APRILab: regulation dilemma report

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Citation for published version (APA):

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APRILab

Action orientated planning, regulation and investment dilemmas for innovative urban development in living lab experiences

REGULATION DILEMMA
Full Case studies Report

Deliverable 3.a
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To cite this report: Savini, F., Salet, W., Markus, M. Eds. (2015) APRILab: Regulation Dilemma Report. Amsterdam, University of Amsterdam


Published by: University of Amsterdam, Amsterdam Institute of Social Science Research

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APRILab

APRILab is the acronym for the research project: ‘Action oriented planning, regulation and investment dilemmas for innovative urban development in living lab experiences’. The research is funded by the Joint Programming Initiative Urban Europe. The Netherlands Organisation for Scientific Research (NWO) is a participant and key funder for this research.

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Acknowledgements

The partners of APRILab would like to thank the JPI Urban Europe as well as the respective national research councils for coordinating and financing this research project. The national research councils are DCSR (The Danish Council for Strategic Research), NWO (The Netherlands), TÜBİTAK (Turkey) and Tekes (Finnish national funding agency for Technology and Innovation).
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AMSTERDAM: REGULATION DILEMMA IN IJBURG AND OVERAMSTEL

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Editor
Joline Rodermans
Introduction

APRILab investigates the paradoxical nature of the relationship between planning and self-organization. It looks at practices of dealing with complex social change of area-development within the urban periphery. In Amsterdam we focus on two selected areas, the island extensions of IJburg in the east and Overamstel, an industrial area undergoing urban change. The intervention dilemma \(^1\) regarded the relationship between borders and programs within urban design and planning. In this first phase we have investigated how in practice project borders and programs of urban-real-estate development are changed and adapted to include elements of unpredictability.

The most important conclusion of this research was the following:

a) There is no agreement between the stakeholders of the elements of programming that can be kept closed and fixed and those that can be open and unpredictable;

b) The spatial scale of intervention is multiplex and different actors focus on different scales. Controversies often occurs because of different scales of prioritization;

c) The issues of open programming is at odds with the request of certainty in urban development. This mostly concerns public services available in the area and future relationships between functions;

d) By opening borders and programs and leaving them more undefined it is likely that the project as such will tend to be fragmented and disconnected. The management of flexibility concerning borders and programs is therefore linked to the way different scales of planning and different ad-interim steps of programming are governed, specifically by the municipality;

The investigation on the regulation dilemma directly links to this conclusion. The municipality of Amsterdam as a whole - the two cases are not exception - is seriously discussing the functioning and institutional legitimacy of its regulatory system in light of the economic crisis. Regulations are becoming an issue, often depending on the specific context in which they are discussed (for example area-development vs. strategic planning). Yet, discourses on self-organization, which often focus on the responsibility of legally enabling temporary usages, self-building initiatives, practices of bottom-up entrepreneurship, and physical adaptation, are directly impinging on the way a wide set of legal rules are applied in area development. Most discussions tend to focus on public law, with specific regard to that regulatory framework that applies to the consolidated tradition of Amsterdam’s active land policy. Also at the political level this is an issue seriously discussed. We see two general discourses:

1) A general call for ‘de-regulation’, especially from the side of the development industry and municipal department generally prone to favour bottom-up entrepreneurship and economic dynamism. This discourse often focuses on the ‘too detailed’ and ‘too strict’ regulations applied in Amsterdam land use planning. The land use plan as such is generally taken as an example of a regulatory stringent framework. Building regulations (bouwrecht and procedures of authorizations) are also generally looked at to be too stringent, thereby inhibiting private freedom. Similarly, the excessive detailing, and the parallel legalization within the land use plan, of the urban plans (stedenbouwkundige plannen) is considered as a problem, often closing possibilities of flexibility.

2) A general discussion on the changed role the municipality of Amsterdam, and its departments. This discourse is divided into two sub-themes. The first regards the procedural aspects of active land use planning. Advocates for legal reform are usually pointing at the heavy and ‘too long’ procedures for urban development. This is

\(^1\) See report at http://aissr.uva.nl/research/externally-funded-projects/sites/content13/aprilab/about.html
generally addressed within municipal reformist movement as ‘process’ costs. It regards the institutional heaviness of procedural requirements and the often contradictory succession of steps to be followed. This stream of reflection also critiques the often unnecessary or unjustified recourse to certain steps in the process, also with regard to inclusionary procedures for inhabitants. In this sense, the current Crisis and Recovery Act (*Crisis- en herstelwet*) is pointed as a partial solution to these problems. The second stream of debate instead focuses on the set of regulations in place to govern private action. In this sense, reformist discourses points at the need of using regulation as a ‘tool for governing’, strategically to achieve certain public goals. This discourse, despite it is de-facto institutionalized in the active land policy, became highly relevant in times of municipal austerity policies. The municipality counterbalances the lack of financing for pro-active land development, with regulatory instruments for what is now called ‘*kavelsturing*’. Within the discussion, the issue of ‘spatial quality’ is highly central.

These two discourses ultimately regards the apparently contradictory position of planning (and planners) in the tension between freedom (of initiative and spatial self-organization) and the need to establish certainty of spatial quality and urban outputs. Planning per definition enables to suggest directions of change and sustain part of this (legal) certainty. Yet, while these two discourses are rather clearly juxtaposed, in the practice of urban development the range of rules that are discussed and questioned is highly relevant in times of municipal austerity policies. The municipality counterbalances the lack of financing for pro-active land development, with regulatory instruments for what is now called ‘*kavelsturing*’. Within the discussion, the issue of ‘spatial quality’ is highly central.

In the following document we decided to organize the large amount of information around three main large ‘regulatory fields’. The definition is empirically based, and it is justified according to:

1) **Contract and public private agreements**: these are stringent regulatory elements, enforced through private law. In urban development, this framework becomes important elements of negotiation over regulatory aspects.

2) **Land use planning**: it is organized with relationship to urban plans (*stedenbouwkundige plannen*), temporary usages and self-built initiatives. Here we collected information regarding the way land use plans are used to address development. We focus on the relationship between the land use plans and the urban plans, which exemplifies the sets of regulations to be enforced through public law. Secondly, we address the issue of temporary use, which is generally seen as relevant in the debate about flexible urban development. Third, we address the issue of self-building with relationship to the land use plan. This is related to the general belief that more individual power of choice in housing development requires less stringent (or different ) regulations.

3) **Environmental protection framework**: these regulatory frameworks are relevant to the extent that they are provided from supra-governmental levels. In this sense they impact on local planning, providing a more or less stringent procedural framework.
Development contracts and public-private development agreements (private law)

IJburg

IJburg is generally recognized as an example of a hyper planned project. Since the mid-90s, the project has been constructed over a nested system of regulations, contracts and legal arrangements which covered the whole area. The project has been managed as a unitary large intervention and the specific regulations in place have been generally applied in the whole area. The scale has requested a large degree of standardization of regulations, often applied to the whole surface of the project. The project therefore takes place within a strongly consolidated, and publicly legitimated, system of contracts, framework rules and detailed regulatory elements applicable throughout the whole history of the project. The recent redevelopment of the last parts of IJburg 1 (Haveneiland Oost and Rieteiland Oost), and the newly started development of Centrumeiland (first phase of IJburg 2) demands new regulatory approaches. Recent regulatory changes have been impacting on the current conduit of the project.

Counterintuitively, as a highly planned and publicly funded project, IJburg is today dependent on the management of the relationship between municipal planning and private responsibilities of realization. The pillars of this relationship lie in the historical roots of the project. Forecasted as a unitary long term public investment, the municipal government needed sufficient certainty in the return of its investments. The main elements of investments were:

a) The building of the land on the island;
b) The servicing of the land through infrastructure for mobility, energy and water management;
c) The covering of large process costs for the management of the project and the generation of spatial quality;

The city has progressively contractualized the conditions for generating the security of future returns on the selling of the housing stock. This was partly done through systems of public law, with contracts closed between the city and the state (VINEX covenant) and a large system of development contracts closed with the organized development consortia. The actual formation of three big consortia for the development of IJburg (Groep Waterstad, IJ-delta, IJburger Maatschappij) was primarily justified to manage the large amount of sub-contracts, and land prices negotiation, for the governing of the whole island development. In both these systems of contracts the most important elements of fixity were related to elements of programming:

1) The definition of the total amount of houses to be produced per year, and per sub-period, with a total expectation of the total housing output in the long run (relevant for Haveneiland);
2) The definition of the housing typology, based on the expected housing costs for end-users and spatial quality (elements of spatial mix);

The contractualization in IJburg was made in two different phases, the first regarding the Western side of the project (Haveneiland and Rieteiland West) and the second, mid 2000, regarding the Haveneiland Oost and Rieteiland Oost. The contractualization was at the same time highly detailed on output figures, and public-private responsibilities, and spatially general, regarding the whole sector in question.

**Intentieovereenkomst**

13 August 1996

The *intentieovereenkomst* is preliminary a contractual document of intention and it is mostly geared to test the space for agreement between the municipality and the development corporations. It contains an early stage negotiation on the cooperation between public and private parties regarding 6,000 houses and necessary facilities. It included a clause that the city might change the details of the island plan after the results of the citizen referendum against the project (determining public uncertainty). Indeed, an agreement that the Cooperation Agreement (*samenwerkingsovereenkomst*) was conditional to the result of the referendum. The contract was based the execution of the urban plan (*stedebouwkundig plan*), which needed to be done in cooperation in order to improve quality, and the social and financial feasibility of the project. The agreement also sets the initial points ‘to be agreed on’ within the upcoming contract. These are:

- Detailed programming, in time and space;
- Detailed phasing and issuing of land in time;
- The guarantees from both parties that land and buildings are delivered;
- The amount of initial payment to be transferred by developer at the time of the issuing of building rights and the payment rhythm across the years;

**Samenwerkingsovereenkomst Haveneiland and Rieteiland**

7 April 1998

With this formalized contract, the city agrees on a long term commitment with the private parties on the land price and building output for the total project. Land price is decided in relationship with the amount of houses and the housing typologies. For this reason the contract turns to be a highly binding agreement (even more binding then public law systems) on the typology of spatial quality and housing to be produced. The agreement is closed on a total of 6,705 houses, with 465 houses to be yet assessed because they ought to be built on piles-platforms within the water. The agreement was revised on 14 March of 1999 in order to readdress the division of tasks between the developing consortia and the municipality. The main change regards the need to design the first part of the urban plan (*Stedenbouwkundig Plan Haveneiland West, 2000*). While initially it was the competence of the consortia to create a privately designed plan (rather innovative in Amsterdam at the time), the large investment pressure on the development industry generated too much uncertainty for the city that was in need for guaranteed output quality of the plan. The agreement establishes a plan designed by a municipal architect (Ton Schaap). The agreement also contains the expectations over time and programming. Different pieces are put in relationship with each other. The three tranches of issuing of building rights and payment of land prices (in particular South of IJburglaan, February 2001, North of IJburglaan, April 2001, South of boulevard, October 2001). This phasing was further specified at the level of
each block with a 'hierarchy of contracts'. Moreover, the prices of the houses in the middle segment are indexed each year, with long term expectations over market growth. The contract was indeed based on an expectation of a steadily increasing real-estate market, inflation and interest rates. In the contract it is also specified that the land price and the leasehold contract (erfpacht) is defined at the time of the signing of the building concession. The exact limit of the plots per block, the design, the planning of the building, the locations, the net price of housing, are also intended to be elements of contractualization at each stage.

**Samenwerkingovereenkomst**

2001

This is a further specification of the first contract. It includes a global contract with the total amount of houses, the typology and, very important, it contains the *stedenbouwkundig plan* as annex. The urban plan and the output features of the project are element of contractualization between the public and the private party. At this point the contract is implemented and further specified per consortia within the different strips (see fig.1). According to the urban plan, which is then official and turned into cogent formal rules within the land use plan operationalization (See below). The urban plan indicated the responsibility of each consortia to realize the contract within each block, following the specificities of the urban plan.

**Changes in Overeenkomst Haveneiland Oost**

March 2000

The following changes are forecasted:

a) A general agreement with a general plan and no definition per block. A more global contract;

b) The higher risk of concentration of social houses to save money. This is not coherent with the principles of the social housing developer;

c) The land use plan was conformingly changed into a more general plan (with different outcomes). Some specificities are left out (i.e. the maximum limit of 40 houses per architect in each block). This would have increased the process costs up to 5,000 euros;

d) The agreement is on the percentage of segments (30%/20%) but not on the specific design rules specified in the former plan (within the former urban plan). We can play on the quantity.

The new systems for Haveneiland Oost combines a general master plan, a public steering role on the development, a close relationship between the municipality and the developers on the plot and a contract which regards a global plan with indications of sqm. Yet, during the implementation different elements can vary (e.g. size and typology of houses as well as quantity of houses). The variation might lead to an increase of total realized houses. This would be in mismatch with the set up house prices by the municipality, which are based on a estimation of the number of houses to be completed and on their typology. A higher amount of houses might be allowed only if further compensation of land price is given.

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2 Interview with Aiko Lem (2 november 2014) contract manager at OGA Amsterdam
Samenwerkingovereenkomst voor Haveneiland Oost
2005

The detailed contractual infrastructure of Haveneiland West went under pressure in 2008. The economic crisis, the negative expectations of credit to realize the expected buildings, together with the awareness of the need to change typology of houses caused the need to revise the contracts system at the base of the project. The approach is somehow more specified than the first contract. Differently from Haveneiland West, the eastern part is contractualized differently with each developing consortium. There is not a global contract for the whole sector. Each consortium agrees with the city on a certain number and typology of houses, according to a somewhat different urban plan (where some regulations are left out, as for example the compulsory limit per architect). In this way it is also possible to ensure the pre-paying of the building right. For each contract, each consortium has paid the costs of development. This is on top of the cashed lease hold and ensured a relative limited but guaranteed sum for the municipality. In this system, the city has also the responsibility to assess the progress of the realization and to adapt-stipulate different erfpachtleverings (lease transfers) contracts in the process. This depends also on the realized building stock, since erfpacht (lease) value changes vary according to real-estate function.

The development program is also redefined. Around 70% of the program was already built. The remaining 30% (approximately 12 blocks, with each 100-150 houses) are suffering the lack of bank credit. Negotiations are thus started on the structural dimension of the block, on the size and characteristics to decrease the building costs for housing. Negotiations mostly regard the top segments of the housing stock, with social houses already realized. The interesting area of Rieteiland Oost for example, with larger self-built houses. The land use plan was at that point more ‘flexible’, with more possibilities of ‘exceptions’. The first partial revision of the first phase of IJburg (see below) does not provide with ‘less regulations’ but it includes a specification of all the urban-design elements that can be allowed to incorporate flexibility in the different projects. The land use plan is highly general indeed, allowing for a different organization of the housing stock. Some problems related to the adaptation of changed housing stock after the crisis within blocks, whose structural elements were organized by the urban plan. For example the minimum building height around the main avenues. In this case the shift towards mid-high segment single family homes was not possible.

Larger issues of negotiation was instead the already paid land price for developing rights. In this case a change of program required a renegotiation on the housing stock in order to ensure the matching between costs and returns. An agreement is found into a balance of cheaper houses but more numerous. In other cases, the price of the house can also be influenced by specific leaseholds agreement. The city had already ceased the developing rights, and this is a better condition for negotiation. Smaller houses, and more rental homes, also affects the number of parking lots, one of the important elements on housing price calculation. The municipal risk is instead related to the cashing of the land lease, that starts when the building is realized. The delay due to inflexible plans therefore generates pressure on the municipality to renegotiate the program. The contracts also contained a time sensitive clause for a fine. The mis-realization of the program would incur into a fine for the developers. Yet, also this clause was renegotiated, because of the needs for the city to realize the real-estate output in a shorter time.
Table 1. List of agreements between developing parties and the municipality of Amsterdam

<table>
<thead>
<tr>
<th>Type of agreement</th>
<th>Parties involved</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intentional Agreement IJburg</td>
<td>City of Amsterdam Groep Waterstad IJburgmaatschappij IJdelta</td>
<td>December 2nd, 1996</td>
</tr>
<tr>
<td>Collaboration agreement Haveneiland and Rieteilanden IJburg</td>
<td>City Council of Amsterdam (Decision No. 81 and 88)</td>
<td>February 18th, 1998</td>
</tr>
<tr>
<td>Collaboration agreement Haveneiland and Rieteilanden IJburg</td>
<td>City of Amsterdam Waterstad Beheer B.V. II-mij Beheer B.V. II Delta Ontwikkeling VOF</td>
<td>April 7th, 1998</td>
</tr>
<tr>
<td>Amended collaboration agreement Haveneiland and Rieteilanden IJburg</td>
<td>City Council of Amsterdam (Decision No. 10)</td>
<td>February 9th, 2000</td>
</tr>
<tr>
<td>Amended collaboration agreement Haveneiland and Rieteilanden</td>
<td>City of Amsterdam (Decision No. 10)</td>
<td>March 14th, 2000</td>
</tr>
<tr>
<td>Amended Collaboration agreement Haveneiland and Rieteilanden</td>
<td>City Council of Amsterdam (Decision No. 873)</td>
<td>November 28th, 2001</td>
</tr>
<tr>
<td>Intentional agreement collaboration public spaces Haveneiland West and Rieteilanden West</td>
<td>City of Amsterdam</td>
<td>September 2002</td>
</tr>
</tbody>
</table>

Zeeburgereiland

Zeeburgereiland, the former location of the sewage plant at the West of IJburg, shows another model of contractualization. The project’s experimental approach, relatively to Amsterdam’s tradition, is an expression of the political intention to radically change the land development approach traditionally employed. This experimental approach has found ground on both the recognition of the difficult redevelopment of the area: a strategic location yet a lack of any urban function, the difficult search for large developers interested in a unitary project, and the choice to experiment with a low ‘process cost’ procedure from the side of the city. The early attempts to develop the project (see below section on land use planning) since 2005 where considered ineffective, both due to the excess of regulatory burden on the project (see section on environmental protection) and to the need to provide with a long term coordination. A strong partnership between de Alliantie (one of the larger housing corporations in the country) and the Amsterdam municipality made it possible to establish a new approach. The pilot project of Ri-Oost, the northern sector of the whole island (see fig 3) is divided in different sub-sectors. The north-western corner (see fig 2) is subject to a specific public-private agreement, recently made in 2014, with the aim to favour a flexible, market responsive and rapid development. A development contract is closed between the city of Amsterdam and the de Alliantie corporation. The contract includes the following agreements:

- The city transfers all the development tasks to de Alliantie with an agreement of 600 houses in 10years time;
- The development corporation has the responsibility to design an urban plan, and to manage the process of development of the area. All the process costs are externalized to the company;
- The city and de Alliantie agree on a general delivery contract including the specific area of intervention, and time based development plan, and the relative land price for the whole area. Delivery times are fixed;
- The private company operates as ‘broker’ (makelaar), as manager of the area, and coordinates the whole project. The responsibility of delivery of the private spaces is of de Alliantie;
- The responsibility for coordinating the planning of the public space with the municipality of Amsterdam is also left to the private party. It is enforced through a ‘benefit contribution system’ (reserveringsvergoeding). De Alliantie pays the cost of the right to the develop. This is the risk of the corporation. This benefit is decreased progressively with the delivery of the real-estates;
- Organization of structural and architectural elements is by the coordinator of the project. In this case de Alliantie is also responsible to process the building authorization for each plot. The municipality has a role of testing and confirming this authorization. This ensures rapidity in procedural agreements. A quality team, with a representative of the municipality, is formed in order to ensure synergy between these procedures;

Figure 1. In orange the area subject to the specific development contract

Source: Stedenbouwkundig Frame op Zeeburgereiland voor de Alliantie, 2014
**Overamstel and bouwenveloppen**

The redevelopment of Overamstel offers another view on contractualization and binding agreements for land development. The main tool used is the building block envelop (*Bouwenvelop, BO below*). This tools was firstly introduced in 2005. It is a locally produced procedural framework, established in response to European regulation on the single market and to local demands of rationalization and simplification of concession procedures. The tool was particularly conceived to better govern the increased demand of land development, ensuring a more efficient negotiation between the municipality and private corporations on land development. In this sense it was pinned on positive expectations of market growth and land market dynamism, to be more efficiently exploited by the government, which owned land position. This tool was also partly conceived in order to avoid highly complex negotiation with large consortia, as experiences have shown in the contractualization of IJburg 1. The ‘great simplification’ (*grote vereenvoudiging*, source Duco Stadig, former alderman of City of Amsterdam) was the main driving logic of such a contract. With a BO, both public and private responsibilities are fixed as well as land prices.

The BO is a public-private contract over a specific plot. It contains a specification of the land use plan and a pace of realization. It is a binding agreement on the delivering of a project between the city and a consortium/corporation. It is based on an open tender procedure which contain a clear and complete overview of regulation and expectations on the realized plot. It is also bound to fixed land costs. The BO contains details on the leasehold and is hierarchically dependent on the land use plan. The fix by private law agreements are complementary rules that will apply to the specific building authorizations (*bouwvergunningen*). It defines total air-rights with amount of volumes, conditions and eventual extra’s for specific realization. The organization and

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3 Gemeente Amsterdam Bouwbrief: Regels en afspraken Amsterdamse woningbouw, nummer 2005-23
4 The relevant decisions and frameworks for the EU single market directive are: EP and CU, 2004, Directive 2004/18/EC, on rules applied for coordination procedures for award and procurement rules, European court of Justice (ECJ) C-220/05, 18 Jan 2007 against commune de Roanne, CEC 2008 public procurement, infringement case against Germany concerning urban development project in Flensburg
amount of functions can be organized within the maximum limit of the block. Yet, the degree of differentiation is still bounded to a precise land price.

The BO is concretized through a building envelop agreement (*Bouwenveloppeovereenkomst, BOK*). This is an agreement that establishes the land prices at a first moment in the planning process (during the tender procedure). The BOK can be based either on an existing land use plan and provide an operationalization of it, or it can contain within the public responsibility the ‘approval’ of a land use plan. The agreement is non-negotiable according to European regulations. The BOK is based on a building block envelop description (*bouwenvelopbeschrijving*). The BOK contains planning, ground price, payments, delivery conditions, relevant public regulations and eventual recession conditions. A ‘bonus system’ to concede more air rights for qualitative improvements of the plan can be forecasted at this point. Elements of flexibility depends on the rate between allowed square meters and the general surface of the block. The smaller the more difficult to realize the spaces in different forms. The size of the envelop tend to be not too small (min 100 houses) since the returns are calculated on the marginal costs of the land.

**Amstelkwartier**

The northern sector of Overamstel, Amstelkwartier, with a total surface of 18 hectares is redeveloped with a series of different BOs. The choice to address the whole redevelopment through different regulated contracts was mostly due to:

a) The existent property structure of the area (see fig.4) and the relative infrastructural connection underground. The area has already a fragmented structure;

b) The necessity to boost land values in the area and to govern the relatively high market pressure on this strategic location.
The legacy of these BOs is suggestive of the effect of the crisis. All the BOs are issued at the same time, based on an overall consistency provided with an urban plan. The conditions of all the BOs are therefore complementary to the plan. The first tender opened in 2007 and was signed in 2008. The result was a very high proposal on land prices (up to 50% of expected prices from the city) as the location was highly interesting. Yet, the real-estate crisis of 2008 has seriously hindered the realization capacity of the corporations. The contractual parties claimed a renegotiation of the conditions and an exception for paying the reservation costs. In 2010 the city appeals to the court in order to ensure that the reservation compensation is paid accordingly to contract agreements. The judge emphasizes that ‘a crisis is not a right to change a
contract, it is a contingency\textsuperscript{5}. After paying the reservation benefit, the city starts a negotiation with developers on different aspects: parking lots ratio, smaller houses, and student housing, with the aim to make housing more affordable. Also partial revisions of the land use plans (see below) are enabled to allow for more structural freedom with self-built houses, more marketable houses, etc.

Figure 4: Map of BOs in Overamstel

![Map of BOs in Overamstel](image)

Source: Bijlage, stedenbouwkundig plan Overamstel, DRO, 2007

The main challenge with such a regulation based land development approach is the coordination between the different development sectors when there is evidence of conflicting regulatory requirements between different units, which are fully independent contractual agreements. One example is the coordination issues between the blocks 3b and 3c. Within the BOK, the city of Amsterdam had expressively requested a coordination between the two BOs to address parking space supply. The two developers AM and Cradilestone, stated that the realization on parking lots underground within the other BO area would have incurred on higher costs for the other party if the parking lots of the hotel needs to be produced under the houses. The two different developers could not coordinate their works and appealed to the judge in order to request more precise rules through land use plans.

\footnote{5 Interview with André Vermeer, OGA, Contract manager for Overamstel}
Reflection on contractualization

The traditional form of contractualization in active land use planning in Amsterdam is generally defined as agreements of cooperation (samenwerkingsovereenkomst, SOK). They are generally open contracts, highly relational (van der Veen en Korthals Altes, 2012) because they allowed negotiations on the program in progress, and builds on the long lasting relationship between a municipality with strong land position and an active development sector (often highly organized at the level of the city). These negotiations are therefore recognized in the land use plan procedure. The land use plans overlap with the contract, turning certain conditions of private agreements into public relevant law. This ensures a rather effective realization of the project. Since 2005 the procedure is reversed with the building envelop agreement (BOK). The land use plan formalizes the (minimum) regulatory framework which applies to future public-private agreement (the tender) before the agreement is put in force. Public and private law agreements tend to go hand in hand. Yet, after the stipulation of the contract, and the enforcing of the land use plan, flexibility is highly constrained. The public law provides a stable frame for private law agreement at that point. While European regulation on a single market and on procurement rules recognizes this as a condition for fair market competition with the European economic union, at the local level this can be generally looked at as a problem. The capacity to redefine a contract, even when based on a formal tender, is considered a way to ensure freedom of manoeuvre in renegotiating programmes to boost development. The city of Amsterdam is experimenting with optional agreements (optieovereenkomst), a potential solution to this problem. This is an in-between step between the SOK, a general agreement on logics and goals, and a BOK, which is a legally binding contract between parties. The option agreement is a ‘right to develop’. It is time fixed and it intends to give possibility to develop a plan that can be later activated to a leasehold agreement. The risk of the municipality is decreased by an option fee (optievergoeding), a one-time payment for acquiring the option to develop. This ranges between 3 and 8% of the total land price, for a determined program.

This type of option raises two issues related to the European single market policy where two conditions to be fulfilled:

1) Equality of possibilities;
2) Market conform land prices;

The solution found is to specify the type of functions in a way to favour the participation to the tender of specific subjects and to establish market conform prices by negotiations.

Ultimately the regulation dilemma on contract and land use lies between a general contract with a detailed land use plan (this is the case of IJburg 1) or a detailed contract with a general land use plan (as in the case of Overamstel). It regards the field of law in which the city would like to play. Private law reveals to be more discretionary in practice and therefore it is open to possibilities and renegotiations (in case this is accepted by both parties). Yet, the detailed contracting through formal procedures tends to close down this flexibility by ensuring that realization is applied in time (or a general fee). The Amsterdam tradition of active land policy gives important institutional conditions in addressing the dilemma between legal certainty and flexibility. The Amsterdam municipality has a long tradition of steering on quality and development. This was generally done with detailed land use plans. This practice is now transferred in the private law contracts through extremely detailed requirements for development. Often these requirements can be even larger than those fixed within the land use plan, which sets the minimum legal requirements. In this case, the aim is to enable more control in the long run under the condition of private
land development initiatives. On the other hand, this also seem to allow more flexibility under a regime of private law, as particular regulations through private contracts can allow for an existing option out of the programming that land use plans do not provide so straightforwardly. When the contract is receded, a new agreement can be defined over a new programme. In practice, the city of Amsterdam seems to prefer a global land use plan and an instrumental use of contracts. This strategy is linked to the active land policy of the city, which is ultimately driven on the generation of land use value within publicly owned land before the initial investment is actually done. This topic will be further researched in a later stage, looking at risk and investment dilemmas (part 3 of the APRILab project). The following quote better explains this procedure:

‘Wat we natuurlijk het liefst doen is dat we het eerste bestemmingsplan maken, en dat we dan die kavels in de markt gaan zetten om de contracten te sluiten om geld te verdienen waarmee we dan vervolgens de infrastructuur en bouwrijp maken, is kosten, die we dekken uit die opbrengsten. Voorheen, in de oude contracten gingen we altijd vooruit investeren. Met IJburg gingen we eigenlijk eerst een eiland aanleggen en grond verwerven en pas daarna een heel groot contract sluiten om een paar honderd miljoen binnen te harken om die opbrengsten binnen te halen. En nu doen we het andersom. Zeggen we van: ‘we maken eerst een bestemmingsplan, dan heeft de grond waarde’. Want zonder bestemmingsplan is er geen waarde. Tenminste als de bestemming agrarisch is, is de waarde een stuk minder dan als het wonen is. En hoe hoger de dichtheid, hoe groter de grondwaarde, dus je kunt de waarde daarmee creëren en als die waardecreatie er is, als het bestemmingsplan klaar is, dan kun je die kavels in de markt gaan zetten en dan is je doorlooptijd wat korter want dan is je bestemmingsplan al klaar en dan hoeft er alleen nog een plan ontwikkeld te worden en een bouwvergunning, en dan ben je al wel twee jaar bezig, en dat is wat we aan het proberen zijn, om de tijd tussen de erfpachtvestiging en de plan, die te verkorten. Dus dat je je risico’s beperkt’

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6 Interview with Aiko Lem (2 November 2014) contract manager at OGA Amsterdam
Land use planning, urban plans, temporary usages and self-building

In this section I will try to sketch the logic underlying the use, design and procedural aspects of the land use plan in IJburg, Overamstel and Zeeburgereiland. Land use plans are a collection of rules rather than a rule in itself. They contain both material and procedural rules which apply to the whole interested areas. In Amsterdam planning tradition, the most important ground for any land use plan is a Stedenbouwkundig Plan (from here translated as Urban Plan, UP). This plan is not legally enforced, it is a collection of design, land development and structural indications that operationalize any strategic development choice within a certain area. It can have different scales and it can be relatively easily changed. This is a political process rather than a legal process. Yet, the land use plan (bestemmingsplan, or BP) is generally a legal translation of an agreed UP. The BP de facto recognizes part or all the spatial aspects entailed in the UP. The Land use plan contains two main parts in general:

a) A part on the specific aims, spatial character and applied limitations/regulations/possibilities for the development of the area;
b) A sector where these indications are tested against public law framework fixed at higher levels of government (national and regional). The object of this particular section is only part A of a land use plan. Part B is discussed in a later section where natural protection rules and environmental zoning is looked at;

There are three general issues which are under critique and discussion on land use plans today.

