

The Transfer of Property and Development Rights in Turkey

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Introduction

Urban conservation, renewal and regeneration methods are improving in many countries such as USA, England, France, Italy, Germany, Spain, Malaysia, Hindistan, etc.

The Transfer of Development Rights (TDR)

The transfer of development rights (TDR) literature reports different histories, especially in the United States.¹ Since TDR can be used as a market-driven technique to preserve land from development while guaranteeing the rights of property owners.² Also there were some examples in Europe.³ However, command-and-control regulation has been preferred in land preservation to market-based solutions in Europe,⁴ so that there are problems in implementing TDR programs.

U.S. laws and regulations for land use are often explained through references to the U.S. Constitution or to economic efficiency. Indeed, it is sometimes argued that these two are opposite sides of the same coin: private property ownership, capitalism, and freedom are all interwoven.⁵ There are implemented by many

Transfer Development Rights (TDR) programs in U.S.A.

Italy is experiencing tentative practices under regional laws, introduced by an equalizing approach since the '90. Italy has achieved some remarkable results in public land acquisition, "perequazione" (means TDR) should be granted by a national law, in order to avoid legal disputes, as well as supported by an explicit exaction policy,⁶ in order to reduce discretion in the negotiating process. Planning by agreement⁷ is then a consequence and yet a tool to face the responsibilities of local financial autonomy.

Land use in Japan is important and the instrument of transferable development rights plays a role in many cases. Paul⁸ in Tokyo writes about one of them as an example of "The redevelopment of the Marunouchi Area" which is a case study about an Conservation; Protection, upgrade of existing land use.

Tokyo Station which is a National Heritage site, is another example of reallocation: compensation for non-development. In this way Tokyo Station as a historical building can be preserved while at the same time the unprofitable land use can be made profitable elsewhere by selling the development rights.⁹

Heritage bodies make grants and give loans for work on heritage items. In New South Wales, the govern-

¹ Machemer and Kaplowitz, 2002; Bredin, 2000; Voget, 1999; Johnston and Madison, 1997.

² Tavares, 2003.

³ Micelli, 2002; Renard, 1999.

⁴ Weale, 1999; Feitelson and Lindsey, 2001.

⁵ Epstein, 1985.

⁶ Curti, 2006.

⁷ Urbani, 2000.

⁸ Chorus, 2007.

⁹ Chorus, 2007.

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ment has set up a fund for this purpose, derived in part from the proceeds of the sale and transfer of development rights over significant State government owned heritage items in Sydney's central business district.

The Definition of Problem: The Existing Situation about Property & Development Rights and TDR in Turkey

In spite of everything, TDR can also be used in Turkey with some regulation proposed in this study. This paper explores the difficulties in previous urban conservation (and also urban renewal/renovation, urban regeneration) plans/programs, many of the arguments for the use of TDR programs, and discusses expropriation tools in Turkey.

There are transfer development rights and detailed development applications which were legislated into the jurisprudence in Turkish law, in 2004. The subject of this paper is to develop proposals for a new transfer development rights program (tool) for conservation planning (and also urban regeneration before in with/without disaster by revised models¹⁰ later), determined firstly by "Law on the Protection of Cultural and Natural Assets",¹¹ but that Law is not clear enough in different aspects of its application.

In order for conservation of registered historical, cultural and natural assets in utilization of individual and corporate ownership, a conservation development plan needs to be implemented by limiting private and corporate property and development rights of certain development restricts, and by limiting the development rights of partially development restricts, and it should go hand in hand with a proposed framework (BTM) developed through the help of legal counsel sound proposals in line with the legislation in Turkey.

The Goal of the Study: The TDR Implementation for The Conservation in Turkey

Firstly, the development plans' and some discussions about property and development rights with theory of the development plan 15 in the following chapter. Then, BTM is explained with details.

This paper concerns the realization of granting of ownership and "building"-development rights limited by implementation of (especially conservation) development plans for assets under utilization of individual and corporate ownership, in order to enable conser-

vation of cultural and natural assets in the national level.¹²

At the same time, this proposed model can be implemented with all development plans for the various purposes.¹³⁻¹⁵ It should go hand in hand with a Basic Transfer Model (BTM) (three phases) developed with the help of proposals in line with the legislation. Especially, a before paper was about for the first phase.¹⁶

Now, this paper also looks at new methods which are set out with several enriched and detailed approaches for these types of application or possible programs. In fact, methods are related to seven different professional fields or enriched approaches; city planning, jurisprudence, management, finance, education, public relations and information theory. For the further information about social subjects about urban conservation and urban regeneration, another proceeding work has been presented in a congress on June.¹⁷

In the proposed model is clarified by a basic model called BTM or framework, and explained as three different phases. These phases are related also to functional detailed approaches to implementation. Besides the transfer development rights programs a development application tools are put into practice which also purposely includes expropriation tools in this study, because BTM is a more complex detailed optional structure than expropriation as in Fig. 1 later (5. Chapter).

