Critical Evaluation of Legal and Institutional Context of Urban Planning in Turkey: The Case of Istanbul

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The extent of informal urban developments, exceeding % 50 of the built environment especially in the rapidly urbanized metropolitan cities of Turkey, is acknowledged as an obvious indicator of the inadequate legal context of planning which does not embrace the dynamics of urban development. Such an ascertainment requires a comprehensive critical evaluation of the legal context of planning with spatial references and is also the starting point of this study.

The Planning Law, which has passed in 1985, was a democratic revolution in the planning field as it routed the planning authority to the local governments. Although the decentralization of the planning rights was valued in terms of democratization, the contents of the Law have been criticized from the very beginning due to its structural deficiencies. The Planning Law basically consists of articles referring to different laws and institutions without performing a holistic, integrated approach. The Law also reduces the planning process to physical interventions without any tools to supplement the spatial decisions with socio-economic policies. In other words, The Planning Law itself paradoxically can be labeled as the foundation of the fragmented urban structure with a severe lack of coordinating bodies.

In this context, it is targeted to explore the legal and institutional structure of the urban planning system in Turkey in a critical approach with references to the specific urban development issues in Istanbul. A comprehensive exploration of the legal and the institutional structure of planning will not only help to redefine the role of the public sector in Turkey in order to rectify the imbalances of the market fueled by the vagueness of the planning system, but will also form a reference for the similar processes which are experienced in the other developing countries.

In the first part of the paper, the fragmentation of the planning authority through the Planning Law and the other related Laws is displayed as well as the systemic deficiencies of the overall structure. The exposure of the deficiencies is complemented by the sections from the urban development of Istanbul, such as illegal and irregular settlements, pressure of growth over the natural thresholds, conservation areas and projects undermining the holistic plan.

The paper will be concluded by the exposure of the critical issues of the legal and institutional structure of the planning system in Turkey in order to stimulate the discussions about the redefinition of the public role and enlighten the current restructuring process in Turkey as well as the similar processes running on the other developing countries.

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Introduction

Turkey is a country of high rate of urbanization. The proportion of the urban population has increased from 28.7% in 1970 to 62.7% in 2006. However, especially in the metropolitan cities, which receive heavy migration flows, problems arise in terms of accessibility to the basic public services and upgrading the life quality for all the citizens. Furthermore, the prosperity generated by the urbanization process is unfairly distributed through unprincipled implementations. In other words, the urban planning system is unable to achieve its main goals, which are the improvement of the urban life quality and establishing social justice through spatial arrangements, in Turkey.

In this context, the legal and the institutional structure of planning should be evaluated in a critical manner. Basically, the evaluation made in this paper will focus on the over-fragmented structure of the planning authority through the Planning Law and also through the related laws mentioned in the Planning Law. The planning system consists of 56 plan types and 18 authorized planning institutions.1

Fragmentation of Planning Authority Through Planning Law (see Figure 1, p.6)

The legislation in Turkey guiding the spatial developments and planning starts with the “Law of Buildings and Roads” (1933). The rapid urbanization process of the 1950’s, which was the result of the mechanization in agriculture and the subsequent migration from the rural areas to the cities, necessitated a new legislation and an institutional governing body regarding the urban development. In this context, the “Planning Law” (1957/6785)2 was passed and the Ministry of Reconstruction and Settlement was established (1958).3 As per the first Planning Law, the planning authorities were assembled at the Central Government. The passing of the Planning Law and the establishment of the Ministry coincide with the period of setting up the State Planning Office and the First Development Plan (1963-1967) coming into force.

On the other hand, the “Planning Law” (1985/3194), which is currently in effect, has been the starting point of an important change in the planning field through transferring the planning authorities to the local governments. This legislation which is a turning point in the recent past of planning, despite being a forward step in the democratization process, has been controversial ever since the very first implementations. The internal inconsistencies as well as the unclear relations with the other legislations have led to implementation difficulties and also resulted in many legal cases.

Main Plan Types at Two Levels of Planning

In the context of the Planning Law, two planning levels and corresponding plan types are referred to. At the first level, “Regional Plan”4 and “Environmental Plan”5 are defined.

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1 Duyguluer F., 2006, p.28
2 Date of the Law/ Code of the Law
3 Ministry of Reconstruction and Settlement has been united with the Ministry of Public Works in 1983
4 Regional plans are made or have been made by the State Planning Office in order to determine the socio-economic development trends, development potential of the settlements, sectoral targets and the distribution of the infrastructural facilities as well as the functions (Planning Law 1985/3194, Item 8).
5 Environmental plans are made or have been made and approved by the Ministry of Public Works and Development in line with the already-approved national and regional plans (if they exist) in order to determine
generating macro decisions for the urban and regional developments. At the second level, the “Development Plan” and the “Implementation Plan” are defined in order to provide the development consent.

The Planning Law has given the authority to make the Regional Plans to the State Planning Office, which is a central government institution. However, the authoritative power on Environmental Plans, which are made more frequently than the Regional Plans, is subject to ongoing discussions.

