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ID 1732 | THE EFFECT OF LEGISLATIVE FRAMEWORK IN CONSERVATION PRACTICES: EXAMPLE OF TURKEY

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1 INTRODUCTION

In the last decade, site conservation and ideas against site conservation such as transformation and renewal have become considerably contradictory subjects in Turkey. The implementation on these subjects and new projects are also taken into consideration as research studies. Along with these implementations about conservation and renewal, it is important to think what is expected for cities in near and distant future.

In conservation and renewal studies, apart from their architectural, artistic, historical and esthetical values, cities should be evaluated with their social values. Moreover, it is a fact that they have a living identity.

As is known, the historical background of a built environment is the most important features that creates the identity of an area. Therefore, the conservation of historical environment has become an important component for the planning process. Important experiences have been obtained related with planning site conservation areas in Turkey, however there are significant problems in implementation especially at administrative level. Foremost among these problems are the troubles in the process of conservation planning and difficulty in creating a healthy relationship between urban planning system and conservation plans. Currently, urban areas and site conservation areas are planned within different legislations and organizational structure. Moreover, contradicting laws and regulations for site conservation areas result inconsistent implementations which different from each other in the same urban area.

The aim of this paper is to compare two legislations on protected areas in terms of functioning and implementation and investigate contradictory parts of these two legislations on public and personal property rights by comparing them item by item. Also, analyse the differences between these two legislations that based on conservation and renewal is another purpose of this paper. To answer the question “Are these legislations protecting or renewing?” we analyze causes and consequences of verdicts of Supreme Court on two public prosecutions. One of the Supreme Court decisions examines the obtained results, which are based on objection to protection and renewal studies within the scope of No.2863 Law on the Conservation of Cultural and Natural Property and the other No. 5366 Law On Renovating, Conserving and Actively Using Dilapidated Historical and Cultural Immovable Assets. In conclusion, the urban conservation areas, in accordance with the no. 5366 Law On Renovating, Conserving and Actively Using Dilapidated Historical and Cultural Immovable Assets, Renewal area announcements and projects in site area are excluded from the conservation plan approaches, principles and processes of the historic area. Because city planning and protection plan decisions are not co-produced, problems arise. As a result, the difference of these two laws are examined and evaluations are done regarding the solutions to these problems generated in urban spaces.

No. 5366 Law On Renovating, Conserving and Actively Using Dilapidated Historical and Cultural Immovable Assets and announcements and projects of renewal areas in site conservation areas are segregated from site conservation planning approach of the area. Therefore, this situation creates the problem, which is the inability of producing urban planning and site conservation planning decisions together.

2 ANALYSING CONSERVATION AND RENEWAL LAWS WITHIN THE SCOPE OF LEGAL LEGISLATION FOR HISTORICAL AREAS IN TURKEY

In this part, ‘Law no: 2863 Law on the Conservation of Cultural and Natural Property’ and ‘Law no: 5366 Law on Renovating, Conserving and Actively Using Dilapidated Historical and Cultural Immovable Assets’ are analysed item by item in order to understand their similar and contrasting sides with regard to process and implementation.

2.1 EXAMINATION OF LAW NO: 2863 ON THE CONSERVATION OF CULTURAL AND NATURAL PROPERTY

The aim of this law is “to define movable and immovable cultural and natural property to be protected, regulate proceedings and activities, describe the establishment and duties of the organization that shall set principles and take implementation decisions in this field”(Url-1).

In the law, concepts cultural such as property, natural assets, site, conservation, protection, conservation area conservation development plan, street improvement projects and implementation, interaction-transition area are also defined. Among these concepts, an article in the description of conservation development plan is important for this study. According to this article, the plan should take the interaction and transition zone into consideration and aim to conserve the cultural and natural assets in accordance with sustainability. What is more, the plan should be prepared on a base map and it should include a field

2.1.1. EXAMINATION OF REGULATION ON THE IMPLEMENTATION OF THE LAW ON CONSERVATION BY RENOVATION AND USE BY REVITALIZATION OF THE DETERIORATED HISTORICAL AND CULTURAL IMMOVABLE PROPERTY

With the following additional paragraph: (Additional paragraph: 04/02/2009 - 5835/3 art.) “The Regional Conservation Councils for Preservation of the Cultural and Natural Properties which are set up as per Law No 5366 to approve any renovation projects in the renovation zones declared pursuant to Law No 5366 of 16/6/2005 On Preservation by Renovation and Utilization by Revitalizing of Deteriorated Immovable Historical and Cultural Properties Law, have the task and authorization to carry out the works which are specified by this article.”

