

Public Value Capture Tools in Turkey

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SUMMARY

Value capture is an umbrella term used to describe a range of financing mechanisms sharing a common rationale that the benefits of public investments and decisions are capitalized into property values and this value increase, namely betterment, plus value, windfalls, or unearned increment should be captured by the public. Countries use a variety of tools, instruments and process to capture the value increase resulting from public investments, decisions or actions, and the general economic development such as taxes, developer obligations, exactions, impact fees, levies, tax increment financing, land readjustment, land banking, land leasing, land development, etc. In addition to the great variety of the value capture tools, for each tool, there are also diverse rules, process and applications, which affects the usage, efficiency, acceptance and success. Thus value capture tools in a country and their effectiveness or success mainly depend on country's planning, land management, land administration systems and their institutional, legal, technical and social frameworks. Therefore, this study aims to provide the Turkish case.

In Turkey, in the past decade, in addition to the existing tools, there has been a renewed interest in public value capture, evidenced by the policy documents. For instance, making legal arrangement on value capturing to prevent land speculation is defined in the Action 2.1.4 of the Integrated Urban Development Strategy and Action Plan. In addition, broadening the tax base (article 181 and 263.7), introduction of ad valorem taxation of properties (article 264.2), increasing the revenues of local governments (article 181 and 264), using the value increases of immovable properties for the quality and development of cities (article 684), capturing the value increases from plan amendments (article 225.2), integration of property values into Land Administration System to determine the value increases from public investments (article 684.1) are aimed in the 11th Development Plan. Recently, some of these policies are realized and the value capture capacity of land readjustment is improved, and two legislations about new value capture tools are enacted. The first tool aims to the capture the value increase arising from the parcel-based plan amendments and the second aims to ad valorem taxation of high-valued residences. This paper presents the main characteristics of the existing and new value capture tools in Turkey and evaluates their capacity and efficiency in various contexts.

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1. INTRODUCTION – PUBLIC VALUE CAPTURE

Cities today face many complex challenges, including demographic changes, rapid urbanization, economic crisis, natural disasters, effects of economic growth, climate crisis which all increases the pressure on land. In response to these challenges, countries, especially developing countries with fiscal decentralization policies, turned their attention to search and improve their value capture tools and financial instruments for additional funding stream for providing serviced land, land assembly and (re)development, and recovering the cost of a public improvement or service, etc.

Value capture can be defined as an umbrella term used to describe a range of financing mechanisms rooted in the notion that the benefits of public investments and decisions are capitalized into property values and this value increase, namely betterment, plus value, windfalls, or unearned increment should be captured by the public. According to UN Vancouver Declaration (1976) these unearned increments must be subject to appropriate recapture by public bodies for the community. Countries use a variety of tools, instruments and process to capture the value increase resulting from public investments, decisions or actions, and the general economic development such as taxes, developer obligations, exactions, impact fees, levies, tax increment financing, land readjustment, land banking, land leasing, land development, etc.

Several attempts have been made to classify the tools and process that are used to capture the increase in the land values due to the public actions. For instance, Smolka and Amborski (2000) classified the value capture tools as taxes, contributions, fees, exactions, and regulatory charges. Smolka (2013) categorizes the value capture tools into three main groups: taxes and betterment contributions; exactions and charges for building rights and large-scale approaches. Another classification is provided by Alterman (2012) which is one of the most widely used and adopted classifications in the value capture literature. In her classification, the value capture tools are grouped into three sets, which are macro, direct and indirect instrument. Macro instruments are explained as instruments embedded in some overarching land policy regime, motivated by some broader rationale and ideology. The main examples of these tools are long-term public leaseholds, land banking or land readjustment. Direct instruments are aiming redistribution of the community-derived wealth and related to recovery of the unearned increment in land value due to general development or to a specific public action. On the other hand, indirect instruments are aiming to generate revenues or in-kind substitutes for particular public services. Recently, Muñoz Gielen and van der Krabben (2019) provided a detailed classification and a framework for understanding value capture tools. They categorize the value capture tools as taxes and charges; developer obligations as negotiable or non-negotiable; land assembly and development tools. From these tools, developer obligations and taxes-charges are further classified with respect to the direct and indirect rationale provided by Alterman (2012) and in

addition by taking account whether the value capture tools are charged at land-use regulation decision or not. In addition to the great variety of the value capture tools that are subject to classification by different authors, for each tool, there are also diverse rules, process and applications, which affects the usage, efficiency, acceptance and success. Thus value capture tools in a country and their effectiveness or success mainly depend on country's planning, land management, land administration systems and their institutional, legal, technical and social frameworks. Therefore, this study aims to provide the Turkish case.

