

**THE EFFECTIVENESS OF TURKISH COASTAL
LEGISLATION IN ENSURING THE PROTECTION-
UTILIZATION BALANCE**

**A Thesis Submitted to
the Graduate School of Engineering and Sciences of
İzmir Institute of Technology
in Partial Fulfillment of the Requirements for the Degree of**

MASTER OF SCIENCE

in City Planning

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**July 2006
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ABSTRACT

THE EFFECTIVENESS OF TURKISH COASTAL LEGISLATION IN ENSURING THE PROTECTION-UTILIZATION BALANCE

This study focuses on the consequences of the legal arrangements related to coastal areas' usage decisions. It has been emphasized that planning of the coastal areas should be performed sensitive to the environment, providing a protection-utilization balance between different purposes, considering public participation, protecting the historical and cultural heritage, and taking care of natural values and environmental dynamism. The rational use of the coastal areas is a very important contribution to the country's economy.

It has been definitely seen that the rational use of the coastal areas will highly be important contribution to the country' s economy by the literature review being done. The research data collected from other master and doctorate thesis relevant to costs has been performed in this manner. The thesis researched for this study have been grouped into according to coastal use, coastal legislation, coastal planning and tourism affects. The analysis section of the thesis formed by consisting different methods such as selection of sample case areas, examination of the thesis subject in a critisizable manner or comparing the coastal management with similar practices abroad.

An examination of the responsibilities and objectives of the institutions and organizations regarding coastal areas showed us that coastal areas should be managed by the integrated coastal management approach. This conclusion is reached through the analysis of five court cases. Also, this is the first study performed by the evaluation of the sample court cases regarding to coasts.

ÖZET

TÜRKİYEDE'Kİ KIYI MEVZUATININ KORUMA KULLANMA DENGESİNİ SAĞLAMADA ETKİNLİĞİ

Bu çalışma kıyı ile ilgili tüm yasal düzenlemelerin kıyı kullanım kararları üzerindeki etkilerine odaklanmaktadır. Kıyı alanlarının, kullanımlar arasındaki koruma kullanma dengesini sağlayan, halk katılımına dikkate alan, tarihi ve kültürel mirası koruyan, doğal değerleri ve çevrenin dinamizmini göz önünde bulunduran, çevre duyarlı bir yaklaşım ile planlanmasının gerekliliği vurgulanmaktadır.

Yapılan literatür araştırması ile kıyı alanlarının rasyonel kullanımı ile ülke ekonomisine sağlayacağı katkının son derece önemli olduğu görülmektedir. Kıyı ile ilgili yapılmış olan yüksek lisans ve doktora tezleri bu kapsamda incelenmiştir. Tezler kıyı kullanımını, kıyı mevzuatını, kıyı planlamasını ve turizm etkilerinin ele alındığı başlıklar altında toplanmıştır. Tezlerin analiz bölümleri, örnek bir case alanı seçilmesi, konunun eleştirel bir bakışla irdelenmesi ya da kıyı yönetimini içeren yurt dışı örneklemeleri ile kıyaslanması gibi yöntemlerin kullanılması ile oluşturulmuştur.

Bu çalışma kıyıları ilgilendiren tüm kurum ve kuruluşların kıyı ve çevresi üzerindeki görev ve sorumluluklarının araştırılması kıyı alanlarının bütüncül yaklaşım çerçevesinde yönetilmesinin gerekliliğini ortaya koymaktadır. Bu sonuca ulaşırken kullanılan yöntemin yukarıda yapılmış çalışmalardan farkı beş mahkeme davasının analizi neticesinde elde edilmiş olmasıdır. Kıyı alanında geçen örnek davaların incelenmesi ile yapılan ilk çalışmadır.

TABLE OF CONTENTS

LIST OF FIGURES	viii
LIST OF TABLES	ix
LIST OF ABBREVIATIONS.....	x
CHAPTER 1. INTRODUCTION.....	1
1.1. Definition of the Problem	1
1.2. The Objective of the Work	2
CHAPTER 2. COASTAL AREA AND ITS USE	4
2.1. The Conception of Coastal Area.....	4
2.1.1. Legal Definition of Coastal Concept.....	5
2.1.1.1. The 1995 Coastal Protection and Management Act of Queensland Australia.....	5
2.1.1.2. The 1972 Coastal Zone Management Act United States of America	6
2.1.1.3. The Directives of Practice Relating to the 1992 Coastal Law Turkey.....	6
2.1.2. Definition of Coastal Concepts by Different Disciplines	7
2.2. The Use of Coastal Areas	8
2.2.1. The Use of Coastal Area as a Resource	8
2.2.2. Sectoral Diversity in the Use of Coastal Areas.....	10
2.3. Summary	12
CHAPTER 3. LEGISLATION REGARDING COASTAL LANDS IN TURKEY	13
3.1. The Development of Coastal Legislation	13
3.2. Laws and Regulations	15
3.2.1. The 1982 Constitution.....	15
3.2.2. The 1972 Development Law	16
3.2.3. The 1984 Coastal Law	17

3.2.4. The 1990 Coastal Law	19
3.2.5. The 1992 Coastal Law	20
3.2.6. The Draft of the Proposed Coastal Law	21
3.2.7. Other Legislation about Coastal Lands	24
3.2.8. International Agreements Regarding Coastal Lands.....	29
3.3. Special Environmental Protection Areas	29
3.3.1. Belek	30
3.3.2. Foça	31
3.3.3. Datça-Bozburun	31
3.3.4. Fethiye-Göcek	31
3.3.5. Gökova	32
3.3.6. Kekova	32
3.3.7. Köyceğiz-Dalyan.....	32
3.3.8. Patara.....	32
3.3.9. Conclusions	33
3.4. Summary	34
 CHAPTER 4. UTILIZING COASTAL AREAS AND COASTAL PLANNING.....	35
4.1. The Use of Coastal Lands for Public Interest.....	35
4.1.1. Coastal Land as Public Property	36
4.1.2. The Concept of Public Interest.....	37
4.1.2.1. Public Interest vs. Collective Interest	38
4.1.3. The Concept of Partial Development.....	39
4.1.4. Utilizing Coastal Lands.....	41
4.2. The Factors Affecting the Quality of Coastal Areas.....	41
4.2.1. Coastal Tourism	42
4.2.1.1. Recreational Tourism.....	44
4.2.1.2. Protection of Coastal Areas for Sustainable Tourism.....	45
4.2.2. Use of Secondary Housing.....	46
4.2.3. The Main Problems of Coastal Regions.....	47
4.2.3.1. Problems Resulting from Legal Arrangements	48
4.2.3.2. Problems Arising from Institutional Arrangements.....	49
4.3. Coastal Planning	51
4.3.1. The Definition of Coastal Edge Line	52

4.3.2. The Determination of Coastal Edge Line.....	52
4.4. Summary	53
CHAPTER 5. METHODOLOGY	54
5.1. Court Cases	54
5.1.1. Holiday Village vs. Dock	55
5.1.2. Fisherman's Shelter vs. Marina.....	55
5.1.3. Home Pension	55
5.1.4. The Limitation of the parcel use	56
5.1.5. Park vs. Recreation.....	56
5.2. Analysis Methods	56
5.3. Follow-up of the Court Cases	57
5.4. Summary	58
CHAPTER 6. ANALYSIS	59
6.1. Case Studies	68
6.1.1. Lawsuit No: I.....	68
6.1.2. Lawsuit No: II	73
6.1.3. Lawsuit No: III.....	78
6.1.4. Lawsuit No: IV.....	84
6.1.5. Lawsuit No: V	88
6.2. Results of the Lawsuits	94
6.3. Evaluation of the Lawsuits	98
6.4. Suggestions	99
CHAPTER 7. CONCLUSIONS	103
REFERENCES	106

LIST OF FIGURES

<u>Figure</u>	<u>Page</u>
Figure 3.1. The Coastal Band in the Current Situation	23
Figure 3.2. The Coastal Band Proposed in the Draft Legislation	23
Figure 4.1. Types of Public Property	36
Figure 6.1. Yenihisar (Didim)-Güllük-Akbük 1/25.000 Scale Master Plan	72
Figure 6.2. The Location of Muğla-Bozburun Yacht Marina Area Project.....	77
Figure 6.3. The Site Plan License Granted in 1989 in Architectural Project.....	81
Figure 6.4. The Situation of the Construction and Coastal Edge Line in Dispute Approved on January 22, 1991.....	82
Figure 6.5. The Location of the Parcel in the Development Plan Scaled 1/5000	83
Figure 6.6. The Master Plan Approved on March 12,2001.....	87
Figure 6.7. The Implementation Plan Approved on June 05, 1991	91
Figure 6.8. The Implementation Plan Approved on September 09, 1997.....	92
Figure 6.9. The Implementation Plan Approved on April 21, 2000	92
Figure 6.10. The Implementation Plan Approved on December 12, 2001	93
Figure 6.11. The Master Plan Scaled 1/25000 Approved on March 12, 2001.....	93

LIST OF TABLES

<u>Table</u>	<u>Page</u>
Table 2.1. Coastal Area Uses	11
Table 3.1. The Development of the Coastal Law in Turkey.....	14
Table 3.2. Institutions with Authority over Coastal Areas	25
Table 3.3. Legislation about Coastal Lands	26
Table 6.1. The Reasons of the Cancellation of the Coastal Laws.....	30
Table 6.2. Special Environmental Protection Areas in Muğla.....	63
Table 6.3. The Analysis of the Lawsuits.....	64

LIST OF ABBREVIATIONS

ICM	: Integrated Coastal Management
CAM	: The Coastal Area Management
CCD	: Constitutional Court Decision
FAR	: Floor area ratio
K	: Decision number
SPO	: State Planning Organization

CHAPTER 1

INTRODUCTION

1.1. Definition of the Problem

The dramatic increase in urbanization has extremely intensified the use of natural resources and has an exhausting effect on the environment and eco-systems. This rise is accelerated by the over-exploitation of the nonrenewable resources and by the harmful human behavior toward the environment in an irresponsible manner. The industrial revolution, which started in the 19th century, enabled humans to disrupt the environment more effectively. Moreover, the technological advancements which rose in the 20th century have brought many environmental issues and problems to light both in Turkey and other European countries. These environmental issues are caused by several factors such as the sharp rise in population growth, wrong location selection of land uses, increase in economic wealth, development in socio-cultural level, lack of sufficient qualifications in the code of law, and insufficient control mechanisms over environmental issues.

Coastal areas have considerable significance for both natural wealth and the contributions to the country's economy. Coastal areas have become the most attractive locations for centuries because of their aesthetics and the economic and geographic opportunities they provide for industrialization and urbanization. Because of these, coastal areas have become settlement places for many civilizations throughout history.

After 1960s people living in cities had enough money to spare on recreation and vacation due to increased wealth. As a consequence, tourism has evolved and this led to coastal plundering. According to Eke (1995) some interest groups such as industrialists, tourism investors, land owners, real estate agents, the middle class who benefit from local tourism opportunities, marine products industry, and public organizations have turned coastal use into extravagance. This process has resulted in some debates on a number of issues such as the ownership of the coastal areas and the limitation of the coastal areas' use.

However, there are many reasons of the construction density in coastal areas. Examples include providing transportation infrastructure to coastal areas before

elsewhere, using coastal areas as the only way to revive the tourism sector, encouraging people to own land or real property near the shore, and giving permission to public organizations to establish recreational centers for their employees in coastal areas.

In Turkey, many laws were passed in order to prevent intensive use and plundering of the coastal areas. The year 1972 is the turning point for Turkey regarding laws dealing with coastal management. Up until that date, there was no legal regulation regarding to utilization of coastal areas. The 7th and 8th articles related to usage of the coasts were added to the Development Act numbered 6875, describing the concept of *coastal land* in terms of coastal line and coastal edge line and type of facilities that can locate there. 43rd article of the 1982 constitution indicates that the coasts are special areas and priority should be given to coastal areas in planning and public interest usage of the coastal areas is considered before all else. Moreover, public interest required to be considered by the code of law cannot be secured by leaving only 100 meters determined by the 1992 Coastal Law to public usage in theory. Public interest can be secured in practice by the protection of existing coastal values, the provision of transportation utilities, the improvement of these utilities, and the existence of supporting activities in order to use these utilities “(Ünal 1997)”.

As in Turkey the coasts are destroyed all over the world. The *Integrated Coastal Management* (ICM) approach was first suggested in the United States in the beginning of 1960s in order to solve this illogical exploitation. Later some progress was made in the international arena through some laws and programs. These include Coastal Areas Management Act, Mediterranean Action Plan signed in 1975, and Black Sea Environmental Programme supported by Global Environmental Facility “(Ünal 2000, Erdal 1997)”. ICM was recognized in Turkey by the foundation of the Turkish National Committee of the Coastal Area Management (CAM) in 1993 “(Tekinbaş 2000)”.

1.2. The Objective of the Work

The use of coastal area as a resource is inevitable because it presents sectoral diversity, ecological and natural values, and contributions to the country’s economy. However, coastal areas have been facing irreversible damage because of increasing pollution, exploitation of limited resources, spoiling of coastal eco-systems, natural

disasters in the coastal areas, and groups of people who intervene and compete in the coastal areas.

Besides spatial problems, there is a fragmentation of authority between local government bodies and central government in the planning of coastal areas. Although coastal areas should be planned for the benefit of the economy and people, it has been observed that self-interest focused usages in coastal areas are widespread.

The objective of this study is to investigate the effectiveness of Turkish coastal legislation in ensuring the protection – utilization balance after evaluating the court cases against coastal area uses.

The literature review revealed several Masters and Doctoral thesis about coasts. These studies handled the planning and implementation problems of coastal settlements, criticized the coastal legislation and included proposal tendencies, and considered some subjects dealing with the effects of tourism sector on coastal settlements. Besides these, this thesis included the legal regime which effects the coasts and the necessity of a coastal area management in order to maintain a sustainable coastal planning.

Two important questions form the basis of this work. First question is “is it possible to provide the protection-utilization balance between coastal resources and functions by the coastal laws and regulations?” Secondly “are general coastal laws and regulations sufficient for the conservation of coastal regions with different characteristics?”

While looking for the answers to these questions that form the basis of this thesis, a ‘Content Analysis’ of the expert reports of the 5 court cases related to coastal use conflicts have been performed using specific criteria. Besides, a follow-up search was conducted by contacting the municipalities in charge of the areas in conflict in order to get up-to-date information on the cases.

The most remarkable distinction of this study from other studies is its interpretation of the reasons and results of the improper coastal uses as they relate to the conception of the public benefits and its analysis of the effectiveness of related laws and institutions in ensuring the protection - utilization balance. This thesis emphasizes the necessity of ICM to protect coastal resources. ICM protects coastal areas from unfavorable results of economic activities, provides coordination between central and local governments, and includes strategies which target economic development by preserving cultural and ecological values.

CHAPTER 2

COASTAL AREA AND ITS USE

The interest and pressure led by the extraordinary natural beauties and ecological values of the coasts along with their historical and cultural heritage as the host of numerous civilizations throughout centuries is increasing the attention paid to the coastal areas. After Italy with its 8800 kilometers Turkey has Europe's second longest coastal band with a total length of 8333 kilometers and there are numerous conflicts on the use of these areas. In this chapter, the conception of the coastal area is discussed with the relating legal definitions, approaches of various disciplines and the use of coastal areas.

2.1. The Conception of Coastal Area

The coast is a geographic formation that is shaped by natural events. The shape of the coast may differ or disappear due to variability of events such as the waves and water streams. The *coast*, with its most plain definition, is a geographical area where the land and sea meet and where both systems interact with each other “(Doğan and Erginöz 1997, Karabey 1977)”.

The dictionary definition of the term *coast* is “the land next to or close to the sea” “(WEB_10)”. Kay and Alder (1999) have defined the *coast* as, “the spot where the land and sea meet” They also state that the coast is not easily described since the methods of shaping the coast represent a dynamic structure and change rapidly with time. Stating that the coastal areas feature “lands in interaction with the sea and the seas in interaction with the land”, Ketchum (1972 quoted in Kay and Alder 1999, 2) has listed the features of coastal areas as follows:

- Contains portions of land and sea,
- Interaction between the portions of land and sea, and
- Have no unique widths, depths and heights.

2.1.1. Legal Definition of Coastal Concept

Kay and Alder (1999, 11) state that “the borders of the land and ocean are not a distinct line on the map while this distinction is described as an area of gradual transition” Such transition zone is referred as the *coastal zone* or *coastal area*. This difference has also led to numerous conceptual discussions. While Kay and Alder (1999) maintain that the coastal zone concept would include a more restricted and narrow meaning, they are stressing that the coastal areas were larger areas and would stand for the transition between land and sea. Following sections include some examples from legal definitions of coastal concepts in other countries.

2.1.1.1. The 1995 Coastal Protection and management Act of Queensland, Australia

Coastal front: The portion of land between the high and low water points.

Coast: All areas within or neighboring the foreshore.

Coastal Management: Includes the protection, conservation, rehabilitation, management and ecologically sustainable development of the coastal zone.

Coastal Resources: The natural and cultural resources of the coastal zone.

Coastal Waters: The waters to the limit of the highest astronomical tide.

Coastal Wetlands: Include tidal wetlands, estuaries, salt marshes, melaleuca swamps (and any other coastal swamps), mangrove areas, marshes, lakes or minor coastal streams regardless of whether they are of a saline, freshwater or brackish nature.

The “**coastal zone**” is—

(a) coastal waters; and

(b) all areas to the landward side of coastal waters in which there are physical features, ecological or natural processes or human activities that affect, or potentially affect, the coast or coastal resources “(Kay and Alder 1999, 7)”.

2.1.1.2. The 1972 Coastal Zone Management Act of United States of America

Coastal Zone: Refers to the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.

Coastal Resource of National Significance: means any coastal wetland, beach, dune, barrier island, reef, estuary, or fish and wildlife habitat, if any such area is determined by a coastal state to be of substantial biological or natural storm protective value.

Coastal Waters: means in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbours, roadsteads, and estuary-type areas such as bays, shallows, and marshes and in other areas, those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.

Coastal State: means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes “(WEB_2)”.

2.1.1.3. The Directives of Practice relating to the 1992 Coastal Law Turkey

Coastal Line: Refers to the natural line determined by the connection of points where the water meets the land except for overflow times at the seas, natural and artificial lakes and rivers and that varies depending on meteorological events.

Coast: Refers to the area between the coastal line and coastal edge lines.

a) *Narrow – High Coast:* Refers to the coasts with no or quite narrow beach or abrasion platform that end in the shape of a slope or bevel.

b) Low – Depressed Coast: Refers to the coasts that extend farther beyond the coastal line and includes beaches and active and fixed sand dunes, coastal bands, lagoon lakes, lagoon areas, reedy, swampy, sandy, gravelly, stony and rocky areas.

Coastal Edge Line: Refers to the natural border of sandy, gravelly, rocky, reedy, etc. areas of beaches and sand dunes formed by the water movements towards the land at low – depressed coasts of the seas, natural and artificial lakes and rivers and the upper border of slopes or bevels at narrow-high coastal sections. This border cannot be modified by filling for land acquisition purposes “(WEB_3)”.

