



Evaluation of a land readjustment cancelled by a court decision from a technical perspective: A case study in Türkiye

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Abstract

In Türkiye, land readjustments conducted within the framework of the Zoning Law can be canceled by courts for technical and legal reasons. These cancellation processes can result in significant time and costs for both property owners and the public. Therefore, it is of utmost importance for land readjustments to be applied correctly from both technical and legal perspectives. However, in cases where certain situations are not clearly specified or defined in legal texts, the effectiveness and applicability of practices can be limited. In this study, a zoning implementation that was canceled with reference to its boundaries was reexamined. This examination is based on court decisions related to technical and zoning applications. As a result of the new land readjustment conducted based on the canceled court decisions, it was determined that there were no changes in the Regulation Partnership Share (RPS) ratio, the allocated areas of parcels within the building block, and the number of parcels including social facilities. This indicates that due to certain court decisions, property owners' zoning rights have been restricted, resulting in a burden in terms of time and cost. Consequently, to prevent the cancellation of land and plot readjustments when they do not change the outcome legally and technically, a consultation board consisting of experts well-versed in technical and legal regulations could be established as a solution. This consultation board could evaluate existing practices and propose improvements, contributing to making processes more transparent and participatory. Moreover, courts should be encouraged to consult with expert witnesses and judges when handling such cases. This would ensure that land readjustment implementations are conducted more fairly and effectively, and the interests of property owners and the public are better protected.

1. Introduction

In cities worldwide, Land Readjustment (LR) activities are considered significant endeavors that directly impact urban development and a country's economy. As urban populations grow, urban plans are formulated to meet the basic housing needs and enhance social life. These plans can also be viewed as a settlement planning foresight that anticipates future settlement requirements such as city growth and population increase. The design and finalization of these plans occur within the framework of relevant laws, regulations, and directives currently in place. This process, where technical and legal procedures intersect, is a field where engineering and land-use law converge. It encompasses the work of land surveyors and urban planners but also involves administrative law due to its legal nature. An integrated evaluation and implementation of both fields are crucial. Particularly during the implementation phase of urban plans, personal rights, legal obligations, and technical requirements can complicate the attainment of results that satisfy everyone.

LR methods, fundamentally, are processes conducted to support urban development, improve infrastructure, and create more suitable parcels. However, on a global scale, while they have been successfully implemented in some countries, they have not been systematized to the desired level in many others [1]. A review of the literature reveals numerous studies on land use, urban planning, and land-use implementation methods. For instance, Balla [2] examined some LR cases in Hungary from the perspective of urban planning and design. In this context, the focus was on the scale of interventions in areas and evaluating the development of planning ideas. Šoškić et al. (2022) [3] examined models of land readjustment adapted to Serbia. It was concluded that the proposed LR models could resolve significant past issues when implemented. Song (2010) [4] presented recommendations to improve urban renewal projects in his country. His suggestions included the need for the reorganization of urban improvement projects and the legislative system, ensuring transparency in projects, and strengthening the role of public institutions. In Türkiye, too, numerous studies have been conducted on land readjustment methods and practices for healthy urban development [5]. For instance, Turk (2005) [6] examined the reasons why LR practices, despite having a rich experience and knowledge base in Türkiye, were not effectively used in urban areas. He also provided recommendations to enhance the success of LR practices.

Erdem and Meshur (2009) [7] conducted an evaluation of the shortcomings in the Turkish Planning Legislation concerning land readjustment processes, taking into consideration Article 18 of Law No. 3194 and relevant regulations regarding "Land Readjustment." The main issues identified in LR practices in Türkiye include limited participation of property owners, disregarding changes in the value of reorganized land, and parcel-based calculations of shares. Due to reasons similar to these, LR practices have not yet met expectations to the desired level, and satisfaction rates have not increased. A clear indicator of this inadequacy is the objections raised against LR results and the cancellation decisions issued by courts. In cases like these, the cancellation of LR applications by courts can dissatisfy some parcel owners while benefiting others. Such situations can lead to the loss of certain rights for many parcel owners, negatively impacting them in terms of time and costs. Additionally, some cancellation decisions have been observed that do not bring about any qualitative changes.

