A CRITICAL EVALUATION ON THE CONCEPT OF JUSTICE IN PLANNING PROCESS – JUDICIAL OVERSIGHT: THE BALÇOVA AND NARLIDERE CASES

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ABSTRACT

This thesis aims at scrutinizing what is meant by the concept of justice and the ways the concept is being referred to in urban planning practice in Turkey. Aimed as such, the due analysis involves examination of how the concept is taken into consideration and defined by different actors taking part in urban planning process of our country. The basic data underlying the considerations based on not only the conceptual discussions, but also the planning practice will comprise different demands concerning the urban space and the cases of lawsuit under control of adjudication as reflections of these demands upon the process of planning.

The questions to which this study based on "justice" in the urban system and the planning discipline are to be answered can be listed as follows: Which concepts, which ideals, which discourses and methods are used during the process of distribution mechanism in the economic realm, law system and judicial process? How are the basic concepts of justice, namely equality, interest, right and liberty used in defining and encountering the urban social needs in these processes? Do the achieved results involve any targeted ends that can be called as just?

In order to elucidate the understanding and demands of justice, conceptual information pertaining to the concept of justice is required. For this reason, study focuses on theories of justice and elaborates the fundamental points of concepts, theories and their reflection on the state regulations.

Regarding an assessment of the Turkish practice, overall assessments are held as based on cases of lawsuit under control of adjudication. The cases of lawsuit are assumed to represent matters of conflict/dispute and spatial demands of actors regarding the urban space. Accepted as such, the spatial disputes will be elaborated on basis of the matters of case study area in emphasis.

Keywords: Justice, Justice Theories, Planning Practice, Judicial Process, Balçova and Narlıdere Settlements

ÖZET

Bu tez, Türkiye şehir planlama pratiğinde, adalet kavramının nasıl kullanıldığını irdelemeyi amaçlamaktadır. Bu amaçla; yargı denetimine yansıyan örneklerinde farklı aktörlerce kavramın nasıl ele alındığı ve tanımlandığı incelenmektedir. Bu kapsamda, kavramsal tartışmaların yanısıra, pratiğe yönelecek değerlendirmelerin temel verilerini; kentsel mekana yönelen farklı talepler ve bu taleplerin planlama sürecindeki yansımaları olarak, yargı denetimindeki dava örnekleri oluşturmaktadır.

Kentsel sistem ve planlama disiplininde "adalet" temelli bir çalışmanın cevap aradığı sorular şöyle sıralanabilir: Kentsel mekanda üretilen kararlar ve bu kararlara yönelen itirazlarda, oluşan "dağıtım süreci"nde hangi kavramlar, hangi idealler, hangi söylemler ve yöntemler kullanılmaktadır? Adaletin temel kavramları olarak eşitlik, yarar, hak ve özgürlük kentsel toplumsal ihtiyaçların tanımlanmasında ve karşılanmasında nasıl kullanılmaktadır? Ulaşılan sonuçlar, istenen, hedeflenen ve adil olduğu söylenebilen sonuçları içermekte midir?

Adalet anlayış ve taleplerinin açıklanabilmesi, büyük ölçede "adalet kavramı"na ilişkin kavramsal çerçevenin sınırlılıklarının farkındalığı ile olanaklı olabilecektir. Bu nedenle, çalışmanın ikinci bölümünde, adalet teorileri üzerinde durulmaktadır. Kavramların, teorilerin ve bu çerçevenin, "formal adaletin" gerçekleştirici birimi olarak devlete ve uygulama birimlerine yansıyışı genel bir değerlendirmeyle ele alınmaktadır.

Türkiye pratiğine yönelen üçüncü bölümde, planlama pratiğine yasal bir zemin ve temel oluşturan hukuk sisteminin belirlediği "adalet"in kapsamı, yürürlükteki yasalar ve uygulayıcı kurumlar üzerinden değerlendirilmektedir. Bu değerlendirmelerin yanısıra, Türkiye pratiğinde 1980'ler sonrasında yaşanan ekonomik tercihlerdeki dönüşüm süreci de ele alınmaktadır.

Yargı denetimine yansıyan mekansal davalardaki tarafların, kentsel mekandaki aktörlerin, mekansal taleplerini ve çatışma/uzlaşmazlık konularını temsil ettiği kabul edilmektedir. Bu kabul doğrultusunda, mekansal çatışmaların konuları, yoğunlukları örnek alan üzerinde ele alınmakta ve açıklanmaktadır. Çalışmanın dördüncü bölümünü oluşturan bu bölümde, teorik çerçevelerin sunduğu olanaklarla, dava örneklerinde çatışmalar/uzlaşmazlıklar özelindeki "adalet" değerlendirilmektedir.

Anahtar Kelimeler: Adalet, Adalet Teorileri, Planlama Pratiği, Yargı Süreci, Narlıdere ve Balçova Yerleşmeleri.

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CHAPTER 1

INTRODUCTION

1.1. Aim of the Study

In practice of the planning discipline in our country, with regard to determination of the formation ways and processes of urban space, physical plans are produced as result of a series of technical and social studies based on particularly the physical structure of cities. Following the phase of planning, the approved plans are re-determined by many actors during implementation and urban space often becomes subject to such new results that are different from the decisions previously determined by physical plans. The plans then begin to be embodying in documents that usually have no resemblance with the spatial environment created. This practice that comprises the physical planning dimension of planning activity pertains to our practice of development planning. In a variety of different ways, it is possible to monitor the impacts of actors and this practical process pointing out to those different actors who are influential in formation of urban space all upon urban space. However, this thesis takes its departure point from the will to scrutinize the way how conflicting urban spatial demands are expressed in terms of "*justice*" demands. In line with this aim, the spatial pressures of actors demanding for justice upon urban space will be examined and the way how space is produced within this process will be monitored and evaluated.

The fact that planning discipline is a scientific activity where the methods used are based on scientific bases causes the problem as to what kind of values these scientific methods shall carry become a matter of secondary importance. However, the most fundamental problems of planning involve the distribution of resources throughout urban space, the supply of urban facilities and accessibility and how this distribution can be realized in the best and most proper way. Although the basic criteria in distribution of resources is interpreted according to predefined standards such as per capita allocation, the justice in such a distribution is usually disregarded (Talen, 1998). Contrarily though, the justice debate is a process concerned with how spatially, socially,

economically, and culturally defined different social class, group and individuals interest from the resources and opportunities of urban space. Expression of location criteria in terms of profit/loss mechanisms or of social interest does not bring any clarity to the adoption of justice within the context of these techniques and concepts. In this sense, the proposals in methodology of planning discipline do not carry any sufficient quality with respect to debates of justice. The basic problem belongs to the question of which justice criteria the practice of planning discipline as an actor of organization and distribution mechanism takes its departure from and what the sufficiency level of these criteria are.

The planning practice in Turkey; planning as a public and administrational activity is realized formally by those instruments and processes where positive law is defined within the legal process and informally by different influences of the actors.

The made decisions together with the urban demands of actors, the legal order and planning within a specific geography and specific time of such processes involved within pass through a series of preferences. This process created by the actors and decisions made correspond to a series of assents in sphere of "*values*". This system of values encountered by such concepts as true, good, just, equal or beneficial is reflected upon the process of spatial formation via expression sometimes by norms, and other times by obscure mechanisms.

In context of this study, the below mentioned dimensions are taken into consideration in examination of the concept of "*justice*" as the fundamental element of this system of values within which the discipline of planning takes place:

1. Essence of matter: under which conditions of reality, what are the basic principles and aims?
2. Process: what are the instruments and methods?
3. Result: what are the results of the process?

Therefore, this thesis aims at analyzing the position of the concept of justice as a component in the system of values within the planning discipline.

In this study, which aims at discussing the concept of justice with particular reference to the cases of lawsuit, the included actors as representatives of conflicting demands during the process of adjudication in relation to the process of planning are as follows: planners as representatives of the planning discipline; local governments (municipalities) as institutions of implementation; courts as the representatives of the legally given decisions and the law-state system; and individuals as those living in

urban space. The considered aspects of these actors are demands of right, perceptions of interest / benefit, equality, liberty / freedom, evaluations of individual-society and the way they regard land ownership.

1.2. Definition of the Problem

In a general definition as to '*What Planning is*', planning can be regarded as an instrument of organizing the urban physical space. What is organized in urban physical space is the distribution of goods and resources (public and private). The methods, approaches and tools adopted within the process of this distribution and location entail the below questions to be asked for the Turkish practice:

Today, does the existing urban structure achieved through the efforts of planning process in organizing urban space display any results that can be accepted as just? Do these results represent the ideals of the field of planning discipline? Can the planning process and its results be depicted as just results arrived through a just process? Affirmative answers to these questions will cause for examination of what justice is. If we further on with questions of MacIntyre "…*Does justice permit gross inequality of income and ownership? Does justice require compensatory action to remedy inequalities which are the result past injustice, even if those who pay the costs of such compensation had no part in that injustice? Does justice permit or require the imposition of the death penalty and, if so, for what offences?...*"(MacIntyre;1988;1). In cities of our time, what sort of justice and just processes are meant by the squatter settlements emerging as ways of shelter; natural disasters[1] caused by insufficiency of infrastructure; pressures of development adopting the discourse of restricted rights of ownership in response to demands of healthy natural environments to be sustained for future generations? In a planning study aimed at encountering these problems, through what kind a consideration can just distribution of urban opportunities be possible?

These questions referring to justice can be approached in two different ways. The first one of these is the acceptance of causes and results of the problem as out of consideration of the planning discipline. With an assent as such, it can be indicated that the causes and solutions of the problems are related with the institutions and processes

[1] Remembering the past experience of Turkey in terms of earthquakes and floods, the subject matter whether these are natural disasters or not appears to be a different topic of discussion.

that are not within the field of planning. In these processes determined by a series of superstructures, the planning discipline can play no role and have no affect. However, this assent also means accepting the current position of planning, in other words, adopting all possible ways of urban space emerging as a result of not implementing the plans, causing them to become uninfluential. Contrarily though, this takes place within the field of planning itself. At least what happens in reality takes place upon "*urban space*", the space which planning targets at organizing. It is for this reason that planning is a major component to the extent that it cannot claim to be neither unbiased, nor neutral concerning the subject at issue. The observations pertaining to the dimension the opportunities and distribution relations have reached in urban space; the inadequacy of the technique, method and prevailing paradigm of planning process in highlighting this process, and thus failing to be influential within, all entail the opinion that the debate on justice is a crucial part of the planning discipline.

A second consideration involves the idea that the actors of the planning process (formal, informal, superstructure institutions) and the concept of justice are to be accepted within the discipline of planning both. These correspond to the effort to interprete and understand the process and practice by elaborating these concepts. In this study, the adopted consideration has been preferred to be the second one where the concept of justice is given a central position as availing for an evaluation of the process at issue.

1.3. Guidelines for the study: Statements and Assumptions on Planning, Law and Justice

In context of this thesis where the planning practice in our country is considered from a justice-centered point of view, the determinants of the practice can be adopted as follows:

1. Integrated structure of the legal system – state within which the planning system takes place:

Throughout history, there has been a constant discussion concerning the problems as to how justice will be reached in every social system, by whom it will be kept and taken care of, by which mechanisms it will be controlled and which ideas will

be revealed and defended. The practice of the social life has rendered social organization and regulation mechanisms as necessary. [2] It is accepted that the social organization mechanism that has undertaken the duty of ensuring "*justice*" for the last three centuries is represented by the legal system, which is currently recalled by the modern systems of state and is often mentioned with the state (Özlem, 2000a). For this reason, justice is prevalently brought up with laws, by-laws and in a more integrated manner, with the legal system and the state. At this point, when considering justice, the legal system as the regulation mechanism of social life and the structure of state cannot be left out of debate. In furthering this debate on the discipline of planning as a spatial organization, the effective and determining role of the concept of justice in planning process of the state and legal system is admitted. As constituted by the state and the legal system, this process is considered as the first determinant of the planning practice that can be referred to as a formal regulation and admitted as the legal dimension of justice.

2. The prevailing paradigm of the planning discipline field:

The second determinant of the process refers to scientific approaches developed within the planning discipline as in relation to what science and a scientific approach is. The prevailing paradigm of these approaches as adopted widespread throughout a specific geography within a specific period of time during which great effort has been spent for its implementation, has been Rational Comprehensive Planning, with regard to the Turkish practice in particular. This prevailing paradigm as determining the city planning practice as a spatial organization regulates the ways and content of intervention in urban space with all its tools, methods and principles that guide practice accompanied by a series of conceptual assents concerning the society, social structure, economy, culture and space.

[2] The Latin saying "where a society does exist, there is also a legal regulation" (ubi societas ibu ius) is used to indicate that law is influential in social regulations of all societies. Exemplifying from the Marxist critics regarding the primitive society as the one where there exists no driven structure of class, law is rejected as an instrument of dominance among classes. These critics are met with the opinion stating that law is the expression of specific rules in the sense where "order" is provided and that these rules exist in all societies. (See Aybay&Aybay; 2003, pp:17-18)

3. Set of values produced through social processes (social, economical, cultural) within daily practice:

Apart from the above-mentioned first two determinants, a series of daily practice that prevail the geography in question constitutes another determining factor. Among the actors of this practice as representing the informal process take place the individuals, associations, foundations, firms and networks of relation. These informal actors are included within the process sometimes as manifest, other times as secret/concealed forms of social organization. Taking place in and/or out of the same geography, these informal actors act differently with regard to the legal regulations adopted as the formal form of social regulation. Apart from the legal form of justice, they exist via a different perception and acceptance of justice that is determined by ethics, moral values and beliefs.

The discipline of planning represents only one of these actors undertaking roles in formation of urban space. Within this set of actors including the planning discipline, the perspectives, demands, intentions and targets of every actor differs from one another. At the same time, the power, method, affectivity rate of these actors to have impacts upon space also changes from one to another. The urban settlements of our time emerge as the final products of different demands and perceptions of all these different actors and different ways of activities.[3] In context of this study, all these actors and the whole set of urban activities have been regarded as the practical process of planning in Turkey. Within this trio of generalizations, both the individuals as actors each and the institutions constitute the determinants of the planning process in line with justice conceptions of their own.

1.3.1. Assumptions on Planning, Law and Justice

In the debate of "*justice within the process of planning*", at which this thesis aims, the existence and variety of these actors are admitted first. Concerning the analysis as to how justice is defined by these actors, the demands of these actors have been determined and the way of rights are described and analyzed. These analyses are regarded to be guiding in understanding and encountering the different demands met during the formation process of physical space. The basic assumptions and the

[3] Related views on this are manifest in the papers presented in particularly the World Urbanization Day meetings held for the last 10 years of Turkish practice. As for the world literature, the debates, searches and new paradigms related with the theory and practice of the last three decades are developed upon the assents guided by such a way of thought.

questions, of which the answers are searched for, are identified in this purpose as given in the following:

Assumption: 1. There can be no stated single definition of justice as accepted commonly by all. In definitions, different regulations are proposed giving priority sometimes to liberty or equality and other times interests and rights. This causes justice to be expressed as rather an individual preference or activity than those measures which can be used.

The questions to be answered in this respect appear as mentioned below:

What is justice? Is there any single definition of justice reached by consensus of all and any criteria determined in line with this definition? What are the ways of questioning justice with the concepts upon which different theories of justice are based? In concepts of justice, can there be any superiority of one upon the other? Is it possible for a definition reached by consensus? In planning discipline, what can be the definition to be used and the criteria included within this definition? What kind of opportunities do the Rawlsian justice present within the discipline of planning?

Assumption: 2. In current Turkish planning practice, there can be no single definition of justice stated. Definitions and demands vary by events, circumstances and perception of actors. In this sense, it is possible to speak of competing demands of justice represented by competing interests. Within such differences, there also emerge different demands accompanied by different assents of justice within the process of planning where each demand determines space and the planning process to the extent of the power of arguments as much as their affectivity in regulation mechanism.

The questions to be answered in this respect appear as mentioned below:

How is a just process defined by adjudication bodies and governments in the legal system; individuals within the informal process and planners are the representatives of the prevailing paradigm in planning discipline? How is justice considered within the planning discipline and the adjudication process? What is the position of adjudication control within the practice of urban planning discipline developed within the framework defined by Turkish positive law? What kind of disputes do the cases of lawsuit represent within the adjudication process? When these disputes are taken as some questioning of "*justice*", what kind of areas of dispute, claims and results are revealed?

These questions are directed towards consideration of the conflicts/disputes within the process of adjudication in Turkish practice as based on the experience of case study area selected.

1.4. Methodology

As the case study, planning processes of Balçova and Narlıdere settlements in between 1991-2003 were analyzed and evaluated with the aim of clarifying the role of justice concept in planning process over judicial control. Actions in judicial control process constitute the necessary amprical data required to make justice discussions in planning process over concrete events. In the examination of actions in the extent of this thesis, above mentioned actors of planning process are classified as follows; plaintiff/defendant parties representing the private persons and institutions, experts as representatives of planning discipline, persons charged with planning process and approval authorities and courts as representatives of legal process. Claims of these actors, as parties, constitute the primary data to discuss the changing meaning of justice and changing content of justice demands. In this process, there are data which are obtained in two different fields and examined under different evaluations. First kinds of data are the generalized ones that were obtained in order to examine in which subjects and how often these actors of planning process have conflicts. These data are used in order to determine in which subjects, in which stage of planning process and how often actions do occur. In this extent, problems and conflicts, which were occurred with demands of these components examined in planning process as a whole, can be determined and discussed. Besides, these data form the criteria of selection in determination of which subjects and samples can be taken into consideration in detail.

Second kind of data consists of the detailed data regarding the case samples which were selected to make detailed discussions after general evaluation stage. In the discussions made by the help of these data, it is possible to determine in which forms and in which different contents right, equality, interest and liberty concepts as determinatives of justice concept have been used in the claims of parties. In Rawlsian perspective, a need originated justice concept and use of this concept in the process and the existence of alternative evaluation possibilities can be discussed. Furthermore, during plan making, research, approval and implementation stages, examination of these

problems in legal process, effects of judicial control on this process, approaches of individuals and groups and influences of results on space can be evaluated in this process.

Data concerning the actions reflected on judicial control in planning process include necessary information that accompanies demands of urban rights and justice discussions of problems/conflicts occurred with these demands of rights. These data provide the possibility to explore the concentration of conflicts, subjects of conflicts, claims of the parties and to examine the planning process in legal process. Concerning the data obtained from court files, it is accepted that; subjects of data represent subjects of conflicts, concentration of subjects represent the concentration of conflicts; actors (plaintiff, defendant, experts, related institution and legal dimension) represent the justice approach of different groups.

In this aim, municipalities of Balçova and Narlıdere have been selected as case studies. Data regarding all actions proceeded between 1992 -2003 where mayoralties of those municipalities were the parties inside their own municipal boundaries, have been obtained under the following extent.

1.4.1. Extent of Obtained Data

1.4.1.1. General Evaluation:

In order to make a general evaluation, it is aimed to determine and classify the subject, content and intensity of the problems concerning demands of urban right proceeded in judicial process. For this aim, as the primary step of the study, data about all of the cases proceeded between 1992 -2003 and registered in Directorates of Law Affairs of Balçova and Narlıdere Municipalities were obtained. These data consist of the following brief information existed in the registration books of related directorates; plaintiff/defendant party, subject of action, proceeding year of the action, authorized court, conclusion of the court. These can give necessary information to constitute a general data and about fields of conflict and dimension of conflicts. While considering actions as disagreement/conflict fields representing spatial problems, questions that have to be answered in general evaluation process can be discussed as follows:

1. In which subjects and by whom were the actions proceeded? How did these actions conclude in the end of the judicial process?
2. In which subjects do actions regarding planning process concentrate in judicial process?
3. What is the ratio of the actions concerning urban space and planning process through all of the actions proceeded in Administrative and Juridical Courts?

1.4.1.2. Detailed Examination:

In order to make a determination regarding perception and definition of justice, a second stage study has become obligatory in addition to general evaluation stage. In this second stage, it is aimed to evaluate in detail the definitions of actors through the generalization obtained before. During the process forming the second stage of the study, each court file related to planning process are examined separately in detail according to the following topics; claims of parties on application petitions, claims of defense, expertise reports, decisions of the local court, amendment demands of appeal-decision and applications to the Ministry of Justice. In this detailed examination process following questions have to be answered:
1. How do property owners that express spatial demands, courts that evaluate these demands and experts that evaluate these demands in planning discipline define "*justice*" concept in their claims?
2. How do parties define equality, liberty and interest concepts in their claims?
3. How are public and private interests evaluated in conflicting demands?
4. Who are the most disadvantaged groups in evaluation of the expressions by the need originated justice definition in Rawslian perspective?

After general examination stage, total number of the actions caused by conflicts, where related municipalities and İzmir No.1 Committee of Protection of Cultural and Natural Heritage were the parties, has been found out as 1215 cases. 965 of these court files concerns directly with planning and urban space and detailed examinations of these files has been realized. These examined court files do not represent all of the actions proceeded in the related municipality and obtained data do not include only the actions where related mayoralty is the party. Objection actions, which were proceeded against the decisions of İzmir No.1 Committee of Protection of Cultural and Natural Heritage

taken in 1999 regarding the area including Sahilevleri quarter inside the boundaries Narlıdere Municipality and Bahçelerarası and İnciraltı quarters inside the boundaries of Balçova Municipality, have also been taken in the extent of above mentioned data. Property owners objected these decisions of İzmir No.1 Committee of Protection of Cultural and Natural Heritage (Decision No.8049 for Sahilevleri quarter and Decision No.8050 for İnciraltı and Bahçelerarası quarters) which were taken in 1999. Because there are actions considerably high in number and because they represent a vast scale, regarding decisions have also been included in the extent of the study. Furthermore, above mentioned general and detailed examinations have been made for these court files.

Data, which have been used in explanation of examined court files, were obtained by the help of general evaluation and detailed examination results.

In the end of this data collection stage;

1. Classification of subjects of actions according to their relationship with planning process,
2. Examination of case study and subjects of actions, which were selected as a result of detailed court files studies, in planning process according to justice discussions could be possible.

1.4.1.3. Spatial Analysis and Spatial Distribution of Data

In order to follow the importance of the data through spatial situation, existing plans and existing development; necessary information regarding the quarters, maps, building blocks and plots have been obtained about the property that are the subjects of the action. Although obtaining these data from Technical Department of Balçova Municipality, related data couldn't be acquired from Narlıdere Municipality. Thus, spatial distribution about spatial relationship has been realized only for Balçova Municipality. In this section, these are the questions that have to be replied:

1. In which districts spatial distributions of subjects of actions/fields of conflicts are concentrated in plot basis?
2. How is physical space formed and developed in this process?
3. Are the decisions (court decisions) applied in the end of judicial process?

1.4.2. Resources of Data

In this study, influences of planning practice and judicial process on production of urban physical space are examined. In this process, in order to evaluate the differentiation in justice concept, necessary data have been obtained from the following resources;

a. Balçova and Narlıdere Municipal Organizations – Directorates of Law Affairs

Balçova and Narlıdere Municipal Organizations are determined as case studies and data regarding the actions causing conflict where these two municipalities are the parties were obtained from registration books and archives of their Directorates of Law Affairs. Firstly, data existed in registration books were generalized. In order to make a detailed examination, data regarding action process and action details were received from the court files existing in the archives of the directorate. Subjects and contents of the proceedings regarding planning process and spatial rights exhibited in judicial process were determined and categorized according to the subjects. During the detailed examination of court files, in addition to subjects of actions; claims of the parties on application petitions, claims of defense, evaluations of expertise reports, decision of local court, appeals, demands of decision corrections and applications to Ministry of Justice have been studied in each court file separately. (Preliminary information before evaluation process are shown in App.: E Table: 1. "All Collected Data[4] Including Balçova and Narlıdere Settlements".)

b. İzmir No.1 Committee of Protection of Cultural and Natural Heritage

In addition to the data regarding the actions where related Municipal Mayoralty (Organization) is one party; actions concerning the decisions of Izmir's No.1 Committee of Protection of Cultural and Natural Heritage inside the boundaries of these two settlements have also been included in research contents. Data of actions brought against the decisions of the committee were obtained from the archives of the committee.

[4] Data of tables include the actions which mayoralties of related municipalities (Narlıdere and Balçova) are the parties and all Administrative and Juridical actions brought against İzmir No.1 Committee of Protection of Cultural and Natural Heritage regarding their Decisions No:8050 and 8049 in 1999 and Decisions No:10168 and 10169 in 2003. Differentiations of Administrative and Juridical actions are shown in classified data section in App.:A and B.

c. Municipalities of Balçova and Narlıdere – Directorates of Public Improvements

In order to determine the relationship with the planning process and physical space, data about plan decisions and current situation of the area of each related action were acquired from Directorates of Public Improvements, Planning Department and Technical Department of Municipalities. Cadastral data, including necessary information about maps, building blocks and plots of the area where the action takes place, have been obtained from the Municipality of Balçova, however, regarding systematic data couldn't have been found in the Municipality of Narlıdere.

d. Greater Municipality of İzmir – Planning Department

Systematic data concerning the planning studies in both two settlements couldn't have been obtained from the related municipalities, thus, regarding data have been acquired from the archives of Planning Department of Greater Municipality of İzmir. Furthermore, digitalized base maps regarding planning process and data about public services of settlements were also obtained from the Planning Department of Greater Municipality of Izmir.

e. Land Use Study

Determinations regarding existing situation, other than court file data, were obtained during land studies. Determinations about the areas causing action and spatial influences of action results depend on land use studies and observations in these areas.

f. Interview with the Headmen of the Quarters

Interviews can only be realized with the headmen of Bahçelerarası, İnciraltı, Korutürk, Eğitim quarters inside the municipal boundaries of Balçova. During these interviews, data concerning study area, actions causing conflicts, development process and problems of the quarters were obtained. Because of the preparations of the quarters to local elections in Nov 2003 – March 2004, interviews cannot be realized with other headmen of the quarters.

All of these data collection and archive studies above mentioned were concluded between Feb 2003 - Apr 2004.

1.4.3 Computer Programs Used in Evaluation of Data

In preliminary data before evaluation process, as shown in App.:A, and later in classification, examination, tabling stages Microsoft-Excel (R.2002) has been used. In addition, AutoCAD (R.2000) and ArcViewGIS (R.3.2) have been used in spatial diagrams.

CHAPTER 2

THE FRAMEWORK OF JUSTICE CONCEPT

In this part of the study conceptual considerations accompanying the evaluations on urban planning field will be examined. In this frame, firstly the justice definitions are handled and justice theories and arguments which came on agenda after 1970's.

As justice mostly was evaluated with the state and structure of the state and together with the rights, freedoms, interests and equality within this structure, transformation of these values within the development process of Liberal Nation State constitute another subject of this chapter. It is considered important that evaluation of the state and its institutions/tools that form one of the tools in the realization of formal processes of justice plays an important role in understanding the concept of "formal justice". This type of consideration is thought as a necessary factor in the evaluation of formal justice that evolves with modern state and legitimate justice. Therefore, subjects like liberal development of the state in understanding the concept of justice, state as an organizing mechanism, and evaluation of right, freedom, interest and equality approaches defined within this development are also covered in this chapter.

From viewpoint of Urban Planning discipline evaluations about justice on urban area which came into agenda in the last 30 years and some of the critics about planning also are included into this chapter. It is thought that with these considerations a general perspective about the new directions of planning discipline can be drawn.

2.1. Definitions of Justice Concept

In the monolingual (Turkish) dictionary[5] the definition of justice concept is given as compliance with laws. When justice is defined as legal rights and state organizations, the concepts of law and justice are replaceable. However, such a replacement does not adequately clarify the context or the meaning of justice beyond laws (Çeçen;1993;18). In the definitions that stress the fact that these two concepts are

[5] "1. Principle or action of giving the rights defined by laws to every person and not touch this right in anyway; tüze; 2. State organizations in practicing tüze. 3. Equality" (Turkish Dictionary;(Türkçe Sözlük) 1974; p.9)

similar and replaceable, the difference of justice from law has been ignored. The aspect of law that is different from and more comprehensive than law is the fact that it is a superior aspiration, a fundamental idea showing the best and most accurate solution and a virtue[6] (Aybay&Aybay;2003;70).

A more comprehensive justice definition can be found in a Turkish philosophy dictionary[7]. In this definition here the law, legal and state dimensions of the justice concept (that is the dimension related to formal process) and also the moral and ethic dimensions are stressed. While the concept of justice is synonymous for the terms equality, right, interest / benefits, freedom/liberty, and ethic, these concepts are in fact subtitles concepts referred to in the explanation of justice.

It is seen that justice concept involves different meanings and contexts in the terrains of religion, law, legislation, individual thought and behaviors[8]. The classifications of justice types vary according to the terrain it is used in[9]. In these various classifications it is not always possible to come to an agreement on what justice is, and how it is to be defined. Various definitions of justice and different theoretical frames also point at this.

Except for the differences in theoretical and definitional efforts, there arise many different views about what sort of behaviors will be more just. Differences also occur in practice. These variations in views can be explained by the tendency of justice to obtain different contexts according to the feelings, vision, intuition and cultural economic and social condition of the person. The reason of the changing of the justice definitions and

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[6] Aybay&Aybay declares that departing from virtue and justice will turn the law into a mechanical tool. Therefore, they reveal that just because of this reason law put the concept of justice into its centre as the highest value that should be realized (Aybay&Aybay; 2003; p.70).

[7] "It is the state of putting the values, principles, ideals and values into the social life as materials and in a concrete form. It is the state of everybody confronting with the reward or with the punishment they deserve. Justice appears in front of us as a thought examining and criticizing the human behaviour from the viewpoint of ethics, as an ethic principle basing on respect to justice and right, and as right, honesty, neutrality and as an expression of the highest, objective and absolute value. Within this frame, justice is understand as the state and condition where a harmony occurs between the rights of a person and rights of others (society'', public'', government'' or individual'') is the state of being in appropriate with the rights and laws and is a condition where the state should form a balance in appropriate with rights of different, even opposing groups (Cevizci, 1996; p.11). In another definition tüze is defined as "the protection of the right, the good and the just" (Hançerlioğlu, 1982; p.423).

[8] Çeçen (1993) The aim of Çeçen's work named as "Concept of Justice"(Adalet Kavramı) is determined as the display of the relativity of the concept. For this purpose, a very detailed work is done about the law and justice relation, pluralism of justice concepts and various definitions which justice concept involves.

[9] Justice typologies emphasized on different terrain and priority are as follow; regulatory, distributional (Aktaş, S.; 2001;pp.:187-191) or "improving", "retortionary" justice (Cevizci, A.;1996; pp.: 11;121;132; 261;367) .

concepts is the society's structure such as national-cultural differences, level of economic and social development. (Aybay&Aybay; 2003; 70).

Justice concept that is being used today is the results of liberal, modernist and a west centralized tradition of last tree centuries. (Özlem; 2000a; 9-23). Justice in modern times is separated into; law state and institution field, distributional principle in economic field, democracy and administration in politic field. In economic, social, cultural processes which are different fields of social life, definition of justice in independent and different contents prevents a comprehensive aspect. Nevertheless, these disintegrated processes constitute the integrity that completes each other. (Özlem; 2000b, 29-43).

Although the human relations, the relations of man with others, rights, responsibilities and duties were given a central place in the concept of justice during the Modern periods, in recent times, the emphasis has been put more on necessity of a nature-based justice approach as supported by debates on feminist considerations on the one hand, and environmentalist movements and debates of sustainability, on the other[10]. Still however, in the prevailing discourse and paradigm of our day, the definition of rights; definition of existence; interest; liberty (absolute); and equality concepts are usually regarded within the framework of humanistic world and human relations.

At final stage arrived; justice depends upon the ethical one as a virtue in subjective sphere of thinking and behaviors, upon the informal sphere (that is, conscience and the individual). In sphere of social life on the other hand, it is an idea and ideal.[11] In other words, whereas it is virtue actively taking part in personal-informal relations, in impersonal-formal relations and within the formal sphere, the ways, principles and rules to reach the idea and the ideal are at issue. While the basic idea upon which the laws in formal sphere and regulation tools of the social structure is justice, in private sphere it takes place as a "*value*" (in sphere of individual, conscience and virtues). Nevertheless, it is manifest that considerations of the formal sphere inevitably cover and mention justice as virtue and ethics as well.[12] In terms of its widespread position within the public sphere and social structure, while justice

[10] On one hand, while the debates on hypothetical assents, laws regulating the existence of man in human world (natural-human) and on justice all continue, on the other hand, with the questions as to what nature and man are and how they exist, the debates are carried up to a new dimension.

[11] Çeçen;1993, pp.:17-35; Aybay&Aybay; 2003, pp.:67-70; Aktaş;2001, pp.:183-191;İzveren;1994;pp.: 34,52,112,134.

[12] When considered in legal terms, it appears that the Civil Law addresses to the sphere of ethics and social values. Relations of ethics and justice are also recognized and considered in law. For further discussions, see Aybay&Aybay, 2003.

represents the regulation mechanism of distribution and division in the existing structure, in private sphere, it accompanies ethics as the main point of departure underlying the question "*how can I exist in public sphere?*".

In these definitions, consideration of the ways how problems are handled avails for examination of plural meanings of justice lacking any adequate and concrete definition[13], whether any decision or behaviour is "just" or fair or not, and comprehension of what the just conditions of "justice" are as expressed in this examination. The problems experienced in liberal societies considered in West-centered assessments and the ways these problems are discussed over in theories of justice carry considerable importance for the theoretical framework.

2.2. Differentiations and Categorizations in Justice Theories

Some of the current justice approaches discussed today are as follows:

1. Robert Nozick and justice as liberty in the neo - liberal approach,
2. John Rawls and justice as fairness in the liberal approach,
3. Alaxdair MacIntyre and justice as a moral value in the communitarian approach,
4. Irıs Marion Young and justice as a cultural value in the Post-structuralist (cultural) approach,
5. R.G. Peffer and justice as a production relation in the Marxist approach.

In the table below the differences and similarities between the theories are generalized.[14] (See Table: 1)

These different justice approaches developed on the basis of social structure, power relationships and economic relationships vary depending on the way they are dealt with using the following criteria;

a: for whom they are intended / how man is defined and the way his class and social relationships are handled,

b. which values are considered to be of top priority,

[13] Aktaş links the problem of not running into any agreed definition although the history of thought is full of efforts to define the concept of justice, to the fact that there exists no sphere of justice to be concretely scrutinized (Aktaş; 2001;pp.:183-184).

[14] For these conceptual discussions the following resources have been referred to: Rawls, (1971) "A Theory of Justice"; Hünler, (1997), "İki adalet Arasında",; Nozick (2000) (Anarchy, State and Utopia) "Anarşi, Devlet ve Ütopta"; Peffer, (2001) (Marxism, Morality and Social Justice) Marksizm, Ahlak ve Sosyal Adalet; MacIntyre (2001) Etiğin Kısa Tarihi; MacIntyre, (1988), "Whose Justice? Which Rationality?"; Young, (1990) "Politics of Differences".

c. how the procedures are explained,

d. what kind of tools are used to identify the institutions in relation to their implementations and principles.

As a result, there is no concept of justice or theory that can be used in common. Yet, each justice conceptualization handles and develops an integration of different production relations, and social structure through an assessment of the above parameters and thus suggests different solutions. In such a case, the evaluation is to be done by taking into account the definition of the limitations and possibilities of social relationships rather than the superiority of one concept to another. In spite of this fact, it is possible to say which one is more implacable in our modern life institutions with appraising conceptional details. So these theories above mentioned will be examined.

Some of the contents, aims and approaches on which these justice theories are based can be classified under the following sub-titles.

2.2.1. Justice as Liberty in the Neo-Liberal Approach

In his study which is named as Anarchy, State and Utopia (Anarşi, Devlet ve Ütopya), Nozick, acknowledged as the representative of the neo-liberal approach, defines the "minimal state" as the best tool of a well-ordered society, basing his definition on individual rights and liberties. Any social sacrifice intended to restrict liberties and any state that would regulate such a sacrifice would be completely unacceptable. In parallel to this approach today walfare state is accepted unnecessary, too. According to Nozick, individuals of the "minimal state" are not to be used as tools, means, materials or sources. He claims that these individuals, whose rights have not been violated, are not tools but goals on their own (Nozick, 2000, 414).

Nozick, handles inequalities not in terms of outcomes but with respect to process. In this sense, a regulation that does not violate individualistic rights and thus does not render the individual secondary in and for the society is the most legitimate structure for a just social order. The "minimal state" will make this structure possible. Accordingly, individualistic property rights are just only if they are obtained not by force or trick but honestly and openly. Property rights are to be obtained through individualistic efforts. And the main task of the minimal state is to prevent the violation of individualistic rights. Nozick assumes that social regulation done by placing the

individual and individualistic right at the center of the rules of law form the beginning of fair social principles in the "minimal state". The intervention of the state into the distributional mechanism for the welfare of the society means the threatening of individualistic rights and liberty.

Since the priority of liberty and individualistic rights are considered to be the most important components of justice, "minimal state" is the only acceptable form of state. As a consequence, a regulation based on the minimal state and individualistic rights at the center will form the beginning of just social principles. This approach of justice suggests that the welfare state of today is not just inasmuch as it forces some of the individuals forming the state to help others economically. Nozick, on the other hand, has developed arguments supporting "the minimal state" "as the most comprehensive state to be accepted" (Nozick; 2000, 203).

He believes that demands for equality and distribution according to the needs suggested by Rawls means ranking liberty as of secondary importance. Yet, liberty, which constitutes the fundamental of justice, is a concept that comes before equality and social interest. Individuals are not to be seen as a means for the society or the public (Nozick; 2000, 240-297).

Even though this approach, termed "right-based entitlement", has been criticized from many different viewpoints, it has been found to be appropriate for the pressing needs of today and also as a response to the arguments for "privatization and thus shrinkage of the state". Nozick's approach is criticized for rejecting environmental values since it is based on humanistic as well as individualistic interests (Vincent; 1998, 120-137). On the other hand, it is thought and suggested as an alternative in the protection of environmental values. Despite the criticisms, it is argued that this approach is not counter-state and hence not anti-planning (Harper&Stein;1995;11-29).

2.2.2. Justice as Fairness in the Liberal Approach

Rawls assumes that the conditions for the inequalities in the society to provide justice can be realized by regulating the principles of distributive justice. This regulation offers a new perspective where principles, practice processes and tools are re-defined. In Rawls' perspective, justice is seen to be the process and outcome of rational agreement. Though he takes place on the liberal wing, unlike Nozick, he gives priority to the

society rather than the individual. In spite of the criticisms of the Marxist and communitarian circles, his approach can still be seen to be widely evaluated.[15]

With respect to the policies he argues for, Rawls, who is inclined to social democracy, is regarded as one of the most important philosophers of modern liberalism, emphasizing economic equality and the necessity of welfare state for the liberty and rights of the individual to be meaningful (Borovalı;2000, 10).

2.2.3. Justice as a Moral Value in the Communitarian Approach

According to MacIntyre, a representative of communitarian approach, justice is to be seen as a moral value, and a virtue. MacIntyre makes a criticism of approaches tending to explain justice from procedural and analytic points of view. According to his ethics of virtues, virtues cannot consist of fixed principles only (Hünler; 1997; 307-312).

MacIntyre, maintains that analytical and procedural principles constitute a mechanism that renders justice perceptions and values dominant rather than explain them. He points at the modern conflicting areas by questioning justice:"...Does justice permit gross inequality of income and ownership? Does justice require compensatory action to remedy inequalities which are the result of past injustice, even if those who pay the costs of such conpensation had no part in that injustice? Does justice permit or require the imposition of the death penalty and, if so, for what offences? Is it just to permit legalized abortion? When is it just to go to war?..."(MacIntyre;1988;1).

In order to interpret these conflicts, he finds it essential to know what the rationality in our practice is, and to handle rationalism in a historical context. Not "a" rationality but "rationalities" are to be mentioned, which means not justice but justices are in question (MacIntyre; 1988;2-11). This justice as an expression of what the contemporary society has so far lost points at the dead ends of the formal production of justice and seeks to disclose losses of humanity (Hünler;2001; I-XXIV).

[15] Peffer evaluates Rawls's formulation in the justice theory from a Marxist viewpoint (Peffer; 2001) and Harvey evaluates it in urban social justice discussions (Harvey;1993). Similarly, Nozick, finds it necessary that any social justice investigation should refer to Rawls or explain why it does not do so, although he is critical of his theory (Nozick;2000).

2.2.4. Justice as a Cultural Value in the Post-Structuralist Approach

In contrast to distributional justice, Young focuses on cultural justice rather than economic considerations. Young suggests the handling of justice with respect to the process of distribution in itself rather than distributional values. These two problems she defined express the insufficiency of these paradigms. "*..first, it tends to focus on thinking about social justice on the allocation of social positions, especially jobs. This focus tends to ignore the social structure and institutional context that often help determine distributive patterns. Of particular importance to the analyses that follow are issues of decision-making power and procedures, division of labor, and culture...*" (Young;1990;15).

For all these problems, Young places domination and oppression concepts into the center of her own justice concept. In Young's justice concept, institutions that do not involve pressure but the production of group differences and respect for them are found to be necessary, in place of a system that welds and thus eliminates differences. In a critical theory of social justice, she suggests taking into consideration relations and processes produced and reproduced in distributional relationships, emphasizing the importance of the power relations, the process and culture in the decision making process. Young also puts emphasis on the insufficiency of distributional justice principles, in an environment where differences in urban space such as marginalization, isolation and polarization are made visible (Young, 1990, 47-53). Young deals with the distribution processes of determination and domination in the reconstruction of social structure processes and relations in three different dimensions: 1) Centralized companies and bureaucratic pressure. 2) Decision making mechanism in local government and the hidden face of this mechanism in the redistribution 3) The isolation and disintegration process within the urban area, between the cities and in the suburbs. (Young, 1990)

When the question whether the justice issue will come to an end in urban areas where the most successful just distribution is realized by means of distributional justice is considered from Young's perspective the answer will be negative. Can a just society be really successful when the regulation principles are dealt with only from economic and/or legal aspects? The criticisms of cultural approaches are based on the most serious problems and restrictions/limitations that distributional justice principles and political

economy approaches encounter. As a consequence, the definition of distributional justice principles and the determination of rights, liberty and autonomies can be regarded as important steps in the constitution of a just society.

This answer is attributable to the insufficiency of distributional justice principles in the democratization of the process and the outcome as well as lack of isolation and inability to eliminate micro power relations. Nevertheless, the insufficiency of these determinations is apparent, due to the fact that they risk eliminating differences and are politically limited. Five different forms of pressure and obsession that Young developed have gained importance in the assessment of these criticisms: These are exploitation, marginalization, powerlessness, cultural imperialism and violence. Young attributes a central value to these five forms of obsession and pressure, and discusses the way injustice has been reproduced in social structure and relations (Young;1990;39-65).

2.2.5. Justice as a Production Relations in Marxist Approach

Peffer, the representative of classical Marxist approach, argues that, justice principles should be handled in an integration of production relations and it would not be possible to mention a just society unless production relations are converted. Production relations in this approach take place at the center of, justice principles and social justice. Regulations in the distributional area contribute little more than the sustainment of the present inequalities in this system. Such a case will only cause justice discussions to remain as bourgeoisie worries.

On the other hand, Peffer's suggestion is to focus on the justice concept and principles, placing production relations at the center of distributional justice. He urges that justice be re-handled from the Marxist point of view. In a sense, he seeks ways to develop justice from a Marxist perspective in terms of distributional principles is inclined towards justice theory.

The fundamental issues of the Rawlsian theory constitute Peffer's emergent points, which are as follows: property which is not nationalized; going beyond the motion laws of capitalism and especially maximization of change value; bourgeois and individualistic assumptions related to the nature of the individuals in Rawls's definition of "original position"; the defence of welfare state capitalism by use of justice principles in a classed society; the aim to implement the justice principles to single societies rather

than the whole world. Peffer constitutes his principle contrary on these points (Peffer, 2001: 365-370).

2.2.6. General Evaluation of the Theories

These differences notwithstanding, two different ways of handling can be mentioned to guide us in the classification of justice theories as to how to evaluate the inequalities of the current time.

The distributional justice theories handled with an approach of political economy:

Theories developed upon the recognition of the fact that rights, liberty, interest and responsibilities can be rationally defined and it is quite possible to realize a rational distribution of social benefits and burdens within a distributional mechanism. In this perspective, the fundamental issue is how they should be distributed. After the determination of inequalities in the distributional relations, solutions have been investigated as to the procedural elimination of these inequalities.

The justice theories handled with a cultural and ethical values approach:

Approaches that find the economic-based concept of justice inadequate and stress that cultural and ethical value are and should be in the justice context. Generally speaking in these approaches differences are emphasized, the universal validity of values are criticized and different conceptualizations of justice and rationalizations are pronounced. Studies that disclose these differences and inequalities with such variants as race, sex and micro power terrains have been carried out. Rather pluralistic evaluations take place in this terrain ranging from liberal pluralistic discourse to radical democracy and collaborative approaches.

General evaluation: Though they are dealt with in this generalization, each of these approaches that discuss such concepts as virtue, liberty, equality, fairness, interest and needs, shows that there is no single system of justice principles and no single comprehensive justice concept. But one of them, developed by Rawls, is more implicable so, have been commonly discussed today. In the following section these basic concepts will be examined in detail.

Table 2. 1. The Main Emphasize of Different Justice Theorists

	Neo-Liberal	Liberal	Communitarian	Post-Structuralist	Marxist
Theoricians	R. Nozick	J. Rawls	A. MacIntyre	I. M. Young	R.G.Peffer
Justice Definition	Political – Economy Liberty as a individualistic right Center on Individual	Political Economy – Distributional Relations Center on Society	Cultural - ethics Criticized on Modern Societies	Cultural Relation Society	Political Economy Relation of Distribution and Production Society
Main Subject	Acceptable principles of inequalities in the regulation process	Principles of reduction of inequalities in the distributional process	Criticize on rationalities and Justices in modern times	Cultural determinations and cultural injustice in the distribution process	Social and class strugle in the production process
Suggestion	"Minimal state" Giving priority on individualistic right and liberty	"Welfare state" Giving priority on disadvantaged and Worst – off	Not institutional but moral value and virtue In modern society	Form of cultural determinations and democratization of decision making	Priority on production process as a whole
Based on Idea	Process Centered Acceptable just process	Result Centered Acceptable just results arrived just process	Process Centered Rationalities and justices in modern society	Process Centered Reduction of oppression and domination	Result Centered Transformations of production process

2.3. Rawls and Justice as Fairness

In his theory, Rawls aims at reaching acceptable principles of division in a society consisting of individuals in "original positions" of their own.[16] In realization of these principles, he dwells on the social structure, the most just conditions acceptable and the just operation of institutions in analytical and procedural terms both (Hünler; 1997). In order to reach the ideal principles, he first determines the main concepts of justice theory and then elucidates the relationship between these concepts.[17] In these hypothetically constituted ideal grounds, the understanding of social benefit consisting of all individual interests adopted by the utilitarian approach is rejected (Rawls; 1971; 3-4). Contrary to this standpoint, Rawls suggests a framework for an original position admitting that social benefits are of benefit to the individual. In this framework, the individuals of ideal-hypothetical status reach an agreement via discussing the principles of justice in order to attain social welfare.

The essential concept of his theory is: "justice as fairness". In "justice as fairness" approach, he states that the priority subject of justice is the basic structure of society, i.e., the major institutions of society. In words of Rawls, this is expressed as "…the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation" (Rawls; 1971;7).

Concerning the issues as to which circumstances shall a theory of justice and just conditions comprise and when injustice shall become acceptable, Rawls denotes the following: *"…A theory however elegant and economical must be rejected or revisited if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust…justice denies that loss of freedom for some is made right by a greater good shared by others…in a just society the liberties of*

[16] Rawls delineates a starting point in accepting the perception of justice in the entire society. Hipothetically, at this point (original position) where nobody has any idea concerning the past and relations of division, the individuals are covered with a veil of ignorance. This initial point is accepted as a preliminary situation required for adoption of justice principles. This framework is the one which is used societally by individuals in agreement upon justice principles in order to forget the existing inequalities in terms of past-present-future and head towards new principles by breaking off from the historical context.

[17] As for the other concepts that are determining in elucidation of this concept, they cover the concepts of original position, veil of ignorance, initial situation, sense of justice, basic structure of society, reflective equilibrium, social contract, thin good theory, full good theory, and procedural justice.

equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests. The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one; analogously, an injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising" (Rawls; 1977; 3-4).

Within this framework, Rawls tries to reach an agreement where the most appropriate advantages are distributed as principles of a series of social regulation. The principles to be attained will constitute the principles of justice on the one hand, and be guiding in distribution of rights and duties. Furthermore, these principles will as well constitute the appropriate distribution principles concerning the benefits and burdens of social cooperation.

In conceptualization of justice as fairness, the individuals within a "veil of ignorance" in a hypothetical society make their choices on principles of justice (dwelling on equity, liberty, fairness, social/individual good). This hypothetical framework constitutes an initial point in making due preferences and eliminating existing inequalities.[18] The fundamental questions within this hypothetical framework focus on which kind of inequalities can be accepted under which circumstances.

