

# PRINCIPLE OF TRUST IN THE LAND REGISTRY IN THE TURKISH LAW SYSTEM

## PRINCÍPIO DA CONFIANÇA NO REGISTO PREDIAL NO SISTEMA DE DIREITO TURCO

Himmet Koç

Ph,D, Faculty of Law, Necmettin Erbakan University, Konya, Turkey  
[drhimmetkloc@gmail.com](mailto:drhimmetkloc@gmail.com).

**Abstract:** The principle of trust in the land registry has a very strong place in Turkish law. This principle is valid for all immovables without reservation and without exception. Because the registers in the land registry are related to immovables. The name of the principle is the principle of trust in the land registry. If a simple definition is made, it can be defined as "protection of bona fide third parties against wrongful registration and wrongful abandonment". The basis of the principle of trust in the land registry is the choice made as a result of a responsibility undertaken by the state. In this respect, the principle of trust in the land registry is a result of the choice made to prioritize the rights and interests of one party over the other. The state protects the gains of those who qualify by relying on any record in the registry. Even if the record in the registry does not reflect the real situation, if the person who made the acquisition has good faith, he has earned the right.

**Keywords:** Register. Land Registry. Trust. Good Faith. Wrongful Registration.

**Resumo:** O princípio da confiança no registro predial tem um lugar muito forte na lei turca. Este princípio é válido para todos os bens imóveis sem reservas e sem exceção. Porque os registros no registro predial estão relacionados com bens imóveis. O nome do princípio é o princípio da confiança no registro predial. Se for feita uma definição simples, pode ser definida como "proteção de terceiros de boa-fé contra registros errados e abandono indevido". A base do princípio da confiança no registro predial é a escolha feita como resultado de uma responsabilidade assumida pelo Estado. A este respeito, o princípio da confiança no registro predial resulta da escolha feita para dar prioridade aos direitos e interesses de uma parte em detrimento da outra. O Estado protege os ganhos daqueles que se qualificam, confiando em qualquer registro no registro. Mesmo que o registro no registro não reflita a situação real, se a pessoa que fez a aquisição tiver boa fé, ela ganhou o direito.

**Palavras-chave:** Registro. Registro Predial. Confiança. Boa Fé. Registro incorreto.

---

## INTRODUCTION

In the Turkish legal system, the state has taken upon itself the task of keeping the land registry. As a reflection of this, the state had to undertake the responsibility arising from the fact that the land registry was not kept correctly and duly. If the state does not fulfill this duty duly, situations may arise that require the protection of persons who acquire rights by relying on the register in the registry. Namely; the register in the registry may not reflect the truth. Since this register is the responsibility of the state, no one thinks that the state will not keep these registers correctly. If the registers do not reflect the truth despite the acquisition of rights by relying on this register kept by the state, there are two interests that need to be protected. The first of these is the party that has the real right to that register in material terms. The other is the third person who acquires rights by relying on the accuracy of the registration. Here, too, the legislator has made a choice to protect one of the two parties. This preference is embodied in the provision of Article (Art.) 1023 of the Turkish Commercial Code (TCC). In this study, the principles required for the implementation of this provision will be tried to be explained.

The study, which will explain the principle of trust in the land registry, will consist of three main parts. In the first part, the phrase "the principle of trust in the land registry" will be tried to be explained. Then, the positive and negative provisions of the principle of trust in the land registry will be explained.

In the second part of the study, the conditions of the principle of trust in the land registry will be tried to be explained. The conditions in question have been examined in various classifications in the doctrine. However, three main conditions were regulated in this study. These are the existence of wrongful registration, good faith and other constituent elements. If these conditions exist, the third party will benefit from the principle of trust in the land registry and its acquisition will be protected by law even if it has acquired a right based on a wrongful registration.

The last part of the study is the third section. In this section brief explanations will be made about the situations in which the principle of trust in the land registry cannot be applied.

