Expropriation and Valuation of Agricultural Lands

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Authors’ contributions

This work was carried out in collaboration between both authors. Author CK worked on developing the paper and making it academic, searched literature and developed and submitted manuscript. Author SHK conceptualized the paper and shared experience from the field to see to it that the manuscript is created out of his ideas. Both authors read and approved the final manuscript.

ABSTRACT

Although the right to property is a constitutional right, the most common administrative process that terminates it is expropriation. The first condition that gives legal validity and legitimacy for the expropriation process to terminate the right to property is public benefit; The second condition is to determine the real value of the expropriated real estate and to pay this amount to the property owner in a reasonable time. Protection of the right to property can only be ensured if the fair value of the real property is determined. It is essential for the administrations to apply the procurement procedure first in expropriation. The determination of the purchase value is provided by the valuation commission formed by the administration. The valuation commissions should be based on the income to be obtained from the lands in accordance with the Expropriation Law No. 2942 in determining the land expropriation values. As a result of the fact that the valuation commissions do not include objective criteria in the valuation method with the income method, the real and fair value of the real estate cannot be reached and there is no agreement between the parties. It is important that members of the valuation commission are objective and knowledgeable in this regard. In this study, the principles regarding the application of the income method in determining the land expropriation values by the valuation commissions of the administration were examined and some suggestions were brought.

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1. INTRODUCTION

Expropriation is the most common administrative process that terminates the right to property, a constitutional right. Expropriation transactions are carried out within the framework of the principles set out in the Expropriation Law No. 2942, which is amended by Law. Expropriation in Turkey; Although it is a legal process based on the Constitution, the main purpose is public interest. Because, administrations can not possess the real estate owned by real and private legal entities with a transaction that is not based on public interest, and cannot realize the expropriation process. The first condition that gives legal validity and legitimacy for the expropriation process to terminate the right to property is public benefit; the second condition; It is the determination of the real value of the expropriated property and the payment of this amount to the property owner in a reasonable time. In determining the expropriation value, the "fair value" to be reached is the "real provision" specified in the Constitution. Protection of the right to property; It can be provided if the fair value of the real property is determined. In the expropriation commissions formed by the administrations in expropriations; Since the determination of the real and fair value of the immovable registered in the land registry will allow the parties to agree, expropriation cases will not be required. Because, in the expropriations to be made by the administrations about the immovable property registered in the land registry, it is essential to apply the purchase method first. The expert report prepared as a result of the objective evaluation of the valuation commission is the highest value the real estate owner can agree with the reconciliation commission. Therefore, if the value imposed by the reconciliation commission and the real estate owner is reasonable; the administration will realize the expropriation with the purchase method.

2. EXPROPRIATION AND LEGAL BASIS

Where public interest requires, immovable properties owned by real and private legal entities can be expropriated by the state and public legal entities. Expropriation in Turkey; It is a legal process that takes its foundation from the Constitution. According to Article 46 of the Constitution, "State and public legal persons; In the case of public interest, it is authorized to expropriate and establish administrative easements on all or some of the immovable properties owned by private, provided that they pay their real provisions in advance". Article 35 of the Constitution has regulated the right to property. Pursuant to this article, "Everyone has the right to property and inheritance. These rights can only be limited by law for the benefit of the public". The most important point here is that the exercise of the right to property cannot be against the public interest. The Constitution of the Republic of Turkey, there are two issues related to interference with the right to property. One of them is expropriation; the other is nationalization [1]. Although the state can purchase immovable property with the consent of private individuals, these optional purchases are insufficient. In cases where the public interest prevails, the Constitution is given the power to acquire goods to the state within a certain legal framework. The most important and most frequent application of the state by means of acquiring goods is expropriation [1]. The administration has the opportunity to obtain the real estate it needs through expropriation, even for a price, based on the right to sovereignty. Expropriation in Turkey is carried out within the framework determined in the different Law No. 2942 by law No 4650. In the aforementioned law; Expropriation procedures to be carried out by government and public legal entities, registration of immovable property and easement rights on behalf of the administration, transfer of immovable properties between administrations, recovery of unused immovable property after expropriation, mutual rights and obligations, and resolution methods and methods of disputes based on them. The provisions of the same Law are applied in expropriations to be made on the basis of private laws on behalf of real and private legal entities. The concept of expropriation actually has many definitions. Although these definitions consist of different words and sentences, they are similar in content. Expropriation is based on the unilateral declaration of will of the competent authority, in order to fulfill the public service; It is the process of transferring the real and private property subject real estate to the ownership of the administration in accordance with the method specified in the law. Therefore, in expropriation, the unilateral operation of the administration on the basis of public interest is allowed and the
administration may have property within the limits drawn by the Constitution and the Expropriation Law numbered 2492, even if the owner does not have consent. In expropriations, the price of the real estate is paid in advance as a rule. However, if the conditions are met, the Administration can also be paid in installments. In the decision taken by the Supreme Court General Assembly dated 13.07.2005 and numbered P.2005/12-463, L.2005 / 455, "to give the money for the money in advance, in cases where the law allows for taxation, based on the opinion of the public interest and public power, provided that an immovable property is obtained regardless of the consent and consent of the owner ".