The Development Plans' Necessity in New Dimensions and the Limited Rights

In our country and around the world, within the framework of the changing economic and social conditions

in many fields, or born again, changing, developing new insights;

- Macro-level strategic projections of the state show a need to know or re-design in all areas.
- It must be ensure with accountability and also planning predictability, efficiency, monitoring, evaluation and audit qualifications by boosting in the long-term solutions to problems.
- The need for a holistic approach to planning general felt more than ever.

¹⁰ Kocalar, 2011b.

¹¹ The Law No. 2863, article 17, cth sub-section.

¹² Kocalar, 2010b.

¹³ Kocalar, 2010c.

¹⁴ Kocalar, 2011b.

¹⁵ Kocalar, 2011a.

¹⁶ Kocalar, 2010a.

¹⁷ Kocalar, 2012c.

- During this period of globalization to be effective in all areas,

the opportunities and risks which are arising from the competition based on the rapid changes occurring in multi-dimensional come together.

- Society expects solutions in line with macro-level objectives, must be coordinated in the country's development plans, the regional plans, the development plans

- However, the economic, social and cultural transformations of the fields, has emerged to be realized with a planning process which is carried out the basic policies for the purposes of a country

The Transferring of Limited Rights Model (TLRM) with the Highest Priority in the Theory of Development Plans¹⁸

The building-development rights are homogeneous to the immovable property rights in our country. Because of this situation, in principle, an independent property right should be considered as legal norms.¹⁹ Although the right of building has been included into the legislation of conservation through the law²⁰ in 2004, these rights must be demanded insistently by the community informed on this issue. However, the architects, town planners, engineers and lawyers also are expected to be leading to this demand. The immovable property is not a single right by itself. It also covers the rights of building-development. Besides, within the scope of this right there are also the rights of city, the environment and the living.

In a sense, all of them must be also taken into consideration. However, these potential rights must be also demanded by owners. Nevertheless, it has been late to the creation of this awareness in the public.²¹ The assessments in the dealings of real estate between public and private should need to be done by committees at the national level with the same principles, criteria and methods. Besides, these processes with all the qualities and quantities should be realized by keeping placement, housing, housing, environmental issues and rights of life in mind and then, equivalents of these must be reimbursed to owners by governments.

In addition, the following topics should be the most priority of subject:²²

- Cultural, historical, urban, archaeological and natural site assets;

- Coasts, forests, pastures, meadows, grasslands, scrubs, and national parks;

- For the protection of catchment's basins such as dams, under ground and surface water basins, swamps;

- With the precautions taken against the possible natural disasters, forest fires, floods, avalanche blasts, before earthquakes and then,

- For the benefit of public service and order in the urban and the regional-level conservations, renewals and regeneration projects, are the most important issues.

In the means of implementation of development plans, together with the expropriation and changes, the rights of transfer in a contemporary approach, should be based on the realization of the principles of a social state of law.²³ In all over the world, new approaches have been needed to integrate into the theories of planning during recent years. One of these is allocation of the areas of the limited real rights reserves. Even though overdue in this subject, the joining urgent seems mandatory. Because this has been ignored so far, immediate actions on this issue seem necessary.

The Transfer Periods after The Historical Past in Turkey

Both the conservation development plan that transfer is based on and other development plans for protection of coasts, forests, meadows, national parks and water basins are under the title of special-purpose plans. TRANSFER is to be used instead of problem creating and outdated character of binding expropriation, which is an instrument of development plan implementation based on sanctions and one-sided will.

Transfer is a right that requires participation of all parties by taking responsibility and authorization.

It is a right that creates rulling through a legal-administrative concept and action and it is supposed to provide solution of problems. Transfer in implementation of development plans, stems from the necessity for utilization of unilaterally limited property and building- development rights for public interest and for public service in other areas. Since transfer is based on right to shelter, settlement and housing as well as the demand for creation of all lost values in other ar-

¹⁸ Kocalar, 2012b.

¹⁹ Kocalar, 2011a.

²⁰ Law No. 2863.

²¹ Kocalar, 2010a.

²² Kocalar, 2011a.

²³ Kocalar, 2010b.

²⁴ Kocalar, 2011a.

