

# MAIN CHARACTERISTICS OF URBAN PLANNING AND ITS EFFECTS ON FUNDAMENTAL RIGHTS AND FREEDOMS – WITH SPECIAL REFERENCE TO TURKISH LAW

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## ABSTRACT

Urban planning is one of the quandaries of modern society. Rapid growth in urbanization has brought about significant problems that the public authorities could not handle with, and led to the formation of slum areas and shanty constructions all over the world. As a result, many people have to suffer from the negative effects of such developments, and to have a very low standard of living. As a governmental work and duty, urban planning is to minimize the negative effects of urbanization, and also to maximize the quality of life in the urban areas. This task may be achieved by the preparation and the implementation of urban development plans. These plans must bear certain features in order to achieve the public benefits that are expected from it. Applications of urban development plans have significant effects on human rights. It affects the fundamental rights and freedoms of persons in two ways, either negative or positive. If the implementation of a plan directly gives rise to the restriction of a right (i.e., barring someone from constructing a building on his land), this sort of effects may be classified as those of negative-dimension. On the other hand, if the non-implementation results in the violation of persons' basic rights (i.e., in cases of right to housing or to decent environment), this may be regarded as positive-dimension effects on human rights. In this article, the main characteristics of urban planning

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(urban development plans), and its effects upon some of the basic rights and freedoms of persons are explored.

**Key words:** Urban; Planning; Right; Liberty; Freedom; City; Environment; Property; Land.

## ÖZET

Şehirler, toplumların ulaştığı medeniyet seviyesinin göstergesidir. Hızlı şehirleşme, üstesinden gelinemeyecek birçok problem doğurmuştur. Plansız şehirleşme en başta gecekondulaşma sonucunu doğurmuştur. Planlama süresince yaşanan aksamalar hak ve özgürlükler üzerinde olumsuz etkiler doğurmaktadır. İdarenin görevi, planlama sürecinde ortaya çıkan olumsuzlukların ortadan kaldırılmasını sağlamaktır. Şehir yaşamında temel hak ve özgürlükleri etkileyen olumsuzlukların ortadan kaldırılması ve toplumun yaşam seviyesinin yükseltilmesi idarenin temel önceliği olmak durumundadır. Doğru bir planlama süreci, sağlıklı, düzenli ve estetik bir şehir yaşamı anlamına gelecektir. İmar planlama çalışmaları sağlıklı bir şekilde gerçekleştirildiğinde temel hak ve özgürlükler üzerinde olumlu etkiler doğururken, sağlıklı bir plan çalışması yapılamadığı durumlarda, hak ve özgürlükleri olumsuz etkilemesi kaçınılmazdır. Başta mülkiyet hakkı olmak üzere, hak ve özgürlüklerin kullanılması, imar planlama çalışmalarıyla yakından ilgilidir. İmar planlarında ortaya çıkan hukuka aykırılık temel hak ve özgürlüklere hukuka aykırı bir şekilde müdahale edilmesi sonucunu doğuracaktır. İmar planlama çalışmaları, temel hak ve özgürlükleri kısıtlama etkisine sahiptir. Ancak, temel hak ve özgürlüklerin anlamlı olabilmesi ve kullanılabilmesi bakımından da imar planlamasının belirleyici bir katkısı olduğu tartışmasıdır.

**Anahtar kelimeler:** Şehir Planlama, planlama, hak, özgürlük, şehir, çevre, arazi

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## INTRODUCTION

The Greek philosopher Aristotle, in his seminal work “*Politics*”, asserted two reasons why man has to live in society. To him,

“Man is by nature a political animal. And therefore, men, even when they do not require one another's help, desire to live together; not but that they

are also brought together by their common interests in proportion as they severally attain to any measure of well-being.”<sup>2</sup>

Today, no rational person may challenge the fact that one needs another’s help in the course of the fulfillment of his or her needs, or that common interests urge -if not force- people to live in society since there are many issues in life that only the organized (or political) society, not the individual, can overcome.

Community life requires the necessary infrastructure within a human settlement, which is not only a critical determinant of the quality of life in the settlement but also the one that makes the community life possible.<sup>3</sup> It also requires the determination of certain issues such as, of the area (to settle), the process and the rules by which the land use shall be governed, the rules on the observation and the supervision of the implementation, and so on. The ends that are expected from the community life would not be reached if the necessary infrastructure had not been set in accordance with the rules but with actions if based solely on a whim.

Among the needs of human habitation, determination of the settlement areas for the community, of the rules for land use and the conditions of implementation has led to the emerging of urban planning regulations and their implementations.

The physical conditions of the city are important for residents to enjoy a peaceful and healthy urban lifestyle. Visual and aesthetic aspects of a city have much to do with the shaping of its identity, and with providing the residents with a sense of pleasure and belonging, generating a *sense of spatial identity*.<sup>4</sup>

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<sup>2</sup> **Aristotle**: Politics, Part VI, <http://classics.mit.edu/Aristotle/politics.3.three.html> (11/11/2010).

<sup>3</sup> We take the term “community” –in Alvin Boskoff’s definition- as a “*relatively self-contained constellation of variably interdependent social groups within a definite, manageable geographic area, which, through their interrelated functioning, provide minimal satisfaction of the basic and acquired needs of their members.*” **Boskoff**, Alvin: The Sociology of Urban Regions, Edited by Jon F. Cuber, Sociology Series, New York: Meredith Publishing Company, 1962, p. 4.

<sup>4</sup> Fried notes that “a *sense of spatial identity* is fundamental to human functioning. It represents a phenomenal or ideational integration of important experiences concerning environmental arrangements and contacts in relation to individual’s conception of his own body in space. It is based on memories, spatial imagery, the spatial framework of current activity, and the implicit spatial components of ideals

The roots of the idea of restricting the individual right to property for the sake of achieving general public interest or an urban spatial order goes back to the ancient times. In the pre-Classical and Classical ages, we see a number of cities laid out according to fixed plans, though many tended to develop organically.<sup>5</sup> The ancient cities were mostly of Mesopotamian, Harrapan, and Egyptian civilizations of the third millennium B.C.E. The Greek Hippodamus is widely considered the father of city planning in the West, for his design of Miletus.<sup>6</sup>

Urban planning is said to have become popular due to the growing need to get factory workers into healthier housing, rather than stuffing them into fire-trap tenements. With the emergence of unions, workers gained strength to lobby for better housing. Hence, "mill towns" and "steel vil-lages" sprang up in larger cities.<sup>7</sup>

The right to property of persons, apart from that of the nobles<sup>8</sup>, or of the citizens, was not secured against the acts of the State neither in ancient times nor in the Middle Ages since the right to property was not considered to be a fundamental right at all. However, the right to property recognized in today's liberal democracies requires that there must always be a balance struck between the implementation of urban planning and the fundamental rights and freedoms of persons. It is the government agency's responsibility to ensure the right balance between public inter-

and aspirations." See for his entire discussion about "the sense of spatial identity" **Fried**, Marc, *"From the Urban Condition: Grieving for a Lost Home"*, The Urban Scene: Myths and Realities, Second Ed., Ed. by Joe R. Feagin, New York: Random House, 1979, pp. 171-172.

<sup>5</sup> For detailed information see **Frankfort**, Henry, *"Town Planning in Ancient Mesopotamia"*, Town Planning Review, Vol. 21, No. 2, July 1950, pp. 99-115.

<sup>6</sup> [http://www.newworldencyclopedia.org/entry/Urban\\_planning](http://www.newworldencyclopedia.org/entry/Urban_planning) (10/11/2010); see also, Encyclopedia of Urban Planning, Von Hoffmann Press, USA 1974, p.43; For a historical and comparative analysis of the development of "cities" in the world see also **Lee**, Rose Hum: *The City: Urbanism and Urbanization in Major World Regions*, USA: J.P. Lippincott Co. 1955.

<sup>7</sup> <http://www.wisegeek.com/what-is-urban-planning.htm> (11/11/2010)

<sup>8</sup> For example, the English Barons acquired a relatively strong guarantee for their rights, including the right to property, by way forcing the King John to issue the famous Magna Carta in their favor. For a detailed study on the development of the right to property in the UK, see **Siegan**, Bernard H.: *Property Rights-From Magna Carta to the Fourteenth Amendment*, USA: The Social Philosophy and Policy Foundation, 2001, pp. 6-12.

est, for which the planning is to be conducted, and the rights of the people who are affected by the planning. Government agencies must observe and respect the rights of its citizens while either issuing or implementing the plans.

In this article, the concept of urban planning, the scope of planning, and its major principles and relationship to fundamental rights and freedoms will be explored.

## I) CONCEPT OF URBAN PLANNING AND ITS SCOPE

Planning, in general, means that “*the act or process of making, or carrying out of plans; specifically, the establishment of goals, policies, and procedures for a social or economic unit.*”<sup>9</sup> As a complex governmental process, planning comprises policy-making<sup>10</sup> and policy implementation<sup>11</sup>, which involves the collection of data and information, the formulation of goals, objectives and priorities, and the devising and evaluation of alternative ways of attaining goals and objectives. “*The function of planning*” in this respect, Fitch and associates elucidate, “is to inform, to stimulate, and to guide those responsible for policy decisions, to reduce the incidence of guesswork in policy-making, and to enable the community to make intelligent choices about its future development.”<sup>12</sup>

Planning is a process for providing healthy and livable human settlements, as well as a blueprint of industrial growth and a road map of development. It helps in deciding objectives both in quantitative and qualitative terms. It is a setting of goals on the basis of objectives to be pursued and achieved by the administrative authorities.<sup>13</sup> Planning involves

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<sup>9</sup> Mirriam-Webster Dictionary online, [www.merriam-webster.com/dictionary/planning](http://www.merriam-webster.com/dictionary/planning) (11/11/2010).

<sup>10</sup> Policy-making is described as “choosing among alternative courses of action or inaction and committing resources to implement decisions.” See **Fitch**, Lyle C. and Associates, *Urban Transportation and Public Policy*, San Francisco: Chandler Publishing Company, 1964, p. 60.

<sup>11</sup> Policy-making is described as “carrying out broad policy decisions, [which] includes the interpretation and application of decisions as well as the technical functions concerned with ‘getting things done.’” See **Fitch** and Associates, p. 61.

<sup>12</sup> **Fitch** and Associates, p. 62.

<sup>13</sup> Article 1 of the Turkish Urban Planning Act, No. 3194, dated 03/05/1985, refers to the purpose of the Act with such terms as stated here, while the Article 8/pr. a refers to socio-economic aspects of the planning. It reads as “This Act has been enacted to ensure adjustment of the settlement areas, and of all the structures

purposeful design of the future through societal action as society and its members devise their own images of a desirable future.<sup>14</sup> Planning is not only of importance to the society as whole but also to the individual's lives. As public resources are limited and its needs always exceed its coffers, efficiency is a vital element in their use. Planning, then, serves this purpose best<sup>15</sup>.

### A. Some Conceptual Issues

The word “urban” originated from the Latin word “urbanus” and from “urbs” which means the “city.” In English, the word “urban” means “of, relating to, characteristic of, or constituting a city.”<sup>16</sup> In Turkish, however, the word for “urban,” “imar” has a different connotation than its English counterpart. “Imar” is a word which comes from the Arabic, and means “to construct,” “to repair,” “to make happy or gay,” or “to restore from decay.” The exact matching word for “urban planning” in Turkish is “şehir planlaması” which literally means “city planning.”<sup>17</sup> The plural form of the word “imar” in Turkish “umur” means “orders,” “commands,” or “deeds,” etc.

156 The relationship between the English words “urban” and “city” is more obvious than the relationship between the Turkish words “imar” (urban) and “kent” (city). However, the concept of “imar” relates to the word “kent” (city) in the sense that the former refers to the reconstruction and renewal of the latter.<sup>18</sup> The determination of areas such as “urban” or

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wherein, to the plan, physical and health conditions, and to environmental conditions.

<sup>14</sup> Harris, Britton: “The New Technology and Urban Planning”, Urban Affairs Quarterly, Vol. III, No. 2, Dec. 1967, p. 23.