For the pre-2000 implementations, planning authority lies with the Ministry of Reconstruction and Settlement for the Environmental Plans covering a number of provinces. On the other hand, a Regulation has been issued in the year 2000, regarding the fundamentals of the Environmental Plans and giving the planning authority to the Ministry of Environment. The Ministry of Environment has been exercising the authority forcefully since 2003.

However, the Ministry of Environment faces authority disputes with both the State Planning Office and the local governments, when exercising environmental planning authority.

The authority disputes between the State Planning Office and the Ministry of Environment originates from the new regional split in use since 2002. Within the process of the candidacy for the European Union, the State Planning Office and the State Statistics Office have defined three levels of regions. 12 regions are defined in the first level, 26 in the second level and 81 in the third level. For the 26 regions at the second level, it is targeted to set up “Regional Development Agencies”, which will also have the planning authority. The State Planning Office has recently been preparing Regional Plans for some of these 26 regions at the second level. At the same time, the Ministry of Environment has also been preparing Environmental Plans (at the scale of 1/ 100 000) for the regions intersecting with these 26 regions.

The origin of the dispute between the Ministry of Environment and the local governments, on the other hand, is the “Law of Special Government for Provinces” (2005/5302). “Special Government for Province” is a local democratic governmental council, the president of which is the governor of the province (see Figure 1, p. 5). The governors are not elected but assigned by the central government. Law of Special Government for Provinces gives the planning authority for the Environmental Plans of the provinces (at a scale of 1/ 100 000) to the special governments for provinces. In this context, especially in the urban areas with dense populations, an authority dispute arises between the Ministry of Environment and the local governments, namely either with the special governments for provinces or with the greater metropolitan municipalities.

decisions regarding the settlement and land use such as housing, industry, agriculture, tourism and transportation (Planning Law 1985/3194, Item 5). On the other hand, “The Regulation on the Principles of Environmental Plan Preparation” (2000) gives the planning authority to the Ministry of Environment.

Development plans are made by the municipalities in line with the already-approved regional plans and environmental plans (if they exist) in order to determine the general land uses and future population densities (building densities if necessary); principles, direction and size of the future developments; transportations systems and solutions of current urban problems (Planning Law 1985/3194, Item 5 and Item 8).

Implementation plans are made by the municipalities, based on the principles of the development plan, in order to determine the development pattern and density of the building blocks and defines the phases of implementation (Planning Law 1985/3194, Item 5 and Item 8).

The expansion of the environmental plans over the national territory has gone up from 5,5% in 2003 to 57,5 in 2008.

Babacan Tekinbas B., 2008, p.15
In the context of the Planning Law, the local governments are appointed to make the second level plans, namely the “Development Plan” and the “Implementation Plan”. However, items 4 and 9 of the Law define the exceptional cases which grant the planning authority, which has been delegated to the local governments, back to the central government. These exceptions are tourism areas, conservation zones and special environmental protection zones. Furthermore, item 9 of the same Law gives the planning authority to the related institutions of the central government in the illegally developed areas, mass housing areas and the areas where the major transportation routes pass through, if the circumstances necessitate such a transfer of planning rights. In other words, granting planning authority to the institutions defined in items 4 and 9 of the Planning Law further complicate the already fragmented planning structure.

**Supplementary Plan Types**

Besides the main plan types performing at the above mentioned two levels, there are supplementary types of plans defined within the context of the Planning Law. The concept of supplementary plan types is predominantly valid for developing countries. In a developing country, the rhythm differences between the dynamism of the rapid urbanization and the static structure of the comprehensive planning approach requires new planning types. The Planning Law and the associated Regulation define processes and the plan types in order to meet the requirements in the phase of implementation. “Plan Modification”, “Revision Plan” and “Local Development Plan” are all within this context. According to the Planning Law, modifications can be done at all levels and for all types of planning. The modifications in the plans should be done for the public benefit, in line with the masterplan and the social, technical infrastructural balance of the plan. They should also be based on objective and technical reasons. The Plan Modifications are grouped in four categories within the context of the Regulation of the Law: modifications linked to social and technical infrastructure, modifications affecting the densities, modifications related to the routing or the enlargement of the roads and the land use changes.

Although the Plan Modification should be done without disturbing the integrity of the plan and should be in line with the decisions of the masterplan, in actuality many modifications are dedicated to speculative expectations and political gains as rewards. Especially after the handover of the planning rights to the local governments, a radical increase in the number of Plan Modifications have been experienced.

Within the context of the Planning Law, other plan types are defined where the Plan Modification is insufficient. One of these plan types is the Revision Plan, which calls for an entire or a partial renewal of the plan in order to meet the deficiencies of the Development Plan or to overcome the problems in the phase of implementation. The most important

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10 Plan Modifications are based on objective and technical reasoning, for the achievement of the public benefit, without jeopardizing the integrity and the infrastructural balance of the Development Plan (The Regulation on the Principles of Development and Implementation Plan Preparation, 1985, Item 3/6).

