

## An Overview of Inheritance of Agricultural Land in Turkish Law

### Abstract

*Agricultural land in Turkey has been fragmented as a result of the application of equal inheritance rules. It has adversely affected productivity and the sustainability of the rural sector. As such, Law No. 5403 introduced a compulsory transfer system that showed a preference for single-heir succession. The current research assesses the legal and constitutional basis for this reform, especially regarding conformity with Articles 13, 35, and 44 of the Turkish Constitution and as understood within European inheritance practices influenced by the Common Agricultural Policy (CAP). The system aligns with international standards and therefore serves a legitimate public interest; however, it raises concerns of social justice for women and the non-inheriting heirs. The study reaches the conclusion that the legal reform alone is insufficient without implementing complementary social policies to either ensure that land consolidation ensues or that equitable rural development takes place.*

**Keywords:** Agricultural Land, Inheritance Law, Compulsory Transfer System, Land Fragmentation, Turkish Legal Reform

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## 1. Introduction

Agriculture, which has a history of around ten thousand years, is the cultivation of all forms of plant and animal produce for human utilization. Despite technological advancement, arable land has continued to be required—and even more extensively—so due to the increase in the population of the world as a whole. At current projections, the world would have crossed eight billion by 2025 and nine billion by 2040<sup>6</sup>, but this can be achieved only if the demand for food is maintained at its current increasing trend. The percentage of the people residing in the rural areas continues to decrease.<sup>7</sup> For Turkey, the percentage was around 75% when the Republic had first started but now it has decreased to a mere 7%.<sup>8</sup> A review of the Turkish economy by sector—agriculture, industry, construction, and services—reveals a dramatic shift: the agricultural sector, which constituted about 70% of the national economy in the 1970s, has fallen to 14.8% by 2024.<sup>9</sup> Despite population growth paralleling global trends, Turkey has witnessed a significant reduction in agricultural land. In 1990, the per capita area of agricultural land was 0.76 hectares; it decreased to 0.28 hectares in 2022.<sup>10</sup> Nowadays, most countries adopt both legal and economic measures to protect agricultural land.

These are providing different subsidies and incentives to farmers, fixing price policies of agricultural produce, and conducting land consolidation activities. Another important step is implementing legal measures to discourage excessive subdivisions of agricultural landholdings. Efficient agricultural production becomes more inefficient on parcels of land that are smaller than a certain area. In the above situation, land fragmentation—due to multiple causes—undermines agriculture productivity.<sup>11</sup> When agricultural land is divided into small plots and cultivated separately by different individuals, it increases the demand for equipment and labor. Thus, the costs of agricultural production often exceed the income that is generated, eventually forcing small-scale farmers to stop their agricultural activities. Although urban expansion, development projects, tourism, mining, and infrastructure construction all contribute to the reduction of agricultural land, inheritance is the most significant factor behind the ongoing fragmentation in Turkey. The Turkish system of inheritance, under the principle of equal division among heirs, has resulted in the fragmentation of agricultural land into smaller

6 | <https://tinyurl.com/4zphktxn> [02.05.2025]

7 | According to United Nations reports, 55% of the global population resided in urban areas in 2018, and this figure is projected to rise to 68% by 2050. In Turkey, the rural population is expected to decline by 34% by 2050 compared to 2018 levels, <https://tinyurl.com/yywpxypj> [02.05.2025].

8 | <https://tinyurl.com/53u89j5s> [02.05.2025].

9 | <https://tinyurl.com/3u5fcp9k> [02.05.2025]. For an in-depth analysis of agriculture's role in the sectoral composition of the Turkish economy; see Demir, Çağlar Gültekin & Uzundumlu 2023, 63 and following.

10 | <https://tinyurl.com/42ppcyzw> [02.05.2025].

11 | Sayin et al. 2017, 213–214.

pieces across generations to the extent that the plots obtained do not support farm families anymore.<sup>12</sup> This problem necessitated legal reforms by the Turkish parliament. Articles 8/A through 8/J of Law No. 5403 on Soil Protection and Land Use, entered into force on May 15, 2014, constituted a significant step toward the restructuring of agricultural inheritance law in Turkey.

The amendment provided for a legal framework for the transfer of inherited farm land as expeditiously as possible, and in a manner that ensures its viability by preventing partition below a certain threshold. The system, referred to as the ‘compulsory transfer system’<sup>13</sup>, is designed to ensure the continuity and profitability of farming production. Similar legal systems exist in other European countries with similar land fragmentation problems. In this regard, the European Union has also implemented the CAP, which aims to protect rural areas, maintain food security, and promote sustainability. This study will examine the compulsory transfer system introduced under Turkish law in the context of the European Union’s Common Agricultural Policy, evaluating their shared goals and policy alignment.