When the definitions in the coastal laws of the USA and Australia are examined, some definitions about coastal resources and coastal management are seen in addition to the different physical texture formed by natural metamorphosis. The definitions of the Turkish Coastal Law in Turkey include only physical changes resulting from natural occurrences. However, as a country surrounded by four seas, it is obvious that Turkey should have definitions about coastal management and distinctive utilization of coastal areas.

2.1.2. Definition of Coastal Concepts by Different Disciplines

The coast is defined in a comprehensive manner by numerous disciplines. A few examples follow.

According to geomorphology; coast not only means a border between the sea and land, but an area of which the length can be determined and width may vary “(Büyükvelioğlu 1998)”. The specific movements of the seas and lakes throughout the centuries have led to different coastal shapes. Such difference may vary depending on the tidal energy and quality.

According to geography; coast is defined as a portion of land that restricts the sea. “According to the natural geographic criteria, the coastal area begins at the coastal line formed by the junction of land and sea and extends to the inside of the lands as the border reached by the natural, climate-related and formative factors of the sea” “(Karabey 1977)”.

According to environmental science; the coast is a biological value which must be protected. The coast is an area that controls the quality and density of the exchange between the land and sea “(Doğan and Erginöz 1997)”.

According to urban and regional planning; the coasts are areas of a dynamic interaction between the land and water which are areas of a fragile balance, subject to changes by the human behaviors “(Beatley et al. 2002)”.

2.2. The Use of Coastal Areas

Urbanization has gained importance due to population increase and industrialization and especially the land and other natural resources have gained value parallel to this increase “(Akkaya et al. 1998)”. The fact that the coast is a consumable, limited resource results in increased competition among its users. As a result of this competition, inconsiderable damage to the coasts becomes inevitable. Consequently, cost of the conversion of coastal areas into usable areas will be high.

As in our country, the coast offers “a suitable environment for many human related actions” in many coastal countries “(Karabey 1977, 5)”. Contrary interests arise in coastal areas “(Geray et al. 1977)”. In addition, since the coasts represent an important point of transition between the land and sea, they represent a significant habitat that requires ultimate protection in terms of natural values and bio-diversity “(Duru 2003/1)”.

2.2.1. The Use of Coastal Area as a Resource

The coasts offer a suitable environment for numerous human activities. Yet, such actions may be harmful for the coastal area if they exceed certain limits in particular. As a result of the merger between the natural environment and many factors, coastal areas have become a resource for a wide variety of users by the offered features. The misuse of the coast that is a natural resource will lead to the loss of possibilities of benefiting from the recreational features as well as the marine products and thus, result in consequences that directly affect the users.

The competition over the coast is caused by the fact that it is a limited resource. The resource property of an object is a relative existence. If a new use becomes available for any object in nature, it is used as a resource “(Tekeli 1976, 40)”.

The state of a resource emerges depending on the presence of use. Termination of use or modification of its form will lead to the termination of a natural object's state of resource or conversion into a new type of resource. Such modification depends on social and technological changes. The basic feature of the coast is that it is a transition line between the sea and the land. The state of being a transition line grants the coast a special status, which includes the feature of being a resource “(Tekeli 1976, 41)”.

Interactions in the coastal areas and resulting activities have been quite valuable for manufacturers throughout the history. Coastal areas are popular places. The popularity becomes more widespread as the population grows and the social-economic development increases “(Kay and Alder 1999)”.

The coast itself can be used as a resource because of its geographic location. Some special features of the coast that offer source for specific uses can be listed as follows:

1. To connect marine and land transport,
2. To treat urban waste materials economically,
3. To create opportunities for tourism and recreational activities,
4. To form suitable environment and conditions for agriculture in the proximity to the sea “(Doğan and Erginöz 1997, Karabey 1977)”.

The importance of the coast and coastal resources for a country may be measured by various criteria. The first is the coastal length in comparison to the country's total surface (i.e.: the coastal length per 10.000 km²) while the second is the length of coast compared to the length of the country's borders. In other words, while a long coastal band is a natural and economical resource for one country, a limited coastal band grants importance to the resource in a subjective manner. Another criterion is determined by economical contribution such as the income gained from the production and export of coastal resources, tourism, and direct or indirect contribution to the workforce “(Doğan and Erginöz 1997)”.

In conclusion, coasts will always remain popular areas due to the natural resources and economic opportunities they offer. Therefore, resource planning, coastal planning and coastal management programs should be the major and urgent duties of the central and local authorities “(Kay and Alder 1999)”.

2.2.2. Sectoral Diversity in the Use of Coastal Areas

Asserting a single quality while providing information on the local and sectoral diversity offered by the coasts would be wrong. Coasts have many features. In brief:

1. Coasts are geographical areas that offer quite a rich habitat since they host different ecosystems in interaction with each other,
2. Coasts are highly rich in terms of natural resources and offer different opportunities for the use of land – water resources,
3. Coasts represent areas of high economical value,
4. Coasts are human focused areas with dense population “(Cicin-Sain and Kenecht 1998, 18)”.

Coastal areas are the most appealing places for economical activities. Economic activities such as production of marine vehicles such as vessels, production and processing of sea products, formation of new sea trade routes, storage related to development of industry, processing and exporting have provided new dimensions to traditional uses of coasts for fishery, defense sector, and trade activities “(Karabey 1977, 31)”. Table 2.1. shows the diversity of uses coastal areas provide.

Tekeli (1972 quoted in Bilge 1978, 4) informs that “the utilization of harbours is becoming increasingly widespread due to coastal access of marine and land transport.” This particularly triggers the industrial localization at the coastal areas. Industrialization leads to urbanization at the coastal areas. Another feature of the coastal areas that makes it suitable for industrial use is its purifying effect. It has high suction capacity that provides cheap and even free of charge treatment that is very valuable under the conditions of our country “(Geray et al. 1977)”.

Another feature the coasts offer in addition to their location is the opportunities they grant for various marine products and underwater resources. Coasts are not only a resource for productive activities, but also for consumption. The geomorphologic structure formed by the coast (sand, gravel, reed and swamps) combined with the flora and the climatic conditions makes the coasts the most popular areas for entertainment, relaxation, recreation, and leisure “(Geray et al. 1977)”.

Furthermore, the specific climatic conditions make the coasts appealing places and the environment of rare agricultural products upon the interaction between the water mass and the atmosphere “(Bilge 1978)”. According to a research in the United

Kingdom, the specific impacts of land and sea utilization on the coastal systems are classified as follows:

Table 2.1. Coastal Area Uses
(Source: Cicin-Sain and Kenecht 1998, 21-22)

Maritime Sector Vessel transportation Harbour and maritime business enterprises Establishing communication channels
The Resources of Water Products Fishing Raising and harvesting sea products Bio-technology of sea products
Mining Petroleum and gas production and usage Mining the different metals and minerals such as gold and magnesium
Tourism Hotels and recreational areas Establishment of tourism infrastructure Arranging swimming activities and forming scuba parks Preparing recreational fishing activities
Energy Preparing the structure of the plans in order to prevent damage from the natural disasters such as waves and storms
Defense Determination of the naval forces' maneuvering areas Identifying military areas
Transportation Developing roads, bridges and other transportation facilities Evaluating and utilizing the water sources Developing the infrastructure
Industrial Sector Industrial facilities Raw material resource facilities Vessel industry facilities Investment and storage facilities
Studies toward Protecting the Quality of Water and Coastal Environment Protecting waters against pollution Protecting waters against pollution of vessels and other means of transportation Declaring special protection areas and parks Protection of marine flora and fauna Protection of cultural resources around the coasts Protection of the coastal resources Protection of eco-system quality and prevention of marine flora and fauna which will harm the eco- system
Scientific Research Oceanography Geology of water and the coast Research on marine flora and fauna Archaeology Research on the usage of marshy areas

1. Physical Characters

- Decrease or loss of the coastal view
- Decrease of the water clarity
- Decrease of comforting areas (such as the beaches)
- Impacts on the character of the coastal towns

2. Natural Heritage

- Decrease or loss of natural environments
- Damage to the coastal ecosystems
- Decrease of the crustacean or fish resources
- Loss of coastal areas under protection

3. Coastal Utilization

- Disputes relating to the rights of the sea users
- Inconsistent usage
- Pressure for services and opportunities
- Impacts on the existing work and business areas “(Kay and Alder 1999, 19)”.

2.3. Summary

In conclusion, the competition between the different uses of the coasts keeps increasing as a result of the fact that the coast is a limited resource. The increasing competition leads to the unplanned and careless consumption of coastal areas. At this point, the use of the coastal resources with priority given to public interest for a long term, it is necessary to ensure protection.

CHAPTER 3

LEGISLATION REGARDING COASTAL LANDS IN TURKEY

When we examine the legal arrangements regarding the coastal lands in Turkey, we see that the initial arrangement was made in 1972 and subjected to numerous modifications. Following a short description of the development of coastal legislation, all coastal laws that were in force in various periods as well as the relevant institutions are discussed in this chapter. In addition, the draft coastal law that is currently under discussion is summarized.

3.1. The Development of Coastal Legislation

The first of the two basic principles of coastal legislation relates to land ownership at the areas that are referred to as coast, while the second comprises the restrictions applied on the use of such lands. According to the Ottoman land practices, coastal areas are considered state property. Although the Code of Law numbered 1858 permits coastal filling and private property ownership, the Civil Code numbered 1876 stipulates that the seas and lakes are collective property. The coastal legislation is based on article 641 of the Civil Law numbered 643 that was issued in 1926. The said article stipulates the principle that any unowned property belongs to the state and the coasts are public property available for public use. However, acquisition of private property upon coastal filling as specified under article 8 of the Title Deed Act numbered 2644 is an exception “(Eke 1995)”.

Considering coastal development in Turkey, it is clearly noticeable that the Development Law of 1972 numbered 6785 is an important milestone. While there was no description regarding coastal areas prior to this date, coasts were considered under the state’s possession. The Municipality, Structure and Roads Law numbered 2290 guided coastal development during the period where no Development Law was in force. According to this law, a zone 10 meters inwards from the coast was considered the coastal zone and kept under protection “(Keleş 2002)”.

The coastal law contains provisions for the protection and use of the coastal areas. When chronologically viewed, it can be observed that the development of the coastal law was subject to numerous revisions until today. Table 3.1. summarizes the development of coastal law in Turkey.

Table 3.1. The Development of the Coastal Law in Turkey

(Source: Durukan 1997, Büyükvelioğlu 1998)

Coastal Regulation	Date Issued
Civil Law Numbered 643, Article 641	1926
Article 4/1 of the Municipality, Structure and Roads Law Numbered 2293	1933/1957
Supplemental article 7 added by the Law numbered 1605 to the Development Law Numbered 6785	July 11,,1972
Directives of supplemental articles 7 and 8 of Development Law	January 18,,1975
Article 43 of the Constitution of the Republic of Turkey	1982
Coastal Law Numbered 3086	December 1,,1984
Directives pursuant to the Coastal Law Numbered 3086	May 18,,1985
Decree of the Constitutional Court pertaining to the cancellation of several articles of the Law Numbered 3086	July 10,,1986
Circular No 110	July 15,,1987
Coastal Law Numbered 3621	April 17,,1990
Directives pursuant to the Coastal Law Numbered 3621	August 3,,1990
Decree of the Constitutional Court pertaining to the cancellation of several articles of the Law Numbered 3621	January 23,,1992
Law Numbered 3830 pursuant to the Amendment on the Coastal Law	July 11,,1992
Directives relating to Law Numbered 3830	October 13,,1992
Revision of Directives	March 30, 1994
Revision of Directives	July 27,,1996

In addition to the Coastal Law, other laws that involve coast-related issues also existed. The Harbours Law of 1924, Forest Law of 1956 and Marine Products Law of 1971 are among the laws including coastal provisions even if to a partial extent “(Eke 1995)”.

3.2. Laws and Regulations

In this section the 1982 Constitution which dictated the use of coastal areas for public benefit and the 1972 Development Law are examined. Later, the development of coastal regulation is described and the 1984, 1990, and lastly, the current 1992 Coastal Laws as well as the draft of the proposed law is summarized.

3.2.1. The 1982 Constitution

The coast as defined in 1972 is also included in the 1982 Constitution. Article 43 of the Constitution on Public Interest includes a provision that reads¹ “In the utilization of sea coasts, lake shores or river banks, and of the coastal band along the sea and lakes, public interest shall be taken into consideration with priority. The width of coasts and coastal band according to the purpose of utilization and the conditions of utilization by individuals shall be determined by law.” Prior to the enforcement of this provision, the *right to health* stipulated under article 49 of the 1961 Constitution was the sole constitutional provision that the coasts could benefit from. The 1982 Constitution sets forth the right of living in a healthy environment under article 56. The consequences of article 43 of the Constitution can be listed as follows:

1. Any legal arrangements to be made according to the constitutional provision are required to be based upon the principle stipulating that the coasts are areas under the state’s sovereignty and disposal.
2. Coasts may not be subject to private property.
3. Public interest should also be considered for the utilization of any areas next to coasts.
4. The depth of the coastal bands is determined according to the purpose of use.
5. The utilization of coastal bands for the public interest is essential “(Tekinbaş 2000)”.

¹ In decisions no. A.Y.M.16.2. dated 1965; no. E.1963/126, K.1965/7 and dated January 2, 1968 and no. E.1985/1 K. 1986/4, the meaning of the state’s sovereignty and disposal on natural resources and wealth is described.

3.2.2. 1972 Development Law

The year 1972 can be seen as a turning point when coastal development in Turkey is considered. Supplemental article 7 added by the Law numbered 1605 to the Development Law Numbered 6785 declares that settlements which will be located within 10 meters from the coast of seas, lakes or rivers can only be built up by the permission of the Ministry of Development, Public Works, and Settlement “(Tekinbaş 2000)”.

In the year 1972, coastal development permissions were left to the Development Law. Article 40 of this law stipulated that no permissions would be granted to any private building within 30 meters of coastal edge without a development plan. The definition of “coast” was introduced to our laws by the article 7 of the law numbered 1605 foreseeing a modification in the Development Law numbered 6785 in 1972.

According to this law, the coast was stipulated to be a zone determined as minimum 10 meters by the Ministry of Public Works. The regulations² pursuant to the supplemental articles 7 and 8 of the Public Law issued in 1974 however, defined the length of the coastal zone as minimum 10 meters in areas with a development plan, minimum 30 meters in village settlement areas and river banks and minimum 100 meters in other areas. The specified zones have been available for the construction of tourism facilities including accommodation “(Tekinbaş 2000, 118)”.

In this directive certain coast related descriptions are clearly given for the first time. According to this directive, the *coast* is a part of the mainland. *The coastal line* is described as a natural changing line where the water of the seas and the land meet. *The coastal edge line* is described as the ending point of the coast in the direction of the land “(Eke 1995)”.

The coasts on which only the construction of buildings that aim public interest such as piers, boat houses, light houses etc. is allowed are open for public use in strict equality and freedom. However, although the directive does not apply to private property, it also includes the provision which states that public teahouses, restaurants and dressing rooms can be built on the water wholly or in part upon the permission of the development plan (Directives of supplemental articles 7 and 8 of Development Law). One of the most important statements in the directive stipulates that the areas within the coastal band may not be acquired as private property and that no private property may be acquired by coastal filling. Thus, filled areas are excluded from private property ownership. The Directive of supplemental articles 7 and 8 of the law numbered

² Regulation, published at the Official Gazette dated January 18, 1975 and issue number 15122.

1605 related to the Development Law numbered 6785 bears the nature of a reform by the basic principles added to the coastal legislation “(Eke 1995)”.

3.2.3. The 1984 Coastal Law

The Coastal Law numbered 3086 was issued in 1984 to determine the conditions of use of the coasts. According to this law, the coastal band consists of the areas with a minimum of 10 meters horizontal width from the coastal edge line towards the land for areas with a development plan and minimum of 30 meters in other areas. Consequently, the 100 meter coastal band rule of the supplemental articles numbered 7 and 8 for areas without development is abrogated “(Eke 1995)”. Principally, the coastal law prohibits coastal development. However, this provision also has an exception. Coastal development is permitted upon a plan decree only for buildings and facilities such as shipyards, factories, and water product premises that conduct their activity at the coast in structures aiming for public interest and comfort. Furthermore, permission for educational, recreational and tourism facilities is also granted for public interest as well. In addition to these, it is stipulated that the use of such premises out of their purpose or their restriction of coastal utilization is prohibited.

It has been stated that outside the coastal band, except for the locations with public priorities, private construction on the coasts would be permitted upon the plan decree, under the permission of the Council of Ministers. Besides, the determination of the coastal line is given to governorships. However, there is not a significant foresight for the approval of this determination, signatures of the Council of Ministers were considered sufficient “(Coastal Law Directive Numbered 3086)”. The commission is formed by a minimum of five members representing different disciplines such as geological engineers, geology engineers and surveyors, agricultural engineers, and architects “(Tekinbaş 2000)”.

Cancellation of the Coastal Law of 1984: The law numbered 3086 was cancelled upon the court decree³ issued by the Constitutional Court in 1986. Tekinbaş (2000, 121) lists the provisions and grounds subject to cancellation as follows:

³ A.Y.M. E. 1995/1, K. 1986/4, (Official Gazette dated June 10th, 1986, numbered 19160).

1. Articles pursuant to the definitions relating to the coastal edge line and coast are contrary to the Constitution due to the exclusion of the rocky cliffs that are a determining factor for the coasts from the definition of coasts.

2. Provisions that set out the principles relating to the use of the coasts are contrary to the Constitution due to their arrangements that do not permit the equal and free use of the coasts but result in coastal private property and development.

3. The provisions pertaining to the utilization of the coastal bands are contrary to the Constitution since they are not stipulated by provisions that comply with the principles of use for public interest.

4. The provisions that stipulate the consideration of acquired private property rights obtained prior to 1972 at the coastal areas are contrary to the Constitution since the private property status of the coasts are not made possible in any manner.

The law was cancelled as a whole since it was impossible to have the remaining articles of the law in force after canceling articles 4, 6, 9, 13, and provisional article 2.

Circular No. 110: In order to avoid a legal gap upon the cancellation of the Coastal Law numbered 3086, the Constitutional Court has postponed the enforcement of the cancellation decree six months. However, no new coastal law was issued during the period, while the Ministry of Public Works released a circular that took into consideration the Constitutional Court's cancellation decree. The circular numbered 110 was issued on July 15th, 1987. Compared to the law numbered 3086, circular 110 includes some modifications pertaining to the determination of a coastal edge line and regarding the formation of the determination commission. While the law numbered 3086 requires minimum two of the five commission members to be public officers, circular 110 stipulates the entire commission to consist of public officers while the professions of the members are diversified. Furthermore, this circular bears a statement that reads "the property rights on the areas that remain within the coastal description shall be reserved until expropriation" "(Circular no. 110)".

Circular 110 was cancelled on February 3rd, 1989 and new arrangements were made in consideration of the grounds of cancellation of the Coastal Law numbered 3086 specified by the Constitutional Court "(Tekinbaş 2000)".

3.2.4. The 1990 Coastal Law

The Coastal Law numbered 3621 was issued on April 17, 1990 while the related directives of practice were enforced on August 3, 1990. The important details and progress can be summarized as follows in comparison with the previous laws:

1. Restrictions on the coastal depth and possible activities at the banks, fillings and coastal bands,
2. Details and new arrangements pursuant to the administrative progress and approval processes applicable to the coastal edge determination and filling procedures,
3. Increase of penal provisions “(Eke 1995, 13)”.