## I. PRINCIPLE OF TRUST IN THE LAND REGISTRY

### A. IN GENERAL

The principle, which has gained a firm place in Turkish law as the principle of trust in the land registry, is valid for all immovable properties unconditionally and without exception. In its simplest form, the principle that can be explained as "protection of bona fide third parties against wrongful registration and wrongful abandonment" lies in the choice made by the state as a result of a responsibility undertaken. In this respect, principle of confidence in the land registry is a result of the choice made to prioritize the rights and interests of one party over the other.

The principle of trust in the land registry is based on the principle of protecting the gains made on the basis of the land registry, starting from the duty of keeping the land registry undertaken by the state (Sirmen: 117). Trust in the land registry and the protection of the rights acquired based on this trust is a manifestation of the principle of trust. In other words, the state maintains this trust of the person who trusts own. This protection is called "the principle of trust in the land registry". In order for the said principle to work , certain conditions must be present (Albaş: 138) . These conditions will be discussed later.

As mentioned before, the state has undertaken the duty of keeping the land registry regarding immovables, ensuring their publicity, and accepting the responsibility arising from not keeping them well and correctly. As a result of this, the obligation to protect the trust of the person who acquired a real right on the immovable property by relying on the register in the title deed has emerged. This protection is a necessity, because people who acquire rights by relying on a registry held under the responsibility of the state must conduct their transactions in a secure manner. If people cannot rely on a register kept by the state itself, it will not be possible to talk about a state of law there.

Within the framework of the principle of trust in the land registry, there are two parties with conflicting interests. On the one hand, a person who believes that he gains real rights by relying on the accuracy of the land registry kept under the responsibility of the state. On the other hand, there is the real owner who is in danger of losing his right in rem on the immovable which has material and in some cases moral value for him. With the operation of the principle of trust in the land registry, the property right of the real owner sometimes ends and sometimes is limited.

Legislator, by adopting the principle of trust in the land registry with Art. 1023 of TCC, it does not protect the right of the original owner, whose name is not in the land registry, in order to provide trust in the legal appearance and the life of people to trade /

buy and sell real estate. In other words, the legislator, on the one hand, does not worry that the immovables they buy may be taken back from them in the future, so that they can shop in peace and security, and on the other hand, in order to protect the trust in the legal appearance created by the land registry. He established the Art. 1023 of TCC.

The principle of trust in the land registry is expressed in Article 1023 of the TCC as follows:

*“This acquisition of the third person who acquires property or another real right based on the registration in the land registry is protected.”*

Good faith is protected only in cases stipulated by law and at the level prescribed by law (Akkanat: 10; Dural/Sarı: 220; Oğuzman/Barlas: 244). As can be clearly understood from the text of Art. 1023 of TCC, in order for the principle of trust in the land registry to be valid, the person who acquires rights by relying on the land registry must have good faith. In this respect, the principle of trust in the land registry is one of the legally stipulated conditions for the protection of good faith.

As a rule, it is not possible for a person to dispose of an item that he does not own. No one neither can transfer the property that he does not own to a third party, nor can he limit the right of the real owner. The principle in question has survived from Roman Law<sup>1</sup>. Although this is the general rule, in some cases where the legislator maintains good faith, an exception to this rule is encountered. The so-called principle of trust in the land registry is an exception to this general rule.

In the Turkish legal system, real rights on immovables are acquired by registration as a rule. However, the acquisition of a real right by registration is subject to the validity of all the founding elements required for the birth of the right. The registration made despite the deficiency or invalidity of the founding elements will be a wrongful registration. In this case, it does not create registration provisions. Despite the registration, it is not possible to acquire a real right. As a matter of fact, registration has no corrective effect. However, the registration has become meaningful for bona fide third parties, thanks to the principle of trust, even if it is wrongful.