1. The widespread believe that land use plans are hard to change burdens on the development of certain areas. They are regarded often as bounding elements, limiting creativity and entrepreneurial ideas;
2. The idea that the land use plan gives high certainty for investors and users because it is fully cogent and irrevocable in time;
3. The believe that land use planning is an obsolete form of planning through regulations, and that after all it is important to govern the planning process beyond this particular instrument;

The following description shows that: (a) the land use plan seems indeed not to be a problem when it comes to achieve flexibility. It is recursively changed, even though it requires time, and it is generally used to steer development; (b) for this reason the land use plan does not necessarily fulfil the task of certainty in a target area. It is rather used to generate value within active land policy and its regulatory task depends on the way it is used in case of conflicts; (c) the land use plan is after all a tool demanded and appealed on by almost all parties involved in case of controversy. It is in these cases that more operational plans, with detailed norms, are often called to generate certainty. For this reason it is a central element of the planning process.

The ways to derogate to a land use plan, without actually changing it, are numerous and highly complex to explain. The different choices depend on the specific context, as well as to the specific political salience of certain decisions. The temporary usages
have a specific field of regulations. In general two different ways of derogating are to be found:

1. **Omgevingsvergunning buitenplanse afwijking art. 2.12 lid 1, sub a onder 3o Wabo (land use authorization issues out of plan change)**
   
   it is a possibility to make an exception going beyond the land use plan through a specific decision. This must be motivated and approved by the city council. It is in this way comparative to the former project decree (projectbesluit, included in the WRO). It has to be assessed along the criteria of ‘good spatial planning’ (goede ruimtelijke ordening) and the request needs to be properly provided of spatial grounding?

2. **Binnenplans afwijken: art. 2.12, lid 1 onder a, sub 1 Wabo (change within land use plan)**
   
   possibility to change from the specific details of the BP without changing the plan and without a procedure of public audit. The change is direct if justified by details. It should not modify that end use and not have effects to framework regulations (such as noise pollution issues). The condition is that the change should not hinder the right to security of interested parties in the whole BP. The change should not modify the amount of houses allowed. The feasibility of change needs to be provided within the BP itself.

**IJburg land use plan and urban planning**

In IJburg there are three main elements which are intertwined in the land use planning of the island:

1. A general mixed land use plan (a transformation plan) for both land and water area;
2. A detailed and highly refined urban plan for the two parts of West and East, which makes precise the main structural, urban and qualitative elements, and provides the general list of regulations;
3. The specific sector based elaborations (uitwerkingen) of the general land use plan. They are step by step made in order to translate the UP in an enforceable regulation;

The concatenation of these elements has provided with the conditions to govern a large scale project in a way to never lose grip on the overall economic and regulatory feasibility of the development. Other research has already demonstrated how the large scale regulative approach (with a general land use plan, used to generate a high value out of the water/land in construction) also made room for eventual critique from environmental and political groups (Waterhout et al, 2013). The large geographical relevance of the land use plan was also justified by the need to maintain the unitedness of the project at legal, economic and political terms. It however demanded a very complex system of negotiation on each specific operational choice and included a low degree of flexibility to reduce the possibilities of divergence. The general land use plan is also overlapped with a unitary contractual strategy of IJburg (see above).

The relevant plans are:

- Land use plan IJburg eerste fase (1996);
- Numerous uitwerkingen for each sector (from 2000 to 2003);
- Land us plan IJburg second phase (2009) approved;
- Partial revision Land use Plan IJburg 1 regarding the Haveneiland Easter sector (2009);

The UP (*Stedenbouwkundig Plan Haveneilanden en Rieteiland West, 2000*) is pinned over a block structure. The block provides with the essential planning (and ownership)

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7 See also http://www.infomil.nl/onderwerpen/ruimte/handreiking/(planologische)/wabo-0/buitenplans-afwijken/#Procedureleaspecten
The most important regulations that apply to the block are: max height of 16 meters (with exception of building with eight layers up to 25 meter), and a size of 67 by 20 meter. The blocks are considered as closed living units. The grid is emphasized as ‘resistant and coherent’. It characterizes the contrast between street and internal living area. It is allowed to design eventual access to internal block areas. There is a possibility to build little walls for each plot yet respecting the general measures. Open space is sheltered within the blocks. Characteristic is the formal outside and the informal inside of the block. Used materials have to be time resistant (natural iron, wood, glass). The front of the block between street and houses needs to be 1.20 m large. Public space has to be protected against wind, and street furniture needs to be limited. A little gate is used to protect the sidewalk from the street.

This brief overview of regulations gives the idea of the relevance of the UP on the land use plan. Moreover, these regulations are voluntarily chosen and translated in the land use plan as elements of spatial quality. Yet, no particular higher level legal framework de facto forces the application of these rules. A revision of this highly regulative (and voluntarily so) approach was slightly made during the design of the second part of Haveneiland. The first general land use plan is still in effect, as well as the urban plan, yet the partial revision of the general land use plan indicates a series of rules that can be modified considering the ‘specific situation’ (Bestemmingsplan IJburg eerste fase, 2013:78). This change was reportedly due to the consortia feedback on too constraining design rules, together with the increased building costs, the decrease of expected returns on housing, and the weakening of an idea of ‘controlled quality’ (the raising of new planning assumptions in Amsterdam). The revision of the BO IJburg first phase, includes the following changes (among others):

- Commercial situation (forecasted changes in the HORECA and large commercial spaces within certain areas). More work functions and employments;
- Some extra flexibility within the blocks not yet built (there is no option of out-of-the-plan developments). Namely 126l-J Steigereiland, block 1(solid, partially realized), 20, 26 32 42c 43a 54 66 and 67, Rieteiland 50 55b and 59 (the bestemmingsplan regards these as ‘mixed’ blocks);
- Some possibilities to change existing housing stock into other functions;
- Different rules with regards the different combination of housing and commerce;
- The building possibilities are established in the bestemmingsplan in order to ensure correspondence between the original stedenbouwkundig plan and the uitwerkingsplannen (pag. 78);

In this new plan, the dilemma is about on the one hand providing certainty for the spaces for management by the consortia and exceptions due to new conditions, while on the other hand to be sure that the initial logic of the urban plan is not modified. The city therefore opts for on the one hand a more restrictive land use plan (management) and on the other more flexibility by providing a long list of possible options and possible changes. The flexibility now highly increases in the land use plan. The description provided at page 78 of the land use plan better explains the attempt to manage this trade-off between the aim to consolidate the existent structure of the island through carefully regulated management, and the aim to include elements of change relatively to the previous plan. The difference lies indeed in the ‘specific use’ that the land use plan provides in the development of the island.

*The flexibility offered in the development plans is often much greater than in the urban design (section)plans. In the explanatory notes on the development plans (uitwerkingen), a statement is made concerning the role of the urban design plan in providing a foundation for the development plans, and that the development plans encapsulate the essence of the urban design plan. The level of detail in the urban design section plans is not adopted into the development plan. The reason behind this*
is the need to timely provide a juridical planning framework used to review the first building permit requests. As a result, the development plans are more focused on development, not on area management. The renewed zoning plan, however, is different because IJburg phase I is now largely completed, thus it needs a framework for managing rather than developing. The flexibility in the current development plans gives to much space. Maintaining this flexibility will not do justice to the level of preciseness dedicated to the design of the built environment. This zoning plan limits the space previously offered for new developments by closing the gap between the urban design plans and the development plans’.

These changes are frequently done through quick procedures (in plan change, see above) and often regards difficult adaptations of specific design regulations on the specific case (e.g. the height of ground floor ceiling within areas with slight slope of the land). These architectural-design elements are often judged internally in the process and case by case by municipal officials and architects.

Table 2. Overview of land use plans for IJburg 1.

<table>
<thead>
<tr>
<th>#</th>
<th>Plan Title</th>
<th>Status</th>
<th>Date of Approval</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Gerechtelijke uitspraak IJburg 1e fase CS</td>
<td>vastgesteld</td>
<td>16-7-2014</td>
</tr>
<tr>
<td>2</td>
<td>IJburg 1e fase CS (Centrale Stad)</td>
<td>vastgesteld</td>
<td>12-11-2013</td>
</tr>
<tr>
<td>4</td>
<td>BP_IJburg_2e_Fase</td>
<td>onheroepelijk</td>
<td>20-7-2010</td>
</tr>
<tr>
<td>5</td>
<td>BP IJburg fase 1 partiële herziening</td>
<td>onheroepelijk</td>
<td>10-2-2009</td>
</tr>
<tr>
<td>6</td>
<td>BP IJburg fase 1 uitwerking 13 en partiële herziening uitwerking 8</td>
<td>onheroepelijk (Rieteiland Oost)</td>
<td>29-12-2008</td>
</tr>
<tr>
<td>7</td>
<td>BP IJburg fase 1 uitwerking 12 en partiële herziening uitwerking 4</td>
<td>onheroepelijk (delen van het Steigereiland)</td>
<td>15-2-2006</td>
</tr>
<tr>
<td>8</td>
<td>BP IJburg fase 1 uitwerking 11 en partiële herziening 1 en 8</td>
<td>onheroepelijk (Haveneiland Oost)</td>
<td>3-12-2004</td>
</tr>
<tr>
<td>9</td>
<td>BP IJburg fase 1 uitwerking 7</td>
<td>onheroepelijk (Bestemmingsplan Steigereiland)</td>
<td>25-6-2003</td>
</tr>
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<td>10</td>
<td>BP IJburg fase 1 uitwerking 6 partiële herziening uitwerking 1</td>
<td>onheroepelijk</td>
<td>13-8-2002</td>
</tr>
<tr>
<td>11</td>
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<td>onheroepelijk (Haveneiland west)</td>
<td>18-9-2001</td>
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<tr>
<td>12</td>
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<td>onheroepelijk (Haveneiland west)</td>
<td>24-4-2001</td>
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<td>13</td>
<td>BP IJburg fase 1 uitwerking 1</td>
<td>onheroepelijk</td>
<td>31-3-2000</td>
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<tr>
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<td>BP IJburg fase 1</td>
<td>onheroepelijk</td>
<td>11-1-1996</td>
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<td>15</td>
<td>BP IJburg fase 1 uitwerking 10</td>
<td>concept Steigereiland</td>
<td>-</td>
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<tr>
<td>16</td>
<td>IJburg 1e fase CS (Centrale Stad)</td>
<td>ontwerp (2-07-2013)</td>
<td>-</td>
</tr>
</tbody>
</table>
**IJburg second phase**

The land use planning of IJburg second phase was less straightforward and its legacy intertwines with the regulations on Natural protection (see below). In this section I will give a better outline of the different steps used to design the final land use plan (fig.5).

**Figure 5: Land use plan IJburg 2**

![Land use plan IJburg 2](image)

*Source: Bestemmingsplan IJburg II, 2009, Gemeente Amsterdam*

The first BP IJburg 2 was designed in 2003, and was never approved by the Afdeling Bestuursafspraak Raad van State (ABRvS). It was rejected consequently to an appeal executed by the Stichting Centrale Dorpenraad Landelijk Noord (Central Association of country Villages North). The appeal filed on July 2003 against the drafted land use plan and the approval of the Provincial government. The main issue of appeal regard the *difficulty to determine* the exact impact that the project will have on the lake. Here the main attack refers to a vice of ‘form’ and procedure since the plan is accused to not have been tested along a precise and thorough evaluation of Environmental effects (Plan Milieueffectrapportage). See annex 1.

A second plan is drafted in 2009. The same association (now called Stichting Verantwoord Beheer IJsselmeer, VBIJ) files a comparable appeal against the decision to authorize the project office to start building the land for the Centrumeiland (first sector of IJburg 2). This time the appeal particularly focus on the existent fauna around IJburg 1, the existence of birds and other ecosystems (EU Birds directives and Flora-Fauna Wet and different sub issues of Natura 2000). In particular there is reference to the need to include mitigating effects rather than compensational solution to the problem. Compensation through the creation of extra space for fish and mussel breeding was considered indeed as a measure to counteract the effects on the local birds population. This appeal is however not grounded by the Court, as the mitigation measures are recognized to fulfil the task according to Natura 2000 policy.
The new land use plan is particularly geared to specify sufficient conditions to evaluate and mitigate the impact of the island on the lake. The Municipality, aware of the difficult task to forecast such a long term investment in a more than 20 years’ time, deliberatively chose to specify the necessary legal measures to make the plan ‘Raad van Staten-Proof’*. These elements are (Bestemmingsplan IJburg tweede phase, pag.44):

- The central island is detached from Haveneiland and turned into an urban island with a harbor area.
- A specific form of Middeneiland is designed in a way to enable more water within the built surface.
- The removal of the harbor in Centrumeiland.
- The establishment of mussels banks (0.6 hectare per land hectare). Water recreation will be limited to 3 beaches, and no sailing is allowed.
- The slight reconsideration of the location, the form and the size of the islands.
- Programmatic fixed element: max 26m, 38m exemptions in some cases, flexible housing program in Middeneiland and Strandeiland (provided a total amount of 6200).

Excluding the land design conditions, it is today hard to understand the feasibility of these specific programmatic plans. The recent consultation promoted by ARCAM (project name: Stad in Zicht) as well as the recently restarted planning process do in fact call for a strong redefinition of the amount and typology of housing. Yet, the land use planning process as such (together with the subsumed urban design process already ongoing) demands relatively defined choices on the typology and structure of the living environment in the island, and their political implications. At the moment of writing the project office at DRO is starting up a consultation process to define the urban structure of the island.

**Zeeburgereiland land use planning**

Zeeburgereiland is somehow a differently organized project with regards to the design and application of the land use plan. The most relevant challenges in this island are to:

- Combine a relatively loose role of the municipality with a proactive role of de Alliantie as development corporation;
- Redefine and modify the existent land use plan, approved before the crisis, in order to accommodate more flexibility in the output; the aim is therefore to enable a highly differentiated typology of housing and living space, and at the same time govern the incremental development of the island to attract first pioneers and guarantee the provision of basic public services at initial stages.

The BPs in the island are

- 1978 - Bestemmingsplan Zeeburg-Schellingwoude: the area was defined as Waterstaats doeleinden – Verkeersareaal en Openbaar Groen. The sewage infrastructure (rioolwaterzuiveringsinrichting) is included. The eastern extreme part is already changed in the BP IJburg 1 into water-rich urban area.
- 2003 – Development vision Zeeburgereiland: this is an ambitious unitary plan of 5,500 houses (including 30% social).
- 2005 - Development plan Zeeburgereiland: a general structure for redevelopment is constituted into four sub areas (Oostpunt, Baabuur Oost and West, Sluisbuurt and Ri-Oost-terrein). This structure clearly follows the existent geo-morphological and (underground) infrastructural condition of the island.

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* Interview with John Smith (25 September 2014), DRO, Juridical Affairs, Municipality of Amsterdam
- 2007 - The first Urban Plan for the sector Ri-Oost: it identifies each neighbourhood as autonomous, divided by the large existing streets. In this plan, the main problem to be addressed is the existing noise along the main streets. The plan forecasts an urban structure whose balance depends on a wall building around the new development to take consideration of the noise level. Thirty building block envelops are planned, each of them with at least five precise regulatory elements:

1. A compulsory building line within specific parts of the blocks;
2. The inner blocks needs to be transparent at ground floor to enable visibility of the inner public spaces;
3. Different heights are fixed ranging from 13 to 16 meters;
4. A parking norm of 1.25 per house, 0.75% within own space. The auto should not be visible from the building. Suggestion of inside ground solutions. For apartment blocks around the park there are more strict rules, with a max of 0.8m of visibility over the ground;
5. Different structural rules for the blocks with public facilities, schools and for the use of the existent industrial Silos.

- 2009 - The first land use plan Bestemmingsplan Zeeburgereiland Ri-Oost is approved. It includes a max of 1.950 houses and 20.000 sqm. of facilities. The plan has an average density of 80 houses per hectare. There is particular attention to the building of protective screens around the main roads (sources of noise). These screens need to be protective but not too dense (external security) around 5-6 floors high. Furthermore, the requirement is stated to reuse the silo's as branding and place making tool. Different self-built plots around the water are included.

- 2011 - First partial revision of the land use plan Ri-Oost: including less density between block 28 and 30. Moreover it is decided that there is no need for an exploitation plan, and that the development will be conducted according to regular leasehold procedure;

- 2013 - Second revision of the land use plan: the most relevant change is the phasing of the building procedure. The original land use plan indicated that in order to start the construction of the houses, it is necessary to finalize the construction of a screen-estate along the main streets (south-north). This building has the function to decrease the noise level within the sector and allow for housing. This phasing is deleted, with the aim to favour the development of initial houses (low density) within the area and trigger the development. The Municipality deliberates that there is no need to phase the project;

- 2014 - Third revision of the plan: this is a consequential step from the former revision. Due to high noise levels within the area, and the lack of the screen-estate, the noise level is increased (see below). This adjustment allows for creating more legal space for housing production within the north-western sector and the central sectors of the Ri-Oost. The new buildings will lie within a higher noise zone. The specific Amsterdam Noise policy (see below) is in this case applied. Also the recently established Crisis-en herstelwet is applied in order to limit appeals on the project (these appeals are indeed already existing, coming from the first inhabitants of the CPOs (Nautilus) on south-east side, which will not be considered valid;

This overview of the different steps synthetically presents the legal procedure used to create the conditions for a relatively experimental mode of land development. In 2014 a development contract was signed with de Alliantie for the North-Western sector of Ri-Oost. The details are already explained in the former section. The different revisions of the BP are indeed geared to generate space for private initiative at the level of the sector, by means of loosening the most stringent regulations, in this case the noise level issue. This has enabled the redaction of an Urban Plan by the new developer consortium (de Alliantie, Municipality of Amsterdam and aTA). The so called ‘Urban Frame on Zeeburgereiland for de Alliantie’ established a minimum set of requirements in comparison with the Urban Plan Ri-Oost already approved in 2007 and recognized as the land use plan of 2009. It is expected that further actions will require punctual revision of the land use plan (or within plan deviations). The new urban frame contains an agreement on frame rules which revised the
‘welstandcriteria’ included in the 2009 BP and revision of 2012, only for the North-Western sector. The main principles of this new frame are:

a) Generate building flow in order to enable realization and selling of the first houses before the neighbourhood is fully completed (2020);
b) Enabling an incremental and not pre-defined realization of services;
c) Enabling an incrementally participative process where each new step is responsive to new demands;

Figure 6: The Urban Plan of Ri-Oost designed in 2007 (top) compared to the Urban Planning Frame designed in 2014 (North-Western Sector)

Source: Steedenbouwkundig plan Ri-Oost, Gemeente Amsterdam 2007; ZBE Frame, aTA-de Alliantie, 2014
**Overamstel coordinated micro land use plans**

The particular concatenation and overlapping of multiple land-use plans in Overamstel show a relatively experimental system of planning regulation. Overamstel is a relatively small area (92 hectares), and it is today institutionalized as one project. The unity of the project is connected to the *Overamstel Vision* approved in 2005 (DRO, 2005), where the intention and main principles of the transformation from industrial to urban area are outlined. Within the Amsterdam Strategic Plan ‘choosing for urbanity’ (*Kiezen voor Stedelijkheid*, Gemeente Amsterdam, 2003), Overamstel is defined as a living-work-area. Being at the crossroad of two border areas (along the A10 from Zuidas to Science Park and on the main corridor from Amstelstation to Bijlmer Arena/AMC) the area is considered strategic for potential development. Moreover, the municipality has relevant land position in this sector, with large public facilities (water and energy companies) and an expectation of highly positive returns.

The land use planning in Overamstel has a *developmental function* rather than *regulatory function*. The way the different plans are overlapped is strategic to enable the progressive and incremental transformation from an industrial use to a residential use. Already in 2005, the need to enable this progressive transition was clear, after the general re-zoning of the industrial environmental space was conducted. The existing companies did not agree on a mixed development which would harm their industrial production. A step by step regulatory approach was chosen, with progressive small scale land use changes from the northern side to the southern side. A specific plan for the industrial area was approved with possibility of new office spaces and HORECA facilities.

The bordering and location of the plans do follow the existent property structure of the area (considering the existent companies of NUON, Alliander, Waternet) as well as the underground infrastructure. All the plans are connected by two means:

1. The generally approved vision, which gives an estimation of the real-estate output;
2. A partially complete Plan of Environmental Effects (Plan MER) which provides three main development scenarios for the central part of the plan. These two elements are the binding elements for all the following land use plans. The most relevant plans currently in force in Overamstel are (see table below for details):

   - Amstelkwartier eerste fase (binnendijks);
   - Amstelkwartier eerste fase (buitendijks);
   - Amstelkwartier tweede fase ;
   - Amstelkwartier derde fase (Conservatief (voorbereiding besluit) preparation after the decadence of the former plan because of new WRO). Former bestemmingsplan 1962;
   - Joan Muyskenweg (confirmed previous destination and one plot for building);
   - Ronettenterrein (Land use plan, horeca, hotel and student housing);
   - Kop Weespertrekvaart (transformation) ;
   - Weespertrekvaart Midden (conservation);

The following table provides an overview of the different steps and concatenations of these main plans with numerous revisions and adaptations, almost at the level of the block. All these adaptations are functional to the realization of specific parts of the programme. Moreover, they are reportedly strategic in allowing small scale responsiveness of the plans towards private initiatives (such as the plan Ronettenterrein, which covers a relatively small area).
Table 2: list of plans approved and proposed in Overamstel

<table>
<thead>
<tr>
<th>#</th>
<th>Plan Title</th>
<th>Status</th>
<th>Date of Approval</th>
<th>Date of publication</th>
<th>Documentation</th>
</tr>
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<tr>
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<td>Tweede Partiële herziening Kop Weespertrekvaart</td>
<td>Design</td>
<td></td>
<td>20-11-2014</td>
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</tr>
<tr>
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<td>7-11-2014</td>
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</tr>
<tr>
<td>4</td>
<td>Weespertrekvaart Midden (Fire)</td>
<td>Approved</td>
<td>19-9-2013</td>
<td>19-9-2013</td>
<td>omgevingsvergunning</td>
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<tr>
<td>5</td>
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<td>13-7-2013</td>
<td>3-7-2013</td>
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<td>13-7-2013</td>
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<td>Raadsbesluit 118/532</td>
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<tr>
<td>7</td>
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<td>13-7-2013</td>
<td>27-6-2013</td>
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<td>8</td>
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<td>13-7-2013</td>
<td>26-6-2013</td>
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</tr>
<tr>
<td>9</td>
<td>Weespertrekvaart Midden (Fire)</td>
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<td>13-7-2013</td>
<td>28-5-2013</td>
<td></td>
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<tr>
<td>10</td>
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<td>13-7-2013</td>
<td>25-5-2013</td>
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<tr>
<td>11</td>
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<td>13-7-2013</td>
<td>30-11-2012</td>
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<tr>
<td>12</td>
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<td>Approved</td>
<td>13-7-2013</td>
<td>12-1-2012</td>
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<tr>
<td>13</td>
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<td>13-7-2013</td>
<td>12-1-2012</td>
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<td>14</td>
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<td>12-1-2012</td>
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<td>18</td>
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<td>21</td>
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<td>No.</td>
<td>Land Use Plan</td>
<td>Description</td>
<td>Date</td>
<td>Decision Date</td>
<td></td>
</tr>
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<td>-----</td>
<td>----------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>------------</td>
<td>-----------------</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Bedrijventerrein Overamstel</td>
<td>(intensification possible) creative industries and high level offices.</td>
<td>20-1-2010</td>
<td>22-1-2010</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>BP Overamstel verkleinen geluidzone</td>
<td>Irrevocable</td>
<td>8-1-2010</td>
<td></td>
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<tr>
<td>25</td>
<td>BP Overamstel Buitendijks</td>
<td>Irrevocable</td>
<td>11-1-2009</td>
<td>11-1-2009</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>BP Weesperktrekvaart West</td>
<td>Irrevocable</td>
<td>5-6-1998</td>
<td>5-6-1998</td>
<td></td>
</tr>
</tbody>
</table>

Figure 7 better identifies the developmental model led by the different land use plans in Overamstel. The active areas of transformation are at the North and South West side of the zone, with industrial activities remaining active at the south of the area. The central location is left for a later stage. As the overview of plans explain, the first step of reduction of the Noise Zone for the enterprises was central in activating the redevelopment of the Amstelkwartier. The first land use plan was indeed approved in 2009 for the part of the waterside which turns into a park. The *Amstelkwartier Binnendijks* plan is revised in 2012, in order to adapt specific structural elements to incentive self-built blocks (terrace space, specific street elements).

**Figure 7: Division of main areas with reference to the status of the land use plan in 2005**

![Division of main areas](image)

*Source: Visie Overamstel 2005, Gemeente Amsterdam*

**Temporary usages and land use planning**

The capacity to enable a rapid and often discretionary implementation of temporary usages in areas undergoing development is generally considered as an element to enable practices of self-organization. In Amsterdam, the practice of temporary deviation from land use plans is already widespread since several years. Historically, the city of Amsterdam has a long tradition of enabling arbitrary choices for temporary use.
usages, and several examples can be found in areas of fast dynamism (as for example NDSM). The breeding places (broedplaatsen) policy is already in use since 2005 with successful results. Yet, in the recent years, the legislator has seriously reformed the system for temporary usages making it much straightforward and discretionary to implement temporary deviations from the land use plans. The traditional legislation forecasted three types of possibilities.

1. The article 3.22 of the WRO: It forecasted an in-between use of land between a T1 and T2, where the before and after temporary usage are defined by concrete and objective criteria. This means that temporary cannot apply to bottom-up projects within areas where development is uncertain or uncompleted, just to avoid vacancy. In practice (practice of use) temporary use is therefore attached to the structure and service (voorzieningen) that host a function and not to the ‘need’ of that service. This need can actually be permanent making a distinction between temporary need (tijdelijke behoefte) and temporary service (tijdelijke voorziening) This is the same philosophy of the previous WRO (1985);

2. Project decree (ex art.19 WRO) (now integrated as deviation out of plan, art 2.12, lid 1 sub A Wabo). The project decree attached the temporary usage to the condition that the land use plan would be changed within a year. Also within a project decree the temporary use needs to define an ending. The project decree demands a heavier process than WRO 3.22. It needs to comply to the good justification (BRO defines the aspects);

3. Preliminary land usages (voorlopige bestemming): Preliminary functions are related to functions which are to be accomplished (in progress) or functions that are not yet allowed (for concessions or authorizations). In practice, the article WRO 3.22 and the preliminary function were jointly used to guarantee a total of 10 years. On the other hand, this tool was not much used, since it required the certainty of a definitive function to be realized;

The economic crisis and the derived delays in project realization and real-estate investment have triggered a series of problems with these particular regulations. Specifically, the main problems where related to the highly rigid, and not easily to codify, status of temporality of the function. Legislative debate, especially at the local level, rotates around the apparent legal contradiction between temporary and permanent usages. With land development seen increasingly as an incremental process, the rules that bound temporary usages to five years and to a precise definition of their end point are seen as limited in practice. In this sense, the legislator has radically changed the legal framework for temporary usages, which underwent heavy simplification. Today, the Amsterdam government can realize temporary usages through faster procedures and more discretionary choices. The authorization to allow temporary usages is in the hand of the city, after the recent reform of municipal subsidiarity.

The formalization of the Crisis and Recovery Act (Crisis- en herstelwet, ChW) in 2014 provides a highly simple procedure for deviations from land use plans within specifically selected areas. It also allows certain temporary ‘deviations’ on environmental rules for development areas (art 2.3) and for ‘innovative projects’ (art. 2.4). It affects in particular the art. 2.12 of the Wabo (tijdelijke behoefte, tweede lid) and the art. 5.18 of the Besluit omgevingsrecht (Bor). The most important changes regard the length of the temporary usages. Today, the limit of five years within the Bor is extended. A municipality can also grant an environmental permission in deviation of the land-use plan, according to article 2.12 subsection 1 Wabo. This possibility is analogous to the project decision under the old WRO.

In the project investigated there are several examples of temporary usages. It has been however difficult to retrieve information on the specific regulation applied. In
practice, temporary usages on vacant land are decided upon by the district or the city. In particular we found two different examples.

1. IJburg: these usages are diffuse within not yet built land plots. They are concentrated on property of the city in order to avoid issues of taxation when the property is reused. The desired procedure regards an ordinary environmental authorization. This is allowed only in the case that the authorization does not clash with the existent land use plan;
2. Zeeburgereiland: a large temporary recreational facility has been implemented. In this case the procedure of the tender is used (Tijdelijk gebruik Sluisbuurt, Zeeburgereiland);

Self-building initiatives and land use planning

Self-building is today increasingly seen as a possible solution to the real-estate crisis. This model of real-estate production tends to redefine the land development process to reduce costs and to increase responsiveness of built spaces\(^9\). Today in Amsterdam (2014) almost 25% of all the newly built houses are self-built (with a total share of new built homes of 1.200 per year). Within the position document of the development alliance of Amsterdam (promoted by the Economic Board), the following problems in relationship with the land use plans are found\(^{10}\):

- **The land use price policy** (grondprijsbeleid): the price for each plot is generally the residual price for the amount of square meters possible to be built (defined by OGA). The prices of land are in principle in force for one year and therefore might provide with uncertainty in the long run for bigger projects;
- **The leasehold policy** (erfpachttentheid): this is based on an option reserved for the potential builder. The juridical confirmation of the **erfpacht** is stabilized at the moment the building gets the permission of its own real-estate. High variation of the lease hold price might also be problematic for large scale projects;
- **Juridical policy and spatial policies/regulations** (RO Kader): while the principle for self-built initiatives is to keep maximum freedom over the rules of building (structural rules), a general uncertainty of the structural conditions is seen as a disadvantage for the coordination of individual projects;

The investigation of the areas within APRILab has revealed a much more complex picture of the legal complexity of this practice. In reality, issues of land use flexibility are not always central in the planning process. Most of the self-built blocks often require more certainty in structural conditions and more preciseness of the building rules (and allowances) stated in the land use plan. Unfortunately, the investigation did not have the opportunity to go in-depth on issues that derive at particular cases for specific plots. Uncertainty of building structures increased the difficulty of accounting the costs of building for other houses. Self-building initiatives therefore seem to demand more ‘precise’ and specified regulations at the level of the plot. This is regularly achieved through the issuing of passports of information on plots

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\(^9\) CPOs (Collectief Particulier Opdrachtgeverschap) is described within the Besluit Ruimtelijke Ordening (Bro) as a situation where the citizen or a group of citizens – in the latter case organized as a juridical subject without profit aims – have full juridical right over the responsibility of the use of the land, the design and the building of their own house (Art. 1.1.1. lid 1 sub g Bro). There is no formal distinctions of CPOs and POs, but the ministry gives specific modalities and indications: a) The kavelbouw (traditional way to develop a plot with design and building of your own house); b) The cataloguegebouw (with a specific house chosen within the catalogue); c) The CPOs (a group chosen to buy a plot with residential use and forms an association). The distinction concerns the location of the RISK (which is in the end of the living subjects and not of the developer). The relevant rules are the 3.1.2 lid 1. Bro; the Art. 6.2.11

\(^{10}\) These data are retrieved from the strategic document published by the Zelf-bouw team in Amsterdam, Ontwikkelingsalliantie (Programma Zelfbouw Amsterdam 2012-2016, May 2012)
(Kavelpaspoort) for large sets of plots, where the specific structural conditions (and lease prices) are conformed between different projects.

