

**C.E.D.R.**



**European Council for Agricultural Law  
Comité Européen de Droit Rural (C.E.D.R.)  
Europäisches Agrarrechtskomitee**

**XXV European Congress and Colloquium of Agricultural Law  
Cambridge – 23 to 26 September 2009**

**XXVe Congrès et colloque européens de droit rural  
Cambridge – 23 au 26 septembre 2009**

**XXV. Europäischer Agrarrechtskongress mit Kolloquium  
Cambridge – 23. bis 26. September 2009**

**Commission III**

**National Report – Rapport national – Landesbericht  
Turkey**

Scientific and practical development of agricultural law in the EU,  
in countries and in the WTO – Développement scientifique et  
pratique du droit rural dans l'UE, dans les pays et dans l'OMC –  
Wissenschaftliche und praktische Entwicklung des Rechts des  
ländlichen Raums in der EU, in den Ländern und in der WTO

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**Commission III**

**Report for Turkey**

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<b>Abstract.....</b>	<b>4</b>
<b>A. Main Legal Developments .....</b>	<b>5</b>
<b>1. Rural Structure and Economy Law .....</b>	<b>5</b>
1.1. Objectives of agricultural policies .....	5
1.1.1. Agricultural production .....	5
1.1.2. Agricultural marketing .....	6
1.1.3. Biological diversity .....	7
1.1.4. Food and nutrition.....	7
1.1.5. Producers' organizations .....	7
1.1.6. Rural development .....	7
1.2. Principles of agricultural policies .....	8
1.3. Priorities of agricultural policies .....	8
<b>2. Rural-Environmental Law .....</b>	<b>9</b>
<b>3. Rural Food and Nutrition Law.....</b>	<b>9</b>
3.1. General Turkish Food Law .....	9
3.2. Law no. 5179 .....	10
<b>4. Law of the Rural Land Use and Land Planning.....</b>	<b>11</b>
4.1. New Turkish Civil Code .....	11
4. 2. Land Conservation and Land Use Code .....	12
4.2.1. General.....	12
4.2.2. Land conservation board .....	13
4.2.3. Determination of land asset and classification of agricultural lands	13
4.2.4. Conduct of land use plans .....	14
4.2.5. Preparation of land use plans for agricultural purposes .....	14
4.2.6. Preparation of land conservation projects .....	14
4.2.7. Land use for non-agricultural purpose.....	15
<b>5. Rural Tax Law.....</b>	<b>16</b>
5.1. Taxation of agricultural income.....	16
5.2. Taxes collected on agricultural lands .....	16
<b>6. Rural-Social Law .....</b>	<b>17</b>
6.1. Labor and working conditions.....	17
6.2. Social security .....	18
6.2.1. Self-employed workers working in their name and for their account	18
6.2.2. Agricultural workers employed in agricultural sector .....	18
<b>B. Opportunity to Develop and Apply Laws .....</b>	<b>19</b>
<b>C. Success in Application of Laws .....</b>	<b>19</b>
<b>D. Present Tendencies.....</b>	<b>20</b>
<b>E. Role of EU and International Legislation.....</b>	<b>20</b>

## Abstract

Legislations about rural sector in Turkish agricultural law follow a specific development path and is divided into two in general. In the first of them, the legal matters related to agriculture sector are regulated by the adopted special acts while in the second one, the matters related to agriculture sector are covered under the adopted regulation of general nature. No special legal regulations have been made regarding rural economy, rural structure, rural environment, food and nutrition, tax and social areas but such areas have been considered within the scope of the legislations of general nature.

The legal studies regarding agricultural sector in Turkey have been limited to regulations contained in common law for several years except just a few special codes. Upon commence of EU membership activities, several codes of special nature have been adopted during recent 15 years in line with realization of legislation alignments in order to ensure compliance with common agriculture policy. Although essential developments have been achieved with the legislations adopted during the process of adaptation to the EU, such developments have rather occurred for the realization of adaptation commitments made to the EU and international commitments. The EU legislation has had effects on legislation related to agriculture sector, and the effect of World Trade Organization has remained at limited levels.

Concrete needs of agriculture sector have not been taken into account in legislations but only adaptation to the EU and fulfillment of international commitments in terms of form have been paid priority. As compliance in form has been paid priority, institutional structures aiming at putting such legislations into practice have not be established. And this case has prevented establishment of doctrine and case law in connection with the matter.

In conclusion, since the legal regulations in Turkish Agricultural Law have remained at the level of theory and forms, it is failed to put them into practice, which creates adverse impacts in development of agricultural structure and international competition, and most importantly, endangers plans for adaptation to the EU Common Agriculture Policy. Therefore, it is necessary to establish institutional structures which will assure putting into practice the legal regulations with political stability so as to take concrete steps by means of making regulations in order to provide compliance with the EU and fulfillment of international commitments.

## A. Main Legal Developments

### 1. Rural Structure and Economy Law

Turkish agricultural law does not contain separate private legal regulations about economy, food, taxation and social structure related to rural sector. The said matters have been directly related to agricultural policies and Agriculture Code no. 5488 which is in the nature of frame law was adopted on 25.04.2006 in order to regulate the rural structure. The code was adopted in order to specify the required policies so as to develop and support agricultural sector and rural areas in line with development strategies and thus to provide regulations accordingly. The Code specifies the frame of agricultural policies in general and determines the purposes, principles and implementation procedures for agriculture supporting programs. It contains market regulations relating to implementation of envisaged programs, priority R&D programs to be implemented in rural areas and requirements for financing the programs. In addition it has been envisaged to make legal and administrative regulations which will specify the procedures and conditions of administrative organization related to implementation of the programs.

