



Practices of Law Number 6292 and Evaluation of Lands Taken Out of Forest Boundary: The Case of Finike District

Mohammad CHEHREH GHANI^{1*}, Nimet VELİOĞLU¹

^{1*} Istanbul University-Cerrahpasa, Faculty of Forestry, Department of Forestry Engineering, 34473, Istanbul.

Abstract

In the history of forestry in Turkey, areas within the forest boundary have been taken out of forest boundaries on different dates to relieve the grievances of forest villagers and to bring a legal dimension to land disputes arising in forest lands. Different regulations have been made to the assessment of these lands but the most comprehensive regulation is Law No. 6292 which came into the force in 2012.

The aim of this study is to examine the implementation principles of Law No. 6292 and 2B practices through the example of the Finike district of Antalya. In this study, Law No. 6292; concept of the right holder, sales practices, transfer of user rights, the concept of the free transfer of user rights, and project areas were reviewed.

In this study, Finike forest areas were examined on the basis of the main village and its eighteen surrounding villages. Since Finike was chosen as the study area, the data were obtained from Finike Forest District Directorate. Regarding the sales of 2B lands, data such as the number of 2B lands, applicants made to sell, and the number of sold 2B lands were compared. Thus, the number of 2B immovable properties and the latest status of sales were examined. Results show that 51.4% of the 2B lands in Finike district were sold.

Keywords: Law No. 6292, Finike, 2B lands, to take out of forest boundary.

6292 Sayılı Kanun Uygulaması ile Orman Sınırları Dışına Çıkarılan Arazilerin Değerlendirilmesi: Finike İlçesi Örneği

Öz

Türkiye ormancılık tarihinde, orman köylülerinin mağduriyetlerini gidermek ve ormanlarda ortaya çıkan arazi uyuşmazlıklarına hukuki boyut kazandırmak amacıyla muhtelif tarihlerde orman sınırı içinde kalan alanlar orman sınırları dışına çıkarılmış ve bu alanların değerlendirilmesine ilişkin farklı düzenlemeler yapılmıştır. Bu düzenlemelerin en kapsamlısı, 2012 yılında yürürlüğe giren 6292 sayılı Kanun'dur.

Bu çalışmanın amacı, 6292 sayılı Kanun ve Kanun'un uygulama esaslarını ve Antalya'nın Finike ilçesi örneği üzerinden bölgedeki 2B uygulamalarını incelemektir. Bu çalışmada, 6292 Sayılı Kanun; hak sahibi kavramı, satış uygulamaları, kullanıcı hakkı devretme, bedelsiz devir kavramı ve proje alanları başlıkları altında değerlendirilmiştir.

Bu çalışmada Finike orman alanları merkez ve on sekiz köy bazında ele alınmıştır. Çalışma alanı olarak Finike seçildiği için, veriler sadece Finike Orman İşletme Müdürlüğü'nden alınmıştır. Araştırmada 2B arazilerin satışıyla ilgili olarak 2B arazi adedi, satış için yapılan başvuru sayısı ve satış işlemi tamamlanan arazilerin verileri karşılaştırılmıştır. Araştırma sonucunda, 2B taşınmaz adedi ve gerçekleşen satışların son durumu incelendiğinde Finike ilçesindeki 2B arazilerinin %51,4'ünün satışının gerçekleştiği tespit edilmiştir.

Anahtar Kelimeler: 6292 Sayılı Kanun, Finike, 2B arazileri, orman sınırları dışına çıkarma.

*Sorumlu Yazar (Corresponding Author):

Mohammad CHEHREH GHANI (PhD Student); Istanbul University-Cerrahpasa
Faculty of Forestry, Department of Forestry Engineering, 34473, Istanbul. Tel: +90
(212) 338 2400, Fax: +90 (212) 226 1113, E-mail: mohammadc@ogr.iu.edu.tr,
ORCID: 0000-0001-5785-7169

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1. Introduction

The areas formed by the exclusion of forest lands belonging to the treasury out from the forest boundaries on the grounds of losing their qualifications are referred to as 2B land as defined in clause (b) of Article 2 of the Forest Law No. 6831. According to the relevant article, the land that is excluded from the forest areas by means of cadastre, that can not be regained and improved is defined as the area taken out of the boundaries of the forest (Başak Hukuk, 2017).