This article shows that both boards of the two laws have the same authority for the same places. Therefore, this results authority confusion for the two boards where one of them aims conservation and the other aims renovation(Url-1).

The traditional structures of urban areas, which are defined as urban sites with their cultural properties, and the traditional tissue can gradually lose their original qualities for various reasons. As a result, it is foreseen that in areas, which are registered and identified as site areas by Cultural and Natural Heritage Conservation Board should be restored in accordance with the development of the region, and No. 5366 Law On Renovating, Conserving and Actively Using Dilapidated Historical and Cultural Immovable Assets went in effect.

2.2 EXAMINATION OF LAW NO: 5366 ON RENOVATING, CONSERVING AND ACTIVELY USING DILAPIDATED HISTORICAL AND CULTURAL IMMOVABLE ASSETS

Article 1- The purpose of this Law is to ensure that metropolitan municipalities, district and first-tier municipalities within boundaries of metropolitan municipalities, provincial municipalities and district municipalities, and municipalities with populations above 50,000, and special provincial administrations for the areas outside the purview of such municipalities, reconstruct and restore, in a manner consistent with area development, the areas registered and announced as protected areas by the cultural and natural heritage conservation boards and protection zones of such areas which have been dilapidated and are about to lose their characteristics, create zones of housing, business, culture, tourism and social facilities in such areas, take measures against risks of natural disasters, renovate, conserve and actively use historical and cultural immovable assets(Url-2).

This Law covers the procedures and principles relating to the designation of renovation areas which shall be formed according to the purposes specified above, the determination of technical infrastructure and structural standards, the design, implementation, organization, management, supervision, participation and utilization of the projects.

DESIGNATION OF AREAS

Article 2- Renovation areas shall be designated by a resolution of general provincial councils in case of special provincial administrations, and that of municipal councils in case of municipalities, passed by the simple majority of the full membership. The resolutions passed by general provincial councils in case of special provincial administrations, and by municipal councils in case of non-metropolitan municipalities shall be submitted to the Council of Ministers. In case of metropolitan municipalities, such resolutions as passed by district and first-tier municipalities shall, upon approval by the metropolitan council, be submitted to the Council of Ministers. The Council of Ministers shall decide within three months whether or not to implement the project in question (Url-2).

The implementation in the areas accepted by the Council of Ministers may be designed in consecutive phases within a program.

Phased projects and programs shall be implemented by a resolution of the council passed by the simple majority of the full membership and the approval of the mayor in case of municipalities, or of the governor in case of special provincial administrations.

All immovable assets within the boundaries of the designated area shall be subject to the renovation project to be realized under this Law after the cultural and natural heritage conservation board approves the renovation projects prepared by the municipality and the special provincial administration in question.

Renovation projects within boundaries of metropolitan municipalities but not prepared by metropolitan municipalities shall be approved and put into effect by the metropolitan mayor after such projects are prepared by district and first-tier municipalities and adopted in the councils. Expropriation and implementation shall be executed accordingly (Url-2).

Procedures and principles relating to the establishment of technical infrastructure and structural standards for the renovation areas, the management and organization of such areas and the participation of the right holders or local people shall be laid down in a regulation.

IMPLEMENTATION

Article 3- In the areas designated as renovation areas, special provincial administrations and municipalities shall implement or cause public entities or natural or legal persons to implement the renovation projects which special provincial administrations and municipalities have prepared or caused to prepare. In such areas, it shall be possible to implement the projects jointly with the Housing Development Administration or cause the same to implement them (Url-2).

In metropolises, district and first-tier municipalities shall alone or jointly implement or cause to implement the projects not initiated by metropolitan municipalities.

