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eWORKING WEEK 2021 20-25 JUNE
SMART SURVEYORS FOR LAND
AND WATER MANAGEMENT
CHALLENGES IN A NEW REALITY

Legal Confiscating based on Zoning Plan in Turkey

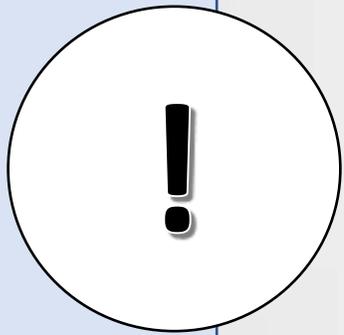
Yakup Emre CORUHLU and Bayram UZUN, Turkey





Outline

1. Story towards an article
2. Problem
3. Aim
4. Conceptualization
5. Conclusions



Published Article

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Zoning plan-based legal confiscation without expropriation in Turkey in light of ECHR decisions

Yakup Emre Coruhlu*, Bayram Uzun, Okan Yildiz

Karadeniz Technical University, Faculty of Engineering, Dept. of Geomatic Engineering, Division on Land Management, 61080, Trabzon, Turkey

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ABSTRACT

The right to property is a fundamental human right guaranteed by international conventions. In countries like Turkey, where the principles of private ownership apply, this right is guaranteed by laws. The right to property may be restricted by law only in the case of public interest. Nevertheless, the right of ownership of immovable property can be transferred to the public authority only with payment. However, in some cases, a person's immovable property may be *de facto* converted into a public facility without expropriation. This process is called "confiscation without expropriation". This concept was introduced into the Turkish Legal System in 1956 by the unauthorized conversion of immovable property for a road. Today, especially in planned areas, a different type of confiscation without expropriation is often seen. Zoning plans are known to be public tools that reorganize properties in public interest. However, the uncertainty in the implementation process of these plans negatively affects the owners of parcels reserved for public use in the zoning plan. This situation is defined in terminology as "legal confiscation without expropriation". In this study, the subject has been discussed in the light of the European Court of Human Rights (ECHR) decisions and Turkish judicial decisions, and which institutions are responsible for what kind of zoning functions within zoning plans have been investigated. Official (*ex officio*) applications and voluntary applications have been compared. Conceptual illustrations on the subject have been prepared. According to the results obtained from the study, it has been stated that all public spaces in the zoning plan are not subject to legal confiscation. Due to their location or characteristics, protected areas, unsuitable geological areas and parcels remaining in agricultural areas can be allocated as public spaces in the zoning plan. In such a case, it is not possible to say that there is legal confiscation. In terms of plan classification, there may be legal confiscation in areas if only a 1/1000-scale implementary zoning plan is in practice. As a solution for legal confiscation, land and real estate arrangements should be made *ex officio* and without delay. In addition to this, alternative models are also needed. Otherwise, public institutions will be subject to severe financial burdens. Some of the proposals include: granting construction right to zone cadastral parcels affecting public facility areas, or granting the right to construct all cadastral parcels in the plan in specified amounts and also developing a zoning right transfer system.