## 2. Historical development of legal regulations on agricultural land subject to inheritance in Turkish law

Agricultural land is understood to be land whose soil, topographical, and climatic characteristics are suitable for agricultural production—whether currently used for that purpose, capable of being used as such, or potentially transformable into arable land through zoning, reclamation, and improvement.<sup>14</sup> Different measures have been taken, since the foundation of the Republic of Turkey, in preventing the fragmentation of agricultural land and to improve agricultural productivity. One of the earliest such efforts was included in the Turkish Civil Code of 1926 (Law No. 743)<sup>15</sup>, specifically Articles 597–602, which allowed for the allocation of agricultural holdings to individual heirs as an exception to the general rules of inheritance.<sup>16</sup>

12 | Zevkliler 1969, 263; Ünal 1990, 106.

13 | Aydoğdu 2020, 44–45; Dalcı Özdoğan 2021, 66 et seq.; Çabri 2023, N. 479 et seq.

14 | On the concept of agricultural land, see Özay 2015, 31–36; Eren & Başpınar 2017, 155 et seq.; Başpınar 2006, 266 et seq.; Sağlam 2010, 202–203; Uyumaz & İlhan 2018, 864–865; Açıkgöz 2018, 75; Çabri 2023, N. 463–464; Yılmaztekin 2022, 449; Dalcı Özdoğan 2021, 45; Bilgin Yüce 2011, 106.

15 | Referred to in this study as OCC.

16 | The provisions of OCC Articles 597–602 are derived from the 1907 Swiss Civil Code and correspond to Articles 620–625 of the ZGB. These provisions also incorporate the principle that agricultural holdings may, under certain conditions, be transferred undivided to a single heir. For further details, see Baumann 1924, 27 et seq.; Beck 1976, 194; Escher 1960, Art. 620, N. 43; Tunçomağ 1954, 513. In Switzerland, the Federal Law on Agricultural Land (Bundesgesetz über das bauerliche Bodenrecht – BGBB) came into effect on January 1, 1994. With the enactment of this law, Articles 620–625 of the Swiss Civil Code (ZGB) were repealed. As a result, the inheritance of agricultural holdings and farmland in Swiss law was removed from the scope of the Civil Code and placed under a distinct legal framework. For further information, see Beeler 1998, 40 et seq.

These provisions aimed to prevent the division of agricultural holdings among multiple heirs, which would have led to the creation of economically unviable, small-scale farms.<sup>17</sup> However, because these provisions were not mandatory, families with multiple children often chose to divide inherited land despite the inefficiencies, leading to fragmented agricultural plots.<sup>18</sup> This situation persisted until the new Turkish Civil Code<sup>19</sup> (Law No. 4721) came into force on January 1, 2002. Articles 659–668 of this code maintained the approach of allocating agricultural enterprises in their entirety to a single qualified heir.

Like the previous code, these provisions were non-compulsory and functioned as default rules, rather than binding mandates.<sup>20</sup> Furthermore, neither the former nor the current civil code imposed a time limit for requesting the allocation of an agricultural enterprise, resulting in delays, prolonged idleness of agricultural land, and continued fragmentation. Although the Soil Protection and Land Use Law No. 5403 came into effect on July 19, 2005, it initially brought no changes to the inheritance framework for agricultural land. The provisions of the Civil Code continued to govern inheritance<sup>21, 22</sup>

Recognizing the need for a more robust legal framework, the legislature introduced mandatory and comprehensive rules through Law No. 6537, which amended Law No. 5403 on May 15, 2014, by adding Articles 8/A–8/K.

This amendment established a new system for the inheritance of agricultural land and repealed the previously applicable Civil Code provisions (Articles 659–668).<sup>23</sup> Thus, inheritance of agricultural lands was removed from the general scope of the Civil Code and placed under a specialized legal framework. In any legal system that recognizes private property, it is essential to determine how the estate of a deceased individual will be distributed.

Inheritance law addresses who may claim rights based on familial ties and the extent to which the deceased may dictate the disposition of their assets. In this context, inheritance law governs the transfer of all or part of an individual's rights, obligations, and private legal relationships to surviving real or legal persons upon

17 | Saymen 1944, 356. In addition to the Civil Code, various legal regulations have been enacted concerning agricultural inheritance. These include the Farmer Land Law No. 4753 of 1945, the Soil and Agricultural Reform Law No. 1757 of 1973, and the Agricultural Reform Law on Land Arrangement in Irrigation Areas No. 3083 of 1984. However, to maintain the focus and scope of this study, the provisions of these laws are not addressed.

18 | Düren 1972, 118.

19 | It will be referred to as TCC in this study.

20 | Başpınar 2006, 264; Aras 2004, 139; Sağlam 2010, 210.

21 | For earlier versions of the Law, see <https://tinyurl.com/5nbtffj9>

22 | Yıldız, Uzun & Çoruhlu 2018, 97.

