

# A New Vision in Compromising of Civilizations: The Right of Real Property Acquisition of Foreigners in Turkey

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**Key words:** Real Property Acquisition of Foreigners, Turkey and Developing Countries.

## SUMMARY

In today, the target of many communities is to become contemporary and advanced community. In fact, the technology has turned the world to the U-tube. Waters have rapidly incorporated and the information has interchanged regardless boundaries. The universal definition of this is globalization. As the result of the globalization, the information and the capital have rapidly circulated and people have affected each other mutually. In addition, the globalization has brought real property requirement of foreign real person and legal entity to be able to live and continue their works at the outside of their own countries.

Individuals' right of real property acquisition in wherever they want is one of the fundamental human rights. However, that any country takes protecting and maintaining of benefits of its own citizens, and of its own integrity into account is of the great importance by defining the rights given to foreigners. That the country takes the applications, its own citizens are exposed in any foreign country, into account is also very important. Particularly in developing countries, foreign capital requirement necessitates to abolish the restrictions preventing real property acquisition of foreigners. In this context, Turkey needs 25 billion dollars foreign capital verdure yearly to be able to provide sustainable growth. In order to meet this requirement, the procedures, preventing the right of real property acquisition of foreign real and legal person, have been arranged in the level of the European Union (EU) member countries.

In this paper, it is aimed that existing legal procedures about real property acquisition of foreigners in Turkey as a candidate country to the EU is explained in detail in order to be a sample for developing countries. Besides, some approaches are given by evaluating positive and negative aspects of conversion from national properties to international properties in point of visions in future of developing countries.

# **A New Vision in Compromising of Civilizations: The Right of Real Property Acquisition of Foreigners in Turkey**

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## **1. INTRODUCTION**

Up to date, real property ownership for human being has been perceived as satisfaction of possession feeling, support of power, symbol of freedom and the most valuable treasure transferring to the next generation. The social-economical structure of countries has modified this understanding having differences in communities and cultures in the course of time.

On the other hand, in the world consists of two main groups such as agriculture community and industry community, the ownership either has carried on its sanctity or has been a restricted object by covering necessities like in developed countries.

In Turkey reaching to the stage of industrial society, the ownership understanding of community is limited with being an investment instrument protecting values of savings in inflation environment rather than its sanctity. Inasmuch as, real income of investment instruments such as interest and stock market out of the real property has lingered behind of inflation.

Recently, development of economy, trade and industry and getting increase of foreign tourism activities have caused the requirement of real property acquisition of foreign real or legal people to live in out of their own countries or to continue their business in these places.

Having a real property of foreign real person and commercial companies in a country is important in point of increasing of international relationships, developing of trade and industry with foreign fund contribution and increasing of tourism incomes through foreign tourism and thus development of nations.

In this context, particular articles of some laws arrange real property acquisition of foreigners in Turkey. Articles related to this arrangement take place in the Village Act numbered 442 and dated 1924, and the Land Registry Act numbered 2644 and dated 1934. According to these laws, real property acquisition of foreigners is permitted dependent on some conditions and limitations. Correspondingly, the reason of some limitations in real property acquisition of foreigners, which is one of the classical human rights, is based on intellectual anxieties such as protecting government and providing of its continuity (Uzun and Yavuz, 2003).

Looking at the history of real property acquisition of foreigners in Turkey, it is seen that major reforms have been done both mentally and in practice in time. While the concept of real property acquisition of foreigners was not approached in positive in point of importance