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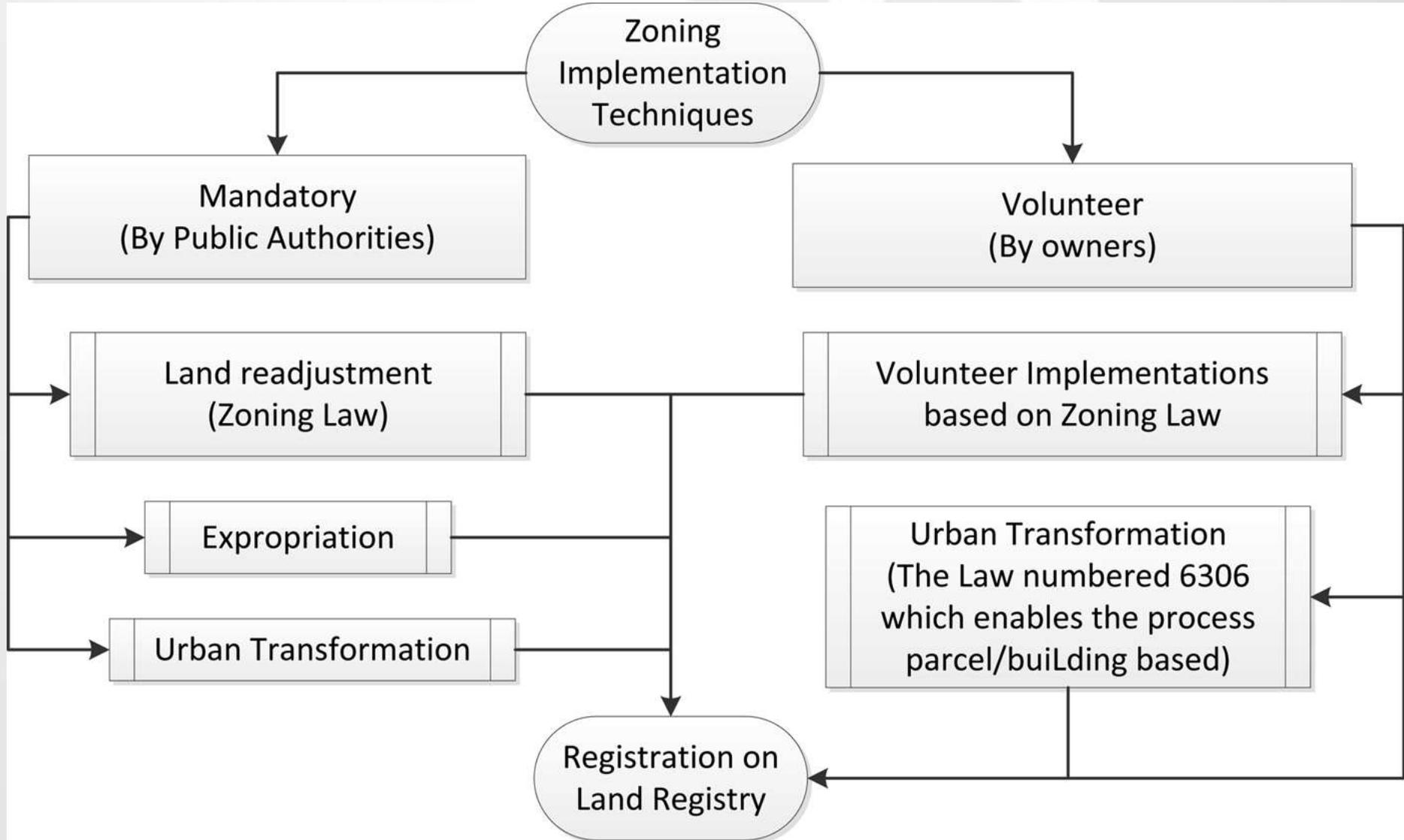
One of the most important violated rights is the right of ownership.

The most common violation is the process of legal confiscation without expropriation.