Ministry of Agriculture and Rural Affairs is recognized as the sole authorized authority in making policies related to agriculture sector, planning, coordination and implementation of the policies. The objectives of the agricultural policies related to development of rural organization under the code are discussed below.

#### 1.1. Objectives of agricultural policies

Lack of legal rules specifying scope and limits of the agricultural policies implemented until present in Turkey has led to failure to achieve what expected from the policies. For that reason, Agriculture Code has firstly specified the objectives of agricultural policies.

The objectives of the agricultural policy are grouped under 6 basic items.

General Objectives	Tools
Agricultural production	Development of agricultural production as per domestic and foreign demand
	Increasing efficiency
Agricultural marketing	Strengthening agriculture markets
Biological diversity	Protection and development of biological resources
	Protection and development of natural resources
Food and nutrition	Food safety
	Strengthening food safety
Organization	Improvement of producer organizations
Rural development	Providing rural development
	Increasing welfare in agricultural sector by rural development

##### 1.1.1. Agricultural production

The Code specifies the objectives of the agricultural production as development of production as per domestic and foreign demand and increase of efficiency. For that purpose,

priority has been paid to principles about agricultural researches and training of farmers, extension and consultancy services. It is aimed to develop agricultural knowledge and technologies needed by rural areas in the country, to transfer knowledge and technologies from foreign countries, to try them and ensure adaptation and extension of them. For this purpose, regulations providing qualification of specialists and development of research infrastructure in order to maintain agricultural research activities of public and private sector efficiently and effectively. Measures to reinforce the cooperation with relevant entities, organizations and enterprises in research activities have been taken. In this context, Regulation about Regulation of Agricultural Extension and Consultancy Services has been adopted in order to specify the procedures and principles related to meeting the needs of agricultural enterprise owners in knowledge, techniques and methods in due time and at sufficient level.

The Regulation also specifies private extension consisting of “non-governmental organizations, chambers of agriculture, agricultural consultancy companies and self-employed agricultural extension” in addition to public extension services. It stipulates the principles, strategies and programs of agricultural extension and consultancy services, and trainings in details. The Regulation also covers certification of private agricultural extension executors, definitions of their duties and responsibilities and the sanction to be implemented.

In addition, procedures and principles about farmers’ informing activities to be made under the frame of trade activities of the organizations receiving and giving input from and to agriculture have also been regulated for the first time.

Contract farming has been recognized as another tool serving for purpose of development of agricultural production, and the main rule of granting agricultural supports to those carrying out contract farming has also been adopted.

Furthermore, Regulation about Procedures and Principles for Contract Farming was adopted on 26.04.2008 in order to specify the implementation principles about contract farming. The Regulation stipulates the procedures and principles about “Agricultural Production Contract” to be concluded by and between producers making agricultural production and producers’ organizations and real and legal persons buying their products.

The Law also covers the provisions about production activities in the locations specified as agriculture basins in regard to agricultural production. Agricultural basins are specified by the Council of Ministers upon proposal of the Ministry for conduct of agriculture in a manner providing concentration in locations, support, organization and integration of production in compliance with ecology of its own. Although any regulations stipulating principles and conditions about the agricultural basins have not been adopted yet, the works in regard to the matter are in progress.

### 1.1.2. Agricultural marketing

The Law also regulates establishment of product councils for strengthening agricultural markets in line with the objectives of agricultural policies regarding agricultural marketing and also agricultural production. Accordingly, producers, merchants, industrialists and/or non-governmental organizations such as the associations established by them and public and research entities, professional chambers and associations may come together and establish product councils of legal personality on a product base under the frame of National agriculture policies.

Foundation and Working Conditions of Tea, Hazelnuts, Cotton, Milk, Orange and Olive have been specified based on the provisions stipulated under the Law. Councils have been founded on the basis of the said products after formation of legal infrastructure by these regulations.

### 1.1.3. Biological diversity

Another purpose of the agricultural policies as per the Agriculture Code is to protect and develop the natural and biological resources. The duty of taking measure regarding protection and development of biological diversity, genetic resources and ecosystems is assigned to Ministry of Agriculture and Rural Affairs under the Code. It is also clearly stipulated that it is the Ministry that will make the required provisions about protection, record, registration, production, consumption, use as food, export and import of the products produced by means of biotechnological ways or various improvement methods under the scope of intellectual property rights. In this context, Code about Protection of Improver's Rights for New Plant Varieties adopted to encourage development of plant varieties was put into effect on 15.01.2004.

On the other hand, the Seed Law adopted to increase yield and quality in crop production, to provide quality assurance for seeds, to make arrangements for the seed production and its trade, and to implement necessary arrangements in order to reorganize and improve seed sector was put into effect on 08.11.2006. The Law covers regulations with reference to the variety and germplasm registration of field crops, fruits, ornamentals, vegetables, plant species in forest and propagation material of other plant species, and production, certification, trade, market inspection of seeds, and institutional organizations.

### 1.1.4. Food and nutrition

The Agriculture code also lists reinforcement of food assurance and food security among the purposes of the agricultural policies but the Code does not cover any special provisions about this matter. In addition, no reference has been made to general food legislation established comprehensively and in details in this matter as Turkish agricultural law does not have a specific food and nutrition legislation related to rural and agricultural sector.

### 1.1.5. Producers' organizations

Agriculture purposed cooperatives and unions established by producers based on various codes are also inevitable target groups in implementation of agricultural policies. For that reason, support and direction of agriculture organizations in line with the policies are considered under scope of Agriculture Code. For that reason, Law about Producers' Unions adopted to plan agricultural production according to demand, to improve product quality, to market the products in compliance with standards, to ensure taking measures increasing strength of marketing products at national and international scale was put into effect on 06.07.2004.