In respect of implementations in plots within the renovation area, the owner of the plot may implement the renovation with exact preservation of the building and plot provided that the integrity of the project be preserved, the design approved by the municipality be fully observed and the building be used for the purposes as designated by special provincial administrations and municipalities. In such cases, it is essential that the implementation be started and completed simultaneously with the project. Otherwise, special provincial administrations and municipalities shall apply the provisions of this Law (Url-2).

During the implementation of renovation projects, special provincial administrations and municipalities may make necessary arrangements including refinements and impose prohibitions for the renovation projects in order to implement necessary measures in the areas designated as the Ministry of Public Works and Settlement as running risks of natural disasters. Procedures and principles relating thereto shall be laid down in a regulation (Url-2).

Special provincial administrations and municipalities shall execute or cause to execute and finalize all control, supervision and monitoring actions during the implementation. Such actions shall be entrusted to specialist persons, institutions and teams according to the nature of the project. Implementations in the renovation area shall be exempt from all taxes, duties, charges and fees.

Regional boards of conservation of cultural and natural heritage shall be established as many as necessary pursuant to Article 51 of the Law No. 2863 on Conservation of Cultural and Natural Assets. The projects approved by the board shall be implemented by the special provincial administration or the municipality (Url-2).

RESTRICTIONS ON PROPERTY RIGHTS AND EXPROPRIATION

Article 4- The special provincial administration or the municipality may impose temporary restrictions of construction, utilization or operation on the existing immovable properties in the areas declared as renovation areas until the project is completed (Url-2).

Mutual agreement shall be the fundamental rule in dealing with the evacuation, demolition and expropriation of buildings located in the renovation areas. Where an agreement is not reached, special provincial administrations and municipalities may expropriate the immovable property owned by natural persons or private law legal persons. The expropriations to be effected under this Law shall be considered as expropriations with the purpose of realizing the housing projects stated in the second paragraph of Article 3 of the Law No. 2942 on Expropriation. Expropriation actions shall be executed pursuant to the same Article for those immovable properties for which no owners are identified in the land registry, a trustee has been appointed or on which there are disputes or legal action pending, and on which property rights or non-property rights have been established. For expropriation actions, special provincial administrations and municipalities shall be authorized to obtain decrees of heritage from courts, have trustees appointed or take action according to the owner last recorded in the land registry (Url-2).

Special provincial administrations and municipalities may, if they deem suitable, instead of expropriating the immovable property, purchase the property, exchange it on the basis of land for flat, or establish limited property rights through usufruct rights or right of construction as regulated in the relevant Articles of the Turkish Civil Code No. 4721(Url-2).

(Amended fourth paragraph: 27/4/2008-5793/45 Art.) The immovable properties owned by the Treasury located in the renovation area, excluding those which are allocated for public service, those which have preliminary permit or rights of easement established, the places covered under the Law No. 2565 on Military Forbidden Zones and Security Zones, civil and military airports and areas within the obstacle plans, shall be transferred free of charge to the special provincial administration or the municipality executing the project upon a proposal from the Ministry of Finance and by the Decree of the Council of Ministers. Transfer transactions shall be exempt from all taxes, duties and charges. The immovable properties which are not used in accordance with the transfer purpose within five years from the transfer date shall be registered free of charge, ex officio in the name of the Treasury. Fifty percent of the revenues derived from the said immovable properties after deducting project and implementation expenditures shall be transferred to the Treasury.

At places declared as renovation areas, the immovable properties covered under the renovation project may not be sold, leased, allocated or be subject to preliminary permit or right of easement by the Treasury until the transfer transactions are concluded(Url-2).

But it is foreseen that, there will be changes in property owners and other uses of the area as a result of the sua sponte implementation authority which is given to administrations with the Law no: 5366. Therefore, the most important axis of the law to be analysed contextually is the contradiction between planning discipline and the description of renewal area (Dinçer,2008).

The extreme example of sua sponte implementation authority, which is given to administrations, is that it made investors partners with property owners. The law does not seek for agreement. Moreover, if landowners do not come to a mutual understanding, it is possible to expropriate. This creates a one-sided power to administrations. In conservation areas the municipalities, which preferred this model rather than using public resources, created with Cultural and Natural Heritage Conservation Board, evaluates the historical district as an ordinary tender area(for example Beyoğlu Municipality) (Dinçer,2008).