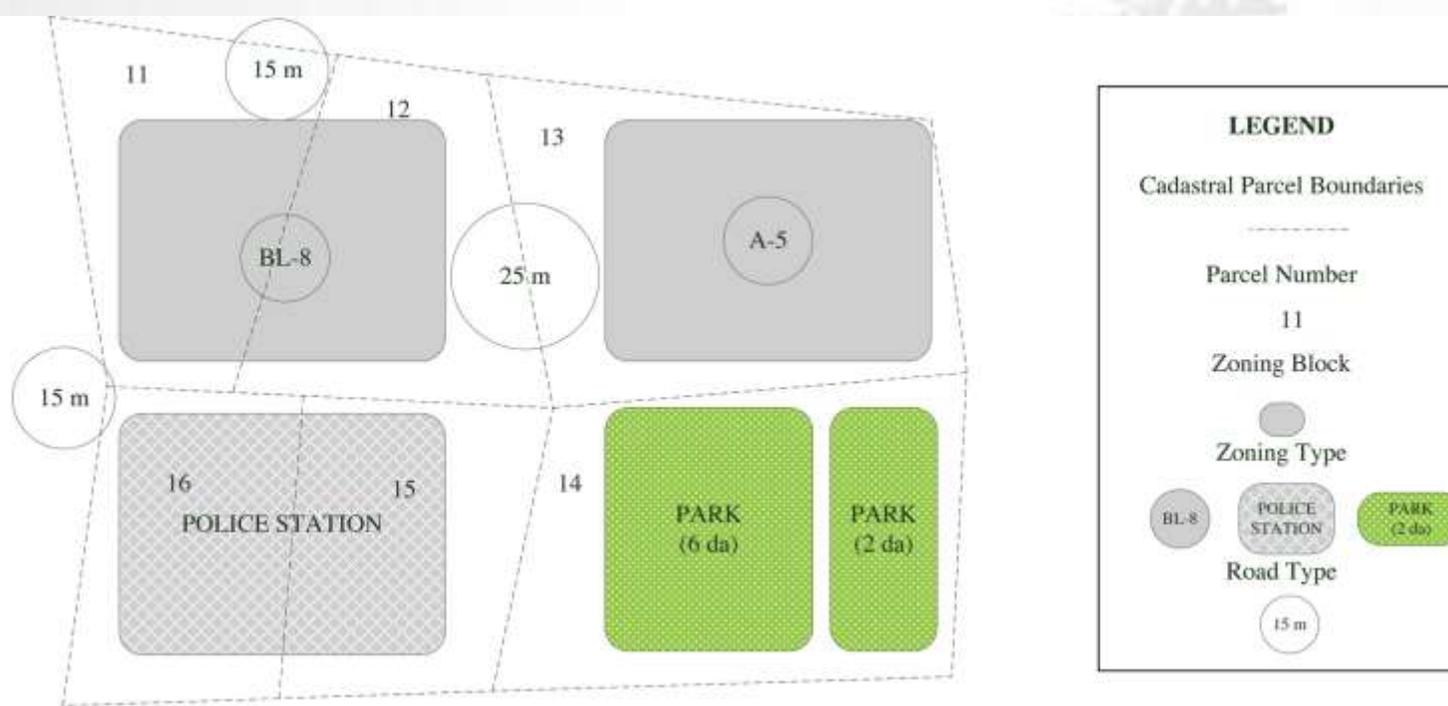
These kinds of violations are often the issue in Turkish courts, as well as in international courts.