The Law covers provisions about establishment, functioning, management, duties and auditing of the agricultural producers' unions. Regulation about Procedures and Principles of Agricultural Producers' Unions specifies detailed procedures and principles about the product and product group to be based for establishment of such unions, fixing total production amount of the union on product basis and harmonization of existing agricultural organizations.

### 1.1.6. Rural development

Being one of the main objectives of the agricultural policies, rural development has also been regulated in details under Agriculture code. Measures for development of employment in and outside agriculture in rural areas, increase and diversification of incomes, enhancement of education and entrepreneurship level of women and youth have been taken in line with the provisions of the Code.

Under various regulations in Turkish agricultural law, the Ministry of Agriculture and Rural Affairs has been carrying out the activities for rural development programs, making regulations about projects and activities and providing coordination among various organizations. However,

it is understood that no specific division has been established within the Ministry of Agriculture and Rural Affairs to carry out activities in rural development, and that a special entity should be established outside the Ministry in order to conduct any activities related to the matter under the scope of EU alignment works. For that purpose, Law about Establishment and Duties of Agriculture and Rural Development Support Agent was adopted on 18.05.2007 and Agricultural and Rural Development Support Agent was established.

The Law stipulates the procedures and conditions for duties, powers and responsibilities of Agricultural and rural development Support Agent established to carry out the activities related to implementation of rural development programs under the frame of principles and objectives envisaged under the national development plan, program and strategies.

## **1.2. Principles of agricultural policies**

The Agriculture Code stipulates the principles of agricultural policies as follows:

- Integrated approach in agricultural production and development.
- Harmonisation with international commitments.
- Utilization of tools not distorting market mechanisms.
- Organization and Institutionalization.
- Enhancement of role of private sector.
- Sustainability, human health and environmental sensitivity.
- Decentralized management.
- Participation.
- Transparency and informing.

## **1.3. Priorities of agricultural policies**

The Agriculture Code stipulates the priorities of agricultural policies as follows:

- Enhancement of productivity, product diversity, quality and competitiveness in agricultural production
  - Providing adequate and reliable food supply
  - Improvement of infrastructure of agricultural enterprises.
  - Spreading use of information and technologies in agricultural activities.
  - Improvement of agricultural input and product markets and providing production-market integration
- Direction of agricultural production in line with agriculture-industry integration.
- Providing regulations meeting borrowing and financing needs of agriculture sector.
  - Taking subsidizing and direction measures.
  - Development of risk management mechanism against natural disasters and animal diseases.
- Improvement of rural life in terms of socio-economic aspect.
- Improvement of producer organizations
- Establishment and use of agriculture information systems.

- Conduct of consolidation, land use plan and establishment of agriculture operations of economic size.
- Improvement and rational use of land and water resources.
- Making administrative and legal regulations envisaged by common market orders in a manner meeting the needs arising from developments during alignment with European Union.

## **2. Rural-Environmental Law**

Turkish Agricultural Law does not contain any special legal regulation directly related to rural environment. For that reason, rural environment matter other than “protection of agricultural lands for environmental purposes” put into practice with Agriculture Code is handled under common environmental law regulation.

General regulation about environment in Turkish Law consists of Environment Law no. 2872 adopted on 11.8.1983 with International Agreements countersigned by Turkey, and implementation regulations in effect pursuant to the Environment Law. The provisions about protection of agricultural lands for environmental purposes have been stipulated under “Implementing Regulation about Subsidizing Producers Choosing Program for Protection of Agricultural Lands for Environmental Purposes and Grant of Technical Aids to Those Producers”. The Implementing Regulation stipulates procedures and conditions about the required cultural measures to be taken for protection of land and water quality, sustainability of renewable natural resources, prevention of erosion and mitigation of adverse impacts of agriculture. The Implementing Regulation aims to ensure re-establishment and sustainability of ecological balance in sensitive regions threatened by deformation and pollution.

Protection program for environmental purposes provides supports for certain periods in order to encourage producers engaged in activities in agricultural fields exposed to erosion and adverse environmental impacts in line with environment prioritized purposes. The said subsidies are paid under the contracts concluded by and between Ministry of Agriculture and Rural Affairs and producers. Amount of subsidies is fixed according to the amount of land to be allocated for the program by the producers.

## **3. Rural Food and Nutrition Law**

Turkish Agricultural Law does not contain any specific legal regulation related to food and nutrition in rural areas. For that reason, the issue of rural food and nutrition is considered under the general Turkish Food Legislation.

### **3.1. General Turkish Food Law**

The first legal regulations about foods in Turkey were made after declaration of the Republic. Although not directly related to foods, “Municipality Law” no. 1580 put into effect on 14.04.1930 contains provisions about inspection of foods. Also “General Public Health Law” no. 1593 put into effect on 06.05.1930 stipulates provisions about inspection and control of food under articles 181-199.

As these two Laws envisaging various provisions about food are insufficient, “Food Regulation” and “Foodstuff Regulation” were put into effect in 1942 and 1952 respectively. Foodstuff Regulation, some articles of which are still in effect, contains provisions about

characteristics of foodstuff, and provisions specifying when they will be deemed deformed or faked or debased.

No specific food law was adopted until 1961 but Constitution of 1961 contains a special provision about foods, Article 51 of the Constitution of 1961 stipulates the provision of "The State shall take the necessary measures to provide the people with adequate nourishment, to assure an increase in agricultural production to the benefit of the society, to prevent erosion, to enhance the value of agricultural products and the toil of those engaged in agriculture." Therefore, any and all authorities and responsibilities have been vested onto the State as a Constitutional duty in regard to agriculture and food field in general. During effect period of Constitution of 1961 no food code of general nature was made until 1995 to specify principles and conditions for inspection in regard to food has been made to collect under one frame the different regulations stipulated under various laws regarding performance of food services. Any activities related to foods were conducted under the then existing Law and Statues as well as Implementing Regulations and other legal arrangements made and adopted based on the legislation by 1995.