In the history of forestry in Turkey, the areas that remained within the forest boundary for various dates have been subject to exclusion from the forest boundaries and different arrangements have been made regarding the evaluation of these areas. Meanwhile, since 1937, when the Forest Law No. 3116, which is accepted as the starting point of scientific and technical forestry in Turkey, got into force, works for the forest cadastre have been going on. The forest cadastre in Turkey has not yet been completed since then (Kose, 2017).

At the global level and countrywide, the boundary limits of both forestlands and all other immovable possessions are ensured land surveying and upon completion of those surveying, they are secured by recording them into the land register (Gençay, 2012). According to Ayanoglu (1994) and Article 169 of the Constitution, the supervision of all forests belongs to the State, and ownership of the state forests cannot be transferred.

But the fact is that despite these opinions, the first legal arrangement for the lands which were taken out of forest boundary was made on 17/04/1970 with the process of exclusion from the forest boundaries. On the mentioned date, by adding a paragraph to Article 131 of the Constitution got into force with the Law No. 1255 (1961 Constitution) before the effective date of the Constitution (15.10.1961) agricultural areas such as fields, vineyards, gardens which lost their qualifications as forest and areas like pastures, plateaus, winter quarters used in livestock and the settlements where urban, village and town structures exist collectively were allowed to be excluded from the forest. This provision of the Constitution was started to be applied by adding it to the Forest Law No. 6831 by Law No. 1744 in 1973. This process was also expanded in scope and time by the 1982 Constitution (Velioglu,2007).

According to Köktürk (2006), in the 1982 Constitution, the text in article 170, declares that in order to make settled partially or completely the local people of the forest villages, the places should be designated by the State which will be fixed and their allocation to the benefit of local people will be regulated by law.

Furthermore, the date of losing qualification of the forest was changed as prior to the date 31.12.1981, exclusion operations were carried out dependent on the conditions in accordance with the law dated 1983 and numbered 2896, this process was largely facilitated in 1986 after making amendments by the Law no 3302 which lead to completely revoking the conditions to maintain the integrity of the forest, not to move the forest and soil conservation consents (Velioglu,2007).

In this article, the main purpose was the development of forest villagers, which has deviated from its purpose with the regulations described above and problems have started to emerge in the evaluation. In order to solve the current problems, the Law No. 6292 on Supporting the Development of Forest Villagers and Evaluating the Places Taken Out of the Forest Boundaries on behalf of the Treasury and the Sale of Farmland Belonging to the Treasury was put into effect in 2012 (Yıldırım and Ayanoğlu, 2014). The arrangements regarding the 2B areas have been changed over the years (Gençay et al. 2018). However, Law No. 6292 which was enacted in the year 2012 made possible the sale of 2B lands (Birben and Ünal 2016).

According to the data of the General Directorate of Forestry, the total area of 2B lands in Turkey is 410,000 hectares besides Antalya province is ranked first with 45,548 hectares (Kavasoğlu, 2014). The provisions on the evaluation of the disputed areas mentioned above have been included in Law No. 6292, known to the public as 2B Law.

Based on the latest (2018) National Real Estate Activity Reports, as of the end of the year, 981,322 purchase applications were made for 2B immovables. Of these applications, sales were made to 848,148 rights holders. The sale of 543,908 immovables with 211,249 hectares to 769,074 right holders has been completed as of the end of 2018.

In this study, the Law No. 6292, the principles of implementation of the law and 2B applications in the region were examined through the case of Finike District of Antalya.