Enforced in 1990, this law includes rocky cliffs within the definition of a coast, prohibits any structures and premises within the coastal band other than the mandatory ones, diversifies the coastal bands depending on their type of settlement and excludes any provisions regarding the acquisition of coastal private property.

The law has determined the coastal band to begin from the coastal edge line as (i) a horizontal area of minimum 20 meters in width at those areas where a development plan will be implemented (ii) a horizontal area of minimum 50 meters in width at the settled areas within the municipal borders and adjacent areas where an implementation plan is unavailable whether or not master and/or development plan is present, and (iii) a horizontal area of minimum 100 meters in width at the areas within the municipal borders and adjacent areas and outside development area whether or not a master and/or development plan is present “(Keleş 2002, 703)”.

The areas acquired by filling and drying are also included after determining the buildings to be constructed in the coastal area. Putting this rule into practice requires the governor’s opinion, before the approval of Ministry of Public Works. The development of social facilities such as roads, outdoor car parking areas, parks, open spaces and playgrounds is foreseen on such areas acquired.

In addition to these, in reference with the Development Law numbered 3194, the Tourism Incentives Law applies to the approval and implementation of the plans for coastal areas and shorelines with the exception of filled areas. Another rule that differs from the previous law relates to the determination of the coastal edge line. The approval of the Ministry of Public Works is required for the coastal edge line determined by the governorship. The most remarkable principle of this law, which is also the one that differs from the cancelled law is its inclusion of penalty provisions.

Cancellation of the Coastal Law of 1992: The Constitutional Court has cancelled the law numbered 3621 due to the definition of the coastal band whose depth is considered insufficient in terms of public interest and granting healthy and well balanced living conditions to the residents⁴. Tekinbaş (2000, 127-128) lists the reasons of the Constitutional Court as follows:

1. Coastal development is not permissible on private property. Any principles of property rights are unacceptable and invalid at the coasts.
2. Utilization of the coasts will become possible only as long as the coasts are open for everyone, since coasts are the extension of the seas, lakes and rivers.
3. The Constitution envisions the public interest in determining the coastal band depth.
4. Coastal band depths may be determined separately at planned or unplanned areas. However, in any case, such depth should not be less than 100 meters. Determining a narrow band would make a proper utilization in terms of public interest as foreseen by the Constitution more difficult.
5. Coastal bands should have a sufficient depth that is suitable for utilizing the sea and sun as well as the construction of premises to meet the health, fresh air, and recreation requirements of the public, adequate space for a coastal road, utilization of the sea as a value and resource, and the construction of the facilities for such purpose.

An important feature of the decision on the cancellation is the fact that it is not only based on the public interest principle, but also the consideration of the coastal use in terms of issues such as the environment and health.

3.2.5. The 1992 Coastal Law

The Coastal Law numbered 3830 was approved on July 1, 1992 and entered into force on July 11, 1992 upon publication at the Official Gazette. According to this law, the coastal band depths are unified in one single depth while the coastal band's determination of an area of minimum 100 meters width in horizontal position towards the mainland was stipulated as a provision. Also, the provisions setting forth that construction of any buildings within the first 50 meters of the coastal band (except for any structures in the nature of an extension to the permissible buildings) is prohibited

⁴ A.Y.M. E. 1990/23, K. 1991/29.

and such space may be used for pedestrian ways, jogging, leisure, and recreational purposes. Construction of daily tourism structures and buildings, vehicular roads, outdoor car parking areas, treatment facilities, police stations, and similar security related buildings that do not include residence and accommodation is permissible within the second 50 meters of the coastal band “(Abacıoğlu 1994)”.

The law defines the *coast* as the area that lies between the coastal line and the coastal edge line. The *coastal line* is defined as the line that is formed by the intersection point of where water and land meet at natural and artificial lakes and rivers except for the overflow times. The *coastal edge line* is the area along the seas, natural and artificial lakes and rivers after the coastal line towards the mainland that draws the natural boundary of sandy, pebbled, stony, rocky, reedy, swampy and similar areas formed by the water’s movements “(Abacıoğlu 1994)”.

Furthermore, *partial development* under the law numbered 3621 is defined according to the number of parcels. The regulation related to the law numbered 3830 expanded the partial development definition to include the criteria of having more than 50 percent of the ground area to be used besides the number of parcels. Two years after the 1992 Coastal Law these directives were revised due to the presence of practices that do not comply with the principles of the use and protection of the coasts for public interest. The amendment made is published at the Official Gazette dated March 30, 1994, issue number 21890. The enforced provisions include: the diversity applied on the daily tourism definition, modification made on the partial development definition, technical revisions made on the definition of the coast as well as the determination of the coastal edge line, and diversity pursuant to the possible utilizations of areas obtained by filling and drying. During the process of this study, the draft of an amendment on the Coastal Law numbered 3621 came to order. The modifications and arrangements applied by the said draft are discussed in the following section.

3.2.6. The Draft of the Proposed Coastal Law

The draft of a new coastal law is issued by the Ministry of Public Works on March 27, 2006. Comments were made on the draft by numerous media institutions, non-governmental organizations, private and institutional entities. The contents of the draft as well as the purpose thereof were made public through the press conferences

held by The Ministry of Public Works who issued the draft. The most significant provisions introduced by the draft that attracted reactions are summarized below “(WEB_4)”.

The draft includes a new definition for the *coastal band* as the horizontal area from the coastal edge line towards the mainland at the seas, natural and artificial lakes; which is minimum 100 meters in width outside the settlement areas and the area of minimum 50 meters in width in urban and rural settlement areas. The proposed law includes watchtowers, roads, railroads, airports, terminals, railway depots, outdoor car parking areas, restaurants, cafeterias that may be built by provisional elements, entertainment areas, parks, green fields, outdoor recreation areas, outdoor swimming pools, and playground structures among the premises that are allowed on the coastal band and filled areas. In addition to the foregoing, the construction of administrative, supportive, repair and maintenance, technical and social infrastructure, accommodation units for cruise ports and marinas, as well as tourism facilities will also be permissible at the coastal bands, coasts, and filled areas “(Şehir Plancıları Odası 2006)”.

Under the Integrated Coastal Area Management concept, the draft shall take over the approval authority of the plans that fall within the scope of the Coastal Law from local administrations and assign to the Ministry of Public Works. In addition, a further amendment on the draft is granting the investors the opportunity of preparing a development plan proposal together with a feasibility report that complies with the legislation.

The law proposes changes to the *acquired rights* concept as well. Whether the development plan exists or not, buildings constructed before this law complying with appropriate legislation will be accepted as an acquired right. Besides, the vertical line which joins the front side of the buildings will be recognized as the boundary of the coastal band and the development plans will be prepared according to these borders “(Şehir Plancıları Odası 2006)”.



Figure 3.1. The Coastal Band in the Current Situation
(Source: Şehir Plancıları Odası, 2006)

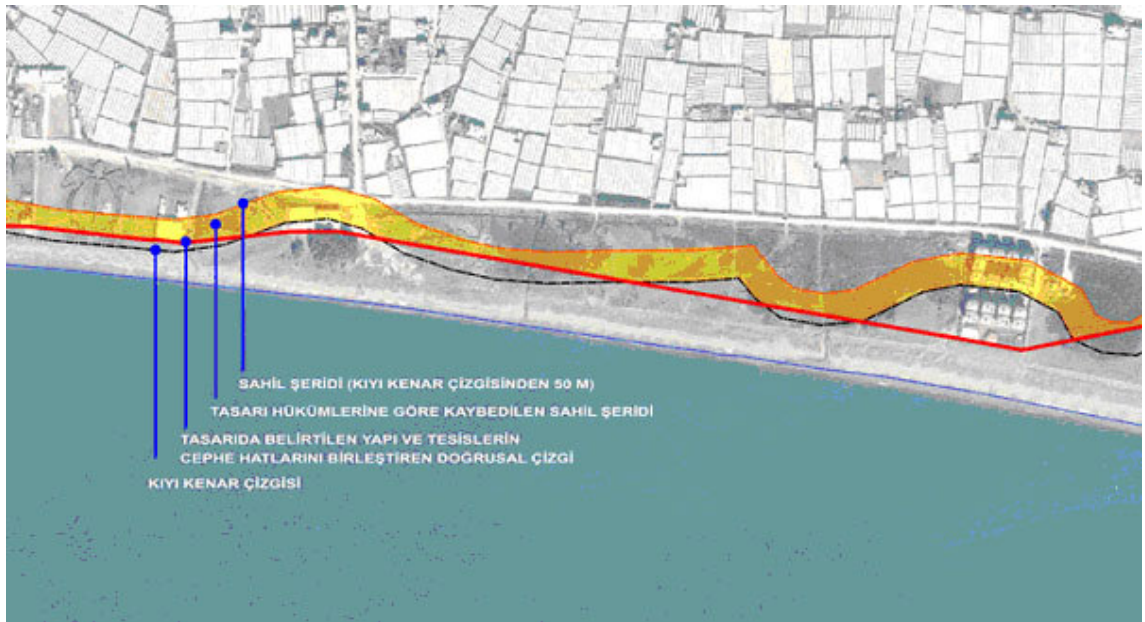


Figure 3.2. The Coastal Band Proposed in the Draft Legislation
(Source: Şehir Plancıları Odası, 2006)

The protection principle of coastal areas has been destroyed by the new approaches such as ‘vested interest’. In addition, misuse of words in definitions can be interpreted in various ways. For example, constructions, unplanned but appropriate to the coastal law can be located coastal areas.

Integrated Coastal Management which was first appeared in the draft of the coastal law, has lately been understood not to include an integrated planning approach for the whole city. In this manner, integrated coastal planning issues will be implemented in special areas selected by the ministry and authorization of the local governments will be replaced by the central authorities. In summary, the new law prepares the legal basis for dense construction in the coastal band and filled areas near the coasts.

3.2.7. Other Legislation about Coastal Lands

Many institutions in Turkey that have some authority over coastal lands have their own legislation. Each institution’s objectives and responsibilities concerned with the conservation, management, and planning of the coastal areas are stated in these legislations. The mission of the institution, the legislation that relates to coastal lands, and its objectives are summarized in Table 3.2.

Table 3.2. Institutions with Authority over Coastal Areas
(Source: Özhan 2005, Durukan 1997)

Institution	Mission	Related Legislation
The Ministry of Environment and Forestry	The ministry's objectives include protecting the environment, determining strategies to prevent pollution, protecting the forests owned by the state, and improving the life standards of the peasants living by the forests.	▪ The Environmental Law ▪ National Park Law ▪ Forestry Law
The Presidency of Special Environmental Protection Areas	The aim of the institution is to protect the environmental values in Special Environmental Protection Areas determined by the Environmental Law numbered 9, to eliminate the existing environmental problems, to determine the principles appropriate for protection-utilization balance, and also to prepare, reexamine, and approve development plans for the Special Environmental Protection Areas.	▪ The Environmental Law ▪ Decree of the Cabinet for Special Environmental protection areas
The Ministry of Culture and Tourism	The purpose of this institution is to contribute to the development and marketing of tourism in order to maintain, develop, and spread cultural and historical values.	▪ Conservation of Cultural and Natural Assets Law
The Ministry of Development and Public Works	Organizations related to development are dependent upon this institution. Besides development, the coastal laws and regulations charge this ministry with important tasks. The principles of settlement and the land use decisions which are implemented through the Master Plan approvals belong to this Ministry.	▪ The Development Law ▪ The Coastal Law
The Ministry of Transport	This ministry's responsibility regarding coasts is concerned with development of harbours and their management. These activities are conducted through The Ministry of Transport and General Directorate for the Construction of Railways, Seaports, and Airports.	▪ Harbour Law ▪ The Coastal Law
The Undersecretariat of Maritime Affairs	The Undersecretariat is responsible from the development and maintenance of the maritime system according to the needs of the people and interest of the country. It is also charged with observing each and every activity harming the sea's natural and ecological structure and resulting in pollution and determining vessel dismantling locations.	▪ The Harbour Law
The Ministry of Agriculture And Rural Affairs	The ministry's responsibility is to implement agricultural policies and manage agricultural lands in the country. Another mission of the ministry is to audit deep sea fishing.	▪ The Fisheries Law
Prime Ministry State Planning Organization (SPO)	The aim of this institution is to provide a balanced distribution of the economic development throughout the country. Besides economic responsibilities, the institution is authorized to prepare leading projects and strategies for regional planning and development.	▪ SPO Establishment Law ▪ The Development Law

Aims of the regulations related to coasts other than laws and regulations described above are summarized below. A list of these regulations can be found on Table 3.2.

Table 3.3. Legislation about Coastal Lands
(Source: Özhan 2005, Durukan 1997, Alaca 1997)

Name and Number of the Law	Date of Acceptance	Official Gazette issue date and number
The Harbours Law No: 618	April 14, 1341	April 20,,1341–95
The Law related to Waters No: 831	April 28, 1926	May 10,,1926–368
The Civil Law No:743	October 4,,1926	
The General Hygiene Law No: 1593		May 6,,1930–1489
The Forestry Law No: 6831	August 31,,1956	September 8,,1956–9402
The Marine Products Law No: 1380	March 22,,1971	April 4,,1971 – 13799
Marine Products Regulation No: 7/6719	June 28,,1973	27.7.1973–14607
The Constitution	1982	
The 1982 Tourism Incentives Law No: 2634	March 12.1982	March 16,,1982–17635
The Coastal Security Force Law No: 2692	July 9,,1982	July 13,,1982–17753
Conservation of Cultural and Natural Assets Law No: 2863	July 21,,1983	July 23,,1983–18113
The Environmental Law No:2872	August 9, 1983	August 11,,1983–18132
The National Parks Law (No: 2873)	August 9,,1983	August 11,,1983–18132
The Bosphorus Law No: 2960	November 18,,1983	November 22,,1983–18229
The Development Law No: 3194	May 3,,1985	May 9,,1985 – 18749
The Decree of Cabinet for the Establishment and responsibilities of the Ministry of Transport No: 3348	April 9,,1987	April 14,,1987–19434
The Water Protection Regulation based upon the Environmental Law	1988	September 4,,1988–19919
Directives Relating to the Non-Agricultural Use of Agricultural Areas	March 11,,1989	20105
The Decree of the Special Environmental Protection Areas No: 383	October 19,,1989	November 13,,1989-20341
The Coastal Law No: 3621	April 4,,1990	April 17,,1990-20495
The Regulation Related to the Coastal Law No: 3830	July 11,,1992	
The Decree of the Establishment and Functions of the Undersecretariat for Maritime Affairs (No: 491)	August 10,,1993	August 19,,1993–21673
The Municipalities Law No: 5393	July 3,,2005	

The Harbours Law: The aim of this law numbered 618 is to arrange all types of objectives related to harbours.

The Civil Law: It has been stated in the law that the coastal areas belong to public and cannot be subject to private property.

The 1956 Forestry Law: The aim of this law numbered 6831 is to take forests under the authority of the state, to prohibit the activities which harm forests, vegetation, and water resources, to limit land uses in the forest land for other purposes. Heavily forested areas within coastal areas are also affected by this law.

The 1971 Marine Products Law: The aim of this law numbered 1380 is to protect marine products, identify the marine products production locations, and provide control of these areas.

The 1982 Constitution: It has been explained in the paragraph number 43 of law number 2709 that all coastal areas are under the authority and the possession of the state and priority in the use of coastal band which surrounds seas, lakes, and rivers is given to public interest.

The 1982 Tourism Incentives Law: The aim of this law numbered 2634 is to provide measures for a dynamic structure for the regulation and development of the tourism sector.

The 1982 Coastal Security Force Law: The aim of this law numbered 2692 is to regulate the methods related to provision of security and protection of the inland waters, harbours and gulfs.

The 1983 Conservation of Cultural and Natural Assets Law: The aim of this law numbered 2863 is to identify the cultural and natural assets which relate to the determination of the definitions of the movable and immovable natural wealth and to arrange procedures.

The 1983 Environmental Law: Law numbered 2872 aims at the protection and improvement of the environment which is a common good of all people, finding more appropriate ways of using land and natural resources within rural and urban areas, prevention of water, land, and air pollution, protection of natural and historical wealth of the country, and the improvement of the life standards of current and future generations in a more civilized approach.

The 1983 National Parks Law: The aim of this law numbered 2873 is to protect and develop the national parks, natural parks, and natural monuments which are

valuable nationally and internationally, to identify the natural conservation areas, and to protect, develop, and manage them without harming their characteristics.

The 1983 Bosphorus Law: The aim of this law numbered 2960 is to determine the legal procedure to limit the construction in this area to prevent population increase, and to protect the cultural values and natural beauties of the Bosphorus area by taking public interest into account.

The Decree of Cabinet for the Establishment and responsibilities of the Ministry of Transport: The aim of this law numbered 3348 is to prepare the planning and programming of the protection of coastal establishments and structures of the harbours and shelters and their equipment, the maintenance of these establishment, and equipment repairing in cooperation with related institutions.

The 1988 Water Protection Regulation based upon the Environmental Law: This law aims at achieving better ways of use and protection of the water resources potential of the country and preventing the water pollution by the production of well-adjusted legal and technical specifications with the social and economic development plans.

Directives Relating to the Non-Agricultural Use of Agricultural Areas: The purpose of this law numbered 20105 is to provide the use of agricultural areas appropriately and determine the fundamental principles for the agricultural areas used for purposes other than agriculture.

The 1989 Decree of the Special Environmental Protection Areas: The aim of this law numbered 2872 is to establish the Presidency of Special Environmental Protection Areas to protect the environmental value of the identified areas of value.

The 1993 Decree for the Establishment and Functions of the Undersecretariat for Maritime Affairs: The aim of this law numbered 491 is to provide observation and auditing to all types of activities which can cause marine pollution and damage to marine ecology, and to identify, plan, assign, and permit vessel dismantling facilities in cooperation with other institutions.

The Municipalities Law: This law numbered 5393 gives authority to municipalities to audit the soundness, cleanliness, and loading capacity of the marine vehicles and to determine their routes “(Özhan 2005, Durukan 1997)”.

3.2.8. International Agreements Regarding Coastal Lands

There are many international environmental agreements which Turkey undersigns besides the laws shown above. The aims of these agreements are summarized below.

The Barcelona Contract to Prevent Pollution of the Mediterranean Sea: The content of this contract is to protect the social, cultural, and ecological values for the use of the next generations.

The Protocol to Protect the Mediterranean Sea against Land Originated Pollution: The purpose of this protocol is to protect the Mediterranean Sea against disposals in the peak seasons dependent upon tourism because of the increase in industrialization, urbanization and population

The Protocol Related to Special Environmental Protection Areas of the Mediterranean Sea: The aim of this protocol is to protect and to improve the cultural heritage, natural sites, and natural resources of the Mediterranean due to the increase in the human activities reaching a level to threaten the environment.

The Protocol to Protect the Black Sea against Land Originated Pollution: The purpose of this protocol is to prevent, decrease, or eliminate land originated pollution which can spread out to the Black Sea “(Kalelioğlu and Özkan 2000)”.