In a study that statistically analyzed LR-related lawsuits, it was found that after local court proceedings, cancellation decisions issued during the Council of State (Danıştay) process were examined in terms of jurisdiction, form, reason, subject, and purpose. It was determined that 44% of these decisions were overturned by the Council of State. Therefore, it is emphasized that the specialization of local courts is essential; otherwise, the process may lead to prolonged proceedings or result in situations where parcels subject to cancellation decisions, without lawsuits, may obtain building permits and complete construction, leading to difficult or irreparable consequences [8].

A study [9] has been conducted to address potential technical and legal issues that may arise as a result of LR cancellation decisions issued by the Council of State and Administrative Courts, and to provide solutions to protect the acquired rights of property owners. In particular, strategies for preserving the acquired rights of third parties during parceling and allocation stages have been highlighted [10].

In another study conducted on LR practices in Türkiye, one of the most significant problems was claimed to be the value-based distribution method, and a legal regulation was proposed to address this issue. Furthermore, it was concluded that encouraging active participation of parcel owners in the process for early intervention in potential disputes in LR applications could contribute to reducing the number of conflicts [11].

A specific type of LR application, Article 18 implementation, is closely related to the public interest and property rights. It has been suggested that technical personnel involved in such applications should have sufficient knowledge of real estate property law, and applications for cancellation should be evaluated by specialized courts consisting of experts, which could help prevent significant costs [12].

Lastly, Pamuk (2016) [8] found that nearly half of the 314 Council of State decisions examined between 1987 and 2014 were overturned by the higher court, the Council of State. Therefore, it was emphasized that expert witnesses or judges specializing in urban planning should examine the trial processes in local courts [8].

These analyses highlight significant issues encountered in land readjustments and LR implementations in Türkiye. The solutions to these problems include further specialization of local courts and the Council of State, emphasizing participatory processes, and improving value-based distribution methods.

In this study, the Kaynarca 4th Region zoning application in Pendik District of Istanbul Province was examined in terms of the boundary of implementation and cancellation decisions issued by the courts. The study considered Law No. 3194 on Urban Planning, relevant Cadastre Directives, previous studies, and publications on similar subjects. Data obtained from the relevant land regulation example of Pendik Municipality's Real Estate and Expropriation Directorate were also taken into account. Based on this information, solutions were sought for the difficulties arising from the division of land parcels resulting from urban planning applications.

2. Material and Method

Land Readjustment are compulsory or optional, but they are examined in 2 different groups. Optional applications can be made together with the applications of the relevant parcel owners. In addition, allotment, amalgamation of land and dereliction methods are a means of optional application. In other words, the applications

made ex officio are the application of the zoning plan to the land by the relevant administration (municipalities, special provincial administrations, Housing Development Administration of Türkiye (TOKI), Ministry of Environment Urbanization and Climate Change). This can be done in three ways: the expropriation application regulated in the Expropriation Law No. 2942, Some Transactions to be Applied to Buildings Contrary to the Zoning and Slum Legislation No. 2981/3290 and Article 10/c of the Law on Amending an Article of the Zoning Law No. 6785 and the application of Article 18 of the Zoning Law No. 3194 [5]. Among the ex officio methods, the application of Article 18 was also included in this study. For this reason, the method of application of Article 18 is summarized schematically with the steps of the procedure (Figure 1).

2.1. Process Flow for the Implementation of Article 18

The implementation of Article 18 is an ex officio LR method based on the workflows presented in Figure 1 and Figure 2. Initially, cadastral data, zoning plan information, and current map data are collectively assessed to determine the readjustment boundary of the land.