23 | The following articles address various aspects of agricultural land regulation: Article 8/A defines the minimum size of agricultural land deemed to provide sufficient income; Articles 8/B to 8/J govern the transfer of agricultural land through inheritance; and Article 8/K outlines the procedures and processes related to the acquisition of agricultural land.

death or legal declaration of absence.<sup>24</sup> The core of inheritance law is the right to property and the principle of its continuity after death.<sup>25</sup> As inheritance law contains elements both of individual rights and social interests, the legal traditions adopted vary from one nation to another.<sup>26</sup> The countries in the continental European legal tradition, like Turkey, Switzerland, and Germany, adopt a mixed system between personal freedom and social needs.<sup>27</sup> In this tradition, Turkish inheritance has been determined with core principles like testamentary freedom, equal heirs, and division in kind.<sup>28</sup> However, the provisions of the 2014 amendments to the Soil Protection and Land Use Law differ from these principles.<sup>29</sup>

That is to say that the compulsory transfer system imposed by the new legal framework limited testamentary freedom and put a premium on agricultural viability rather than equal division.

In this section of the study, we will first explore the guiding principles of the compulsory transfer system and then analyze the exceptions it introduces to the conventional doctrines of Turkish inheritance law.

### 3. Compulsory transfer system in inheritance of agricultural land in Turkish inheritance law

With the enactment of Law No. 6537 on May 15, 2014, a significant agricultural reform was introduced in Turkish law through the addition of Articles 8/A–8/K to the Soil Protection and Land Use Law No. 5403.<sup>30</sup> The most notable feature of this reform is the mandatory nature of these new provisions. Unlike previous regulations, heirs no longer have the discretion to opt out of the rules governing the inheritance of

24 | İmre & Erman, 2024, 1; Dural & Öz 2024, N.1; Köprülü 1985, 5; Antalya & İpek 2021, 46; Serozan & Engin 2024, § 1 N. 1–4; Kocayusufpaşaoğlu 2024, 3–4.

25 | The close connection between the right of inheritance and property is also evident in national legal frameworks. For instance, in the former Union of Soviet Socialist Republics, where individual ownership was historically not recognized, the right of inheritance was abolished for a certain period. For more detailed information, see İmre & Erman 2024, 2; Kocayusufpaşaoğlu 2024, 22 et seq. Similarly, in medieval England, the distinction between realty and personalty—applying different legal systems to immovable and movable property—shaped inheritance law, as the rights of feudal lords over immovables were considered paramount. For further details, see Sawyer & Spero 2015, 2.

26 | Öztan 2024, 6–7; Kılıçoğlu 2023, 9; Köprülü 1985, 19.

27 | Öztan 2024, 7; Kocayusufpaşaoğlu 2024, 26–29.

28 | Eren & Yücer Aktürk 2023, N. 1543; Öztan 2024, 464–467; Çabri 2023, N. 144 et seq.; Ozanemre Yayla 2011, 67 et seq.; Serozan & Engin 2024, § 7 N. 43–47.

29 | Yavuz & Topuz 2015, 674; Şenol & Uzun Kazmacı 2020, 164; Özay 2015, 154; Kartal 2019, 847.

30 | Agrarian reform is defined as “the restructuring of human-land relations, specifically aimed at ensuring and enhancing the efficient use of agricultural lands, increasing production, redefining the distribution of property rights on these lands, improving methods of conservation and cultivation, and securing democratic rights and freedoms for rural populations.” For similar definitions, see Eren & Başpınar 2017, 93; Zevkililer 1969, 256.

agricultural land—compliance is now compulsory.<sup>31</sup> For the compulsory transfer system to apply, two conditions must be met: the estate must include at least one agricultural land parcel, and there must be more than one heir in the inheritance.<sup>32</sup>

Under this system, the primary rule is that the agricultural land must be transferred to a single heir as an undivided whole, provided it does not fall below a legally defined minimum size. The law, however, provides four options for heirs—on the condition that they reach a unanimous agreement:

1. Transfer of the agricultural land to one heir or to multiple heirs, as long as the land meets the ‘sufficient income size’ requirement;
2. Establishment of a family property partnership (or a profit-sharing version) and transfer of the land to this partnership;
3. Formation of a limited liability company in which all heirs are shareholders, and transfer of the land to this company;
4. Transfer of the land to a third party.<sup>33</sup>

According to Article 8/B/II of the Soil Protection and Land Use Law, heirs have a one-year period from the date the inheritance is opened to reach a unanimous agreement and complete the required legal transactions for transferring ownership.<sup>34</sup> This time limit is intended to prevent inherited agricultural lands from remaining unused and to facilitate swift transfer of ownership.

A critical restriction introduced by the new system is the prohibition against subdividing agricultural land below a certain size. The law imposes two key limitations: a minimum agricultural land size and a ‘sufficient income’ size.<sup>35</sup> These criteria, though restrictive to property rights, aim to prevent the negative effects of land fragmentation and ensure the sustainability of agricultural operations.<sup>36</sup>

If the heirs fail to reach an agreement within the specified one-year period, any heir may initiate legal proceedings to request the transfer of ownership.

31 | Erdoğan 2016, 133; Özçelik 2015, 93; Özyay 2015, 25–26.

32 | Çabri 2023, N. 476; Özyay 2015, 83, 157; Şenol & Uzun Kazmacı 2020, 169; Dalcı Özdoğan 2021, 73, 86; Erdoğan 2016, 138, 146.