The principle of trust in the land registry has been determined without exception in terms of immovables. In other words, in terms of immovable properties all over Turkey, earnings will be possible within the framework of Art. 1023 of TCC. The fact that the principle of trust in the land registry has been adopted in this way, without exception, is

---

<sup>1</sup> “*nemo plus juris transferre potest quam se ipso habet*” (For detailed information, look: Özçelik: 32 et al.).

because it constitutes a presumption that the actual situation in the land registry fully reflects the material situation. The presumption in question is that the person or persons who appear as owners in the land registry are also owners in a material sense. This presumption is similar to the presumption of possession in movables (Yakuppur: 5 et al.).

## **B. PROVISIONS OF THE PRINCIPLE OF TRUST IN THE LAND REGISTRY**

There are some consequences/reflections of the principle of trust in the land registry, which was introduced to ensure transaction security (Özçelik: 37). After all, it is pointless to think that there are no consequences for the state to protect the party that acquires rights in good faith, rather than the materially owner of the parties that may be entitled. The provisions of the principle of trust in the land registry are two. These can be examined as positive clauses and negative clauses.

### **1. The Positive Aspect of the Principle of Trust in the Land Registry**

What is meant by the positive effect of the principle of trust in the land registry is that the person who is written in the land registry as the owner is accepted as the owner even if it does not comply with the material reality (Şengül: 485; Sirmen: 196). The principle of trust in the land registry does not only apply to property rights. All real rights on the land registry page of an immovable, even if they are not real; As a positive result of the principle of trust in the land registry, it will be considered correct by third parties (Yakuppur: 8). Acquisitions made on the basis of/trusting these registers will be protected due to the positive effect of the principle of trust in the land registry (Sirmen: 196).

The positive result of the principle of trust in the land registry results in positive results for those who are third parties in good faith and acquire rights by trusting the registry in the land registry. So much so that the gains made by benevolent third parties from people who are not actually owners are protected. However, the principle of trust in the land registry leads to undesirable results for those who have financial means. Because the real owner is taken away from the immovable without using the power of disposition on the property.

### **2. The Negative Aspect of the Principle of Trust in the Land Registry**

The basis of the principle of trust in the land registry is not only the presumption that the registers in the land registry are correct. The principle of trust in the land registry also includes the presumption that all registers in the land registry are complete and complete. In this context, it can be said that the negative aspect of the principle of trust in

the land registry means that any transaction based on a register that is not included in the land registry will also be protected. For this reason, the gains of bona fide third parties who act with a register that is not included in the title deed will be protected by the negative aspect of the principle of trust in the land registry. In other words, a right that is not registered in the registry will also be ignored by third parties. The gains made by third parties will arise as if there are no rights that exist in material terms but are not registered in the registry. The existence of the said rights in a material sense will not affect the third parties involved in the acquisition in good faith, since they are not registered in the registry; third parties will acquire their rights independently of the rights not included in the registry (Akkanat: 93).

To explain this with an example; the right of a person who has a usufruct right on an immovable may be deleted from the land registry due to wrongful abandonment. When the bona fide third person who wants to buy this immovable makes a check in the registry, he/she does not have any limited real rights etc. on the real estate. will not see. The third party does not know and does not need to know that his abandonment is wrongful. Here, the negative effect of the principle of trust in the land registry will come into play when a benevolent third person buys this immovable by relying on the land registry. A bona fide third party will take over the immovable without any right of usufruct. The person who has the right of usufruct provision will lose his right of usufruct as per the Art. 1023 of TCC. This is the negative aspect of the principle of trust in the land registry.

The negative effect of the principle of trust in the land registry may be on the wrongful abandonment of real rights, as well as in the wrongful abandonment of an annotation based on personal rights, it ensures the protection of the gains of good-willed third parties. In the principle of trust in the land registry, which provides protection even against the wrongful abandonment of real rights, it is necessary to protect the wrongful abandonment of the annotation of personal rights (Yakuppur: 10).

## **II. CONDITIONS OF THE PRINCIPLE OF TRUST IN THE LAND REGISTRY**

Even if the registration in the land registry is wrongful, the protection of the bona fide person who acquires rights based on that registration constitutes the basis of the principle of trust in the land registry. In order to protect the rights of the third party,

certain conditions must also be present. Under this heading, these conditions will be examined.