<sup>15</sup> Colak, N. İlker: İmar Hukuku, XII Levha Yayınları, İstanbul 2010, p.70-72

<sup>16</sup> Merriam-Webster Dictionary online, www.merriam-webster.com/dictionary/urban (11/11/2010)

<sup>17</sup> Osmanlıca-Türkçe Sözlük, http://www.osmanlicaturkce.com/?k=imar&t=@, (06/12/2009)

<sup>18</sup> The phrase “kent in Turkish was called as “kend”. The origin of the word is said to be “kant” who was used by the people of Turkistan. ÖGEL, Bahaeddin: Türk Kültür Tarihine Giriş I, Ankara: Kültür Bakanlığı Yayınları, 1991, s. 115. İSBİR, Eyüp G. /AÇMA, Bülent. Kentleşme Ve Çevre Sorunları, Eskişehir: Anadolu Üniversitesi Yayını, 2005, s. 6-8.

“*rural*” is generally connected to administrative, political, historical or cultural considerations as well as to demographic criteria.<sup>19</sup>

The main distinction between the *city*, *town* and *village* is drawn based on the number of inhabitants as a city is more densely populated than a town, which is more densely populated than a village. Cities are defined – from a realistic perspective<sup>20</sup> – as *population aggregates*, large, heterogeneous, and densely settled within a limited land area, in which persons are more often cultivated for specific gains and objectives rather than on an intimate face-to-face basis. This is because large aggregates of populations may lead to different pursuits that interest and attract people from different geographical locations. Anonymity and mobility are the other features of cities.<sup>21</sup>

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<sup>19</sup> According to the United Nation’s Demographic Yearbook, definitions of “urban” divided into three main categories: “(1) Classification of minor civil divisions on a chosen criterion which may include: (a) type of local government, (b) number of inhabitants, (c) proportion of population engaged in agriculture; (2) classification of administrative centers of minor rural divisions as urban and the remainder of the division as rural; and (3) classification of certain size localities (agglomerations) as urban, irrespective of administrative boundaries” See **Hauser**, Philip M., “*Urbanization: An Overview*”, The Study of Urbanization, Ed. by Philip M. Hauser and Leo F. Schnore, Second Printing, John Wiley&Sons, USA: Inc. Press, 1966, p. 9.

<sup>20</sup> There are many definitions of “city”, with many features added in literature. These definitions may correlate to a very physical or abstract entity, depending on how it might function in literature, or in fiction. See a study on this, **Diallo-Gaboury**, Lisa: “*Circumscribing Urban Space and Its Connotations in J.R. Leveille’s New York Trip and The Setting Lake Sun*”, Western Humanities Review, Vol. LXI, No. 3, Fall 2007, pp. 75-87.

<sup>21</sup> **Lee**, pp. 7-8; According to the progressive thought, face-to-face personal contact is desirable because only this way, the traditional values -such as family, neighborhood, small-town solidarity- on which the social organization is based, might survive. So, they idealized a small-town in which such values can be realized. See **Berry**, J.L.: The Human Consequences of Urbanization, New York: St. Martin’s Press, 1973, p. 14; Besides such advantages, small-scale towns have also many disadvantages compare to large metropolitan areas. Such advantages or disadvantages may be classified into two parts: those stemmed from social and cultural diversity, such as rich variety of food, drinks, movies, arts, etc.; and those based on the scale of the economy which the city bears, such as a large state university with well-developed programs and research opportunities, the main medical centers with a wide range of services and research facilities, or a large corporations and business activities, etc. See **Thomson**, Wilbur R., “*Internal and External Factors in the Development of Urban Economies*”, Issues in Urban Economics, Ed. by Harvey S. Perloff and Lowdon Wingo, Jr., Published for Resources for the Future Inc., Washington D.C.: The Johns Hopkins Press, 1968, pp. 53-55; On the other hand, The size

The word “*urban*,” it is argued, shall be reserved for the areas of 20,000 or more inhabitants, and that calculations indicating degrees of urbanization will be based on places of 20,000 or more and places of 100,000 or more of population. The reason why such assumptions should be accepted is that in the areas where population is under 20,000, typical characteristics of urban life are not likely to appear.<sup>22</sup> However, this mode of definition ought not to exclude the determinants of size, heterogeneity, and density of population.

Another criterion for distinguishing between such administrative units is drawn upon the economic, social, and political structures of the human settlements. Villages are small rural settlements, whose inhabitants are mostly dependent on agriculture in which to live. In another words, the village economy is only viable with the development of agriculture as the dominant way of making a living, while that of the town is a function of increased agricultural productivity, the proliferation of the crafts, development of trade, and/or more efficient means of transportation.

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However, the metropolitan economy mostly rests upon the combination of technological and organizational changes associated with industrialization and the emergence of the metropolitan complex with the large city as a nucleus for an interdependent hinterland.<sup>23</sup> Cities, or metropolitan areas, compare to towns and villages, have industrial, commercial and residential areas<sup>24</sup>; for which planning becomes more than a necessity.

As to the Turkish administrative system, the distinction is made between such divisions as “*city*,” “*town*,” and “*village*.” To refer to its administrative structure, cities are also called provinces. Besides the historical fac-

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of the city is closely associated with increased latitude of choice. A larger city can offer not only variety of activity and opportunity but also more efficient fit of supply and demand. See **Hoover**, Edgar M.: “*The Evolving Form of the Metropolis*”, Issues in Urban Economics, Ed. by Harvey S. Perloff and Lowdon Wingo, Jr.: Published for Resources for the Future, Inc., Washington D.C.: The Johns Hopkins Press, 1968, p. 281.

<sup>22</sup> This distinction was made by Gerald Breese of Princeton University, Bureau of Urban Research. See **Breese**, Urbanization in Newly Developing Countries: Modernization of Traditional Societies Series, NJ, 1966, pp. 16-19.

<sup>23</sup> **Hauser**, p. 3.

<sup>24</sup> **KAYA**, et. al., Modern Kent Yönetimi I, İstanbul: Okutan Yayınevi, 2008, s.9-10; İS-BİR, /AÇMA, s. 6-8.

tor, there are – as explained above – several other criteria in declaring or defining a certain area as a “*province*,” such as a *geographical situation* and *economic conditions*, or *public service requirements*.<sup>25</sup>

Finally, urban planning bears some relation to *urban community* and *urbanization* as well. The term “*urban community*” is defined as:

“a community characterized by a dominance of commercial, industrial, and service occupations; an extensive division of labor and its corresponding social complexity; an accompanying and underlying high density of population; and the development of coordination and social controls on a nonkinship basis.”

Definition of urbanization, however, refers to social, ecological, and cultural trends which produce positive developments in any or all of these four aspects.<sup>26</sup>

In this context, “*urban planning*” may be defined as one of the planning deeds of government pursued as a means of improving urban environments and achieving certain economic, social and cultural objectives; as an effort of creating a spatial order of living together which meets human needs;<sup>27</sup> as the determination, in the best interests of the society, of such a spatial order.

## **B) The Scope of Urban Planning**

Urban planning is a term that encapsulates both science and art, which has strong relevance to several disciplines and brings them under a single umbrella. It encompasses almost all aspects of a city, whether it be physical, social, or cultural. In response to urbanization, these aspects vary from the construction of children’s playgrounds to highway or railroad infrastructures; from the construction of residential, industrial, or commercial sites to governmental plants and buildings. However, planning

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<sup>25</sup> For example, Article 126/pr. 1 of the Turkish Constitution provides that “Turkey is divided into provinces on the basis of geographical situation and economic conditions, and public service requirements; provinces are further divided into lower levels of administrative districts.”

<sup>26</sup> **Boskoff**, pp. 13-14.

<sup>27</sup> See **Helmes**, et. al.; revised by D. Wiktorin, [www.v-g-t.de/english/brd/module/m3/u8.htm](http://www.v-g-t.de/english/brd/module/m3/u8.htm) (03/01/2011).

activity involves not only building or re-construction of a whole city but also the construction or restoration of a single building.<sup>28</sup>

The public activity of urban planning is not just about the construction of such facilities for public use; it must also meet some cultural and social needs of society, as well as an answer to some aesthetic considerations.<sup>29</sup> Ought urban planning to concern itself only with the present and future needs of the urban community – in a manner limited to the current modes of social and cultural change, or limited to devising remedies for the problems engendering these changes? The scope of urban planning will be varied based on answers to this question. The answer, indeed, prompts a distinction between two types of urban planning activity.

Boskoff distinguishes between corrective planning and creative planning, according to the scope of, and the aims pursued by, the urban planning activity. Although both types of activity relate to the physical and social aspects of planning, corrective planning is said to be preliminary to the planners' fundamental objective –the creation of an urban region that provides the maximum in physical services and social amenities for its residents<sup>30</sup>; creative planning, on the other hand, being regarded as *an ideal, a projected image, and a utopian perspective*, directed to building urban areas “in which changes can be *consciously selected and articu-*

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<sup>28</sup> Helmes, et. al., [www.v-g-t.de/english/brd/module/m3/u8.htm](http://www.v-g-t.de/english/brd/module/m3/u8.htm) (03/9/2011).

<sup>29</sup> Aesthetic considerations (“beautifying the cities”, Banfield argues, is important for, though, but not of primary importance to, the urban development planning. To him, it seems that the satisfaction of other public needs is more essential to any development plan to be taken into account prior to the aesthetic considerations. He writes: “[t]he same [satisfaction of cultural and intellectual needs] can be said about efforts to ‘beautify’ the cities. That for the most part the cities are dreary and depressing if not offensively ugly may be granted: the desirability of improving their appearance, even if only a little cannot be questioned. It is very doubtful, however, that people are dehumanized (to use a favorite word of those who complain about the cities) by the ugliness of the city or that they would be in any sense humanized by its being made beautiful. (If they were humanized, they would doubtless build beautiful cities, but that is an entirely different matter. ...) At worst, the American city’s ugliness –or more, its lack of splendor or charm- occasions loss of pleasure. This loss is an important one, but it cannot lead to any kind of disaster either for the individual or for the society.” See Banfield, Edward C.: “*From Unheavenly City Revisited: Introduction*”, *The Urban Scene: Myths and Realities*, Second Edition, Ed. by Joe R. Feagin, New York: Random House, 1979, p. 20.

<sup>30</sup> Baskoff, p. 326.

*lated with one another so as to achieve the highest level of experience and opportunity from the urban potential.”*<sup>31</sup>

Between the two lies “*master plans*,” a practical approach to both types of planning, which seeks to realize the ideals of creative planning and to confront the objections to it. Despite its feasibility and desirability, master plans are deviated from their original conception, focusing in practice on the physical features of the planning activity.<sup>32</sup> It therefore disregards the social, cultural, and political aspects of the planning; each has a part to play in shaping the identity of the urban area. The scope of the term “*urban planning*” ought not to be limited to the narrow meaning of the “*master plan*.” Therefore, both types of urban planning will be taken into account in this work.

In practice, urban planning is usually carried out through the preparation of “*urban development plans*,”<sup>33</sup> which are and ought to be conducted in accordance with either the ordinances or the specific decisions of government authorities. In our modern society, no one should be allowed to perform any activity involving the exercise of such plans without the explicit consent of the authorized public body. Those who act against the rules and ordinances governing urban planning shall be punished by law. As urban planning is strictly governed by law, it carries by definition this sanction in case of violation.

In this context, the law of urban planning is not only applicable to the private actors but also to the public bodies. And the activity not only concerns itself with the public bodies’ acts of general character but also the individuals’ acts of a particular character.

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<sup>31</sup> **Baskoff**, p. 346.

<sup>32</sup> **Baskoff**, p. 342; this (physical) feature of planning is also called the first level of urbanity. In this classification, the second level of urbanity relates to the cultural opportunities. And third level involves with “the need for fine [rare] food and drink, special food, special drink; and not merely an incessant supply...” Though the first level of urbanity may better be satisfied in idealized [by progressive thought] small-scale towns, the second and third level urbanites cannot be realized in such towns. See **Burchard**, John Ely: “*The Limitations of Utilitarianism as A Basis for Determining Urban Joy*”, Man and The Modern City, Ed. by Elizabeth Geen, Jeanne R. Lowe, Kenneth Walker, and Pennsylvania: University of Pittsburgh Press, 1963, pp. 14-24.

<sup>33</sup> A “development plan” technically, “comprises written statements, maps, and diagrams prepared by an authority responsible for planning in town and country”. See Encyclopedia of Urban Planning, p. 332.

## II) MAJOR CHARACTERISTICS OF URBAN PLANNING

It must be noted at the outset that there may be countless way of analyzing the characteristics of urban planning. Before identifying the major characteristics of urban planning, it would be helpful to explain the elements of the urban planning process. B. Harris cites five elements of the urban planning process as follows:<sup>34</sup>

(1) At the first stage, a problem is identified with the mismatch between aspirations and potential developments. These problems cover a spectrum of complexity and urgency, and the most general is the difficulty of designing and securing a better future urban environment.