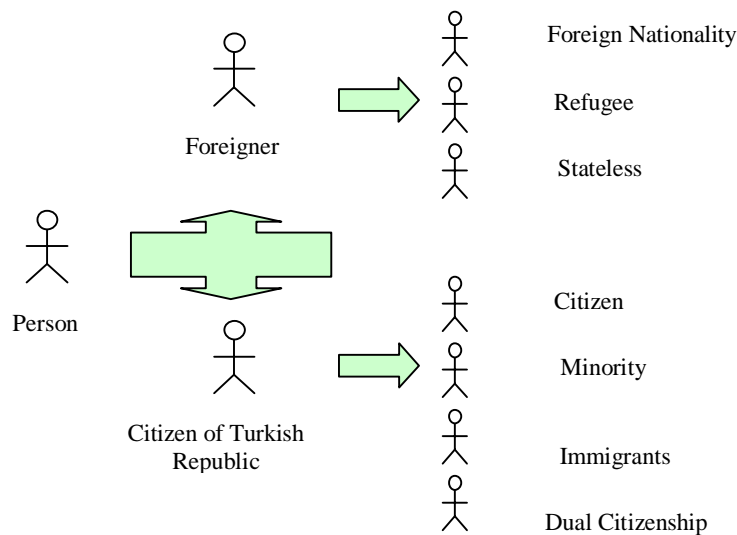
and indivisible of land for the country in the beginning, today ideational red lines in mentioned field has begun to lose in meaning and importance as a result of gradually increasing democracy, freedom, and economical and social development. In conclusion, most important amendments in the nature of a reform have been done in current law giving the right of real property acquisition to foreigners.

In this study, by taking into consideration of final legal amendments, the procedure of real property acquisition of foreigners will be explained in detail and, it will be given some approaches about how shaping of ownership will be and whether limitations will be continue or not.

## 2. REAL PROPERTY ACQUISITION OF FOREIGNERS IN TURKEY

The citizenship is a political and legal link connecting individuals to a specific state. Thus, a person who is not in the nationality of the state want to acquire real property is a foreigner person for mentioned state. A foreign legal person is like a legal entity that its administration center is in abroad without looking at the nationality of its partners or its members. The conception of foreign includes a stateless (a person who has no nationality of any state), a refugee, a person losing the Turkish citizenship, a person extracted from the Turkish citizenship or person whose Turkish citizenship is cancelled and foreign nationality appointed person (Gökna, 1989).

On the other hand, immigrants after taking immigrant certificate can acquire real property in Turkey without being dependent on any procedure applied for foreigners. If one of nationalities of a person having dual citizenship is a Turkish citizenship, this person can obtain real property like the Turkish citizen in Turkey. Minorities can obtain real property in the same statute as the Turkish citizenship without being dependent on any distinction. In brief, who are in the scope of foreigner is seen in Figure 1.



**Figure 1.** Who is a Foreigner?

## 2.1 Restrictions in The Real Property Acquisition of Foreigners in Turkey

The places in which foreigners can obtain real property are limited with places subject to private ownership. In Turkey, places in the judgment and disposal of the State such as forest areas, beaches, pasture and roads are not subject to private ownership. Consequently, acquisition of these places is forbidden for both the Turkish citizen and foreigners. On the other hand, some special additional restrictions also are brought for foreigners wishing to obtain real property in places out of the places mentioned above.

These restrictions pertaining to foreigners are judgments in some articles of the Village Act numbered 442 and the Land Registry Act numbered 2644. Although these restrictions brought for foreigners were more rigid in the beginning, some modifications have been done as a result of developing requirements of community and developing and changing ideational dimension in the course of time. In this context, one of the most important modifications is the Law numbered 4919 accepted in July 2003. This Law repealed the articles forbidding real property acquisition of foreigners in village boundaries. Thus, people want to obtain real property in Turkey can acquire real property not only in municipal areas but also in village areas. That real property acquisition of foreign legal entities is also permitted is another modification in the nature of reform. Before this law, the judgment concerning real property acquisition of foreign real person only existed in the legislation. So, foreign legal people did not obtain real property in Turkey excluding some exceptions. These judgments seen as handicap particularly for tourism sector and foreign investors were abolished with mentioned final modifications.

In spite of these modifications, some special restrictions still exist in real property acquisition of foreigners. The main restriction of these is the mutuality (reciprocity) principle. The mutuality principle is defined as giving mutually the identical content rights like its own citizen to other country's citizens in each country (Uzun and Yavuz, 2003). Namely, in any country whose citizen wants to obtain real property in Turkey, Turkish citizens must have been given the real property acquisition right.

The second provision of real property acquisition of foreigners in Turkey is abiding by the restrictive decisions. One of these restrictive decisions is that a foreigner cannot obtain real property in the military forbidden regions and safety regions according to the Law of The Military Forbidden Regions and Safety Regions numbered 2565. The other is that approval of the Council of Ministers is required because foreigners can obtain real property more than thirty hectares only. According to these restrictions, provisions of real property acquisition of a foreigner are given in Table 1.

