

Transferring of the Education Areas to Public Property without Any Charge

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Keywords: Education, Implementation of Plans, Land Management, Land Readjustment, Expropriation

SUMMARY

Education infrastructure is a multifaceted system that requires a long and patient process from primary to higher education. Land acquisition and school construction form the first physical dimension of an primary school investment. Development plans are important tools for placing in the physical space of educational institutions in Turkey. When preparing development plans, educational areas are determined without considering the owner of the property. These lands are transformed to public property by expropriation. However, the small share of fund for expropriation which is allocated for educational lands and the complexity of the legal and technical aspects cause failure and delays in land acquisition. This situation often leads to ownership conflicts (which are mostly resolved in the courts) between authorities and land owners whose property rights are restricted because of remaining in the school area. The purpose of this paper is to highlight that the expropriation method commonly used for transformation of such areas to public ownership is not the only available option and emphasize that the land readjustment method which has been successfully applied in Turkey as a development plan implementation for decades is the most appropriate method for these kind of acquisitions. The study also aims to show that this method is applicable for developing countries where the funds for the expropriation are not enough. So, the number of school areas in development plans and the expropriation costs are examined and compared to the cost of the land readjustment method to demonstrate the cost-benefit relationship. Implementation principles, methods and technical stages of the land readjustment method are described on a sample. This implementation, which draws on its own resources would solve the problems of property conflicts between the public and the individuals, except for the financial compensation. This method would also make an important contribution to decisions about management tools, planning and the application phase in the sustainable management of slum regions lacking infrastructures. Also it would be a crucial and new perspective for the developing countries who have ownership conflicts and inadequate funds for implementing of development plans.

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FIG Working Week 2015
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1. INTRODUCTION

While the compulsory education varies between 8 and 14 years around the world, it has been increased to 12 years in Turkey with the amendment in 2012 (4 years for primary education, 4 years for junior high education and 4 years for secondary education). The insufficiency of classrooms caused by the extension of compulsory education and excess of both classroom sizes and students per teacher (Özoğlu, 2012) bring along the need for providing lands where all degrees and types of school buildings would be erected. In order to meet these needs and provide the required lands, the relevant institutions apply to different methods of acquisition. Being involved in development plans and annual programs, these immovables are transferred to the public ownership via expropriation and purchases from the immovables of treasury, provincial special administration, municipalities and other public institutes (that are not required for service) through exchanging the public domains and private ownership domains and with the application of the article of 18th in the Development (Zoning) Law (no. 3194, enacted in 1985). However, the tendencies of acquiring the school domains mainly through expropriation in our country bring along a number of problems. The extension of expropriation proceedings over long processes like 5, 10, 20 years causes the property owners whose immovables remain in the education field in the development plan to be deprived of the property for an undetermined period of time and results in objections and lawsuits against the relevant institution (Ministry of National Education or Provincial Special Administration), courts and the Grand National Assembly of Turkey on the grounds that the property right is violated. In addition to this, expropriation is not the only method in the acquisition of school areas that are necessary for constructing new schools in primary and secondary education and are spared in the construction plan by the Ministry of National Education (MNE). Instead, it has become possible to acquire the school areas that are in the list of public reinforcement areas without any cost since 2003. This application that is performed in accordance with the article no. 18 of the Development Law (no. 3194) structures the cities regularly, provides the costless acquisition of public reinforcements that are needed by public and prevents the property right violations. Compared to expropriation and other acquisition methods, the main objective of this notice is to show that the land readjustment (LR) method is a more equitable and applicable method that minimizes the property right violation and prevents the property conflict between public and individual. It also shows that this method could be applied for developing countries as well. For that purpose, it primarily handles the property problems being experienced in the process of acquiring the school areas and examines the expropriation and LR methods. We examined the number and expropriation costs of schools being involved in plans across the country, compared with the LR method and revealed the benefit-cost relationship. The application rules, methods and technical phases of LR were described. As a result of this study, LR was determined to be the most convenient method for the acquisition

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of school areas that are the public reinforcements. This implementation, which draws on its own resources would solve the problems of property conflicts between the public and the individuals, except for the financial compensation. This method would also make an important contribution to decisions about management tools, planning and the application phase in the sustainable management of the urban areas. Also it would be a crucial and new perspective for the developing countries who have ownership conflicts and troubles for implementing of development plans.