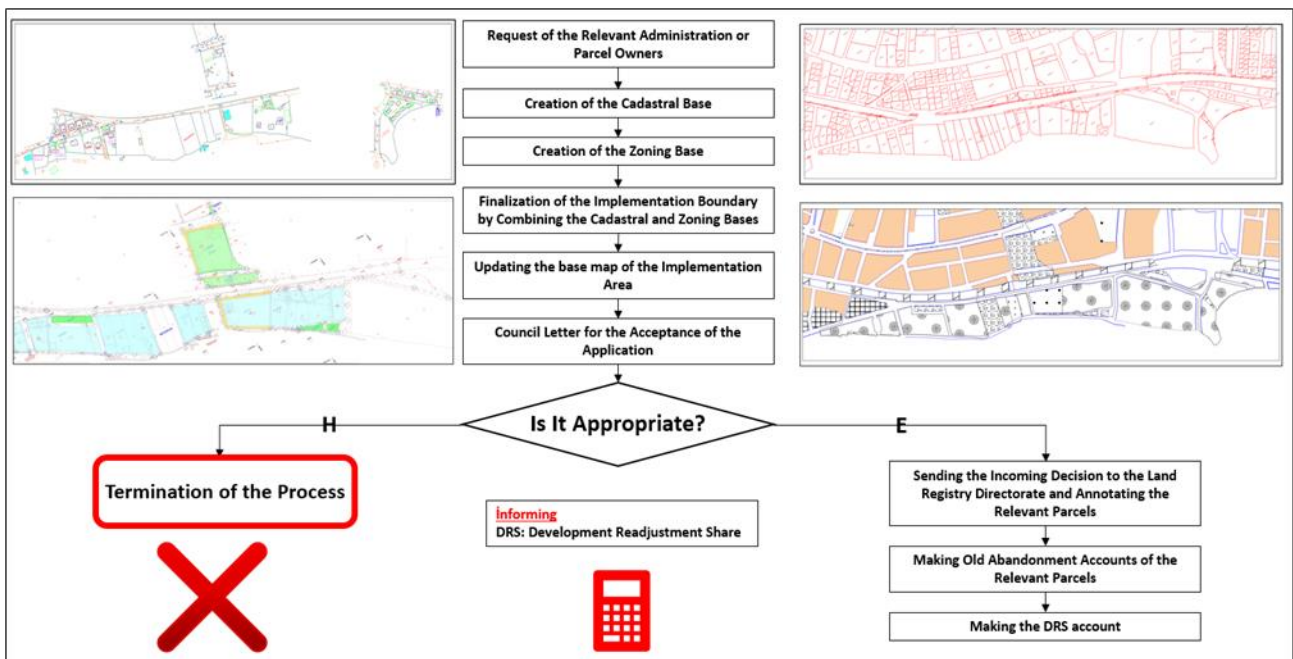


Figure 1. Application of the article 18th workflow 1.