However, when the then existing regulations started to be insufficient for conduct of food services and when new developments occurred in international area, it has become necessary to make specific legal regulations in the nature of frame. For that reason, on 28 June 1995" Decree By-Law about Production, Consumption and Inspection of Food" no. 560 was adopted.

The said Decree no. 560 has provided several essential novelties in terms of any and all duties, responsibilities and authorities regarding conduct of food services. It has been the first time that principles about requirements for establishment of food producing enterprises, employment of responsible food specialists in such enterprises, principles about establishment of Turkish Food Codex and requirements for inspection of food producing enterprises. In addition, several implementation regulations were adopted and put into effect on various dates in order to ensure implementation of the said Decree By-Law.

International developments, the novelties occurring in food quality conditions, the requirements for control of technical operations such as processing, packing, storing and marketing foodstuff, new concepts such as "food safety" and "protection of consumer" have all made necessary to issue a specific legal regulation regarding food services. For that reason, on 05.06.2004 "Law about Amendment and Adoption of Decree By-Law about Production, Consumption and Inspection of Food" no. 5179 was adopted. Some implementing regulations envisaged under the Law were adopted and an effective food legislation was provided in order to ensure implementation of the Law.

### **3.2. Law no. 5179**

Law no. 5179 has regulated the terms related to food law not having any legal regulation. In addition to the concept of food safety, it also contains new terms such as "National Food Assembly" "crisis management", "traceability". Law no. 5179 is important in that it is the first specific legal regulation adopted in food sector in the Turkish Law. The Law vests any and all responsibilities regarding food services onto Ministry of Agriculture and Rural Affairs. In other words, no special administrative division has been envisaged to assume any and all powers and responsibilities for effective implementation of the established legislation. No such institutional body has been formed in the Ministry either.

Law no. 5179 is in the nature of "frame law" in maintaining performance of food services. For that reason, it has not been chosen to regulate any and all services and activities envisaged under the Law in details but the principles and conditions to be observed during execution of the Law has been left to Implementation Regulations.

## 4. Law of the Rural Land Use and Land Planning

Legal regulations about rural lands and planning use of such lands are mainly provided in two codes. First of them is New Turkish Civil Code no. 4721 put into effect on 1 January 2002 and the second one is the Code about Land Conservation and Land Use no. 5403 put into effect on 19.07.2005. The Agricultural Reform Code about Regulation of Lands in Irrigation Areas no 3083 put into effect in 1983 has only a limited implementation area confined to reform areas deemed as implementation area.

### 4.1. New Turkish Civil Code

The most important provisions of New Turkish Civil Code no. 4721 about rural lands are those relating to pass over of agricultural operations by way of inheritance. The fact that the agricultural lands are so separated that they cannot even provide making life of one family is deemed to be result of equal sharing principle adopted by Turkish Inheritance Law. Actually, 55% of total number of agricultural lands plots and about 50% of total land asset is less than 50 decares. Accordingly, about 60% of total land assets have been divided into 4 and more parts. Average number of parts per an agricultural operation is 4.

Schedule 1 – Status of agricultural holdings by size of holdings and number of parcels in Turkey

Size of holdings (Decares)	Total number of holdings	(%)	Total number of parcels	(%)	Total area (Decares)	(%)
5-9	468.467	<b>15,50</b>	956.687	<b>7,76</b>	2.434.458	<b>1,32</b>
10-19	539.816	<b>17,86</b>	1.650.312	<b>13,39</b>	7.378.022	<b>4,00</b>
20-49	950.840	<b>31,46</b>	3.831.683	<b>31,09</b>	29.531.619	<b>16,02</b>
50-99	560.049	<b>18,53</b>	2.836.069	<b>23,01</b>	38.127.032	<b>20,68</b>
100-199	327.363	<b>10,83</b>	1.881.198	<b>15,27</b>	43.884.395	<b>23,81</b>
200-499	153.685	<b>5,09</b>	997.015	<b>8,09</b>	42.075.497	<b>22,82</b>
500-999	17.429	<b>0,58</b>	135.983	<b>1,10</b>	11.218.554	<b>6,09</b>
1000-2499	4.199	<b>0,14</b>	32.760	<b>0,27</b>	5.476.930	<b>2,97</b>
2500-4999	222	<b>0,01</b>	1.189	<b>0,01</b>	695.541	<b>0,38</b>
5000+	57	<b>0,00</b>	509	<b>0,00</b>	3.526.175	<b>1,91</b>
<b>Total</b>	<b>3.022.127</b>	<b>100</b>	<b>12.323.405</b>	<b>100</b>	<b>184.348.223</b>	<b>100</b>

The specific regulations about transfer of agricultural operations by inheritance were stipulated under articles 597 - 602 of Turkish Civil Code of 1926 no. 743. The provisions therein has been inadequate to prevent separation of agricultural lands by inheritance as voluntary sharing applicable in case of request of successors was taken as basis. For that reason, articles 659 - 668 of the new Turkish Civil code no. 4721 put into effect on 1 January 2002 stipulates regulations and provisions in details in order to prevent separation of agricultural operations by inheritance. According to the new regulations, an agricultural operation of economic integrity and

adequate agricultural asset in the succession is allocated to the successor qualified to run the operation if requested so by him/her, on the income value of it without separation thereof.

