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Evaluating The Ownership Structure in Land Regeneration Applications

Res. Assist. M.Sc. Ali Tunc and Prof. Dr. Tahsin Yomralioglu, Turkey



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Introduction: Eligible Zoning 'Land Regeneration'

- The word regeneration is understood as reforming something spiritually, raising it morally, giving new strength or life to something, restoring lost qualities to something and finally growing again.
- Land regeneration is a featured zoning implementation in Turkey that can be defined as the rearrangement of properties in unplanned, slummed, legal or illegal areas that have inadequate and unqualified infrastructure and dense housing, sensitive to disasters and urban risks, according to new development plan data, and it becomes an issue of increased importance.

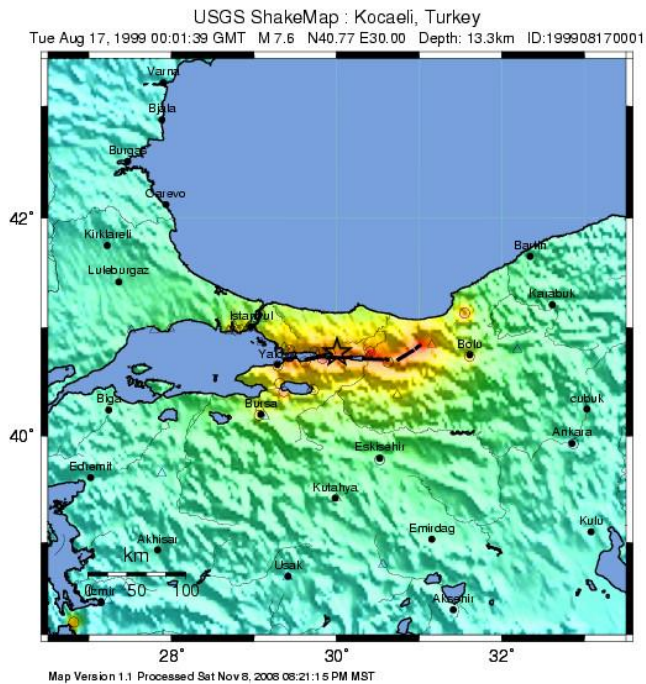


Introduction: Eligible Zoning 'Land Regeneration'

- As the newest application of zoning applications, land regeneration is an ownership regulation in accordance with the planning and zoning data within built-up areas. Land regeneration contains development plan implementation, distribution of new ownership structures and land registration processes.
- Because urban regeneration applications are about using public power to regenerate urban spaces, regulatory justifications of the related laws can determine based upon the answer of why certain areas should be a part of regeneration applications. These justifications are;
 - ❖ Preventing the security risk of life and property,
 - ❖ Taking out the encountered problems of the urban living and
 - ❖ Enhancing the urban life standards by enhancing urban living qualities.



1999: Izmit Earthquake (also known as Marmara Earthquake)

