The Role of Registration in the Transfer of Title
in Turkish Law

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Abstract

It is of vital importance for legal transactions regarding real estate to ensure the ability to prove rightful ownership and proper title to limited rights, or the transfer of these, or prove or disprove existence of burdens resting on the real estate. The Land Register has an essential role in this.

Whereas registration in some countries is not necessary for the validity of the transfer of rights and burdens on real estate, it nevertheless in these systems constitutes the only effective protection against wrongful claims from third persons.

In other countries registration in the Land Register is a necessary formality for the full effectiveness of contracts such as transfer of rights and burdens on real estate and certain other legal transactions.

In this article I will focus on the role of registration in the Land Register when ownership of real estate is transferred by purchase, and examine whether registration in the Land Register in Turkish law is an additional formality ensuring full protection of the rights ensuing from a contract about transfer of real estate against third parties, or whether it is a necessary formality for the effectiveness of these contracts i.e. an indispensable element of the transaction.

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Introduction

Turkey has a codified system of law, based on European legal traditions. Property law in Turkey is regulated in the Turkish Civil Code [Türk Medenî Kanunu, hereinafter “MK”] no: 743 of 17 February 1926\(^1\). In addition, the Turkish Code of Obligations [Türk Borçlar Kanunu, hereinafter “BK”\(^2\)] regulates the general private law aspects of transactions involving property. The specific rules for registration of land are found in the Land Registration Regulation\(^3\) of 1994 [Tapu Sicili Tüzüğü, hereinafter “Regulation”].

Ownership of both movables and real estate entails that the owner may dispose over the good within the limits of the law. Ownership is extended to all belongings and fruits of the good (MK art. 683, 684, 685 and 686).

Acquisition of ownership of real estate (“Erwerb des Grundeigentums, l’acquisition de la propriété foncière“), is subject to several legal and contractual limitations\(^5\). It is regulated in MK art.705-716. Ownership of real estate can be established by purchase, gift, appropriation,

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\(^1\) Amended in 2002, Türk Medenî Kanunu no: 4721. The Swiss Civil Code of 1907 [Zivilgesetzbuch, hereinafter “ZGB”] and later amendments constitute the foundation of the MK. Amendments in the Turkish Civil Code have, although with some delay, followed amendments in ZGB. Swiss court practice is forthwith an important source of interpretation of MK.

\(^2\) The Swiss Obligation Law [Obligationenrecht, hereinafter “OR”] constitutes the foundation of the BK.

\(^3\) In Turkish Law a regulation [tüzük], is drawn up by the Council of Ministers, signed by the President of Turkey, and passed through the State Council [Danıştay]. In the hierarchy a regulation is below, and derives its authority from, a statute. It regulates in detail a certain field of law, the outlines of which are already fixed by the statute.

\(^4\) Published in Official Journal 07.06.1994 – 21953.

\(^5\) See Jörg Schmid/Bettina Hürlimann-Kaup, Sachenrecht, 2. Auflage, Schulthess, Zürich, 2003, N 833, 912 etc..
inheritance, expropriation, execution and court decisions. The Land Register is of decisive importance for the ability to prove ownership of real estate, as it – like the possession of a movable – serves to publicize the existing legal circumstances. MK art. 705 deals with the prerequisite of registration in the Land Register (the so-called Registration Principle), while MK art. 706-714 contains the rules for different forms of acquisition.

The Publicity Principle and the Registration Principle

For movables the general rule is that possession (which is immediately recognizable) establishes a presumption of ownership (MK art. 985/I), unless there is a special rule requiring public registration of the ownership.

The subject matter of a right may also be proved by documentation or by other means. Other means may be a public register. If there is a public register, and there is a conflict between an entry in a register and the documentation, an entry in the register is decisive, and if documentation and register entries confirm each other this is considered certain proof.

The Publicity Principle means that information about certain legal facts must be made available to the public by registration in a public register.