33 | For detailed information see Çabri 2023, N. 484–496; Özyay 2015, 166 et seq.; Şenol & Uzun Kazmacı 2020, 170–174; Dalcı Özdoğan 2021, 92 et seq.; Erdoğan 2016, 150 et seq.; Eren & Yücer Aktürk 2023, N. 1824 et seq.; Eren & Başpınar 2017, 177–178.

34 | Çabri 2023, N. 483; Özyay 2015, 156–157; Kartal 2019, 849; Erdoğan 2016, 139.

35 | Minimum agricultural land size refers to the smallest parcel size set by the Ministry, below which, even with the rational and efficient use of production activities and inputs, the land cannot maintain its productivity if further reduced. For detailed definitions and explanations, see Çabri 2023, N. 472; Yavuz & Topuz 2015, 677 et seq.; Açıkgoz 2018, 78; Erdoğan 2016, 142; Özçelik 2015, 89–90. The size of agricultural land with sufficient income denotes the minimum total area that one or more parcels must collectively reach to generate a certain level of income for the owner and their family. This concept may apply to a single piece of land or to multiple agricultural lands owned by the same person that, together, form an economically viable unit. The sufficient income size is determined separately for each district and is always equal to or larger than the minimum size. For further details, see Açıkgoz 2018, 79; Erdoğan 2016, 145; Özçelik 2015, 89–90; Yavuz & Topuz 2015, 679–680; Çabri 2023, N. 473.

36 | Yıldız, Uzun & Çoruhlu 2018, 97.

In such cases, the court will transfer the land to a ‘qualified heir’, if one exists. If multiple heirs qualify, priority is given to the heir who can maintain subsistence through the land. If no heir meets this condition, the land is transferred to the one who offers the highest price among the qualified heirs. If no heir is qualified, it goes to the highest bidder among all heirs.<sup>37</sup> Moreover, if the heirs neither reach an agreement nor initiate legal proceedings within the one-year timeframe, the Ministry of Agriculture may file a lawsuit against all heirs. As a last resort, the court can transfer ownership of the agricultural land upon the Ministry’s claim so that the land is not left vacant or further fragmented.<sup>38</sup>

## 4. General principles of Turkish inheritance law

### 4.1. Principle of freedom of will

In inheritance law, the principle of freedom of will is fundamental to the division of an estate.<sup>39</sup> This freedom applies to both the timing and the manner of division. Accordingly, heirs may request the division of the inheritance at any time (Art. 642/I of the Turkish Civil Law – TCL), determine how it will be divided (Art. 646 TCL)<sup>40</sup>, and agree on the distribution of shares as they see fit (Art. 650 TCL). While

37 | Article 10 of the Regulation on the Transfer of Ownership of Agricultural Land outlines the criteria for determining the competent heir. According to this provision:

(1) An heir or heirs who score fifty points or more, based on the following criteria, shall be considered competent heirs:

- a) Twenty points for those whose livelihood depends on the agricultural lands subject to inheritance,
- b) Ten points for those without non-agricultural income,
- c) Ten points for those whose spouses are actively engaged in agricultural activities,
- ç) Ten points for those possessing the professional knowledge and skills necessary for cultivating agricultural lands,
- d) Five points for those residing within the district where the inherited lands are located for less than five years, and ten points for those residing five years or longer (Amended: RG-8/12/2021-31683),
- e) Ten points for those without any social security coverage,
- f) Five points for those insured under the Social Security Institution’s agricultural insurance,
- g) Five points for those registered in the Ministry’s existing registration systems for less than five years, and ten points for those registered five years or longer (Amended: RG-8/12/2021-31683),
- ğ) Two points for those registered in agricultural organizations for less than five years, and five points for those registered five years or longer (Amended: RG-8/12/2021-31683),
- h) Five points for those who own agricultural tools and equipment,
- ı) Women receive an additional five points.

For more on the concept of the competent heir and the qualification conditions, see Özçelik 2015, 96–97; Erdoğan 2016, 158; Özay 2015, 98; Dalcı Özdoğan 2021, 104 et seq.

38 | Çabri 2023, N. 519; Erdoğan 2016, 160–161; Dalcı Özdoğan 2021, 115–117; Yavuz & Topuz 2015, 686–687.

39 | Oğuzman 1995, 326; Kocayusufpaşaoğlu 2024, 702; Escher 1960, Art. 607 N.1 et seq.; İmre & Erman 2024, 478; Serozan & Engin 2024, § 7, N. 43; Eren & Yücer Aktürk 2023, N. 1545–1548; Ozanemre Yayla 2011, 53–54; Dalcı Özdoğan 2021, 12; Çabri 2023, N. 144; Mamük 2013, 319–320.