The coastal areas of a certain value in our country were determined as Special Environmental Protection Areas and taken under protection upon a decree of the Cabinet while the regional planning authorization was assigned to the Presidency of Special Environmental Protection Areas. Such regions are planned within the framework as determined by the relevant ministry. Taking into consideration planning principles and the Special Environmental Protection Areas at the coastal areas as discussed in the coming section, observations are made as to whether or not such rules are sufficient for the protection of the selected areas

3.3. Special Environmental Protection Areas

The following general planning principles are considered for the protection of the ecological and historical values of Special Environmental Protection Areas as well as the formation of a sound structuring within the protection – utilization balance;

- To ensure the establishment of protective balances of use,
- To protect the limited agricultural areas with high performance,
- To prevent any actions that may result in the loss of watery and sandy areas,
- To establish a well planned protection – utilization balance for the regions of recreational potential,
- To rehabilitate and develop the infrastructure of regional settlements,
- To ensure the protection of natural areas of protection previously determined and announced by the Conservation of Cultural and Natural Assets Councils,
- To ensure proper protection and development of archeological areas of protection,
- To generate balanced decisions on the existing tourism demands and to reflect such on the plans, and
- To protect and direct as well as to ensure the development of the present architectural texture and local features of the regions “(WEB_1, Özhan 2005)”.

The 14 Special Environmental Protection Areas determined in accordance with the aforesaid principles are Belek, Foça, Datça-Bozburun, Fethiye-Göcek, Gökova, Göksu Delta, Gölbaşı, Ihlara, Kekova, Köyceğiz-Dalyan, Pamukkale, Patara, Tuz Gölü, and Uzun Göl. These areas are rich in terms of natural, historical, and cultural values; feature a good biological and ecological balance; are highly significant in terms of ecology and promising for the future both locally and worldwide. Some of the 14 declared areas are situated on the coast. The features of the Special Environmental Protection Areas on the coast are summarized below.

3.3.1. Belek

Antalya, Population 27.235, Area 111,79 km²

The area is hosting numerous well planned and regular regional observation projects and protection of the breeding areas for *sea turtles* that are under a worldwide risk of extinction and is subject to the programs carried out according to the results of such observations “(WEB_1)”.

3.3.2. Foça

İzmir, Population 14.295, Area 27.6 km²

The origin of the considerable portion of the region's importance comes from the seals that live in this region for over thousands of years and after which the area is named. Turkey is the second country where the *Mediterranean Seals (Monachus monachus)* facing the danger of extinction currently exist. The studies to be conducted in this region will ensure the continued health of the ecosystem in the vicinity of Foça and avoid any further damage to the species “(WEB_1)”.

3.3.3. Datça-Bozburun

Muğla, Population 21.165, Area 1443.68 km²

In addition to the products such as thyme, sage, bay leaves, and carob fruits picked by the local residents for economical purposes; Bambus bees used for the insemination of the plants in the greenhouses and the mountain goats (*Capra Aegagrus*) about to go extinct are the most important biological assets of the region where the natural flora is consisting of Mediterranean plant species such as olives, red pines, sandalwood, and almonds “(WEB_1)”.

3.3.4. Fethiye-Göcek

Muğla, Population 73.206, Area 774.07 km²

The southern coasts of Fethiye are surrounded with steep mountains. The sea becomes instantly deep. There are small bays and inlets along the coast. The Dead Sea Lagoon at the Belceğiz village offers an idyllic appearance. The regional flora consists of maquis at the coast and pine (conifer) woods at higher areas. These woods contain black pines, (*Pinus nigra*), red pines (*Pinus brutia*) and *Cedrus* woods. The coasts feature moorlands, olives, oaks, and citrus “(WEB_1)”.

3.3.5. Gökova

Muğla, Population 7.615, Area 7576.9 km²

The high quality forest areas become denser at the slope of Kıran mountains along the southern coast of the Gökova Bay. The Gökova savannah and the surrounding mountains are ecologically important in terms of a rich flora and fauna. Wild animals are available at the southern part of the Gökova Bay in particular “(WEB_1)”.

3.3.6. Kekova

Antalya, Population 1.165 , Area 232.36 km²

Giving the region its name, Kekova is the largest island within the region. İç Ada, Toprak Adası, Aşırılı Ada, and Kışnalı Ada are other important isles. The Sıcak Peninsula and Kekova Island situated parallel along the coast form the “Dead Sea” which is a closed sea. Fishery is the major means of living. The region also contains the remains of ancient city walls and fortress currently under water. This area is supposed to be the ancient city of Simena. In addition, there are numerous other sunken cities “(WEB_1)”.

3.3.7. Köyceğiz-Dalyan

Muğla, Population 29.129 , Area 461.46km²

This region is among the most important breeding areas of the Mediterranean Sea Turtles (*Caretta caretta*). The most abundant vegetation at the Köyceğiz Special Environmental Protection Area comprises of red pine and sweetgum woods; as well as the grassy plants that grow in the wet and dry swamps surrounding the Köyceğiz Lake “(WEB_1)”.

3.3.8. Patara

Antalya-Muğla, Population 15.667, Area 189.18km²

One of the most typical structures in this area is the moving dunes. With both archeological values and natural assets, Patara has managed to preserve its importance

from ancient times until today. The coasts of Patara that form an unsurpassed beach of 18 kilometers long, sand-hills, archeological sites, wetlands, flora and fauna, the historical and cultural values along with the agricultural areas worthwhile to protect result in dense tourism activities in the region “(WEB_1)”.

3.3.9. Conclusions

The examination of Special Environmental Protection Areas, showed that the principles necessary to constitute a healthy settlement in the areas mentioned above have not been taken into consideration in the management of these areas. These areas are exposed to violation as follows:

Fethiye – Göcek: In this area, a project, which was prepared by Turkon Holding connected to Kalkavan group is supposed to be finished until 2008. The project consists of a hotel with 500 beds, a holiday village, apartments, and two-storey villas. For this project, the Ministry of Environment and Forestry assigned 136.831 meter square land from the state forest and hundreds of trees were cut immediately for Göcek Marina Resort Tpurim Complex project. The Ministry of Environment and Forestry stopped the project temporarily. However, the construction is only stopped in the land leased from The Ministry of Environment and Forestry. It is still going on in the privately owned land. Göcek region has an inland sea, and therefore, is vulnerable to pollution “(WEB_5)”.

Gökova: The public domain and forestry land in Gökova Gulf has been opened to re-development by the Ministry of Culture and Tourism in order to build facilities related to tourism. This decision would possibly finish the sea tourism in Gökova which is a very essential center for this use. The place is very famous for Blue Voyage cruises. It has been very well understood that cruise ships anchoring in Gökova have a high bed capacity and bring good income. That is why Gökova is not thought to have a need of luxury hotels and holiday villages “(WEB_6, WEB_7)”.

Datça: Due to having no development plan, Datça and Bozburun peninsulas are plundered seriously. Especially illegal settlements are seen intensively in Mesudiye

village of Datça. Unplanned settlements and mass population pressure in the coast of Datça region constitute a crucial threat on the water resources. Besides, research shows that the fish traps between Datça and Bozburun damage the bio-diversity in the region and cause the visibility in the sea water to decrease to 15 meters “(WEB_9)”.

Such issues should not be experienced in the Special Environmental Protection Areas. It is necessary to provide a well planned protection - utilization balance and the settlements in this region should be taken under protection for their natural and cultural values. However, different institutions and managements violate the authority and preservation principles of the Presidency of Special Environmental Protection Areas. The methods used by this Presidency showed us that they are neither sufficient nor efficient to protect coastal areas appropriately. In our country there should be a governance system encompassing, not only Special Environmental Protection Areas, but also all coastal areas taking protection into consideration predominantly in the utilization balance, and developing the settlement in the region by protecting the traditional architectural texture.

3.4. Summary

All aforesaid laws set the legal framework of coastal planning and development activities. In addition to the legal gaps arising from the frequent revisions and the multiplicity of the laws which should be taken into consideration in addition to the coastal law, the coasts have been plundered recklessly due to the confusion of authority and missions of multiple responsible institutions as well as the lack of coordination between them. Another reason for this plunder was the lack of comprehensiveness of the said coastal laws during the periods in which they were in force. Yet, the Coastal Law requires control over the coastal development and must provide proper protection for the coasts. Consequently, the Coastal Law must comprise a set of comprehensive provisions that gives equal importance to all users of the coast and features a coastal management approach that is based on public interest.

CHAPTER 4

UTILIZING COASTAL AREAS AND COASTAL PLANNING

In this chapter, coastal planning and public interest concepts that require urgent emphasis in a study of this nature are discussed. However, before passing over to the public interest concept, definitions on public property, a concept corresponding to the coasts, and the place of coasts within public property are presented. Public interest, on the other hand, is discussed only as one of the mandatory principles of the coastal legislation and defined within this framework. Since the study involves the coastal use framework, ideas of public interest and social benefit are compared in terms of their contents while their contents as well as the points of difference of coastal use for public benefit are emphasized.

Coastal planning and basic issues experienced in coastal regions are discussed and defined from both legal and institutional points of view. The factors that influence coastal development are reviewed while the necessity of following a management model is stressed out within the scope of an idealist and protective approach regarding coastal planning.

4.1. The Use of Coastal Lands for Public Interest

As stipulated under article 43 of the 1982 Constitution, “the coasts are under the sovereignty and disposal of the state. In the utilization of sea coasts, lake shores or river banks, and of the coastal band along the sea and lakes, public interest shall be taken into consideration with priority.” In addition to the Constitution, article 641 of the Civil Law and article 16 of the Property Law also stress out the requirement for the priority of public interest principle for the utilization decisions. Since the coasts are public property under the state’s sovereignty and disposal, prior to public interest, the next section will discuss the status of the coasts as public property as well as their place among the types of public property.

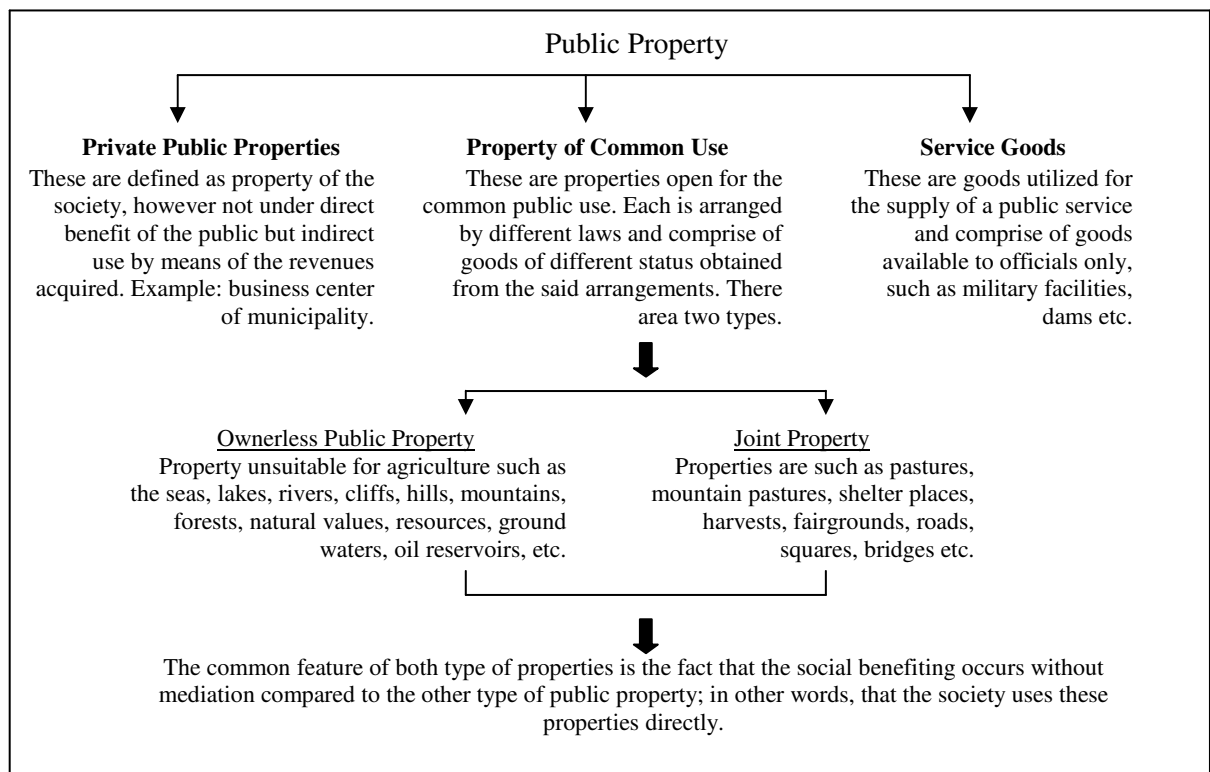
4.1.1. Coastal Land as Public Property

Public property is described as all property broadly available and open in nature, benefited from usage and its revenue and of which the use promotes public interest. While a certain part of the public property such as the stores and business buildings owned by municipalities is only used to gain revenue another portion thereof such as wholesale groceries and market areas fulfills public services as well as bringing revenue. There are also public properties used for providing public services such as the streets, parks and shores “(Toprak 1998, Akın 1998, Toprak 1995)”.

Regardless of the scope of discussion, the common feature of public property is that it is used for public interest only. If a property is placed among public properties by the constitution or any other arrangement of law, no other criterion is required to classify it as a public property “(Akın 1998)”.

Figure 4.1. Types of Public Property

(Source: Akın 1998)



Among the public property types classified above, coasts are under the ownerless public property category available for common use. As it is also stipulated by article 43 of the 1982 Constitution “the coasts are under the state’s sovereignty and disposal.” However, according to such provision, it is not possible for the state to have the authority of obtaining all kinds of economical and financial benefits from the coasts like a property owner “(Akın 1996)”.

The discussions on the state’s supervision considering the coasts results in 5 legal consequences set out by the laws pertaining to the coasts:

1. Coasts are not transferable,
2. Coasts are not distrainable,
3. Coasts can not be acquired in time,
4. Coasts may not be expropriated,
5. Coasts are protected in a manner different than personal private property.

Coasts are under special protection to avoid loss of their natural characteristics giving them natural wealth and resources.

4.1.2. The Concept of Public Interest

Determination of how and by whom coasts should be used is an issue that requires special attention during a study conducted on the coasts. Coasts, which are among our most significant natural resources, have become the areas of investment due to their contribution to the economic development of transport, housing, and tourism as well as their geographic location. Furthermore, due to increasing population accompanied by industrialization and urbanization, natural and limited resources have become much more important “(Ünal and Taner 1995)”.

While this situation increased the national and international demand of use on the coasts, the inability of enhancing the natural and limited resources has led to speculative plunder in the coastal areas. Consequently, the public benefit principle pursuant to the coastal use as stipulated by the Constitution has gained even more importance.

In his work “Public Freedom”, Kapani (1981) refers to public interest as the effort to behave justly and states that is not a “concrete concept”. Umar’s (1976) approach however, is that no definitive criteria is available for the determination of

public interest and that there is no stable and everlasting definition. It is a varying concept depending on the conditions. According to Akıllıoğlu (1983 quoted in Akkaya et al. 1998, 40) public benefit is a multi functional concept that cannot be considered independent from the interest of the individuals and groups that form a nation and should be deemed as a natural or necessary balance among the benefits of the groups within the society. The concept has a broad and comprehensive scope that is not necessarily indisputable. In summary, this concept, as Akıllıoğlu (1983 quoted in Akkaya et al. 1998) has also stated, is known by its form, yet has no definitive and previously recognizable content or essence. For example, their use of the coast is considered in public interest by the regional residents while local municipalities have a different approach and interpret the presence of a recreation facility and vacation homes in public interest. On the other hand, tourism investors consider the indirect turnover of the investments such as highways, telephone system , hospitals , schools, etc. in the form of foreign currency earned upon the allocation of coastal areas to tourism in public interest “(Akka et al. 1998)”.

Consequently, neither the scope, nor the subject of the public interest concept is certain. The extent of public interest differs depending on the amount of the benefits to be made available to the society by the actions in each individual event. Therefore the concept is defined by many disciplines in terms of form rather than content.

4.1.2.1. Public Interest vs. Collective Interest

Research conducted on public interest has shown that in many cases, the use of the term “collective interest” is preferred over “public interest”. Therefore, public interest and collective interest are defined within the framework of this study and differentiated in terms of their scope.

In addition to the public interest concept, related terms such as “collective interest”, “social”, goodness”, and “common goodness” also represent something different than the individual interest. Yet, the terms public interest and collective interest are misused or used instead of each other from time to time. The same applies to the 1982 Constitution. While article 43 is titled ‘public interest’, the title of articles 35 and 127 are ‘collective interest’ “(Keleş 2003)”.

It is possible to say that collective interest is the broad meaning of public interest. With that said, public interest is used as a criterion to draw the borders of property rights and for interventions to be made to the essence of such rights. On the other hand, the broad meaning of public interest bears a political and ideological content. In this sense, public interest relates to the political and social principles on which constitutions are based. Therefore perhaps it would be more suitable to refer to the concept public interest that represents a broad meaning as collective interest “(Keleş 2000, 2)”.

The public interest principle is a legal and technical term in the narrow sense. Decisions of related authorities on public interest may be subject to objections by the opposite party. However, due to their political and ideological content, decisions on collective interest are setting out the basic principles of the social state as prescribed by the Constitution as well as directives to be complied with by the politicians. While public interest is referred to as the protection of the existent interest, collective interest stands for the common interest of the entire humanity. For instance, while expropriation of a certain area in the form of a parking lot is considered necessary for public interest (parking areas form an opportunity for private car owners in the manner of protecting private property) the provision of the law stipulating the construction of social housing on the land is for the collective interest “(Hasgür 1997)”. Consequently, public interest is the obligation of preferring the benefit of the society comprising individuals, over the individual benefits in dispute within an objective attitude while fulfilling the public services assumed by public institutions.

4.1.3. The Concept of Partial Development

Some legal restrictions are implemented based on one of the basic legal principles pertaining to the coastal areas as set out by the constitution: “Establishment of private property in coastal areas is not permitted and utilization of coastal areas may be determined in compliance with the purpose of public interest” “(Akkaya et al. 2001)”. However, it is quite questionable to what extent the said restrictions were considered during the determination of usage in the coastal bands. These are related with the *acquired right* and *partial development* concepts.

Partial development concept is defined in the 1990 Coastal Law as follows: The area in which the partial development is calculated is limited with the block of houses. For settlements with approved development plans prepared before

April 17, 1990, partial development is defined as ‘more than 50 percent of the buildings located on all of the parcels within a block should be completed at a minimum at the level of basement.’

New criterion was produced for the partial development concept by the regulation related to the 1992 Coastal Law. Partial development is determined by the percentage of ground area used, which was specified in the development plan scaled 1/5000 as more than 50 percent used. In addition, implementation plan scaled 1/1000 for the partial development area should be approved before July 11, 1992.

In March 30, 1994, the partial development concept was redefined by the regulation issued in the official gazette numbered 21890. To gain partial development status all of the development plans should be approved before July 11, 1992. Partial development is also assessed differently according to plan type. If the plan is an urban and rural implementation plan then partial development will be evaluated considering the coastal band. The partial development located in each city block is not calculated individually. If there is partial development in the city block by more than 50 percent, plan will be implemented by leaving the coastal band 100 meters. If the plan is a partial plan then the partial development in the city blocks within the coastal band will be considered related to the city block. If the plan is a tourism implementation plan then the 100 meters coastal band requirements remains mandatory.