3. PUBLIC SERVICE AND PUBLIC BENEFIT

Even though there is no consensus on a definition that will satisfy everyone about public service, which is one of the basic issues of administrative law, it is observed that some criteria are used to define public service. Today, there are different approaches and opinions about the definition and quality of public service. However, they are activities carried out by public entities or private enterprise under their supervision and responsibility [2]. Again, according to another definition; "Public service is an activity carried out by public legal entities or private persons under their control to satisfy a common and general need that has gained importance for the society." [3]. However, if a general description is made; "Public service is an activity that is important for all or part of the society, is aimed at the satisfaction of a common and general need; it is carried out for public benefit within the jurisdiction of public entities or private persons under their supervision." [4].

Public interest is the basis of the expropriation process. The decision of public interest is an administrative process, a decision that occurs before the expropriation decision and initiates the expropriation process. Public interest; It is a concept that can change according to the time and place based on the type of service and the understanding of those who receive the service [5,6]. Although the public interest was addressed in controlling the legality of administrative procedures as a criterion and limiting fundamental rights and liberties as a reason, the lack of a clear definition by the legislation caused it to be a highly discussed issue by the authorities [7]. In order for the administration to make an expropriation decision, it must first make a "public interest" decision. Here, "public interest decision" and "expropriation decision" are two different concepts. Because the administrations cannot possess the immovable properties owned by real and private legal entities to the public through a transaction that is not based on public interest. The decision of the administration to make an expropriation depends primarily on the decision of the public interest. After the public interest decision has been made, a concrete process occurs after the decision is approved by the competent authorities. Public benefit decision; In addition to being objective and abstract, it is also a condition processing. It foresees a change in the status of real estate owned by private persons, and reveals the existence of a general benefit that exceeds the private benefit, and puts the immovable among the immovables to be expropriated by the administration [6]. In order for an immovable to be expropriated; It is clear that the purpose of allocation, that is, the purpose of expropriation, should be stated clearly and precisely, based on concrete reasons and should be suitable for this purpose (Council of State 8.D, P.1988/1426, L.2000 / 4362, D.06.06.2000). Those who will decide on the public interest; While making this decision, it is important for them to be objective, to take into account the general tendencies of the people living in that society, to try to balance the individual interests with the interests of the public, not to damage public trust, and to prevent public harm rather than public benefit. The expropriation process to be performed by the administrations; road construction (Council of State 6. D, P. 1986/901, L. 1986/1032, D.26.11.1986), solution of sewerage problem (Council of State 6. D, P. 1991/2720, L. 1992/398, D. 30. 01.1992), supply of open market place (Supreme Court 18.HD, P.2002 / 368, L.2002 / 835, D.29.01.2002), preservation of a cultural asset structure (Council of State 6.D, P.1994 / 3698 , L.1995 / 367, D.23.01.1995), such as meeting the city drinking water need (State Council 6.D, P.1992 / 3732, L.1993 / 1327, D.05.04.1993) should be absolutely public benefit.