2.3.1. Distributional Justice Principles and Their Application in Rawls' Theory

While fostering a theory of justice, Rawls elaborates the ways of distribution, principles of distribution, tools of distribution and institution and method of distribution where he considers "distributional justice" principles as the values and methods upon which individuals in their 'original positions' agree. In this context, Rawls mentions two fundamental principles of justice:

"First Principle

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all

Second Principle

Social and economic inequalities are to be arranged so that they are both;

[18] With regard to the individuals within this original position, Rawls also denotes that his conceptualization does not object to the social contract approach in classical liberal line.

a)to the greatest benefit of least advantaged, consistent with the just saving principle, and

b)attached to offices and positions open to all under conditions of fair equality of opportunity" (Rawls;1971; 302)

Regarding these principles attained, the first priority rule is, in words of Rawls, "priority of liberty". He implies that there exist two conditions in restriction of liberties in the name of liberties.

(a) a less extensive liberty must strengthen the total system of liberty shared by all;

(b)a less than equal liberty must be acceptable to those with the lesser liberty (Rawls;1971; 302).

According to Rawls, implementation of these principles is important point for a good/fair society. For this reason, Rawls, who is in search of a practiced justice not in production relations but in distribution relations, has a theory about how justice principles will be applied and his four-stage sequence proposal takes place in this theory. First one of these stages is selection of the sides at original position, the justice principle and their adoption of it. In the second stage sides are oriented toward a constitutional agreement. In this stage the constitutional powers of the administration and basic rights of citizens are determined. In constitutional stage priority is given to the liberty and freedom. According to Rawls this priority and process; "it guarantees selection of a system guaranteeing moral liberty, and thought, belief and religious freedom in constitutional agreement" (Hünler, 1997, 57-65). In the third stage; the justice of laws and policies are determined. In the organization of economic justice in other words in the distribution justice an arrangement where distribution results are just is proposed during legislation period. The principle of this arrangement is making the least advantaged people reach to social minimum level (Rawls, 1971, 276). In the last and fourth stage is the application of rules into the situations and observation of them by the citizens in general. In the fourth stage which is the judicial stage the constitutional and legislation stages are considered at the points of conscience and civilian disobedience. These last three stages are the ones which procedural justice is practiced and show how justice functions at the disidealistic situations.

2.3.2. The Attained Principles and Right, Liberty, Equality and Interest as Components of Justice

Equality:

In Rawls' understanding of equity, the comprehension where the individual is accepted as equal no matter what the opportunities and conditions are, is rejected. Equality of opportunities is above all other priorities. As can be as well monitored from the principles, Rawls speaks of equality in the sense that the worst ones off with least prospects and least liberty are provided the most opportunity, the most liberty and advantages. What this means is that a social system and society based on the acceptance of equality of unequal ones is not fair in Rawls' perspective.

Liberty:

According to Rawls, there can be no exchanges between the basic liberties (expression, conscience, ownership etc.) and the economical and social benefits, because fairness does not permit less liberty of some to be admitted as right in the name of rather economical and social interests of the remaining ones. Betterment in economical terms would not precede liberties. Liberty is used as a principle of equal freedom in the sense that basic liberties have priority all the time. As emphasized in general principles, the prospect to abandon basic liberties (or restriction of liberties in the name of liberties) is only for those with less liberty (See principles). Here Rawls stresses that, if liberty in opportunities procures advantage to those with the least advantaged ones, then these liberties can be abandoned.

Interest (Benefit):

Rawls rejects the idea where any reduction in liberties of some is acquitted with a greater good shared by the remaining others. He criticizes the utilitarian doctrine for making an estimation of advantages that balances the losses of some against the gains of remaining ones by disregarding the inequalities in opportunities. Contrarily though, Rawls' understanding of benefit is based on needs and the state of being the most disadvantageous (i.e., adoption of inequalities). This, in turn, corresponds to objecting a homogenous structure in societal terms.

Within this framework, Rawls alters the utilitarian meaning of the concept of public interest/ benefit as "*greater happiness of the greater number to reflect the wishes and advantages of majority*". In Rawlsian terms, public interest/benefit lies in increasing the advantages of the most disadvantageous ones (McConnell;1995;38).

Right:

According to Rawls, every individual has indispensable rights of his/her own. However, in case these rights cause the socially most disadvantageous and less free ones with least rights to become more advantageous, then rights can be abandoned.

As manifest, the most important emphasis accompanying the components of justice in Rawls's framework, namely, liberty, equality, right and interest, is on "*just abandonment of advantages of the least advantaged ones*". In order not to live such great inequalities as of today, the individuals accept all these principles with the recognition that they can be able to reach a much better society via their renunciations (abandonments). In this approach that comprises abstract series of principles, universality is emphasized as independent from specific time and space.

The institutions depicted as what balances and implements the social order, which is created by such assents and principles, is promoted through adoption of a comprehensive state. These institutions consist of the constitutional and legal system as comprising all the mechanisms related with its operation.

This framework presented by Rawls renders re-consideration of distribution and re-distribution mechanisms (that is, of all institutions and mechanisms of regulation) targeted at reduction of inequalities all as necessary. However, the fundamental problem lies in definition of need, which is reached by consensus in implementation of these principles presented in a lexical order, to change also by society, culture, time and space. Nevertheless, it is possible to attain, in minimum standards, universally acceptable criteria in such issues as health, shelter, security and education.

With the emphases he has put on the priority given to principles and justice, Rawls appears to have reached his target concerning the implementable principles of liberal society by staying within the liberal traditions.

IN RESULT, in "justice as fairness" approach where Rawls has presented a new perspective to the classical liberal principles of justice, he defends:

1. that equality shall be considered in a need-based manner as to provide for advantages to the least advantaged ones,

2. that the liberties shall be restricted only as dependent upon this inequality rule,
3. that benefit shall be described not as benefit of single individuals within the understanding of "*good society*" accepted by all or as the total of all these benefits, but as "*fairness*" based on benefit of society.

Setting off from the lived events and realities in which classical liberal societies take place, Rawls has received serious critiques of his approach that is meant to revise liberalism, but all the interpretations and assessments of what exists seems to be of crucial importance.

2.4. The Application Institutions of Procedural Justice

Discussing justice on the field of objective ground and application, apart from the fields of theories and ideals makes it obligatory to evaluate how the procedural (formal) justice works in the societies of today. In this sense, within "legal justice" two questions gain importance in order to understand their functioning; first is about among whom and in what kind of organization it takes place and the second is upon what they are based. The main answer to the first question, which is about by whom and how the justice is organized, will be that it is organized by the state and its institutions and takes place among individual-society and the state. In this sense, state as the regulator mechanism of justice and law, as the application rules index, take their place among the most important actors organizing the procedural justice. While talking about the main functions of law in today's modern state and in modern legal system, the priority is given to the organization of relations among individual-society and state and when this is regarded it is clear that the sides are society-individual and state. Therefore, state takes the duty of "distributing justice"[19] in its hands as the organizing mechanism of justice and aims to realize this process with legal arrangements.

Within this frame the question of what the arrangement principles among the sides are (in other words the answer to the question of how), will be clear by what the priority is given to. It is known that there are and were arranging rules in every step of the history and in each society. However, at the point where today's "modern" periods are reached, this process represents a new era with its historical and social differences.

[19] (Aybay &Aybay, 2003, 210). When justice definitions in the previous parts are evaluated, relation between justice and law and functioning of state can be clearly seen. In this sense the procedural realizatior of the justice is considered as state and legal order.

So, in this section the subjects like; what the state is, whatever the priorities in the short development of the organizing mechanism of the liberal state and society are; and how the rights, liberties, equalities, benefits in liberal state and prosperity state are considered within procedural legal justice will be examined.

2.4.1. Concepts of State, "Social State" and "Rule of Law"

There are series of arguments about what the state is starting from Ancient Greek to today in the fields of philosophy, political science, economy and social sciences. However, because "justice" functions of today's contemporary state is examined within the scope of this study the general definition frame is accepted, too.

State, in general, is defined as a political organization which bases on a common land entireness and which has control over the people living on that land (Cevizci, 1996, 135). The concrete characteristics defining the 19th century "rule of law" are; integrity of the state's land; single money, single treasury, single language, single law system (Poggi, 2001, 114) and the state being the only power within these boundaries. Modern state typology that emerged in 17th and 18th centuries is nourished from an approach that considers the state as an artificial/imitationary being and tool[20] (Sancar, 2000, 25-26).

Modern state is accepted as an artificially constituted structure rather than a structure that developed and grew by itself. It is a frame that is constructed consciously and an "artificial" realization. State has complex organization property not identical with the society's property, and social process organizes on its lands (Poggi; 2001, 117-122).

The most important hypothetic acceptance that origins in 17th century, of the state comprehension suffering series of transformations till today, is that it was a new social organization to what the individuals, who came together with a social agreement, transferred their authorities. The intellectual basis of this hypothetic acceptance was put

[20] State is studied under 5 topics within the state philosophy which is a part of political philosophy.
1. Approach regarding it as a natural institution, formation, an organism; approach which the state bases on human nature, classic representative is Platon. 2. Aristotelesian approach regarding the state apart from the administrator but also regarding it as institutional and service systems which administrators play important role in their development with their decisions and competence. 3. Approach that sees the state as an artificial being/tool, and the representatives are Rousseau, Hobbes and Locke. 4.Hegelian approach accepting the state as a national spirit which has its own determination, competence and ability. 5.Marxist approach seeing the state as a tool of state dominancy working for the benefit of ones who control the state (Özlem, 2000a, 10-11; Cevizci; 1996; 135-136; etc.).

by Rousseau, Locke and Hobbes. Formation of modern social state as a governing type, as a political organization should be considered within the context of series of economic, social and political transformations. Shortly, these transformations can be handled as; commercialization of agricultural products, disintegration of the traditional rural structure, emerging of modern industry, urbanizational and demographic transformations, prevalent of capitalist production relations, social opposition to the inequalities, developments in technology, science and thought fields (Şaylan, 1990; Özlem, 2000a; Özbek, 2002).

It is also possible to define the "social state" as a governing type shaped by the economic and social transformations described as modernity, a very special type of relation between the state and the society. Properties discriminating today's modern state from the other types of state are the tendency of interfering with the social field and capacity of controlling this field, (Özbek, 2002, 7-23) and level of institutionalization.

2.4.2. Liberal Formation and Development of State and Law Relation

In the evaluations about the characteristics of state, different concepts such as "state of law (yasa devleti)", "liberal state of law", "democratic state of law", "social state", "social state rule of law" and "welfare state" are used in different contents and meanings. Differentiations in these concepts are explained by emphasizing the properties of the state, type of the state and the values it is based upon.

The most important unchangeable and continual functions of the liberal state rooted to the 17th century is producing law and that is why state and law, sometimes "state of law" is defined as a state limited by law. The purpose of this arrangement, that limits itself with the laws that it does, is providing a domination of law (Özlem, 2000a, 10-13). In other words while rule of law declares its legality with the help of laws it also obtains its dominancy and legitimacy. This type of state unavoidably has the possibility of being totalitarian and anti-democratic.

State as a social organization, with a hypothesis that individuals transfer their authorities by a social agreement, protects its legality on an artificial and hypothetic comprehension. On the other side, it strengthens its legality and being with these legal arrangements. State undertakes the function of arranging and controlling the rights,

authorities, responsibilities and liberties between the individuals, society and state with the institutions and legal interferences that it constitutes. Even though existence of the states as a social organization extends as far as the beginning of history of humanity, comprehension and practice of "state of law" and "social state" are special state forms which started to develop in 17th century.[21]

Sancar defenses that the most important point distinguishing "rule of law" from "state of law" is "rule of law" implies the meaning of commitment to materialistic values basing on human rights. According to this "legality principle" is the least meaning of "rule of law", but a deeper meaning of this principle and the meaning of institutions serving to its realization is the individual liberty being the base for the state and its protection. In this approach called as "materialistic rule of law" the legitimacy of the activities of the state depends on two situations; legality and appropriateness with human rights. In "formal rule of law" the law of the state is equal to rule of law. In other words, whatever the content is, a state is accepted as rule of law if it complies with the laws it puts. In this content legality is the adequate condition of legitimacy (Sancar, 2000a, 54-87). However, if "rule of law" is only intended to be a state of "law" framed by the laws, it also carries the risk of being a state of legal injustices by making injustices legitimate under legal covers (Özlem, 2000a, 14).

In the definitions about "rule of law", it is explained that the principle of this concept is not only one person or a few people but it is the idea of bounding and limiting the power of state by laws which can be also expressed as dominancy of laws. Roots of thought of limititation the power of state goes as back as ancient era. However, in the "contemporary" definitions of "rule of law" what is new is that this limitation is not a goal by itself but it is the concrete existence of the principles and institutions making it become real for the benefit of liberty. There are two tools in realizing this goal. First are formal predictions and they are; framing the state with a law text (constitution) which has a superior power, distributing the power of state among different institutions (principle of separation of power), assignment of all state activities to rule of laws (dominancy of law and legal security principles), and this commitment being under a adjudicatory control applied by independent adjudicatory institutions. The second tool of "rule of law" expresses the description of valid law with its content. And this is liberty and human honor or human rights embracing these two ideas. Within this

[21] Since the term of "rule of law" was first used in 1793 in Germany, the recency of today's modern state idea can be seen clearly (Özlem; 2000a; 12).

content “rule of law” is described as a state protecting liberty through law (Sancar, 2000a, 35).

According to Sancar, “rule of law” depending on the base of “negative liberty” gives opportunity for capitalist production development dynamics. In the center of the idea and model of liberal rule of law, which developed starting with mid-17th century and continued developing through 18th century, rights of ownership, agreement and working liberty and principle of formal-legal equality take place. This system, in order to be able to realize the political and legal equality also keeps the non-economic side of individualistic development. A conceptual-historical study of “rule of law” should take “bourgeois” “rule of law” as the starting point. Concept of “rule of law” came out as creation and requirement of a liberal bourgeois (Sancar, 2000a,).

According to Özlem “democratic rule of law” is a type of state developed after Enlightenment Era. He discusses “democratic rule of law” as a sub-title of “rule of law”; he takes note to the main differentiations between “liberal rule of law” and “social rule of law”. Even though their starting point is liberty and equality principles; first gives accent to liberty, and the second to the equality. Properties of today’s democratic rule of law and even further “liberal democratic rule of law” are; liberty of selection and election, liberty of testimony and organizing, legal equality, independency of courts, separation of legislative, judicial and executive powers (separation of powers), physical and psychological immunity of individuals, existence of developing and realizing conditions of people in spite of income varieties, acceptance of varieties rules of plurality (Özlem, 1999, 88-93).

Özlem, mentions that the main aims of the state and laws in social state are to establish a balance between the rights and liberties and eliminate all the negativenesses of “state of law”. Concept of “social state” emerged as the result of reaction to the inequalities caused by capitalist development. In this sense, social state is thought as a state aiming to minimize the inequalities among classes, and also trying every citizen to benefit from social and cultural opportunities. This type of state discretes from the concept of “laissez fair, laissez alle” of economic liberalism and has a property of interfering the economy in order to protect the poor classes and groups. Aim of social state is to distribute the social wealth and services equally, in order to prevent extreme inequalities in income and ownership. Social state reduces the arguments and contrasts between social classes and groups by performing this function. In social state because of priority of equality, positive liberties also come into agenda as balancing components

besides the negative liberties. This carries a meaning where organizing interventions of the state orient to the second generation economic and cultural rights and liberties as well as to the first stage personal liberties and political rights. (Özlem, 2000a,b)

Determinant properties of liberal rule of law and social state are listed below in table 2.2.

Table 2. 2. Determinant properties of liberal rule of law and social state (Prepared with the help of Nozik's and Rawls propositions, and evaluation of Özlem, (2000a), Sancar (2000a), Göze (1980), etc.)

	"Rule of Law" limited by the law (state of law)	"Social State" government by the rule of law
Basic Values and Rights	Natural rights, natural law; living, liberty, ownership	Life security, full employment, protection of working force
Intervention of State	Intervention unnecessary, "guarding state"	State intervention necessary, "welfare state"
Role of The State	Protecting liberal entrepreneurship, no economic intervention, guarding function	Interfering economic and social life in order to minimize the inequalities
Individuals	Priority of individuals liberty, No obligation to the society	Who have social obligations toward the society and society has the same obligations for individuals
Liberty	Individual based	Social based
Interest	Total interests of individuals	Social interest
Base of Justice	Liberty	Equality
Equality	In front of law and market relations	Within social and economic relations

2.4.3. Liberties and Rights in the Development Process of Liberal Rule of Law First Stage Rights: Individuals' Liberties and Political Rights

These rights at first came out as the rights providing the security and autonomy of individuals in front of government and others. Today, however, they reached to a state where individuals choose the conditions of their own future and improve themselves. Rights and liberties within this scope are; thought freedom, freedom of assembly and association and rights of participation. Starting of "liberty of individuals and political rights" which are called as "classic" or "basic" today bases on conflicts between aristocracy and bourgeois. With their classical meaning rights and liberties they have a classificational property because it was born from the struggle of bourgeoisie and feudality and it represents classic-liberal liberty which also represents the benefits of bourgeoisie. Even though the thought and historical sources of human rights goes even further in the past, with the "the individualistic doctrine" and "natural law"[22] trends born in 17th and 18th centuries established the theoretical data of traditional liberties' formulations (Kaboğlu, 2002, 41-42).

Kaboğlu considers the basic of first stage "individuals' liberty and political rights" as liberal doctrine. Liberalism as an individualistic approach gives priority to individuals in front of the society; a thought of individuals as first merit in society even as the aim of social organization and develops on the basis of showing respect to individualistic entrepreneurship and preferences. Society is necessary for the improvement of individuals however is secondary and just a "tool". Individual on the other hand is the owner of rights. Order of state-society and individual is like individual-society-state" (Kaboğlu, 2002, 268-267).

Specificity of first stage human rights is that people are born free and equal and that people are born free and equal and that the political power origins from them and so it determines what these people who are entrusted, cannot do. Everybody can benefit from these rights and liberties which their realization depends on the political power not interfering them according to their abilities.

[22] In natural law approach the human nature has some properties like protecting itself, motive to continue its species and natural rights. Rights to live, freedoms, searching for happiness are among natural rights. These rights are not historical, in other words they do not depend upon time and space and are organic parts of human being (Şaylan, 1990; Cevizci, 1996, 157).

First stage rights and liberties base on the negative definition[23] of liberty and so in public law they are called as "negative status" rights. Because outer interference aiming the liberty of individual fundamentally comes from the state (because interference of one individual to another one is a crime), first stage rights and liberties determines the life space of individuals staying outside the state interference (Şaylan, 1990, 56).

From the viewpoint of liberal discourse, the important point is that people are equal in front of law and in market relations. However, people are not equal in intelligence, skills and natural talents and this inequality will increase within market mechanism. These inequalities are defined as right, just and ethic and so they oppose to the idea of interfering the market (Şaylan, 1990, 56-57). During the period when this approach developed, in economic field, liberties in market mechanisms were accepted as a base causing the rules of free market economy to be current. However, the point where the social inequalities reached and functioning of market mechanisms had to the criticism of Marxist approach and social groups.

Marxist criticism directed to this approach bases on the idea that basic rights and liberties are rights to be lived for every person. It is emphasized that it is not ethic to indicate that a person who can benefit from all the opportunities of medical science has the same basic rights and freedoms with a person who can benefit from this opportunity at marginal level. It is not true to say that these two individuals have the right to live at the same level because of the great inequalities emerging socially and economically (Şaylan, 1990, 57; Göze, 1980).

These arguments bring forth a new dimension of liberty. "Positive liberties" concept and second stage rights and liberties are developed basing on this new liberty definition. This structuring that overcame the great crisis of capitalism in 1920's is realized over the second stage rights and liberties and democracy as the result of them (Şaylan, 1990, 59).

[23] The negative definition of freedom (freedom from) is a person making whatever he wants or at least act as he wants without any outer limitation or intervention. The negative definition of freedom in this frame necessities the absence of outer intervention orienting the individual or at least staying at the minimum level.

Second Stage Rights and Liberties; Social, Economic and Cultural Rights and Liberties:

It is realized in 20th century as the result of industrial revolution; emerge of a working class and social oppositions about decreasing the social poverty. It was affective in the socialization of liberties and in the equalities with the changes and developments. Social rights being recognized by the constitutions prevalently and formation of social state, are the important characteristics of western constitutionalization after Second World War (Kaboğlu, 2002, 44-45).

One of the doctrine that refused liberalism and individualistic approach is Marxist socialization. According to "formal liberty" and "real liberty" of classic Marxist analysis, first are the values of liberal doctrine and are theoretical and abstract freedoms which necessity wealth and materialistic tools. These are, actually, liberties that never meet the basic requirements of individuals opposing inequalities and social exploitation. These "so-called" liberties never obtaining anything to individuals are unnecessary. Furthermore, these liberties are rather dangerous because they mask social and economic inequalities and as a result they service and form a support for these inequalities. Marxism puts "real" liberty on contrary to these liberties; liberty to have a job, reaching to suitable living condition and to get a real liberty opposing social "alienation" (Kaboğlu, 2002, 445-447).

Second stage rights and liberties, bases on the positive definition of liberty. Here the discussion is about putting the rights and liberties of people or individuals into a usable situation. According to the negative definition of liberty an individual can realize these wishes without facing a power/pressure other than himself. However, what about his liberty if he lacks the opportunities in realizing his wishes? According to the positive definition of liberty an individual has to have a certain standard in order to meet his requirements and it is possible to obtain it with state interventions[24]. Likewise, state intervention is necessary for individuals with inadequate economic conditions in order for them to have a right of having the same life conditions with the others who live in the same society (Şaylan, 1990, 56). Second stage rights and liberties, in other words, economic and social rights and liberties need a very active and influential state intervention contrary to the first stage rights and liberties. Working, education, health, organizing, collective agreements and strikes, benefit from culture and art are among

[24] This point is important for discussion of the shelter right in an urban habitat who has not any opportunity to access a house.

second stage rights and liberties. In public law the rights and liberties are called as "positive status rights". Contemporary welfare state in this context is a state interfering socio-economic life in order to realize these rights and liberties (Şaylan, 1990, 60).

Keynesian paradigm which is the starting point of 1920's world crisis accepts the intervention of the state to economy. This intervention could only be realized by regarding a more just and equal social order. Welfare state, found a more prevalent practice field after the Second World War with the practice of Keynesian solutions and with the efficient interventions of the state to the society and economy.

Third Stage-"Collective Rights"; Environment, Development and Peace Rights;

Rights and liberties that started to come to the agenda after the Second World War with the internationalization of human rights are called as "Collective Rights". Problems that came out as the result of scientific and technical progresses are among the factors causing rise of "third stage rights and liberties". Developments bringing forth the problem of "continuation of human kind" are nuclear technology, atom, radioactive scatters, environmental pollution and decrease of natural sources (Kaboğlu, 2002, 45-46).

Starting with Second World War conscious those human rights are not only the problem of states but it belongs to the entire international society, began to be accepted. International texts began to declare the classical liberties, social rights and new rights at the same time (Kaboğlu, 2002, 529).

Differentiations of third stage rights from the first and second stage rights and freedoms are: peace about the problem of continuation of humankind, formation of development and environment subjects; subject of the rights being people of today and future; concept of rights' limits going further than nation-state (Kaboğlu, 2002, 534).

On the basis of the appearance of environmental problems in 1970's, three components take place; environmental problems, environmental movements towards these problems, and scientific studies realized within this concept (Turgut, 1998, 6-8). As environment right developed in legal field, this process is supported by sustainable development paradigms in economic field[25]. Discourse that in the usage of natural

[25] Serious criticisms are directed toward the economic dimension of "sustainable development" paradigm by the developing countries and different sides. Discussions about exclusion of undeveloped/developing countries from the global market mechanisms and staying outside the capital accumulation stages and supporting the undevelopmental situation of the countries and forming dependent economies are on the

sources new arrangements in economic and political fields aiming formation of usage-protection balance is emphasized.

Development of rights named as urban rights takes place within this embracement. "European Urban Charter" which carries the property of being the first international document in defining the urban rights was accepted in 1992. The European Urban Charter constitutes of 13 sub-chapters. They are listed under these themes: 1.Transport and mobility; 2.Environment and nature in towns; 3.The physical form of cities; 4.The urban architectural heritage; 5.Housing; 6.Urban security and crime prevention; 7.Disadvantaged and disabled persons in town; 8.Sports and leisure in urban areas; 9.Culture in towns; 10.Multicultural integration in towns; 11.Health in towns; 12.Citizen participation, urban management and urban planning; 13.Economic developments in cities[26] (Urban Rights; 1994; 85-114).

Among the reasons of differentiation of these rights from the first and second stage human rights, its need of a common social activity and efforts of all societies in its realization take place. While the first and second stage human rights are based on an abstract society formed of atomistic individuals, urban rights on the other hand are based on individuals in contact with each other and have more concrete properties because urban people are taken as basis, in these rights (Tekeli, 1994). Subjects of third stage rights called as environment rights also, involve the future generations as well as generations of today. One of the slogans of environmental rights defenders, "common future"[27] discourse reveals this emphasize. Some of the agreements commonly known done about environmental rights till today and in global level are: 1972 Stockholm Proclamation, 1982 World Nature Obligation, 1981 Africa Human Rights Obligation and 1992 Rio Environment Development Declaration"[28].

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agenda. On the contrary the arguments about the effects of environmental pollution on whole human race take place on concrete basis. These kinds of discussions were not handled in this content.

[26] For evaluations on these rights please look at: Duben, 1994; Tunçay,1994; Turgut, 1998

[27] "Common future" approach is both considered in positive meaning in international texts and also criticized. Critics developed by "Whose common future" question determine that the subjects are international capitalizm and cannot be discussed independent from the developments in economic field. Arguments about this topic are spread widely within the actions and discourses against globalization.

[28] International corporations and organizations gained speed by the foundation of United Nations and they are the most important steps of political stage after World War II. International Money Fund, World Bank and United Nations are the most important corporations of the era. The first international representatives of human rights agreements are Universal Declaration of Human Rights in 1948.

2.4.4. A General Evaluation about the Development of Rights and Liberties

Three different periods in the improvement liberal rule of law and liberal rights and liberties can be generalized as below.

First Period: Negative liberties began to be seen during the beginning of rising period of rule of law (first stage, individual liberties and political rights) and these liberties found a practice field with "laissez faire", economic political perspective. Protection of liberties owned by people starting from their birth and their put under security take place on the basis of justice of the state at that period. It is accepted that with the competing attempts among these individuals whose liberties are protected, economic and social progresses and developments could be achieved. Characteristics of this period are; a society constitute of atomistic free individuals; a legal order formed of these individuals' unlimited rights and liberties; unlimited rights and liberties gained by birth; a state approach as the organizing mechanism of these rights and liberties. First stage rights at this period when dominancy was given to law and state in the sense of getting free from divine will power, from class and group and arrangement of these rights were progressive practices. However, inequalities in the development of rights and liberties in economic and political fields and deepening poverty problems mode it necessary to gain a new dimension to first stage liberties.

Second stage; Second stage which developed after economic progressions, economic crisis of the world, and after First and Second World War is the period of social, economic and cultural rights. This period can be summarized as; welfare state practices supported by Keynesian policies, too; rule of law transforming into a social state and its extension; extension in government type and in representative democracy. The main emphasize of that period is on the "interfering role of the state in achieving equality". In other words, intervention of the state on distribution division relation on economic field has the meaning of the state to take the role of balancing and organizing the inequalities.

In the third period; global economic, social, cultural organization and developments were effective especially after 1970's. The main characteristics of this period are; abandonment of Keynesian development policies; discourses about going

back to the limited contents of minimalist state approach and rule of law; emphasizes on liberties rather than on equalities; intensification of global capital; NGO actions against globalization; affects of environmental problems on whole global society and international organization mechanisms directed toward decreasing these affects. Against the economic, cultural and social fields basing on the spread and intensity of liberalism on the world with is economic and political dimensions and developments of concepts of "rights, liberties, equality, interest" on these fields, there are still some unsolved problems; today. These problems can be listed as:

1) There is tension between the equality side of political liberalism (legal) and the mechanism basing on the free competition among the unequal individuals of economic liberalism. The concrete results of this tension is legal liberalism and liberal rule of law becoming meaningless by accepting everyone equal and giving equal political rights and freedoms to them, in other words making them equal in front of laws. Aim of liberal rule of law to obtain the individual's happiness, to protect the honor of humanity and individual rights turns into an unpracticed project because of reasons caused by economic liberalism.

2) Because it involves justice equality, individuals' having the same equalities is an important subject. Discourse saying that political equalities are the first step in the performance of justice is accepted prevalently. There is no convention on the other hand about the subject what equalities should involve in economic justice[29]. The thing that is revealed by the evaluations basing on liberties and equal rights is that one's rights are responses to the other's obligations. This shows that the duties of the state and the political institutions and the obligations of citizens in the provision of economic and political rights are determined by historical, cultural, social processes. The economic distribution system established among citizens where every person is accepted equal and free are determined and practiced according to time, space, ethic and social cultural values and also practices within given time and place.

In this context, there are certain points in balancing antagonism among rights and liberties when distinguishes between "liberal rule of law" and "social rule of law" are taken as fundamental principles, such as; whether society or individual is taken as basic subject; whether priority is given to political values or economic values; how

[29] This subject gains clearance in the arguments about different justice theories discussed in the previous part. It is a subject without any reconciliation on production relations, distribution relations and how it will be realized with an arrangement between these two subjects.

distributive relations are arranged in the relevant texts (Constitution) and state organization according to the selection made among these two factors carries great importance.[30]

Evaluations of these arguments in urban planning discipline can be examined under below mentioned topics:

Planning discipline, according to its nature was always defined as a function of the state as being a "public activity", a type of action oriented toward obtaining public benefit and public interest[31]. On the other hand planning discipline can find a practice field within the limits of legislation, judicial and execution besides the scientific data of the discipline. Considered in this frame, a political organization dealing with the equality limited by personal rights and liberties will aim the maximization of personal interest. Urban planning with this type of aim will take its place on the agenda as a mechanism functioning as a tool in the maximization of benefits, happinesses and liberties of people. Especially urban land, staying within the private ownership rights will turn into a practice area maximizing the personal profits causing serious problems in the application of developing third stage rights. Whereas a liberal approach and social state practices basing on equalities in cultural and economic fields will have the possibility to find a practice area minimizing the limitations of ownership rights and social inequalities. Certainly, what the limits of political liberalism and economic liberalism are, how the equalities and liberties are defined in this state organization will gain openness with the laws and interventions oriented toward economic field in parallel with these laws.

[30] First years when beautiful city practices were first seen in England and in America are also the years when planning was formed as a scientific discipline. In this context, it is known that interventions to urban area were types of interventions aiming to improve the urban opportunities of different parts of the city and the interventions aimed to realize these improvements by the "state" in other words by "public power". Today, on the contrary, although planning discipline argues on many topics as a scientific facility, it can only realize its spatial interventions within the frame determined by "the state" or "public power". It can only gain legality with the power whose application tools and arrangements of its principles stay out of the scientific field. In this context, it is possible to conclude that the state and organization mechanisms are limited with the concepts of liberty, equality, justice. However it is also important that related scientific fields put ideas about this subject for the transformation of this field.

[31] The state, which Nozick reached at the end of his deep arguments about why state cannot limit the liberties, represents this type of state. See previous part of this chapter.

2.5. Spatial Considerations Based on Justice Debate and Changes in Planning Theories

The city planning activity is a way of spatial intervention realized in the aim of organizing physical space. The fundamental purpose of physical space interventions, which are held in public sphere by use of public power and consideration of public benefit, is to attain the desired level of development and physical space organization. This intervention in physical space aimed at encountering the spatial requirements of society manifests that the discipline of planning is not independent from distributional relations in terms of its purpose and tools both. As for these distributional relations comprising distribution of opportunities, costs and urban benefit, they are influential upon both the physical and the socio-economical structures.

Debate of justice in relation to these interventions in urban area has been majored on with urban analysis studies of Castells and Harvey[32] from the perspective of political economy.

Collective consumption and the rise of urban social movements constitute Castells' point of departure. Castells regards urban problems as connected with the organization of common tools of consumption taking place on basis of daily life of all social groups. In his opinion, the urban crisis is a special way of a more general crisis exposed by the contradiction between productive powers and production relations (Castell,1997,12-15).

Harvey, on the other hand, takes the history of urban development into consideration by elucidating the capitalist process via its spatial impacts and how severely it increases the inequalities in social space (Harvey, 1993). Harvey and Castells both suggest that the basic problem of unequal development in urban spaces produced under relations of capitalist production lies in relations of production (Fainstein, 1996).

In his first period studies, during which he has focused on inequality and justice, Harvey dwells on how "just distribution justly arrived at" as referring to the resources in a liberal society can be possible. He considers space within the integration of social processes and spatial form and emphasizes the significance of social justice and its principles in understanding this holistic relation (Harvey; 1993; 13-14). Rawls'

[32] The first period studies mentioned here are namely Harvey's *Social Justice and the City (1993)*, and Castells' *City, Class, Power* (1997).

principles in his theory of justice (as fairness) and the regulation of "territorial social justice" Harvey has proposed for a liberal society in "just distribution justly arrived at", are as follows:

"1. The distribution of income should be such that (a) the needs of population within each territory are met, (b) resources are so allocated to maximize interterritorial multiplier effects, and (c) extra resources are allocated to help overcome special difficulties stemming from the physical and social environment.

2. The mechanisms (institutional, organizational, political and economic) should be such that the prospects of the least advantaged territory are as great as they possibly can be.

If these conditions are fulfilled there will be a just distribution justly arrived at"[33] (Harvey;1993;116-117).

Similar debates in field of the planning discipline has commenced in the post-1960 period. According to the prevailing paradigm of the 1960s, the fundamental approaches of planning are given in words of Krumholz as follows:

"1. city planning apolitical instead of serving a narrow political objective, served "the public interest" or the community as a whole, 2. a unitary plan prepared by a public agency was adequate to express the interest of the entire community, 3. city planning was the planning of land uses which, if articully done, with attention to green space and close proximity of linked activities, would improve the quality of city life"(Krumholz, 1994,150). In this approach, the debates of justice and equality are kept distant from the field of planning discipline.

On basis of this approach, how will planners approach the lived inequalities? Should the levels of inequality (in terms of both the social inequalities and inequality in distribution of urban facilities), polarizations and territories of poverty, all experienced by cities of our day be a matter of debate for the planning discipline and planners? Concerning what the attitude of a planner shall be in this subject matter, Davidoff has declared his opinions in 1978 as in the following:

"If a planner is not working directly for the objective of eradicating poverty and radical and sexual discrimination, then she or he is counter-productive. If the work is not

[33] Following the political economy critiques of urban inequalities he has realized from a Rawlsian perspective during the first period, Harvey re-evaluates the problem of urban justice from a post-structuralist perspective. In this perspective pursuing Young, he evaluates in cultural terms the debate on justice for livable cities. Although he concentrates on justice principles of Young's approach and does not abandon the distributional principles, he sets forth the cultural values. With regard to how a just planning and policy implementation should be, he determines six aspects of justice.

specific in its redistributive aims, then it is at best inefficient. If the work is not aimed at redistribution, then a presumption stands that is amoral. These are strong words. They must be. So long as poverty and racism exist in our society, there is an ethical imperative for a single direction in planning."[34] Following this assessment that points to a breaking point in the prevailing discourse of 1960s, different approaches and different proposals regarding justice are fostered. For instance, Davidoff's critical approach and the "advocacy planning" he has proposed present a new perspective. In advocacy planning approach, planning is no longer regarded as value-free and the conflicting interests and values are made to come to the fore in urban space (Peattie; 1994;151).

The new assessments fostered within the planning discipline have displayed a rapid shift in line with the questioning of unequal developments emerging at cities in the capitalist system. The presence of such questions as to what distribution within the planning system is (what is distributed), among whom or what it is distributed and by which criteria and processes it is distributed, is accepted as corresponding to those issues required to be highlighted.

Parallel to the views and assessments where urban space, the built environment and in turn, the planning activity are not depicted as independent from abstract values and social relations, the concept of social justice has also begun to be discussed in terms of its relations with social relations, time and space.[35] The debates have reached the point that the justice phenomenon is not independent from the time/space within, and space from social relations and the concept of justice. Within such a framework, space is regarded not only as where inequalities are manifest, but also as where these inequalities are created and re-produced both. In line with these assessments, it is accepted that the discipline of planning as a spatial organization and its role within the re-production of space and social relations is not independent from values. For this reason, the idea is that it cannot have any claim of impartiality. As for planners, who have been the implementors of a discipline undertaking such a role, they no longer bear the characteristic of being technical experts only. At such a breaking point, the claims of rationality and impartiality in principles and implementations of planning are criticized. Parallel to this, the traditional rational model has also been subject to critiques arguing that the planning process is a-theoretical and physical-result-centered and that it re-produces the existing inequalities (Fainstein, 2000).

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[34] Davidoff, Paul (1978;69-70) as cited by Hendler; (1995; 3)
[35] Harvey,D.:*Social Justice and the City (1993)*; Castells, M.; *City, Class, Power (1997)*

In line with all these debates, different approaches of planning have begun since the 1960s to involve considerations of justice discussions in terms of the essence, process and results of planning. Among these approaches, three of these can be mentioned as Communicative, Collaborative Planning, Just City and the New Urbanism approaches.

- **Communicative-Collaborative Approaches**

In this model, rationality is depicted, in pursue of Habermas, as reasoning reached by the intersubjective mutual effort to comprehend each other. In this approach, the role of planner within the process of planning is defined as mediating between stakeholders. Different from the role of a technical expert the traditional rational model has given to the planner, in this approach the planner undertakes the assistant role in establishing consensus between different points of views by listening to different experiences. The aim of the model is democratization of the planning process. The model envisages a deliberative reconciliation where no stakeholder is dominant. Contrary to the traditional model, there exist no single definition of benefit and rationality. In this case, a just process is considered as those processes, which are arrived by reconciliation between different rationalities (Fainstein, 2002).

- **Just City Approach**

This approach initiates the debate of justice pertaining to the essence of planning. Effort is spent to regard the matter concerned with who the determining ones and winners in planning activity are, from a political economy perspective without falling into any economical reduction. From an political economy perspective, the emphasis on nature of a good city is evaluated together with the impacts upon distribution of social benefits and the culture-based determinants. In this approach, participation of powerless groups to the decision making process and the inequalities emerging as result of planning are taken into consideration (Fainstein, 2002).

- **The New Urbanism**

In creation of a desired, reasonable physical pattern of a city, the adopted approach is design-centered. The damages caused by market-led urban development upon the society and city, the homogenous structure of modern city and urban sprawl are all criticized. In response to these developments, the proposals are fostered by

giving the heterogenous urban vision a central place in design of physical space. In physical planning and urban design, the three social targets as components of social change are set forth as community, social equity and common good (Talen; 2002, Fainstein; 2002).

These three approaches discuss the process, results and essence of planning by examining how existing inequalities are produced by whom, which processes and tools in planning activity. All three approaches direct their critiques to market processes in general and the traditional rational planning approach in particular.

2.5.1. Rawlsian Approaches and Critiques against the Planning Paradigm

At present, the city planning activity is accepted to refer to re-organization of the values, benefits, costs and opportunities created through social processes on physical space. Because of its meaning as such, planning is taken as part of distribution and re-distribution mechanisms. When the planning activity is adopted as the physical spatial organizations in urban space, the process of distribution also seems to be affected and determined by the decisions made for scarce resources of the urban space. With such decisions, re-determination of the produced benefits (who gets what) and costs (who pays) are manifest in urban space (Talen; 1998; 22). For this reason, depending on the results of spatial decisions made for urban space, the matter of who the winners and loosers, the advantaged and disadvantaged ones are carry great importance for the planning discipline (Hendler; 1995, 5).

The mentioned assessments pertaining to urban area focus on critiques of the traditional planning model (which in fact is the Rational Comprehensive Model) as the prevailing paradigm of the planning discipline. These critiques can be summarized as below:

1. The traditional planning model used widespread (Rational Comprehensive Model) does not give sufficient importance to the question of whose gains and whose loses in urban physical space.

This model, of which the point of departure lies in the assumption that the collection and analysis of data, formulation of explanatory models, formulation of alternatives in attaining public targets and selection of the best alternative can all be

accomplished in a rational way, is criticized for a) its utilitarian consideration of public interest, b) due to its approach of "*planners as scientist*", reduction of the activity to a technical scientific process as broken off from policy and c) for its value-free characteristics (Harper&Stein; 1995; 14) .

The assent of a single "*public interest*" accepted in connection with utilitarian ethics theory underlying the planning discipline and the belief that social benefits will be increased via this assent appear to be the matters of discussion. This utilitarian consideration of public interest is emphasized as corresponding to *"...advocate liberal values, such as freedom or pluralism, and institutions but only as a means to achieve their goal*" (Harper&Stein; 1995; 13-14).

As for the interest presented by Rawlsian theory, it evolves upon the acceptation of inequality as differently from the Rational Comprehensive Model. The justice as fairness approach attains the accepted context of "*greater benefits of least advantaged*" as contrary to that of "*greater happiness of the greater number*" (Harper&Stein; 1995, McConell; 1995).

The interest defined in Rawlsian theory, on the other hand, displays the assent of unequality together with the ways in which these can be overcome. "Justice as fairness" approach is thought to be used within the planning discipline as the "*greatest benefits of the least advantaged allocation of priority in implementing plan so that disadvantaged complicated first*" (McConel; 1995).

2. In Rational Comprehensive Model, the inadequacy of a previously-determined abstract understanding of distribution mechanism disregarding distributional justice in distribution of resources is emphasized:

Concerning the distribution of resources within the process of rational planning, the approach of "... *predefined standarts such as per capita allocation without conscious attention to distributional fairness*" is criticized stating that such an approach reduces the decision-making costs, but does not take social geography throughout urban space into consideration. These criteria are regarded as insufficient to accept that resources are justly distributed throughout the urban area (Talen, 1998, 22).

From the Rawlsian perspective, on the other hand, the distribution to be held in relation to the spatial standards (such as those related with open areas, transportation, benefiting from transportation facilities etc.) by consideration of relative equality in society takes place among the proposals concerning the methodology of planning (McConnel; 1995, 33-43).

In this approach that is based on acceptation of inequalities, the defended idea is that relative disadvantages can be measured by use of needs and that "need-based plans" for urban space can be implemented. This approach proposes a need- and disadvantage-based Rawlsian planning practice instead of demand-based one (McConnell; 1995; 40).

All the effort considered critiques and proposals render a new perspective to urban space as necessary. From such a point of view, the inequalities shall be re-defined by looking at what it means to be disadvantaged and how it is produced in urban space. The existing institutions and institutional operations will as well have to entail primarily the acceptance of existing inequalities and the new regulations to be realized in line with this assent.

As criterion of distribution, need changes by culture by values differing among individuals, and by the place lived. In spite of this, however, it is possible to reach universally acceptable criteria as minimum standards pertaining to issues like health, shelter, security, education etc. The Rawls' fairness principles have formulated in the purpose of eliminating inequalities for greatest benefits of the least advantaged ones present a new perspective for re-assessment of the planning system and the existing liberal society.

2.6. Summary on Justice Conceptual Discussions

In summary; in assessment of the contents, targets, underlying approaches and demands of difference regarding the concepts of justice or fairness, those approaches which dwell on how a theoretical consideration can be made are in majority. Whereas in *individualistic approaches*, "*rights*" and "*liberties*" of individuals are given a central place, the "*communitarian approach"* takes the demands of difference in the pluralistic discourses changing in society as "moral values" and criticizes the inequality-increasing impact of capitalist development upon cities. As for the *post-Modern (such as structuralist) discourses*, they point to the impossibility of establishing collaboration among the fragmented communitalities, and of reaching a universally homogenous and holistic system of values. The points commonly addressed by these differences, on the other hand, pertain to the change in acceptance of "*individuals*" gathered by a "*social contract*", realizing the principles of nation-state as a modern project, which are namely, the homogenous social structure, identity and related "*distributive justice*". Moreover,

all these debates of justice represent the critiques and searches for resolution of the inequalities that emerge in economical and social life as the most fundamental determinants of the classical liberal society. As a project of Modernity, the planning project, which takes its point of departure from a predictable future and predictable social structure thought constructed upon these assents, is influenced by these changes in production of physical plan decisions.

On the other hand, Rawls and Nozick who search for the practicable principles of justice, develop two different critics for basis acceptances of liberal state, today. While Rawls propose a revision in increasing the equalities in distribution relations of modern liberal state, Nozick emphasizes on the priority of freedoms and consequently the properties and bases of neo-liberal state with a neo-liberal perspective. First of these two different viewpoints that are directed toward the consideration of justice by modern liberal state, today, emphasizes on probability of re-organization in all social institutions with a need based approach together with the emphasize which gives priority to equality. Such a consideration accepts the necessity of reorganization of the state and all social institutions by accepting the priority of equality. Second proposition on the other hand indicates to the changes seen today against all critics. Approach presented by Nozick contrarily with the theory of Rawls seems to have an application opportunity practically and not in theory when the prevailing neo-liberal policies are considered.

Planning discipline when considered as an activity which is an organizing tool of the state and limited by the liberal state, it can realize its activities by staying within the selected state form. In this context, limits determined by “formal justice” will form the limits of planning discipline practices. On the other hand, every kind of urban planning activities realized within these limits informally and ethically will be open to questioning and critics. In other words, priorities of the state from and concepts of freedom, equality, rights and interests which are accepted within this form and all organisations realized basing on these priorities will also constitute the limits/limitations of planning discipline. These limits will come into agenda as the determinants of planning practices and principles of these practices with their reflections on countrywide practices. In this frame, it is recognised that countrywide practices about how the national policies and selections are realized from the viewpoint of “justice” in general and “spatial” in private and how they are considered gain importance.

Justice and freedom approaches which develop in parallel with the development of modern liberal state followed a development pattern starting from individual rights to

social and economic rights and in the last twenty years to “the rights of mutual support”. When in one hand this development was realized on the other hand they caused new arguments /approaches in planning discipline. When it is regarded that developments in rights and freedoms are not synchronous and do not follow a linear development it is important to determine how they are considered within practices of the country.

In the next chapter is about the study of practices in Turkey and the way the planning discipline is defined by formal processes will be studied in order to understand these practices better by considering on the defined rights, freedoms, interests and equalities.

CHAPTER 3

TRANSFORMATION OF PLANNING PROCESS IN TURKEY AFTER 1980'S

In the second part of this study, criticizes about; a. Institutional functions and formal organizations, b. Economic political selections, c. Cultural determination forms directed by justice theories are presented. Some of these three layer critics are oriented toward the refusal of practical, theoretical are presented. Some of these three layer critics are oriented toward the refusal of practical, theoretical and scientific approaches determined by classic liberal approaches while some of them develop arguments proposing revisions of these arguments. Besides justice theories, other subjects discussed here are the rights and freedoms, equality and interest arguments, limits in the practices of justice, state and practiced/formal dimension of justice defined by the laws of the state. How justice is handled within state organization and legal frame in Turkish practices is evaluated in this section after all these evaluations. Evaluations about these subjects will provide a possibility of generalization about how the limits and scopes of spatial justice in Turkey should be considered. Therefore, "justice" concept is evaluated on the basis of a new platform which involves Turkish practices. Turkish planning practices are studied from two viewpoints in order to discuss them from this perspective:

1. Justice acceptances of social institutions about spatial subjects in the entire state-law-society relationships defined as formal arrangements,

2. Justice acceptances in economic political selections.

The first part mentioned above involves studies of legal arrangements and institutions formed on the behalf of Turkish Republic Constitution which has conjunctive property in the organization of urban space. In this context, how rights, liberties, equalities and benefits are defined for individuals, society and the state is evaluated.

In the second part, the spatial affects of economic transformations after 1980 are evaluated. This part involves the evaluations of transformations of the organizing role of

the state on public space and the changing economic politic selections in countrywide scale.

In this frame, the main aim of this chapter is to understand what happens when interventions orienting towards urban land are reduced from the Constitutional frame to concreteness. What kind of a process forms with the institutional structure formed within the Constitutional frame and at which dimension rights, freedoms, interest and equalities gain concreteness. It will be an incomplete evaluation if the new legal institutional organizations of post 1980 are considered only from the viewpoint of implementation. It is known that, distribution relations, spatial structuring and social structure are redefined and transformed by implementation planning process on urban space as the result of these practices. In this sense, each legal frame and interventions basing on this form a new type of spatial distribution form.

In this frame; the justice acceptances of social institutions and their economy politic selections or dimensions; justice acceptances of urban physical space planning and the relation/differentiations between these components are presented.

3.1. The Context of Rights and Liberties Orienting the Planning Process in the Post 1980 Constitution and Legal Arrangements

As a conjunctive documentary the Constitution determines the definitions of authorization, duty and responsibilities and the general limitations in the relations among individuals-society-state with the nation state boundaries. In order to study the items about space, planning, equality, interest, rights and freedoms in the Turkish Republic Constitution which is an abstract but conjunctive documentary in determining the ways of these relations, the constitutional articles are discussed firstly.

This section involves justice acceptances of social institutions about spatial subjects, study of institutions and organizing laws about the arrangement of urban space in the integrity of state-law relations which are defined as formal arrangements. In this context, how rights, liberties, equalities and interests are defined for the individuals, society and the state is evaluated. Constitution and laws about planning, consideration of justice in institutional practices realized by these conjunctive documents form the content of this part.

