

WORLD CADASTRE SUMMIT

Legal and Technical Documents Before The Cadastre and their Applicability in Turkish Cadastral System

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What is cadastre?

Cadastre is in short the work of recording and determining officially the place, owners, qualities and quantities of a real estate in a country.

What is meant in this definition is three-dimensional constant settings on the globe. The two-dimensional appearance of these settings, called place, is called as parcel and they are visualized in the form of maps through their coordinates on the cadastral planes.

However, in the use of parcels, the third dimension (depth and height) and even the fourth dimension (temporal position) are seen as essential factors. In this case, cadastre is expressed as three or four dimensional cadastre.



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The property right in historical process

In the use of real estates, property and the formation and acquisition of rights in connection with it have appeared in different ways throughout the history.

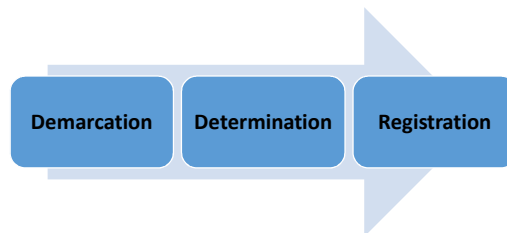
In ancient times, every kind of need was met by spontaneous resources. Everybody used to make use of every piece of land when the people were unaware of civilized agriculture and stock farming. Thus, a kind of collective property was prevalent.

However, when some disagreements and rifts arose in the share of sources, the concept of private ownership (ownership in common or personal ownership) came to the fore. Along with this concept, clan, tribe, and state ownership concepts were also developed. In the societies where the ownership of real estates is institutionalized, cadastral studies were initiated by the official assessment and assurance of real rights and ownership (Güriz 1969).



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Basic stage of cadastre...



The basis of cadastre consists of three steps; demarcation, determination and registration (official assurance).

Demarcation is the marking of properties on earth (horizontal and vertical).

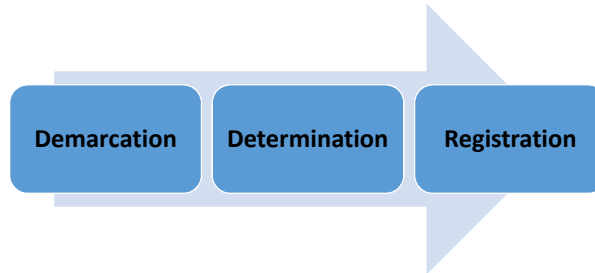
Determination provides ownership and other real rights information

Registration is the official assurance of all rights.



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Importance of the cadastral documents before cadastre



In the realization of these demarcation and determination processes, cadastre takes advantage of documents, expertise and the statements of the witnesses. As a rule, if there is a valid document, the statements of the expertise and witnesses are not considered. Hence, the documents used in cadastre are of vital importance.

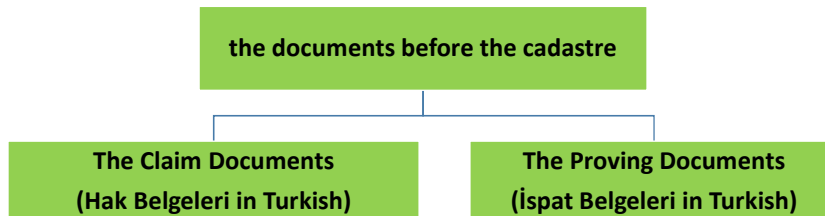


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What are the documents before cadastre?

While examining the cadastral studies, the documents analysing the qualities and quantities of current rights are divided into two groups:



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The Claim Documents

The Claim Documents are the papers which are used to identify the owner of the real estate during the cadastre and explain the rights obtained through legal ways.

Property deeds or these documents having the force of law were the documents which were given for the real estates registered into the Registry Book (zabit defteri), Tahrir Book, inspection book (yoklama defteri) which were established either before or after the Civil Law.

