

IMPLEMENTATION OF TECHNICAL CADASTRE SERVICES THROUGH DELEGATION OF AUTHORITY: LİHKAB*

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SUMMARY

The aim of this context called “Implementation of Technical Cadastre Services through Delegation of Authority: Licenced Survey Cadastre Engineers and Offices” is with researching of the situation of cadastre services -in a framework including historical development of it- against the public service concept in our country, the process of the delegation of authority to the licensed offices about the implementation of technical cadastre services which are depend on demand, in addition, to explain other processes including licensing, establishment, controlling and responsibilities and to bring up the functions of The Commission of Licenced Offices which plans, observes and carries out these processes.

It has been reached to the opinion that, maximum effort should be exerted to solve the problems of the “licensed offices” which are relatively new implementations in our country, by making the new implementations without causing the planning of the offices rapidly and to ensure coordination among the rural organizations and licensed offices in the implementation of technical cadastre services.

Within this scope, at first it is given a place the basic concepts and theoretical frames of these concepts in public administration literature; after that it is given a place to the legislation and the implementation of procedures and principals that is subject to licensed offices and at the end current situation of licensed offices is put forth with numeric data, the problems and the solution proposal are mentioned about implementation of licensed offices. In this study domestic literature and legislation are used generally. Finally, some suggestions were made on how LİHKAB could be integrated into other country cadastre systems.

LİHKAB*: LSCEO (Licensed Survey Cadastre Engineers and Offices)

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INTRODUCTION

In this study, we will present information about the establishment process, scope, mode of operation, tasks and powers of the licensed topographical and cadastral engineering offices that have been established following the transference of cadastral technical services, run by public sector before, to private sector in order to provide these services in a faster and more quality way, as well as the legal regulations these offices are subject to.

Cadastral activities in Turkey are basically related to property cadastre. Today, by these activities carried out in accordance with Cadastre Law No. 3402, modern land registry certificates as stipulated in Turkish Civil Code are formed after determining and mapping the immovable properties on the field and the rights on them.

It is known that West European countries make the best use of contemporary technologies in order to provide cadastral services and are highly productive in establishing land information systems. Thus, cadastral data can be developed with computers; graphics or legal information can be found as requested and presented for users' benefit. All of the cadastral information has been computerized thanks to the developed analysis information systems. This information gathered in a specific center has been presented to institutions for a fee.

In these countries, technical services after cadastre can be provided by both public institutions and private sector under the same conditions. For instance, an individual will pay the same fee for a requested service whether this is provided by a public institution or private sector. Also, in some countries, it has become a principle to apply to private sector, to some degree, for a service in order to boost private sector.

In our country, it became an application method for the private sector to provide technical services after cadastre within this framework. Due to the fact that cadastral technical services have grown in volume, it became mandatory for private company to provide these services, as well. Thus, the objective was to create new employment areas by establishing offices throughout the country and to run cadastre services effectively and fast by assigning competent public personnel with cadastral services. To this end, after Law on Licensed Topographical and Cadastral Engineers and Offices No. 5368 and secondary legislation related to this passed the Turkish Grand National Assembly on 16.06.2005, *"Providing and checking the unlicensed cadastral technical services and providing licensed cadastre*

services...” became the responsibility of licensed topographical and cadastral engineering offices (LİHKAB).

After the establishment of licensed topographical and cadastral engineering offices (LİHKAB) with Law on Licensed Topographical and Cadastral Engineers and Office No. 5368, a new structure in the cadastral services conduct has emerged. In this study, we will try to analyze -on a public work concept basis- the performance of the partial re-construction of the cadastral services within the "public works", which is considered as one of the main activity areas of the administration.

1. THE CURRENT STATE OF CADASTRAL TECHNICAL SERVICES

Cadastral services have been one of the traditional public services run by state. Cadastral services are subject to public law; thus, it is not possible to privatization of all these services as a whole by definition and nature of these services. Consequently, it is the best application to divide the cadastre service according to its features and transfer the appropriate ones to private sector under administration’s supervision and monitoring. Work items that can be considered as “cadastral technical services” are financial and commercial public services by their nature. Thus, this will not entail any problem for private sector to provide these services under administration’s supervision and monitoring.

As it is known, transference of some part of the cadastre services to private sector was regulated with Law on Licensed Topographical and Cadastral Engineers and Office No. 5368. The Article concerning the “scope” that states the regulated public services have a provision as follows: “The unlicensed cadastral technical services will be provided and checked and licensed cadastral services will be provided by licensed topographical and cadastral engineering offices”. As established in this provision, the activities to be transferred to private sector have been designated by law with the concerned regulation.

2. PREPARATION PROCESS OF THE LEGISLATION

Taking into consideration that the annual volume of the alterations on demand –these alterations are considered as cadastral technical services in the regulations that licensed offices are subject to- reached approximately 1 million, considering that the employment in the cadastral sector will increase after licensed offices provide these services and believing that this will ensure cadastral services to be provided more effectively when consulting with authorized public personnel, ‘*Draft Law on the Duties of Licensed Topographical and Cadastral Engineers and the Establishment of Offices*’ was brought to agenda. Knowing that the issue of transferring cadastral technical services to licensed offices dates back to early 1990s, it has been stated that services after cadastre are provided only for people with real estate; though this services do not fall within Administration’s fundamental duty, it assumed to provide these services; and the Administration allocated 1/3 of its resources for these

services. The objective was to provide individuals with more quality and safe service by those who work under private sector but with public liability.

