CATEGORIES OF LAND AND THE MAIN PRINCIPLES GOVERNING THEM FROM THE POINT OF VIEW OF OWNERSHIP (LAND SYSTEM OR REGIME)

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I. GENERAL INFORMATION

In Turkey, there is no special "Land Law" that differentiates between the various categories of land and sets out in detail the system of law applying to these various categories. The Civil Law of 4 October 1926, distinguishes only two categories of land, that which is subject to private ownership and that which is not and it regulates only private property. Further classifications, and the establishment of suitable principles to govern them are left to special laws.

The method thus chosen for dealing with this subject has created a confused state of affairs for the Turkish Land System. This in turn makes it difficult to survey the subject, creates vast problems in practice and, because of the lack of determination of special provisions, leads to confusion.

Another disadvantage of this method is that, although nearly fifty years have elapsed, the systematisation is not yet complete. Some of the special laws have still to be put into effect and the gaps are leading to faulty implementation.

The Civil Law of 1926 ended one system of land control and started a new one. This new system is different from the old, the differences being of categorisation, regulation and main principles. Therefore, in practice, the adoption of the new system has become a problem. The problem has been intensified as the new system has

been completely unable to replace the old one. Implementation has at times employed the old provisions no longer in effect; the gaps have been filled with the provisions of the old system, and thus a system no longer in effect has lived on.

The solution of the problem of the ownership on land is closely related to the method chosen for development. The success of the solution depends on the harmony between the solution to the problem of ownership and the method of development. In the case of conflict, problems will arise and development will be impeded. Also any changes in the method of development influences the land system and may at times damage it and lead to illegal implementation. Such discordances will have a detrimental effect on the continuity of the land regime as they create uncertainties. This situation which is to be observed in some developing countries, exists in Turkey also. Some examples of these discordances are : the measures taken relating to agricultural land and forests before 1950, when development was to be initiated by public measures; the changes in favour of private ownership after 1950, and the neglected implementation of existing laws; the conflict created between practice and the new provisions, introduced by the new Constitution after 1960 with new concepts and institutions; the evident half-hearted efforts after 1970 to implement the new Land Reform.

As can be seen the Turkish hand system is not fully worked out and its implementation is not firmly established. The problems encountered in practice that give rise to complaints are consequences of these characteristics of the system. These characteristics have to be understood in order to comprehend the problems involved and to find solutions to them.

I have pointed out that relationships still exist between the old and the new land systems. Therefore, before enquiring into the categories of land from the point of view of ownership, it would be appropriate to describe the old system.

II. THE LAND SYSTEM PRIOR TO 4TH OCTOBER 1926

Until the Civil Law of 4th October 1926, the Land Law of 1274 (1858) and customs and traditions applied to land. The Land

Law divided the land into five categories : private estates of the sultan (mülk arazi), public land (miri arazi), dead land (mevat arazi). The Law defined every one of these categories and indicated the main provisions to be applied to them.

1. *Private Estates of the Sultan* (Mülk arazi). On these lands, the owner possessed the property rights, he could have the bare ownership (çıplak mülkiyet) i.e. without the right to use for profit, and the right of use.

2. *Public Land* (miri arazi). The bare ownership of this land belonged to the state. The right of use was given to people for an unlimited time in exchange for a payment made. Most of the cultivated land, the pastoral land under title deed and forests were considered to be public land. The right of use of this land was regulated by the Land Law.

3. *Foundation Land* (vakit arazi). This land was allocated for a certain purpose and could not be sold or bought. Its ownership belonged to God and the profit to the public.

4. *Abandoned Land* (metruk arazi). This category had been extensively regulated by the Land Law. Profiting from this land was open to the public (roads, bridges, prayer groups, markets, fairs, etc.) and, in addition, there was some land the profit from which was allocated to certain villages and districts (pastures, summer and winter pastures and harvest fields etc.). On abandoned land, there could be no private ownership or right of use. This land was publicly owned. There was a right to benefit (usus fructus) from the land belonging to the public or a designated village or district, which was regulated by the Land Law. This land could not be sold or bought. Its allocation could not be changed. It could not be given to a person or a community.

5. *Dead Land* (mevat arazi). According to Article 6 of the Land Law, land to which no one had a right of use and which was not allocated to the public, which was distant from villages and empty (rocky, barren and moorland) was dead land. This too was publicly owned. But it was not

suitable for agriculture. If someone developed this land, it could be turned into land suitable for private use. Apart from the general regulations of the Land Law, the Mecelle (old Civil Law) also introduced provisions related to land.

III. THE LAND SYSTEM AFTER 4TH OCTOBER 1926

Law No. 864 on "the coming into effect and the application of the Civil Law" in Article 43, repealed all the laws and the Mecelle that were repugnant to Civil Law, the Law of Contracts and the aforementioned Law. Thus, the land system which had been in effect for centuries, and had been made contemporary in written form by the Land Law of 1274, came to an end, and the Civil Law land system replaced it on 4th October 1926.