11 Revision Plans are made by the municipalities, when the current development plan is insufficient in meeting the needs of the society due to the environmental changes or other major considerations. The revision may cover the entire plan or a part of it (The Regulation on the Principles of Development and Implementation Plan Preparation, 1985, Item 3/3).

12 Local Development Plans are made by the municipalities when a settlement is needed to be developed beyond the boundaries of the current development plan and is located isolately from an already-planned settlement (The Regulation on the Principles of Development and Implementation Plan Preparation, 1985, Item 3/5).

13 Ersoy M., 2000, 44-71
difference between the Revision Plan and the Plan Modification is the need for renewing the analytical researches, although mostly neglected. If a change in the essence of the plan is required, then the Revision Plans should be done. However, Plan Modification erroneously substitutes the Revision Plan in most cases and impulsive process of Plan Modification instead of making a Revision Plan yields implementation difficulties as well as socially unaccepted unfairness.

Within the context of Planning Law, Local Development Plan is defined for the cases where the existing plan do not meet the requirements of the population, new development areas need to be allocated. Since the Local Development Plans are accepted as an extension of the Development Plans, they should be done at the scales of 1/5 000 and 1/ 1 000. Hence, they should include the analytical research and evaluation requirements of the masterplan. However, especially in the areas where sectoral developments such as tourism or industry are rapid, the developments are guided by the Local Development Plans without proper analytical studies. These areas in which developments are quite fast, the cost of infrastructural investment and the provision of municipal services are higher than expected. Furthermore, the integrity of the plan is jeopardized by these developments. Especially in coastal settlements, a mosaic-like development pattern emerges through the implementation of the Local Development Plans and it becomes difficult to stay in line with the population and development targets of the masterplan.14

Additionally, besides the Planning Law, there are legislations which give the planning right to different institutions for special areas. “Law of Coastal Areas”, “Law of Forest”, “National Parks Law”, “Law of Environment” give the planning authority to the relevant ministries in certain areas. In other words, although the Planning Law gives the planning rights to the local governments, the planning authority is given back to the central governmental bodies in some specific areas which hold strategic importance in the development of Istanbul. As a matter of fact, coordination and cooperation between the local governments and the central government is insufficient. For example, the decisions of the Bosphorus Bridges, which play a very important role in the spatial expansion and the development pattern of the city, are made independently from the metropolitan planning studies of Istanbul and the bridges with their connecting roads are imposed on the masterplans as a fait-accompli. The decision process of the third Bridge is now going through a similar process.

Basically, the lack of the coordinating instruments and processes for the integration of different plan types leads to a disorder of authorities in the planning system and ongoing disputes in the form of court cases.

14 Babacan Tekinbas B., 2008, pp.25-28
Figure 1: Fragmentation of Planning Authority Through Planning Law
Fragmentation of Planning Authority Through Related Laws (see Figure 3, p.18)

Although the Planning Law gives the planning rights to the local governments, it also provides the basis for many central government institutions to be entitled to exercise the planning authority.

In this part of the paper, the legislation giving the planning rights to the institutions of the central government which are most influential on the urban development of Istanbul will be discussed. In this context, planning legislation regarding the areas of illegal settlements; areas of protection such as forests and coasts; sites of conservation and renewal; critical plots designated for sectoral projects of overwhelming importance such as tourism and mass housing projects will be discussed. Sections from the urban development of Istanbul will be added to the above mentioned exposure of the deficiencies regarding the legal and institutional context of planning.

Despite the high number of central and local government institutions authorized in the planning process, almost half of the settlements in the metropolitan cities are either unplanned or developed against the existing plans.

Law of Unauthorized Building and Development Amnesties

The phenomenon of illegal developments has been the subject of several special legislations. The purpose of the “Law of Unauthorized Building” (1966/775) was established in order to avoid the unauthorized developments by creating prevention zones through expropriation and provide small plots of land to the needy people. However, the proposed achievements could not be accomplished as the Ministry (Ministry of Reconstruction and the Settlement) and the local governments were not able to integrate their works and cooperate properly. In time, the arrangements proposed in the legislation have turned into populist policies and yielded to the allocation of land as a means of obtaining a mass of votes. The legislation itself stimulated the expansion of the illegal settlements rather than avoiding them.15

The legislation targeting the unauthorized developments was followed by a series of development amnesties through various laws (1983/2805, 1984/2981, 1986/3290, 1987/3366) and paradoxically has played a role in the expansion of the unauthorized settlements. Through a series of development amnesties, all illegally developed settlements have been taken into the scope of the amnesty programs. Through this legislation, “Improvement and Development Plan”16, as an additional plan type, has been added to the already complicated planning system.