2. THE POSITION OF THE EDUCATION AREAS IN PLANNING

Education areas include areas that are spared in the application construction plan as private or public utilities for the utilities of public or real or juristic persons in order to provide service for preschool, primary, secondary and higher education. The placement of these areas in the physical space is performed by construction plans. For that purpose, laws and regulations have determined the field sizes for education utilities and the standards about the population. In this context, the field size standards in the period where the education was separated as primary and secondary were arranged by the relevant regulation of the valid Development Law numbered 3194. However, as a result of the construction plan that was made on 09.04.2011 and the changes in regulations concerning the rules of changes, the education area standards were redetermined as in Table 1. These standards were determined based on the social, economic and cultural policies of the country. Depending on these reinforcement criteria in urban planning, the unit of primary school settling unit is designed together with other reinforcements. The planning area that is based on the principal of primary school comprises a population of approximately 5000 individuals (Yomralioglu and Uzun, 2001).

Table 1. Standarts of educational areas and area sizes

Education Type	Population Dependent Area Standards	Minimum Area Size
Pre-Primary Education	1m ² /person	3.500- 5.000 m ²
Primary School and Junior High School	4m ² /person	5.700- 8.800 m ²
Secondary Education	3m ² /person	10.000-15.000 m ²

Municipalities prepare a 5-year construction program, within 3 months at the latest as from the coming into force of construction plans, in order to enforce these plans. Areas that are involved in this program and assigned to public institutions are reported to relevant public institutions. Public institutions concerning the areas that are assigned to public service facilities remaining within the boundaries of five-year construction programs are expropriated within this program. For that purpose, it has imposed the obligation of expropriating the lands that are spared for public service in construction plans on investment enterprises throughout the construction program by asserting that the required allowance is added to the budget of public institutions. By this way, the lawmaker has disapproved to wait the lands of possessors

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that are obliged to stand a self-sacrifice for public benefit in construction programs for such a long time to result in the violation of property rights and loaded the administration with the charge of making the required transactions in connective periods.

2.1. Post-Planning Problems Experienced in Education Areas

According to the article no. 10 of the Development Law (no. 3194); Special Provincial Administration is required to expropriate the areas that are spared as primary schools in construction programs within the provincial borders and the Ministry of National Education is required to expropriate the areas that are spared as secondary schools within 5 years.

However, some problems occur in practice;

- It is occasionally observed that investment enterprises do not perform the expropriation on the lands of private ownership for 15 – 20 years even though they are spared for public service in construction plans and programs, which not only limits the saving authority of private owners –as their lands are involved in the construction plan- but also disables them to earn income from their lands due to the failure of expropriating.
- There is no sufficient budget for expropriation. The failure of the Ministry of National Education to sufficiently use the budget facilities that are spared for expropriation also obstructs the allocation of funds that are proportional to needs in the budget planning of the next year. Thus, the fact that the central administration decreases the budget of MNE hinders the proceedings of expropriation.
- Municipalities exclude the lands of the private ownership that are not expropriated for a long time from the construction plans through making changes on the plan, which causes a number of difficulties within the scope of the planning principles.
- The victimized landowners either suggest plan changes or file a lawsuit. This approach causes a number of problems between the landowners and local governments and the central administration.

2.2 Methods of Transferring the Education Areas to the Public

The problems between the landowners and the public mainly originate from the fact that the training facility hits the lands of private owners while making the development plans and the expropriation mechanism does not function in accordance with legal terms. In this case, different solutions are tried in the transfer of property due to the problems that occur while applying the development plans and expropriating the education facilities. These methods are as follows;

Expropriation Method: When the Turkish government needs the land for public construction, such as building a new school area, basically, the compensation method (also called land expropriation method) is used. This method involves the forcible transfer of private properties by the relevant public legal entities to public ownership with a unilateral enactment based on the public power for public benefit in order to enable a public service (Bıyık and Uzun, 1992). The costs of expropriated school areas are paid by the Ministry of National Education. Construction programs are made within three months following the

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construction plans, which enables the transfer of education areas that are envisaged in the plan from private ownership to public ownership through expropriation by the MNE within five years.

Applicability: Compensation is an expensive method for the government. A specific budget needs to be continually available. Landowners are unhappy with the decision about the compensation delays for their land (Uzun, 2009). Because, property rights of the land owner's can be restricted about 15-20 year periods. So, even if this method is generally used by the relevant institutions, private land owners whose lands remain in the education areas are unhappy with the excessive intervention. Comparing the expropriation costs with the construction costs of primary school buildings, it is seen that expropriation costs double up the construction costs in some cases (Table 2).