Figure 8: A visualization of a kavelinformatie sheet in Steigereiland

In practice, the regulation applied for self-built plots are concrete tools to steer the urban structure of the area. Regulation de facto provides with the space for private initiatives which tend to include as much as spatial and structural details as allowed.

'If you have row housing at least this is the building line. Like Steigereiland, it has a building line on the street. So we have the front, there is a streetfront, here you have the building line, you have to build in this line. And this is the maximum height and you park in the street. And I think these were all the rules. There were no other rules. And this building in the rooilijn (the space between house and street), meant that there was a maximum percentage of openings so you could not make more than this much of non-build. On the backside there are these little free standing houses and they also didn’t have the rooilijn or anything. It was completely free. There was a maximum envelop so the maximum is this big on the ground floor and this high and that’s it. But because this bouwenvelop was relatively small, what they did is they all build exactly to the maximum. So if you look at it you think ‘well this urban designer really did its best to put the roofs at the same height’. But actually they were just maximizing as much as possible. So in that way you can play with it. You know that they will build the maximum. So if we say the maximum is 15, they will build 15.5. So you don’t have to regulate everything by really making rules. So I think that was relatively free except that especially this backside and the little wall that caused enormous discussions at that time’.  

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11 Interview with Mirjana Milanovic (8 august 2014) project leader IJburg 2, DRO.
Conclusions on land use planning, self-building and temporary regulation

The regulation dilemma analysis within APRILab problematizes the challenges of combining general and principle norms for urban development with particular and output based regulations. General regulations tend to be less specific, more durable and universal. They are hypothetically considered to be more effective in allowing spontaneous and context based self-regulation, while decreasing the suffocating effects that too specified regulations might have on creative development. In the practice of Amsterdam, urban development land use plans are generally problematized and questioned on the base of their effectiveness in allowing or prohibiting certain desired or undesired developments. Advocates for de-regulation tend to claim that the land use plan is ‘too rigid’ and that the formal procedure of land use planning tends to disturb and scope out a truly effective, flexible and innovative urban development. We here looked at how land use plans are used and formulated in relationship with the development process, and how they link with the urban design plan (a not-regulatory tool often designed by the local government). Moreover, we looked at the problematics related to flexible temporary land usages and self-built practices. Four main conclusions stem out:

1) Land use plans do not seem to be a problem when claiming on flexible change of urban development, especially in times of crisis. Land use plans are first of all translated into public stringent law that incorporates some minimum requirements which are preliminary agreed on within the urban plan. The process of urban design is highly influential in Amsterdam’s planning tradition and it remains so. In all the projects investigated, the land use plan is actually formalized at a later stage, with several agreements and definition steps already taken. This also relates with the practices of contracting public-private partnerships, which often subsume the approval of the land use plans as a condition to be fulfilled by the public party involved.

2) Land use plans are frequently and relatively rapidly changed in case new development needs to be allowed and permitted. This expresses a developmental use of land use regulation. In this sense, land use plans instrumentally reflect urban development choices taken at other levels of decision making (both contracts of national governmental regulation). In some cases land use plans are kept deliberatively highly general, with no particular references in terms of urban structures and precise regulations. The plan is used to create value on the land, providing the minimum condition for contractual and political agreements to be taken.

3) Temporary usages are a widespread practice, and its regulatory and juridical frame is hardly considered a problem in the projects selected. The recurring to temporary use projects is highly discretionary. In this sense it is so because of the need to fulfil local demands, very often bottom-up and spontaneous. The field of temporary deviations to the land use plan has been largely changed by the legislator. The particular concern regards the need of enabling experimentation.

4) Regulations are a condition for self-built plots rather than a barrier, even more than non-CPOs projects. Despite the intuitive claim that self-built plots might require less regulation in order to enable more creative freedom to architectural and living environment experimentation by the citizens, in practice, the regulatory framework are much more precise, output based, stringent and particularized. The coordination of different units of plots requires a clear and agreed on framework of structural rules, which are generally seen by the end-users as important points of references to calculate the risk and opportunities of such an individual endeavour. In this sense, it is expected that a planning approach heavily based on individually coordinated action tends to call for a highly instrumental use of regulations.
Environmental Zoning and Supra-Local Regulations

Environmental regulations provide a supra-local framework for the redaction of land use plans. While they can be generally considered as material norms, therefore providing more or less precise indications for land development, they are rather applied as procedural norms. In practice, the process of land use planning involves a progressive application of these regulation as a coherent set of calculations and projections over the ‘potential’ effects of the designed plans on the area. The succession of events in the land use planning process here is important. Land use plans often follow (rather than set up) agreements on urban plans and main objectives. The procedural steps involved in testing the different environmental requirements are functional to a further operationalization and testing of the agreed plan in relationship with its environmental effects. In case the plan stands in conflict with one or more of these regulations, a process of adaptation and revision is started. This process does not necessarily build on an appeal or a formal decision by the Court, but it might require progressive profiling of the plan by the competent public authorities. In Amsterdam public led land development practice, such a translation and testing against environmental requirements seems a public task.

Regulations are however not necessarily solid and unchangeable. In the practice of the projects investigated, the city government has demonstrated a large capacity to adapt plans to these requirements. Because of their procedural character, the application of these regulations takes the form of a sub-sequential clarification of the programming, in terms of impact of housing and infrastructures for example, of the project. Environmental regulations do require a profiling of the programming, often at larger scales because of the interconnected consequences of specific developments on surrounding areas.

We surveyed carefully all the land use plans produced for the areas on the base of the specific implications that environmental regulations have on them. Moreover, in all the interviews conducted, a specific set of questions were posed on the relevance or problematic aspects of environmental rules. The plans surveyed in this case are: Overamstel (different plans designed and approved), Zeeburgereiland Ri-Oost, IJburg 1 (updated and approved on 2013) and IJburg 2. In the following table the most relevant environmental regulations are summarized. We deliberatively skipped the non-legal environmental framework (e.g. Amsterdam structural plans, National frameworks like Belvedere, or Amsterdam Waterplan) as they do not necessarily provide with legally binding norms, but create a reference framework for ‘good spatial planning’.
Table 3. Overview of surveyed environmental rules.

<table>
<thead>
<tr>
<th>Regulation type</th>
<th>Document</th>
<th>Relevance for area</th>
</tr>
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<tbody>
<tr>
<td>Noise</td>
<td>Act Noise Abatement (<em>Wet Geluidhinder, 1979</em>) with recent modifications.</td>
<td>- Overamstel industrial area</td>
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<td></td>
<td></td>
<td>- IJburg 1 Havenieland oost</td>
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<tr>
<td>Air quality</td>
<td>Act Environmental management (<em>Wet Milieubeheer</em>) with Act on air quality, 2007 Implementation of directive nr. 2008/50/EG of EU parliament</td>
<td>- Not relevant at the moment</td>
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<td>- Amstelkwartier third phase</td>
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<tr>
<td>Land pollution</td>
<td>2008 Decree on land quality</td>
<td>- Overamstel land of Zuidergasfabriek</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(decision AM0363/08178/B40 d.d. 28 July 2009). Not relevant at the moment seen the conservative character of the land use plan Amsterkvarter 3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- IJburg 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- IJburg 2</td>
</tr>
<tr>
<td>Water quality</td>
<td>Different regulations at national, provincial and local level.</td>
<td>- Zeeburgereiland RI-Oost</td>
</tr>
<tr>
<td>Culture and Archeology</td>
<td>Monument Act (<em>Monumentenwet, 1988</em>) plus modified version on archeology 2007)</td>
<td>- Overamstel old industrial structures. Structured need to be taken into account when providing environmental authorization.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- IJburg 2 (Flora and fauna wet)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Zeeburgereiland</td>
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The procedural aspect of environmental protection norms is expressed through the redaction of the report on Environmental Effects (*Plan Milieueffectrapportage, Plan MER*). The plan MER integrates all the norms into one procedural step for the approval of the land use plans, and it is required in all urban development projects that forecast more than 4,000 houses and a not-house program of 200,000 sqm or more. The MER procedure is a technical research on the different impacts on an hypothetical plan on the environment. As such, it often makes use of different possible scenarios. Moreover, it tends to be devised at an early stage of the project in order to set up the minimal conditions for the progress of the plan.
Reflections on Environmental Zoning

Below, I summarize the main reflections on environmental zoning for the specific areas of relevance.

Nature and Landscape

The land use planning of IJburg 2 was strongly influenced by the application of environmental protection rules. In particular, the appeal filed by the Association for the Management of the IJsselmeer (Vereniging tot Behoud van het IJsselmeer, uitspraak 200304566/1) particularly appealed against a violation of several norms: the birds and habitat European framework, the structural scheme for green space by the Ministry of LNV, the special protected zone for birds (SBz, EU), the Habitat directive and the BRO. The main argument was indeed a procedural argument. The appellant claimed that the city, in designing the IJburg 2 land use plan, had not taken into account properly the effects of the island on the natural environment. This would require further specification of the programming, the location and the type of houses to be built in the long run. The municipality has successfully responded to these requirements with further operationalization. No further conflicts have been found, and negotiations on the new plan mostly regarded the design elements of the island and the use of recreational water. A new plan is approved in 2009 and the details are already explained above in this report. The natural protection norms are at the moment not an urgent issue (both due to the particular phase of the project and location).

Noise

The contention of noise level in newly developed areas is today a relevant issue in Amsterdam. This is particularly due to the tendency to build within existent urbanized areas, where vacant land is available, across areas of former industrial usage. The most relevant noise sources are therefore the existing industrial activities and the existing transport routes (train and vehicular traffic mostly). These sources of noises are more relevant in contexts of compact city development.

The Noise Abatement Act (since 1970s) fixes precise boundaries of noise level. The max level within any house is between 33 and 35 db. Extra noise requires particular structural isolation solutions. Isolation rules are required for existent houses around transport routes with more than 58 db. The limit for industrial noise is 55 db and for train noise this is 63 db. The city of Amsterdam, with the framework document on higher thresholds of the noise abatement act (nota ‘Vaststelling hogere grenswaarden Wet geluidhinder, 2009) provides with further specification for isolation issues with concern of housing in noise areas. In particular, the possibility is forecasted to increase the noise level within the house, provided that the building has a ‘silent side’, where less noise levels can be found. Other particular structural requirements are further specified. The application of this local exemption needs to be correctly justified, according to at least one of the following requirements:

a) The need to stimulate urban development and housing production under conditions of financial instability;
b) The need to allow temporary exceptions within the long term planning of the area;
c) The need to enable extra investments in the area after a period of exception of 5 years to the noise level. In practice the Amsterdam noise policy often incurs into conflict with other rules regarding building conditions. The definition of the ‘silent side’ tend to be not fixed by the legislator. For this reason a commission is put in place for a case-by-case evaluation. The rule of silent side indeed might generate conflict with other rules, for example with those regarding the need to windows that cannot be opened;
In practice, within the projects analysed, the City council has made large use of this particular exception:

- IJburg first phase, Haveneiland Oost: the areas lie in the noise zone of Muderlaan and Nuoncentrale, on the Diemer vijfhoek (2006, akoestisch onderzoek verkeerslawaai/industrielawaai, partiële herziening bestemmingsplan IJburg). The noise goes beyond the preferred limit of 50db (both transport and industrial terrain. Two blocks have been adjusted to correct this problem.
- Overamstel: part of the transformation area lies within a zone of industrial noise (generally defined as large noise producers, ‘grote lawaaimakers’). The areas around the industrial zone was already labeled as noise zone by the Koninklijk Besluit van 26 April 1990 (nr. 90.010170). To enable the beginning of the transformation, a specific land use plan (Overamstel verkleinen geluidzone) is approved the 18 November 2009 (nr. 679) to redefine this noise zone. At this point the development in Amstelkwartier first and second phase are not influenced. In October 2013 (Nummer Bd2013-008516) higher limits for transport related noise have been decided on the following areas:
  o Street noise: Amstelstroomlaan from 48 to 57 db and Spaklerweg from 48 to 49db; b)
  o Rail noise: all the areas around Amsterdam-Utrecht train track12.
- Zeeburgereiland: in this case the noise coming from the large streets surrounding the Ri-Oost sector required a careful phasing in order to realize a screen-building along the roadways. The land use plan has been changed in order to reduce the noise limit, reduce the speed limit of cars, and exempt from a phasing. This was necessary to allow for the beginning of the project in a way to not constrain the realization time-programming to specific real-estate.

Conclusive remarks on environmental zoning

European, national and provincial environmental zoning regulations are generally considered as structured frames for land use planning. They tend to be looked as bounding elements in both the process and the content of land use plans. Procedural aspects of environmental zoning suggest that land use planning follows a certain path of in-between researchers, assessment and approvals (mostly within the level of the municipality) in order to be legally enforceable. Materially, these noise regulation tend to fix certain limits and indications for design and structural elements of the plans, such as screen buildings, distances from sources of annoyance, or street patterns in relationship with existing morphological, natural and historical conditions. The major critique to these frames in practice points to the excessive pre-determinism that these rules call within the process. The procedural guidelines and the material elements of these norms are defined on the base of an ‘expected outcome’ or ‘expected output’ within the project. They require a time-projection in the planning process and call for specifications, particular determination and indications on the future spatial quality and condition of the area. This process of translation from general norms (e.g. sustainability or ecosystem protection) to particular procedural and material outputs (e.g. plan-Mer, scenarios, or urban plans) is considered the most problematic element in bounding flexibility. Once results are formalized in the land use plan, they turn into applicable law on the base of which minimum expectations from individuals, companies and governments are based.

In the projects surveyed, environmental zoning has not necessarily led to more determined outcomes, or to several bounding elements for the projects. In fact they have rather stimulated the design and planning negotiation towards more precise land use elements in the plan. The case of IJburg 2 is certainly an exception within this set

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32 The preparation of this Overamstel reduced noise zone (verkleinen geluid zone) is published in the meeting on May 23th 2012, nummer 59/279.
of cases. It is a large project, long term planned, and unitarily treated by the city, which naturally requires high determination of structural details. These details are necessary to both stimulate market actors by reducing risk in the intervention and to generate legitimacy and consensus around the project (both within the government and towards end-users). In the first case, it is interesting to compare the planning of IJburg 2 with the first phase of IJburg, where a large set of contracts where based on a pre-determined idea of spatial quality to be achieved. The referendum on the viability of the project (conducted before the signing of these contracts) actually seems to have provided direct legitimacy to the intervention (Lupi, 2008).

In the other projects surveyed, environmental regulations are background elements structuring the planning processes. In Zeeburgereiland, environmental regulations have required a series of subsequent revision of the land use planning in order to bypass certain structural requirements. In Overamstel, the noise borders of the industrial area have been instrumentally redefined to open the area for development, where the building block envelops have considered the noise from the transportation sources. Moreover, a plan MER with different scenarios was preventively done on part of the area to enable future land use plan changes. In this sense, it is possible to conclude that environmental zoning does have effects on the procedural organization of the land use plan. Yet, it does seem to not heavily influence the end-result of the project in terms of programming and urban design. While certain structural requirements have to be fulfilled (for noise or pollution for example), the relationship between these investigated environmental regulations and the spatial output (within plans) of the project does not emerge clearly within the limit of this current research project (with exception of IJburg). Rather, more relevant effects seem to be linked to the different development contracts, with land price calculation being more relevant for the spatial outcome of the area. Environmental zoning in this case appears in a secondary position (also within a time frame) from the contractualization of the project and on the negotiations on the urban plan. Environmental regulation rather provides with procedural guidelines for the formalization and translation of these agreements into publicly relevant rules.
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ISTANBUL: REGULATION DILEMMA IN KARTAL AND DERBENT

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Istanbul: Regulation Dilemma in Kartal and Derbent

Introduction

The relationship between urban development and the Law has been one of the most outstanding and much-debated issues in Turkey as the legitimacy of the projects carried on by the authorities during the last decade, especially in Istanbul, are becoming highly controversial. With the recent adjustments made in the legislation, the public authorities and especially the institutions of the central government were vested with great authority to realize urban projects that support the economic policy rigidly followed since the 2000's based on real-estate projects and the production of the urban land. An increasing tendency towards ad hoc and provisional rules and ambiguities in the laws have been observed putting into question the neutrality of the legislation itself as well as the authorities prescribing the rules. The uncertainty created by the recent changes and the insufficiently defined provisions, which leave room for subjective evaluations allowing the arbitrary execution of the rules impaired public confidence with regard to the reliability and stability of the law. This tendency towards arbitrariness and the appearance of new institutions as influential actors in urban planning entail a closer inspection of the recent urban planning legislation in order to understand the current state of affairs and the trajectory of the urban development in Turkey.

Furthermore the analysis of the urban planning legislation become all the more important as it can be considered as a set of rules regulating the coordination of diverse activities or relations between actors, the allocation of resources in relation to these activities and actors, and the structuring of conflicts in terms of prevention and resolution. While doing so, they touch upon a range of institutions, networks, directives, actors, bodies of regulations revealing the relationship between each and every one of these elements. On the other hand, the point of view that considers the Law not as an independent and exogenous body but as an institution that is the expression of social needs that result from the (new)mode of production (Karahanoğlu, 2002) gains importance as urbanization becomes the engine of economic development. Thus, the Law is seen as an institution that changes in time and meets economic motives; quoting Marx (1847: 36) “Legislation, whether political or civil, never does more than proclaim, express in words, the will of economic relations”. Likewise the strong relationship between the economy and the law is revealed as such in Baykal's words (2008:76) “Robust functioning of the economic system relies on meeting the requirements as well as existence of an effective legal system. In that context, the role of law in economics is to identify the legal framework, which ensures orderly functioning and evolving of the market”.

In such a context, this report will be analysing the changing nature of the urban planning legislations in Turkey. In order to highlight the simultaneous transformations in the economic system and the regulatory structure, we will take a historical perspective, focusing on the post-1980 period, with a special emphasis
on the 2000’s, which is a period marked by intense legislative changes. Our analysis will focus on revealing the shift in the state’s role from a guarantor of the legitimate execution of ‘the rules of the game’ and the provider of services to a ‘sovereign’ power that has discretionary authority that can bend the rules to adopt them to its own political agenda in accordance with the market’s desires, overshadowing the ‘public interest’ principle.

The second section will focus on the cases of Derbent and Kartal that will reveal the increasing authority of the central administration in terms of decision making and execution of urban transformation projects and the legislative framework that has been preparing the ground for such authoritarian interventions. The two cases will expose, on the other hand, the piecemeal interventions executed by the central authorities and its privileged institutions in order to eliminate the barriers vis-a-vis top down urban projects shaped according to the capital’s interest and market rules in the current urban development of Istanbul. The overall planning legislation as well as ad hoc laws will be examined in relation to the changing conditions that necessitate these laws, the adaptation process and their capacity to respond to emerging needs as well as resolve conflicts. Also the set of agents, actors and institutions – the stakeholders- that are directly related with the functioning of these laws alongside with the controversies they created will be exposed.

Interviews conducted with officials from Sarıyer Municipality, Ministry of Environment and Urban Planning, Chamber of Architects, Chamber of Urban Planners and academicians revolving around issues concerning the general legal framework in Turkey, the recent transformations of the juridical system as well as case specific questions, will be used to elaborate deeper on the connection between Law/Regulation- Urban Planning as well as to sustain our arguments that we will put forward throughout the report.

**A historical view of the Turkish Planning Legislation**

The planning approach in Turkey in terms of urban planning, policy regimes, regulatory practices that is to say the institutional and legal frameworks that evolve around these issues can be analysed in three main periods. Although it is an overgeneralization to determine such clear-cut time frames, we will analyse the evolution of different planning approaches and the urban process in Turkey, first from the beginning of the republic until the 1980’s, then from 1980 to 2000’s as the instigation of a neoliberal outlook and the coercive implementation of neoliberal policies and finally form 2000’s on as the rescaling of state interventions to enhance the market rule.

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13 Although this period can be further broken-down, we will summarize it under one heading in order to focus on the post-1980’s. Our emphasis will be on the 2000s, which is a period of major legislative change complex enough to be portrayed within the limits of this report.
Implication of the state as a plan making authority and the inception of an urban planning approach

The first period is marked by the construction of a nation state, establishment of national economies, transition to capitalist industrialization and early regional planning attempts. Keynesian national development ideals and provision of public services all around Anatolia constituted the core of the state policies of the Early Republican Period. The planning approach was grounded on the regulation of regional development aiming to balance rural and urban development; meaning that planning served both agriculture and industries to proliferate at the same time around the country. Comprehensive and holistic planning was a tool for the state’s interventions to rationalize the economy and build the nation-state around industrial cities (Keskinok, 2010). In other words, the policy-oriented approach geared towards regional and inter-regional integration during this period aimed for a balanced growth as opposed to economic policies bringing forth the primacy of a single large city, that is of Istanbul, which has for centuries been the main centre of attraction.

The basic instance regarding the planning regulations is the first Municipality Law #1580 passed in 1930 and the Law #2290 on Buildings and Roads in 1933, assigning local governments the responsibility of making of 50 year plans and land provision for future development. However, the city plans were to abide by the national plans made by the state. The task of the municipalities was considered to be the assurance of the common good in line with the envisaged national progress (Keskinok, 2010). As one can see policies in this period are shaped around the dominant ideology of the nation-state, which was the main actor of both the economy and social services in terms of decision-making and enforcement of these decisions and plans.

In the course of the 1950’s, the national development policy combined with the process of import substituting industrialization engendered rapid changes in the urban form. Industry and production promoted by the market-oriented governmental incentives, assigning the private-sector an expanded role in the economy, induced a high rate of migration to urban areas creating a significant housing need for the newcomers who provided the main workforce for the expanding industry. The lack of policies oriented towards sheltering newcomers and urban poor led those groups to improvise their own solutions to the housing question. Consequently, gecekondu, the informal settlements built on public land, became a prominent mode of housing production, which constituted a major component of urbanization and an important issue on the political agenda for many years to come. These changes in the urban form, namely growing industry and the informal housing areas around it, obliged the authorities to take action. First in 1951 with the Municipal Act # 5656, provided the municipalities the authority to produce (public) housing; and in 1956 with the City Planning Act #6785, they were given the authority to regulate future developments inside the municipal limits. However with an increasing need to make plans for the growing cities, in 1958 Ministry of
Public Works and Housing was founded and equipped with the authority to make master plans as the competent body of the central government, confirming the attempt to organize urban affairs on a central level.

During the 1960’s the central administration’s authority was consolidated through the Ministry of Public Works and Housing as it was authorized to prepare the legislative framework for the implementation of the plans made by Master Plan Bureaus founded after a cabinet decree in 1965.

Another important institutional change, over the years is the provision of a couple of new laws regulating the system for the election of the mayors who were beforehand appointed by the parliament, gradually liberating the local decision making bodies from the central government’s authority, although this made municipalities vulnerable to pressure coming from the local population causing populist policies to dominate the urban strategies of the following years. On the other hand, the Ministry of Public Works and Housing was vested with the authority to monitor the municipalities in terms of the planning personnel, signifying that the central government was still watching over the local administrations and was still the main actor in urban planning.

The 1960’s was also the setting for the foundation of the State Planning Organization (STO), important both for showing the state’s interventionist powers over plan making and for revealing the holistic and long term planning approach of the period aiming to eliminate regional imbalances, especially when it comes to the growth rate of Istanbul in comparison to its hinterland as well as the rest of the country. The STO until the end of 1970’s was advocating plans underlining the importance of regional development and for the first time bringing forth the idea of planning on a metropolitan scale to satisfy the needs of fast developing cities (Ataöv&Osmay, 2007).

During the same period several amnesties were put into operation easing the conditions for the use of lands belonging to public treasury and foundations and thus opening up the vacant areas to construction by petty investors and triggering the vertical development of former single-storey informal housing. At the same time, with the 1966 Act #775 on Informal Settlements, the situation of gecekondu areas was regulated, the municipalities were held accountable for the creation of housing for people living in these areas and it was aimed to ameliorate the conditions of the houses, when it was possible, according to health regulations instead of demolishing them. Thus, it could be stated that the State was condoning the informal settlements that provided housing for the labour power essential for the growing industries supported by state policies and undertook the legalization, infrastructure and public services provision of these areas to improve the living conditions. In this way, however, the state was turning a blind eye to a self-organized and unplanned urban form created by these informal settlements generating a bigger problem while resolving the housing issue through bottom-up buffer mechanisms such as self-built houses. Moreover, we could affirm that by condoning the occupation of
public lands, the central government was also following a redistribution strategy concerning the surplus value created through arrangements made over urban land to underprivileged groups and petty investors, bridging the lack of welfare state provisions - such as housing - with economic advantages. Meanwhile, the Condominium Act, promulgated in 1958 and amended in 1965, gave momentum to the construction of new apartment buildings in the planned sections of the city and relieved the pressure in the formal housing market for the middle classes. The commodification of the urban land opened up a market for its exchange and speculation and combined with the economic inflation; land/home ownership became a safeguard mechanism for the middle classes whose savings were draining away. As a consequence, this situation “drew the middle classes to take part an active role in the land market, both to get a share of the increasing values and to preserve their savings” (Tekeli, 1978:35). Thereby, we could conclude that the laws that were being enacted during the 60’s introduced a mind-set that normalized both unregulated urbanization and land speculation. As Tekeli (1978:36) expresses; “in a setting where the main instinct becomes getting a share of the value increase; societal sensibility over house ownership develops. In such a setting, as the house ownership allows the seizing of the surplus created in the society, alternative institutional adjustments that can be put in practice in order to solve the housing problem lose their appeal. A fanatical passion for house ownership emerges.” Yet, with the rising pace of urban growth it was agreed upon that urban planning cannot be dealt only inside municipal boundaries and the hinterland should also be included in the plans in order to resolve the problems of overgrown and uncontrolled places such as Istanbul. For that reason in 1972 amendments were made to the City Planning Law #6785, including in the law the concepts of holistic planning, planning hierarchy, regional and sub-regional planning and allowing upper scale plans to guide urban planning, paving up the way for regulating urban growth. As we mentioned before, the power to make metropolitan master plans was given to the Ministry of Public Works and Housing, marking the position of the central government as a plan making authority.14

To sum it up, we could state that the urban process between the 1950’s and 1980’s in Turkey was under the administration of the central government through its main institutional body, the Ministry of Public Works and Housing trying to steer urban development in accordance with the central government’s economic development plans through industrial investment and holistic planning strategies. Although municipalities were given duties to regulate land provision and solve housing problems - especially revolving around gecekondu settlements - the regulatory structure consolidated the central power. Although a certain idea for

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14 With this amendment, the law stipulated protection of monuments and civil architecture works in a holistic manner taking into consideration their physical environments. Also, the ‘protocol zone’ definition brought in 1969 prescribing the protection of structural layouts of certain areas was endorsed with the amendment (Dinçer & Akin, 1994). Furthermore, the changes proposed the inclusion of coastal areas in the development plans, limiting the construction in these zones only to buildings serving for public interest and tourism(Akyol & Sesli, 1999). Hence the implementation was seen as a positive outcome for the protection of coastal areas as well as civil architecture and execution of upper-scale decisions in a holistic manner.
the need of a comprehensive urban planning developed and regulations were put in place; socio-economic policies placed greater importance on restoring economic growth leaving the urban development to take shape through its own dynamics with minimum regulation and intervention. The national funds were being directed to industry and large-scale infrastructure - such as roads and bridges – seen as the steering force of national development, supposing that economic development would create better life conditions for everyone- whereas spatial development was handed over to spontaneous bottom-up processes. However the underprivileged labour force in big cities couldn’t attain the surplus created from the national growth policies. Meanwhile, as the state did not to provide sufficient welfare services, the economic gap created between different social groups was substituted via lax land policies and amnesties targeting informal housing market and the low-income migrants. In that respect, the Condominium Law, which made the ownership of individual flats possible and triggered the transformation and densification of the formal housing areas, can be considered as another remedy for the lack of state funds or financial mechanisms geared towards solving the housing needs of middle classes. These legal arrangements allowed surplus gain through speculation over urban land and provided monetary improvements for gecekondu owners as well as middle classes and opened up opportunities for petty contractors, balancing out the unequal effects of the redistribution structure. Yet, the impact of these initial policies of the ‘populist modernity’ period, as Tekeli (2001) puts it - aiming to boost the low turnover rate of the capital through investing in industrial development in one hand and implementing populist legal arrangements to facilitate surplus gain for lower and middle classes - especially in Istanbul- was an urban morphology increased in density due to the legalization of the previous self-regulated and unplanned developments with an uncontrolled macro form and growth pace.