The Improvement and Development Plan target to upgrade the living standards in the irregularly developed, unhealthy settlements within the limitations of the existing conditions. The Improvement and Development Plans were supposed to be transitory implementations for bringing the illegal settlements into the legal domain. However, in time they have transformed from an instrument of improving the illegal developments into a means of reproducing them continuously. In this plan type, since the technical and the social infrastructural standards, which are normally required in the standard Development Plans, are not looked for; they have

15 Babacan Tekinbas B., 2008, p.322
16 Improvement and Development Plans are made by the municipalities in order to improve the living standards in the irregularly developed, unhealthy urban environments by taking into consideration the current situation of the settlements (The Regulation on the Principles of Procedures to be Applied to the Unauthorized Developments, 1984/2981, Item 4/24).
been used as escape mechanisms to avoid the development plan processes, especially in the areas with the illegal development tendencies.

One more negative impact of the Improvement and Development Plans on the planning system is observed in the metropolitan regions. A layered local governmental system exists in the metropolitan regions: Greater Municipality and District Municipalities (see Figure 2, below). There is a coordinating function of the Greater Municipality through the submission of the Development Plans made by the District Municipalities. Since the Improvement and Development Plans do not have to be submitted to the Greater Municipal Council for the approval, the coordination function of the Greater Municipality in the metropolitan regions is automatically bypassed.\(^\text{17}\)

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**Figure 2**: Local Governmental System

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**A Section from the Urban Development of Istanbul Revealing the Illegal and Irregular Settlements**

The city of Istanbul displays an uncontrolled, fragmented and low-cost urbanization pattern as a result of the high urbanization rates and the insufficient production of housing to accommodate masses of people migrating from Anatolia since 1950’s. Istanbul is the destination of nearly 50% of the total people migrating in Turkey. Among the people living in Istanbul, the proportion of people born outside Istanbul to the total population of the city is accepted as a determinant of the extent of migration towards Istanbul, that has reached 62% according to the Census of 2000.

The public funds are insufficient to meet the housing and the infrastructural requirements of the rapidly-increasing population. There has been also a lack of integrated employment and housing policies, which led to the random spread of industrial establishments surrounded by illegal housing areas. It is stated that the illegal and irregular\(^\text{18}\) housing units in Istanbul cover

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\(^{17}\) Unal Y., 1996, pp.255-256

\(^{18}\) **Illegal development** is occupying illegally an estate that belongs to public or another person or building an accommodation on a piece of land that is registered as an agricultural land, forest or green area, against rules and regulations. **Irregular development** is registering the legally occupied estates as the property of the occupiers through building amnesties.
a surface area of 32.4 % of the total housing areas.\textsuperscript{19} It reaches an extent of almost 70 %\textsuperscript{20} when the total area of housing (counting the storeys) is regarded (see Figure 4, p. 9).

It is unrealistic to claim that the illegal and the irregular developments in Istanbul are only the result of inadequate control mechanisms. As the illegal production of housing is stimulated by the development amnesties, there is obviously a hidden support of the public authorities behind the ill-pattern of development. In other words, the populist policies of the governments form the basis for the excessive figures of illegal and irregular developments in Istanbul.

Although the urban development pattern of Istanbul with the high rates of illegal and irregular settings is unacceptable in terms of low standards of life qualities, public authorities avoiding an authoritarian approach serves as a relief mechanism for the society. The social tension emerging from the severely unfair distribution of income is relieved by the tolerance of the public authorities providing the titles to the illegally built houses.

\textbf{Figure 4:} Illegal and Irregular Housing Areas in Istanbul (produced from the data in the Analytical Report of the Environmental Plan of Istanbul, 2007)

\textsuperscript{19} The Report of Environmental Plan of Istanbul, 2007
\textsuperscript{20} The Report of Development Plan of Istanbul Metropolitan Area, 1995
Law of Forest and Planning

The highest concentration of the illegal developments is at the city peripheries. The cities are generally surrounded by farm areas, forest areas and water collection basins. The peripheries of the cities, which are the transition zones between the urban developments and the rural areas, are both subject to the pressure of the expansion of illegal settlements and the multitude of planning authorities due to a number of ministries having planning rights on these areas. In the view of the development tendencies of Istanbul, expanding beyond the natural thresholds, the legislation related to the forests is discussed first.

The forest areas in Turkey are protected by a special law passed at an early stage of urbanization. However, some critical items of the “Law of Forest” (1956/6831) are of a nature that facilitates the illegal developments. One of the most controversial items is the item 2B. Under this item, it is stated that publicly owned forest areas which have lost the characteristics of being a forest and which contain a large number of dwellings, can be taken out of the forest zone of restrictions. The development rights of the areas falling under 2B and their legal standing frequently come to the public attention, especially at the times of elections. Currently, the legal arrangements for handing over those plots under the jurisdiction of 2B with industrial establishments or residential developments to the current users are being discussed extensively in the press. Transferring those sites to the jurisdiction of the Directorate of Mass Housing in order to perform urban regeneration is also being challenged.

Under item 52 of the same legislation, it is allowed to have development up to 6% of the plots in the privately owned forest areas. Items 16 and 18 of the same legislation lead to a different sort of destruction. These items allow certified or uncertified mining operations and stone/sand quarries within the forest zones. The stone and sand requirement of the construction sector in a rapidly developing city like Istanbul leads to the irreversible destruction of the natural sites and disturb the balance of the eco-system.