### **A. WRONGFUL REGISTRATION**

The first condition of acquiring rights from the land registry based on the principle of trust is the presence of a wrongful registry in the registry (Sirmen: 197; Şengül: 490). Wrongful registration in its most basic form; it can be expressed as a registration that only exists formally and does not comply with the actual right situation (Oğuzman/Seliçi/Oktay-Özdemir: 264; Akipek/Akıntürk: 483). A recognition regarding wrongful registration is also in Art. 1024/2 of TCC is included in the provision. According to this:

*“Registration based on a non-binding legal action or lacking legal reason is wrongful.”*

In the Articles 1013, 1014 and 1015 of TCC, the conditions required for registration in the land registry are specified. According to the said articles; In order for the registration to take place in accordance with the law, there must be a written registration request of the person with the power of disposition and a valid legal reason on which this request is based. That is, all necessary constituent elements must be present and must be valid. Despite the absence of even one of these conditions, the registrations that exist in the land registry are called wrongful registration.

The concept of wrongful registration should also be understood as the rights abandoned as wrongful (Oğuzman/Seliçi/Oktay-Özdemir: 238). In other words, third parties in good faith can benefit from the principle of trust in the land registry, not only in cases created by wrongful registration, but also in cases revealed due to wrongful abandonment. The results of wrongful abandonment appear as negative consequences of the principle of trust in the land registry. Since the explanations regarding this issue are made under the negative provisions of the principle of trust in the land registry<sup>2</sup>, we do not repeat them here. The term "wrongful registration" used in the study should also be understood as the concept of wrongful abandonment.

### **B. GOOD FAITH**

Another condition for the protection of the acquisition of rights based on the wrongful registration in the land registry is good faith (Sirmen: 200). Under this title, concepts such as the concept of benevolence, the moment when good faith should be found, and the person who should be in good faith will be tried to be explained.

---

<sup>2</sup> Look: I.B.2.

## 1. In General

Determining the existence of good faith in order to benefit from the principle of trust in the land registry is not easy in many cases, but it is of great importance in order not to undermine the trust in justice (Özçelik: 53). Good faith is among the conditions of the principle of trust in the land registry, derives from the Art. 1023 of TCC clause. The concept of good faith is although it is regulated in provision Art. 3 of TCC, it is not defined in this article (Akkanat: 18; Oğuzman/Barlas: 237). In a Decision to Unify the Jurisprudence of the Supreme Court, it is defined as "...good will is not knowing perfectly while the right is being acquired that an issue that will prevent the birth of the right..."<sup>3</sup>. Moreover, it is also stated that the gains of non-benevolent persons will not be protected, is clearly stated in Art. 1024 of TCC (Akipek/Akıntürk: 363).

It should be noted that the good faith specially protected by the legislator does not mean not knowing a legal deficiency in any way. As a matter of fact, as stated in the Art. 3/2 of TCC clause;

*"However, a person who does not show the care expected of him according to the requirements of the situation cannot claim good faith."*

With the Art 3/2 of TCC clause, it can be said that good faith is no longer a subjective concept (Akkanat: 18). In other words, a person who does not show the care expected of him will not be considered well-intentioned. If it is necessary to evaluate this provision within the framework of the principle of trust in the land registry, it will not be possible for third parties, who have the opportunity to examine the land registry due to the publicity of the registry and who have a desire to acquire a right on the real estate, claim that they have shown the due care expected of them and that they are in good faith, without examining the registers in the land registry (Akipek/Akıntürk: 365; Akkanat: 96).

Good faith should be determined by the judge in the concrete case. For example, in one decision, the Supreme Court accepted that those who took over the immovable could not be considered in good faith if the immovable was sold quickly and at a low price to a third party<sup>4</sup>. Similarly, that Art. 1023 of TC cannot be applied; stated that the acquirers could not be in good faith because they acted negligently by not examining a situation that could be considered suspicious<sup>5</sup>.

