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Commission III

National Report/TURKEY

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Veillez ommencer à la page 2 avec votre rapport.

Please start on page 2 with your report.

Beginnen Sie bitte auf Seite 2 mit Ihrem Bericht.

SUMMARY

NEW DEVELOPMENTS IN INHERITANCE LAW IN TURKEY

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In this regard there was a need to make a new arrangement on Inheritance law, for this purpose, preparations began in 2006. Survey was conducted with 50 thousand farmers engaged in actual farming countrywide. . 71 percent of farmers have supported the collection of a single shareholder of the land by inheritance.

The draft law preventing the division of agricultural land by inheritance was adopted in the Parliament last year.

The arrangements introduced by the new law are outlined as follows: agricultural land and farms can not be divided under the minimum size by taking account of regional differences. In order to have agreement between them will be given a 1-year period. In addition, except transfer to one brother, land can be farm by limited company established under the Turkish Commercial Law. That land may be sold as a whole by the heirs. If children heirs don't agree, the parties may be go to the Court. Heritage land, will be transferred to the eligible heirs with the market value.. If there is no eligible heirs, land will be transferred to the willing heir giving highest price. The Ministry will provide technical support.

This last arrangement has been made in the Law of Inheritance is an important step to facilitate the structural adjustment of the EU to Turkey. The issue is expected to reflect to the 2015 Progress Report as a significant improvement.

NEW DEVELOPMENTS IN INHERITANCE LAW IN TURKEY

ENTRANCE

One of the problems in Turkey that causes gangrene on agriculture and paralyzed the agriculture is the inheritance law which envisages sharing equally among the heirs of the inherit. So small-scale agricultural land which was already small, shrunk more over time, the number of land per farm has increased, as a result of this agricultural structures has moved away from being used in efficient agriculture (Acar, 2006: 156).

Although the average farm size in the United Kingdom is 53.8, 52.1 in France, 45.7 in Germany, and 23.8 hectares in Spain, this figure is 5.9 hectares in Turkey. In this case competition of Turkey with other countries in the agricultural sector is difficult. In Turkey from 1961 to 2003 450 thousand hectares, and in last decade 4 million hectares of land had been consolidated. 2 million hectares of land related work is expected to be completed by the end of this year. But on the other hand due to the continuing division of the land, these studies are defective (Eker, 2014). When taking into account that the average number of plots per farm in Turkey is six, the average small size and fragmented scale of agricultural enterprises are obviously seen (Acar, 2006: 156).

One of the indispensable conditions of making Turkish agriculture competitive in this context and integrating to the EU is to prevent more fragmentation of land by changing the inheritance law immediately, in addition to this, integration of the existing fragmented terrain and to take measures to provide the optimal scale for useful fertile farming (Acar, 2006: 157).

The situation that Turkish agriculture enterprises, gradually shrinking over time with increasing population pressure away from the optimal scale, has taking great sets in front of economic activity and technological development. The reorganization of the inheritance law to prevent shrinkage apart of agricultural land, dissemination of the consolidation activities of the farms and on the other hand, prevention of unproductive land concentration is the first work to be done to achieve a more efficient farm structure (Şahinöz, 2011: 371).

Land fragmentation involved in agricultural productivity, imbalances in soil and human relations, in the inefficiency of resource use in Turkey,

can arise from different causes. Among these: the disintegration through inheritance and the traditional status brought about land ownership. Agrarian reform, land consolidation, can not be considered separately from the concept of land ownership (Gülçubuk, 2013: 21).

Because land is shared equally among the heirs in accordance with the provisions of that heritage it is permanently divided and falls under the economic farm size. This situation has led to the deterioration of the structure of the farm as the company leads to the division of all assets and ultimately farm is losing its efficiency. The lack of legal control over the sale of the agricultural business is also affecting the division of agricultural land. As there is no statutory limitation, in terms of farm size, on the sale of land belonging to agricultural enterprises, agricultural enterprises can be divided according to the request of the owner (Güven-Cozoğlu, 2013: 49).

INHERITANCE LAW

In this regard there was a need to make a new arrangement on Inheritance law, for this purpose, preparations began in 2006. Survey was conducted with 50 thousand farmers engaged in actual farming countrywide. . 71 percent of farmers have supported the collection of a single shareholder of the land by inheritance.

The draft law preventing the division of agricultural land by inheritance was adopted in the Parliament last year. Substantial losses in production due to land division has occurred for the last 90 years. Farm sizes fell to 59 acres. 9 million hectares couldn't benefit from support for not being registered to the system by the farmers. 2 million hectares of 23 million hectares of land could not be farmed. Economic losses reach 17 billion annually.