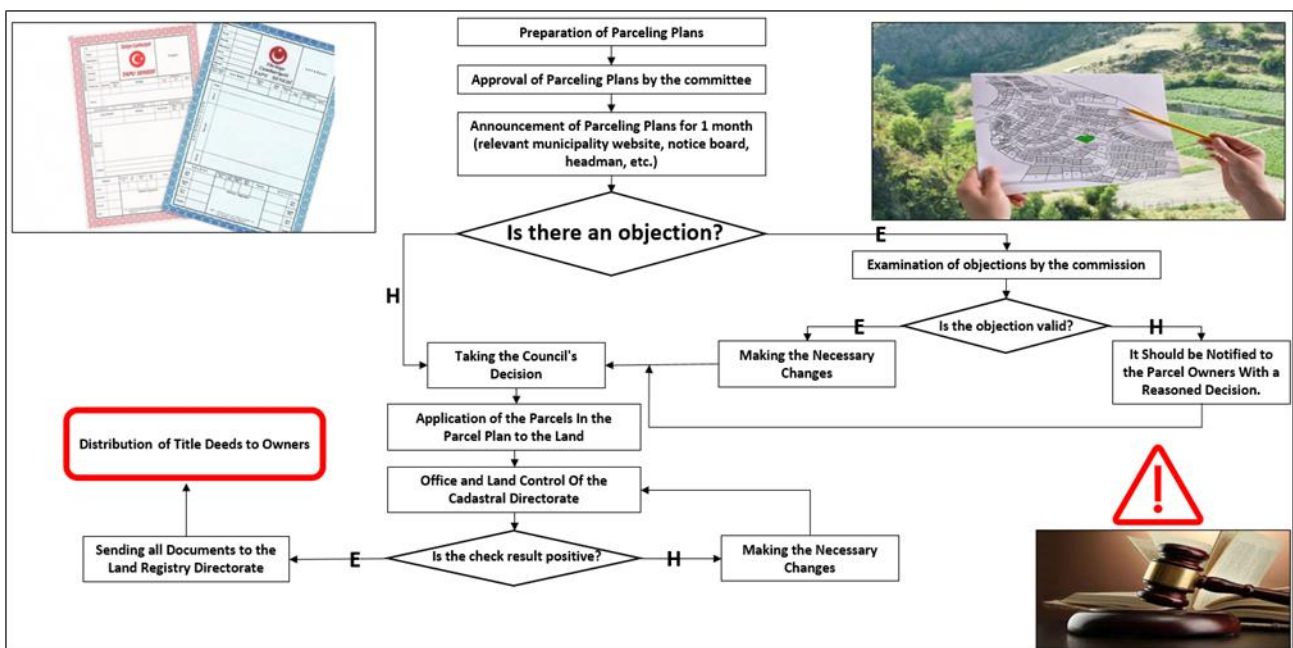


Figure 2. Application of the article 18th workflow 2.

In this LR arrangement, the determination of parcel geometries and ownership structures is crucial to creating new zoning parcels in accordance with the zoning plan, without violating property rights and in compliance with the law. Therefore, concerning the designated readjustment area; obtaining the approved zoning plan from the municipality, the up-to-date cadastral map drawn by on-site measurements, parcel geometry information, documents, and technical documentation from the cadastral office, as well as ownership information from the land registry office is required.

The LR implementation boundary is the outer limit of the area where parcellation planning will be conducted. The LR boundary has significant implications in technical, legal, and social aspects for land and plot arrangements. In the process, technical aspects, such as the calculation of the readjustment common ownership ratio and other procedures directly related to ownership, depend on the parcels included in the readjustment area being determined within the framework of relevant laws, regulations, and directives. Therefore, it is considered a crucial process from a legal standpoint as such determinations can be challenged in court if not made according to the relevant regulations, potentially causing grievances to parcel owners. Thus, there are several considerations to be considered when establishing the readjustment boundary.

The readjustment boundary is determined in accordance with the conditions specified in relevant regulations, considering the planning history and specific circumstances of the readjustment area. The readjustment area directly influences the calculation of the readjustment common ownership ratio, as it includes real estate and amenity areas. Therefore, the readjustment boundary can be determined by passing it through the portion deemed appropriate according to the RPS ratio of parks, squares, green areas, recreational areas, afforestation areas, cemeteries, and parking areas. Considering these aspects, after the technical checks of the readjustment boundary sketch and its annexes prepared or commissioned by the administration, the preparation phase of the land and plot arrangement process is completed, and it proceeds to the implementation phase.

The accurate calculation of the RPS is a crucial stage that directly impacts the course of the implementation. It holds vital importance because it determines how much land each parcel will have during the distribution/allocation process following the readjustment.

After the RPS calculation and control procedures, the distribution and allocation process of zoning parcels takes place. At this stage, all necessary data has been obtained, calculations have been performed, and the area of each parcel in the subdivision plan has been determined. The distribution of zoning parcels involves allocating the remaining portion after the deduction of the development share area in the subdivision process to the owners of cadastral parcels affected by the new zoning parcels. Following the implementation, the next step is determining the areas for individual registration of zoning parcels or, in the case of shared ownership, the allocation of ownership shares. During the distribution process, administrative authorities are obligated to adhere to both the provisions specified in the legislation and the property rights of parcel owners.

After the subdivision process is completed, a technical report containing various technical details related to the land and plot readjustment is prepared. The technical report, along with the subdivision plan and its annexes for land and plot readjustment, is submitted to the relevant authority for approval. Once approved following the necessary checks, the subdivision plan along with its distribution tables is made publicly available for landowners to review for a period of one month. Any objections raised during this period are taken into consideration. If there are no objections, at the end of this one-month period, the subdivision plan becomes final, and new property titles are issued to the citizens. This marks the completion of the process. In case of objections, the process restarts, as depicted in [Figure 2](#).