The land registry is an open registry secured by the responsibility of the state. For this reason, it is not absolutely necessary to check whether the registers that form the basis

<sup>3</sup> Date: 08.11.1991 and E: 1990/4, K: 1991/3 (RG. 29.01.1992; S: 21126).

<sup>4</sup> 14. HD, 19.04.2002 T. and E: 2002/2412, K:2002/3038.

<sup>5</sup> YHGK, 26.12.1973 T. and E: 1972/1644, K: 1973/1225.



of registration reflect the truth. It cannot be expected from the person who will be entitled in kind to investigate the existence of the reason for registration, the validity of the reason or whether the cadastre is done correctly (Akipek/Akıntürk; 365.; Akkanat: 94).

## **2. The Moment to be Found of Good Faith**

In general, the moment when good faith is sought in legal cases can differ. The good faith required to benefit from the principle of trust in the land registry must be present at the moment of birth of the right (Akipek/Akıntürk; 365.; Akkanat: 94). This means that it is sufficient to have good faith at the time of registration request and registration in the journal book. The disappearance of good faith after the registration in the journal book, but before the registration in the land registry, does not affect the benefit of the principle of trust in the land registry (YAKUPPUR: 184). This situation is a reflection of the principle that "later bad faith does not remove good faith (*mala fides superveniens non nocet*)", which has survived from Roman Law (Oğuzman/Barlas: 248.; Oğuzman/Seliçi/Oktay-Özdemir: 242.; Akipek/Akıntürk: 366.; Akkanat:199.).

In exceptional cases where the real right is acquired without registration, in order for the principle of trust in the land registry to be applied, the required good faith must exist at the moment when the event giving rise to the acquisition gives rise to the provisions. For example; In case the non-registered acquisition is realized by a court decision, good faith must exist at the time the judgment becomes final so that the principle of trust in the land registry can be utilized (Yakuppur: 145.).

## **3. The Party to Be in Good Faith**

Persons who will benefit from the principle of trust in the land registry due to their benevolence and whose acquisition of rights based on wrongful registration will be protected are third parties. In other words, they are people who acquire rights from people who have become owners through wrongful registration. Whether the persons transferring the right are in good faith or not does not have an effect on the third parties acquiring rights to benefit from the principle of trust in the land registry (Oğuzman/Seliçi/Oktay-Özdemir: 242). Although this is the general rule, there may be special cases in some cases.

If the person who acquires the right has appointed a representative through voluntary representation and is making the right acquisition in the land registry on behalf of the represented; good faith must be present in both the principal and the represented (Oğuzman/Seliçi/Oktay-Özdemir: 242; Akkanat: 129-130; Sirmen: 200). If the power of representation is not voluntary representation, but a legal representation relationship such

as a parent or guardian, there is no consensus in terms of persons who must have good faith. According to first view, only the legal representative needs to be in good faith; because the represented does not participate in the legal process (Üstündağ: 108; Cansel: 84). However according to another view, both the legal representative and the represented must be in good faith (Oğuzman/Barlas: 247). According to YAKUPPUR, “*a distinction must be made here. If the representative does not have the power to distinguish, the first opinion should be accepted, since it cannot be said about his good or bad intentions. However, in order for the limited incompetent with the power of discrimination to be considered in good faith, both the representative and the represented must be in good faith.*” (Yakuppur: 148). In my opinion, Yakkupur's view is correct.

Juristic persons may also benefit from the principle of trust in the land registry in the acquisition of rights based on wrongful registration. In this case, in order for legal persons to benefit from the principle of trust in the land registry, all members of the body that declares the will of the legal person must be in good faith (Oğuzman/Barlas: 247; Akkanat: 163-164).

In the event that cooperation ownerships acquire rights, each of the stakeholders must be in good faith in order to benefit from the principle of trust in the land registry (Akkanat: 151).