(2) A number of solutions or new courses of action are then produced to take part. This stage of planning is basically one of design or invention and holds many more subtle difficulties than are generally recognized.

(3) The other problem of planning is to foresee the consequences of adopting each of a selected set of design or discoveries, estimating their costs and benefits and at the same time establishing a comparative basis by forecasting the conditions which would emerge due to the absence of new designs and new policies.

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(4) The fourth stage in the planning process is the evaluation of courses of action and the selection of the most effective and desired one.

(5) Fifth: the desired course would include budgets, project schedules, legislative enactments, public education campaigns, and perhaps a sketch of the political process.

These elements may shed light on the path to the planning process, and must be observed by the administration in any planning process. At the first stage of the planning process, for example a problem, whether of traffic, housing etc., is identified, to which a solution is offered accordingly in the second phase. Planning for the *future* is also one important feature of a planning activity, which relates to the third phase. That the planning ought to be aimed at achieving the most effective and desirable design and policy from among the many is one of the main objectives of planning activity in general. The final element obviously relates to several characteristics of planning, such as the fiscal, time effectiveness, im-

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<sup>34</sup> Harris, pp. 23-24.

plementation and binding nature of planning, etc. All these stages of the planning process, in one way or other, involve the main characteristics of a planning course. Moreover, these stages may overlap with the main characteristics of planning activity, which we'll try to clarify below.

Finally, being an administrative activity prescribed by law, urban planning must meet the several criteria to achieve the goals and benefits expected from it. Above all, it must be comprehensible, unambiguous, and accessible. In addition to the clarity requirement, there are several other principles on which the urban planning activities must be based, or the main characteristics by which the urban planning must be conditioned. We can count several, but not all, of these principles or main characteristics as the principles of generality, accessibility (by the public), and durability; requirements of forcibility and a binding nature, of public interest, of unity, and of cooperation with the other public authorities.

### **A) Generality**

One of the distinctive characteristics of urban planning activity is that it must be performed to enclose the area to which it is concerned, and in a way that is not to be deliberately directed at benefiting any particular subject within the field of activity. Put another way, planning must be carried out without distinction, based not on the subjective interests but on the common interests of society. Planning activity is not appropriated to one's subjective interests, nor is performed to punish someone simply for his/her rivalry with, or opposition to, the administration.

In order to ensure the principle of generality in urban planning, it must be carried out in accordance with the scientific research that's already been accomplished by independent and impartial scientists based on objective principles. Otherwise, the planning work would be motivated by subjective interests, mostly detrimental to the common interests of the society, in that it would lower the benefits and advantages expected from the planning. However, this principle ought not to contradict with the other characteristics of planning such as "*accessibility*" or "*unity and cooperation.*"

### **B) Accessibility**

The purpose of urban planning is to achieve the goals determined by, and expected from, the planning activity. In order to achieve this task, planning activity must be directed to frame and shape the practice concerned.

This cannot be achieved without ensuring public access to the planning activity first and foremost. Being one of the classified objectives of planning activity, public access to the planning process is to clarify – by highlighting the selected decision-making processes where a polychotomy of interests are involved – some of the relationships and interactions between land use, economic forces, and planning principles. Participants must be familiarized with the causes and effects of selected decisions while the circumstances of the situation are still top of mind.<sup>35</sup>

The principle of public access to planning contains two aspects, the first of which is that all details of planning activity should be available for public access and scrutiny. Administration shall not refuse on the pretense of bureaucratic formalities persons with legitimate interests in having access to the plans. This doesn't necessarily mean that persons demanding copies of the plans shall not be asked to pay for the basic expenses concerned. Besides these expenses, administration shall not hinder, on any bureaucratic ground, public access to the plans.

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The second aspect of the principle of public access to the planning process is to ensure the participation of the persons having legitimate interest in it. This aspect is also called “*advocacy of planning*” which means, by the encyclopedia definition, the preparations of plans or planning proposals and their advocacy by professional planners on behalf of an organization, interest group, or community as an alternative or in opposition to plans or planning proposals prepared by the administration.<sup>36</sup>

By participation, a person who might be affected by the plan will have a say in the preparatory works of the plan, which will reduce the potential grievances to the plan, and ensure a more effective compliance by the public with its implementation.<sup>37</sup> This aspect is of more importance to the planning activities since it helps reduce the potential injustices and

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<sup>35</sup> See **Taylor**, John L.- **Richard** N. Maddison: “*A Land Use Gaming Simulation: The Design of A Model for the Study of Urban Phenomena*”, Urban Affairs Quarterly Vol. III. No. 4, June 1968, pp. 40-41.

<sup>36</sup> The term has been named because of the planners engaged in the planning process are said to be advocate, representing their clients, interest groups or bodies who claim that their interests are at stake. For more information see Encyclopedia of Urban Planning, p.11.

<sup>37</sup> American Planning Association, Planning and Urban Designing Standards, USA, 2006, s. 7.

wrongs to those who might be affected by the plan, and helps keep the integrity and unity of the plan together in the future, especially against the legitimate objections to be raised by those who might be affected by the plan.

Blocking the public from taking part in the preparation of the plan means that the plan will be prepared by governmental departments. Besides being undemocratic and subject to the above-indicated perils, technocratic planning is intrinsically *short-range*, *econocentric*, and *premised on hierarchy*.<sup>38</sup> Thus, leaving the planning activity solely in the hands of the planning departments will lead to leaving out its many essential features.

Finally, planners are generally inclined to overemphasize the physical features of planning activity, and to overestimate the community sentiment, which determine the extent of a collectivity's reach and its sense of sentimental and functional independence.<sup>39</sup> This is because the professional planners conceive of the area as an organic unit, which is too abstract and generalized to the creation of the image of the *human city*; and function within the image created by a profession.<sup>40</sup> So, participation does have an important role to play in a planning activity to satisfy the community sentiment and human needs, other than solely the physical and material.<sup>41</sup>

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<sup>38</sup> Although Toffler articulates the disadvantages and the deficiencies of the technocratic planning handled solely by the government authorities, we believe that his critics are quite applicable to the case of urban planning. See for his discussions. **Toffler**, Alvin: "*From Future Shock: The Strategy of Social Futurism*", The Urban Scene: Myths and Realities, Second Edition, Ed. by Joe R. Feagin, New York: Random House Publishing, 1979, pp. 270-305.

<sup>39</sup> Encyclopedia of Urban Planning, p. 289.

<sup>40</sup> See **Bacon, Edmund N.**: "*The City Image*", Man and The Modern City, Ed. by Elizabeth Geen/Jeanne R. Lowe/Kenneth Walker, Pennsylvania: University of Pittsburgh Press, 1963, pp. 25-32.

<sup>41</sup> L. Haworth points out that "[t]he emphasis on citizen participation is the second aspect of community renewal that enhances person-centeredness. ... a neighborhood may incorporate participation in planning for renewal brings the resident into contact with the whole round of neighborhood life, ... the inhabitants would broaden their acquaintance not only with neighborhood affairs but with those who conduct them." See **Haworth**, Lawrence: *The Good City*, Reprinted, Westport: Greenwood Press, 1990, p. 125.

## **Durability**

As a typical administrative activity, urban planning must include a character of durability irrespective of whether or not it is an investment plan or a sectoral one.

The principle of durability in urban planning activity enjoys two varied aspects, one of which being that the works must follow in a consecutive order without ceasing. It is usual that the life and validity of urban plans may some day end due to economic, industrial, political, or legal developments in the country, in that the plan would become obsolete and its implementation useless.

Apart from the above-mentioned developments, urban planning activities should be aimed at the most durable state possible to meet the public needs and benefits expected from it. Thus, planning activity, by its very nature, involves not only the present but also the future. The more the plan focuses on the future, the less it will be subject to revision, and the more durability it will gain against the passage of time.

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— In order to achieve a long-lasting plan, framers of the plan must take basic infrastructure features of the plan into account, such as the transportation, Sewage, water, and solid waste disposal systems of the settlement area, to meet not only the present needs of the area but also the potential future needs. This must be done by assessing the predictable future developments of the area concerned.

Both transportation and sewage systems are a powerful determinant of urban configuration where people live and work. The type, quality and location of transportation, for example, differs with the concentration or dispersion of populations, growth or decline of central business districts, success or failure of urban renewal, housing and public improvement programs, recreational and cultural opportunities, and the relationships of suburbs to the central city and to each other.<sup>42</sup> The same evaluation with respect to the transportation system is also true of the sewage system since it's strongly tied to the population growth in the area. All these facets determine the life of the plans, whether long or short.

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<sup>42</sup> For more detailed analysis of urban transportation planning and policy-making, see **Fitch**, and Associates, pp. especially at 58-102.

The second aspect of the durability principle refers to the due diligence application and implementation by the administration of the urban plans as long as it exists in the legal spectrum.

### **C) Planning Necessity**

This aspect of planning involves two dimensions. The first relates to economic and social necessities while the second is to legal. Though it is true that both the political and social necessities are by far the most exercised through the legal instruments, such as necessary legislation or administrative ordinances and decisions, economic and social developments are the most determinant factors for shaping and framing the legal instruments.

As mentioned earlier, economic and social factors affecting, if not determining, urban development are very complex. We are not to discuss the entire subject here because our analysis is mostly limited to the legal dimension of the planning imperative. A variety of concepts and ideas have been introduced by many to explain the factors and dynamics of urban growth. These factors range from “intra-urban scale economies” to the “impact of hinterland” on the city growth; from “local employment multipliers to “assortments of goods and services,” which the area produces; from “the strategic location of the areas” to “internal improvement networks”; from “the interdependencies associated with market-oriented retailing and service activities” to “manufacturing, wholesaling, financial, and insurance activities within the private and public sector”; and so on.<sup>43</sup> Major political decisions – like moving the capital of the country, declaring a certain area a “free zone,” or “industrial development zone,” etc. – may also play an important role in urban growth, which makes the planning even more than a necessity in order to not throw human life into chaos in modern societies.<sup>44</sup>

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<sup>43</sup> Although A. Pred analyzes the factors of urban growth in the USA, in the period between 1840-1860 in, his analysis and conclusions are mostly –apart from the relationships between the economics of slavery and urban growth, which is peculiar to the place and the period that the study focuses on- applicable to the subject of urban growth in general. See **Pred**, Allan, *Urban Growth and City-Systems in the United States*, Harvard University Press, England, 1980, pp. especially, at 49-59.

<sup>44</sup> In the context of planning necessity, Frank argues, for example, that “[t]he city today not only physical deterioration and congestion, inadequate facilities and services for healthy, sane, orderly human living, but all of the varied forms of human defeat and tragic human wastage. ... But the deplorable conditions should rather be regarded as concomitants of the accelerated urbanization of the past sixty to sev-

With greater size and capacity comes greater and more complex problems, which are of concern to geographers, as well as to other social scientists and planners. All users of urban land, whether commercial, industrial, residential or other, cannot locate themselves on the same sites. To avoid agglomeration coming into play, each site should be planned in accordance with the nature and functions of such establishments. Central business districts and heavy industrial sites, for example, should not be located within the same area.<sup>45</sup>

Planning may generally be conferred by either constitutional or ordinary legislation on the government authorities as a duty.<sup>46</sup> Such a conferral makes the planning activity a legal necessity. The Turkish Constitution, for instance, refers to planning duty and function of the State under several of its Articles,<sup>47</sup> one of which is more relevant to our discussion here. Article 166 of the Constitution reads as follows:

“The planning of economic, social and cultural development, in particular the speedy, balanced and harmonious development of industry and agriculture throughout the country, and the efficient use of national resources on the basis of detailed analysis and assessment and the establishment of the necessary organization for this purpose are the duties of the state. Development activities shall be realized according to this plan.”

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enty years, during which time cities have rapidly grown without the guidance and administration that could have avoided or prevented these conditions by enlisting the new technological resources and professional skills.” **Frank**, Lawrence K.: “*The Promise of the City*”, *Man and The Modern City*, Ed. by Elizabeth Geen, Jeanne R. Lowe, Kenneth Walker, Pennsylvania: University of Pittsburgh Press, 1963, p.35.

<sup>45</sup> See generally **Mayer**, Herold M.: “*A Survey of Urban Geography*”, *The Study of Urbanization*, Edited by Philip M. Hauser and Leo F. Schnore, Second Printing, New York: John Wiley & Sons, Inc. Press, 1966, pp. 81-92.

