

The Problems Resulting From Nationalization Of The Long-Distance Line Projects And The Solution Offers

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Key words: Nationalization, Rural Area, High Speed Train, Nationalization Problems

SUMMARY

The revolutionary technological developments that have begun to spread by the end of the 20th Century made the authorized persons of the state institutions and organizations serving in Turkey invest by making use of these technical developments. The government has to make investments to develop Turkey, employ its citizens, improve the social life quality of people living in rural and urban areas, increase the per capita income and rival the world countries. It has to complete urgently its rural consolidations and line projects such as roads and water, energy transmission lines, railways, new highways, converting available highways to double highways, high speed trains, and potable and irrigation water transmission lines. Most of these projects are to be applied in rural areas and needed areas are gained by nationalization protecting public's interests. We can consider nationalization - which is still valid in Turkey- as the government extorts the lands it needs for investment without asking their landowners and looking for another solutions.

In this article; nationalization's geometrical effects on the rural area of Kadınhanı Kolumukisa Town where the high speed railway line passes, economical and sociological effects on the people living in the area and the results have been examined, new solution offers have been tried to be found out.

Uzun Mesafeli Hat Projelerinin Kamulaştırmalarından Doğan Sorunlar Ve Çözüm Önerileri

Anahtar kelimeler: Kamulaştırma, Kırsal alan, Yüksek Hızlı Tren, Kamulaştırma problemleri

ÖZET

20 Yüzyılın sonlarından itibaren yaygınlaşmaya başlayan devrim niteliğindeki teknolojik gelişmeler, Türkiye'de hizmet üreten Kamu Kurum ve Kuruluş yetkililerini bu teknolojik gelişmelerden faydalanarak yatırımlar yapmaya mecbur hale getirmiştir. Türkiye'nin kalkınabilmesi, vatandaşlarına iş imkânı sağlayabilmek, kırsal ve kentsel alanda hayatlarını sürdüren insanların sosyal yaşam kalitelerini artırabilmek, kişi başına düşen milli geliri artırabilmek, dünya devletleri ile rekabet edebilir duruma getirebilmek için çeşitli yatırımlar yapmak zorundadır. Bu zorunlulukları yerine getirebilmek için Türkiye'de yol ve su, enerji iletim hatları, demiryolu, yeni karayolları, mevcut karayollarının duble yola dönüştürülmesi, yüksek hızlı tren, içme suyu, sulama suyu iletim hattı gibi hat projelerini ve kırsal alan düzenlemelerini ivedilikle yapıp bitirmek zorundadır. Bu projelerin büyük çoğunluğu kırsal alanlarda uygulama alanı bulmaktadır ve ihtiyaç duyulan alanlar kamu yararı gözeterek kamulaştırma yoluyla elde edilmektedir. Türkiye'de halen uygulanmakta olan Kamulaştırmayı devletin yatırım ihtiyaç duyduğu arazileri sahiplerine sormadan ve başka çözüm yolları aramadan zorla elde etmesi olarak algılayabiliriz.

Bu makalede kamulaştırmanın Konya –Ankara yüksek hızlı tren hattının geçtiği Konya Kadınhanı Kolumukisa kasabası'nda kırsal alanına geometrik, yaşayan insanlara ekonomik, sosyolojik etkileri, sonuçları incelenmiş ve yeni çözüm önerisi yapılmaya çalışılmıştır.

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1. INRODUCTION

In Turkey, acquiring of the real estates needed for operations of the state institutions and organizations occurs usually by nationalization. The great deal of money paid for nationalization brings any benefits for neither citizens nor the government. Moreover, it is faced with economical, technical and sociological problems during nationalization process. It is resorted to the judgement for the solution of these problems, especially for the economical ones; therefore it causes delay in application of projects, lawsuit-mass and engages the judiciary considerably. When considering that most of the lawsuits proceeded against Turkey in European Council of Human Rights consist of millions of dollar-nationalization remedial actions, the importance of the subject is better understood.(Türkoğlu, 2008)

However, by minimizing all these money, time and sociological wastes, achieving two goals by means of one operation, the applications that can contribute to the country's economy must be searched. In these applications, to provide acquiring the needed lands by carrying out 18th article of the law no 3194 within urban areas and the regulation of land consolidation in rural areas is much more proper method to the current technology and knowledge, as for me.