INAPPLICABLE PROVISIONS

Article 7- The provisions of other laws contrary to those of this Law shall not apply to the renovation areas covered under this Law, without prejudice to the obligations arising from international law(Url-2).

This article of the law invalidates housing and property rights written earlier in the Turkish Constitution.

In the application regulations, the descriptions of concepts such as Cultural and Natural Heritage Conservation Board, renewal area, renewal concept project, renewal implementation project are given. It is crucial to understand these descriptions in order to understand the authority scope of both laws (Url-4).

Article 4-d) Conservation regional council: shall mean In accordance with Article 3 of the Law, The conservation of Cultural and Natural property Regional Council shall be established in accordance with Article 51 of the Law on the Conservation of Cultural and Natural Property No. 2863(Url-4).

- e. Immovable culture and nature assets: shall mean In accordance with the Law No. 2863, they are registered and declared by Cultural and natural property conservation council as immovable cultural or natural assets.
- f. Renewal area: shall mean an area of which boundaries are approved by the Council of Ministers upon the proposal of the competent authority in the Regions registered and declared as sites and conservation areas and conservation areas within this area,
- g. Renewal preliminary Project: that is concluded by the conservation of cultural and natural assets in accordance with Article 2 of the Law, It represents the preliminary reports of static, plumbing, electricity, transportation and infrastructures, and architectural preliminary project, which will be the basis for the renewal implementation projects.
- h. Renovation implementation Project: Shall mean is concluded by the conservation of cultural and natural assets in accordance with Article 3 of the Law, Historical and cultural immovable assets within the renovation area, constructions to be repaired or reconstructed and Survey, restitution, restoration projects state to the urban design, landscaping, architectural, static, mechanical-electrical installation and infrastructure projects which are envisaged in the development legislation(Url-4).

PARTICIPATION AND INFORMING THE PUBLIC

Article-7 "Property owners who are in the area of renovation by the competent authorities or Meetings are held to inform the people of the region about the implementation and their views are taken and their participation is ensured (Url-4).

The competent authority may organize consultation meetings with universities, professional organizations, civil society organizations ,public institutions and neighborhood representative and may inform about the projects by means of press and publications tools" (Url-4).

In the article 7, the participation is defined. However, this definition does not overlap with the concept of participation in the latest examples of planning discipline and implementation. It is observed that the regulation has a centralism scope and mandatory rules for planning and project process. The concerned ones are only informed about the result, are not included in the process. In other words, the process is totally left to administration's initiative (Dinçer,2008).

ESTABLISH OF THE REGIONAL CONSERVATION COUNCIL

Article- 12 In accordance with Article 51 of the Law on the Protection of Cultural and Natural Assets, number 2863, the Regional Conservation Council is formed as necessary to limit the powers and responsibilities to the renewal areas and to conclude the renewal projects (Url-4).

The ministry of Culture and Tourism has assumed the procedure of law enforcement in site areas. Moreover, it is validated that boards responsible for renewal areas will follow the same procedure as in Cultural and Natural Heritage Conservation Boards. In this respect, the Resolution on the Grouping, Maintenance and Repairs of Immovable Cultural Property No. 660 dated 5.11.1999 of the Supreme Council conservation is a binding document (Dinçer, 2008).

Thus, from today in the declared renewal areas with the Law no: 5366, the regulations and resolutions of Cultural and Natural Heritage Conservation Board has started to implemented. This slightly diminishes the concerns about conservation of physical tissue in historical heritage areas(Url-4).

Article 17- Following the decision of the Regional conservation council The renewal preliminary Project which is done or made by the competent authorities enters into force with the approval of the mayor in the municipalities and the governor in special provincial administrations (Url-4).

Within the borders of the municipality of the metropolitan, the Renewal preliminary project, which to stay out of the metropolitan municipalities's applications, enters into force with the approval of the mayor in the Metropolitan municipalities after the acceptance of district and the first-tier municipal councils(Url-4).

Renewal implementation projects are prepared on the basis of renewal preliminary projects and are implemented after approval of the Regional protection council.