Determination if an agricultural operation is of economic integrity and adequate agricultural asset is conducted in accordance with provisions of Implementing Regulations about Determination of Agricultural Asset Adequacy of Agricultural Operations adopted on 26.01.2003. If the agricultural operations being subject of inheritance has more than one adequate agricultural asset without decrease in its value, then the court can allocate the operation separately to more than one successors qualified to run the operation if requested so by them. The provisions envisaged for agricultural operations are not only for immovable properties but also for movable properties. Accordingly, the successor may also request allocation of properties such as tools, instruments and animals required for operation at the value for the operation. In case of objection by any one of the successors against the allocation or in case of more than one requester, the judge shall decide on the successor for whom the allocation will be made based on the personal capabilities and status of the persons. The successor who wishes to run the operation himself/herself and whose qualification has been understood will be granted priority. In case none of the successors request allocation of the agricultural operation for him/her integrally or in case of dismissal of allocation request, then each of the successors shall be entitled to request the sale of the operation as a whole. In other words, in case none of the successors request allocation of the agricultural operation, then it is still not possible to share the inheritance equally. Because pursuant to Law no. 5403 plot size of the agricultural land of adequate size not to be divided into smaller size and having the smallest area allowing conduct of agricultural activity in terms of economics has been specified by the Ministry. The agricultural lands having the said specified minimum area are of non-divisible property in inheritance law. The agricultural lands having minimum area is 2 hectares for absolute agricultural lands and private product lands, 0,5 hectare for cultivation lands, 0,3 hectare for agricultural production under cover and 2 hectares for marginal agricultural lands according to the classes of the lands.

Divisions of agricultural lands into ones less than such sizes or separation into smaller plots have been banned. In case the agricultural lands of non-divisible size are subject to inheritance and they have share possession in any way whatsoever, division of such lands is still banned.

## **4. 2. Land Conservation and Land Use Code**

### **4.2.1. General**

Although Turkish law adopts different legal regulations regarding general planning, no special regulation has been made regarding planning of rural areas. For that reason, Code about Land Conservation and Use of Fields no. 5403 was adopted in order to specify the provisions enabling use of them in a planned manner in compliance with the principle of protection, improvement and sustainable development with environment priority of the lands by means of prevention of land degradation through natural or artificial ways and loss of nature. The Code stipulates provisions regarding planning of use of agricultural fields, determination of final borders of existing agricultural fields and title registration of agricultural lands. It stipulates provisions for classification of agricultural fields, determination of land plot sizes and prevention of use of agricultural lands for purposes other than agricultural purposes as well as administrative fine sanctions to be imposed onto those breaching those provisions in details. Under Article 8 of the Code plot size of the agricultural land of adequate size not to be divided into smaller size and having the smallest area allowing conduct of agricultural activity in terms of economics has been specified taking into account the social, economic, ecological and technical characteristics of the areas.

Minimum land widths for lands of adequate size and of non-divisible property nature in inheritance law are given below as per nature of lands.

<b>Type of agricultural land</b>	<b>Size of non-divisible parcel (Decare)</b>
Marginal agricultural lands	20
Absolute agricultural lands	20
Special product lands	20
Planted agricultural lands	5
Cultivation under cover lands	3

#### 4.2.2. Land conservation board

Land conservation boards established to fulfill the duties related to tracking, inspecting and implementing duties regarding land use planning in rural areas are one of the novelties provided by the Code no. 5403. Land conservation boards are established within governor's office in each province. The board chaired by Governor is composed of the department head responsible for agriculture in the province, public entities and organizations having authority to make planning in the province and university representatives, the top representative of the Ministry of Finance in the province, local representatives of professional organizations and non-governmental organizations.

Establishment of land conservation boards is important in terms of handling the land use plans at local scale. The duties of the Land Conservation Boards are described as follows under the Code:

- to conduct studies, assessment and tracking of land conservation, development and efficient use in all activities where land is used.
- to discover the negative results occurring, to take, develop measures related to land conservation and recovery of problems occurring related thereto, to produce opinion for implementation of them.
- In order to direct all initiatives requiring land use, to monitor local plans and project implementation.
- to monitor, assess process of performance of land conservation measures at local scale and to develop problem solving proposals.
- to produce opinion for annual work program on local scale and to follow up putting into practice of them in line with land conservation and land use plans to be prepared.
- to check the consistency between country, regional or local scale plans.
- to receive applications related to the matters stipulated under the Code and to forward them to the concerned authorities.

Pursuant to provisions of Code no. 5403, land conservation boards have been established in 81 provinces since 2005 and works regarding production of land use plans have been started.

#### 4.2.3. Determination of land asset and classification of agricultural lands

The Code no. 5403 stipulates conditions regarding determination of existing land assets. Any duties, powers and responsibilities regarding classification and mapping of land and fields by use of different systems aiming at land conservation and use are vested onto Ministry of

Agriculture and Rural Affairs. The data and information needed in works for determination of land and field assets are collected in cooperation with related entities, organizations and local governments, The land and field information are determined according to criteria specified for agriculture lands on basis of village, town, district, province and country to establish database.

Code no. 5403 classifies agriculture lands as absolute agriculture fields, special product fields, planted agriculture fields and marginal agriculture fields taking into account the natural characteristics and their importance in agriculture. Ministry of Agriculture and Rural Affairs is authorized to make different classifications other than those classifications in connection with agricultural land conservation, development and use.

#### 4.2.4. Conduct of land use plans

Land use plans are prepared by Ministry of Agriculture and Rural Affairs or under coordination of the Ministry. When preparing land use plans, first of all, water potential, land data and land maps are taken as basis for country and regional planning. Types of existing and future potential land uses and their characteristics are determined with participation of concerned public entities and organizations as well as local beneficiaries in line sustainable development principle with environmental priority also taking into account the sector development potential and population status.