<sup>46</sup> Constitution (Basic Law) of Federal Republic of Germany, for example, includes several articles referring to the Government’s planning duty. Article 75/4 assigns the Federal Government to taking part in legislation relating to the issues of “land distribution, regional planning and water conservation”. Article 109/3 refers to “financial planning”.

<sup>47</sup> For example, Article 41 refers to the State’s duty towards family planning; Article 45, to the principles to agricultural planning; Article 56, to the planning with respect to the natural environment, and with respect to the functioning of health services; Article 166, to the planning of economic, social, and cultural developments.

Though this Article refers in general to the State's planning duty, it is also true of the local governments, and of relevant administrative bodies. Article 7 of the Law on Urban Planning obliges the administration to conduct urban planning for a district of which its population is 10,000 or over according to the latest census. For the districts, of which their population is under 10,000, the Municipal Assembly will decide at its discretion whether or not to conduct urban planning.

Article 4 of the Municipal Law no. 5397, dated 03.07.2003, provides that the population must at least be 5,000 or over in order for a district to be established as a municipality administration.

There is obviously an inconsistency between Article 4 of the Municipal Law and Article 7 of the Law on Urban Planning because the latter law provides the administration with a discretionary power to conduct planning irrespective of the existing municipal administration established in accordance with the former law. Had the law required establishing a municipal administration in a certain area, the law should also have called for conducting urban planning over that area. It would, otherwise, bring about an absurd situation where a town with a municipal administration would be left without urban planning conducted over it. In other words, it should not be allowed to establish a municipality in any area, for which urban planning is not mandated by law.

A threshold population should not be sought in conducting planning of a town or district. It is preposterous to think that a town established by law should be left without a municipal administration due to the threshold population requirement, and with no urban plan to be conducted over its geography. What kind of development would be expected from such a town? It would be nothing but catastrophic. The practice of establishing towns and provinces in Turkey shows us that such absurdities have arisen mostly because of the political motivations of the ruling parties, aiming to gain political advantage by establishing a town or province in certain regions of the country.<sup>48</sup>

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<sup>48</sup> For a study showing the sheer political influence over the planning activities see **KURT**, Hacı: Türkiye'de Kent Planlarının Siyasal Amaçlarla Yozlaştırılması: Ankara Örneği, [www.e-sosder.com](http://www.e-sosder.com) Yıl: 2006, Cilt:5 Sayı:15 s.110-122.

#### **D) Binding Nature and Forcibility**

Urban development plans are conducted by municipal administrations, and backed by law. As the planning is conducted by administrative bodies, it is considered to be an administrative act. However, planning is always based on legislative acts, namely the law. There are a number of laws governing urban planning activities in Turkey – two of which are of a general character. These two are the Urban Planning Act (Town Planning Law), No. 3194, dated 03/05/1985, and Municipal Act No. 5397, dated 03/07/2003. In addition to those Acts of more general character, there are laws of specific character, such as the Law on the Governance of the Metropolitan Municipalities, No. 3030, dated 27/6/1984; the Metropolitan Municipality Act, No. 5216, dated 10/7/2004; the Bosphorus Act, No. 2960, dated 18/11/1983; The Act of Incentive in Tourism, No. 2634, dated 12/3/1982; and the Law on the Preservation of Cultural and Natural Assets, No. 2863, dated 21/07/1983. By-laws and other kinds of administrative regulations, ordinances, acts and deeds are drawn upon and based on such legislative framework.

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Therefore, the law has a binding force, and is backed up by a sanction against those who violate it. Urban development plans have binding force not only upon individuals or private corporations concerned but also upon public corporations and bodies involved in any way.

#### **E) Public Interest**

The purpose of planning activity is to provide the highest benefit for the public. We understand the complexity of calculating what the utility or benefit that a certain way of planning would produce. Any government activity should indeed be appropriated for an increase in public happiness. O. William writes that,

“The increase of public happiness is the true primary object which ought to claim the attention of every State. It is to be attained by increasing the common standard or measure of happiness, which every citizen may have chance of enjoying under the protection of the state, and by increasing the number of citizens who are to enjoy this common measure of happiness.”<sup>49</sup>

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<sup>49</sup> **Ogilvie**, William: An Essay on the Right of the Property in Land, Printed for J. Walter, London, 1782 p. 25.

A planning system, as Cullingworth puts quite rightfully, should not be a servant of private interests, but of the public good.<sup>50</sup> However, public efforts to ensure the highest benefit for the public will be in *the comfort, convenience, and business advantage of the relatively well-off*, as well as but not necessarily in *anyone's essential welfare*.<sup>51</sup> Whether a certain public activity meets the public interest requirement is sometimes measured and controlled through calling for a referendum on that issue.<sup>52</sup> And such democratic inquiry will obviously count on the voters' degree of respect for the values on which urban life ought to be based.

The common interests of society require the creation of a safe, aesthetic, healthy city infrastructure; and an organized city life. Efficiency of public services will no doubt be dependent on the organization of the city infrastructure.<sup>53</sup> Aesthetic consideration is essential, especially for the satisfaction of human beings spiritually. Given the relation of happiness and pleasure to the concept of aesthetics, it can be argued that taking aesthetics into consideration for the development of urban areas will directly serve the public interest.<sup>54</sup>

Urban planning ought also to direct and govern a gradual reorientation of such traditional values, of cultural and demographic changes, to enable the urban population to reap the objective benefits of social change with minimal disturbance to their rights and freedoms. Though it is usual that some people will be affected by the planning negatively, the planning activity may still serve the benefit of the public as a whole.

It will be argued that the *public interest* ought not to be understood as to be limited to the short-term gains expected from the planning activity. Furthermore, planning must be aimed to achieve long-term benefits not only for the people immediately falling within the plan's scale, but also

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<sup>50</sup> Cullingworth, J Barry: *The Political Culture of Planning*, New York: Routledge Press, 1993, p. XV.

<sup>51</sup> Banfield, p.20.

<sup>52</sup> See for an analysis of referendum case in relation to the factors affecting what the "public good" is in a certain public issue, Peterson, Anne F.- et Al: "Bringing the Spatial in the Case of the 2002 Seattle Monorail Referendum", *Urban Affairs Review*, Vol.43, No. 3, Jan. 2008, pp. 403-429.

<sup>53</sup> NİKES, Şebnem: 3194 Sayılı Kanununun 18. Maddesi Uyarınca Yapılan Arsa ve Arazi Düzenlemelerinde Karşılaşılan Sorunlar. *Gazi Ü. Fen Bilimleri Dergisi*, Yıl:16, Sayı:4, 2003, s.759

<sup>54</sup> See supra note 28.

for the whole of mankind. By this we mean that the planning, for example, ought to take into consideration global warming and other environmental issues (i.e., contamination and climate change), and to develop industrial policies to confront the challenges raised especially by the human-caused factors of our time. Such a policy may comprise many green products, such as solar energy, subway cars, green-building products, and other kinds of renewable energy sources.<sup>55</sup>

Through the reconciliation of subjective interests combined with the interests of society, the part ought to coalesce into the interests of the whole while protecting the basic rights and freedoms of persons.

### F) Unity and Co-operation

172 — A human settlement is a fixed form of life, and thus occupied with the whole round of life. Though the composition of this whole will vary from one culture to another according to the activities of life somewhat peculiar to the society, all features of these activities must be articulated in the plan – if we do not regard the settlement only as a geographic but also a social fact.<sup>56</sup> Comprehensive planning must be carried out from the broad to the particular. It must meet certain minimum requirements to encompass and incorporate all types of information, whether they be tangible, quantifiable, physically visible in space, stable, reasonably understood or projected.<sup>57</sup>

Unity is a prerequisite for planning activity to achieve the integrity in the plan. It is argued that focus and unity in urban environments are also

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<sup>55</sup> For a comparative study of world's main cities regarding the green economic developments see **Fitzgerald**, Joan: *Emerald Cities: Urban Sustainability and Economic Development*, New York: Oxford University Press, 2010, pp. especially at 26-27. for an analysis of responsibility of local and central governments in relation to the measures to be taken to relieve the consequences of climate-change see also **Lundqvist**, Lennart J./**Borgstede**, Chris Von: "*Whose Responsibility: Swedish Local Decision Makers and the Scale of Climate Change Abatement*", *Urban Affairs Review*, Vol. 43, No.3, 2008.

<sup>56</sup> For the features of human settlement –from a philosophical perspective, see generally **Haworth**, pp. 13-15.

<sup>57</sup> See for a study about the requirements of a comprehensive city planning, **Branch**, Melville C.: "*Simulation, Mathematical Models, And Comprehensive City Planning*", *Urban Affairs Quarterly*, Vol. 1., No. 3, March 1966, pp. especially at 17-24.

among the conditions for focus and unity in individual life.<sup>58</sup> Planning activities are aimed to achieve certain values, and to provide the maximum benefit for the society. Every part of the plan is designated to achieve these goals. Change in one part of the plan will certainly affect the other parts; thus, its unity.

Unity requirement has two features, the first of which concerns the other public bodies operating within the sphere of the plan. The preparation of the plan must be conducted in a way to eliminate all of the possible conflicts with the other public authorities, those which are especially the central government's local bodies, involved with the implementation of the plan.<sup>59</sup> Otherwise the plan would, at the stage of implementation, be subject to revision due to the legitimate challenges made by the other public authorities. Such revisions would destroy the integrity of the plan if it has been revised many times because of the valid objections raised by other public bodies. This feature of unity requires the full cooperation of the planning authority with the relevant public authorities, in the preparation of the plan.

Co-operation between local and central administration is essential especially for the planning of transportation systems and the construction of dams for water supplies. The planning and administration of both types of systems goes beyond the boundaries of any local administration especially in the cases of huge metropolitan areas. In some cases, this co-operation is ensured by law, as in the case of General Directorate of Istanbul Water and Sewage Administration.<sup>60</sup>

The second feature relates to the subject and spatial dimensions of the plan. The plan must include the entire subject with which it deals to meet

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<sup>58</sup> **Haworth**, p.125.

<sup>59</sup> Cooperation between the central- and local governments, one of the universally recognized features of planning activity is seen as one of the main goals and objectives of urban growth policies. See **Berry**, pp. 142-143.

<sup>60</sup> Article 1 of *The Law on the Establishment and the Powers of the General Directorate of Istanbul Water and Sewerage Administration*, No.2560, dated 20/11/1981, provides this public authority with exceptional powers such as to intervene the water supply resources, and to build the necessary infrastructure (dams, canals, etc.) even if the sources are located beyond the jurisdiction of the metropolitan municipality, namely within the administrative boundaries of another province. For the web address of the law, see [www.iski.gov.tr/Web/UserFiles/File/mevzuat/pdf/Y\\_ISKI\\_Kurulus\\_ve\\_Gorevleri.pdf](http://www.iski.gov.tr/Web/UserFiles/File/mevzuat/pdf/Y_ISKI_Kurulus_ve_Gorevleri.pdf) (10/10/2010)

the needs of the society. Excluding a subject from the plan will result in the revision of the plan at some stage in the implementation. On the other hand, the plan must cover the entire space, to which it concerns, without discriminating on any grounds, public or private, other than the legitimate one, in order to ensure the integrity in its implementation with both public and private bodies. Excluding one person or one plot of parcel from the plan might give rise to injustices in the practice of planning activity. Such exclusion will sometimes lead to the punishment of the person, or sometimes to the awarding of him. For instance, one's property might be excluded from the plan's coverage, resulting in a situation in which he may not, for example, be allowed to build on his land; or a situation in which his land may not be allocated for public use.

### **III. THE EFFECTS OF URBAN PLANNING ON FUNDAMENTAL RIGHTS AND FREEDOMS**

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Urban planning activities have both direct and indirect consequences for those who are affected by them. As the planning is necessarily associated with the law, there developed a specific field of law which we call "urban planning law." When we talk of the latitude of the direct impact of such laws, we indeed mean the consequences arising directly from the implementation of such laws. In other words, the subject-matter of urban planning law is generally the planning of the land uses, and the regulations and supervisions of the infrastructures to be built in accordance with the plan.<sup>61</sup>

Therefore, the direct consequences of the implementation of urban planning law may inevitably restrict some of the basic rights of the persons such as the right to property and the right to private enterprise.

There are some key urban services, such as housing, transportation, welfare, health, education, etc., characterized by an advanced degree of socialized management and a decisive role in State intervention.<sup>62</sup> Urban planning has thus some reversed but still direct effects on some second and third generation rights, such as the right to housing, a second genera-

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<sup>61</sup> Cullingworth, pp. 11-14.

