LEGISLATION TURQUE

A SURVEY OF THE "GECEKONDU" ACT, 1966, FROM THE STANDPOINT OF EFFECTIVE LAND USE

by

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I. The occurrence of *Gecekondu* (squatter houses) is one of the indicators of a dficiency in the urbanisation process. When urban land, or land which is expected to join the urban area in the near future, is utilized haphazardly without adhering to laws or the needs of economy, law, health and aesthetics, and when, as a consequence, the conditions of cohabitation in the city are deteriorating, we call this situation a deficiency. The occurrence of *gecekondu* is its most concrete symbol.

To correct this situation, the law-makers try to find measure to remove the *gecekondu*. In many countries, legal measures are introduced to prevent or remove this kind of settlement. In Turkey, too, many laws (the last being 1966) have been enacted for this purpose.

The aims of the Law of 1966 are cited in Article 1, *viz* : The building of new *gecekondu* will be prevented, those already in existence will be improved and removed. In the provisions that follow, quite a complicated system is introduced to provide for prevention, improvement and removal. I shall not go into this detail[1]. What I wish to dwell upon is the manner in which the *Gecekondu* Law No. 775 handles the element of land within the

1) See the paper I delivered at the Istanbul Bosphorous and the Problems of the Environment Symposium, for the outline of this.

system for the solution of the *gecekondu* problem, and how it does so from the judicial point of view. In other words, are the present rules suitable for the solution of the problem? If not, what can be done?

II. The importance the *Gecekondu Law* attaches to the element of land is obvious. In its provisions following the first two dealing with definitions, the Law introduces rules whereby the municipalities can acquire and stock land rapidly, for the prevention, removal and improvement of *Gecekondu*. The municipalities will acquire most of this stock from land which is the property of the Treasury and public authorities, without making any payment for it. Also, land which is located in contiguous zones and within the boundaries of the municipality and falls "under the rule and usage of the State", will pass to the ownership of the municipalities free of charge (Art. 3). Apart from these areas, the municipalities will also be able to acquire land belonging to private citizens and legal persons through the power of compulsary purchase to use such land for purposes set forth in the Law. In addition, the immovable property belonging to the General Directorate of Trusts may be given to the municipalities where necessary, upon payment.

According to the wording of the Law, the land will pass to the ownership of the municipality and will be used by the municipality "for the purposes set forth in this Law" (Art. 3/1). The result is that the Law-maker increases the patrimony of the municipalities by allowing the ownership of this land to pass to them. But it also introduces limitations as to the usage of such land. Having established this point, let us now consider how the municipalities will "use" the land.

III. The basic principle of the *Gecekondu Law* is the distribution of the land stocked in the ownership of the municipalities to the persons who need it under very favourable conditions. The persons who are to benefit from this distribution "are primarily those homeless as a consequence of the improvement and remoral of their *gecekondu* and other homeless citizens" (Art. 25). But under a transitional article (Art. 5) a large proportion of this distribution goes to those who have a *gecekondu*, and the *gecekondu lands* are

thus registered. The fact that a *gecekondu* "can be improved" is not determined according to a physical quality but to its location on the plan; so this outcome is inevitable.

Whether the land of the *gecekondu* is given to the builder of the *gecekondu*, or is given to those whose *gecekondu* has been removed or to those who need land, the ultimate purpose of the Law concerning distribution is to give a property right to those benefiting from the distribution. This property right, as far as its essentials are concerned, is no different from the property right in the civil law. The only limitation is that for a period of 20 years some of the power of disposal is prohibited. Yet, the property right established by distribution, even if it carries with it certain prohibitions, is a "*private property*".

IV. One can thus make the following evaluation : The Law envisages the distribution of land, both belonging to the public and bought with public funds from private citizens, to private citizens as "*private property*" through the municipalities, first making this land the property of the municipalities. Thus, we have answered our first question. The law-maker regards the element of land within the context of "*private property*", and eventually, in spite of the limitations of time, wills that the private person becomes an owner of land.