2. Material ve Method

2.1. Benefits and Application Principles of the Law No 6292

According to the Paragraph (b) of Article 2 of the Forest Law No. 6831, among the places which lost their forest quality before the date 31/12/1981 in terms of science; various agricultural fields like a farm, vineyard, garden, orchard, olive grove, hazelnut field, pistachio field (pistachios, pine nuts), or the lands like grassland, winter quarter, summer pastures that are determined to be beneficial for livestock and the settlements where cities, towns, and villages are collectively exist were excluded from forest boundaries and they were registered on behalf of the Treasury if owned by the State, on behalf of the institution of a public institution with legal personality if owned by them, and on behalf of private forest owners if owned by them. After the application is finalized, a final proofreading and registration process is done on the land registry office.

The purpose of the Law No. 6292 in force is to evaluate the places taken outside the boundaries of the Forest in accordance with Article 2 of the Forest Law No. 6831 mentioned above, to establish new forest areas, to place the villagers within or adjacent to the forest which is decided to be moved, to support the development of the forest villagers and to determine the procedures and principles related to the sale of agricultural land belonging to the Treasury. For this reason, it is essential to make clear the concept of the rights holder and to determine the status of the rights holder in the legislation.

2.2. Concept of Right Holder

According to the updated lists or cadastre minutes issued before the effective date of the law or the declarations of the land registry created according to the finalized court decisions; the persons are shown to be the user and/or right owner before the date 31/12/2011 the ones applying to the administration within the application period to buy these immovable properties and accepting the sale price determined by the administration without objection or a subject of a lawsuit are defined as right holders¹.

According to the relevant regulation, it is possible for the right holders to make direct sales. Therefore, firstly it is necessary to have the right to perform the sales transaction. For users and/or innovation owners to have rights, it is mandatory that their names be included in the cadastral report or update list and that their use should be based on the date before 31/12/2011.

2.3. Sale Practices

Once the right holder is determined, sales applications come. The law provides a period of time for the right holders to apply for sale, and the right holders can request that these properties be sold directly to them for the price within six months from the effective date of the law. In practice, this period regulated by the law could be extended by periods of six months which has been extended until December 2019.

Sale transactions are concluded within one year at the latest from the date of application. Those who fail to meet their sales obligations lose their right to purchase directly. The application fee for those who are found not to be the right holder is returned in the same manner and without interest (Yıldırım and Ayanoğlu, 2014).

The sale price of the real estate to be sold to the rightful owners is calculated over fifty percent of the fair price for the portion up to four hundred square meters and seventy percent of the fair price for more area.

The sale price can be paid in advance or in installments; a twenty percent discount is applied if the entire sale price is paid in advance and ten percent discount if at least half of it is paid.

Immovable property allocated to afforestation and public services or which must be assessed according to private laws or specified by the Ministry of Finance shall not be sold. Instead, another equivalent real estate is sold. Those who do not accept the proposal of the administration are not considered as right holders, cannot claim right and compensation, cannot file a suit. Immovable properties that do not belong to any right holder or that cannot be sold are evaluated by the Ministry of Finance (including sale) by removing the 2B, user and innovation designations on them (Yıldırım and Ayanoğlu, 2014).

Those among the right holders who do not accept the offer of the administration cannot benefit from the rights

¹ Article 6 of the Law no. 6292;

to direct sale, cannot make any other claim, cannot claim right and compensation, and cannot file a suit. The way to go to the judiciary is completely blocked by this regulation.

2.4. Transfer of Right to Use

Whether the right of use can be transferred is a major problem. Although the right of use can not be transferred until today, this issue has also been resolved in this law. The law also includes regulations on the right holders being able to transfer their rights of use to someone else. According to the relevant regulation, users can transfer their rights to others with a notarized letter of consent from the effective date of the law. Thus, the right holders who had difficulty paying the sale price were given the opportunity to sell their rights to the contracted successors in return for its price.