4. BASIC PRINCIPLES IN PUBLICIZATION

Administrations; immovable properties, resources and easement rights required for the execution of the public services or undertakings they are obliged to do by laws and Presidential decrees; They can make expropriation in cash or by paying them in equal installments in specified situations (Public Law No 3 / f. 1). Expropriation procedures cannot be initiated without adequate
funding by the administrations (Public Law No. 3 / P. 4). The administrations that will make expropriation must first take a decision of public interest and have this decision approved by the relevant approval authority. After the approval is obtained, a letter is written on the immovable from the land registry office where the immovable to be expropriated by the administration is registered, with a request to put an expropriation warning. In the expropriation process that will start after the approval of the public benefit decision taken by the administration, as stated in the 8th article of the Expropriation Law, according to this Law, in the expropriation transactions to be made by the administrations about the immovable properties registered in the land registry; Purchasing law practices are essential. In expropriation, the administration firstly goes to an agreement with the immovable owners to be expropriated by the purchasing method. The agreement is fulfilled by the "settlement commission" established by the administration. The administration has to determine the value of the immovable to be expropriated before starting the purchase process, without going through an agreement with the owners. For this purpose, the administration establishes one or more "Appraisal Commission" consisting of at least three people. (Law No. 2942. Law. No. 8.) The value determined by the valuation commission is conveyed to the reconciliation commission established to purchase the immovable by negotiation. The Administration notifies the owners of the immovable in writing in writing by negotiating the bargain or by clearing. The owner of the real estate to be expropriated; After applying to the administration within 15 days, negotiations begin at a date determined by the reconciliation commission. In the negotiations; an agreement is attempted provided that the reconciliation commission does not exceed the price determined by the valuation commission. If an agreement is reached, a record is signed by the parties. Then, it is transferred to the institution that makes the immovable expropriated by the owner. If it does not reach an agreement with the institution that will make the expropriation, this is determined again by the minutes and the expropriation value known as the "expropriation case" becomes the case and the registration case. In this case, the administration adds the cost assessment information and documents prepared in accordance with Articles 7 and 8 of the Expropriation Law to a petition. By applying to the Civil Court of First Instance, where the immovable property is located, by determining the expropriation value of the immovable property; payment in cash or in installments, if made according to the second paragraph of Article 3 of the expropriation law; in return, it requests the decision to be registered on behalf of the administration.