Furthermore, the decrees of the Sultan, Kuyud-u Kadime registries and Land Distribution and Settlement Documents (Toprak Tevzii ve İskân Belgeleri) are the documents having the force of property deed and given during the Republican Period. These documents prepared before geometrical cadastre are classified as:

- Land Registry Certificates,
- Court Decisions and Maps,
- Certificates of Inheritance for Registered Properties,
- Decrees of The Sultan,

If the validity of these documents and their applicability to the land are indisputable, their content should be preserved and registered into the new records.



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The Claim Documents after the Land Code (1858)

In 1858, The Land Code (Arazi Kanunnamesi) was enacted. According to this statute, the documents regarded as Land Registry were divided into five groups (Özmen and Çorbali, 1988):

- Atik Land (1847-1871): The first title register arranged by Defterhane. The oldest title registers are named as Arazi-i Atik (Bıyık and Yavuz, 2006),
- Cedit Land (1872-1883): These land registrations are called as the Inspection Books,
- Miri (state) Land Inspection (1872-1873),
- Private Land Inspection (1874-1885),
- Deeds (1883-1910),

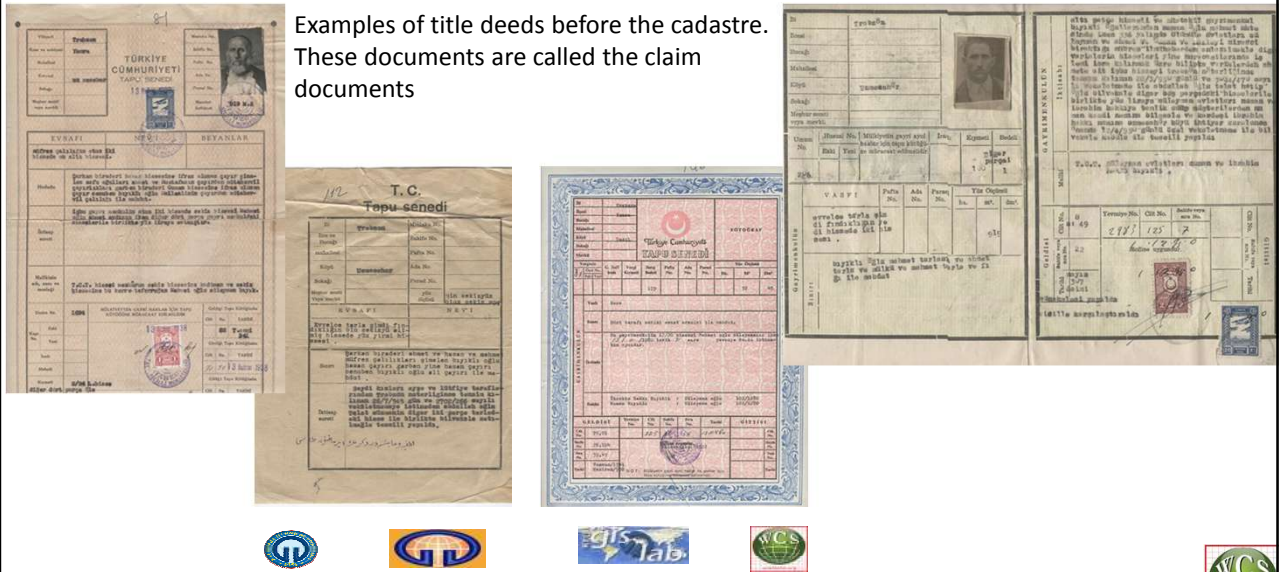


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The Claim Documents Examples