3.1.1. Content of 1982 Dated Turkish Republic Constitution: Rights and Liberties; Interest and Equality

1980's are the years when legal, administrative transformations occurred in Turkey. New legal arrangements following the Constitution of Turkish Republic changed after 1980 military interference and its affects on spatial and planning discipline came out with these new arrangements, are discussed.

Constitution of Turkish Republic was accepted on October 18, 1982 by the Constitutional Assembly and became valid by a referendum on November, 7, 1982 with an acceptance ratio of 92%. Starting with the date it became valid, many articles are changed till today[36]. Constitution of Turkish Republic evaluated below is studied with its last changes done in 2004 [37].[38]

In the preamble part of the Constitution (article 3.10.2001-4709/1) it is determined that; "... every Turkish citizen has the right and jurisdiction starting with his birth to have an honorable life within the national culture, civilization and law order by benefiting from the basic rights and liberties on equal and social justice grounds and to develop his physical and moral existence in this way; ... has rights to demand a peaceful life ..." With this definition in the preamble section it is determined and secured that every Turkish citizen has the right and jurisdiction of 1. having an honorable life, 2. Developing his physical and moral existence within a rule of law basing on a social justice and is equal in front of laws.

Constitution of Turkish Republic dated 1982 has 7 Main parts apart from preamble section and 177 articles in total. These seven parts are; 1. General Principles, 2. Basic Rights and Duties, 3. Basic Organs of Republic, 4. Financial and Economic Judgements, 5. Various Judgements, 6. Temporary Judgements, 7. Last Judgements. These seven parts are covered under sub-topics and chapters. Articles defining the rights and liberties, interests and equalities forming a base for city planning discipline and their contents within these parts, sub-topics and chapters are quoted below in a list emphasizing the basic points.

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[36] It can be seen that Constitution dated 1982 changed through the years 1987-2004. Some of these changes can be listed as: Law No.3361-1987; law no 3913-1993; law no.4121-1995; law no 4388-1999; law no 4446-1999; law no 4709-2001; law no 4720-2001; law no 4777-2002; Resource: WEB-1 and WEB-3

[37] Resource: WEB-3 and WEB-4

[38] The English translation of the Constitution text bases on the text at WEB-5

I. Part-In General Principles chapter, articles about the form of the state, properties of republic, integrity of the state, unchangeable judgements, aims and duties of the state, sovereignty, authorities of legislation-execution-jurisdiction, equality before laws and conjunction of the Constitution take place.

In this context, it is determined that Republic of Turkey is "a secular, democratic social state governed by the rule that is respectful to human rights and has an understanding to provide peace for the society and with a national solidarity and a justice" (article 2). Main aims and duties of the state is described as "... protecting the republic and democracy, providing the welfare, peace and happiness of people and the society; trying to take off the political economic and social obstacles limiting the basic rights and liberties of people without incompatibility with the social rule of law and justice principles and trying to prepare the necessary conditions for the development of existence of people".

In the state of Turkish Republic where "sovereignty is vested fully and unconditionally in the nation" (article 6), according to separation of powers the legislation authority is given to Turkish Grand National Assembly (article 7); executive power and function is given to the President of the Republic and the Council of Ministers (article 8); judicial power to the independent courts on behalf of the Turkish Nation (article 9).

In article 10 which explains equality before law it is told that "all individuals are equal, without any discrimination before law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and seet or any such considerations". With the last article of this part, it is decided that "the provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs and administrative authorities and other institutions and individuals and laws shall not be in conflict with the Constitution" (article 11).

As mentioned in article 5 which defines the main aims and duties of the social state are "striving for the removal of political, social and economic obstacles which restrict the fundamental rights and freedoms of the individuals and provide the conditions required for the development of the individual's material and spiritual existence". As can be understood from this Constitution defines the state as a formation in responsible of individual-society-state relations and in maximization of the social welfare. With the emphasizes in the Preamble in the individual-society-state relations

the Constitution formed with “social state governed by rule of law” idea aims to protect and control the individualistic rights and freedoms and also constitutes a political and economic balance within the social structure.

II. Part forms of 4 chapters. Topics of these chapters are: 1. Basic Rights and Freedoms; 2. Rights and Duties of Individuals; 3. Social and Economic Rights and Duties; 4. Political Rights and Duties. In these chapters laws about settlements, planning, public interest, rights and freedoms take place in these articles:

2. Chapter-Article 23 under the topic Rights and Duties of Individuals determines that every person has the freedom of settlement and traveling under the topic **“residence and movement”**; and article 35 determines that **“ownership right”** is a right for everybody and these rights could only be limited for the public interest. In the same article a limitation that in the usage of ownership rights it cannot be against the social interest. By this limitation, it is determined that although ownership right is current for every person it cannot be used against the public interest and also explained that a limitation can be put to these rights for “public interest”.

3. Chapter is about social and economic rights and duties and the right and duty of education and training is defined with **article 42**. This article explains that **“no one shall be deprived of the right of learning and education”**, and the state should help successful students who lack financial means and should take necessary measures who need special training.

In the third chapter there are five different sub-topics. These sub-topics can be listed as utilization of the coasts, land ownership, protection of agriculture, animal husbandry and of persons engaged in these activities, expropriation, nationalization and privatization.

Utilization of the coasts is organized in article 43. In this article coasts are under the sovereignty and disposal of the state. It is stated that “sea, coasts, lake, shores or river banks and of the coastal strip along the sea and lakes, public interest shall be taken into consideration with priority... The width of coasts and coastal strips according to the purpose of utilization and the conditions of utilization by individuals shall be determined by law”. In this article of the Constitution it is considered that the utilization of coasts will be determined by the laws also and it carries great importance for planning discipline for plans done at these areas.

Land ownership and its utilization principles take place in article 44. With this article state is given duty of taking precautions. These precautions are stated as this: "shall take the necessary measures to maintain and develop efficient land cultivation, to prevent its loss through erosion, and to provide land to farmers with insufficient land of their own or no land. For this purpose, the law may define the size of appropriate land units, according to different agricultural regions and types of farming. Providing of land to farmers with no or insufficient land shall not lead to a fall in production, or to the depletion of forests and other land and underground resources."

Arrangements about **"Protection of Agriculture, Animal Husbandry and of Persons Engaged in These Activities"** which take place under the title Public Interest are stated in **article 45** as: "The state facilitates farmers and livestock breeders in acquiring machinery, equipment and other inputs in order to prevent improper use and destruction of agricultural land, meadows and pastures and to increase crop and livestock production in accordance with the principles of agricultural planning.

The state shall take necessary measures to promote the values of crop and livestock products, and to enable growers and producers to be paid the real value of their products."

According to article 46 about expropriation (As amended on October 17, 2001)
"The State and public corporations shall be entitled, where the public interest requires it, to expropriate privately owned real estate wholly or in part and impose administrative servitude on it, in accordance with the principles and procedures prescribed by law, provided that the actual compensation is paid in advance". Within its content the payment of expropriation, payment conditions payment way are explained in detail.

In article 47 about "Nationalization and Privatization" it is stated that "private enterprises performing public services can be nationalized when this is required by the exigencies of public interest". Privatization is added to this article by a Constitutional change in 1999 (Addition: 13/8/1999-4446/1)**.** It is decided that principles and rules concerning the privatization of enterprises and assets owned by the State, State Economic Enterprises and other public corporate bodies shall be prescribed by law. Privatization practices and arguments which started in 1990's are based on this article added into the Constitution in 1999 with a change. Before and after this Constitutional change, (privatization) selling of many lands and plots owned by public were realized.

These five articles (from article 43 to 47) mentioned above under Public Interest title determine the macro economic policies of the state and also produce decisions about the utilization of natural and environmental resources. In this context, these articles accepted as top data for planning discipline do not only determine the duties of the state but also indicate to the economic rights of individuals.

Another topic taking place under Social and Economic Rights and Duties is **article 56 "health services and conservation of the environment" under the topic "health, the environment and housing"**. This article states that "everyone has the right to live in a healthy, balanced environment". In the utilization of this right improving the environment, protecting environmental health and preventing environmental pollution, are described as the duties of the state and citizens. In this article about the improvement of health conditions of individuals these points are stated: "To ensure that everyone leads their lives in conditions of physical and mental health and to secure cooperation in terms of human and material resources through economy and increased productivity, the state shall regulate central planning and functioning of the health services"(WEB-3,WEB-4, WEB-5). In this article of the Constitution, the right to live in a healthy and well balanced environment and the physical and psychological health conditions are considered as a whole.

"Right to housing" is described in article 57: "The state shall take measures to meet the need for housing within the framework of a plan which takes into account the characteristics of cities and environmental conditions and supports community housing projects". This article gives state two main duties such as taking precautions in meeting the requirements of housing and secondly supporting community housing projects (Kaboğlu, 1996,70). In the realization tools is planning considering the properties of cities and environmental conditions. Laws about this subject are Development Law No.3194, Mass Housing Law, Gecekondu (squatter settlement) Law.

"Conservation of Historical, Cultural and Natural Wealth" is explained in article 63. It is stated in this article that "The state shall ensure the conservation of the historical, cultural and natural assets and wealth, and shall take supportive and promotive measures towards that end.

Any limitations to be imposed on such privately owned assets and wealth and the compensation and exemptions to be accorded to the owners of such, as a result of these limitations, shall be regulated by law"(WEB-5). Related with this article legal

regulations are done with Conservation of Cultural and Natural Heritages Law No.2863 accepted in 1983[39].

"The extent of Social and Economic Duties of the State" takes place in article 65 (Amended on October 3, 2001-4709/22). This article states that "The State shall fulfil its duties as laid down in the Constitution in the social and economic fields within the capacity of its financial resources, taking into consideration the priorities appropriate with the aims of these duties"(WEB-5).

4. Chapter-"Obligation to Pay Taxes" is regulated under the topic of **Political Rights and Duties**, and with article 73. It is stated that "Everyone is under obligation to pay taxes according to his financial resources, in order to meet public expenditure…An equitable and balanced distribution of the tax burden is the social objective of fiscal policy"(WEB-5, WEB-4). One of tax payment regulations is Real Estate Law No.1319 accepted in 1970.

In the III. Part of the Constitution legislative executive and judicial organs, articles about the formation, authority, duties and responsibilities of these organs take place under the topic **"Fundamental Organs of Republic"**. The regulations about the formation of "**central administration"** is discussed **in article 126** under the topic of **"organization of the administration"** in executive chapter. It is determined that central administration structure is divided into provinces on the basis of geographical situation and economic conditions, and public service requirements, provinces are further divided into lower levels of administrative districts. The administration of the provinces is based on the principle of devolution of wider powers. In order to ensure efficiency and coordination among public services it is decided that a central administrative structure may be organized containing more than one province when necessary, and the duties and authorities of this structure would be regulated by law.

Local administrations article 127. "(As amended on July 23, 1995) Local administrative bodies are public corporate entities established to meet the common local needs of the inhabitants of provinces, municipal districts and villages, whose decision-making organs are elected by the electorate as described in law, and whose principles of structure are also determined by law.

[39] Law no 2863 and the new conservation of cultural and natural resources law no 5226 which went into effect on July 27, 2004 are not taken into consideration.

The formation, duties and powers of the local administration shall be regulated by law in accordance with the principle of local administration…The central administration has the power of administrative trusteeship over the local governments in the framework of principles and procedures set forth by law with the objective of ensuring the functioning of local services in conformity with the principle of the integral unity of the administration, securing uniform public service, safeguarding the public interest and meeting local needs, in an appropriate manner... The formation of local administrative bodies into a union with the permission of the Council of Ministers for the purpose of performing specific public services; and the functions, powers, financial and security arrangements of these unions, and their reciprocal ties and relations with the central administration, shall be regulated by law. These administrative bodies shall be allocated financial resources in proportion to their functions"(WEB-5). Municipality Law No.1580 became valid in 1930 and Municipalities established basing on this law, and Greater City Municipalities Law No: 3030 which became valid in 1984 take place at the head of local administrations.

Part IV is collected under the topic **"Financial and Economic Provisions"** and under two sub-topics. Financial Provisions chapter one includes subjects like preparation and Implementation of the Budget, debate on the budget, final account, auditing of state economic enterprises. In chapter two under Economic Provisions subjects like planning, supervision of Markets and regulations of foreign trade, exploration and exploitation of natural resources, protection and development of forests and inhabitants of forest villagers, promotion of cooperatives, protection of consumers, small traders and craftsmen.

"Planning" sub-title which part is of **"Economic Provisions"** take place **in article 166,** in forth part, second chapter. According to this article the duty of the state is defined as: "The planning of economic, social and cultural development, in particular the speedy, balanced and harmonious development of industry and agriculture throughout the country, and the efficient use of national resources on the basis of detailed analysis and assessment and the establishment of the necessary organisation for this purpose are the duties of the state"(WEB-4, WEB-5). The aims in the plans are: "Measures to increase national efficiency and production, to ensure stability in prices and balance in foreign trade transactions, to promote investment and employment, shall be included in the plan; investments, public benefit and requirements shall be taken into

account; the efficient use of resources shall be aimed at. Development activities shall be realised according to this plan"(WEB-4, WEB-5).

According to article 168 titled as **"exploration and exploitation of Natural resources"**. "Natural wealth and resources shall be placed under the control of and put at the disposal of the state". The state may delegate this right to individuals or public corporations for specific periods.

Regulations about **"forests and the inhabitants of forest villages" and "protection and development of forests"** are explained **in article 169.** The state shall enact the necessary legislation and take the measures necessary for the protection and extension of forests. "All forests shall be under the care and supervision of the state"(WEB-5). With this the limitations of duties of the state are determined. In this article the ownership rights, management and exploitation of the forests are given to the state and the state is under duty for this subject. "The ownership of state forests shall not be transferred to others... Ownership of these forests cannot be acquired through prescription and nor shall servitude other than that in the public interest"(WEB-5, WEB4).

With this article, No acts and actions and political propaganda are permitted that may damage forests; and no general and special amnesties are permitted for offences against forests.

The conditions for the limitation of forest boundaries are described as: "The limiting of forest boundaries shall be prohibited, except in respect of areas whose preservation as forests is considered technically and scientifically useless, but whose conversion into agricultural land has been found to be definitely advantageous, and in respect of fields, vineyards, orchards, olive groves or similar areas which technically and scientifically ceased to be forest before 31 December 1981 and whose use for agricultural or stock-breeding purposes has been found advantageous, and in respect of built-up areas in the vicinity of cities, towns or villages".(WEB-5, WEB-4, WEB-3)

In the **article 170** about **"the protection of the inhabitants of forest areas"** it is determined that for improving the living conditions of the villagers and protecting the forests and their integrity some measures should be taken between the state and the forest villagers.

In part V of the Constitution, under the title "Miscellaneous Provisions", regulations about the preservation of reform laws take place. In part VI under the topic "Provisional Articles" provisional articles with 16 articles and lastly part VII under the

title “Final Provisions” decisions about changing the Constitution, preamble and headings of articles and entry into force of Constitution take place.

Headings of articles used in the evaluations done above are not counted within the Constitution text according to article 176 and show the connection between the subjects and articles. The preamble defining the basic viewpoints and principles on which the Constitution bases is included into the Constitution text according to this article.

3.1.2. Evaluation of the Current Constitutional Frame

Constitution is determinant both on the structure of the state and on the legislative, executive and judicial organs and so these articles play a determinant role about the characteristics of the state on macro level. The structure of the state is determined as “social state governed by the rule of law” within the context of Constitution. Its property being a “social state governed by the rule of law” not only “rule of law” means that it also undertakes the duty of intervening, organizing and balancing the economic and social fields of social life and the fact of being a social state becomes important, here. In other words, first stage rights and freedoms together with second and third stage rights and freedoms are among the authorities, duties and responsibilities of the state. In the Constitution of Turkish Republic as a “social state governed by the rule of law” the personal rights and freedoms, the economic and social rights and freedoms of individuals are defined, too.

Within the scope of 1982 dated Constitution of Turkish Republic studied above, if rights and freedoms among individuals, society and state and articles about the urban planning discipline conjunctive on interest and equality are evaluated as a whole these determinations can be made:

State form and duties: The form of the state is “the social state governed by the rule of law” and the state has to accomplish its duties in social and economic fields determined by the Constitutions (article 2). Among the main aims and duties of the State of Turkish Republic “providing the welfare, peace and happiness of individuals and society, trying to dismiss the political, economic and social obstacles limiting the basic rights and freedoms of people not connecting with the principles of social state governed by rule

of law and justice and preparing the conditions necessary for the development of individuals" take place (article 5).

Definition of individuals: People who have the right and authority to have an honorable life within the order of law and to improve their existence by interesting from the basic rights and freedoms, equalities and social justice.

When studied from the viewpoint of equality, individuals; are equal in front of laws and have equal, political rights and freedoms. State is obliged to provide the realization of these equalities and the state organs should move according to these principles (article 10).

From the viewpoint of freedoms, individuals have personal freedom and security and the state is obliged to take measures for this security (article 19). Individuals have settlement freedom but these freedoms can be limited by the state if necessary (article 23). Individuals have the freedom of to insist on their rights for every problem caused by individuals-society and the state (article 36). Judicial power has the duty on this subject.

As the generalization of rights; individuals have the ownership and inheritance rights, utilization of these rights cannot be against the social interest and control of it belongs to the state. Limitation of this right for the interest of public belongs to the state (article 35). Individuals have the right to live in a healthy balanced environment and to form a healthy environment is under the responsibility of the state and individuals (article 56). It is the duty of the state to take measures to fulfill the needs of housing of individuals (article 57). Individuals have social security right and necessary measures should be taken by the state (article 60). People have education right (as a social and economic right) and it is the state's duty to protect this right (article 42).

In the articles about Public Interest subjects such as; utilization of the coasts (article 43), land ownership, agriculture, animal husbandry, protection of persons engaged in these activities, expropribition, nationalization and privatization (47), conservation of historical and cultural wealth (article 63), national wealth and resources (article 168), forests (articles 169,170) and cooperatives are discussed and measures of the state taken for the public interest and society and duties of the state on these subjects are defined. In the articles about public and social interest no clear explanation is given. Constitution states that nationalization can be realized for the public interest as well as

privatization. On the other hand, in the article 35 it is stated that ownership right among the rights and freedoms of persons may be limited for the public interest, too.

Development approach: The state has the duty of preparing the Development Plans which have the properties of being a conjunctive documentary in realizing the organization of economic facilities and developmental enterprises. The aim of these plans is described as: planning the economic, social and cultural development in balanced and congenial way in sectoral levels. The aims of the plans are: regarding the social interest and requirements in the enterprises; and efficient usage of the resources. These plans are the highest step of planning categorization and are the conjunctive documentaries of planning hierarchy with a property of a preliminary stipulation in determining the land use types, laborship of the whole population and facility requirements from the scale of Environmental Plans to application development plans in urban planning discipline.

3.2. Laws, Institutional Regulation and Interventions Defining Urban Planning Activities in Turkey

Legal and administrative frames take place at the beginning of the intervention tools of the state in the realization of rights, interests and freedoms defined by the Constitution. In this context determination of intervention tools would only be realized through the Constitution which is also an intervention tool itself and through the legal and institutional regulations determined within the frame of Constitution. Therefore what the practices of urban planning activities can only be understood through the legal, administrative regulations and how they are formed and reflected on the practices, as well as through the constitutional frame. In other words, understanding the legal and institutional regulations supporting the plans and planned development in cities will also make it easier to understand the dimensions of formal justice in urban area. When laws and institutions about urban land are studied for such an evaluation it can be seen that both the legal regulations and the organizations formed basing on these laws are numerous and their duty distribution is very complex. A very detailed evaluation take place in “Report about the revision of Development plan no 3194 and its relevant regulations”, prepared by Ministry of Public Works and Settlements in 1998. In this

report among legal regulations enacted in 1998 and the institutions formed by these regulations the ones about planning were collected. Between the years 1998-2004 new laws were added to these legal and institutional regulations basing on national, regional and local levels and a few is on the list to be enacted. Starting with 1998 arguments about the constitution of a new ministry Urbanization and Housing Ministry were made but no development occurred till today. Likewise instead of works about defining integral administrative processes about urbanization increasing complications are seeing with the legal changes everyday. In the project formed at the end of meetings on "Development and Urbanization Law Project" which is organized for forming policies about integral planning and urban policies by the same ministry, no improvement can be seen[40]. In this context firstly the legal regulations about the realization of a healthy environment and housing rights and housing policies of some of the institutions formed by basing on these regulations are discussed.

3.2.1. The Housing Development Administration and Mass Housing Law

In the articles 56 and 57 of the Constitution, housing, healthy environment, social and economic rights and freedoms are stated and it is accepted that it is the duty of the state to realize them. This, in a way, means that the state should develop policies about these subjects and should put interventions that meet the requirements of the groups who are in need. When housing is regarded as a need, there are two groups which meet these needs. Keleş, considers the first group as the ones who can need their housing needs within the free market conditions by their own financial resources. This group can buy house from free market or pay the rents of houses. Second group consists of ones who can not live in an appropriate house with their financial resources. The support of the state and other public institutions is needed for meeting the needs of this group. State undertakes duties in meeting the need of housing with the development of welfare state practices and progressive polices. In the article 49 paragraph 2 of the 1961 Constitution it is stated that "State shall take precautions in meeting the needs of a healthy housing conditions for poor or low-income families". However there is no article in 1982 Constitution especially about the poor or low-income families.

[40] For the preliminary studies see WER-6; for detailed data of meeting held by the ministry see WEB-7

According to Keleş, this point indicates that the state is obligate to meet the housing needs of all social groups without any discrimination (Keleş, 1990, 277-288). In such and acceptance it is expected that the state would develop/regulate policies appropriate firstly for the improvement of free market conditions and secondly for the conditions of low-income groups. However post 1980 developments indicate that second dimension was not developed efficiently.

Mass Housing Law no 2487 which became valid in 1981 during military government period is the first step taken in central policies about housing problem. The main properties of this law are:

Trying to irritate the mass housing and not private housing; trying to solve the sheltering problem of low and mid-income groups; considering mass housing in "social housing" dimensions; aiming to obstruct crowding in large cities; housing ownership belongs to individuals; not accepting private mass housing firms as mass housing organizations; transferring all the authority given to the state by the Constitution to the Ministry of Public Works and Settlement in other words to the central administration; accepting the value of the estate written on tax statement as a measure for expropriation and without any need for "Public interest" decision at the areas announced as "Mass housing areas"; reserving 5% of the general budget incomes for this purpose; (Keleş, 1990, 341).

However this law became invalid with the mass housing law no 2985 which became valid in 1984. This new law is different from the approaches mentioned above; proposes individual credits; includes private sector to "Mass housing cooperatives" (Keleş, 1990, 277). With these changes low-income groups no longer were included in the aimed groups. The aim of this law was "To meet the housing needs, to regulate the principals which instruction firms should obey; improvement of industrial instruction techniques appropriate with the conditions and materials of the country and improvement of tools and equipment and support of the state." (Article 1). Formation of "mass housing fund" under the control of Central Bank of Turkish Republic (Article 2) and determination of sources of this fund; determination of mass housing areas by provincial administrators and nationalization of these areas by Urban Land Office are the points determined by this law.

After these regulations Housing Development Administration divided into two offices in 1990 as Directorate of Housing Development and Directorate of Public Administration (WEB-8). In 2001 Mass Housing Fund was abrogated by law 4684 and

financial resources of administration were limited with the resources transferred from the budget.

Mass Housing Law no 2487 choice policies directed at the low-income groups in order to decrease housing shortage as well as to revive market mechanism. With law no 2985, on the other hand priority was given to market mechanisms as can be understood from its giving importance to individual credit system. Likewise Housing Development Administration declares that from its foundation to the year 2004 that it provided financial support for about 1.1 million (1.070.507) houses and that it completed the construction of 43.145 houses on its own land plots. 21.859 of these credited houses were realized within the projects of Municipalities, 944.446 of them within the cooperative applications, 10.987 within the credit for "martyr" (şehit) families, and 93.215 within the individual housing credits[41].

According to information reached after a field survey done in 1992, the ratio of the groups unaware of Housing Development Administration varies between 65% and 81% in gecekondu areas in the cities of Ankara, İzmir, İstanbul and Gaziantep.[42] In this research, it is expressed that it is very surprising to see that a foundation aiming to solve the housing problems of low-income groups is not known by the target groups. This study emphasizes on the important effects of the demonstration opportunities not used efficiently by the foundation (Şenyapılı; 1995; 37-38). This also indicates that these groups did not benefit from these credits which are used within at least four provinces.

It can be seen that credits were mostly used in secondary housing areas (Keleş; 1991) and most of the houses constructed by Housing Development Administration did not target low and mid-income groups (see WEB-8). The fact that the foundation is insufficient in meeting the housing needs of low-and mid income groups takes place within the records of the foundation itself as well as in academic groups.[43] In this context, it is very indefinite if mass housing project went beyond reviving the housing and construction sector.

Values in the Table: 3.1. are significant for understanding the efficiency level of the projects developed by Housing Development Administration for meeting the housing needs in Turkey. As can be seen in this table, housing need in the year 1994 is

[41] These gathered information are taken from the foundation's web site WEB-8
[42] Şenyapılı, T. (1995). Paper presented, involves field data of four provinces done in 1992 within the scope of the project done under the coordination of METU, Faculty of Architecture, Housing Research Center.
[43] see for other arguements WEB-9.

917.095. It can be concluded that there is a very rapid housing construction process when it is thought that illegal and gecekondu houses do not take place in this table. However, it is impossible to understand the real housing need from this table because there is no distribution between the permanent and seasonal or secondary housing usages of these houses.

Table 3. 1. Housing Needs in Municipalities, Numbers of Housing Under Construction and Issued Occupancy Permits

Years	Population Occupancy Increase (1000)	Increase in the Number of Households	Housing No Longer Available	Total Need (A)	Number of Construction Issued Permits (B)	B/A %	Number of Houses Issued Occupancy Permits (C)	C/A %
1955-1959	1.813	319.190	137.000	456.190	268.994	59,0	n.a.	n.a.
1960-1964	2.653	467.077	176.000	643.077	285.843	44,5	n.a.	n.a.
1965-1969	3.464	614.462	225.000	839.462	513.314	61,2	251.994	30,0
1970-1974	3.044	534.973	293.000	827.973	827.193	99,9	412.998	49,8
1975-1979	4.952	900.363	354.000	1.254.363	1.111.340	88,6	563.862	44,9
1980-1984	5.600	1.070.744	485.000	1.555.745	866.984	55,7	610.004	39,2
1985-1989	5.961	1.162.000	599.000	1.761.000	2.036.272	115,6	993.876	56,4
1990-1994	6.316	1.379.039	662.934	2.041.973	2.318.857	113,6	1.243.622	60,9

Resource: Habitat II, National Report and Activity Plan of Turkey (1996), Ankara, p.30

All of these regulations and practices, it had been accepted that the housing needs of low income groups had not been met according to legitimate rules by the National Report (1996, 31).

After the 2000's a new direction have been accepted by the institution. Among the works done by Housing Development Administration in the year 2003 below mentioned subjects take place:

1- Expropriating the plots and lands appropriate for mass housing construction and making housing projects on these lands: Projection of building 161.354 houses in total, 74.379 of them on the foundation's plots, in 71 provinces; a) building houses for low income groups (for widows, elderlies, orphans, etc.); a housing project of total 3.156 houses for poor, orphans, widows and elderlies who cannot own a house and which will be sold to these groups with payment conditions of 1.5 billion TL in advance and with

installments starting from 150 million TL.; b) Housing Project for disabled and poor people; houses with 45-55 sqm sizes and sold for 20 years payment time option: c) Constructing houses for people who work in public institutions; construction projects of 7.196 houses for personnel who work in different Ministries in Ankara within the scope of building mass houses for low-and mid income public institutions' workers who do not own a house.

2- Urban renewal project in existing gecekondu area, cooperating with the municipalities. Preventing gecekondu and transformation of existing, gecekondu areas in cities cooperating with municipalities, improving the traditional (historical) settlement areas in cities. It is planned to construct 20.000 houses in 29 settlement areas and protocols are signed for the construction of first 10.240 houses. Institution aims to increase the building construction facilities in greater city municipalities within the scope of gecekondu transformation and urban renewal projects.

3- Overcoming the housing shortages in the places where natural disasters occurred; It is authorized with the law about "Making Changes in Some Laws About Natural Disaster" law no 4864 which was legislated in 2003, to take over land without charge for housing construction purpose at the places affected by natural disasters, to give credits to the cooperatives of victims of disasters or to victims of disasters themselves, to take credits from other countries for this purpose, to found temporary units at the disaster areas. In this context starting with the year 2003, 2.902 of 4.550 houses were constructed and given to the owners.

4- "Resource development projects" as a solution to the insufficiency of the payment taken from the budget; Institution determined that a total of 4.5 quadrillion TL. is needed for constructing 100.000 houses and realizes income distribution projects on its valuable plots which take place within the greater city municipalities. It aims to create a source with the projects that will be realized on its valuable plots and transfer the money earned, from these projects to the construction of social houses built for low-income groups. With this model and with the bids done starting from January 2003; it is planned to construct total amount of 37.518 houses in 30 settlements.

5- Agriculture Villages Practices: it is determined that there is a project of 5.056 houses in 34 settlement areas.

6- Houses for Immigrants: 21.874 houses for immigrants were constructed in 17 provinces and 23 settlement areas within the frame of law No. 2510 accepted in 1989.

7- Preparing building site with infra structural system in order to decrease the cost price in housing construction: It is determined that 1.5 million sqm. plot was allotted to cooperatives in Ankara Eryaman in 1998.

8- Within the scope of supporting house construction firms with credits; it is determined that new credits were given to total amount of 7.731 houses between the years 2003- September 2004.

According to data of State Institute of Statistics the total number of household is 11.188.636 (approximately 12 million) in 1990 in Turkey. Use of building by provinces, according to data in Table 1984-2000 the number of buildings used as house was 3.8 million in 1984 (3.841.609) and 6.7 million (6.735.865) in 2000. There is an increase of 2.8 million between the years 1984-2000 in the number of buildings used as house. It can be seen that the housing shortage is 4.452.771 even if it is accepted that there is no increases in the number of households between the years 1990-2000.[44]

Table 3. 2. General Use of Buildings in Turkey, 1984-2000 (www.die.gov.tr)

Types of Buildings	**Years**	
	1984	**2000**
Residential Building	3.515.110	5.872.808
Mostly Residential Building	326.499	863.055
Mostly out of Residential Building	59.158	84.926
Completely Commercial (*)	424.217	804.662
Education Culture	13.485	30.349
Health	2.132	6.600
Administrative	18.795	33.124
Religious	13.494	26952
Other	15.081	116.249
Total Number of building	4.387.971	7.838.675

(*) It covers buildings which completely use of commercial, industry, social, sports, agricultural buildings.

[44] (Data used here are taken from State Institute of Statistics Building Census and Household data. For resource see WEB-11)

Table 3. 3. Total Number of Household and size of household in Turkey 1990(WEB-11)

Size of household	
1	503.830
2	1.258.359
3	1.592.701
4	2.297.500
5	1.809.112
6	1.265.910
7	936.375
8	502.791
9	334.263
10 +	687.795
Total number of household	11.188.636

3.2.2. Ministry of Public Works and Settlement

Duty of making housing policies in Turkey and their application was given to the Ministry of Reconstruction and Settlement in 1958. Within the content of this law, the duty of Directorate of Housing connected to the ministry was determined as taking precautions in making homeless people to own a house and shelter them with appropriate rents (Keleş, 1990, 291). However, these duties of Ministry of Public Works and Settlement which was formed with the union of Ministry of Public Works and Ministry of Reconstruction an Settlement, were cancelled.[45] [46]

Ministry realizes its duties about subjects such as construction, house, planning and disaster with three sub-units that are in relation with the central organizations.

On the web page of the ministry it is stated that "building houses according to housing policy principles" is also among the duties of ministry. However, there is no data about these practices. The mission of the ministry is stated as: "preparing all the regulations, technical documentary and standard within the content of architecture, engineering and

[45] Keleş; With the cancellation of Governmental Decree no. 209 dated 1983 and article 10 of the Governmental Decree About the Duties of the Ministry of Public Works and Settlements this duty is cancelled, also.

[46] Starting with 2004 General Directorate of Highways and General Directorate of Title and Cadastreing are the institutions connected to the ministry.

contractor services by using technology about subjects like planning, preparing maps, study and project works and producing buildings and building materials, doing, approving and application all kinds of coordination, education and control in order to provide an unification throughout the country." The vision of the Ministry is stated as: "providing countrywide standards and policies within the principles of "sustainable development" by using the sources of the country efficiently in producing just, efficient services like a healthy environment, planned and organized urbanization and secure buildings by cooperating with the relevant institutions and organizations in participating and transparent relations." In this frame it can be concluded that housing policies are not considered (WEB-10).

Directorate of Technical Research and Implementation (TAU) which works as a sub-unit of the ministry has the duties of applications of Development Law no.3194, Coast Law no. 3621/3830 and laws no. 2981/3290/3366. In the report of the institution about supporting houses data such as:

Starting from the validity of gecekondu law to the year 2002; 8080 gecekondu improvement areas on a land of 16174 ha; 232 gecekondu elimination area of 1325 ha of land; 643 gecekondu prevention area on a land of 18317 ha were formed by the Ministry. Within the frame of housing construction projects under titles such as public houses, social houses, building houses with possession, core, and rental houses 35.000 houses were built. According to the article 14 of the law, from the gecekondu fund taking place within the Ministry of Public Works and Settlements credit was given to 14.562 associates of 354 housing cooperatives formed by people without a house and with low-income and also approved by the Ministry. In order to increase construction rate 105.881 units of plot were allocated at the gecekondu prevention areas to the housing cooperatives which have associates with the qualities that suit the Law. In the practices of aiding the ones who build their own houses plots for 40.000 houses were distributed among them and housing credits with limited number were given but did not become prevalent. Through the country at the gecekondu prevention areas 32.506 multi-storey and 2494 one-storey totally 30.672 houses were built and distributed among the ones who have the right, by the Ministry. 110.000 units of plot were allocated to 2000 housing cooperatives and construction credit was given to 14.500 members from Gecekondu Fund.

Results of the studies of two important public institutions belonging to central organizations can be listed as:

1- Development of a comprehensive countrywide housing policy is not mentioned in this report.

2- It can be seen that the constructed houses and policies about these houses are not regarded in an integral approach.

3- It can be seen that no statistical research about housing problem and no policy basing on the evaluation on this way.

4- Among the data, rental houses, social houses, core houses are very little in amount within the projects that are realized.

5- Attempts about meeting the housing needs of low-income groups are in limited numbers.

3.2.3. Local Government and Transformation of Planning Authorities [47]

Municipality Law no.1580 went into effect in 1930. Even though many changes were done till 2000's the most important change from the viewpoint of urban planning is Development Law no.3194 which went into effecting 1985. While the authority of planning and approving belonged to the Ministry of Public Works and Settlement before 1980, it was transferred to the local administrations with this law. The authorization transfer means the transformation of planning authorities from centralist approach to localist approach, in other words it means localization of authorities. According to the article 8/b of the law no.3194, only responsibility of local administrations is giving information to the Ministry of Public Works and Settlement about the planning activities also meant democratization, today the effects of transfer of uncontrolled local authorization on cities can be seen, clearly. These general topics take place among the duties of local administrations within the content of law no.1580: duties of health and social aids within the boundaries of settlement; development; education; agricultural; economic, security; transportation and other duties (Keleş,

[47] With the Law of Public Administration which came into force in July, 2004 new regulations were done in local administrations. This regulation is out of consideration in this study. However there are doubts that this new law has a property of being alternative to the existing administration structure by the extension in authorities and in authority fields.

1994, 194). In this context, municipalities as local administrative offices are defined as the authorized and responsible units with duties on almost every subject in urban land.

Another change after 1980's is the Law about the Administration of Greater City Municipalities no.3030 which came into effect in 1984. This law involves the cities with more than one county within their boundaries. Application regulation of the law also came into effect in the same year and within the concept of this regulation; authorities of planning, approving and application of Development Plans formation of principle decisions; authority of studying and approving the county implementation practices (article 9); authority of control and supervision about implementation (article 10); exceptional institutions and organizations about implementation (article 11); free real property transfer in implementation applications (article 12); transportation and traffic; roads, squares (article 13); bus stations and multi-storey car parking buildings (article 14) are listed among the duties and authorities arranged within the concept of this regulation.

With these changes, transfer process of all authorities of the Ministry of Public Works and Settlement on urban land except the part which is included in law no.2634, is completed. In accordance with the article 4 of law no.3194, Act of Tourism Support no.2634 which became valid in 1982 is an "exception". With law no.2634, all the authority of determination, planning, approving, control processes at the determined areas of Tourism Regions, Tourism Areas, Tourism Centers and Enterprises is given to the Council of Ministries. In accordance with article 7 of law no.2634 the unit which should meet the planning demand of Council of Ministry is determined as the Ministry of Public Works and Settlement.

Both of these two local administrations are charged by the selected council municipality and mayor to take decisions about the application. Transfer of central authority which comes to the agenda in 1980's also brought some problems in 20 years. The basic defects of the legal arrangement in validity are: disformation of the control mechanisms of these authorities after the transfer of planning authorities, and similarly unopening of planning and application processes to the participant processes.

In 1990's traces of policies of "privatization of public service" and "shrinking of the state" can be seen in local administrations, too. Municipalities' applicating to international credit in order to be able to meet the public services and privatization of

public services are among the other important determinations on these fields.[48] In other words processes of privatization of public services are begun to be seen in local dimensions, too. When existing situation of cities today, insufficiency in urban facilities and in urban space quality are regarded it can be seen that serious problems occur in the functions, sources and control of local administration mechanisms.

In summer 2004 public administration law project has come into effect. Within the content of this law the most important point is, in spite of all the difficulties which municipalities have to face as local administration units, the widening of their authority areas and transfer of some areas which are under the control authority of Public Works and Settlement Departments to the greater city municipalities. In order to have a wider opinion about the effects of this transformation on urban space and its administration, the law should be studied in detail. However, this kind of evaluation is not included into the content of this study.

3.2.4. Expropriation Law No. 2942

Expropriation law which became enact in 1983 makes it possible the transference of real properties from individuals to the state and to the legal entities for "public interest". This law involves subjects like "authorities" who can make expropriation, principles about determining the price, order of the procedures, special methods used in expropriation (partially, expropriation, constituting servitude, seizuring, permutation, urgent expropriation) and judicial examination. The aim of the law no. 2942 is determined in article 1 as; procedures that will be done in expropriation of real properties owned by legal entities when it is required for public interest by the state or by public entities, estimation of the expropriation price, registration of real property an its servitude in the name of the administration office, taking back the unused real property, transfer processes of real properties between the administrative offices, reciprocal rights and duties and methods and procedures in solving the disagreements basing on these rights and duties."

In article five regulations about authorities giving decisions for public interest and the name of these authorities are listed as: a) public administrative office and public

[48] It can be found more information in Güler's working. See these sources for Güler's arguments about the investments of local administrations transforming into public services and properties by their usage in direction of the international capital and about the local administrations. Güler, 1998

entities relevant ministry, board of aldermen, municipality committee, Province Committee, Province Administration Commission in expropriation for state interest, administrative committees, for expropriation in more than one village and municipality within the same county, County Administration, Province Administration Commission for expropriations in villages and municipalities connected to more than one country within provincial boundaries, Council of Ministries for expropriations of more than one public entity connected to different provinces, Council of Ministers for expropriations done for state interests within the boundaries of more than one province; administrative committee or institution committee for expropriations done for public institutions; if they do not exist authorized administrative organs; for expropriations done for real persons these people, for expropriations done for the interest of private entities administrative committees or council of administrative offices, if not existing authorized administrative organs, villages, municipalities, other local government unit or ministry are entitled.

In article 6 of this law, people who have the authority to approve the "public interest" decision are defined, and also it is stated that "for services that will be done according to special plan and projects approved by the relevant ministries or according to the approved development plan, there is no need to take decision of public interest or approval of it" and is stated that expropriation process could be directly started by the authorized application organ. In the approval of "public interest" decisions other than these situations, the decision has to be approved by a superior office of the relevant institution (article 6). It is also determined that public interest decisions taken by the Ministries or Council of Ministries do not have to be approved once again.

According to the law, the owner of the expropriated real estate can commence a suit in judicial courts against the price or financial errors and in administrative courts against the expropriation process within thirty days after the proclamation.

3.2.5. Development Law No.3194 [49]

Development Law No.3194 which became valid in 1985 has the property of being the most comprehensive law about urban planning and construction regulations in

[49] In the evaluation of the law, laws published in computers are used. Sources: WEB-12 and WEB-13, Besides Odyakmaz, 2001.

Turkey. Individualistic rights and freedoms and social and economic rights and duties defined in articles housing right (article 57), settlement freedom (article 23), ownership right (article 35), land ownership (article 44), public interest (article 43-44-45-46-47) and planning (article166) in 1982 Constitution of Turkish Republic found a more concrete base within the scope of this law. This law can be accepted as a step in taking precautions balancing the ownership right included in the individual rights and duties and the right to live in a healthy environment (article 56) and housing rights (article 57) included in the social and economic rights.

The aim of the Development Law No. 3194 is; determined as the "formation of the settlement areas and buildings in these areas in accordance with the planning, technological, health and environmental conditions" (article 1). This law "embraces all the plans and buildings done within or without the municipality and adjacent (mücavir) areas." (article 2) In the first part of the law aim, 1,2 and 3. In the fourth article the definitions of Development Plan, Implementation Plan, Settlement Plan, City Block, Plot, Cadastral Block, Cadastral Plot, Building, Adjacent Area, Environment Plan are made. Relevant administrative offices are municipalities within boundaries of municipalities and adjacent area, provincial offices and Ministry of Public Works and Settlement outside these boundaries. As can be understood from the definitions all kinds of planning and building regulations from the scale of Environmental Planning to building scale take place within the scope of this law.

In the second part with a title Principles About Development Plans articles like; planning scales, base maps and development plans, authority of the ministry in development plans, development programs, expropriation and limitation process; real estates belonging to public; front line; areas reserved for public services, and servitudes take place. Third part is about "division and unifying; division of undivided property; remaining parts from expropriation; plot and land regulations; preparation of subdivision plans and official registration. Forth part involves articles about buildings; building permissions; conditions of taking building permission; building permission in development areas; permission to public buildings; technical responsibilities and registration of building constructors; permission duration; building usage permission; buildings without usage permission; illegal buildings; temporary building in public spaces; measures and obligations about construction, repairs and landscape plans; excavating the ground; houses of doorkeepers and shelters; car parking.

Fifth part involves; preparation and application of base map projects, development plans and building projects; building about to demolish; measures that should be taken for the safety of public; front elevations of plots; punishment decisions; decisions removed from the effect; regulations; adjacent area. Sixth part involves articles like decisions about Bosphorus (Boğaziçi) Law No. 2960; seventh part, "temporary decisions and regulations, execution".

Intervention About Land/ Plot Ownership: It tries to provide the right to live in a healthy environment and establish balance between these rights and with article 18 this is tried to be established. According to this article; 35%[50] of the plots with or without any buildings is deserted for the usage of public services like road, squares, parks, car parking areas, play grounds, green areas, worship areas, police station. In the conditions where these requirements cannot be met, for the remaining part expropriations will be realized by the municipalities and provincial administrators. This article which is accepted to form conditions needed for the right to live in a healthy environment and for the public interest is applicated with subdivision plans. In the regulation about subdivision plans application conditions and principles are determined in detail. Within the scope of the law, the corporation rate is applied equally on each plot within the planned are whatever their areas or plan decisions may be. This equality is acceptable on areas which do not have enough area for a unit of house after DOP, and also at the areas where green areas and dense housing areas exit at the same plan. This article also has the risk of losing the existing shelters. It also has the risk of inequality when plan decisions are taken disregarding the ownership rights.

Development Plan no. 3194 gives the duty, responsibility and authority in planning to the municipalities and provincial administrators(articles 5,7,8).

Sanctions about Demolishing and Financial Punishments: Controlling the spatial planning on building scale takes place of articles 32 and 42 of law no.3194.

Article 32 of law no. 3194 determines the conditions that should be applied by the relevant institutions about "illegal buildings". It is started in this article that "expect the buildings that will be built without a permission, if a building is built without a permission or against the permission and if it is determined by the administrator or technical responsible or by a denunciation or by another kind of way the construction is stopped immediately". It is started that stopping process is notificated to the owner with

[50] This ratio is increased to 40% with a change of law.

a notice hang at the building and one copy is send to the executive officer of neighborhood area. It is started that after this building eliminates the illegal conditions whatever they are and after it is understood that the building is appropriate with the building permission the construction may continue. Otherwise, the permission will be cancelled and the building will be demolished by the municipality or by provincial administrator and the cost of it will be paid by the owner.

Article 42 regulates the money punishment that will be given to the owner and constructor of the illegal building. The financial punishment that will be given to the owner, technical responsible and to the cotractor is regulated within this article, who does not execute their responsibilities determined in the articles 28, 33, 34, 39 and 40 and in the third paragraph of article 36. If the acts determined in these articles are repeated financial punishment will be multiplied and given by the municipalities or by the provincial governor.[51]

Articles 18, 32 and 42 mentioned above and procedures done according to these articles have the property of being an administrative procedure and so the trials are held in Administrative Courts. Trials about article 42 were held in Criminal Court of Peace till the year 2000 but afterwards this duty was transferred to Administrative Courts.

In the Revision Preliminary Report about building control involving the articles 32 and 42 of law no. 3194, some of the problems detected about this part are:

"Problems of Project Control; In the situation when the administration responsible of controlling projects neglects its duties; there is no superior authority to determine this neglect and practice a legal sanction…"

Problems of Controlling Construction;

> *(1) It takes a long time to collect the money from financial punishments given to the contractors according to article 42 and lose its monetary value.*
> *(3) Connecting electricity, telephone or other infrastructural services to the buildings without permission, without taking the acceptance of municipalities or provincial administrators and no legal responsibility is given to the relevant administrative offices.*

[51] In the following of this article expressions such as: "Against these punishments within the seven days after the notice objection can be made to the Criminal Court of Peace. Objection will be brought to a conclusion after studying the documents. If relevant administrator applies to the Criminal Court of Peace with the mediation of Public Prosecutor, decisions of prohibiting the technical responsible and contractors from theirprofession for 1 to 5 years can be given. Decisions of courts about these subjects will be announced to the ministry and to the chambeer they are connected to. According to this article, punishments given by the municipalities are put into the budgets of municipalities as a revenue." take place.

(4) Municipalities or provincial administrators not having any opportunity or mechanism other than denunciation in determining the buildings without legal permissions
(5) Legal processes that should be followed in demolishing the illegal building being too long (minimum one year)
(6) Municipalities and provincial administrators having insufficient opportunities of tools, equipments, workers and security systems in demolishing the illegal buildings with irrevocable demolishment decision.
(7) There exists no responsibility definition other than Law of Obligations for the damages caused by building faults." (Report; 1998, xi-xiv)[52]

Important points among the findings of the same report about the Development Regulations and Practice Problems in Turkey can be listed as:

"(1) Development Regulations departed from being the only and highest authority in the formation and usage of physical environment. Decision authorities about settlement and building are distributed among many institutions and so coordination mechanisms lost their functions. (2) (Strategic) principle plan, sectoral plans and similar plan types do not take place in the law. (3) Connections between the laws and institutions about real properties and Development Law are insufficient. Taxes of real properties, rent control, ownership rights and limitations and some other likewise tools are organized by different regulations and authorities. This causes conflicts rather than target agreements in real property markets which planning and applications aim to orient and control. (4) Regulations are insufficient in creating resources. There is no envision about the methods and functions involving how development system which create and distribute large amount of values will benefit from this source itself or how it will meet its costs. There is no direct connection between the resources (real estate taxes, tax of environment, car parking areas, fees, expenditures, punishments, etc.) and planning. (5) "Decentralization" model projected by Development Law no. 3194 interpreted the control mechanism as if it does not exist. As well as the responsibilities responding the authorities are not defined clearly, sanctions about responsibilities are indefinite, also. (6) Judicial control mechanism functions very slowly and also judgement personnel are not equipped with the development subjects. There are great problems in the functions of consultative authorities. (7) Law lacks variety from the viewpoint of tools aiming the orientation of settlement and building. There are insufficiencies in the functions of existing tools. Even though article 18 has the quality of being an important toll from viewpoint of plan applications, it is not used efficiently. Efficient usage of public lands cannot be provided and their invasion by illegal buildings cannot be prevented, also. (8) Public opinion is completely out of usage. (9) There is no functioning about decreasing the disaster damages within the system formed by the Development Law and regulations. Article 9 is the only article in the law directly related with the disasters. However, this authority is only used for making new plans after a disaster and did not oriented to a target aiming to develop a planning system sensitive to disasters. Even though there are some attributions to Disaster Regulations in Development Regulations, bonds are very loose and sanctions are indefinite. (10) Illegal buildings are supported by the decisions in the regulations, by insufficiency in resources and weakness in practices. Against this prevalent fact the attitude of the system is to accept the existence of illegal buildings, to publish amnesty for them and to give them rights

[52] Within the scope of this report, provincial government of Ankara took decisions about the demolishment of avarage 50 buildings in the last 20 years but none of it was realized and this carries great importance in understanding the application of the law. (1998, Bayındırlık;4-17)

> *and give them the statue of being legal. This behavior means the joint of building, stocks which have poor health conditions and which have high risk into the public responsibility area. Ownership definition in Disaster Law disregards whether the buildings are illegal or whether they have or have not taken the necessary technical precautions. This encourages the illegality in buildings and puts great financial burden on the state after a disaster."* (age. xi-xii)

There are some other points other than the ones mentioned above when Development Plan is accepted as the most concrete documentary about realising "the right of living in a healthy environment". Besides having the opportunity of living in a healthy environment as stated in the 1982 Constitution; clean air, clean water and accessibility all other natural resources, it also includes that every citizen should also has the opportunity to access to urban services like health, education, green area, cultural areas and transportation from the place he lives. Regulations about realising these second stage opportunities take place in the "About Making and Changing Implementation Plans" accepted in 1985. In the article 10 of this regulation it is determined that "minimum standards shall be obtained in the social and technical areas as defined by regarding the existing conditions of the planned areas and their future requirements during making and changing processes of implementation plans at every scale."(Odyakmaz; 2001). Standards mentioned here states the minimum standards necessary for a healthy urban environment. In the cities of today it is impossible to mention the existence of a settlement with these standards. In order to determine the standards both in Development Plans and Implementation Plans, the population of the area is needed to be known as determined in the law no. 3194 and in its regulations. With population projects the areas needed for facilities will be evaluated and consequently located selection of these facilities will be realised during the planning process. In order for the complete realisation of this process with an optimistic possibility either no plan change requests should be made or the changes should be made according to the conditions which take place in article 21. It is known that making changes on plot base with piecemeal plans and plan changes are very prevalent. In this case, it is impossible to say that article 21 determining the conditions that should be considered in changes on implementation plans is applied efficiently.