2.2. LR Application and Court Cancellation Decisions

In this section, cadastral parcels belonging to Istanbul Province Pendik district Kaynarca 4th Region Zoning Application have been included in the implementation area pursuant to application of article 18 of the Land Development Act No. 3194. In the left part of [Figure 3](#), the registered parceling plan of the region included in the implementation boundary is shown. After the application of the 18th article, which includes a total of 67 cadastral parcels in the parceling plan, 41 zoning parcels were created, excluding the ones that are not subject to registration (road, park and green area, etc.).

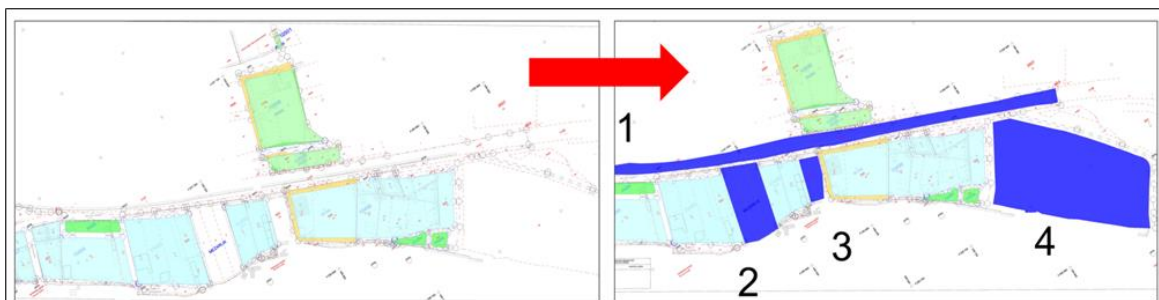


Figure 3. Proprietary parceling plan (left) and reorganized according to the implementation boundary (right).

As a result of the cancellation of the registered parceling plan in the left part of the figure due to the reasons that are the subject of the lawsuit, the parceling plan was created by applying 18 again in the right part of Figure 3. In this plan, a total of 6 parcels located in 4 different places, which caused the cancellation of the application, were included in the application within the implementation boundary. On the parceling plan, where 6 parcels belonging to these 4 different regions are not included within the implementation boundary, Figure 4 for places 1 and 2, respectively, and Figure 5 for regions 3 and 4 are shown in more detail.