Table 1. Some legal aspects in decades to related with property & development rights

No	Year/ Month	Law # (old law)	Section #	Law Name	Situation	Institution	Subject, Content	New or important terms
1	2001/8	4706	6	Land of Trust	New law	Trust, Ministry of Finance	Evaluation, trust lands	Sit Certificate, Lost rights
2	2003/7	4916(4706)	5	//	Changed	//	//	"Approved" Conservation Development Plan
3	2004/3	5104	All sections	North ANKARA	New law	Ankara Municipality	North ANKARA	Urban regeneration prj
4	2004/5	5177(2863)	53	Conservation of the Culture & Natural Assets	Changed	Ministry of Culture & Tourism	Coordination	Natural parks, Mineral deposits
5	2004/7	5226(2863)	(17/c)	//	Changed	//	Culture & Natural Assessts	Transfer of Property &Development rights
6	2004/12	2273		MassHousing Administration	New law	TOKİ *	Authorization, Renewal	Mass housing, squatter
7	2005/7	5393	53	Municipality	New law	Municipalities	New Authorization	Earthquake
8	2005/6	5366	All sections	Renewal, Conservation, Use, Livebility	New law	Municipalities	Renewal, Conservation, Use, Livebility	(new) Renewal areas, Conciliation management
9	2005/7	5403		Ground protection & Land use			Agriculture	
10	2010/6	5998(5393)	(73)	Renewal	Changed	//	New Authorizations, Renewal	(non- Historical areas) Urban regeneration& development areas
11	04.07.2011	644		Legislative Decree	New decisions	Council of Ministers	Nes Ministers & new authorities into the centre	All
12	17.08.2011	648		//	Changed	//	//	All
13	26/4/2012	6292	14 sect. (15 pages)	Supporting Development of Forest Villagers	New law	Ministry of Forests and Water + others	Places from out of limits forest, Treasury of agricultural lands for sale	
14	16/5/2012	6306	25 sect. (12 pages)	Law on Transformation of Disaster Risk Areas	New law (like frame)	Republic of Turkey Ministry of Environment and Urbanization	Disaster & Regeneration	All

* TOKİ: Mass Housing Administration.

eas, it should be implemented before and instead of all expropriations.²⁴

The Legalisation in Last Decades with Case Studies

The Necessary Transfer Regulation

The current Law²⁵ namely the “Law on the Protection of Cultural and Natural Assets”, (Kültür ve Tabiat Varlıklarını Koruma Kanunu-KTVKK) was amended by the another law²⁶ of 14th of July, 2004. In the last cth paragraph of article²⁷

“Transfer regulation should be made as soon as possible.”

The meaning and functions in the conservation development plans as well as its conditions have been

briefly talked about in the Law without more detailed descriptions of the new terms. Under this framework, not only an option for expropriation, but also an opportunity of transfer development rights is provided for properties that are site certificated and without allotment as in Figure 1.²⁸

Transfer is a process, which is planned in a very detailed ways, consisting of three stages that are handled in a comprehensive manner within the framework of Basic Transfer Model. (Evaluation, Securitization and Transfer) in Figure 1.

The Basic Transfer Model

(The Framework of the BTM) Processes

This research anticipates that 25-year-old unsolved problems on protection of Registered Immovable Cul-

²⁵ The Law No. 2863.

²⁶ The Law No. 5226.

²⁷ The Law No. 2863, Article/Sub-section No. 17/c.

²⁸ Kocalar, 2009.

