

Changing Legal Status of Property and Ownership in Turkey

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Abstract

The unplanned, uncontrolled, fast and policy-less urbanization process of Turkey has created urban areas filled with informal settlements. Policy attempts to solve problem of informal settlements and housing has resulted as changes in property regime in Turkey. By 2015, lack of title deeds in urban areas is still a contemporarily important problem both for the residents, local authorities responsible from these areas and other governmental agencies. Okmeydanı neighbourhood in Beyoğlu, Istanbul has used to be one of the problematic spaces where almost 100.000 residents have no title or any other legal documents in 160-hectare area. The uniqueness of Okmeydanı case arises from the ownership status of the land. The land possessed by informal settlers is owned by a foundation and the type of property on land prevents and forbids either private ownership or any other commercial activity. Since 1960s, this problem of property ownership have been tried to be solved by cooperation of central governments and local authorities through more than twenty legislative acts such as cabinet decisions, public mandates, laws and amendments. On the other hand, the Foundation which is the legal owner of the land in Okmeydanı and other governmental agencies such as General Directorate of National Estate and High Council of Historic Preservation had been tried to prevent construction, private ownership and sales of land by opening suits and decisions. The study aims to analyse changing legal status of property and ownership and the role played by legislative regulation on changing ownerships of land property during the implementation of urban policies base on urban transformation for reconstruction of land. The relation establish between labour and right to property is also examined A field research is carried out which includes in-depth interviews in addition analysing mixed data of photos, maps, magazines and other type of written materials.

Keywords: Property Regime, Turkey, Urban Transformation, Housing Policy

Introduction

Disharmony between economy and population at rural Turkey and the belief that this disharmony would be solved at urban scale was a very wrong prediction that create even more inequality among society. Cities became the places of capital accumulation and distribution but distribution of capital realized itself as unequal treatment of the unequal. State officers and policy makers hold the control of distribution mechanisms in their hands and the main approach of this mechanism have practiced by legal regulations.

Migrants from rural Anatolia faced social and physical difficulties in urban life. The migrants produced space by bypassing the legal and normal procedure at urban scale with help of social networks such as relations with fellow countrymen and clientelist relations with policy makers and politicians at local and central level. Even today, dwellers, gecekondu owners, possessors, squatters, right holders no matter how they named, they are at the core of social economic and political agenda of hegemonic class.

Commodification of land during rapid urbanism and transformation of land from agricultural to urban between the years 1950- 1980, the exchange value of land became more important and came into prominence than use value of land and housing. Back in the history gecekondu areas were in the peripheries of the city but with urban expansion the gecekondu areas are now located in the city centre with high rent gap ratios.

The importance of gecekondu owners, who solved their housing problem at cities by illegal acts, which are repeatedly condoned by several legal regulations are the main character of on going urban politics due to the aggressive urban transformation projects all over the Turkey.

Since 2000's gecekondu areas and residents of gecekondu houses have been subjects of spatial, socio-cultural and economic changes due to urban transformation projects in name of the beautification, rehabilitation, preservation and fortification of their neighbourhoods. However, one of the main problems behind these regulations and projects is the property and ownership relations. During years of rapid urbanisation,

the property regime in Turkey has gained a multi partite character in order to solve housing problem. There are single proprietorship, common proprietorship, condominium principled ownership, possessory title, joint-owned property, certificate of land registration and gecekondü property. All these types of ownerships developed as a solution to housing problem at urban scale. Independently from the discussions whether ownership is a right or not, property mechanism works as a regulatory institution for social structure. Property regime in Turkey has an economic character as well as its social and political character. Due to the housing and real estate market, property ownership is also a very effective enrichment factor. In addition to these private property types, the public property is regime of Turkey is also very complicated that there are municipal property, public's private property, common properties, governmental agencies' properties so on and so forth but these will not be mentioned within this paper.