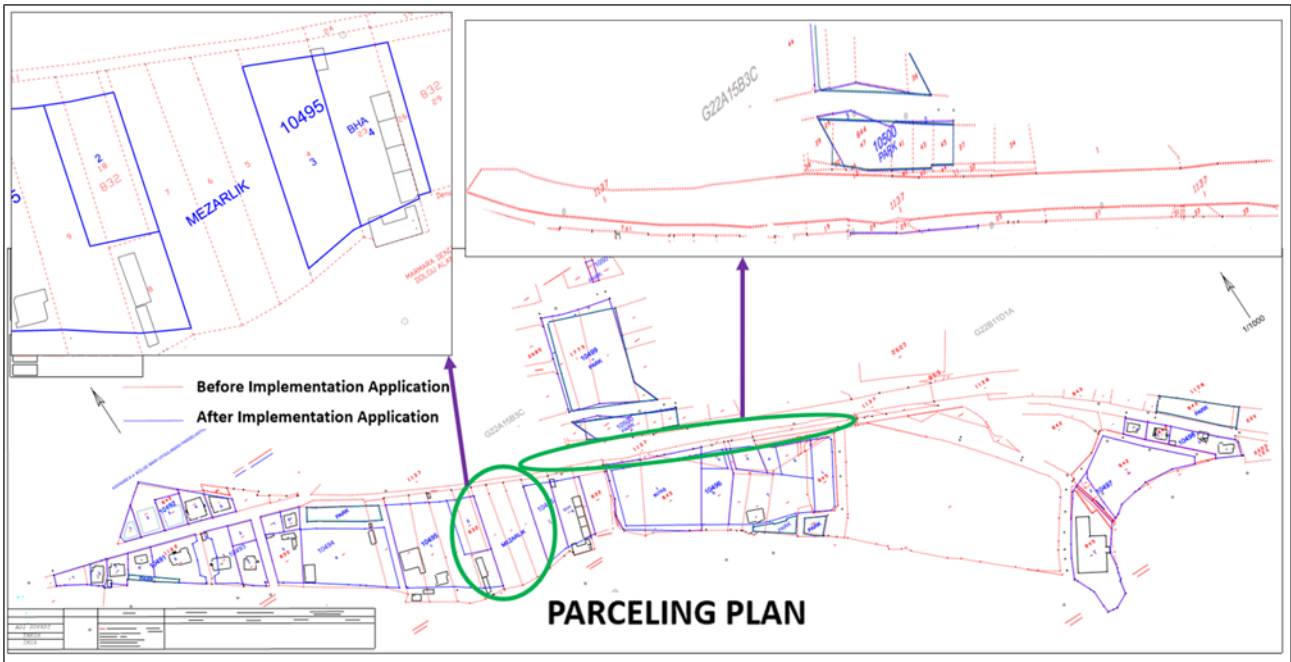


Figure 4. Zones 1 and 2 that are not included in the regulation boundary.

A total of 12 lawsuits were filed for the annulment of the application due to the fact that the 4 regions in the figures were not included in the implementation boundary and due to different reasons. Two reasons were presented according to the subject matter of these cases. First, it is requested that the application be canceled on the grounds that the parcels included in the application area according to the needs of the region are not determined according to the principles of the relevant law, regulation and circular. Secondly, it was decided to cancel the application on the grounds that the zoning parcels that were not included within the implementation boundary did not provide integrity.

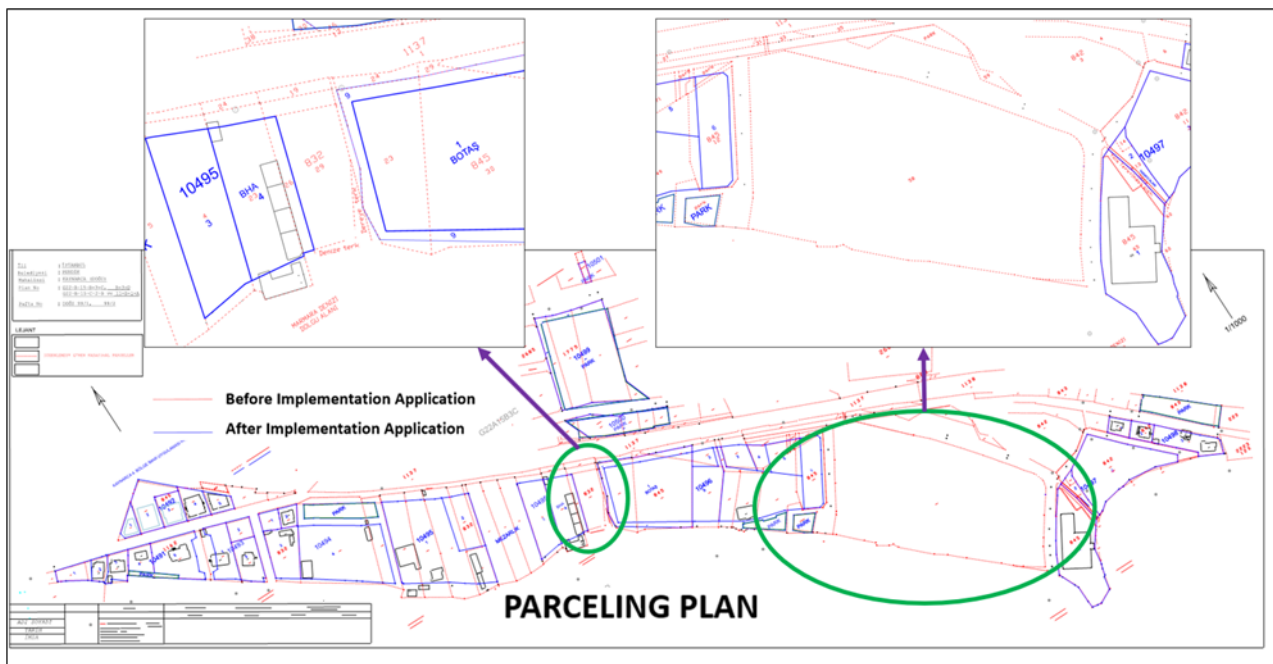


Figure 5. Zones 3 and 4 that are not included in the regulation boundary.