2.5. The Concept of Free Transfer

The concept of free transfer is regulated in Article 7 of the law. With this article, It is aimed to eliminate the grievances of the persons whose title deeds were canceled by the State on the grounds that they were taken out of the forest boundaries without payment stipulating that as a result of the lawsuits filed on the grounds that the lands formed in accordance with the land registry and cadastre or zoning legislation (clause-a) or allocated, sold, exchanged, assigned with or without charge or given for settlement purposes by the State to the people, or the ones sold by privatization or the immovable properties (clause-b) registered on behalf of private law legal person shares of which were transferred were taken out of forest boundaries shall be returned to the previous owners or to the legal heirs, for the title deeds under the scope of clause (b) to be returned to the contractual successors as free of charge. In case of application to the administration by the concerned persons according to this article, land registry records of the immovable property are considered valid without getting a charge.

2.6. Determination of Project Areas and Transfer of Rights by Rights Holders

The concept of the project area is also mentioned in the related law, it is related to the determination of project areas and the evaluation of the remaining immovable properties in these areas. Determination of project areas and duties of the Public Housing Administration will be stated below.²

Due to the fact that the zoning applications in the 2/B areas have been accepted as void, no zoning applications have been made in these areas or the applications have been canceled by the courts. For this reason, the settlements, which usually occur in 2/B areas, are irregular. In order to eliminate the irregular structures formed in this way, urban transformation projects to be determined by the Ministry of Environment and Urban Planning, Public Housing Administration or the relevant metropolitan or municipalities and approved by the Ministry of Environment and Urban Planning have been made available to be realized.

According to Article 8 of the law, in areas among the 2/B areas, the ones whose cadastral minutes were finalized or update lists were registered before the effective date of this law within thirty days from the effective date of this law, within three months from the finalization and registration date of the areas for which cadastral minutes will be finalized and updated lists will be registered after the effective date of this law, the boundaries of the area will be determined by the administration willing to identify the project area, and satellite photos, any and all scale plans, parceling plans, ownership information, cadastral maps, and current maps will be sent to the Ministry of Environment and Urban Planning by the municipalities through the governorates, and directly by the Public Housing Administration (TOKI) for approval of the boundaries of the project area.

The approved project area approved by the bidder administration shall be sent to the Ministry of Finance within thirty days from the date of approval by the administration upon the request of transfer of immovable property within the remaining 2/B in the project area, the ones from these properties approved by the Ministry of Finance will be transferred to the claimant administration by specifying the right holders and current rights on the property over their real estate tax values.

In case there is more than one proposal for the same project area, the priority order is evaluated as TOKI, metropolitan municipalities, and municipalities. The remaining 2/B immovable properties in the project areas can be transferred by the Ministry of Finance to the project owner administration over the tax value of the property by specifying the users and their existing rights. If the project area is determined by the Ministry of Environment and Urban Planning, the priority belongs to the Ministry. The immovable property in the 2/B areas

² Article 8 of the Law no. 6292;

within the project area determined and approved by the ministry shall be allocated to the said Ministry for use in the purposes of this law by specifying the right holders and their existing rights and these areas shall be evaluated by the said Ministry. In this context, the remaining immovable properties are evaluated by taking into account the sales and payment conditions specified in the law.

2.7. The Sample Area

Finike is one of the most mountainous and wooded areas in Turkey. A large part of the population of the district lives in the Finike plain, while the rest live in forest villages. In this region, where the income level is very low, dry farming and livestock are carried out on small and unproductive land. Finike is richer in woodland than the average of Antalya province (Demirbaş, 1998) 75% of the 65,500 ha land of the Finike District, namely 48834.96 hectares, is forested. When examining the forest areas of Finike on a village basis, Arifköy, Yalnızköy, Yazır, and Alacadağ have the most forestlands; and Arifköy covers 7,992.61 ha, Yalnızköy 6,815.03 ha, Yazır 5,204.84 ha, and Alacadağ covers 4,353.27 ha of forest areas. Of the total registered area of 25,990.02 hectares in the area of responsibility of the Finike Forest Management Directorate, 0.59% consists of 2/B areas. According to the data of the General Directorate of Forestry, Antalya province is ranked first with 45,548 hectares (Kavasoğlu, 2014). Therefore, Antalya, Finike district was chosen as the working area.