2. PUBLIC VALUE CAPTURE IN TURKEY

This section presents the main characteristics and the efficiency of the public value capture tools in Turkey. Existing public value capture tools related with the planning system are given in the Section 2.1, and tools related to the land assembly and development are given in the Section 2.2, and the recently introduced and enacted tools are given in the Section 2.3.

2.1 Public Value Capture in Turkish Planning System

In Turkey, planning system is typically driven by the national policies and through a hierarchy of plans and land-use decisions are implemented at a local level. The hierarchy of the planning system is stated in the Regulation on Making Spatial Plans, which was accepted in 2014. According to this regulation (Article 6), spatial plans are prepared based on the area they cover and their purposes. The regulation defines the hierarchical system of the Turkish planning system from upper level to lower level as Spatial Strategy Plan, the Regional Plan, the Environmental Plan, the Master Plan and the Implementation Plan respectively. Spatial Strategy Plan aims to integrate national development policies and regional development strategies spatially and reflects the national development policies, regional development strategies and regional plan decisions to the spatial plans. For the coordination of the local and upper-level plans, Master and Implementation Plans have to be in accordance with the Regional Plan and Environmental Development Plans prepared by the central government. Implementation Plans are the main local detailed plans that provides the basis for the land development and building permits which is prepared by the municipalities in areas inside the municipal boundaries and by the governorships outside the municipal boundaries (Yilmaz et al. 2020).

In Turkey, a spatial plan is accepted as a whole with its plan notes and detailed plan report. Spatial plans are approved with plan notes, plan reports and attachments. In the plan reports the vision, purpose, goals and strategies, planning, implementation and conservation principles, land-use decisions, etc. are explained in detail. Furthermore, plan notes provide detail explanations for the spatial representations of the land use functions, development conditions, rules etc. Municipalities generally use plan notes to enable value capturing in terms of planning or developer obligations to provide extra contributions for social and technical infrastructure. In addition, plan notes are also used as a passive policy implementation tool. For instance, with plan notes providing additional building rights for supporting public policy such as urban renewal for disaster prevention is possible. As a summary, in addition to provide value capturing via enforcement of obligations such as extra contributions for developers, planning notes are also used as a passive policy implementation tool for land policies in Turkey. In

addition, municipalities can make agreements or protocol with the developers or landowners. These agreements or protocols provides specific conditions or obligations pertaining to the contributions in return for development rights or for an approval of a certain project. Recently, the use of protocols as a legalization tool for value capturing cause controversies in Turkey. In some projects, municipalities used these protocols as a value capturing tool to obtain social and technical infrastructure areas or to get extra contributions in return of using its planning powers for making necessary planning changes that necessities legalization of the illegally constructed buildings. The contributions in the protocols could be land deductions or donation for a certain on-site or off-site social and technical infrastructure area and do not follow a detailed regulation.

The legal framework of spatial planning, land development and physical development is provided by the Development Law No. 3194 dated 1985. Before this Law, urban planning departments were centralized government offices under the Ministry of Reconstruction and Resettlement. Their roles were to designate the land use, to preparation of land-use plans, to control the planning ordinances, to license new developments of private owners, and to locate public facilities. These privileges are decentralized and transferred to the local governments with the Development Law (Gülkan, 2001). While decentralization of the planning powers to municipalities, financial decentralization that is needed to cover the burden of planning, land assembly and land development could not be provided. As a result, together with the non-functioning cost recovery and value capture tools and financial problems of the municipalities, the planning system in Turkey fails to provide a balance in distribution of the costs and the benefits of urbanization. In general, urbanization costs have to be borne by the municipalities and the benefits and the value increases resulting from public investments, decisions or actions in urbanization is usually left to the landowners or the developers.

Another important change in the legal framework is realized by the establishment of the Ministry of Environment and Urbanism with the Decree Law No. 644 adopted in 2011. The Law sets forth the duties and responsibilities of the Ministry in urban planning and provides centralization of planning system. As a result of the legislation, the planning powers become fragmented between government and municipalities. For instance, in Istanbul, Ministries have 74% of the planning authority, and Istanbul Metropolitan Municipality has 26% of the planning authority. The rates shows structure of planning, the power of and centralization of planning system (Gürsoy and Edelman 2017). In addition, fragmented structure of the planning powers may have negative effect on fiscal decentralization by causing a division of the captured value between government and municipalities in urban areas.