PARTICIPATION IN THE PROJECT

In the applications of the parcels in the renovation area , the building which owned by natural and legal persons with the public institutions and organizations and to be preserved or renewed in the same way can be done by natural or legal persons or public institutions or organizations Provided that it is approved by the competent authority and the integrity of the project is not impaired. It is essential that this type of application be started and finished simultaneously with the project. The competent authority may expropriate such premises which are not completed on time, as if they could be completed by themselves.

As can be understood from the article 22, the statements in the regulation about project participation contrast with participation principle of planning (Url-4).

EXPROPRIATION

Article 24- The way to deal with the evacuation, destruction and expropriation of the structures in the renovation areas is essential. In cases where no agreement is reached, Immovables owned by natural or legal persons may be expropriated by the competent authorities. expropriations which made pursuant to Law are considered as expropriation.for the realization of Settlement Projects of the second paragraph of Article 3 of the Expropriation Law No. 2942 (Url-4).

Even though it is not stated in law, in the regulation's article 24, which organizes expropriation, it is mentioned that: "...If it is understood that the ordinary expropriation process will cause delay in the implementation of the project, urgent expropriation can be made according to the provisions of Article 27 of Law No. 2942..." This important verdict strengthens the administrations and brings the expropriation of all ownership within the renewal area in a short time. These expropriated ownerships are marketable to third parties and this creates a situation against public interest (Dinçer,2008).

Under the light of all these analysis, the differences and similarities of the laws are shown in the table below (Table 1).

No.2863 Law on the Conservation of Cultural and Natural Property	No. 5366 Law On Renovating, Conserving and Actively Using Dilapidated Historical and Cultural Immovable Assets
The description for Conservation Development Plan is made.	While it has not mentioned any conservation plans, it describes renewal concept projects.
Is for sustain while conservation purpose.	Is for sustain while conservation purpose.
Pays attention to socio-cultural structure.	Without taken into consideration the socio-cultural structure, physical plans are made.
It has collaborative planning perception.	The description of "collaboration" in 7 th article does not overlap with the collaboration concept in planning discipline and practices.
Creates substantial solutions in most instances.	Intends to create gentrification.
	Gives spontaneous implementation authority to administrations, which results making investors partners with property owners.
	Invalidates housing and ownership rights, which are written before No. 5366 Law.
Expropriation is done when needed.	Promotes expropriation.
	Without a plan, the firm and municipality can make agreements and then produce projects. Company executives make deals with property owners. If they are unable to agree, expropriation rises as a threat. Yet it is not possible to expropriate without a plan.
	Project-based intervention manner.

Table 1. Comparison of two laws

As understood from the table, No. 2863 Law provides a collaborative planning perception via taking into consideration the socio-cultural structure of the area and on site conservation of historic tissue. On the other hand, No. 5366 Law brings a number of justifications in order to demolish and rebuild dilapidated historic tissue. This law has not mention any conservation plan although it describes renewal concept projects. For that matter, the firms and municipalities can create projects without a plan. In short, within this law, project-based major physical interventions can be done via ignoring socio-economic structure to historical areas.

3 ANALYSING THE DIFFERENCES BETWEEN NO. 2863 LAW AND NO. 5366 LAW IN THE IMPLEMENTATION PROCESS WITHIN THE SCOPE OF ADJUDICATIONS

These two laws to understand which cases are the subject of the file of these two laws and to examine the decisions made regarding the case was examined two decision of Council of State 6th Chamber. One of which is determined as a renewal area which is mentioned Ulus, Hacibayram Mosque and Bent Runnel and Ankara Castle and Surroundings in Ankara's historical city center covered by Law No. 5366. Another decision is related to changing the degree of the natural site boundaries of Hill of Dragos and its surroundings.

3.1. ADJUDICATIONS OF ACCORDING TO NO. 5366 LAW

In order to understand the contradictions between these two laws in the implementation process with the scope of adjudications, two Supreme Court Decisions are examined. Supreme Court Decisions are related with the cases of implementation process of two renewal projects in Istanbul (Council of State 6th Chamber,2008).