**Re-scaling of state and the dichotomy between central and local authorities after the 1980’s**

The economic crisis of the 1970’s that had serious impacts worldwide also affected Turkey, causing a shift in the import substitution policies towards a more flexible economic structure to steer out of the ongoing regression. The deregulation policies advocated full blast by Thatcher and various schools of economics seeking to limit governments’ involvement in the economic sectors not only had serious effects on the whole monetary system and production activity – by mainly pushing aside industry and replacing it with finance and services - but also had severe impacts on the urban space and its organization. The decentralization of industry brought along the transformation of the city centres that were slowly being hollowed out. Again, with the crisis of the 1970’s caused by the incapacity of the industries to create enough surplus value to ensure the reproduction of the capitalist class, investment in the built environment and secondary circuit of capital accumulation (Harvey, 1985) became the decisive constituents of the urban space. The capital that did not flow into industry anymore progressively turned to finance sector, urban land speculation and consumption. The policies implemented during the period oriented the capitalists to invest on the urban land by easing up the regulatory frameworks and preparing the favourable conditions for surplus gain over urbanization. Thus an urban process that turned the cities into means of surplus accumulation emerged as the earmark of the neoliberal era. Turkey
was no exception to this; starting from the 1980’s onwards import-substituting industrialization strategies implemented between 1960 and 1980 were replaced with strategies of export-oriented growth opening up the market to foreign investment and deregulating the economic structure.

Accordingly, Istanbul was being conceived as the primary driver of development that can compete on a global scale to attract the fluid global capital and its growth took shape according to this ideal. At that period the president Turgut Özal and the entrepreneurial mayor of Istanbul Bedrettin Dalan, ventured forth to form alliances with national and foreign investors to undertake the change in the city according to the policies that were open to the outside influence of the demands and expectations of the market actors (Öktem, 2011). At the same time, the state withdrew its resources from industry and privatized production facilities while directing its investments to large-scale projects in energy and communication sectors. As the industry was drawn to the background, tourism, finance and investment on urban land became the prime areas where the private sector was headed (Öktem, 2005). Yet the more important point is to highlight the priority of the decision making mechanisms and legislative amendments that allowed the demands of the capital investors and the market to shape the urban form in the implementation of the neoliberal urban policies.

The 1980’s witnessed a power shift in the state organization in order to facilitate the decision making processes that would allow the coordination and management of large scale projects that would supposedly attract multinational companies, finance organizations and the global capital to Istanbul, to establish the conditions enabling international competition through global networks and create a potential to attain a better place amongst the hierarchy of global cities. The first law passed by the state to facilitate the necessary investments in the city in order to make it a globally attractive was the Act #2634 on the Encouragement of Tourism in 1982. This law allowed the central government to declare certain areas as Tourism Zones granting special development rights independent of the limitations of the existing local plans controlling urban development and strengthening the possibility of making flexible and piecemeal plans according to the needs of the investors that would undertake the development of these areas. The law also consolidated the decision making power of the central government by vesting it with the authority to bypass local planning controls on the urban development process (Enlil, et.al. 1998). In addition to that, the Act #2942 on Expropriation passed in 1983 also provided a tool for the government and various public bodies to create land easily for further development. However, in the 2000’s this law was digressed from its initial aim as will be discussed later on in this report, and the appropriation of the privately owned land only to put it back into another private use as opposed to a public one was made possible.

On the other hand, the global shift in the economic system challenging the power of the central administrations as the ultimate decision making authority required more decision power given to local administrations to
take actions according to the needs of a more flexible urban administration model and positioned them as the facilitators of the new phase of the capitalist system functioning via accumulation through built environment and urban land. The beginning of the 1980’s witnessed a series of laws passed one after another deregulating the urban processes according to the new global system. During this period, crucial steps were taken re-scaling the state in Turkey (Bayırbağ, 2013). The first step was the passing of the Metropolitan Municipalities Act no #3030, in 1984, which defined metropolitan municipalities as a new level of administration and bestowed them with plan making authorities. This was followed by the Act # 3194 on City Planning, in 1985, which transferred all the planning powers that the central administration retained to the local level, granting the plan making rights both to district and metropolitan municipalities. However, several special laws breached the City Planning Law #3194. Allocation of exceptional rights for areas declared as ‘tourism areas’ and ‘privatization zones’ that allowed the plans made in these special areas bypass the City Planning Act itself and to be exempt from some of its constraints are prime examples of this. Indeed, an important exemption brought to the City Planning Act was the Act #4046 on Privatization passed in 1994 and the amendment made in 1997 giving the power to make plan changes as well as local zoning plans to the Privatization Administration whereas the municipalities were restrained from making changes in the functions of these areas during the 5 following years. Also, Bosphorus Act #2960 bringing particular planning regulations to the Bosphorus Area in order to protect its unique cultural landscape and the Act #2863 on the Protection of Cultural and Natural Properties regulating the planning conditions for cultural and historical heritage sites generated other areas with exceptional planning regulations. Though, these two laws reflected the preservation and protection approach of the modernist era and pursued the public interest, differing from the privatization and tourism laws that laid the first stones for the realization of top-down and piecemeal planning interventions. That is to say, the first set of market- oriented laws launched the capital’s intervention under privileged development circumstances while the latter

15 We should also note that the same act implemented a ‘Prominent Mayor- Subordinate City Council’ model, making the mayor the prime authority in terms of planning decisions. This way the authority transferred from the center as well as the financial resources were concentrated in the hands of the Metropolitan Municipality and its Mayor (Erder ve İncioğlu, 2013), making it critical to win the municipal elections for the central government in order to implement its urban policies and agenda in big cities. With the power granted with the Municipal Act #3030, Metropolitan Municipalities managed to mute the opposition coming from the district municipalities, opening up many debates in terms of the democratic character of the act. This has been many times the case in Turkey, where metropolitan municipalities belong to the central government party and the local municipalities to the opposition parties, creating conflicts in the implementation of many projects as well as official city plans. 16 With another additional article placed in the City Planning Act in 2005 the Privatization Administration acquired the power to make plans of all scales and kinds and was exempt from the limitations of the City Planning Act. This exemption was brought to the supreme court as it opposed the equality principle of the constitution as areas to be planned under the Privatization Act were being given privileged planning rights. Official Gazette, 4 January 2008, no 26746 http://www.resmigazete.gov.tr/eskiler/2008/01/20080104-6.htm 17 The Bosphorus Law defined four different zones: the waterfront, primary skyline, secondary skyline and the hinterland zones, each with different stringent rules and regulations on building and development (for more information see Enil, et. Al. 1998)
two balanced out the non-public utility and uncontrolled development of the Bosphorus shores and zones with historic and cultural value. It is thus interesting to highlight the simultaneous presence of two different planning approaches during this period.

Moreover, with the 1984 Mass Housing Act #2985 and several amnesties concerning the squatter settlements - of which 1984 The Amnesty Act #2981 in 1984 is the most important - state intervened into the production of urban built environment not only by enacting new laws and policies but also by financing the construction activities, especially the housing sector. Through the foundation of Mass Housing Administration (TOKİ) and Mass Housing Fund, the state not only provided Resources to finance the housing sector but was also involved in the sector as a developer. Furthermore the regulatory changes allowed municipalities to collaborate with public-private partnership companies – such as KİPTAŞ – since the beginning of the 1990’s to produce housing for the market. TOKİ and companies like KİPTAŞ help increase the activity of local as well as foreign capital in the housing production sector through revenue sharing or direct cooperation models.

Moreover, the amnesties granted to the squatter settlements during this period, did not intend to resolve the informal housing problem like the previous act # 775 – implying physical improvements as well as social housing provision but only aimed to settle the property issues through the legalization of informal areas and enlarged the scope of the amnesties to include industrial, commercial and public buildings. Also, after having secured the property rights through these amnesties, many squatters turned their houses into multi-storey apartment buildings thus acquiring new potential sources of income through flats for sale or income (Öncü, 1988; Enlil et al., 1998). Hence the amnesties highlighted the clientelistic approach of the state policies as well as the commercialization of informal housing. On the other hand, these amnesties gave authority to local administrations to make rehabilitation plans that engendered an unhealthy and unplanned urban form (Öktem, 2011) due to the political clientelism and populist approaches of the administrations. As a result the amnesties brought a redevelopment process in certain areas immune from restrictions of holistic urban plans and planning regulations, maintaining and enhancing the impact of the self-regulated urban development processes that were taking place since the 1950’s.

Consequently, the increase in the urban land speculation, combined with the investment strategies in transportation, the building of highways and the second bridge facilitated decentralization of the industry along with the development of CBD’s, luxury housing and shopping centres along these main axes with the backing of the national and international investors as

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18 KİPTAŞ was first founded as a public-private company, whose partners were the İstanbul Metropolitan Municipality and a foreign investor in 1987 to make development plans and architectural projects with the name of İMAR WEIDLEPLAN. After the 1989 local elections it was almost to be liquidated but after 1994, the company was restructured taking the name İstanbul Residence Development Plan Industry and Trade Inc.
well as the local authorities. This prompted the beginning of urban decay in certain neighbourhoods and triggered a sprawl towards the north of Istanbul with the appearance of planned as well as unplanned housing areas and satellite cities backed up with regulatory policies and state aid in the construction sector through its institutions such as TOKİ. Though these changes in the macro form of Istanbul highlighted the transformation on the legislative context. The regulatory adjustments made in order to attract the global capital to Istanbul and clearing the way for the implementation of urban projects and interventions to increase the competitive potential of the city necessitated planning strategies based on metropolitan levels. This engendered new urban forms shaped by the economic and political powers given to local authorities after the 1980’s (Keyder & Öncü, 1993). With this new process, local authorities were reshaped according to the concept of ‘urban entrepreneurialism’ in which new coalitions with capital groups started governing the urban development (Harvey, 1989; Brenner, 2004). Moreover, due to the policies that aimed attracting the global capital deregulation, flexibility and privatization marked the adjustments made in the regulatory structures. Planning authority given to local administrations damaged the upper scale and comprehensive plans for the sake of project-based interventions in areas newly opened up to construction. Although, these were still local and relatively less ambitious projects concerning mainly Istanbul, compared to the nationwide large scale projects being implemented after the 2000’s. The jurisdiction of the administrative powers was directed to generating policies in order to overcome the limitations on the global and local investments by loosening the centralized control and bureaucracy. However, it should be kept in mind that the central administration never fully decentralized its planning authority by handing privileged rights to some of its institutions and ministries. Although planning powers were transferred to local authorities with the 1985 Act #3194, exclusive planning rights were given to ministries responsible from different sectors such as tourism, industry, housing, and privatization. This created a leeway for the central power to step in the planning process enabling the realization of project-oriented planning interventions. We should note, however, that the use of these powers varied during the 1980s and 1990s. Most remarkable application during these two decades of central planning powers bypassing local plans and the provisions of the City Planning Law has been through the use of privileges bestowed with the Law on the Encouragement of Tourism. Although there were also centralized interventions in the areas of industry and housing, these were relatively limited as compared to those aimed to boost the tourism sector, which was considered to be one of the major drivers of the economy. On the other hand, it took more time for the Privatization Act to be affective. After several amendments it become, in the hands of the Privatization Administration, a powerful tool in the full blast implementation of neoliberal policies during the 2000’s concerning the commodification of the urban land and realization of plans favouring the private capital. Thus,

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19 For a detailed account of the changing urban form of Istanbul during this period see Enlil, 2011.
20 For instance, the central administration had the authority to declare industrial parks.
the exemptions made through special acts that we mentioned above marked the beginning of the sectorial privileges in urban planning and the piecemeal and top-down interventions on the planning authority of the local administrations by the central government to be continued with an increased impact in the following period.

Figure 3. A chronological diagram of the planning legislations enacted through time in Turkey. The diagram also shows the types of intervention and the development of the notion ‘participation’ in line with the planning periods

To conclude, this series of laws reflected the dominant philosophy of the period; the shift from government centred and controlled planning towards a decentralized planning model. The powers of the central authority was partly handed over to the local authorities since central planning couldn’t meet the rapidly increasing need of the cities and also ‘democratization’ of the administrative systems had become a rallying cry of the neoliberal era. On the other hand, giving more power to the local administrations facilitated the forming of alliances between the public and the private sector as it opened up the control of the redistribution mechanisms to the local powers. This also meant that market actors would be able to take part in the urbanization process as it was gradually being opened up to the free market rules through the legal (de)regulations we have discussed. Nevertheless, the exemptions made in the law marked an important feature of the neoliberal policies being implemented in Turkey, through which the central authority tried to regulate the urban processes to open up to global capital and bestowed local authorities with decision making powers but never totally gave up its control over the urban development by creating itself niches through which it can implement its own agenda of sustaining the investment in the building sector and still act as a crucial actor in the urban process. Although the 1980’s was a turning point as the economy...
opened up gradually to the global markets and legal adjustments were made to facilitate the reworking of the whole system, this era can be referred as the period of ‘eager’ neo-liberal policies when compared with the aggressive and coercive period to follow in the 2000’s as we will address next.

2000’s: Coercive urban planning and increasing centralization processes

From 1980’s onwards the increasing importance of globalization, international competition between leading cities and neoliberal market logic becoming the common framework of the world-wide politics, large-scale and strategic planning was brought one more time to the political and urban agenda as the global capital’s choice of location started steering the spatial development of the cities. In the context of Istanbul it was understood that the piecemeal interventions of the previous period that only patched problems and created an unplanned urban form were to be replaced by metropolitan ones shaped through a global perspective let alone regional plans that used to constitute the former policies. This aspiration became more and more the dominant motive in the general discourses of the central and local administration underlining the significance of cities as the engines of socio-economic change and advancements in terms of tourism, culture, finance and skilled services were asserted as the future direction of the changes to take place in metropolitan cities. The 2009 Istanbul Master Plan expressed clearly the central government’s conception of a new city with CBD’S aiming to turn Istanbul into a finance and business centre alongside a wide span of strategies including mega urban transformation, knowledge and technology-based projects and flagship developments.

On the other hand, instead of holistic and comprehensive plans that would lead the urban development, project based and partial interventions continued to prevail in urban policies. Urban land speculation and construction that emerged in the 1980’s fully developed as the tools of capitalistic accumulation through urbanization. Investments to satisfy the consumption needs of the new global bourgeoisie, transformation projects in the historical centres of Istanbul, gated communities, residences, luxury entertainment and shopping spaces, sports and congress areas sprouted all around the city without the guidance of overall and upper-scale plans. However, what made the difference after the 2000’s from the previous neoliberal era was the regression to a gradually centralized planning system, increasing numbers of actors concerning the planning authority - creating a great confusion and uncertainty in the planning process and discipline- and more strikingly a tendency towards immunity from legal sanctions and control created by a new framework consisting of acts, cabinet decrees and omnibus bills- very much similar to the period of successive laws passed in the beginning of the 1980’s – disregarding the supremacy of the legal order. This period is marked by the consolidation of the link between urban space and the capital accumulation, deepening the commodification of the urban space and its exposure to expropriation processes in the name of enabling the capital’s intervention in the cities and
urban land. The policies implemented by the central government hastened the integration of housing sector and finance by preparing the legal conditions and ad hoc decisions that facilitate certain projects lucrative for the big investors to shape the urbanization process. As Brenner and Theodore (2002:352) denote “[…]while neoliberalism aspires to create a “utopia” of free markets liberated from all forms of state interference, it has in practice entailed a dramatic intensification of coercive, disciplinary forms of state intervention in order to impose market rule upon all aspects of social life” which applies precisely to what has been going on since the 2000’s in Turkey. The deregulation policies of the government are backed by a new juridical-political framework regulating urbanization, by means of strategic alliances with multinational companies and giant investors – local and global. This part of our work will portray the current situation of the legal framework that has been shaping Istanbul –and the rest of the country- through interventions on the urban development.

“Reshuffling” the legal framework

The restructuring of the economic relationships with the new era of neoliberal policies taking a different turn since the 1980’s increased the importance of the role of cities and city regions and reshaped the boundaries of urban administrations. This shift required a new form of urban governance in which the active partaking of local actors in decision-making processes came into prominence. Meanwhile Turkey went through an administrative transformation with the coming into power of the conservatist right wing party AKP projecting its political agenda on the urban structure. As Erdoğan -the former mayor of Istanbul between 1994-1998 and who became the prime minister in 2003 - declared in a speech before the local elections in 2004 issues such as decentralization, governance, local development, urban and local entrepreneurship and welfare policies concerning the municipal services became the highlights of the urban governance strategy of the central government (Erdoğan, 2004, cited in Öktem, 2011), although the period to follow did not display in reality a genuine decentralization process and empowerment of the local governance. The first legal step taken towards the authority transfer to the local administrations was the Metropolitan Municipalities Act #5216 passed in 2004, which expanded the boundaries of Istanbul Metropolitan Municipality to coincide with the boundaries of the Province of Istanbul thereby extending planning authority of the metropolitan municipality over the areas that were not formerly in its jurisdiction. Similarly, boundaries of the district municipalities were enlarged to include the countryside over which they hitherto did not have any planning authority. The authority in these areas rested with the organs of the central administration. However, this was not a transfer authority for the purposes of decentralizing the decision-making powers. The main motive of the central administration in redefining the municipal boundaries in space was to rationalize urban administration and eliminate conflict of responsibility between different agents of central administration as well as among central and local administrations.
Another very important legislative change during this period was the Municipal Act #5393 passed in 2005. It included a very significant provision, which granted the municipalities the power for housing production and urban transformation. Different from the 1951 Act #5656 ascribing the municipalities with the duty for social housing production, the 2005 Act opened up the way for the municipalities to produce housing for the market. As Şence Türk remarked during our interview “The fact that municipalities can determine urban transformation areas themselves has importance. In the meantime, the expropriation power in the transformation areas granted with this law opened up the way for the municipalities to develop housing on any piece of land they want and sell it in the market.” Also these Acts established a legal frame for the
relationship between the municipalities and public-private partnership business ventures being founded since the 1990’s, reinforcing the role of private investment in urban development as well as handing many services such as housing, transportation, health, culture etc. to subcontractors.

On the other hand, these laws stipulated the making of strategic plans with the participation of local actors, including professional organizations, trade associations, universities and NGO’s in order to create ‘Civic Councils’\(^\text{21}\) which would take part in the creation of a commons city vision, however, this notion of participation did not evolve further than the advisory stage and these institutions could not attain an influence on the decision making process and implementation of the plans\(^\text{22}\) (Erder & İncioglu, 2013). Although the general picture portrayed a shift towards the increasing power given to local administrations making them a crucial actor in the social and local policies, these regulatory changes were met with scepticism concerning the central administration’s authority in urban development and the impositions of its political agenda. The new municipality law significantly strengthened the financial and administrative powers of local governments in Turkey that has historically been exceptionally centralized (Bartu Candan and Kolluğlu, 2008), nevertheless the consolidation of power of the central government in the years to come and the changing relationship between the central and local administrations proved the cautious attitudes to be true unfolding a central-local administration dichotomy.

As AKP consolidated its administrative authority, a series of adjustments made in the legal framework converged the planning authority under the power of institutions dependent to the central power, such as the planning authority given to the Mass Housing Administration and the cabinet decree, 644 amended by 648, regulating the duties and the organization of the Ministry of Environment and Urban Planning that we will address later on in detail. The adjustments privatizing and restraining some of the authorities given to local municipalities demonstrated that they were being reorganized as the executive organs of the central authorities urban development plans ensuring the distribution of the surplus value created through urban land speculation and piecemeal projects to regulate the relationship between the government and the capital. Furthermore the amendment of the clause no 73 of the Municipalities Act #5393 in 2010 giving authority to metropolitan and local municipalities to determine urban transformation areas in their jurisdiction- though it had to be

\(^{21}\) The Municipal Act #5393 of 2005 stipulated to foundation of Civic Councils as a means to provide civic consultation.

\(^{22}\) For example in Kartal, the participatory approach only involved the Metropolitan Municipality, the industrialists, and the Kartal Urban Development Association (Kent-Der) established by industrial investors and did not involve any other local group or initiative in most of the meetings organized (see the Intervention Dilemma for further information). Hence most of the inhabitants directly affected by the plans as well as the small scale industrialists did not get a say and neither any NGO or academic agent was invited to elaborate on the plans and discuss its possible effects on the city as a whole. This has been the case in almost all large scale projects in the agenda since the 2000’s, though in some of the cases NGO’s as well as academics manage to get involved.
approved by the Ministry of Environment and Urban Planning - gave another hint of where the local administrations were positioned in the long-term economic policies of AKP making the capital accumulation through the production of the urban environment, real-estate and construction sector the main economic activities. After the 1999 earthquake the risk of a great disaster which might take place in Istanbul was used as a pretext for a creative destruction process taking place in the city turning the whole urban area into a big construction site, opening up the way for the shaping of the city’s macro form according to the investment choices and urban transformation. As a result of the laws providing a basis for the urban transformation local administrations became the guarantors of the smooth functioning of the economic system under the guidance of the “urban-transformation centric” development ideal of the central government instead of being entities with a say on the urbanization process that can take initiative.

In addition to the Municipality Act, the AKP government also passed a very controversial law in 2005, the Renewal Act # 5366 that enabled municipalities to implement renewal projects in historical or natural protection zones. Most of Istanbul’s historical peninsula as well as the Beyoğlu district -areas with great urban rent potential but inhabited mostly by low-income groups- were included in this category, resulting in highly contested projects such as the ones in Tarlabası and Sulukule. Their ‘protection zone’ status has been preventing big developers and investors from undertaking large-scale regeneration projects, yet the Renewal Act #5366 enabled local governments to bypass the bureaucratic obstacles that have prevented the full commodification of these areas (Dinçer, 2011; Kuyucu, 2014).

In 2008 two more important amendments were made, with an omnibus bill, first concerning the Mass Housing Administration and second concerning the Privatization Administration and its planning authority. Firstly we could state that the amendment of Act #2985 on Mass Housing Administration, under direct ordinance of the prime ministry, acquired the power to make plans and plan revisions of all scales and types and approve them ex officio in urban transformation, mass housing and squatter areas. Thus, through a public institution the state entered into the construction sector in the role of a developer opening the public land to capital and triggering the production of housing not only for lower-middle income residents but also for the market. Further, the authority given to the Mass Housing Administration facilitated the implementation of transformation and ‘clearance’ plans for gecekondu areas freeing these public lands for further investment. Legal ambiguities and arbitrary administrative rules played direct causal roles in the making of the new markets and in the transfer of the (informally owned) property of certain groups to stronger public and/or private actors commanding greater economic, legal and administrative resources. As MHA was exempted from the parliamentary auditing, it became one of the first examples of technocratic institutions enabling the neo-liberalization of land and housing markets (ibid.).
The second amendment made to the City Planning Act #3194 granted further authority to the Privatization Administration to make plans and plan revisions of all scales and types even in areas under the scope of special laws such as the Coastal Law or the Tourism Encouragement Act creating an authority conflict in the making of upper scale plans.

Yet a more substantial change in terms of the planning authority took place with the Cabinet Decree #644 on the Duties and Organization of the Ministry of Environment and Urban Planning (MEUP) in 2011 thus, laying the foundations of the Ministry of Environment and Urban Planning. With this decree, the ministry almost monopolized all kinds of plan making, revision and approval authorities in its hands. The decree gave the ministry the power to bypasses all kinds of local authorities and to approve plans it deems suitable even though the local municipalities do not give their consent. Hence, ministry became the ultimate authority in terms of urban planning and implementation of the plans made by the central government. This indicated that a centralization process, authoritarianism and lack of accountability became the new characteristics of the urban planning process after the 2000’s.

In 2012 another significant Act, Act # 6306 on the Transformation of Areas Under Disaster Risk, or also known as the infamous ‘disaster law, was passed. With this act, the Ministry of Environment and Urban Planning acquired the authority to claim risk zones - even though they are protected under special acts such as the Act of Bosporus, which includes one of our cases Derbent – becoming the ultimate planning authority. In addition, this act provided an exemption from the City Planning Act liberating the plans made under the scope of the disaster law free of any planning restrictions, consolidating once more the planning power of the central authority and the supremacy of its decisions over planning laws and regulations.

Two years later in 2014, the Regulation on Spatial Planning was enacted. This regulation brought many conflicts and since it subverted the planning hierarchy as was known and accepted until then, opened up major debates in the planning field. First of all, the regulation introduced new plan categories and definitions that did not exist in the City Planning Act, such as integrated coastline plan, action plan, urban design projects and spatial strategy plan, contravening the relationship between an act and a regulation which only serves the purpose of defining the implementation of the acts themselves. Especially two new definitions provide the basis of controversies; the urban design project and the spatial strategy plan. Firstly, the spatial strategy plan was designated as the highest effective plan to guide the urban development being placed above the Metropolitan Plans and the Ministry of Environment and Urban Planning was assigned to make these plans and plan revisions all over the country, reinforcing anew the central authority. On the other hand, the urban design project reflects a progressively establishing idea of urban development through project implementation. The new regulation allowed the integration of previously made projects in the master plan decisions nullifying the need to ground the particular interventions, such as special projects, on large-scale
comprehensive master plans and hence breached the planning hierarchy and integrity. Additionally, the regulation stated that the procedures and principles of an urban design project would be designated by the Ministry of Environment and Urban Planning; which signified that for each and every urban design project the regulations might differ indicating the arbitrariness and the flexibility of the law that might be manipulated according to the needs of a particular project and the will of the Ministry. This way the law built a solid ground for the special projects that engendered problems, as they were contradictory to the master plans and paved the way for a project-based urban planning approach by providing its legal basis. In other word, the regulation reflected a concern to integrate special design projects and partial plans that do not take into account the upper scale plans, such as the Kartal Transformation Project designed by Zaha Hadid, without any hindrances and enable the adjustment of master plans in line with projects designed according to the wills of capital investors and the market.

**Conclusion**

The project based urban development perspective gaining ground on the overall planning approach in Turkey indicates to the strengthening relationship between the state policies and the capitalistic market rules. Partial interventions and special projects enable the spatial interventions of the capital shaping the urban development accordingly.

The new laws that have been enacted since the 2000’s ingrained the flexibility that would allow the instantaneous wishes of the capital to take place into the planning institutions and regulations. Yet a planning approach that has been shaped according to the capital’s desire requires the taking of *ad hoc* and context dependent decisions resulting in open-endedness and ambiguity in the laws. Hence, statements and clauses that leave an open door for all kind of adjustments multiply concerning the spatial planning regulations and in the recent juridical amendments. Further, as Kuyucu states (2014: 628) “the uses and abuses of legal ambiguity in the making of markets should be taken as an important variable in analysing the relationship between law and economy, and in examining how markets operate,” to see the strengthening connection between with the state, the global capitalism and the juridical adjustments made during the period after the 2000’s in Turkey.

On the other hand, we have been observing at the same time a centralization process and the interventionist role that the central government has been assuming since the 2000’s. The government adopted a monopolistic attitude regarding the project oriented urban planning as well as the decision-making processes in the realization of partial and speculative projects by concentrating the executive power under the institutions with exceptional authorities- such as the authority to make plans of all scales in ‘risk zones’ and protected areas- under direct command of the central government given the recent regulatory adjustments. These comprehensive juridical reforms also reinforced the authority of local and central public bodies that regulate the land and
housing markets by providing the opportunity for the realization of arbitrary operations and ambiguous decisions. The Ministry of Environment and Urban Planning, the Mass Housing Administration being the most effective institutions, alongside the municipalities - dotted with the authority, according to the Municipality Act #5393 and the Renewal Act #5366, to realize urban transformation projects together with TOKİ – came into play as implementing institutions per se regarding these urban projects (Özden, 2007). Although the flexibility bestowed to these institutions enabled a faster decision making process in resolving urban problems, realizing projects and overcoming the cumbersome bureaucracy, it engendered the loss of legitimacy as this flexibility evidenced to the arbitrariness and autonomy of the state organs in the face of the legal system.

This was also backed up with the wave of legal changes made after the 2000’s including omnibus bills and cabinet decrees. Looking at the contents of these decrees and bills one can identify a tendency towards an expansion of the jurisdiction and powers of the central administration regarding economic issues in relation with a development model based on the urbanization process and the facilitation of the functioning of the construction sector as we mentioned in the introduction of this section. Combined with the intrinsic character of the cabinet decrees that are taken hastily under emergent situations it leads us to an analysis of the relationship between the executive and legislative powers of the state and the capitalistic structure that requires immediate changes in the presence of the crisis it faces. The recent changes in the capitalistic economic system and the breaking loose of the capital from the time-space restrictions brought the executive element to the forefront, as the effective and safeguarded continuity of the global capitalistic relationships can only be ensured by the liberation of the execution that can take immediate decisions and swiftly adopt to the changes to overcome the obstacles created by the legislative and judicial institutions (Kılıç, 2012). What we have been observing in Turkey has been the result of the impositions and requirements of the ‘finance-insurance-real estate’ trio that has become the strategic sectors of the global capitalistic system that the country has been shifting towards and the juridical background that would ensure the functioning of such a system (Keyder, 1992; Keyder (der.), 1999 and Bilgin, 2006). A political organization that is being shaped around the rule of the fiscal system of globalization urges the governments to embrace authoritarian and central government lead methods – overshadowing even the parliament and highlighting personas such as the President Erdoğan as the competent authority - to adopt to the changing perceptions of time and speed in terms of legislations and politics. Accordingly, when we analyse the developments in the juridical system we could say that what has been aimed by the cabinet decrees is “the redefinition of the state in the market structure and the elimination of the barriers against the unification of the national market with the global capitalism” (Kılıç , 2012).

In such a context the centralization of the planning authority does not mean the return to a holistic planning approach or a restoration of the traditional
duties of the public sector. As Erder and İncioğlu (2013) emphasize the centralization process in this period refers more to adjustments made to implement a flexible, ‘liberal’ and market oriented- state idea that allows populist practices to be implemented. Through this process, “the urban planning institution that was formerly acknowledge as a public operation was fragmented, rendered more flexible and opened up to the impact of the large capital and the market” (Erder&İncioğlu, 5). The regulations concerning the historical, cultural and natural protection areas that were given special planning rights following a protectionist planning ideal during the previous periods are now being digressed. The letter of the law is being altered as the recent changes made - notably with the Act #5366 - loosen the regulations in protected areas and centralize the plan making powers.