The arrangements introduced by the new law are outlined as follows: agricultural land and farms can not be divided under the minimum size by taking account of regional differences. In order to have agreement between them a 1-year period will be given. In addition, except transfer to one brother, land can be farm by limited company established under the Turkish Commercial Law. That land may be sold as a whole by the heirs. If children heirs couldn't agree, the parties may be go to the Court. Heritage land, will be transferred to the eligible heirs with the market

value. If there is no eligible heirs, land will be transferred to the willing heir giving highest price. The Ministry will provide technical support.

In order to resolve disputes, expropriation, purchase and sale transactions will be made by the Ministry of Finance in accordance with the relevant legislation. In transfer procedures and legal entities; stamp duty, fees etc. exemption for expenses will be provided. Eligible, but not having purchasing power or willing heirs credit will be given. If there is big amount of shareholders or there are difficulties in accessing the owners, land can be expropriated. The shareholders will be paid into the bank account. Later these lands will be sold to the user farmers or farmers who want to expand their land (Eker, 2014b).

Prevention of separation of the farms, rather than to be shared among the heirs, inheritance can be purchased by one of them from other heirs requires capital, and therefore credit. In addition, distribution of the tool and machines in farms among the heirs causes a new credit requirements in this area (Eraktan, 2001: 162). Taking into account the needs, tax benefits and technical support is provided in the law. Banks have also begun work to provide the necessary resources in the form of loans and credits.

As known, the transfer is made to the big brother in England, in France, one of the brothers pays the price of at market value to the other brother, in Germany, one of the brothers pays a small compensation to the other, in Spain and in Italy, the transfer is made to heirs who is regarded as qualified. In the US, sales are made at the market value.

According to the Law; minimum size of agricultural land will be determined by the Ministry of Food, Agriculture and Livestock considering social, economic, ecological and technical characteristics of region and location. Agricultural land have reached to the specified minimum size, will win the “indivisible goods” status. The minimum size of agricultural land will be 2 hectares on absolute farmland, marginal farmland and special products land, 0.5 hectares on planted land, 0.3 hectares on greenhouse farming. The Ministry would increase minimum size of agricultural land, according to the conditions of the day. Agricultural land can not be secreted and allotted to sizes smaller than minimum size determined by Ministry. Except for the Treasury real estate sales transactions, total shares and shareholders numbers will not be increased. However, in permit given area for non-agricultural use or

in the areas where there is special climate and soil requirements, such as tea, nuts, olive's grown, because of the area specification, smaller parcel sizes necessary than determined agricultural land sizes, smaller parcels can be created with the approval of the Ministry. According to county, land can be evaluated separating categories; aqueous, dry, planted, under cover. Land, will be considered to be large enough to feed a family.

The purpose of "Regulations regarding the transfer of ownership of agricultural land" dated December 31,2014 and published in the Official Gazette numbered 29222 prepared depending on 3/7/2005 dated and No. 5403 : "Soil Conservation and Land Use Law" 's 8 to 8 / K article, is to specify the procedures and principles for transferring of agricultural land, changing by inheritance, evaluation, sufficient income area size and economic integrity with determination eligible heirs criteria.

Valuation of agricultural land

Revenue value of agricultural land is calculated according to average annual net income in the case of using the lands on valuation date at optimum conditions.

On calculation of the gross production value of the production period, the acquired product price of farmer and yield are taken into account. On the acquired product price, Turkey Statistical Institute (TUIK) data are taken into account. In product design and calculation of yield, the land to be valued or other land in the area offering similar features to the land is determined on the basis of the last five years' valuation records of the Ministry .

Annual Average Gross Production Value obtained from area is calculated by multiplying the product price that farmers get during the valuation period with multiplying the last five years' average yield of the product.

Annual average net income of land is determined by subtracting the average annual production costs for the dominant crops grown in the area to be determined by Ministry of Provincial and District Directorates to determine the land's average annual net income from from the annual average gross production value.

Agricultural areas income value is calculated by the multiplying fixed average annual net income with the twenty years.

When there is any objections to the agricultural income value, calculation are reevaluated on the bases of crop design and yields of land used on determination, crop cost and farmer's income. In any objections to crop design, cost and farmer's income, data on the Ministry and TSI system will prevail.

Agricultural land size with sufficient income

Provincial towns and sufficient income agricultural land size is determined by considering the differences of regions in the law . Agricultural lands can not be divided to sizes below sufficient income agricultural land size specified in the list attached to Law. Statements of this feature of agricultural land is notified to the land registry offices commentary about the household by the Ministry.

In the calculation of the size of agricultural land with sufficient income, all agricultural lands owned by the same person and economic integrity identified between them by the Ministry are evaluated together.

In the calculation of farm size with sufficient income, if the same person owned agricultural lands are at different classes, inter class conversion coefficients obtained by comparing the sufficient income agricultural land sizes in different classes which are determined for each district by Law are considered.