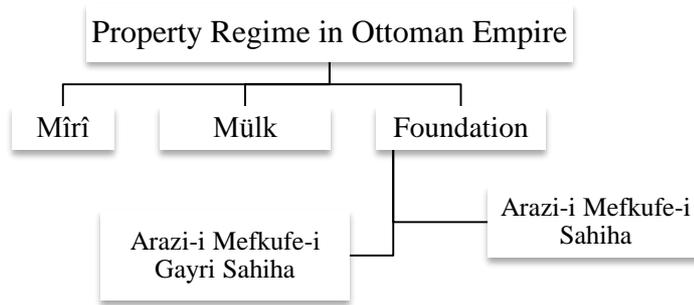
History of Land and Property Regime in Turkey

Ottoman Empire Era

The transfer process of property from communal to individual had occurred different times at different geographies and in Turkey this process started as possession in the Ottoman era and legally consolidated in the early Republic (Günay, 1999).

Although discussions on private property have a place in Ottoman History, legal ground of private property based on secular law was absent till 19th century. In other words, western type of private property regime cannot be observed till a certain time in Turkey. In Ottoman Empire, there were two types of property ownership as *mîrî* and *mülk*; *mîrî* land was property of Ottoman treasury and it could not be transferred or sold to third parties whereas *mülk* land assigned to third parties by Sultan himself and it was possible to rent, sold and it was also transmissible to heirs (Mundy & Smith, 2013). The third type of land property, besides *mîrî* and *mülk*, was owned by foundations; the lands owned by a foundation could not be rent or sold like *mîrî* lands. As shown in Figure 1. the lands owned by foundations had two sub-types named as *arazi-i mefkufe-i sahiha* which has *mülk* character and *arazi-i mefkufe-i gayri sahiha* which has *mîrî* character.

Figure 1. Property Regime in Ottoman Empire



Source: Mundy& Smith, 2013 (Figure prepared by the author)

The Regression period of Ottoman Empire which started in the 16th century resulted in dissolution of property regime and many changes had been made like *mîrî* lands started to be given as private property but because of the limits of this study, the transformation process after 16th century and legal regulations starting from 19th century will not be mentioned.

Turkish Republic Era

Turkish Civil Law went in effect in 1926 and new property regime prevented condominium principled ownership even if Ottoman Code of Civil Law dated back to 1877 gave permission to condominium (Arslan, 2014). After the enactment of Deed Law in 1934 which regulates the property and ownership regime; a housing shortage had been experienced in big cities during 1940's and in order to solve the housing problem of middle class, a discussion on condominium regime had started but the bill of law rejected by the Turkish Parliamentary in 1948, the right to constitution of servitude enacted in accordance with the law no. 6217 in 1954 and Property Law had approved by Turkish Assembly in 1965 and became valid in 1966 (Tekeli, 2012). This law also enabled Turkish State to tax real estates, in other words the regulation had a very financial aspect and importance, too.

The value of land shows differences in rural and urban context and value of the land property has an increasing value since the land is limited source and cannot be ramped up. As seen in Figure 2, the development and transformation of land firstly

depends on a more natural process such as natural urban growth like population growth.