5. FORMATION OF THE VALUE COMMISSION AND THE WORKING PROCESS

After the expropriation decision is taken, a report is received from the relevant expert, institution or institutions according to the principles of article 11 of the Expropriation Law. Until necessary, by carrying out all kinds of works in the expropriated land by making use of the information obtained from the chambers of industry and commerce and from the local real estate buying and selling offices, to appreciate the value and to issue the appreciation report and the transfer of this report to the reconciliation commission and to be registered on behalf of the immovable administration; in order to receive technical support at every stage needed, a "Valuable Appreciation Commission", one of which is composed of at least three people, is establish. For the Administrative Appraisal Commission; It determines as many substitute members as the number of permanent members. (Publication Law No. 2942 of P.8) Valuation Commission, for determining the value of the expropriated land, state / county agricultural and forest departments, land administration, municipal zoning, real estate and expropriation offices, Soil Products Office, municipal state offices, Turkey Sugar Factories Inc., agricultural trade and industry chambers, Agricultural Economics and Policy Development Institute, Ziraat Bank, agricultural credit and sales cooperatives and central associations and producer associations, irrigation associations in the region, farmer registration system, agricultural research organizations and from Turkey Statistical Institute in the web environment, information and assure data. The Valuable Appreciation Commission collects the necessary information and data for the agricultural lands that remain in the expropriation site according to the planning reports, a reasonable time before the investment program of the expropriated region (preferably five years). The annual crop and yield values of the crops grown in the region and the harvest period; monthly or annual sales prices reflecting wholesale prices; Provides product cost data from the provincial / district agricultural
directorates to analyze production costs, determine land type and type (dry agriculture, irrigated agriculture, fruit, poplar etc.) and change widths of average capitalization rate on village basis, and determine the capitation rate to be applied. The appraisal commission determines whether the type of land to be expropriated and whether it is dry-irrigated or irrigable agricultural land, soil structure, slope condition of the land, etc., and annual or perennial plants in the land. Determination of the immovable to be expropriated; In accordance with Article 7 of the Expropriation Law numbered 2942 by the Appraisal Commission, an expropriation map and any existing products and trees on the immovable subject to expropriation with its current and topographic maps, including all kinds of structures belonging to someone else, including are determined on the basis of the parcel. In the appraisal commission study, he takes photos from several aspects of the immovable property and processes the information and data he collected into the information collection leaflet. The appraisal commission determines the factors that can affect the value of the real estate after the application of the project belonging to the area to be expropriated (the distance of the real estate to the main road and its distance to the district, the transportation status, proximity to the market, climate and soil condition, population parameters, supply demand status, etc.). Land registry records, cadastral maps, topographic maps, zoning plans, land determination, surveys and observations make it certain. According to the location and conditions of the immovable property or resource in the lands, and if the property and resource of the immovable property or resource have the value of all the qualities and elements that may affect the surface area, the value of each property and the value of each element separately, the tax declaration made by other official authorities in the region at the date of expropriation. Capital Market based on the net income it will bring, the sales value in the lands, the sales value according to the precedent sales without special purpose before the expropriation day, the official unit prices and building cost calculations and the attrition share of each measure, and the other objective measures that will be effective in determining the price, provided that the effect of each measure is explained. It determines the value of the immovable property based on a reasoned evaluation report in accordance with the valuation standards adopted by the Board (CMB). (Law No. 2942) It is in the direction that the provincial and district agricultural directorate data should be taken as basis for the production data to be taken as basis in the valuation reports of land properties for expropriation value determination in the decisions of the Supreme Court (Supreme Court 18., P.2002 / 6930, L.2002 / 7460 D. 1.7.2002 ) distorts judgments based on expert reports (Court of Appeals 18., P.2002 / 8381, L.2002 / 9028, D.1.10.2002). If there is a conflict between the same agricultural directorate data, the yield is determined by the court using discretion (Supreme Court 5.P.2002 / 10383, L.2002 / 15267, D.03.07.2002).

6. VALUE APPROVAL COMMISSION REPORT

The Valuation Appreciation Commission determines the widespread alternation applied in the region in line with the information and data compiled beforehand and the information and data obtained from the field observations. Product (crop) yields must reflect the regional average in accordance with the case law of the Supreme Court. In order to minimize the impact of climate and soil conditions on yield and to reach as close as possible to market conditions, it is preferable that product yields reflect the last 5 years. Crop sales prices should be wholesale and current sales prices, which reflect the harvest period of the farmer. Retail (market) prices cannot be used in net income analysis in accordance with judicial decisions. In case the product sales prices or expense items of the valuation year (current) year are not officially available, the current year sales prices are updated with the Domestic Producer Price Index index. The Commission analyzes the cost of each product included in the alternation and compares the results it has obtained with the cost data obtained from the provincial or district agriculture and forestry directorate and other agricultural institutions.

In the valuation report to be made for the valuation commission agricultural land;

- According to the land registry records of the expropriated real estate, the province, district, neighborhood / village, locality, island number, parcel number, surface area and type of the real estate,
- All the qualities and elements that affect the value of the real estate (such as slope%, soil type, soil depth, stony condition, irrigation source and shape, source of flood, danger of transportation, groundwater
condition, salinity) and also the value of the properties on the property,

✓ If it is used with existing alternation system and yield-expense net income account, the value of one decare of land according to net income,

✓ Objective criteria effective in determining the price,

✓ m² value of the expropriated real estate,

✓ If there is an increasing part from expropriation, main issues such as increase and decrease in value are included in this part.