The term *acquired right* is discussed in numerous decrees of the Constitutional Court as a right arising from partial development and as *a requirement of the principle of the state of law*. However, referring to the acquisition of a right as an acquired right requires the final acquisition of all of the rights on a legal basis until the date on which the new law is entered into force⁵. In cases where the acquired rights constitute a contradiction to the social order, public interest, health, and general ethics, no acquired right can be at issue⁶ “(Akkaya et al. 2001)”.

Consequently, the acquired right arising from the partial development principle is a concept that requires to be interpreted differently depending on each individual situation. It is therefore an important arrangement which should be elaborated in the coastal law “(Akkaya et al. 2001)”.

⁵ Official Gazete A.Y.M.K dated February 25. 1986 E: 1985/1,K: 1986/4, Official Gazete dated July 10, 1986 and numbered 19160.

⁶ D.6.D December 19, 1998 dated E: 1998/36, K: 1998/33, Council of State Magazine numbered 84, p.176.

4.1.4. Utilizing Coastal Lands

As stressed out in the previous sections uses assigned to the coasts should give the priority to the public. In other words, they should contain activities to ensure availability and accessibility of the coasts to the public “(Aşan 2004)”.

Opening the coasts to public is perceived as the public access to the coast. The reason for this is the fact that the coast is planned as a simple line or a variable band. However, the coast should be planned as an area with natural aspects that hosts different functions and has a depth at the 2nd and 3rd dimensions.

The coasts have been allocated among politically and administratively privileged individuals and authorities rather than based on the public interest. Therefore, coasts have a variety of users such as tourism investors, local residents, politicians, and local administrative authorities. As a result of this, various unfair conflicts of interest are due. The coast-related administrative structure in Turkey is by no means put into practice in real life. While the public has no access to the coasts because of the holiday complexes and hotels, private investors are very often forced to be subject to arguments and lawsuits “(Akkaya et al. 1998)”.

While benefiting from the coastal areas is a priority right granted to the public, the increased pressure on the coasts parallel to the increased land value by the accessibility of infrastructure and transportation made available by public funds, the asset achieved by the society in common becomes available for use to the property and asset owners who made no investment and no special effort for the gain.

Unfair profit is caused by the public interest, thus, the public contribution must be necessarily assessed with a certain method and equity in benefiting from the said resources must become the basic principle. Reflecting the value increase to the owner instead of the public will result in an unjust outcome and social conflicts in terms of sharing the national assets “(Geray 1976, 66)”.

4.2. The Factors Affecting the Quality of Coastal Areas

As an advantage of the length of our country's coast, the coast becomes the origin of many activities and is allocated to a variety of sectors. The climatic conditions created by the coasts bringing together the land, water, and air leads to the growth of diverse plants and advantages such as the formation of a marine eco-system turns the coasts into an important natural element, and results in the exposure to pressures arising

from different demands by many social Tekeli (1976) classifies the said social groups as follows:

1. Industry investors,
2. Tourism investors,
3. Small entrepreneurs,
4. Building constructors and sellers and real estate agents,
5. Local residents,
6. Individuals that desire vacation, and
7. The public bureaucracy.

While demanding such variety of usage is harming the natural – ecological features of the coastal areas, they also trigger speculative plunder. In addition, together with the negative impacts of the said factors, the investments made for economic development only at the coastal areas without comprehensive planning and fulfillment of liabilities of the existing plans result in irrevocable damage to coastal areas “(Gökdalay and Yalçiner 1997)”.

When we examine the groups in society that are placing different pressures on the coasts, we can clearly see that all investors and entrepreneurs other than the industry sector have demands relating to coastal tourism. Therefore, tourism-specific demands are among the most significant factors having an impact on coastal development. Coastal tourism, secondary housing, and the main problems of coastal regions will be discussed in the subsequent sections.

4.2.1. Coastal Tourism

Tourism is one of the world’s most rapidly developing economic sectors. Tourism is a cultural phenomenon that leads to economic development. Due to their geographical location, natural aspects, and climatic features, coasts are forming the most appealing areas for the tourism sector “(Pacheco 1998)”.

The fact that tourism is viewed as the sole source of employment opportunities and contribution to the country’s economy has led to an accelerating impact on the development of this sector in Turkey. Akar (1998) lists some of the many reasons behind such rapid growth as follows:

- Increased level of welfare,

- Infrastructure and transportation opportunities,
- The desire to escape from highly populated areas due to increased urbanization,
- The desire to experience new and diversified cultures,
- The desire to live in nature,
- The need to stay away from the stressful business life,
- Increased movement capabilities, and
- Increased free time.

Development of tourism is set as a very important objective for the solution of Turkey's development issues. Moreover, it is referred to as the tourism industry to take benefit from the prestige of industrialization. As Turkey's development becomes a national goal and as tourism is viewed as a very important tool for the achievement of this goal and as Turkey's tourism is identified with increased use of coastal resources, planners no longer need a goal towards public interest. Consequently, planning becomes a public excluded objective when merged with the goal towards the tourism development in a certain sense. Promoting foreign tourism for coastal planning in particular becomes a single-dimensional target. Thus, planning aims at achieving this goal accordingly" (Tekeli 1976, 47)".

In addition to the tourism approach described by Tekeli (1976) tourism in Turkey is experienced as a phenomenon that enables the exposition of the natural features and national assets to harmful use without setting any target towards the *balance of protection and utilization* while creating an environment that is becoming increasingly filled with luxury hotels and recreational activities along the coastal band. Population increases dramatically due to the peak in the tourism sector in the summer season in all coastal towns. For example, Çeşme is exploited by the support of the administration who worries about its rent only. The type of tourism development which harms the national values is supported through the decree of The Conservation of Natural and Cultural Assets Council of İzmir no:1, dated February 18, 2006, numbered 1184. The decree indicates that the grade of the natural protection area of the adjacent area belonging to Alaçatı municipality in Çeşme, district of İzmir province, has been degraded which means a lower level of protection.

Owners of agriculturally fertile lands and properties in rural areas are also enchanted by the revenue and unfair income acquired from tourism, thus, accelerating the process of conversion of the said areas to holiday resorts "(Bender 1991)". The wrong approach to tourism in Turkey leads to disregard of the benefits of tourism to the city that would occur from the understanding that tourism is in fact an industry and it

will only be successful if planned properly “(Gunn 1979)”. Schmid (1998, 189-190) lists the activities for the achievement of a well-planned and thus, successful tourism as follows:

- National enabling legislation to control the development of tourism,
- Regional development strategy for tourism,
- Consistent enforcement of existing laws, and
- Taking the pressure of the coasts by developing attractions in the hinterland.

Inskip (1991, 16) lists the following among the benefits of well planned tourism:

- Various direct and indirect economic benefits,
- Positive impacts on the physical environment,
- Various socio-cultural benefits,
- Special organizational structures.

Both authors agree that to provide the social benefits tourism development needs to be planned. When studied with respect to the targets of achievement, tourism phenomenon is divided into following different types:

- Recreational tourism,
- Scientific tourism,
- Business tourism,
- Health tourism, and
- Religious tourism “(Özgüç 1983 quoted in Zafer and Güney et al.1997, 274)”.

Quite naturally, the biggest portion among the tourism types is taken by recreational tourism with a percentage above 80 “(Özgüç 1983 quoted in Zafer and Güney et al. 1997)”. Therefore, in the next section, recreational tourism is discussed including the scope and conceptual definition thereof

4.2.1.1. Recreational Tourism

The dictionary definition of the term *recreation* is “game and entertainment” “(WEB_10)”. Aran’s (1970 quoted in Doğan and Erginöz 1997, 114-115) definition of recreation is “the individual’s employment of time to refresh and prepare for more satisfactory working period, by means of dealing with stimulating activities after the

boring, disciplined, and monotonous time of daily business, refreshing and energizing their exhausted bodies”.

Recreation should not be a destructive tool for natural resources. While the coasts, that are among the natural resources consumed in an unconscious and excessive manner and hence quite appealing for the allocation of recreational activities, were the chosen areas to decrease the urban pressure, their use for investment purposes and acquisition of unfair income has become more dominant today. The similarity of recreation and tourism is their use of common resources, while the distinction is made by different types of action that diverge in terms of purpose. Tourism is a type of approach which describes recreation in terms of an economic factor “(Zafer and Güney 1997)”. It is a fact that recreational tourism is a conjunction which brings people together for similar purposes. Recreational tourism can be differentiated according to seasonal factors. For example, in summer season people are mostly in tendency to have holidays in coastal areas to share and benefit common recreational activities.

Recreational activities cause negative pressures where they are located on the coast. Use decisions where the establishment of a protection-utilization balance has failed harm the qualities that form their own system with the pollution resulting from the pressures leading to tourism and recreation activities “(Dinç 1995)”.

Consequently, it can be asserted that recreation is an activity formed by a complete set of behaviors that meet the basic needs of individuals, reinforce their vital force, and provide vitality, freshness, and vividness to their lives “(Sadri 1970)”. As in all areas of tourism, recreational tourism also makes use of the country’s national resources or history, culture, and natural values. Without doubt, the main objective of planning should be to implement a sustainable approach that includes protection and ensures that the natural assets at the coasts, consumed for this purpose, become one of the culture heritages for the next generations.

4.2.1.2. Protection of Coastal Areas for Sustainable Tourism

In order to ensure suitable protection of the country’s welfare, it is vital to give importance to tourism sector. To maintain sustainable tourism, the first step should be considering protection and public interest principle in planning “(Görer et al. 1995)”. Consequently, tourism should be encouraged in suitable places and in correct density

with a planning process and an approach that minimizes environmental damage, avoids harm to the natural flora and structure, considers the tourism potential of the local area as a target for protection and development in a large scale, complies with the coastal edge line and topographic assets, and involves a survey of the cultural assets “(Ekinci 1995)”.

4.2.2. Use of Secondary Housing

The careless and uncontrolled consumption of the coasts that are appealing for tourism and recreational use has resulted in the development of large numbers of secondary housing “(Zafer and Güney 1997)”. Supported by the property ownership, the incursion by intellectual masses following the 1970s in addition to the tourism-related activities which tend to harm the environment, has led to the unstoppable increase of vacation homes and the related developments “(Özbay 1988)”.

Secondary housing developments comprise monotonous, unaesthetic, and topographically unstable housing units that lack a certain area-size-density balance, harming the environment and leading to increased infrastructural problems along with low-quality buildings and waste of resources; triggering the physical disorder experienced at the coastal areas of our country “(Arkon 1997)”. The dense secondary housing texture formed with this approach is “a vandalism that can be deemed illegal in terms of quality even if they are considered legal by the laws” “(Vanlı 1997, 29)”. “Coastal bands full of secondary houses are spread through such large areas even in the smallest settlements so that no urban-pedestrian relations can be established, thus, resulting in the construction of kilometers of transportation arteries” “(İdil 1988, 41)”.

According to article 8 of the Tourism Incentives Law numbered 2634 entitled *The Use of Immovable Property for Tourism Purposes*, immovable properties are assignable to the Ministry of Tourism regardless of their proximity to forest or coastal areas. Article 6 “(*Protection and Use of the Natural Tourism Resources*)” of the same law stipulates that construction and operation of buildings and management of public benefit is permissible in the areas under the state’s sovereignty and disposal provided that the region’s natural and cultural assets as well as the tourism facilities remain unharmed and the development plans are complied with. Therefore, damage of the

coastal areas, by the implementation of article 6 and article 8 of the Tourism Incentives Law numbered 2634 causes undesirable consequences.

4.2.3. The Main Problems of Coastal Regions

As in many coastal countries, increased urbanization and industrialization since the 1960s have caused the coasts to face settlement and environmental problems in our country “(Devlet Planlama Teşkilatı 1997)”. The unplanned and uncontrolled development at the coastal areas has resulted in an irrational settlement pattern. The lack of differentiation as per the qualities of coastal regions, the insufficient public participation, plans made without a definitive coastal edge line and the absence of higher level plan decisions form the basis of the problems experienced at the coastal areas. In addition, the partial development approach is causing irreparable damage to the natural and cultural environment. (Devlet Planlama Teşkilatı 1997, 56-57) lists the major problems requiring solution at the coasts and interaction areas as follows:

1. Settlement problems arising from uncontrolled processes that lack social and technical infrastructure,
2. Ecological problems such as water pollution, spoiled coast characteristics, destroyed flora and fauna,
3. Cultural values such as the archeological, historical, and architectural artifacts at the coastal areas destroyed by population pressure, lack of planning and control etc.,
4. Social and economical problems resulting from shifts in dominant sector (such as tourism instead of agriculture and fishery),
5. Problems resulting from the lack of provision of local public services due to the seasonal population increase due to tourism,
6. Lack of coordination in authority and duty assignment, resulting from the legal arrangements and institutional structure, and
7. Organizational and planning problems caused by the deficiencies of the planning approach and process.

The origin of the problems experienced in the economical, ecological, social, cultural, and authoritative areas as stated above can be classified under two headings as those resulting from legal and institutional arrangements.

4.2.3.1. Problems Resulting from Legal Arrangements

The correlation between the policies implemented at the coasts, legal arrangements, and irregular settlement pattern is an inevitable fact. While the enforced legal arrangements prepare a basis for the decrease of the forest and agricultural land at the coastal areas, the legal gap caused by the said legal arrangements are forming the basis for the increased concrete buildings at the coastal areas.

The problems described in brief above are the consequences of the coastal laws. The related laws and the problems arising from such laws can be summarized as follows:

- After the cancellation of the Coastal Law numbered 3086 on July 10, 1986, a “legal gap” appeared until the enforcement of the circular numbered 110 issued by the Ministry of Public Works in July 15, 1986. By virtue of such legal gap, development at the coastal areas has increased. While this has led to the partial development phenomenon, it is at the same time, the reason for the legalization of numerous illegal buildings.
- Productive agricultural areas have been made available for non-agricultural use such as housing cooperatives, tourism, industry etc. upon the “Directives Relating to the Non-Agricultural Use of Agricultural Areas” dated March 11, 1989 by offering flexible provisions. This is causing the loss of productive agricultural lands at the coastal areas “(Devlet Planlama Teşkilatı 1997)”.
- According to the directive issued on February 7, 1989 and the amendment made on the Forest Law numbered 6831, forest lands are made available for assignment to tourism facilities. Consequently, the area of forest lands by the coasts is decreasing.
- According to the Tourism Incentives Law numbered 2634 that was issued in 1982 by the Ministry of Tourism, the Ministry is authorized to plan, arrange, administer, and make financial incentives available at the tourism protection and development areas or centers. Tourism facilities promoted in an unplanned manner by the single-sector development approach spoil the natural balance and increase the amount of concrete development “(Eke and Karaaslan 1997)”.

- Municipalities, which realize the rising value of the coastal areas, locate secondary houses or cooperatives by using partial plans. As a consequence of this, partial plans have to be combined with the complete plan at the end.

The aforesaid laws are arrangements prepared and issued for the development of certain sectors without taking into consideration the different features of the coastal areas assuming one type of coastal area.

4.2.3.2. Problems Arising from Institutional Arrangements

Many institutions and entities have a voice in the arrangement of coastal areas. “Most of the problems experienced in our country are caused by conflicts between the authorities and obligations assigned by the laws as well as the sector structure of institutions and the legal gaps. In this chaotic environment, the cooperation which fails due to the increase of numerous centers and local institutions with different purposes result in a disorder in terms of authority and duty regarding the use of coastal areas for public benefit within the sustainability framework” “(Devlet Planlama Teşkilatı 1997, 60)”.

According to the Development Law numbered 3194, the authority of planning, approval, and implementation was granted to municipalities within the municipal borders while outside the settled borders such authority is granted to the Governorships. In addition to the existing problems they have to deal with, the coastal municipalities that are deficient technically and economically are also facing spatial problems such as excessive demand of infrastructural service arising from the high demand for coastal development “(Gezim and Kiper 1995)”. In addition, socio-economical problems resulting from the excessive summer population compared to winter time are also inevitable for coastal municipalities. This hampers the provision of services for the local residents.

The fact that local governments generate and put into practice the policies for their own sectors only, in other words, their unilateral and sector-focused approach as well as the provisional solutions for the problems experienced is preventing the consideration of the coastal areas within a comprehensive and stable framework: “While the discontinuities and coordination issues experienced in the administrative system of our country result in utterly negative impacts on the coastal areas that require

comprehensive perception and assessment, the central-local contradictions and disputes are causing serious ruptures in the system” “(Turgut 2002, 330)”.

Consequently, regardless whether the problems experienced at the coastal areas originate from legal arrangements or the institutional arrangements, the underlying reasons for both is the overlap of authorities and responsibilities set out by the laws, the sector structure of the institution, and legal gaps. The lack of proper management leads to improper use of the investments by the municipalities and consumption of the coastal resources “(Suyolcu 1979 quoted in Büyükvelioğlu 1998)”. Thus, in addition to the unplanned development of the coastal areas and loss of natural assets, this is also resulting in ecological problems such as environmental pollution and damage or even loss of the flora and fauna due to unhealthy development.

As in our country, foreign countries with a coastal line are also facing various problems such as the destruction of the natural structure and damage to the ecologic balance due to urbanization, industrialization, and development of tourism. According to Kay and Alder (1999), the increase of population at the coastal regions has two reasons. The first is the immigration from rural areas to urban areas observed in developing countries. The second reason is the incursion to the coastal areas. The factor pointed out here is the increased entertainment, economic, and social opportunities along the coasts. In this context, coastal problems experienced in Florida and California are presented as examples “(Kay and Alder 1999)”:

California owns one of the longest coastlines of the United States. The biggest negative impact on these coasts is the frequency of the settlement areas as well as the trade progress development such as fishery and tourism. For this reason, the coastal water quality has decreased.

Florida has numerous natural sea aspects due to its tropical and subtropical climate. The increase of the commercial and accommodation areas having an impact on the coasts of Florida has led to many problems such as vulnerability to tropical storms, increase of erosion, and the loss of natural life. Regardless of type, piers and ports that form one of the important infrastructural developments have environmental and social influence to a certain extent. Generally, pier developments of coastal areas are harmful for the natural structure of the coastal areas and destroy the forests. This is forcing the fauna to change their habitats and destroys or restricts their living space and results in noise and pollution. Furthermore, the water quality is decreased by the oils and leakage of the vessels, thus, damages the living environment in the water.

A similar effect was experienced in Victoria, the capital city of Seychelles Islands. The country has two important international piers one of which is used for fishery while the other for further commercial services. Enlargement of these harbours was followed by the scraping out and removal of the coral tissue, thus, resulting in the loss of the corals and organisms they host. Coral reefs in this area have been used for land filling. Worse, a tuna fish processing factory was established and the wastes were directly released into the water resulting in a massive amount of pollution “(Kay and Alder 1999)”.

4.3. Coastal Planning

The coastal law is a regulation that is taken into consideration for the planning of coastal settlements. The protection and use of the coastal areas for the public interest have always been the basic principle of the coastal law. However, the arrangements contained in the coastal law did not lead to the protective use of the coastal areas, protection of natural beauties, and effectively benefiting from the coastal resources “(Güleç 1997)”.