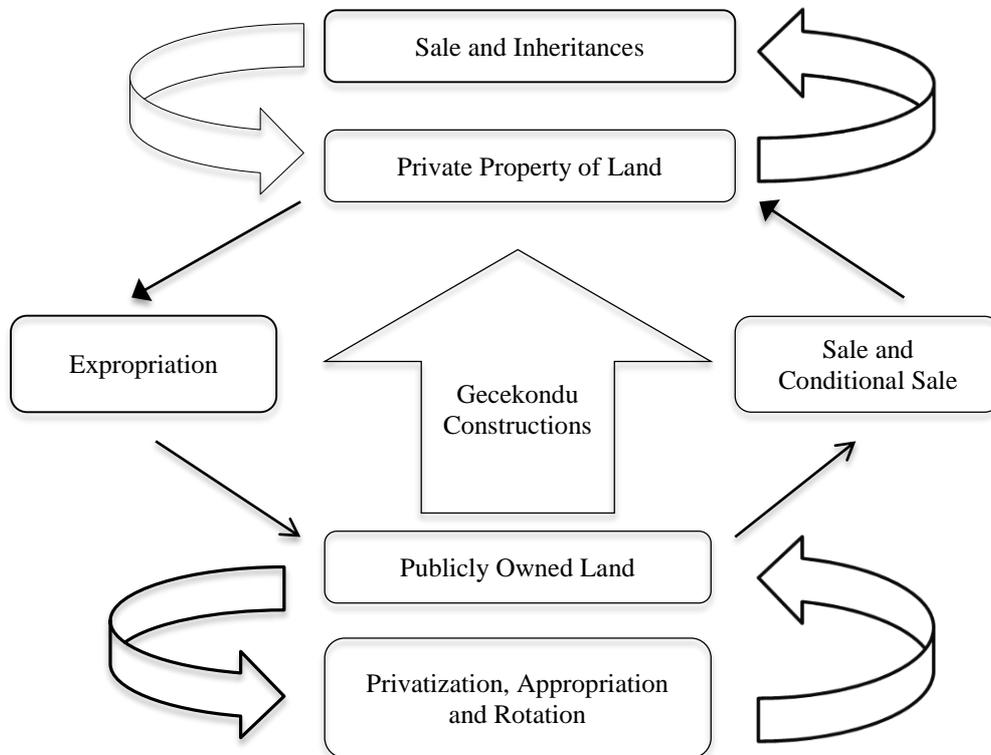
Figure 2. Transformation Process of Land in Turkey



Source: Arslan, 2014 (prepared by the author)

However, once the land gain urban character it gets more valuable by public effort by infrastructure services and zoning and construction permission. Figure 3 shows that the transformation process of land in metropolitan cities of Turkey complicated than Figure 2.

Figure 3. Transformation of Property of Land in Urban Turkey



Source: Tekeli, 2011 (prepared by the author)

Since 1950s, central government in Turkey play a very main role in urban development even if not developing an urban policy to solve housing crisis. Rather, Turkish governments preferred to solve housing crises by amendment laws, which gives to gecekondu owners their right to property and titles of their real estates. These amendments laws, from the first one backed in 1953 and the last one planned to be enacted in 2016 (Türkiye Büyük Millet Meclisi, 2016) there are almost 20 amendment which forbidden future construction of illegal houses and forgive the existing ones. Within these 60 year, private property first fragmentized and turned into shared properties some with titles and some just with bills of electricity, water and bank receipts to get their titles; and then in the last decade these fragmentized lands and properties unified with the absolute power of expropriation and urgent expropriation due to some superior public interest.

The Law, 6306 known as “Disaster Law” provides a legal ground that puts each person’s right to property in danger. Between the years 1959 and 2010, 17 % of all suits which makes more than 500 suits, opened against Turkey was about violation of protection of property rights which was second after violation of right to fair trial with more than 705 suits (Public Relations Unit of the Court, 2011). It has been observed that due to legal regulations made in 2000’s there is a decrease in number of the suits opened on the violation of protection of property rights.

Public Authority and Resident Relations

The main aim of all these regulations is to prepare optimum conditions to attract real estate market mechanism that in the last 15 years, construction sector became the most important sector of Turkey’s National Economy. The construction sector has almost 30 % of shares in GDP in March 2016 and the 8,75 % of the workers, which is almost 2 million people; work in the construction sector by 2015 (Türkiye İnşaat Sanayicileri İşveren Sendikası, 2016).