Economic integrity

The detection whether there is an the economic integrity of agricultural land owned by the same person or not is determined by the following criteria:

Less than one decare at under cover farmland, five decares at planted farmland, ten decares at irrigated and dry farmland does not pose economic integrity.

If distance between the lands belonging to the same person and non-contiguous distance is less than ten km and sizes at least at greenhouse agricultural land , a decare, at planted farmland five decare, at wet and dry farmland, over ten decares are assumed as economic integrity exists between these areas.

Property belonging to the same person with the bordered agricultural lands is considered to constitute the economic integration.

If one or some agricultural land belong to the same person is joint, the economic integrity assessment is made considering the amount of the share of a person in agricultural land.

Economic integrity assessment is made by the provincial or district administrations in accordance with the above criteria. Difficulties arising from the use of topographic conditions and other compelling reasons to appeal against this decision to be decided by the Ministry by evaluation.

Transfer of agricultural land

The following procedures will apply to all types of agricultural land ownership transfer request.

- a) In the case owner has only one agricultural land property in the same district boundaries, transfer of property is possible.
- b) In the case owner has more than one agricultural land property in the same district boundaries, if all of those lands together is considered, transfer of properties are possible.
- c) In the case owner has more than one agricultural land property, after economic integrity evaluation, parts of agricultural lands which are out of economic integrity can be allowed to
- d) At the economically integrated agricultural land, over sufficient income agricultural lands and under the sufficient income lands, lands not requiring allotment can be allowed to transfer.
- e) In the shared agricultural lands, the transfer of all the shares to the one or more shareholders are allowed to transfer of this land.

Transfer subject to heritage on agricultural land

Agricultural land and sufficient income agricultural land which are subject to heritage, transfer of ownership is essential. Heirs inherit the issue of transfer of agricultural land ownership, since the opening of the inheritance can be realized in the following ways within a year.

- a) By taking into account of minimum agricultural land size and sufficient income agricultural land, can be decided to transfer to one or more than one heir.

b) According to Turkish Civil Law through Notary Deed, family property or earnings joint partnership can be established.

c) They may set up a limited liability company interest in the shareholders of all the heirs inherit.

d) Heirs, the inheritance subject can perform the sale of agricultural land to third parties.

By the heirs of the ownership transfer is not completed within a year on agricultural land and the prosecution before the competent magistrate's court is given three months to implement the provisions of the Law Ministry to heirs. Failure to complete the end of this period the transfer process, the Ministry can go the relevant magistrate's court ex officio or statement on the eligible heirs in the claims of these places, in the absence of eligible heir, eager heir offering highest price, , in the opposite case for the sale to third parties.

Magistrate judge on opening of the case by the Ministry or heir;

a) Decide to transfer ownership of agricultural land or agricultural land sufficient income to eligible heirs on the account of personal skills through the agricultural income value, in case there is more than one eligible heirs, to primarily subsistence to the heirs of providing these adequate income of agricultural land, on that there aren't any, to heir offering highest price among heirs, if there aren't eligible heir, to heir offering highest price . Agricultural income value is calculated by considering the opening of the trial.

b) If there is more than one eligible heirs and these heirs have non-heritage agricultural land, to reach sufficient size of the income or to contribute farming the land economically, judge may decide transfer to the heirs notwithstanding adequate revenue size of agricultural land. Judge decide to transfer taking into account of the economic integrity and sufficient income land size criteria of the current land in the hand of heirs and between the lands subject to inheritance .

c) If there is no heirs who requested the transfer of sufficient income agricultural land subject to heritage to him, the judge decides to sell. Thus the income obtained from the sale will be shared in proportion to their shares.

d) If agricultural lands with sufficient income can be divided into more than one sufficient income agricultural land, judge may decide to transfer of ownership to the heirs individually in accordance with the provisions mentioned above.

(6) Until the final court decision, if they have reached an agreement as envisaged by the Law, the heirs in the case of submitting in writing to

the court, shall be terminated by way of peace according to the lawsuit agreement.

Criteria for Eligible Heirs

The heir or heirs have fifty points and up is determined as an eligible heir at the result of the calculations made considering the following criteria in determining the eligible heirs.

The heir;

- a) Twenty points to the persons earning life from the agricultural land subject to heritage,
- b) Ten points to the persons don't have non-agriculture income,
- c) Ten points to the persons their wife doing agricultural activity,
- d) Ten points to the person having professional knowledge and skills to handle agricultural lands,
- e) Five points to the persons staying at farmland subject to heritage within district boundaries, ten points for residents for six years and more,
- f) Ten points to the persons not having social security,
- g) Five points to the persons have agricultural insurance in the context of The Social Security Institution (SGK),
- h) Five points to the persons registered for six years to the The Ministry's registry system, ten points to six years and more,
- i) Two points to the persons registered for six years to the agricultural organizations, five points to six years and more,
- j) Five points to the persons having agricultural tools and equipment,
- k) Five points to the women is given.