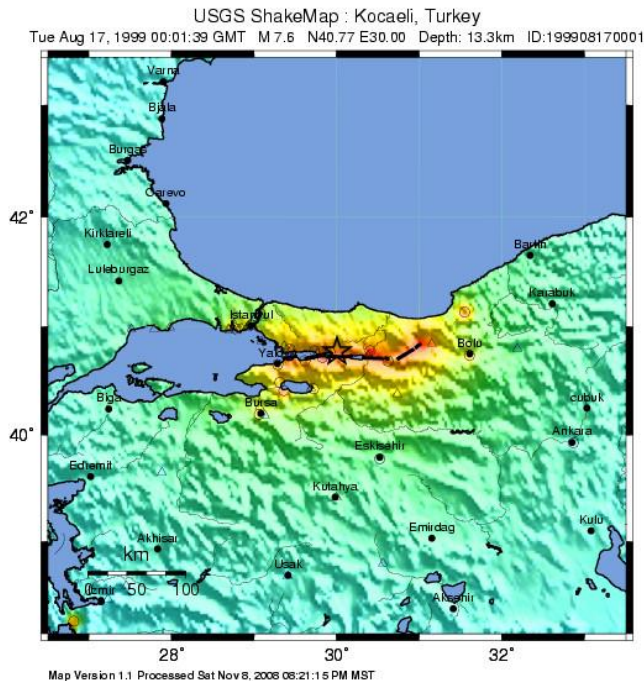


PERCEIVED SHAKING	Not felt	Weak	Light	Moderate	Strong	Very strong	Severe	Violent	Extreme
POTENTIAL DAMAGE	none	none	none	Very light	Light	Moderate	Moderate/Heavy	Heavy	Very Heavy
PEAK ACC (%g)	<.17	.17-1.4	1.4-3.9	3.9-9.2	9.2-18	18-34	34-65	65-124	>124
PEAK VEL (cm/s)	<0.1	0.1-1.1	1.1-3.4	3.4-8.1	8.1-16	16-31	31-60	60-116	>116
INSTRUMENTAL INTENSITY	I	II-III	IV	V	VI	VII	VIII	IX	IX+

- After the Marmara Earthquake which hit in 1999 revealed the necessity to re-evaluate urban transformation attempts. The regulation studies within the risky areas of disaster risks became prominent.
- In the direction of this basis, the article 73 of the Municipal Law (Law no. 5393) predicts the roles and responsibilities of municipalities related to urban transformation and considered municipalities as the local element for urban transformation.



1999: Izmit Earthquake (also known as Marmara Earthquake)

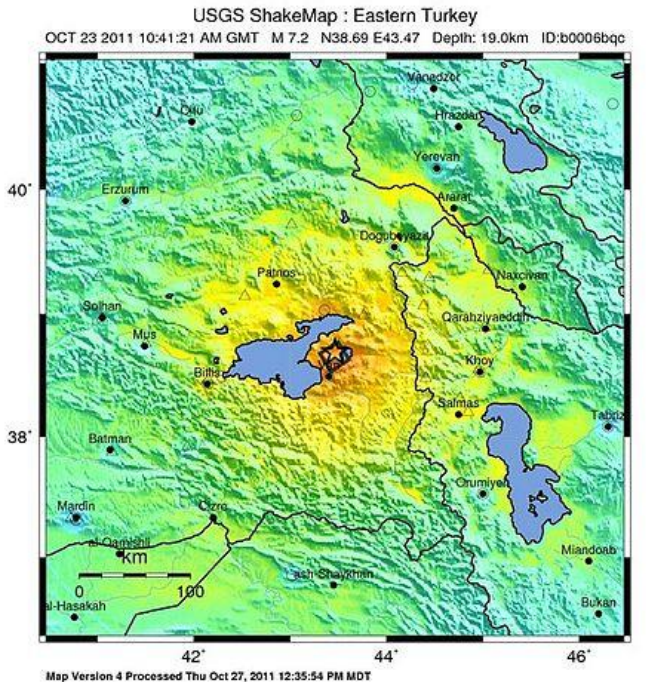


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- Generally speaking, even, the purpose is to forming the legal infrastructure of regeneration applications in Turkey; the only function of this article relates only declaring the regeneration areas.
- With this and many aspects, mentioned amendment taken to supreme court for trespassing property right, equality right, fundamental rights and freedom.



2011: Van Earthquake



PERCEIVED SHAKING	Not felt	Weak	Light	Moderate	Strong	Very strong	Severe	Violent	Extremo
POTENTIAL DAMAGE	none	none	none	Very light	Light	Moderate	Mod./Heavy	Heavy	Very Heavy
PEAK ACC.(%)	<0.03	0.3	2.8	6.2	12	22	40	75	>139
PEAK VEL.(cm/s)	<0.01	0.1	1.4	4.7	9.6	20	41	86	>178
INSTRUMENTAL INTENSITY	I	II-III	IV	V	VI	VII	VIII	IX	X+

Scale based upon Worden et al. (2011)

- After 2011 Van Earthquake (Mw 7.1), the government took serious steps for demolishing illegal buildings and regenerating old ones; therefore Law 6306, known as “Urban Regeneration Law”, officially named as “Law on Restructuring of Areas Under Risk of Natural Disasters” entered into force in May 2012.
- With this law and related legislation, main urban regeneration projects are accelerated in Turkey and a new era has begun.