A claim was filed to Council of State 6th Chamber for the cancellation of the decision numbered 935, which is for the urgent expropriation of the structure in Ankara Province, 19959 island with the number 8 parcel by Ankara Metropolitan Municipal Council. The area which is mentioned Ulus, Hacıbayram Mosque and Bent Runnel and Ankara Castle and Surroundings in Ankara's historical city center, is actually determined as a renewal area according to article 2 of the Law No. 5366 with with the decision of the Council of Ministers taken in 2005(Council of State 6th Chamber,2008).

According to the definition¹ of the renewal area (in article 4); in order to determine a renewal area, the area must be initially registered as a site area by Cultural and Natural Heritage Conservation Board and the same area has to be worn and started to lose its characteristics.

Under the light of these information, the case file is examined. According to the examination, it is founded that in this urgent expropriation decision, the boundaries of the area is not detailly specified. For this reason, an expert examination has been done. According to this examination it is stated that the boundaries of the area are indicated as X and Y coordinates due to the size of the area, these coordinates are not shown in the current maps and the boundaries of the conservation area and site area which is decided under the scope of Ankara Historical City Center are not signed. Therefore, the decision of the Council of Ministers on the determination of the boundaries of the renewal area is not in accordance with Law 5366(Council of State 6th Chamber,2008).

It is mentioned that in the proposal of the Renewal Area boundaries presented to the Council of Ministers, Ulus, Kale, Ankara old town tissue and archeological sites are are found. However, is determined that in the proposed sketch urban and archeological site areas and their conservation areas are not shown. Besides archeological areas cannot be accepted as renewal areas(Council of State 6th Chamber,2008).

In his example, firstly the renewal area is declared. Then in this renewal area, a conservation area is planned and afterwards approved by Ankara Cultural and Natural Heritage Conservation council. Thus, an area which have not been identified by Cultural and Natural Heritage Conservation council is declared as a renewal area.

According to Law No. 5366, in order to be able to detect a region as a renewal area, it is necessary to show that the region should contain site and conservation area, also it should be pointed out that the area is worn and about to lose its character. For this reason, it has been determined that the decision of the Council of Ministers is not in accordance with the Law No. 5366, since the decision of the renewal area is given without examining whether or not it carries the conditions stipulated by law. As a result, Council of State 6th Chamber cancelled the urgent expropriation desicion(Council of State 6th Chamber,2008).

3.2. ADJUDICATIONS OF ACCORDING TO NO. 2863 LAW

Another case filed to the Council of State 6th Chamber was investigated in accordance with the Law No. 2863 on the protection of cultural and natural property.In 1999 with the conservation decision numbered 513/5385 It has registered the forested area which of the upper part of hill of Dragos in Maltepe, Istanbul as 1 st degree of natural site and The zone is south-west of this area and the area along the coastal path south of Drogos Hill as 2 st degree of natural site and the area of enclosing both this areas as 3 st degree of natural site as shown in the scale of the 1/5000 plan borders. The case has been filed with the cancellation of this conservation desicion(Council of State 6th Chamber,2002).The report prepared by the Administrative Court after the investigation of the expert and viewing and documents in the case were evaluated together.

According to this; Hill of Dragos ,which is a special and potential value for the region in an urbanized area, is suitable for the definition of 1st degree natural site due to Hill of Dragos has a positive effect on silage and it needs to be purified from the constructions because its location and position in the topographic patern and the sea-filling areas constructed by the human hand can not be evaluated as the 2st degree natural site and The part declared at the 3st degree natural site is constructed in large scale and

¹ The definition is given in the part, which is entitled as 2.1.1.Examination of regulation on the implementation of the law on conservation by renovation and use by revitalization of the deteriorated historical and cultural immovable property.

Evaluation of this constructed areas as site don't comply with the principles defined in the law. It was decided to canceled due to the fact that Registered of Immovables within the borders of Maltepe Municipality as 2st and 3st degree site don't compliance with the law. This decision has been appealed by the respondent administration and the intervening deputy. The conservation as a whole of Dragos Hill and its surroundings which is an important place in the landscape of Istanbul is a right decision in terms of conservation principles(Council of State 6th Chamber,2002).