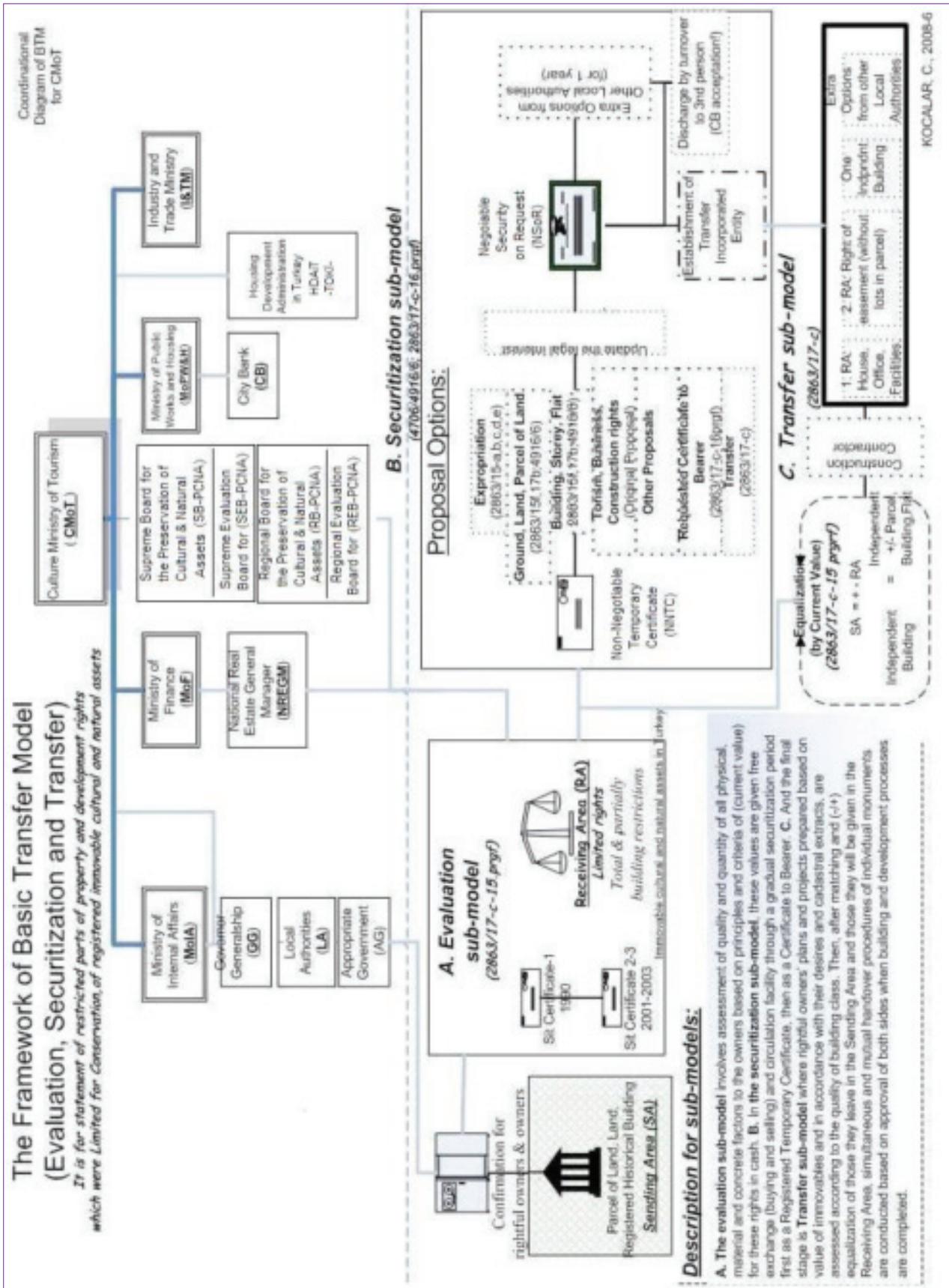


Figure 1. The Basic Transfer Model (BTM) with 3 sub-models (ESM, SSM, TSM) (Kocalar, A.C., 2009).

tural and Natural Monuments in Turkey can be addressed through implementation of Basic Transfer Model involving sequential and comprehensive applications of Evaluation, Securitization and Transfer sub-models as in Fig. 1 in a transition period of 5 years on average.

The implementation programs to be realized under Basic Transfer Model and three related sub-models, designed as an alternative development plan implementation to expropriation will not provide only short term solution to complicated problems but also it is anticipated that this improvement process should be supported by some middle and long term developments.

It also covers on coordination between all organizational units for Ministry of Culture and Tourism with other Ministries in Figure 1. This framework is detailed with a complex structure which proposes new options for owners, speculators and market-regulation partners for setting up a new free real property market which also needs to work for a long time.

The First Step in BTM: Evaluation Sub-Model (ESM) Process

The evaluation sub-model involves assessment of quality and quantity of all physical, material and concrete factors to the owners based on principles and criteria of (current value) for statement of restricted parts of property building-development rights, which were limited for conservation, of Registered Immovable Cultural and Natural Monuments in cash.

Evaluation steps starts firstly with property rights, then comes their development rights. In this study, if owners want, their development rights can be separated by their property without allotment.

