



Development and management of private property rights on coastal areas



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ABSTRACT

In Turkey, the coast is defined as the area between the shore line and the shore border line (SBL). The determination of the SBL is important in terms of both designating the boundary of coastal areas on the side of land and indicating the starting boundary of private property. From the perspective of property, it has been adjudged primarily in the Constitution and other related laws and regulations that the coasts are under the sovereignty and at the disposal of the state, that public welfare shall be pursued above all in benefiting from these areas and that all are free and equal to benefit from them. Nevertheless, coasts have become the subject of private property in the absence of Constitutional and legal regulations or before the determination of the SBL. The issue in question is also applicable to the Black Sea boundary of the Artvin Province. SBL detection work, which began with 36.2 km of Artvin shores in 1975, was completed only in 2012. The completion of SBL detection over approximately 40 years has led to the formation of private properties along the coast of the Artvin province.

The aim of this study is to detect the property structure and the size and distribution of land use along the coast of the Artvin province using Geographic Information Systems and to provide a new approach for transferring real estate infringing on the SBL to public use. In the conducted research, 209 parcels on the coast were found to infringe on the SBL partially or completely. Furthermore, both public institutions and citizens were determined to have used coastal areas in a way that infringes on the SBL, and there has been a lack of cooperation between the cadastre and the institutions responsible for the determination of the SBL. Lastly, in the transfer process of real estate on the coast to the public, a new approach has been presented regarding the undertaking of public expenses due to the annulment of title deed registries by both the government and the owners of real estate.

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1. Introduction

Whereas the coast is defined in the conceptual sense as the soil type that surrounds all types of natural water masses, such as sea, lakes and rivers, or the contact point between the lowest line of the sea and the land (Kay and Alder, 1999), it is legally defined in Turkey as the area between the shore line and the shore border line (SBL) (Özhan, 1996). Therefore, the coastal area is changeable on the side of the sea and encircled by a fixed SBL on the side of the land (Ferudun, 2009). With respect to detecting coastal areas, it is of vital importance to determine the SBL, which creates a boundary for the coast on the side of the land. Coastal Law 3621 in Turkey defines the

SBL as “the natural boundary of areas with sand, gravel, rock, stone, swamp and similar areas formed by water flows in the direction of the land after the coastline, on the coastal sections of seas, natural and artificial lakes and rivers”. In addition to being a legal prerequisite to carrying out planning and implementation on the coast and shore line, the determination of the SBL also brings about some important legal consequences in terms of the determination of the boundary where private property ends on the side of the sea as a result of the legalization of this line (Akıncı et al., 2010; Uzun and İnan, 2010). With the determination of the SBL, plots of land for which the legal status related to coasts is implemented emerge legally and de facto (Çoban, 2009).

When determined coastal areas are approached from the perspective of property, it has been adjudged primarily in the Constitution and other related laws and regulations that coasts are under the sovereignty and at the disposal of the state, that public welfare shall be pursued above all in benefiting from these areas

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and that all are free and equal to benefit from them. In the 1982 Constitution, Article 43, titled Utilization of the coasts, specifies that “Coasts are under the authority and disposal of the State. In the utilization of sea coasts, lake shores or river banks, and of the coastal strip along the sea and lakes, public interest shall be taken into consideration with priority. The width of coasts and coastal strips according to the purpose of utilization and the conditions of utilization by individuals shall be determined by law”. Further, it has been stated that coasts cannot be subject to private ownership; the use of coasts and shorelines, which are their complement, shall be contingent upon public benefit (Özhan, 1996; Yavuz Özalp et al., 2013). The fact that coasts cannot be subject to private ownership was also stated in the 715th Item of Turkish Civil Code 4721, which came into effect in 2001 with the provision “Ownerless properties and estates belonging to public welfare are under the provision and possession of the government. Unless otherwise proven, nonarable lands such as waters and rocks, hills, mountains, glaciers and the resources extracted from these are not in the possession of anyone and cannot be subject to private property under any circumstances”. Within this framework, the 14th Item of Land Register Law 2644 and the 16th Item of Cadastre Law 3402 also state that coasts are under the provision and possession of the government. In sum, it is clearly stated in the current legislation that the coasts shall remain outside the concept of private ownership; they cannot even be under the ownership of the treasury. When Continental Europe is examined, it is observed that the coasts are characterized as public property, no private ownership acquisition can be made upon them and they are considered areas open to the use of everyone (Bostanoğlu, 1993). Legal systems in many countries accept sea shores as common property that cannot be subject to private use. In countries including Belgium, France, Germany, Greece, Italy and Spain, where the legal system mostly relies on Roman Law, sea shores are characterized as common property for all and considered a government-owned depository for public welfare (FAO, 2006). Similarly, in the Integrated Coastal Management (the ICM) Act of South Africa, it is clearly stated that ownership of public properties on the coasts belongs to the public and these lands cannot be transferred, seized, sold or acquired with prescription. This Act authorized the government not only to manage and protect sea shores but also to ensure that they can be used by all citizens and not just by a few people or a group (Celliers et al., 2009). Moreover, the Marine and Coastal Area (Takutai Moana) Act (MCAA) of New Zealand, passed March 24, 2011, also emphasized that neither the Crown nor any other person can claim any ownership over common marine and coastal areas. The MCAA protects the public rights of access, navigation and fishing within these areas.