Implementation and the evaluation of the 'Law on the Transformation of Areas under Risk of Disaster'

- Ministry of Environment and Urban Planning has identified 100 risky areas and preferably aimed to demolish approximately 165.000 buildings in 35 cities in a massive urban regeneration program.
- Istanbul is conspicuous to have 27.700 risky buildings and 230.000 effected population. In order to make out such an aim, the government needs to supply a budget of 23 billion US dollar, even though the government is able to construct 50.000 new independent units annually. As a result, public-private partnership is an obligation to carry out these projects. In order to satisfy owners, there has been some attempts such as increasing floor numbers and transfer of construction rights.



Implementation and the evaluation of the 'Law on the Transformation of Areas under Risk of Disaster'

- The first step of the practice started in 35 cities of Turkey concerning around 75 different areas and 3169 buildings on 05.10.2012. The ministry will start to collapse risky buildings beginning from the first degree earthquake areas. The main problems behind the many new technical and legal debates created along with this law are the lack of any clear definition of the property transformation processes, and paying no attention to the requirement that people should be backed by a law enacted to ensure their participation in the transformation process, which is closely related to them.
- The second step of the regeneration process besides the legal part of regeneration applications is the implementation process grounded by the regulation.



Implementation and the evaluation of the 'Law on the Transformation of Areas under Risk of Disaster'