Observing the characteristics of the land, the reports and maps indicating types of agriculture lands, pasture lands, forest lands, areas specified under special laws, settlement-industry-tourism areas, social and economic purposed infrastructure facilities and other land use types and sustainable land use at local, regional and country scale pursuant to land use plans based on land and field studies in order to discover the behavior against different uses. Maps, satellite images or air pictures meeting the needs are used in the study, and the discovered data are stored in database.

Use of the agriculture lands contained in the land use plans for purposes other than those indicated in the land use plans except the exemptions specified under the Code is definitely banned.

#### 4.2.5. Preparation of land use plans for agricultural purposes

When preparing land use plans, depth, stone content, slope, location and other physical, chemical and biological features of the lands are taken as basis. Taking into consideration the climate conditions and agricultural activities to be carried out, use of such lands are also determined by agriculture purposed land use plans in a manner not causing land loss and degradation.

The land use plans for agricultural purposes are prepared under responsibility of an expert, by the governors' offices upon receiving opinions of land owners. In case the prepared projects are approved by land conservation boards in respect to economic, ecological and social aspects, they are submitted to governor's office and approved and put into practice by governor's office.

The smallest administrative borders are taken into account in determination of sizes and borders of the lands where the agricultural land use plans are to be applied.

#### 4.2.6. Preparation of land conservation projects

Code no. 5403 assumes natural functions of the land as the basic principle for conservation of land. For that reason, preparation of land conservation projects is compulsory in cases when land loss and land degradation is likely as a result of use of land requiring excavation or filling necessarily except urban settlement areas.

Province Directorate of Agriculture determines if land conservation project is needed in a region and the content of the project by means of conducting soil surveys. The persons conducting soil survey are responsible for deciding if the project is needed. The prepared land conservation projects are approved by Governor's Office and implementation thereof is provided by the Governor's Office.

#### 4.2.7. Land use for non-agricultural purpose

The problem of land use for purposes other than agricultural activities is an important problem continuing in Turkey for several years. Different provisions have been stipulated under the Constitution, various laws and implementation regulations adopted specifically for this matter in order to solve this problem.

Conservation of agricultural lands are listed among the duties of State under Constitution of 1982 but a specific code has not been adopted.

Provisions aiming prevention of use of agricultural lands out of purpose have been stipulated under Implementation Regulations adopted on various dates during the period from 1989 until 2005 when the Code no. 5403 was adopted. However, it was failed to apply such regulations as required, and use of lands out of purpose could not be prevented. The initial legal regulations adopted during the period from 1989 to 2005 and deemed as period of Implementation Regulations have stipulated requirements for allocation of agricultural lands for activities other than agricultural activities. The opinion of agricultural land conservation has been taken into account for the regulations adopted after 2001.

The first regulation aiming at prevention of use of agricultural lands out of purpose was adopted on 11 March 1989. Several amendments have been made to the said regulation until 2005 and 5 separate regulations have been adopted on various dates.

Regulations are inadequate for prevention of use of agricultural lands out of purpose because of the fact that they do not envisage an institutional organ for control and supervision of use of lands out of purpose and that the political government may amend them easily. For that reason, Code no. 5403 stipulates special provisions for this matter in order to regulate matter by a law other than Regulations. Code no. 5403 strictly bans the use of absolute agricultural lands, special product lands, planted agricultural lands and irrigated agricultural lands for purposes other than agricultural production activities. However, it has been agreed that the Ministry may allow use of lands out of purpose for the following activities, provided that there is no alternative and that such request is approved by Land Conservation Boards and further provided that land conservation projects are observed;

- Strategic needs for defense purposes,
- Temporary settlement area need arising subsequent to natural disasters,
- Petrol and natural gas exploration and operation activities,
- Mining activities for which the related ministry has taken decision for public interest,
- Plans and investments for which the Ministries have taken public interest decision,
- Investments to be made in road infrastructure and superstructure activities observing public interest,
- Investments related to use of renewable energy resource areas pursuant to Electricity Market Law no. 4628 dated 20.02.2001 upon request of Energy Market regulatory Authority,
- Geothermal originated technological green-house investments,

Agricultural lands other than absolute agricultural lands, special product lands, planted agricultural lands and irrigated agricultural lands can be allocated for use out of agricultural purposes by the governor's offices, provided that land conservation projects are observed.

Agricultural lands of any class and characteristics can be used in needed amount for structures for agricultural purposes with approval of governor's office, provided that the project requirements are observed.

In addition, the operations which will carry out the above mentioned activities are liable to carry out their activities in a manner not damaging environment and agricultural lands and to restore the lands allocated for them at the end of allocation time.

## **5. Rural Tax Law**

### **5.1. Taxation of agricultural income**

Turkish agricultural law does not contain any special legal regulation related to rural sector taxation. For that reason, taxation of rural sector has not been separated from current Tax laws but subjected to general regulations.

The taxes related to agricultural sector under Turkish law are combined under two points. First of them is the taxation of agricultural income and the second one is the taxes collected on the agricultural lands. Article 2 of Income Tax Law no. 193 deems agricultural income as activities generating income, and stipulates that they are subject to income tax. Article 52 of Income Tax Law defines the term of agricultural earning as “earning generated from any agricultural activities”. The term of agricultural activity is defined as “production of plants, forest, animal, fish and the products of them in lands, sea, lake and rivers by means of planting, cultivation, caring, production, growing and improvement or by direct use of nature, hunting, protection of them by hunters and producers, transportation of them or benefit from the said products in other way”.

According to Income Tax Law, the operation wherein agricultural activities are carried out are called “agricultural operation” and the persons operating such operations are called “farmers”.