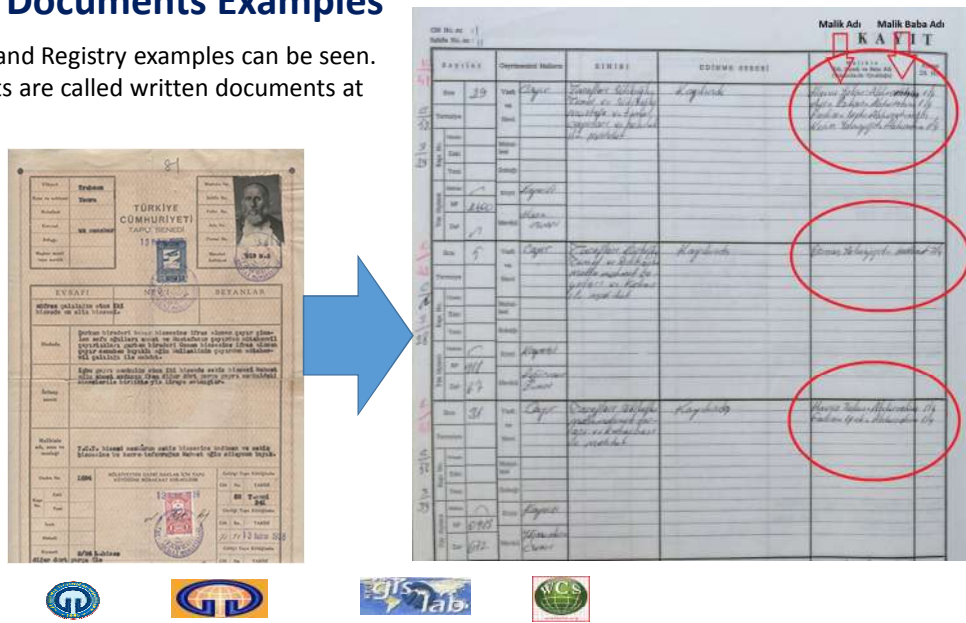
Examples of title deeds before the cadastre. These documents are called the claim documents



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The Claim Documents Examples

Title deed and Land Registry examples can be seen. These documents are called written documents at the same time



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The Proving Documents

These are the documents used to substantiate not the absolute existence but the possibility of this right. they should be trusted until otherwise specified. These documents point out the rights related to real estates and are used to substantiate the ownership (Bıyık and Yavuz, 2006).

a) The documents given during the rule of Ottoman Empire

- Declaration of intention copies approved by the Sultan and Decrees, (*Padışah tasdikli irade suretleri ve Fermanlar in Turkish*)
- Muteber (valid), Mütevellî (trustees), Sipahi (cavalry soldier), Mültezim (taxmen) Temessük deeds,
- Hazine-i Hassa deeds (the Sultan's privy purse deeds) or temporary disposal documents (muvakkat, geçici tasarruf ilmühaberleri),
- Mülkname and Muhasebat-ı Atika Kalemî records,
- Mubayaa (purchasing), İstihkâm (fortress) and İhbar (declaration) hüccets (deed),
- The disposal records not transferred from foundation administration to land registry,
- Unstamped title inspection records,
- Kuyud-u Kadime records (The records were began to be arranged as of Sultan Suleyman period)
- Ordinary deeds (Köy Senedi).

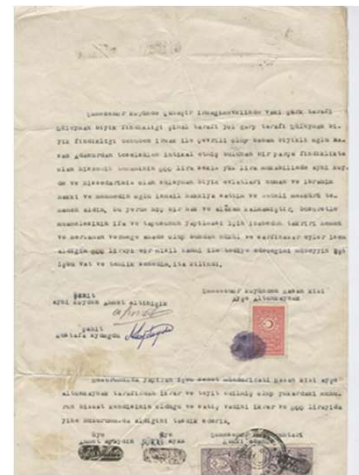
b) The documents given during the Republican Period

- Note of Hand,
- Notarial Deed,
- Uncertified Title and Composition (tahrir) Records,
- Certificate of Inheritance,
- Tax Record,
- Other Disposal Documents

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The Proving Documents



The documents are examples of proving documents belonging to the Ottoman period and early Republican years. They are known as ordinary deeds in Turkey.