2.2 Public Value Capture in Land Assembly and Development

In Turkey, especially after 1950, urban population has increased rapidly which necessities implementation of the development plans to provide sustainability of the city land stock for development. In Turkey, until 2019, there were three main tools for the implementation of the urban plans by the municipalities which are land readjustment, voluntary method and expropriation. According to the survey conducted in 2014 and 2016 by the Ministry of Environment and Urbanization; in all types of local governments of Turkey, the main plan implementation tool is the voluntary method. According to this survey; the rate of

municipalities that are choosing the voluntary method is 40% in 2014 and 38% in 2016 for the metropolitan district municipalities; 36% in 2014 and 35% in 2016 for the provincial municipalities; 44% in 2014 and 43% in 2016 for the district municipalities and 45% in 2014 and 50% in 2016 for the town municipalities (Yilmaz, 2020). As it can be understood from the data, in town and district municipalities, which has rather limited technical personnel and low budget, the rate increase and in almost half of this type of municipalities, the voluntary method is the first option. In addition, while the rate of municipalities choosing the expropriation method has increased over the years, the use of land readjustment has been decreasing.

Although land readjustment is accepted as an efficient tool for implementation of the urban plans both for government and landowners, it can be concluded that when compared to other possible land assembling methods, expropriation and voluntary application, the tool has not been used widely in implementation of development plans in Turkey. One reason is that land assembly and development are carried out with intense public financing in Turkey as value capturing tools associated to the planning system are insufficient and not functioning. Consequently, municipalities generally cut corner and prefers to wait for landowners to apply for building right, which is called the voluntary method. Voluntary method provides a partial and cheaper solution in plan implementation. However, many problems arise with the delays of the plan implementation in long term. Municipalities avoid covering the costs of a comprehensive implementation, and although it takes longer time, prefer to use to wait for voluntary method to acquire infrastructure areas freely in return for the development rights to be given to the landowners. However, according to the Article 10 of the Development Law No. 3194, municipalities shall prepare, within three months from the date of entry into force of the urban plans, the five-year programs to implement such plans. Based on this rule, the areas allocated to the public entities or to infrastructure areas should be acquired by the municipalities. The voluntary method fails to provide the rule as the time needed to implement the plans are generally much more than five years. In addition, due to the financial problems of the municipalities and non-functioning cost recovery and value capture tools implementation of the urban plans, acquisition of the areas allocated to the public entities or to infrastructure areas and the physical conversion is generally delayed more than five years. Therefore, municipalities not implementing the urban plans result in limitation of the use of property rights for an uncertain time period which is accepted as intervention to property rights by the Turkish Supreme Court. It is also accepted that public entities remaining passive and not realize the acquisition of the areas allocated to the public entities or to infrastructure areas within five years starting from the date of entry into force of the related urban plan, interfere in the property rights and landowner's power of disposition is diminished, and their enjoying the right to property becomes almost impossible. This decision reveals a comprehensive problem in urban land assembly. After this decision, property owners have been able to claim for compensation based on value of their property, and all municipalities were obliged to pay compensation. Still many municipalities have accumulated debts to pay. This problem is called confiscation without expropriation by urban plans in Turkey. Although different laws were enacted to reduce the problem, each of them is annulled by the Supreme Court decisions.

Finally, the use of the voluntary method in plan implementation is restricted with an amendment in the Development Law No. 3194 in 2019 and related regulation in 2020. After this change in the legislation, land readjustment becomes the main land assembly and development tool for

the realization of urban plans in Turkey. In Turkish land readjustment, most of the costs are not covered by cost-recovery tools and only land deduction from each landowner is taken into consideration of the value increase arising from the project to provide land for primary and elementary schools, roads, squares, parks, car parking spaces, children playgrounds, green areas, religious places, and police stations within the project boundary. Land deduction is calculated by the ratio of infrastructure areas to total project area and could be at max 45% of the total project area. If more land is needed, the difference is expropriated from landowners, and the costs are covered by the related authority. In Turkish LR, it is assumed that land deduction is taken into consideration of the value increase. However, the “real” value increase is not calculated, and all calculations are based on parcels' area. Except for land deduction which is taken into consideration of the theoretical value increase, the land readjustment authority undertakes all the other costs, and the remaining uncalculated value increase is captured by the landowners. In addition, infrastructure costs and construction are not included into the land assembly process in Turkey. It is the responsibility of the municipalities, and they can only collect a kind of recoupment charge for local infrastructure for street paving, drainage, and other improvements. These fees are taken after the installment of the local infrastructure and cannot execute the 2% of the taxation value of the property.

2.3 Recent Tools of Public Value Capture in Turkey

In the past decade, there has been a renewed interest in public value capture tools to strengthen the financial dimension of the planning system and land development in Turkey, evidenced by the policy documents. For instance, making legal arrangement on value capturing to prevent land speculation is defined in the Action 2.1.4 of the Integrated Urban Development Strategy and Action Plan. In addition, broadening the tax base (article 181 and 263.7), introduction of ad valorem taxation of properties (article 264.2), increasing the revenues of local governments (article 181 and 264), using the value increases of immovable properties for the quality and development of cities (article 684), capturing the value increases from plan amendments (article 225.2), integration of property values into Land Administration System to determine the value increases from public investments (article 684.1) are aimed in the 11th Development Plan.