The era between early Republican years to 1950’s can be evaluated as urbanisation of nation state when Ankara became prominent as the new capital of Republic; all investments and developments made by state and capital accumulation started at urban scale (Şengül, 2009; Scopetta, 2011). During 1950’s, the migrants from rural Anatolia claimed possession on land and build gecekondu houses mostly on publicly

and privately owned lands at the periphery of the cities. These practices of possessions turned into a phenomenon occasionally ranges between conflict and collaboration with middle class and state. In 1960's people living in gecekondu houses started to be accepted both as consumption units and cheap labour force by state so the tension between state and people living in gecekondu settlements had started to decrease and the relationship started to shape as collaboration than conflict (Şengül, 2009; Şenyapılı, 1982). The Condominium Law in 1966 legally enabled building multi story apartment blocks and this type of property ownership created a partnership between landowners, individual buyers, small capital entrepreneurial groups and contractors (Öncü, 1988; Scopetta, 2011).

During the years of 1950's and 1960's, gecekondu houses built, bought, sold and rented as commodities even the legal system did not permit those acts, the informal ownership of land and house practices as if a legal private property (Neuwirth, 2005). So, the exchange value of gecekondu houses became more important than its use value and the meaning of gecekondu houses redefined by interest groups as a second property market and lost its meaning for society as shelter for the ones who were in need of housing. This secondary market of property had also provided a channel of accumulation for the urban poor that the people living in gecekondu houses became an important client group in urban politics (Öncü, 1988). The ambiguities of property of land and housing and the people living in these houses provide an unusual opportunity for political parties to build a clientelist relation with electorates that votes both in local and central elections became exchange tools to gain right to property for gecekondu houses (Buğra, 1998).

In 1970s, the regulations on credit opportunities for housing cooperation enabled new housing development areas on publicly owned lands via the financial support of Turkish Insurance Fund and Turkish Estate Credit Bank thus large construction firms included to real estate market. Land and house gain financial character and became a financial guarantee for gecekondu owners and state redistribute the sources by infrastructural developments, and master plans (Şenyapılı, 1982; Öncü, 1988). In addition to 1970's clientelist politics, it was a two-sided relationship, the gecekondu owners were also aware of their political power and the most common and effective form of patronage was promise of title deeds and legal recognition of their ownerships

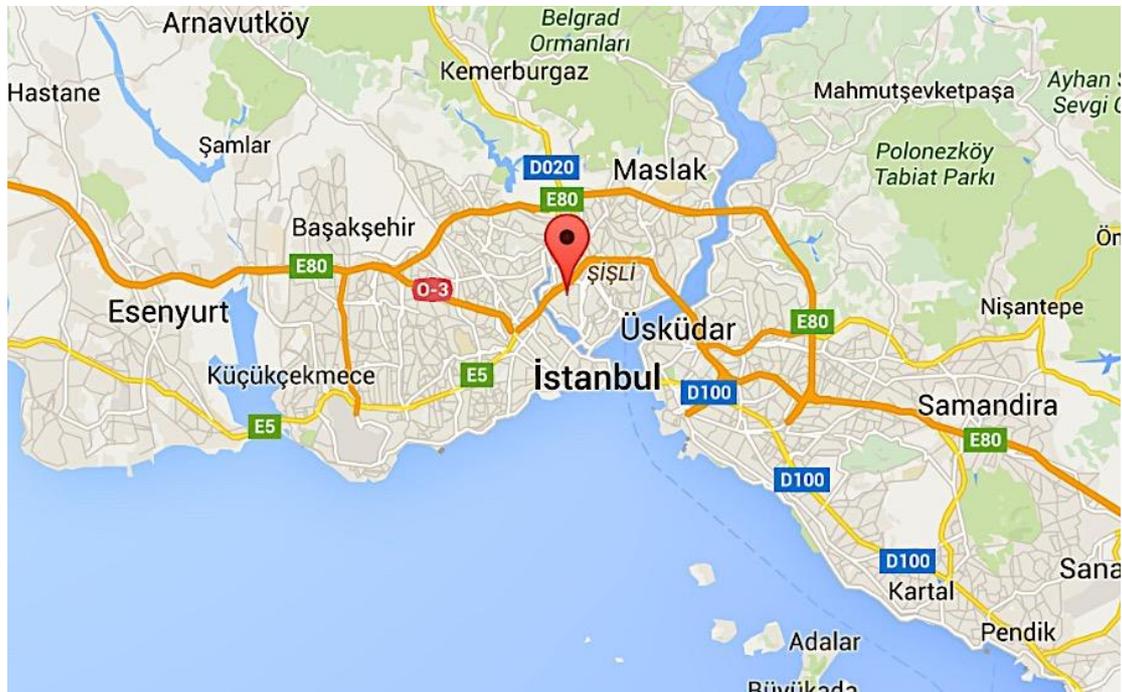
(Öncü, 1988; Danielson & Keleş, 1985). During 1980's many amendments had been made to forgive illegal constructions, many gecekondu owners gain their titles and legal regulations gave permissions gecekondu owners to build up to five storeys.