The Draft was adopted on 16.06.2005 and entered into force as ‘Law on Licensed Topographical and Cadastral Engineers and Offices’ after being published on Official Gazette No. 25860 on 29.6.2005.

The Draft Regulation on Licensed Topographical and Cadastral Engineers and Offices was finalized after the recommendations of District Directorates, Head of Departments, Chamber of Topographical and Cadastral Engineers in the Union of Chambers of Turkish Engineers and Architects (TMMOB), Court of Accounts, Ministry of Financial Affairs, Ministry of Environment and Forestry, Ministry of Justice, Ministry of Agriculture and Rural Affairs and General Directorate of Technical Research and Practice were taken into consideration. Regulation on Licensed Topographical and Cadastral Engineers and Offices entered into force after being published on Official Gazette No. 26867 on 05.05.2008.

However, the regulation had to be amended on the grounds that some of the articles in the existing legislation should be excluded, the problems in areas such as exam application and placement should be fixed and the deficiencies in the application should be eliminated in order to ensure that licensed offices carry out their activities more effectively and efficiently. In this context, the amended regulation entered into force after being published on Official Gazette No. 28678 on 15.06.2013.

3. THE ESTABLISHMENT, OPERATION AND TRAINING OF LICENCED OFFICES

Licensed topographical and cadastral engineer offices are authorized within the official borders of the province. General Directorate of Land Registry and Cadastre is authorized for licensing several offices in the same province and revocation of the license.

In order to run their activities and provide services without delay, licensed offices should recruit at least one engineer besides licensed engineer and at least two technicians or operators competent in this area.

The Administration provides at least five-day mandatory and paid training on cadastral technical services and land registry and cadastre to those who are entitled to set up a licensed office.

4. LICENCE EXAM AND PROCEDURE

Article 3 of Law on Licensed Topographical and Cadastral Engineers and Office No. 5368. that entered into force on 16.06.2005 states that “Licensed topographical and cadastral engineering exam is held by General Directorate of Land Registry and Cadastre in accordance with the regulation that is prepared according to the opinions of Chamber of Topographical and Cadastral Engineers. Those who pass the exam are entitled to set up a licensed office and carry out their duties under this title”.

The Administration can hold the abovementioned exam or authorize the institutions stated in the Regulation to hold the exam within the framework of a protocol. Choice and placement procedure is carried out in accordance with the related articles of the Regulation on the basis of the exam score of the candidates.

5.DUTIES, POWERS AND RESPONSIBILITIES OF THE LICENCED OFFICES

5.1 Duties and Powers

Licensed offices are in charge of the implementation and control of the processes in cadastral technical services which are subject to registration, designated by the Law No. 5368 on the Licensed Topographical and Cadastral Engineers and Offices. These offices carry out the mentioned cadastral technical services, within the jurisdiction of the established licensed office and as of the date the office starts operating. Cadastral technical services to be carried out by the licensed offices are applications which are not subject to registration and the ones who are subject to registration when the parcel is designated such as land use conversion, constitution of servitude or cession and merging operations on demand.

The Administration also gives works and operations by circulars, instructions and regulations to the licensed offices not through Laws and Regulations. These works and operations can be considered as erroneous independent section number correction, layout sheet, and independent section plan and benchmark sketch.

5.2 Responsibilities

According to the Article 5.2 of the Law numbered 5368, the licensee is responsible for the making and audit of the works and operations which are not subject to registry and of the makings of the ones are subject to registration. This responsibility was also clearly stated by the fact that the licensed offices which are authorized to carry out the operations stipulated in this Law are considered as public officials within the Turkish Penal Code and are revoked according to the Article 1007 of the Turkish Civil Code numbered 4721 if any losses or damages arise from the operations carried out by the offices.

Licensed offices have other responsibilities to carry out within the Law numbered 5368 and the Regulation. We can sub-categorize these responsibilities as:

Responsibilities to the Administration: In the Article 2.3.(d) a special condition is specified to grant license to offices as "to deposit ten thousand new Turkish liras to the bank and blocking this money under the name of the General Directorate of Land Registry and Cadastre." Within this regulation "those who are granted the license shall block the stipulated amount of deposit under the name of the Administration in the presence of the bank and submit the concerning document to the Administration.

Deposit amounts are designated yearly in relation to the previous year by the Administration according to the revaluation rates set by the Ministry of Finance and as per the Tax Procedural Law dated 4.1.1961 and numbered 213. These deposits under the possession of the bank cannot be used, levied or refund without the Administration's knowledge and request. In case of the licensed office having any financial responsibility conditions within the Article 5 of the Law, these deposits are used by the Administration's request. The Administration holds the right to suspend or revoke the license in case of a failure in the completion of the deposit within the period set by the Administration. When these deposits are used, updated deposit amounts should be completed no later than 30 days after the date of use and new deposit document must be submitted to the Administration.