The Bundle of Property Rights

The bundle of rights that comes with a piece of property has some details which can be showed by the following Fig. 2. All these rights will be used by the

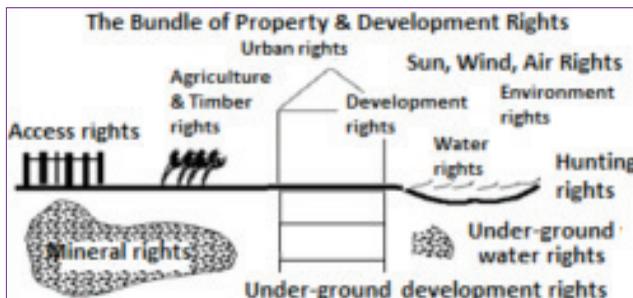


Figure 2. The bundle of property rights (physical and legally enforceable rights).

Table 2. A list for immovable property samples (IPS) [1. list for property]

Property samples	
1	Building (please look at the Table 2)
2	Land
3	Ground
4	Land of Cultural and Natural Assets
5	Garden bed, vineyards and orchards
6	Agricultural land
7	Normal-Natural land
8	Forest land, Woodland
9	Steppe
10	Pasture, Summer pasture, Meadow, Grassland
11	Tourist foundation land
12	Plant land or ground
13	Industry land area or land ground
14	Commercial land or land ground
15	Trading land or land ground
16	Other immovable property or real estate

evaluation sub-model.

Some physical rights, depicted in Fig. 1, include the rights to build, exploit natural resources, and restrict access and farm. Other legally rights include the right to sell the land, subdivide it, rent it out or grant easements across it.²⁹ Evaluation process for property and development rights is a first and difficult step in this study.

Property Rights for Proposed Model (ESM)

Three related tables (with first rows) for definition in property rights created by Ph. D. dissertation, are explained as follows.³⁰

Firstly, a list for immovable property samples (IPS) defined [as a 1. list for property] in the Table 1. Then secondly, property rights for a structure (PRS) (building) [as a 2. list for property] defined in the Table 2. Lastly, a position list for immovable property rights (IPR) [as a 3. list for property] defined in the Table 3. Samples of Property Rights for a Structure (building). The first rows in every tables supply relational connection for transition between tables. Then, three forms created by the dissertation are to fill during the process in according to these tables. After all, evaluation criterions for immovables created as a 1st (form) format in six pages, it is named by immovable evaluation criterions format (IECF) (DSAF in Turkish).³¹ It is filled

²⁹ Marquitz, 2004.

³¹ Kocalar, 2009, p. 413-8.

³⁰ Kocalar, 2009, p. 409-412

Table 3. A position list for immovable property rights (IPR) [3. list for property]**Samples of position for Property Rights**

1. Lot of ownership
2. Ownership with sharing (Partnership for property)
3. Ownership divided into shares
4. Ownership for one possessor
5. Pure ownership right
6. Servitudes
 - 6a. For development
 - 6b. For the other cases
 - 6c. Profiting right
 - 6d. Sitting right
 - 6e. Upper part right
7. Spring water right
8. Immovable task (or responsibility)
9. Immovable security (pledge)
10. Immovable mortgage
11. Other property rights

Kocalar A.C 2008.

by every transfer application for the Regional Evaluation Board for the Preservation of Cultural&Natural Assets (REB-PoC&NA) which will be evaluated by it.

IECF: Immovable Evaluation Criteria Format (IECF)-(DSAF: Taşınmaz Değerleme Ölçütleri Bilgi Ve Belge Değerlendirme Sonuçları Ana Formatı in Turkish)

This board (or commission) evaluates by this transfer request and is filled another 2nd form which is named by immovable evaluation format (IEF) (TDF in Turkish) for transferring right.³²

IEF: Immovable Evaluation Format-(TDF: Aktarılabak Hakkın Taşınmazını Değerlendirme Formatı in Turkish)

Lastly, board calculates transferred last value by 3rd form which is named by Evaluation Result Format (ERF) (DSF in Turkish).³³

ERF: Evaluation Result Format-(DSF: Değerlendirme Sonuçları Formatı in Turkish)

All this complicated process will be realized by an Evaluation Board of Conservation Area which is proposed by this dissertation firstly to be depended by Ministry of Culture and Tourism.³⁴

Evaluation sub-model details can be showed by the following sub-Figure 1. related part with ESM.

Other details can be found by that paper³⁵ and that dissertation.³⁶

All exchange actions for immovables that take place between public and private owners are evaluated based on the same principles, criteria and methods, and the process would benefit gratefully from the results of this. Urbanization, environmental, human and living rights can be given by different values in this model where the parties involved agree mutually acceptable points (items to be conceded and advantaged to be received. The agreement concerning real property immovables can be evaluated by the same method (-/+ counterbalanced).

The Kocalar's paper has been proposed to serve these needs again.³⁷ Besides practical and innovative integrated solutions to many problems about evaluation are mentioned in the conclusion of this research.