<sup>62</sup> Castells, Manuel: *"The Wild City"*, The Urban Scene: Myths and Realities, Second Edition, Edited by Joe R. Feagin, New York: Random House, 1979, p.43.

tion right, and the right to live in a safe and healthy environment, which is classified to be a third generation right.

On the other hand, one must think of the indirect effects of the practice and implementation of urban planning law on fundamental rights and freedoms. Within this sphere we can especially take into account the rights to life, freedom of the press, freedom of residence and movement, and freedom of peaceful assembly and association.

### **A) Direct Effects of Urban Planning on Some of the Fundamental Rights**

Some basic rights are directly affected by either the designation or the applications of urban planning. We mean by the phrase “direct effect” that the effect is the outcome that follows directly from the application of the plan. For example, if one’s land is allocated by the plan to public use (green space), it means that his or her right to property has directly been affected by the plan simply because the enjoyment of the property has been removed considerably by public intervention from the rights-holder. Similarly, when one’s request for a building permit on his land has been refused by the administration, we may speak of a direct effect on the right to property.

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Government is under a positive obligation of a kind to provide its citizens with safe and affordable housing. Government’s passive position in ensuring that rights are effective and reachable will no doubt cause a violation of the right to housing. Modern governments cannot make this happen without the designations of urban planning. Or, alternately, that housing prices have reached a point, due to the administration’s reckless planning, of not to be considered affordable by ordinary citizens and which may lead to the infringement of the persons’ right to housing.<sup>63</sup>

#### **1) Right to Property**

As a matter of fact, the effects of urban planning, especially of redevelopment plans, are huge on the economic interests of the people, and thus on their property rights. Some businessmen may lose customers, since their businesses are adjusted to the previous tone of the locale. Redevel-

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<sup>63</sup> For an analysis of two dimensions of rights and liberties in general, and with respect especially to the right to freedom of expression see **Şahin**, Kemal: İnsan Hakları ve Özgürlük Boyutuyla İfade Özgürlüğü, İstanbul: On İki Levha Yayıncılık, 2009, pp. especially at 67-132.

opment plans may change the social construction of an area by, for example, introducing into the area new dwelling units that have either lower or higher economic values than the previous ones.<sup>64</sup>

To what extent shall such interventions through planning be considered an interference with property rights of persons? The answer depends on the definition and scope of the right to property within a legal framework.

Right to property, a first generation right, is literally defined as the right to the ownership and stewardship of, and profits from, land, capital, and other goods.<sup>65</sup> Private property is defended by the liberal philosophers, the most famous of whom is John Locke,<sup>66</sup> against the arbitrary interference backed by the State authority, on the grounds that it existed under natural law before the creation of political authority.<sup>67</sup> Though right to property has many social aspects, the scope and the nature of the right will be defined in accordance with liberal theory. Thus, as to our discussion here, the relationship of the rights within urban planning will be focused on the latter's negative effects on the former.

176 Like many other constitutions,<sup>68</sup> the Turkish Constitution of 1982 (hereinafter "the Constitution") guarantees the right to property under its Article 35, which provides:

"Everyone has the right to own and inherit property."

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<sup>64</sup> **Haworth**, p. 103.

<sup>65</sup> See the definition of "right to property" by the Barron's Banking Dictionary, at [www.answers.com/topic/property-right](http://www.answers.com/topic/property-right) (09/11/2010).

<sup>66</sup> John Locke is well known to be one of the pioneers of the right to property. He asserted that "A man must mix his labours with the earth to justify his title to a piece of land, -or by extension to any kind of property." See, **Watson**, Sir George, *The Right to Property-A Deem in American History*, UK: Leichester University Press, 1974, p. 12.

<sup>67</sup> See for an article on private property in West's Encyclopedia of American Law, at [www.answers.com/topic/property-right](http://www.answers.com/topic/property-right) (09/11/2010); for a moral defense of private property right, see also **Machan**, Tibor R.: *The Right to Private Property, Essays in Public Policy*, No. 109, USA, 2002.

<sup>68</sup> For example, Fifth Amendment to the USA Constitution doesn't allow the public authorities to take one's property without just compensation. Similarly, Article 14 of the German Constitution, Article 64 of the Poland Constitution expressly guarantees the right to property of persons.

Similarly, the European Convention on Human Rights (hereinafter “the Convention”) provides that:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions”

However, the right to property is neither of an absolute character, but is a limited right, even in the most liberal traditions.<sup>69</sup> Those who recognize the right to property as one of the natural rights of the individual consider also the exercise of the right as being subject to restrictions on the grounds of an individual’s entering into society and partaking of its advantages.<sup>70</sup>

The limitations to be imposed upon the right are explicitly provided for by the legal texts in which the rights are guaranteed. The Constitution, like the Convention, explicitly sets out the restrictions to be exercised on the right. The phrasing of the Constitution is as follows:

“These rights [the Constitution, contrary to the Convention that refers only to a single right which combines ‘the right to own’ with ‘the right to inherit,’ refers to two different rights: the right to own property and the right to inherit property] may be limited by law in view of public interest. The Exercise of the right to own property shall not be in contravention of the public interest.”

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The term “*restriction*” explicitly suggests any limitation to be imposed in the form of “*don’t,*” or “*you can do it to the degree...*” or “*you can do it under certain conditions of...*” Restrictions inflicted upon the right shall not reach a point where the exercise of the right has manifestly been pro-

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<sup>69</sup> For a study on the limits of the right to property in the USA, see **McEvoy**, Tom J.: “*Private Property Rights- A Look at Its History and Future*”, at [www.umass.edu/fruitadvisor/fruitnotes/privatepropertyrights.pdf](http://www.umass.edu/fruitadvisor/fruitnotes/privatepropertyrights.pdf) (09/10/2010)

<sup>70</sup> O. William expresses this necessity in these words, “All right of property is founded either in occupancy or labour. The Earth having been given the mankind in common occupancy, each individual seems to have by nature a right to possess and cultivate an equal share. ... It is a birth right which every citizen still retains. Tho’ by entering into society and partaking of its advantages, he must be supposed to have submitted this natural right to such regulations as may be established for the general good, ...” **William**, pp. 12-13.

scribed, or implicitly been hindered through which the enjoyment of the right has become impossible.<sup>71</sup>

As a limitation ground for the right to property, “*public interest*” (or the general interest of the community) hasn’t an exact definition in practice under the Turkish legal system. The latitude of public interest may be drawn upon reviewing the acts of the public authorities in terms of whether the restricting act has been carried out with an intent directed at benefiting solely the individuals, not the public; or upon looking at the consequences of the act, or at the way in which the act has been performed. Had the public authority acted, for instance, with an intent solely to benefit – at the expense of the whole with no justifiable reason – an individual or a certain part of the society, we cannot say that the authority’s action would meet the public interest criteria.

The Turkish Constitution provides a procedural guarantee for fundamental rights and freedoms as well. The guarantee is more formal and definite than the Convention’s “prescribed by law” requirement. Article 13 of the Constitution clearly states that fundamental rights and freedoms shall be restricted only by law, which refers only to the legislative acts. Thus the Constitution, in theory, leaves no room for administrative bodies to impose restrictions on the right to property without the explicit authorization by law. This principle implies, above all, that the procedure shall be prescribed clearly by law, and that the authorities shall act accordingly.

When it comes to the implementation of urban planning laws, public authorities use a great deal of margin of appreciation that may infringe on the right’s basic core, due to the lack of clarity in the law. Although such margin of appreciation doctrine is acceptable in both theory and practice of human rights, the discretionary power that the public authorities use in urban planning cases may be characterized as arbitrary power, which upsets not only the philosophy of human rights but also the rule of law.<sup>72</sup>

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<sup>71</sup> ÖRÜCÜ, Esin: Taşınmaz Mülkiyetine Bir Kamu Hukuku Yaklaşımı, Mülkiyet Hakkının Sınırlanması, İstanbul: İ.Ü. Yayını, No: 2132, 1976, s.31.

<sup>72</sup> We understand from the term “rule of law” –as is described by J. Waldron- that “a form of political life in which everyone is subject, and everyone is ruled, not by a person or by any particular group of people but by a shared set of abstract rules”. See **Waldron**, Jeremy: The Law, Reprinted Edition, London-New York: Routledge, 2003 p. 31.

Administrative bodies impose restrictions on the person's rights of property directly by designating "*appropriated to public-functions*" over the person's land parcels in the urban plans, which means that the parcel concerned has been appropriated to specific public use such as transportation, square, green area, etc.; yet there is no constraint at all on the time period in which the expropriation shall be conducted over the restricted property. This is a typical situation of "*you can keep it, but you can't use it.*"<sup>73</sup>

One of the well-known ways the administration's use of inflicting limitation on the right of property is the administration's denial of the owner's applications concerning building permits. Thus, the administration refuses the applicants, who are seeking a construction status permit on their land, on the ground of "*public-function*" designated in the urban development plans.

Regulation of property may be justified, to a certain degree, for the appropriation of public good or public interest. As the U.S. Supreme Court Justice wrote in one of the landmark decisions in property cases in the Court, "*while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.*" However, as Prof. Tribe rightly put it, the difficulty arises in the cases when it comes to determining "*how far is 'too far'.*" To put it another way, whether or not the administrative regulation of private property through the public function notes ought to be considered as a deprivation of property will be addressed by the courts case-by-case.<sup>74</sup>

At this point, one may make mention of the land owner's right for recourse to judicial review of the administrative action, although efficiency of the right in practice is very much disputed. In Turkey, almost all cases brought by the land owners before the courts on annulling the urban plans have been concluded based on the expert reports.

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<sup>73</sup> The phrase's been quoted from **Tribe**, Laurence H.: American Constitutional Law, New York: The Foundation Press Inc., 1988, p. 593.

<sup>74</sup> For a brief but comprehensive analysis of US legal practice in property rights see **Tribe**, pp. 587-628. It is noted by some other authors that the US Supreme "Court left these questions unanswered for many years, and when they returned to it in the next case, by their own admission, they gave an 'ad hoc' answer." See **Kmieć**, Douglas W.: et al., The American Constitutional Order: History, Cases, and Philosophy, Second Edition, USA: LexisNexis, 2004, p. 845.

Such expert reports are prepared by those who are not in any way expert in legal issues, but solely in city planning, and let in the legal evaluation of the case, in which the judge would base his conclusion. In most of the modern legal systems courts, the power of judicial review is the final appeal for people whose rights are at stake due to administrative actions. Nevertheless, it may well be said that the courts in this specific application of the law, are not much reliable.

Unjustifiable restrictions inflicted upon the right to property are not just limited to those caused by the administration itself, but there is also a specific way of permanent restriction directly imposed by the legislative.

Though all of the land parcels, which had been registered as land plots at the time when the law was issued, have been determined by the Bosphorus Planning Law<sup>75</sup> to be green areas but have not yet been expropriated by the administration for more than twenty-six years. While the local authorities argue that they couldn't and cannot expropriate the lands in question due to their insufficient funds and the budget deficits, the central government has seen the issue out of its jurisdiction. It cannot be said that, in such a case, a fair balance had been struck between the interests of the community and the rights of the individuals, individuals who bear an unjustifiable excessive burden, which goes beyond even a wide margin of appreciation enjoyed by the States; and which should not be 'tendered legitimate' without the recognition of adequate compensation.<sup>76</sup>

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Most curiously enough is that while the owners cannot make any use of their property due to the administration's "*public-function*" notes in the development plans, they still continue to be charged with all tax and similar burdens imposed by the government. For example, the owners are not allowed to build any construction on their lands because of *public-function* notes, but they will still continue to pay a land tax. Such unfair practices not aimed to achieve a fair balance between the general interests of society and the individual's right to property obviously doesn't comply with the letter and spirit of the convention, and its practice. As the European Court of Human Rights held in one of the recent cases brought against Turkey:

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<sup>75</sup> The title of the Law is 'Boğaziçi Kanunu', No. 2960, and dated 18/11/1983.

<sup>76</sup> See, for example, **Sporrong and Lönnroth v. Sweden**, (app. 7151/75; 7152/75), Judgment of 23 September 1982, pr. 73.