6.1 Application of Income Method in Expropriation of Agricultural Lands

The law stipulates that the commissions to be expropriated will be based on the income to be expropriated by the commissions, in other words, the application of the income method. According to the clause (f) of Article 11 of the Expropriation Law No. 2492, according to the location and conditions of agricultural lands; If it is used as it is, it is foreseen to use the net income method. Again, Article 11 of the Expropriation Law is that in determining the value of the immovable property, the profit it will bring will not be taken into account in accordance with the intended use patterns. Therefore, valuation should be made on the lands subject to expropriation based on the method of use on the expropriation date and the product obtained according to this method of use (Supreme Court 5., P. 2000/14628, L.2000 / 15274, D. 12.10.2000). After determining that the real estate is in the nature of land; First of all, it is necessary to determine what kind of land the immovable property is to determine the calculation method to be applied. After reaching the conclusion that the immovable property is in the field, the first thing to be determined in terms of the alternation method and capitalization interest to be applied is whether the immovable is water, dry or irrigable land. According to the income method, the average yields determined by the agricultural directorates of the crops planted in the region where the real estate is located are multiplied by the average kilogram sales prices during the harvest period and the average costs are deducted from the gross income; so the net income of the real estate is calculated. In this method, the income in question is the net income of the land, in other words, the net rent of the land [8]. The value of a land according to the income method is determined by the capitalization of the average income of the land according to the current interest rate, with a technical expression of all income to be obtained from that land in the future [9,10]. Net income from the land is calculated by subtracting all other cost elements from gross production value, excluding land rent. However, finding the net income (land rent) according to the income method in the agricultural valuation studies and the approach to be used in the valuation varies according to whether the income is periodic as in the field agriculture or periodic as in the fruits, and also the way the land is operated (owner, tenant, partner) [11]. Land net income stated in the Expropriation Law is the rent of land or land and this value is capitalized when calculating the expropriation value. While the expropriation value for the land is appreciated, firstly estimate the annual average net income of the lands and the capitalization rate applicable to each land (use-ability) ability class (KT1-KT2-ST1-ST2-Vineyard-Fruit-Poplar etc.) in accordance with scientific principles needs to be. Capitalization interest refers to the ratio between the real estate's annual net income and the actual sales price. Region-specific capitalization interest rate has not been determined in our country. However, considering other factors that are effective in terms of capitalization interest, such as geographical location of our country, climate conditions, soil structure and productivity, the capitalization rate ranges from 3% to 15%. This situation was also adopted by the General Assembly of the Supreme Court of Appeals (P.1990 / 5-507, L.1990 / 539 D.31.10.1990.). In these conditions, the capitalization interest rate will be lower than 3% and higher than 15% and will not be appreciated. The Supreme Court takes into consideration the characteristics of the land such as the specialization of the land, irrigated dry agricultural land, the structure of the soil, the crops that can be planted, the yield, the surface measurement, the composition of the soil, the slope rate, its proximity to the important settlements, agricultural facilities. It is expected to be determined by taking (P.2007 / 5-160, L.2007 / 189, D.04.04.2007, P.1995 / 18-426, L.1995 / 187, D.17.09.2008). In the established jurisprudence of the Supreme Court, the capitalization interest rate for agricultural lands is applied as 4% in irrigated land and 5% in dry agricultural lands. (Supreme Court 5. P. 2017/24111, L. 2017/27077, D. 04.12. 2017), (Supreme Court 5. P. 2017/24839, L. 2017/12885, D. 08.05.2017). In the valuation of an agricultural land with the income method, the following formula is generally used [11,12].
6.2 Land Rent