3. Result and Discussion

The sample area of the study was selected as Finike District of Antalya province due to the problems experienced in the evaluation due to the abundance of 2/B areas in Antalya province and the fact that it is a tourism region. In this study, the data were obtained only from the Forest Management Directorate of Finike. The following Table 1 and Figures 1 and 2 also provide forest area, 2B area, and registered area information on the village basis.

Table 1. Distribution of Finike forest area and 2/B lands by the village.

Village	Forest area (ha)	2/B Lands (m ²)	Registered area (ha)
Akçaalan	2,124.3	5,878.55	2,670.18
Alacadağ	4,353.27	195,279.58	7.74
Arifköy	7,992.61	1,442	146.3
Asarönü	1,876.02	765.51	1,702.54
Boldağ	2,691.65	81,926.59	3,601.55
Çamlibel	1,541.05	-	12.14
Dağbağ	2,977.52	59,282.19	3,022.67
Gökbük	932.99	-	387.46
Gökçeyaka	2,231.17	1,938.08	3,048.8
Günçali	2,652.11	32,015.22	4,703.28
Hasyurt	-	-	-
Merkez	585.75	7,808.97	-
Sahilkent	1,796.61	185,718.85	-
Turuçova	926.7	687,175.46	2.59
Yanlız	6,815.03	3,237.04	64.18
Yazır	5,204.84	173,130.29	2,263.38
Yeşilköy	2,759.19	29,508.12	3,409.94
Yeşilyurt	1,334.73	-	947.27
Yuvalılar	39.42	82,632.56	-
Toplam	48,834.96	1,541,860.46 (154.18 ha)	25,990.02