Decision based on the expert report ,which is not based on sufficient examination by ignoring the fact that Removal of immediate environment from the boundaries of the site by the Administrative Court will be difficult to conservation, was not considered appropriate.

In accordance with paragraph (a) of Article 3 of the Law No. 2863 on Conservation of Cultural and Natural Poverty which is defined to refer to all assets on the ground, under the ground or under the water pertaining to geological periods, prehistoric periods until present time, that are of unique kind or require protection due to their characteristics and beauty(Council of State 6th Chamber,2002).

According to Article 7 of the Coastal Law No. 3621 "Where public good necessitates and with the resolution of the application structure plan, lands can be acquired through filling and desiccation by considering the ecological features of seas, lakes and rivers" due to the fact that It is clear that these lands can not be qualified as natural assets above-mentioned(Council of State 6th Chamber,2002).

For this reason, according to the decision which is subject to appeal no: E. 2002/1652 K. 2003/3386 T. 29.5.2003 of the Council of State 6th Chamber Part of 2st degree of the natural site area is approved and Part of 3st degree of the natural site area has not been approved. It opens the way for the reconstruction of a demolishing registered of structure.

These two adjudications will be evaluated; According to Law No. 5366, urgent expropriation is required to be made. So that, as mentioned in the regulation's article 24, these expropriated ownerships are marketable to third parties and this creates a situation against public interest. And in the other case a situation related to the Law No. 2863. By lowering the grade of the 1st degree natural site, It is requested that these areas be permitted to build. This issue is against this conservation. For this reason, the Council of State canceled the decisions in accordance with the laws.

4 CONCLUSION

The majority of Turkish cities have lack of upper scale plans; therefore, they are not ready for point projects. No. 5366 Law is completely a framework, which consist of only nine article and left to local municipalities. With this legislation, new conservation decisions are created peculiar to regions and the resell of expropriated areas after regulation became a current issue(Url-7).

Reviving desolated historic centres and traditional residential areas around them constitutes a very important problem. These areas are under a heavy migration pressure. The changes made in Conservation Law in 2004, socio-economic values, renewal and collaboration have started to be handled with conservation. Nevertheless, after almost 11 months from these changes with No. 5366 Law, conservation concept has been pushed into background. While planning is abolished, renewal at building scale and expropriation concepts are highlighted. By this way, No. 5366 Law, which breaks off the integrity of site areas and historical spaces, has become a debatable issue even before its implementation (Tekinbaş,2008 and Url-7).

In this context, Historical Peninsula where this law has been first implemented has faced urban renewal projects, which ignore master plan.

Municipalities evaluated the opportunities which comes with No. 5366 Law in 2005 and they take serious steps for producing and implementing "renewal projects" under the name of "conservation projects". These projects is the Sulukule renewal project, which ignores the socio-cultural aspects of conservation and foresees the dislocation of Romany and culture living in Sulukule for more than a thousand years. New projects such for Balat is added day by day. Treating proprietary constructions in the areas which should

be protected within the scope of the law projecting “renewing” and trying to do it by overcoming the restrictions which make transformation difficult cause lots of problems(Dinçer,2008).

The most important problem is that focusing on physical interventions neglecting research about socio-cultural structure.The main problem in renewal projects for such as Tarlabası and Sulukule, which are the most important historical places of Istanbul is that, they do not have a plan. In an area that has lack of a conservation plan does not provide a planning hierarchy or planning process.

In no. 5366 law economic and especially social situations are ignored. Instead of boards, municipalities prepare Conservation Development Plan but organization of these plans delayed. When an application is performed without a plan, it creates wreckage. The expression of “Law On Renovating, Conserving and Actively Using Dilapidated Historical and Cultural Immovable” results an incomprehensibility. Will it renew or conserve? (url-7).

Instead of conserving cultural assets in site areas via its complete historic, cultural and natural features, no. 5366 law foresees changes in property, social and physical renewal, usage of different user with different functions. As a result one can see that no. 5366 Law On Renovating, Conserving and Actively Using Dilapidated Historical and Cultural Immovable Assets considers no.2863 Law on the Conservation of Cultural and Natural Property as an obstacle and tries to surpass it.

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