Possession of real estate also creates a presumption of ownership (MK art. 992/II), unless the real estate is registered in the Land Register as belonging to a different person (MK art. 992/I), thus publishing this person’s better right. The formal element of publication of purchase is not the possession, but the entry in the register. The Land Register holds information about ownership of real estate, servitudes, burdens, securities and mortgages (MK art. 1008). Other rights such as preliminary contracts

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6 Schmid/Hürlimann-Kaup, N 831.
8 In case the entry in the Main Register shows a lesser right than the documentation, the right only exists to the extend of the entry (see Zobl, p. 63, footnote 207).
9 See Zobl, N 94.
regarding real estate, preemptions, options to purchase and re-purchase, tenancies and certain contracts (MK art. 1009), and certain restrictions of the right of disposal (MK art. 194, art. 1010, etc.), may also be registered as a priority notice if there is a specific rule of law allowing this. The Publicity Principle regarding the transfer of ownership in a real estate is found in MK art. 705. According to this, on one hand the legal effects of the transfer of a real right depends principally on the registration in the Land Register (The Absolute Registration Principle), on the other hand can a real right, which is based on certain legal factors, be transferred independently of the registration in the Land Register if certain prerequisites are fulfilled (The Relative Registration Principle). The main function of the register is to convey clearness of and confidence in legal transactions regarding rights over real estate. In case of conflict about ownership of a real estate, for example a conflict between an occupant and a purchaser of a house, the purchaser may rely fully on the information in the Land Register. This is an expression of the Registration Principle.

In the field of law on real estate it also represents an example of the use of the Publicity Principle; the main aim of registration is to convey clearness of and confidence in legal transactions regarding rights over real estate.

The Absolute Registration Principle (absolutes Eintragungsprinzip)

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11 Laim, p. 968; Rey, N 314.

12 Zobl, N 97, 140, 240 etc..

13 Zobl, N 93.
Generally

The Absolute Registration Principle [mandatory registration, "absolutes Eintragungsprinzip, Buchungsgrundsatz\textsuperscript{14}, le principe absolu de l’inscription"] entails that registration in a register is compulsory for obtaining rights over real estate. Where real estate is concerned, the Land Register is compulsory for the formation and for the transfer of real rights over real estate, especially for purchase of real estate. A real right is thus generally only established if it is entered in the Land Register (the constitutive, or legally causative, effect of the entry)\textsuperscript{15}.

The negative meaning of rules prescribing registration in a certain register as a prerequisite for the establishment of a right is that an unregistered right does not exist as a right, unless proper registration has been made,\textsuperscript{16} the so-called negative effect, or negative legal force of the register\textsuperscript{17}. That, which is not registered, is not valid. The Land Register and other registers possess negative legal force\textsuperscript{18}\textsuperscript{19}.

\textsuperscript{14} Schmid/Hürlimann-Kaup, N 834.

\textsuperscript{15} See Laim, p. 968-969; Simon Zingg, in Jolanta Kren Kostikiewicz/Ivo Schwander/Stephan Wolf (Hrsg.), ZGB Handkommentar zum Schweizerischen Zivilgesetzbuch, orell füssli, Zürich, 2005, p. 600; BGE 122 III 150 etc. [154], E. 2a; Rey, Nr. 1319 etc.; Schmid/Hürlimann-Kaup, N 835; Zobl, N 94, 96, footnote 199.

BGE 123 III 346 etc. = ZBGR 1999 115 etc. with editorial comments = JdT 1998 I 262 ff, 115 II 226 etc.; Rey, N 311; Schmid/Hürlimann-Kaup, N 572. Actually the right arises not solely from the entry in the register, other elements must be present as well (i.e. a valid contract). The entry is thus a necessary, but not the sole, condition for the creation of the right (see Zobl, p. 63, footnote 206).

\textsuperscript{16} Zobl, N 95. Also entries of rights, which are essentially not of a real right nature, will be considered as not entered (BGE 124 III 293, 295 etc.) (Zobl, p. 62, footnote 203); see also Schmid/Hürlimann-Kaup, N 572a.

\textsuperscript{17} Peter Tuor/Bernhard Schnyder/Jörg Schmid/Alexandra Rumo-Jungo, Das schweizerische Zivilgesetzbuch, 12. Auflage, Schultness, Zürich, 2002, p. 805 etc.; Schmid/Hürlimann-Kaup, N 570; Zobl, N 95.

\textsuperscript{18} Zobl, N 95.
MK art. 1021 lays down that provided there is a rule for the establishing of a real right requiring its entrance in the Land Register, then the real right only exists if it can be found in the Land Register. The obligation to register transfer of ownership and other real rights in the Land Register is an expression of the Absolute Registration Principle.

The Absolute Registration Principle applies absolutely to transfer of ownership over real estate (in the sense of MK art. 704), between people in vivo and mortis causa legal transactions regarding transfer of the ownership of the real estate based on single succession (MK art. 705/I). In the sphere of the Absolute Registration Principle no person can be entitled to any real rights if the right is not registered in the Land Register as belonging to him/her (MK art. 1021).