The state institutions and organizations in Turkey have created some kind of methods in accordance with laws and regulations to acquire the lands they need timely or permanently. These methods are given in Table.1 as timely and permanently acquiring methods.

Table.1: Methods of Land Acquiring

TIMELY	PERMANENTLY
Donation	Donation
Barratry-Exchanging	Barratry-Exchanging
Allocation	Buying
Renting	Forward Buying (Redemption)
Temporary Utilization	Development Plan Implementation (3194/15-16-18)
Constitution of Servitude	Land Consolidation
	Nationalization

Of these methods in Table.1, the most optimum one is donation; the most problematical one is

nationalization.

2. NATIONALIZATION

Nationalization is the process in which state institutions and organizations acquire real estates that belong to natural persons or legal identities by using state's public force, paying their actual values without asking and informing the property owners, and by keeping public interest over owners' to provide services they have to.

2.1. The Legislation Concerning Nationalization In Turkey

The first regulation on nationalization in the Republic Period is stated in the article 74 of Turkish Constitution of 1924. This article had authorized the institutions and organizations to have the right to nationalize by paying immovable property subjected to private property as prepayment in their actual values. "Municipality Land Clauses Act" No. 3710 enacted in 1939 re-organized nationalization of the municipalities. In the law, it is provided that nationalization can be made concerning the sanitary and aesthetic needs of the inhabitants of towns.

In nationalization process, the act that eliminates the separation between central administration and local administration is "Land Clauses Act" enacted in 1956 with no. 6830.

This act is an important step for Turkey in terms of the Nationalization act. Four years after enacting of this law, elimination of some faulting aspects of the legislation occurred in 1960 due to changes made. Between the years 1923–1960 in addition to the acts bringing general provisions regarding nationalization, some special nationalization acts were enacted for certain regions and certain functions. The first of these is "Central Places for Yenimahalle To Be Re-Constructed in Ankara and, The Act about the Nationalization of Swamp and Mergazi Lands to Şehremaneti" dated 1925 and no. 583. The followings are examples of these kind of laws as well: "Nationalization Act for State Railway" no. 929, dated 1926; "Nationalization Act for the needs of National Defence" no. 3887, dated 1940; "The Act for Nationalization of the Lands where the city of Erzinçan to be re-established" no. 3908, dated 1940; "The Act about Property allocated by public legal persons or their Institutions in specie to the Public Services" dated 1961. By including the nationalization process the Constitution of 1961 drew attention to the importance of the real value in payment of the nationalization provision. The article 38 of the Constitution implies that immovable property can be nationalized provided that "the real values are to be paid in advance". The Constitution of 1982 also remained within the limits provided by the Constitution of 1961 with respect to the nationalization. The article 46 of the Constitution of 1982 has determined constitutional limits of nationalization by stating that the legal entities of the government and public are authorized to nationalize privately owned real estates wholly or in part in accordance with the principles and procedures as prescribed by law and provided that the real values are to be paid in advance when the public interest requires.

By amendment of the Constitution in 2001, the methods used for appraising the expropriated price were removed from the text of the constitution. The payment for the nationalization

process was left to the discretion of the legislator again (Keleş, 2004). The Act of Nationalization to be the most recent act in respect of nationalization process no. 2942, dated 1983 is the act which repealed the Land Clauses Act entirely and is still in force. The act is still in force which was considerably amended by the Act no. 4650 in 2001.

In terms subject, the Act of Nationalization no. 2942 is considered as the basic legal document which comprises the basic rules and principles needed by administrations in Turkey for fulfilment of nationalization procedures in accordance with the law. Just as the Constitution, the Act of Nationalization no. 2942 which does not include the nationalization process completely limited its scope with the 1st article. According to this, “This act provides the

procedures for nationalization of the immovable property that belong to natural and legal persons by the government and public legal entities, calculation of the expropriated price, registration of immovable property and constitution of its servitude on behalf of administration. In addition, it embodies the withdrawal of unused immovable property, conveyance of immovable property between administrations, the mutual rights and obligations, procedures and organizing of dispute resolutions based on these rights and obligations”. The act of nationalization no. 2942 was amended radically by the Act no. 4650 enacted in 2001. The amendments by the Act no. 4650 can be summarized as follows:

Administrations do not start nationalization process as soon as they do not have the enough allowance.