The character of state's approach to gecekondu areas had change after 1999 Earthquake and renewal of unhealthy and risky building became the main urban politics. One of the target groups of urban transformation projects is the area of gecekondu settlements categorised as spaces of extreme poverty located in the historic centres of cities.

Okmeydanı Urban Transformation Project and Space of Legal Intervention and Struggle on Right of Property

Okmeydanı is one of the widest gecekondu settlement area labelled extreme poverty, crime and radical political activities in the centre of Beyoğlu, İstanbul. Okmeydanı is very close to many trade, finance and residential areas in European side and located on the most important transportation axis in İstanbul.

Figure 4. Location of Okmeydanı

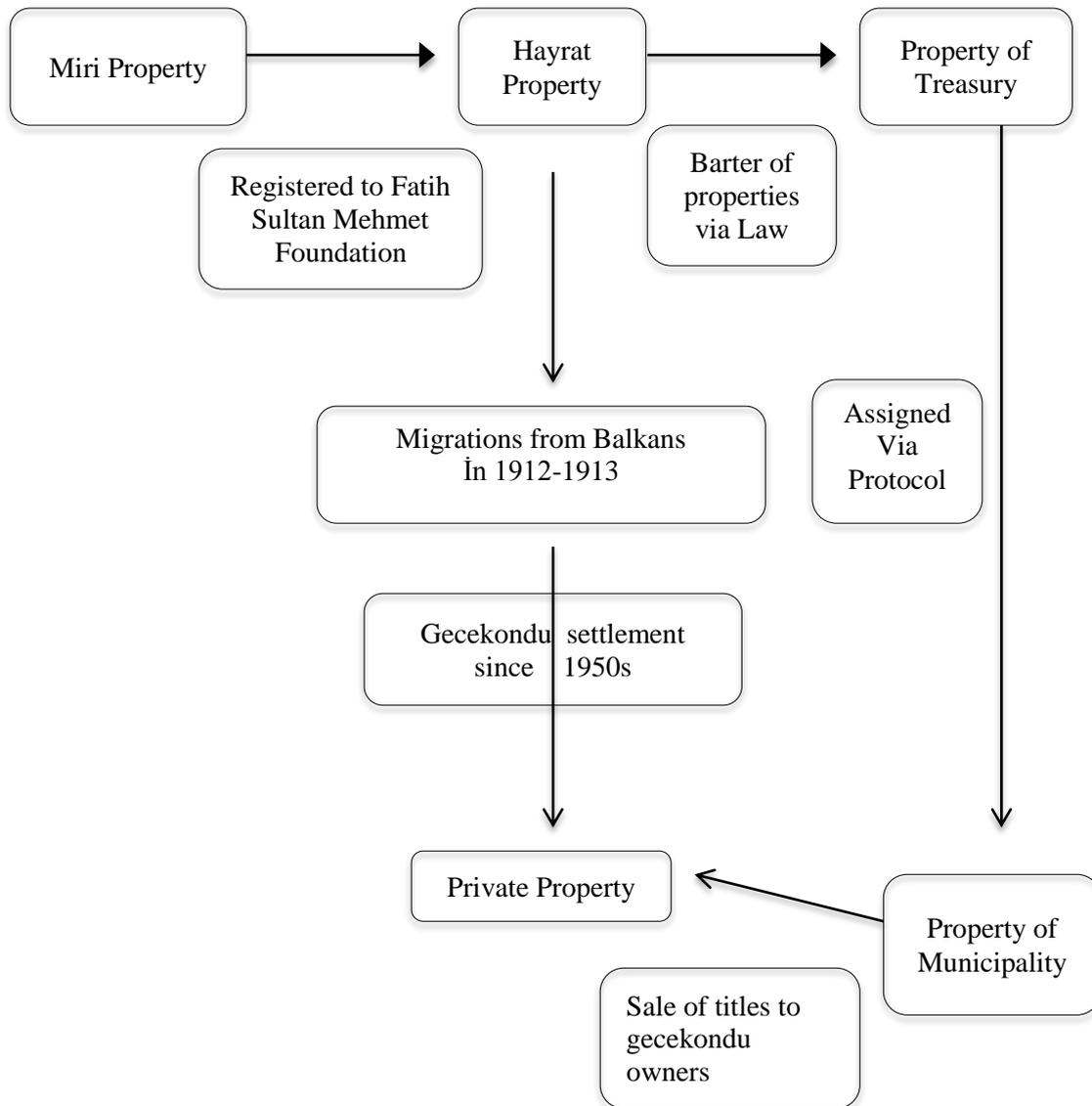


Source: Google Maps

In the context of ownership of land, property mechanism used as an instrument of a control mechanism by politically hegemon class that non-owners do not have voice or right on where they live or on their daily lives (Lefebvre, 2013; Harvey, 2008). Okmeydanı is one of the cases in Turkey where there is a legal battle between different actors such different branches of state agencies and civil society on right on property for the last 60 years. Another important detail is about the historical character of Okmeydanı. In relation to rise neo-Ottomanism; there is a desire to rehabilitate “Ottoman Neighbourhoods” and Okmeydanı has a very symbolic importance for this ideology because of the critical role played during conquest of Istanbul. The History of Okmeydanı starts with the conquest of Istanbul and Fatih the Conqueror forbidden any construction in Okmeydanı and appropriates only for public uses as picnic or festival area (İşli, 2004). Sultan Beyazıt the II. established a foundation in name of his father Fatih the Conqueror and registered Okmeydanı land to this foundation in accordance with his father’s will, Okmeydanı is also the first training stable built by Ottoman Empire in Istanbul and the oldest, biggest and richest arrow monuments were in Okmeydanı before the settlements started in 1950’s (Güven, 1995; Avcı, 1976; Arslan, 2014). However, Okmeydanı opened to settlement in the early 20th century during Balkan wars and first corruption of *arazi-i mefkufe-i gayri sahiha* had experienced however transformation of right on property did not recognized in legal records.