An interference with the right to the peaceful enjoyment of possessions must achieve a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.<sup>77</sup>

Unfortunately such administrative practice in Turkey is not limited to urban development plans; there are very similar practices in other types of government activities as well.<sup>78</sup>

## 2) Right to Private Enterprise

Article 48 of the Constitution, under the heading, “freedom to work and conclude contracts,” provides:

“Everyone has the freedom to work and conclude contracts in the field of his or her choice. Establishment of private enterprises is free. The State shall take measures to ensure that private enterprises operate in accordance with national economic requirements and social objectives and in conditions of security and stability.”

The framing of the Article appears to be emphasizing the relationship between free enterprises and the national economy and national development, with little concern on the relationship of urban planning with free enterprises. However, the exercise of the right to free enterprises is closely related to the planning of land use and construction scales.

Some specialized facilities may be needed by certain activities: for example, retailing requires a high degree of accessibility whereas manufacturing needs ample land and railroad service. On the other hand, some activities may well be detrimental or incompatible with one another. For example, a heavy industry area must not be located close to a purely tourist site. Likewise, storage and warehousing facilities, which have a fairly

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<sup>77</sup> **Case of Kozacioglu v. Turkey**, (app. 2334/03), Judgment of 19 Feb. 2003, pr.63

<sup>78</sup> There are some other cases in which the owners of the land plots had been requested by the government tax charges, but later, the title deeds to the lands were transferred to the Treasury, for which no compensation was adjusted, on the ground that the land was found to have belonged either to the forestry or to coastal lines. See for example, these cases which were also brought before, and decided by the European Court, **Doğrusöz and Aslan v. Turkey** (app.1262/02), judgment of 30 May 2006; **Devecioğlu v. Turkey** (app. 17203/03), Judgment of 13 November 2008.

lower competitive capacity to buy good locations, are able to afford only low-rental areas.<sup>79</sup>

All these activities are directly performed in accordance with the plans and their contents. The “public function” notes designated in urban plans have special roles to play in the exercise of the right to free enterprises simply because the free trade zones, tourism areas, manufacturing and industry areas, or any particular activity area of any kind ought to be determined by the public function notes designated in the plans.

It is vital for an entrepreneur to examine the urban plans carefully if he wants to make an investment within the planning area. Putting it other way, an entrepreneur who needs a certain kind of building for his investment may not construct it even though the area falls within a specific industry zone if the scale of the building does not correspond with the requirements of the plan.

182 — In brief, there is a strong relationship between urban planning law and the right to free enterprise. Urban planning has many social aspects and consequences, which relates to many basic rights of persons and society on the one hand, such as the right to free enterprise being one of the basic pillars of a free democratic society, based on liberal principles. Thus, there must be a balance struck between the rights of the society and those of an individual. This measurement refers to the principle of proportionality, by which: “an appropriate balance must be maintained between the adverse effects which an administrative authority’s decision may have on the rights, liberties, or interests of the person concerned and the purpose which the authority is seeking to pursue.”<sup>80</sup>

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<sup>79</sup> See **Breese**, Gerald: *Urbanization in Newly Developing Countries*, New Jersey: Prentice-Hall Inc. Publishing, 1966, pp. 102-108; A survey was carried out by some of Connecticut Institute of Municipal Studies within the State of Connecticut on the competitiveness in business activities to attract investment into its territory, and to ensure the cost-efficiency and competitiveness in business. See the Report of the Neighborhood Revitalization and Reinvestment Task Force, January 1995, unpublished material, available in the University of New Haven Marvin K. Patterson Library, with Ref. No. HT-176. C6.

<sup>80</sup> This passage has been quoted from the decision of Council of Europe Committee of Ministers in: **Hogan**, Greer: *Constitutional and Administrative Law in A Nutshell*, Seventh Edition, London: Sweet & Maxwell, 2005, p. 113.

### 3) Right to Housing

Every person must share a decent standard of living. Housing meets not only the physical needs of human beings by providing security and shelter from weather and climate but also psychological needs by providing a sense of personal space and privacy. It fulfills social needs by providing a gathering area and communal space for the human family, the basic unit of society.<sup>81</sup> Thus housing relates to many benefits such as personal health and safety, employment opportunities, and a decent education. It is argued that if the right to housing is realized, the tension between the different strata of society would, to a great extent, disappear. The importance of the right to adequate housing has been realized by the modern human rights instruments.<sup>82</sup>

Right to housing, a social, economic and cultural right, is recognized in a number of international human rights instruments, including the Universal Declaration of Human Rights, Article 25, which states:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including ... housing...”

Similarly, the International Covenant on Social, Economic and Cultural Rights provides a guarantee for the right to housing under its Article 11.<sup>83</sup>

Article 57 of the Constitution states as follows:

“The States shall take the measures to meet the need for housing within the framework of a plan which takes into account the characteristics of cities and environmental conditions and supports community housing projects.”

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<sup>81</sup> For definitions of some terms concerning the right to housing, and also of the list of the international conventions in which the right has been secured see, “*The Right to Housing*” at [www.hrea.org/index.php?base\\_id=149#intro](http://www.hrea.org/index.php?base_id=149#intro) (06/12/2010)

<sup>82</sup> See **Bratt-Stone-Hartmann**: “*Why a Right to Housing is Needed and Makes Sense: Editors’ Introduction*”, *A Right to Housing*, Edited by Bratt-Stone-Hartmann, USA: Temple University Press, 2006, pp. 1-19.

<sup>83</sup> Wording of the Convention is as: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

Right to housing implies adequate and affordable housing for all who need it. This basic human right needs also government's positive action in order to be realized by its holders. Urban planning has both a reverse and direct effect on the right to housing because the planning, on the one hand, carries with it a limiting of the persons' rights to use their lands as a potential housing space, and with referring on the other hand to the government's obligation to ensure housing for the persons in need. In other words, the authorities' refusal to a person's building permit applications relates to the negative aspect of the planning.

However, the authorities' failure to provide adequate and affordable housing for those in need relates to the positive aspect (reverse effect) of planning. In order to achieve this task, public authorities must allocate in the urban development plans ample space to housing. Besides that, it is a constitutional mandate for the authorities to support community housing projects. Realization of these rights is indispensable for the preservation of human dignity as well because these rights have also an ethical basis within principles of justice, especially justice as fairness.<sup>84</sup>

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This notion, in a somewhat different way, is adopted by even the most liberal traditions in the US. The difference lies not in the scope and application of the right but in the nature and philosophy of the right. Right to housing as a basic human right relates to the preservation of human dignity equipped with a deontological defense. The latter notion, however, is based on a consequentialist defense. Following World War II, urban liberals in the US were aware of the importance of public housing projects both as an instrument of national economic stabilization and as a strategy for slum clearance. Public housing, indeed, was seen as a humanitarian program to alleviate the socially pathological behavior associated with slums and urban poverty in the thirties and early in the forties. It was believed that public housing would elevate the aspirations of the residents, transforming them into industrious and useful citizens, and inculcate in them the basic ideals of democracy.<sup>85</sup>

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<sup>84</sup> Here we use this term to refer to John Rawls' theory of justice. Second principle of his theory requires that the social institutions should be the most beneficial to the least advantaged people in the society. See **Rawls**, John: *A Theory of Justice*, Original Edition, Cambridge: Harvard University Press, 1971, p. especially at 302

<sup>85</sup> **Funigiello**, Philip J.: *The Challenge to Urban Liberalism*, Knoxville: The University of Tennessee Press, 1978, p. 84; **Botein**, Hilary: *"Labor Unions and Affordable Hous-*

The public housing project has been carried out – at the federal level – by the U.S. Housing Authority, an agency established by the Housing Act of 1937, while this task has been performed by the Housing Development Administration of Turkey, established by Law No. 2983 in 1984. The main duty of the Housing Development Administration is to finance private housing projects as well as to provide affordable housing for those in need. The Agency works under the Office of the Prime Ministry. It has been equipped with the powers to issue internal and external bonds and any sort of stocks with or without state guarantee. The Agency may support the industry with reference to housing, and provide the credits, or even establish companies to this end. It may also grant credits for projects directed at the improvement of rural architecture, redevelopment of squatter and slum areas, and preservation and restoration of historical and regional architecture.<sup>86</sup> Municipal authorities have similar departments to contribute to public housing projects.<sup>87</sup> According to the Agency, the shortage of housing units in Turkey reaches a number of 2.5 million. This number clearly indicates that the realization of that right still desperately needs a great deal of government intervention.

Right to housing has a strong tie with the right to live in a safe and healthy environment as well.

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*ing: An Uneasy Relationship*", Urban Affairs Review, Vol. 42. No. 6, July 2007, pp. 814-818.

<sup>86</sup> According to the Administration's official cite, some other duties of the Housing Development Administration (TOKİ) are to implement, or appoint others to implement, profit-oriented projects to ensure sources to the benefit of the Administration; to build, promote and support construction of housing units as well as social facilities and infrastructures in locations where disasters occur if it deems it necessary; to fulfill other duties conferred by legislation and other laws. See the official website of the Administration at: <http://www.toki.gov.tr/> (03/12/2010).

<sup>87</sup> KIPTAS, as one of such agencies founded at local level, was established under Istanbul Metropolitan Municipality in 1987 to launch development plans and architectural projects. It was established to bring a solution to unplanned urbanization and shanty houses did complete its establishment on 8 March 1995. Since its establishment, it has built the site residences, approximately 40.000 residences and roads, waste water and rain water canals, drinking water conveyance line, energy, telephone, natural gas lines, street lighting, landscape applications, forestation, kids playing areas, parking areas, health establishments, school, nursery and play-fields. See its website at: [www.kiptas.com.tr/EN/KIPTAS/kip\\_misyon.asp](http://www.kiptas.com.tr/EN/KIPTAS/kip_misyon.asp) (03/12/2010).

#### 4) Right to Live in a Safe and Healthy Environment

Classified as a third generation's right or people's right, the right to live in a safe and healthy environment has many dimensions such as social and cultural, of which we can deal here with the physical part.

Although there has been a debate over whether the right to environment is a human right at all, it has been argued that if a right satisfies the criteria to be considered a human right, it is a human right. First of all, the right must satisfy the human right test of generality since human rights are general rights that should be attributed to all human beings as such, and while the understanding of them may vary from region to region and from culture to culture, the concept of human rights preserves its universal character. The right to environment therefore belongs to every individual or group of individuals who possess it, not because of race, citizenship, religion, sex, place of birth, or any other such limiting class qualifications.<sup>88</sup>

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The second test of a human right refers to its importance. It is argued that human rights are more fundamental than ordinary rights. They have a transcendental position over the others. The right to live in a safe and healthy environment is essential for the protection and improvement of the quality of life, and in some respect, for the survival of the planet.<sup>89</sup>

The third and final test of a human right is whether it is so enduring as to preserve its essential and pre-eminent character against the passage of time. The right to environment must be viewed as one such right because it is not only relevant to the past or present but also to future generations whose quality of life or survival strictly depends on the practice and enjoyment of the right. Thus, "its importance and great significance to human life merits it a place in the central core of human rights."<sup>90</sup>

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<sup>88</sup> See, for a brief discussion of the topic, at: [http://unu.edu/unupress/unupbooks/uu25ee/uu25ee01.htm#environmental rights in the context of the natural order](http://unu.edu/unupress/unupbooks/uu25ee/uu25ee01.htm#environmental%20rights%20in%20the%20context%20of%20the%20natural%20order) (06/11/2010); see also for the contributors of the article, at: <http://unu.edu/unupress/unupbooks/uu25ee/uu25ee16.htm#c.contributors> (06/11/2010)

<sup>89</sup> [http://unu.edu/unupress/unupbooks/uu25ee/uu25ee01.htm#environmental rights in the context of the natural order](http://unu.edu/unupress/unupbooks/uu25ee/uu25ee01.htm#environmental%20rights%20in%20the%20context%20of%20the%20natural%20order) (06/11/2010).

<sup>90</sup> [http://unu.edu/unupress/unupbooks/uu25ee/uu25ee01.htm#environmental rights in the context of the natural order](http://unu.edu/unupress/unupbooks/uu25ee/uu25ee01.htm#environmental%20rights%20in%20the%20context%20of%20the%20natural%20order) (06/11/2010).

The Rio Declaration on Environment and Development, in Principle 1, stressed that human beings must be at the center of concerns for sustainable development, and are entitled to a healthy and productive life in harmony with nature.<sup>91</sup>

The right to live in a healthy environment has been recognized by international human rights instruments as well. Article 24 of the African Charter, for example, expressly recognizes the rights of "all peoples" to a "generally satisfactory environment favorable to their development." Article 11 of the "*Protocol of San Salvador*" provides that:

*"Everyone shall have the right to live in a healthy environment... The States Parties shall promote the protection, preservation, and improvement of the environment."*<sup>92</sup>

This emphasis on bringing development and nature together calls for public authorities to designate urban development plans in order to preserve the environment in which human beings can live with dignity. Urban planning involves a range of settings from the protection of natural sources to enhancing local ecosystems, or to designation of public transportations.