Law of Coastal Areas and Planning

In a country like Turkey, which is surrounded by seas on three sides, legislation regarding the coastal zones also plays an important role in the conservation of the balance of the eco-system. The “Law of Coastal Areas” (1990/3621, 1992/3830) is based on the constitutional principle that the coastal zones should be primarily used for the public benefit. In this context, a utilization which is not for the use and the benefit of the public cannot take place on a coastal area. However, the planning decisions granting the consent for the developments prior to this legislation are accepted as the acquired rights.

Besides the Law of Coastal Areas, the complex domain of planning legislation applies to the coastal developments. There are additional legislative rules of protection for the coast of lakes and the water reservoirs. Especially in large cities, the water catchment zones of the lakes, which supply drinking and all-purpose water, are subject to the “Regulation of Water Pollution Control”. If this legislation is more restrictive than the Law of Coastal Zones, then has the priority in the implementations. Despite the dual protection, the illegal developments or the developments through Local Development Plans in these areas are quite common.

There are provisions of the Law of Coastal Zones which are claimed to facilitate the speculative investments as opposed to the public benefit. For example, the Law defines a critical distinction between the constructions which require land reclamation through a filling

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21 473 000 hectares over the country, www.orman.gov.tr
process and those which do not. Based on this distinction, reclaimed coastal land falls under the jurisdiction of the Ministry of Public Works and Settlement whereas the rest of the land under the local governments (the municipalities within the municipal boundaries and the Governorships outside the municipal boundaries)\(^{22}\). However, this distinction leads to implementations contradicting to the essence of the Law and its constitutional principles. The coastal zones are rapidly being converted to investment areas. Reclaimed lands through filling process increase the economic value of the coastal areas, while the ecological losses are tolerated.

**A Section from the Urban Development of Istanbul Revealing the Pressure of Growth over the Natural Thresholds**

The water collection basins and the forest areas in the north are the natural boundaries of the development in Istanbul. The uncontrolled development of forests and water collection basins has been over the limits of sustainable growth especially after the 1990’s. The scattering of the population growth rates between 1990 and 2000 clearly shows the pressure over the natural thresholds in the north (see Figure 5, below).

The surface area covered by the illegal and the irregular developments over the seven water collection basins of Istanbul metropolitan area has exceeded 8,800 hectares. The development tendencies in the forest areas are similar to the water collection basins. Especially, Item 2B of the Forest Law facilitates both regular and irregular developments in the areas which lost their identity as forests. The areas under the jurisdiction of Item 2B have exceeded 16,000 hectares in Istanbul, that is 6% of the total forest areas (see Figure 6, p.12).

![Figure 5: Scattering of Population Growth Rates and the Natural Thresholds (produced from the data of Census 2000)](image)

\(^{22}\) Babacan Tekinbas B., 2000, p.126
The urban development of the city is attached to the coast line in the south because of its appeal for the development. Istanbul is a rare city which is surrounded by sea from its six sides as it is separated by the Bosphorus. The length of the coast line is more than 647 km. On the other hand, the uncontrolled and densely built shores disturb the ecological balance and are mostly inaccessible for the majority of the society. According to the Law of Coastal Areas, the reclaimed land through a process of filling is under the jurisdiction of the Ministry, which is mostly the case in the densely populated parts of the city, causing the separation of the coast from its social ties lying at its hinterland.

**Legislation of Conservation**

In the planning system of Turkey, besides special laws to preserve natural assets (e.g. the Law of Forest and the Law of Coastal areas), a general legislation exists which aims to preserve historical, cultural and natural assets. Since the establishment of the Republic, the first step towards modern conservation legislation has been the “Law of Ancient Monuments” (1973). Institutional structures have been developed through this legislation in order to register the assets in a range of a ‘particular building’ to a more extensive ‘urban site’.

The “Law of Conservation of Natural and Cultural Assets” (1983/2863, 1987/3386), which has gone through a number of changes, sets the foundations of conservation in the urban and natural areas through registering particular assets as well as urban sites, archeological sites and natural sites. “Board(s) of Conservation” have been established to register the assets which are to be preserved, to define the temporary conditions of development till the approval of the plan and to approve the “Conservation-Aimed Development Plan”. Removing the
restrictive rules and regulations for those areas which have lost their identities are also subject to the approval of the Conservation Boards. In other words, local governments which have planning authorities due to the Planning Law are under the planning authority of the Conservation Boards within the conservation areas.

While there is a general legislation on conservation of the natural and cultural assets, two special conservation laws exist for two regions, Bosphorus and Gelibolu (the coast of Dardanelles). The “Bosphorus Law” (1983/2960) is one of the exceptional cases defined in the 4th item of the Planning Law. Therefore, planning and the approval of Development Plans for a considerable portion of the Istanbul metropolitan region are separate from the procedures defined by the Planning Law. In the Bosphorus region, 4 different zones are defined: Bosphorus Shore Zone and the Bosphorus Front View Zone are under the jurisdiction of greater Municipality of Istanbul. Bosphorus Back View Zone and Impacted Zones are under the jurisdiction of District Municipalities (second level of municipal governments in the local governmental system).