In early Republican era the foundations without heirs registered as state- owned foundations and the properties of these foundations registered as properties under General Directorate of Foundations via the laws 2762 and 743 in 1926 and 1938. The properties of Fatih Sultan Foundations are registered on behalf of General Directorate of Foundations as *Mazbut* a foundation because there was no one left to run the foundation and the administration of the foundation carried by a committee assigned according to law. In addition to these regulations Okmeydanı specifically registered as *hayrat* property, which prohibits any type of construction, sale or rent of land as in Ottoman Empire Period. Right on property also is not prescribed on these type of lands. Hypothetically, the land was only allowed to be used just by public only purposes for public interest. Along with hayrat property the other property type is *akar*, which can be practiced as an ordinary private property.

Figure 5. Transformation process of right on property of Okmeydanı



Source: Arslan, 2014 (prepared by the author)

Figure 5 shows all legal and ad hoc interventions to space in Okmeydanı and summarise the transformation process of right on property for almost one century. The uniqueness of Okmeydanı rises from the type of property. During 1950's and 1960's the settlements in Okmeydanı tried to be prevented. First protection order was made in 1961 to stop attempts to make master plans. From 1961 to 2012 16 different protection orders had been made and Okmeydanı announced as historical protection area. Meanwhile, approximately 20 different legal interventions have been made to change the type of property, to realize private property in Okmeydanı via master plans, amendment laws. Furthermore, there are other non-written enforcements,

which had implemented and countless destruction decisions made by municipalities, which are never practices because of clientelist relations between gecekondü families and municipality.