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Process of cadastre in Turkey

During cadastre, the basic process steps are as follows

- 1 • the real estates are demarcated on the basis of parcel,
- 2 • the demarcated real estates are measured,
- 3 • In order to determine the legal status of the real estate, every kind of property and limited rights in rem are written in the Cadastral Reports.
- 4 • Obtained information is recorded in the Land Register.

One of the most significant stages in cadastral studies is the determination of property right. The claim and proving documents have a substantial place in these determinations.

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How Property Rights are determined?

According to Cadastral Law in Turkey, the determination of property right is divided into two groups:

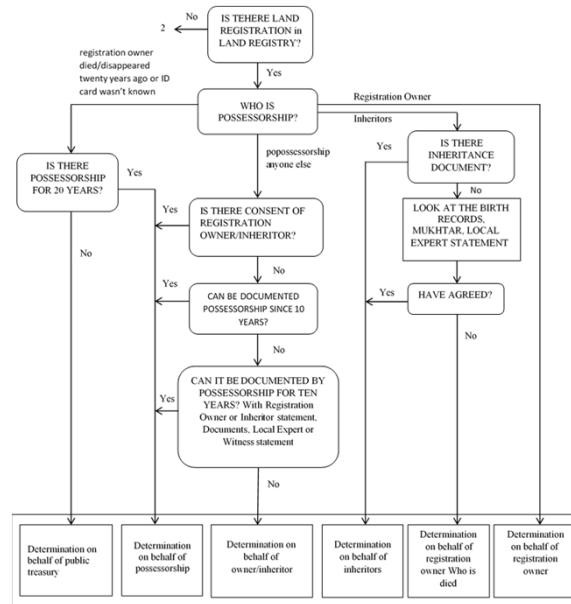
1. The determination of real estates recorded in Land Registry
2. The determination of real estate non-recorded in Land Registry

The Land Registry which is implied above belong to the last Ottoman period and the first years of the Turkish Republic. These are written documents.

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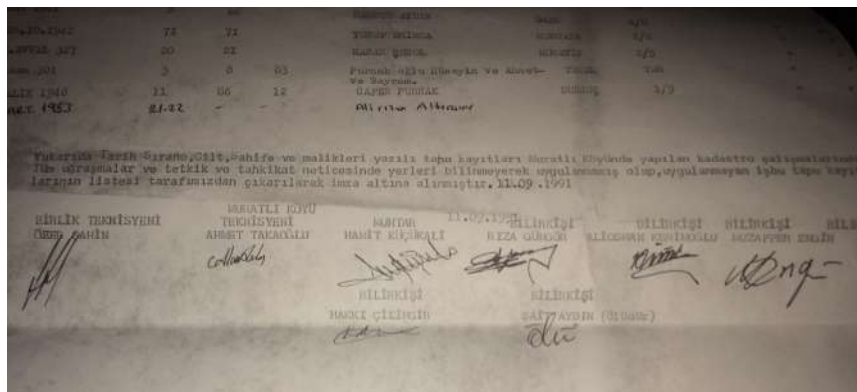
Determination of Real Estates Recorded in Land Registry



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Determination of Real Estates Recorded in Land Registry



At the end of the determination process, some claim documents (like title deeds belonging to the Ottoman period) can't be applied to land.
These documents are canceled by a cadastre expert.

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Determination of Real Estates Recorded in Land Registry

Village name	Number of parcel (N)	Number of parcel which were determination with title (T)	Rate (T/N) %
Kayaıçı	1789	51	3
Çiftesu	330	12	4
Muratlı	1614	135	8
Yukarıçavuşlu	372	143	38