With respect to this information, real property types, which a foreign real and legal person can acquire in Turkey, are given in Table 2.

Provisions	First Provision	Second Provision	Third Provision
Real Property	According to the article 35 of the law numbered 2644	According to the law numbered 2565	According to the article 35 of the law numbered 2644
<b>A real property which a foreigner wants to acquire</b>	It must be in the scope of mutuality principle.	It must not be in the military forbidden regions and safety regions	If it is bigger than 30 ha., permission of Council of Ministers is required.

**Table 1.** The Restrictive Judgments in the Real Property Acquisition of Foreigners

Type of Real Property	Is it open for real property acquisition of Foreigners?
Rural Lands	Yes
Agricultural lands	Yes
Dwelling Buildings	Yes
Commercial Buildings	Yes
Urban Lands	Yes
Dwelling Buildings	Yes
Commercial Buildings	Yes
Natural Resources	No
Public Areas	No

**Table 2** Which Types of Lands Can a Foreigner Acquire?

## 2.2 Which Country's Citizens Can Acquire Real Properties in Turkey?

The fundamental factor in the real property acquisition of foreigners is the mutuality principle. According to this principle, three groups exist in Turkey. These are follows: countries obtaining real property in unconditional, countries subject to some conditions and permission, and countries which cannot acquire real property in Turkey.

- *Countries obtaining real property in unconditional*

The real and legal people who are citizens of the following countries are free to acquire the real property in Turkey. In this group, there are 44 countries at present. These countries are: *Federal Republic of Germany, USA, Argentina, Australia, Austria, Barbados, Belgium, Bolivia, Brazil, Croatia, The Republic of Dominic, El Salvador, Finland, France, Gabon, Guatemala, Guyana, Netherlands, England, Ireland, Spain, Italy, Canada, The Turkish Republic of the Northern Cyprus, Colombia, Costa Rica, Luxembourg, Malawi, Sweden, Malaysia, Malta, Nicaragua, Norway, The Central African Republic, Panama, Peru, Somalia, Chile, Tanzania, Venezuela, Israel, Uruguay, New Zealand, Yugoslavia (Serbia and Montenegro)* (LRC, 2003).

- Countries depends on some conditions and permissions

A person in this group encounters the same corresponded restrictions as applied for Turkish citizens in his own country when he wants to acquire real property in Turkey. There are **27**

countries in this group at present. These countries can be classified in two groups based on restrictive provisions and permissions in the real property acquisition.