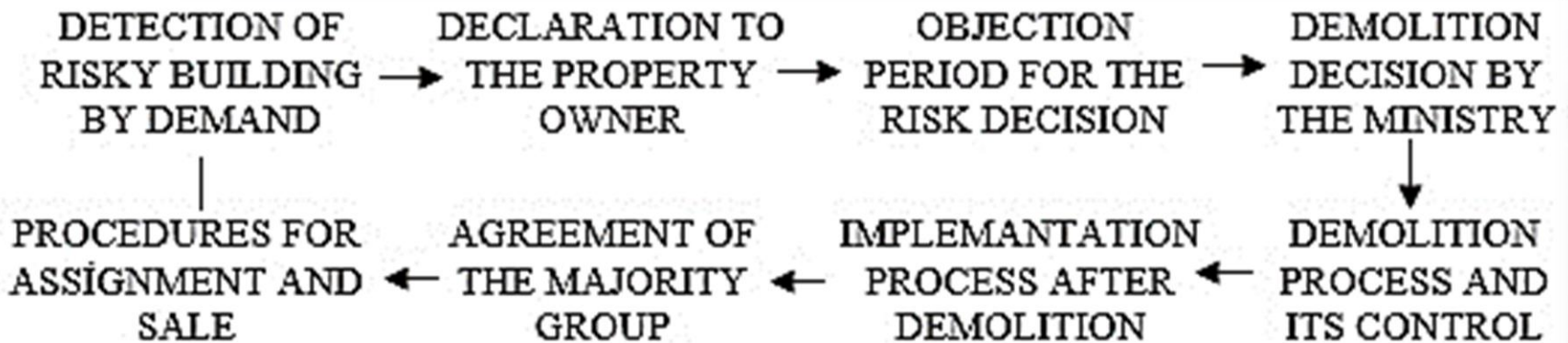


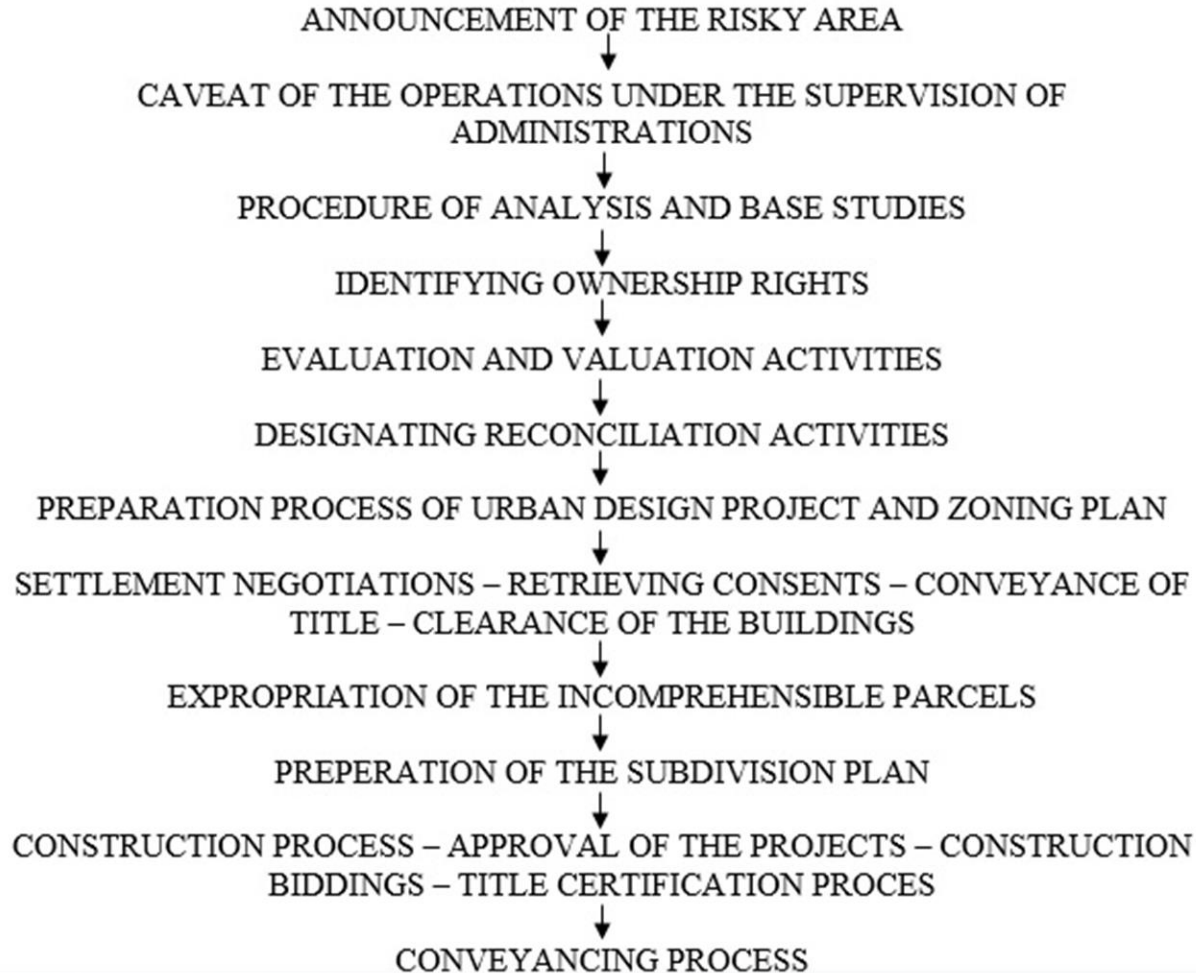


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Regulation Concerns:

- *Obligation to subject no-risk structures to the project:*

According to paragraph 7 of Article 3 of Legislation no. 6306, "Buildings that are not deemed high-risk within the boundaries of the designated area for the implementation of this Act are also subject to the provisions of this Act, if the Ministry finds it necessary in terms of execution integrity."

- ❖ The general rationale references Articles 23 and 56 of the Constitution, the right to live in a stable and secure environment and highlights the facts about earthquakes in Turkey. However, including non-risk buildings within this Act "in terms of execution integrity" does not constitute a sufficient rationale for such an interference with the right to property. Such intervention power connected to a vague definition such as "deemed necessary by the Ministry" contradicts certain legal concepts like "certainty", "legality", and therefore, the "rule of law" principle.