Furthermore, with the transformation of the state towards a business like structure in public service fields, the commodification and privatization of certain services (Kılıç, 2012) and the coming into play of real estate investment trusts, the state-market relationships entered to a whole new stage not only in terms of land and housing production but in many aspects of daily life. The ‘planning’ understanding of the current government has been carrying out many actions that commodified public and natural resources and expropriated them together with the capital investors (Ekici, 2015). In the meantime the planning legislations as well as the chambers and professional opinions were approached as impediments in the face of the ‘development’ ideal, and the recent decrees served as a control mechanism over these opposing organizations as well as a tool to bypass the upper-scale planning decisions. Similar to the 1980’s, a wave of laws passed – especially revolving around urban transformation and delegation of planning authority – ignored the upper-scale plans and enforced a centralization based on a project planning approach catalysing the state’s relationship with large-scale capital, especially when it comes to the construction sector. The interventionist and domineering role that the centre has been assuming since the 2000’s in terms of the project-based planning approach turns the planning professionals into technicians performing the decisions taken by the central authority (Özden, 2007). Whereas with the increasing impact of the adjustment policies to a global capitalist economy through urban processes many local, national and international new actors – including the NGO’s and activist groups concerned with the ‘urban’- enter the public decision making and implementation process and private sectors significance has increased notably. Moreover, with the juridical adjustments the planning authority is divided up among many different institutions, ranging from ministries to municipalities, that have sometimes conflicting authorities and ambiguous jurisdictions turning the plan making and approval process into entropy.

23 As Erder and İncioğlu state (2013: 4), “... another aspect of these recent adjustments can only be understood through a structural analysis of the construction sector”. Although this is an extensive topic that needs to be elaborated as a separate research topic we find it necessary to underline the importance of the construction sector in the current period that the Turkish planning institution is going through.
Table 4. The Different Institutions with plan making and approval authorities and corresponding laws granting them this power.

<table>
<thead>
<tr>
<th>INSTITUTION</th>
<th># of ACT/DECREE and THE STATEMENT IN THE LAW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council of Ministers</td>
<td>4533 .. renewing or making alterations in long term development plan</td>
</tr>
<tr>
<td>Bosporus High Coordination Commission of Development</td>
<td>(1983) 2960 .. giving expert opinion about plans and approving if appropriate</td>
</tr>
<tr>
<td>Privatization High Commission</td>
<td>3194 .. plans go in effect after being approved by the high board of privatization (Additional clause: 3/4/1997 - 4232/4 md.),</td>
</tr>
<tr>
<td>High Commission of Regional Development</td>
<td>(2011) 641 Cabinet Decree .. approving regional and action plans</td>
</tr>
<tr>
<td>High Commissions</td>
<td></td>
</tr>
<tr>
<td>TOKİ</td>
<td>2985 .. plans which aren't approved by municipalities or governors within 3 months are ex officio approved by TOKİ. (Amendment in first article: 24/7/2008-5793/7 md.)</td>
</tr>
<tr>
<td>Board of Directors of Disaster and Emergency</td>
<td>(2009) 5902 .. managing development, plan and project processes</td>
</tr>
<tr>
<td>Prime Ministry</td>
<td></td>
</tr>
<tr>
<td>Ministry of Environment and Urban Planning</td>
<td>(2011) 644 Cabinet Decree .. approving plans of any scale and kind</td>
</tr>
<tr>
<td>Ministry Of Science, Industry And Technology</td>
<td>(2011) 635 Cabinet Decree .. approving Master and Development Plans</td>
</tr>
<tr>
<td>Ministry Of Energy And Natural Resources (BOTAŞ or License holder firm)</td>
<td>4646 .. on request of the firm, previous allocation on master plans is not stipulated; natural gas transmission lines and facilities are processed on master plans a pursuant to their projects</td>
</tr>
<tr>
<td>Ministries</td>
<td></td>
</tr>
<tr>
<td>Development Agencies</td>
<td></td>
</tr>
<tr>
<td>Development Administrations</td>
<td>642 Cabinet Decree .. making province wide action plans</td>
</tr>
<tr>
<td>Ministry of Culture and Tourism</td>
<td>2634 .. authority to approve plans of any scale</td>
</tr>
<tr>
<td>Cultural And Natural Heritage Preservation Board</td>
<td>2863 .. after the plans are approved by preservation boards, they also have to be approved by relevant institutions in 60 days, otherwise plans go in effect as such</td>
</tr>
<tr>
<td>Ministry Of Forestry And Water Management</td>
<td>6831 .. Plans of any scale on uplands are approved by the ministry.</td>
</tr>
<tr>
<td>Ministry Of Food, Agriculture And Livestock</td>
<td>6292 .. land use plans are approved by the ministry</td>
</tr>
<tr>
<td>Ministry of Transportation</td>
<td>655 Cabinet Decree .. approving railway, port,</td>
</tr>
</tbody>
</table>
Table 2. Central Institutions with planning power, the laws enacting, the year and the definition of their planning authority.

<table>
<thead>
<tr>
<th>Authorized Central Institutions</th>
<th>Laws</th>
<th>Year(s)</th>
<th>Planning – Built Environment Production Authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mass Housing Administration (TOKİ)</strong></td>
<td>Act #2985 on Mass Housing and 11 additional laws</td>
<td>Throughout the 2000’s</td>
<td>Granting mass housing loans; implementing mass housing projects in informal housing transformation areas; realizing luxury housing projects; establishing companies operating in housing sector or becoming a partner of finance institutions…etc.</td>
</tr>
<tr>
<td><strong>Ministry of Culture and Environment</strong></td>
<td>Act #4937 on Making Amendments in Tourism Encouragement Act</td>
<td>2003</td>
<td>Authority to make plans of all scales and kinds, or to have it made, in tourism areas</td>
</tr>
<tr>
<td><strong>Ministry Of Science, Industry And Technology</strong></td>
<td>Act #4737 on Industrial Zone</td>
<td>2002</td>
<td>Authority to make master plans, or to have it made, in industrial areas</td>
</tr>
<tr>
<td><strong>Ministry of Environment and Urban Planning</strong></td>
<td>Cabinet decree, 644 amended by 648, Regulating The Duties And The Organization of The Ministry of Environment And Urban Planning</td>
<td>2011</td>
<td>1. Authority to make, have it made and approve spatial strategy plans and master plans; 2. Authority to make, have it made and approve Integrated Coastal Area Plans; authority to take decisions in the protection or development of Natural Protected Areas; 3. Authority to take a decision in the development of specially protected Environment Area, national parks, natural parks, natural conservation areas and natural protection areas; 4. Develop urban transformation, renewal and transfer zones, authority to make plans of all scales and development implementations, make, have it made and approve urban design projects; 5. Authority to make plans of all scales and kinds, have it made and approve plans prepared by the relevant institutions or plans that are prepared but not approved within 3 months concerning investments to be realized on any real property (public or private) nationwide and authorization to licensing.</td>
</tr>
</tbody>
</table>

Finally the project based approach weakening the ‘analysis-synthesis-decision making’ processes in planning, creating an authority conflict as several different institutions have jurisdiction over planning issues, damaging the integrity of the plans (Özden, 2007) in one hand and the autonomous decisions of the central administration disregarding the existing planning legislations and authorization of the central institutions in planning that endanger many conflicts. As a consequence, urban planning process in Turkey, and especially in Istanbul, has been going on as a series of court cases opened up against the jurisdiction conflicts, incompatible legislations and urban projects that are being realized through exceptional planning regulations being implemented in the law since the 2000’s. This also reveals the conflict between procedural and material norms, the main laws and the regulations that define the implementation of these laws, as ambiguity, open-endedness and arbitrariness dominates the rationale behind the current planning laws. The fact that in recent years, the amendments are not made within the laws themselves but are brought by omnibus laws or cabinet decrees as an outside intervention affirms the authoritarian administration over the planning institutions and the turn the legislations has taken in order to underpin the capital’s spatial interventions.
Cases

Regulation Dilemma in Kartal

To be able to understand the current status in Kartal, one has to take a quick glance at the planning background of the district within the context of institutional changes.

One of the oldest suburbs of Istanbul which started with the establishment of Yunus Cement Factory in 1926, Kartal went through a rapid urbanization process as a result of the large scale industrial investments which increased particularly after the 1950s. (Enlil, Z. et al, 2014). Approved in 1965, “Istanbul Industry Plan” stipulated that the heavy industry located within the city be moved outside the city, and as a result the first decentralization of industry started in Istanbul (Tekeli, 1992).

The “Industrial Relocation Plan” which was approved in 1991 aimed to decentralize the industrial areas of Istanbul over the other districts of Marmara Region. After this plan, most of the industrial facilities left the city but there were still some remaining.24

In 1995, “Istanbul Metropolitan Area Sub Region Master Plan” put Kartal among districts which would change their leading sector from industry to service and commerce (Istanbul Metropolitan Area Sub Region Master Plan Report, 1995). Due to the fact that Kartal has very strong transportation connections in Istanbul, and that it has a strategic location in relation to the transformation of Istanbul into a multi-centred structure, have been major elements that triggered the areas transformation.

The period of recent transformation development in Kartal has started in 2005 right after the establishment of Istanbul Metropolitan Planning and Urban Design Centre (IMP) by Istanbul Metropolitan Municipality (IMM) in 2004, and followed by the announcement of an international urban design competition.25 As a result of this approach, the decentralization process of the other industrial areas in Kartal continues with individual applications, and it is one of the rare areas where this process has been planned as an integrated implementation.

IMP26 was charged with the preparation of 1/100,000 Istanbul Metropolitan Plan27 (ÇDP) by the Istanbul Metropolitan Municipality. According to the

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26 Due to the fact that the legal framework based on which IMP was established is not clear in the legislation; it has been the subject of numerous controversies since its establishment.

27 The Environmental Plan concept was used in the City Planning Act No. 3194 for the first time. Article 5 of the Law describes environmental plan as “the plan that lays down settlement and land
ÇDP, Istanbul was going to be transformed into a multi-centred structure, and one sub-centre would be created on each side of Istanbul. Kartal was chosen as one of these sub-centres. Based on this plan, it was decided to turn the vacated industrial areas in Kartal into business centres.

At this point, IMP organized a competition, which invited international star architects for the reorganization of this new CBD (as a business, service, and finance centre) as stated above. This competition occupied the national agenda for a long time. The reason for the invitation of only foreign participants was questioned lengthily, to which Istanbul Metropolitan Municipality Mayor Kadir Topbaş replied: “Istanbul is a silk cloth. Everybody cannot sew silk cloth”, to which numerous professional chambers, particularly the Chamber of Architects strongly reacted. On the other hand, as IMP planners indicated, the idea behind inviting renowned architects to design projects for the area was to add to the urban value and identity that was aimed to be created in Kartal, to attract new investments and people to the area through featured designs.

Following the announcement of the competition, the first meeting was held on May 13, 2005, attended by Istanbul Metropolitan Municipality (IMM), IMP, Kartal Municipality and large-scale industrialist, during which the planning, design and transformation process of the Kartal Central Industrial zone was discussed.

In early 2006, Zaha Hadid’s project, who was the first woman architect to receive the Pritzker Architecture Award, was elected the winner. In her project entitled “Kartal Sub-Centre Urban Transformation Project”, Kartal’s new appearance which would be created following arrival of service functions after the removal of the industry from the region was determined, and in a sense the foundation of the 1/500 and 1/1000 scale development plans to be prepared for the region was created.
On 21 November 2006, industrialist property owners of Kartal came together to form Kartal Urban Development Association (KENTDER) with the incentive of IMM, and Kentsel Strateji was included in the project as a mediator. On 21 March 2007, Zaha Hadid Architects (ZHA) and IMM signed an agreement, and 8 meetings were held to determine the course to be taken while making the urban design decisions fit to procedural processes. The participants of the project decision meetings were: IMM, IMP, Kartal Municipality, ZHA and representatives of KENTDER. After these meetings where fundamental decisions were made as to project design, planning and procedure, another series of meetings were held to make the ZHA project compatible with the legal procedure. Despite the fact that the 1/100,000 Istanbul Metropolitan Plan and all competition and finalization procedures were prepared and carried out by IMP, the duty to perform the project-plan harmonization of the concept project was given to IMM. The methodology which was adopted by IMM for the urban transformation project developed by ZHA into master plan and implementation plan, and harmonization of the project with the existing procedures led to fierce controversies.

28 As mentioned before in “Intervention Dilemma” the plan was done by translating the core principles of the concept project done by ZHA into a master plan. This situation challenges the traditional planning hierarchy in which an upper scale plan is followed by a subscale plan and then a project is done accordingly.

29 Indeed, it can be deduced from both the expert reports and the statements of the IMM and IMP planners that the Kartal Transformation Project takes the 1/100,000 Metropolitan Master Plan -in
As a result of the studies conducted in relation to this subject, 1/5000 Kartal Master Plan was approved by the IMM Council on 23 June 2008. Following the 1/5000 scale master plan, the 1/1000 Kartal Development Plan was approved by IMM on 1 December 2008. Kartal Municipality, the Kartal Neighbourhood Association Against Urban Transformation, both Istanbul and Kartal branches of Chamber of Architects, and the Chamber of City Planners’ Istanbul Branch objected to 1/5000 Kartal Central Master Plan and file a lawsuit afterwards (Eniliz, Z. et al, 2014). One of the main arguments of the case, as the interviews and the expert report indicate, is that the main conflict stems from the incompatibility between a flexible planning concept that was attempted to put in application for the first time in Kartal – as underlined several times by the planning authorities – and the rigidity of prevalent planning legislation that does not accommodate ‘uncertainties’ resulting from such a flexible approach. As a result, the 1/5000 Kartal Master plan of 2008 was revised due to the lawsuit filed by the Chamber of Architects and was approved in 2009.

What also needs to be emphasized here is, on 29 March 2009, CHP won the local elections in Kartal, which has been under AKP rule previously. At the beginning, CHP administration took a political stand and opposed the plan claiming it to be a benefit-oriented project to increase land rent. Indeed, CHP won the elections, on the large part, by campaigning against the various transformation projects of IMM, including the Zaha Hadid Project. That was why for some time the new Mayor of Kartal distanced himself from the project. But after having realized the aims of the plan, and in the interest of resolving the conflicts in favour of the citizens, he eventually started supporting the project, mostly trying to make new regulations in the M legend areas of the plan where he got most of his votes. But even though his approach was positive, he still had conflicts with the city council. Nowadays, he became a proponent of the transformation of Kartal, working side by side with IMM and Ministry of Environment and Urban Planning, announcing additional urban transformation areas within the district. One of the latest and most significant indicators of this change is CHP City Council members are not against plan any more.

So, if we go back to the planning process of the area, on 25 May 2010, the Chamber of Architects files again a lawsuit against the 1/5000 plan on 25 May and due to the new revisions the plan was approved once more on 3 June 2011. The reason for this “approve-cancel” process is that IMM immediately prepares a new plan which is almost the same as the cancelled one and makes it public and the chambers opposes to the plans again. After the plan was one more time cancelled by court on 30 May 2013, IMM started revising the plan

which Istanbul was conceived as a multi-centered city, and Kartal was designated as a CBD area- as a reference, meaning that it is compatible with a macro scale plan. Yet, the fact that both the 1/100,000 Metropolitan Plan and Kartal Project that later on turns into a 1/5,000 master plan were realized simultaneously, is deemed as against the legislations.

30 M legend areas (existing constructed land) which mostly corresponds to the current residential areas in the plan.

31 http://www.radikal.com.tr/turkiye/chp_7_yil_sona_fikir_degisirdi_zaha_hadidin_projesine _evet-1288789
and the latest version is approved on 16 January 2015 by the IMM City Council both with AKP and CHP votes.

While this was going on by metropolitan municipality side, Ministry of Environment and Urban Planning made plan changes on 5 November 2012 for the land belonging to the former Yunus Cement factory which was the very first industrial facility in the area. The lot was sold by Emlak GYO (Emlak Real Estate Investment Partnership) -to which TOKİ holds profit sharing stocks. The lot was given to the Ağaoğlu\(^{32}\) and DAP Yapı in exchange for partnership on profits made from flats sold. In addition to this, Yunus Neighbourhood in Kartal was declared a Risk Zone\(^{33}\) on 16 September by the Council of Ministers. ŞUA Yapı is preparing the project for this area\(^{34}\).

Figure 6. The Area in Yunus Neighbourhood declared as risk zone.

Source: 1-Drawn on the base from Expert Report Case no 2010/1024 and Kentsel Strateji, 2-Outline drawing of the area by the Cabinet Council

One of the major criticisms regarding the planning process in the Kartal transformation area concerns the relation between different levels of planning regulated by the City Planning Act No. 3194, which stipulates that there should be a

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\(^{32}\) Ağaoğlu which is one of the two of the biggest construction companies in Turkey is also known for corruption cases and its close relationships with the government officials.

\(^{33}\) Under the law no. 6306 regarding the ‘Transformation of Areas Under the Risk of Disaster’ - shortly referred as the Disaster Law

\(^{34}\) So as a result of the objections that hinder the planning process; decisions taken by different authorities on certain zones make it difficult to adapt these different areas to the overall plan and have a holistic approach and an integrated long-term plan as stated by the IMM planners.
hierarchical relation between different scales and that lower scale plans should adhere to upper scale ones. At the first sight, the planning process in Kartal, it looks as if there is a proper hierarchy. Planning process starts with the 1/100.000 scale Istanbul Metropolitan Plan declaring Kartal as a CBD on the Asian side and in accordance with this decision, a new master plan is made. However, closer scrutiny shows that in reality there is a sudden switch from a large-scale metropolitan plan directly to a “concept project” by a star architect, skipping intermediate scales of planning. Then, the core principles of the concept project done by ZHA had to be translated into a master plan by IMM and approved by the city council because IMM is the institution empowered by the City Planning Act No. 3194 to prepare and approve master plans. The project decisions which were transformed into plans with difficulty by the IMM led to the opening of social facility areas to building construction via the decisions made by different institutions according to their own agendas; in other words, this spatial change opens up possibilities for market instead of citizens. As a result, the principle decisions of the plan were abandoned, its integrity was compromised, and a conflict of authority arose among various institutions at the planning stage.

The fact that this very sudden and unexpected process was interrupted in a very sudden and unexpected way is one of the most interesting characteristics of the Kartal case. Preparing plans on all scales and at all places was a power granted to the Ministry of Environment and Urban Planning with the Decree-Law No. 644, and the Privatization Administration was granted the power to prepare plans with the Law No. 4046 in an unexpected way, made the planning process worse which was already problematic. The disintegration of power which is defined by different laws in relation to the planning practices in Kartal reveals the lack of legal certainty in the transformation area.

**Re-regulation and Re-scaling of Local Government**

Kartal’s transformation process exemplifies the application of a macro scale planning decision upon a district. The importance of the industrial facilities which form the economic backbone of the Kartal region, and the employment of a major portion of the population in these industrial areas caused the district municipality to adopt a negative stance towards this decentralization decision. On the other hand, the industrialists who hoped to obtain greater revenues by transforming the industrial areas into service sector, the pressures applied in order to move these areas outside the city because of the pollution caused by the industrial facilities, and the use of “financial centre” discourse for Kartal and “global city” discourse for Istanbul allowed the central government to weaken the power of the local administration.

As it was stated before, legal arrangements concerning urban transformation and urban renewal were addressed both in the Municipal Act and Metropolitan Municipalities Act after 2004. Municipal Act No. 1580 holds municipalities responsible for all local services, and the transfer of various powers from the central government to local administrations after the 1983 elections, which are important steps in the localization of the planning process. On the other hand, as stated before, most of the laws introduced after 2004 paved the way for centralization again. In this respect, in the Kartal case, the Law No. 5393 which the Kartal Municipality is subject to, and the Law No. 5216 which forms the legal basis of Istanbul Metropolitan Municipality give the clues of centralization on a local level. For example, with

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35 Another major criticism has been about the international competition itself because it excluded Turkish architects and planners since there was an invitation limited only to three renown international architects, Zaha Hadid, Massimiliano Fuksas, Kisho Kurokawa
Article 73 of the Municipal Act No. 5393 dated 03.07.2005, the duty and power of urban transformation were granted to district municipalities; however, the “Law No. 5998 on the Amendment to the Municipal Act” dated 17.06.2010 assigned this duty and power to metropolitan municipalities. The centralization process did not end with this arrangement, and with the Act No. 6306 on the Transformation of Areas under the Risk of Disaster, this power was assigned to the Ministry of Environment and Urban Planning.

Article 73 of the Municipal Act No. 5393 states: “Metropolitan municipalities shall be authorized to declare an urban transformation and development area within the boundaries of the metropolitan municipality and adjacent areas.” (...) “Metropolitan municipalities shall be authorized to carry out development planning and control acts such as development plans of any scale, plotting plans, building construction licensing, issuing occupancy permits and similar acts and exercise the powers conferred to municipalities in the Law No. 3194 dated 3/5/1985 on City Planning and control for the urban regeneration and development projects to be undertaken by metropolitan municipalities.” Thus, urban transformation has become monopolized by metropolitan municipalities, and by IMM in Kartal case.

However, the regulation which was followed in Kartal was not Article 73 of the Law No. 5393, but paragraph b of Article 8 of the City Planning Act No. 3194: Development Plans shall comprise the Master Plan and the Implementation Plan. Relevant municipalities shall make or cause to make the master plan and implementation plans of places within municipal boundaries by making them comply with the regional plan and environmental plan decisions if any. They shall enter into force upon approval by municipal councils. Such plans shall be posted publicly for one month from the date of approval at such posting boards as designated by municipalities. Objections may be raised against plans within the posting duration of one month. Municipal councils shall review and finally resolve within fifteen days any objections and plans referred by mayors to municipal councils. Governorships or the relevant administration shall make or cause to make the plans for the areas outside municipal boundaries and adjacent areas.” As a result, the process was carried out by the IMM acting on these powers without including the district municipality based on the reference from Environmental Plan.

However, the process was extended because of the objections to the plan filed by various trade associations, NGOs, and individuals, revisions and cancellations, and the target which was set by IMM at the beginning could not be reached even today. These disruptions and failures to advance caused those who are entitled in the large scale industrial areas and in M legend areas to search for different paths to make the process work again. The Ministry of Environment and Urban Planning emerged as a new actor with the risky area announcement mentioned above.

The risky area which is announced in the project area is determined by the Council of Ministers, the highest executive organ in the country, pursuant to Law No. 6306. This practice, which is criticized on many levels, also became the centre of criticisms for disrupting the administration hierarchy. That the central administration organ which is situated at the top makes decisions on the parcel level has been the main subject of criticism. This approach which started with the Act on the Encouragement of Tourism Promotion Law in 1982 became prevalent, and through new laws enacted, making disintegrated decisions by setting forth different reasons (disaster, privatization, renewal, etc.) has become an established method of administration. An examination of the Kartal case reveals that, in addition to centralization’s taking precedence over localization, this disintegrated approach came into play in Kartal where the plan was
handled in an integrated manner at the beginning. Following the announcement of risky areas in the region within the scope of Law No. 6306, the stone quarry area was also included in the privatization process through the Privatization Act No. 4046, which resulted in the emergence of a new actor in Kartal’s transformation process which has the authority to prepare plans in an area defined in the project boundaries.

The privatization of enterprises owned by the public, the lands belonging to the Treasury, and the public shares in participations in order to operate them, to achieve efficiency in economy, and to reduce public expenses constitute the purpose of the Law No. 4046. According to the Privatization Act, which contains provisions pertaining to the assets of the state which will be included within the scope of privatization, the principles concerning privatization applications, privatization high council and its duties, establishment and duties of the privatization administration, administrative service unit, various provisions relating to the personnel, budget, fund, inspection, privatization methods, tender methods, these decisions shall be made by the Privatization Administration and Privatization High Council which are affiliated with the prime ministry.

When the Privatization Act No. 4046 which is the fundamental law concerning privatization was enacted in 1994, the administration had no planning authority. However, the amendments to the Law No. 4046, and the transfer of the authority to prepare plans concerning the zoning changes in relation to the lands and building lots owned by the enterprises which were included in the privatization program which are located within the municipal boundaries and adjacent areas to Prime Ministry Privatization Administration; and transfer of the approval authority to the Privatization High Council formed the legal basis for stripping the municipalities off their powers in these areas. Today, as it can be observed in the Kartal case, the most important tool used by the Privatization Administration is the zoning plans. Zoning plans play the most important role in the “rent increasing process” by making function changes and increasing the building density. The laws enacted between 2000 and 2010 consistently tried to grant the Privatization Administration the authority to prepare plans, which proves the importance of zoning plans in the rent increasing process. The planning powers which started as the Privatization Administration obtained the duty to make site zoning plan were increased in time through amendments made to the law, and today it has become the only authority in charge of planning in the areas within the scope of privatization (Karasu, M.A., 2011).

The stone quarry and the land reclamation area within Kartal Project are the main lands owned by the public. These lands constitute 30% of the project area, and are the two greatest areas which can be used open to public. These areas are included in the 1/5000 Master Plan as “Creation of large green areas on the coast and stone quarry”. In the 1/1000 design principles and decision, three different attraction areas were defined in relation to these areas: “On the north, the Stone quarry will be evaluated as public open space mainly, and it is supported by social and cultural facilities and the transfer centre around it, making it one of the most important attraction points of the project. On the south, the coastal area has been enriched by the marina, and it has been supported with the open spaces and cultural structures right behind it. This area, which is supported by the Marmaray transfer centre and the public areas, constitutes the window of the project when approached from the sea. These to foci are connected with the avenue line which is supported by the tramway rail.”

However, Prime Ministry Privatization High Council included numerous immovable properties in Istanbul and other provinces within the scope of privatization in May 2014. Among these areas is the stone quarry on the north of the project area which
was defined as open green space in the urban design project and in master plans. The fact that the Privatization Administration was given the authority to amend master plans on a parcel basis requires the repetition of the centralization criticism. However, with this decision which allows altering the function of the areas which were defined as “green area” or “public facility” in approved master plans and implementation plans, the projections which were made before and which aimed at infrastructure services, particularly transportation, communication, healthcare and educational services, are rendered non-functional. The decisions of the 1/5000 and 1/1000 Kartal Master and Implementation Plans, and the “Urban Design Guide” which is considered their plan notes, and the population-facility balances within these decisions are completely turned upside down. Another problem concerning urban spaces resulting from the fact that the Privatization Administration has the power to make plans is that the plans prepared are closed to public participation. Obtaining the views of the public in relation to the zoning plans to be prepared before the investments are made in Kartal, participation of the public in the decision-making process, and holding a referendum concerning the amendment when necessary, and notification of the public regarding the changes in the plan were forms of participation, albeit insufficient, which were not stipulated in the City Planning Law, but which were applied anyway by the municipalities informally. At least the Municipal Councils are responsible for making the Municipality hear the voice of the public. In a period when it is expected to develop participatory processes which are an indispensable part of modern democracy and which is a requirement of urban rights, this situation is totally eliminated in relation to areas subject to privatization, such as the stone quarry.

Figure 7 Division of planning powers in Kartal Project area.

Source: Drawn on the base from Expert Report Case no 2010/1024 and Urban Strategy, edited by the authors
In the Kartal transformation process, it can be seen that the top-down project generation decision is supported by a centralized legal structure. The decisions concerning the decentralization of industry, the authority wars between IMM and Kartal municipality during preparation of the metropolitan plan, designing the transformation project through a competition, the harmonization of the design with the planning legislation, and the preparation of plans; the use of Disaster Act No. 6306 and Privatization Act No. 4046 which allow the creation of different project areas within the project area by the central administration; and the prime minister’s vision causes Kartal to be reshaped by actors other than the local administration through legal arrangements. That exemplifies the legal resources of regulation being used by central authorities in order to control spatial processes rather than local perspective in urban change.

Moreover, these arrangements disrupt the plan–project hierarchy, and allow the creation of countless gaps within the zoning plans prepared for a region. Different institutions which have their own respective laws and regulations, and which have different reasons of establishment, make decisions, and prepare and implement plans in line with those reasons. As a result of this situation the public interest which is the ultimate objective of the plan is disregarded, an authority chaos created, and the residents who are the end users and who must have a say in these matters are left outside of these processes. With these black holes created in the city by the rent-oriented designer approach, the central administrations unsustainable, real estate-oriented, short ranged, and profit oriented approach becomes more visible in Kartal.

Economic development opportunity recognized by central authorities sets future actions for Kartal by using re-regulated planning system of Turkey which is the core component of urban power for towards the elimination of self-organized local communities. 5 Kartal Strategy and Action Plan Draft, 2009

**Regulation Dilemma in Derbent**

Figure 8. Derbent in 1956

Derbent was first founded as a neighbourhood with a few self-constructed houses on public treasury land appropriated by the migrants living mainly on agriculture around the 1930’s. However, the greatest development took place in the 1950s and especially after 1960s, with the rapid industrialization and labour migration that happened simultaneously. First ‘gecekondu’ areas around industrial zones were being built up by migrants coming from different parts of Anatolia. In the 1960s, reflecting the general character of the urban sprawl process in Istanbul, former agricultural lands in Derbent were split up into plots and were sold to migrants moving into the area by land promoters. Also during the 1960s and 1970s the populist governmental discourse supported the ‘gecekondu’ development as an interim solution to house the migrant working class (see Intervention Dilemma Report and also Part I). The Illegal Settlements Act #775 passed in 1966 prescribing the amelioration, clearance and prevention of new illegal settlements granted the municipalities the right to appropriate and expropriate the ‘gecekondu’ areas in order to provide affordable, social and core housing for people living in these areas. Also the municipalities were assigned for the designation of amelioration, clearance and new settlement areas as well as making rehabilitation plans. Though, the Mass Housing Administration had the authority to approve or make adjustments or make its own plans for these areas. Also the act authorized the municipalities to provide land for the people affected by the amelioration and clearance activities along with the ones willing to build their own houses. On the other hand the Illegal Settlements Act regulated the conditions of the provision of land deeds under the conditions of realization of reparations and ameliorations carried out by the people inhabiting these houses. Furthermore, it defined the conditions of technical assistance or aid in kind conditions that would be provided by the municipalities. Taking into account the arrangements facilitating the regularisation of illegal settlement areas, it could be said that the act does not only envisage the removal of such areas but also intends to improve the physical structure when possible. Yet, even though the Act #775 has been a crucial step in the planning process in Turkey, it could not succeed in the reorganization of the urban structure in a planned manner and its outcome was restricted to the provision of infrastructure and legalization of the current conditions of the ‘gecekondu’ areas. Hence the law promoted the development of spontaneous urbanization in many cities of Turkey.

Figure 9. Derbent in 1982

Although Derbent was never officially declared as a clearance or amelioration zone under this act, in line with the public policies tolerating the development of self-built and illegal housing areas, the area got basic technical support from governmental institutions helping in the establishment of the neighbourhood (See also Intervention Dilemma Report). However, in the 1980s, via several consecutive amnesty acts – such as the Act #2805 and #2981 – illegal settlements were legalized and given preliminary allotment deeds. As the research done by Şen and Ünsal (2014) indicates, amongst the 199 households interviewed 65.7% got their preliminary allotment deeds after the amnesties in 1980s, and 25.5% still does not have any kind of legal paper relating them to their houses (see also Intervention Dilemma Report). With these deeds the inhabitants were only granted the ownership of the land and the land title is to be registered only after the rehabilitation plans for the area are done by the local municipality, which still is not the case in Derbent.