Table 1- List of Protection Orders

Date	Decision No:	Decision Board	Content
1961	1576	High Council of Preservation of Historical Estates and Monuments	Borders of Okmeydanı defined and any type of construction has been forbidden
1976	8885	High Council of Preservation of Historical Estates and Monuments	Okmeydanı defined and declared as Historical Preservation Area
1984	824	High Council of Preservation of Historical Estates and Monuments	Continue to decision no: 1576
1986	2047	High Council of Preservation of Cultural and Natural Heritages	Form greenbelts around monuments and continue to borders defines in 1961 and 1984
1988	857	High Council of Preservation of Cultural and Natural Heritages	Construction forbidden in the defined borders, Okmeydanı categorised as open-air museum, the greenbelt defined as new border
1989	63	High Council of Preservation of Cultural and Natural Heritages	Advisory decision
1993	4720	Istanbul Council of Preservation of Cultural and Natural Heritages (No: 1)	Advisory decision made definite decision
1999	10574	Istanbul Council of Preservation of Cultural and Natural Heritages (No: 1)	Borders of interaction site saved maps for future master plans
2007	1079	Istanbul Council of Preservation of Cultural and Natural Heritages (No: 2)	Decisions taken in 1961, 1976 and 1986 are still valid
2009	2863	Istanbul Council of Preservation of Cultural and Natural Heritages (No: 2)	Site visit to see estates subject to transfer and sale
2010	3135	Istanbul Council of Preservation of Cultural and Natural Heritages (No: 2)	Borders of Okmeydanı rearranged
2010	3136	Istanbul Council of Preservation of Cultural and Natural Heritages (No: 2)	Permission transfer or sale of estates
2010	754	High Council of Preservation of Historical Estates and Monuments	Borders of Okmeydanı rearranged
2010	3280	Istanbul Council of Preservation of Cultural and Natural Heritages (No: 2)	Valid borders of Okmeydanı defined
2010	3770	Istanbul Council of Preservation of Cultural and Natural Heritages (No: 2)	Only 14 areas defined as historical side, necessity of urban transformation in case of an earthquake
2012	627	Istanbul Council of Preservation of Cultural and Natural Heritages (No: 2)	Master Plans approved for the first time

Source: Arslan, 2014 (table prepared by the author)

The protection orders and decision shown in Table 1, mainly aims to prevent any legal interventions to transfer right on property from the Foundation to third parties. If Table 1 and Table 2 compared the parallelism between dates can be seen.

Table 2. Sum of All the Legal Regulations

Date	Decision Board	Content
15th Century	Sultan Beyazıt II.	Okmeydanı registered as property of the Foundation
1938	General Directorate of Foundations	Okmeydanı registered in name of the Foundation
1952	-	First cadastral surveying
1976	Demirel Government	Victims of Van earthquake settled in the social housings in Okmeydanı
1984	Özal Government	Special offices opened for special types of titles
1985	Beyoğlu Municipality	(1/1000) Master plans (did not approved and implemented)
1989-1990	Beyoğlu Municipality	Permissions for multi storey apartments
1993	General Directorate of National Estate	Sales of the estates owned by the Foundation legally impossible
1994	Council of Ministers	Sales of 4013 parcels owned by the Foundation in Okmeydanı
1997	Beyoğlu and Istanbul Metropolitan Municipality	(1/1000) Master plans
1999	Istanbul Regional Administrative Court (No:5)	Cancellation of master plan
2001	Ecevit Government (ANAP and MHP Coalition)	Law (4706) enacted transfer of right on property between General Directorate of Foundations and Undersecretaries of Treasury
2004	Council of Ministers	Amendment of an article in Law 4706 to make the barter of hayrat property possible
2004	General Directorate of Foundations & Undersecretaries of Treasury	Protocol on barter of estates owned by the Foundation in Okmeydanı
2005	Istanbul Metropolitan Municipality	Demolitions of houses for the construction of “Okçular Tekkesi” for another foundation
2010	Beyoğlu Municipality & Istanbul Metropolitan Municipality & Undersecretaries of Treasury	Protocol on barter of estates transferred to Treasury to Municipality
2012	Beyoğlu and Istanbul Metropolitan Municipality	(1/1000 and 1/5000) Master plans
2013	Beyoğlu Municipality	Realisation of private property and joint- titles
2014	Beyoğlu Municipality	Under law. 6306 Okmeydanı declared risky area which makes almost every type of intervention from central