If a right is acquired based on the principle of trust in the land registry, if the right acquirer is in a shared ownership relationship, good faith may differ depending on the situation of each stakeholder. Because the shares of the persons who will acquire rights in the joint ownership relationship may be at different rates in each concrete case. For example, if the buyers decide on shared ownership during the purchase of a immovable property and receive the immovable in the form of four equal shares; the good faith of each buyer is sought over the share ratio to be received. In other words, if each buyer is in good faith over the 25% share he owns, he can only benefit from the trust principle under this condition. In other words, the non-benevolence of even one of the stakeholders does not affect the stakeholders, unlike in the case of co-ownership (Akkanat: 147-148).

#### **4. Presumption of Good Faith**

In accordance with Art. 3/1 of TCC, in cases where the law imposes a result on good faith, good faith is essential. In other words, in accordance with the principle of trust in the land registry, a result is tied to good faith. In this case, it will maintain its place as a presumption that the party wishing to rely on good faith is in good faith. The party claiming that this person is not in good faith will be obliged to prove this claim (Akkanat:

17, 54; Oğuzman/Barlas: 249; Yakuppur: 151). This situation constitutes a presumption of good faith regarding the principle of trust in the land registry.

In cases where public notification through announcement is mandatory, the third party cannot benefit from the presumption of good faith. The most probable situations where the principle of trust in the land registry can be the subject are the announcements made in the trade registry and the announcement of the bankruptcy decision (Yakuppur: 152). Making the necessary announcements in these matters, for example, the announcement of a real estate as capital to a commercial company in the trade registry will eliminate the presumption of good faith.

Temporary easement rights, as the name suggests, automatically expire at the end of the period. As long as the cancellation is not made after the expiration, the registration in the land registry constitutes a wrongful registration. It is not possible to acquire a real right in good faith based on the existing wrongful registration. Because in such rights, the period is specified in the title deed and third parties cannot claim that they did not know the register in question and that they do not need to know (Ögüz: 49).

### **C. THE EXISTENCE OF OTHER FOUNDING ELEMENTS**

The registration to be made in the land registry must first of all depend on a reason. For example, the reason for the registration made on the basis of the sales contract is the sales contract. Registrations with invalid legal grounds are also wrongful registrations (Yakuppur: 158).

In the Art. 1023 of TCC provision, it is not clearly stated which types of registrations can be based on the principle of trust. Two different questions arise in this regard. Can the principle of trust be applied in both cases of legal action and legal action? The other question is, is there a difference between whether the gains of third parties are modest or not in order to operate the trust principle?

#### **1. Legal Action-Legal Act Distinction**

Sales can be given as examples of legal action, and occupation situations can be given as examples. It has been a matter of debate whether an immovable can be acquired by occupation or by any legal act based on wrongful registration.

According to CANSEL, such an acquisition is possible (Cansel: 57-58). For example, if someone who does not actually own an immovable but appears as an owner in the deed leaves the immovable from the registry; A bona fide third person may acquire this immovable through occupation, based on his wrongful abandonment. According to those

who have the opposite view, such a gain is not possible. Because the principle of trust in the land registry is a principle introduced to protect the safety of shopping (Serozan: 267).

However, occupation of immovables is not a legal action, but a legal act. In this case, based on Art. 1023 of TCC, it should not be possible to acquire the right in rem through occupation (Serozan: 139-140). According to other authors who have a second opinion, abandonment does not terminate the property right of the real owner. For this reason, the principle of trust in the land registry cannot be based on after the occupation of the immovables in question. In such cases, only the gains made with the extraordinary statute of limitations are preserved. However, in order for the property to be acquired through occupation based on its wrongful abandonment, the immovable must also become truly ownerless (Oğuzman/Seliçi/Oktay-Özdemir: 410; Akipek/Akıntürk: 478).

## 2. Mutuality

Another founding element is the element of mutuality. In order for the benevolent third person to benefit from the principle of trust in the land registry, should the gain made be mutuality, or will the gratuitous gains be protected as well?