The coastal law applies the same protective rules for all coastal areas of historical value and natural beauty. The standard depth of the coastal band is 100 meters at each coastal settlement regardless of the coastal area features. The physical form of development of the coastal areas is moving towards a linear macroform as a result of the approach where no relation is established for the areas that fall behind 100 meters during the use decisions of the coastal band in coastal planning. Coastal planning should be implemented at the areas where a coastal edge line is determined and with a comprehensive approach that includes protection, aims public interest, is suitable for the natural structure of the settlement, and avoids any harm to the natural flora, thus, minimizing damage. The first step for the fulfillment of the state’s duties regarding coastal protection, providing convenient use of the coasts, determining usage for the public interest, protecting the coastal ecosystem, and ensuring proper planning at the coastal bands is an appropriate legal determination of the *coastal edge line* in compliance with the natural balance of the coasts “(Akça 2004)”.

4.3.1. The Definition of Coastal Edge Line

The state considers the determination of the coastal edge line⁷ as the most important and primary condition of coastal development. The coastal edge line determination procedure is an administrative process with significant legal consequences on coastal use. Above all, this line is a borderline to be used for the determination of the coastal bands in the nature of a coastal extension towards the mainland “(Doğan et al. 2002)”.

The coastal edge line is the basic data and tool used for the resolution of disputes we are frequently facing during the determination of the coastal areas and bands. The coastal edge line has two determining factors: the first originates from the formation process depending on natural reasons while the second is due to the fact that it is a legal concept “(Doğan et al. 2002)”.

4.3.2. The Determination of the Coastal Edge Line

According to Turkish Coastal Law, the *coastal area* is the area that falls between the coastal line and coastal edge line. In order to determine this area, the determination of the coastal line and coastal edge line is required “(Tekinbaş 2000)”. The coastal edge line is the natural border of the sanded, pebbled, stony, rocky, reedy, swampy and similar areas in the low and compressed coast type and the upper border of the slope or bevel at the narrow and high coast type. This border can not be subject to change for acquisition of land by filling “(Article 4 of the Directives of the Coastal Law numbered 3830, Amended: October 13, 1992)”.

The coastal edge line is determined by the governorships and requires approval of the Ministry of Public Works. While governorships may determine the coastal edge line according to schedules, they also may do so based on requests. Determinations are usually made upon requests.

The importance of this determination’s necessity for coastal protection, applicability of the laws, and feasibility of plans is definitely indisputable. The

⁷ A.Y.M. dated September 18.,1991 and E:1990/23, K:1991/29, (Official Gazette, dated January 23.,1992 and numbered 2110).

determination of the coastal edge line is mandatory to ensure public availability and accessibility to public.

The commission set up by the governorship to determine the coastal edge line has minimum five members comprising geological engineers, geology engineers and surveyors, agricultural engineers, architects, city planners, and civil engineers. The commission members are public officers. The said commission is criticized for lacking a lawyer who would be valuable due to the concepts legal extent. A further critique towards the present commission is the claim that such authorities usually take decision without site visits “(Doğan et al. 2002)”.

4.4. Summary

The pressure on the natural structure caused by the increased human activities parallel to urbanization is leading to the damage of the ecological and natural balance and results in the conditions suitable for pollution and irregular development. This process has particular impact on the coastal areas. Planning studies conducted on such areas should be carried out according to the settlement capacity, in consideration of the public interest and natural assets, and the continued existence of the coasts as a heritage for the future generations “(Özer et al. 1996)”.

However, when we examine the current situation, it is obvious that the decisions on utilization lack aesthetical and scientific approach, give priority to economical and political expectations, and ignore environmental assets and social changes. While they provide unfair income for the time being and the near future, they result in serious losses to the public and natural resources in the long run “(Arapkirlioğlu 1997)”. In conclusion, coastal area planning is not a method of ranking among the users of the coast, but a regular spatial and social organization aiming at public benefit and the achievement of targets “(Karabey 1976)”.

CHAPTER 5

METHODOLOGY

The basis of this thesis constitutes whether it is possible to provide protection-utilization balance between coastal resources and functions on the coastal areas by the coastal laws and regulations and whether general coastal laws and regulations are sufficient for the conservation of coastal regions with different characteristics.

To answer these questions firstly the conception of the coast is reviewed in the literature. In addition to such questions the sectoral diversity of the coasts and the use of coastal area as a resource are also investigated. Also, the concept of “public interest” is emphasized as an absolute necessity. Next, legal arrangements about the coastal lands in Turkey is analyzed. The development of coastal laws in Turkey is explained by summarizing the development of the coastal legislation. In addition to coastal laws and regulations relevant to the coastal areas, missions and responsibilities of the related institutions regarding the coasts are mentioned. In the final section of the literature review, coastal planning is examined. Main problems encountered in the coastal areas are described by legal, institutional, and ecological points of view. The necessity of a coastal management model in order to form an idealist and protective approach for coastal planning by investigating the factors affecting the development in the coastal land is emphasized.

In order to understand the development of the coastal laws and regulations replaced or cancelled over time, these were analyzed and summarized in a table according to their cancellation reasons to form the basis of discussion of the conformity of these laws to the Constitution in the analysis chapter.

5.1. Court Cases

One of the very important methods used in the process of answering the research questions is evaluation of lawsuits resulting from conflict of the uses in the coastal areas. Five court cases are chosen because they have different use conflicts and the problems that caused litigation have similar starting points. The court cases were provided by Assoc. Prof. Dr. Semahat Özdemir who worked in the technical expert

team in preparing the expert reports. The court cases she worked on were selected from the same city and the same coastal area to control for regional differences. Besides, the expert reports belong to court cases where decisions taken by several different institutions and chaos of authority were observed. The reports were selected due to accessibility and this limited the scope of the study and impeded somewhat the richness of the analysis section. The data which is related to the suits have been collected from expert reports. Subjects of these suits are below:

5.1.1. Holiday Village vs. Dock

The conflict occurred in 2001 in the city of Muğla, the district of Milas, the town of Güllük, Manastır location. The issue started with the defendant's (Güllük municipality) demand of constructing a dock for vessels by filling up the shore in a very narrow side. However, the plaintiff, General Directorship of Foundations, went to 1st Presidency of the Aydın Administrative Court in Aydın on August 3, 2000 in order to request a change in the development plan to realize a holiday village in the same place.

5.1.2. Fisherman's Shelter vs. Marina

The conflict occurred in 1998 in in the city of Muğla, the district of Marmaris, the town Bozburun. The plaintiff, S.S. Bozburun Su Ürünleri Kooperatifi, went to court in order to request the cancellation of plan scaled by 1/25000 which was prepared by the Presidency of the Special Environmental Protection Areas allowing the marina related to the city block 112 and parcel number 10.

5.1.3. Home Pension

The conflict occurred in 2001 in the city of Muğla, the district of Gökçöy, Gökburun location. The plaintiff had a request of cancelling renewals of a home pension permit and improvements dealing with some parcels.

5.1.4. The limitation of the parcel use

The conflict occurred in 2001 in the city of Muğla, the district of Datça, Mesudiye Village. The subject of this case is the cancellation request for the use of tourism in the city block 101 and parcel number 62, subjected to Conservation Master Plan in Mesudiye Village, scaled by 1/1000 which is approved by The Presidency of the Special Environmental Protection Areas on May 25, 2000.

5.1.5. Park vs Recreation

The conflict occurred in 2001 in the province of Muğla, the İskele district, Azmakbaşı area. The subject of this suit is a request of cancellation of a park use on a parcel subject to Master Plan, scaled 1/5000 approved by the Presidency of the Special Environmental Protection Areas on March 30, 2001.

5.2. Analysis Methods

Content Analysis method is used in the analysis of the expert reports. Some of the benefits of using this method are as follows:

- Content Analysis method can put forth contents searched and can give specific characteristics of a message,
- It is systematic,
- This method is not a simple summary of the work analyzed but it categorizes and draws some conclusions of that work,
- It discovers essentials of the people and issues then presents them in understandable manner “(Neuendorf 2002, WEB_11)”.

Analysis of the court expert’s reports is done based on the following criteria:

- Origin of the problem,
- Grounds of lawsuit,
- Conflicting uses,
- Important reasons presented by the parties,
- Organizational responsibilities regarding the land in dispute,
- Relevant legislations,

- Deficiencies in practice that emerged through the analysis of the expert reports, and
- Court decision.

5.3. Follow-up of the Court Cases

Further information dealing with the court cases was collected from the responsible persons working in different municipalities in order to uncover any written documentation issued in the local media for the lawsuits in question and to learn about developments that occurred after the case went to court, as well as the current uses.

For the first lawsuit Municipality of Güllük was contacted. Hasan Çerçi from that municipality informed us that a dock was made in the narrow coast line at the front side of the real estates by sea-filling and the parcels belonging to the Directorate of Foundations were planned to be used as depots and warehouses. However, the Directorate mentioned was sentenced to ‘fault penalty’ so it can not implement any project yet. In order to start implementation, the Directorate of Foundations has to pay the penalty due. According to information collected the Directorate has a tendency to compromise with the municipality and this claim is approved by the municipality.

For the second lawsuit Municipality of Bozburun was contacted which in turn directed us to Muğla Public Works Directorate for the lawsuit related to fisherman’s shelter. Ayfer Kurdu at that Directorate was contacted. We have been told that there was no documentation related to the lawsuit and the fisherman shelters were used for binding yachts.

For the third lawsuit Ali Saruhan from the Municipality of Gököy was called. We have been informed that there is no documentation concerned with the lawsuit. He said that the parcel in question was planned as a tourism center in the Master Plan with the scale of 1/25.000 but the area belongs to second degree natural protection area so nothing can be implemented until the development plans have been completed.

For the fourth lawsuit Asım Balcı was contacted from the Municipality of Datça. We have been informed that the real estate related to this lawsuit is in the agricultural areas in Mesudiye and included in first degree natural protection area. However, it has been mentioned that the boundaries of the natural protection areas which were expanded

by the monuments commission in 1996 has been taken into the agenda again in an attempt to be narrowed.

For the fifth lawsuit Asım Balcı was contacted from Municipality of Datça. It has been confirmed that the area has been planned as a park in the development plan. The dilemma concerned whether it would be a park or a recreation area. However, the plaintiff, who has a construction permit, has a tendency to use this area for recreational purposes. The lawsuit is still going on.

Follow-up research was also conducted by means other than telephone calls in order to gather information to discover what uses were implemented among the conflicting uses in the lawsuits. The said Güllük pier was constructed by the 6th Regional Directorship of Railways, Harbours and Airports in the narrow coast side, at the front side of the General Directorship of Foundations by the build, operate and transfer model. In addition to this, the “Muğla – Bozburun Marina” project in the second lawsuit was awarded to Marina Tourism and Trade Corporation by the build operate and transfer model.

5.4. Summary

Consequently, the questions which constitute the basis of this thesis are whether it is possible to provide a protection-utilization balance between coastal resources and functions on the coastal areas by the coastal laws and regulations and whether coastal law and regulations are sufficient for the conservation of coastal regions with different characteristics. The results of the analysis were performed by the selected criteria and the expert reports were evaluated while the answers of these questions were sought. Besides these, authorized persons of the municipalities were contacted by phone to gather information for an update on the cases. So the analysis section of the study was prepared with all the information gathered.

CHAPTER 6

ANALYSIS

From the past until today, no complete stability could be achieved in terms of the legal arrangements regarding the coastal areas. Considering the various types of use provided by the geographical location in addition to the natural, aesthetical and economical opportunities offered by the coasts, individual benefits of many interest groups are inevitable. For this reason, many authorities and entities pertaining to the coasts issue direct or indirect laws, directives, decrees, and administrative decisions.

While the lack of comprehension and clarity of many coast-related laws and an uncontrolled structure seeking for solutions only for trivial daily problems results in numerous problems in practice, the chaos of mission and authority in the administrative structure along with the lack of coordination “blocks out any possibility of putting into practice the public interest as suggested by the Constitution and further legal norms” (Ünal 1997, 97)”. Within the scope of the said legal arrangements, the features of the coastal areas that offer diverse natural and ecological structures are ignored, thus, no planning is realized where a static physical planning approach is given priority and where no social and economic inputs are considered.

This consequence is supported by the “disorganization and contradictions among the administrative levels and authorities as well as the fractions in the planning system and the loopholes experienced at the upper scale planning strategies and levels” (Turgut 2002, 330)”.

Without doubt, the most evident feature of the coastal laws that is open to criticism is the frequent amendments. As the complete coastal laws are reviewed, it is seen that they are cancelled due to their mandatory provisions contradicting the benefits appropriate for public interest as suggested by the Constitution. However, this is not the sole reason for the cancellation of the laws. As it is seen in the following table the reasons of cancellation of the coastal laws is not having given the priority to the public interest as the Constitution states. Besides this, other cancellation reasons are said to be daily tourism, partial development, new descriptions given to coastal definition, and coastal edge line. Because, they were not clear and comprehensive for problem solving in the short and long term..

Table 6.1. The Reasons of Cancellation of the Coastal Laws

(Source: Eke, 1995)

COASTAL LAW NO.	ANNEX 7 – ARTICLE 8 LAW NO. 6785 /1605	THE 1984 COASTAL LAW (3086)	CIRCULAR NO. 110
THE REASON OF CANCELLATIONS	Annex 7-article 8 was cancelled due to the Article 43 of the 1982 Constitution coming into the force, "The coasts are under sovereignty and disposal of the state"	1- Articles on the definitions of the coastal edge line and the coast are contradictory to the Constitution since they do not include the cliffs which are the determining factor of the coasts. 2-The law is contradicting the Constitution due to the arrangements that do not make the equal and free use of the coasts possible and result in coastal private property and development. 3- Provisions pertaining to the utilization of the coastal bands are contrary to the Constitution since they are not stipulated in accordance with the provisions that comply with the public interest principles. 4-Provisions that suggest the approval of the coastal private property arising prior to 1972 as acquired rights are contrary to the Constitution since the coasts becoming subject to private property ownership is by no means made possible.	Regulations prepared by the circular no. 110 issued by the Ministry of Public Works in July 15, 1986 should have been made by laws as stated in the Constitution. When inconsistencies were added into the problems related to regulations, the circular no. 110 has been terminated on February 3, 1989 by a decree of the Ministry of Public Works dated February 7, 1989.

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Table 6.1. Cont.

COASTAL LAW NO.	THE 1990 COASTAL LAW (3621)	THE 1992 COASTAL LAW (3830)	
THE REASON OF CANCELLATIONS	The law was terminated since the definition of the coastal band in the law was not adequate in-depth to ensure the protection of environmental conditions as well as public interest and to provide opportunities for living in a healthy and balanced environment. It was stipulated that the coasts could not be subject to development based on private property, that utilization would be available by means of public access and that the depth of the coastal band may not be less than 100 meters, as otherwise, a utilization in compliance with public interest as stipulated by the Constitution would become difficult.	<u>Amendment dated March 30, 1994 on the Directives</u> The definition of daily tourism was diversified, definition of partial development was amended, technical modifications on the coast definition and coastal edge line determination was amended and diversities pursuant to the usage at the areas acquired by coastal filling were enforced	<u>Amendment dated July 27, 1996 on the Directives</u> Descriptive rules on the infra- and superstructure premises in cases of mandatory use of the coastal band by coastal structures (such as harbours, marinas, shipbuilding areas, etc.) are introduced

None of the coastal laws in question include a direct approach in terms of coastal protection. The most significant tool for coastal protection is the control of the development at the coasts “(Subaşı 1992)”. “Monitoring should be performed in both higher and lower management level. In other words, while the central government executes the high levels monitoring through their public surveyors and general assessments, locally appointed public auditing forces should ensure a fundamental control by methods that promote public participation ” “(Eke and Karaaslan 1997, 77)”.

As one of the reasons which constitute the cancellation of the 1984 Coastal Law, while the “partial development” concept of the Coastal Law of 1992 as amended by the directives dated March 30, 1994 protects the acquired rights of the buildings already constructed, it results in the inability to protect rural settlements of a certain traditional texture.

The protection – utilization balance of the coasts described by the Coastal Law and related regulations cannot be solely provided by assuming coastal areas to be a band and limiting settlements on it or determining coastal structures such as harbours, marinas, or shipyards that can be built there. The protection – utilization balance can be achieved by considering coastal areas with all their characteristics and users together and providing an integrative approach which is far from partial development. Applicability of such method requires organization. The functions and roles of the central, regional, local governments and public at the planning – implementation – control stages should be determined clearly.

The literature review conducted shows that in addition to the coastal laws, a variety of institutions and authorities related to the coasts and thus, numerous other laws and regulations are in force. In addition to the fact that implementation is facing numerous problems due to the large number of laws, the negative impacts of user groups that are in competition with each other is revealed. The said problems include:

1. Chaos of authority,
2. Acquired rights arising from the legal gaps caused by the frequent amendments of the coastal legislation,
3. Lack of coordination among institutions and entities,
4. Fractions in the planning system,
5. Lack of active participation in the relevant planning process by all stakeholders, and

6. A planning approach where the economical values are given priority and cultural and environmental assets of the coasts are ignored “(Ünal 1997, Eke and Karaaslan et al. 1998)”.

For the purpose of demonstrating these issues experienced in implementation, five lawsuits chosen in different areas within the same province have been reviewed according to various criteria such as the uses in dispute, the basis of the lawsuits, the relating institutions, relevant legislations, origin of the problem, and deficiencies such as lack of public participation etc. By choosing all lawsuits from the same province it is aimed to see the theoretical consequences of the chaos of authority, its impacts on coastal management in its required form, and the negative impacts caused. With respect to the foregoing matters, all events subject to lawsuits have occurred in different districts and areas of the province of Muğla.

Briefly, if the province of Muğla and its potential in terms of natural assets is examined it can be seen that the city features a coastal band of 1124 kilometers and encompasses highly touristic districts of Marmaris, Bodrum, Göcek, and Fethiye. Muğla has three important assets of urban, natural, and archeological protection areas. Five of the 13 Special Environmental Protection Areas throughout the country are within the provincial borders and the total area of these comprises 26 percent of the province. The five Special Environmental Protection Areas that fall within provincial borders are shown in Table 6.2.

Table 6.2. Special Environmental Protection Areas in Muğla

(Source: WEB_12)

Fethiye - Göcek	774 km ²
Köyceğiz – Dalyan	461 km ²
Gökova – Akyaka	521 km ²
Datça - Bozburun	1.474 km ²
Patara	190 km ²

Table 6.3. The Analysis of the Lawsuits
(Source: Experts Reports of the Cases)

LAWSUIT NO	DEFENDANT	PLAINTIFF	AREA	LAND/PARCEL IN DISPUTE
1	Güllük Municipality, Ministry of Public Works	General Directorship of Foundations	Muğla Province, Milas District, Town of Güllük, Manastır Area	Parcels no. 1410, 1411, 1412, 1413
2	Ministry of Finance, Presidency of Special Environmental Protection Areas	Bozburun Marine Products Cooperative	Muğla Province, Marmaris District, Town of Bozburun	City block 112, parcel 10
3	Gündoğan Municipality, Göktürkbükü Municipality	Hatice Nevra Erda	Muğla Province, Bodrum District, Town of Gölköy, Gökburun Area	City block 7, parcel 421
4	Presidency of Special Environmental Protection Areas	Özden Ahmet Akgüç	Muğla Province, Datça District, Mesudiye Village	City block 101, parcel 62
5	Datça Municipality and the Presidency of the Special Environmental Protection Areas	Uslu Otelcilik Turizm Ltd.Şti Necati Uslu	Muğla Province, Datça District, İskele Region, Azmakbaşı Area	City block 3027, city block 154, parcel 144

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Table 6.3. Cont.