Having determined this attitude, let us now enquire whether this attitude or point of view plays any role in the Law's failure as a solution to the *gecekondu* problem.

Let us first point out that it is officially accepted that Law No. 775 is a failure. According to material related to planning from 1966 onwards, the number of *gecekondu* doubled, though there are prohibitions in the Law. Another point is related to improvement and removal. As explained in the *Third Five Year Development Plan*, only one-tenth of the *gecekondu* to be improved or removed in this period will be subjected to any such action.

Needless to say, the only reason for the failure of this Law is not the legal form given by the law-maker to the land to be used for prevention, improvement and removal. Even if this is regarded as a reason, it can play only a secondary role. But, after all the

reasons and influences have been examined, this fact should also be made clear.

We can conclude absolutely and pragmatically that the value of land distributed as private property to those in need, is rising with unforeseen speed because of speculative attitudes created by the pace of urbanisation, inflation and new demands directed towards land, inspite of the prohibitions. For example, in Istanbul, some of the land registered in the name of the builders of *gecekondu,* to be paid for over a period of ten years, has now reached forty times the distribution price. This observation alone indicates that allocations in the form of private property can be considered an incentive for the *gecekondu* developer. A citizen who was in financial difficulties and built a *gecekondu* in a suitable area, after a short while can, because of his *gecekondu,* become a well-to-do person. There is also a psychological effect to be kept in mind : the citizen knows that one day he will be able to "legalise" his position with his *gecekondu* which he has managed to build, despite the ban. This means that he will one day be quite well-off because of his *gecekondu.*

We can now answer another question we had posed earlier on, using this pragmatic observation : the procedure of distributing land by giving registration rights cannot be considered a procedure suitable for preventing the occurrence of *gecekondu.* That is to say, the legal form given to the element of land by the law-maker within the process of solving the total *gecekondu* problem, cannot be accepted as a suitable approach.

V. So, what should this form, this approach be? First, let us indicate something : among the duties imposed upon the State by the Constitution, one encounters that of securing housing for low income groups in keeping with standards of health. But there is one point here : the State will provide housing for the needy citizen, but it does not necessarily follow that this housing should be owned by that citizen. The Constitution does not impose upon the State the duty or obligation to secure property rights to the citizen.

Thus one can say that, the securing and giving of property rights which, as far as the *gecekondu* process is concerned, is not

a preventive but, on the contrary, a legal form of incentive can very well be abandoned. There is nothing to prevent this in the Constitution.

If this form were to be abandoned, long term leases could be introduced instead. A "*lease contract*" should be given to the builder of the *gecekondu* or the citizen who is in need and has no home, instead of a registered ownership of the lot. This contrat should have provisions that would grant the citizen the opportunity to use the *gecekondu* as a dwelling and give him security and trust. It would be a written contract. After this relationship has been established, all the possibilities of improvement and betterment will be used by the builder of the *gecekondu*, just as in the Law in effect. Since there will no longer be a problem of property rights on the land, any conflict arising as a result of development or improvement of the building, will be easily calculated in terms of money when the term of the contract expires or lease agreement ceases.

On the other hand, this solution will enable the municipalities to act freely on the land left in their ownership. It will be the municipality that will benefit from any increased value of this land, rather than the builder of the *gecekondu* as now. The municipalities, instead of paying vast amounts of money to compulsary purchase land resulting from developments in the process of urbanisation, will, by removing the lease-holder to other dwellings, be able to evaluate the land in the most rational manner.

I am aware that, as a method of efficient land use, this approach to *gecekondu* areas reflects a very problematic proposal which is very difficult to reconcile with the social realities. Yet, the "*deeds distribution*" which has proved to be very detrimental through the implementations made to date, can be abandoned as a method by a political decision, and a lease system, that will be defined in detail and well designed, can very well work and, I belive, will be of great value in the solution of the legal aspect of the *gecekondu* problem.