As provided in Articles 632 and 641, the Civil Law divides the land into two categories : that to be subject to private ownership and that not to be subject to private ownership but to remain under public ownership (eminent domain). These categories are in effect subdivided.

1. *Land to be subject to private ownership* : As provided in Article 641, any land not publicly owned can be subject to private ownership. "Land" in the sense of Article 632, that can be subject to real property rights, means this type of land.

In the Turkish system, the rule is private ownership, the exception is land publicly owned. The differentiation is based on this. Thus, when one can prove that a piece of land is not publicly owned, this is sufficient to show that piece of land can be subject to private ownership.

The "unappropriated land" under public ownership is defined in Article 641, and it is there provided that a large amount of land which can be subject to private ownership is "agricultural land". Land in the villages or within municipal boundaires, with a building on it or which is unoccupied but suitable for building on or that is allocated for building, can be subject to private ownership.

The definition of "agricultural land" is given in Law No. 1617 (Art, 2), and in Law No. 1757 (Art. 3) relating to "Land and Agricultural Reform". Also there is a definition in Article 8 of the "Regulation on and to be removed outside the forest boundaries" to distinguish agricultural land from forest land. Thus, the agricultural land is arable land. It is divided into fields, vineyards, gardens, pasture, woodlands and meadows. Agricultural land is subject to Law No. 1617 and No. 1757, in addition to the Civil Law.

Forests that are also considered to be cultivated land can be subject to private ownership. Of these forests, those which are less than 3 hectares are subject to the Civil Law, those which are more than 3 hectares are subject to the special provisions of the Forest Law No. 6831.

The land falling within the boundaries of the municipalities and "neighbouring areas" that can be subject to private ownership, is controlled by the provisions of the Planning Law No. 6785 and Civil Law. For village lands, in certain circumstances the village Law may be applicable. Also Law No. 1710 on "Ancient Monuments" contains special provision regarding ownership on this type of land.

As a rule, the general provision of the Civil Law apply to foundation land. The Civil Law does not regard these as a special category, as the Land Law had done. But there are special provisions for this type of land. Article 80/A of the Civil Law imposes special conditions on the right to use such land, Article 81/B provides that no title is established on this land, through possession. Those foundations established prior to the enactment of the Civil Law are subject to Law No. 2762 on Foundations.

The title deed of the land subject to private ownership is subject to Law No. 2644 on Title Deeds, No. 766 on Title Deeds, and No. 2613 on Official Measurements and Registration of Deeds.

2. *Land Publicly Owned* (Under the control and use of the State). According to Article 641 of the Civil Law, there

are two types of land which can be publicly owned: unappropriated land and land for public use. There are special provisions for the use and management of these two types of land (Article 641/last sentence).

a) *Unappropriated land :* Land which cannot be subject to private ownership in accordance with Article 641 is land which cannot be cultivated because it consists of rocks, hills, mountains and sandy stretches. This land is open for public use. The State has a duty to make it available for the benefit of the public.

In the last fifty years, the State has not issued the special regulations to make this benefit possible. Therefore, this land has been subject to unlawful management and usage.

At first, there was an attempt to fill in this gap by applying the provisions of the Land Law. In particular, the provisions of this Law relating to development were used until the Title Deed No. 2644 of 22.12.1934 came into effect. Also the provisions of the Land Law were used as customer rules to regulate the usage and management of unappropriated land, and in resolving conflicts arising therefrom.

According to Article 19/b of the Agricultural and Land Reform Law unappropriated land falls under the control of the Under-Secretary of Land and Agricultural Reform. Since 1945, when Law No. 4753 on the distribution of land to farmers came into effect, it has not been possible to develop this type of land for such development.

Because of the lack of special regulations and the maps of unappropriated land, this type of land has been used for 'gecekondu' purposes around the cities. And under the provisions of the Gecekondu Law, the granting of title deeds has made it possible for this type of land to become subject to private ownership. Local governments have used these areas for brick kilns and quarries, and private persons have taken advantage of this situation to close them to the use of other people, and to allocate them for the benefit of certain individuals or groups (the enclosing of sandy stretches bordering the sea, lakes and rivers).

The management and use of unappropriated landi n violation of laws is a vital issue for the land system. It is essential that the law-maker takes action as soon as possible.

b) *Land for public use* : Land in public ownership is eminent domain in the general sense. This land can be subdivided as follows : Land allocated for the use of the general public, land allocated for the use of certain villages and areas, land allocated for the performance of public services, and forests.

There is no special law regulating the management and use of land for public purposes. In particular, land which is allocated for such public purposes as roads, squares, parks, marketplaces, fairs and areas used for public services remains unregulated. In practice, this gap is filled by use of the provisions of the Land Law relating to abandoned or ownerless land, and, by administrative customs.

There is a special law, however, applying to forests belonging to public legal persons. Forest Law No. 6831, although frequently amended, is the only measure pertaining to this field.

In 1973, with the passage of the Land and Agricultural Reform (Art. 131-160) new provisions were introduced for public land used by certain villages or areas for summer and winter pasture purposes.

Therefore, there is a crying need for the introduction of a "Public Property Law" to determine the principles for the management and use of public property.