- a) Principally, the procedure of buying immovable property has to be applied.
- b) The expropriated price is determined per curiam, instead of commissions on appraisal of provinces and counties.
- c) It's highlighted that it is not enough to stop nationalization process because of the suit of nullity; it is needed to be a decision on suspension of execution (Keleş, 2004)

2.2. Nationalization Procedures For The Line Procects Applied In Rural Areas

2.2.1. Procedures before Nationalization;

- Nationalization route or area is determined. The required studies are applied along the route by means of the institutions such as Petroleum Pipeline Corporation, General Directorate of Turkish Highways, Turkish Electricity Distribution Corporation, General Directorate of Turkish State Railways and for the maps of the area under water of dam or pond by General Directorate of Turkish State Hydraulic Works.
- The administration determines its way of nationalization. It is decided whether the type of nationalization is temporary servitude, permanent servitude, nationalization in part or wholly nationalization. According to the 3rd Plan, “Decision of Public Interest” is made.
- The administration that is to apply nationalization prepares or has somebody prepare a

scaled plan which shows the border, surface and sort of the area. If the immovable property owners do not have land registrations, administration confirms their occupant.

- Annotations about the immovable property used in nationalization are given to the real estate registration office.
- After providing allowance by administrations, the processes of nationalization are started.

2.2.2 Procedures after Nationalization Decision;

- A commission on appraisal is constituted by the administration. Approximate value is determined.
- Immovable property is gained with the consent of the landlord or by record.

3. INVESTIGATION OF THE SAMPLE AREA (KADINHANI- KOLUKISA TOWN-KONYA)

Kadınhanı-Kolukısa Town (Konya) where the Konya-Ankara High Speed Train Line (Figure.1) passes through is located 31 km far from the city centre and 90 km from Konya. It has a population of 3800. It municipalized in 1973. Its surface area is 151705 km². Of this 151705 km²-area, 142227 km² part of it is engaged for agriculture (DİE, 2000). 3273 of population earn their keep by means of agriculture and stockbreeding. Thanks to the stockbreeding cooperative, bovine breeding grows expeditiously. There are 1 village clinic, 2 primary schools, 1 bakery, 5 groceries and 2 gas stations in the town. There is also water supply network in town and the sewerage system is at a 50% level (Aydın, 2007).

3.1. Investigation of the High Speed Train Line Route in terms of Cadastral Parcels;

Passing of the High Speed Train Line Route through Kolukısa Town begins from 114. km and end at 130. km. Between these kilometres, the line passes through 42 personal parcels, 43 revenue treasury parcels, 20 parcels external registration; 105 parcels in total. Here,

42 parcels belong to 67 persons. It can be seen in Figure.2.

Of these parcel, 33 were divided into two parts, 72 were divided into three parts. Nationalised places on these parcels are 795282 m². Out of these parts, 21 are smaller than 5000 m², 13 are between 5000 m² and 10000 m², and 104 are bigger than 100000 m². The percentage distribution is given in Graphic.1.

In this area, 11 cadastral roads were closed; crossing over was blocked by wire fences at two sides of the route which passes through all borders of the town and blind roads formed. Along the 30-km route, 6 subways and overpasses were built (Picture.1).