Since the expropriation is done at the parcel level, it is sufficient to calculate the land rent. Annual fixed annuity in annual plants in land expropriation value calculations; In perennial plants, total fixed periodic rent should be taken into consideration during the economic life. In estimating land net income; There is a need to know the alternation according to the wet and dry condition, to reveal the production costs of the alternating crops, the annual average yields of the crops and the wholesale prices of the crops, which are harvested at the farmer's hands. The concept of production costs refers to the sum of the expenditures made on the means of production used in the production of goods or services. The cost found in this way is monetary cost. In agricultural enterprises, land rent, labor costs, current costs, depreciations, agricultural capital interest and general administration costs can be listed as the costs that make up the cost. According to the existing alternation in the land, the average yields of the product and by-products are multiplied by the wholesale prices of the year, and the gross production value, all costs incurred for that product (annual operating costs + 3% general administrative expenses + agricultural capital interest) are deducted from the gross production value. Annual net income is calculated by dividing net income by the number of products in alternation. When determining the alternation, it will be wrong to consider the products that are not grown widely in the region, instead of the products that are grown widely in the region and generally taken into alternation. This situation is also fixed with the case law of the Supreme Court (Supreme Court 18., P.1998 / 8199, L.1998 / 9984; Supreme Court 18., P: 2002/006544, L: 2002/006990, D. 18.06.2002).

If fallow is included in the alternation in agricultural lands in dry conditions; When calculating the average annual net income, the year when the land is left fallow, that is, when the cultivation is not made, should be taken into consideration.

\[
\text{Value of the Real Estate} = \frac{\text{Land Rent}}{\text{(Capitalization Interest \%)} \ (1)}
\]

\[
\text{Total GPV} = \text{GPV (Main Product)} + \text{GPV (By-Product)} \ (4)
\]

\[
\text{Net income (Land Rent)} = \text{Total GPV} - \text{(facility and production costs excluding land rent) \ (5)}
\]

6.3 Capitalization Rate

Capitalization rate; It refers to the value created by the values of the immovables due to their future income. The future value estimation of the real estate's income is a very sensitive and important issue. Briefly, it is a rate of return that meets the expectation principle of the appraisal and converts the income of the real estate into value. According to the Supreme Court decision in Turkey are accepted between 3-15%. The capitalization rate, which forms the basis of the Income method in the valuation of agricultural lands, allows the calculation of the relationship between the income generating capacity of the real estate and the value of that real estate. The decisions of the Supreme Court were adopted as 4% for irrigated agricultural lands and 5% for dry agricultural lands. In this case, the Value of the Immovable (D) is the result to be obtained by dividing the calculated land rent by 0,04 for dry areas and 0,05 for dry agricultural areas. This result may not always give the real value of the expropriated property. For this reason, it is necessary to determine the objective value increase and add it to the value of the real estate at the rate determined. In some land properties, the value found by income cannot reach its real value. For example, all immovables (bushes, shrubs, vacant lands, all kinds of immovables with buildings, threshing places, market, picnic and fairgrounds etc.) within the boundaries of the village settlement are land quality even if they are not actually planted. However, the immovable located in the settlement center of the village will be different in terms of value and the immovable outside the settlement. In such cases, the factors affecting the value of the property should be analyzed and an objective element applied.

6.4 Objective Dimensions

In accordance with the valuation standards adopted by the Capital Markets Board, by stating the answers of all these elements separately and taking into account the declaration of the relevant parties in the report they will prepare based on the other objective measures that will be effective in determining the price, provided that the effect of each measure is explained in Article 11 of the
Expropriation Law No. 2942, Based on a reasoned evaluation report, they determine the value of the immovable property and include its provision. Factors that provide an objective increase in value, which is considered to be effective in the value of the immovable, which is not taken into account in the determination of capitalization interest, and the proximity of the immovable to the road, zoned areas, commercial-industrial areas and natural beauty that increases the demand for land such as lakes, rivers, and sea; In determining the net income that will be brought in the lands when used according to the expropriation date, location and conditions, the immovable value is determined by adding the objective criteria that will be effective in determining the price of the property of the committee and adding it to the net income within the rate determined by explaining each element separately. In the first paragraph of Article 11 of the Expropriation Law, dated 4/11/1983 and numbered 2942, amended with the title of Article 6 of the Law numbered 4650 and dated 24/4/2001, the objective value increasing element ratio was limited to 50%. The Constitutional Court states that the expression "... not to exceed half of the land value and ..." in the (i) amendment of the Expropriation Law numbered 2942 with the 27th article of the Law No. 7139 dated 19/4/2018 is against the Constitution and decided to cancel. (Constitutional Court P. 2019/156, L. 2019/22, D.10 / 4/2019). Since the immovable properties with the same agricultural land class in different villages or districts of a district will have the same net income and interest rate; The values to be found without applying the objective measure will be the same or there may be very small value differences depending on the quality of the expert's real estate, depending on whether the amount of efficiency is above or below the official data. For this reason, the objective criteria, which are not taken into account in the determination of the value of the immovable property to be expropriated, the proximity of the immovable to the road, zoned areas, commercial-industrial areas, and the natural beauty that increases the demand for land such as lakes, rivers and seas, are taken into account. The use of objective increase in value in the wrong place is common in expert reports. Besides the factors that affect the rate of capitalization and the yield of the land (watery / dry, base / lightweight / sloping land, crops that can be planted in accordance with the characteristics of the soil), it is taken into account in the appreciation of the land value in factors that may affect the sales value (proximity to important settlements, agricultural facilities for agricultural purposes). Paragraph (i) of the Law No. 2942 is excluded from these issues and relates to objective measures that may affect the value of the land (increase or decrease).