It is impossible for minimum standards, application of article 18, controls on buildings which take place among the tools determined by law no. 3194 for constituting a healthy environment to acquire functionality unless an organisation about the

limitation of the profit by equal distribution which was produced by planning decisions of plot/land values in urban space occurs.

In the conditions when this kind of arrangement does not occur, with individual objections about decisions of implementation plans it is almost inevitable to prevent the transformation of land uses into the ones which increase the urban land profit. In this situation when a struggle between profit and forming a healthy environment on urban land occurs, land profit will have priority. In sufficiency of facilities in cities of today mostly bases on this fact, in spite of all the regulations.

3.3. Privatization Policies and Their Spatial Reflections

The period which started with economic crisis in 1970's was a period when new political and social arrangements and practices began to be seen as well as changes in economic field. The subjects which determined the globalisation process in this period can be listed as:

1. Capital accumulation and re-organisation process;
2. Production relations, transformation in production types (from fordism to post-fordism; transformation to flexible production type);
3. Increase in the activities of international, supranational organisations;
4. Transformation in governing system (from government to governance);
5. New functions of the state and deregulations.

Among the titles mentioned above, in parallel with the acceleration which capacity activity (accumulation and circulation of capital) gained in this period, re-organisation and re-structuring processes are seen from global level to local level. After World War II, welfare state (social state) practices and policies which developed within fordist production relations gained a new dimension with the help of globalisation. In this process, the new state re-shaped by the new distribution policies formed by the re-treatment of the state from economic field, and "abandonment" of development enterprises, constitutes the breaking point in the concept and practices of welfare states. This period when considered from two viewpoints which are 1) accumulation of global capital and intensification of it at certain cities and 2) distribution of production relations with nation-state model and their control mechanisms, it indicates to two

important points. First one is shrinking state becoming dependent on cities and on capitals accumulated in the cities, abandoning its economic and social functions. In other words, it is the fact of urban economies. Second one is the transformation of "relatively equal distribution model" which is accepted by the welfare state or developmental national state, to the equality model basing on free entrepreneurship determined by free market conditions.

It is important to from a balance between the egalitarian policies of cities competing in drawing the capital to themselves, distribution relations and national benefit, in globalisation process. The risk of not having this type of balance, against all the national benefit which cities will gain, is the increase of existing inequalities within and among the cities as the result of unorganised enterprises (Keyder, 1993; 90-101). Among these developments, legal and administrative organisations gain importance in providing an equal distribution.

It can be concluded that reflections of this process on legal organisations in practices of Turkey has started by the approvement of "Law about Organising Privatisation Practices" no. 4046 in 1994. The aim of this law is determined as "organising the privatisation of all kinds of properties and real estates, their rights of management, share payments, properties, service units, wealth and institutions in order to increase the efficiency in economy and decrease the public costs". As can be detected from this article, this law targets the subjects like organising the state policies of shrinking the state in order to "increase the efficiency in economy", how that will be realised and which state enterprises will be included in this process Privatisation and Nationalisation which together take place in article 47 of the Constitution indicate to the breaking point in Turkish practice of welfare state entering into a new economic organisation. In this concept, the state gives up making investments in order to create resource and shrinking policies and privatisation form the basic inputs of state resources. After the validity of law no. 4046, great enterprises known as KIT (Public Enterprise), their services and real properties began to be sold for the purpose of "increasing economic efficiency" and so the privatisation process began to be realised.[53]

[53] After the arguments about this subject two groups with different viewpoints came out: first group claims that providing efficiency cannot be succeeded by privatization policies and the other group defends that "privatization" is the only solution. However, whatever the argument are privatization started and is continuing rapidly. Among the institutions that may be subject to privatization in article 13 of the law, Turkish Airlines, T.C. Ziraat Bankası, Türkiye Halk Bankası, the Agricultural Products Burean, Turkish Oil have to form preferred stocks. And privatization conditions of these institutions and strategic subjects are connected to this rule.

Kazgan considers this process seen in Turkey and its reflections on economic field as "privatisation of public benefits, expropriation of private benefits. Support of state on the banks and on private enterprises in which great number of firms take place and save them from sinking is the expropriation of private benefit. In this sense public pays the financial losses of private sector. Besides decreasing the risk of private sector and forcing the public to pay their losses instead of the owners of those firms, privatisation of public benefits are realised through decreasing the public revenues/wealth and through transferring the opportunities which large masses benefit from to few firms".(Kazgan; 1999;213-281)[54]

First of the concrete, effects of law no. 4046 on urban land is its decision taken for the sail of public lands and realisation of sailing/privatisation procedures with this decision. These practices, meaning transfer of public land to private ownership, increase the problems of reservation of lands for urban facilities needed in the formation of a healthy urban environment. It is stated by the urban planners that consumption of existing public land stocks without forming integral and long form programs about the need for technical-social facility areas and how this need will be met and about the long term urban land needs, means to mortgage the future of the cities.(Özdemir; 2004; 500)[55]. In this sense, law no.4046 has a content which may cause privatisation of public interest in all activities starting from macro scale to micro scale and from investment decisions to the decisions about physical space.

Another effect of the law is, authorities defined in urban planning and the new approach determined in planning. There is also a change on the article 9 of Development Law no. 3194 as stated in the article 41 of law no.4046. This article gives an opportunity of preparation of all kinds of plans on "the plots and lands taken into the program of privatisation" by Directorate of Privatization and going into effect after the approval of High Commission of Privatization. In the paragraph D of the article 19 of this law it is stated that: "preparations about the division and joiner of the real properties belonging to the corporations and the process required by these organisations are made by administration, till the public share falls below 50% in the joint stock corporations and till the transfer date of the others is reached as the result of privatisation

[54] For discussion of the different direction of globalization and effects in Turkey See these sources; Kazgan, 1999; Keyder;1993;2000; Güler,1998; Eraydın.

[55] For a detail viewpoint about why public lands are necessary in urban space see Özdemir's unpublished PhD Thesis (1993); Tarık Okyay Anısına Makaleler (1991; 497-514); Chamher of City Planner's publishing "Özelleştirme ve Kamu Arazileri"1997.

applications. Articles 15 and 16 of Development Law No. 3194 cannot be practiced in the processes about the division and joiner of real properties within this content."[56] With this decision which puts the local governments out of session during the planning process, the realisation of the privatisation of development rights on the plots/lands will be caused also beyond the privatisation of plots/lands itself. Likewise it is known that many suits were open in the courts about the cancellation of implementation plans and removal of national treasure lands which are spared for common usages in implementation plans from these kinds of usages (Özdemir; 1994; 499). This process seen in Turkish practice causes an unplanned and spontaneous development in urbanisation process which has not caught the housing and healthy environmental conditions in urban space yet besides the shrinking policies of the state. At this point, the right of living in a healthy environment in urban space is almost out of question especially for low-income city dwellers within the free market conditions. From this viewpoint "expropriation" procedures conflicts with "privatisation" policies in the realisation of facilities in cities.

It is known that attempts of "shrinking the state" have many social effects like social inequalities, increases in social polarisation, as observed in many societies. The most affected ones from this transformation in every society are "poor" people and this process produces new poor people in cities. In Turkish practice, however, state retreats from the basic public services like education, health, social security which it tried to undertake before and leaves these services under the responsibility of market mechanism which; means commercialisation of the profitable basic services. As the result of this commercialisation, while the opportunity to benefit from these highly qualified services exists for high and mid-high income groups, low-income groups on the other hand have no other solution but becoming dependent on informal supporting relations within this system (Erder, 1998, 107-114).

Concept of public interest became a subject on which many arguments were done during the period when these developments occurred. Priorities which changed in urban space make he question of how the urban sources will be used and distributed very important.

On one hand while the cities competing in global scale and their attempts to be included in to the process in urban design scale are seen, on the other hand one way

[56] Odyakmaz, 2001, 141-146; For the law at WEB-2 and WEB-14 are cosidered.

development in urban areas created by this process increases the dual structuring and inequalities and urban planning turns in to a constitution which increases the inequalities with its fragmented approach. Free circulation of the capital and new accumulation models re-shapes the urban area as a component of this development. Inequalities in economic field are reflected on the spatial area and spatially reproduced again.

Social state which takes place in the relative equality approach presented by the progressive model enters into a new period with privatisation policies on public services like education, healthy, etc. and with decreases in the enterprises. (Keyder, 2000, 34-35).

3.4. Gecekondu (Squatter Settlements) and Legal Arrangements

Fact of gecekondu began to be seen in Turkey at the end of 1940's as the result of rapid urbanization and intense immigration. Solution taken for the problem of housing requirements of the population who migrated to the cities and who could not meet their housing needs in legal ways is called as "gecekondu". Gecekondu formation process even though is a way of meeting the needs of shelter from 1940's to today also represents a very different social structuring. According to Kongar, in the development of this social structure, gecekondu formation process as "owning house in illegal ways" also started two other processes, which developed with itself. First one is speculation on plots and the second is the degeneration in local and central policies. These two processes which started with gecekondu formation process took strength from it as strengthened it. This trio gecekondu formation process, speculations on plots and political degeneration began to affect the general urban pattern of the country and consequently the general urban pattern of the country and consequently the general structure of it (Kongar; 1998, 563-64). It is possible to detect the reflections of the determinations of Kongar on legal process, too.

Gecekondu Law No.775 which came into effect in 1996 is the most comprehensive law about gecekondu since 1948. In the first article explaining the content of this law it is stated that; "decisions of this law will be practiced about subjects like improvement, elimination of existing gecekondu, preventing building new gecekondu and involves measures that will be taken for this purpose." The definition of

gecekondu in this law is made as; “building built on lands or plots owned by other people without taking the acceptance of the owner disregarding the laws and general decisions organizing the development and building affairs.” In the regulation of Practicing the Gecekondu Law there are articles about the improvements, eliminations and preventions of gecekondu such as; determining gecekondu areas (article 16), preventing restructuring (article 18). According to article 12 of law no. 775 a fund is founded for; giving credits to ones who will build, repair houses, for usages like making plans and projects, buying plots and constructing houses on these plots and for providing public services to these areas (article 15). For plot allocation this law puts the condition of being poor and in this sense constitutes a direct link between gecekondu and low-income groups (article 25, addition1).

When problem of gecekondu is examined economically and socially and also from the viewpoint of their reflection on space it will be seen that their solution has to involve these two dimensions too. Law no. 775 has the property of targeting the solutions of problems, reflected on physical space. In this content because the problem is considered only as a sheltering problem and because this law only targets the solution of this problem spatially without eliminating the social and economic problems, it cannot bring a permanent solution (Keleş, 1990, 379). After the acceptance of law no.775 gecekondu problem still continued in Turkey. For this reason Law of Development and Amnesty for Gecekondu no.2803 in 1983 and “Law about Processes for Building Contrary To Gecekondu Regulations” no. 2981 in 1984 went into act. Within the contents of these laws gecekondus and illegal buildings that were built before 1981 were forgiven. It is clear that the illegal building which constitutes the target of gecekondu laws do not form of a homogenous social group. In this sense, the first group forms of buildings built without legal permission on plots owned by themselves, and the second is the group that builds buildings on plots owned by others. Because this duality formally bases on ownership rights, second one is a fact which came out as the result of individual searches for solution to housing problems of low-income groups. Gecekondu problem which started in 1948 in Turkey is mostly the housing production way of second group. This indicates that the economic and social structure differentiations which lay in the origin of main discrimination between illegal building and gecekondu should not be disregarded. After all the Development amnesties till today there is no indication that the housing needs of this group were organized, met

and the problem has come to an end. On the contrary this problem still continues[57]. It is a matter to be discussed what the right to live in a healthy environment means for the ones who cannot have this opportunity.

Because these amnesty laws generally do not have the quality to bring solution to the housing problem of low-income groups, consider the problem only from spatial viewpoint and no integral evaluation is done about housing policies, gecekondu problem as a social, economic and physical sheltering for low income groups has not yet solved. Likewise after Development amnesties after 1980 in Izmir, in the studies about gecekondu problem it is seen that citizens who cannot meet their housing needs in market conditions continued to form new gecekondu areas as a solution to this problem. Existing gecekondu areas in urban space were either accepted as non-existing and standart implementation plans were made by the municipalities or they were organized as profit tools for different social groups by the municipalities.

When Izmir sample is examined it is seen that slum reclamation plans were not solutions for gecekondu problems. Now on the agenda of cities "gecekondu improvement" attempts within the content of "urban renewal" projects take place. Urban land taking its place in capital accumulation process and strengthening of house/land market results desertion of process of sharing the profits to the market mechanisms. In this process the sheltering needs of low-income groups and poor citizens can not be met. In this content, low-income city dwellers who cannot realize the right to live in a healthy environment and right to own a house have the property of being illegal but also being legitimate.

3.5. Housing and Sheltering; Right to Live in a Healthy Environment and Results of the Arrangements

In formal justice arguments, in a general evaluation done about the city and concept of urban planning discipline, firstly the legal-administrative arrangements and practices formed within the frame of the Constitution have to be discussed. Therefore, firstly a general evaluation about housing and ownership which take place among the

[57] Unfinished report studying gecekondu formation processes after the Development Amnesties in sample of Izmir is a detailed study on this subject. "Gecekondu Areas in Izmir After the Construction Amnesty Acts: Socio-economic, spatial analysis" research findings supported by Tübitak.

prior subjects in the organizations of urban land and in the content of social state will be made.

3.5.1. Social State Practices

It is expected that "welfare state" considered together with "social state governed by the rule of law" and priorities in the practices of these state governing systems should be realized in a way of taking precautions about decreasing the inequalities in social structure. The origin and legitimacy of the existence of this type of state will base on decreasing the equalities that come out in capitalist and free market developments. Arrangements in such a state will undertake dual functioning not in the integral of production relations but in distribution relations and with the policies of decreasing the unbalances origining from these production relations. First of these functions is, forming the arrangements that provide free market conditions to process away which involves all social groups. And the second is, concerning to the problems created by the system by decreasing the extreme inequalities that may be seen within this system. In this context, inequalities will not imply a property of a radical solution because they will not cover the integrity of production relations, however deep inequalities and polarizations will be decreased with the attempt of providing the equality. From this viewpoint, social state will have the property of being a precondition for the most reliable operation of market mechanisms and social structure with the least conflict.

In the practices within the state of law or within the absolute rule of law, the state takes its legitimacy not from the decrease of social inequalities but either from the authority of the dominant legislator or from the maximization of freedom. If the rights, freedoms, interests and equality which are provided by the laws in such a "rule of law", base on the acceptances of the dominant authority, the legitimacy problem will either base on the acceptances of this authority or will never come out because of the authority. If it takes the increase of freedoms as a base, economic inequalities will be accepted legal because of the priority of freedom before equality. This type of state as the controller of freedom will come out within the "minimal state" (night watchman state) which is defined as an acceptable state by Nozick and inequalities will be out of discussion because of priority of freedom. In other words, in freedoms in economic

field, acceptance of priority of freedom do not base on elimination of inequalities in the sense of provision of equal competing rights. The subject on which legal-administrative arrangements orients toward will be in the direction of guaranteeing the equality in free competing conditions.

It is evident that there are acute differentiations in the organizations of interest, equality, freedom, and rights between these two state organizations; first is social state governed by law and the second is state of law. In the welfare state model as a practice type of social state governed by law which came into agenda after 1940's, freedoms are limited for the purpose of minimizing inequalities in distribution relations and free market conditions are arranged within this frame. Need base approach which Rawls has arrived by taking these organization stipulations a step further can be evaluated as the revision of welfare state practices. This type of revision carries the meaning of the priority of equal and interest concepts against freedom and right concepts coming into agenda. In this context, welfare state will use its priorities for the most disadvantaged and will orient towards new organization and arrangement mechanisms. Form of the state as a response to two liberal approaches which determine the priority of equality and liberty will gain concreteness by the arrangements of the laws and practices targeting the economic, social and cultural fields within the frame of these laws.

When this process is considered from the viewpoint of sample of Turkey, it can be seen that state, in the Constitution of Turkish Republic dated 1982, is defined as: "social state governed by the rule of law". Within the content of this definition, it can be concluded that the duties of taking measures and making attempts in subjects like individualistic and social rights, freedoms and balance of interests, in order to provide equality, are given to the state. Within this frame, legal frame organized in the realization of the legal/political dimension of social justice formally and whatever these practices are and how they are realized carry great importance. In this sense, it is seen that the state is obliged to make arrangements along with its duty of providing the equality (article 5).

Even though principle of social state governed by law is determined within the content of the 1982 Constitution, it is clear that conflicts between the legal arrangements about the realization of this principle and the developments in economic field occur. Constitution in act even though draws an abstract frame because of its properties of generalization and comprehensiveness it is also seen that it takes decisions for the behalf of public interest, social interest, justice, equality, rights and freedoms in

establishing a social balance and gives this duty to the state. However, results of decisions at Constitutional level that nationalization as well as “privatization” can be realized for public benefit (article 47). Processes of “privatization of public properties” and “expropriation of private properties” create a tension and conflict in the idea of the state in providing the equality by being “a social state governed by law”. As the result of these conflicts it is seen that as the sum of individual interests social interest is accepted in economic developments that grow within the liberal atmosphere and within free market mechanism. So, economic and social rights defined by the Constitution cannot be reflected on practices and the concepts of rights, freedoms practically continue to be abstract concepts.

3.5.2. Influences on Cities and Urban Planning Discipline

Process mentioned above, inevitably influential and determinative on the cities and urban planning in Turkish practices. It is known that urbanization followed a very rapid line since 1960’s and gecekondu formation process became an unchangeable property of urbanization in parallel with urban population increase. Besides these, housing shortage, insufficient infrastructure systems, degeneration of environment, transportation problems, aesthetic pollution in settlements which are indicators of unhealthy urbanization are among the problems which come out in parallel with this increase. In spite of all these developments, within the content of the Constitution, there is no direct expression about interventions on urban land, administration of urban land and on urban rights except the definitions which take place under the titles which are right to live in a healthy environment, settlement freedom and expropriation. It is possible to reach to the same conclusion in the legal arrangements and practices in sub-levels. If the limitation levels of practices about housing right are evaluated, it is seen that this right is acknowledged before the laws but never as realized. As mentioned in previous chapters, authorized administrative and application units also accept the insufficiency in providing the housing rights and mention this fact in their own studies and reports also.

3.5.2.1. Housing Right

According to Kaboğlu; even though settlement freedom and housing right are organized under different titles they are actually two human rights strongly linked with each other. Housing right as a human right is a realization degree of other rights and freedoms and to own a house is a social right for individuals. Housing right is the lowest human right for protecting the human honor and it represents the measure of realization of other rights and freedoms. Freedom of selecting and settling wherever they wish to is just an abstract freedom for the one who cannot find an opportunity to own a house. Housing right is necessary but not sufficient for right of settlement (Kaboğlu, 2000, 59).

Kaboğlu describes the relation between social state governed by law and housing right as: "social state governed by law is a state form that organizes the economic and social way of life by an efficient planning, decreases the social inequalities and protects the rights of disadvantaged groups by decreasing the social inequalities and by creating opportunity equality... If housing right is the lowest of all human rights, is also the minimum measure of social state governed by law" (Kaboğlu, 2000, 62).

In the realization of housing right which is the minimum measure of social state governed by law both the accepted laws (Development Law No. 3194, Mass Housing Law, Gecekondu Law) and the organizations formed by these laws are insufficient. Nevertheless, it is also obvious that there is no integral policy about the sheltering and housing rights and the planned investments are insufficient in their organizations and practices about the groups which own this right. When considered this way, it is impossible to say that the minimum measure of social state governed by law has successfully accomplished its aims. Contrarily, with the existence of privatization policies, such a measure gained a property that should be discussed.

Even though house has a meaning of being an individual property and since living in a healthy and balanced environment is accepted as a right, it is a matter expressed that there is a need for a new legal frame about providing the rights of macro scale public interests and individual rights in a balanced way (Erkun, 1991, 59). However, it is evident that firstly new arrangements are needed to be done in economic and political fields about the approach of social state governed by law which gives priority to equality.

3.5.2.2. Limitation of Ownership Rights, Urban Land Profits and Interest

It is determined in the Constitution from the viewpoint of Urban Planning discipline that rights of private ownership may be limited by the law for public interest in urban space plans and usage of private ownership right cannot be against the social interest. By such a limitation, even though the right of ownership is the individual right of all people as a right its usage against the social interest is forbidden and also it is determined that limitation can be put on these rights for "public interest". In this context, there are no clues and explanations about the matters involving social and public interest even though the necessity of limitation targeting the social interest is determined, in the Constitution.

Non existence of organizational mechanisms in economic field also results uncertainty about to whom (which social group) the concept of interest is oriented toward. The importance of ownership rights in planning discipline origins from the limitation or increasement of these rights by planning decisions. It is accepted that urban planning puts limitations to individual ownership right for the social/public interest through the laws basing on the Constitution and through implementation plans. On the other hand one of the basic data constituting a foundation to implementation plans being the ownership data also indicates to the importance of private ownership priority. Conflicts with this fact, is the disregardment of economic influences created by the decisions basing on these data in the organization of distribution relations.

From this viewpoint, its being socially produced, determination of the rights given by the implementation plan decisions (positive or negative), infrastructure being provided by public and economic values are the most important properties of interventions on urban land and urban plot ownership. It is interesting that no arrangement was done about the justly distribution of this profit between the owner and society, against these properties of individualistic ownership and opportunities and profit it provides to its owner with its properties. It is important to provide the transformation of the profit produced on urban plot both by planning decisions and by citizens and by public, not individually but socially (Tekeli, 1991, 117-123). Another dimension needed to be evaluated about urban land is its property of being a speculation tool because of its multi-functional property. Urban land profit and plot and house as an

economic income gained a new dimension with post 1980 developments. This point which is reached in 7. Five Year Development Plan also is defined as "high urban profits and their unjust distribution cause formation of an illegal market"[58]. In his evaluations this process as: "land profit and this profit being tax-free, and its transformation into a very attractive investment reason, eventually, as an income source with a high profit resulted the participation of different groups into this illegal building and plundering from different levels and rates" (Ekinci, 1998, 191) . In such a reality, the insufficiency in the organization of distribution relations in urban space means basic rights and public interests defined in the Constitution and by laws, staying in the level of abstraction. The basic acceptance, taking place among the planning principles that provide the legitimacy of planning and in the interventions on urban land ownership pattern as a basic determination in implementation plans, is; the hypothesis that these interventions are done for the behalf of benefits in the protection of social order and by regarding the public interest. In the evaluations of Inankul and Eryoldaş about this process it is criticized that no price was paid to the society by the urban land created by the society in the process of its transformation from a land to an urban plot, even in the condition when public interest is regarded. At this point while some people make sacrifices for the behalf of public, some others benefit too much from this process made in the name of society. Therefore, it is necessary to reconsider the decisions about ownership and making arrangements about ownership decisions in order to prevent profit increases are required (Inankul&Eryoldaş, 1991, 162-167). Elimination of the tension between the economic liberalism chosen after 1980's in Turkish practice and "equalitarian" approach which take place in legal arrangements is a serious argument for the realization of such an arrangement. In other words, it is a conflict that appeared as the result of equalities defined in political/legal fields finding a practice opportunity as an equality in entrepreneurship freedom. Not the elimination of this conflict which takes place in the nature of social state governed by law but its decrease will only be possible with re-evaluation of the arrangement mechanisms in the distribution relations of the social state governed by law.

[58] quoted from; Ekinci; 192; 1998

3.5.2.3. Individual, Social and Public Interest

For a meaningful concept of public interest in "social state governed by the rule of law", how and by whom the values are created, by whom they are shared and how this process is organized carry great importance. In this context, a public interest acceptance disregarding the distribution of national interests within the society and how they are reflected on the society, will have a property of aiming the legitimating of this arbitrary and definite process, rather than being a meaningful concept. When this process is studied from the viewpoint of urban land, it is seen that individual and public interest at every scale from macro scale plans to the decisions basing on the scale of a single plot have different contents. Therefore, for the concretization of public interest a very extended evaluation is needed to be done about the balance between individual and public values. Keleş, determining that liberalism being accepted as identical with the lack of constraint will be most harmful on cities, bases the fact that balance giving shortage from the viewpoint of urbanization in the last 30 years, is basing on liberalism not succeeding on providing a balance between individual interests and public interests (Keleş, 1991, 16).

Even though there is no definition about what the public interest in countrywide, regional and local scales mean, acceptance of city plans as documents which have public interest properties will only be possible with the establishment of this balance. These necessities the evaluation of the plans from the viewpoint of distribution relations with an assumption that they are not socially, economically and culturally neutral from macro to micro scales and that everyone/public will benefit from every intervention done on physical space. It is impossible to accept the idea that a neutral plan can be made and a benefit be provided from this plan from the viewpoint of the value of urban space and urban plot, as mentioned above. From the point urban plot has reached, it is evident that while plan decisions limit the freedoms of certain groups they on the other hand increase the benefits of some others. At this point, planning activity giving decisions on urban plot, evaluates the redistribution mechanisms it defines on urban space, equalities and rights in an integral consideration and necessities new legal arrangements and practices within the frame of these evaluations. Within the context of these evaluations, how the relations between rights, freedoms, equality and interest as components of justice in legal processes and interventions in the provision of formal

justice are evaluated will be studied in the next chapter. This evaluation will base on the concrete reflections of abstract conceptual frame and on the dimension which conflicts on urban space have reached.

3.5.2.4. Results Orienting the Turkish Practices

While planning before 1980 was defined as an important tool of the development paradigm of the state as a public activity, after 1980 the legitimate base entered into a crisis on which this public activity based on by market processes taking the place of development economy. In this period development amnesty laws, privatization laws and practices in the "shrinking" of the state are among the arrangements that affected the urban planning discipline. These developments caused a new period in planning discipline. Planning discipline entered into a new period with new economic demands loaded on the space with the effect of newly defined right, interest, freedom and equality approaches on one side and globalization period on the other. These developments create a paradox among the acceptances of disciplines of law, economy and planning and deeper yet from the view point of legitimacy of planning. This paradox; is different definitions and practices of concepts like equality, right, freedom and interest which are the components of justice in individual perception, legal decisions, economic selections and planning practices. In other words, searches for right as conflicts seen on urban land, compete their own discourses and practices on urban space by founding them on different acceptances. This process in Turkish practice shows the tension between different values of multi-dimensional definitions of concept and institutions of ownership as an economic value, as an individual right, as a response to need to shelter, as a tool in meeting the needs in public space. The multi-dimensional definition of ownership institution is; it shows the conflict between

1. Public interest and private interest;
2. Individual rights and social rights.

The dimensions/results of this conflict occur within the frame of division of the city into legal and illegal building areas (gecekondu areas and gecekondu problems and illegal buildings) and urban land policies.

These differentiations are also responses to the differentiations in considering the justice in urban area from different approaches, too, in Turkey.

In the legal transformations which form one foot of the imported substitution economy policies and modernization:

a. change in the meaning of “public”,

b. urban land becoming a profit tool rapidly,

c. dissolution of development paradigm.

This process, questions what the “public interest” on which planning discipline is founded as a public activity, means with the transformation of development policies.

CHAPTER 4

EVALUATION OF THE JUDICIAL CONTROL AND PLANNING PROCESS DIRECTION ON THE JUSTICE DEMAND IN NARLIDERE AND BALÇOVA SETTLEMENTS

In this case study, influences of planning practice and judicial process on formation of physical urban space and differentiations of justice concept in this process are examined. Planning process is discussed in research, plan making, approval, implementation processes as a whole and as all actors that are active in this process. Relationship between judicial control and planning process is evaluated through the actions proceeded in case study area and subjects of actions. In this chapter, data evaluations are explained after giving a general information about case study area. By the study of action patterns selected from the court files generalized in judicial control and planning process, justice definitions of different actors regarding urban space are evaluated.

4.1. Development Process of Balçova and Narlıdere Settlements

Case study area is on the left axis of İzmir and has been existing in urban development area particularly after a rapid transformation in 1980's. There are two important effects of the year 1980 on this area. First effect is the loss of independent municipal organizations by the military intervention in 1980 which were established in 1960's. Between the years 1980-1992, this area was firstly included inside the boundaries of central county and central municipality (Municipality of İzmir) and then inside boundaries of Municipality of Konak. Transformation of the two settlements again into independent municipal status and giving a county status was realized in 1992. This administrative change means the transmission of plan making, approval, implementation and control authorities of planning process to Municipality of Konak between 1985-1992. Transmission of authorities again to municipalities of Balçova and

Narlıdere realized in 1992. By this change, planning practice and actors determining planning practice have also changed.

Second effect is the legal and administrative arrangements enacted after 1980 in Türkiye in general. Primary legal arrangement which is very important in the framework of the study is the Development Act No.3194 mentioned above, that was enacted in 1985. This act is one of the most important legal arrangements that determines planning practice and planning process in Türkiye. In the extent of the act; minimum standards that are obligatory in plan making process, means of implementation, and hierarchic structure of planning are declared. By the new arrangements in the act; authorizations, tasks and responsibilities in plan making-approval stages have been conveyed from central government to local governments. Conveyed authorities and planning process have also been localized. Furthermore, local administrative courts have been stated as the authorized institution of spatial subjects in administrative dimension by the amendments in Turkish administrative and legal system and by the laws arranging administrative judgement (Aybay&Aybay, 2003, 250-253). Administrative courts established by the Act No.2576[59] were the primary authorization that spatial conflicts are proceeded. Council of State was the authorized court before the act and by the act, Council of State has been the authority of appeals. This process means the localization of both development planning process and conflicts in this subject in legal-judicial control and indicates a different term in planning practice. Institutional transformations in legal process regarding development planning practice and legal arrangements are the indicators of determination of development planning and urban development after 1980.

As a result of these developments; municipalities of Balçova and Narlıdere in the study area represent one of the administrative bodies that has the authorization, task and responsibility on development plans, space and spatial arrangements, interventions, decisions that will be taken in the name of public inside municipal boundaries. Particularly, in the Development Act No.3194 and Act of Municipalities No.1580, municipalities' authorizations and contents of these authorizations in development planning process are declared. In this framework, in the actions proceeded about physical space, municipality is one of the most important parties in arrangement,

[59] Act of Establishment and Tasks of Regional Administrative Courts, Administrative Courts and Courts of Tax No.2576 has been enacted in Jan 6, 1982. Other important acts concerning administrative judgement are; the Act of Council of State No.2575 and Act of Administrative Judgement Procedures No.2577.

application and control of plan decisions taken regarding implementation process. Therefore, related municipal organization is authorized to realize the intervention and control of spatial arrangements inside municipal boundaries in the name of public.

Balçova settlement has become a county in 1992 and in the same year, its dependent municipal organization has reestablished which had been closed in 1980. On the other hand, Narlıdere settlement has been consolidated with Güzelbahçe and become a county named as Narlıbahçe. In 1993, Narlıbahçe has been divided into two counties named as Narlıdere and Güzelbahçe.[60] 1993 is the establishment year of the independent municipal organization inside today's municipal boundaries.

Population growth of both two settlements existing in the left axis of İzmir city has become more rapid after 1975. These regions that have an important agricultural potential until 1980's, have been included in the Master Plan of Metropolitan Area in 1978. Particularly, the region existing inside the boundaries of Sahilevleri, Bahçelerarası, İnciraltı and surrounded by coast and İzmir-Çeşme Highway was declared as 1st Degree Area that agricultural quality has to be protected. (See Figure: 4.1&4.1A) First development plans were made separately for these two settlements in accordance with the above mentioned decision and approved by the Ministry of Construction and Settlement in 1981. (See Figure: 4.2 and 4.3) Existing populations during that plan making process were; Balçova: 30.030 and Narlıdere: 23.100. In the plans approved in 1981, decisions were taken regarding protection of the area having agricultural quality and development of the area was directed towards existing built-up area. First plans, which were made after the enactment of the Development Act No.3194, had many revisions and alterations. These plans were graded in between 1981-2003 and planning process was realized partially according to these revisions. This process can be seen in Figure: 4.4 and Figure:4.5.

Between 1980-2000, populations of these two settlements were; Balçova: 68.084 and Narlıdere: 53.281 with a growth of more then 50% in twenty years time. Thus, settlement area boundaries, determined in the plans in 1981, were expanded and densities inside existing settlement area were increased. Hence, it can be observed that, existing agricultural intensity and agricultural lands become less with parallel to the practices in Türkiye and İzmir. Besides, agricultural lands couldn't be protected as decided in the Master Plan of Metropolitan Area and in the plans approved in 1981.

[60] İzmir İlçelerinin Ekonomik Profili ve Alternatif Yatırım Olanakları, İzmir Chamber of Commerce, (2000) Issue No: 89, İzmir, pp: 621

Although not making any decisions or plans regarding these areas in the planning studies realized in both two settlements, increase in building density couldn't be prevented. Particularly, in Sahilevleri quarter in Municipality of Narlıdere and in İnciraltı and Bahçelerarası quarters in Municipality of Balçova, luxury housing areas of high income groups have developed. Between 1990-2003, planning practice regarding the built-up area existing inside the boundaries of both two municipalities were realized partially with development plans of revision, additional development plans and plan alterations. (See Fig.: 4.4 and Fig.: 4.5)

As a result of these developments, according to data of the year 2002, existing land use of both two settlements (with partial development, it can not be said that settlements have plans with a goal) are not appropriate with urban standards as stated in the Development act No.3194 and planning goals. Data regarding the planning process in these settlements that belong to 1992-2003 show the plan making process, transformation and intensity of demands in this process. At this point, lack of public services in existing land use is showed in Table:4.2 "Public Service Capacity Analysis of Balçova and Narlıdere Settlements".

Table 4. 1. Population Growth of Balçova and Narlıdere Settlements [61]

County/Years	1950	1955	1960	1965 (I)*	1970 (I)*	1975 (I)*	1980 (I)*	1981-92	1997 (I)*	2000 [62] (I)*
Balçova	1.342	1.701	3.114	6.387	11.432	16.906	30.030	C.C.	67.423	68.084
Narlıdere	2.655	4.853	11.176	14.147	12.853	14.667	23.100	C.C.	47.807	53.281
TOTAL	**3.997**	**6.554**	**14.290**	**20.534**	**24.285**	**31.573**	**53.130**		**115.230**	**121.365**

(I) The years when they were Independent Municipalities

Included inside the boundaries of Konak which had been Municipality of Central County between 1981-1992. Data has been obtained from Population Census Results of 2000 realized by State's Institution of Statistics.

[61] Resource; Semahat Özdemir; Metropoliten Kent Çeperlerinde Mülkiyet Örüntüsü Değişim Süreci İzmir Örneği(1993), Unpublished Doctoral Thesis, DEU Institute of Natural Science.

[62] Quarters of Balçova in this year: Çetin Emeç, Cennetçeşme, Eğitim, Bahçelerarası, İnciraltı, Fevzi Çakmak, Onur, Korutürk, Teleferik. Quarters of Narlıdere: Sahilevleri, Altıevler, Maltepe, Limanreis, Huzur, Narlı, Yenikale, 2.İnönü, Atatürk, Ilıca.

Table 4. 2. Public Service Capacity Analysis of Balçova and Narlıdere Settlements (Greater Municipality of İzmir Department of Planning, Municipalities of Balçova and Narlıdere, 1997)

	BALÇOVA		NARLIDERE	
	Existing	Deficient	Existing	Deficient
Public Services	Hectare	Hectare	Hectare	Hectare
Primary Education	13,2	21,3	18,7	10,08
High School	0,7	22,1	0,7	18,27
Socio-cultural	6,8	24,3	13,2	11,97
Health	5	25,8	4,2	21,42
Religious	1,1	2,74	0,7	0
Administrative	3,4	34,96	3,2	28,35
Recration	68,8	7,6	60	28,35

Figure 4. 1. The Plan of Metropolitan Planning Office, 1978 (Map by Funda Altınçekiç)

Figure 4.1.A. Detail from Balçova and Narlıdere Settlement (1978)

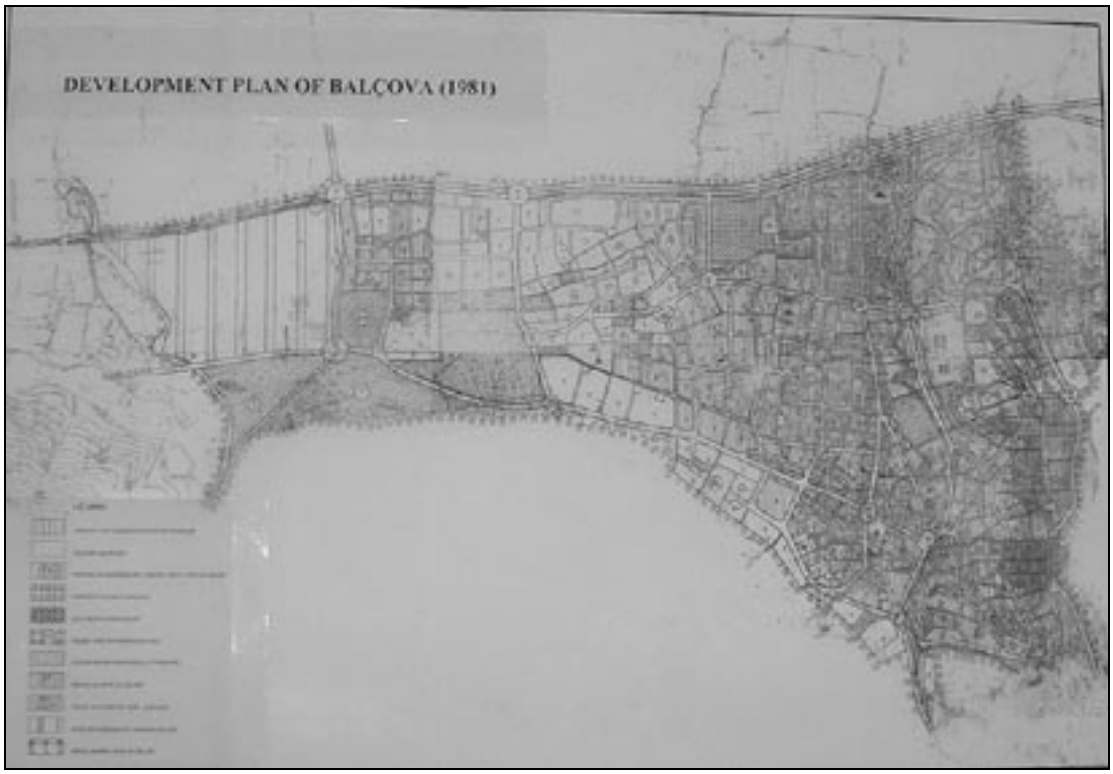
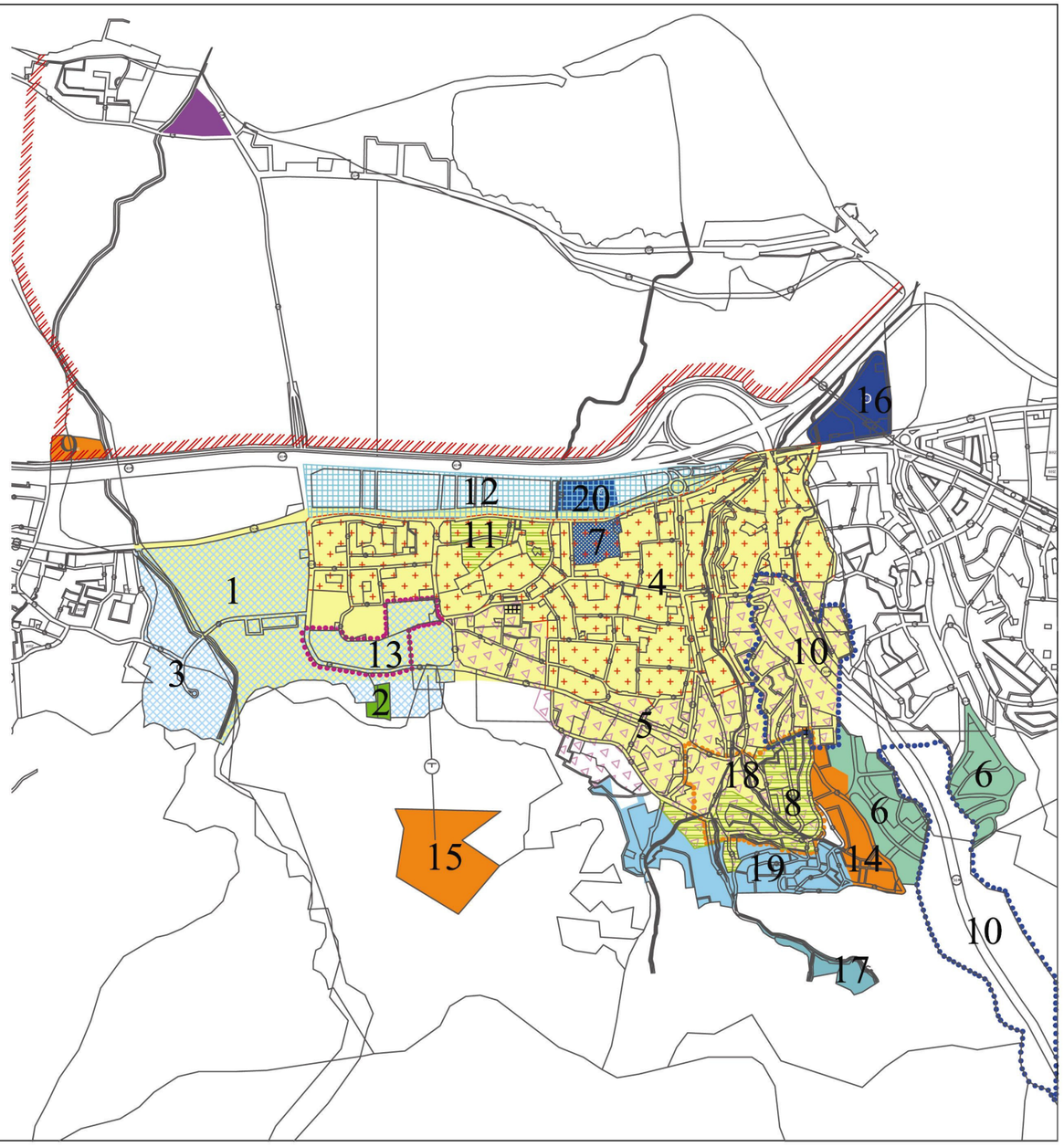


Figure 4. 2. Development Plan of Balçova (1981)

Figure 4. 3. Development Plan of Narlıdere (1981)

IMPLEMENTATION PLANS IN BALCOVA SETTLEMENT (1981 - 2000)

NO	ONAMA TARIHI	PLAN ADI
1	30.10.1981	BALCOVA IMAR PLANI
2	27.07.1982	57'LILER KONUT YAPI KOOPERATIFI
3	30.12.1982	KAPLICA TESIS ALANI
4	04.09.1984	1. ETAP REVIZYON IMAR PLANI
5	25.02.1986	2. ETAP REVIZYON IMAR PLANI
6	08.10.1986	ESENTEPE TAS OCAGI CIVARI NAZIM IMAR PLANI
7	17.10.1988	BALCOVA COK ISLEVLI KENT MERKEZI
8	28.02.1994	KOYICI VE CIVARI RTEVIZYON IMAR PLANI
9	24.07.1995	B.H.Z. ALANI (GUNUBIRLIK TICARET)
10	05.05.1997	EGITIM.C.CESME,MESALE YAPI KOOP. KARAYOLU REVIZYON
11	09.01.1998	22K-4C VE 21K-4D PAFTALARINDAKI PLAN DEGISIKLIGI
12	26.01.1998	IKIYOL ARASI IMAR PLANI TADILATI
13	14.04.1998	MESIRE ALANININ KONUT ALANINA DONUSTURULMESI
14	27.07.1998	BALCOVA (HACI AHMET MEVKII) ILAVE IMAR PLANI
15	23.09.1998	TELEFERIK TESISLERI UYGULAMA IMAR PLANI
16	08.10.1998	UCKUYULAR 22K-3A,3B,2DPAFTALARI REVIZYONU(DOGUS PLAZA)
17	17.12.1998	MEZARLIK ALANINA 10 PAFTA 541 ADA 111 PARSEL ILAVESI
18	26.06.2000	TELEFERIK MAHALLES REVIZYON IMAR PLANI
19	11.07.2000	20K-2,20L-4,21K-3 PAFTALARINDA ILAVE IMAR PLANI
20	27.11.2000	IKIYOL ARASINDA 62PLAN 1320 ADA 3,4 PARSEL TADILATI
21	14.8.1996	BAYINDIRLIK VE ISKAN BAKANLIGINCA ONANAN PLAN(OZDILEK)
22	1.07.1999	IZMIR 1NOLU KTVKK'NIN 8050 SAYILI SIT ALANI KARARI

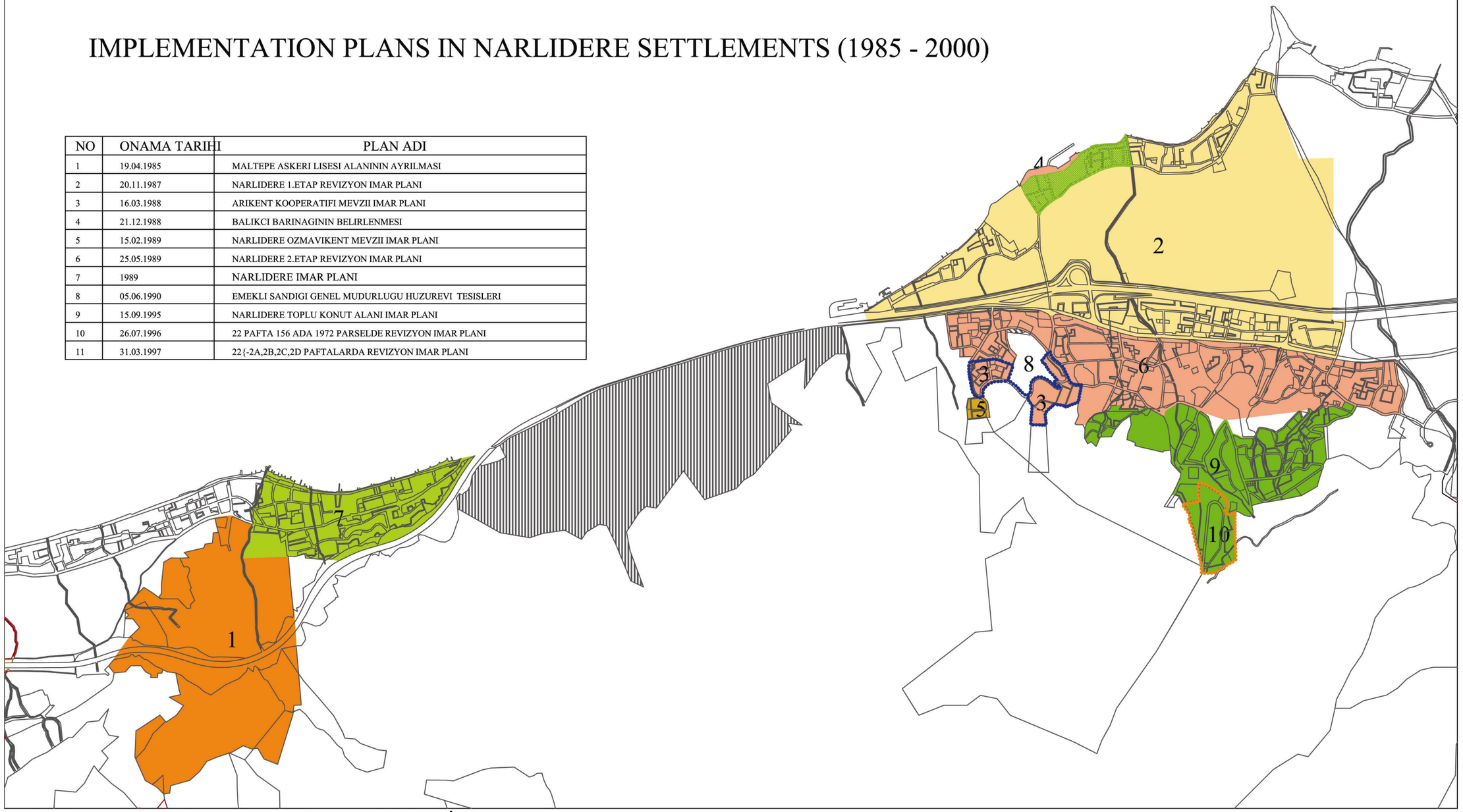


Derived from the data Planning Department of Greater Municipality of İzmir

Figure 4. 4. Development Plans in Force in Balçova Settlement

IMPLEMENTATION PLANS IN NARLIDERE SETTLEMENTS (1985 - 2000)

NO	ONAMA TARIHI	PLAN ADI
1	19.04.1985	MALTEPE ASKERI LISESI ALANININ AYRILMASI
2	20.11.1987	NARLIDERE 1.ETAP REVIZYON IMAR PLANI
3	16.03.1988	ARIKENT KOOPERATIFI MEVZII IMAR PLANI
4	21.12.1988	BALIKCI BARINAGININ BELIRLENMESI
5	15.02.1989	NARLIDERE OZMAVIKENT MEVZII IMAR PLANI
6	25.05.1989	NARLIDERE 2.ETAP REVIZYON IMAR PLANI
7	1989	NARLIDERE IMAR PLANI
8	05.06.1990	EMEKLI SANDIGI GENEL MUDURLUGU HUZUREVI TESISLERI
9	15.09.1995	NARLIDERE TOPLU KONUT ALANI IMAR PLANI
10	26.07.1996	22 PAFTA 156 ADA 1972 PARSELDE REVIZYON IMAR PLANI
11	31.03.1997	22{-2A,2B,2C,2D PAFTALARDA REVIZYON IMAR PLANI



Derived from the data Planning Department of Greater Municipality of İzmir

Figure 4. 5. Development Plans In Force in Narlıdere Settlement

4.2. General Evaluation of Actions Proceeded Inside Municipal Boundaries of Balçova and Narlıdere

Data that have been collected by acceptance of representing planning and spatial conflicts inside municipal boundaries of Balçova and Narlıdere (the case study area) consist of 1215 court files belonging to the period in between 1992-2003. Before 1992, 3 court files have been found, which were proceeded in 1988-1991, however, these actions have not been included in generalization and evaluation extent.[63] First classification concerning 1215 actions causing conflict is the differentiation of Administrative and Juridical actions. Examination of actions, proceeded between 1992-2003 according to proceeding years and administrative-juridical differentiation, is shown in Table: 4.3. "All Administrative and Juridical Actions Proceeded In Balçova and Narlıdere Municipalities According to Proceeding Years (1992-2003)". As seen in the table; number of juridical actions is 191, number of administrative actions is 565 and totally 756 actions exist in Balçova settlement. On the other hand, in Narlıdere settlement the number of administrative actions is 257, juridical actions is 194, actions in "others" category is 8 and totally 459 actions exist in Narlıdere. If actions proceeded in both two settlements are examined in total according to proceeding years, greatest portion belongs to the year 1999 with 241 cases, second portion belong to the year 1995 with 230 cases and third portion belongs to the year 1996 with 173 cases. Years that have the minimum number of actions are; 1992 with 4 cases and 1993 with 27 cases in total. If it is considered that the only authorized administration was Municipality of Konak before 1992, decrease in the number of actions proceeded between 1992-1993 depends on the establishment of new municipalities in these years. Total number of

[63] These three actions exist in registrations of Narlıdere Municipality. First one is an administrative action proceeded in 1988. In this action of objection, which was brought against the demolition decision taken by Konak Municipality, it was claimed that, related building was completed before 1984 and there was an application for development amnesty, therefore, annulment of the decision was demanded. In 1991, action was accepted in favour of plaintiff by regarding administrative court and this decision was approved by the Council of State (6th G.O.) in the same year. Second one is a juridical action proceeded in 1989. Subject of this action was the annulment of land register. Related court decided the acceptance of the case in favour of plaintiff in 1997 and this decision was approved by the 8th Civil Panel of the Supreme Court of Appeals. Third action is a juridical action proceeded in 1991. Subject of action was partition action and it was rejected against plaintiff by the related Civil Court of First Instance. Action was appealed and abated by the Supreme Court of Appeals because of not approving the decision of the local court. Action was concluded in 2001. These actions proceeded between 1988-1991 can not represent all of the actions in these years because Municipality of Narlıdere was not an independent municipal organization at that date and not included in general evaluation because of not obtaining systematic data between these years. However, these actions have importance because of indicating the existence of actions regarding physical space between 1988 -1991.

actions is limited with 7 actions, which were proceeded in 2003, because of the conclusion of the research process of the study in April 2003.