Table 2. (Continued)

2014	Istanbul Regional Administrative Court (No:6)	(1/1000) Cancellation of Master Plan
2014	Istanbul Regional Administrative Court (No:6)	(1/5000) Stay order for Master Plans
2014	Istanbul Regional Administrative Court (No:6)	(1/5000) Cancellation of Master Plan
2014	Istanbul Metropolitan Municipality	Revision of master plan
2015	Istanbul Regional Administrative Court (No:6)	(1/5000) Cancellation of Master Plan and revision master plan become obsolete
2015	Istanbul Regional Administrative Court (No:4)	(1/5000) Sue for cancellation of revision and original master plan (has not resulted yet)

Source: Arslan, 2014 (Updated and prepared by the author).

The Legal decisions and protection orders affect almost 100.000 people's lives in 160 hectare. Even the legal regulations for transformation of property type from foundation to private reflected as, recognition of gecekondü owners' right on property, there is also a highly economic character of these regulations and economic potential of Okmeydanı associated with the new urban transformation project, too. The estimated financial gain after the sales in 1990's, if the sale decision was not cancelled, calculated as 78 trillion Turkish Liras. Today, the sale prices of houses without titles and legal ownership statues in Okmeydanı are around 150.000 Turkish Liras whereas the expected price of a house after urban transformation project is around 800.000 and 1.000.000 Turkish Liras.

In addition to rent and financial gain potential for the firms will included the transformation projects, gecekondü owners have to buy their titles of not the parcels they actually use but the ones, the municipally relocated within the master plans which are also cancelled by 2015. The regulations made in the last decade do not help to solve the complex character of property in Okmeydanı, specifically the regulations made in master plans and relocation of rights on property and cancellation of master plans afterwards created an unreliable atmosphere in Okmeydanı. According to municipal data there are more than 20.000 potential titleholders however since 2012 nearly 3.000 titles rearranged and bought by titleholders. (Beyoğlu Belediyesi, 2016) it also be noted that titles delivered since the last amendments are joint-titles that even if people buy and get their titles, they will not be independent from other title holders

who share the same parcel. Another problem of the master plan and rearrangement of titles is that, because land amalgamation and parcelling out, the ones who did not prefer to buy their share under risk of displacement and the ones who bought cannot do anything on their new parcels unless the whole sale of titles has been done.

Conclusion

Okmeydanı is one of the most problematic settlements in Turkey and the legal complexity of the property ownership causes Okmeydanı to be in the agenda of policy makers with high financial potential for almost 60 years. From 1960's to 2016, the problem in Okmeydanı has not been solved, yet. Each regulation calculated as the ultimate solution but there always been some obstacles mentioned in the previous paragraphs made the case in Okmeydanı more complex than before.

Even if the problem in Okmeydanı has not been solved; its unique character with demography of the residents and political character of the space make it easier to observe the contradictions of capitalist cities under influence of neoliberal urban politics. The relation between the political character of Okmeydanı and regulations on property ownership is not mentioned within this study, future studies in the case will be helpful to understand the power of private property on the construction of social structure of society.

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