7. CONCLUSION

Administrations form an appraisal commission consisting of at least three people who will determine the value of the real estate to be expropriated and provide technical support. It is important that this commission is the technical staff that absolutely knows the subject. Agricultural expert must be included in the commission in determining the expropriation value of agricultural lands. In the case-law of the Supreme Court and the expropriation law, it envisages the valuation of the lands to be expropriated, the income to be obtained from the land by the commissions, in other words, the application of the income method. While determining the value in the income method, the most important issue is the quality of the real estate. Determining the quality of the agricultural land as a field and determining whether the real estate is a wet and dry agricultural land is important in terms of alternating crop and the capitalization rate to be used. As stated in the decisions of the Supreme Court, the product cost charts containing the data such as average yields of the products and by-products required for the determination of the gross production value of the land, the net income, the product price and the cost should be obtained from the provincial / district agriculture and forestry directorates. As a result of the determined data, the average yield and the product price are calculated and the gross production value is determined. Land rent is achieved by subtracting the facility and production costs, excluding land rent, from the total gross production value. As a result of the determined data, the average yield and the product price are calculated and the gross production value is determined. Land rent is achieved by subtracting the facility and production costs, excluding land rent, from the total gross production value. Therefore, it is essential to make a valuation in terms of criteria not used in determining the capitalization rate in agricultural lands in the same region. Due to the fact that the product data and capitalization interest rate are the same, the factor that individualizes an immovable and distinguishes it from other immovables in the same region and district in determining its value is the objective measure. Since one of the constitutional
elements of expropriation is “real provision”, legal regulations regarding the price of the expropriated immovable must comply with the “real provision" criterion stipulated in the Constitution. Accordingly, the payment of the real value of the expropriated property is a requirement of the property right and the principle of proportionality within the scope of Articles 35 and 13 of the Constitution. Since this situation is often neglected by the administrative appraisal commissions, an agreement cannot be reached between the administration and the real estate owners. Calculation of the expropriation value in the land by using scientific method in accordance with the location and conditions of the immovable property or resource in accordance with the location and conditions of the immovable property or resource in accordance with the subparagraph (f) of the first paragraph of Article 11 of the Law, Although this valuation does not only reveal the real value of the real estate, so in case there are concrete and objective features that can affect the value of the land positively or negatively, these issues are determined and expropriation value is added to the value determined by the income method within the scope of the mentioned paragraph (ı) must be determined. Considering the objective criteria that will be effective in determining the price that is often ignored by the valuation commissions, the real and fair value of the real estate will be achieved.

DISCLAIMER

The products used for this research are commonly and predominantly use products in our area of research and country. There is absolutely no conflict of interest between the authors and producers of the products because we do not intend to use these products as an avenue for any litigation but for the advancement of knowledge. Also, the research was not funded by the producing company rather it was funded by personal efforts of the authors.

COMPETING INTERESTS

Authors have declared that no competing interests exist.

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