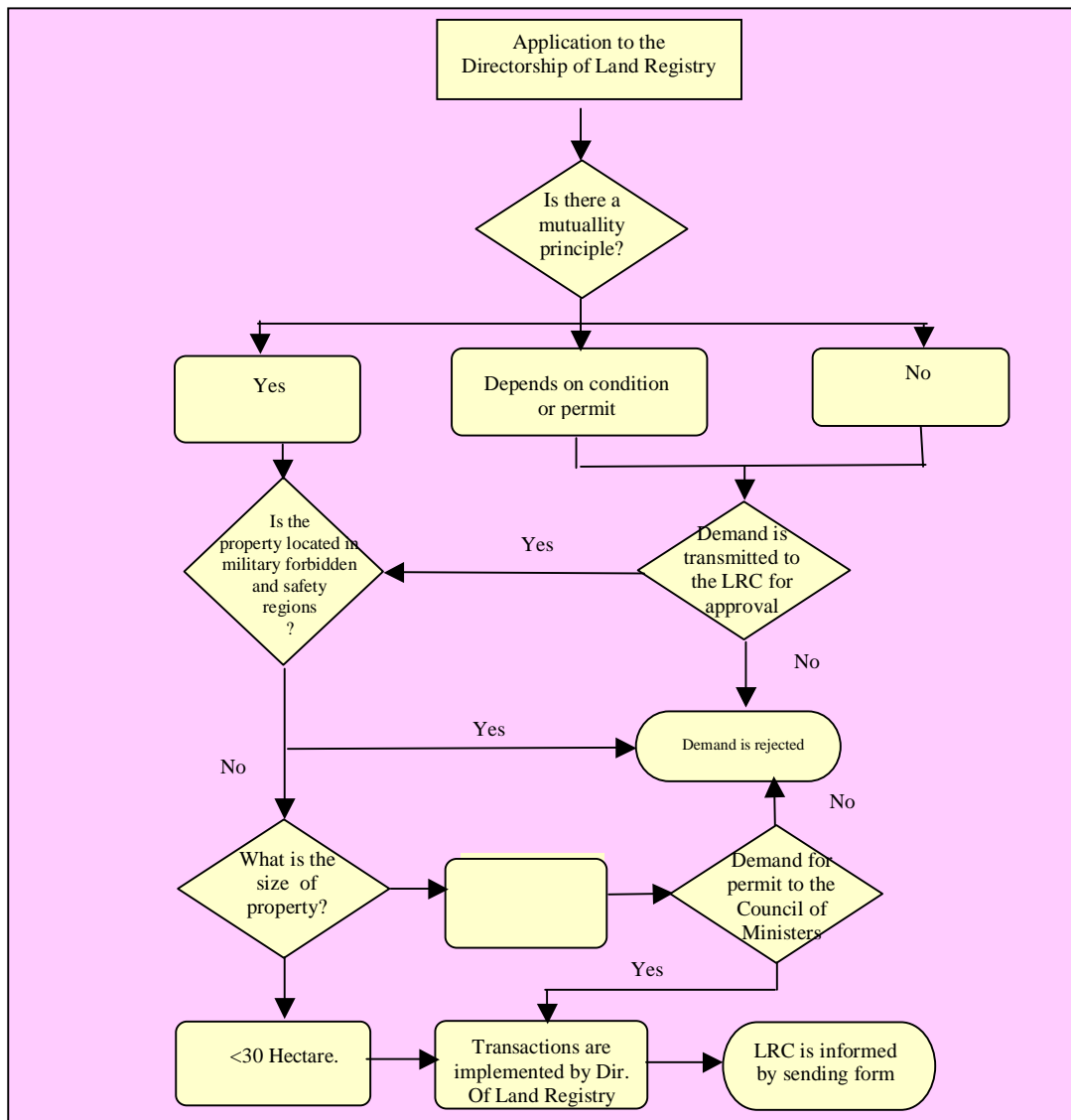
- Countries dependent on any provisions
  - Countries not permitting the right of real property acquisition of foreigners in their coast and border regions: *Greece and Mexico*
  - Countries permitting acquisition of dwelling and workplace in municipal areas: *Morocco, Jordan and Egypt*
  - Countries permitting acquisition of dwelling and workplace only in municipal areas providing residing for five years: *Iran*
  - Countries subject foreigners not having permanent residence to permission: *Denmark, Switzerland, Portugal and Japan*
  - Countries in which permission is needed for acquisition of only agricultural land: *Chad and Kenya*
  
- Countries dependent on permissions
  - Countries in which permission of the Presidency of a Republic is required: *Bosnia-Herzegovina, Cibuti, Togo, Trinidad and Tobago*
  - Countries in which permission of Council of Ministers is required: *Lebanon and Pakistan*
  - Countries in which permission of Central Bank is required: *Philippines*
  - Countries in which permission of the Ministry of Justice is required: *Haiti*
  - Countries in which permission of Ministry of the Interior is required: *South Korea*
  - Countries in which permission of Ministry of Finance and Planning is required: *Bahamas, Singapore and Sri Lanka*
  - Countries in which permission of the related Municipality in Municipal Boundaries is required: *Uganda*
  - Countries in which permission of Ministry of the Interior in Municipal Boundaries is required: *Syria (Kas, 2003).*
  
- Countries which cannot acquire real property in Turkey

In this group, there are 27 countries. The real and legal people of these countries cannot acquire real property in Turkey at present. These countries are: *Afghanistan, Albania, Azerbaijan, Bulgaria, United Arab Emirates, Bahrain, Algeria, Indonesia, Armenia, Ethiopia, Palestine, India, Iraq, Iceland, Qatar, Kazakhstan, Kuwait, Libya, Cuba, Hungary, Niger, Oman, Rumania, Russia, Saudi Arabia, Tunisia and Ukraine (LRC, 2003).*

The countries whose citizens haven't wanted to acquire property in Turkey in any way up to now haven't been subject to investigation. So, these countries are not included in these lists.