An increase in the value of agricultural land subject to inheritance

Sufficient income agricultural land ownership within twenty years from the time of handover to one of the heirs of all or a portion of the land to non-agricultural use due to an increase in the value of the case; the monetary value of the land at the date of transfer to non-agricultural use permission is recalculated based on the date given. Difference between the found value and the value of the land due to the non-agricultural use, shall be paid by the heir transferred ownership, to the other heirs in proportion to their shares.

In the case of transfer of agricultural lands to the one heir through the agricultural income value by court order according to the provisions of

the Law, other heirs will be entitled to occurred value increase after transfer operations as a result of permission to use for non-farm activities within twenty years, must be written on the declaration of the land register.

If the consent can be taken as annotated sales, commentary put in the case of agricultural land commentary expires twenty years from the subject of the sales to be used for agricultural purposes, removing the commentary if taken the consent of the other heirs. Third party purchasers of immovable property as annotated, are responsible to pay the share of value increase due to non-agricultural use in the same period to the other heirs.

In case of non-agricultural use permit in the commentary period for agricultural land under this Article shall be communicated to the other heirs is permitted by the Ministry within fifteen days. Heirs of, from the date of notification pursuant to the increase in demand for value within sixty days is obligatory. Commentary on agricultural land that paid by the heirs of the difference calculated in accordance with the first paragraph is not removed.

In case of an agreement between the heirs after the increase in value due to use of non-agricultural purposes, declare the land with the consent of the heirs are removed annotation in the household. In case of failure to achieve agreement between the heirs, as determined by the difference between the value paid to other heirs are calculated by the Chief Magistrate using the Producer Prices Index determined by TSI.

In the case of decided to sale by open increase auction of agricultural land subject to inheritance by the Magistrate or if there is agreement between heirs in accordance with the provisions of the second paragraph of Article 9 , at that lands will not be annotated twenty years on the value increase that may occur due to non-agricultural use.

Twenty years after annotation period is completed, , the annotation is considered to have been removed.

Payment of the shares of other heirs

Magistrate judge gives permission to the heir that it finds appropriate to transfer the property, in order to store up to six months the price of the

share of other heirs to the legacy of the court cashier. In the case requested by the heirs granted additional time up to six months. Failure to store transfer price within the specified period and in case of absence of willing heirs, magistrate judge decide to sale agricultural land or sufficient income agricultural land by auction.

If heirs transferred sufficient income ownership of agricultural land can't pay the price of the shares of the other heirs with their own resources, interest support can be given from Ministry's budget when they will use loan from the bank for realize paying. The amount of credits to be given can not exceed the sum of the shares of the other heirs. If heirs reach an agreement, the same provisions shall apply for the unable heirs to pay another heir's share from their own resources.

Termination of agricultural activities

Agricultural land owners can put an end to agricultural activities by disposing of all the land they owned. Land owner, in which case all of the land to be in demand at the same time in order to deliver sufficient income on the size and financial condition, can buy to land owners more than one. In the absence of buyers to complete the purchase of the land, the owner notifies the situation to the province or district offices of the Ministry in writing. The Ministry, may allow the sale to owners who request it in order to deliver sufficient existing land size of income with the condition it must not be less than at least 50% of the land .

Result

As known, between Turkey and the vast majority of the EU member states there is such an important demographic differences: in agricultural population between Turkey and these countries there are big differences. A significant portion of the population still lives in rural areas in Turkey. In this respect it is more difficult implementing agricultural inheritance law that do not disrupt the integrity of the land easily and successfully in Turkey. In this sense unfavorable land-population balance in Turkey makes it difficult to apply the special rules proposed for heritage agricultural enterprises. Therefore, private agricultural heritage law in Turkey should be considered in conjunction with the reduction measures of farmer population (Acar-Aytüre, 2014: 245).

This last arrangement has been made in the Law of Inheritance is also an important step to facilitate the structural adjustment of the EU to Turkey. The issue is expected to reflect to the 2015 Progress Report as a significant improvement.

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THEMATIC INDEX

- Agricultural land size with sufficient income, p.7
- An increase in the value of agricultural land subject to inheritance, p.10
- Criteria for Eligible Heirs, p.10
- Economic integrity, p.7
- EU, p.3-12
- Inheritance law, p.4
- Payment of the shares of other heirs, p.11
- Transfer of agricultural land, p.8
- Transfer subject to heritage on agricultural land, p.8
- Termination of agricultural activities, p.12
- Valuation of agricultural land, p.6