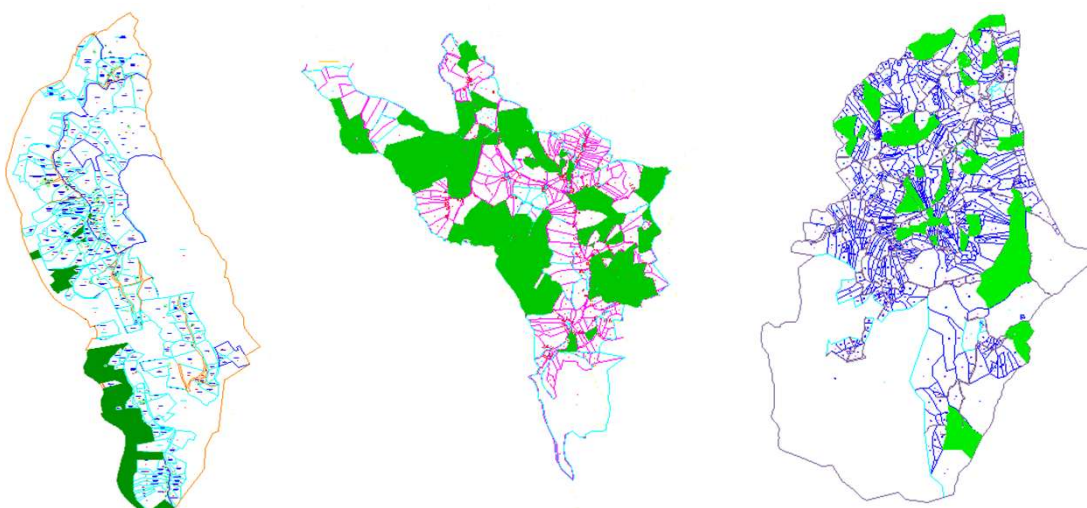
This table reflects a few cadastre results about determination of real estate recorded in Land Registry in Turkey. As seen in the table, the number of parcels which were determined with a title is rather low. Because these titles called the claim documents are rather old and their applicability is rather low.

Despite this situation, these documents have to be used in cadastral works to prevent loss of rights.

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Determination of Real Estates Recorded in Land Registry

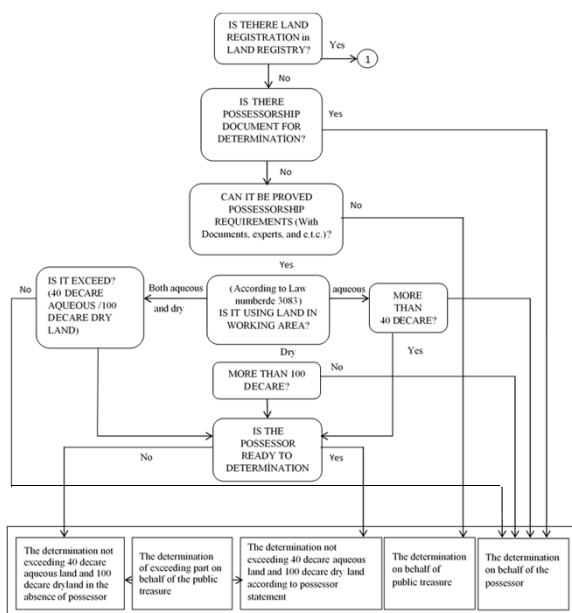


In this slide, the results of the cadastral Works of a few villages are seen. The green areas are parcels determined with title deeds. The other areas are parcels determined only with possession.

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Determination of Real Estates Non-Recorded in Land Registry



If a parcel doesn't have a title deed, it is determined according to possessorship conditions.

In respect to this, This parcel is determined on behalf of the person who uses it for 20 years continuously and without dispute.

This chart shows the details of this procedure.

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CONCLUSION AND SUGGESTIONS

In the determination of ownership, the statements by the witnesses and experts are not taken into account if there is a valid document. Hence, both claim and proving documents are the indispensable sources. A determination which only considers ownership and ignores these documents is away from being fair and legal. Such determinations will eventually lead to violation of rights, objections and civil trials. This understanding may cause cadastre to be a problem rather than a solution. Therefore, every kind of claim and proving document displaying current rights should be taken into consideration and evaluated in cadastral determination.



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