Nature and Meaning of This Principle

The Absolute Registration Principle is laid down in the first paragraph of MK art. 705. Property of real estate is thus acquired in principle only with the entry in the Land Register (see also MK art. 1021). In other words, in these cases the entry in the Land Register is the

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21 BGE 122 III 150 etc. [154], E. 2a; Rey, Nr. 1319 etc.; Schmid/Hürlimann-Kaup, N 835.

22 Rey, N 1323; Laim, p. 968; it applies in principle also to the legal transaction establishing a limited right in rem as a burden on a real estate, see MK art. 780/I, MK art. 795, MK art. 840/I, MK art. 856/I (Laim, p. 968).

23 Zingg, p. 600.

24 Laim, p. 968.
indispensable prerequisite, and has constitutive, that is: establishing or extinguishing legal (legally causative), effect ("negative Rechtskraft" des Grundbüchs).\(^{25}\)

Registration in the Land Register is decisive for the validity of a purchase of real estate (MK art. 705/I).\(^{26}\) In the sphere of the Publication and the Absolute Registration Principle no person can be entitled to any real rights if (s)he is not registered in the Land Register as the rightful owner of the right (MK art. 1021).

**The Reason for the Absolute Registration Principle**

The reason for the Absolute Registration Principle is the Publication Principle; real rights must be published for reasons of the safety and the certainty of law.

Transfer of Ownership of Real Estate through Land Registration (The Field of Application of the Absolute Registration Principle)

**Generally**

When a real estate is sold, the owner of the real estate must make a written application to the Land Register before the (constitutively effective) land registration of the transfer of ownership can take place (MK art. 1013; the Regulation art. 11), an action which is formally an application to the Land Registrar to make the registration, and which can be qualified as the substantive disposition over the real estate.\(^{27}\)

\(^{25}\) Laim, p. 968; Zingg, p. 600. See BGE 122 III 150 etc. [154], E. 2a; Rey, Nr. 311 and 1319 etc.; Schmid/Hürlimann-Kaup, N 835; Zobl, N 96. BGE 123 III 346 etc. = ZBGR 1999 115 etc. with editorial comments = JdT 1998 I 262 etc., 115 II 226 etc. (Zobl, p. 63, footnote 206); see also Schmid/Hürlimann-Kaup, N 572.

\(^{26}\) See Zobl, N 95 and p. 62, footnote 202.

\(^{27}\) Rey, N 1326, 1486 etc.; Laim, p. 969.
The registration in the Land Register is the constitutive precondition for the legal transfer of ownership in cases where the Absolute Registration Principle applies. According to the Causality Principle of the Turkish/Swiss Property Law, the purchaser can, however, only become the actual owner, if the registration in the Land Register is based on a valid legal transaction obliging the transfer of the ownership.\(^{28}\)

To acquire real estate in the field of application of the absolute registration principle there are certain elements that must be present:

- application to the Land Register;
- a contract of transfer of the ownership of the real estate, which is valid in form (see MK art. 706/I);
- the sellers right to dispose (cmp. MK art. 1015, or the good faith of the acquirer (MK art. 1023);
- entry in the Land Register.\(^{29}\)

Elements of the transfer

Application to the Land Register

Generally

The prerequisite for any entry in the Land Register is a written application (MK art. 1013/I). According to the Regulation art. 11/I with a few exceptions mentioned in the law and the Regulation no entry in the Land Register may be made unless a written\(^{30}\) application is made.

The application to the Land Register is a one-sided legal action of prerequisite and limiting character.\(^{31}\) The landowner by his formal

\(^{28}\) See Rey, N 347 etc.; Laim, p. 969.

\(^{29}\) See Zingg, p. 600; see also Rey, N 1326.

\(^{30}\) See also GBV art. 13/I, II. For the rule preventing application via telephone or electronically see GBV art. 13/III, IV.

\(^{31}\) Laim, p. 970-971.
application to the land registrar to make the registration makes the discharge, a substantive disposition over the land, which cannot be retracted one-sidedly. (S)he thereby fulfills the obligation of transfer, which is part of the contract.

The application cannot be made conditional of any negative conditions that may make the entry invalid (the Regulation art. 11/I).

The Land Registrar

The Land Registrar has primarily authority to examine whether the formal requirements are fulfilled. However, the Land Registrar is authorized also to object to glaring defects of the contract, such as obvious invalidity of the legal basis of the documentation, or a lack of consent from the other spouse to sell a real estate registered in the Land Register as a family home.