LAW SUIT NO	YEAR	SUBJECT	USES IN CONFLICT	GROUNDS OF LAWSUIT
1	2001	Demand of the public plan amendment of the decision relating to the pier construction by means of coastal filling at a narrow coast	1. Coastal filling and pier construction 2. Tourism related holiday complex project	1. The environmental pollution caused by the present pier and its insufficiency to meet the needs 2 The contract executed for a 49 year period in 1989 in the form of build – operate and transfer.
2	1998	Demand of partial cancellation of the Master Plan of 1/25000 scale	1. Fishermen's shelter 2.Marina	1. The present fishermen's shelter is hosting 120 fishery motor boats and is operated by the Bozburun Municipality (Construction was completed between 1977 and 1985) 2. The Shelter area was designated as Marina in the 1994Master Plan.
3	2001	Demand of the cancellation of the coastal regeneration and restoration license	1.Home, 2. Pension	The defendant has been granted the construction license of the parcel in question in 1989. However, the plaintiff's demand dated 1990 on a provisional construction site building was refused.
4	2001	Demand of the cancellation of the 1/1000 scale Implementation Plan for protection purposes in Mesudiye	1. While the ratio of the construction right of the holiday village project commenced in 1979 as approved by the protection council during 1991 was far: 0,30 2. The fact that the area in question was granted a structuring right of far :0,08 on the 1/5000 and 1/1000 scale plans upon inclusion of the said area in Special Environmental Protection Area (on October 22, 1990)	Three amendments which affect the development provisions of the plaintiff's parcel were made. These are; the area's inclusion in Special Environmental Protection Areas, enforcement of the (date) Coastal Law, and the stipulation of new protection areas.
5	2001	Demand of the cancellation of 1/5000 scale Development Plan approved by the The Presidency of Specially Environmental Protection Areas on March 30, 2001,	1. Park (What type of park?) 2.Recreation	• The the decisions given by the Plaintiff are overlapping with those of the Master Plan, • The limitations of the coastal law along with the necessity of the protection of planning decision and performing this necessity by the said development plan in the lawsuit scaled 1/5000.

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Table 6.3. Cont.

LAW SUIT NO	IMPORTANT REASONS PRESENTED BY THE PARTIES	RELATED AUTHORITIES	RELEVANT LEGISLATIONS
1	1. Positive opinion of all related authorities and the 1/1000 scale implementation plan includes the provision on the preventability of a possible pollution 2. The area considered as a touristic holiday complex is designated as an area of which the “agricultural quality shall be preserved” as per the 1/25000 scale Master Plan	For pier construction; The Ministry of State, Undersecretary of Marine Affairs of the Prime Ministry, Ministry of Communication and the Governorship were asked for opinion.	Article 7 of the Coastal Law no. 3830
2	1. The Ministry of Agriculture and Rural Affairs was not asked for an opinion while a new usage was assigned instead of the Fisher Shelter in the Master Plan. 2. Following the Master Plan’s approval in 1994, the fact that the Ministry of Communication and DLH General Directorate’s “Muğla-Bozburun Marina Project” of a 150 yacht capacity (dated October 26, 1995) was tendered and that the project area in question was planned outside of the present shelter while such decision was not included in the Master Plan	For Fishery Shelter; The Ministry of Agriculture and Rural Affairs, Ministry of Communication, Ministry of Finance were asked for opinion and For the marina; The Ministry of Transportation and General Directorate for the Construction of Railways Seaports and Airports were asked for opinion	Article 19 of the Fishery Shelters Directives
3	1. The first license granted to the said parcel in 1989 overlap with a period of a loophole caused by the frequent amendments of the coastal legislation. <i>(The Coastal Law no. 3621, dated April 17, 1990 that was enforced upon the decree no. 110 cancelled on February 3, 1989)</i> 2. The applications for the coast and the coastal band were commenced prior to the determination of the Coastal Edge Line 3. The area in question fell within the borders of the Göktürkbükü Municipality upon its establishment in 1990	Bodrum Municipality Gündoğan Municipality Göktürkbükü Municipality	Coastal Legislation 3621 - 3830
4	1. The inability to develop an accommodation facility within the first 100 meters due to the amended coastal legislation. 2. The northern section of the plaintiff’s parcel is crossing the border of the 1st degree Natural Protection Area 3. The authority for the approval of the plan is transferred to the Presidency of Special Environmental Protection Areas.	Presidency of Special Environmental Protection Areas	Coastal Legislation 3830
5	1. The amendments made by the related authorities on the decisions pursuant to the geographies within their borders make the revision of the physical plans mandatory 2. In the settlements that represent a natural, cultural and archeological value, planning authorities and responsibilities were taken from the local administrations.	Presidency of Special Environmental Protection Areas Ministry of Culture and Datça Municipality	Coastal Legislation 3830

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Table 6.3. Cont.

LAW SUIT NO	ORIGIN OF THE PROBLEM	DEFICIENCIES	COURT DECREE
1	Disputes and uses in conflict resulting from the designing of different opinions within the same geographical region	• Non-participation by all relevant stakeholders • Data collection	Construction of a yacht marina by means of coastal filling complies with the planning principles and public interest.
2	Under a plan such as the Master Plan that pertains to many institutions and entities such as numerous investors, the Marina function is fulfilled instead of the present Fishery Shelter. In addition, the Muğla-Bozburun Yacht Marina Area project was tendered whereas such project does not exist in the Master Plan.	• Non-participation by all relevant stakeholders • Data collection • Lack of coordination between the investment projects and investor corporations	The decision that modifies the means of use of the estate located under city block no. 112 and parcel 10 of the 1/25000 scale Master Plan does not comply with the planning principles and public interest.
3	During licensing process of the parcel subject to the lawsuit or while applications were commenced for the coast and the coastal band, the Coastal Law in force was not taken into consideration. The legal benefit that fell within the same period was taken advantage of.	• State of incompliance of the Local Administrations with the laws in force • Frequent amendments of the coastal legislation • Lack of auditing	The decision on the license of renewal and restoration pertaining to the city block 7, parcel 421 does not comply with the planning principles, public interest and zoning legislation.
4	The change of the conditions that would make the project realization impossible within the legal / institutional structural modification process of the investment project in progress for 25 years		The decision regarding city block 101, parcel 62 under the 1/1000 Mesudiye Protection Implementation Plan, approved on May 25, 2000 is compliant to the planning principles and public interest.
5	Modification of the means of use between 1994 and 2003 of the parcel subject to the lawsuit as “park area” and “recreation area”	• The local administrative authorities were not informed timely on the decisions generated towards the change of the current situation by the related institutions, • Failure of reflecting the generated projects to the physical planning hierarchically and on a timely basis,	The decision on the parcel no. 144 of the 1/5000 scale development plan revision as approved on March 30, 2001 and the 1/5000 scale development plan revision as approved on January 16, 2002 complies with the planning principles and public interest,.

6.1. Case Studies

In this section, after a brief summary of the lawsuit expert reports of the selected five cases the approach of the parties to the lawsuit with their reasons are discussed within the context of the arguments presented to the Court.

6.1.1. Lawsuit No: I

Experts of the case: Assoc. Prof. Dr. Semahat ÖZDEMİR , Dursun ÇELİK and Prof. Dr. Cemal ARKON

This case occurred in the Province of Muğla, Milas District, Town of Güllük, Manastır area in the year 2001. The subject of the lawsuit is the request of the plaintiff for the cancellation of the procedures performed by the Ministry of Public Works regarding the construction of a pier by the Municipality of Güllük by means of coastal filling at the narrow coast in front of the immovable properties of the General Directorship of Foundations situated at the parcels no. 1410, 1411, 1412 and 1413.

The plaintiff, General Directorship of Foundations who is the owner of the parcels in question (1410, 1411, 1412, 1413) has made a contract in 1989 leasing the property to a private company for 49 years for a holiday complex project consisting luxury villas to be realized by the “build – operate – transfer” method. Two years later, in 1991, all parcels owned by the General Directorship of Foundations were included in “areas to be protected for agricultural quality” as per the 1/25 000 scale Master Plan approved by the Ministry of Public Works.

Meanwhile, the Municipality of Güllük approved the implementation plan scaled 1/1000 dated October 13, 1995 by The Ministry of Transport and General Directorate for the Construction of Railways, Seaports, and Airports that the most appropriate area for the construction was in the narrow coast side, at the front side of the General Directorship of Foundations.

The Plaintiff's (General Directorship of Foundations) arguments made upon its request are as follows:

- Güllük Airport is located in the proximity of the area considered for a pier construction, however according to Annex 14 of the International Civil Aviation

Agreement, restriction of construction is required within 15 kilometers starting from the beginning of the runway.

- In addition to the negative impact of the Güllük Fish Trap which is situated in the fish breeding area, the pier to be built in approximately 200-meter distance will result in the destruction of the fish nests and spawns.

- The parcels of the General Directorship of Foundations were determined as tourism development area in the development plan (scale?) issued by the Municipality.

Due to the reasons shown above the General Directorship of Foundations filed a lawsuit for cancellation of the planning decision. This lawsuit has been refused by the Municipality of Güllük and the Ministry of Public Works.

Reasons submitted to the 1st Presidency of the Aydın Administrative Court on September 22, 2000 by the Municipality of Güllük:

- Due to the environmental pollution, visual pollution and traffic density caused by the pier within the Güllük settlement area, and considering the fact that the present pier is not only incapable of meeting the current requirements, but will also remain incapable to do so for the increasing demands with time, the 6th Regional Directorship of Railways, Harbours and Airports was asked for determining a location for constructing a new pier. In the 1/1000 scale implementation plan prepared for this purpose, suitability of the parcels subject to the lawsuit are also supported by the Municipality of Güllük.

- Based on the 1/1000 implementation plan approved by the Municipal Council on October 13, 1995, the parcels no. 1412 and 1413 belonging to the General Directorship of Foundations were expropriated. These parcels were allocated for the “road” and just compensation was paid.

- The parcels no. 1410, 1411, 1412 and 1413 of the General Directorship remain within “areas to be protected for agricultural quality” on the 1/25 000 scale Master Plan.

- The company, which leased the parcels no. 1410, 1411, 1412 and 1413 for 49 years is bankrupt and thus, a lawsuit for the eviction of the said company is filed by the plaintiff, the General Directorship of Foundations, for this reason.

- The harbour construction project by means of filling dated March 1, 2000 is accepted feasible by the Ministry of Public Works within the scope of the law numbered

3621 and that approval is given as a result of the positive feedback obtained from the related institutions.

Reasons submitted to the 1st Presidency of the Aydın Administrative Court on October 2, 2000 by the Ministry of Public Works:

- Due to the environmental pollution, visual pollution and traffic density caused by the pier within the Güllük settlement area, and considering the fact that the present pier is not only incapable of meeting the current requirements, but will also remain incapable to do so for the increasing demands with time, the parcels subject to the lawsuit are considered suitable according to the letter of the Governorship of Muğla dated January 10, 1996.

- In spite of the refusal of the Ministry of Public Works of the pier construction project of the Municipality of Güllük by means of filling at the narrow coast via the letter dated March 1, 1999 and numbered 306 – 2621, the municipality has repeated the request by a letter dated August 23, 1999 upon the decree of the Municipal Council dated June 21, 1999. Taking into consideration the positive opinions by the Ministry of State, the Undersecretary of Marine Affairs of the Prime Ministry, the Ministry of Communication, and the Governorship of Muğla the request of the Municipality was approved according to article 7 of the Coastal Law numbered 3621/3830 upon inclusion of the provision stipulating that a possible pollution was preventable.

The decision on the construction of a pier by means of coastal filling upon the surveys conducted by the experts is based on the following reasons:

- The present pier at the Güllük settlement is no longer capable of meeting the requirements and will also remain inadequate against the increasing demands.

- The present pier within the settlement causes environmental pollution and increased traffic density.

- The decision on the pier construction subject to the lawsuit is supported by all relevant parties except for the plaintiff, the General Directorship of Foundations.

- The tourism project suggested by the General Directorship of Foundations is not feasible since the said area is determined as an “area to be protected for agricultural quality” in the Master Plan.

- According to the provisions entered into force in the 1/1000 scale implementation plan and annotations approved and stated by the Ministry of Public Works the preventability of a possible pollution is stated.

The decision in question is considered appropriate according to the planning principles and public interest by expert of the case.

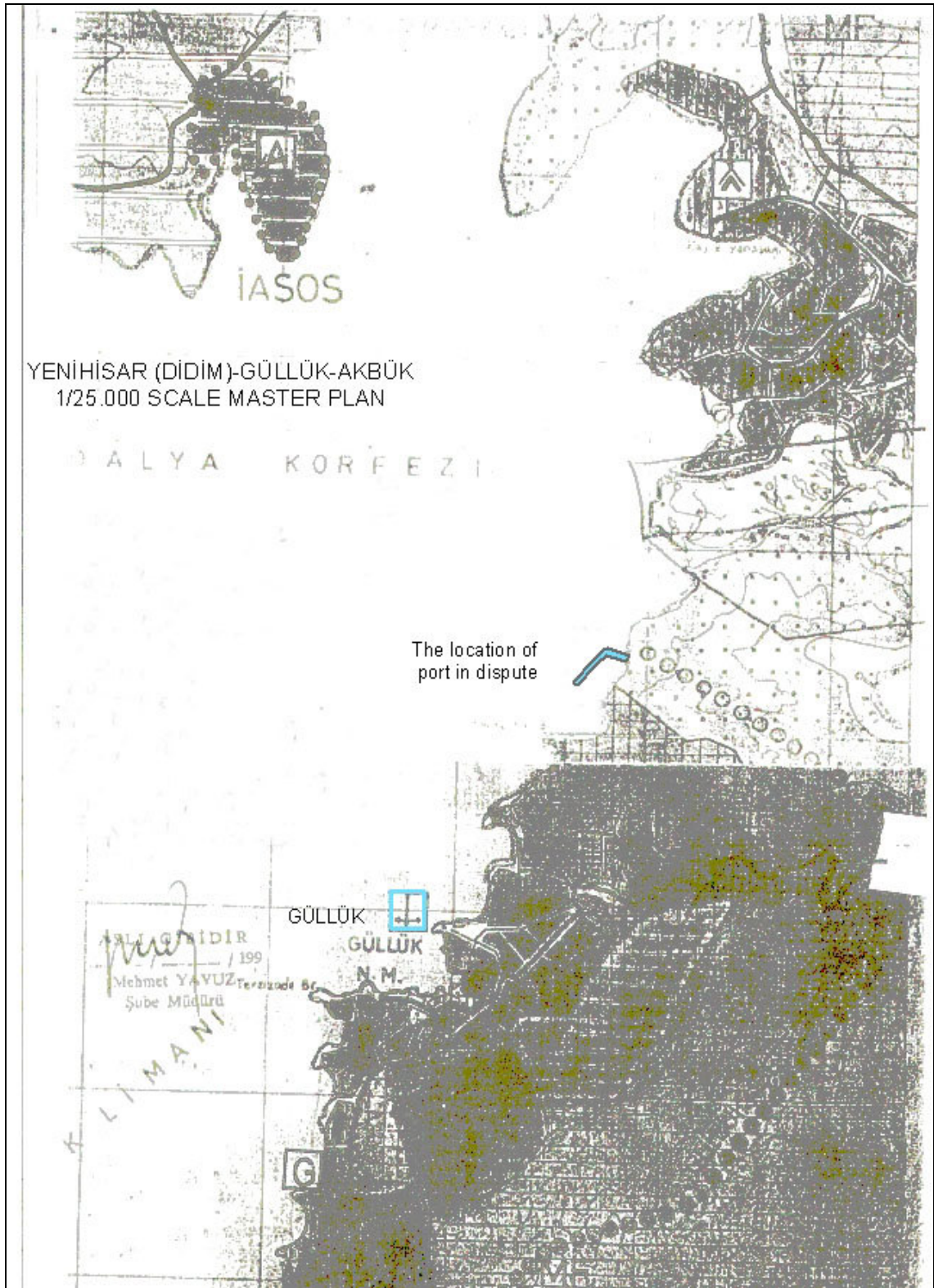


Figure 6.1. Yenihisar (Didim)-Güllük-Akbük 1/25.000 Scale Master Plan
(Source: Özdemir et al. 2001a)

6.1.2. Lawsuit No: II

Experts of the case: Assoc. Prof. Dr. Semahat ÖZDEMİR , Prof. Dr Mesut AYAN and Prof. Dr. Cemal ARKON

This lawsuit was filed during 1998 in the Province of Muğla, Marmaris District, the town of Bozburun. The subject of the lawsuit is the request of cancellation by the Bozburun Marina products cooperative of part of the 1/25000 scale Master Plan issued by the Presidency of the Special Environmental Protection Areas relevant to the immovable property located at the city block numbered 112, parcel 10.

According to the decree of the Cabinet dated October 22, 1990, numbered 90/1117, Bozburun has been identified and announced as a “Special Environmental Protection Area”. The construction of the Fishermen’s Shelter subject to the lawsuit and operated by the Municipality of Bozburun was completed between 1977 and 1985 and was hosting 120 fishing boats. On May 2, 1994, the Datça – Bozburun Master Plan prepared by The Presidency of the Special Environmental Protection Areas assigns this area to a Marina. However, according to the statement under article 19 of the relevant Fishery Shelter Directives, the opinions of the Ministry of Agriculture and Rural Affairs as an investor institution was not asked for although it was mandatory for this amendment. Thus, such an amendment is not possible unless positive feedback is obtained from the Ministry of Agriculture and Rural Affairs.

Following the approval of the Master Plan, the plaintiff, Bozburun Marine Products Cooperative, was founded as of 1996. Subsequently, the cooperative in question has made applications for the rental of the said shelter upon demand, to the required authorities within the scope of the Fishery Shelter Directives. The shelter was tendered by the Revenue Department of Marmaris and announced to be leased for a 10 year period for a price of 2 billion Turkish Liras. The tender was awarded to the Bozburun Marine Products Cooperative on September 17, 1997. As a result of the tender, the rental of the Fishery Shelter to the Cooperative at an annual rate of 2.001.000.000 Turkish Liras was approved. However, the Ministry of Finance, whose approval was required, did not submit the approval since the area subject to the lawsuit was reserved for a marina in the Master Plan.

Following the approval of the Master Plan in 1994, the Muğla-Bozburun Marina project with a capacity of 150 yachts was tendered according to the Ministry of

Communication and the General Directorate of Railways, Harbours, and Airports. The application contract of the construction designed according to the build – operate – transfer model was submitted to the Supreme Planning Council’s approval.