It can be stated that the planning authorities have been over-fragmented and a structure of conflicting authorities between the institutions exists. Despite this structural handicap, in general, a planning style that targets a planned development in a comprehensive an integrated approach has been taken till 1980’s. However, in more recent times, legislations undermining the integrated planning system in favor of the large scale urban projects are coming into force.

In this context, the “Law of Urban Renewal in the Depreciated Urban Areas in order to Preserve Through Utilization” (2005/5366), which has been put into implementation in a rush, is being heavily criticized. The Law facilitates the operations in the renewal zones for which the selection criteria do not have an objective basis. The comprehensive and integrated methods of overcoming the urban problems lose their effectiveness by the fragmentation of the space through renewal zones. In these zones, physical and aesthetic arrangements are prioritized, focusing on the development of the plots and ignoring the social costs of increasing densities or neglecting the conservation-oriented development decisions.

A Section from the Urban Development of Istanbul Revealing the Intertwined Structure of Conservation and Development Sites of Istanbul

The conservation mentality started to be effective in Istanbul after the declaration of the year 1975 as the European Cultural Heritage. However, it took a long time to register Bosphorus (1983) the Italian Quarter (1993) and Historic Peninsula (1995) as conservation sites where as they are unique sites of their kind: Bosphorus as the exclusive display of its geographical characteristics as well as its spatial configuration of a distinctive cultural accumulation; the Italian Quarter symbolizing the westernization of the Ottoman Empire; the Historic Peninsula holding the monumental identity of being the capital of three empires, Roman, Byzantium and Ottoman.

The rapid urbanization process after the 1950’s, increasing densities of the built environment and the careless development operations in order to open wide streets, demolished most of the distinctive cultural assets of Istanbul till the registration of the conservation areas.

Although there has been a considerable loss of the cultural heritage before the declaration of the conservation sites, currently there is an extensive web of the conservation sites in Istanbul, covering a surface area of 55 943 hectares (see Figure 7, p.14). The conservation sites

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embrace 10.3% of the Istanbul Metropolitan Area. However, only 21% of the conservation sites have an approved Conservation-Aimed Development Plan. The temporary conditions of development are valid for the rest of the conservation sites. As a result of the delay of the conservation-aimed planning process, the conservation sites are neither conserved properly nor integrated to the development process of the immediate neighboring areas of the conservation sites.

Bosphorus, the most important natural site of Istanbul, has been taken under the protection of a special Law in 1983, as one of the earliest attempts of conservation. The aim of the Law was to protect and develop the Bosphorus and to prevent the increases in density. The Law was issued to facilitate the implementation of the Master Plan of Bosphorus, which was also approved in 1983. Unfortunately, the Law deviated from its aims by a series of development amnesties.

The Conservation-Aimed Development Plan of a conservation site is approved by the Board of Conservation, under the authority of the Ministry of Culture and Tourism. The involvement of a new institutional body in the development of the conservation sites is supposed to provide an extensive conservation whereas the implementations reveal that it leads to ongoing disputes between the local governments and the Boards of Conservation.

Figure 7: Conservation Areas in Istanbul (produced from the data in the Analytical Report of the Environmental Plan of Istanbul, 2007, p. 318)
Tourism Incentive Law and Law of Privatization Implementations

Project-minded development replacing the integrated planning approach is not only present in the renewal areas, but also in other areas such as tourism development regions. The “Tourism Incentive Law” (1982/2634) aims to develop and control the tourism development regions in order to promote the sector in economic terms and to provide a dynamic structure. However, functional relations of the tourism zones with the rest of the city are ignored in such an approach prioritizing economic benefits.

The Tourism Incentive Law has come into force, before the Planning Law delegating the planning authority to local governments. Therefore, the first applications in the tourism development zones have been established under the jurisdiction of either the Ministry of Tourism or the Ministry of Reconstruction and Settlement. A more complicated structure emerged after the Planning Law. While the upper scale Development Plans on the tourism development regions are approved by the Ministry of Public Works and Settlement, the Implementation Plans those containing tourism sites are approved in part by the Ministry of Tourism and by the local government for the rest of the city. After 2003, with the change in the Tourism Incentive Law (2003/2634), the Ministry of Tourism has been authorized with planning rights at all levels and types of planning. The attitude of the Ministry of Tourism disregarding the priority of multi-sectoral functionality and hence the comprehensive approach severely limits the efficiency of the planning system.

The sectoral bias and the investment-focused mentality displayed by the Tourism Incentive Law blocks the implementation of the conservation oriented laws such as the Law of Forest and the Law of Coastal Zones.

Furthermore, the mentality of the Tourism Incentive Law undermines the main objective of planning to achieve a fair and extensive distribution of prosperity to the whole society through spatial arrangements. A developing country like Turkey, needs a multi-sectoral planning approach in order to facilitate a wide range of employment opportunities embracing the widely diversified labor force.