Regulation Concerns:

- *Restriction of Savings:*

According to the third paragraph of Article 4 of the Legislation, "If requested by the Ministry, TOKI or the Administration during implementation, services such as electricity, water and gas shall be suspended for the structures that are high-risk or are located in risky areas.«

- ❖ Various decisions of the Constitutional Court have stated that the uncertainty caused by restrictions for unknown duration renders the right to property unusable. The fact that the Court has ruled in favor of cancelling such arrangements on the rationale that the objectives regarding public good and other purposes should not lead to limitations that infringe on the fundamental right and render it unusable, based on Article 13 of the Constitution, is important in terms of analyzing the legal regulations.



Regulation Concerns:

- *Decision-making with at least two-thirds majority:*

Under the heading of "Operational Processes", Article 6 of Legislation no. 6306 regulates that after the demolition of risky buildings, the decisions on further processes shall be taken with the majority vote of owners in proportion with the shares they hold.

- ❖ This regulation constitute an interference with the right to property. Because according to regulations, the shares of the one-third of shareholders who do not agree on the decision will be sold in an auction to, primarily, the shareholders who have taken the decision with two-thirds majority, and in case this sale does not take place, it will be registered ex officio in the name of Treasury, paid for by the Ministry. This means restricting the owner's authority to economize that is attributed to him through property rights.



Regulation Concerns:

- *Urgent Expropriation:*

According to the second paragraph of Article 6 of Legislation No. 6306: "In case of not attaining an agreement with two-thirds majority within 30 days following the notification of the land owners, the Ministry, TOKI or the Administration may resort to the urgent expropriation of real estate in the ownership of real persons or private legal entities.

- ❖ Even though the expropriation procedure is followed, ultimately there is an interference with the right to property. Because expropriation is done for the public good without seeking the owner's consent.
- ❖ But; since the individuals' right to life is on the forefront with regard to risky structures, and the risky structure needs to be vacated promptly, we can say that such arrangement is positive in a sense. However, an amendment to the legislation would be appropriate to state that urgent expropriation is foreseen only for risky structures. Because no such urgency is in question for no-risk structures.



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Impact of the urban transformation law on property ownership:





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Impact of the urban transformation law on property ownership:





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Impact of the urban transformation law on property ownership:





Impact of the urban transformation law on property ownership:

- Even though the economic value of the transformation areas is low, the revitalization of these areas that are generally located by the centre of the cities causes a significant increase in value. This increase in value is extremely natural and sometimes an increase in value is also important for the financing of these projects. However, it should be emphasized that focusing transformation projects to profit, should be questioned in terms of city planning, and the purposes and functions of transformation. Value increase through urban transformation cannot be an objective, it can only be a result. Otherwise, serious doubts are raised on the public interest in urban transformation.



'Public Use' ?

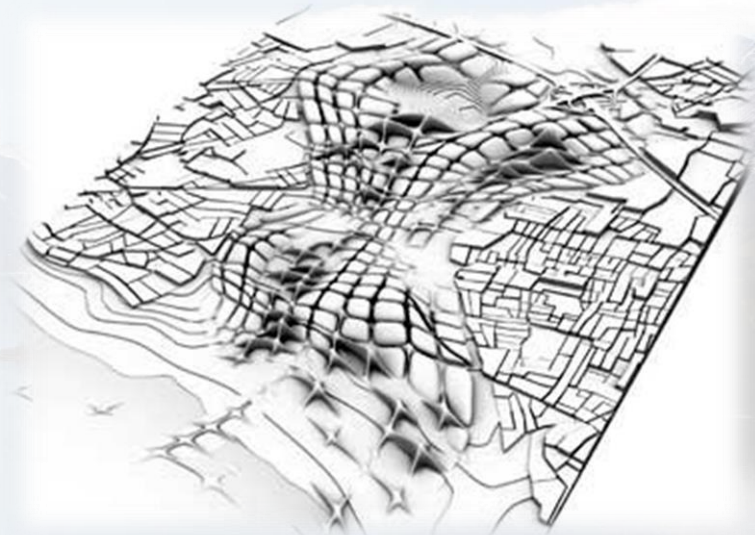
Kelo v. City of New London:

- In 1998, the drug company Pfizer built a new plant in New London, Connecticut. To take advantage of additional business the plant might bring in, the City of New London attempted to purchase 115 houses in a nearby area in order to sell it to commercial developers. 15 residents resisted, so the city cited eminent domain and claimed the land.