As proceeded actions are examined according to counties, it can be said that, 1995-1999 and 1996 are the years that actions in Balçova settlement most intensive. In 1995, total number of actions is 195 and 177 of these actions are administrative and 18 actions are juridical. In 1999, 154 actions are administrative and 15 actions are juridical which makes a total of 169 actions. In 1996, total number of actions is 116; 96 of them are administrative and 20 of them are juridical. In Balçova settlement, subjects of the actions proceeded mostly between 1995 -1996 are the collective objections to İzmir-Çeşme Highway and Site Decision No.8050 of İzmir No.1 Committee of Protection of Cultural and Natural Heritage.

In Narlıdere settlement, 1999 is the year when most of the actions were proceeded. There are 31 administrative, 41 juridical and totally 72 actions belong to 1999. In 2001, total number of actions is 58; 29 of them are juridical and 29 of them are administrative. Between 1996 -1998, total number of actions is 57. In 1996, there are 43 administrative and 14 juridical actions; in 1998, number of administrative actions is 39 and juridical actions are 18.

If total number of actions in Balçova and Narlıdere settlements are compare, it is seen that, total actions proceeded in Balçova is 756 and in Narlıdere 459. Although the number of actions proceeded in Balçova settlement is more than the number of actions proceeded in Narlıdere settlement, intensity of the actions in both two settlements under judicial control are the same. As mentioned above, number of actions is more in Balçova because of the existence of collective objections. Thus, it can be said that, there is no big difference in the number of actions proceeded in both two settlements.

Table 4. 3. All Administrative and Juridical Actions Proceeded In Balçova and Narlıdere Municipalities According to Proceeding Years (1992-2003) [64]

Administrative/ Juridical	County							
	Balçova		**Balçova** Total	Narlıdere			**Narlıdere** Total	Grand Total
Proceeding Year	J.	A.		J.	Others	A.		
1992	1		1	1		2	3	**4**
1993	12	13	25	2			2	**27**
1994	12	18	30	15		14	29	**59**
1995	18	177	195	6		29	35	**230**
1996	20	96	116	14		43	57	**173**
1997	13	31	44	15		25	40	**84**
1998	27	21	48	18		39	57	**105**
1999	15	154	169	41		31	72	**241**
2000	13	7	20	32		16	48	**68**
2001	42	22	64	29		29	58	**122**
2002	18	16	34	14		26	40	**74**
2003		7	7					**7**
Unknown		3	3	7	8	3	18	**21**
Grand Total	**191**	**565**	**756**	**194**	**8** [65]	**257**	**459**	**1215**

J: Juridical and A: Administrative

In jurisprudence discipline, differentiation of administrative judgement and juridical judgement also determines the characteristic of the procedure. In this differentiation formed according to the parties of legal relations; if the parties of the legal relation are persons private law is applied, if one of the parties is "state" then public law is applied (Aybay&Aybay, 2003,140). This differentiation, which has been occurred as a result of public law-private law separation, has caused the formation of administrative law and administrative judgement as a branch of public law and juridical judgement as a branch of private law. General aim of administrative law is to determine the rules that have to be obeyed in procedure, decision and arrangements of public institutions and organizations. Aim of administrative judgement system is to examine and conclude the claims about contradictory attitudes of organizations and persons

[64] Administrative actions in the table include the actions proceeded in Administrative Courts and Courts of Tax. In App:1 and 2 can be checked for subjects of action in the courts. Juridical actions in the table include the actions proceeded in Criminal Court of First Instance, Civil Court of First Instance, Commercial Court of First Instance, Court of Enforcement, Labour Court, Criminal Court of Peace, Civil Court of Peace. In App.:A can be checked for subjects of actions.

[65] "Subjects according to the courts" are shown in App.A. 8 cases existing in "others" title in the table shows the actions proceeded in the courts outside İzmir as; Unfair Competition (1case), Rental Contracts (court is not known and detailed information couldn't be obtained) (1case); Payments of Social Insurance Association (1case), Collective Labor Agreement (2cases) and Regulation (1case), Regarding Declaration of Property (1case) and Credit (1case). These are the actions that court files couldn't be obtained in Municipality of Narlıdere.

against laws or public management principles who use public power in certain decision, procedure and activities. Highest authority in this system is Supreme Court of Administration which is also named as Council of State. Administrative Courts, Regional Administrative Courts and Courts of Tax are the local courts (first degree courts) established in city basis (Aybay&Aybay, 2003,219-253).

Actions, which are caused by disputes in private law field, are named as "lawsuits". In these kind of actions, in "juridical judgement", courts with a general name of "civil courts" have been authorized by laws. According to this differentiation; procedures, applications, objections against the rules and decisions of Narlıdere-Balçova municipalities as local administration organ of state using public power and İzmir No.1 Committee of Protection of Cultural and Natural Heritage exist in administrative judgement's field. Number of actions proceeded in administrative judgement process in Balçova is 565, in Narlıdere 257 and total number of administrative actions are 822. On the other hand, although judicial actions represent the disputes between private persons, because of the subjects of actions are the objections to the procedures done by public power in public space, actions have the characteristic of being semi-public where municipalities are the parties in juridical judgement process. In spite of making such a differentiation in legal system, acceptance of the actions regarding planning process and space only as administrative actions and examination of actions that are proceeded in administrative courts will be insufficient for a comprehensive analysis. Thus, an evaluation based on that differentiation will also be insufficient.[66] In order to evaluate juridical judgement process and determination of the process as a whole, juridical/administrative actions have been discussed in total and proceeded actions have been evaluated according to their subjects and contents.

[66] As an example for this subject, Articles No.32 and No.42 of the Development Act No.3194 can be discussed. Administrative Courts are authorized for the proceedings regarding the buildings without license and conflicts regarding objections to demolition decisions for the buildings constructed against building license and annexes. Objection authorities for the development penalties fined for the same buildings are Juridical Judgement and Criminal Courts of Peace. Although contents of the procedures are the same, processes that they depend in judicial process are different.

4.2.1. General Evaluation of the Actions Proceeded Regarding Planning and Space

In order to determine the actions regarding planning and space through all actions, Table: 4.4. "All Administrative and Juridical Actions Proceeded In Balçova and Narlıdere Municipalities According to "Spatial" and "Others" Categories (1992-2003)" has been formed. Actions reflected on administrative and juridical judgement control have been grouped in two parts. Categorizations in "others" and "spatial" titles have been formed considering their relationships with planning and space. In this categorization, subjects of actions are considered if they have or not a transaction, intervention or decision regarding space and if this intervention affects or not persons and other public institutions in spatial basis. Thus, in both "*spatial*" and "*others*" categories there are common titles. For instance, in the differentiation under "*credits*" and "*title-deed*" titles, if it concerns an intervention of regulation on space it is included in "*spatial*" category and if it concerns procedures regarding municipal personnel, municipal properties or operations of municipal organization then it is included in "*others*" category.

In this categorization, subjects under "others" title are as follows: Credits (actions of debts caused by commercial procedures realized with persons and institutions except interventions on space); Personnel (actions of compensations (monetary and staff) caused by identity rights of municipal staff); License (actions regarding properties under ownership of municipality); Compensation (actions of compensation caused by commercial transactions between municipal organization and companies); Title-deed (land registers regarding properties of the municipality); Determination (determination of tenancy on properties of municipality); Evacuation (evacuation of the tenants from municipality's property); Others (dissolution of attachment, declaration of property, monthly pays of ghazis).

General subjects of actions examined under "*spatial*" title are as follows: Restitution of expropriated Area, Demand of Increase in Expropriation Value, Dismissal of Intervention, Partition Action, Evacuation, Title-deed, Ownership, Credits, Administrative Penalty, Easement, Narkent, Compensation, Development Penalty, Development Plans, Subdivision Plans, Annulments of Plan Change Decision, Demand of License and Annulment of License, Objection to Demolition Decision,

Relinquishment for Road, Determination, Taxes (entertainment, real estate, environmental), Objections to the Decisions No.8049-8050-10168 of İzmir No.1 Committee of Protection of Cultural and Natural Heritage.[67]

According to the data obtained from this classification, total number of actions under "spatial" title regarding planning and space is 965. Total number of actions under "others" title which have the characteristic of administrative transaction but do not include spatial subjects and actions that have juridical contents but not spatial subjects is 250. If this is considered according to percentage distributions; through totally 1215 cases, percentage of actions in "spatial" category is 79,42% and actions in "others" category is 20,58 %.

In total, 1215 actions are evaluated in county basis; in Balçova settlement, 112 of juridical actions (9,22%) have "others" and 79 juridical actions (6,5%) have "spatial" contents; 19 of administrative actions (1,56%) have "others" and 546 administrative actions (44,94%) have "*spatial*" contents. Totally in Balçova settlement, 625 cases are in "spatial" and 131 cases are in "*others*" categories through all administrative and juridical actions.

In Narlıdere settlement, 82 of juridical actions (6,75%) have "*others*" and 112 juridical actions (9,22%) have "*spatial*" contents; 29 of administrative actions (2,39%) have "*others*" and 228 administrative actions (18,77%) have "*spatial*" contents. Furthermore, 8 more actions exist in "*others*" category. In Narlıdere settlement, 340 actions (27,99%) have "*spatial*" subjects and 119 actions (9,8%) have "*other*" subjects through 459 administrative and juridical actions in total.

Examination in distribution of action subjects indicates the intensity of actions regarding space through all administrative and juridical actions. These results in both two settlements, which are indicators of spatial disputes in urban space and demands of right on urban space, state that urban procedures/arrangements applied by related municipality and committee of protection are not considered as fair and also state the amendment demands in procedures done by judicial control.

[67] Data about the distribution of these actions according to authorized courts are shown in App.A and App.B

Table: 4.4. All Administrative and Juridical Actions Proceeded In Balçova and Narlıdere Municipalities According to "Spatial" and "Others" Categories (1992-2003)

Subjects				Proceeding Year of Action														
County	Administrative/Juridical	Regarding Plans	Subject (General Evaluation)	92	93	94	95	96	97	98	99	2000	2001	2002	2003 unknown	Grand Total	Subject (%)
Balçova	J	Others	Credits		2	2	2	2	1	1	3	11	4	1		29	2,39
			Others		2	2	6	5	1	2	2	1	5	11		37	3,05
			Personnel			1		2			4					7	0,58
			Evacuation							2						2	0,16
			Title-Deed		1		1	2	2							6	0,49
			Compensation		1	1		2		3	2		18	1		28	2,30
			Determination				1			2						3	0,25
		Total of Others			6	6	10	13	4	10	11	12	27	13		112	9,22
		Spatial	Others		1											1	0,08
			Restitution of Expropriated Area		3											3	0,25
			Expropriation Value		1	2	1	5	7	3	1			2		22	1,81
			Dismissal of Intervention				6									6	0,49
			Partition Action			2	1	2	1	10	2		2	1		21	1,73
			Evacuation			1										1	0,08
			Title-Deed	1	1	1				2	1	1	12	2		21	1,73
			Compensation										1			1	0,08
			Determination						1	2						3	0,25
		Total of Spatial		1	6	6	8	7	9	17	4	1	15	5		79	6,50
	Total J			1	12	12	18	20	13	27	15	13	42	18		191	15,72
	A	Others	Credits										2			2	0,16
			Others			4		2			1				2	9	0,74
			Personnel				1			1	2					4	0,33
			License								2					2	0,16
			Compensation										1			1	0,08
			Relinquishment for Road												1	1	0,08
		Total of Others				4	1	2		1	5		3		3	19	1,56
		Spatial	8050								139	5	1			145	11,93
			10168												6	6	0,49
			Others							1	2					3	0,25
			Administrative Penalty										2			2	0,16
			Development Plan				5		6	2			3	1	1	18	1,48
			Expropriation & D.P.				109	70	12							191	15,72
			Ownership		1							1	1	5		8	0,66
			Subdivision Plan		1		47	5	2	13	2		2			72	5,93
			Plan Changes			1	1	2			1			2		7	0,58
			License		2	2	2			1	1		2	1		11	0,91
			Evacuation			3		6	1							10	0,82
			Compensation				1		1		3			1		6	0,49
			Tax		1		1	1		1						4	0,33
			Demolition decision		8	8	10	10	9	2	1	1	8	6		63	5,19
		Total of Spatial			13	14	176	94	31	20	149	7	19	16	7	546	44,94
	Total A				13	18	177	96	31	21	154	7	22	16	7	565	46,50
Balçova Total				1	25	30	195	116	44	48	169	20	64	34	7	756	62,22
Narlıdere	J	Others	Credits			1			2		2	7	7	2		21	1,73
			Others			2	2		2	4	2		1	3	2	18	1,48
			Personnel			7		4		1	21	3		1		37	3,05
			Title-Deed									1	1	1		3	0,25
			Compensation										2			2	0,16
			Determination										1			1	0,08
		Total of Others				10	2	4	4	5	25	11	12	7	2	82	6,75
		Spatial	Credits					1								1	0,08
			Others			1		4		4				1		10	0,82
			Administrative Penalty				2	1	1	1	12				5	22	1,81
			Expropriation Value			1		1	1	1	1		2			7	0,58
			"Narkent"			1			1			1				3	0,25
			Partition Action			1	2		2	3	1	1	11	2		23	1,89
			Subdivision Plan										1			1	0,08
			License							1						1	0,08
			Evacuation									16				16	1,32
			Title-Deed	1	2	1		2	6	1	1	1	1	4		20	1,65
			Compensation							2						2	0,16
			Determination									2	1			3	0,25
			Tax					1					1			2	0,16
			Demolition decision								1					1	0,08
		Total of Spatial		1	2	5	4	10	11	13	16	21	17	7	5	112	9,22
	Total J			1	2	15	6	14	15	18	41	32	29	14	7	194	15,97
	Others	Others	Credits												1	1	0,08
			Others												5	5	0,41
			Personnel												2	2	0,16
		Total of Others													8	8	0,66
	Total Others														8	8	0,66
	A	Others	Credits								1	1	1		1	4	0,33
			Others			1	1	2	1	2			3	1	2	13	1,07
			Personnel			1		1	2	3				3		10	0,82
			Compensation										2			2	0,16
		Total of Others				2	1	3	3	5	1	1	6	4	3	29	2,39
		Spatial	8049								2					2	0,16
			Credits						1	1						2	0,16
			Others			2					1		1	1		5	0,41
			Administrative Penalty			1		1	2	2				1		7	0,58
			Development Plan			1	1	1	4	2	2		1	1		13	1,07
			Easement Right					1								1	0,08
			Expropriation							1						1	0,08
			"Narkent"									1	5	2		8	0,66
			Partition Action									1				1	0,08
			Subdivision Plan	2		2	2	6	5	5	4	6	5	4		41	3,37
			Plan Changes			3	1	2			3	2				11	0,91
			License					2	1	1	1	1				6	0,49
			Evacuation										1	1		2	0,16
			Title-Deed				3	1		2						6	0,49
			Compensation								1					1	0,08
			Tax			1	11	9	1			2	10	9		43	3,54
			Demolition decision			1	10	17	7	20	16	2		3		76	6,26
			Relinquishment for Road			1			1							2	0,16
		Total of Spatial		2		12	28	40	22	34	30	15	23	22		228	18,77
	Total A			2		14	29	43	25	39	31	16	29	26	3	257	21,15
Narlıdere Total				3	2	29	35	57	40	57	72	48	58	40	18	459	37,78
Grand Total				4	27	59	230	173	84	105	241	68	122	74	7 21	1215	100,00
			Years (%)	0,33	2,22	4,86	18,93	14,24	6,91	8,64	19,84	5,60	10,04	6,09	0,58 1,73	100	

4.2.2. Actions According to Plaintiff Parties

In order to understand in detail who has objections to arrangements reflected on judicial control, Table: 4.5. "All Administrative and Juridical Actions Proceeded In Balçova and Narlıdere Municipalities According to Plaintiffs (1192-2003)" is prepared. In this table, it is possible to see the parties of disputes.

As actions examined according to plaintiff parties in Balçova and Narlıdere settlements between 1992-2003, through 1215 actions in total, 946 of them (78,11%) were proceeded by persons, 149 actions (12,26%) were proceeded by official institutions (1 of them was proceeded by person & official institution), 70 actions (5,75%) were proceeded by cambers of profession (1 of them by TMMOB Central Office of Chamber of Architects and 18 of them by İzmir Chamber of Commerce), 2 actions (0,16%) were proceeded by foundations and there are 3 actions (0,25%) in "others" group. As all of the actions (1215 cases in total) are examined according to plaintiffs in county basis; in Balçova 51,2% of the plaintiffs are persons, 0,9% are cooperatives, 7,08% are official institutions, 2,55% are companies. In Narlıdere, through all actions (1215 cases) 26,91% of the plaintiffs are persons, 0,08% are cooperatives, 5,18% are official institutions and 3,2% are companies (Detailed information can be seen in Table: 4.5.).

As evaluated according to plaintiffs, actions proceeded by persons with a high ratio of 78,11% (949 cases) indicate demands of individual rights. Evaluation, which will be made in detail separately in actions regarding space, will also show more meaningful results to understand this ratio in spatial subjects.

Table 4.5. All Administrative and Juridical Actions Proceeded In Balçova and Narlıdere Municipalities According to Plaintiffs (1992-2003)

Person/Institution				
County	**Administrative Juridical**	**Person/Institution**	**Total**	**%**
Balçova	Juridical	Cooperative	1	0,08
		Official Institution	75	6,17
		Unions	2	0,16
		Person	103	8,48
		Company	10	0,82
	Juridical Total		191	15,72
	Administrative	Cooperative	10	0,82
		Chamber of Profession	1	0,08
		Official Institution	11	0,91
		Person	519	42,72
		Company	21	1,73
		Unknown	3	0,25
	Administrative Total		565	46,50
Balçova Total			**756**	**62,22**
Narlıdere	Juridical	Management of Apartment House	1	0,08
		Official Institution	43	3,54
		Official Institution + Person	1	0,08
		Unions	2	0,16
		Person	131	10,78
		Company	15	1,23
		Foundation	1	0,08
	Juridical Total		194	15,97
	Others	Official Institution	4	0,33
		Unions	2	0,16
		Person	1	0,08
		Company	1	0,08
	Others Total		8	0,66
	Administrative	Management of Apartment House	1	0,08
		İzmir Chamber of Commerce	19	1,56
		Cooperative	1	0,08
		Official Institution	15	1,23
		Unions	2	0,16
		Person	195	16,05
		Company	23	1,89
		Foundation	1	0,08
	Administrative Total		257	21,15
Narlıdere Total			**459**	**37,78**
Grand Total			**1215**	**100,00**

4.2.3. Detailed Classification and Contents of Spatial Actions

Detailed distribution of actions classified under "spatial" title is shown in Table: 4.6. "Administrative and Juridical Actions Regarding Space Proceeded In Balçova and Narlıdere Municipalities, According to Subjects (1992-2003)". As subjects of actions regarding planning and space re examined; 965 actions through 1215 in total are spatial. Subjects and numeric distribution of actions according to the data obtained after detailed examination of subjects of spatial actions can be classified in order as follows:

1. Actions about Expropriation

Total number of expropriation actions is 224. In administrative actions, there exist demands of annulment of procedure and in juridical actions, there are demands in increase of expropriation value. There are 3 actions regarding restitution of expropriated area and all of them were proceeded inside boundaries of Balçova. There is 1 action registered in Municipality of Narlıdere about objection to rejection of municipal council regarding payments of expropriation value by barter. In Narlıdere 7 and in Balçova 22 actions were proceeded regarding the increase in expropriation value.

There are 191 actions concerning annulment of expropriation procedure and the development plan that it is based on and all of these actions were proceeded in Balçova settlement. 181 actions were about the annulment of expropriation procedure for İzmir-Çeşme Highway and related development plans where General Directorate of Highways, Greater Municipality of İzmir and Municipality of Balçova are the plaintiffs. Actions were rejected against plaintiffs. 10 actions were proceeded in Balçova for the annulment of expropriation in light industry area and related development plans. Proceeding years of these actions were 1995.1996 and 1997. (Table: 4.7. "Actions about Expropriation proceeded In Balçova and Narlıdere Municipalities According to Administrative and Juridical Courts and Subjects (1992-2003)")

Table: 4.6. Administrative and Juridical Actions Regarding Space Proceeded In Balçova and Narlıdere Municipalities According to Subjects (1992-2003)

Count of Konu G.D			Proceeding Year of Action														
County	Administrative/Juridical	Subject General Evaluation	92	93	94	95	96	97	98	99	2000	2001	2002	2003 unknown	Grand Total	Subject(%)
Balçova	J	Others		1											1	0,10
		Restitution of Expropriated Area		3											3	0,31
		Expropriation Value		1	2	1	5	7	3	1			2		22	2,28
		Dismissal of Intervention				6									6	0,62
		Partition Action			2	1	2	1	10	2		2	1		21	2,18
		Evacuation			1										1	0,10
		Title-Deed	1	1	1				2	1	1	12	2		21	2,18
		Compensation										1			1	0,10
		Determination						1	2						3	0,31
	Total J		1	6	6	8	7	9	17	4	1	15	5		79	8,19
	A	8050								139	5	1			145	15,03
		10168												6	6	0,62
		Others							1	2					3	0,31
		Administrative Penalty										2			2	0,21
		Development Plan				5		6	2			3	1	1	18	1,87
		Expropriation & D.P.				109	70	12							191	19,79
		Ownership		1							1	1	5		8	0,83
		Subdivision Plan		1		47	5	2	13	2		2			72	7,46
		Plan Changes			1	1	2			1			2		7	0,73
		License		2	2	2			1	1		2	1		11	1,14
		Evacuation			3		6	1							10	1,04
		Compensation				1		1		3			1		6	0,62
		Tax		1		1	1		1						4	0,41
		Demolition Decision		8	8	10	10	9	2	1	1	8	6		63	6,53
	Total A			13	14	176	94	31	20	149	7	19	16	7	546	56,58
Balçova Total			1	19	20	184	101	40	37	153	8	34	21	7	625	64,77
Narlıdere	J	Credits					1								1	0,10
		Others			1		4		4				1		10	1,04
		Administrative Penalty				2	1	1	1	12				5	22	2,28
		Expropriation Value			1		1	1	1	1		2			7	0,73
		"Narkent"			1			1			1				3	0,31
		Partition Action			1	2		2	3	1	1	11	2		23	2,38
		Subdivision Plan										1			1	0,10
		License							1						1	0,10
		Evacuation									16				16	1,66
		Title-Deed	1	2	1		2	6	1	1	1	1	4		20	2,07
		Compensation							2						2	0,21
		Determination									2	1			3	0,31
		Tax					1					1			2	0,21
		Demolition Decision								1					1	0,10
	Total J		1	2	5	4	10	11	13	16	21	17	7	5	112	11,61
	A	8049								2					2	0,21
		Credits						1	1						2	0,21
		Others			2					1		1	1		5	0,52
		Administrative Penalty			1		1	2	2				1		7	0,73
		Development Plan			1	1	1	4	2	2		1	1		13	1,35
		Easement Right					1								1	0,10
		Expropriation							1						1	0,10
		"Narkent"									1	5	2		8	0,83
		Partition Action									1				1	0,10
		Subdivision Plan	2		2	2	6	5	5	4	6	5	4		41	4,25
		Plan Changes			3	1	2			3	2				11	1,14
		License					2	1	1	1	1				6	0,62
		Evacuation										1	1		2	0,21
		Title-Deed				3	1		2						6	0,62
		Compensation								1					1	0,10
		Tax			1	11	9	1			2	10	9		43	4,46
		Demolition Decision			1	10	17	7	20	16	2		3		76	7,88
		Relinquishment for Road			1			1							2	0,21
	Total A		2		12	28	40	22	34	30	15	23	22		228	23,63
Narlıdere Total			3	2	17	32	50	33	47	46	36	40	29	5	340	35,23
Grand Total			4	21	37	216	151	73	84	199	44	74	50	7 5	965	100

Table: 4.7. Actions About Expropriation Proceeded In Balçova and Narlıdere Municipalities According to Administrative & Juridical Courts and Subjects (1992-2003)

Detail of Subject			Proceeding Year of Action									
County	Administrative/Juridical	Subject Detail	93	94	95	96	97	98	99	2001	2002	Grand Total
Balçova	J	Restitution demand of expropriated area	3									3
		Increase in expropriation value	1	2	1	5	7	3	1		1	21
		Worth actions caused by confiscations done without expropriation									1	1
	Total J		4	2	1	5	7	3	1		2	25
	A	Annulment of expropriation (development plan) procedures			109	70	2					181
		Annulment of expropriation (development plan) procedures (LI)					10					10
	Total A				109	70	12					191
Balçova Total			4	2	110	75	19	3	1		2	216
Narlıdere	J	Increase in expropriation value		1		1	1	1	1	1		6
		Worth actions caused by confiscations done without expropriation								1		1
	Total J			1		1	1	1	1	2		7
	A	Objection to municipality's rejection of barter proposal caused by expropriations						1				1
	Total A							1				1
Narlıdere Total				1		1	1	2	1	2		8
Grand Total			4	3	110	76	20	5	2	2	2	224

J: Actions Proceeded in Juridical Courts
A: Actions Proceeded in Administrative Courts
LI: Light Industry

Table: 4.8. Administrative and Juridical Actions About Expropriation Proceeded In Balçova and Narlıdere Municipalities According to Subjects and Conclusions of Actions (1992-2003)

Count of Sonuç					
County	Administrative/Juridical	Subject detail	Existing Development Situation	Result	Total
Balçova	J	Restitution demand of expropriated area	(blank)	revocatory	3
			(blank) (Total)		3
		Restitution demand of expropriated area (Total)			3
		Increase in expropriation value	(blank)	revocatory	1
				continues	1
				n.n.t.d.	2
				accepted	2
				partially accepted	15
			(blank) (Total)		21
		Increase in expropriation value (Total)			21
		Worth action caused by confiscations done without expropriation	(blank)	rejected	1
			(blank) (Total)		1
		Worth action caused by confiscations done without expropriation (Total)			1
	Total J				25
	A	Annulment of expropriation (development plan) procedure	Izmir Ring-Road/Aydın Expressway	n.n.t.d.b.o.r.	8
				not adversary	5
				partially accepted	3
				rejected	164
			Izmir Ring-Road/Aydın Expressway (Total)		180
			(blank)	rejected	1
			(blank) (Total)		1
		Annulment of expropriation (development plan) procedure (Total)			181
		Annulment of expropriation (development plan) procedure (KS)	Light Industry Area	consolidation	1
				n.n.t.d.	4
				accepted	4
			Light Industry Area (Total)		9
			Light Industry area (placed on road&green space on development area)	n.n.t.d.	1
			Light Industry area (placed on road&green space on development area) (Total)		1
		Annulment of expropriation (development plan) procedure (KS) (Total)			10
	Total A				191
Balçova Total					216
Narlıdere	J	Increase in expropriation value	Demand of increase in expropriation value realized in green space on development plans	n.n.t.d.b.o.r.	1
			Demand of increase in expropriation value realized in green space on development plans (Total)		1
			Objection to expropriation value of 2 storey building for construction of Sevgi Rd in İsmet İnönü Str	accepted	1
			Objection to expropriation value of 2 storey building for construction of Sevgi Rd in İsmet İnönü Str (Total)		1
			Objection to expropriation value of the lot under common ownership with Municipality of Narlıdere	accepted	1
			Objection to expropriation value of the lot under common ownership with Municipality of Narlıdere (Total)		1
			Conversion of green house area to quarter's sports court	n.n.t.d.	1
			Conversion of green house area to quarter's sports court (Total)		1
			Demolition&expropriation decision of green house for construction of sports court	rejected	1
			Demolition&expropriation decision of green house for construction of sports court (Total)		1
			(blank)	accepted	1
			(blank) (Total)		1
		Increase in expropriation value (Total)			6
		Worth action caused by confiscations done without expropriation	(blank)	no information	1
			(blank) (Total)		1
		Worth action caused by confiscations done without expropriation (Total)			1
	Total J				7
	A	Objection to municipality's rejection of barter proposal caused by expropriations	Objection to rejection of expropriation value payment demands by barter	rejected	1
			Objection to rejection of expropriation value payment demands by barter (Total)		1
		Objection to municipality's rejection of barter proposal caused by expropriations (Total)			1
	Total A				1
Narlıdere Total					8
Grand Total					224

n.n.t.d.: no need to decide

n.n.t.d.b.o.r.: no need to decide because of reliquishment

2. Actions of Objection against Site Decisions of İzmir No.1 Committee of Protection of Cultural and Natural Heritage (İzmir No.1 CPCNH)

Total number of actions regarding the annulment of Site Decision No.8050 taken in 1991 by İzmir No.1 Committee of Protection of Cultural and Natural Heritage concerning the area including İnciraltı and Bahçelerarası quarters in Balçova settlement is 145. Plaintiffs of the actions proceeded between 1999-2000 are the property owners and companies living in the area regarding the site decision.

There are 2 actions of objections to committee's Decision No.8049 regarding the area including Sahilevleri quarter in Narlıdere settlement. In these actions, the plaintiff is Municipality of Narlıdere and in the other action the plaintiff is private person. After taking decisions regarding annulment of both two decisions, site decisions were renewed by the committee of protection and 6 new actions have been proceeded for the objections to committee's final Decision No.10168 including Balçova settlement. During the period of data collection (Jan 2004), it has been observed that, actions of objections regarding committee's Decision No.10168 were still being proceeded.

3. Actions of Objections to Demolition Decisions

Through 140 actions of objections to demolition decisions in total, 77 actions exist in Municipality of Narlıdere and 63 actions exist in Municipality of Balçova. These actions include the objections to demolition decisions taken according to the Development Act No.3194/Artice No.32 for the buildings without license, buildings constructed against license and its annexes. Administrative courts are authorized in these actions. As a result, 47 actions in Balçova and 64 actions in Narlıdere were concluded with rejection decision against plaintiffs.

4. Actions of Objections to Subdivision Plans

Through 114 actions of objection in total; 72 of them were brought against 11 different subdivision plans enacted by Municipality of Balçova. In Narlıdere, 42 actions of objection were brought against 20 different subdivision plans enacted by the municipality. Distribution of 114 actions in total according to plaintiffs is as follows; in 1 action plaintiff is a company, in 2 actions it is an official institution (Turkish Corporation of Electric Distribution and Office of Official Finance Director of İzmir), in 3 actions it is a cooperative (Cooperative of "T. İş Bankası" Houses), in 108 actions plaintiffs are private persons. In Table: 4.9. "Administrative and Juridical Actions

About Subdivision Plans Proceeded in Balçova and Narlıdere Municipalities According to Subdivision Plan No's and Proceeding Years (1992-2003)", subdivision plans have been examined according to years.

5. Actions about Taxes

In total, there are 49 actions about taxes; 45 actions were proceeded in Municipality of Narlıdere and 4 actions were proceeded in Municipality of Balçova. Subjects of actions are objections to taxes of real estate, entertainment and environmental.

6. Actions about Title-deed

Through 47 actions about title-deeds; 26 actions are in Municipality of Narlıdere and 21 of them are in Municipality of Balçova. Subjects of actions about title-deed in Narlıdere are; demand of land registration according to the Act No.2981, land registration of the land which was used as tenure, correction of mistakes on land registers which were done by the municipality, restitution of part of the land more than 35% according to the Development Act No.3194/Article No.18.

7. Actions about Partition Action

There are 24 actions in Narlıdere and 21 actions in Balçova municipalities which makes a total of 45 actions. These are the actions proceeded in order to nullify the partnership on the lots where related municipality is one of the shareholders. Partition actions are proceeded in Civil Courts of Peace and actions generally conclude with the decision of sale of the lot.

8. Actions of Objection to Development Plans

Actions of objection to development plans include; annulments of Master Plan scaled 1/5000, Implementation Plan scaled 1/1000, Development Plan Revision, piecemeal plans, objections to changes of planning briefs and objections to plan alterations. Administrative courts are authorized in these subjects of conflict. Total number of actions concerning annulment of development plans is 31. Number of actions brought against Municipality of Narlıdere is 13 and against Municipality of Balçova is 18. Number of actions for nullity regarding plan changes is 11 in Municipality of Narlıdere and 7 actions in Municipality of Balçova which makes a total of 18 actions.

Grand total of the actions directly related to development plans, like actions about development plans and plan changes, are 49. Through this total, 25 actions were proceeded in Municipality of Balçova and Municipality of Narlıdere.

9. Actions of Objection to Development Penalty

Through 31 actions of objection to development penalties; 29 actions were brought against Municipality of Narlıdere and 2 actions were brought against Municipality of Balçova. These actions include penalties regarding price lists that work-sites have to obey, being appropriate with health conditions and the inspections that municipalities have to do in urban space according to the Act of Municipalities No.1580.

10. Others

Through 19 actions existing in others group; 15 actions were proceeded in Municipality of Narlıdere and 4 actions were proceeded in Municipality of Balçova. Actions in this group includes subjects like; mesne profits, objections to payment for road construction, approval of electricity project, payment of traffic accident expenses caused because related municipality did not take any precaution.

11. License

There are 18 actions of objection to refusal of demands for building license and work-site operation license. In Municipality of Balçova number of regarding actions is 11 and in Municipality of Narlıdere there are 6 actions.

12. Narkent

Includes the actions brought against the implementations realized in the extent of Urban Renewal Plans with the goal of slum reclamations realized by Municipality of Narlıdere. All of 11 actions were proceeded against Municipality of Narlıdere.

13. Actions of Compensation

There are 10 actions of compensation. 7 of them were proceeded in Balçova and 3 of them were proceeded in Narlıdere. These are the actions of compensation for damages proceeded because of involuntary manslaughter because of not taking any precautions during the demolitions realized by the regarding municipality.

14. Actions about Ownership

All of these actions exist in Municipality of Balçova and total number of actions is 8. 4 actions were proceeded with the demand of annulment of development plans and transmission of ownership in Universiade Houses (Olympiad Village). Although these actions were brought by private persons in 2003, disputes caused by actions depend on the procedures realized by Municipality of Balçova in 1970's. Other 4 actions are the ones proceeded because of transmission of municipal lots between Balçova and Konak municipalities.

15. Determination Actions

These actions include the determinations made on properties. There are three actions in Narlıdere and three actions in Balçova municipalities with a total number of actions six.

16. Dismissal of Intervention

Six actions in total, about dismissal of controversy including the objection to the official letter regarding the demolition decision for expanding the road after Subdivision Plan No.62, were brought against Municipality of Balçova. After revocation of the procedure done by Municipality of Balçova, authorized court decided the action as revocatory.

17. Actions of Credits, Relinquishment for Road, Easement

There are 6 actions in total and all of them were brought against Municipality of Narlıdere. 3 of the actions are about credits, 2 of them about relinquishment for road and 1 action is about easement.

Table 4. 9. Administrative and Juridical Actions about Subdivision Plans Proceeded in Balçova and Narlıdere Municipalities According to Subdivision Plan No's and Proceeding Years of Actions (1992-2003)

Subdivision Plan No.			Proceeding Year of Action											
County	Administrative/Juridical	Subdivision Plan No	92	93	94	95	96	97	98	99	2000	2001	2002	Grand Total
Balçova	A	Subdivision Plan No.10		1										1
		Subdivision Plan No.48					1							1
		Subdivision Plan No.54				2		1						3
		Subdivision Plan No.56				21			1					22
		Subdivision Plan No.62				24	4							28
		Subdivision Plan No.68						1						1
		Subdivision Plan No.70							9					9
		Subdivision Plan No.74							3					3
		Subdivision Plan No.75										2		2
		Subdivision Plan No.76								1				1
		Subdivision Plan No.80								1				1
	Total A			1		47	5	2	13	2		2		72
Balçova Total				**1**		**47**	**5**	**2**	**13**	**2**		**2**		**72**
Narlıdere	J	Subdivision Plan No.101										1		1
	Total J											1		1
	A	Subdivision Plan No.101								1	2			3
		Subdivision Plan No.105			1									1
		Subdivision Plan No.107						1						1
		Subdivision Plan No.112						2						2
		Subdivision Plan No.112/1							1	1				2
		Subdivision Plan No.114				1	1							2
		Subdivision Plan No.120					3							3
		Subdivision Plan No.121							1	1				2
		Subdivision Plan No.127						1						1
		Subdivision Plan No.127/1											2	2
		Subdivision Plan No.130							1					1
		Subdivision Plan No.135							1					1
		Subdivision Plan No.151									3	2		5
		Subdivision Plan No.152									1			1
		Subdivision Plan No.154										1		1
		Subdivision Plan No.156										1		1
		Subdivision Plan No.44						1						1
		Subdivision Plan No.70										1		1
		Subdivision Plan No.87	1			1								2
		Subdivision Plan No.95								1				1
		Unknown Subdivision Plan	1		1		2		1				2	7
	Total A		2		2	2	6	5	5	4	6	5	4	41
Narlıdere Total			**2**		**2**	**2**	**6**	**5**	**5**	**4**	**6**	**6**	**4**	**42**
Grand Total			**2**	**1**	**2**	**49**	**11**	**7**	**18**	**6**	**6**	**8**	**4**	**114**

4.2.4. General Evaluation Results of Proceeded Actions

As actions that are reflected on judicial control in case study area has been examined, intensity of the objections including decisions and implementations regarding spatial subjects can be observed. These objections concern the decisions of municipalities, General directorate of Highways and İzmir No.1 Committee of protection of Cultural and Natural Heritage, as application authorities, by using necessary authorizations defined by laws.[68] Basic demand in these objections is the detailed definition of "*appropriateness*" of authority, task and responsibility of application authorities with "law and regulations" during implementation process. In another words, plaintiffs apply to legal justice in order their rights on urban space can be defended during legal application process. Proceeded actions control the appropriateness of the implementations and decisions of authorized government office, which have the arrangement authority of urban space, with law and acts and they also present the expectations of defendant and plaintiff parties from urban space. In this extent, numbers and subjects of actions represent the indicators of conflicting urban spatial demands.

General evaluation results of actions, including all spatial problems without making any administrative/juridical differentiation, are as follows:

1. Number of conflicts/disagreements regarding spatial subjects are considerably high in number. Through 1215 actions in total proceeded between 1992-2003, number of spatial subjects is 965 and number of objections including tasks and other transactions of municipalities is 250. Number of these actions through grand total, as interventions concerning the aim of arranging urban space, indicates the reactions of persons to plan making and approval processes.

If plaintiff parties of 965 spatial actions are examined, following results are going to be found; 811 actions (84,04%) by private persons, 63 actions (6,53%) by official institutions, 57 actions (5,91%) by companies, 19 actions (1,97%) by İzmir Chamber of Commerce, 12 actions (1,24%) by cooperatives, 1 action (0,10%) by foundation, 1 action (0,10%) by camber of professions (TMMOB Central Office of

[68] Development Act No.3194, Act of Municipalities No.1580, Act of Development Amnesty No.2981, Act of Expropriation No.2942, Acts of Protection of Cultural and Natural Heritage No.2863.

Chamber of Architects) and 1 action (0,10%) was proceeded by management of an apartment house. Highest ratio of actions according to plaintiffs, with 811 cases, depends on the objections of property owners and private persons that were affected by the transactions directly. Defendants are mayoralties of related settlements, General Directorate of Highways, İzmir No.1 Committee of Protection of Cultural and Natural Heritage and Greater Municipality of İzmir.

Table 4. 10. Spatial Actions According to Plaintiffs

Plaintiffs	**Total**	**Ratio of %**
Management of Apartment House	1	0,10
İzmir Chamber of Commerce	19	1,97
Cooperatives	12	1,24
Chamber of Professions	1	0,10
Official Institutions	63	6,53
Private Persons	811	84,04
Companies	57	5,91
Foundation	1	0,10
Grand Total	965	100,00

2. In the actions regarding spatial subjects, it is claimed that, spatial rights, which were arranged by acts, must be controlled also by acts.
3. Objections to restriction (intervention) procedures on property rights by plan decisions are primary in distribution of spatial subjects. Through these intervention forms; expropriation procedure, subdivision plans, development plan decisions, decisions of committee of protection, interventions on building rights are the subjects that interventions are most intensive.

In this study, in the classification of action subjects regarding planning, actions ,including plan making-approval-implementation processes are accepted as actions having first degree relation with planning. By this acceptance, followings are the subjects of actions that have first degree relation with planning; expropriation, subdivision plans, demolition of the buildings without license, penalty of the buildings without license, decisions of the committee of protection, objections to development plans and plan changes. Actions having second degree relation with planning include the subjects like; title-deed, land registration, intervention, determination, compensation, license, taxes and administrative penalty.

Through actions regarding urban space, objections having first degree relation with planning in Narlıdere and Balçova settlements can be arranged in order as follows

according to their subjects and number of proceeded actions: Actions of expropriation and annulment of development plans do exist in the first order. Site decisions taken by the committee of protection in 1999 exist in the second order and objections to demolition decisions of the buildings without license are in the third order. Objections to subdivision plans are in the forth order and finally objections to development plans and decisions of plan changes exist in the fifth order.

4.3. Detailed Examination of Spatial Actions Proceeded Between 1992-2003

As a result of general evaluation of the actions proceeded between 1992-2003 in Balçova and Narlıdere settlements, as mentioned above, selection criteria formed in order to examine spatial subjects in detail are as follows:

1. According to the generalization made above, subjects that have the highest number of actions through the subjects exist under "*space*" main-title and actions that comprise a vast scale are determined as samples. Information concerning actions are given in Narlıdere and Balçova settlements as a whole. Separately in Balçova; actions, which have the highest numeric value under selected sub-title, have been examined in detail and spatial influences of these samples have been evaluated.
2. In subjects of actions regarding single plots, selections have been realized considering the plan decisions and characteristics of the area causing actions. For instance; during the examination of demolition decisions of the buildings constructed against license and its annexes, sample selection has been realized by the differentiation of the areas developed appropriate with plans and the areas developed against plans in planned areas by selecting one sample from each related area. Another criterion in selection process is the effect of the procedure that has caused an action on the area. Özdilek Trade Center has been determined as the sample for this subject.

Subjects of actions have been examined in this section with development of litigation process.

4.3.1. Actions about Expropriation

According to the Constitution of Turkish Republic/Article No.46, expropriation is the confiscation of State and public corporations by force partially or totally on properties under private ownership, in situation that public interest necessitate and in terms of payment in advance, according to the principles and procedures stated in the law (Günday, 1997, 185). State and public corporations, who has the expropriation authority, confiscate private properties using an authority resulted by public power (Kalabalık, 2002, 181). In another words, expropriation procedure is the arrangement intervention of public space with the principle of public interest realized by State and public corporations as representatives of public power. Expropriation procedure, which also means the restriction of private ownership rights[69] on urban land with the goal of public interest, can be discussed as an administrative activity regarding the goal of balancing the tension between private ownership-individual rights and public ownership-public rights. Authorities that produce public procedures and decisions in the name of public and representing public, are the government offices which are declared as state and public corporations in the Act No.2942.

In the conflict between public interest and private interest, superiority belongs to public interest. In order to provide a balance in this conflict between public interest and private interest, the consideration of "*Self-sacrifice that property owner has to tolerate because of public interest, is balanced with condition of paying the value of the property to property owner*" is accepted. (Günday, 1997, 170-171)

Administrative stages of expropriation procedures are: "*decision of public interest*" taken by authorized government office, notification and announcement of this decision. After these stages, expropriation becomes an administrative procedure, actions of nullity are proceeded for these procedures and actions of objection are proceeded against the value determined in juridical judgement by Civil Court of First Instance. Actions proceeded in this litigation process, where Administrative Courts[70] are

[69] In the Constitution of Turkish Republic/Article No.35 following statements exist; in Clause No.2, "ownership rights can be restricted for public interest" and in Clause No.3, "ownership rights can not be used against public interest". Although existence of these decisions regarding the balance of public-private interest, there are not any certain sentence about in which conditions public interest and in which conditions private interest can be considered.

[70] Procedure is accepted as an administrative transaction because of confiscation by related government office by force without property owner's consent and permit. For a detailed discussion, please see; Günday, 1997, 170-173.

authorized in administrative judgement and Civil Courts of First Instance are authorized in juridical judgement, are; actions of nullity, increase in the price, decrease in the price and conveyance.