In addition the potential acquirer must be legally capable of being owner, and both participants must have full legal capacity to transact. Where the transaction takes place between a purchaser and a person with power of attorney, the warrant of attorney must be issued by the actual owner of the real estate.

A formally valid contract of transfer of the ownership of the real estate

According to the Causality Principle the transfer of real estate through entry in the Land Register is dependent on the existence of a *causa,*

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32 BGE 115 II 221 etc.; Laim, p. 971.
33 Laim, p. 971; Zingg, p. 601. See also BGE 115 II 221, 229.
34 BGE 119 II 17 etc.; 114 II 127 etc., 131; 114 II 36 etc., 40; 110 II 128 etc., 131; Rey, N 1334, 1509 etc.; Bernhard Schnyder, “Vertrags und deren Sicherung in sachenrechtlicher Sicht”, in: Alfred Koller [Hrsg.], Der Grundstückkauf, 2. Auflage, Stämpfli AG, Bern, 2001, N 23 etc.; Laim, p. 969; see also Ayiter, p. 55; Jale G. Akipek, Türk Eşya Hukuku (Aynı Haklar), Birinci Kitap, Zilyetlik ve Tapu Sicili, 2. Bası, Sevinç Matbaası, Ankara, 1972, p. 356, 373 etc.,
35 Laim, p. 969.
such as a contract of sale (MK art. 1024/II), which includes the obligation to transfer the ownership. By the contract the purchaser acquires a compulsory claim against the seller to make the necessary steps for transferring the ownership (MK art. 716/I). The contract must be valid according to the corresponding rules for legal transactions and must especially obey the formality rules (MK art. 706)\(^{36}\). Therefore the transfer of ownership of real estate must be based on a legal transaction, which is valid both in substance and in form. The registration in the Land Register has in principle no effect between the parties if the transaction is invalid\(^{37}\).

ZGB art. 657/I states that a contract of transfer of ownership of real estate must be registered in a public register [öffentlichchen Beurkundung]. The meaning of “public register” is not defined in the ZGB. The definition of this was purposely left to the cantons, some of which require that such a contract to be formally valid must be made with the assistance of a notary, whereas others require that it must be made with assistance of a canton official or an official of the Land Register. Further, according to OR art. 216, to be valid both the contract of sale of a real estate and, if there is a such, the preliminary contract of sale must be registered in a public register. Again what is meant by “public register” is not clearly defined, because it will depend on the specific rule of the respective cantons.

Corresponding to the rule of ZGB art. 657/I it is regulated in the Turkish MK art. 706/I that a contract of transfer of ownership of real estate to be valid must be made according to formal requirements [resmi şekil], and corresponding to OR art. 216, BK art. 213\(^{38}\) states that a sale of real estate to

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\(^{36}\) Zingg, p. 600.


be valid must be taken down in an official document [resmi sene]. In Turkish law, however, there is no authority akin to the cantons, and accordingly no written rules for the definition of “formal requirements” or for “official document” were made. This caused many court cases and much theoretical discussion.

According to a decision of the Supreme Court of 10 June 1931, notaries could neither legally draft a preliminary contract (such as a promise of sale), nor the actual contract of sale of a real estate. In a Supreme Court decision of 19 October 1938 it was established that a preliminary contract of sale could only be validly be drafted by officials of the Land Register.

Since according to BK art. 22/2 a preliminary contract to be valid must be made in the same form as the actual contract, it follows that also the actual contract must be made with assistance of Land Register officials.

In 1942, however, it was regulated in the Notary Law [Noterlik Kanunu] that the draft of the preliminary contract of sale of a real estate [gayrimenkul satış va'di sözleşmesi] must be made with assistance of a notary. Because of the wording of the rule it is considered that it does not imply that the Land Register officers do not also still have the right to arrange preliminary contracts.

Following this the topic of the theoretical discussion and court cases was whether the notary should or could also assist at the draft of the actual contract of sale. However, the decision of the Supreme Court of 10 June, 1931, that the sales contract as such may not be made by the notary, still prevails. Thus, while the Land Register officers have the right to arrange both preliminary contracts and the actual contract of sale, a notary can

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40 See also Öğuzman/Seliçi/Oktay-Özdemir, p. 304, footnote 359.

arrange only a preliminary contract\textsuperscript{42}. The valid contract of sale of the real estate must thus be made at the Land Register.