In 1983 the Bosphorus Act # 2960 was declared, bringing limitations to the construction around the Bosphorus zone and regulating the duties and authorities of the institutions responsible for executing the law. According to this act metropolitan municipalities are responsible for making blueprint plans and revisions in ‘seashore and front view’, ‘back view’ and ‘impacted’ zones and local municipalities are responsible for giving the building permits and check the compliance of the projects to the preliminary plans. Also the law defines the standards for buildings deemed ‘illegal’ in the Bosphorus area and designates the actions to be taken in such case. Derbent, according to this act, remains within the borders of the ‘back view’ area so the metropolitan municipality is officially responsible for preparing the blueprint plans for the area.

Meanwhile real estate agents started collecting allotment deeds in Derbent, to sell later on a major part of it to the Oto Sanatkarları Cooperative founded by people who do not themselves live in the neighbourhood. Subsequently, the cooperative filed a suit of partition (izale-I şiyu) against the inhabitants in order to acquire the rest of the land to commence a while later the construction of the Mesa Gated Community for upper-middle class residents marking the first transformation process in the neighbourhood.

36 Besides, the same act would play an important role later on as the neighbourhood association will demand the transfer of the public land to the association in accordance with the Illegal Settlements Act #775
Although we will not refer to the Cooperatives Act #5982 here in detail, it is important to mention that this period was marked by the sprouting of many building cooperatives that undertake the –owner occupied – housing provision for middle, upper-middle class Residents and that had a discernible impact on the urban form and suburbanization in Turkey\(^{37}\). In 1995, suit of partition was resolved through open tendering and Oto Sanatkarları Cooperative acquired 221m\(^2\) land, invalidating the preliminary allotment deeds of the inhabitants.

Until the 2000 no big intervention was made to the neighbourhood although surrounding zones were being developed through the construction of headquarters of big companies, shopping centres, luxury housing along Büyükdere-Maslak axis and gated communities filling up the land left from the decentralization of the industry in Sariyer. The city continued its expansion towards the north engulfing the neighbourhood. With the new developments the land prices increased drastically preparing the right conditions for further investment in the area. Accordingly, between 2002-2005 the Oto Sanatkarları Cooperative signed an agreement with MESA Construction Company and the MESA gated community for upper-middle income families was built on 90,000 m\(^2\) of the land causing 98 gecekondu houses to be demolished\(^{38}\).

While the rest of the neighbourhood was not affected then, the demolition pressures continued as the area was now optimal for investment as land values continued to increase with the metro line reaching up to Derbent, and the presence of other ongoing projects around Bosphorus, such as the Park Orman

\(^{37}\) We should also note that one of the main aims of the foundation of the Mass Housing Administration was to grant credits and subsidies to these cooperatives, hence they are an important element in the national housing policy.

recreation area on the other side of the Büyükdere Avenue, İstinye Park shopping mall, Acibadem private hospital being the most noticeable examples, turning the area into an upper-middle class zone threatening the inhabitants with displacement.

In 2010 Oto Sanatkarları Cooperative decided to build on the rest of the land and signed an agreement with Yorum Construction Company to construct on the rest of the 131,000m² and. Soon the residents received demolition notifications, however after public demonstrations and petitions sent to the officials the construction company tried a different strategy through private negotiations with certain households who seemed to be in favour of the transformation project and offered them apartments in the TOKİ Kağıthane social houses. We should also note that making private negotiations with the inhabitants of low income neighbourhoods where development projects were being planned and offering them social housing has been a common strategy since the 2000’s and revealed the relationship between private developers and TOKİ in Turkey, revealing the urban planning approach being implemented by the government policies. Also the Act # 5393 on Municipalities granted the ownership rights to the inhabitants in gecekondu areas according to the #2981 Amnesty Act in urban transformation projects, making the land or housing sale possible in agreement with TOKİ. In Derbent, only around 40 families agreed to leave Derbent and the rest stayed to pursue legal actions against the project.

In 2011 Derbent Mahallesi Yerleşimcileri Konut Yapı Kooperatifi (Inhabitants’ Housing Cooperative) was founded in order to organize against the displacement threat and to secure the rights of the residents and protect them from eviction. As Hanisch and Çekiç (2014) suggest; “[a]lthough, they have similarities and links with the traditional cooperative movement and operate in accordance with the Cooperative Law, housing cooperatives in Sarıyer have a particular by-law and define themselves as neighbourhood cooperatives depending on this difference. Derbent Cooperative and other new ones in Sarıyer have been established without a property and not to build but to defend an existing residential environment”.

Simultaneously Istanbul Metropolitan Municipality also got involved in the transformation projects, as it also owns over 10 ha of land in the neighbourhood. A year later, Yorum Construction Company and Istanbul Metropolitan Municipality Mayor Kadir Topbaş, presented the project together in Cannes International Real Estate Fair MIPIM. In August 2012, 1/5,000 Revision Conservation Master Plan and 1/1000 Revision Conservation Development Plan concerning the Transformation of Gecekondu areas in Derbent approved by Ministry of Environment and Urban Planning, indicating also to the shift in the planning legislation giving the planning power of illegal

39 This has been an ongoing implementation in many gecekondu transformation areas in Istanbul, engendering housing right violations and displacement of the populations as the new apartment values and living costs in areas provided by TOKİ surpassed the solvency of many families. See also the part concerning the Act #5393 on Municipalities in this report.

40 Cooperative Responses to Urban Transformation: Lessons from Istanbul and Berlin, Markus Hanisch, Tuba İnal Çekiç, 54rd Congress of the European Regional Science Association August 26-29, 2014, Saint Petersburg, Russia Regional Development & Globalization: Best practices
settlement areas to the ministry with the Cabinet Decree 648&644 on the Duties and Organization of the MoEU which was before under the authority of the municipalities as we have mentioned before in part I. This intervention shed light on the determination of the central authority to realize transformation projects in gecekondu areas which are now part of the land stock that has been increasing in value due to the investments realized around it and due to their strategic locations. Also, as we have also mentioned before, the authority given to the ministry underlines the top-down and arbitrary nature of the planning approach, especially when it comes to urban transformation projects. Sarıyer Municipality filed a lawsuit against the plans referring to the non-competence of the Ministry to make plans in the Bosporus Area and arguing that the plans made disregards the ‘protection’ status of the area and covers only the area where the gecekondu settlements are found raising doubts about a tacit intention of an urban transformation project.

**Figure 11. The Urban Transformation Project planned by IMM**

![Image of urban transformation project](http://www.radikal.com.tr/turkiye/derbentte_riskli_alana_iptal_projeye_durdurma_karari-1189527)


In January 2013, while the court case continues, Derbent was declared as ‘Risk Zone’ and as well as a ‘reserve area’ for the construction of prefabricated houses during the construction stage in the neighbouring Ferahevler by the Council of Ministers applying the Act #6306 on the Transformation of Areas Under Disaster Risk as a legal basis although a research was undertaken by Japanese scientist proving the neighbourhood to be on solid ground. In the scope of this law, the planning authority passed on to the Ministry of

41 The Mass Housing Administration has the authority to make plans in gecekondu transformation areas as the Act #2985 Clause 2 defines; on the other hand the ministry of Urban Planning and Environment (Clause 4) also has the power to make plans of all scales approve them, execute expropriations...concerning the practice of the authority given to the mass housing administration given by the Act #2985 and Act #775 on Illegal Settlements. See part I of this report for more formation on the details of the authorities granted to these institutions by the law.
Environment and Urban Planning, bypassing the plan making authority of the Metropolitan Municipality granted by the Bosphorus Act #2960. Sarıyer Municipality objected to the decisions and filed a case against the risk zone decision. According to the authority given to the Ministry, with the Act #644, a protocol was signed between the Ministry and Istanbul Metropolitan Municipality commissioning the municipality to undertake the implementation of the urban transformation in Derbent neighbourhood.

The Neighbourhood Association filed a lawsuit against the risk zone decision and in April 2014, The decision of ‘Risk Zone’ in Derbent and ‘Reserve Area’ in Ferahevler designated for the construction of prefabricated houses during the construction stage is annulled by the state council and accordingly the execution of the project done by IMM and Yorum Construction Company is suspended by court order. Although no new action is taken neither by the Ministry nor by the Metropolitan Municipality to reinitiate the transformation in Derbent, the neighbourhood association continues to get organized around the subject.

Figure 12. Borders of the Risk Zone declared by the Ministry of Environment and Urban Planning

Also, like many other gecekondu neighbourhoods in Derbent, the residents recently handed in petitions demanding the free transfer of public land to the inhabitants, referring to the regulations of the Act #775 on Illegal settlements that enables (Clause 13) the allocation of zoned lands giving precedence to building cooperatives that apply in the name of all resident, so they can transform the area themselves.

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42 The article dispensing the Act#6306 from the limitations of other private acts, such as the Bosphorus Act in this case, was annulled by the constitutional court decision in 2014 invalidating its supremacy over the planning regulations and subjected it to the limitations of other legislations. See the part concerning the Act #6306 on the Transformation of Areas Under Disaster Risk in this report.
Derbent represents a case in which ownership status of the inhabitants create a handicap for the resolution of the illegal status of the neighbourhood. Although amnesties and amelioration plans provide a legal tool to solve the situation it seems as the political pressure on the municipalities and the strategic agenda of the central governments that pay attention to the problems in these areas only when they need political support engender populist remedies neglecting comprehensive urban planning regulations aiming to create healthier and planned environments for all. On the other hand the historical evolution of the neighbourhood and its surroundings prove the effect of neoliberal urban policies and development strategies on ‘gecekondu’ neighbourhoods such as Derbent. The increasing land values and large-scale investments threaten the future of such areas as they are one of the few ‘available’ lands for the realization of privileged projects of the capital. As we have mentioned many times before in this report the legal framework is also being reshaped to adjust to the needs of the capital and facilitate its gain over urban land. Derbent case perfectly reveals the authoritarian turn in the legislation paving up the way for a neoliberal urbanization model as well as the increasing power of the central powers managing the rules of the game arbitrarily to ensure the realization of such projects and especially the urban transformation taking place in Istanbul.

Further, as the Manager of Urban Design Manager Department of the Sarıyer Municipality, Murat Durna, states that Derbent case represents the authority conflict between various institutions in terms of plan making and inconsistent legislations. He affirms that there is an uncertainty created as many laws with intercepting jurisdictions are in force at the same time in Derbent such as the Bosporus act, Amnesty Act #2981, Illegal Settlements Act #775 and finally the Disaster Act #6306 making it difficult to decide which one is to be applied under certain conditions. The manager also mentions that due to this ambiguity the state council has to make a final verdict on the supremacy of laws or many cases are submitted to the court to resolve authority issues such as the case in Derbent between the ministry and the metropolitan municipality on making plans. This situation also refers to the general ambiguity created in the planning legislation especially during the last decade reducing the urban process almost only to a sequence of lawsuits being opened by chambers and residents against the urban intervention decisions and projects managed by the central authority, as well as for the cancelation of certain clauses in the laws that disregard the public interest, and court rulings as we have mentioned in the previous sections. Durna also remarks that the Ministry of Environment and Urban Planning acts as the Central Municipality for the whole country making plans, revisions, and project based urban interventions and ignores the supremacy of court decisions and also once the Mass Housing Administration enters the picture the local municipalities lose control over the jurisdiction of neighbourhoods. However Durna expresses that the municipality has an influence indeed by appealing to the court against plans that breach the integrity of urban plans and counter the public interest principle by violating the rights of inhabitants. However, this also affirms the secondary role given to the local municipalities dominated by the decisions and powers of the centre that has been more and more the case in Turkey since the 2000s especially when it comes to places where the local authorities are from opposition parties that do not share the political strategies and urban policies conducted by the centre. Finally we could also remark that the neighbourhood organization and
the legal means used such as getting organized under a legal entity, the cooperative, and using the rights granted by the law to ask for the transfer of the public land; both strengthening their customary rights to land and using the laws against the top-down planning approaches led by the central government that avoids the needs of certain groups and maintains an urban planning model in favour of the capital shaping the cities according to its demands.

**Conclusion**

The more and more salient relation between the Law and urban planning has become one of the most scrutinized topics of both the academic and the general agenda as the production of built environment became one of the prime wheels of the Turkish economy. On the other hand, the analysis of the urbanization process unveils the economic policies, the re-scaling of the administrative system and the ever increasing authoritarian stance taken by the state since the 2000’s coinciding with the implementation of aggressive neoliberal policies.

Although the regulation system and the legislations have always been closely connected with the functioning of the politic and economic system, the division among the executive and legislative powers of the state have never been this ambiguous and the laws this partial in favour of the dominant actors leading the economic structure. Roughly speaking, until the 1980’s the country went through a state-led industrialization and growth model while the urban development took shape according to such mode of production. Even though the central institutions were in charge of governing the urban processes and legal frameworks existed to steer the urban planning, the issues such as the gecekondu development transpiring as a repercussion of the industrial growth model were left to be resolved mainly by bottom-up and self-organized practices. The minimal state intervention regarding uncontrolled and unplanned urban development could be interpreted as a means of substitution to cover up for the lack of welfare policies of this period. When the welfare mechanisms fell short of providing housing and wealth distribution, the ‘laissez-faire’ attitude and the legal regulations enabled lower and middle classes to acquire economic gain over urban land and provided them the means of sustenance. As for the 1980’s, this period became the setting for a neoliberal turn witnessing a shift in economic and political principles and a compatible policy adjustment in order to improve the accumulation regime and its regulatory system (Jessop, 2002). The states all around the world assumed a role in aiding the national adjustment to global pressures and a capitalist social formation just like in Turkey. As Jessop (2002:459) accurately expresses “this is reflected in the greater continuity in institutions and modes of policymaking, even as distinctive national variants of a new mode of regulation are emerging with a mix of neo-statist, neo-corporatist, and some neoliberal features.” Correspondingly we could claim that the 1980’s in Turkey have been a period when a neoliberal tendency in the state policies gained weight, although in time this tendency turned increasingly to a neo-statist approach, especially after the 2000’s. The policies implemented during the 1980’s opened up slowly the way for the global capital and new international and local actors entered the stage regarding the urban planning process. Despite an influential deregulation policy loosening the ‘rules of the game’, enabling the market rules to gain ground and piecemeal interventions to be implemented in urban development
through granting privileges to certain institutions, the holistic planning ideal and the notion of ‘public interest’ was still mostly sustained. Yet, approaching the 2000’s, the deregulation policies and strengthening of local administrations took a turn towards the creation of suitable conditions for the reproduction of capital instead of the labour, underlining the deepening of the rescaling of the state structure (Tekeli, 1987). Accordingly, the urban services produced pursued the satisfaction of the needs of the capital and the upper-middle classes instead of embracing all the users of the city. Moreover, the construction of infrastructure to sustain the economy and projects to increase the global attraction of cities were being promoted instead.

Finally, the 2000’s transformed the ‘eager’ neo-liberalist policies into ‘aggressive’ and coercive practices raising the importance of a centralization process in the meantime. The urban planning legislation went through a de-regulation and a re-regulation at the same time since the 2000’s. As the planning legislation was loosened further to attain a more and more flexible structure clearing off the possible obstacles- especially legal ones- in front of capital’s investment potentials, it gained an authoritarian touch under the control of the central government. The local administrations authorities were expanded and the laws were rendered more flexible since the 2000’s in order to expedite the capitals spatial movement and to facilitate the implementation of lucrative, project-based urban interventions. Yet the expansion of local powers was not intended as a genuine means to democratize the urban planning process. The central institutions on the other hand, were vested with powers such as the authority to approve plans ex official and make plot based amendments, invalidating and preponderating the local administrations. On the other hand, with the recent amendments made in the legislation many new institutions were included in the planning process. Moreover, the recent manifold of laws passed successively was charged with ambiguous statements conflicting with the existing planning legislation. This situation not only created a chaotic situation in which it became quite complicated to decide who has the right to make plans or whether the plan decisions taken by these numerous authorities contradict previously made plans, but it also engendered a ‘legislative inflation.’ Consequently the urban planning laws are ‘mystified,’ making it possible for central institutions furnished with ambiguous powers to implement radical and contested projects mostly serving the capital’s intervention on the urban fabric. On the other hand, most of these conflicting plans and decisions end up in the Supreme Court as the final recourse incorporating the judicial power in the planning process as well. As a consequence, conversely to the bottom up forces of the previous periods, the recent shift in the urban planning legislations make the state the main actor of ‘unplanned’ and ‘uncontrolled’ urban growth eliminating any kind of control mechanism over the decisions of the central structure on the urbanization process.

One of our cases Kartal represent the conflict between the new planning legislations and the old ones as well as the two different approaches that lay behind these legal frameworks. Although the planning of Kartal was initiated by a top-down decision of the central government and its implementation anticipated the adaptation of Zaha Hadid’s flexible design concept to an urban plan, the process failed to comply with the participatory urban planning
principles as well as the rigid and hierarchical planning legislation in Turkey. Only certain actors such as the İstanbul Metropolitan Municipality (İMM), the association established by industrialists (KENTDER), ZHA, Kartal district Municipality, and an agency, Kentsel Strateji, carrying out the negotiations in the name of the industrialists were involved in the decision making process. Yet it was finally the IMM approving the much contested and sued plans bypassing the urban transformation power given to the local municipalities. On the other hand, in order to resolve the stalemate and implement the Kartal transformation project a number of different authorities with plan making powers got involved in the picture. Ministry of Environment and Urban Planning uses its power to make plan changes for the area of Yunus Cement Factory in Kartal in 2012, selling it to Emlak GYO (Emlak Real Estate Investment Partnership) –to which TOKİ holds profit sharing stocks - and the project was handed to private construction company to be realized in exchange for profits of development. Secondly, using the Disaster Act # 6306 enacted in 2012 Yunus Neighbourhood was declared as an area at risk area, which authorized Ministry of Environment and Urban Planning to make the plan for this area. Lastly, the Privatization Administration associated with the Prime Ministry declared the stone quarry, which was a public land on the northern part of the Kartal project area under the scope of Privatization Act. In this way Kartal case reveals the top-down partial planning practices based upon recently introduced laws used by different centralized actors having an active role in urban transformation. Moreover, it shows that the intervention of multiplicity of laws and actors vested with planning powers in restricted areas in the city disregard the upper scale planning principles and contradict with the holistic planning approach.

Further, our second case Derbent underlines the unrestrained control of the central institution’s powers, given by the recent legislation, in order to remove the obstacles in front of the implementation of profitable real-estate projects in favour of the capital. On the other hand, it also affirms the eradication strategy of the government in the face of informal settlements, as they constitute the obstacle vis-à-vis the inclusion of valuable urban land in the real-estate sector. Derbent transformation project exposes how the new laws and especially the Disaster Act # 6306 can be used to overcome any hindrance as it gives almost unlimited power to the Ministry of Environment and Urban Planning facilitating the realization of the government’s urban agenda at any cost. Moreover it also elucidates how this law is used to bypass any former law – the Bosporus Act in this case- aiming to protect certain zones of the urban fabric. Besides it also highlights the fact that new laws under the guise of ‘public health,’ ‘public interest’ and ‘public safety’ actually work in favour of the closely knit relationship between the housing/construction sector, urban land and capital investment as well as the state’s role in the regulation of this relationship. Lastly, although it shares similarities with Kartal in terms of bypassing local administrations’ powers by the central authority, neglect of the ‘participation’ principle and a top-down and piecemeal urban intervention approach, high level resistance of the inhabitants result in the annulment of the ‘risk zone’ decision on the neighbourhood, warding off the danger of being transformed under the ‘Disaster Act’ and revoking the authority of the Ministry of Environment and Planning to make plans in the area under this act. It also
proves the arbitrary use of the Disaster Act especially in areas that are deemed ‘socially dilapidated’ without any scientific justification revealing the economic motives behind the authorities’ decisions.

Finally, we could say that urban space has become the prime tool of value extraction while the production and reproduction of space has become the predominant mode of capital accumulation. In such a context, the Turkish urban planning legislation shows a tendency towards centralization and deregulation. Yet we observe the authoritarian touch, privileges bestowed to certain institutions, exemptions from judicial supervision and the conflict between the executive, legislative and judicial powers of the state becoming increasingly evident. The urban planning –though not limited only to it - legislative system is gradually being transformed to remove any kind of obstacle in front of the production of urban space and especially the capitalistic interventions realized in collaboration with large-scale investors becoming an ever influential actor in urban planning. The laws passed one after another as well as frequent plan revisions affirm that the legislative amendments are made in order to tailor the new set of legislation to the changing needs of the capital with every moment along with the need to overcome the legal chaos created by these conflicting rules.

That being the case, the urban planning in Turkey has been losing ground, since the 2000’s, in terms of instituting a participatory, transparent approach and practice in the face of repressive and coercive governance of the built environment bypassing any kind of planning principles. The uncontrolled authority given to new planning actors and institutions put planning in a position that demands constant defence of the these principles that pursue the public interest and planning for all. And yet newly implemented laws impede urban planning to become the grounds open to all the possible users of the city holding the right to the production of the urban space, almost to the detriment of the notions of ‘common’ and ‘rights’ in public space. In this context, improving the tools and the language of planning become efforts almost in vain. Yet the voices raised against the remodelling of the legal structure, authoritarianism and centralization processes together with the ascending dichotomy between the recently implemented planning laws and the judicial power shows that the planning model that has been established over the time in Turkey is taking a stand against becoming merely a tool for the urbanization of the capital.
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**Regulation on Spatial Planning**


**Interviews**

Secretary of the Board of Chamber of Architects; Ali Hacıalioğlu

Secretary of the Board of Chamber of Urban Planners; Akif Burak Atlar

Istanbul Deputy Manager of the Ministry of Environment and Urban Planning (Urban Transformation Office); Dr. Hande Yalçınataş

Chair of the Board of Chamber of Architects, İstanbul Kartal District, Esin Köymen

Associate Professor Şence Türk, İstanbul Technical University, Faculty of Architecture, Urban and Regional Planning Department

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Municipality of Sarıyer

**Laws**

Act #3194 on City Planning

Act #5393 on Municipalities

Act #5216 on Metropolitan Municipalities

Act #2985 on Housing Development Administration

Act #6306 on the Transformation of Areas Under Disaster Risk
Appendixes

Appendix 1. Act #3194 on City Planning

1. Aim of norm

City Planning Law No. 3194 was enacted in 1985 in order to ensure that settlements are built and developed according to plans, principles of science, public health and environmental conditions. The law includes provisions that concerns the plans that will be made and public and private structures that will be built in and outside the municipal and adjacent areas, and it defines various terminology pertaining to planning and applications such as Master Development Plan, Implementary Development Plan, Building Area, Building Block, Building Plot, Cadastral Block, Cadastral Parcel, Structure, Building, Relevant Administration, Ministry, Municipal Adjacent Area, Land Use Plan, Engineers, etc..

2. Main Output integrated

City Planning Law No. 3194 stipulates certain provisions pertaining to planning and zoning. Foremost among them are Principles concerning development plans. The law mentions principles concerning planning stages, development plans and city maps, preparation and enactment of plans, the authority of the Ministry concerning development plans, development programs, and main principles to urban planning. Principles regulating the organization of parcels are also included in the law. The most important among those principals is Article 18, which regulates the organization of land and building plots. Principles relating to buildings include building permits, inspection, project authorship, technical responsibility, procedures to be performed for buildings with or without permit, measures which needs to be taken for the well-being of people, and administrative sanctions. The conditions concerning the application of the provisions of the law have been defined in various bylaws, which were enacted and implemented within the scope of the law since 1985 until today. However, these were all subjected to the Regulation on Preparation of Spatial Plans, which was enacted by the Ministry of Environment and Urbanization on 14.06.2014.

3. Owner of the norm

The units responsible for implementing the law are the municipalities within municipal boundaries and adjacent areas, or the governorships elsewhere. The Ministry, which was cited as Ministry of Settlement and Public Works in the original form of the Law, but which has become Ministry of Environment and Urban Planning, is authorized, where necessary, to make, have it made, amend and approve ex officio, partially or wholly, development plans and amendments relating to infrastructure, superstructure and transmission lines concerning public structures and power facilities; plans and amendments that must be made due to disasters affecting public life, or mass housing implementations or implementation of the Informal Settlements; the land
development plans which concern more than one municipality; or the development plans or settlement plans of places with airport or air or sea connection or with railways or airways passing through or nearby by informing the relevant municipalities or other administrations and collaborating with them as necessary.

As it will be explained below, through the amendment to the Law made in 1994, the task of preparing development plan amendments and localized development plans and appropriate development planning status of the land and land lots within municipal boundaries and adjacent areas owned by entities included in the privatization program was given to the Prime Ministry Privatization Administration, and the authority to approve them was given to the Privatization High Council. With this amendment, the authority of the municipalities to make plan decisions for lands for which privatization decision has been given was taken away.

4. Historic use of the norm (evolution)

The first example of modern City Planning Law was the “Ebniye Nizamnameleri” (Building Construction Regulations) which were enacted in late 1800s. This law, which was described as the Building Law, was inspired by its Western counterparts, and it introduced various rules concerning various subjects, e.g. width of the roads, densities that affected urban texture, height of buildings, etc. This regulation included various provisions concerning the future and development of cities, and introduced the obligation to prepare maps for cities. In the Republic era, the Municipality Law No. 1580, which was enacted in 1930, established municipality organizations to satisfy common and civil needs of town residents at a local level. The Law No. 1580 is regarded a very contemporary regulation according to its period.

In 1933, Municipal Law No.2290 on Buildings and Roads was enacted concerning the preparation and implementation of city plans by the municipalities. With this law, issuing certificates to authorities who will prepare city plans, and transactions such as controlling and certifying these plans became the duties of the Ministry of Interior. The City Planning Law concept was first introduced into our legislations with the Law No. 6785 dated 9 July 1956. Following this Law, the Ministry of Urban Development and Settlement was established, and it was empowered as the only entity that approves the municipalities’ plans. Establishment of the Ministry has been an important step in the preparation and implementation of development plans. On 9 May 1985, City Planning Law No. 3194 was introduced and the municipalities were brought to the forefront with respect to its implementation, and the functions of the Ministry of Development and Settlement were reduced.

Many amendments were made to the Law No. 3194 since its enactment. Most important ones that concern our study were introduced in 1994 (Article 41 of the Law No. 4046), 1997, and 2005. With the amendments made in 1994 and 1997, the Prime Ministry Privatization Administration was granted the authority to prepare plans. 2005 amendment was enacted in 03.07.2005.
(Article 12 of the Law No. 5398). With this amendment, Annex-3 was added to the City Planning Law, and the duty of the Privatization Administration’s to prepare plans, and the authority of the Prime Ministry Privatization Administration to approve plans was expanded so as to include the areas which are included in the Coastal Law No. 3621, and Tourism Promotion Law No. 2634.

On the other hand, the last paragraph of Article 9 of the City Planning Law stipulates that the Ministry of Public Works and Settlement – which is today’s the Ministry of Environment and Urbanization - shall be authorized to approve ex officio the plans prepared or caused to be prepared at places where the investments shall be made in the nature of service privatization. In addition to these amendments and additions, the Constitutional Court annulled certain paragraphs of the Law for various reasons - for example, not subjecting some specially prepared plans to the restrictions in the city planning legislation was found to contradict with the principle of equality in the Constitution.

5. Acceptance/ Controversies

When the City Planning Law was introduced, transfer of central government’s authority to make plans to local governments was welcomed as a positive development, and it was regarded as the most significant feature of the law. Moreover, the systematization of planning, the inclusion of provisions which aims to reflect the physical planning stages and decisions based on social-economic foundations to space, the handling of areas with and without a plan as a whole, and increasing the effectiveness of the governorships and municipalities in the plan preparation and implementation procedures were considered very important with respect to transferring the authority to approve plans to governorships and municipalities.

However, an evaluation of the amendments made to Law No. 3194, particularly those introduced after 2000s, demonstrates that planning was monopolized, that the power was concentrated in the central administration, and that a course was adopted that contradicted the general trend in a world where local governments became more important. On the other hand, it is said that the Tourism Promotion Law, Law on Protection of Cultural and Natural Assets, Istanbul Bosphorus Law and the laws pertaining to privatization which started to be introduced starting from 1990s and which are still in effect poked holes in the legislation by creating exceptional areas in the City Planning Law. Due to the fact that plans to be prepared for areas which are subject to the Bosphorus and Privatization Laws are completely exempt from the city planning legislation, and that they can determine their own restrictions, it is believed that the City Planning Law was damaged by such special laws.

The creation of institutions with the power to prepare and approve plans by granting such privileges, and the introduction of different authorities and restrictions paved the way for the preparation of plans and projects which were disintegrated in terms of sector and space, and expressions which contradicted with each other and with general principles of law and legal system were included in the city planning legislation.
As the effect of global urban and regional development on planning and cities increased in 1990s, spatial planning concept was started to be discussed again, and accordingly, the said law proved to be inadequate in satisfying the needs, and the problems it caused in practice started to increase, and by early 2000s, making amendments to the City Planning Law, and introduction of local governments reform became major topics of discussion (Özden, 2013). An examination of the amendments to the Law starting from 1990s clearly demonstrates that the planning philosophy evolved from an integrated planning to disintegrated projects in Turkey.

Appendix 2. Act #5216 on Metropolitan Municipalities

1. Aim of norm

The purpose of the Municipal Act No. 5393 is to lay down the establishment, organs, administration, duties, powers, responsibilities and working procedures and principles of municipalities.

2. Main Output integrated

Article 18 and 73 of the Municipality Law, which contains provisions concerning the establishment, borders, organs, duties, powers and responsibilities, organization and personnel, inspection, financial matters and other subjects concerning the municipalities, addresses the authority to prepare plans and urban transformation projects. In accordance with Article 18, it the municipal council is also authorized to approve the municipality’s development plans, and in metropolitan municipalities (like Istanbul) and provincial municipalities where the municipal boundaries are expanded as far as the provincial borders, to adopt metropolitan land use plans.