Approved development plans are also accepted as a special form of public interest, so it is not considered necessary to take any decision regarding public interest on these plans (Günday, 1997, 173). In this stage, public interest principle regarding the lands that have to be expropriated according to related plan decision is discussed in planning practice. Thus, in expropriation procedures, public/social interest together with principles, planning studies and quality of this decision in development practice are considerably important. (Kalabalık; 2002, 193)

In Balçova and Narlıdere settlements where land studies were realized, number of actions brought against expropriation procedures are 224. There are 3 different action type in classification of actions about expropriation according to subjects (See Table: 4.7 and 4.8).

a. Increase in expropriation value; there are totally 21 actions in Balçova regarding this subject and distribution of these actions according to years is as follows: in 1993, 1995, 1999, 2002 – 1 case in each year, in 1994 – 2 case, in 1998 – 3 cases, in 1996 – 5 cases, in 1997 – 7 cases. In Narlıdere there are 6 actions in total and distribution according to years is; in 1994, 1996, 1997, 1998, 1999, 2001 – 1 case in each year. In addition, there are 2 worth actions caused by confiscations done without expropriation in Narlıdere (in 2001 – 1 case) and Balçova (in 2002 – 1 case) settlements.

Plaintiffs of İzmir-Çeşme Highway are not included in the actions regarding the increase in expropriation value. Defendant party in actions about price increase is the General Directorate of Highways who realizes the procedure. It is thought that, there are actions about value increase as well as annulments of expropriation transactions. However, these data have not been included in study extent; therefore they have not been evaluated.

b. Restitution of expropriated area; there are 3 actions, which were proceeded in 1993, in Balçova settlement regarding demand of restitution of expropriated area.

c. Annulment of expropriation procedure and development plans that it is based on; these actions are proceeded in administrative judgement with administrative courts and they mostly exist in Balçova settlement regarding the annulment of expropriation

decision of İzmir-Çeşme Highway and the development plans that it is based on. Spatial distribution of these actions is shown in Fig: 4.6.

4.3.1.1. Actions Regarding Annulment of Expropriation of Highways and Development Plans That It's Based On: Development of the Process and Results[71] – (Balçova)

Defendant parties of the action are General directorate of Highways, Greater Municipality of İzmir and Municipality of Balçova. All of the plaintiffs of all 181 actions are private persons and total numbers of plaintiffs are 315. Situation of the plots which are subjects of actions and the present built-up residential area existing in the highway zone are shown in Fig: 4.6.. As also seen on the map, different actions were proceeded by different flats existing in the same apartment house on the same plot. (See Fig.: 4.6 and Fig.:4.7)

Subject of actions is the annulment of expropriation decision dated 11.02.1993 and numbered 6 regarding the expropriation of the plots existing in highway zone for the construction of İzmir Ring-Road/Aydın Expressway (Part 2.1A,2.1B) and the development plans scaled 1/5000 and 1/1000 that the expropriation decision based on.

It's not known if 25 of the plaintiffs had lawyers or not. On the other hand, 156 actions were defended by 3 different lawyers. 2 of these lawyers were the counsels of 2 actions (1 action for each) and counsels of 153 actions were the same. Thus, statements of counsels of these 153 actions have been evaluated.

4.3.1.2. Claims of Parties in Litigation Process

Claims of Plaintiff Parties:

In the 12 paged application text of plaintiffs parties' lawyer, it was stated that, expropriation decision and development plans that it was based on were not appropriate

[71] Statements have been taken from the court files of 1st Administrative Court e:1995/799; e:1995/812; 4th Administrative Court e:1995/851; 2nd Administrative Court e:1995/891; 3rd Administrative Court e:1995/803; e:1996/760. In total, different statements were used that have been obtained during detailed examination of court files. However, in such a concentrated litigation process, it has been noticed that, mostly, there has been no difference in the statements of lawyers' petitions, defenses of parties, expertise reports or court decisions.

with equality and relinquishment balance principles, thus, annulment of expropriation decision and related development plans was demanded. Furthermore, it was also stated that, there were 450 households living in Eğitim quarter where the highway existed and expropriation of built-up areas did not have any public interest principle. It was emphasized that, public interest principle was taken into consideration during location stage of the highway's route and a participated planning process had not been realized. Previously planned highway route had been more agreeable because of passing through public lands and undeveloped lands. In addition to development plans, it was also stated that, expropriation payments realized in 1995, over the expropriation value determined in 1993, was not fair. Public interest, planning process and evaluations concerning expropriation transactions, which were examined in detail by the counsel of plaintiff parties, have been discussed in above mentioned generalization.

Claims of Defendant Parties:

In the claim of Ministry of Public Works and Settlement General Directorate of Highways, it was stated that, appraisement procedures were realized in 1993 according to the "decision of commencement of expropriation transactions", payments would be effected to bank in a month and necessary notifications were sent to property owners. Later, it was added that, payments were effected to bank by a delay of two and a half year because of the delay in payment done by General Directorate of Public Finance to General Directorate of Highways.

In the defense of Greater Municipality of İzmir, it was declared that, maps of the development plan related to highway construction, which was planned by General Directorate of Highways, were sent to Greater Municipality of İzmir for approval purpose (in order to mark the highway route on the development plan) by Second Regional Directorate of Highways with the official letter dated 14.05.1992/ numbered 16700 and this information was accepted by the decision of municipal council dated 27.10.1992. It was also expressed that; "Plans and projects, which are realized by public institutions in country and regional scale according to contemporary urban planning approach, have to be accepted as a superior data for development plans and this is a legal obligation". It was claimed that, there was not any contradiction in these decisions, which were considered as superior data for development plans, against planning principles, urban planning essentials and public interest.

In the claim of Municipality of Balçova, it was expressed that, Master Plan scaled 1/5000 had been accepted on 05.12.1986 by Greater Municipality of İzmir and approved on 20.02.1987. Implementations Plans scaled 1/1000 had been accepted by Municipality of Konak before establishment of Municipality of Balçova and approved by Greater Municipality of İzmir in 1994 and then approved plans were sent to Municipality of Balçova. Municipality of Balçova also has demanded the annulment of the action because there was no reason to nullify the development plans.

Evaluation of Expert Committee:

The committee consisting of 3 persons, which has been appointed as experts, has stated the followings in their reports prepared according to their evaluations of files, data and inspections on case area:

1. During determination of highway route; planning and urban planning principles and necessary procedures have been regarded.
2. Public and social interests have been considered as far as possible.
3. It has been determined that, maximum benefit has been regarded in the investment realized according to improve transportation and traffic conditions in İzmir.
4. During route research, necessities of highway engineering have been realized and expropriations were fulfilled at minimum level.[72]

It has been noticed that, expertise examinations and reports have been arranged only for 99 actions where above mentioned statements have been existed. For the other actions, decisions were taken by related courts according to the same expertise reports.

During litigation process 5 actions, which were proceeded in administrative courts in İzmir, were rejected by adversary because of existing outside municipal boundaries of Balçova. 8 actions were resulted with relinquishment decision. 168 actions were concluded with rejection for plaintiff according to expropriation procedure.[73] 106 of the decisions, which were taken by local courts regarding rejection

[72] Statements have been taken from the court files of 1st Administrative Court e:1995/799; e:1995/812; 4th Administrative Court e:1995/851; 2nd Administrative Court e:1995/891; 3rd Administrative Court e:1995/803; e:1996/760. In total, different statements were used that have been obtained during detailed examination of court files. However, in such a concentrated litigation process, it has been noticed that, mostly, there has been no difference in the statements of lawyers' petitions, defenses of parties, expertise reports or court decisions.

[73] In these 3 cases, court decisions are for partially acceptance partially rejection. These 3 cases regarding these 3 plots existed on the area that was included in the extent of the plotting plan no.62. Partial expropriation decision of the authorized government office regarding the plotting plan was objected. Authorized court accepted this decision in favour of the plaintiff. (See 2nd Administrative Court e:1996/714 kn:1998/305)

for plaintiff party, were appealed. As a result of the appeal, decisions of local courts were approved by 6th Government Office of Council of State.

Actions of nullity regarding the expropriations and related development plans were proceeded between 1995-1997 and concluded between 1998-1999. As a result of the actions, construction of existing İzmir-Çeşme Highway connection was concluded and it is being used today.(See Fig.:4.7)

4.3.1.3. General Evaluation

As litigation process is evaluated according to legal justice, it can be said that, it is realized in a fair process through procedures accepted by law. In general evaluation process, conclusion of following litigation procedures have been observed; parties have submitted their claims and experts, which were appointed by independent courts, have evaluated these claims of parties. In the transactions applied in the court decisions that were made according to expertise reports, decisions have been produced as there has been no contradiction against acts and regulations. Objections against local court decisions have been examined again in legal framework and approved also by the Council of State. In this legal-procedural process "*justice*" decisions have been concluded.

If claims and contents/substance of these claims are discussed, a different evaluation can be possible. Basis of the expropriation procedure, which has been realized by the General Directorate of Highways, is "*public interest*". In these procedures, public interest is defined as expropriation transaction and minimization of highway construction costs. In this condition, public interest will necessitate the use of territorial resources for minimum loss/cost and maximum benefit. In this point of view, it is accepted that, realized procedures and decisions have maximum "*public interest*" content. On the other hand, similar evaluation exists in the expertise reports. Besides, it is stated that, minimum expropriation cost has been provided in this region through all highway route alternatives. Furthermore, plan decisions have been marked on the maps appropriate with planning technics. However, problem of relinquishment balance, as lawyers of plaintiff parties has stated, is very important in this extent. In another words, "*greater happiness of the greater number*" approach is accepted with the principle of maximization of public interest in country scale. As a result of this acceptance,

monetary/moral difficulties and losses tolerated by residents in local scale are not taken into consideration. This process, which is defined as relinquishment principle, indicates the importance of the problem regarding who relinquishes, from what and in which scale. In this pattern needs, priority and justice criteria should be re-discussed for the benefit of all citizens in urban area. In the area where expropriations were realized for public interest, problems concerning the evacuation of residents their existing residences in return for the paid value (m² unit price) of the property and equality of the distribution of public interest are the main discussion subjects.[74]

4.3.2. Decisions of the Committee of Protection

Defendant party: Turkish Republic Ministry of Culture İzmir No.1 Committee of Protection of Cultural and Natural Heritage (İzmir No.1 CPCNH).

Plaintiff Parties: Private persons and companies who are property owners in İnciraltı and Bahçelerarası quarters in Balçova County and Sahilevleri quarter in Narlıdere County.

Transactions causing action: According to the principle decisions of İzmir No.1 CPCNH dated 14.07.1998 / numbered 596 and dated 12.03.1999 / numbered 641; following decisions were taken on 01.07.1999 by the committee:

1. Decision No.8049 including Sahilevleri quarter in Narlıdere county
2. Decision No.8050 including İnciraltı and Bahçelerarası quarters in Balçova county
3. Decision No.10168 dated 17.12.2002 including the same quarters in Balçova County.

By above mentioned decisions, İzmir Çakalburnu Dalyan area has been registered as Natural Site by the committee. Objections of property owners to the registration of the area as First Degree Natural Site constitute the subjects of actions. 151 actions through 153 actions in total consist of the objections to Decisions No.8050 and No.10168 inside boundaries of Balçova County. Remaining 2 actions are the objections to Decision No.8049 inside boundaries of Narlıdere County. One of these

[74] Delay in the payment of expropriation value and low prices are some of the claims of the plaintiff parties. In the interviews realized with the headmen of the quarters, plaintiffs have been tried to be found out and reached but no information could be obtained. Headmen of the quarters stated that, property owners have move to other quarters as tenants.

actions was proceeded by private persons and other action was proceeded by Mayoralty of Narlıdere Municipality. There are 145 actions of objection in total against Decision No.8050; 136 of these actions were brought by private persons, 8 of them by companies and 1 action was brought by a cooperative. There are 6 actions of objections against Decisions No.10168 and all of them were proceeded by private persons. Although Mayoralty of Balçova Municipality voted against the decisions of committee, they haven't proceeded any action. It is observed that, total numbers of plaintiffs are 414 (person/company/cooperative) in 153 actions in total and expert examinations were made for 97 of these actions.[7524] Number of plots, which became subject for the actions, are 253 (actions, which were proceeded more than one for the same plots, also included in this number). Distribution of actions according to plots, which were brought inside the boundaries of Balçova county, is shown in *Fig:4.6.* In this figure, it can be seen that, there are more than one action proceeded for the same plot and there are different decisions taken by different administrative courts for the same plot.

[75] Because some of necessary documents in court files couldn't be obtained, number of actions examined by experts couldn't be determined definitely. In the actions, which were not examined by expert committees, courts have used the previous examinations as similar case.

Table 4. 11. Actions of Nullity Proceeded in Administrative Courts Regarding the Decisions No.8050 and No.10168 of İzmir No.1 CPCN Heritage According to Plaintiffs and Results of Actions*

			Result							
	Person / Institution	**Expert Reports**	No Info.	C	RP	RL	R	Accepted [76]	Rejected	**Grand Total**
8050	**Cooperative**	**Exist**							1	**1**
	Kooperative (Total)								1	**1**
	Private Person	**No Info.**						2	3	**5**
		Exist						57	33	**90**
		Not Exist	1			2	2	15	21	**41**
	Private Person (Total)		1			2	2	74	57	**136**
	Company	**Exist**						1	5	**6**
		(blank)						2		**2**
	Company (Total)							3	5	**8**
8050 Total			1			2	2	77	63	**145**
10168	**Private Person**	**Not Exist**		2	2					**4**
		(blank)		1					1	**2**
	Private Person (Total)			3	2				1	**6**
10168 Total				3	2				1	**6**
Grand Total			**1**	**3**	**2**	**2**	**2**	**77**	**64**	**151**

RP: Rejection of Petition R: Relinquished

RL: Rejected by License C: Continue

*These results represent local administrative courts decision

4.3.2.1. Claims of Parties in Litigation Process

Plaintiff Parties

20 different lawyers as counsels of plaintiff parties have stated the points they opposed regarding the decisions of the committee as follows:[77]

[76] After the objections of these decisions all of the accepted cases were rejected by the supreme and also local courts.

[77] Statements have been taken from different petitions. However, it has been observed that, 53 actions were defended by only one lawyer, thus statements and claims have been the same. Furthermore, other lawyers also gave the same statements and sometimes they've used the same forms. Thus, although these statements have differentiated because of comparative evaluation of all court files, it has been accepted that, statements used here have reflected the general opinion and statements. For details, court files of 1st Administrative Court e:1999/579; 4th Administrative Court e:1999/690; 1st Administrative Court e:1999/665 can be seen.

1. Decision is contrary to the principle of ownership and right equality of the Constitution.
2. A detailed research regarding the conservation of land owners' rights has not been realized.
3. Decision does not concern public interest
4. Decision is contrary to Turkish Republic Laws, international agreements and related regulation sentences.
5. Decisions of principle, which were accepted as basis of the decision of İzmir No.1 Committee of Protection of Cultural and Natural Heritage have been anulled by Supreme Committee of Protection of Cultural and Natural Heritage, thus, becuase of the annulment of principle decision, final decisons are without basis.
6. Regarding area does not have the characteristics of being a Natural Site, does not have interesting features and beauty, consequently, does not have any characteristics to be protected.
7. Regarding decision has been taken without making researches and studies. Decision of high and grade separated intersection constructions should not even be thought in an area that has a natural site characteristic. However, in the Environmental Impact Assessment (ÇED) report, it has been stated that, related area is available for such a construction. Thus, how can be these site decisions taken?
8. In regarding region, there are public investments like; İnciraltı student dormitory, University of Dokuz Eylül Faculty of Marine Technology, Youth Entertainment Centre and some private buildings. Besides, this region has been declared as Tourism Centre by the Council of Ministers (Official Newspaper dated 20.09.1991 numbered 20997). As these decisions are taken into consideration, decision of the committee of protection is contrary to law.

Claims on the petitions of plaintiff party indicates different implementations of different authorized institutions on the region which is declared as natural site area. At this point, Greater Municipality of İzmir, Ministry of Tourism, General Directorate of Highways and other public institutions do not follow a perspective with the aim of protection whether in implementations or in their decisions. This indicates that, conflicting interests on this area are not restricted with private persons. Another emphasis of the plaintiffs is the contradictions against law and rights that legal framework presents. Statements emphasize the confliction of individual property rights,

which are defined in legal process, natural and environmental value concepts of these rights.

Basis of Defendant Party's Decisions

As the decisions of İzmir No.1 Committee of Protection of Cultural and Natural Heritage examined, following points can be summarized:

1. Decision depends on international agreements
2. During decision making process, opinions regarding the subject have been taken from universities situated in İzmir and opinions of different profession organizations have been considered.
3. Legal arrangements, which are the basis of decisions, have given necessary authority and liability to the committee.[78]

During decision making process, it has been seen that; reports, which state opposite claims of plaintiff parties, haven been existed in the files of the committee. In these reports, site characteristics of Dalyan area have been determined and opinions regarding protection area have been existed. Furthermore, it has also been realized that, comprehension of protecting urban natural areas for public and social interest has constituted tha basic principle of committee's decision.

Technical Report of Experts

Followings are the subjects that have to be explained by the expert committee appointed by the common decision of the authorized courts;

"As a result of the evaluation realized by the determination and examination of the area, where the plots causing litigation exist, as a whole in order to expose whether regarding area has the characteristics of being a first degree natural site or not, furthermore, a concrete determination with the consideration of public interest has been required in order to suggest; in the condition of taking the area out of site decision how will this wholeness affected."

In the extent of this examination, following evaluations have been stated in the report submitted by the expert committee;

"In the Act on Protection of Cultural and Natural Heritage No.2863, a concrete definition of "natural site" has not been made. However, more concrete definitions have

[78] Detailed examinations exist in the Decisions No.8050 and No.8049 dated 01.07.1999 of İzmir No.1 Committee of Protection of Cultural and Natural Heritage.

been made by the principle decision of Ministry of Culture – Supreme Committee of Protection of Cultural and Natural Heritage that has been established by the Act No.2863. However, these decisions have often been changed. According to the observations on the area and evaluations of necessary documents, it has been noticed that, regarding area has been occupied by commercial buildings, touristic buildings, education buildings, highways, residences (villas and dwellings). Settlements have entered a functional alteration process because of rapid and intensive building demand and pressure. As the Act on Protection of Cultural and Natural Heritage No.2863 (Decision Amendment No.3386) and related regulations are evaluated according to principle decisions of Supreme Committee by considering public interest, it has been noticed that, regarding area has the characteristics of being a natural site according to its ecologic elements and landscape structure like; topographic/geomorphic features, local climatic conditions, hydrographic and natural flora as a whole. However, as a result of site grading evaluation by considering socio-economic and cultural needs of the urban area with other criteria, it has been decided that, related area does not have the characteristics appropriate with the definition of first degree natural site. According to this conclusion, in the condition of changing site degree of the area that causes litigation; it will be possible to continue and protect its natural site characteristics as a whole."

As a result of the studies on the area realized by considering public interest, expert committee has decided in legal frame that "the area has the characteristics of being a natural site, however, it is not a first degree natural site." By the observations they made on the area, expert committee also exposed the aimless land use and occupation on the area. Although socio-economic and cultural needs of the city have not been clarified, they claimed that, site grading of the area for these needs were not appropriate with acts and regulations.

In the actions proceeded in Administrative Courts in İzmir, court decisions, which base on these expertise reports, can vary. Two different decisions have been taken by the courts. First one is the annulment of the procedure that has caused litigation, which means the decision of acceptance of the action in favour of plaintiff. These decisions claim that, natural site decisions are not appropriate with law. In second kind of decisions, courts have accepted the procedure causing litigation as appropriate with law, and have rejected the action against the plaintiff and approved the decisions of the committee. These courts, who decided the rejection of action against plaintiff, have

accepted the explanation of "having the characteristics of being a natural site" that was stated in expertise reports. By considering these statements in principle, they have announced that, subject of the action is not natural site grading; subject is whether the area is a natural site or not.

Ministry of Culture, as the defendant party, has applied for appeal regarding the decisions that nullify the procedure and private persons and companies, as plaintiff parties, have applied for appeal regarding the decisions that accept the procedure. Decisions regarding annulment of committee's decisions has been approved by the Council of State's 6th Government Office; decisions that accept committee's decisions have been appealed and have returned to Administrative Courts. All of the actions, which were appealed and returned to related Administrative Courts, have been accepted in favour of plaintiff party by Administrative Courts (appropriate with State of Council's decisions), which means decisions of the committee have been annulled.

Hence, İzmir No.1 Committee of Protection of Cultural and Natural Heritage nullified their Decision No 8050 in Balçova County on 17.12.2003 and made the new Decision No.10168 and nullified their Decision No.8049 in Narlıdere County and made the new Decision No.10169. These decisions have renewed 1st degree, 2nd degree, 3rd degree natural site boundaries on the area including Çakalburnu Dalyan and surrounded by İzmir-Çeşme Highway. Property owners have begun to make objections to the courts regarding also these new decisions. During research period between Dec 2003 – Jan 2004i number of actions brought for the annulment of the Decision No.10168 has already been 6 cases. Objections claim that, decisions are not just, are not appropriate with law and they should be annulled. These actions have not been concluded yet and they still continue.

In addition to actions/conflicts that reflect on legal process; there are also legal organizations which are parties in the evaluations regarding the area but exist out of legal process. These are the organizations of professions in city base and different civil community organizations. İzmir branches of chambers of TMMOB, Faculty of Architecture, Chamber of Architects İzmir Branch, Chamber of City Planners İzmir Branch are some of these organizations. Discussions concerning future of the area, which reflect on legal process as objections to the decision taken in 1999 by the committee of protection, has started in 1995. Different demands of different urban

actors regarding the future of the area have been discussed on public space.[79] Demands and definitions of right, interest, liberty regarding this area, whose future has been discussed since 1995, have been changing. Litigation process reflects only a part of these differentials.

4.3.2.2. Actions Regarding Özdilek

In addition to decisions of the committee, there are two more actions that represent the dimensions of the conflicts exist on the area. First one is the action regarding annulment of the license of Özdilek Tourism Centre situated in the area and exists in the extent of committee's decisions. Second one is the action regarding the annulment of the plan. This action was brought by Central Office of TMMOB Chamber of Architects against the decision of Tourism Centre approved by the Ministry. (See Fig.: 4.7 &4.8).[80]

One of these actions is the annulment request of Central Office of TMMOB Chamber of Architects regarding the Master Plan Changes realized on the plots purchased by Özdilek Company. Second one is the objection action proceeded by Özdilek Company against the decision taken according to Committee's Decision No:8050 regarding the annulment of Construction license of the building which was commenced before committee's decision. Both two actions were proceeded in İzmir Administrative Courts. Chronologically this process has developed as follows:

1. In 1991: By the decision of the Council of Ministers dated 13.08.1991 and numbered 91/2137; a group of regions, including the area where Özdilek Company existed, have been announced as Tourism Area and Tourism Centre.
2. In 1995: After announcement of the decision of the Council of Ministers, Özdilek Company had purchased plots in order to make tourism and shopping center in İzmir-İnciraltı region.
3. In 1996: By the Master Plan Revision of Greater Municipality of İzmir Scaled 1/25000, the plot belonging to Özdilek Company has been declared as Tourism Area.

[79] Altınçekiç, F. & Göksu, E & Göksu, S (1995); 1995/2, year:5, issue no:16, pp:29-50

[80] In addition to those two actions, Özdilek Company had brought another action concerning the nullification of the decision no. 8050. This subject has been explained in the previous section; therefore it is not evaluated in this section.

Plans scaled 1/5000 that include Master Plan Revisions were prepared by Greater Municipality of İzmir and approved in 1996 by Municipal Council.

4. In 1996: Plan changes, which had been approved Municipal Council of Greater Municipality of İzmir, were approved by Ministry of Public Works and Settlement on 14.08.1996.

5. In 1997: Implementation Plans scaled 1/1000 were prepared according to master plan decisions and approved by Municipal Council of Balçova by decision numbered 55, dated 18.06.1997.

6. In 1997: These plans were approved by Ministry of Tourism on 17.09.1997 according to the Article No.7 of Tourism Encouragement Act No.2638.

7. In 1997: Development diameter (extract of cadastral entry) has been obtained from Municipality of Balçova in 1997.

8. In 1998: Özdilek Company obtained Tourism Investment Certificate from Ministry of Tourism and Investment Encouragement Certificate from Under secretariat of Treasury regarding the most luxurious hotel and shopping centre in 1998.

9. In 1998: License for excavation was received in 21.04.1998.

10. In 1999: Plot purchased by Özdilek Company was subdivided as 27.050 m^2 and 14.488 m^2 in 1999 and registered as two different plots.

11. In 1999: Building license was obtained from Municipality of Balçova in 16.04.1999.

12. In 1999: Construction was commenced by Özdilek Company in 11.06.1999.

13. In 1999: İzmir No.1 Committee of Protection of Cultural and Natural Heritage (İzmir No.1 CPCNH) has declared the area, where Özdilek Company situated, as first degree natural site. By this decision and according to the principle decision dated 18.06.1999 numbered 648; "because of not being included in the definition of 'licensed building' according to the legal procedures, furthermore because of not claiming any deserved right in administrative law; cancellation of building license, demolition of the construction under basic excavation stage and provision of regaining the natural characteristics of the area" has been stated and building license of Özdilek was cancelled.

14. In 1999: Building license was cancelled by Izmir No.1 CPCNH on 09.07.1999 according to the decision dated 01.07.1999 and numbered 8050.

15. In 1999: Construction of Özdilek was stopped by Municipality of Balçova according to the the principle decision of Supreme Committee dated 12.03.1999 numbered 641.

16. In 1999: Özdilek Company applied to İzmir No.1 CPCNH in order to be included in the extent of "buildings under construction that building license according to legal procedure" stated in the principle decision dated 18.06.1999 numbered 648. This application was rejected by the committee with the decision dated 16.07.1999 numbered 8067.
17. In 1999: Decision of the cancellation of construction which had been applied according to the principle decision of Supreme Committee of Protection dated 18.06.1999 numbered 648, was annulled by Municipality of Balçova on 05.07.1999.
18. In 1999: Özdilek Tourism Management Co. Applied to İzmir Administrative Court on 27.08.1999 by the official request in order to nullify the decision of building license cancellation and to stop this procedure.
19. In 2000: 3th Administrative Court decided to nullify the procedure (by E.no: 1999/606, decision no: 2000/3/13) in the same court where Özdilek Co. has brought the suit of nullity regarding the decision no. 8050 (E.no: 1999/605). For that reason, by the declaration of "legal support, that constituted the reason of the legal procedure regarding the cancellation of building license, had been removed" and by the majority of votes, the court decided the nullification of the procedure on 25.05.2000. Opposing vote has claimed the necessity of the rejection of this action. This opposing opinion has objected the transaction which based on the nullification of the procedure of the decision no. 8050 by stating "fundamental principle of the transaction should be the announcement of natural site and site grading is not satisfactory to take such a decision on the cancellation of building license".
20. In 2004: Construction was concluded by Özdilek Company and shopping centre and hotel enterprise has been operated.

In the action regarding the nullification of Master Plan Change scaled 1/5000 which was brought by Central Office of TMMOB Chamber of Architects against Greater Municipality of İzmir, Ministry of Tourism and Ministry of Public Works and Settlement, procedure has been developed as follows:
1.TMMOB Central Office of Chamber of Architects brought an action to 6th Council of State concerning the plan change realised on plot basis.
2. 6th Council of State decided to nullify the transaction.
3. "Decision Amendment Demand" was submitted again to the court by the Ministry of Tourism against the "nullification of transaction" decided by Council of State.

4. “Decision Amendment Demand” was accepted on July 21, 2004 and the court file returned to Council of State.

5.The action is still being discussed by 6th Council of State. On the other hand, as mentioned above, Özdilek’s building was completed and has started to operate while this action continues.

4.3.2.3. General Evaluation

Have legal procedure and authorizations stated by acts been used in place by the committee? What do acts define? Have rights been redefined on urban space? What do citizens demand, what do property owners demand?

In the claims of plaintiff parties, who are property owners, it is stated that, rights of being property owners and liberty of using their properties are constitutional rights. However, site decision, which has been taken for social interest, is the greatest obstacle in use of these rights. Nevertheless, the decisions which have been taken by public institutions except the committee comprise the implementations regarding these rights. Thus, decisions of committee are contrary to law, interest and rights.

On the other hand, rights that constitute the basis of the protection committee, have the meaning of conserving social and general rights. In the framework defined by international agreements and positive law, they undertake the advocacy of natural and healthy environment against individual ownership and liberty rights as a public institution. However, this advocacy is being welcomed with reaction against today’s situation of urban space and planning practice that has reached a new dimension in distribution of urban rent. Although international agreements and acts on protection have the goal of protecting environmental value; because of not defining responsibilities, authorizations and restrictions in implementations process and not considering urban land policies and legal arrangements in a comprehensive approach, they do not define how this goal can be realized. In another words, there becomes the problem of how demands of individual interest that rise against urban-social interest can be balanced with these acts. Consequently, lack of a balancing mechanism of social needs against individual rights cause these conflicts.

4.3.3. Objections to Demolition Decisions of the Buildings without License

Administrative Courts are authorized for the actions regarding the demolition of buildings and their annexes without license. These buildings constructed against Development Act No.3194/Article No.32 include the buildings except the ones that can be constructed in urban space with no need to take a license. According to the related article, demolitions can be decided according to the determinations, denunciations or information received about the commencement of the building without a license or construction of the building against the license and its annexes. Construction against the rules defined by legal process -by development law- constitutes the basis of demolition decisions.

In addition to these decisions, according to the Development Act No.3194/Article No.42 development penalties are fined to building owner. Whether demolition decisions or development penalties describe different obligations applied on the same building. (Yılmaz; 2002; 100-111) Although Criminal Courts of Peace have been authorized where actions of objections to development penalties are proceeded, authorized courts in these decisions have been changed as Administrative Courts since 2001. By this legal change in authorization, Administrative Courts consolidate the actions of objections to demolition decisions and development penalties and determine these subjects in one action.

According to the examination of the actions to demolition decisions, it has been found out that, demolition and development penalties consist of following subjects;

a. Addition of storeys, covering balconies and addition of roof to buildings

b. Construction of buildings without license on urban space where construction is forbidden.

Table 4. 42. Distribution of Demolition Decision Results According to Counties

County	**Result**	**Total**
Balçova	Continues	3
	No need to decide because of relinquishment	1
	Acceptance	9
	Partial Acceptance	2
	Rejection	47
	Limitation of action (duration)	1
Balçova Total		63
Narlıdere	No information	4
	Consolidation	1
	Continues	1
	No need to decide because of relinquishment	2
	No need to decide	1
	Acceptance	3
	Partial Acceptance	1
	Rejection	64
Narlıdere Total		77
Grand Total		140

As actions about demolition decisions have been examined in Balçova and Narlıdere counties in general, it has been noticed that, there were 140 actions and 111of these actions were rejected against plaintiff party. As actions evaluated according to counties; 47 actions, through 63 actions regarding demolitions in Balçova settlement, were rejected against plaintiff party and demolitions were approved. In Narlıdere settlement, 64 actions through 77 actions in total were rejected against plaintiff party and demolitions were approved. Numeric values of these actions show the concentration of illegal buildings and buildings that were constructed against license and its annexes.

4.3.3.1. Demolition Decisions in Balçova

Distribution of demolition decisions taken by Municipality of Balçova inside municipal boundaries is as follows:

1. Buildings that were constructed against building license in geothermal protection area. Property owners existing inside protection zone (opposite Dokuz Eylül University Hospital) have objected the decisions by stating that; their properties have been in the protection zone and although they have not been expropriated, they can not use their properties. On the other hand, constructions have continued.

Building license demands have been rejected in this region with parallel to the development of the axis, however illegal constructions regarding different land uses continue informally.

2. Additions storeys and annexes of building in existing residential area without license.

Locations of the proceeded actions of objections regarding demolition decisons are shown in *Fig.4.6.* It can be seen in the figure that, actions regarding demolition decisions in Balçova settlement concentrate in first and second degree geothermal protection zones and in Korutürk, Teleferik, Onur quarters inside residential area boundaries. In İnciraltı and Bahçelerarası quarters, there is not any existing action regarding demolition decision. As a result of the land use working and the interview from the municipality departments, it was seen that most of the demolition decision taken by the courts do not applicated.

4.3.4. The Demand Concerning the Cancellation of the Subdivision Plan

Article 18 of Law No. 3194, is acknowledged as one of the important instruments in the implementation of the subdivision plans. The Subdivision process that is applied pursuant to this article, which regulates the Improvements that are Made on Lands and Lots, can be defined as the process of separation of the lands and lots that are included within the borders of the development plan in accordance with the cadastre and/or development subdivision, without having to receive the consent of the owners of the property. The authorization to execute and approve the subdivision process within the borders of a given municipality, belong to the concerned municipality. Subdivision plan involves the acquisition of a portion of up to 35% of the real property under private ownership without expropriation, for purposes of utilization as public areas.

In Article 18 of the Construction Law, and in the "Regulation Concerning the Principles Relating to the Improvements on Lands and Lots to be Applied Pursuant to Article 18 of the Construction Law, which was put into effect in 1985, it is stipulated through a provision that provided that it does not exceed a proportion of 35%, privately owned real property may, for one time only, be allocated to the use of general services that are needed in the reconstructed areas, such as roads, squares, parks, parking lots,

children's playgrounds, green zones, mosques or police headquarters; or to the service of the establishments and organizations who are involved in the rendering of such services.

The districts of Balçova and Narlıdere have filed 114 actions with demands concerning the cancellation of 31 separate subdivision plans in general. The subdivision plans implemented by the municipalities of Balçova and Narlıdere, which are currently under litigation, are provided in Table 4.9. In the case of Narlıdere, the subdivision plans numbered 112 and 112/1, belong to the same area. Following the cancellation of the subdivision plan numbered 112 upon court decision, subdivision plan numbered 112/1 was developed; yet the concerned plan has also become the subject matter of a litigation process. Similarly, the subdivision plans numbered 120 and 121 are also plans that have been developed in the same area. Following the cancellation of plan No. 120 upon court order, plan No. 121 was developed; yet, this plan has also become the subject matter of a litigation. The same process is also in question for the plans numbered 127 and 127/1. In the Balçova district, subdivision plans numbered 56 and 74 are plans that have been developed for the same area. (İşbankası Evleri) In the Balçova detail, the locations of the subdivision plans, the subdivision borders and the plots of the plaintiff parties, are illustrated in *Figure 4.6.*.

The examination of the actions initiated to date, will show that the scope of the objections on the whole also include the objections that are related to the development plans In this sense, the plaintiffs are also objecting against the development plans that have come up in the agenda concurrent with the subdivision plans. The actions are initiated on the basis of the claims of the property owners on grounds that the improvements that are introduced no not protect the ownership rights, and that the rules set forth in Article 18 and the pertinent legislation are being disregarded. Regarding the Balçova case, the subdivision and the development plans that constitute the subject matter of the objections, are evaluated in the Subdivision Plan Example 62, under section 4.4.2.

4.3.5. The Actions Initiated for the Cancellation of the Development Plans

4.3.5.1. Balçova Municipality

A total of 25 separate actions were initiated against the implementation plans with a scale of 1/1000 developed by the Balçova Municipality and the Master Plans with a scale of 1/5000 (the Master Plans are under the jurisdiction of the Greater Municipality of İzmir). The subject matter of the concerned actions are as follows:

1. The Cancellation of the development plans for the Olympic Village; The subject matter of five action which were initiated by 24 persons in 2002, consist of the demands for the transfer of ownership and the cancellation of the Master Plan with the scale of 1/5000 and the Implementation Plan with a scale of 1/1000. The court decision concerning the suspension of execution, passed in accordance with the conclusions set forth in the Expert Commission report, was adopted in 2003. The litigation is currently in progress.
2. The cancellation of the Aqua park Project that is included within the borders of İnciraltı Tourism Center, and that has received the approval of the Ministry: The subject matter of this legal action initiated by the Balçova municipality in 1995, consists of the demand for the development plan for İnciraltı Tourism Center, with a scale of 1/1000, which has been approved by the Ministry of Tourism. Regarding the four plots that are under the ownership of the Balçova and Konak Municipalities, a decision was passed in 1996, concerning the rejection of the plans that were under litigation.
3. The Cancellation of the Revision of Master Plan for the Aydın-Çeşme Highway; The subject matter of this action that was initiated by a real person who is the owner of a private property, consists of an objection against the designation of the real property owned by the concerned individual, as a green zone in the approved plans. The action was finalized by the rejection of the objection raised by the plaintiff party, and the court decision has been approved by the Council of State.
4. Objection Against the Work Site: The subject matter of the action that was initiated by a real person who is the owner of a private property, consists of the demand submitted by the plaintiff concerning the modification of the type of property that was

shown as a work site in the implementation plan, as a residence area. The said demand, relating to the area that is located in the İnciraltı district, was rejected by the administrative court in 1996.

5. The Cancellation of the change in the Master Plan with a scale of 1/5000 (Özdilek): The defendants of this action was initiated by the Head Office of the Turkish Chamber of Architects and Engineers (TMMOB) are, the Municipality of Balçova and Greater Municipality of İzmir, and the Ministry of Tourism and the Ministry of Reconstruction and Resettlement. This legal action was initiated in 1999, and was rejected in 2002. The litigation is currently pending at the level of the court of appeal. Meanwhile, the construction of the Özdilek Tourism Center, of whose construction had then begun based on the plan that is the subject matter of the litigation process, has been completed.

6. The Cancellation of the Recreation Area: In an application submitted by the property owners to the Balçova Municipality, the area (Karapınar Location) where the properties of the concerned applicants were found, which was designated as a recreation area, was demanded to be redefined as a residential area. This demand was rejected before being negotiated at the municipality assembly, and in the ensuing litigation process, the court has decided to accept the demand of the property owners. At the end of the litigation, the court has decided that the issue be negotiated at the municipality assembly; however, the decision that was settled at the municipality assembly regarding this issue is unknown The legal action was initiated in 2002, and a resolution was passed based on the investigation that was conducted on the file on the same year, and the litigation was resolved.

7. The Demand for the Cancellation of the Light Industry Site Shown in the Master Plan with a scale of 1/5000 and the Implementation Plan with a scale of 1/1000: The action relating to the real of the Light Industry (minor handicrafts) site, consists of two phases. The first litigation within this framework was initiated in 1995 by two plaintiffs, with a demand for the cancellation of the development plans The decision passed by the administrative court in 1996, concerning the repeal of the plans under litigation, was approved by the Council of State (court of appeal). The Demand for the Revision of the Court Resolution submitted by the Balçova Municipality was rejected, and the court decision has become final and decisive. During the course of the litigation process, the plans were implemented through revision by the concerned municipalities. During the second phase, applications were submitted to the court for the cancellation of these plans. The defendants of this litigation, which was initiated by six real persons in 1997,

are the municipality of Balçova and Greater Municipality of İzmir. The litigation process was finalized in 1999, and it was resolved that the plans shall be cancelled (i.e. the demands of the plaintiff party were accepted). At the end of the appellate review, the court of appeal has approved the resolution of the administrative courts, and the Demand for the Revision of the Court Decision was rejected.

8. Objection against the Demand for the planning of the Area that Remained outside the Borders of the Zone of Expropriation for Dokuz Eylül University (DEÜ) and that has not been expropriated. Since the lot that remained beyond the borders of the development area for the DEÜ Faculty of Medicine was not expropriated in the Master Plan with a scale of 1/5000 was not expropriated, a demand for revision in the development plan was submitted by real persons. The litigation with the demand for the repeal of the request that was rejected by the Balçova Municipality was initiated in 2002. The litigation is currently in progress.

9. Objection against the rejection by the Municipality of the demand concerning the amendment of the plan relating to the reclassification of the area from the school property to area for reconstruction: This action, which was initiated by a plaintiff in 2001, was decided to be resolved in favor of the plaintiff party.

10. Objection against the Changes of the Plan Notes: Amendments have been introduced in articles 3 and 7 of the plan notes in the region between the İzmir- Çeşme Highway and the Mithatpaşa Road. This procedure was rejected by the Greater Municipality of İzmir. Upon the passing of a decision of insistence by the Balçova Municipality, the Greater Municipality of İzmir has applied to court for the repeal of the concerned procedure. Another action was initiated by a real person regarding the same subject matter on the same year (2001). The two actions were finalized by the administrative court through a resolution that envisaged partial acceptance (the acceptance of the amendment of Article 7) and partial rejection (the repeal of Article 3). The court resolution was not submitted to the court of appeal.

11. Cancellation Of The Change In The Development Line Effected Through Changes Of The Plan Notes: In the action that was initiated in 1994 by the Greater Municipality of İzmir, an objection was raised against the change in the development line effected by the Balçova Municipality through changes in the plan notes. Balçova Municipality Assembly has passed decision for insistence no. 118 on 19.10.1994, and the demand for repeal submitted by the Greater Municipality of İzmir was rejected. In the litigation that ensued, it was resolved that the change of plan shall be repealed (in 1995) and that the

court decision will be in favor of the plaintiff party. The court resolution was not submitted to the court of appeal.

12. The Demand for the Cancellation of the 1/1000 implementation plan (Cancellation of the Municipality Service Area): The subject matter of this litigation which was initiated by the Greater Municipality of İzmir and the Balçova Municipality, consists of a demand for a change in the plan regarding an area that was initially planned as municipality service area. Since the plans of the concerned area, that was planned as a Hot Springs Facility in 1982, and as a recreation area and municipality service area in 1997, were prepared by the Greater Municipality of İzmir, Balçova Municipality was released from its status as the defendant party. The litigation was rejected from the standpoint of the plaintiff in 1999.

4.3.5.2. Narlıdere Municipality

A total of 24 actions were initiated against the Narlıdere Municipality in connection with the implementation plans with a scale of 1/1000 the concerned actions are outlined below as per their subject matter:

1. The demand for the 1st stage revision development plan: The action regarding this subject matter was initiated in 1994, by two real persons who own real property within the borders of the development plan, against the Narlıdere Municipality. These actions were rejected by the competent courts following the investigation conducted on the file in 1997, due to statute of limitation and from the standpoint of legal basis.

2. The Demand for the cancellation of the portion of the area designated as mass housing residence and light industry area that was planned as water reservoir in the application plan with a scale of 1/1000: This action was initiated by a total of 12 plaintiffs against the Narlıdere Municipality in 1995. The administrative court who has evaluated the issue under litigation at 2. İnönü Quarters of the Narlıdere district, has rejected the legal action from the standpoint of the plaintiff parties. The concerned Court Resolution was approved by the Council of State, in 1998.

3. The Demand concerning the re-planning of the Area designated as Municipality Service Area in the Implementation Plan with a scale of 1/1000, since it was nor expropriated, and since no construction permission was not granted for 5 years. The litigation was initiated in 1998, by a mass-housing cooperative located in the area under

litigation (the Quarter of Yeniköy). As indicated in the expert reports, the subject matter of the litigation was accepted from the standpoint of the plaintiff in 1999, on grounds that the purpose of allocation of the concerned municipality service area, was indefinite. The resolution of the administrative court was approved by the Council of State in 2000. The Demand for the Revision of Decision submitted by the Narlıdere Municipality was rejected, and the concerned court resolution has become final and decisive.

4. Cancellation of the section that remains within the road and the green zone in the Peacemeal Plan: The subject matter of this action which was initiated by the İzmir Chief Fiscal Authority against the Municipality of Narlıdere and the Grater Municipality of İzmir in 1997, consists of an objection raised against the Peacemeal Plan. The objection that was raised against the peacemeal plan that envisaged the subdivision of the area owned by the Treasury (section 18; block 156; plot 1962 (55,766 m2)) within the boundaries of the road and the green zone, was rejected from the standpoint of the plaintiff party by the administrative court in 1999. In this resolution, which was revoked by the Council of State at the end of the appellate procedure, 200, the administrative court has decided on the cancellation of the plan. The demand for the revision of decision submitted by the Narlıdere Municipality was rejected in 2001.

5. Objection against the transformation of the blocks that were planned as "A7 arrangement" in the development plan with a scale of 1/1000, into "Block Arrangement": The plaintiffs consist of the real persons. There are two actions within this context. The subject matter of this action initiated by two real persons living in the area where the concerned action took place, consists of the objection that is raised against the decision of the Narlıdere Municipality concerning the change in the improvement plan dated 27.10.1999, numbered 86. Since the concerned legal action was not initiated within the specified deadline subsequent to the occurrence of the event (in 2000), it was rejected by the administrative court by reason of the statute of limitation. The litigation was approved by the Council of State upon application.

6. Objection against the changes in plan and the increases in land coverage and floor area ratio: In this action which was initiated in 1999 by the Greater Municipality of İzmir against the Narlıdere Municipality, the administrative court has resolved in the revoking of the concerned action in 2000. The resolution was approved by the Council of State, and the Demand for the Revision of the Resolution submitted by the Narlıdere Municipality was rejected.

7. Objection against the rejection of the demand for the preparation of a development plan by the administrative court: The demand submitted by the plaintiff party, the Foundation of the Turkish Medical Doctors concerning the preparation of a development plan for the area (located in the quarter of Yeniköy) owned by the Foundation, was rejected by the Balçova Municipality The action that was initiated against the rejection of the demand by the municipality assembly, was accepted from the standpoint of the plaintiff party by the administrative court in 2001.

8. Actions concerning the changes in plan realized at Narlıdere Municipality by the Greater Municipality of İzmir: On the whole, there are five actions initiated within this context. Four of these actions were determined to be initiated in 1994; however, it has not been possible to have access to the files containing the relevant details. Of the remaining two actions, the first one was is concerned with the objection that was raised against the transformation of the residential area that was originally conceived as "A3 arrangement" into "Block-5" arrangement. The litigation that was initiated in 1994 was resolved by a decision in favor of the administrative court in 1995. The concerned decision was approved by the Council of State in 1996. The second legal action consists of the objection that was raised against the decision concerning the transformation of the residential areas originally conceived as "A2 arrangement" in the development plans, into "Block Arrangement". In this action, which was initiated in 1999, and the administrative court has resolved in favor of the plaintiff party in 2000. The concerned resolution was not brought to the attention of the court of appeal.

9. Objection against the transformation of the green zone into a high density residential area. The plaintiff is not a property owner. Since the no follow up was applied on the litigation initiated in 1999, the administrative court has resolved in 2000 that the "litigation shall be deemed as not having been initiated".

10. Objection against the modification of the plan: An objection was raised by an individual who was not a property owner, against the reclassification of the area as "Block-5 TM" the effect of a change in the plan by the Balçova Municipality. The litigation initiated in 1996 was accepted by the administrative court in 1997, and the decision was approved by the Council of State in 1999.

11. The cancellation of the Revision Plan developed for the Narlıdere- Sahilevleri Quarters: A total of three actions were initiated regarding this subject matter in 1997. In 1998, the administrative court has resolved on the cancellation of the revision plan. The

resolution was approved by the Council of State in 1999, and the Demand for the Revision of the Decision was rejected.

4.4. Objections against the Development Plans and the Subdivision Plans in the Balçova District

4.4.1. Objections against the Light Industry Site and the Development Plans

Regarding the Area for Light Industry demanded by the Balçova Municipality, the Master Plan with a scope of 1/5000 was approved by the Greater Municipality of İzmir Assembly through Resolution dated 12.12.1994, and numbered 05/265; and the improvement plan with a scope of 1/1000, was approved by the same Assembly on 27.11.1995. The first objections against the approval of these plans were raised in 1995. In the actions that ensued, the objections raised by the administrative courts were deemed as appropriate and a decision was passed regarding the cancellation of the plan. The application to the court of appeal submitted to the Council of State by the defendant party, the Balçova Municipality was rejected and through the rejection of the Demands for the Revision of the Decision, also presented by the Balçova municipality, the cancellation of the improvement plans that were under litigation, have gained decisiveness. During this process, the Balçova Municipality has revised its improvement plans covering the concerned area. The new (revised) plan was approved by the Greater Municipality of İzmir Assembly through Resolution dated 16.10.1997, numbered 05/237. Meanwhile, the improvement plans with a scale of 1/1000, were approved by the Balçova Municipality Assembly through Resolution numbered 69, dated16.10.1997, and was put into effect. Nevertheless, the new plans also became the subject matter of objections like the initial plans. While the litigation was in progress, the request concerning the issuance of a construction license to the S.S. Balçova Light Industry Site Construction Cooperative, was accepted by the Balçova Municipality, and a construction license was issued to the concerned Cooperative on 16.04.1999. Regarding the actions that were initiated for the cancellation of the plans for the second time, the administrative courts have decided on the cancellation of the improvement plans under litigation. (December, 2001). Upon this court resolution, the Balçova

Municipality has repealed its plans (Decision of the Municipality Council dated 29.07.1999; numbered 243/1668). Subsequent to this decision, the Municipality Council has decreed the "Demolition of the constructions that do not have a license pursuant to Article 32 of the Construction Law, and the imposition of a fiscal penalty amounting to TL 500 million pursuant to Article 42 of the same law, as per the Resolution of the Municipality Council dated 12.04.2001, numbered 101.

Upon the passing of the aforementioned resolution, S.S. Yeni Balçova Light Industry Site Cooperative has filed an action on 07.09.2001 (4th Administrative Court, Legal Basis 2001/746E). The current images of the site are provided in Fig. 4.7).