Licensed offices shall renew the document of the deposit stipulated in the Article 9 of the Regulation every year, within the period designated by the Administration. In case of a failure of renewing the document, the Administration holds the right to suspend or relocate the license.

Responsibilities to the Chamber: Just like having responsibilities to the Administration, licensed offices also have responsibilities to their affiliated professional chamber arising from the Law, regarding the office registration. This responsibility is defined in the Article 6 of the Law as such: "The licensee is obliged to register his/her offices to the chamber of topographical and cadastral engineers of the topographical and cadastral engineering offices."

Another responsibility is that a licensed engineer has to his/her affiliated chamber arises from the Article 36 and second clause of the Regulation and it constitutes an obligation to the licensee to submit a written statement mentioning that the office is now operating and the workplace.

6. INSPECTION OF THE LICENSED OFFICES

According to the Law numbered 5368, the General Directorate of Land Registry and Cadastre is authorized to inspect and impose a disciplinary penalty on the licensed offices and the procedures and principles regarding the inspection are established by the Regulation.

The inspection of the licensed offices is carried out at least once a year by the staff authorized by the Administration.

Works and operations carried out under the office activities, workplace, and staff, equipment and archive order are within the scope of the inspection.

Principles set out by the administration are taken into consideration while organizing, evaluating and finalizing the inspection reports.

The licensee is informed about any errors, shortcomings and unfavorablenesses identified during the inspections by a written notification by the inspector. The licensee has the right to raise a written objection to the Administration regarding these findings with any relative documents and justifications within fifteen days. The Administration considers the inspection report and the licensed office's objection and comes to a decision. The inspected licensed office is notified in written, regarding the decision. After the consideration of the Administration regarding the inspection findings and the objection, any penalties prescribed in the related article of the Regulation can be imposed according to the shortcomings and unfavorablenesses and their repetition.

All inspection findings are kept in files by the licensee and the Administration.

7. INVESTIGATION AND DISCIPLINE PROCEDURES

Penalties mentioned in the Regulations cannot be imposed without taking the statement of the licensed engineer or the person having the authority of the licensed engineer. Licensed engineer is asked to prepare a written statement regarding the alleged action within seven days from the date of notification. Otherwise, the person is considered to have waived his/her right of defense.

The administration investigates the licensed topographical and cadastral engineering offices regarding the areas mentioned in the Article 50 and second clause of the Regulation and within the framework of the provisions of the related legislation. Disciplinary penalties given in case of an error, inadequacy and unfavorableness identified by the inspections, investigations, preliminary exams and inquisitions carried out by the administration are: warning, reproach, suspension of the license, revocation of the license.

8. CURRENT STATE

For the planned 2029 licensed offices in Turkey, licensing examinations were carried out within the scope of the articles of the related Laws and Regulations.

As of today, 195 licensed engineers are carrying out licensed office activities. A total of 1000 staff, comprised of engineers, technicians and office staff, were recruited in the active licensed offices.

Table 1: Number of active licensed offices, their trading volume and turnovers in regions

REGIONS	Number of Offices	REGIONS	Number of Offices
Ankara	19	Edirne	6
İstanbul	42	Van	2
İzmir	24	Elazığ	4
Bursa	14	Eskişehir	10
Konya	7	Denizli	10
Antalya	10	Kastamonu	3
Diyarbakır	4	Sivas	-
Erzurum	2	Şanlıurfa	3
Trabzon	2	Yozgat	1
Samsun	3	Turkey	195

9. CONCLUSION AND EVALUATION

Cadastral services are one of the traditional public services provided by the state all along. Cadastral services are subject to public law, since these are "administrative" public services. However, cadastral work is being re-shaped due to the evolving public administration and "active state" approach. As a manifestation of this approach, some public services were transferred to private sector, yet the State's responsibility was maintained through effective monitoring methods. In this context, the monitoring of the public services provided by the private sector through effective monitoring mechanisms is important in terms of providing these kinds of services under state's guarantee. Even though today, the monitoring of the licensed offices are carried out by General Directorate of Land Registry and Cadastre under the executive body, enabling an administratively and financially independent regulating and auditing board to carry out this function, rather than the General Directorate of Land Registry and Cadastre, will contribute to the services' efficiency and effectiveness.

To conclude, we aimed to provide information regarding the qualifications, duties, scopes and limits of the relatively new practice in our country, the licensed offices. It is important that

provincial organizations and licensed offices show a maximum effort in order to provide cadastral technical services with an aim to avoid any possible problem. Besides, we have reached a conclusion that, in case of any problem, it is more beneficial to come up with long-term and permanent solutions and investigating the source of the problem in terms of the nature of the service, rather than searching for temporary solutions.

Licensed Topographical and Cadastral Engineers and Offices are also appropriate models in terms of using the time more efficiently, the increased quality of the services provided by the state and the quality of the services provided within the framework of the on-going works of the United Nations Public Administration Network (UNPAN).

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