40 | Eren & Yücer Aktürk 2023, N. 1544; Kılıçoğlu 2023, 369.

the formation of an inheritance partnership is automatic upon the opening of the estate and does not depend on the heirs' consent, its continuation and dissolution are entirely subject to their will.<sup>41</sup> In principle, heirs are under no obligation to divide the estate or dissolve the inheritance partnership. Prior to the enactment of the compulsory transfer system, this also applied to agricultural land, which could remain undivided within the inheritance partnership for extended periods.

The compulsory transfer system takes its name from the mandatory nature of the relevant legal provisions, which override the heirs' freedom to maintain joint ownership of agricultural land. The future of agricultural land in an estate is no longer entirely at the discretion of the heirs. Under this system, based on the principle that ownership must be transferred, heirs are granted the opportunity to reach an agreement on the transfer of ownership. However, this transfer must be completed within one year from the opening of the inheritance (Art. 8/B/II of the Soil Protection and Land Use Law – LSPLU). This introduces a significant limitation to the previously unrestricted right to request division at any time.<sup>42</sup> Furthermore, Article 8/C/I of the LSPLU restrictively lists the individuals to whom ownership of agricultural land may be transferred.

The principle of testamentary freedom, a reflection of individual autonomy in inheritance law, also applies to the deceased (testator).<sup>43</sup> The testator may, through a testamentary disposition, determine how their estate should be managed after their death, including delaying the division of the inheritance. Such dispositions are generally considered valid.<sup>44</sup> However, the compulsory transfer system imposes exceptions to this freedom. One such exception concerns the timeframe for division. Specifically, agricultural land must be transferred within one year from the opening of the inheritance (Art. 8/B/II LSPLU). Even if a testamentary provision stipulates a longer delay, the statutory one-year timeframe must still be observed for agricultural land.

Another exception is set out in Article 8/F of the LSPLU. According to the first paragraph of this provision, "The right of the heir who requests the transfer of ownership of agricultural land with sufficient income and who is recognized as the sole qualified heir cannot be nullified by a testamentary disposition." This complements the rule that, in judicial proceedings concerning the transfer of agricultural land, priority is given to the qualified heir making the request. Moreover, the LSPLU prohibits the division of agricultural lands below certain thresholds. If a testamentary disposition includes a final wish to divide agricultural land among multiple heirs, such a wish must still conform to the legal limitations on minimum land size and

41 | Acar 2006, 124, Çabri 2023, N. 145–146.

42 | Şen Doğramacı 2017, 75–76.

43 | Dural & Öz 2024, N. 1949; Çabri 2023, N. 147 et seq.

44 | Dural & Öz 2024, N. 1998. However, it is unlawful for the heir to completely prohibit the division of the estate or to do so for an excessively long period. In such cases, the relevant testamentary provision may be subject to annulment (Art. 557/b.3 TCC). For detailed discussion, see Kocayusufpaşaoğlu 2024, 684; Oğuzman 1995, 377; Kılıçoğlu 1989, 39; Kılıçoğlu 2023, 352; Ozanemre Yayla 2011, 48 et seq.



sufficient income thresholds. Thus, even testamentary freedom is constrained by statutory requirements intended to preserve agricultural productivity and prevent land fragmentation.

## 4.2. Equality principle

Equality of successors in law of inheritance is not in the same quantity of their shares (quantitative equality), but in the same legal standing and rights of each successor over the estate (qualitative equality).<sup>45</sup> This doctrine renders all successors—whether on account of age, sex, or because their right develops out of the law or a will clause—have the same legal standing and voting power in the division of the estate. As specified in Article 649/I of the Turkish Civil Law (TCL), this principle of equality applies “unless otherwise provided.” Accordingly, exceptions to this rule may arise from the law, the testator’s will, or an agreement among the heirs.<sup>46</sup> An important deviation from this principle occurs under the compulsory transfer system introduced in the LSPLU.

If one of the heirs sues for partition (Art. 8/C/II LSPLU) or the Ministry sues because of not transferring agricultural land within the statutory time limit (Art. 8/Ç LSPLU), preference is given to the ‘competent heir’ among the co-heirs in deciding who gets the agricultural land. When the law considers such an heir, they are entitled to request transfer of ownership.<sup>47</sup> This legal preference for the competent heir represents a deliberate departure from the general principle of equal rights among heirs in the inheritance. Specifically in the context of agricultural land, the law prioritizes the practical goal of maintaining agricultural viability over formal equality, thus granting the competent heir a superior claim to ownership in certain circumstances.

## 4.3. Exact sharing principle

Another fundamental principle guiding the division of inheritance is the principle of partition in kind, which stems from the broader concept of equality among heirs.<sup>48</sup> According to this principle, inheritance assets should, as a rule, be divided in their original form rather than being converted into cash.<sup>49</sup> Generally, land is

45 | Escher 1960, Art. 607, N. 5; Aral 1979, 49; Eren & Yücer Aktürk 2023, N. 1549; Dural & Öz 2024, N. 1951; Kılıçoğlu 1989, 31; Ozanemre Yayla 2011, 56; Çabri 2023, N. 156; Oğuzman 1995, 326; Kocayusufpaşaoğlu 2024, 708.