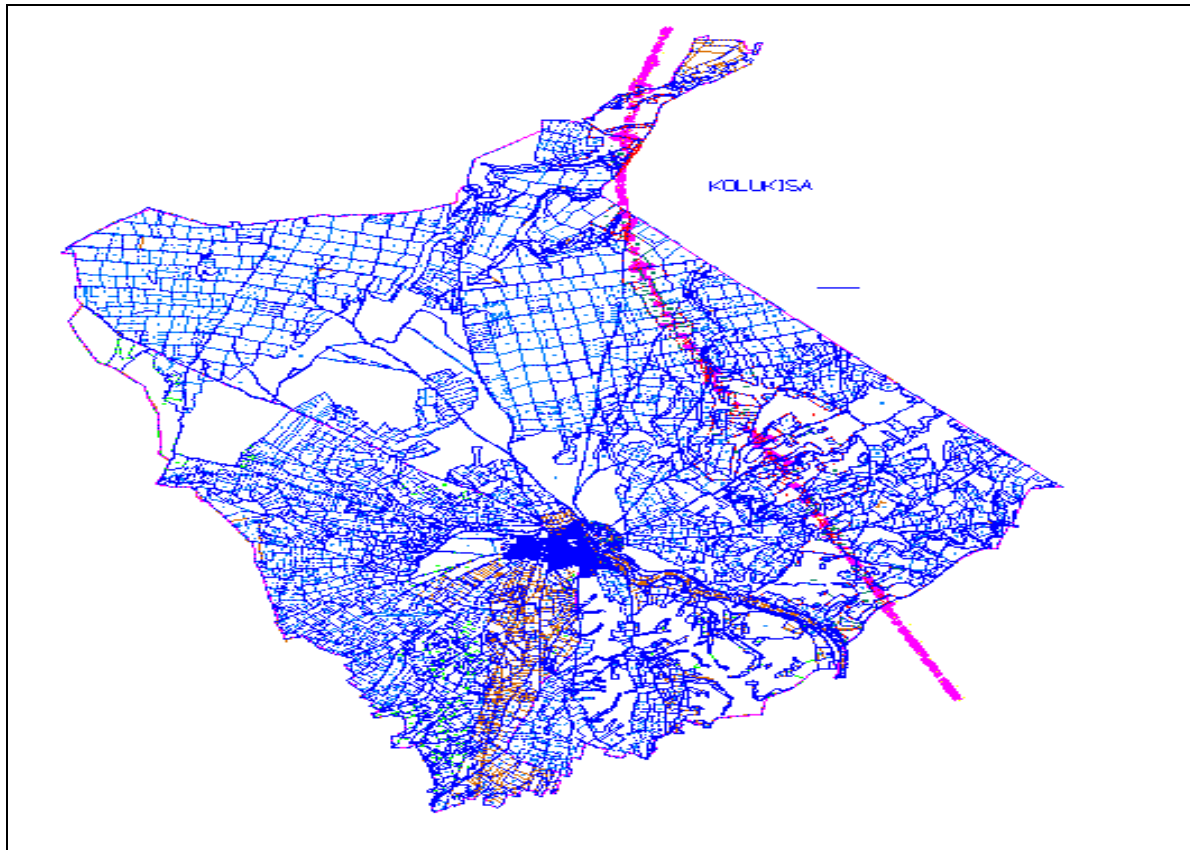


Figure 1. Passing Route of the High Speed Train Line through Kolukisa Town



Picture.1 A View of the High Speed Train Route

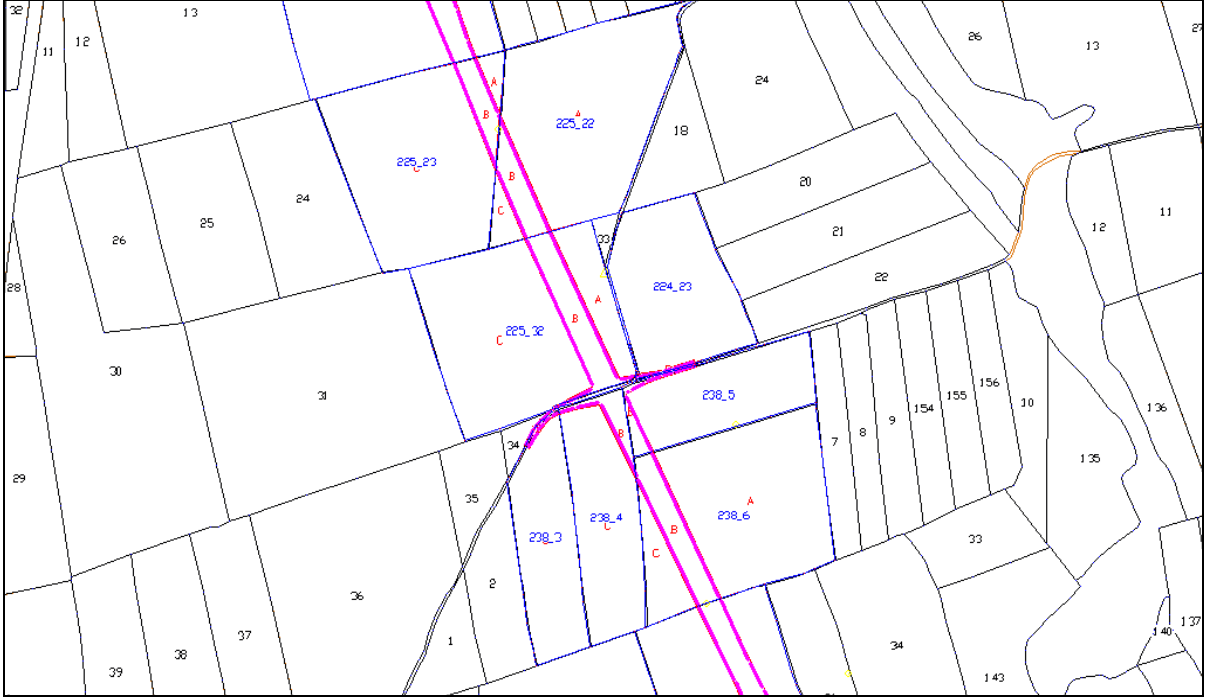
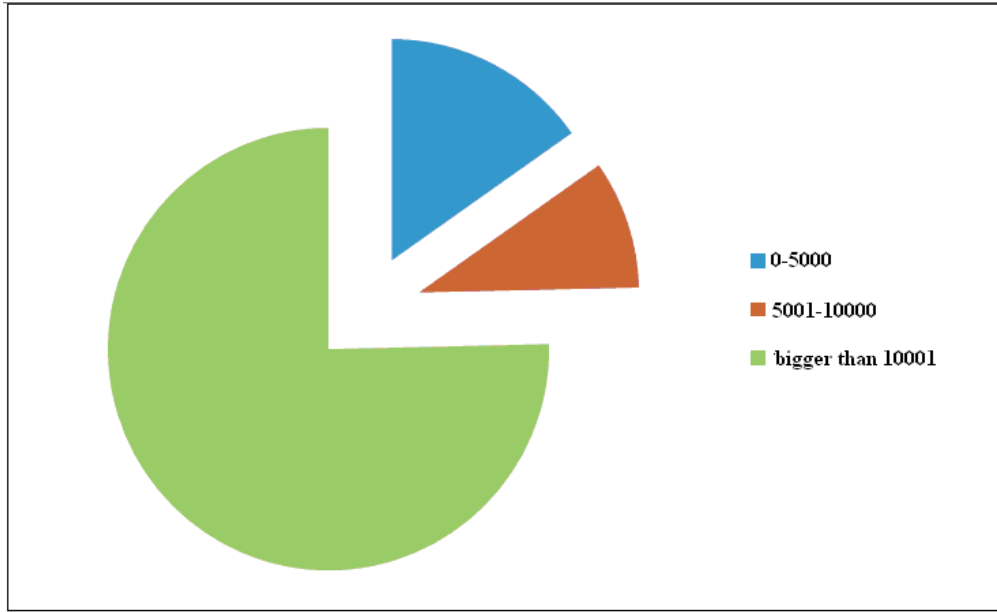


Figure.2 Cadastral Situation of the Nationalised Parcels



Graphic.1 Size of Areas after Nationalization

3.2. Investigation of the High Speed Train Route in terms of Juridical and Economical Aspects

22 persons in 42 subjected to nationalization challenged against expropriated price determined. Of 42, 4 persons accepted later, 18 persons resorted to the judgement. 3.376.790 TL (2.000.000 \$) was paid in banks to be paid on 15.06.2005 to 42 persons in this area.

4. PROBLEMS FACED DURING NATIONALIZATION PROCESS

It has been determined that the problems which start to occur from the day on when projects for nationalisation in rural areas of Turkey get started reach their top by price and price determination. Later on, some kinds of economical, sociological and psychological problems go on emerging. We can investigate these problems under the following titles; general problems, technical infrastructural problems during project designing, price determination problems in nationalization, sociological and psychological problems, problems in division of lands in rural areas and economical problems.

4.1. General Problems Faced During Applications of Nationalization

- a) Although the legal structure in nationalization procedures is tried to be constituted as strong as possible, it causes some kind of problems and conflicts in terms of methods used in resolution and application process and in the eye of the persons faced with nationalization procedures.
- b) The structure of the nationalization which can exterminate the property rights of

persons using one-sided and disproportionate juridical powers without monitoring by another public body whether it protects public's interests or not causes moral and material problems to emerge in terms of application.

- c) Each of the following problems constitute the parts of nationalization problems: difference of understanding and commenting between public and nationalization operators, distresses after nationalization and depressions that can effect the society in general
- d) Resorting to European Council of Human Rights by landlords of the nationalised lands cause loss of reputation and besmirching our foreign reputation as a result of losing these cases.

