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Professional merit and ethics in choosing the development plan implementation method

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ABSTRACT

Development plan implementations in Turkey, can be made by three different methods according to the development regulation. The responsible administration for implementation has authority to subject of which method should be preferred/chosen under which conditions. In this sense, the administration should evaluate the content of the implementation from technical, legal, sociological and economic issues and should decide within the principles of professional merit and professional ethics. The implementation of development plans with public interest should also be in the public interest. In the present case, the decision to choose the most appropriate method within professional merit will also serve the overriding public interest. Therefore, the department that makes the decision on behalf of the responsible administration should conduct in professional and administrative merit. In this study, points to take into consideration that choice of method of the administration responsible for implementation of plan in Turkey will be investigated with a sample implementation. The subject of which method should choose under which conditions will be clarified by considering the legal regulations, professional merit and ethical principles.

1. INTRODUCTION

The development plans are prepared to protect and develop physical-natural-historical-cultural values in urban areas, to ensure the balance of protection and use, to support sustainable development at the country-region-city scale, and to create healthy and safe environments. Municipalities are obliged to implement development plan within boundaries of settlement and special provincial administrations are obliged to implement development plan outside boundaries of settlement. The implementation of the development plans is as important issue as the plan design. The aims of planning can only be achieved with an economic and social application (Yıldız 2020). Within this period, the relevant responsible administration decides which method should be applied under which conditions. The development plans can be applied in three different methods according to Turkish development regulations. İnam 1989; Uzun 1992; Akçeşme 2006; Çelik 2006; Yıldız 2020).

a-) The development plan implementation in the expropriation method: It is the process of “transferring to public ownership by purchasing real estates belonging to private ownership corresponding to technical

infrastructure, public space and official institutions in the development plan for public interest”. Technically, it does not reflect the plan integrity to the place, since only the place that will be needed by the public authorities are included in the plan implementation. While this method application often offends the property right of the real estate owner, it also creates an economic burden on the administration due to the payment of the price.

b-) The development plan implementation in the applications on demand of owners: This method is made upon the request of the property owner to the responsible administration. The plan is applied to ground piecewise, depending on the ownership-zoning relationship of the parcel. Since the plan is not implemented as a whole, public spaces cannot be consist of on time and in place. Increase in value and benefit-cost relationship that will occur with the implementation of the plan can't be allocated equally to the real estates in that area.

c-) The development plan implementation in the land readjustment method: This method is applied on area where implementation areas and boundaries are determined by the responsible administration for the implementation of the development plan. The

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implementation areas can't be smaller than one urban block. However, if urban lots are created on some part of the block, then the remaining part of the block can be subject to another land readjustment project as well. With this method, same amount of contribution ratio (up to 45%) is taken from all land owners in proportion to the size of their parcels for create public spaces and government agency areas in the implementation area. In this sense, while the development plan is applied to the ground as a whole, the places needed by the public are provided in the most economical way. Increase in value and benefit-cost relationship that will occur with the implementation of the plan can be allocated approximately equally ratio to the real estates in that area with implementation partnership share ratio (DOPO). In this sense, plan implementation in the land readjustment method is a technical, economic and fair a method. Land readjustment is the most effective and efficient plan implementation method, since the structures that shape the urban morphology and the public space correlated with it are handled with in a mechanical understanding.

In this sense, method selection in the development plan implementations is important and it should be evaluated in terms of overriding public interest and public finance within the principles of professional merit.

2. METHOD

In this study, development plan implementation in the expropriation method in Konya province, Karatay district, Hacibali neighborhood will be evaluated within the professional merit and ethical principles. When a different development plan method is applied in the same implementation area, its effect on public interest and public finance will be discussed.