The first provision under the Miscellaneous Provisions heading in Part One, Section Six of the Law concerns the urban transformation and development areas. Article 73 (as it was amended on 17.06.2020) states the following as to urban transformation: Municipalities may, by a resolution of the municipal council, carry out urban transformation and development projects in order to create housing areas, industrial areas, business areas, technology parks, public service areas, recreation areas and all sorts of social facility areas, rebuild and restore worn-out parts of the city, preserve the historical and cultural heritage of the city or take measures against earthquake. In order for an area to be designated as an urban transformation and development area, it must be appropriate for the realization of one or more of the foregoing be located within the boundaries of the municipality or adjacent areas. However, a decree of the Council of Ministers issued upon the recommendation of the Ministry of Environment and Urban Planning shall be required to declare those areas owned or used by the public as an urban transformation and development area and implement accordingly.“

Within metropolitan municipality and adjacent areas, only the metropolitan municipalities are authorized to declare urban transformation and development areas. If the municipal council deems appropriate, the district municipalities
can implement urban transformation and development projects. These provisions do not give the urban transformation authority to the decision and implementation of district municipalities in cities where metropolitan municipalities have been established (e.g. Istanbul). The boundaries of this authority is very expansive, and the Metropolitan Municipalities are authorized to prepare and issue all development plans, subdivision plans, building construction licenses, occupancy permits and to perform similar building procedures relation to urban transformation and development plans to be prepared by Metropolitan Municipalities, and to exercise the powers granted to the municipalities under City Planning Act No. 3194.

3. Owner of the norm

District municipalities are responsible for the implementation of this law. The tasks have been shared among district and metropolitan municipalities according to the distribution of duties, responsibilities and powers defined in the Metropolitan Municipalities Act No. 5216. City Planning Act No. 3194, on the other hand, is the law the municipalities use when performing their duties concerning planning and implementation.

4. Historic use of the norm (evolution)

The Municipality Law No. 1580 enacted in 1930, the General Healthcare Law No. 1593 which was enacted right after the former one, and the Municipalities Construction and Roads Law No. 2290 dated 1933 have introduced important regulations for municipalities.

Particularly the Law No. 1580 charged municipalities with the performance of all local services, which is a very important development under those circumstances. Moreover, the municipalities are also authorized to carry out all kinds of works that might be beneficial to the towns and the people living there.

The Municipal Act No. 5393, which replaced the Municipal Act No. 1580, and which establishes the fundamental principles of municipal administration, is implemented in all provincial, district and town municipalities that lie outside the scope of Metropolitan Municipalities Act No. 5216, and in metropolitan municipalities and metropolitan district municipalities in relation to subjects which are not addressed in the Law No. 5216, and which do not contradict the said law.43

5. Acceptance/ Controversies

The most important change introduced by the law is that the municipalities are authorized to produce housings. Article 69 of the Municipal Act No. 5393 authorizes the municipalities to build housings, and Article 73 authorizes them to implement urban transformation. Although the duty to build housings defined in Article 69 was given to municipalities in Law No. 5656 in 1951 for the first time, the duty to implement urban transformation which is defined in the article was given for the first time. The Municipalities started to construct

43 http://www.migm.gov.tr/Mahallildareler.aspx?DetayId=8
housings through the companies they are a partner of (KİPTAŞ in İstanbul). The housings which were built under Law No. 5656 were social housings whereas those being built today target the market. The fact that the municipalities are authorized with the Law No. 5393 to determine urban renewal areas by themselves is very important in this context. On the other hand, the said Law also grants expropriation power in relation to urban transformation, which paved the way for the municipalities to develop and sell market-oriented housings on any land they desire (from interview with Şence Türk).

Moreover, the Law No. 5998 Concerning the Amendment to the Municipality Law made important changes in Article 73 of the Municipality Law. Accordingly, they are given their right in urban transformation and development project areas in the event they reach an agreement with the owners of real estate located in urban transformation and development project areas and the with the persons who were entitled under Law No. 2981 dated 24/2/1984 on Certain Actions Applicable to Buildings Violating the Legislation on Land Development Planning and Squatter Houses, and Law No. 6785 on Amending an Article of the Law on Land Development Planning and Control. On the other hand, although it is stated in the Law (Additional Sentence: 10/9/2014 – 6552/122) that “The real estates transferred to the municipality through agreement cannot be attached. The squatters who are not included within the scope of Law No. 2981 are given their rubble and tree compensations, or the municipality may sell lands or housings located outside urban transformation and development projects based on its means. They may sell housings to people in this scope by cooperating with the Mass Housing Administration. The rubble and tree compensation is set off against land or housing fees”, in practice the squatters in the urban transformation project areas cannot benefit from this situation. The fact that the said fees are very low prevents them from owning real estates in their own living spaces or in other parts of the city.

Appendix 3. Act #5393 on Municipalities

1. Aim of norm

The purpose of the Municipal Act No. 5393 is to lay down the establishment, organs, administration, duties, powers, responsibilities and working procedures and principles of municipalities.

2. Main Output integrated

Article 18 and 73 of the Municipality Law, which contains provisions concerning the establishment, borders, organs, duties, powers and responsibilities, organization and personnel, inspection, financial matters and other subjects concerning the municipalities, addresses the authority to prepare plans and urban transformation projects. In accordance with Article 18, it the municipal council is also authorized to approve the municipality’s development plans, and in metropolitan municipalities (like Istanbul) and provincial municipalities where the municipal boundaries are expanded as far as the provincial borders, to adopt metropolitan land use plans.
The first provision under the Miscellaneous Provisions heading in Part One, Section Six of the Law concerns the urban transformation and development areas. Article 73 (as it was amended on 17.06.2020) states the following as to urban transformation: Municipalities may, by a resolution of the municipal council, carry out urban transformation and development projects in order to create housing areas, industrial areas, business areas, technology parks, public service areas, recreation areas and all sorts of social facility areas, rebuild and restore worn-out parts of the city, preserve the historical and cultural heritage of the city or take measures against earthquake. In order for an area to be designated as an urban transformation and development area, it must be appropriate for the realization of one or more of the foregoing be located within the boundaries of the municipality or adjacent areas. However, a decree of the Council of Ministers issued upon the recommendation of the Ministry of Environment and Urban Planning shall be required to declare those areas owned or used by the public as an urban transformation and development area and implement accordingly.

Within metropolitan municipality and adjacent areas, only the metropolitan municipalities are authorized to declare urban transformation and development areas. If the municipal council deems appropriate, the district municipalities can implement urban transformation and development projects. These provisions do not give the urban transformation authority to the decision and implementation of district municipalities in cities where metropolitan municipalities have been established (e.g., Istanbul). The boundaries of this authority is very expansive, and the Metropolitan Municipalities are authorized to prepare and issue all development plans, subdivision plans, building construction licenses, occupancy permits and to perform similar building procedures relation to urban transformation and development plans to be prepared by Metropolitan Municipalities, and to exercise the powers granted to the municipalities under City Planning Act No. 3194.

3. Owner of the norm

District municipalities are responsible for the implementation of this law. The tasks have been shared among district and metropolitan municipalities according to the distribution of duties, responsibilities and powers defined in the Metropolitan Municipalities Act No. 5216. City Planning Act No. 3194, on the other hand, is the law the municipalities use when performing their duties concerning planning and implementation.

4. Historic use of the norm (evolution)

The Municipality Law No. 1580 enacted in 1930, the General Healthcare Law No. 1593 which was enacted right after the former one, and the Municipalities Construction and Roads Law No. 2290 dated 1933 have introduced important regulations for municipalities.

Particularly the Law No. 1580 charged municipalities with the performance of all local services, which is a very important development under those circumstances. Moreover, the municipalities are also authorized to carry out all kinds of works that might be beneficial to the towns and the people living there.
The Municipal Act No. 5393, which replaced the Municipal Act No. 1580, and which establishes the fundamental principles of municipal administration, is implemented in all provincial, district and town municipalities that lie outside the scope of Metropolitan Municipalities Act No. 5216, and in metropolitan municipalities and metropolitan district municipalities in relation to subjects which are not addressed in the Law No. 5216, and which do not contradict the said law.44

5. Acceptance/ Controversies

The most important change introduced by the law is that the municipalities are authorized to produce housings. Article 69 of the Municipal Act No. 5393 authorizes the municipalities to build housings, and Article 73 authorizes them to implement urban transformation. Although the duty to build housings defined in Article 69 was given to municipalities in Law No. 5656 in 1951 for the first time, the duty to implement urban transformation which is defined in the article was given for the first time. The Municipalities started to construct housings through the companies they are a partner of (KİPTAŞ in İstanbul). The housings which were built under Law No. 5656 were social housings whereas those being built today target the market. The fact that the municipalities are authorized with the Law No. 5393 to determine urban renewal areas by themselves is very important in this context. On the other hand, the said Law also grants expropriation power in relation to urban transformation, which paved the way for the municipalities to develop and sell market-oriented housings on any land they desire (from interview with Şence Türk).

Moreover, the Law No. 5998 Concerning the Amendment to the Municipality Law made important changes in Article 73 of the Municipality Law. Accordingly, they are given their right in urban transformation and development project areas in the event they reach an agreement with the owners of real estate located in urban transformation and development project areas and the with the persons who were entitled under Law No. 2981 dated 24/2/1984 on Certain Actions Applicable to Buildings Violating the Legislation on Land Development Planning and Squatter Houses, and Law No. 6785 on Amending an Article of the Law on Land Development Planning and Control. On the other hand, although it is stated in the Law (Additional Sentence: 10/9/2014 – 6552/122) that “The real estates transferred to the municipality through agreement cannot be attached. The squatters who are not included within the scope of Law No. 2981 are given their rubble and tree compensations, or the municipality may sell lands or housings located outside urban transformation and development projects based on its means. They may sell housings to people in this scope by cooperating with the Mass Housing Administration. The rubble and tree compensation is set off against land or housing fees”, in practice the squatters in the urban transformation project areas cannot benefit from this situation. The fact that the said fees are very low prevents them from owning real estates in their own living spaces or in other parts of the city.

44 http://www.migm.gov.tr/Mahallildareler.aspx?DetayId=8
Appendix 4. Transformation of Areas Under the Risk of Disaster Act # 6306

1. Aim of norm

The purpose of this law which was enacted on 16 May 2012 is to establish procedures and principles for improvement, clearance and renewal in order to establish healthy and safe habitations conforming to technical and artistic norms and standards for areas and in plots and lands which contain risky structures those are under disaster risk.

2. Main Output integrated

The law defines the following terms in relation to areas which are under risk and which will be transformed:

a) Risky Area: An area determined to have been at risk of causing loss of life and property due to its soil structure or the buildings on it by The Ministry of Environment and Urbanization or Mass Housing Administration in coordination with the Disaster and Emergency Management Agency and classified as a risky area by the Council of Ministers upon the proposal of The Ministry of Environment and Urbanization;

b) Risky Building: A building in or outside of a risky area identified as having completed its economic life, as carrying a risk for collapse or severe damage based on scientific and technical data;

c) Reserved construction area: An area designated by the Ministry ex officio or upon demand of TOKI or the Administration and by obtaining the consent of the Ministry of Finance for use as a new area of settlement under this law.

Furthermore, the conditions and procedures established in relation to the areas to be transformed with the Transformation of Areas Under the Risk of Disaster Act # 6306 are described under headings like the determination of risky buildings, authorities pertaining to the determination of risky areas, building, and reserved building areas, assignment and determination of the immovable property, discharge and demolition, implementation procedures, transformation revenues, methods by which the authorities will be used in the urban development planning process, and institutions that will exercise those authorities are laid down with this law. Expropriation, rights of property owners, rent allowances, conditions and procedures for objection etc. are also explained by the law.

The law has caused great controversy among public about two main topics. The first one was the wide authority granted to the Ministry of Environment and Urbanization. Granted with these wide powers, the Ministry is empowered to carry out all kinds of map, plan, project, land and building plot regulation transactions pertaining to risky buildings, reserved building areas and the immovable property upon which risky buildings are built, and to perform land and building consolidation, to purchase the immovable property on these areas, to assign the ownership or development rights of the immovable property to another area, to transform the immovable property to a real estate, to implement procedures based on public and private sector cooperation, to construct buildings or have them constructed through various methods including flat for land or flat for revenue methods, and to determine land shares. Moreover, the Ministry is authorized to determine the procedures and
principles to be implemented by the administrations in relation to rehabilitation, renewal and transformation implementations that will be performed in the urban and rural areas and settlements, and to determine the standards upon which all kinds of planning transactions of all kinds and scales will be based including those pertaining to areas specified by special laws, and to designate these standards through plan decisions when necessary, or to prepare and approve plans which include special standards, and to prepare urban design projects. With this power, the Ministry of Environment and Urbanization is granted the authority to go beyond plan preparation norms and standards defined in the City Planning Law No. 3194.

The second matter of discussion was that this law is a regulation using the disaster-oriented urban transformation as an excuse which in fact contained sanctions on the basis of areas, plots or even buildings that bordered coercion. The demolition of buildings located in the risky area which do not require to be demolished but which are demolished to ensure “area integrity” is another matter of discussion. The powers which paved the way for the transformation through the 2/3 majority that is set forth as a method of solving the disputes among owners, and the provisions which grant urgent expropriation powers to The Ministry of Environment and Urban Planning to resolve situations which are more unsolvable indicate that the transformation to be carried out as a measure against disaster risk will be more obligatory than voluntary, and that the law’s sanction powers are too wide.

3. **Owner of the norm**

According to the Law, the request for the determination of a risky area can be made by TOKİ or municipalities and the special provincial administration, and the request for determination of a risky building can be made by building owners. The Ministry of Environment and Urbanization and the municipalities, if authorized by the Ministry, will be responsible within the municipal and adjacent areas, and the special provincial administrations and TOKİ will be responsible within other areas for the implementation of this law. During implementation, the Ministry will have the authority to prepare maps, plans and projects. The Ministry has the power to carry out very small scale procedures such as parcelling regulation if it deems necessary.

4. **Historic use of the norm (evolution)**

The law concerning the aids to be made to those affected by the earthquake in Erzincan in 1939, and the Law on Measures to be Taken Before and After an Earthquake enacted in 1944 were the first earthquake-oriented laws in Turkey. In 1945, “Turkey Earthquake Zones Map” and “Turkey Earthquake Zones Building Bylaw” were introduced. The City Planning Law enacted in 1956 regulated the display of disaster risks when determining the settlement areas, and technical responsibility system and building inspection, and various amendments were made to these laws to eliminate social and economic losses suffered following an earthquake (Sancaklar, 2012). However, this law, shortly known as the Disaster Law, is regarded the most recent one of a series of legal regulations - such as the Building Inspection Law - introduced immediately following the 1999 Marmara Earthquake. In line with the discourse of taking concrete steps to actualize the idea of demolishing risky buildings in cities and
renewing those which emerged after the Van Earthquake in 2011, the ideas raised in urban transformation law drafts which were being discussed since 1999 were combined and the Law No. 6306 was enacted in 2012. Since there is no other legislation that regulates urban transformation today, Law No. 6306 has the greatest sanction power along with various provisions in the Municipality Law, Ministry of Environment and Urban Planning Organization Law, and the Mass Housing Law. Before the Law No. 6306, the Law No. 7269 on the Measures to be taken and Aids to be Provided due to the Disasters Affecting Public Life was being implemented in relation to earthquakes, fires, floods, landslides, rock falls, avalanches and similar natural disasters. This law regulated the technical conditions to which all official and private buildings would be subject that would be rebuilt, changed, enlarged or repaired substantially, and the evacuation of the risky buildings or risky areas, and the creation of new settlement areas following a natural disaster. However, unlike the Law No. 6306, it did not have any provisions that regulated the practices to be introduced before a disaster, and therefore preventing the consequences of a possible disaster.

On the other hand, it has been widely claimed that the 1999 and 2011 Marmara Earthquakes accelerated the actualization of urban transformation projects, and that they were used as an excuse for this transformation. In this respect, the Disaster Law is regarded as one which will carry on urban transformation that could not reach the desired level of success despite the amendment to Article 73 of the Municipality Law made in 2005, and the enactment of the Law for the Restoration, Protection, Perpetuation and Utilizing of the Worn-out Historical and Cultural Immovable Heritages No. 5366 (Öngören & Çolak, 2013). The areas in relation to which the Law was used – particularly the – informal settlement areas in Istanbul – seem to support this view. Within the scope of the Disaster Law, at least one area was declared risky in every district of Istanbul, Tozkoparan, Derbent, Okmeydani and Fikirtepe being the best-known ones. The Law is regarded as a regulation which facilitates urban transformation not only in provinces with a high earthquake risk like Istanbul but in almost all cities, and efforts are made to implement it. Determination of these areas in line with the requests of the central administration without any scientific reasoning, and practices which completely disregard housing rights, and the implementation of this law in the form of a social and economic “cleansing” that targets areas which are generally inhabited by lower classes, and the informal settlement areas, lead to questions such as “Is the Disaster Law being implemented to protect the lives and property of the people, or it is being implemented to transfer these areas to groups from higher social-economic classes?”.
5. Acceptance/ Controversies

Until 2000s, urbanization progressed in an unplanned manner in Turkey; with the amnesties issued, the cities took form spontaneously and in an uncontrolled manner, and there were many inadequacies in the infrastructure. When the probability of natural disaster risk is added to these factors, the Disaster Law can be seen as a positive step towards the creation of healthy and safe living conditions, an intention also stated in the Law’s purpose. When this legal arrangement, which can be regarded as an opportunity to renew the urban fabric distorted due to unplanned urbanization, and the building stock which is vulnerable to natural disasters, is examined closely, it becomes apparent that it is not simply a legal arrangement introduced against disaster risk.

One of the leading criticisms voiced in relation to the Disaster Law was that the Law had extraordinary powers, that it left the issuance of regulations relating to areas to the Ministry of Environment and Urbanization, and that it had very high sanction power (Interviews, Chamber Reports). The Decree Law which establishes the powers of the Ministry of Environment and Urbanization authorizes the Ministry to “make transformation projects or have them made in relation to structures which are not earthquake resistant, and structures which violate the zoning legislation, plans, projects and their annexes, and the areas in which these are located”, and to “determine the procedures and principles to be complied by the administrations in rehabilitation, renewal and transformation implementations that will be carried out in illegal settlement areas, coastal areas and facilities, and the areas which were not considered forests or pastures anymore due to degradation, and to make the plans or have them made, and to approve all kinds of maps, plans, parcelling plans and building projects of all scales, to carry out expropriation, licensing and construction procedures concerning implementations in this nature which are determined by the Council of Ministers, financial centres and similar special project areas and buildings which require special construction, and the implementations performed by the Mass Housing Administration in accordance with the Mass Housing Law No. 2985, and the Informal Settlements Law No. 775, to issue occupancy permits, and to ensure the establishment of property ownership in these areas. The vastness of this authorization allows the Ministry to perform disaster-oriented urban transformation at any stage and place it deems necessary, and to perform the works it desires by itself.

The “two thirds rule” foreseen by the law, (i.e. if an agreement cannot be reached with the two thirds majority within 30 days following the demolition of the building after a “risky building” decision is given for the said structure, the immovable property is sold to other flat owners within the property via public auction,) and if this cannot be applied, the Ministry, MHA or the municipality or the governorship may resort to urgent expropriation, which shows that there is a strong will to overcome any obstacles hindering disaster-led transformation., and that if the provisions of the law are not applied by the property owners, they will be applied forcefully by central and local authorities. It is claimed that this rule violates the ownership rights of those who do not want to be a part of urban transformation, and that it contradicts the Constitution. According to some scholars and authors, this situation is an
indication of “accumulation by dispossession” (Harvey, 2013) On the other hand, this article is seen as a positive development by public authorities, legislators and law enforcers since it eliminates dependence on property ownership, and facilitates renewal (See. Ministry of Environment and Urbanization, interview with Hande Yağmurlu). On the other hand, in the original version of the law, it was possible to file a lawsuit against the established administrative transactions within thirty days following their enactment; however, it was not possible to obtain an stay of execution decision in these cases. This article demonstrates the incompatibility of this law with general principles of law, and proves the vastness of the powers with which the law was intended to be bestowed. This article was annulled by the Constitutional Court in 2014.

One of the most controversial aspects of the Law was the determination of “risky area”, “risky building” and “reserved construction area”, and the distribution of powers in this process. The authority with regards to rehabilitation, discharge and renewal activities to be carried out in areas under disaster risk has been granted to the Ministry of Environment and Urbanization by the Law, and the local governments, which are the main responsible authorities in these areas, have been eliminated. Local governments are allowed to use their powers in these areas only if they are assigned by the Ministry, and as a result they are placed under direct guardianship of the Ministry (TMMOB Chamber of City Planners, “Draft Law on the Transformation of Areas Under Disaster Risk” Evaluation Report).

The Ministry’s authority to determine reserved building areas ex officio without consulting to local administrations that have already prepared land use plans, master plans and development plans highlights the law’s centralist nature again (Çolak, 2013). The statement “completed its economic life” used in the definition of the term “risky building” in the Law has been criticized for being subjective (Pakel, 2013) and allowing the Ministry to take action through arbitrary decisions. On the other hand, the use of the expression “economic life” in a transformation law which was enacted in relation to disaster risk leads to doubts with regards to the true objective of the law. According to the law, the Ministry is the party which grants authority in relation to the determination of risky buildings, and which also performs control and approves, which demonstrates that this implementation of this law is a transformation that is carried out single handedly. The lack of an authority that audits the Ministry in this regard leads to doubts as to democratic rights and the transparency of the law enforcers. Besides, the article which allows the Ministry to demolish a building in a risky area which conforms to Construction Bylaw and which is resistant to earthquake on account of integration of implementation, and which, therefore violates the ownership right and housing guarantee, was one of the articles annulled in 2014.

The term “Risky Area” in this article contains the expression “minimum 15,000 m²”, which demonstrates that the law was prepared with the intention of creating lands in the city centre, and that certain arrangements were made based on minimum areas to make transformation projects profitable. This situation shows that the Ministry may exercise its powers so widely to interfere
with the smallest areas in the city, and perform interventions even on a parcel basis.

Article 3 of the Law foresaw (before it was annulled by the Constitutional Court) that the lands on risky areas and reserved building areas which belonged to the Treasury and the immovable property which belonged to public institutions other than the Treasury (including those belonging to the military) should be allocated to the Ministry entirely, and that the Ministry was authorized to assign these areas to local administrations or to TOKİ. Thus, the way was paved for the use of these areas by the Ministry for building construction, or their assignment to TOKİ or municipalities free of charge. It was claimed that this situation would lead to selling out the public facilities such as hospitals, schools, etc. located in highly profitable regions (TMMOB Chamber of City Planners, Disaster Law Brochure). In addition, the law permitted the inclusion of undeveloped the areas which could be determined to be risky, which, many claimed, proved that the law in fact served to create new expansion areas in the city. The said article was annulled by the Constitutional Court, which in a sense confirmed those claims.

On the other hand, one of the most striking aspects of the Law was the legal restrictions it was exempted from. Not subjecting the plans and buildings in the areas to be transformed through the Law No. 6306 to Law No. 3194 was the most important one of these exemptions. It was claimed by the Ministry that the authorization of the Ministry to establish the standards which will form the basis for all kinds and scales of planning transactions in these areas, and to designate these standards through planning decisions if it deems necessary, and to make plans which contain special standards, to approve them, and to prepare city designs, was a result of a provision which was put in the law due to the urgency of the law, and that revisions could be made in the plans to ensure that the integrity of the plan and the balance between social-cultural-technical infrastructures are maintained within the framework of the plans to be made in accordance with the law (Ministry of Environment and Urbanization, Frequently Asked Questions about Urban Transformation Process); however, this situation was criticized by many scholars and planners on grounds that the plan changes to be made by the Ministry would distort the integrity, continuity, and socio-cultural and technical infrastructure balance of the already approved plans. On the other hand, the concerns were that these decisions would lead to disintegrated plan revisions in the entire plan, and that, while new expansion areas opened, these areas would be “urbanized” by the state itself without a plan, was eliminated after this Article was annulled by the Constitutional Court.

When it was first introduced, the Disaster Law was exempted from the restrictions stipulated by the Zoning Law, Forest Law, Law on the Protection of Cultural and Natural Assets, Law for the Restoration, Protection, Perpetuation and Utilizing of the Worn-out Historical and Cultural Immovable Heritages, Pastures Law, Law on Soil Preservation and Land Utilization, and Bosphorus Law. It was believed that exercising these privileges would lead to the abolition of building restrictions imposed in agricultural areas, coasts, forests, protected areas where cultural and natural assets are located. Moreover, it is claimed that the disabling of the Public Tender Law by the Disaster Law would allow the administrations to carry out the transformation
implementations by purchasing the services and products from the enterprises it prefers in the construction works, and that in this way the perception that the implementations for fighting the disaster risk are used as a means to transfer the ownership of the real estate would be reinforced (Çolak, 2013).

Moreover, the view that these exemptions provided to the Disaster Law, and the authority granted to the Ministry to determine risky areas were put in the planning legislation in order to eliminate the obstacles lying before the transformation has become popular. In Derbent, one of the examples that we examined, the borders of the area were drawn by the Ministry in order to by-pass the Bosphorus Law, and the area was prepared to be declared a risky area, after which it was submitted to the Council of Ministers, and a decision was rendered for it. This situation is true for numerous informal settlement areas that are located inside the centre of Istanbul. The Disaster Law is being used as a means of transforming these areas. Conforming the urban areas which were considered unplanned according to planning principles, and the buildings which were constructed in violation of the building license to the city planning legislation; exempting the law from city planning restrictions- although its main duty should have been to create an orderly, healthy, and safe city- and the other privileges granted by this law, create the impression that the Disaster Law serves purposes other than those specified at the beginning of the Law. The way in which the Law is implemented, particularly in the informal settlement areas, may be criticized for making urban transformation “sustainable” by encouraging social and urban problems to be displaced spatially other areas instead of resolving them. At the same time, practices which violate the housing right become habitually getting legalized with the Disaster Law. However, this article which grants an authority to the Disaster Law to put it above many other laws and which increases its ability to act while being exempt from restrictions has been annulled by the Constitutional Court along with the other articles we mentioned before. Thus the law’s power to bypass many other legal restrictions which ensured the integrity of the planning legislation, and which served as a control and monitoring mechanisms in their respective areas, and to make independent plans and decisions was restricted.

In conclusion, the Law on the Transformation of Areas under Disaster Risk dated 16.05.2012 and No. 6306 granted an immense authority to the Ministry and “allowed the enforcement of a transformation in risky areas or risky buildings by using the power of the State” (Çolak, 2013:13). The fact that the criteria of the bylaw are set by the Ministry, and that the rights of the people – housing, ownership, democratic and legal rights – are violated during implementation, and that no forecasts have been made as to the social effects that will be brought about as a result of the transformation, raised significant doubts concerning the law’s take on the public interest. As Bayram stated (n.d.) the most prominent characteristics of the laws that enable urban transformation are that “they foresee a new social and economic relationship systematic, that they are thought of independently from long-term macro plans (master plans), and that they prioritize not rehabilitation but demolishing first and building again by using the earthquake risk as an excuse, and that they target increasing urban rent and the organization of the redistribution of this increased rent in order to make sure that they are economically feasible.” The
Disaster Law supports this view by making the initiative of the Ministry the fundamental decision mechanism in the determination of risky areas, and by increasing the floor area ratio in the areas which are already declared risky, and reducing the planning scale to parcel basis, and thus allowing disintegrated project instead of integrated plans. On the other hand, the real objective of the Law has been disclosed to invigorate the construction industry and the economy with the following sentence - which was repeated in our interviews with the Environment and Urbanization Provincial Directorate: “It is estimated that about 7 million buildings will be demolished and rebuilt, and the realization of this big project will invigorate the Turkish construction industry” (Ministry of Environment and Urbanization, Frequently Asked Questions about the Disaster Law). Within this period, the Law has transformed the housing right into a commodity, and presented urban transformation as a promise of enrichment, leading to an expectation within the society (Hacalioğlu, Chamber of Architects, interview on 14 November 2014); as a result, the injustices committed during the implementation of the Law were covered by economic profit, and “rent obtained from land and construction” mentality was imposed to the society in general.

On the other hand, the annulment of the much-criticized fundamental articles of this Law by the Constitutional Court both confirmed the truthfulness of the worries concerning these provisions and restricted the powers of the Law, which were believed to be “uncontrolled” by many scholars. The articles which rendered the stay of execution impossible were annulled on grounds that they would cause irreversible damage, and the Law was subjected to city planning legislation, in other words, its conformity with integrated planning principles was ensured. As a result, the arbitrary powers of the Law over housing and ownership rights, and its sanction power which violated personal rights during the implementation of the transformation were taken under control; on the other hand, as the president of the Urban Transformation Platform Prof. Dr. Gürsel Öngören sated (2014), the distortion of the integrity of the zoning plans which need to be integrated on provincial, district and borough level through the plan changes to be introduced by the Ministry and the municipalities on the parcel or building block basis was not permitted.
Appendix 5. Act #2985 on Mass Housing

1. Aim of Norm

The purpose of this Law No. 2985 which was enacted in 2 March 1984 is to “to meet the housing needs, to regulate the procedures and principles the housing constructors will be subject to, to develop industrial construction techniques suitable for the conditions and material of the country, and tools and equipment, to regulate the subsidies to be provided by the state.”

2. Main Output Integrated

Law No. 2985 defines the purpose for the establishment of Mass Housing Administration (TOKİ), its revenues, its expenses and procedures for its auditing, and the purposes for which the administration can use the resources. Moreover, the duties and powers – e.g. delineation of settlement areas, expropriation, cadastral issues - are also determined by this law. There have been numerous amendments to this Law between 1990 and 2008 concerning these duties. Duties of the administration following all these amendments can be summarized as follows:

- To issue domestic or foreign bonds with or without state guarantee, and all kinds of securities,
- Upon the approval of the under-secretariat of treasury, to decide to find credit from abroad to be used for areas in the field of its duty
- To take measures to ensure the participation of banks for financing housing, for this purpose to extend credits, when necessary, to banks, to establish procedures to be followed in applying this provision,
- To support the housing construction industry and those working in this field
- To establish companies related to housing construction or to become a partner in companies or finance institutions already established,
- To have all kinds of research, project and contracting businesses performed through contracts,
- To develop projects at home or abroad directly or through its affiliates; to perform or have performed housing, infrastructure and social facility implementations,
- To extend individual or mass housing credits, to perform implementations aimed at the development of village architecture, transformation of squatter areas, preservation and renewal of historical textures and local architecture, and to extend credits to projects relating to these works, and to offer interest subsidy in these credits,
- To implement or facilitate the implementation of profit-oriented projects to secure funds for the administration.
- To build housings and social facilities in regions where natural disasters occur along with their infrastructures, to encourage and support them,
- To produce or facilitate the production and implementation of projects that are requested by the Ministries and approved by the relevant Minister

The powers granted to the administration with this law was to provide land and building plots for housings, industrial, educational, health and tourism investments and various public facilities through agreement, transfer, acquisition and similar methods, and to provide resources from funds in these areas. Moreover, another power granted to the administration is to expropriate lands and building plots belonging to real and legal persons to make investments and to build the facilities mentioned above, to make land stock and sale land at regulated prices. In addition, the Administration is charged with renting or exchanging lands and plots that are under its ownership,
establishing the rights of use on its property, marketing and selling them via public institutions and organization as they are or by preparing plans.