4.2. Technical Infrastructural Problems during Nationalization Applications

4.2.1. Cadastral Problems

Most of the problems faced during nationalization operations are cadastral. Cadastral organization's being lacking in technical aspects and old cadastral bases' being not able to address the today's world's needs cause loss of time and good quality of service for all of the institutions and organization that make nationalization applications. We can specify the cadastral failures as measurement failures, classification failures, plotting failures, failures resulting from calculation of the surface area and failures which occur in graphical map sections.

4.2.2. Problems resulting from Immovable Property Owners

Immovable property owners are not informed beforehand in designing of nationalization projects in Turkey. Most of the real estate owners are unaware of the process and have to accept the result. Plans are prepared without informing these owners and without their contribution, the results are declared. The owners have the right to challenge against these results only for short period of time. This opposition is evaluated and resulted for public's interests. In this sense, naturalization is the retaining the property by public without informing the owner about when it takes place and how much it will be paid. These plans that are prepared without owner's contribution and approval, and protecting ownership usually create problems which even the project owner does not approve (Demirel, Z., Demir, H.,2003). Because of these reasons, the law-suits brought in juridical and administrative justice create problems such as loss of time, effort and money due to cancellation of nationalization and re-application of the procedures (Türkoğlu, 2008).

4.3. Immovable Property's Price Determination Problems during Nationalization Process

One of the most important aspects of the nationalization process in terms of the related organization and as well as individuals whose real property is to be nationalised is the appreciation of a consistent, valid and fair price according to the today's conditions. On the other hand, price determination in nationalization process should be appropriate not to compel

the administration financially which takes the action; it has a vital importance for ensuring effectively application of the final goal which is public's interest (Demirel, Z., Demir, H., 2003).

High Speed Train passes between Konya and Ankara non-stop. Therefore, there is not any increase in value of lands through which High Speed Train Route passes, as a result 42 % of citizens in the area have resorted to the judgement.

4.4. Sociological and Psychological Problems;

Nationalization process can create serious social and psychological problems and depressions in terms of its serious and irreversible intervention to the property right which is accepted as one of the most intangible rights of individuals in modern societies, even if it is to be used for public's interest. Nationalization causes some depressions which can be the problem of the some or all parts of society as well, when it extends its scope sometimes. First of all; people who have to migrate to another allocation unit due to nationalization, as a result of separation from their old allocation units, lose their all behaviour norms and their neighbourhood relations weaken and they can not adopt themselves to their new allocations.

Nationalization causes problems as migration and unemployment which are not recorded and social losses whose results can only be seen by the time. It creates -at some different dimensions- resentment, anger and incompatibility between public administration, institution, organization who owns the action and the citizen whose property is encroached. In terms of the usage of means or methods, the subject gains new dimensions out of conflict of public organizations' and individual's interests; and it effects and interests the public opinion. The real property to be nationalized can be a place on which the owner hangs sentimentally and economically. Nationalization of that kind of real property can create depressions in related person/s which can reach up to sadness, resentment and tension. The property owner who can not be satisfied because of the structure of the nationalization mechanism can be angry and even aggressive with the thoughts in mind that s/he is mistreated against the nationalization process and the persons who do the nationalization. S/he accuses them with acting intentionally and serving some persons' or groups' interests; tries hard to stop or hinder the process by using all rights the law gives him/her. In that kind of situation, the administration of nationalization and related persons must be comprehensive and empathize with the property owners. The way of nationalization process can create threat of besmirching the reputation of the government in the eye of public because of the improper application to the psyche, people's living habits (Köycü, 2006).

In the sample area; lack of gangways from one side of the town to another because of High Speed Train Line made the decrease in values of the lands and hindered their selling.

In the same area; there are gangways approximately at ever 5 km that made landowners' transportation to their lands hard and created obstacle for the people who are engaged in stockbreeding to go meadows.

4.5. Lands Division Problems in Rural Areas

After the nationalization route's determination, the institutions as Petroleum Pipeline

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Corporation (BOTAŞ), General Directorate of Turkish Highways (TCK), Turkish Electricity Distribution Corporation (TEDAŞ), General Directorate of Turkish State Railways (TCDD) carried out their transactions along the nationalization platform by dividing agricultural lands into two or usually three parts. So, the division problems resulting from inheritance law are triggered thoroughly and some no-arable and even unused lands constitute. Especially the both sides of the high speed train lines and superhighways are protected double-sided, so crossing over during the routes is not easy, it is enabled only at every 3, 4 km. In this sense, taming of these lands is no more economic.