In this context, the cancellation of a registered land regulation often leads to irreparable results or non-applicable situations, and these cancellation decisions are the beginning of the problems that will come in series. These problems can be listed as the owners' inability to make license applications, the fact that the parcels remaining in the social space cannot use the development right in the building block, as a result of this, the immovable property owners who remain in the equipment are opened lawsuits against the municipalities for confiscation without expropriation, etc.

2.3. Technical Evaluation of the Land Readjustment Cancelled by the Court

In this study, the decisions given by the relevant court in the cases filed regarding the LR application of Kaynarca 4th district of Pendik district of Istanbul province were examined. The court has decided that six parcels belonging to four regions within the application area were not within the implementation boundary and, therefore, the zoning application was cancelled.

KAYNARCA 4 NOLU DOP HESABI	
Toplam Tahsis Alanı	= 57531.58
Toplam İmar Ada Alanı	= 57531.58
Toplam Ortak Katılım Alanı	= 0.00
Toplam Düzenlemeye Giren (Dopal) Alanı	= 74038.82
Toplam Düzenlemeye Giren (Dopalma) Alanı	= 4388.73
Toplam Kamulaştırılan Alan	= 0.00
Toplam Bağışlanan Alan	= 0.00
Toplam Kadastro Parsel Alanı	= 79850.95
Toplam Pay	= 79850.95
Ortak Katılım Oranı	= 0.0000000
Düzenleme Ortaklık Payı Oranı (DOPO)	= 0.2822299
DOPO (OKO ile birlikte)	= 0.2822299
Düzenleme Ortaklık Payı Hesabı	
Kaynarca Bölgesi Alanı	= 78427.55
Düzenleme Ortaklık Payı	= 20995.97 / 74038.82 = 0.2822299
KAYNARCA 4 NOLU DOP HESABI	
Toplam Tahsis Alanı	= 99135.40
Toplam İmar Ada Alanı	= 99135.40
Toplam Ortak Katılım Alanı	= 0.00
Toplam Düzenlemeye Giren (Dopal) Alanı	= 74038.83
Toplam Düzenlemeye Giren (Dopalma) Alanı	= 45992.55
Toplam Kamulaştırılan Alan	= 0.00
Toplam Bağışlanan Alan	= 0.00
Toplam Kadastro Parsel Alanı	= 121454.77
Toplam Pay	= 121454.77
Düzenleme Ortaklık Payı Hesabı	
Düzenlemeye Giren Alanlar (R1)	= 74038.82
Eski DOPO > Proje DOPO Alanlar (D1)	= 0.00
İmar Alanları (R2)	= 99135.40
Eski DOPO > Proje DOPO Tahsisler (D2)	= 0.00
DOPAlınmayan Alanlar (R3)	= 45992.58
Düzenleme Ortaklık Payı	= (R1 - D1 - R2 + D2 + R3) / (R1-D1)
Ortak Katılım Oranı	= 0.0000000
Düzenleme Ortaklık Payı Oranı (DOPO)	= 0.2822299
DOPO (OKO ile birlikte)	= 0.2822299
Maksimum DOP Oranı	= 0.45

Figure 6. The RPS that was canceled (left) and the RPS that was calculated using the rescheduled implementation boundary (right).

As a result, the LR application was canceled, and these 6 parcels were included in the urban planning application, necessitating a re-implementation of Article 18. The LR application that was canceled was reprocessed by defining the readjustment boundary in line with the court's decision, and the urban planning process was carried out once again. However, as seen in Figure 6, the new readjustment application did not result in any changes in the RPS ratio or the areas of the parcels on the island. The implementation of the urban plan does not alter the parcel numbers in the participation areas benefiting the public interest. Therefore, this court's decision has imposed limitations on the right of ownership in the zoning parcels to which the relevant owners are entitled.

3. Results and Discussion

In this article, an analysis was conducted using one of the numerous land readjustment projects in our country as an example. The consequences of the court's annulment decisions regarding this application, both in legal and technical terms, have been evaluated. It is anticipated that this study will serve as a precedent for experts to prevent application cancellations in similar cases in future urban planning projects. Additionally, it is recommended to train multidisciplinary experts who can work on these issues both legally and technically in land readjustment projects. Thus, the aim is to prevent many application cancellation cases in our country, providing significant advantages in terms of time and cost.