Recently, some of these policies are realized and the value capture capacity of land readjustment is improved by a 5% increase on legal land deduction rates, and two legislations about new value capture tools are enacted. The first tool aims to ad valorem taxation of high-valued residences and entered into force by the Law No. 7194 dated 2019 for taxation of the high-value residences. In addition to the existing taxes related with real estate's such as property tax, income tax, capital gain tax and inheritance and transfer tax, starting from the 2021 an additional “Valuable Residence Tax” will be imposed for the residential houses with a value of over TRY 5 million. The tax rates vary depending on the value of the residence (between % 0,3 – 1) and differently from the property taxes, the taxable base for the valuable residence tax is the market value appraised by the General Directorate of Land Registry and Cadastre.

The second new value capture tool aims to capture the value increase arising from the plan amendments. In Turkey, Development or Implementation Plans are produced at 1/1000 scale and show all the details of the building rights of the parcels. These plans determine the permitted

usage, the amount and the characteristics of the development, therefore, has a fundamental impact on the values of land and property, which is the main driving force of planning amendments by developers and individuals. Planning amendments or modifications of plans can be realized by two ways. Comprehensive modifications made through Revision, Partial and Additional Development Plans by public authorities and generally do not reflect the private interest. However, block or parcel based plan amendments are frequently used by landowners and developers to change the plan decisions, mainly for rent seeking via increment of the density, function or use. Modifications in plans follow the same procedure as in the preparation and ratification of the plans and with the paradigm shift on decentralization of the planning powers in 1985, Municipal Councils becomes the only authority in the decision making of plan amendment proposals. Therefore, decentralizations of the planning powers to local governments with the Development Law resulted much easier and uncontrolled plan amendments. Parcel based plan amendments are perceived as corruption and irregularity by the society. One reason of the high demand in planning amendment can be that the value increase as a result of the planning decisions remain to the developers or the landowners and weak value capture tools result in plan amendments regarding value increases (Yilmaz et al. 2020).

Recently, as a solution to this problem, a value capture tool has been defined for the value increase resulting from the plan amendments by the Article 12 Of The Law Amending Geographic Information Systems and Some Other Laws No.7221 as the Supplementary Article 8 of the Development Law No.3194 in 2020. According to the law and the regulation, parcel-based plan amendments are prohibited and for the value increase as a result of block based plan amendments, a development charge is introduced. In a block-based plan amendment, the developer or the landowner receives additional development rights or a more profitable land use in exchange for obligation to compensate in cash. The charge will be shared among the public administrations. In metropolitan municipality provinces, development charges will be shared equally among metropolitan municipality, district municipality, the Ministry of Environment and Urbanization, and the Treasury. However, if the plan amendment is approved by the Ministry of Environment and Urbanization, then the value increase will be shared between the Ministry (75%), the metropolitan municipality (15%) and the district municipality (10%). In non-metropolitan districts, development charges will be shared among the administration that approved the plan amendment (40%), the Ministry of Environment and Urbanization (30%), and the Treasury (30%). However, if the plan amendment is approved by the Ministry of Environment and Urbanization, then the development charges will be shared between the Ministry (75%) and the relevant administration (25%). In addition, if the plan amendment is approved by a public administration, then development charge will be captured by the Treasury. The revenues from development charges are planned to be used in public services such as expropriation, urban transformation and infrastructure (Yilmaz et al. 2020).

3. Conclusion

In Turkey, due to the financial problems of the municipalities and non-functioning cost recovery and value capture tools, implementation of the urban plans, acquisition of the areas allocated to

the public entities or to infrastructure areas and the physical conversion is generally delayed. In addition to these problems, municipalities should also fight against time to prevent confiscation without expropriation by urban plans while preventing plot speculation, taking measures against urbanization pressure and reducing disaster risks, etc. In the past decade, in response to these problems there has been a renewed public interest in value capture tools. Recently, some of these policies are realized and the value capture capacity of land readjustment is improved, and two legislations about new value capture tools are enacted. The first tool aims to capture the value increase arising from the parcel-based plan amendments and the second aims to ad valorem taxation of high-valued residences. This paper presents the main characteristics and the efficiency of the main existing tools in Turkish planning system, land assembly and land development such as land readjustment, voluntary plan implementation, plan notes, planning protocols and recoupment charges for infrastructures and the newly enacted value capture tools such as the developer obligations for plan amendments and valuable residence tax.

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BIOGRAPHICAL NOTES

Ahmet Yılmaz has obtained his Ph.D. degree in 2016 and has been working as assistant professor in the Department of Geomatics Engineering, Yildiz Technical University (YTU) since 2018. His research interests covers land management and the financial aspects of the land assembly and land development.

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