Table 2. Comparison of the Construction and Expropriation Costs of Some Primary School Areas in the City of Trabzon (Yomralioglu and Uzun, 2001).

Primary School Name	School Construction Cost I (USD)	Expropriation Cost II(USD)	Ratio II/I %
Erdođdu	1.103.681	253.821	23
Yavuz Selim	664.439	863.762	130
Beřirli	565.958	545.542	96
Ayasofya	493.044	1.008.636	205

Swap Method: This method involves payment in the form of a property, which is defined as a swap; this method is applicable with the agreement of both parties. In this method that is based on the principal of exchanging the lands in the treasury ownership and the lands in the private ownership, the MNE mediates between the General Directorate of National Estate and the landowner. In addition to this, only the areas involved in the investment plan could be exchanged.

Applicability: However, the fact that this property is land leads to concerns about the rapid exhaustion of the property stock that is owned by the public. Additionally, even though the number of immovables that were subjected to exchange was 35 by 2005, totally 2 of them were realized. Considering from this point of view, this method has a very low level of applicability.

Allocation Method: The school and education campus needed by the MNE is based on the principal of being purchased in exchange for the assignment of lands, plots and buildings in the treasury ownership on the basis of their real price.

Applicability: It is not a favorable method.

Plan Amendment Method: This method is based on the principal of either changing or completely removing the education areas, which are not transferred to the public ownership within its period, in the plan upon the request of the landowner. Construction plan is changed based on technical and objective reasons for public benefit without disturbing the main decisions, sustainability, integrity, social and technical infrastructure balance of the plan. Views are received from the relevant investors, the Ministry or institutions.

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Applicability: In areas where urbanization is intense, municipalities have difficulties in assigning a new land for the public service in question. Abandoning an area that is spared for public service in the plan may destroy the urban fabric and establish a ground for an unhealthy urban life, which would contradict with public benefit. Considering from this point of view, it is not a favorable method.

Land Readjustment Method: In our country, approximately 1.3 million children start school every year. The insufficiency of educational resources in binary and crowded classrooms primarily in large cities caused by the population growth and internal migrations limits the objective of development in the standards of modern countries (DPT, 1995). Taking the inventory of sites that are spared as school areas in the development plan across the country, it has been determined that there is a need for totally 7435 lands and the estimated expropriation cost of these areas is 11.551.391.455,00 TL. As is seen, there are economic obstacles in technically, economically and legally obtaining these areas in periods determined by laws without destroying the property right. In addition to this, an arrangement made in the development law numbered 3194 in 2003 enabled the basic primary school areas to be brought in public in the planned fields with a cost of 5-10 percent of the expropriation cost.

Applicability: AAD method is the most convenient method being used in acquiring the urban facilities that are determined through construction plans in our country. It has been successfully applied by municipalities, governorships and other public institutes for years.

2.2.1 Land Readjustment (LR) method

According to the LR method, when there is a need to develop an area, the municipality begins by preparing a development plan. The area is then subdivided into an appropriate pattern of streets, parks, schools, and sites for other uses. Within site blocks formed by the streets, new lots are allocated for private development. Public use areas are subsequently calculated in the planned streets, parks, etc., and these areas are looked at in relation to the project area (Doebele, 1986; Minerbi et al., 1986). Each cadastral parcel is then divided into building lots. After the project has been completed, the urban development area will be reorganized, and private landowners will receive new lots which are as close as possible to the location of their original land (see Fig. 1) (Yomralioglu, 1993).