Impact of an accommodating and participatory transformation implementation on property ownership:

- Another important issue in the urban transformation process is the scale of participation, and related to this, the question of who and which parties that demand participation accordingly are representing, in other words, whether they have representative attributes. Evaluating participation to the process of determining and realizing macro plans for the city (environment plan, and master plans, such as transport and infrastructure master plans) on the same scale as participation at the project level does not appear correct.





Impact of an accommodating and participatory transformation implementation on property ownership:

- Local conditions shaping the project in urban transformations are based on the active directing of the process by local actors, in other words, the principle of participation. In particular, individuals should not be excluded from such a process that is related to their fundamental rights and freedoms, whose effects could directly affect their lives and their future. However, participation is as much of a social, cultural and economic issue as it is a corporate issue, and its realization depends on certain conditions.





Sustainability of urban transformation and the impact of sustainability on property ownership:

- It is extremely important to ensure the continuity of the benefits achieved after the realization of the transformation projects. Undoubtedly, achieving sustainability is largely related to the correct execution of the preparation and implementation phases of the project. As demonstrated in this study, for example, it will not be possible to sustain a project whose execution neglects its social dimension.





Conclusion:

Obtaining healthy results from the implementation of urban transformation depends upon the formation of principled decision support environments (integrated urban planning, sustainable management style, multi-purpose cadastral infrastructure, inter-agency coordination, etc.) In such an environment and an urban transformation that will be realized under data organization such as land management, not only zoning parcels with infrastructure will be created, but also:



Conclusion:

- Property issues will be identified with regard to their technical and legal aspects;
- Common objectives within institutional strategies will be determined;
- Land registry and cadastral documents that do not reflect the actuality will be transformed into a database for spatial information systems;
- Illegally erected structures or slum dwellings on the land will be replaced with healthier, planned/licensed structures;
- Rights in rem that are not suitable for planned construction due to distribution of shares or square footage will have found non-problematic, active use with 'real estate ownership applications';
- Areas of equipment needed by the population living in unit areas will be enriched, their operating limits raised.



Conclusion:

Urban transformation applications thus will allow the integration of urban settlements with the city by identifying the city's problematic areas in need of transformation. Aside from the necessity of taking a holistic approach for an urban transformation project, steps aimed at the success of the project for various aspects, from finances to partnerships in project execution, should be planned and transformation programs should be prepared.

For example, ensuring the personal participation of the locals in the neighborhood in order to realize their social transformation, could make a difference in the process of good urban transformation



Conclusion:

Participation of the civilian population to the transformation process can be realized through reliably calculating the locals' participation and distribution values, and ensuring that the property circulation will be done in a fair manner. This can be resolved by making the aforementioned value-based method a legal obligation in zoning implementations. In order to achieve a property-based zoning implementation in accordance with the value-based method:



Conclusion:

- Property, property rights and their use should be amended in all legislation, including the Turkish Civil Code.
- Integrated zoning legislation and a legal base related to the transformation applications intertwined with this legislation should be created, and in this context, a statute regarding this method should be established.
- Legal and institutional structures must be established regarding valuation, appraisal companies and appraisal standards, and their powers and responsibilities should be defined.
- Value maps that need to be updated periodically and that will constitute the basis for obtaining building values should be created for real estate across the country, and related legislation should be prepared.



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Finally;

Legislation No. 6306 was created due to the fact that almost 6.5 million dwellings in our country are at risk from earthquakes, with the objective of demolishing and reconstructing them.

Thus, while containing positive provisions, it has been drafted in a manner that intervenes in unlawful ways, and gives the Ministry overarching authorities, and has been implemented as such.

However, within the context of urban transformation, the restrictions to be imposed on property rights should be done in accordance with the objective and purpose of this transformation, and no restrictions that go beyond the objective should be imposed. Otherwise, they will be infringing on property rights. Property ownership issues related to special law that is examined within the scope of the thesis should be taken into consideration within this context, and resolved as soon as possible.



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Thank You

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