2.1. The Importance of Method Selection in Development Plan Implementations in terms of Public Interest and Public Finance

The municipalities should establish realistic and stable public policies regarding spatial planning and implementation of plans in urban areas. Municipalities have a duty to ensure sustainable urbanization and living standards, so they should create public spaces and stock of urban lot ready to be built, and also should provide management and organization functions within budget balances. The municipal administration is obliged to implement the development plans in order to ensure regular urbanization in the city and cater the housing-industry-trade area needs of the city. However, while the municipality is doing this implementation; it should choose a method that protects the property rights secured by article 35 of the Constitution of the Republic of Turkey, protects the public interest, is technically compatible with the development legislation and is economically and sociologically ergonomic. The development legislation in force has legally allowed these plans to be implemented in the "expropriation" method, the "applications on demand of owners" method and the "land readjustment" method. However, the legislation confer the responsibilities to the municipal

administration for "which method should be used under which conditions". The municipal administration should choose the method within the ethics and merit of the institution and should consider the public interest and public finance under all conditions.

The municipal administration should carry out the evaluation in the principle of "public interest" and "wise use of public finance" when it make a choice in the implementation method of the development plan. Public interest is defined as, "the state or the services of public institutions representing the state and a criterion that is a public activity and shows the compliance of the transaction with public law". The wise use of public finance is defined as "the prediction of the most efficient and effective use of public funding". The concept of public interest ground on the wise use of public finance. When this approach is evaluated for the expropriation method which is the implementation alternative on the sample parcel; a part of the development plan (road and park area) which has decision of public interest has been think fitted to put into practice for purpose of "opening to public use" but "if the implementation was made in the method of land readjustment, these areas could have been created with free deductions at equal rates with the implementation partnership share (DOP) "and thus expropriation price payment would not be made from public finances by the administration. In this sense, the preference of "plan implementation in expropriation method" made by the municipal administration is not the right choice for the 'rationalistic and controlled' use of public finance. Because, unnecessary damage to public finance will be caused as much as the expropriation value.

2.2. Technical Evaluation of Method Selection in Development Plan Implementations

When the development plan implementation in the expropriation method are examined, it was seen that generally legal and social dimensions of expropriation are considered; the aim expected from the implementation of the plan was achieved in technical studies; however, as a result of the partial expropriation of the parcel, it has been observed that the remaining part can't be prevented from becoming inefficient in terms of shape, size and use of property. For this reason, it would be appropriate to consider the implementation of the development plan in the expropriation method 'as a method preferred by the municipality administration in special and necessary cases' rather than being an alternative method (Sadiç and Arabacı 2013; İnam et al. 2015; Danişman and İnam 2018).

The applications on demand of owners are a partial implementation made on the basis of parcel and the plan integrity will not reflect in the place. This will be against the essence of planning. Moreover, the municipal administration must not allow the implementation of the development plan in this method for the "cadastral parcel that has not been subject to a plan implementation before" according to Uniform Land Development Regulations in Planned Areas in force. However, this method will be used as a "secondary development

implementation" where the development plan has been renewed.

The plan implementation in the land readjustment method is made on the implementation area created at least the size of a urban block. In this method, the purpose of planning will be achieved, as public spaces and urban lots which suitable housing, are applied to on the ground. In addition, it is technically the most suitable method, as "equal rate of DOP" will be made from all parcels that are implemented to provide public spaces.

2.3. Sociological and Economic Evaluation of Method Selection in Development Plan Implementation

As a result of the development plan implementation in the expropriation method, while property use status of neighboring parcels and value of their real estates improve, persons whose real estate has been seized in accordance with the public interest generally express to be wronged after implementation. The same persons express that they are detached from the psychology of possession of their real estate and have a sociological adaptation problem in new addresses and they say that if there is a public interest in the implementation of the plan, benefit-loss balance between the parcel owners should preserve and allocate equally. These reactions have been main problem of the plan implementation in the expropriation method. For this reason, such economic and sociological problems that occur plan implementation in the expropriation method should be solved by the capable municipal administrators with "choosing the most appropriate method" or "public policies" (Danışman and İnam 2018).

The development plan implementation in the applications on demand of owners is the whole of 'leave some parts of the road - get some parts of areas from road' procedures made in order to "make suitable the parcel according to the development plan". In this process, the "implementation partnership area ratio and the use of their property" will be different specific to relationship of each parcel with the development plan. Therefore there is more individual benefit and the satisfaction of the owner than public interest in this method.

The plan implementation in the land readjustment method, if it is carried out by technical personnel who take into account merit and ethical principles, it will be the most economical method in which social justice and equity are protected. Likewise, on the one hand, the plan will apply to the ground and will open to social use, on the other hand, existing property problems will resolve. If the parcel owners satisfy from the implementation outcomes, it will increase social peace and sense of trust in the state.