46 | Çabri 2023, N. 158; Oğuzman 1995, 327; Eren & Yücer Aktürk 2023, N. 1550; Ozanemre Yayla 2011, 57.

47 | While the OCC was in effect, male heirs were given priority in the allocation of agricultural holdings, thereby deviating from the principle of equality to the disadvantage of female heirs (OCC Art. 598/II).

48 | Eren & Yücer Aktürk 2023, N. 1565; Kocayusufpaşaoğlu 2024, 708; Çabri 2023, N. 159. According to Dural and Öz, the principle of sharing in kind—often seen as an extension of the principle of equality—is actually a distinct principle, and the two frequently come into conflict. For more detailed information, see Dural & Öz 2024, N. 1955.

49 | Ozanemre Yayla 2011, 59–60; Çabri 2023, N. 159.

considered legally divisible property.<sup>50</sup> However, agricultural lands are treated as an exception to this rule.

In order to avoid the perpetual fragmentation of agricultural property and to protect agricultural production, the LSPLU statutorily forbids the partitioning of agricultural property below legally specified sizes.<sup>51</sup> Consequently, the mandatory transfer system implemented through the LSPLU is a significant deviation from the partition in kind principle.

In shaping the legislation on the transmission of agricultural lands, the legislator was guided by the intent to stop the long-standing tendency of land fragmentation. For this purpose, the law instituted the notions of ‘minimum agricultural land size’ and ‘sufficient income agricultural land size’ (Art. 8/A, LSPLU). These sizes are specified in Annex List No. (1) of the LSPLU and are determined separately for each district in Turkey, depending on the type of agricultural land involved. According to the law, agricultural lands cannot be divided or transferred if doing so would result in a plot smaller than the minimum sizes defined in the list.

Once an agricultural plot reaches the minimum legal size, it becomes legally indivisible. Consequently, in the division of inheritance, agricultural lands are subject to transfer in accordance with these statutory size limits, overriding the general rule of in-kind distribution and prioritizing the preservation of viable agricultural units.<sup>52</sup>

## **5. Evaluation of the constitutionality of the restrictions on the right of ownership imposed by the provisions of the compulsory transfer system**

The property right, protected by the Constitution under basic rights and freedoms, entitles the individual with the widest range of control over his or her property. The restrictions imposed on this right are regarded as exceptional and must strictly comply with constitutional values.<sup>53</sup> The most basic constitutional reasons for such prohibitions are enshrined in Article 35 of the Constitution of the Republic of Turkey, ‘Right to Property’, which states: “Everyone has the right to property and inheritance. These rights may only be restricted by law in the public interest. The exercise of the right to property cannot be contrary to the public interest.”

In addition, Article 13 of the Constitution—regulating the curtailment of basic rights and freedoms—is that any limitation must be made by law, must not violate

50 | Aksoy Dursun 2012, 45; Oğuzman, Seliçi & Oktay Özdemir 2024, N. 61, N. 1948.

51 | Bağcı 2019, 461.

52 | Çabri 2023, N. 464; Özçelik 2015, 90.

53 | Oğuzman, Seliçi & Oktay Özdemir 2024, N. 1117 et seq.; Şen Doğramacı 2017, 72–73; Ertaş 2020, 68 et seq.; Etgü 2009, 15; Bilgin Yüce 2011, 109 et seq.

the substance of the right, and must be in keeping with the letter and spirit of the Constitution, most importantly the principle of proportionality.<sup>54</sup>

The obligatory rules in the system of compulsory transfer, restricting both the testator's autonomy to dispose through the will and the succession's autonomy to divide the inheritance, form a restriction on the property right in accordance with the Constitution.<sup>55</sup> Arguments regarding the constitutional legitimization of these limits have been considered by the Constitutional Court, which has justified their compatibility with the principles of the Constitution. In one of its decisions, the Court stressed that:<sup>56</sup> "Article 44 of the Constitution gives the State the responsibility to protect and improve agricultural lands and empowers it to decide their size and land consolidation. While in the advanced agricultural countries the number of agricultural holdings declines, and its average size is increasing, Turkey will witness the reverse effect. There is a legitimate public interest in reversing this trend by promoting the growth of agricultural enterprises, in line with international standards. Therefore, introducing regulations such as pre-emption rights for neighboring landowners does not violate the public interest and is consistent with the duty imposed on the State by Article 44."

The other restraints on property rights of the LSPLU are also in conformity with the principle of proportionality. The provisions do not entirely divest the heirs of their rights over the land. Although the law imposes a time limit and procedure for the exchange of agricultural land, it does not withdraw the liberty of will of the heirs entirely. Furthermore, the system ensures that heirs do not suffer economic harm; equalization payments are available when necessary to ensure fairness in the distribution.

In light of these factors, it can be concluded that the compulsory transfer system governing the inheritance of agricultural lands does not infringe upon the constitutional right to property in a manner that would render it unlawful. Instead, it strikes a balance between individual rights and the public interest in preserving sustainable agricultural practices.