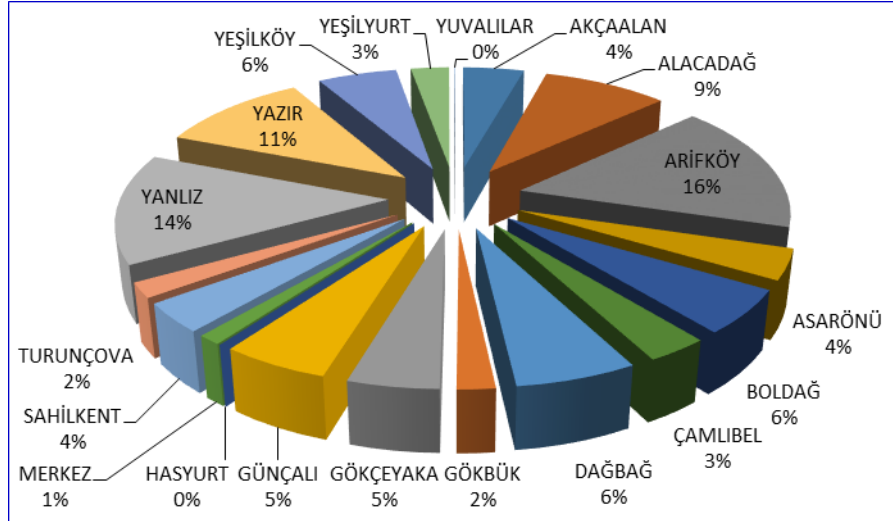


Figure 1. Village distribution of Finike forest areas,

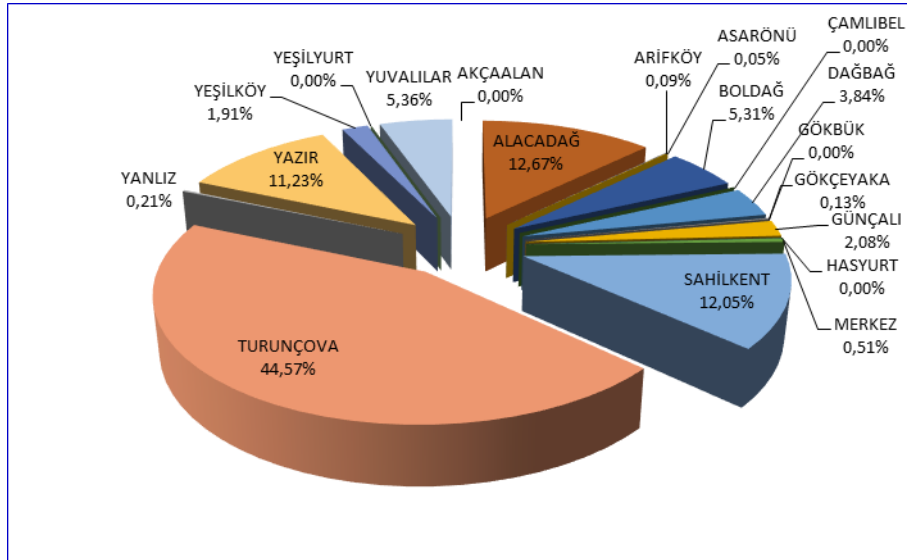


Figure 2. Village distribution of Finike 2/B lands.

3.1. Statistics of Finike 2/B Areas

As a result of the investigation of Finike in terms of 2/B areas, Turunçoova village was determined to be the largest 2/B village in the district due to the fact that 68,7 ha area was taken out of the forest boundaries with 2/B land, It was also determined that the total area excluded with 2/B so far is 154,18 ha in the Forest Management Directorate of Finike up to now, When the district is examined in terms of 2B land, the villages with the largest 2B land in the district are Turunçoova with 44,75%, Sahilkent with 12,05%, Alacadağ with 12,67% and Yazır with 11,23%, The forests in these villages make up only 26% of the forests of Finike, On the other hand, only 19,3% of 2B land is in 74% of the forests of Finike, This suggests that the 2B problem usually occurs in forests having special qualities, In Tables 2 and Figures 3 and 4, the number of applications for the sale of 2B lands and the lands sale process of which were completed is compared.

Table 2. Number of Finike 2/b lands, number of applications made for sale and the total number of properties sold.

Village	Number of 2/B Lands	Number Of Made 2/B Applications	Number of 2/B Sold Lands	2/B Lands Sales Completion Rate (%)
Akcaalan	1	0	0	0
Alacadağ	80	58	34	42.5
Arifköy	1	0	0	0
Asarönü	1	1	1	100
Boldağ	18	11	9	50
Çamlıbel	0	0	0	0
Dağbağ	24	15	13	54.1
Gökbük	0	0	0	0
Gökçeyaka	2	0	0	0
Günçalı	6	4	4	66.6
Hasyurt	0	0	0	0
Merkez	3	16	2	66.6
Sahilkent	101	117	63	62.3
Turunçova	230	284	145	63.0
Yanliz	2	2	2	100
Yazir	41	20	6	14.6
Yeşilköy	9	14	6	66.6
Yeşilyurt	0	0	0	0
Yuvalılar	35	22	0	0
Total	554	564	285	51.4

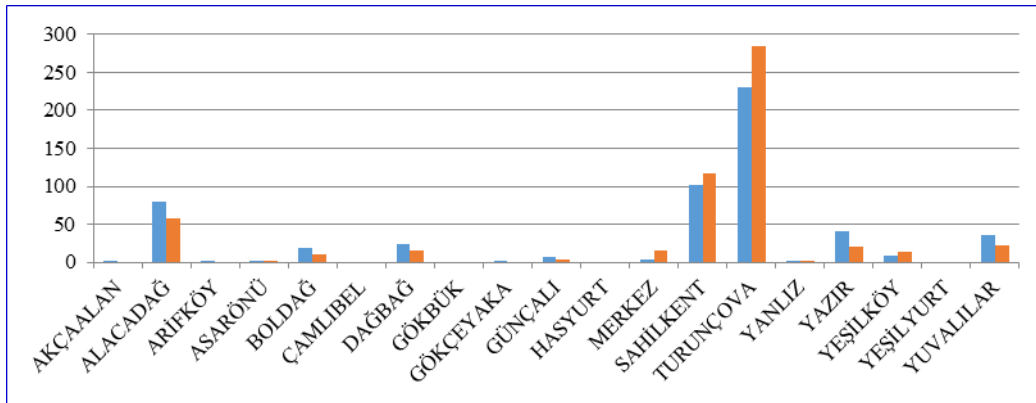


Figure 3. Comparison between the number of 2/B properties (red) and the number of applications made(blue).