The authorities must minimize through the planning applications the conflict between the needs to protect nature and the needs of the human habitation, and shall offer opportunities for innovative design to enhance the local ecosystem and the cooperation capacity between nature and the human being. Recent studies show that the relationship between sustainable development and the protection of the environment is not a compromise at all. They are both compatible with each other and detrimental, vice versa.<sup>93</sup>

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<sup>91</sup> See, for the full-text of the document, at: [www.unep.org/Documents.multilingual/Default.asp?DocumentID=78&ArticleID=1163](http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=78&ArticleID=1163) (06/11/2010)

<sup>92</sup> See, for the full text of the Additional Protocol to The American Convention on Human Rights in the Area of Economic, Social And Cultural Rights "Protocol of San Salvador" (adopted at San Salvador on 18 Nov. 1988) at: [www.oas.org/juridico/english/treaties/a-52.html](http://www.oas.org/juridico/english/treaties/a-52.html) (07/11/2010)

<sup>93</sup> As expressed in the American Planning Association's Policy Guide on Planning for Sustainability: "the capability to equitably meet the vital human needs of the present without compromising the ability of future generations to meet their own needs by preserving and protecting the area's ecosystems and natural resources. This concept of sustainability describes a condition in which human use of natural resources, required for the continuation of life, is in balance with Nature's ability to

## **B) Indirect Effects of Urban Planning on Some of the Fundamental Rights**

So far we have dealt with the direct effects of urban planning on fundamental rights and freedoms. Here, we will discuss the potential threat to some fundamental rights and freedoms, which might stem from the implementation of urban planning laws. For example, urban planning laws are an effective tool for the government to suppress the media, a vast majority of which, in today's world, is controlled by large corporations.<sup>94</sup> The media sector is just one branch of such corporations that operate in many other profit-motivated business quarters. This makes media-government relations more complicated and even atypical.

### **1) Right to Life**

188 Right to life is the most important human right because all the other rights rest on the existence of the biological process that is life.<sup>95</sup> This right has two dimensions. One dimension confers on the State a duty to refrain from interfering with the right –that is the negative dimension, the other is an obligation to *protect* the right against the infringement of the third actors, including, in some cases, nature as the third actor – that is the positive dimension.<sup>96</sup>

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replenish them." It is also argued that low income people and communities of color, including lower income workers and minorities, are often the targets of every kind of environmental assault from toxic waste dumps to elevated levels of ambient; and mostly subject to workplace hazards, and do fall out of collective bargaining agreements that may protect them against such hazards. See for the quotation **Fitzgerald**, p. 19; and for the discussions pp.18-20.

<sup>94</sup> For the graphics showing the scale of such controlling by the large corporations in the USA, see [www.corporations.org/media/](http://www.corporations.org/media/)

<sup>95</sup> For detailed exploration of the status of the right to life among the fundamental rights and freedoms, see **Mathieu**, Bertrand: *The Right to Life*, Belgium: Council of Europe Publishing, 2006, pp. 11-20.

<sup>96</sup> It is not clear how far the scope of the right shall be extended to with respect to the positive dimension of the right. Shall it be extended, for example, to the State's duty to provide pediatric care to reduce infant mortality, or to improve care of the population to increase the life expectancy? See for the discussions **Yorke**, Jon: *The Right to Life and the Value of Life: Orientations in Law, Politics and Ethics*, The Right to Life and the Value of Life, Edited by Jon Yorke, UK: Ashgate Publishing, 2010, pp. 1-38.

Thus, Article 2 of the Convention does not say that the right is “*guaranteed*,” but “*protected*.”

“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally...”

The Court of Human Rights’ interpretation of the right to life is not inclusive of the negative dimension of the right. The Court, on several occasions, has concluded that the right must also contain a positive dimension that extends the State’s obligation from inaction to the active involvement in the protection of the right. Thus the State is not only under a duty to refrain from taking one’s life intentionally, but also under a duty to take all the necessary measures with due diligence to protect the life against the potential threats to it. This protection-dimension instills the State’s positive duty with respect to the right. It is this dimension of the right which relates, more often than not, to the administration’s urban planning activities.

ECHR’s Öneriyıldız case<sup>97</sup> is one of the land-mark decisions of the European Court in terms of a clear reference to the State’s positive obligations arising from the right to life, in which the Court determined that the loss of lives due to the State’s failure to implement urban planning laws has led to the violation of the Convention.

On April 28, 1993, a methanol explosion took place in a waste and rubbish area specifically designated by the local authorities, which caused a landslide swallowing up ten slum dwellings located below the hillside. Thirty-nine people died in the incident.<sup>98</sup> This tragic accident was caused because of the authorities’ failure to implement the law.<sup>99</sup>

Under the heading of “*The Duties [and responsibilities] of Municipalities*,” Article 15 of the Municipalities Act (Law No. 1580 of April 3, 1930) provides that local councils shall prevent and prohibit any buildings or constructions of any kind that violate the law and regulations because they have been erected without permission or constitute a threat to

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<sup>97</sup> **Case of Öneriyıldız v. Turkey** (app. 48939/99), Judgment of 30 November 2004.

<sup>98</sup> Case of Öneriyıldız, pr. 18.

<sup>99</sup> This was concluded by a local court judgment dealing with the case. See for a brief of the court judgment, Case of Öneriyıldız, pr. 33.

public health, order and tranquility.<sup>100</sup> According to Article 18 of Law on Slums, No. 775, of July 20, 1966, after the entry into force of the Law, local and central government authorities are under duty to demolish immediately any illegal building, whether it is in the process of being built or is already inhabited, without any prior decision being necessary.<sup>101</sup>

Had the local authorities enforced the relevant urban planning laws, and thus not allowed people to have settled illegally in the area, thirty-nine people would not have died in the incident. The facts of this case clearly show us that the practice of urban planning laws has not only direct impact on the quality of city life, but is also a matter of life and death.

On the other hand, the State's failure to practice planning within a certain region does not relate only to the disasters caused by human factors but also to natural events that might turn out to be a disaster, mostly because of administrative failure. There is obviously a close relationship between urban planning and such natural events as earthquakes, floods and landslides. The authorities must take such factors and events into consideration while preparing the development plans. Any negligence would result not only in substantive damages to property and the facilities of habitation but also in the loss of many precious human lives.

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Turkey had a bitter experience when a magnitude 7.4 earthquake struck the Sakarya-Kocaeli-Istanbul area in Northwest Turkey, on August 17, 1999. Setting aside the damage to property which the disaster caused, the officially proclaimed death toll was 15,000; but many sources have it that the number would be as high as 40,000. The relevance of urban planning to this unfortunate event is obvious. Had the authorities prepared and implemented the urban development plans in accordance with the physical and geological characteristics of the region, which might and should be determined by scientific research and surveys, the impact of the event on human life would have been much less severe.

First of all, in Sakarya province region, where most of the lives were lost, almost the entire urban area had been located on completely agricultural

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<sup>100</sup> For the full text of the Act, see <http://www.mevzuat.adalet.gov.tr/html/1525.html> (09/10/2010).

<sup>101</sup> For the full text of the Act, see <http://www.mevzuat.adalet.gov.tr/html/404.html> (09/10/2010).

soil before the earthquake. The second negligence of the authorities was that they had disregarded the requisites of earthquake-resilient techniques even though they had been aware of the devastating earthquakes in the region in its past.

The research and surveys indicate that a building constructed with some measure of resilience and a specific type of material is more likely to survive seismic activities than a building constructed, for example, with not a fair degree of concrete or steel.<sup>102</sup> It is obvious that the authorities did not carry out due diligence with their power of supervision over the implementation of plans and laws as most of the buildings demolished in the earthquake were proven to not be constructed in the basic requisites of even ordinary construction.

The State's failure in this case has not been verified by a judgment of an international organ however, the European Court of Human Rights held in *Budayeva* that the authorities are under an obligation to take appropriate measures to mitigate the risks to individual lives even against natural hazards, and to take appropriate steps to safeguard the lives of those within their jurisdiction. This positive obligation confers *a duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life*. This is of course not to impose an impossible or disproportionate burden on the State without considering the circumstances of the case, and irrespective of the resources and operational choices available for the authorities.<sup>103</sup>

In light of the Strasbourg jurisprudence, it can be concluded without a doubt that the State's positive obligation to design *a legislative and administrative framework* to protect the right to life is quite applicable to the cases of urban planning.

## 2) Freedom of the Press

The relationship between urban planning and the freedom of the press may be articulated from two angles: (1) the relationship of urban planning with the right to freedom of the press – a main medium for the right to freedom of expression – as a basic human right; and (2) the relation-

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<sup>102</sup> <http://en.wikipedia.org/wiki/Earthquake> (10/11/2010).

<sup>103</sup> **Case of Budayeva and Others v. Russia**, (app. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02), Judgment of 29 September 2008, pr. 128-135.

ship between the free press and democracy through the latter's relations to urban planning.

However, the relationship between urban planning and democracy is not relevant to our subject here because the impact of urban planning is more direct with regard to freedom of the press than to democracy in general. Thus, we will omit the relationship between urban planning and democracy in this study.<sup>104</sup>

In international human rights law, freedom of the press is closely associated with the right to freedom of expression, which is guaranteed, for example, under Article 19 of the ICCPR (the Covenant), and Article 10 of the ECHR (the Convention). Both the Covenant and the Convention offer the very same protection for the expression although the wording of the former is clearer than that of the latter since the Covenant was framed and adopted subsequent to the Convention, no doubt taken as a model for the Covenant.<sup>105</sup>

Article 19 of the ICCPR reads as:

192 ——— “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

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<sup>104</sup> Some scholar claimed a relationship between democracy and urban life in somewhat different way which is not relevant to our subject here. Among them Robert A. Dahl is prominent. In this particular context, see **Rosenthal**, Donald B.-Crain, Robert L.: “*Executive Leadership and Community Innovation: The Flouridation Experience*”, *Urban Affairs Quarterly*, Vol. 1., No. 3, March 1966, pp. 39-57. See also Sapotichne, Joshua, et.al., “*Is Urban Politics A Block Hole: Analyzing the Boundary Between Political Science and Urban Politics*”, Vol. 43, No. 1, Sept. 2007, pp. 76-106. However, negative impact of urban planning on democracy is much probable. The government may influence the voters' will through the planning activity. For example, government may concentrate by way of urban planning the investments in a certain area whose population would-be friendly to it while penalizing the people who didn't vote in favor. It is even possible to influence the votes vice versa.

<sup>105</sup> Article 10/pr.1 of the ECHR reads as “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

Not only the Strasbourg organs but also the Human Rights Committee interprets the freedom of expression clauses liberally. As the Court remarked in its *Handyside* judgment, freedom of expression constitutes one of the essential foundations of a democratic society; it applies not only to “information or ideas that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.”<sup>106</sup> Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society.<sup>107</sup> Therefore, any restriction to the exercise of the right must meet a strict test of justification.<sup>108</sup>

This liberal approach is carried on as well to give the press the most generous room to play in. Thus, the Strasbourg organs, on every occasion, have put a special emphasis on the importance of the freedom of the press in a democratic society. According to the Court, the principles on which the freedom of expression is based are of particular importance as far as the press is concerned.

There are several reasons why this is so, most of which are advanced by scholars based on the functionalist theories of the freedom of expression. However, this is not a place to discuss the whole aspect of the freedom of expression.<sup>109</sup> We can only note that one important ground for distinguishing between the statuses of the press from the other medium may be that the freedom of the press has a two-sided impact on the communicative system. As already being elucidated by the Court, freedom of expression guarantees not only the freedom of the press to inform the public but also the right of the public to be properly informed.<sup>110</sup> The Court notes, for example, that the freedom of the press is the best means for the public

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<sup>106</sup> **Handyside v. the United Kingdom** (app. 5493/72), judgment of 7 December 1976, pr. 49.

<sup>107</sup> **Lingens v. Austria**, (app. 9815/82), judgment of 8 July 1986, pr. 41.

<sup>108</sup> **Mavlonov and Sa'di v. Uzbekistan** (Comm. 1334/2004), Decision of 29 April 2009, pr. 8.3

<sup>109</sup> This part of subject has been discussed in detail in, **Sahin**, pp. 233-333.