Since it is not required to be subject to taxation for being entitled to title of farmer, being operator of an agricultural activity is adequate. The taxation of agricultural earnings is realized by means of deductions on product basis. In case the persons deemed as farmers sell their agricultural products to real or legal persons listed under article 94 of Income Tax Law, income tax deduction is made from the payments made in cash to those persons in consideration of the products.

Tax deduction rate is subject to type of the sold product and if the same is registered in stock Exchange market.

If the animal or animal products are sold upon registration in exchange market income tax deduction at 1%, if sold without registration in exchange market, at 2% is made while the same for other agricultural products is 2% if registered at exchange market and 4% without registration in exchange market.

### **5.2. Taxes collected on agricultural lands**

There is another land taxation applied in rural areas. Land taxation has been stipulated under Estate Taxation Law and has been applied for all areas without distinction between rural or urban area.

The value of tax to be collected on agricultural lands subject to estate taxation is determined according to type, class and use of the land. Agricultural facilities, planted things,

resources and reservoirs other than buildings on the land are also taken into account in this determination. In cases where it is unlikely to determine the value of tax in this way, “yield value” of the land is taken into account.

## **6. Rural-Social Law**

### **6.1. Labor and working conditions**

The legal regulations regulating rural area in terms of social aspects under Turkish agricultural law are studied as labor and working conditions of agriculture workers employed in agriculture sector and social security implementation in agriculture sector. The first Labor Code regulating working life was adopted in 1936 in Turkish Law, which is Labor Code no. 3008. The regulations and implementation regulations issued after adoption of the Code try to establish and effective labor legislation. Labor Code no. 3008 remained in effect for about 35 years and it was terminated by Labor code no. 1475 adopted in 1971 in order to broaden the scope of the Code and stipulate some new principles. Code no. 1475 did not cover agriculture workers. However, agriculture workers were covered for the first time under Labor Code by means of an amendment made on 15.08.2002. Labor Code no. 1475 was abolished by Labor Code no. 4857 adopted on 22.05.2003 because the international commitments of Turkey and new concepts emerging in working life were not met and the then existing Labor Code failed to meet the needs of the time adequately.

Labor Code no. 4857 has brought important novelties in regard to agriculture workers. Article 4 (b) of the code stipulating the works not falling within implementation scope of the Code stipulates that the provisions of the code cannot be applied in “work places or operations where less than 50 workers (50 inclusive) are employed and where agricultural and forest works are carried out”. Thus, it has been stipulated that the work places employing 51 and more agriculture workers will be subject to the provisions of the Labor Code. Since the Code does not define the works not accepted as agriculture works, the Implementation Regulation about the works to be accepted as Industrial, Trade, Agricultural and Forest Works adopted on 28 February 2004 defines the works falling within scope of agricultural works.

In addition, “Implementation Regulation about Working Conditions of Workers employed in Works deemed as agricultural works” adopted on 06.04.2004 stipulates provisions about working and fee conditions, work contracts and arrangement of work for workers employed in works falling within agricultural and forest works.

New Labor Code enables the work places employing 51 and more agriculture workers to benefit from code provisions. However, while applying provisions of Labor Code to agriculture workers, the provisions about permanent-transitory works listed under article 10 of Labor Code and regulations about the provisions applicable to such works should be assessed together. According to Article 10 of Labor Code, employment which, owing to its nature, lasts only up to 30 days is transitory; and employment which requires a longer period is permanent.

In addition, several provisions of the Labor Code are not applicable to transitory works. The transitory works not subject to provisions of Labor Code are subject to provisions of Obligations Code about service contracts. In this case, for agriculture workers be able to benefit from provisions of the Labor Code; the following conditions should occur together:

- (a) They should work in the works stipulated under the Regulation and deemed as agriculture works,
- (b) The total number of workers employed in the work place should be 51 and more
- (c) The works carried out should last 30 days or longer by their nature.

In accordance with these provisions, the workers (agriculture workers) employed in activities deemed as agriculture works are not within the scope of the Labor Code if total number of workers is less than 51. The workers employed in transitory works not falling within scope of the Labor Code are seasonal and migrant agricultural workers.

Turkish agricultural law does not stipulate any legislation regarding seasonal and migrant agricultural workers who are in fact in need of social protection. These workers are employed under the work contract signed by them with the employer under the frame of “contract freedom” principle.

## **6.2. Social security**

Social security applications regarding agricultural sector are subject to different legislations depending on way of performance of agricultural activities under Turkish law. Social security applications covered under the legislations related to agricultural sector consist of two parts.

1. Social security of the self-employed workers working in their names and for their accounts,
2. Social security of agricultural workers employed in agricultural sector.
  - (a) Social security of transitory agricultural workers
  - (b) Social security of permanent agricultural workers

### 6.2.1. Self-employed workers working in their name and for their account

Legislation about social security of the self employed workers working in their names and for their accounts in agriculture sector is the Law about Social Security of Those working in their names and for their accounts in Agriculture adopted on 20.10.1983. The law stipulates the provisions regarding social insurance benefits for the self-employed workers working in their names and for their accounts in agriculture and their successors in case of disability, old age and death.

According to the Law, the self-employed persons working in agricultural activities in their names and for their accounts, not falling within scope of social security organizations and not affiliated to any employer under a contract, the males of 22 ages and women of 22 years of age and the head of the family are deemed as the insured. However, the Law was abolished by the Code about Social Insurances and General Health Insurance no. 5510 adopted on 16.06.2006. Thus, the persons working in their own names and for their own accounts in agriculture sector are also covered by general health insurance.

### 6.2.2. Agricultural workers employed in agricultural sector

Those other than the persons working in their own names and for their own accounts in agriculture are the agricultural workers employed under a service contract.

Social security of agriculture workers have been stipulated separately for “transitory agriculture workers” and “permanent agriculture workers”.