2

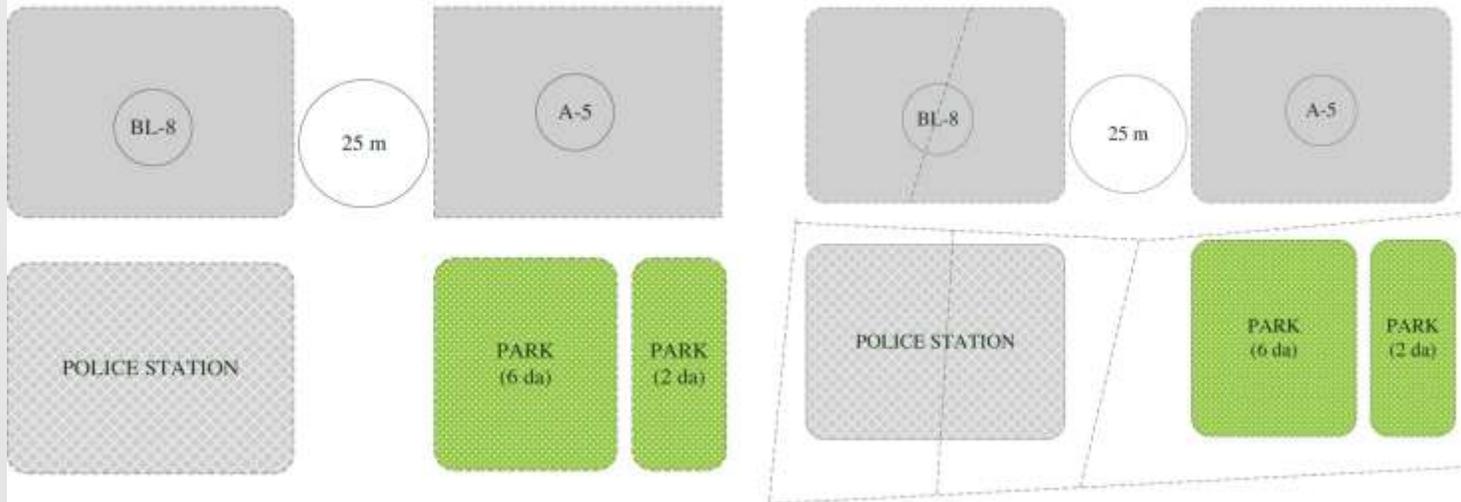
Zoning plan implementation techniques



3



(a) Cadastral parcel boundaries with zoning plan: buildings, a public facility and green areas



(b) Compulsory application

(c) Partially voluntary application

In this study, the claims and proofs legal confiscation are discussed along with the related process.

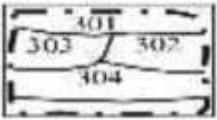
to create conceptualize some flowchart and

to explain the process according to ECtHR

This study aims to develop proposals for eliminating the problem of legal confiscation.

5

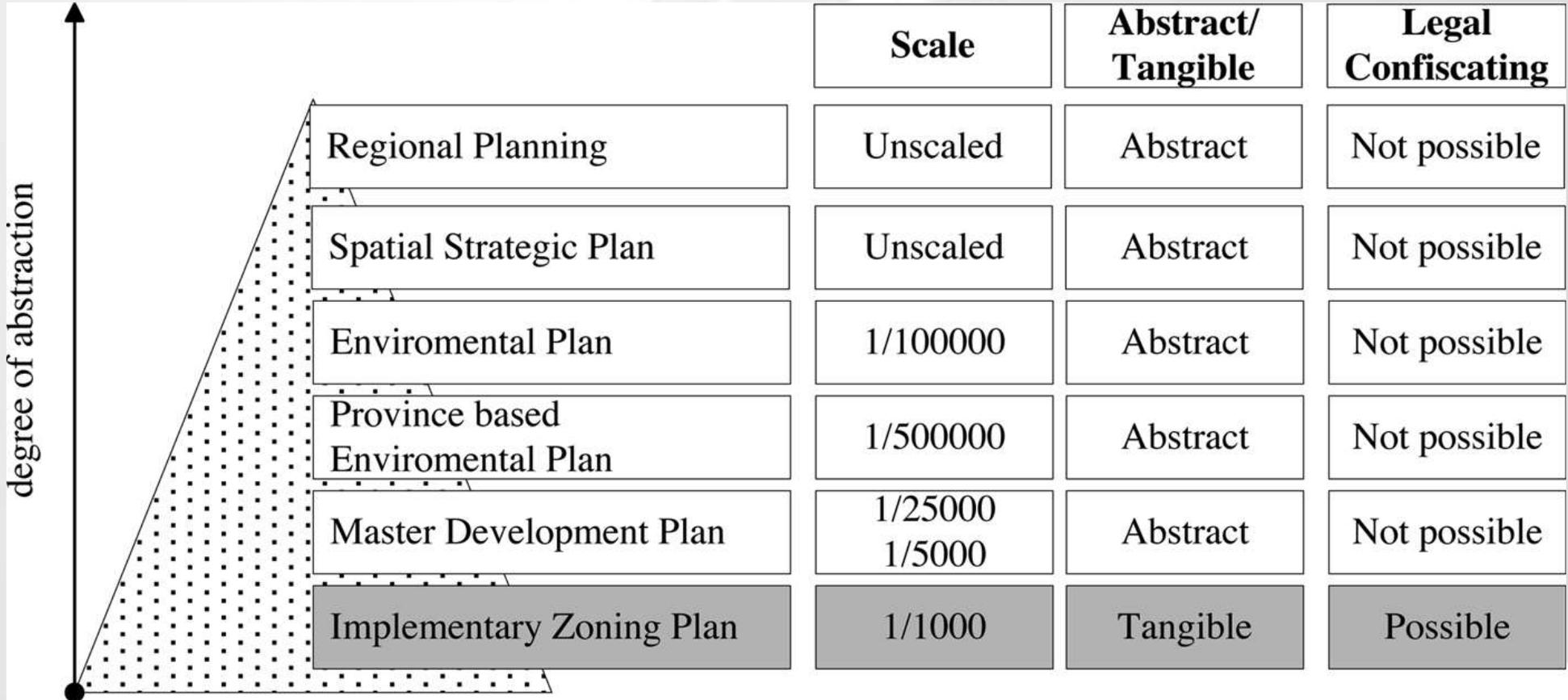
Private property areas subject to confiscation