Another legislation which is parallel to the Tourism Incentive Law in terms of its influence on the planning system is the “Law of Privatization Implementations” (1994/4046, 2005/5398). This legislation gives the planning authority to the “Directorate of Privatization” in the privatization areas, which are smaller in size with respect to the tourism development regions but holding strategic importance in the development of the city. Furthermore, involvement of a new institution with planning rights into a structure that is already complicated leads to new legal cases. Additionally, the drive of the investors, who have purchased the plots at high prices and expecting to maximize the commercial gains, clashes with the expectations of the society and leads to endless legal debates.

Law of Mass Housing

In addition to the Planning Law, among the legislation that determines the urban development, the “Law of Mass Housing” (1984/2985) has a vital place due to the magnitude of the population it impacts directly and due to its capacity to influence the functional set up of the city.

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27 The former name of the Ministry of Public Works and Settlement was the Ministry of Reconstruction and Settlement
28 Babacan Tekinbas B., 2008, pp. 308-309
The mass housing projects started in Turkey, prior to the Law of Mass Housing. However, the spread of the implementations and the establishment of the institutional structure took place after 1984, the year in which the legislation was passed. The objective of the Law was not to obtain planning authority when it was first issued. Its target was to systemize the “Directorate of Mass Housing” and create a funding for mass housing. However, with the recent modifications (2004/5262), the Directorate of Mass Housing has been authorized to make the plans of all types, at all scales. Furthermore, the public land stocks have been transferred to the Directorate. In addition to the planning authority, transferring of the huge amounts of public properties to the Directorate (which has not been granted to any other institution), strengthened the role of the Directorate of Mass Housing in the development of the cities.

The mass housing are still far from solving the mass housing problems and remain subject to heavy criticism, despite privileged planning rights and vast land stocks. One of the main criticisms is that the mass housing projects cannot be integrated to the functionality of the urban system and to the planning decisions shaping up the city. It is stated that main drive behind the increase of the authorities and resources of the Directorate is boosting the economy via the construction of mass housing rather than the improvement of the urban life quality of lower income groups by producing affordable housing.

The Directorate of Mass Housing is behaving like the private sector, concentrating on profit maximization by the choice of inexpensive lands and ending up with distant, isolated peripheral projects. Mass Housing areas, where high numbers of people live, turn into islands outside the planning authorities of local governments. Creation of these distant densely populated development areas increases the cost of infrastructure as well as the provision of the public services.29

A Section from the Urban Development of Istanbul Revealing the Project-minded Approach Undermining the Holistic Plan

The cancellation of the Development Plan of Istanbul Metropolitan Area (1995) and the Environmental Plan of Istanbul (2007) led to an increase in the number of urban projects hence undermining the holistic plan. The Tourism Incentive Law and the Law of Privatization fueled this process. The implementation of a considerable number of projects as Tourism Development Centers have not only ruined the exceptional skyline of the city, but complicated the conservation process as well. There are 21 of these Tourism Development Centers in Istanbul, covering a surface area of 789 hectares. 38 % of these areas is located within the conservation zones.

The tourism development projects can be split into four groups in Istanbul (see Figure 8, p.17):

Rehabilitation Based Projects generally target to upgrade the environmental quality in the historical neighborhoods such as the Historic Peninsula and Italian Quarter. The proposed actions of these projects are mostly repairing and cleaning the sidewalks, facades of the buildings.

Culture Oriented Projects target the renewal or revitalization of specific areas through the establishment of cultural activities centers, which are mostly subject to design competitions. KucukCekmece and Kartal sub-center projects are developing along these lines. Since the projects submitted for competition are design-oriented, they overlook the social integration

29 Keskinok C., 2007, pp. 299-300
and employment issues. However, most of the decentralized industrial zones, where these problems are most intensely experienced, have been subject to design competition processes. Halic is another popular zone of culture-oriented projects. However, the projects in the Halic area are developed as discrete projects without an integrated approach.

Port Projects are located in the densely populated parts of the city, disintegrating a large population of people from the seashore. Zeytinburnu, Galata and Haydarpasa are examples of port projects which are currently on the public agenda.

Sports and Recreation Projects are the large scale projects which are stretching the macroform. The Olympics Village and Formula 1 are the examples of the large scale sport projects.

