

Land Assets and Tenure Systems in Agricultural Enterprises and an Evaluation of Possibilities of Implementation of Legal Arrangements for the Prevention of the Problem of Land Fragmentation in Turkey

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Key words: Land management; Valuation; Land fragmentation; inheritance rules; size of sufficient income enterprise; land protection; and evaluation of sustainability of land resources.

SUMMARY

ABSTRACT

In many countries and in Turkey, importance is attached to making legal and institutional arrangements for the protection of land resources, aimed to protect and prevent fragmentation of fertile land, which is one of the scarce natural resources, for agricultural production. In Turkey, the Law on Soil Conservation and Land Use, No. 5403 and dated 7/3/2005, entered into force for protection, and in particular, prevention of fragmentation of land and then, with the Law on Amendment of the Soil Protection and Land Use Law No. 5578 dated 1/31/2007, drastic changes were made in this area. According to the amendment made by Law No. 5578, the size of the farm land parcel, which has the smallest adequate area where agricultural activity is economically possible and cannot be reduced further, is determined by the Ministry of Food, Agriculture and Livestock considering the agricultural, economic, ecological and technical characteristics of the regions. With the amendment made in Law No. 6537 and Law No. 5403, the minimum size of farm land has been determined to be 2 hectares for absolute agricultural, marginal agricultural and special product lands; 0.5 hectare for planted farm lands; and 0.3 hectare for undercover farm lands. It is possible that the Ministry of Food, Agriculture and Livestock can increase the minimum farm land sizes according to the conditions of the day. Farm lands may not be further dissolved under the sizes determined by the Ministry, they may not be further divided into shares and apart from the sales operations of Treasury land, and share and denominator may not be increased. However, smaller parcels may be allowed to be established with the appropriate opinion of the Ministry, provided that formation of smaller size parcels is required in areas where non-agricultural use is allowed or in regions, in which crops with special climatic and soil requirements such as tea, hazelnut and olives are cultivated.

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FIG Congress 2018

Embracing our smart world where the continents connect: enhancing the geospatial maturity of societies
Istanbul, Turkey, May 6–11, 2018

In recent years, special attention has been paid to the prevention of fragmentation of parcels and farms in terms of increasing the efficiency of land management and improving agricultural production. With the annotation of this characteristic of the land in the declarations section of the title deed registry, dissolving and out of purpose use demands regarding the parcel in question are not allowed. With this arrangement, it is aimed to prevent production of pieces smaller than the specified size from large parcels and to increase production by ensuring that agricultural enterprises benefit from economies of scale. In other words, if the lands are subject to inheritance and co-ownership exists, there is provision that the land in question may not be dissolved further, its shares cannot be sold to third parties, cannot be transferred and cannot be pledged. It is anticipated that such legislative acts restricting rights such as the use, tenure and pledging of land assets of rural households will have important economic and social impacts and the success of implementation of the regulations made given the current economic and social structure of the rural areas seem to be another controversial subject.

Despite frequent use of concepts such as minimum farm land size, sufficient income farm land size, optimum parcel area and optimal farm size in the literature, legislation and practice, the definitions of these concepts vary over time and are often not understood by the stakeholders of land management, especially landowners. Sufficient income criteria were analyzed by economic researches in the field of land economics and management carried out in different provinces in Turkey and land sizes that can provide sufficient income were determined and with the list numbered (1) added to Law No. 6537 and Law No. 5403, farm land sizes of sufficient income were even identified and announced. In this framework, Law No. 5403 stipulates that dissolving that creates parcels under the sizes determined as per land types may not be performed at the district level. In the implementation of Law No. 6537, there seem to be many legal, technical and sociological problems that concern the provincial and district directorates of food agriculture and livestock, land registry offices, cadastral directorates, municipalities, farm land shareholder or owner citizens and other stakeholders. The fact that the minimum farm land sizes defined in the related articles of Law No. 5403 for each land type can be different is the most significant of these problems and it is observed that the differences between criteria in the list annexed to the law and those in Article 8/3 of the law creates a contradiction, which leads to hesitation among the implementing institutions. When real estate subject to procedures such as dissolving, consolidation, and change of type are found to have been allocated for non-agricultural purposes in the development plans, correspondence between municipalities, agriculture directorates, and land registry offices takes a long time and problems in interpretation of technical reports are encountered by title directorates. It is necessary for the current plans to be shared in electronic environment and to reduce unnecessary correspondence so that the immovable properties can be evaluated by the land registry office directly at the time of the transaction, if the property is to be separated as an agriculture area or unplanned area. It emerges that relevant institutions and owners are suffering significant problems at the examination and evaluation of requests for fragmentation of land. Beyond this, the arrangements made have negative effects on the persons, who have farm land in their possession, with regard to land tenure and when the land is given as a security, and when it comes to the arrangement that the inherited property will be left to the most competent one of the heirs. It is anticipated that this will be a main topic of dispute within the family. In the event that factors such as inadequate non-agricultural employment opportunities in the countryside; high population of rural settlements; the fact that even the households living and working in the city do not have a tendency to transfer the lands in their possession, which they do not actually use, (or their being dependent on the land excessively and cause the land to remain idle) are considered collectively, leaving the heritage to one or a few of the heirs and the other rights holders having the income value instead of the market value of the rights on the land are not generally accepted in rural areas. It is also clear that the fact that the land will be expropriated and the Treasury will pay the