The coastal areas in Turkey are unplanned both spatially and ecologically, being exposed to the intense pressure of urbanization, industry, secondary residences and tourism. As stated by Kurt (2015), the trend of coasts becoming the center of attraction for people has been expedited, especially since the Industrial Revolution. The expansion of development and settlements areas and the promotion of tourism activities along the sea shorelines of Turkey have increased the population pressure on the coast and caused these areas to be seen as an alternative income/economic resource. These activities have caused intensive usage, degradation and infringement of coasts, particularly within urban areas. In addition, some coasts became the subject of private ownership without Constitutional and legal regulations or before the determination of the SBL. All of these mentioned problems have led to the usage of shoreline areas by only certain sectors or groups. In contrast, they should be open to everybody. Therefore, it is important to identify and characterize the private properties on the coastal areas. Doing so should ignite efforts to transfer such private ownership to public

use.

Because it is surrounded by the Mediterranean, Aegean and Black Seas on three sides, the mentioned issues of private ownership are quite common in Turkey. Thus, many studies in the literature have analyzed coastal areas in terms of their usage and ownership. For instance, Pala (1975), Özhan (1996), Sesli and Akyol (1999), Esener (2005), Ferudun (2009) and Şimşek (2010) have evaluated the legal status of coastal areas and the process of being subject to private ownership in terms of existing legislation. Uzun and İnan (2010) have studied the lawsuits submitted to the European Court of Human Rights (ECHR) in relation to the land title annulment of real estate occupying the coasts. In a study carried out in the Trabzon Province, Akyol and Sesli (1999) have addressed parcels infringing on the SBL in two separate coastal strips where structuring is intensive in terms of ownership. Examining the parcels in terms of their ownership and characteristics, Sesli (2005) detected that 104 parcels were infringing on the SBL over a coastal strip of 14 km in Trabzon. In another study carried out in Samsun by Sesli et al. (2010) analyzes parcels infringing on SBL in terms of ownership and characteristics. Çete et al. (2011) have suggested that scientific criteria must be taken into consideration in the determination of the SBL. In another study, Akıncı et al. (2012) emphasized the need for spatial data infrastructure in the management of coastal areas and developed web services that automatically prepare documents to be presented to the Civil Courts of General Jurisdiction with respect to issues regarding the land title annulment of real estate occupying the coasts. Uzun and Çelik (2014) put forward suggestions directed towards lowering the compensation burden, which occurs due to the purge of coasts from private ownership and the annulment of land titles.

However, there are some issues that were not taken into consideration in these studies, including the conflict between the SBL detection and cadastre finalization dates for the infringing parcels, whether the parcels being subject to land title annulment are in planned or unplanned areas, how the ownership and characteristics of parcels detected on the coast are affected in the case of land title annulment and how the parcels subject to compensation due to land title annulments should be utilized.

In this study, the 36.2 km coastline along the districts of Arhavi and Hopa located on the Black Sea shore of Artvin Province was addressed, and the property structures and the size and distribution of area usage along the coast were detected utilizing Geographic Information Systems (GIS). Moreover, some approaches were determined and suggested for the transfer process of parcels in private ownership on the coast to the public considering their cadastre finalization dates and whether they are in planned/unplanned areas.

2. Material and method

2.1. Study area

This study was carried out on the coastlines of the districts of Hopa (27.1 km) and Arhavi (9.1 km) on the Black Sea shore of the Artvin Province, amounting to a total length of 36.2 km that stretches from the Georgia border to the Rize Province border. The field of study consists of 17 administrative units, including 7 villages (Sarp, Üçkardeş, Liman, Esenkıy, Sugören, Çamlıköy and Güngören), 9 neighborhoods (Bucak, Orta Hopa, Merkez Kuledibi, Sundura, Aşağı Hacılar, Yukarı Hacılar, Musazade, Boğaziçi and Kale) and 1 town (Kemalpaşa). The field of study is geographically located between 41°19'59"–41°31'13" northern latitudes and 41°15'20"–41°32'52" eastern longitudes (Fig. 1).

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