4. Conclusion

In this study, the importance of not only considering the formal appearance and characteristics of the LR boundary but also the technical and legal aspects in administrative lawsuits filed against the application of Article 18 of Law No. 3194 on Land Readjustment has been examined. It is crucial to investigate the cadastral histories of parcels that are not included in the zoning application and cause a discontinuity in the zoning boundaries.

In cases where land adjustment practices do not affect any calculations or outcomes in the process (such as RPS rate, acreage allocated area, renovation, etc.) and the only change is the correction of the zoning boundary; it may not occur any changes occur other than the old title deeds being re-dated. This situation can impose unnecessary administrative burdens on public authorities. Furthermore, the cancellation of lawsuits and LR can lead to the deprivation of zoning rights for other parcel owners. To address this issue, we propose the creation of a commission made up of experts who are knowledgeable about both technical and legal regulations. This board

can provide precedents and serve as a board that the courts consult during the decision-making process. By taking this measure, even if there is no precedent decision from the Council of State in this regard, the administration can make correct and sound decisions regarding the problems they encounter. Otherwise, our colleagues may find themselves faced with these complex problems in the absence of a precedent decision on this issue by the Council of State. Finally, it is essential to conduct further research and initiate reforms to address the issues related to land readjustment practices. As a result of these efforts, a fairer and more effective land readjustment system can be developed, safeguarding the rights of property owners and serving the public interest better.

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Author contributions

Seyfullah Aybal: Data curation, Writing-Original draft preparation, Validation, Software. **Hüseyin Pehlivan:** Conceptualization, Methodology

Conflicts of interest

The authors declare no conflicts of interest.

References

1. Türk, Ş. Ş. (2009). Arazi ve arsa düzenlemesi yöntemi ve uluslararası çerçevede etkin uygulanabilirliği. ITU Journal Series A: Architecture, Planning, Design, 8(1), 117-126
2. Balla, R. (2019). Case study of applied research: defining the scale of planning unit in post-war large housing estates. DOCONF2019
3. Šoškić, M., Višnjevac, N., Mihajlović, R., Mihajlović, D., & Marošan, S. (2022). The development of land readjustment models in Serbia and South-East Europe. Land, 11(6), 834. <https://doi.org/10.3390/land11060834>
4. Song, K. B. (2010). The study on analyzing the problems of urban improvement projects and improving the system for urban regeneration. The Architectural Institute of Korea, 26(1), 307-314
5. Yomralioglu, T., Tudes, T., Uzun, B., & Eren, E. (1996). Land readjustment implementations in Turkey. In XXIVth International Housing Congress, Ankara, 150-161.
6. Turk, S. S. (2005). Land readjustment: an examination of its application in Turkey. Cities, 22(1), 29-42. <https://doi.org/10.1016/j.cities.2004.10.004>
7. Erdem, R., & Meshur, M. C. (2009). Problems of land readjustment process in Turkey. Scientific Research and Essays, 4(8), 720-727
8. Pamuk, H. (2016). The reasons for cancellation of land readjustment in Turkey. Master's Thesis, Yıldız Technical University.
9. Haciosmanoğlu, S., (2019). Arazi ve arsa düzenlemelerinin geri dönüşüm işlemlerinde yargı kararlarına dayalı çözüm önerileri. Master's Thesis, Yıldız Teknik Üniversitesi
10. Çelik, N. (2013). İptale konu imar planı uygulamalarında geri dönüş işleminin irdelenmesi ve çözüm önerileri yaklaşımı. Master's Thesis, Karadeniz Technical University
11. Paşalı, K. (2013). Subdivision problems of lands and landing regulations example of Pendik Sapanbağları. Master's Thesis, Bahçeşehir University.
12. Ayyıldız, S. (2010). Article 18 of construction law numbered 3194 Applications and Encountered Problems: Yenimahalle-Ankara's Sample, Master's Thesis, Zonguldak Karaelmas University.
13. Pehlivan, H., & Aybal, S. (2023). Analyzing of court decisions cancelling land readjustments due to implementation boundary. Advanced Engineering Days (AED), 6, 68-70.