\textbf{The sellers right to dispose or the good faith of the acquirer}

The sellers right to dispose

When application to register transfer ownership of real estate from one person to another is made to the Land Register, the applicant must show proof that (s)he has a right to dispose of the real estate, and show the legal reason\textsuperscript{43} for the application MK art. 1015/I.

The proof of the right to dispose can be that the applicant is the person registered in the Land Register as having the disposal right, or a power of attorney from this registered person (MK art. 1015/II). As a general rule the person registered as owner will have the disposal right\textsuperscript{44}. However, if a married person wishes to dispose over the family home in the meaning of MK art. 194, the restriction in MK art. 194 of the right to dispose must be taken into consideration\textsuperscript{45}.

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\textsuperscript{43} Like a sale contract (see Trauffer, p. 972; Gürsoy/Eren/Cansel, p. 474).
\textsuperscript{44} According to MK art. 194 the disposal right of the family home is restricted if the owner is married; in general a legal transaction regarding the family home requires consent from the other spouse.
\textsuperscript{45} It is a topic of discussion whether the restriction constitutes a restriction of the right to dispose or of the legal capacity. See Rey, N 1337; Schnyder, N 20; see also the authors mentioned by Laim, p. 970; Ahmet M. Kılıçoğlu, Medeni Kanun’unuzun Aile-Miras ve Eşya Hukukunda Getirdiği Yenilikler, Ankara, 2003, p. 34 etc.; Şükran Şıpka, Türk Medeni Kanunu’nda Aile Konuṭu ile İlgili İşlemlerde Diğer Eşin Rizasi (TMK m.194), Beta, İstanbul, 2002, p. 39 etc..
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The Land Registrar need not make a thorough investigation into the personal details of the applicant, but must examine whether the actual applicant is identical with the registered owner (by seeing an identity card or passport, see the Regulation art. 13/I, II)), and whether this person is capable of making legal transactions, i.e. is of age and appears to be in full demand of his/her faculties. The Land Registrar must evaluate whether the applicant may be under guardianship, and if there is doubt require proof that the person is entitled to make independent legal transactions (see the Regulation art. 14).

If the application is made by power of attorney the documentation for the power of attorney must be delivered to the Land Registrar, who must examine its authenticity (see the Regulation art. 13/IV))\textsuperscript{46}.

The applicant must show both the legal reason for the application, and that the legal reason for the application fulfills the formal requirements (MK art. 1015/III). A preliminary contract does not in itself constitute a valid legal reason for application to transfer the ownership, but a legal reason may be a preliminary contract together with a request for assistance to draw up the actual contract of sale. A contract of sale will eo ipso fulfill the formal requirements since according to Turkish law the contract of sale can only be made legally valid with the assistance of an official of the Land Register.

The importance of preliminary contracts

A preliminary contract is not a prerequisite, but if there is a formally valid preliminary contract, this contract may be registered as a priority notice\textsuperscript{47} at the Land Register by any of the parties (the Land Register Law [Tapu Kanunu hereinafter “TK”\textsuperscript{48}] art. 26/V); see also MK art. 1009, thus

\textsuperscript{46} See also Trauffer, p. 972.
preventing a third party from being in good faith in case of a double sale of the real estate. The registration of the preliminary contract will remain valid for 5 years (TK art. 26/VI), giving ample time to make for example the for a foreign purchaser necessary investigations of whether he may be allowed to purchase the land in question\(^{49}\). However the preliminary contract will also give the prospective purchaser the legal reason for lawsuit against the seller who is reluctant to apply to the Land Register for fulfillment of his obligation to make the actual contract of sale and registration of the transfer. According to practice and theory\(^{50}\) the preliminary contract is sufficient basis for a court decision, with which the purchaser can apply to the Land Register for registration of the transfer of the right to him/herself, using MK art. 716\(^{51}\).

**The good faith of the purchaser and the Positive Legal Effect of the Land Register**

When a person in good faith has acquired ownership of a real estate or other real rights over a real estate relying on the registration in the Land Register, his right is to be protected (MK art. 1023). However, not any right will be protected, only rights, which may be entered in the Land Register as real rights\(^{52}\). A right does not gain the quality of a real right by being wrongfully registered as a real right.

The right of a *bona fide* purchaser of a real estate or other real rights will be protected even if the transferor of the real estate or real rights was wrongfully registered in the Land Register as entitled to the disposal right. This is an expression of the Positive Legal Effect of the Land Register. Only

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\(^{50}\) See Esener/Güven, p. 140-141; Yavuz/ÖZEN/Acar, p. 200-201, footnote 10.