This planning/litigation process that has occurred in the Light Industry Site, must be taken into consideration together with the İzmir-Çeşme Highway that is undertaken by the Turkish Highway Works and the improvement plans that cover the same region. For, the plans under litigation are relevant to the performance of the implementation plans conducted in the region that was planned as urban working area in the Master Plan with a scale of 1/5000 in 1998, the plans that were approved in 1995, and the implementation of the subdivision plan numbered 62. Prior to the implementation of the plans, the minor enterprises that were operating in the area where the light industry site is located (i.e. the space between the Mithatpaşa Road and the Highway (subdivision area no. 62)) were ordered to leave the area pursuant to the evacuation decisions passed between 1995 -1998. (see figure:4.6. the actions under the caption of "evacuation"). The places of business engaged in automotive industry located in the concerned zone, have relocated in the new area designated for them within the borders of the Gaziemir district; however, no space was allocated to the minor handicrafts in the concerned area. Accordingly, the actions that were initiated in connection with the cancellation of the plan entail the examination of the concerned legal actions together with the resolutions concerning the plan, the changes that are experienced in the concerned region and with its relations with the other pending legal actions. When the claims of the parties and the process are taken up as a whole, it becomes possible to develop a better analysis on the issue.

4.4.1.1. The Claims of the Parties in the Actions Concerning the Development Plan for the Light Industry Site

4.4.1.1.1. First Phase of the Action

Claims of the Plaintiff:

1. The area that was designated as the Light Industry Site is a piece of land containing olive trees and pine trees, with a slope of 55-60%. With the construction of the Light Industry Site, the olive trees and the pine trees in the area will be cut down and this beautiful pastoral landscape will be destroyed.
2. Access to the region other than the Balçova main artery, is impossible. The traffic that will be created due to the places of business to be located in this area, will result in the occurrence of an unmanageable traffic jam in the Balçova area.
3. The planning that has been developed implicates very serious drawbacks from the standpoint of city planning. The area in question must be designated and planned as residential are with gardens.
4. Prior to the approval of the development plan with a scale of 1/1000, Balçova Municipality has initiated the expropriation procedures. The working machines have already begun their operations in the land, which means that Balçova Municipality is determined to put the plan into practice.

The Defendant: Balçova Municipality Management

1. When this area located between the Mithatpaşa Road and the İzmir - Çeşme Highway was allocated for other purposes as the result of the development plan[81] that was put into implementation, the car repair shops, carpentry workshops, and blacksmith shops that were located in the area, were decided to be demolished. The regulation under litigation was formulated in order to prevent the suffering of concerned small merchants from economic losses. The topographical structure of the concerned land is not suitable for residential purposes. Moreover, the plan has been developed for public interests. It is also consistent with the zoning and city planning rules.

[81] The area in question is the area that will be mentioned later on in the plotting plan no. 62 and the development plans on which the said plotting plan is based.

Expert Report:

1. The purpose of the city planning discipline is to ensure that the urban activities, that entail urban land use, are positioned in the most appropriate locations and magnitudes, in the available physical space, and to ensure an effective and efficient transportation and communication system among such activities. The principles in the selection of space identified for this for this purpose, consist of the principles relating to the slope of the land, capability of the ground, endemic plantation of the area, ownership structure, the compatibility-incompatibility of the land for other types of utilization, the vicinity-remoteness of the area, the magnitude of the land and its potential for development, its distance to the existing and planned transportation systems, etc. The objectives of such criteria, are to ensure the objective, efficient and effective planning, and to improve social welfare. These criteria enable the city planners to develop a healthy, safe and esthetic urban landscape and to protect the natural environment.
2. Based on the aforementioned criteria, the are that is the subject matter of litigation, must be entirely disallowed for constructions. It is an area that should be kept under protection, and that should be strictly disallowed for urban development. The planning of such a piece of land as urban area, shall conflict with all planning rules and principles, as well as public interest. The plantation on the landscape should be protected for the avoidance of erosion and floods.
3. The slope of the land makes it unsuitable for its utilization as a residence area; the utilization of this piece of land for small industry, would be inconceivable with regard to the rules of city planning.
4. The projected utilization that is currently under litigation, implicate a high risk of fire and environmental pollution. The utilization of such a landscape and the forest areas that are highly sensitive against such risks, will be grossly incompatible with the city planning principles and public interests.
5. The proposed area, does not offer any expediencies with respect to access and transportation in terms of city traffic. As a rule, such areas should be utilized for no other purposes besides green zones.
6. The fact that the shops located in the Mithatpaşa Road are being demolished, shall not justify the planning of the area under litigation as a light industry site.
7. In the Construction Law and the relevant Regulation, it is clearly stipulated that the development plans must be in conformity with the Master Plans with bigger scale. The

Litigation file does not contain any documents verifying that the plan in question is in conformity with the Revision Plan of Metropolitan Area (scale: 1/50,000) Hence, all the procedures are in conflict with the construction legislation.

Finally, the Expert Commission has opined that the development plan is incompatible with the needs of the district, planning principles, fundamentals of city planning, public interests, and the provisions of the construction legislation.

Administrative Court

In light of the Expert's Report, the Administrative Court has decreed on the cancellation of the "development plan under litigation, which conflicts with the existing laws" (4th Court of İzmir Resolution No. 1995/1035; Basis: E-1996/216 KN).

Upon the application of the of Greater Municipality of Izmir and the Balçova Municipality to the court of appeal, the 6th Department of the Council of State has approved the resolution passed by the administrative court. The Plaintiff has waived from its action on 26.12.1996. On the other hand, the Council of State has agreed that as a rule, the legal action concerning cancellation at the administrative court, was initiated for the purpose of the protection of the rights and interests of the concerned parties; as well as for ensuring that the compliance of the executive power and the administrative powers with the Law. With this acceptance, the Council of State has acknowledged that it spite of the waiver of the Plaintiff party, the final decision regarding this issue must be to the interests of the Public.

The Application of the Balçova Municipality to the 6th Department of Council of State with a Demand for the Revision of the Decision, was rejected by the Council of State on 18.05.1998 (Resolution No: 1997/4299 Basis: E- 1998/2671 KN) following these decisions, the cancellation of the planning has become final and decisive.

4.4.1.1.2. Second Phase of the Action

While the aforementioned litigation was in progress, the Balçova Municipality has revised the plans concerning the Small Industry Site in 1997, through resolution numbered 05/237. The Revised Master Plan with a scale of 1/5000 was put into effect upon its approval by the İzmir Metropolitan Municipality, and the Implementation Plan

with the scale of 1/1000 was put into effect upon its approval by the Balçova Municipality Assembly in 1997. The objections raised against these plans constitute the subject matter of the legal action. The concerned parties and the claims that have been set forth in the actions are as follows:

The Claims of the Plaintiff Party:

The claims set forth by the plaintiff party cover the aforementioned issues, as well as the following assertions: In spite of the court resolution concerning cancellation and in spite of the negative opinions of the Civil Works Commission of the Greater Municipality of İzmir, Balçova Municipality has re-proposed the establishment of a Small Industry Site in the same region, has received the approval of the Greater Municipality, and has initiated the expropriation procedures. These procedures and plans, and the activities of the administrations who execute them, are in contrariety with the law, public interests and planning principles.

In response to the above mentioned claims, the defendant Balçova Municipality has set forth the following arguments:

1. The revised development plan contains a number of differences as compared to the plan that was cancelled by the court. I this plan, the issues that were the subject matter of criticism in the Expert report, (the topographical structure of the land and plantation) have been corrected.
2. The cancellation decision (previously passed by the court) and the criticisms that were raised in connection with the previous plan are irrelevant to the plots that are owned by the plaintiff, and there exists no reason that entails the cancellation of the development plan.

S.S. Yeni Balçova Small Industry Site Construction Cooperative (who participated in the action as an intervening party), has presented the following arguments:

1. The legal action that was initiated is devoid of tangible and legally valid justifications. Moreover, it is based on malicious intents and the motive of the plaintiffs in pursuing this case and in their plans, is to derive personal interests.
2. In the new plan, the leafy areas have been preserved as parks. The areas with high slope, were excluded from the borders of the construction areas. In blocks that have

problems due to the slope of land, such problems shall be avoided through the implementation of technical measures.

3. Various measures against environmental pollution have been prescribed in the plan notes.

4. According to the results of the census that was performed in this region, which is located on the axis of significant transportation routes, the population of the area is 67,000. In spite of the rapidly increasing demography and its elite inhabitants, there are does not own a light industry site. The municipality and the merchants living in the area, are cooperating for the fulfillment of this demand. However, there are various attempts to impede the efforts initiated for this purpose by the property owners living in the region.

5. Currently, about 100 members of light industry are obliged to work under unfavorable conditions, and the improvement of these conditions shall serve public interests.

6. The 6th Department of the Council of State, who has approved the previous cancellation decision, has acted in line with the "forestation area" that was envisaged in the plan dated 1964, with the scale of 1/25000. Whereas, the decades that have lapsed and the changing conditions that have occurred since then, have given rise to vast differences. For example, the areas that were then designated as olive groves, orchards and woods, are currently replaced by high rise steel and concrete structures.

7. When the lands of the plaintiffs that were previously classified as "fields" were included within the scope of development plan, thanks to the light industry site prospect, a surplus revenue was generated on behalf of the land owners. The scheme of the plaintiffs for generating more surplus revenue is evident from their demands concerning the planning of the area as residential area.

The Claims of Greater Municipality of İzmir, the Defendant Administration: After outlining the developments regarding the legal action, Greater Municipality of İzmir presents the following issues, which are consistent with the previous arguments of the Administration:

1. The area under litigation is planned to be utilized as an area of concentration for the businesses that conduct their operations in a scattered manner within the Balçova district, in a designated "Light Industry Site" that will be organized in a periphery away from the city center.

2. As the result of the reexamination of the development plan, the implementation was revised and approved in line with the opinions of the State Water Works (D.S.İ.) Regional Directorate.
3. The plan does not contain any conflicts with the existing laws and regulations, and is fully compliant with the fundamentals and principles of city planning and public interests.

Evaluation of the Expert:

In the expert report that was prepared, the similarities and the differences amongst the plan subject to litigation and the new plan are evaluated, and it is concluded that the differences in between the two plans are not fundamental and substantial. It is further assessed that through the introduction of certain marginal modifications relating to the broadening of the road and the green zones, the defendant administrations have attempted to continue the implementation of their plans, in spite of the decision concerning cancellation.

In the report, the expert commission has reiterated its previous opinions and has highlighted the following issues:

1. The Plan is against public interests due to the negative impacts that it will have on the natural environment;
2. Due to lack of direct connections to the main axis for transportation, and due to reasons such as traffic problems and inaccessibility, and due to its position that is inconsistent with the criteria concerning land use and selection of location, the plan is not compatible with the fundamental and principles of city planning.
3. Within the context of the "gradual staging in planning" which is mandatory for city planning purposes, since the plan is not in conformity with the decisions concerning "upper scale" (i.e. the Environment Order Plan with the scale of 1/25.000) and since it conflicts with the provisions of Article 6 of Law no. 3194, and the relevant Regulation, the plan is against the Construction Law.

In light of the above determinations, the Expert Commission has opined that the passing of a decision for the cancellation of the Master Plan with the scale of 1/5000,

and the Implementation Plan with the scale of 1/000 will be appropriate. (1st Administrative Court 1997/755E).

In the evaluation applied by the Administrative Court dated 23.3.1990, in light of the determinations of the expert commission, it was indicated that "the arrangement concerning the light industry site that was proposed in the development plans, was in conflict with the fundamentals and principles of city planning, public interests and the construction legislation. Hence, a unanimous decision was passed on the cancellation of the development plans subject to litigation.

The application submitted by the Administration of Balçova Municipality to the 6th Department of the Council of State concerning the repeal of the decision, was examined by the Council of State (as per Resolution No. 1999/4856 E, 2000/5953 KN) In its Resolution dated 23.11.2000, the 6th Department of the Council of State has revoked the decision of the administrative court. The reason for the revocation is explained as follows:

In the defense submitted by the Balçova Municipality, it is argued that the immovable property subject to litigation is located beyond the borders of the development plan, and at the same time, from the implementation plan with the scale of 1/1000 provided in the attachment to the expert report that was taken as basis in court decision, it is understood that the immovable property in question is beyond the borders of the approved development plan. Therefore, the pertinent decision must be passed subsequent to the determination of whether or not the concerned immovable property is within the borders of the approved development plan.

Although the litigation that was revoked and returned to the administrative court (through Resolution No. 2001/312 E /718 KN); the administrative court refused to obey the decision of revoking, and insisted on the validity of its own decision, and has decided on the cancellation of the development plans on 10.12.2001. The administrative courts presented the following justification regarding its insistence on the resolution concerning the cancellation of the development plan:

"Although the plot that is owned by the plaintiff is beyond the borders of the approved development plan, it is also near the concerned area to the extent that it will be affected from the implementation of the plan. The decision of revocation passed by the Council of State, does not contain any clarifications regarding the degree of

effectiveness of the location of the concerned immovable being within or beyond the borders of the development plan, on the decision to be passed, and on the procedures and principles that will be taken as basis in the passing of the concerned decision. Nevertheless, the request concerning the investigation of this issue was accepted, for purposes of determination of whether or not the plaintiff is authorized to initiate this legal action. However, vis-a-vis the generally accepted case laws, it must be agreed that in disagreements arising from the implementation of development plans and plans, the persons who are residents in the area under litigation shall be entitled to initiate legal action.

The Administration of Balçova Municipality has submitted another application to the council of state with a demand concerning the repeal of the "insistence decision" passed by the local court in December 20012. In its justification concerning this application, the administration has asserted that the "*the raising of a claim on grounds that an immovable that is in proximity of the approved borders of the development plan shall definitely be affected from the development plan*" in not consistent with the fundamentals and principles of city planning.

4.4.1.1.3. Third Phase of the Action

During this phase, while on one hand the legal actions initiated for the cancellation of the development plans were in progress, on the other hand, the permission for the erection of light industry site was issued by the concerned municipality.

The developments that took place during this phase, were as follows:

The application submitted by the S.S. Balçova Light Industry Site Construction Cooperative on 31.12.1998 for the receipt of a construction license in accordance with the current development plan and regulations, was accepted by the Balçova Municipality, and a construction license was issued to the Cooperative on 16.4.1999. However, upon the decision of the administrative court concerning the revocation of the plan (within the context of the process explained above), the Balçova Municipality Committee has decided on the cancellation of the licenses granted in connection with the light industry site. In the aftermath of this decision, Balçova Municipality

Committee has passed a decision concerning the demolition of the constructions that were erected and the imposition of fiscal penalties.

S.S. Balçova Light Industry Site Construction Cooperative initiated action against this decision of the Balçova Municipality Committee on 7.9.2001 (The 4th Administrative Court Decision No. 2001/646E).

In its aforementioned decision, S.S. Yeni Balçova Light Industry Cooperative presented the following evaluations:

1. It was determined that no action was taken by the plaintiff with a demand for the revocation of the decision of the Balçova Municipality Committee dated 29.7.1999, numbered 243/1668, regarding the cancellation of the construction licenses under litigation. Therefore, there exists no conflict against the laws in the section of the application subject to litigation, pertaining to the demolition of the structure that has become devoid of a license due to the revocation of its license for construction.
2. As to the structure that has become subject to fiscal penalty, the building in question was supported by a construction license and was constructed in due conformity with the applicable procedures. However, the building in question has become deprived of a license, since it become beyond the borders of the development plan, upon the revocation of the development plan for the region where the concerned building was located. Therefore, the portion of the decision concerning the imposition of a fiscal penalty pursuant to Article 42 of the Construction Law, is in conflict with the legislation.

This decision of the Administrative Court has been brought to the attention of the court of appeal by the legal attorney of the plaintiff, and the 6th Department of the Council of State has passed a Resolution (No. 2003/5283 E.N.) concerning the suspension of execution. The present status of the area under litigation, which was pending as of the date of completion of the investigation, (December 2003), is shown in the photographs provided in *Figure: 4.7*.

4.5. Objections against Subdivision Plan No. 62 and the Implementation Plan that Constitutes its Basis

The Area Under Litigation: The concerned area is located between the borders of the Balçova district, in the zone that is situated between the beginning of Ata Road

located in between the Mithatpaşa Road and the Çeşme Highway, and the Faculty of Medicine, Dokuz Eylül University (DEÜ)

4.5.1. Development of the Events and the Claims of the Parties

The Master Plan with the scale of 1/5000 which covers the area under litigation, was approved on 21.9.1998. In the concerned Master Plan, the area that also covers the lot under litigation, was planned as "Urban Working Area". The implementation plan under litigation was approved by the Balçova Municipality Assembly in 21.2.1995.

Claims of the Plaintiff Party:

1. The development plan prepared for the area and the subdivision plan no. 62 on which this plan is based, are focused on private interests rather than public interests.
2. During the stages of preparation of this plan (on 7.9.1994) the plots that were owned by Migros A.Ş. were purchased, and before the preparation of the plans, the construction of a huge shopping mall that occupies a covered area of 7,000 m2 was constructed on the basis of a provisional license. In this respect, the plan that has been developed serves the interests of the Migros-Koç Group, and not that of the land owners. As the outcome of the realization of this plan, title deeds divided into shares will be offered, and the lots will be sold at prices lower than their actual values as the outcome of the legal actions to be initiated against this partnership.
3. Since subdivision plan no. 62 will be impracticable on behalf of the land owners due to the magnitude of the plot; hence, it will be sold to the land speculators, and those who purchase these lands will generate substantial profits in the long run.
4. In this process, the land speculators shall generate unfair profits.
5. Since the regions that lie beyond the area under litigation have been planned as residential areas for upper income groups, the concerned region should also be designated as a residential area.
6. There exists an adequate number of tourism and recreation areas, Moreover, the concerned neighborhood also has an adequate supply of shopping centers, and there are no demands for more shopping malls.
7. Should the neighborhood be planned as a residential area, the landowners are ready to separate the common grounds and erect constructions on these lots.

8. The implementation plan is inconsistent with the Master Plan.
9. In its present form, the plan is in contrariety with the Constitution and the principle of equity.

The Claim of the Defendant: Administration of Balçova Municipality

1. Since the statute of limitation for 60 days prescribed in Law No. 2577 for initiating legal action has expired, the litigation should be rejected, as it has become overdue.
2. The implementation plans with the scale of 1/1000, were prepared in due conformity with the Master plans, and were put into effect subsequent to their approval by the Greater Municipality of İzmir. In the Master Plan, the region was classified as "M2 Working area". According to the plan notes, "This area can be allocated to schools, dormitories, business centers, all types of commercial and entertainment facilities, hotels, motels, shopping malls, local and regional public establishments; however, it cannot be allocated to residential use." There is an obligation that the implementation plans must conform with the Master Plans. Therefore, the plans do not conflict with the Law. (2nd Administrative Court 1995/1171 E; 1991 KN).

Expert Report

In the report that was drawn up a three-person expert committee, two different arguments have been set forth. The arguments that are shared by both sides, are as follows:

1. Since the area under litigation was planned as "working area" in the Master Plans with the scale of 1/5000; and since the plans with scale of 1/1000 were prepared in compliance with this plan, the reclassification of this area as a residential area, is in conflict with the planning principles and the construction legislation.
2. The subdivision plans no. 62 that is under litigation, have been prepared for purposes of meeting the construction plots and the common grounds in sizes that are required for the working areas. Accordingly, this application is in conformity with the principles of arrangement.

Due to the above reasons, it was decided that the development plans and the subdivision plans were consistent with the planning principles and public interests.

The issue, against which negative votes were raised, involves the second article above. According to the counter arguments, the utilization of the land for residential

purposes, which is the demand of the plaintiffs, cannot be acceptable for this area. However, the size of the plot and the conditions for construction envisaged in the plan implicate certain drawbacks. The minimum condition of allotment of 10,000 m2, shall give rise to the occurrence of joint possession and certain conflicts arising in connection with joint possession. The reduction of the condition for minimum allotment shall be recommendable in order to alleviate the conflicts amongst the landowners and to ensure the improvement of the area as soon as possible. Consequently, the portion of the subdivision plan that belongs to the plaintiff is not consistent with the fundamentals and principles of city planning and public interests.

Resolution of the Administrative Court

In the administrative courts, the decisions passed were in line with the majority opinions contained in the report and consequently, it was resolved that the cases shall be rejected from the standpoint of the plaintiff party. The plaintiffs of the seven of the actions have submitted the case to the court of appeal and that at the current stage, the appeal was approved by the Council of State. The demand for the revision of decision submitted by one of the parties was rejected. Upon the completion of the litigation process, the implementation of the concerned plans were initiated. (The images of the area are presented in *Figure:4.7.*)

4.6. Olympiad Village

There are two actions examined under "olympiad village" title which have different characteristics and contents like; ownerships rights and objection to implementation plans. The transaction that is the subject of these two cases has been started in 1970's. Thus, most of data have been obtained from the information files prepared by plaintiff parties.

Plaintiff Parties and Development of the Case

In 1970's, with the decision no.3 dated 08.10.1971, Municipality of Balçova decided to subdivide and sell the building block no. 671 and plot no.94 (new no's. 97, 98, 99) inside their municipal boundaries in order to prevent the construction of "gecekondu". Title-deeds of some plots could be taken before military intervention in

1980. After military intervention in 1980 Municipality of Balçova was conveyed to Municipality of İzmir. Thus ownerships of the sold plots were transferred from Municipality of Balçova to Municipality of İzmir and then Greater Municipality of İzmir by rectification method. After re-establishment of Municipality of Balçova in 1992, ownership was not conveyed to the Municipality by the Provinces Administration Commission of Provinces Administration and no actions brought to this decision by the Municipality of Balçova. Although different Myoralties had announced between 1980 - 2002 that, title-deeds of the sold plots would be distributed, title-deed transfers have not been completed since 2003.

In this period, people who had their title-deeds had taken expropriation payments during realization process of the high way planned in the mentioned land. In 2000's, upon the decision of realization of 2005 Universidad Olympiads in İzmir, Greater Municitality of İzmir has started the procedure concerning planning and realization of "Olympiad village project". The area including 98 plots, where also plots causing action exist, were assigned by Greater Municipality of İzmir to construct buildings of International Summer Games.

By the Olympiad Village Project, people who couldn't have their title-deeds applied to Administrative Court with demand of conveyance of ownership and annulment of Master Plans. Characteristic and basis of these action based on "ownership rights and use of those rights". Basis of plaintiff parties depends on the opinion that there is not any just and equitable process regarding "sustainability of administration and removal of the problems occured because of administrative actions." It is stated that, in 1970's, there were approximately 5000-6000 people who were informed by the announcements of Balçova Municipality and purchased those plots. It is also stated that, there were 600 members of "Human Solidarity Association of Land Sufferers in Balçova" (Balçova Mağdurları İnsani Dayanışma Derneği) in 2004[82].

Data obtained during examination of regarding court file proceeded in Administrative court are as follows:

Subject of action is; "Demand of annulment of the transaction dated 1990 numbered 167 of Province Administration Council concerning the conveyance of plots

[82] During the examination of this case, a participation was realized in a regular meeting of this association. After a few interviews with the members of the association, it has been informed that, part of the members have not been still a property owner and have been living in the "gecekondu" areas opposite the lands under construction. In addition, it has been observed in the interviews realized face to face with part of members in the meeting that, socio-economic profile of members is not uniform, however part of them represent low, low-middle and middle income groups.

no: 97-98-99 on building block no.671 in Balçova and annulment of Master Plan scaled 1/5000 approved by Council of Greater Municipality of İzmir on 17.6.2002 numbered 05/46 and implementation plans scaled 1/1000 approved by Municipality of Balçova on 26.6.2002 numbered 45".

Plaintiff parties were the ones who purchased the plots sold by Municipality of Balçova in 1970's but couldn't have the title-deeds and the ones who had the title-deeds but left outside the boundaries of the plan.

Defendant parties were Mayoralty of Greater Municipality of İzmir and Mayoralty of Balçova Municipality.

Plaintiff party has emphasised on sustainability of the administration concerning ownership and confidence to the sale procedure of a public institution. On the other hand, following points were examined concerning planning procedure:

1. There was a discordance between scales 1/25000 and 1/5000 and that discordance was contradictory to regulations and planning principles; 2. Including only the lands under municipality's ownership in plan boundaries was not in accordance with equality and justice concept, furthermore on those land that were sold to built social houses according to subdivision plans prepared in 1969, a planning interference should be realized according to this goal; 3. Peacemeal planning approach has created implementations contradictory to equality and justice concepts and makes useless the integrity of plans, therefore has caused today's unplanned cities."(Application petitions submitted to 2nd Administrative Court dated 2.8.2002 with E.no. 2002/1042 and E No: 2003/79)

Municipality of Balçova claims that, this ownership discussion should be invalidated because of lapse of time after 30 years and parties are no more party on this case. Besides, it is claimed that, implementation plans scaled 1/1000 are in accordance with greater scaled plans and Greater Municipality of İzmir is authorized to pursue those plans, thus Municipality of Balçova is not concerned with this case. Besides, plaintiffs do not have any relation with the plans that are subject of the mentioned case.

Greater Municipality of Izmir, as defendant part, claims in their owner that; 1. The project developed for the university games is not contradictory to "equality", "justice" and "public interest"; 2. There is an accordance between Master Plan scaled 1/5000 and implementation Plan scaled 1/1000.

In expertise reports; it is mentioned that "court council has demanded an evaluation regarding development plans, this is why they has taken such an evaluation into consideration" and following points are stated regarding planning process:

1. The are that is the subject of litigation was defined as "non-residential area" in İzmir Metropolitan Area Master Plan scaled 1/25000, approved in 1973 by Ministry of Public Works and Settlement,
2. This area was decided as highway and area to be planted in 1988 and approved on Master Plan Revision by Greater Municipality of İzmir in 1989,
3. In the Master Plan scaled 1/5000 approved in 2002, it includes plots no:96 and 98 and part of the unregistered land
4. There is not any accordance with the İzmir Metropolitan Area Master Plan, which was approved in 1989 but still in force today, and Master Plan scaled 1/5000 and this condition has a contradiction to principle and basis of planning process,
5. Plan changes were not realized according to the article no:24/1 of the regulation arranging the principles that should be applied in development plan revisions,
6. A plan, an approach that focus on only one property (properties of the municipality that authorized for plan preparation and approval) will cause a discussion in "equality" and "justice" principles,
7. Great part of the land has a slope of over 45% and exist on 1st Degree Earthquake Zone and development proposal with FAR (Floor Area Ratio) of 2.5 and 1.4 isn't in accordance. In this framework, according to above evaluations, expert committee has decided that "it is not in accordance with principles and basis of planning, public interests and Development Act."(E. No. 2002/1043)

As a result, according to expertise report, administrative court decided to "conclude the transection without taking any pecuniary warranty" with E.No:2003/581 on 9.7.2003. The same administrative court made the same decision on the same area on 24.7.2003 with E.N. 2003/684. In the action brought with E.No. 2002/792 by the same plaintiffs in 12th Civil Court of First Instance against the same institutions; annulment of registrations of the same plots in the name of Greater Municipality of İzmir and conveyance of these registration to Municipality of Balçova and decision of cautionary judgement were demanded. Greater Municipality of İzmir objected cautionary judgement decision taken in this action and started in their objection petition; "There has to be a lapse of time in a legal evaluation after 30 years." Besides, it is also claimed that, "party of the action should be the Municipality of Balçova because they had sold

lands belong to the Treasury". On the other hand 2nd Council of State decided to nullify the "investigation permission" that was proceeded against three mayors of Municipality of Balçova because of selling the lands against the laws in 1970's. (E.N. 2001/676, Decision No: 2001/1291 dated 14.5.2001). In this decision, the following statements also exists; "Mayor...according to the decisions taken on different dates by the municipal council, had realized the sale of the land with the values determined by the municipal council to the right owners who could certificate that they had paid the advance payment between 1971-1973 and who paid the difference between today's value and advance payment per m^2 determined by the council. However data and documents are not satisfactory to necessitate to proceed any investigation permission about them... Ministry of Interior's decision to proceed the investigation permission...has been nullified by the majority of votes". The decision existing in this decision is evaluated by the plaintiff parties as, Mayor of Balçova Municipality's land distribution procedures were found rightful and sales were realized legally.

Data concerning conclusion of actions do not exist in the study extent because of limiting the study examinations by the year 2003. Images obtained in 2004 April from the land that caused proceeding are shown in Fig.4.6 &4.7.

4.7. "Others" Category

Through the actions evaluated in Balçova and Narlıdere settlements, four actions that have been emphasised through "other", "determination", "Narkent" categories under spatial category are examined in this section. These actions are also examined in this section because they concern living rights in urban space and survival.

These actions are;

1. First case; This action was brought by the families of two children who died because of insufficient precautions in the construction realized by 10 different housing cooperatives associated to Municipality of Narlıdere and Narkent and Narkent Union of Housing Cooperatives. These children died because of falling into the pits in the Construction area which were filled with rainwater and concerning actions were brought to İzmir Civil Court of First Instance (e.no: 1998/628). The compensation action brought against Mayoralty of Narlıdere and 10 Housing Cooperatives was concluded

with the payment of compensations (Decision No: 2001/1096). Compensations were paid by Mayoralty according to the decision taken by the local court; however there was an objection application to Supreme Court of Appeals regarding this case.

Because of limiting the research by the year 2003, after this date process has been pursued according to data obtained from newspapers. According to those data, it is known that, through October 2004 the case was returned to local court by the Supreme Court of Appeals and it was transferred to administrative court with the "decision of nonjurisoliction" by the local court. At the end of this procedure, although the case was not concluded in administrative court, Mayoralty of Narlıdere has started the transactions in order to recover the compensation paid to the plaintiff[83]. Basis of the case, brought because of not taking necessary security precautions in the constructions of Narbel houses in 2nd İnönü quarter in Narlıdere settlement, depends on the negligence of the authorities and nonrealization of necessary control.

2. Second case; This action was brought by a family upon the death of their child because of touching the electric cables in their balcony of an apartment house in Akasya Street, Onur quarter, in Municipality of Balçova. Plaintiff family brought an action of compensation for pecuniary loss and mental anguish in İzmir Administrative Court (e.no:2002/1134) against TEDAŞ (Turkish Electricity Distribution Co.) and Mayoralty of Balçova. Because of limiting the study by the year 2003, there is not any data about the conclusion of the court. However, it is observed that, there is the problem of authority, task and liability between the two defendants; Municipality of Balçova and TEDAŞ. Both of these two institutions have stated that the subject of case has not been included in their task field. Another important point through these statements is; touching electric cables was the 9 year old child's own fault and the authority can not be responsible of that event.

3. Third case; This is the action proceeded in administrative court with the demand of damage payment occurred because of the fall of a tree near the road (e.no:1994/2284). In this case, Mayoralty of Narlıdere as the plaintiff part has started in his petition submitted to the court that, their tasks/liabilities do not include this subject. In addition, it has been stated that, subject of the court is under the Responsibilities of Branch Directorate of Highways. As a result, action has been concluded in favour of plaintiff

[83] Newspaper "Radikal" dated Oct 13, 2004 WEB-14 and WEB-15

party because documents in court file were unsatisfactory and research could not be examined in detail.

4. Fourth case; These actions were brought in order to compensate the damages caused by Narkent constructions and determination of those damages. These actions are discussed under "determination actions" title. In these actions, determination of the damages in environment and removal of these damages have been demanded. The action proceeded in the Civil Court of Peace (e.no:1996/1706), in order to determine the damages in environment caused by the Constructions of Narkent Housing Cooperative and Municipality of Narlıdere, is an example for those actions. It is known that, determination procedure has been realized by the court, however the conclusion is not known because of inaccessibility to the data and documents in court file details.

These four actions, as different from the other actions, emphasize the lack of control of the authorized bodies in their interferences on urban space and the risk of living occured as a result of lack of control on urban space.

In greater scale, another example for control, task and authority problem outside the spatial (physical) boundaries of this study is the action brought by a person whose relatives died in the earthquake on August 1999[84].

In preliminary stage of this action, applications were realized to Municipality of Yalova, Ministry of the Interior and Prime-Ministry. In these applications and in the court file; improved lands, development conditions of these lands, planning authorities and approval of plans, implementations, licenses, authorities, tasks and responsibilities in each stage were explained in detail. As a result of these explanations, plaintiff party has stated that "there was negligence and abuse of tasks by improving the land which should not be improved permitting development on this land and arranging construction license on this land". The answers from these applications are as follows: Municipal Council of Yalova Municipality has stated that there was not any administrative fault of their institution; in the response to the petition; Prime-Ministry expressed that, mentioned application would be transferred to the concerning authority. Ministry of Interior and General Directorate of Local Authorities stated that their institution did not have any service fault legally, related local authority, not the Ministry, had the task and responsibility to make and approve development plans, to give construction license and permission certificate according to the Acts No. 3030, 1580, 3194.

[84] All data concerning this case were obtained from the internet page;WEB-16

This action was brought to Bursa Administrative Court and it was rejected because of lapse of time by the related court on 29.11.2000 by mentioning 60 days in proceeding had passed (WEB-16). The problem submitted in this case was the uncertainty regarding which institutions, in which scale were responsible in a group of events resulted with death and caused by legal/illegal constructions in the lands that should not be developed. There were and there are a lot of events resulted with death because of similar reasons. However, in the extent of this study, no data or pattern can be obtained about a comprehensive arrangement, authority or existence of such an authority regarding how the authorities carry out their responsibilities.

4.8. The General Evaluation of the Planning Process with a Specific Emphasis on the Actions Initiated in Balçova and Narlıdere Settlements

The general evaluation of all the actions that were initiated from the standpoint of planning and the utilization of space can be grouped under the following sub-sections:

1. The overall evaluation of the planning procedures relating to the space that is under litigation shows the majority of the plaintiffs were property owners, private real persons or corporate entities who are directly affected from the decisions that were passed.
2. In the legal process, the parties attribute different meanings to concepts such as "rights", "equality", "interest". Whereas, in the legal process, such concepts are interpreted in light of the wording of the legislation, and are finalized by the specialists in accordance with their own understanding. In the Balçova example, it is not possible to mention concepts on which a consensus has been reached in the urban sense. However, in the legal process, the concepts that are most widely used and that are even taken as basis, are the concepts of "rights", equality" and "interest".
3. From the standpoint of real persons, the term "right" refers to ownership rights and the entitlement to benefit from such rights.
4. None of the arguments and evaluations of the parties, contain any definitions regarding the term "interest", how it should be determined and how it should be implemented. Consequently, the term "interest" remains rather abstract and within this general context, it is not clear to identify the winning party and the losing party in the

decisions that are passed on the basis of "benefits" mentioned in the context of the urban space.

The arguments on the concept of justice in the process of juridical equity, judicial supervision can be evaluated in a comprehensive way. This kind of way, during the evaluation of whether or not a court resolution is in conformity with the rules of justice (equity), two different approaches can be adopted in the criticism of a court decision passed in connection with a particular legal action.

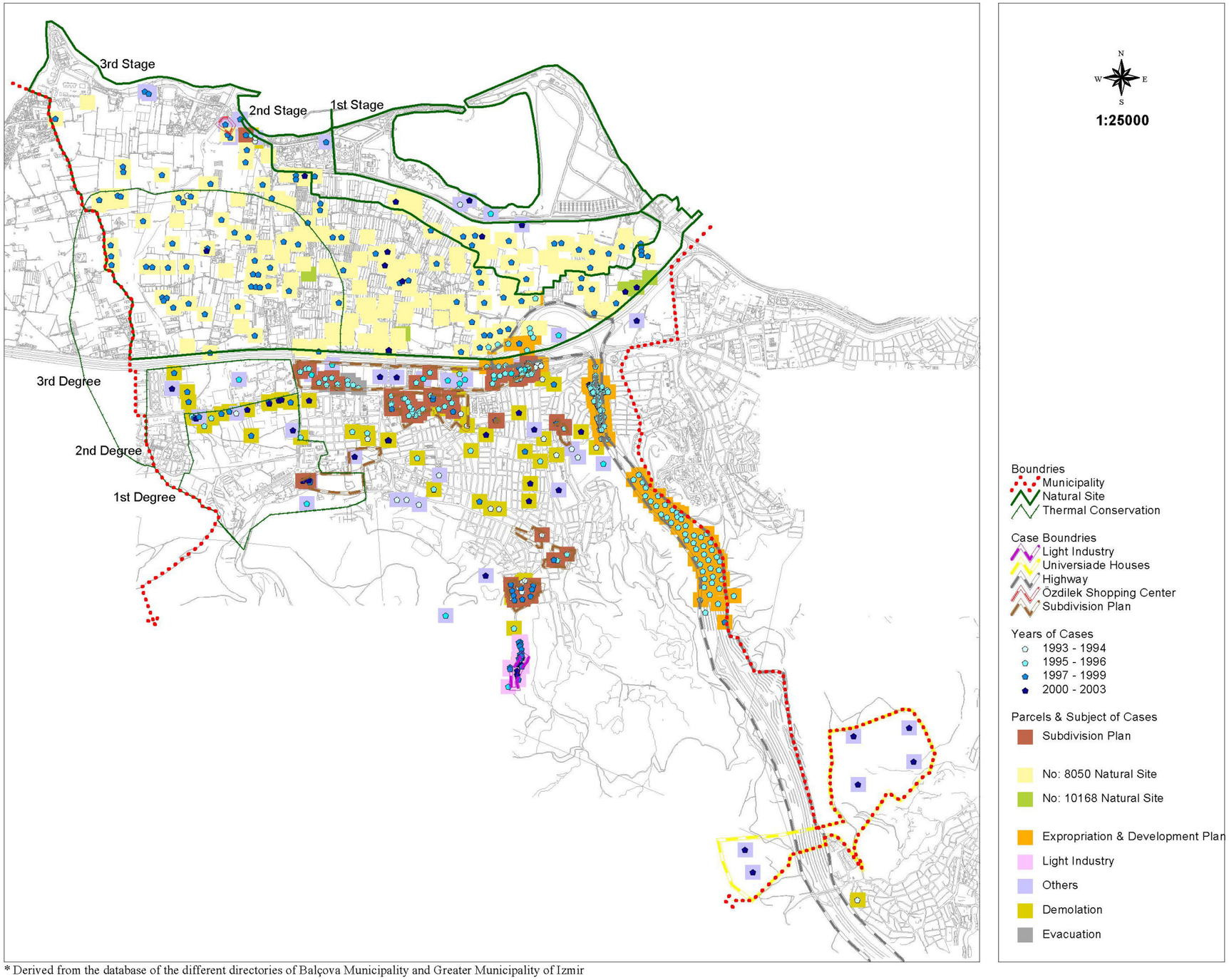
(a) *According to the first approach, the existing rules of jurisprudence, in other words, the positive law is taken for granted as given data. In this evaluation, whether or not a given court resolution was a "fair and just" resolution, is judged on the basis of a critical approach.*
"Was the litigation process undertaken by an independent and objective organ that fully conformed with the definition of a "court?","Were the rules of law pertaining to the action defined and executed in an accurate manner by the court?", "Were the persons involved in the action entitled to benefit fully from the rights provided to them by the current rules of law during the presentation of their claims, or during their defense?", "Were the testaments of the witnesses and other relevant evidence taken into consideration in due conformity with the rules of law?" "Were the rules of law and the phenomena that are pertinent to the subject matter of the litigation evaluated accurately and consistently in the justification of the resolution?"
It can be assumed that a given court is "just and fair", if a positive response can be given to each one of the questions mentioned above.
In the second approach, the evaluation of the subject matter exclusively in terms of jurisprudence, is not deemed as adequate. In this approach, the positive law that puts a definite distinction between the "right" and the "wrong" is exceeded and a philosophical parameter is sought. This supreme parameter is "Justice". In this approach, the fairness (equity) of the court decision is more important than its compliance with the rules of positive law.
(b) *From this perspective, even if it has been implemented accurately and appropriately, an investigation is made in order to ascertain whether or not a given rule of law is appropriate in the particular case, both in content and in purpose." (Aybay & Aybay,2003, pp. 69-70)*

In order for us to make an evaluation according to the first approach, primarily, we have to take for granted that the parties who are involved in the litigation process; namely, the plaintiff, legal attorneys of the plaintiff, the defendant, the legal attorneys of the defendant, the experts and the committee in charge of the court session, are presenting their evaluations exclusively from an objective standpoint and in strict compliance with the legal process. This objectivity shall imply that as the concerned parties, all constituents shall alienate themselves from their personal viewpoints regarding the social phenomena, and from their subjective opinions and evaluations. In can be argued that in an evaluation based on this understanding, the litigation matters are resolved within the scope of a judicial process that adheres to the principle of equity, and in conformity with the contents of justice, as defined in the positive law.

From the standpoint of the outcome of this process; in other words, from the standpoint of whether or not the judicial decisions are viable, any judgement regarding whether or not the said decisions were ”fair and just”, can only be possible through the evaluation of the implementation of these decisions. HENCE, as the examples such as the light industry site, the Olympic Houses, Özdilek Tourism Center have shown us, although the court has decided on the revocation of the administrative procedure, the decisions cannot be implemented.

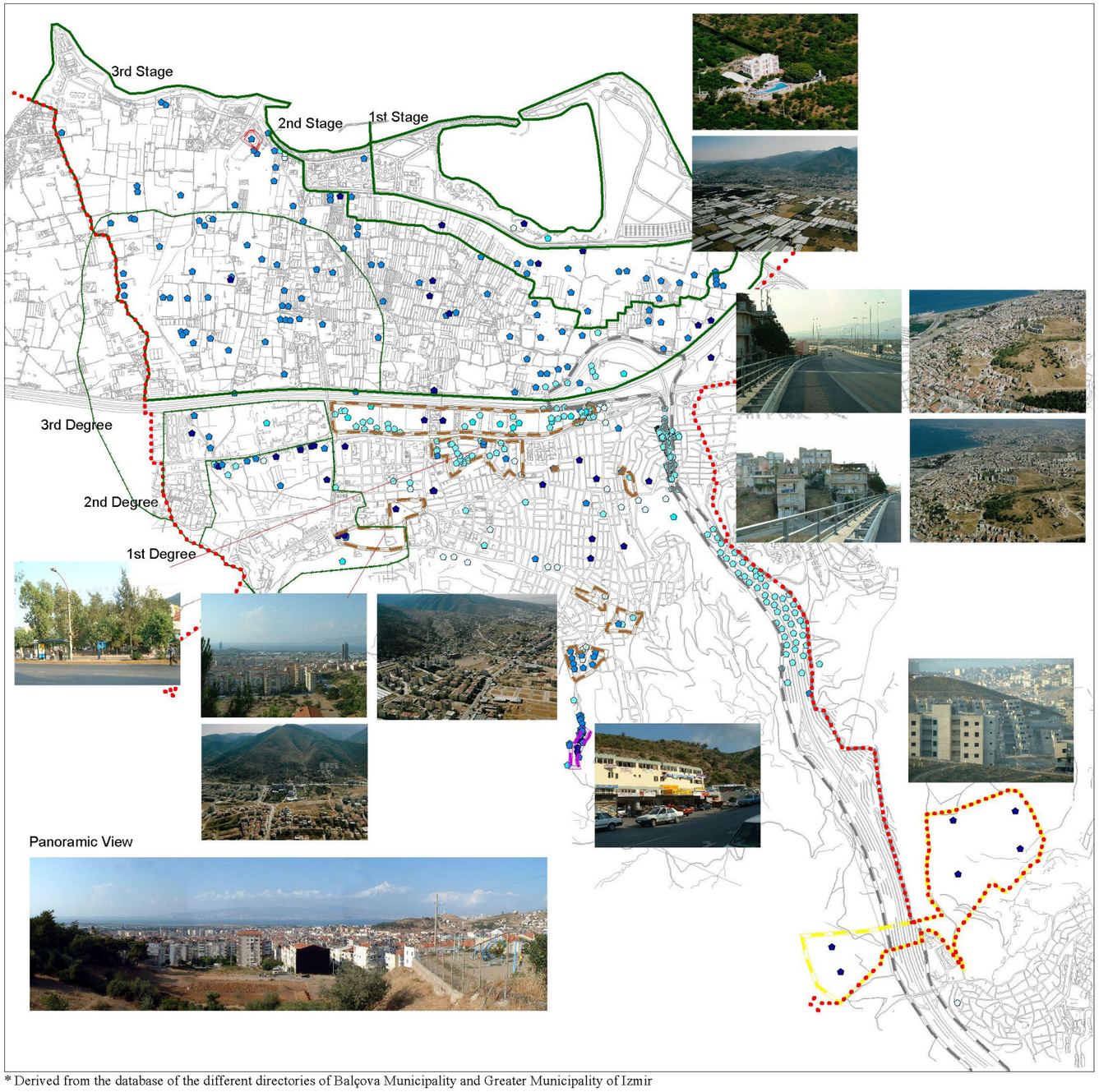
When the second approach is taken into consideration;

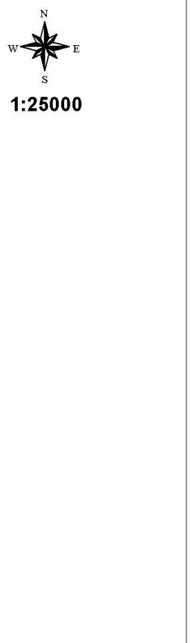
In an evaluation of this type developed in urban environment, it is possible to elaborate on the existing social order and relations from a critical perspective. In such a case, in addition to the framework of the positive law, the current status of the planning, the legal system and the society as a whole, can also be reviewed. With this approach, it is possible to discuss to what extent a legal-social-economic framework where the definition of the constitutional rights, acceptance of a homogenous social structure, equality as an abstract concept, and the lack of equal opportunities are disregarded, is/can be effective in an urban environment. Within this framework, the urban-spatial demands can be evaluated in a more comprehensive manner. The acceptance of the assumption referred to above, stating that the legal justice generates “just and fair” decisions under “just and fair” conditions, can be discussed in a new dimension, when the demands relating to urban space, are taken up together with the processes relating to urban space.



* Derived from the database of the different directories of Balçova Municipality and Greater Municipality of Izmir

Figure 4. 6. Spatial Distribution of Cases According to the Main Subject in Balçova (1992-2003)





* Derived from the database of the different directories of Balçova Municipality and Greater Municipality of Izmir

Figure 4.7. Views of Case Areas from Balçova

CHAPTER 5

CONCLUSION

5.1. General Conceptual Evaluation

Justice when defined generally as living together with differentiations among production relations, cultural styles and moral values-it is rather difficult to consider this kind of definition as a whole-come out as an idea / unapplicated project in the reality of today. In parallel with this it is almost impossible to form an universal frame independent from time and space which defines justice in every way. This kind of definition assumpts to consider the existence of humankind in and together with the nature universally within the context of homogeneity and within only one culture and history and it is difficult to talk about the reality and currency of this assumption.

Against all these, it is necessary to find a common field in the relations of human with nature and human with human in a common universe and according to its existence form. In this sense, minimum standards reached by a consensus, justice principles, and attempts in making definitions of equality, freedom, interest, and right about the formal organisation principles which will provide these standards in connection with this, cannot be denied. With the acceptance of these definitions and of the existence of these frames, the fact that these definitions are hypothetically formed and evaluated by the production of human world should not be disregarded. Consensus formed on hypothetical concepts change according to cultural, economic and social relations in a certain time and space. The transformation processes of concepts and practices of human rights and definitions and practices of state show that this process is not synchronous and homogenous and also evaluated within time.

On the other hand, Rawls and Nozick who search for the practicable principles of justice, develop two different critics for basis acceptances of liberal state, today. While Rawls propose a revision in increasing the equalities in distribution relations of modern liberal state, Nozick emphasizes on the priority of freedoms and consequently the properties and bases of neo-liberal state with a neo-liberal perspective. First of these two different viewpoints that are directed toward the consideration of justice by modern

liberal state, today, emphasizes on probability of re-organization in all social institutions with a need based approach together with the emphasize which gives priority to equality. Such a consideration accepts the necessity of reorganization of the state and all social institutions by accepting the priority of equality. Second proposition on the other hand indicates to the changes seen today against all critics. Approach presented by Nozick contrarily with the theory of Rawls seems to have an application opportunity practically and not in theory when the prevailing neo-liberal policies are considered.

Planning discipline when considered as an activity which is an organizing tool of the state and limited by the liberal state, it can realize its activities by staying within the selected state form. In this context, limits determined by "formal justice" will form the limits of planning discipline practices. On the other hand, every kind of urban planning activities realized within these limits informally and ethically will be open to questioning and critics. In other words, priorities of the state from and concepts of freedom, equality, rights and interests which are accepted within this form and all organisations realized basing on these priorities will also constitute the limits/limitations of planning discipline. These limits will come into agenda as the determinants of planning practices and principles of these practices with their reflections on countrywide practices. In this frame, it is recognised that countrywide practices about how the national policies and selections are realized from the viewpoint of "justice" in general and "spatial" in private and how they are considered gain importance.

Justice and freedom approaches which develop in parallel with the development of modern liberal state followed a development pattern starting from individual rights to social and economic rights and in the last twenty years to "the rights of mutual support". When in one hand this development was realized on the other hand they caused new arguments /approaches in planning discipline. When it is regarded that developments in rights and freedoms are not synchronous and do not follow a linear development it is important to determine how they are considered within practices of the country.