Figure 8: Tourism Development Projects in Istanbul (produced from the data in the Analytical Report of the Environmental Plan of Istanbul, 2007, p. 291)

Besides the tourism development projects, mass housing projects are also undermining the holistic plan. The mass housing projects and implementations were obviously expanded since the Law of Mass Housing came into force. However, the site selection, design principles and the marketing strategies of especially the publicly produced mass housing are extensively criticized. The sites of the mass housing compounds produced by the Directorate of Mass Housing are mostly random and do not match the principles of the higher level development plans. For example, the ratio of mass housing to the total housing areas is highest in the District of Kucukcekmece (14.44%), where the ecological niches are highly concentrated and environmental concern of the higher level development plan is quite abolished.
Figure 3: Fragmentation of Planning Authority Through Related Laws
Systemic Deficiencies in the Over-fragmented Legal and Institutional Context

Such an over-fragmented legal and institutional structure certainly requires efficient mechanisms of coordination. However, the legal instruments of coordination between the institutions which are granted planning authority are either insufficient or underutilized. In many areas, more than one institution is authorized with planning rights leading to an overlapping of jurisdictions. The hierarchical order between these institutions, for the cases in which more than one legislation apply, has not been defined. This structure complicates the decision-making and the enforcement, as the plans made by one institution is challenged by another. The appeal process results in court proceedings that last quite long, where the courts have to decide on unclear grounds regarding the hierarchy of authorities. The investors take advantage of the dispute areas in the legal structure. The lack of clarity in the planning environment not only prevents the execution of decisive urban policies, but leads to the cancellation of the plans approved by the councils as well. The case of Istanbul is a stunning example of this failure of planning as the Urban Development Plan of Istanbul Metropolitan Area (1995) and the Environmental Plan of Istanbul (2007) have been cancelled just after coming into force due to questioning of the authority of the Planning Institution. Hence, the largest city of Turkey, with a population over 12 million and which has expanded beyond its natural thresholds, does not have an approved spatial macro plan.

The over-fragmented legal and institutional context of planning in Turkey also requires efficient auditing mechanisms as a function of well-established civil society. A strong establishment of civil society helps to minimize the cost of blurred decision making in the urban development process to the society. In other words, the cost of the authoritative ambiguity is charged to the vulnerable groups of the society that should supposedly be secured through the auditing mechanisms of the civil society. However, both the legal structure in Turkey and the cultural dedication of the society to real democratic processes are not mature enough in terms of effective participation practices. There is no reference to the participation methods or means throughout the planning legislation, neither in the Planning Law nor the related Laws. The ad hoc participation practices have remained temporary and ineffective implementations.

The urban planning process, which is dominated by the clash of planning authorities and which is also deprived of participation practices, resulted in an eclectic urban environment, where isolated projects are conglomerated. The mosaic of projects, which replaces the holistic plan, disables the multi-sectoral and multi-purpose integrated approach.

The loss of the integrated approach in planning leads to spatial decisions which are not harmonized with the socio-economic policies. While spatial arrangements which aim to strengthen the social justice are disregarded, the spatial decisions to upgrade the image of the space in order to increase the competitiveness in the global markets and improving the space as an economic space are given priority. The main principle of planning, which is to establish a fair distribution of urban values and public services, is sacrificed and ownership-driven development strategies benefit exclusively the property owners at the expense of the others.

There is no regulation in the planning system of Turkey, which targets giving back, at least partially, the gained value of the development process to the public. Furthermore, as the gained value is mostly coupled with an increase in density of the built environment, the society also suffers from the deficiencies in their life qualities due to the overloaded infrastructure. The social cost becomes even worse, especially for the urban development
projects which are funded by the public sector or which are facilitated by the infrastructural investment of the public agencies.

The over-fragmented legal and institutional context of planning in Turkey as well as the overarching systemic deficiencies resulted in an unsustainable urban development pattern in Istanbul. The specific spatial impacts regarding the execution of the Planning Law and the related Laws will be explored subsequently in the closing section of this paper.

Concluding Remarks

In order to have a proper restructuring of the Planning System in Turkey, the role of the public authorities should be redefined. In a developing country like Turkey, with limited resources, the public sector should return to "the guiding, regulating and moderating roles" rather than behaving like private sector and competing with the private enterprises.

For the public sector to achieve the above mentioned three-folded function in the urban development process, the functions of urban management and spatial development should be exercised simultaneously. Within the current legislative system, the legislations on Local Government and Planning are applied independently of each other. A vision that integrates the entire range of the planning activities and a pillar legislation that guides the overall implementation process would certainly contribute to the establishment of an integrated approach in the spatial development. Such a legislation on urban development will eliminate the fragmented structure that cripples the current system and minimize the coordination difficulties.

Social justice should be the predominant motive of such an integrated approach. Consequently, a system that brings value to the 'winners' only at the expense of a large number of ‘losers’ will be given up, laying the foundations of a fair urban development system. The prime objective of the processes of the public decision-making should be fair distribution of the economic gains and improved life standards in the cities rather than generation of maximum benefits through urban development.

In this context, social policies should be integrated to the spatial decisions and should be forced in the implementation process as well as the tangible, physical amendments.

In the assessment of the social impact of the spatial decisions, instruments and processes of participation should be employed. However, in a country of socio-economic imbalances like Turkey, delegating the urban development exclusively to participative processes should be done with care since sometimes it may lead to developments against the public interest through manipulations of the participation process. For this reason, the participation processes and the moderating instruments implemented of the public sector should be utilized simultaneously. Thereby the planning practices will be utilized as learning process, forming a valuable step in the evolution of the social awareness and maturity.
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