\(^{51}\) See Oğuzman/Seliçi/Oktay-Özdemir, p. 307; Ertas/Serdar/Gürpınar, p. 310-311. These authors are of a different opinion.

\(^{52}\) See Ayiter, p. 62; Ünal, p. 226.
the Land Register itself and its supplementary register and documents have this positive legal effect.

The positive legal effect encompasses the person registered, any servitudes, liens or burdens and restrictions of the right of disposal that can legally be registered in the Land Register.

If a right is wrongfully entered, no person who is or ought to be in bad faith may claim this right (MK art. 1024/I). A right is wrongfully entered if it is not based on a binding legal transaction or a legal causa (MK art. 1024/II).

**Entry in the Land Register**

**Generally**

By “entry in the Land Register” is meant entry in the Main Register [tapu küttüğü]. The Land Register [tapu sicili] consists of the Main Register, the register for condominiums, the diary and its documents (MK art. 997/II).

Entries in the Land Register will be made according to the date and order of applications (MK art. 1017). When application is made to make an entry in the Land Register, the application will immediately be registered in the diary (MK art.1002/I).

Although the transfer of real rights only becomes effective with the entry in the Main Register (MK art.1022/I), the effectiveness will, according to MK art. 1022/II), be dated back to the entry in the diary\(^5^3\).

The effect of the entry in the register is that the ownership of the real estate is transferred to the new owner, if there have been no subsequent changes in circumstances that may hinder it\(^5^4\). Thus the new owner becomes entitled to assume possession of the property, and the legal transaction is completed.

\(^{53}\) See Trauffer, p. 980; Akipek, p. 382 etc..

\(^{54}\) See BGE 115 II 221, 230; Zingg, p. 601; see also Akipek, p. 383.
The transfer of risk

According to BK art. 183 in general the risk passes at the moment when the contract is concluded.

BK art. 216\textsuperscript{55} states that in case the parties have decided a date of taking possession in the contract, the utility and risk of a real estate does not pass to the purchaser until this date. In this case the date stated in the contract, not the date of entry in the Register, is decisive. If no such date is stated, the general rule of BK applies\textsuperscript{56}.

Thus in general the risk will pass to the purchaser on the date of the actual contract, since this is also the date of application to the Land Register.

The Relative Registration Principle (relativen Eintragungsprinzips)

MK follows the Absolute Registration Principle without any exceptions where legal transactions regarding purchase take place \textit{in vivo}, but make exceptions regarding other kinds of acquisition (the Relative Registration Principle)\textsuperscript{57}.

According to MK art. 705/II the ownership which is acquired by inheritance, court decisions, foreclosure, occupation, expropriation and other actions foreseen in the law\textsuperscript{58} is transferred before entry in the Land Register. However, no right to dispose regarding the real estate can validly be made until proper registration has taken place (MK art. 705/II, last sentence).

\textsuperscript{55} There is a discussion among scholars about the scope of this article. For this see Yavuz/Özen/Acar, p. 194, footnote 40-42.


\textsuperscript{57} See Schmid/Hürlimann-Kaup N 834, 572 etc.

\textsuperscript{58} For example MK art. 716/III (see Öğuzman/Seliçi/Oktay-Özdemir, p. 279).
Conclusion

In most legal systems the principle of freedom of contract applies, that is: the parties can draw up a contract in whichever way they want, or just make an oral contract. The *pacta sunt servanda* principle will apply regardless of the form of the contract. Also following a rule from Roman Law real rights can be registered in almost all legal systems. In some systems registration is voluntary, but in most cases real rights will not be protected against third persons unless they are registered in an official register. A generally available register showing real rights ensures the certainty of law. It will protect the purchaser of the right against both the transferor and third parties.

In Turkish law generally there are no formal requirements to a contract; a contract is binding for both parties and effective from the moment of its conclusion. However, where contracts regarding real rights are concerned the rules differ: both the Publicity Principle and the Absolute Registration Principle applies. The contract of sale must be made according to certain formal requirements, and even though the contract is binding between the parties from the moment of proper conclusion, the real right of the purchaser is not protected, and in fact does not exist as such, until certain official steps – **constitutive registration in the Land Register** – have been taken, and the contents of the contract thus been made publicly available.

The formal requirement ensures the clarity of the contract, i.e. it ensures that the contract clearly expresses the will of both parties at the moment of being declared, and the registration ensures both the full effectiveness of the contract and that there is an externally discernible element, proving the transfer of the real right, so that third parties cannot claim ignorance of the transfer of the real right.

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