The Ecological Approach in the Development Plans and BTM

Cultural and natural values are not only the inhabitant of the place but also the nation, and even international and actually the whole humanity's common wealth. Humanity's socioeconomic, political, cultural and in sum vital steps that stage solidly the interdisciplinary vital development state. In short, for contributing to humanity, the cultural and natural values have to be preserved as a vital step.

The national regulations that will be applied for the to be preserved values are rules and regulations about culture and nature wealth, shore, environment, underground waters, River, Forest, National park, protected areas, historical sites, and also Bosphorus, Industry, Technological development, Tourism encouragement, Private Environment protection regions.

Thanks to the fact that the concept ecosystem, which presented holistic approach to the ecology, has become very important in the last century, increasing sensitivity within the framework of protection of architectural heritage is observed among the countries. This framework exceeds beyond the limits of historical, archaeological, artistic and scientific limits and even covers social and technical aspects.

Under the present circumstances where abstract rights are expected to be under discussion, methods regarding the transfer of development rights which is suggested with a systematic point of view and brought up with an approach of heightened applicability with the

³² Kocalar, 2009, p. 419.³⁴ Kocalar, 2009, p. 257.³³ Kocalar, 2009, p. 420.³⁵ Kocalar, 2010a.³⁶ Kocalar, 2009.³⁷ Kocalar, 2010a.

provision that interacting coordination between actors is provided, is becoming increasingly important. Because the comprehensiveness of this method based on a holistic approach, as well as the variety of its field of applications is becoming a suggestion for a solution which can overcome administrative gaps and conflicts occurring as a result of trending away from holism due to an authority chaos in the prevailing national legislation.

The decisions regarding the preservation, which are taken according to the legislations in this matter and preservation plans should also be presented in each private property schemes. Accordingly, each right that is a subject of private property should be evaluated and gathered under a certain systematic and these should be classified in relation to their subject and thereby transformed to other fields. The very process mentioned above formulates the main theme of the notice.

Thereby within Basic Transfer Model, which forms a base for Evaluation, Securitization, and Transfer, there is a possibility to transfer these rights to another field.

The Security Sub-model (SSM) Process after Evaluation Phase

My research proposes a new process for securitization phase after evaluation phase.

Legal Aspects or Basis

Some recent application approaches in the conservation and renewal fields with the legal aspects in Turkey has been explained with Table 1 in that announcement.³⁸ The 16th paragraph of article 17th of the law³⁹ also covers securitization of the rights of the owners in return for their old site certificates.

“of property and building rights limited ... are transformed into stocks and bonds written to the bearer”

But this regulation is not enough in point of view realities of our country now that some new regulations added for this aim in securitization sub-model in this research.

The old Site Certificate⁴⁰ should have been changed with new certificate “name written” or “non-negotiable temporary certificate” (nNTC) and then “negotiable security on request” (NSoR) in which the securitization sub-model’s details can be showed by sub-Figure 1 related part with SSM.

This certificates should be written in their name of

the possessor, to be used by them directly for three years. This period is limited to three years, and must be allowed to be used for the necessary compensation with their Local Authorities, because this local solution is especially limited but also more secure in order to keep up possessors’ rights so that they do not lose their certificates in the process of exchange.

This process is realized by the Ministry of Culture and Tourism, who similarly supply authorization simultaneously in advance to those organizations; other Ministries, local governments and land owners and possessors, İller Bankası. These details can be found with figures in the different application scenarios in the last announcement.⁴¹

After three years, if possessors prefer to liquidate their certificates realize them with other Local Government bodies, they are allowed to exchange their Certificate for a NSoR, which means they gain a second one year period.

The Transfer Sub-model (TSM) Process after Securitization Phase

The Position and Meaning of Transfer in the Law (Law No. 2863/17-c) with Comparison

Governorship and Local Government authorized for that result in spite of using 10 times transfer without any definition in the 17th article⁴² which is amended by the another law⁴³ at the 14th of July, 2004.

This changing between the statements of in the 17th article⁴⁴ and its changing reasons at the 2nd of July, 2004 in the law⁴⁵ contains contradiction.

“transfer is not being only single-changed owners in a land-building land, a contemporary tool which shall be using of principles and criteria actually providing a balance between the public interest and individual and corporate ownership..”

In this case, transfer like confiscating opportunity is bring to mind from expropriation. In view of transformation a tool as risky that is applied with the public power as partly. Because of this, transfer has been made describing with its principles, methods and outcomes in the following three sub-sections.