5.2. Results of the Transformation of the Turkish Practices

While planning before 1980 was defined as an important tool of the development paradigm of the state as a public activity, after 1980 the legitimate base entered into a crisis on which this public activity based on by market processes taking the place of development economy. In this period development amnesty laws, privatization laws and practices in the "shrinking" of the state are among the arrangements that affected the urban planning discipline. These developments caused a new period in planning discipline. Planning discipline entered into a new period with new economic demands loaded on the space with the effect of newly defined right, interest, freedom and equality approaches on one side and globalization period on the other. These developments create a paradox among the acceptances of disciplines of law, economy and planning and deeper yet from the view point of legitimacy of planning. This paradox; is different definitions and practices of concepts like equality, right, freedom and interest which are the components of justice in individual perception, legal decisions, economic selections and planning practices. In other words, searches for right as conflicts seen on urban land, compete their own discourses and practices on urban space by founding them on different acceptances. This process in Turkish practice shows the tension between different values of multi-dimensional definitions of concept and institutions of ownership as an economic value, as an individual right, as a response to need to shelter, as a tool in meeting the needs in public space. The multi-dimensional definition of ownership institution is; it shows the conflict between

1. Public interest and private interest;
2. Individual rights and social rights.

The dimensions/results of this conflict occur within the frame of division of the city into legal and illegal building areas (gecekondu areas and gecekondu problems and illegal buildings) and urban land policies.

These differentiations are also responses to the differentiations in considering the justice in urban area from different approaches, too, in Turkey.

In the legal transformations which form one foot of the imported substitution economy policies and modernization:

a. change in the meaning of "public",

b. urban land becoming a profit tool rapidly,

c. dissolution of development paradigm.

This process, questions what the "public interest" on which planning discipline is founded as a public activity, means with the transformation of development policies. This transformation process shows that the transformation of the meaning of "public interest" which basis of "justice" concept and practice.

Planning activity propose a series of interventions to the urban space according to preliminary acceptances about which rationalities are necessary in giving decisions about urban spaces as public areas. Among these rationalities, it orients toward the usage of urban space (physical and non-physical geography) as a social area and towards the social and individual planning principles of this usage and somewhat tries to determine the practical process by these principles. Whether clearly expressed or not mostly a "justice" acceptance take place among these principles and the planning discipline as a public activity aims the application of principles about realizing the "just" physical space planning's. Land-use decisions as meeting the needs at minimum levels takes place among the tools in realizing these aims. In Turkish practices, health, education, socio-cultural area, technical infrastructure areas and their areas per person can be counted among these needs which were defined by act no. 3194. The common and equal distribution of these spatial needs which are location selection criteria, is guaranteed by these law and at the same time one of planning principles is carried along to the legal platform with this law. However, it is evident that these criteria were not realized as planning principles determined by legal arrangement according to the results of sample field survey. Additionally, it should be stated also, that there is no case or disagreement about the unapplication of these criteria and legal arrangement. Whereas, this legal arrangement represents the right to live in a healthy environment also defined by the Constitution. At this point, it is seen that although this right which takes place among the Constitutional rights and legal rights and which is defined by the laws does not have a response in practical processes. Arguments about insufficient facility areas on urban land are way of considering this problem as a technical process. However, this technical process represents the rights of urban settlers, the starting point of the basic human rights in practising these rights and the simplest expression of a "just" process.

It is seen that evaluation about providing the "just" distribution as meeting the spatial needs on physical space are not on the agenda in Turkish practices. Another point that should be evaluated is what kind of a distribution process occurs among the

urban settlers by the urban physical space decisions and their spatial results. How the opportunities and profits, advantages and disadvantages are distributed and shared among who are important points from the viewpoint of distribution process. At this point from the viewpoint of "just" distribution principle; in the evaluations about its spatial dimensions, considering it separate from social and economic process causes formation of problems in the practices of "just" distribution principle and just process. At the survey fields, in Balçova and Narlıdere, it is seen that no planning is done basing on objective criteria which is one of the planning discipline principles and the planning practices especially after 1980 are done as fragmented plans, basing sometimes on plot sometimes on block scale with plan alteration decision and peacemeal plans. Therefore, it is possible to conclude that the social costs and benefits are considered as individual cost and benefits in the decisions and on the areas, that individual right especially property owning right increased, however social rights were disregarded. Inefficient facility areas at minimum levels even detected at the existing structure on the same area show that equal distribution which is accepted as a planning discipline principle is not reached. In this sense a great gap and differences come out between the planning discipline principles and planning practices. This differentiation also represents the differences between the definition of "justice" and definition of planning discipline field, by the actors playing role in practical process (local administrative, plaintiffs, defendants, property owner, etc).

Another point that should be mentioned is that social integrity is a homogenous integrity and that an equal distribution can be made to this homogenous integrity. Within this legal frame, a just distribution can be made to a homogenous social structure is only a mistake. A similar acceptance takes place among the discoursal acceptances in planning discipline field and practices. This pre-acceptance sources from the fact that while developmental state policies before 1980 bases on interventions done in order to increase the equalities in urban space which is the organization area of these policies, no new approach was developed from the planning discipline yet, even in spite of a breaking point in this paradigm. In this sense, considering that these changes do not exist in spite of all the social and economic policies and continuing with the same principles causes the gap between the practice and theory to deepen further. As well as inequalities in physical space, acceptance of social, economic and cultural inequalities are important factors in Turkish practice of planning discipline. This process in other

words, expresses to orient toward a more just processes by denying that there is equality among the unequal.

In Turkish practice, decisions taken about the physical space and principles in planning discipline have the property about how the ownership rights will be used. Therefore, planning discipline and practice should orient toward the establishment of an individual and social balance of the benefit gained by the usage of these rights. In this sense, plan changes on plot scale maximizes the benefit of property owner but at the same time causes insufficiencies in physical space in other words causes the formation unhealthy living environment from the social perspective. In other words because maximization of an individual ownership right is not an arrangement done for a social purpose, it damages the right to live in a healthy and balanced environment which is among the basic human rights. In this sense it is evident that the legal, administrative frame determining the planning practice has serious problems. First field that should be considered in the rearrangement of these practices is putting the supporting rights which are among the third generation rights into agenda and action. Another one is taking new approach and integral consideration on agenda in the practices of these rights theoretically and practically. Integral considerations indicate that planning should involve developing supporting rights and spatial arrangements not only on physical space but also should consider the produced space socially, economically, legally and administratively as a whole system and put into a new frame. Urban space does not develop only by physical plans and is not determined according to the planning discipline principles, only. Administrative organizations, legal arrangements, economic and social fields and their effects diagnostic on urban space are important also, as well as planning discipline. From this viewpoint, it is necessary to take decisions about spatial planning in parallel with this integrity and follow an associated work. Planning discipline will have to occur within the boundaries of legal insufficiencies and within another field of discipline, as long as it depends on the laws and application of these laws. Within the social structure of today, every urban and spatial intervention and decision reproduce values such as ownership, usage type, location and redistribute them among different social groups. This process gains concreteness in the cases of Olympiad Village, Özdilek and Committee of Protection within the field of survey.

5.3. Results of Field Survey

In the years 2003-2004 a survey was done in the archives of different departments of Municipalities of Balçova and Narlıdere. During this survey files of actions which were proceeded against these two municipalities between 1992 May 2003 were examined. As the result of this survey, 1215 actions among the actions proceeded against the decisions taken by İzmir No.1 Committee of Protection of Cultural and Natural Heritage which take place within the boundaries of the municipality were taken into consideration. Total number of actions within the boundaries of Municipality of Balçova is 756. 565 of these actions are proceeded in Administrative Courts and 191 are in Juridical Courts. Total number of 459 actions were proceeded against Municipality of Narlıdere which can be categorized as ; 257 Administrative, 194 Juridical, 8 others (unknown). The reason of the difference of 297 law cases between two municipalities is that there were collective law cases proceeded against the spatial interventions within the boundaries of Municipality of Balçova. While no annulment action was proceeded within the boundaries of Municipality of Narlıdere about İzmir-Çeşme Highway decision which comprises two municipalities, 180 annulment actions were proceeded in Balçova against this decision. Likewise, although decisions no. 8050 and 8049 which were taken by İzmir No.1 Committee of Protection of Cultural and Natural Heritage comprise two municipalities, number of actions about the annulment of this decision is 151 in Balçova and only two in Narlıdere. One of the plaintiffs of these two actions is Municipality of Narlıdere and the other is a citizen who owns a private property within the Municipality of Narlıdere. Municipality of Balçova on the other hand was not a plaintiff in these cases. When studied from this viewpoint it can be concluded that differentiation in number of actions in two settlements results from the collective objections done by the settlers in Balçova.

In the second stage of the evaluation, actions are categorized according to their spatial properties and according to the details in files. In the evaluation of these acts, whether they have any procedure, intervention or decision properties targeting the planning and space was considered. Another important point was the spatial effects of this intervention on individuals, society and public organizations. As a result it is seen that 965 actions take place under the titles space and planning. In other words, it can be concluded that total number of 1215 actions of Municipalities of Balçova and Narlıdere

can be categorized as; 965 spatial cases (79.49 %), 250 (20.58 %) cases categorized as others.

These data are important in indicating the level of conflicts that emerge in spatial situations. Distribution of total 965 cases about the spatial conflicts from the viewpoint of plaintiffs are: 811 private (84.04 %), 63 official institutions (6.53), 57 firms (5.91), 19 İzmir Chamber of Commerce (Ticaret Odası) (1.97 %), 12 cooperatives (most of them building cooperatives), one foundation (0.10 %), one TMMOB General Directorate of Chamber of Architecture (0.10 %), one apartment building management (0.10 %). Since the objections about the spatial interventions and plaintiffs are mostly the building cooperatives and persons it can be concluded that the interventions on the ownership rights in urban space are subjects to these cases.

Distribution of the cases as being Administrative/Judical are; cases proceeded in Tax and Administartive courts (818) are more than the ones proceeded in Civil Court of First Instance, Criminal Court of Peace and other courts (397). In these two settlements with a total population 120 thousand, when the number of actions proceeded about spatial problems between the years 1992-2003 are evaluated, the levels and intensity of the decisions and interventions produced on urban land and conflicts reflected on courts can be understood. These areas which take place on the western axis of the city and seem as if they were separated from the whole of city with municipality borders are in fact the continuing parts of the greater city. Decisions taken for the municipality of county also affect the greater city of İzmir. Contrarily, it is very interesting that most of the actions proceeded about the decisions taken for the area constitute of the ones living within county municipality borders, owners of properties and the ones affected from the applications.

In the actions proceeded about urban space and planning it is necessary to consider these actions with an evaluation that protects the rights of settlers living at that place and the rights of future generations and that balance these rights. In other words, results reached by the actions/conflicts also mean to take decisions for future generations as well as generations of today. In this sense, it seems necessary to make new arrangements by considering that spatial actions on urban place target to provide justice among generations.

Planning decisions and interventions on urban space determine not only the land use types of the area but also the level and form of relations between human being and nature and between human and human. In this context, both the planning decision and

also the legal and legitimacy processes need to regard this approach and make evaluations of decisions and activities about space.

When the consideration of justice concept is evaluated from the viewpoints of plaintiffs, defendants, expert committee and courts in these studied acts, it is seen that there is no common definition and/or consideration both within the parties and among the parties. These parties which put demands, evaluations and interventions on urban space, explain the freedoms, rights, interests and equalities which are components of justice concept with the below mentioned differences.

In different acts, it is found that there existed no homogenous structure among the plaintiffs of the acts that were charged with a demand of reaching to just results through just processes. Part of the settlers who built illegal buildings and who objected to the demolishment decision demands the abolishment of the restricted development rights. These demands mostly come from people who have mid and high incomes and who want to build a house on their own land. Among these acts there is only one act on gecekondu areas and he mentions that he built "an illegal floor" in order to meet his "sheltering need". Even though the demands of two groups of plaintiffs about the abolishment of housing rights and limitations seem to have similar contents it is clear that they do not have similar socio-economic conditions. While these two parties indicate to the usage of individualistic ownership rights in their claims defendant municipalities as local administrative units claim that they act "equally" to these two groups and that these types of applications are predicted by laws, also, "for public interest". Opinions of expert committee control the appropriation of building sites to the existing plans and laws as a technical and procedural process and "their appropriation to justice" bases on these evaluations. At this point both in the evaluations of defendants and of the expert committees, justice is considered as "being appropriate with the regulations" and being appropriate with the existing arrangements. However, in such a consideration, because "justice" concept involved by the existing regulations is taken out of evaluation process it is only possible to talk about its appropriateness to the regulations rather than its being just. During the adjudication process determined by the court council, different courts reach different results and mostly give decisions in parallel with the evaluations of the expert committees. In other words, the levels of legal appropriateness of the technical / procedural processes are controlled by the courts. However, the meaning of results being just from the viewpoint of the courts, means

being appropriate with the legal process in effect. In spite of all these evaluation differences “justice” is very abstract.

Similar results occur when the situation is studied from the viewpoints of different acts. The claims of plaintiffs in the acts against the expropriation decisions about Aydın Çeşme Highway, demand that a balance should be formed between public interest and individual interest. In this sense it is emphasized that the balance of social and individual interests will be just and the interests and rights of individuals cannot be disregarded in a decision taken for the name of public interest. In the actions against Committee of Protection the demands of the plaintiffs are about their ownership rights, that the decision obstructing the development plans also obstruct the maximization of individual rights and that this process is “unjust”. A more open definition of these objections is the objection to not having the same urban profit which many urban areas have. Another objection is to the decision which caused the property owners at that area to pay the cost of development limitation decision taken at that area which carries importance for all citizens. The common point in the testimonies of the plaintiffs is their demand in balancing the social and individual interest. However, while Highway plaintiffs express their demands in meeting their sheltering needs, the Committee of Protection plaintiffs talk about having equal shares from urban profit, as others. The expert committee although express that they consider these two processes by giving priority to social interest/public interest, technically, in fact two different applications take place. In Highway actions, the expert committees approve the construction of highway and relevant plan decisions taken for public interest. In Committee of Protection decisions, however, the expert committee make their technical evaluations for the behalf of property owners. Decisions taken by the courts at the end of this process based on the reports of the expert committee and on legal frame. It is seen that decisions are mostly taken according to the reports of the expert committees. However, in the actions against the decisions of Committee of Protection it is seen that two different decisions taken for the same report prepared for the same plot by the same expert committee and that no unanimity is reached at the decisions.

Another important sample about whether a just process and decision is reached is Özdilek act. A protest act was taken by a non-governmental organization against the plan change decision basing on a plot. The firm Özdilek which selected an area, on which Committee of Protection took decisions, finished its construction and opened. It is impossible to talk about just decisions taken through egalitarian and justly process

between Özdilek which carries a privileged property and the neighboring plots of Özdilek which their building rights were limited by the decisions of Committee.

The first point indicated by these data is that there are no only one justice definitions and no just criteria and applications reached by common processes about the disagreements which can constitute a sample and which take place between the parties. These results show that each party has a justice acceptance and defense defined by different contents in the disagreements seen during the adjudication process on urban space. This kind of result on the other hand indicates that an urban space formation process, which is legal but illegitimate and is almost impossible to conclude that it is "just", is detected on urban land. In this sense, justice concept has an abstract quality almost like a myth. In this practice, it is almost impossible to free the urban space from its property of being an area on which existing inequalities are reproduced if another evaluation other than concrete criteria and legal controls cannot be established.

Establishing an evaluation about forming just processes an urban land makes it necessary to reconsider the subjects about the rights, interest, freedoms and equality concepts as components of justice and about the study of these concepts on urban land. In such an evaluation the practicable criteria can be formed by eliminating the limitations sourcing from the unbalances in social, economic and cultural structure and by orienting toward the agreeable principles. The guiding approaches for these principles are developing an approach which considers the requirements priority and establishes a balance between the opportunities and limitations and individuals and society on urban land.

In this context, the fist step in the formation of a just social-spatial structure on urban land is to decrease the economic and cultural inequalities which result of macro political economic structure of the Turkey. The questions that should be asked for a realistic evaluation of such an orientation are about the tools, methods and results of just process. The questions which are guidance in evaluation about whether every decision, action and interference on urban land has just processes can be: What kind of opportunity and advantage distribution is realized on urban land with the decisions and practices? Which requirement of which social group is met by service? Is there any priority on urban land and by which criteria are these priorities determined? Does any investment in an urban area have the property of being the most needed investment at that area and does it have priority? Is the investment decision considered in social wholeness? Are they realized by the approval, knowledge and contribution of the

different groups affected by the decision? These processes are guidelines in trying to understand and rearrange the concepts of equality, interest, freedom and right as components of justice. Under these evaluations and questions it will be possible to evaluate whether a decision on urban land is just and what kind of justice definition is brought up. In the evaluation done by each side in the cases during adjudication the existence of justice argument could only be possible by these questions.

Important results that will guide the practical processes in the surveys done on the sample area about adjudication are:

- ✓ It is seen that there is no one definition of justice from the viewpoint of sides and parties which are plaintiffs, defendants, expert committee and during adjudication period. The approaches and definitions of property owners are that they accept justice as having the maximum building right on their own properties. So, the dominant viewpoint is that they should have the same opportunity to have the same urban profits like other property owners in the city. It is acceptable that these demands base on a rightful thought since this area has an important urban profit and usage rights are limited highly. However, cases about protecting the rights of urban population are very small in number, which were opened by the citizens who are not property owners and who contribute to the formation of urban profit on that area. In this sense, it is seen that while individual property owner rights are carried to a legal platform no arguments are done about citizen rights. This process represents that the rights of urban population are not defined clearly and that there are many insufficiencies about the organizations about limitations on urban plots, property market. In the claims of decision making institutions and practicing units which are defendant parties, on the other hand, it is stated that the public institution about "justice", considers the public interest in all its decisions. Therefore it can be claimed that the decisions are "just" in that sense. From this viewpoint it can be concluded that the institution is neutral/impartial and independent, has equal distance to all social groups and acts homogenously to all social groups, which is impossible. It is indefinite what kind of a "public interest" and "just" relation process take place in the plan changes about increasing the density on plot bases, on the survey area. In the evaluation of expert committee, it is seen that although an evaluation basing on planning discipline and planning principles take place, no clear explanation was given about whatever will provide these principles to be "just". The expert committee which especially forms of three people in administrative court sometimes did not have the same opinion. In this sense these people who have the same

career, do not have a common definition of interest, freedom, equality and right representing the justice and being just. On the other hand, it is seen that their occupation viewpoint only involves the evaluations done on that private area and on a public physical space, independent from the social and economic realities of the country. Evaluations about "just" results in these reports have an abstract property. Likewise it is also seen that no common decisions were taken at the courts representing the other part during the adjudication process and by the committee of court forming of three people. Two different courts reaching to different conclusions at the same case, on the same plot and basing on the same expert reports show us that there is no common opinion on that subject. (See The Committee of Protection Decision case)

- ✓ Another important finding about the control of jurisdiction is, cases about physical spaces are evaluated by different courts as being administrative and juridical cases. According to the data it is thought best that specialized courts should be established about subjects like physical space and cases about these subjects should be considered on these courts. Likewise, the basic topic of a case which is accepted as an ownership problem may be actually about the usage of ownership rights on an urban plot. Although this may be thought as having an individual property, actually they have an administrative and social quality. When problem of property ownership is considered as a social and administrative problem, it carries a meaning beyond administrative and juridical distribution. Likewise, spatial properties of all kinds of activities which create vital dangers in urban space and cases like penalty, expropriation value should be regarded seriously. For this reason on the cases about urban space it is essential to constitute a new classification and organization by considering the developments about environmental and support rights.

a. It is also seen essential to reorganize the prescription and license to open a trial on urban space cases besides the formation of specialized courts involving all the urban problems.

b. It is important to redefine the authorities, duties and responsibilities on urban area more clearly and form new mechanisms in controlling them besides the courts. Especially it is essential to form application, control and organization mechanisms in realizing the right to have a shelter and right to live a healthy environment. It is also necessary to put urban right concept on the agenda and concretize this concept from the Constitution to level of regulation by developing a new perspective.

c. Adjudication process, when considered as being the control of appropriation to the laws in the spatial cases it is seen that there are many cases claiming that justice, equality, just processes defined by laws were not realized. On the other hand, besides controlling whether they are convenient with the laws, the jurisdiction process also has the characteristic of being the official place to solve the problems that formed on the "public conscious". Therefore, decisions taken at the end of a jurisdiction period should produce results that are legal, definable, and defensible, acceptable by all social groups' minds and conscience. Whole evaluations of the sample area do not indicate to such a result.

✓ At the end of the period of making, approving and application of development plan and the duties and authorities given to local and central administrative in this sense, a more concrete organization is needed to be formed about their being responsible of the problems that form/come out as the result of lack of control. In all the interventions that prevent right to live and in danger the survival which come out as the result of all kinds of work done for the purpose of bringing service on urban land who the responsible are should be clearly defined. Furthermore, to give a Constitutional protest right about the negligence can be thought as an alternative. This kind of obligation definition gives the administrations and individuals a responsibility in the procedures and accepts the crimes committed on urban land as "public crimes". One of the prior conditions of living in a healthy environment is the provision of "survival" condition by the rule of law.

a. One of the ways of this process can be controlled of decision as the result of cases. Surveys done on the sample area indicate that the decisions of the court are not practiced. Balçova small scale crafts area gives service although its plans were cancelled. Likewise, the demolishment decisions of houses within the protection site of Balçova geothermal area were not applied. The results seen in these samples indicate that a more powerful control and sanction mechanism within adjudication process is needed.

✓ As seen in cases of Özdilek and against the cases against the Highway and Committee of Protection decisions, in many cases the balance between the public interest and individual interests is not established. New arrangements in establishing this balance on the areas where improvement rights of individuals were limited needed to be done. The tools and application opportunities should be increased for a new

organization in making the most disadvantaged groups, which are mostly affected from the decisions, advantaged.

✓ A new organization, application and control process should be put into effect in order to follow the cases which interest all urban settlers and makes public hearing possible. Likewise it is essential to make a new organization in giving decisions and announcing these decisions to public hearing about urban areas through a participant process. In this sense the control of all urban settlers on the decisions of selected and assigned people, will be established.

✓ Every citizen has the equal rights and freedoms before the law. However, decisions taken about the citizens with law social and economic level, without considering their situations and differences causes the equality of inequalities and these people are treated unequally. For example; the reports of expert and court decisions about demolishment of gecekondus and detached houses with high standards reach to the same result.

✓ Integral consideration of urban problems is another important point. Developments in cases should be put on the agenda comprehensively and with all their dimensions both on the courts and by the consultative authorities in legalizing the politics. As mentioned in the reports of experts, in samples control of being appropriate with the law is made. However, an event within an urban area develops by illegal processes and the true injustice begins at this point. A new dimension is needed in professional ethics also in order experts committee to evaluate the problem by discussion every dimension of it apart from the control of the law. Control of appropriation to laws can be made by the courts. In this context, expert committee in their reports should have a comprehensive approach and evaluate the social, economic, cultural and political dimensions of the subject, from plot scale to the national scale. Such an evaluation besides the results opportunities such as overcoming abstract, general and technical limitations because it will be directed toward space formation process, as well as. It is possible to say that technical level and fragmented approach of reports is insufficient in evaluating the concepts of interest, freedom, equality and rights and their relations with the society and individual. As the result of unbalances in abandonment created at the end of the application legal but illegitimate results will occur. These results will cause unrealiablity to the planning activity and law in public conscious.

In evaluation of the experts reports and in court decisions, procedures balancing the equalities do not mean anything for individuals an inequal base and causes lose of confidence to the planning system as well as to the field of law. As long as the decisions taken in response to comparing the laws and abstract principles by laws do not involve the property of decreasing and balancing the inequalities, their relation with the reality unfastened. When examined from the perspective of planning discipline; an evaluation done by an approach accepting that it has an effect on all kinds of social and economic relations founded on this area and not only on the physical space planning principles, will have a meaning beyond a technical evaluation. When spatial developments are considered as a whole, approaches putting the evaluations founded on a basic question indicating to this reality, in other words what kind of distribution relation occurs among whom and what, cannot develop. Surely, the perception dimension of such an approach between individual – society – state will change and multi-approaches will develop. Against the reality that this multi-atmosphere will carry many problems it is also a reality that it will increase the approach to reality.

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APPENDIX A

The Extent of Subject Classifications in the Tables

SUBJECT	GENERAL EXPLANATION
Credits	Actions regarding payments and credits between persons, institutions, foundations are studied under this topic. Actions of severance pays of the municipal personnel, actions of worth of risk and actions of mortgage are also in this extent. Labor Courts, Courts of Enforcement and Administrative Courts, if the subjects have administrative characteristic, are authorized for these actions. Thus, those kind of actions are shown in Table: 4.3., Table: 4.4. and Table:4.5 under administrative and juridical topics. For instance; after the approval of the penalty by the authorized court according to the Development Act No.3194/Article No.42, actions against payment order are proceeded by Administrative Courts.
Others	Actions proceeded both in administrative and juridical courts, are categorized under "**others**" topic: unfair competition, determination of rent value; rental contracts; approval of electricity project; annulment of elections of Municipal Budget Commission – objections to commission elections; nullification of the decision of municipal council regarding establishment of work-sites; objections to the decisions regarding the municipal lots given to the building contractors against construction of flats; objections to the authorizations of municipal committee; nullification of the Circular No.1996/63 (gathering the bank accounts of public institutions in common bank management); dismissal of defense; determination of properties; declaration of properties; breaking of seal; annulment of collections of payments for road construction; mesne profits; cautionary judgement; dismissal of intervention & mesne profits; causing damage on property, etc.
Administrative Penalty	Penalties fined by municipal police to work-sites because of noise pollution, price lists, etc.
Expropriation	**A.** Regarding the restitution of the expropriated land; actions about the restitution of the lands which are planned as parks, public use, etc. on

	development plans and not expropriated in more than 5 years time or still do not exist in an expropriation programme. **B.** Regarding the increase in expropriation value. **C.** Regarding the nullification of expropriation and the development plan that it is based on.
Ownership	Actions about boundary determination and ownership transmissions between Municipality of Balçova, Greater Municipality of İzmir and Municipality of Konak. Between 1980-1991, after abolition of Municipality of Balçova, public properties were conveyed to Municipality of Konak. Conflicts occurred after 1991, concerning the determination of municipal boundaries after 1991 and transmission of public properties still continue. İnciraltı, Bahçelerarası, Gençlik Merkezi (Entertainment Center) and Üçkuyular market place are that kind of properties. The case known as Village of Olympiad is also examined in this extent. Administrative Courts are authorized to pursue all of these actions.
Development Plan	Actions brought against the annulment of development plans.
Partition Action	Actions concerning the partition action on the shared lots/lands formed by implementations of Development Act No.3194/Article No.18. In the courts, lots/lands are sold according to the value calculated by the experts and partition action decision is taken. The Civil Court of Peace is authorized to proceed these actions.
Narkent	Actions concerning Narkent Mass Housing Area, including different subjects like; ownership, storey demands, payments of compensation of damages.
Subdivision Plan	Actions for objections to different subdivision plans applied by each regarding municipality.
Plan Change (Alteration)	Actions brought against annulment of plan alterations approved by municipal councils (Greater Municipality of İzmir, Municipalities of Balçova and Narlıdere).

Personnel Actions for annulment of salary reduction fines, objections to promotion cancellations, annulment of entrustment procedures, demand in determination of labor performance, severance/notice pays are shown in this category. These actions are brought by the personnel and can be juridical or administrative according to their contents and subjects.

Development These are the penalties fined due to the inspections done according to Development

Penalties Act No.3194/Articles No.32 and 42. These actions are performed in the Criminal Courts of Peace instead of Administrative Courts. Subjects of action are generally the penalties and demolition decisions stated by the related municipal committee due to record of (Yapı Tatil Zaptları) about the buildings, project and annexes without license. In this extent, there are also squatter demolitions as well as luxury residential areas.

Licenses They are the actions of objections about the refusal of work-site operation license, temporary building licenses and/or annulments of these licenses.

Demolition These are the actions regarding the buildings and/or part of the buildings that are

Decisions considered to be demolished after the inspections of the related municipality according to the Development Act No.3194/Articles No.32 and 42. These actions generally include squatter areas, however, lands developed appropriately with the development plans can also be in the extent of the action. Subjects of actions are generally the demolition decisions and penalties fined by the related municipal committee according to record of (Yapı Tatil Zaptları) about the buildings, annexes and projects without license.

Evacuation Including the actions of objections to the evacuation demands for demolitions decided in the extent of urban renewal plans. Both Balçova and Narlıdere municipalities have those kinds of actions.

Title-Deed These are the actions about land registrations that have to be corrected due to the disagreements between defendants and plaintiffs. This problem generally occurs during application stage of development plans. Lands that have been included in the extent of development plan and had been used as tenure for

50-60 years or registration demands of the lands after municipality's intervention, are the actions examined under this title. These actions mostly concern the areas in Narkent mass housing area, exist outside the boundary of Balçova settlement and belong to Ministries of Treasury, Forestry or Greater Municipality of İzmir.

Relinquishment For Road – (İhdas) Objections to relinquishment for road and (ihdas) procedures.

Tax Real estate tax, entertainment tax, environmental tax and objections to land declarations of Municipal Discretion Commissions. Courts of Tax are the authorized courts for these actions.

APPENDIX B

Examination of Actions Brought Between 1988-2003 in Narlıdere and Balçova Settlements, According to the Authorized Courts and Subjects of Actions

Actions According to Courts:

Researches of court files, registered in the Directorates of Law Affairs of Balçova and Narlıdere Municipalities, were concluded with 1215 files. Resource of the court files are based on the registrations of regarding institution, thus, research contents have been limited with those registrations. It means that, there can be further actions existing in these settlements, because both two municipalities were working as branch offices of the Municipality of Central County between the years 1980-1991. Therefore, data regarding that period are not healthy. In addition, although there has been Directorate of Law Affairs in Municipality of Balçova after 1991, it is established in Municipality of Narlıdere after 1999. Thus, there are some missing information in the court files belonging to the years 1988-1991 because of this institutionalization process.

In order to make a generalization through all court files, actions have been examined separately under Administrative and Juridical topics. Juridical actions include; the Civil Court of First Instance, Criminal Court of First Instance, Labour Court, Court of Enforcement, Civil Court of Peace and Criminal Court of Peace. Administrative actions include; Administrative Courts and Court of Tax. Administrative actions comprise the proceedings that have the characteristic of "administrative activity" of the regarding authority.[85] Every kind of decision of the municipal council and municipal committee regarding the municipalities are examined by Administrative Courts. Actions concerning authorizations, tasks, responsibilities declared in the Development Act No. 3194, Expropriation Act No. 2947 and the acts numbered 1580 and 3030 regarding planning procedures are usually performed in those courts. Although Development Penalties, stated in the Development Act No. 3194/Article No.42, had been performed by Criminal Courts of Peace until 2001, Administrative Courts have been authorized to pursue these actions after that year. Number of actions in Administrative Courts is 822 and number of actions in Juridical Courts is 393 (8 actions exist in "others" category).

(See Table:4.3 and Table: 4.4.)

[85] Implementation plans exist as an arranging activity for the definition of legal and every kind of arranging decision and actions regarding implementation are proceeded in Administrative Courts. In a Central System before 1980, authorized institution was Council of State, however by the arrangements after 1980, Regional Administrative Courts were established and they have been declared as the authorized institution. Thus, Council of State has been stated as the authority of appeals.

Juridical Courts

Criminal Courts of First Instance; actions proceeded in these courts generally include the nullifications for sealing procedures of work-sites done by regarding municipality.

Civil Courts of First Instance; actions in these courts usually brought for demands of declarations, changes in land registers; declaration of tenure rights and change of land registrations (particularly, private persons request land registrations to be conveyed upon themselves concerning public lands that have been used more than 50 years by themselves. Actions are brought by private persons and generally rejected and results in favor of the regarding government office. In Narlıdere case, there are so many actions in parcel no.1972, where squatter prevention and mass housing areas exist), declaration of land value (includes cases like value declarations of the lands that (yoldan ihdas edilmiş) according to Article No.17 of Development Act No.3194), demands of expropriation value changes and actions about compensation of municipal personnel.

Commercial Court of First Instance; action for appraisement. (actions for appraisement & determination of the lands for Narbel A.Ş. and compensation payments for damages on advertisement panel).

Courts of Enforcement; actions concerning the credits of private persons and/or institutions from the municipality or credits of municipalities from the private persons and/or institutions.

Labor Courts; include the actions regarding actions for damages and the credits of the personnel.

Civil Courts of Peace; actions proceeded in these courts are about; partition actions on properties (especially subjects like; nullifications of shares formed after development plan implementations, partition actions by sale), declaration of rent values of municipal properties and their annulments, determination reports (for instance, a municipality gives necessary permit for a building on the area under its liability; the damage or the interference of the regarding building to environment and near plots are declared in those reports), nullification of decisions according to the Act No.6570-Article No.7/4, annulments of interference, determination and credits.

Criminal Courts of Peace; actions of nullity concerning administrative penalties fined due to (Yapı Tatil Zaptları) according to the Development Act No.3194/Article No.42. Demolition decisions according to the Development Act No.3194/Article No.32 were being proceeded in Administrative Courts while applications of Article No.42 were being proceeded in criminal courts of Peace. Due to the difference of the decisions of these two courts, these actions have been under the liability of administrative Courts since 2001. (Regarding decision will be discussed later with exact date and statement.) Concerning the two decisions of municipal committee according to (Yapı Tatil Zaptları) of regarding Construction Control Department for the same building block, plot and map; penalties are decided by the Criminal Court of Peace and

demolition decisions are under the responsibility of Administrative Courts. Activities in both two actions are the same: Buildings without license, development against plans and their annexes. However, in the researched court files, it has been seen that; Criminal Courts of Peace decide the annulment of the penalty where Administrative Courts accepts the demolition decisions because of their accordance with law and regulations. In order to remove these two different decision processes, dating from 2001, Administrative Courts have been authorized for the applications of the Development Act No.3194/Articles No.32 and 42.

Administrative Courts

Courts of Tax; Actions proceeded for real estate and entertainment taxes. 20 cases brought by only one company (Özkanlar Ltd. Şti.) consist of objections for entertainment taxes. The number of objection actions are 19 that were brought by İzmir Chamber of Commerce for the land price list/unit m² approved by municipal council that real estate taxes are based on. These actions usually conclude with acceptance, it means, price lists and excessive parts of entertainment taxes are generally annulled. Other actions are proceeded by private persons for the nullification of real estate/lot/land taxes.

Administrative Courts; Actions proceeded in İzmir's 1st, 2nd, 3rd, 4th Administrative Courts like; demolition decisions according to the Development Act No.3194/Article No.32; subdivision plans applied according to the Development Act No.3194/Article No.18; development plans; plan alterations; expropriation decisions regarding development plans are directly related to planning and its implementation processes. In addition to the actions related to physical space, actions having "administrative activity" are also under the liability of these courts.

APPENDIX C

Development Plans in Force in Balçova and Narlıdere Settlements and Approval Dates of These Plans

Development Plans in Force in Balçova Settlement:

NO	Date of Approval	Title of the Plan
1	1981	Development Plan of Balçova
2	1982	Plan of "57'liler" Housing Cooperative
3	1982	Health Resort Area
4	1984	1st Stage Development Plan Revision
5	1986	2nd Stage Development Plan Revision
6	1986	Master Plan of "Esentepe" Stone Quarry and Its Neighbourhood
7	1988	Balçova Multifunctional Town Center
8	1994	Development Plan Revision of "Köyiçi" and Its Neighbourhood
9	1995	Municipal Facility Area (Daily Trade)
10	1997	Highway Revision of "Eğitim" Quarter
11	1998	Plan Changes on Map No. 22K-4C and 21K-4D
12	1998	Development Plan Alteration Between Two Roads
13	1998	Coversion of Recreation Area Into Residential Area
14	1998	Additional Development Plan
15	1998	Development Plan of Telpher Complex
16	1998	Revision on Üçkuyular Map No. 22K-3A
17	1998	Addition of Plot to Cemetry Area
18	2000	Development Plan Revision in "Teleferik" Quarter
19	2000	Additional Development Plan on Map No. 20K2,20L1
20	2000	Plan Alteration in Plot No.62
21	1999	İzmir No.1 Committee of Protection of Cultural and Natural Heritage – Site Decision No.8050

Development Plans in Force in Narlıdere Settlement:

NO	Date of Approval	Title of the Plan
1	1981	Development Plan of Narlıdere
2	1985	Decision of Military High School in 1/5000 Master Plan of Narlıdere
3	1987	Narlıdere 1st Stage Development Plan Revision
4	1988	Peacemeal Plan of "Arıkent" Housing Cooperative
5	1988	Determination of Fisher's Shelter
6	1989	Peacemeal Plan of "Özmavikent" Housing Cooperative
7	1989	Narlıdere 2nd Stage Development Plan Revision
8	1990	Rest Home Area of General Directorate of Retirement Fund
9	1995	Additional Development Plan and Mass Housing Development Plan
10	1996	Development Plan Revision of "2nd İnönü" Quarter Plot No.1972
11	1997	Development Plan Revision on Map No. 22I-2A, 2B
12	1999	İzmir No.1 Committee of Protection of Cultural and Natural Heritage – Site Decision No.8049

APPENDIX D

Explanation of Terms Used in Thesis

Action / Case / Litigation:	Dava
Action of Nullity:	İptal Davası
Adjacent	Mücavir
Administrative:	İdari
Alteration:	Tadilat
Amnesty:	Af
Annulment / Nullification:	İptal
Appeal:	Temyiz
Appraisement:	Kımet Takdiri
Article:	Madde
Authority:	Yetki / Mercii
Barter:	Trampa
Breaking of Seal:	Mühür Fekki
Built-up Area:	Yerleşik Alan
Cautionary Judgement:	İhtiyati Tedbir
Civil Court of First Instance:	Asliye Hukuk Mahkemesi
Civil Court of Peace:	Sulh Hukuk Mahkemesi
Civil Court:	Hukuk Mahkemesi
Civil Panel of Supreme Court of Appeals:	Yargıtay Hukuk Dairesi
Clause:	Fıkra
Commercial Court:	Ticaret Mahkemesi
Committee of Protection of Cultural and Natural Heritage:	Kültür ve Tabiat Varlıklarını Koruma Kurulu
Confiscation:	El Koyma
Conflict / Dispute / Disagreement:	İhtilaf / Uyuşmazlık / Anlaşmazlık
Consolidation:	Birleştirme
Conversion:	Dönüşüm
Council of State:	Danıştay
Counsel:	Vekil
County:	İlçe
Court of Appeals:	Temyiz Mahkemesi
Court of Enforcement:	İcra Mahkemesi
Court:	Mahkeme
Criminal Court of First Instance:	Asliye Ceza Mahkemesi
Criminal Court of Peace:	Sulh Ceza Mahkemesi
Defendant:	Davalı
Demolition:	Yıkım
Development Act No.3194:	3194 Sayılı İmar Kanunu
Development Plan:	İmar Planı (Genel)
Directorate of Law Affairs:	Hukuk İşleri Müdürlüğü
Dismissal:	Men
Dissolution of Attachment:	Haczin Kaldırılması
Easement:	İrtifak Hakkı
Equality:	Eşitlik
Evacuation:	Tahliye
Greater Municipality of İzmir:	İzmir Büyükşehir Belediyesi
Headman of Quarter:	Mahalle Muhtarı
Implementation Plan:	Uygulama İmar Planı (Ö: 1/1000)
In Force:	Yürürlükteki
Interest:	Yarar
Judicial:	Yargı

Juridical:	Adli
Jurisprudence:	Hukuk (İlim)
Just:	Adil
Justice:	Adalet
Labour Court:	İş Mahkemesi
Land Register:	Tapu Sicili
Lawsuit:	Hukuk Davası
Legal Person / Entity:	Tüzel Kişi / Şahıs
Legal:	Hukuki
Liberty:	Özgürlük
License:	Ruhsat
Market Place:	Pazar Yeri
Master Plan:	Nazım İmar Planı (Ö: 1/5000)
Mesne Profits:	Ecrimisil
Ministry of Construction and Settlement:	İmar ve İskan Bakanlığı
Ministry of Justice:	Adalet Bakanlığı
Ministry of Public Works and Settlement:	Bayındırlık ve İskan Bakanlığı
Municipal Committee:	Belediye Encümeni
Municipal Council:	Belediye Meclisi
Municipal Police:	Zabıta
Notice Pay:	İhbar Tazminatı
Objection:	İtiraz
Partial Acceptance:	Kısmi Kabul
Partition Action:	Ortaklığın Giderilmesi
Party:	Taraf (Davalarda)
Penalty:	Para Cezası
Plaintiff:	Davacı
Subdivision	Parselasyon
Private Law:	Özel Hukuk
Private Person:	Özel Kişi / Şahıs
Procedure / Transaction:	İşlem / Muamele
Public Corporation:	Kamu Tüzel Kişiler
Public Law:	Kamu Hukuku
Quarter:	Mahalle
Rejection:	Red
Relinquishment:	Feragat
Right:	Hak
Sentence:	Hüküm
Severance Pay:	Kıdem Tazminatı
Supreme Court of Appeals:	Yargıtay
Technical Department of Municipality:	Belediye Fen İşleri Müdürlüğü
Tenure:	Zilyetlik
Title-Deed:	Tapu Senedi
To Bring an Action:	Dava Açmak / Dava Etmek
To Denunciate:	İhbar Etmek
To Proceed an Action:	Dava Açmak / Dava Etmek
Transmission:	Devir

Kaynakça:

1- Kentbilim Terimleri Sözlüğü; Ruşen Keleş; 2. Baskı; 1998 - Ankara
2- Hukuk Sözlüğü; Mustafa Ovacık; 5. Baskı; 2003 - Ankara
3- Avrupa Birliği Temel Terimler Sözlüğü; Avrupa Birliği Genel Sekreterliği; 2003 - Ankara
4- Şehir Planlama Terimleri Sözlüğü; Cemal Arkon; 1989 – İzmir

APPENDIX E

All Collected Data Including Balçova and Narlıdere Settlements

All collected data as an Excel document in a different sheet of the program can be found in the CD, at the end of the cover.

CURRICULUM VITAE

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EDUCATION

Ph.D.	Izmir Institute of Technology, Faculty of Architecture, Department of City and Regional Planning (since February 1998). Dissertation: "A Critical Evaluation on the Concept of Justice in Planning Process – Judicial Oversight: The Balçova and Narlıdere Cases, Izmir-Turkey"
MSc	Dokuz Eylül University, Faculty of Architecture, Department of City and Regional Planning (September 1994 – October 1997). Thesis: "Planning, Participation and Policy: Case Study in Torbali, Izmir."
B.S	Dokuz Eylül University, Faculty of Architecture, Department of City and Regional Planning (September 1985 – February 1992).

PLANNING WORK EXPERIENCE

Research Assistant:	Izmir Institute of Technology, Faculty of Architecture, Department of City and Regional Planning (since January 1998).
City Planner:	Chamber of Union of City Planners, Izmir Branch. As a Secretary of the Administrative Committee (from 1996 to 1997)
City Planner:	Izmir-Torbali Municipality, Planning Department (from 1995 to 1996)
City Planner:	Pervin Şenol, Private Planning Office (from 1992-1994)

PUBLICATIONS

Articles and Essays

1. "Planlamanın "Yapabilirlik" Krizinde Özgürleştirici Arayışlar", *Şehircilikte Reform*, *[Urbanization Reform],* syf:63-80, TMMOB Şehir Plancıları Odası Yayını, 2004, Ankara, (Dünya Şehircilik Günü 27.Kolokyumu-Bildiriler Kitabı) (by G.Aşıkoğlu, E.Bal, H.E.Erdin, D.Öncül, P.Şenol, N.Yörür, F.Altınçekiç)
2. "Planlama Sürecinin Sosyal Adalet Kavramları Çerçevesinde Değerlendirilmesi", [An Evaluation of the Planning Process on the Concepts of Justice] *Yoksulluk, Kent Yoksulluğu ve Planlama*,[Poverty, Urban Poverty and Planning] syf: 73-80, TMMOB Şehir Plancıları Odası Yayını, 2002, Ankara, (Dünya Şehircilik Günü 26.Kolokyumu-Bildiriler Kitabı)
3. "İmar Afları Sonrasında İzmir'de Gecekondu Gelişimi Üzerine Bir Değerlendirme", [An Evaluation of the Gecekondu Areas in Izmir after the Construction Amnesty Acts] *Yoksulluk, Kent Yoksulluğu ve Planlama*, [Poverty, Urban Poverty and Planning] syf:127-155, TMMOB Şehir Plancıları Odası Yayını, 2002, Ankara, (Dünya Şehircilik Günü 26.Kolokyumu-Bildiriler Kitabı) (by S.Özdemir, A.A.Avar, N.Sevinç, P.Şenol, H.Velibeyoğlu, B.Arıcan, B.Bektaş, E.Güçer, M.Kompil, U.Yankaya)
4. "Planlama ve Uygulamada Katılımve Denetim", [Participation and Control in Planning and Practice], *İzmir'in Kentleşme-Çevre-Göç Sorunları ve Çözüm Önerileri*, *[Urbanization-Environment-Migration Problems and Solutions in Izmir],* Birinci Cilt; Kentleşme Raporu, İzmir Yerel Gündem 21 Yürütme Kurulu Yayını, Haziran,1998, İzmir, syf: 17-25 (by S.M.Erses, A.Mutlu, H.Ercan, P.Şenol, S.Sertel, T.T.Kamiller).

Conference Papers and Seminar Presentations

Chamber of Union of City Planners, Izmir Branch, "Localization, Planning and Participation Process in Izmir, HABITAT II City Submit, Istanbul, June 1996 (with Ş.Gökçen) (as a representative of Chamber of Union of City Planners, Izmir Branch) ; (unpublished presentation)

RESEARCH EXPERIENCE AND SCIENTIFIC REPORTS

I. Research Project

Supporting Foundation:	TÜBİTAK (The Scientific and Technical Research Council of Turkey)
Project Subject:	Gecekondu Areas in Izmir after the Construction Amnesty Acts: Socio-Ekonomic, Spatial Analysis
Project Manager:	Assoc.Prof.Dr. Semahat Özdemir
Project Researchers:	Asist Prof.Adile Arslan Avar, Reseach.Asist.Pervin Şenol, Reseach.Asist. Nuray Sevinç Kaya, Reseach.Asist. Hasibe Velibeyoğlu, Students: Uğur Yankaya, Birkan Bektaş

II. Research Project

Supporting Foundation:	Izmir Institute of Technology
Project No:	1999 MIM 02
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Project Managers:	Asist.Prof.Erkal Serim, Reseach.Asist Deniz Güner, Reseach.Asist Koray Velibeyoğlu, Reseach.Asist. Yeşim Özgen, Reseach.Asist Pervin Şenol

III. Research Project

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Project No:	DEBAG 127/G
Project Subject:	Ekolojik Dengenin Korunması ve Sürdürülmesi Açısından Kentsel Sistemlerin Planlanması [Planning of Urban Systems in Accordence with Ecological Conservation and Sustainabilty]
Project Managers:	Assoc.Prof.Ülker Baykan Seymen and Prof.Dr. Şenel Ergin
Sub-Working Group/ Subject:	Çeşme Yarımadası ve Alaçatı Yerleşimine Yönelik Olarak Üretilmiş Plan Kararlarının Analizi,

[Analysis of the Planning Decisions in the Çeşme Peninsula and Alaçatı Settlement]

Sub-Working Research Members: Asist.Prof. Semahat Özdemir, Pervin Şenol, Arzu Yiğit

Scientific Reports

Report of theTahtalı Dam*:An Evaluation of Legal, Adninistrative and Planning Decisions for Protection of the Tahtalı, Izmir, Turkey*. Submitted to Municipality of the Izmir Metropolitan Area, 2000 (by Z. Gencel, P.Şenol, Z. Peker).

Survey Study on Urban Planning, Participation and Policy Torbalı settlement, Izmir - Turkey Physical survey and documentation of the municipality of the Torbalı settlement, Izmir, the settlement as an example of the planning process evaluation and the results of the decision making process of the municipal committee and commission decision(1995-1996).

PROFESSIONAL MEMBERSHIPS

Chamber of Union of City Planners, Izmir Chapter, since June 1992.

CERTIFICATES

Programme of National Training Course on Environmental Information Systems (EIS) in Integrated Coastal Area Management (ICAM);Izmir, TURKEY, February 22-26, 1999; Priority Actions Programme Regional Activity Centre (PAP/RAC) UNEP-Mediterranean Action Plan; PAP/RAC (Priority Action Programme, Regional Activity Centre)

WORKSHOP; "Project Management" 4-8 September 2000; IZTECH & Instıtute Aeronautique Et Spatial

ADMINISTRATIVE SERVICE

Committee Membership: The Chamber of Union of City Planners, Izmir Branch Administrative Committee, from 1995 to 1996; from 2000 to 2002.

Representative: The Chamber of Union of City Planners, Izmir Branch for the Greater Municipality of Izmir Local Agenda 21 City Council Meetings, 1996 – 1998.

Representative: TMMOB Chamber of Union of City Planners, Izmir Chapter; Germany-Turkey Cooperation Project; "Hava Kalitesi ve Kent Gelişimi Planlaması İzmir" "[Air Quality and Urban Development Plan in Izmir]; Sustainable Urban Growth Working Group Membership; 12/1996 - /1998

Languages

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COMPUTER SKILLS

Windows Office Programs (Word, Excel, Power Point); Photoshop; AutoCad 2000; introductory ArcGIS v.8.3