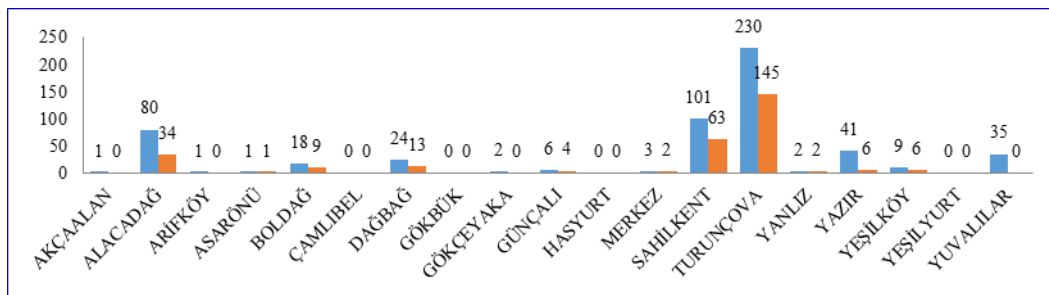


Figure 4. Comparison between the number of 2/B properties (red) and the number of 2/B sold (blue).

3.2. The last state of the sales that occur within the scope of 2B in Finike District

When the number of immovable properties and the number of applications made are examined, it is seen that the villages of Turunçova (284) and Sahilkent (117) have the highest number of applications and that the number of applications in these villages is greater than the number of 2B lands. This means that more than one application has been made for the same land. On the other hand, in some regions for example in Yazır village, there are 41 pieces of 2B lands. although only twenty applications have been made and only six of the applications have been finalized. There are many factors that affect the number of applications but the most important among these factors is how valuable the land is in terms of price. This topic will be examined in the course of the research.

When examining the number of immovable properties within the scope of 2B and the final status of the sales realized, it was determined that 51.4% of the 2B land was sold. More than 60% of sales were completed in other villages except for Yazır Village (14.6%), Alacadağ (42.5%), and Dağbağ (54.1%). Below in Table 3, the quantity sold sales prices and average prices per square meter are presented.

When the total sales of 2B lands are divided into the total sales price the square meter price of the sales is obtained. As a result of the examination, it was determined that the value of the land affected whether the demand was excessive or not. For example, Turunçova, Sahilkent, and Asarönü are the regions where the land is most valuable. These three regions are the ones with the highest number of applications for sale, and over 60% of sales are completed in these regions. So far 4.329.318 TL has been obtained from these sales. However, in areas where land prices are low, such as Yazır and Dağbağ villages the number of demands is very low and in this way, the application of the law can be said to be more ineffective. However, land value is only one factor and other factors can affect these rates differently. For this reason, it was concluded that a new arrangement was necessary for some regions especially taking into account the economic and social conditions of the people.

Table 3. The total amount of sold 2/B lands. sales prices and the average price of square meters.