In the Art. 1023 of TCC provision, only the expression “... *acquired property or other real rights* ...” is included. Whether this win was mutual or not was never mentioned. In practice, the situation of blasphemy is mostly encountered in forgiveness contracts and in cases where the testator is present (Yakuppur: 162).

According to SEROZAN, the principle of trust in the land registry is a principle introduced to ensure transaction security, and in order to benefit from this principle, the gain must be in return for a favor (Serozan: 267). Because, it is necessary to protect the real owner, whose rights are further damaged, against the person who gains gratuitously (Serozan: 271).

According to OĞUZMAN/SELİÇİ/OKTAY-ÖZDEMİR, the testator has only one right to claim. Therefore, the beneficiary of the will does not have the right to acquire it in good faith. If there is a wrongful registration in the name of the inheritance, the registration made in the name of the testator will also be wrongful. For this reason, it is not possible for the testator to benefit from the principle of trust (Oğuzman/Seliçi/Oktay-Özdemir: 406). However, it should be noted that if there is an wrongful registration in the name of the legator and the heirs are registering on behalf of the testator, the beneficiary of the will must benefit from the principle of trust in the land registry (Cansel: 59; Öğüz: 104).

According to YAKUPPUR, seeking a prudence condition in order to benefit from the principle of trust results in an additional condition being imposed on the principle of

trust. For this reason, even if the gain is not mutual, it should be protected (Yakuppur: 162).

In my opinion, in these cases, the passive party of the forgiveness contract and the testator did not acquire any rights based on any wrongful registration in the registry. Therefore, these people do not have any trust in the registry. For this reason, there is no trust to be preserved. In other words, the principle of trust in the land registry should not be applied in gratuitous gains (Özçelik: 53).

### **III. SITUATIONS WHERE THE PRINCIPLE OF TRUST CANNOT BE APPLIED**

#### **A. THE IMMOVABLE IS NOT SUBJECT TO PRIVATE OWNERSHIP**

In accordance with Art. 999/1 of TCC, immovables that are not subject to private ownership and reserved for public use are not registered in the land registry. If they are registered in the title deed somehow, an wrongful registration will occur. But although the existence of a wrongful registration is mentioned here, the right cannot be acquired by making use of the principle of trust in the land registry and based on this wrongful registration (Oğuzman/Seliçi/Oktay-Özdemir: 242, 245).

#### **B. DOUBLE DEED STATUS**

If a real estate is registered in favor of two different persons in the registers in the land registry, a double deed will occur. According to the prevailing opinion in the doctrine, in the case of double deed, if the right is acquired by relying on any of the registers, the principle of trust will not be utilized (Sirmen: 202). Because the deed eraser is public and the person who acquires the right should examine the land registry and see the other register (Oğuzman/Seliçi/Oktay-Özdemir: 249; Yakuppur: 194; Cansel: 288).

#### **C. DESTRUCTION OF THE IMMOVABLE**

As stated in the provision of Art. 717 of TCC, in case the immovable is destroyed, the ownership of the immovable will come to an end. In order to talk about the destruction of the immovable, the immovable must be destroyed in a way that does not allow re-use. Because if there is a possibility of using the immovable again, it will not be possible to talk about the destruction of the immovable there. In the event of the destruction of the immovable, not only the ownership but also all real rights on the immovable will come to

an end (Yakuppur: 197). In this case, since there is no real estate to be dominated, it will not be possible to operate the principle of trust.

#### **D. DIFFERENCES IN PAGES ON EASEMENT RIGHTS RELATED TO GOODS**

Establishment and termination of the right of easement related to the goods is possible by performing the registration and abandonment procedures separately on the page of both the beneficiary and loaded immovables. If there are no compatible registers on the pages of the two real estates, the person who acquires rights by relying on the wrongful registration existing in only one of them cannot benefit from the principle of trust. Because if the registers do not confirm each other, the registry loses its clarity (Sirmen: 203).