Type	Legend	Ownership	Registration	Legal Confiscation
Sea		State	No	impossible
Forest		State	Yes	impossible
Coastal area		State	No	impossible
River		State	No	impossible
Pasture		State	Yes	impossible
Lake		State	No	impossible
Road		State	No	impossible
Bridge		State	No	impossible
Cadastral Parcel		Private	Yes	possible
		State*	Yes	impossible
		State**	Yes	possible

* Public Special Provincial and Treasury, ** other Public Bodies

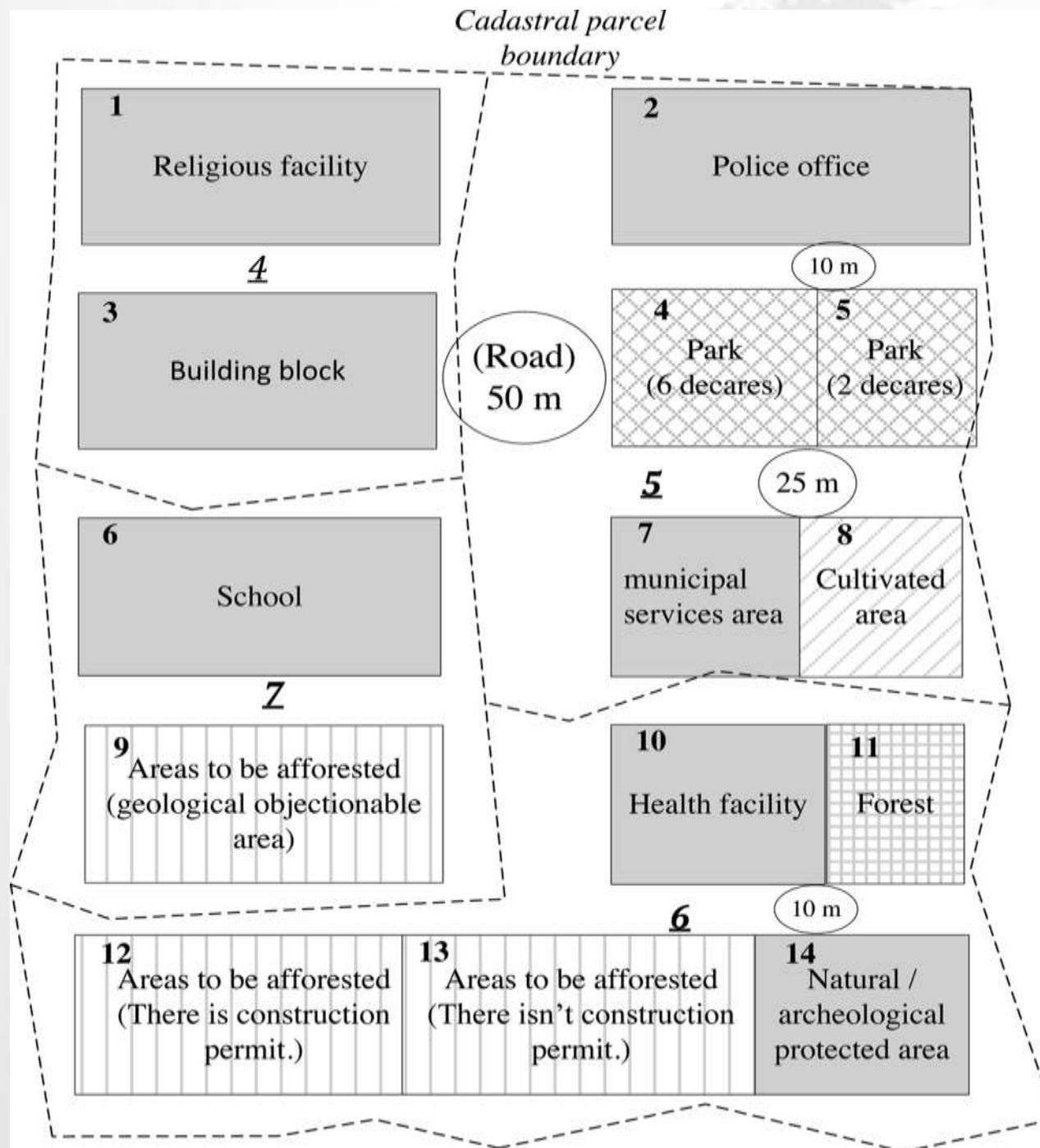
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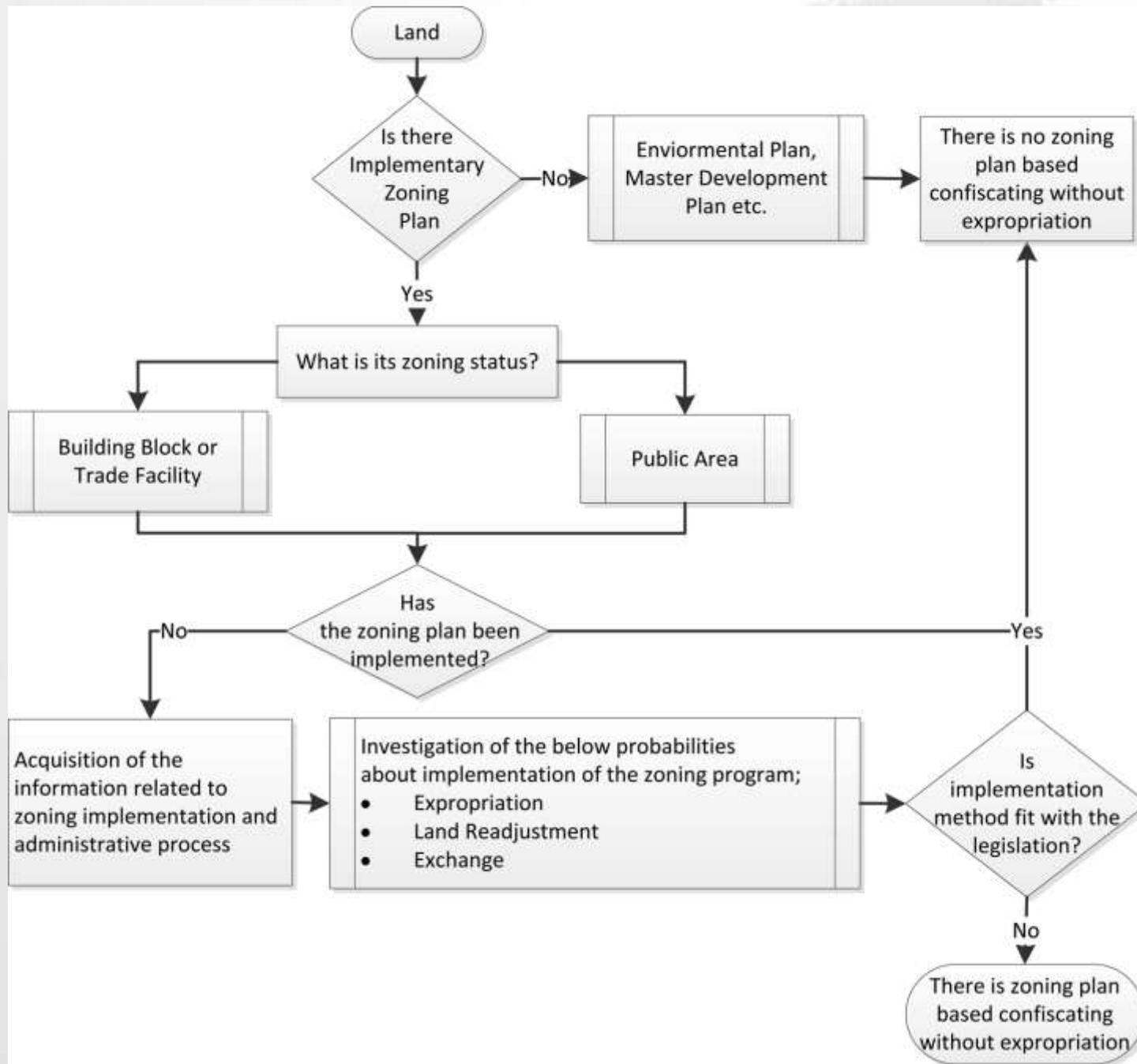
Relationship between planning hierarchy and legal confiscation