#### ***Social security of transitory agricultural workers***

Social security of agricultural workers working transitory in agricultural works has been regulated under Law about Social Insurance of Agricultural Workers no. 2925 adopted on 20.10.1983. The said Law deems the workers employed under service contract for agricultural works transitory who are not within scope of social security laws.

Social security of all agricultural works employed transitory in private sector is stipulated under the law and those employed in seasonal agricultural works in public sector are not covered within this scope. The most important aspect of the law is that it adopts a system on voluntary basis for social security of transitory agricultural workers working in activities in private sector. However, the substantial part of the Law which was criticized for not envisaging a compulsory system for transitory agricultural works was abolished by the Code about Social Insurances and General Health Insurance no. 5510 adopted on 16.06.2006. Thus, the agricultural workers working transitory in agriculture sector are also covered by general health insurance.

### ***Social security of permanent agricultural workers***

Social security of permanent agricultural workers has been stipulated under Code of Social Insurances no. 506 without any distinction between agricultural workers employed in public or private sector. Code of Social Insurances no. 506 was adopted on 17.07.1964 and stipulated provisions about social security of not only workers employed in agricultural sector but also workers employed in all sectors.

The Code of Social Insurances no. 506 was abolished by the Code about Social Insurances and General Health Insurance no. 5510 adopted on 16.06.2006. Thus, the agricultural works working permanently or transitory in agriculture sector in public sector are also covered by general health insurance.

## **B. Opportunity to Develop and Apply Laws**

During about past 15 years, the effort to make major and substantial changes in legislations about rural areas has occurred in Turkey. This effort envisages a different and a new structure when compared to former one in rural areas. For that reason, it is considerably difficult to decide on the priority or superiority of one to the other of the legislations mentioned in outline above. In this respect, although the legislations adopted in Turkish agricultural law by influence of harmonization with European Union or influence of World Trade Organization, they are important in terms of aiming at solving the problems of agricultural structure continuing for years. It is possible to say that improvement of particularly Agriculture code and Code about Land Conservation and Land Use among the purpose of laws about agricultural sector and regulations provided by the same is the most important in terms of implementation.

The Code about Land Conservation and Land Use is important particularly in respect to determination of existence of agricultural land and realization of land use plans.

Because the most important problem of the agricultural structure of Turkey is that its definite borders of existing agricultural lands in terms of quality and quantity have not been determined. Another important issue is that such lands are used in an unplanned manner. Accordingly, it is also important to determine definite nature and borders of the agricultural policies supporting agricultural activities carried out on such lands.

In this context, when the said two codes are applied in compliance with their purposes and in a permanent manner, the efforts for providing alignment with Common Agriculture Policies of the European Union will find a more successful development ground.

## **C. Success in Application of Laws**

It is not likely to say that the success in all of the legal developments occurring in Turkish agricultural law recently has been at the same level. While all of the legal provisions stipulated under a law cannot be applied successfully, it is also seen that some provisions stipulated under the law have been applied successfully. For that reason, it is difficult to mention that legislations regarding agriculture sector have been successful in general. Various factors have been

effective in assessment of legislations provided in Turkish agricultural law recently unsuccessful in general.

First of all, the institutional structure being executor of the provisions stipulated under the law has not been established as required. Indeed, almost all of the legislations mentioned in overall aspects indicates Ministry of Agriculture and Rural Affairs as the sole authorized authority as executor of the legislations. However, authorized and responsible units have not been established under the body of Ministry of Agriculture and Rural Affairs.

In fact, although legislation providing solution to problems occurring in agricultural structure in Turkey and providing alignment with the EU has been established, the failing to establish an institutional structure as the executor of the legislation has led to failure. Also failing to establish regulatory legislation such as by-law and implementation regulations providing application of legislations has led to failure.

## **D. Present Tendencies**

General tendency in line with realization of legislation alignment in priority has been dominant in legislation developments occurring in rural areas in Turkish Agricultural Law in scope of activities for alignment with the EU. In other words, making legislations for providing alignment with Common Agricultural Policies of the EU in general is deemed adequate and putting such legislations in practice has been paid second priority. Accordingly, the tendencies for establishment of an institutional body to be in the capacity to execute the legislations have remained inadequate.

This inadequacy has arisen from the failures in control and supervision attributable to failure to envisage an institutional structuring for applying legislations. In addition, instead of the purpose of meeting concrete needs of agricultural sector, the fact of “making legislation for the sake of adopting law” is seen. However, in case it is seen that the said developments are not transferred into practice in future due to failure to establish institutional structures, it is also clear that the matter will be put into practice easily as the legal frame is already ready.

## **E. Role of EU and International Legislation**

When the present developments in rural areas in Turkey are considered, it is seen that legislation related to rural areas have been intensified in the last 15 years. The most important reason behind it is the clear tendency of the political authority in Turkey for accession to EU. The target of development of rural areas before last 15 years consisted of general concepts and stereotyped political documents only remaining on paper and not being subject to efforts. Achieving considerable progress in accession to the EU has led to understanding the necessity to take concrete steps in this area. For that reason, EU legislations have been taken as basis for almost all of the legislations in agricultural sector realized recently. For instance, Organic Agriculture Act put into effect on 03 December 2004 is the exact Turkish translation version of the EU legislation. The Agriculture Code put into effect on 25.04.2006 contains the provisions of legislation adopted by the EU on various dates.

On the other hand, in the rationale of the legislations adopted recently, it is clearly stated that the developments occurring in international area has been taken into consideration. Although the developments seen in EU legislation and international area have been taken into account in Turkish agricultural law, the EU and international legal doctrine is not taken into account. Accordingly, the fact that an established agricultural legal doctrine is at development stage in Turkish law system leads to non-effectiveness of the doctrine in application.