### 2.3. The Procedure of Real Property Acquisition of Foreigners

The responsibility of every kind of land registry and cadastre processes concerning foreigners' real properties in Turkey is belonged to the Directorship of Foreign Affairs Office of the Directorate General of Land Registry and Cadastre (LRC), under the Ministry of public works. Foreign real and legal people want to acquire real property in Turkey apply for the Directorship of Land Registry in the location of the mentioned real property. A diagram about processing of real property acquisition of a foreigner dating from application phase is given in Figure 2.



**Figure 2:** General Flowchart of Real Property Acquisition of Foreigners in Turkey

A claimant being conformable to provisions in the diagram has the same circumstances as Turkish citizen in the stage of registration transaction in point of process and cost. The period of real property acquisition is about three months for countries not dependent on condition (e.g. Germany, France etc.) and six months for countries dependent on special condition and permission (e.g. Japan etc).

### 3. THE PROFILE OF REAL PROPERTY ACQUISITION OF FOREIGNERS IN TURKEY UNTIL TODAY

In Turkey, touristic and historical places are dense particularly in the regions of Aegean and Mediterranean. Indeed, areas in which foreigners acquire real property are also mostly located in these regions. Investors have consisted of retired people over the middle age. The average price of houses acquired is 70000 US\$. These people have preferred identical region to live together. Besides, they have preferred to purchase villa or to build dwelling by buying estate. The location of preference regions in which citizens of selected some countries acquire real property in Turkey is given in Figure 3 (Kas, 2003).



**Figure 3:** Regions Preferred by Foreigners in Turkey

The main regions in which mentioned citizens acquire real property are also given in Table 3 (Kas, 2003).



Countries	Regions in which real property is acquired
Germany	Kaş, Kalkan, Antalya, Alanya
England	Fethiye, Dalyan, Üçhisar
Netherlands	Alanya, Kaş
France	Ürgüp, Göreme
Norway	Foça
Japan	Antalya
Italy	Üçhisar
Belgium	Üçhisar, Cappadocia

**Table 3:** Main Regions in Which Foreigners Acquire Real Property in Turkey

#### 4. A NEW VISION FOR REAL PROPERTY ACQUISITION OF FOREIGNERS

The shortage of natural resources such as land, water and air requires the privileged supplying of these resources to the common service of all communities. Today, it is commenced to use the concept of *international public good* for these common worthies of mankind (Uzun, 1999). Therefore, these limited natural resources should not be left to the infinite and limitless ambitions of people. Particularly, land should subject to ownership restricted with requirements of real and legal entities needed and, its policy should be developed compatible with sustainable environment. So, that real property acquisition of both citizens and foreigners are brought the restrictions in point of location, number and area is inevitable.

In this context, it is required to answer the following paradoxical questions existed as barrier in the peoples' mind: *Does the citizenship concept lose its importance? Should the right of infinite ownership acquisition be given? Is the world going towards a unique country?*

The responses of these questions should be searched in the globalization phenomenon. This concept which can be defined as fast circulation of information and money and affecting each other in mutual of countries will gradually carry the cultural and economic diversities existed among countries to the common standards in future. Thus, the civilizations adopting the satellite technology will replace the civilizations dependent on soil. As a result of this, it is considered that the demand of real property acquisition of any real and legal person in any country will be met as innocent request.

#### 5. CONCLUSION

In the world, countries can be classified in developed industry societies and developing agricultural societies. It is normal that there are more limitations in giving right of real property acquisition to foreigners in agricultural societies compared to developed countries. These limitations should be regulated more flexible in city centers but more carefully in rural areas appropriate to special conditions of countries.

It is seen that giving of right of real property acquisition to foreigners especially after democracy processes of developing countries are completed will be unavoidable. Besides, the providing of capital accumulation required by developing countries is also possible with the presence of government guarantee in the acquisition of real properties needed by foreign investor and tourism sector.

In conclusion, being directed towards a more flexible understanding in place of arranging restrictive judgments dependent on the understanding as rigid as black-white discrimination in the topic of real property acquisition of foreigners has been seen as the inevitable result of the globalization world. Thus, this understanding will develop a common world culture and shareable environment.

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