## **6. The relation of the provisions of the compulsory transfer system with the common agricultural policies of the European Union**

The European Union does not have one or a collective 'inheritance law'; it is instead a division that falls under the specific Member States. As a result, inheritance laws—such as those over agricultural land—are considerably different in all of the

54 | Özbudun 2021, 113 et seq.; Gözler 2021, 329 et seq.; Gemalmaz 2018, 117 et seq.; Etgü 2009, 176 et seq.

55 | Şen Doğramacı 2017, 74 et seq.; Yavuz & Topuz 2015, 669–670.

56 | For the Constitutional Court decision dated 30.10.2014, numbered E. 2014/133 and K. 2014/165, see <https://tinyurl.com/3t3vp473> [03.05.2025]

Member States throughout the EU.<sup>57</sup> Yet, in most Member States, farm policies at the national level have created mechanisms to avoid the segmentation and inefficiency of farm lands through provisions for the transmission of agricultural farms to only one heir.<sup>58</sup>

For instance, France has introduced special inheritance provisions for agricultural property under the Code Rural, reflecting the principle of *L'agriculture familiale*. These include prioritizing heirs actively engaged in farming, granting *droit de préemption* (pre-emption rights) to prevent division, and implementing a single-heir inheritance system.<sup>59</sup> Germany, under the *Höferecht* regime, also supports single-heir succession for agricultural holdings, with compensation paid to other heirs.<sup>60</sup> In Italy, to curb fragmentation, policies promote partnerships and family-run farming companies.<sup>61</sup> Austria similarly upholds sole ownership as a rule for agricultural land, supporting the sustainability of family farms.

Such approaches—akin to Turkey's compulsory transfer system introduced in 2014 under amendments to the LSPLU—have been in place across the EU for much longer. These national measures have been heavily influenced by the European Union's CAP, which plays a pivotal role in shaping agricultural governance across the bloc. The CAP was originally designed to address post-war concerns such as food security, stable incomes for farmers, protection from market volatility, and harmonization of agricultural mechanisms among Member States.<sup>62</sup> These aims were first codified in the Treaty of Rome (1957), and the policy's foundations were laid during the Stresa Conference (1958). The CAP became operational in 1962 and remains the EU's oldest and most developed common policy.<sup>63</sup> According to Article 39 of the Treaty of Rome, the CAP's objectives include ensuring a fair standard of living for the agricultural population, increasing agricultural productivity, stabilizing markets, ensuring food security at reasonable prices for consumers, protecting rural areas, and promoting sustainable resource management. In recent years, it has also incorporated goals such as combating climate change. The CAP is subject to periodic revision, with targets reviewed and updated every four years.

In this context, Turkey's 2014 legal reform, introducing a system that facilitates the indivisible transfer of agricultural land to a single competent heir, aligns

57 | Although the European Union does not have a unified inheritance law regime, in cross-border inheritance cases within its member states, EU regulations determine the competent authority, the applicable law, and the recognition of final decisions. For the relevant EU regulations on this matter, see <https://tinyurl.com/57azpyh3> [03.05.2025].

58 | For detailed information on European Union agricultural law, see Barents 2022, 20 et seq.

59 | For detailed information on French agricultural law and inheritance of agricultural land, see Dissaux 2024, 257 et seq.

60 | For detailed information on German and Austrian agricultural law and the inheritance of agricultural land, see Martínez, Holzer & Norer 2022, 11 et. seq.

61 | For detailed information on Italian agricultural law and inheritance of agricultural land, see Germanò 2022, 26, 52 et seq.

62 | <https://tinyurl.com/2eyrwudd> [05.05.2025]

63 | Atalay 2004, 59 et seq.; Fennell 1997, 15.

with longstanding EU practices. This amendment effectively closed a significant legislative gap in Turkish law and brought it closer to European standards in the governance of agricultural inheritance.

## 7. Inherited agricultural land distribution and social justice

Turkish agricultural land inheritance goes beyond a strictly legal issue. Due to its broad implications for rural development, social justice, and equity, it has to be analyzed from social policy, economics, politics, and culture perspectives. Practically, agricultural land fragmentation due to inheritance has the effect of impeding production efficiency, accelerating rural poverty, and deepening social inequality, thus becoming a complex issue with wide-ranging social, economic, political, and cultural implications.<sup>64</sup>

Equal inheritance shares, as mandated by current legislation, result in the ongoing fragmentation of agricultural lands and a consequent decline in economic efficiency. Although recent legal reforms have been implemented to address this issue, these reforms primarily aim to preserve agricultural sustainability by transferring land to a single heir. Though the general aim is to cushion the adverse impacts of reduced agricultural output—lower rural development, increased poverty, and increasing inequality—the policy can deprive non-inheriting heirs of land or social security.<sup>65</sup> It thus poses serious questions about the attainment of social justice in rural society.

Farming on land that has been diminished through fragmentation also increases the costs of modernization and mechanization in agriculture. As a result, small-holder farmers are often compelled to rely on traditional, low-productivity methods. This limits their ability to produce for the market, pushing them toward subsistence farming rather than contributing meaningfully to the national economy.<sup>66</sup> With time, such families end up being caught in a cycle of poverty, and since family sizes increase, urban migration frequently becomes their only feasible alternative.