#### **CONCLUSIONS**

The principle of trust in the land registry has been regulated in the Art. 1023 of TCC. Many concepts have not been clarified in the text of the said article. For this reason, many doctrinal debates have occurred around the principle of trust in the land registry.

In order to operate the principle of trust in the land registry, some conditions must also be present. These terms, which are classified differently by different authors, eventually converge on the same point. First of all, there must be a wrongful registration in the land registry. The purpose of wrongful registration is the situation where the register in the registry does not reflect the truth. Not just registration; wrongful abandonment, false registers regarding the area of the immovable, and in some cases, declarations can also create wrongful registration.

Another condition for the principle of trust in the land registry to come to the fore is that the third person acquiring rights must be in good faith. Good faith appears to be a subjective condition. In other words, good faith can manifest in different ways and to a different extent in each person. For this reason, good faith should be re-evaluated in every concrete case.

As another condition; it can be said that the acquirer of the right based on the wrongful registration must be a third party. So much so that the party with a wrongful registration will not be able to benefit from the principle of trust in the land registry since it is not a third party. Even the legal successors, creditors and cooperating partners of the

party on whose behalf there is a wrongful registration cannot benefit from the principle of trust.

In order for the third person who has acquired a right in good faith to benefit from the principle of trust, the acquired right must be a property right or a real right. Since the rights other than these are not registered in the land registry, it is not possible to acquire them within the framework of the principle of trust. Likewise, real rights in (for example; usufruct and right of residence) cannot be acquired by making use of the principle of trust.

Whether those who gain a right in kind by relying on the land registry should gain this right in return for an interest has also been a subject of debate in the doctrine. At this point, it should be said that the gain made must be mutual in order to benefit from the principle of trust in the land registry.

---

## REFERENCES

- AKIPEK, Jale/AKINTÜRK, Turgut. (2009). Property Law. Beta Publications, Istanbul.
- AKKANAT, Halil. (2010). Protection of Good Faith in Turkish Civil Law. Filiz Publications, Istanbul.
- ALBAŞ, Hakan. (2013). “An Exceptional Gap in the Protection of Good Faith in the Positive Effect of Registration in the Land Registry”. Istanbul Bar Association Journal, Vol. 87, P. 2013/3. s. 138-147.
- CANSEL, Erol. (1964). The Principle of Trust in the Land Registry, Ankara.
- DURAL Mustafa/SARI Suat. (2012). Turkish Private Law, C. I, Basic Concepts and Initial Provisions of the Civil Code, Filiz Publications, Istanbul.
- OĞUZMAN, M. Kemal/BARLAS, Nami. (2013). Civil Law, Introduction, Resources, Basic Concepts (19th Edition). Vedat Publications, Istanbul.
- OĞUZMAN, M. Kemal/SELİÇİ, Özer/OKTAY-ÖZDEMİR, Saibe. (2012). Property Law (15th Edition), Filiz Publications, Istanbul.
- ÖĞÜZ, Tufan. (1988). “Conditions in which Good Faith is Not Protected in the Acquisition of Real Rights on Immovables”. Unpublished Master Thesis, Istanbul University Institute of Social Sciences.
- ÖZÇELİK, Ş. Barış. (2016). Protection of Trust in the Land Registry. Yetkin Publications, Ankara, 2016.
- SEROZAN, Rona. (2007). Movable Property Law, Filiz Publications, Istanbul.
- SIRMEN, Lale. (2017). Lessons on the Law of Property (5th Edition). Yetkin Publications, Ankara.
- ŞENGÜL, Mehmet. (2013). Publicity of Land Registry. Justice Publishing House, Ankara.
- ÜSTÜNDAĞ, Salim. (1959). The Case for Correction of the Land Registry, Istanbul.
- YAKUPPUR, Sendi. (2013). “The Principle of Trust in the Land Registry”. Istanbul University Institute of Social Sciences PhD Thesis. Istanbul (Advisor: Prof. Dr. İlhan HELVACI).