3. RESULTS

3.1. Evaluation of Method Selection in Development Plan Implementation: An Example of Implementation

When the sample parcel subject to implementation associate with the development plan, it is seen that the

parcel coincides the 'road' and 'park' areas and cannot be used for 'construction purposes' in its existing state (Figure 1). However, when this situation for the sample parcel evaluate in the integrity of the development plan; it is not enough to open something up for discussion accuracy and objectivity of planning, appropriateness of public interest for plan. In this sense, the municipal administration;

- Since whole of the sample parcel coincides the public area which use for road and park purposes, the municipal administration may choose legally 'development plan implementation in the expropriation method' within the scope of the Expropriation Law No.2942 and the decision of the municipal board. However, it will be wronged to choose this method by the administration. Because both the parcel owner will be wronged and the public finance will be damaged due to the "payment of expropriation fee even though it is not compulsory / necessary" by the administration. In this case, the administration's choice to make "while there is an alternative to implementing in the land readjustment method, apply development plan implementation in the expropriation method", while it is considered legally "achievable" and technically "applicable", it will be "wrong choice" in terms of merit - public interest - public finance.

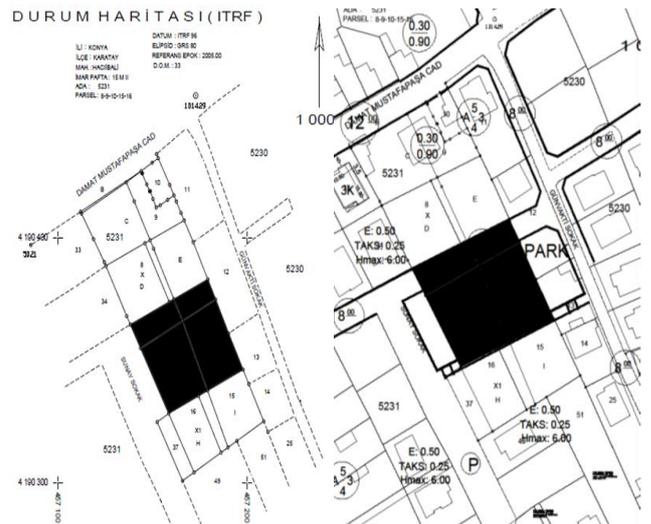


Figure 1. The relationship of the parcel with the development plan in the example implementation.

- Since the whole of the sample parcel coincides the public space, it will not be able to use the method of application on demand within the scope of Articles 15 and 16 of the Land Development Law No. 3194. Besides, if the sample parcel had coincided 'partly the urban block and partly the public space' in the development plan, the application on demand of owners method would not have used according to Uniform Land Development Regulations in Planned Areas (articles 5/12 and 7/1) in force due to a cadastral parcel which unperformed plan implementation.

- It will be best choice to decide on "development plan implementation in the land readjustment method" within the scope of the 18th article of the Land Development Law No. 3194 by determining implementation area where the sample parcel will also be located. Because in the this method implementation,

government agency areas and the public spaces will be occurred by free deductions up to %45 and in equal proportion from the parcels in the arrangement. Parcel owners will benefit from the increase in value arising from the implementation of the plan and the benefit-loss balance will be provided to occur with "distributing to all participating parcel in the implementation area".

4. DISCUSSION AND CONCLUSION

One of the most important of the ethical problems that arise due to the implementation of laws related to urban development and land use is "the neglect of the public interest at individual and institutional level". One of the fundamental responsibilities of the municipal administration is to know 'what should be done as well as what should not be done' (Kılınç et al. 2009). In terms of urban sustainability, social equality and environment / institution / individual ethics, there are inadequacies in both the development legislation and the supervision of implementation.

The method which prefer in the implementation of the development plan should not be determined according to the choice of the municipal administration. This case should determine according to the "most appropriate / rationalistic solution" that will arise as a result of the evaluation of multiple factors such as the property-zoning relationship of the parcel to be applied, development plan notes, expectations from the plan implementation, plan implementation principles, public interest public finance.

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