Expropriation is being known for making criticism in community by everybody. Nonetheless it is starting

³⁸ Kocalar, 2010b.

³⁹ The Law No. 2863

⁴⁰ The Law No. 4706/29.8.2001 amended as Law No.4916/3.7.2003.

⁴¹ Kocalar, 2010b.

⁴² The Law No. 2863, Article/Sub-section No. 17/c.

⁴³ The Law No. 5226.

⁴⁴ The Law No. 2863, Article/Sub-section No. 17/c.

⁴⁵ The Law No. 5226.

“public” word namely in Turkish in its Law, Expropriation also “for the benefit of individually (truth person)” or application of (purchasing or bartering) methods retroactive expropriation had been possible in the course of time.⁴⁶

After finished these steps, it has been constituted for agreeing more with respecting to urban, environmental, human and living rights where using for conditions of accommodation, housing, sheltering, building, development, life and human rights. At this point, historical process in these rights had been arrived at transfer because of using with necessities. The principles and methods of transfer are more stable and democratic, but all these tasks will be realized timely in these acceptable conditions by partners in market. In this sense, there are some important properties of transfer which should not be ever forgotten in the detailed transfer development application programs in following:

- Transfer is based on participations and approvals of both sides,
- Through taking of task, authorization and responsibility, and deciding together, made not bringing any problem in past.
- But Local Governments haven't been completed and approved with Conservation Development Plan which is also mandatory with high priority as the first step of transfer for twenty-one (21) years totally yet, other than realized of transfer in the Law. Because of this, after twenty-one (21) years, it has been necessity for the extra four (4) years more, for fear that solved and made plan.
- Local Governments are the joint owner of the fields (1st, 2nd) at most generally in all process. It is also required to manage every important relational works from beginning to end in this locally conditions, by establishing reciprocal easement. Local Governments will establish a simple partnership (Transfer Incorporated Entity-TIE) with private owners, leadership (as most have a share) will carry out this scheme. Hence transfer, the participation of all other owners, according to a program that will be realized and thus the legal requirements will be fulfilled.

These causes and reasons, the transfer across the country a comprehensive editing, top centre duties,

powers, responsibilities, control and coordination functions under the leadership of Culture and Tourism Ministry by three Ministries, three Headquarters with all the municipalities and the Governor also will join a large program organization. That organization can solve big problems with the above mentioned. Here it is! The basic transfer model which is the product of an integrated approach (Evaluation sub-model, Securitization sub-model, and Transfer sub-model) has been provided for these purposes.

Conclusion

Some Proposals for Transfer Regulation

The current law (act) with the number of 2863, namely the “Conservation Act of Cultural and Natural Assets-CACNA”, (Kültür ve Tabiat Varlıklarını Koruma Kanunu-KTVKK) was changed by the another law⁴⁷ in the current law-2863's last paragraph of 17th item;

“Transfer regulation should be made as soon as possible.”

The author's dissertation contains also proposals which are about regulations consists of;

- 50 sub-proposals in 28 pages, also 21 units of important terms or concepts with proposed descriptions.
- 73 units of concepts are also proposed by the dictionary of the author's dissertation separately.

Its meaning and functions in the conservation development plans as well as its conditions have been shortly talked about in the Act without more detailed descriptions for new terms so that the Kocalar's dissertation⁴⁸ has been proposed to serve this need. The dissertation also covers another appendix in which some changes proposed to be written arguments in the Protection Law.⁴⁹

The most important reasons for the implementation of the transfer:

- Plan on the property due to the limited real estate and construction-development rights transfer with the necessity of concrete and abstract elements.
- Reasons for the limitation of rights on real estate,
- Conservation for natural and cultural heritage protection works:

(Green Fields: Forest, pasture and rangeland, shrub heaths, pasture, National parks, etc)

⁴⁶ The Law No. 2942, at 4th of November, 1983, The Expropriation Law-EL, Article No. 1/2, 5/c and also Articles No. 8, 26. (The Main Law No. 2942 was amended by another Law-No. 4650 at the 24th of April, 2001.)

⁴⁷ The Law No. 5226

⁴⁸ Kocalar, 2009.

⁴⁹ The Law No. 2863, 17th article.

(Water basins: the dam, marsh, coastal, ground and surface waters, etc.)

(Sites: Historical, Urban, Archaeological, Natural, Agricultural, etc.)

- Urban conservation and renewal or
- Urban regeneration purpose of planning studies,
- Natural disaster (bushfire, flood, earthquake, avalanche) (pre- or later) development plan for prevention aimed applications,
- Transfer of all rows 8-24 in Table 1 (Special purpose physical plans) can be applied, as
- In addition, on the practices of all local, regional and urban regeneration development plan,

Transfer of limited rights for public aimed can be used with all the details.