The 21 lands in 42 in Kolukısa Town, which the high speed train line divided, are smaller than 5000 m² and their geometrical shapes deformity make these lands nonarable. Because the high speed train route is protected by wire fence, old roads were closed and most of them turned into blind roads. People who do not know the area have to cover a lot of ground to cross over.

4.6. Economical Problems;

For practising the line projects, it is needed a great deal of land. Because there is no consistent land and plot policy of administrations in Turkey, gaining of real property is practised by nationalization which should be the last resort. According to the Act of Nationalization no. 2942, by the nationalization applications there are some problems such as government's indemnity payment; losing the nationalization suits and therefore excessive indemnity payments; these payments being over the institutions' budget; not being able to control the public expenditures. Because the payments can not be consulted, the economy turned from investment-linked economy to consumption-linked economy.

The commissions on appraisal should not forget in determining the expropriated price that this not a kind of enrichment of the property owner or as he hit the lottery and also not to impoverish the owner by buying his property under its real value. With the expropriated price, the owner should maintain his life as it used to; he should not think that the government cheated him and buy his property by force or feel depressed.

One of the most important problems about this process is the utilizing of the expropriated prices by owners. Lack of consultant financial institutions, the property owners do not know where and how to use their money. They waste money out of investment fields and after a while they face with economical problems (Köycü, 2006).

5. CONCLUSION AND SUGGESTIONS FOR FURTHER STUDIES

The expected income growth could not be provided in the real property after nationalization projects (high speed train lines, pipelines, double highways). In contrast, decreases in value occur because of the land division. So the landowners are affected negatively, behave bias against nationalization and resort to the judgement. Some of them migrate to urban areas because they have no more land to do agriculture and cause new problems to emerge.

Because there is no consistent land and plot policy in Turkey and government does not have enough stock of real estate and procedure, gaining of real property is practised by

nationalization which should be the last resort.

The expropriated prices are determined without discriminating land quality and considering objectively determined standards and the prices should be paid as soon as possible.

In Kolukısa Village, 12 plot owners do not go to plough their lands, because their parcels are too small to plough and they have to cover a lot of ground to arrive there.

The public institutions and organization should not gain real property by nationalization which should be the last resort (Sert, 2005). They should utilize the available laws in Turkey. Relying on the Article 17 in the Act of Soil Conservation and Land Usage no.5403, it should be utilized from the provisions that Provincial Special Administrations, Municipalities and villages, cooperatives that make agricultural activities, legal identities like unions, or other public institutions can make private land consolidation as project administrations. Land consolidation for nationalization purpose should be practised. In other words; public institutions and organizations should not gain the lands by paying their values or using disproportionate power, they should give lands in return their lands, provide the size of parcels to be appropriate and the available parcel shapes should permit people to transport among plots, regulations should be practiced addressing the needs of modern watering and agricultural mechanization techniques.

In such cases when the land consolidation for nationalization purpose can not be practised, if they nationalise, they should not gain the lands by buying from persons, they should receive them from the plots and lands which are in the possession of government (revenue treasury, meadow, lands belonging to public institutions and organizations)

If nationalization will be practised for the projects that needs full-scale of government investment; consultant financial institutions should be constituted to provide the property owners to appraise their expropriated prices correctly. That will enable the landowners whose lands are nationalised both to invest their money correctly and to prevent these people to think negative about nationalization. Moreover, these people think that the government esteem them.

In case of nationalization for land consolidation it can be provided that the amount of arable land in the field by making it a sustainable farming by paying much lower amounts than in the amount of nationalization.

It will be solved that not only prevents fragmentation but also problems arising from the estate in the area of land consolidation purposing the nationalization.

When the remaining parts are very low in the partial expropriation, also the costs are low too. For this reason, landowners do not receive this fee. This is why people do not go to the land registry and that can cause serious problems.

ACKNOWLEDGEMENTS

This paper is supported by Selcuk University Coordinating Office Of Scientific Research, "Problems Occured from Nationalization of Long-distance Line Projects"

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