In addition, TOKİ is given the authority to prepare plans for gecekondu transformation project areas in Article 4 of the Law: “In areas where gecekondu transformation projects will be implemented, or in lands and building lots whose ownership it holds, or in areas which are determined as mass housing building areas by the governorships, it is authorized to prepare, to have prepared and amend plans of all kinds and scales in a manner which does not disrupt the environmental and architectural integrity.” According to the provisions of this article, unless the plans prepared are approved by the municipalities or governorships, TOKİ is authorized to approve them ex officio. All actions to be taken by the municipalities and related public institutions in relation to these plans are put into action by being performed ex officio by TOKİ. On the other hand, TOKİ is granted the authority to implement transformation projects related to earthquake and to determine the procedures and principles concerning the transactions related to these projects. Moreover, TOKİ is authorized to take actions for the preservation and rehabilitation of the historical texture and local architecture by cooperating with municipalities, and to extend credits to projects relating to these subjects, and to offer interest subsidy in these credits when necessary.

In summary, TOKİ is authorized to construct buildings by forming partnerships with domestic or foreign construction companies, it can implement urban transformation, gecekondu transformation and urban renewal projects, it can make amendments in these plans, it can become a partner in profit-oriented projects by assigning the lands it owns to private sector through revenue sharing, it can produce housings based on its own plans without being bound by the municipalities’ development plans, it can request the transfer of lands from the public for projects it intends to implement, it can extend credits for the realization of these projects.

3. Owner of the norm

TOKİ is responsible for the execution of the law.

4. Historic use of the norm (evolution)

In 1984, Mass Housing and Public Partnership Administration was established. The autonomous Mass Housing Fund was formed under the Mass Housing Law no. 2985. The function of TOKİ was defined as “to encourage the housing production sector and to meet the rapidly increasing housing demand in a planned manner.” Mass Housing Act No. 2985 allowed TOKİ to act in an autonomous and flexible manner. At the same time, it was provided a continuous and sufficient resource via the Mass Housing Fund, which was outside the General Administration Budget. In 1990, the Decree-Laws No. 412 and 414 TOKİ and Public Partnership Administrations were organized as two separate administrations. In 1993, the Mass Housing Fund was included in the General Administration Budget, and it was completely abolished in 2001.

An examination of the amendments made to TOKİ law after 2000 reveals the changing position of the institution and the increase in its powers. The first great change in TOKİ’s structure occurred in 2000 via the Law No. 4568
where the Gecekondu Fund held by the Ministry of Public Works and Settlement was abolished, and the Ministry’s entire assets, rights, revenues and duties relating to this matter were assigned to TOKİ. In 2002, TOKİ was authorized to take over mortgaged housing credits and to issue securities. In the same year, it is decided to authorize TOKİ to “produce social housing targeting lower income groups, build housings for the poor, develop gecekondu transformation projects, projects aimed at alleviating the housing deficiency resulting from natural disasters; profit-oriented and prestigious projects aimed at generating funds, Agricultural Village and Refugee homes, land generation projects and credit applications”. Moreover, TOKİ was given the Public Economic Enterprise status and was left out of the Public Tender Law supervision. With the decision of the Prime Ministry dated 14/08/2003, TOKİ was removed from the Housing Under-secretariat, and was connected to the Ministry of Public Works and Settlement. With the decision of the Prime Ministry dated 16/01/2004, it was connected directly to the Prime Ministry. In that year, TOKİ was granted the authority to implement profit-oriented domestic and foreign projects, to become a partner in such projects, to establish companies related to the housing sector or to become partners in such companies, and to extend credits for gecekondu projects.

Another omnibus law amended the TOKİ law in 2004, and authorized TOKİ to prepare, to have prepared and change all kinds of development plans in the areas where gecekondu transformation projects will be implemented. The authority to approve development plans which are not approved by local administrations ex officio was granted to the administration via the same law. Among some of the other amendments are: TOKİ was granted the power to expropriate, to assume gecekondu transformation projects, to implement construction applications and to make financial arrangements.

Article 3 of the Law no. 5366 on the ‘Law on the Protection of Deteriorated Historic and Cultural Heritage through Renewal and Re-use’ authorized TOKİ to implement renewal projects in registered areas and protected sites in cooperation with the local administrations or alone.

In 2007, all the powers granted to the Ministry of Public Works and Settlement by the Illegal Settlements or Gecekondu Act No. 775 was assigned to TOKİ, and the administration was authorized to determine the boundaries of gecekondu transformation areas, and to request the areas it deems necessary for housing construction from the municipalities in addition to the areas located in rehabilitation and settlement areas. Moreover, the power to regulate rehabilitation plans was also granted to TOKİ. It is permitted to have the municipalities prepare such plans, but it is also authorized to reject the prepared maps and plans, to send them back for correction, to approve them as they are or by making changes, and to perform or have performed these services by itself in cases where it deems necessary.

With another omnibus law enacted in 2008, the authority to prepare all kinds of plans for gecekondu regions was assigned to TOKİ, which deactivated the City Planning Actno. 3194. Moreover, all transactions to be performed by the municipalities and related institutions, and the local administrations’ authority to prepare plans was also assigned to TOKİ. On the other hand, through an amendment made to the Law No. 2985 (Addition: 24/7/2008, Article 5793/9),

APRIlab Regulation Dilemma
TOKİ was authorized to carry out or cause to be carried out projects and implementations requested by the ministries following the approval of the Minister it is affiliated with. In addition, a paragraph which was added empowered TOKİ to implement transformation projects related with earthquakes, and to lay down all principles and procedures concerning all transactions.

Table 5. Regulations concerning TOKİ enacted after 2000

<table>
<thead>
<tr>
<th>Year/Law No.</th>
<th>Amendment / Addition</th>
<th>Result</th>
</tr>
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| 2003/4966    | • To develop projects at home and abroad; to make or cause to be made housing, infrastructure and social facility implementations  
               • To take or cause to be taken action to implement profit-oriented projects to secure funds  
               • To build housings and social facilities in regions where natural disasters have occurred along with their infrastructures, to encourage and support them | ✓ Expanding abroad  
               ✓ reinforcement of autonomy                                      |
| 2004/5162 and 5273 | • To establish companies or to become a partner in established companies (5162);  
                        • To extend individual or mass housing credits, to extend credits for projects aimed at the development of village architecture, transformation of squatter areas, preservation and renewal of historical textures and local architecture, (5273)  
                        • To perform or have performed projects and implementations upon the approval of the minister (5793);  
                        • To prepare, to have prepared and change all kinds of development plans on all scales;  
                        • To develop Gecekondu transformation projects aimed at the settlement of Gecekondu regions or their recycling through rehabilitation.  
                        • To obtain building license based on the preliminary project within fifteen days following application without requiring any other document (5273) | ✓ Becoming a company completely  
               ✓ Moving away from public interest  
               ✓ To develop projects in every area via ambiguous definitions  
               ✓ seizing the powers of municipalities  
               ✓ reinforcing project producer mentality |
| 2006/5492    | • In relation to all kinds of infrastructure and superstructure constructions to be made or to cause to be made (...) various charges shall be received at the lowest level. No other fees or charges shall be requested in addition to these charges under any name for the services performed. The building occupancy permit shall be issued within 15 days without requiring any other document; the missing documents are completed afterwards | ✓ exemption from all expenses |
| 2008/5793    | • Transformation projects are implemented in relation to earthquake  
               • In areas where Gecekondu Transformation projects will be implemented, or in lands and building lots whose ownership it holds, or in areas which are determined as mass housing building areas by the governorships, it is authorized to prepare, to have prepared and amend development plans of all kinds and scales in a manner which does not disrupt the environmental and architectural integrity. | ✓ authority to develop projects in more areas  
               ✓ restriction of municipal powers |
In recent years, the urban transformation projects TOKİ carried out alone or together with IMM (İstanbul Metropolitan Municipality) and local municipalities have resulted in controversial outcomes and been criticized. Among most known projects are the Sulukule renewal project performed in the protected areas under the Law No. 5366; Zeytinkuru, Sargöl-Yenidoğan transformation projects which are planned to be implemented in gecekondu regions within the framework of the Law No. 6306 due to the earthquake risk; Tozkoparan project which was cancelled as a result of lawsuits; Derbent Neighbourhood, which is within the scope of our study; luxury housing projects in Ataşehir; in addition, Istanbul Park, Formula 1 Speedway, Marina projects, Sabiha Gökçen Airport; Istanbul Marina projects which is within the scope of our study and which is prepared by the Emek Konut GYO and DAP Yapı partnership with the participation of TOKİ; mass housing projects built on the periphery of the city for displaced groups on account of urban transformation projects. All of these projects demonstrate that TOKİ is everywhere.

The role TOKİ has played in housing production over the last 25 years becomes all the more significant, when the constructions it carried out all around Turkey in addition to these large number of projects are taken into account.

5. Acceptance/ Controversies

Mass Housing Administration which was established to meet the housing needs of the lower middle class and which was authorized to this end was not successful in this function until 2000s. However, after 2000s, TOKİ underwent numerous structural changes, which put the administration into a very different position with regards to city planning and housing production.

One of the most criticized the powers granted to TOKİ with the Law No. 2985 has been the increasing of its powers in relation to urban renovation and transformation, and facilitating of the intervention of central government to these areas. This might be regarded a positive development at first; however, an examination of the law and its applications reveals that these powers mostly concerned the projects to be implemented in gecekondu areas and in historical areas in the city centre and in urban conservation areas, which lead to the questioning of the intention of the said law. As Yılmaz states (2014), “This authority is mentioned as the “discharging of gecekondu areas” in Article 4, which summarizes the central government’s take on the matter. It is of interest that the said Article of the Law does not contain any provisions concerning the “recycling of the said areas through improvement”. With these arrangements, TOKİ has been transformed into a vehicle by which urban transformation is carried out through profit-oriented destruction. Moreover, the fact that TOKİ was granted the power to expropriate in the gecekondu areas, to take over the land belonging to the Treasury under the name of “gecekondu prevention zones”, to approve the borders of gecekondu rehabilitation zones, gecekondu settlement zones and gecekondu prevention zones, and to prepare and approve all kinds of development and rehabilitation plans, demonstrates that the administration took over the municipalities’ planning powers, and that centralization was carried out in gecekondu project areas. It is said that this
exclusive planning authority granted to the administration will make the posting and objection procedures harder (Türkiye & Yapıçı, 2009).

On the other hand, this power granted to TOKİ has been expanded with the Laws No. 5366 and 6306 so as to contain protected historical areas and areas under earthquake risk. The Law No. 5393 allowed the municipalities to cooperate with TOKİ in urban transformation areas, which granted the administration a huge power over all municipal and adjacent area lands. On the other hand, the powers granted to TOKİ in relation to demolitions, discharges and expropriations to be performed in urban transformation areas have been reduced only to these actions (Baysal, 2010:97), which demonstrates that TOKİ has deviated from its objective of producing housing for low-middle classes.

In addition, the lack of a mechanism which will resolve the situation when plans to be made or cause to be made by TOKİ conflict with the upper scale plans prepared by municipalities not only by-passes the local government, it also violates the planning stages principles, and damages the integrated planning philosophy, and paves the way for making “project-oriented” approach a situated practice in urban planning.

Another criticism brought was that the powers granted to TOKİ via laws allowed it to be involved in housing production and planning with the privileges of being a private company. The authority to establish companies or become partners in established foreign companies, and to create credits and funds granted to the administration, demonstrates that TOKİ moved towards generating rent from urban lands and from projects it will implement alone or with its partners. Thus, it is stated that TOKİ can perform all kinds of construction works, from housings to holiday villages, from football stadiums to police stations, and that it can put the risk it will assume through the partnerships it will form with private companies to the state in case of a loss, and that this situation encourages a project-oriented approach (Baysal, 2009; Özden, 2009). TOKİ can participate in profit-oriented projects by assigning lands and building plots with high real-estate rent to private companies, which has led to the realization of rent seeking and sharing investments more frequently recently to the benefit of the private sector rather than the public. Moreover, among the powers granted to TOKİ is the ability to extend credits and to receive the mortgaged housings like a financial institution, which demonstrates that housing and accommodations has become financialized through laws and institutions connected with the central administration.

Lastly, TOKİ has been authorized to make the projects or have them made or implementation coming from the central administration following the approval of the Minister, which, according to Baysal (2010) demonstrates that “This institution has (was) turned into a means which implements projects in line with the requests of the government in connection with the government, and which organizes the urban space with neoliberal policies, and which transfers the rent to domestic and foreign capitals”. Thus, “TOKİ, which is a public institution, works like a profit-oriented construction company, as a result of which the state started to “build-and-sell”.”
In conclusion, following the amendments made to the TOKİ law after 2000s, the urban area in which the administration could intervene has increased, but mostly it was exempted from inspection (Yılmaz, 2014). The projects implemented by TOKİ were realized mostly in gecekondu areas, which are located on very valuable lands within the central areas of the city, and in “dilapidated” historic areas where lower classes live. Targeted to upper middle classes these areas were developed as special-project areas that were assumed to increase the prestige of the city. Hence, these projects resulted in the displacement of current low-income residents instead of improving their living conditions. They were thus harshly criticized upon the grounds that they violated the housing rights of the residents of these areas.

Appendix 6. Decree-Law No. 644 Amended by the Decree-Law No. 648 Regarding the Organization and Duties of the Ministry of Environment and Urban Planning

1. Aim of norm

The purpose of the Decree-Law No. 644 enacted in 04.07.2011 and the Decree-Law No. 648 enacted on 17.08.2011, which amended and rearranged this decree-law is to lay down the principles relating to the establishment, duties, powers and responsibilities of the Ministry of Environment and Urban Planning. The Decree-Law describes the duties and organization of the Ministry and the service departments, and defines the responsibilities and powers granted to the Ministry.

2. Main Output integrated

Some of the most important duties and powers granted to the Ministry with this Decree-Law are as follows: to prepare zoning, environmental, building and construction legislation concerning settlements, environment and urban development; to monitor and supervise implementations; to determine fundamental principles, strategies and standards concerning all kinds and scales of physical plans and their implementation, and to ensure their implementation. To prepare spatial strategy plans by cooperating with relevant institutions and organizations, and to supervise the conformity of planning decisions of local governments with these strategies are among the duties which were define to ensure application integrity at the top level. To determine the procedures and principles to be followed by municipalities and governorships in rehabilitation, renewal and transformation projects to be made in all urban and rural areas and settlements including gecekondu areas, coastal areas, or in areas which are no longer considered forests or pastures because of degradation can also be considered a principal duty granted in order to ensure integration (unity) at the top level. However, the authority to make, to have made, and to approve all kinds of maps, plans, parcelling plans and building projects of all scales, to carry out expropiation, licensing and construction procedures concerning implementations in this nature which are determined by the Council of Ministers, financial centres and similar special project areas and buildings which require special construction, and the
implementations performed by the Mass Housing Administration in accordance with the Mass Housing Act no. 2985, and the Illegal Settlements or Gecekondu Act no. 775, to issue occupancy permits, and to ensure the establishment of property ownership in these areas were also granted to the Ministry, which is very important in that it transfers local powers to the central administration.

3. Owner of the norm

Law no. 6223 dated 06.04.2011, transfers the Turkish Grand National Assembly’s power to make laws to the Council of Ministers by defining special situations. This transfer of power, which was applied in 1972 for the first time in areas that were not related to planning, became a method frequently employed particularly in the second half of the 1980s, and 18 Decree-Laws were enacted between 1987 and 1989. Three of these decree laws concern planning. They were less frequently used in 1990s and 2000s, but in 2011 the number of Decree-Laws enacted showed an incredible increase. 21 Decree-Laws enacted in this period demonstrates the administration philosophy adopted in this period. With this seizure of power in this manner, which became popular after a long time, the legislative power is being transferred to the Council of Ministers and it is being widely discussed in legal and political science circles and among the public. This Decree-Law concerning the establishment of the Ministry of Environment and Urban Planning is not unique, and this method is resorted to under special circumstances defined in the law.

4. Historic use of the norm (evolution)

The Ministry of Environment and Urban Planning is granted with the planning, infrastructure investments, etc. duties which were among the charges of Ministry of Public Works and Settlement, and with the duty of inspection of the environment, which was the Ministry of Environment’s duty. In addition, the Ministry of Environment and Urban Planning is also charged with the supervision of local governments, and the performance some of their duties when necessary. In addition, we see that the powers of the Ministry of Public Works and Settlement to inspect public buildings has been expanded, and that the Ministry of Environment and Urban Planning is granted the authority to assume the right of inspecting structures other public buildings. The most important difference in terms of their duties and powers of the Ministry of Environment and Urban Planning is that “they are expanded so that they now contain the duties, powers and responsibilities of trade associations operating in the field of settlements, environment, construction and urban development.”

5. Acceptance/ Controversies

Decree-Law No. 648, which was enacted in order to eliminate the deficiencies in Decree-Law 644 is being criticized for the manner in which it was enacted and the new authority provisions it brings. First of all, it is being criticized on

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account of the fact that the Decree-Law practice is the seizure of the power of the Parliament, and that it was prepared behind the closed doors in contradiction with the law making technique. Prior to the General Elections on 12 June 2011, the Council of Ministers was granted the authority to issue Decree-Laws for a period of 6 months with the “Authority Law” No. 6223 that entered into force on 3 May 2011. “Decree-Law No. 636 on the Organization and Duties of the Ministry of Environment, Forestry, and Urban Planning” which was issued based on this Law was the first step towards merging the Ministry of Public Works and Settlement and Ministry of Environment and Forestry. Before the ministries were merged in accordance with this Decree-Law that was issued merely 4 days before the general elections, a new Decree Law was issued after the elections. With Decree-Law No. 644, “Ministry of Environment and Urban Planning”, and with Decree-Law No. 645 “Ministry of Forestry and Water Affairs” was established, and the two ministries, which were united before the election were separated again. Even though the powers concerning planning were concentrated in a single ministry during the separation process, the preservation of upper scale plan types, which contradict each other shows that the chaos will continue.46

Another criticism brought was that the said Decree-Law centralized planning in Turkey and paved the way for making “top-down” planning decisions. In addition to the fundamental changes introduced by the Decree-Law No. 648/644 concerning planning, which are explained in the “Main output integrated” section, it also made various amendments to the City Planning Act no. 3194, and led to seizure of power by transferring the building inspection power of the TMMOB to the Ministry. When all of these changes are considered as a whole, it can be seen that the Ministry of Environment and Urban Planning is given the authority to make or cause to be made and to approve plans, which belonged to the local governments, and it is given the power to seize the authority of approving projects, issuing building license and occupancy permits, which belong to local governments in practice, and the power to exercise them on parcel scale and in a privileged manner.

“The Ministry of Environment and Urban Planning, which needs to be central organization which lays down the rules concerning settlements and buildings and which ensures coordination and supervision, has moved towards becoming the “Municipality of Turkey” with the powers it assumed relating to implementation with the Decree-Law. In a similar fashion, the Ministry which is supposed to work in order to regulate the rules relating to urban transformation, to monitor the implementations, to increase the participation of the public, and to prevent developments which would turn transformation into liquidation, seems to aspire to become a “Second TOKI (Mass Housing Administration)” by moving towards direct implementation and house construct

46 Chamber of City Planners, Assesment of Decree-Law No. 648, 2011.
Appendix 7. Regulation on Preparation of Spatial Plans

1. Aim of norm

The purpose of the Regulation on Spatial planning which was drafted by the Ministry of Environment and Urbanization and which was introduced on 14 June 2014 is “to determine the procedures and principles concerning the preparation and implementation of spatial plans which are prepared to protect and improve physical, natural, historical and cultural values, to ensure a balance between protection and usage, to support sustainable development at country, region and urban levels, to create healthy and safe spaces with a high standard of living, and which calls for the land use decisions and zoning decisions”.

As it is stated in Article 2, this regulation contains the procedures and principles concerning spatial plans of all kinds and scales; making of and inspecting revisions, additions, and changes in these plans; and spatial plans and special-purpose plans and projects. However, the legislation upon which this regulation is based are the Act No. 3194 on City Planning enacted in 1985 and the Decree-Law on the Organization and Duties of the Ministry of Environment and Urbanization No. 644/648 enacted in 2011.

2. Main Output integrated

With this regulation, some new planning terminology has acquired a legal dimension which was not included in the Turkish planning legislation before. Integrated coastal areas plan, action plan, spatial plan, spatial strategy plan, long term development plan are some of these terms and concepts which introduced with this regulation and which were not used in laws and regulations before. Regulation on Spatial planning defines various procedures and principles concerning spatial uses and related definitions. In this context, the spatial use areas mentioned in the regulation are as follows: municipal service areas, work areas, industrial zones, industrial development zones, train depot and station areas, small industrial areas, cultural facility areas, logistics zones, bus terminals, governmental agency areas, industrial areas, social infrastructure areas, social facility areas, technical infrastructure areas, and collective work areas.

The spatial planning stages and relations are also defined in the regulation. Accordingly, “the spatial plans are prepared as Spatial Strategy Plans, Environmental Plans and Development Plans with regards to their scope and their purposes. Accordingly, the planning stages consist of the following from top to bottom: Spatial Strategy Plan, Metropolitan Plan, Master Plan, and Implementation Plan.”

In addition, the regulation establishes various procedures and principles concerning general planning principles. The planning process, preparation of plans, cancellation of plans, the consistency and correlation of plans with each other are also defined in the regulation. As we stated before, this regulation is very important in that it contains numerous new concepts and practices. In the preparation of the plans, “Various methods are employed to encourage participation: surveys, public opinion polls and research, meetings, workshops,
announcements and notifications on the internet based on the type of the plan, and the views of institutions and organizations and relevant parties are obtained.” This is an expression which was not seen in previous laws and regulations, and which is considered a development in itself.

3. Owner of the norm

As it is stated in the last article of the regulation, the provisions of this regulation are enforced by the Ministry of Environment and Urbanization.

4. Historic use of the norm (evolution)

The reasons for drafting the Regulation on the Spatial planning published in the Official Gazette dated 4.06.2014 and No. 29030 which is enforced by the Ministry of Environment and Urbanization have been listed as follows:

- That the Regulation on the Principles Pertaining to Preparation of Plans was not revised since 1985,
- That the regulation was not systematic,
- That the regulation was not current (on account of new amendments to the Decree-Law No. 644, Law No. 3194 and other laws),
- That the standards annexed to the regulation could not be applied,
- The development of new approaches and technologies in planning
- The conditions of the country which changed considerably since 1985,
- That plan staging has changed and that new concepts are not included in the regulation.47

The Ministry states that preparations relating to the regulation started in 2012 with the “Works Concerning the Changes to be made in the Regulation on the Principles of Preparation of Plans” title, and that general views were requested from the Ministries and metropolitan municipalities in this context. Draft Regulation on Plan Preparation was prepared according to the views received, and was submitted to the Prime Ministry, ministries, governorships of 81 provinces, 16 metropolitan municipalities, to all universities that had a Faculty of Architecture, UCTEA (Union of Chambers of Turkish Engineers and Architects) Chamber of City Planners, to Turkish Municipalities Association (approx. 150 organizations). In addition, the draft was published on the Ministry’s website to obtain general public’s opinion. The regulation was given its final form by considering all the views received. At the last stage, a workshop was organized under the organization of Turkish Municipalities Association with the participation of the TBB (Union of Bars of Turkey), SPO (Chamber of City Planners), certain ministries, metropolitan municipalities, metropolitan district municipalities and other municipalities. All legends prepared to be used in the regulation and plans were examined and evaluated one by one at the workshop. Upon the enactment of this regulation, “Regulation on the Principles Concerning the Preparation of Plans” and “the Regulation on Environmental Plans” were abolished.

47 Ministry of Environment and Urbanization website
5. Acceptance/ Controversies

Regulation on Spatial planning which abolished the “Regulation on the Principles Concerning the Preparation of Development Plans”, which is the fundamental implementation regulation of the planning and development legislation is being criticized by professional chambers because of its legal infrastructure and the rules it introduced in relation to the planning system in the country.

UCTEA Chamber of City Planners Ankara Branch summarizes the positive aspects of the regulation as follows:

“1- The definition of numerous concepts (plan report, walking distances, urban design project) which were not included in the legislation until today and which were unclear has been considered an important development.
2- The use of Geographical Information Systems and the ability to draw data from the database to be managed by the Ministry are important developments in that they will enable access to current and reliable information in the planning process and prevent data repetition.
3- The obligation to prepare a micro zoning study report along with the geological-geotechnical study report during the preparation of development plans is very important for our country which is located in an earthquake zone.
4- The creation of spatial database and production of current spatial data by adding the plans into the geographical information system are important.
5- Design principles targeting disadvantaged groups (the handicapped, the old, the children) are mentioned in the implementation, which is a positive development.
6- The inclusion of urban design project in the legislation, and its use at the implementation stage as a means of low level planning is important.
7- It is stipulated in the regulation that only spatial strategy plan, metropolitan plan and development plan decisions are followed in land use and zoning, which take all buildings under control through plans, which is an important development.
8- The provision which states that it is forbidden to perform implementation by taking measurements from spatial strategy plans, environmental plans and master plans is considered an important step towards the solution of problems encountered in practice.
9- The provision which states that it is obligatory to design open areas such as parks, playgrounds, squares along with the centres on the neighbourhood and quarter scale, is considered an important development in terms of designing open and public areas as a whole along with neighbourhood centres, and the use of urban codes/rule development with respect to the production of public areas.”

Despite its positive aspects, Chamber of City Planners Headquarters, Regulation on Spatial planning Commission emphasized in its general assessment that the regulation primarily contradicts the Law No. 3194 and Decree-Law No. 644 which are its foundation laws. There are problems in the basis of the regulation which it is supposed to comply with concepts such as “action plan, resilience plan”, etc. which were not in the Act No. 3194 on City Planning and that were included in the regulation; the spatial strategy plan which is not defined in this law which regulates the performance of zoning is included in the law within the planning hierarchy, but the “region plans” which are defined in the planning hierarchy was not included in the City Planning; in this way, the region plans which are mentioned in the law and which exist in the planning hierarchy are totally disregarded.

48 UCTEA Chamber of City Planners Ankara Branch, Evaluation Report on the Regulation on Spatial planning, p.8
Second, it is believed that it is illegal to make a special legal arrangement via a general law or a regulation, for in some sections of the regulation; certain provisions were set forth via general laws or regulations concerning special laws. In this scope, it is observed that the articles of the regulation concerning Preservation Plan and Long-Term Development Plan contradict the law.

“In determining different land use methods through planning, the definition of a process in the form of a mutual relationship which allows a restrictive, directive evaluation that provides important data in planning is abandoned. “The planning stage, which is a multi-criteria decision making technique, which allows the consideration of both objective and subjective factors in the selection of the best alternative, and which allows the development of planning decisions based on priorities obtained from the comparison of different sets of data with each other so as to form a meaningful relationship, which contains the 'feedback' process where the results of the previous stage are re-evaluated at every stage of planning is reduced to the overlapping of multiple sets of data and transformed into an administrative action. This contradicts the scientific techniques and principles of planning.”

Another criticism brought against the regulation by the chambers is that there are ambiguities in its language which in fact needs to use clear and precise statements quintessentially in order to ensure the unity of equal implementation. Also, optional expressions such as “when necessary”, which leave the action to the discretion of the administration; and expressions such as “etc.” “similar” and “similar subjects” which trivialize the articles, which creates an ambiguity, and which leads to unclear statements are used. It is argued that a regulation that describes how spatial planning is to be made should contain more precise expressions and open statements which leave no room for doubt.

In addition to the ones mentioned above, some of the concepts and definitions mentioned in the regulation are problematical. For example, the expressions “to ensure protection-usage balance” and “supporting sustainable development” are used in the first section of the regulation. But an examination of the entire regulation demonstrates that there are arrangements in favour of “usage” in this balance.

Moreover, the regulation contains arrangements which allow the implementation of different standards to minimum social and technical infrastructures and to open and green areas, which will eliminate the public’s right to benefit from and access urban services equally, which contradicts the principle of equality, and to technical and scientific principles. Also, the regulation considers the failure of institutions to notify their views as to spatial plans which are requested before their preparation a “positive view”, which may turn the failure to express an opinion into a tradition. That an arrangement has been made which will turn the failure of public institutions to provide their opinions as to plans into a rule is an arrangement in favour of “usage”. Another criticism brought is that no arrangements have been made as to the rural areas lying within the boundaries of the municipality under the metropolitan municipality law.

The planning process/scope foreseen by the regulation is also a matter of debate. Although it seems to contain certain positive pursuits such as placing
urban design into a planning system, these pursuits are weakened by the lack of a clear hierarchical/feedback relationship between the urban design projects which guide and determine implementation, and the development plans. The introduction of the obligation to merge projects which were approved before and separately from development plans into master plans, and the regulations which allow the substitution of the development plans with “projects” cause this positive approach to become an erroneous practice.

Finally, there are no arrangements concerning technical and professional supervision in the spatial planning system preceding the approval; the “Regulation on Spatial planning”, which is very important in that it will directly affect people’s social lives, was hastily put into effect without adequately sharing and discussing it with the public first; and spatial usage definitions and principles were arranged as bag concepts. Market and demand-oriented planning definitions which do not observe public interest were introduced. All of these are among the primary defects of the regulation on spatial planning.49

49 UCTEA ŞPO Genel Merkez, Mekansal Planlar Yapım Yönetmeliği İnceleme Komisyounu, Mekansal Planlar Yapım Yönetmeliği Değerlendirmesi, s. 3-7
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