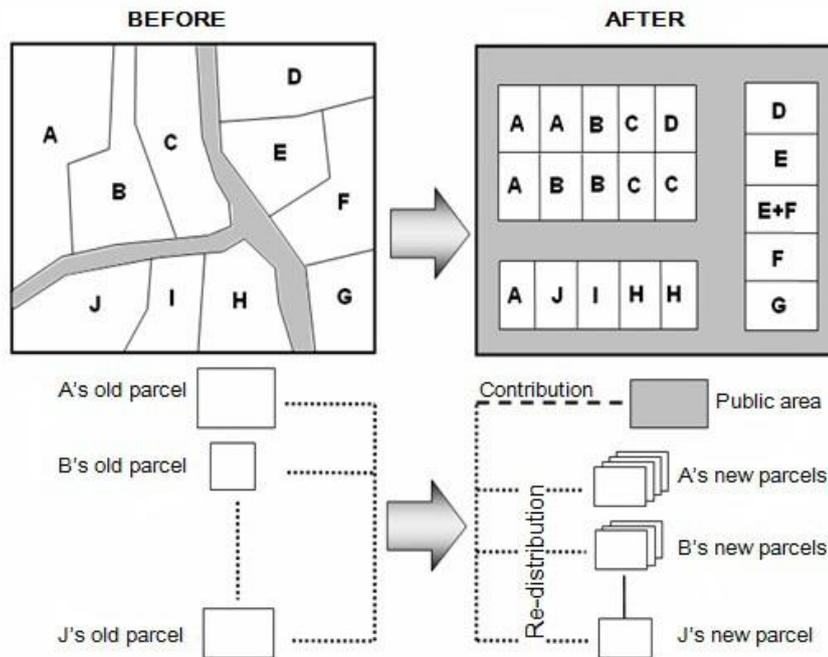


Fig. 1. Mechanism of LR (Yomralioglu, 1993).

In Turkey, the LR technique has been actively used since 1985, and carried out under the existing zoning law, with more specific LR legislation and procedures. Two groups of local public bodies, namely governorships and municipalities, are legally allowed to execute LR projects in Turkey. While municipalities are responsible for making decisions on LR projects within urban areas, governorships are responsible outside the urban areas. In order to begin an LR project, first, all cadastral works and zoning plans have to be completed in the project area. The main statement in article no. 18 of the Development (Zoning) Law (no. 3194, enacted in 1985) is that landowners who have any parcel in an LR project area must give up to 40% of the total area of their land for public use. This includes new roads, streets, green areas, parking places, squares, police stations, playgrounds, parks, school areas and religious places. The exact percentage depends on the size of the public area that is required within the project area (Uzun, 2009).

2.2.2 The Benefits of Turkish Land Readjustment Applications in the Educational Areas

In general, LR has a number of benefits in terms of forming healthy housing and living spaces:

- The original landowners are provided with new plots within the reconstituted area which, although smaller in size have an enhanced value,
- The number of disputes created by the development plan are reduced because the LR project affects landowners in the same way,
- The LR project enables municipalities to create new social services and infrastructure in the project area,
- All project expenses are met by the municipalities,
- Land for planned urban areas can be provided rapidly by LR,

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- Expropriation expenses are greatly reduced and this positively affects the use of the municipality budget for other land development activities
- A systematic land development process is facilitated.
- Law suits about cadastral boundary conflicts are minimized (Uzun, 2009).

In addition to all these, the use of this method in the process of acquiring the areas that are spared as school areas in the development plan provides the following benefits:

- School areas in development plans being involved in construction programs are transferred to the public ownership without charge in 5 years, which will prevent the property right violations.
- Property rights of landowners will not be restricted with periods like 10, 15 and 20 years.
- Lawsuits against expropriation proceedings and objections against the Municipality, Ministry and the Turkish Grand National Assembly will be minimized.
- The budgets being assigned to the Ministry for expropriation will be transferred to the construction costs of school buildings instead of expropriation costs.
- The Revenue Office will minimize the expropriation budget.
- Landowners whose lands remain within the school area and other neighbouring landowners will equally share the benefits and losses of the development plan.

3. CONCLUSION

In our country, approximately 1.3 million children start school every year and educational studies are sustained at 28.532 schools. Additionally, according to the development plans, there are 7.435 schools that are spared as school areas and wait for expropriation. The expropriation method being used in transferring these areas to the public ownership in the period as specified in the law apparently does not fulfill the needs in many economic, legal, social and executive areas. Being successfully applied in Turkey for years, the LR method opens the areas that are spared as roads, parks, parking lots, green spaces, prayer halls and police stations in development plans to the public use without any charge, compensation or payment and by making land cuts equally from every land within the plan. As a result of an arrangement that was made in 2003, it has become possible to transfer the school areas being involved in urban facilities to the public ownership without charge. This application basically prevents the property right violations and provides equal benefits-losses for right owners whose lands are spared for public in development plans. Such property right transfers minimize the property, expropriation and infringement suits between the implementing institutions and right owners. Dispensing a number of economic, social, executive and legal difficulties, this method is thought to be used in developing countries as well.

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