Shortly

In order for Conservation of Registered Cultural and Natural Monuments in utilization of individual and corporate ownership, a Conservation Development Plan needs to be implemented by limiting private and corporate property and development rights of certain development restricts, and by limiting the development rights of partially development restricts, and it should go hand in hand with a Basic Transfer Model developed through the help of legal counsel sound proposals in line with the legislation. Transfer is a process consisting of three stages that are handled in a comprehensive manner within the framework of BTM.

The first stage, namely Evaluation sub-model, involves statement of Registered Immovable Cultural and Natural Monuments in cash, through assessment of quality and quantity of all physical, material and concrete factors that restricted parts of property and building-development rights, which were limited for conservation, provides to its owners, based on principles and criteria of current value.

In the securitization sub-model, these values are given free exchange (buying and selling) and the facility of circulation through a gradual securitization period, first as a “name written” or “non-negotiable” temporary certificate (nNTC), then as a negotiable security on request(NSoR).

And the final stage is Transfer sub-model where rightful owners’ plans and projects prepared based on value of immovables and in accordance with their desires and cadastral extracts, is assessed according to the quality of building class.

Then, after matching and (-/+) equalization of those they leave in the Sending Area and those they will be given in the Receiving Area, simultaneous and mutual handover procedures of individual monuments are conducted based on approval of both sides when building and development processes are completed.

Timing and Future with New Case Studies

Short Comparative Innovations for BTM that Meet Expropriation

The subjects which are before in with/without disaster by revised models,⁵⁰ urban regeneration,⁵¹ conservation and renewal are in scope of basic transfer model (BTM). It also constitute the reasons of expropriation since these subjects are based on public interest.

However the choice between the compensation offered by the Evaluation Board of Conservation Area and the option corresponding to their situation according to the Expropriation Law⁵² that has also been added “purchase procedure” to compensation and barter concepts; is left to the owner of the rights by Basic Transfer Model (BTM).

It is clearly observed that expropriation of the immovable property is the last resort after trying to purchase or barter procedures according to the Expropriation Act. As a result, according to this model, public institutes can buy the immovable properties of the possessors who prefer the option to expropriate, or they can propose barter for other properties.

In Basic Transfer Model, an extra period of one year is granted for those who prefer barter or expropriation with Foreign Local Managements after the three years granted for barter or expropriation with Local Managements before the transfer. However for all the options it is anticipated that the final value is taken as a basis by the Evaluation Board of Conservation Area.

The reasons for the expropriation, the principles, criteria and methodologies of the applied transfer are very different. While expropriation can be carried out on behalf of individuals as specified by the Expropriation Act (Expropriation Act, Item #: 5/c and 6/h paragraphs), it is done in an equal manner between all of the owners and possessors according to the transfer sub-model.

However, in the future, public institutions and orga-

⁵⁰ Kocalar, 2011b.

⁵¹ Kocalar, 2012d.

⁵² The Law No. 2863, The Expropriation Act, Item #: 8, 26

nizations may assume an assuring and conciliatory coordinating role in transfers done between individuals. It is assumed and planned that basic transfer model will create the same life opportunities in the new transfer domains as if the real properties were transferred. In doing this, concrete as well as abstract human rights such as sheltering, habitation, healthy environment, settling, urbanization are taken into consideration in terms of all aspects such as quality and quantity.

The research in future should be focusing on...

Some milestones which are regulation and bulletins of transfer development rights should be approved during the short-term. A draft regulation was proposed with Ph. D. thesis in the beginning of the last year. Also bulletins for iller Bankası, Local Authorities should be exposed by themselves to be related regulations about transfer.

Transfer should be subject of an independent law code in the middle-term. This law should be given functionality by stating precisely the definition, content, principles and procedures of transfer; and by making by-laws, regulations and rules based on concepts and fundamentals of building, development as well as evaluation and securitization of Immovable Cultural and Natural Monuments.

Furthermore, in the long run concerned awareness of community should be increased in a way to comprehend that the concept of transfer is based on accommodation, housing, sheltering, building, development, life and human rights; and building-development and transfer concepts and rights should be included independently in the constitution while being regulated under different laws. Since this model enables Transfer to be used as a contemporary mechanism not only for Implementation of Development Plans for Conservation but also for all applications of conservation and development plans with urban regeneration,⁵³ especially for before disaster,⁵⁴ sometimes this research anticipates its organization in this way.

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