7

Zoning plan functions leading to legal confiscation





8

The problem of legal confiscation could be minimized by the application of the LR method within a specified period after the implementation zoning plans come into force.

Some examples of possible solutions for the problem can include granting each immovable property a specific right of zoning, regardless of the function in the zoning plan, transferring of zoning rights and issuing of certificates for protected areas. Besides, an alternative to expropriation might be considered, such as Land Banking, which consists of immovable properties within the public property in the planning zone.

In conclusion, taking the decisions of the ECtHR into account, it is inevitable that the planning concept and its effects on private property should be developed more practically and reasonably in order to ensure the achievement of reasonable levels of sustainability for urban settlements.

THANK YOU FOR INTEREST

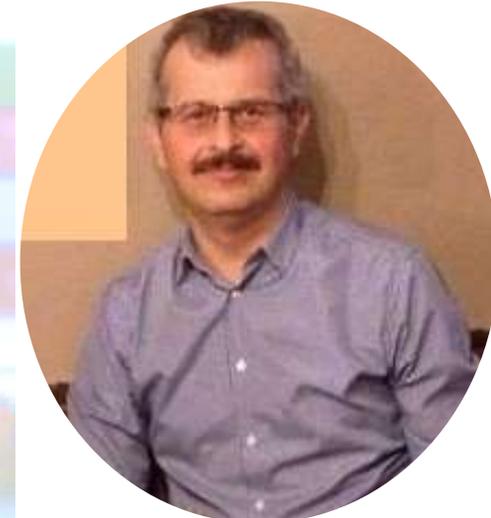
Presenter

*Assoc. Prof. Dr.
Yakup Emre CORUHLU
Karadeniz Technical University
Dept. of Geomatics Engineering
Trabzon/Turkey
yecoruhlu@ktu.edu.tr*



Co-Authors

*Prof. Dr.
Bayram UZUN
Karadeniz Technical University
Dept. of Geomatics Engineering
Trabzon/Turkey
buzun@ktu.edu.tr*



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