<sup>110</sup> **Sunday Times v. United Kingdom** (app. 6538/74), Judgment of 26 April 1979, pr. 66.

of discovering and forming an opinion of ideas and attitudes of their political leaders.<sup>111</sup>

In addition to the special status of the international human rights conventions, which have a higher status than ordinary legislation, in the Turkish legal system,<sup>112</sup> the Constitution, too, provides an independent guarantee for the press. It states under Article 28 that, “[t]he press is free, and shall not be censored. The establishment of a printing house shall not be subject to prior permission or the deposit of a financial guarantee. The State shall take the necessary measures to ensure the freedom of the press and freedom of information.”

Although this guarantee gives the press a relatively secure space to act accordingly, government has other arms to interfere with the exercise of this right indirectly. The degree of state control over the media varies depending on the social and political culture in a country. It does not guarantee that the government can be prevented by law from suppressing media in a country.<sup>113</sup>

194 Government may have many means to suppress the media. Government, for example, may use its taxation power against the media directly or against its affiliate companies to coerce it, though such exercise of power may appear to be within the law. Government may tighten up its supervi-

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<sup>111</sup> **Lingens v. Austria**, (app. 9815/82), judgment of 8 July 1986, pr. 42; Case of Özdemir and Sürek v. Turkey (app. 23927/94 and 24277/94) , Judgment of 8 July 1999, pr. 58.

<sup>112</sup> Article 90/last pr. of the Turkish Constitution determines the status of the international human rights conventions with the following words: “international agreements duly put into effect bear the force of law. No appeal shall be made to the Constitutional Court with regard to these agreements, on the ground that they are unconstitutional. In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and domestic laws due to the differences in provisions on the same matter, the provisions of agreements shall prevail.” For the English translation of the Constitution, see [www.anayasa.gov.tr/images/loaded/pdf\\_dosyalari/THE\\_CONSTITUTION\\_OF\\_THE\\_REPUBLIC\\_OF\\_TURKEY.pdf](http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf) (12/11/2010).

<sup>113</sup> For the models of media classified in accordance with the degree of government control, see **Cornwell**, Nancy C.: *Freedom of the Press*, Santa Barbara: ABD-Clio inc. Press, 2004, pp. 6-8.

sion in taxing affairs against a certain group of media which it considers to be hostile to it while easing the supervision over the gracious media.<sup>114</sup>

A similar manner of interference by the government with respect to the liberty of the press occurs through the use, indeed abuse, of urban planning laws. This may take place in two ways: (1) administration may use urban planning power to restrict or refuse the applications made directly by the press (company) with respect to land use, construction permits, or to other building or printing facilities; or (2) administration may use the urban planning powers by refusing or restricting the applications filed by the corporation, which also owns the press company, in a way that it will cause indirectly the oppression of the press.

It must be kept in mind that the totally profit-oriented corporations may have a natural propensity to use the press they own to gain advantage in their business activities, which even relates to the implementation of urban planning laws. But it is also important to distinguish these kinds of cases from those in which the administration might abuse its planning powers against the press to gain political advantage. The latter case, in our opinion, is more dangerous for the true operation of a democratic system in which the free press has an indispensable part to play.

### 3) Freedom of Residence and Movement

As a basic human right, freedom of residence and movement is protected by international human rights conventions. Article 12 of the ICCPR ensures a protection for this right, with the following words, “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”

Article 2 of the Protocol No. 4 to the ECHR has exactly the same wording with that of the ICCPR.

Similarly, Article 23 of the Constitution provides that, “everyone has the right to freedom of residence and movement,” which indeed comprises two different rights, the right to residence and the right to movement, the latter of which has not much to do with our discussion here.

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<sup>114</sup> For an analysis of taxation of the press, see **Lidski**, L. Barnett-**Write**, R. George: Freedom of the Press: A Reference Guide to the United States Constitution, Westport: Praeger Publisher, 2004, pp. 54-56.

With regard to the grounds for which the right shall be restricted, there is a slight difference between the international human rights conventions and the Constitution. Article 12/pr.3 of the ICCPR provides that:

“The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.”

It's clear that the Covenant doesn't distinguish between the limitation grounds for the right to freedom of residence or for the right to freedom of movement. Not different than the Covenant, the ECHR Protocol 4 provides for the limitation grounds for the said rights under its Article 2.<sup>115</sup>

However, the Constitution puts forward separate limitation grounds for each right, the right to movement and the right to residence, in that it supports a separate examination of these rights.

196 Thus, Article 23/pr. 2 of the Constitution sets forth the limitation grounds for the right to residence as follows:

“The right to residence may be restricted by law for the purpose of preventing offenses, promoting social and economic development, ensuring sound and orderly urban growth, and protecting public property...”

It is very natural to assume that the administrative activity of urban planning and its laws may affect the right to residence. The framers of the Constitution clearly characterize the “*sound and orderly urban growth*” as a legitimate restriction ground for the right to residence. This is mostly because the full enjoyment of the right to residence can only be realized within a rational urban planning framework, without which no sound and orderly city life would be possible.

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<sup>115</sup> Article 2 of the Protocol No 4 to the Convention reads as “No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety for the maintenance of 'ordre public', for the prevention of crime, for the protection of rights and freedoms of others. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”

The applications of urban planning may also restrict the entry of some areas designated in the plan as a military zone, or social facilities for certain professional groups, and so on. Such sorts of restrictions should no doubt be characterized as those imposed for legitimate purposes.

#### 4) Freedom of Peaceful Assembly and Association

Article 11 of the European Convention on Human Rights provides that:

“Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.”

The second paragraph of the Article sets forth the limitation grounds as:

“No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others...”

There are three different rights assembled under this Article, of which only the right to freedom of peaceful assembly is to be considered with respect to our discussion here. Indeed the ICCPR (the Covenant) explores two distinct rights under Articles 21 and 22, both of which are guaranteed by the ECHR under its Article 11.<sup>116</sup>

The Convention organs have, on every occasion, emphasized the importance of the right to freedom of peaceful assembly and association as one of the pillars of democratic society. The right to peaceful assembly covers both private and public meetings. The word “*assembly*” ought to be conceived as being applied *only to gatherings of persons for a common purpose*. The right comprises not only static meetings such as demonstrations and sit-ins but also marches and public processions.<sup>117</sup>

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<sup>116</sup> Article 21 of the ICCPR reads as “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” Right to freedom of association is provided for under Article 22 of the Covenant however.

<sup>117</sup> See, for example, **Rassemblement Jurassienne and Unite Jurassienne v. Switzerland**, (app. 8191/78), Judgment of 10 October 1979; **Ezelin v. France**, (app. )

The Court held in the *Platform Artze fur das Leben* that there is a duty incumbent on the States under Article 11 to take reasonable and appropriate measures to enable lawful demonstrations to take place peacefully.<sup>118</sup> The OSCE's guiding principles on the right to peaceful assembly states that:

The state should always seek to facilitate and protect public assemblies at the organizers' preferred location and should also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded.<sup>119</sup>

But it is not clear how far the State's positive obligation under the right to peaceful assembly shall go. The relationship between freedom of peaceful assembly and urban planning poses an important question of liberty; whether the liberty shall be treated as a positive liberty or a negative one. If we conceive of the freedom of assembly as a positive liberty, the scope of the right would go beyond external causes, which cannot be controlled by any political authority.

198 — Thus, it is not an undisputed belief that the scope of the right shall cover a positive expansion of it from a purely negative dimension; that is, the State's only duty to refrain from interference with the right; to a positive one, that may wrap up the State's duty to create ample spaces in the cities to ensure the enjoyment of the right in practice. This is more or less relevant to, and necessary for, the enjoyment of the right to freedom of peaceful assembly even if it cannot be invoked by any right holder before any tribunal under the current-liberal understanding of the scope of the right.

On the other hand, history shows us that this right has, to a great part, been exercised in cities, mostly in downtown areas, in order to strengthen

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Judgment of 26 April 1991; **Christians Against Racism and Fascism v. United Kingdom**, (app. 8440/78), Decision of 16 July 1980; for a brief analysis of cited decisions and judgments see **Louis-Antony**, Sian: "Case Law of Article 11 of the European Convention on Human Rights" Freedom of Association, Seminar Organized by the Secretary General of Council of Europe in Collaboration with the Ministry of Justice of Iceland, Reykjavik 26-28 August 1993, Council of Europe Publication, Strasbourg 1994, pp. 32-40.

<sup>118</sup> **Platform Artze fur das Leben v Austria** (App. 10126/82), Judgment of 21 June 1988), pr. 31-39.

<sup>119</sup> Guidelines on Peaceful Assembly, Second Edition, Prepared by OSCE experts and the Venice Commission, Poland: OSCE Publishing, 2010, p. 15.

its impact on the public, and thus to increase its outcome.<sup>120</sup> It is true that the creation of avenues and squares in a city plan has not only been to serve the purpose of freedom of assembly but mostly to meet the other needs of city life, such as to ensure that the traffic flows or to create necessary public spaces.

Urban planning has, indeed, a key role to play in the exercise of the right to freedom of peaceful assembly as well. It provides for the arrangement of ample space and squares in the city at which the people may meet and get-together. Not only city life but also democratic life would be affected negatively by the exercise of the right unless there are ample squares and avenues designated in the plan that may serve the purpose. As J.G. Merrills states,

“If democracy is concerned with respecting individuals and giving attention to their claims, then permitting people to articulate their concerns by demonstrating... are means to a democratic end.”<sup>121</sup>

Therefore, it must be kept in mind that not only newspapers and TV channels are a means of communication, but also avenues and squares are major mediums through which people, who are especially unable to reach the popular mediums of communication, can express their opinions on public issues.

### **SOME CONCLUDING REMARKS**

Perhaps two separate –though still connected– conclusions may be drawn from the discussions presented in this article. First, urban planning, as a complex government activity, has some qualifications and features, without which it cannot function to meet the needs expected from it. And we have focused on some features of planning, such as generality, accessibility, durability, planning necessity, binding nature and forcibility, public interest, as well as unity and co-operation, which a planning process ought to carry. Coalescences of these features into the practice of fundamental rights and freedoms must be one of the government’s objectives

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<sup>120</sup> Trafalgar Square in London, Tahrir Square in Cairo, Taksim Square in Istanbul, Times Square or the Fifth Avenue in NYC, Tiananmen Square in Beijing, Place de la Concorde or Champs-Élysées in Paris, Red Square in Moscow, etc., may be considered as having special historical importance to the exercise of the right to peaceful assembly.

<sup>121</sup> **Merrills, J.G.:** Development of International Law by The European Court of Human Rights, Second Edition, Manchester: Manchester University Press, 1993, p. 138.

in its administrative practice. Administrative authorities must review its planning activity in light of both such characteristics and respect for human rights and rule of law – which relates to the second aspect of our conclusion.

Second, it is quite evident that the practice and implementation of urban planning activity affects the fundamental rights and freedoms of persons in many ways. The effects and impact of urban planning on the fundamental rights and freedoms cannot easily be defined in a legal sense. In some cases, the scope of the right may not be invoked to recover from the damage which the administrative practice has done. For instance, the designation of a site in a certain way may result in a considerable loss of value in a person's property. Or the relevant authority's failure to determine the necessary construction rules for an earthquake area would result in huge human casualties as well as property losses. We have given an outlook especially from Turkey's administrative practice with respect to the administrative failure to frame and implement the urban development plans properly. We have referred to some relevant cases brought before, and decided by, the European Court of Human Rights, which found a violation by the State of fundamental rights and freedoms.

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However, how far the government's responsibility in such cases shall be extended within a legal framework to cover or restore damage of such kinds is not clear. Shall the government be accountable for a home owner's rent-value loss because of the main railroad designated near the house – which causes a lot of noise and poses a potential threat to children's safety? Though the trend in international human rights law is inclined to extend the scope of the rights and freedoms to a degree so as to strengthen the positive dimension of fundamental rights and freedoms, the legal precision needed to invoke and defend a claim before a judicial authority successfully induces us not to consider many effects of urban planning on the basic rights within the framework of a legal protection. Be that as it may, one thing is certain: the impact of urban planning on the basic rights of persons may be huge with respect to the consequences of its practice in the field, whether it be spatial, social, cultural, or political. Therefore, the principles of respect for human rights, democracy, and rule of law require the government to be attentive in contributing to such values, and under no circumstances to pretend to do so.

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