This phenomenon is one of the primary drivers of rural-urban migration of younger generations. Consequently, the rural population tends to grow older, thereby further corroding the social fabric of the rural communities. Concurrently, the lack of proper social protection devices for non-inheriting heirs worsens social inequality in cities. This can increase the number of dissatisfied individuals in cities who cannot find decent jobs and a satisfying quality of life.

Besides youths, women constitute another age group disproportionately victimized by the fragmentation of land through inheritance. The historical barriers

64 | Ntihinurwa & de Vries 2021.

65 | Yücer et al. 2016, 2 et seq.

66 | Ntihinurwa & de Vries 2021.

to women's access to land in agriculture underscore the gendered aspect of social justice. Despite their constitutionally guaranteed equal right to inheritance, cultural beliefs and patriarchal customs—especially in rural contexts—continue to constrain women from exercising these rights. Consequently, women are often coerced into forgoing their inheritance rights,<sup>67</sup> thereby perpetuating existing gender disadvantages.

Given these multifaceted challenges, it is crucial to adopt an approach grounded in social policy principles rather than relying solely on a legal framework when regulating the inheritance of agricultural land. Implementing social protection mechanisms for non-inheriting heirs, integrating them into rural development initiatives, and promoting alternative models such as agricultural cooperatives are key strategies that can help advance social justice and foster more equitable rural transformation.

In conclusion, the inheritance of agricultural land is not merely a matter of legal property rights, but a complex social policy issue deeply intertwined with social welfare, equity, and justice. A balanced approach that ensures both the efficient use of agricultural land and the principles of social justice is essential for promoting sustainable rural development and strengthening social cohesion.

## 8. Conclusion

The inheritance of agricultural land in Turkey stands at the intersection of legal doctrine, constitutional rights, social justice, and sustainable development. The fragmentation of arable land—driven largely by the equal distribution principle under Turkish inheritance law—has emerged as a major impediment to agricultural productivity, rural development, and economic sustainability. In response, the Turkish legislature introduced a significant legal reform in 2014 through amendments to Law No. 5403 on Soil Protection and Land Use, establishing a compulsory transfer system aimed at preventing further land division and preserving the viability of agricultural holdings.

From a constitutional perspective, this system raises essential questions about the balance between individual property rights and the public interest. Article 35 of the Turkish Constitution guarantees a citizen's right to property and inheritance but allows the State to impose restrictions when justified by law and in the public interest. The Constitutional Court accepted that system of compulsory transfer as valid, making much emphasis on Article 44 to protect and improve agricultural lands. The Court has also found that the limitations introduced are proportionate, do not violate the essence of the right to property, and include mechanisms—such as equalization payments—that preserve economic fairness among heirs. In this

67 | Doss, Summerfield & Tsikata 2014, 5 et seq.

light, the compulsory transfer system is both constitutionally sound and socially rational, striking a necessary equilibrium between private ownership and the broader public good.

On the international stage, Turkey's legal developments align closely with the long-standing agricultural inheritance policies of several EU Member States. Although inheritance laws remain under national jurisdiction in the EU, countries such as France, Germany, and Austria have long implemented measures—often favoring single-heir succession—to curb land fragmentation and sustain agricultural enterprises.<sup>68</sup> These national approaches are heavily influenced by the European Union's CAP, which emphasizes food security, rural viability, and sustainable resource management. Turkey's reforms thus reflect not only a domestic response to agricultural inefficiency but also a harmonization with European standards in agricultural governance.

Nevertheless, while the compulsory transfer system offers structural solutions to land fragmentation, it also presents significant social implications that cannot be ignored. The switch to single-heir inheritance may result in the exclusion of non-inheriting heirs—particularly younger relatives and women—who lack secondary sources of income or landholdings. This is an issue of equity and social justice, particularly where there is rural poverty, gender inequality, and population decline. In addition, in the absence of good social protection arrangements and pro-poor rural policies, the system may exacerbate socio-economic inequalities and accelerate rural-urban migration.

Therefore, the issue of agricultural inheritance must be addressed not merely through legal instruments but through a comprehensive, interdisciplinary strategy that integrates social policy, economic incentives, and cultural sensitivity. Ensuring fair compensation, promoting cooperative farming models, and empowering disadvantaged groups—especially women and youth—are essential components of a socially just and sustainable rural transformation.

In conclusion, the Turkish model of compulsory agricultural inheritance reform is a forward-looking initiative that aligns with constitutional values and international practices. However, its true effectiveness lies in its capacity to balance legal structure with social justice. A holistic approach—rooted in law, aligned with public interest, and sensitive to socio-economic realities—is essential for safeguarding Turkey's agricultural future while upholding the principles of equity, sustainability, and rural resilience.

68 | For a comparison of the special regulations governing inheritance of land, see: Hornyák 2018, 107–119.

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