Village	2/B Sold Amount (ha)	2/B Sold Price Total	2/B Square Meter Average Price (TRY)
Akcaalan	0	0	0
Alacadağ	56,349.69	145,934.01	2.58
Arifköy	0	0	0
Asarönü	785.51	5,741.33	7.30
Boldağ	20,071.23	90,699.85	4.51
Çamlibel	0	0	0
Dağbağ	38,054.28	28,379.88	0.74
Gökbük	0	0	0
Gökçeyaka	0	0	0
Günçali	10,244.3	15,815.24	1.54
Hasyurt	0	0	0
Merkez	4,387.48	29,832.46	6.79
Sahilkent	118,355.09	1,061,512.7	8.96
Turunçova	341,154.77	2,888,182.31	8.46
Yanliz	3,237.04	22,490.5	6.94
Yazır	16,122.48	14,505.47	0.89
Yeşilköy	24,478.96	26,224.71	1.07
Yeşilyurt	0	0	0
Yuvalılar	0	0	0
Total	633,240.8	4,329,318 TRY	-

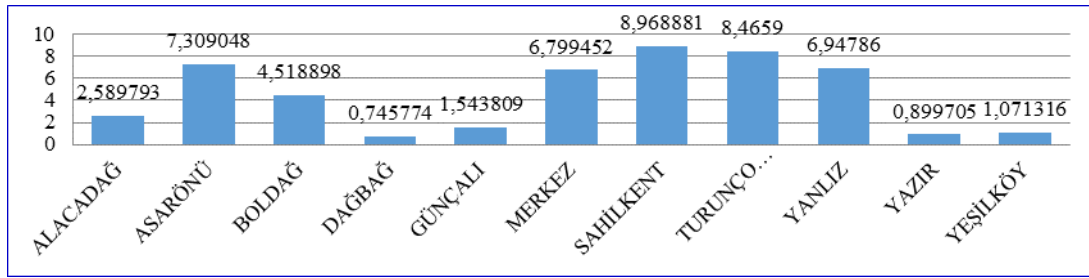


Figure 5. Average price per square meter of 2/B land (TRY).

4. Conclusions

Overall, when the Law No. 6292 is examined, it is possible to conclude that the concept of “Supporting the Development of Forest Villagers” mentioned in the name of the law has not reached its aim but it is evident that 2B land problem has been solved with a high proportion of 51.4% on average in certain regions. The law basically tried to solve the 2B land obstacle by paving the way for the sale of land by considering the persons who actually utilize the 2B land and who meet the requirements as a rightful owner; however, the rates remained below expectations.

At the same time, this regulation does not comply with articles 169 and 170 of the 1982 Constitution which aim the development of forests and forest villagers. The Constitutional Court has basic decisions on this matter. According to the Constitutional Court decision 1992/48E. - 1993/14K. on 30.03.1993, the article (Article 11 of Law No. 2924) which allows the names of occupants to be written in the cadastre report regardless of whether the areas taken out of the forest belong to indigenous people or not, has been suspended. In another decision 2001/382 E.-2002/21 K. on 23.01.2002, the related article of Law No. 4706 authorized the direct sale of occupied forest lands to the occupants has also been suspended by the Constitutional Court decision.

Sales between urban and rural settlements especially different regions of Turkey should be differentiated when evaluating 2B lands. The application has made it possible to make sales in large cities especially in areas where land is valuable. Therefore a new regulation should be presented as a proposal for areas where the land is not valuable. Even in the Finike region of Antalya province success is not at the desired level although socioeconomic conditions are appropriate. It is observed that more than one application has been made for the same land in Finike. There are many factors that affect the number of applications but the most important among these factors in Finike is the land value. When examining the number of immovable properties within the scope of 2B and the final status of the sales realized it was determined that 51.4% of all 2B lands were sold. However, land value is not the only factor and other factors may also be affectable. It was concluded that the economic and social conditions of the people in Finike should be taken into account seriously.

In cases where socio-economical assessments are not based on the real rights holders may be obliged to transfer their rights to other persons especially due to economic reasons. It is essential for a sense of justice to prevent this situation.

The law No. 6292 which was enacted after several long-lasting practices introduced the concept of the rights holder in order to solve the problem of 2B lands and granted some rights to these persons. In addition, for disputed lands that have been going on for a long time without a solution, an opportunity has been made for the state to obtain a certain amount of income from them and irregular construction was tried to be prevented through urban transformation. Besides, different projects applied and these objectives have been achieved to a certain extent.

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