The claims of the Bozburun Marine Products Cooperative made upon their demand are as follows:

- The use of the city block 112, parcel 10 subject to the lawsuit in the form of a marina as described in the Master Plan is not legal in terms of the public interest.
- In addition to the tender’s compliance with the relevant Fishery Shelters Directive, the tender was made upon positive feedback by the Ministries of Agriculture and Rural Affairs and Communication.
- According to the Fishery Shelters Directive, the Ministry of Finance is not required to obtain positive opinion from any authority other than the Ministries of Agriculture and Rural Affairs and Communication. In addition, The Ministry of Finance is required to approve the tender facility due to not entitled to have right to exercise judicial discretion stated on the Shelters Directives.
- The Bozburun Marine Products Cooperative is forced due to the mandatory hosting requirement of the 189 fishers in the Bozburun district although it is tendered at a relative higher rate compared to shelters of similar quality.
- The amendment of the function made on the Master Plan is contrary to the Fishery Shelter Directives and the Ministry of Agriculture and Rural Affairs demanded re-evaluation from The Presidency of Specially Environmental Protection Areas.
- The Shelter subject to the lawsuit has a depth of 3 meters and would result in the destruction of underwater assets and pollution if used for massive yachts and vessels.
- In addition, the Shelter was built with great efforts since 1976 to meet the urgent requirements of the population.

Due to the claims of the plaintiff, the reasons for cancellation of the lawsuit by the Ministry of Finance and Directorship of Special Environmental Protection Area to the Presidency of the 1st Administrative Court of Aydın on March 5, 1998 are as follows:

- The immovable property subject to the lawsuit is planned as a marina in the Master Plan that entered into force on May 2, 1994.

- The said area was described with the same approach on the 1/1000 scale Implementation plan by the Bozburun Municipality.
- The tourism industry is an inevitable economic sector for the Bozburun settlement.
- The development of a project which would ensure collective use of a Marina and a Fishery Shelter is feasible.

The reasons given to the Presidency of the 1st Administrative Court of Aydın by the Ministry of Finance, General Directorate of National Real Estate on March 19, 1998:

- The area subjected to the lawsuit was planned as marina on the Master Plan approved by the Presidency of Special Environmental Protection Areas.
- A lawsuit numbered 1997/1598 was filed by the Bozburun Municipality at the 2nd Administrative Court of Aydın for the cancellation of the Shelter's rental.
- The Chief of İta (The highest manager of the institution) is entitled for tender approval.

The decision on the cancellation of the relevant portion of the immovable property at city block 112, parcel 10 on the 1/25000 Master Plan, according to the evaluation conducted by the experts is as follows:

- The construction of the Bozburun Fishery Shelter was completed between the years 1977 and 1985. Hosting 120 fisher boats, the shelter is operated by the Bozburun Municipality. According to the rates in 1996, the shelter costs valued 39.213.000.000 in Turkish Liras.
- While the shelter is subjected to the lawsuit, it was operated by the Bozburun Municipality, the shelter area was referred to as marina in the Master Plan as issued by the Presidency of Special Environmental Protection Areas. However, at the stage of this functional change, the Ministry of Agriculture and Rural Affairs was not asked for an opinion.
- In addition to the fact that the Ministry of Agriculture and Rural Affairs' opinion was not asked, the provision pursuant to the statement stipulating that the present fishery shelters may by no means be converted to yacht marina as under article 19 of the relating Fishery Shelters Directive was ignored.

- During this process, the Muğla – Bozburun Yacht Marina Area project tendered by the Ministry of Transport and General Directorate for the Construction of Railways, Seaports, and Airports on December 24, 1997 fell outside the borders of the present Fishery Shelter that is subjected to the lawsuit.

- No clear statement was made as to what reasons and which analysis' conducted with respect to this subject were used as a basis of the decision for the conversion of the Fishery Shelter to a yacht marina as stipulated by the Master Plan issued by the Presidency of the Special Environmental Protection Areas.

The decision in question is considered not appropriate according to the planning principles and public interest by expert of the case.

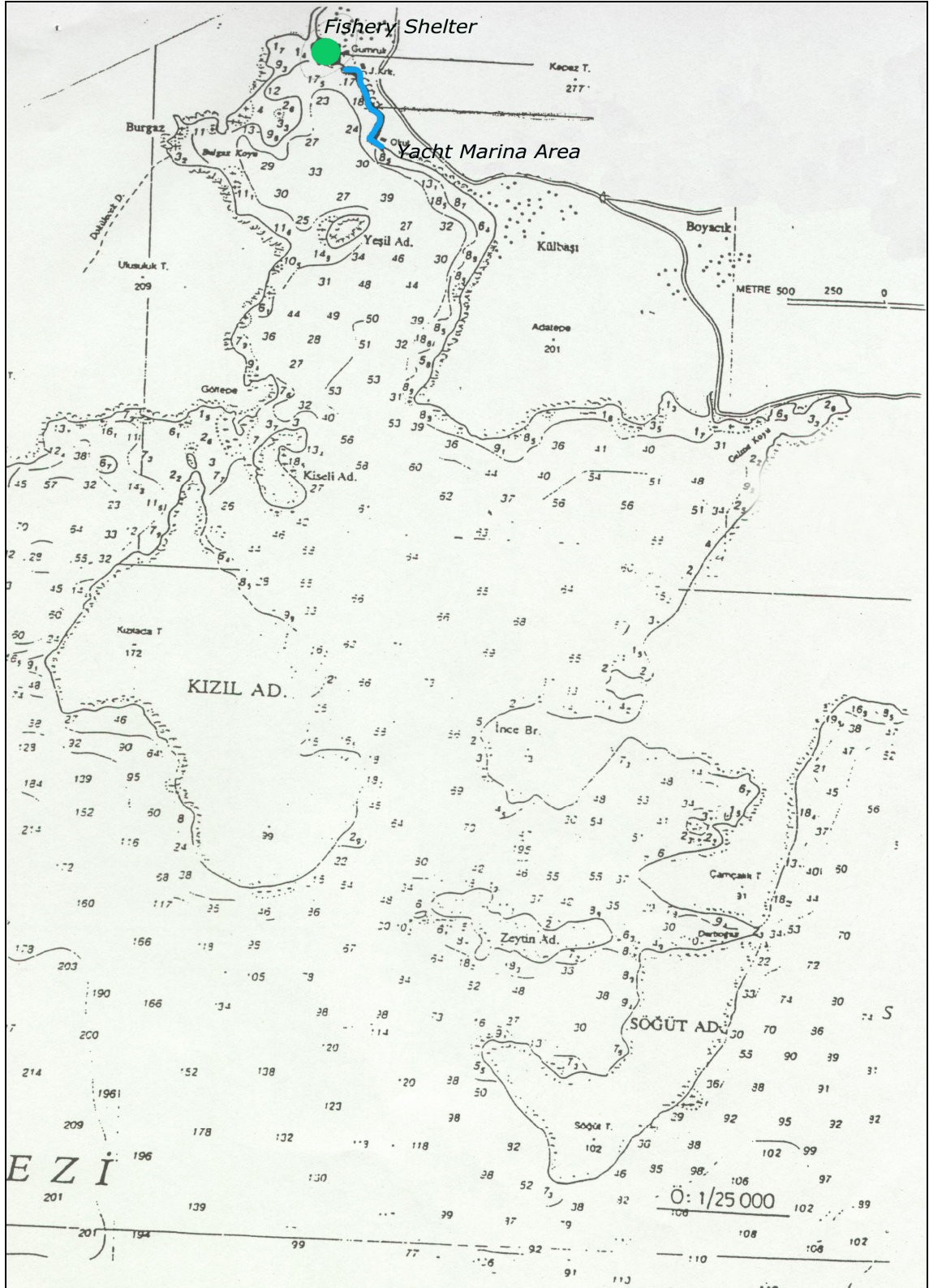


Figure 6.2. The Location of Muğla-Bozburun Yacht Marina Area Project
(Source: Özdemir et al. 1998)

6.1.3 Lawsuit No: III

Experts of the case: Assoc. Prof. Dr. Semahat ÖZDEMİR Res. Asist. Sabri ALPER and Prof. Dr. Cemal ARKON

The lawsuit was filed in the Province of Muğla, Bodrum District, Town of Gökçöy, Gökburun Area in 2001. The scope of the lawsuit can be briefly summarized as the demand on cancellation of the renewal and restoration license granted for the city block 7, parcel 421 by the owner of the immovable properties nearby situated on the city block 7, parcels 411 and 417.

The property situated on the city block 7, parcel 421 that is located in the proximity of the plaintiff's parcel was granted a construction license by the Bodrum Municipality on September 25, 1989 for a 2-storey building on a total area of 440 square meters for the construction of a home pension. The period during which the construction license was granted is a period of a legal gap. Subsequent to the cancellation of the Coastal Law numbered 3086 on July 10, 1986, the decree numbered 110 dated July 15, 1987 was issued. Following the cancellation of the decree on February 3, 1989, the Coastal Law numbered 3621 was enforced on April 17, 1990. Consequently, the construction license granted for the parcel which is subject to the lawsuit was issued within a period during which the Coastal Law numbered 3621 was not yet in force.

The council of the Municipality of Bodrum has issued a decision dated February 26, 1990 numbered 425 on dismantling of the construction that was erected on the parcel subject to the claim as well as the suspension of the coastal filling works. On April 2, 1990, the Council of the Municipality of Bodrum has refused the demand for the construction of a provisional building on the city block 7, parcel 421.

Meanwhile on October 15, 1996, the Municipality of Gündoğan has granted a restoration license to the said parcel and ensured the construction of a 2-storey home pension with a total construction area of 240 square meters as well as a secondary building in the size of 80 square meters. During this period where the restoration license was granted, the Directives of the Coastal Law numbered 3830 as published at the Official Gazette dated July 11, 1992 was in force.

On January 23, 1998, upon demand of the cancellation of the restoration license granted by the Gündoğan Municipality on October 15, 1996, the plaintiff has applied to the 1st Administrative Court of Aydın and has claimed the following:

- On the property at city block 7, parcel 421 subject to the lawsuit, an illegal construction was made by Mandalya Turizm ve Ticaret A.Ş. despite a request placed to the Bodrum Municipality for the preliminary studies of a holiday complex as projected by the same company. Upon such construction, a decision dated February 26, 1990 numbered 425 for the dismantling of the building was released by the Bodrum Municipal Council.

- The demand for the construction of a provisional construction site building on city block 7, parcel 421 was refused on April 2, 1990 by the Bodrum Municipal Council.

- Furthermore, there are restrictive provisions in both the Constitution and Civil Law relating to the constructions made in the coastal areas.

Upon the claim of the plaintiff who is the owner of the property located at city block 7, parcels 411 and 417, the following are the reasons for refusals provided by the Municipality of Gündoğan to the Presidency of the 1st Administrative Court of Aydın on March 6, 1998:

- The parcel numbered 421 subject to the claim has a 1/1000 scale implementation plan approved by the Ministry of Tourism on April 6, 1992.

- As of 1994, the said area was included in the Municipality of Gündoğan adjacent area. In this area there was an old building whose license was once granted by the Municipality of Bodrum and only renewed by the Municipality of Gündoğan.

Meanwhile, the Göktürkbükü Municipality was established in 1999 while the lawsuit was in process. The area subject to the claim remained within the borders of Göktürkbükü Municipality. As of March 23, 2000, Mandalya Turizm ve Ticaret A.Ş. participated to the lawsuit as an intervening party.

The reasons provided to the Presidency of the 1st Administrative Court of Aydın by Mandalya Turizm ve Ticaret A.Ş. on October 15, 2002 are as follows:

- The lawsuit in question was not filed within its legal period.
- The construction license pertaining to the parcel 421 was obtained by the Bodrum Municipality on January 25, 1989.

- The reason for the Bodrum Municipal Council's decision to demolish the construction February 26, 1990 numbered 425 was inappropriateness of the improvements made for the deficiencies for the license.

- In order to ensure several restoration works required within the scope of the holiday complex project in question, a secondary application was made to the Municipality of Gündoğan to extend the construction period permitted by the Municipality. of Bodrum The construction was completed on March 31, 1997 upon receipt of the renewal and restoration license dated October 15, 1996.

According to the survey conducted by the specialized experts, the said decision on the issuance of a renewal and restoration license relating to the city block 7, parcel 421 is considered unsuitable for the planning principles, public interest and the zoning legislation for the following reasons:

- The first license on September 25, 1989 was granted during a period where coastal edge line was not determined. However, according to the Coastal Law numbered 3086 which was in force at that time, it was mandatory to ensure applications at the coast and coastal band based on the coastal edge line determined.

- After receiving the license, the building had been built within 10 meters distance to the coastal edge line. However the coastal band was not determined as 10 meters in any coastal law. According to the coastal law numbered 3086, the coastal band at areas without a development plan is identified as a minimum of 30 meters.

- As per the statements of grounds in the application submitted by the Municipality of Gündoğan, no 1/1000 scale implementation plan was available for the region that covers the parcel 421. The restoration and renewal license granted on October 15, 1996 was issued for the construction area of 240 squaremeters in total. The said structure was built in a 10 meter distance to the coastal edge line and a supplemental building of 80 square meters was additionally licensed.

- However, another important fact is that the construction for which the restoration license was granted under article 16 of the application directives of the Coastal Law numbered 3086 was not fulfilling the requirements of acquired rights.

The decision in question is considered not appropriate according to the planning principles and public interest by expert of the case.

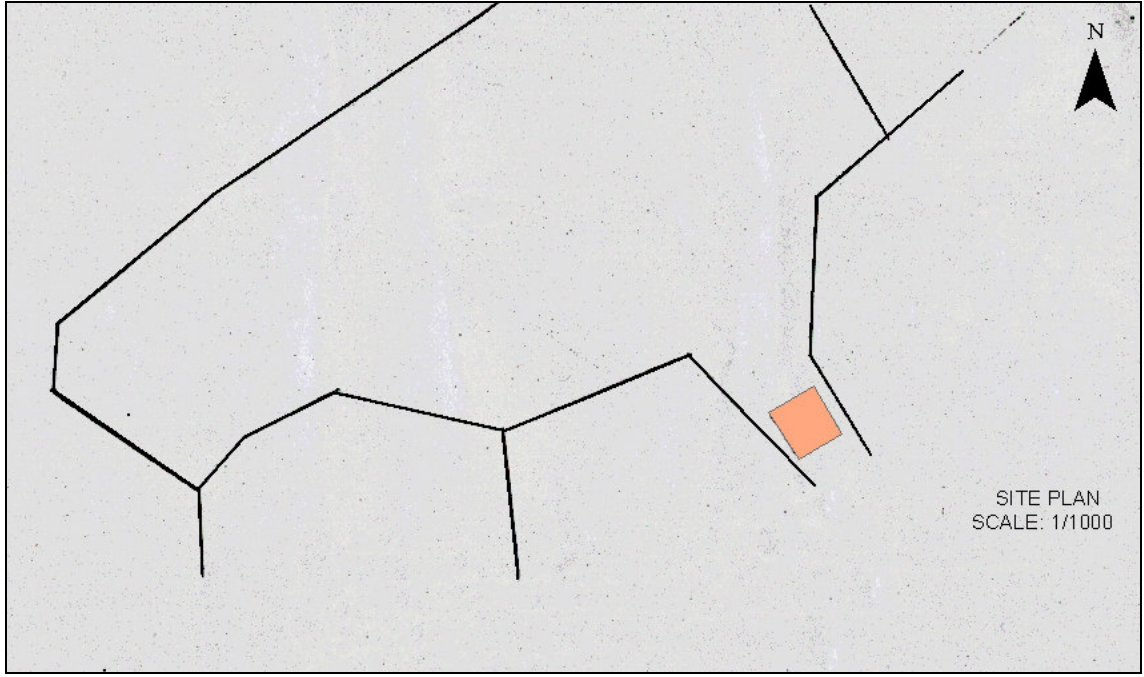


Figure 6.3. The Site Plan License Granted in 1989 in Architectural Project
(Source: Özdemir et al. 2001b)

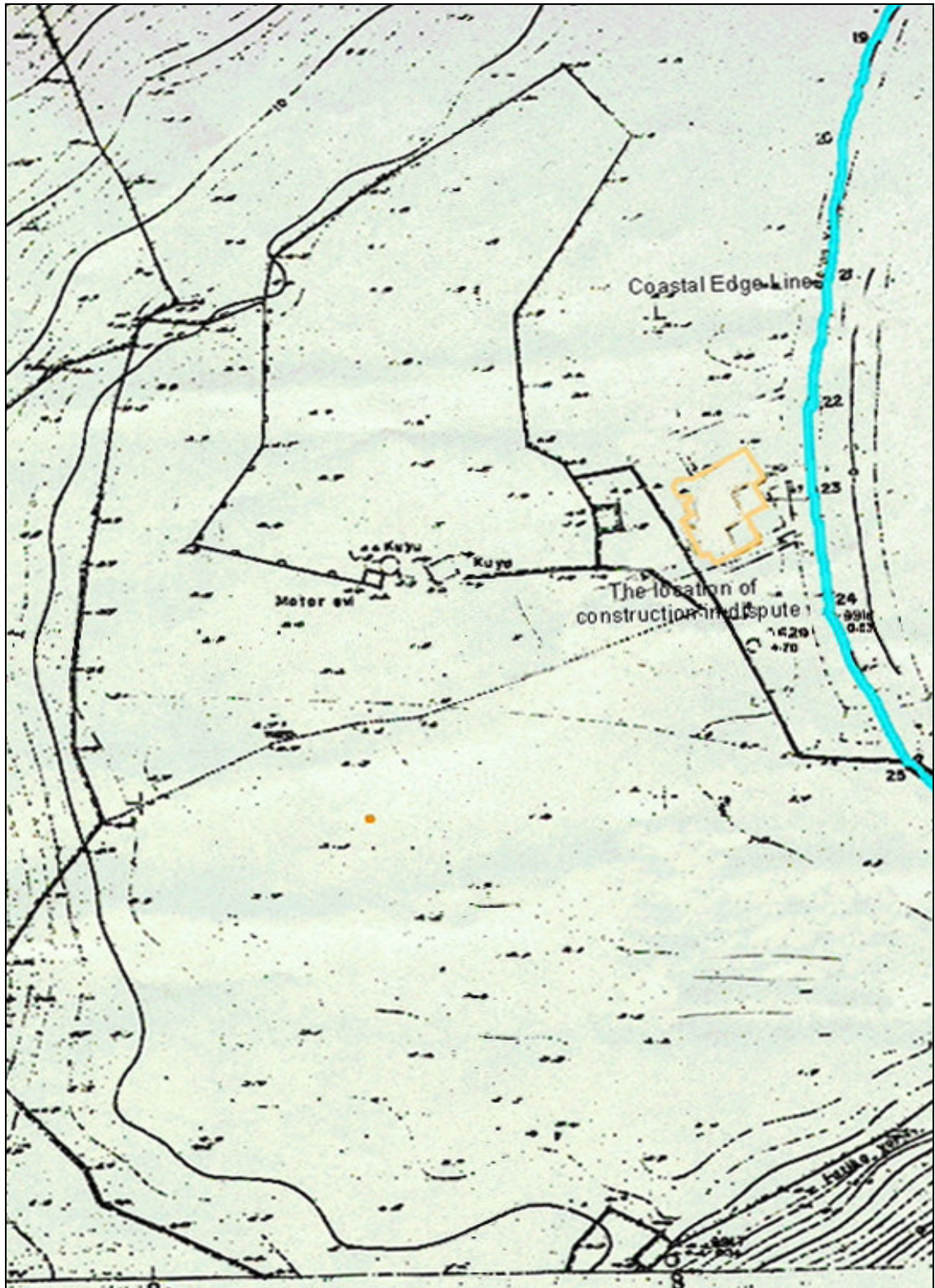
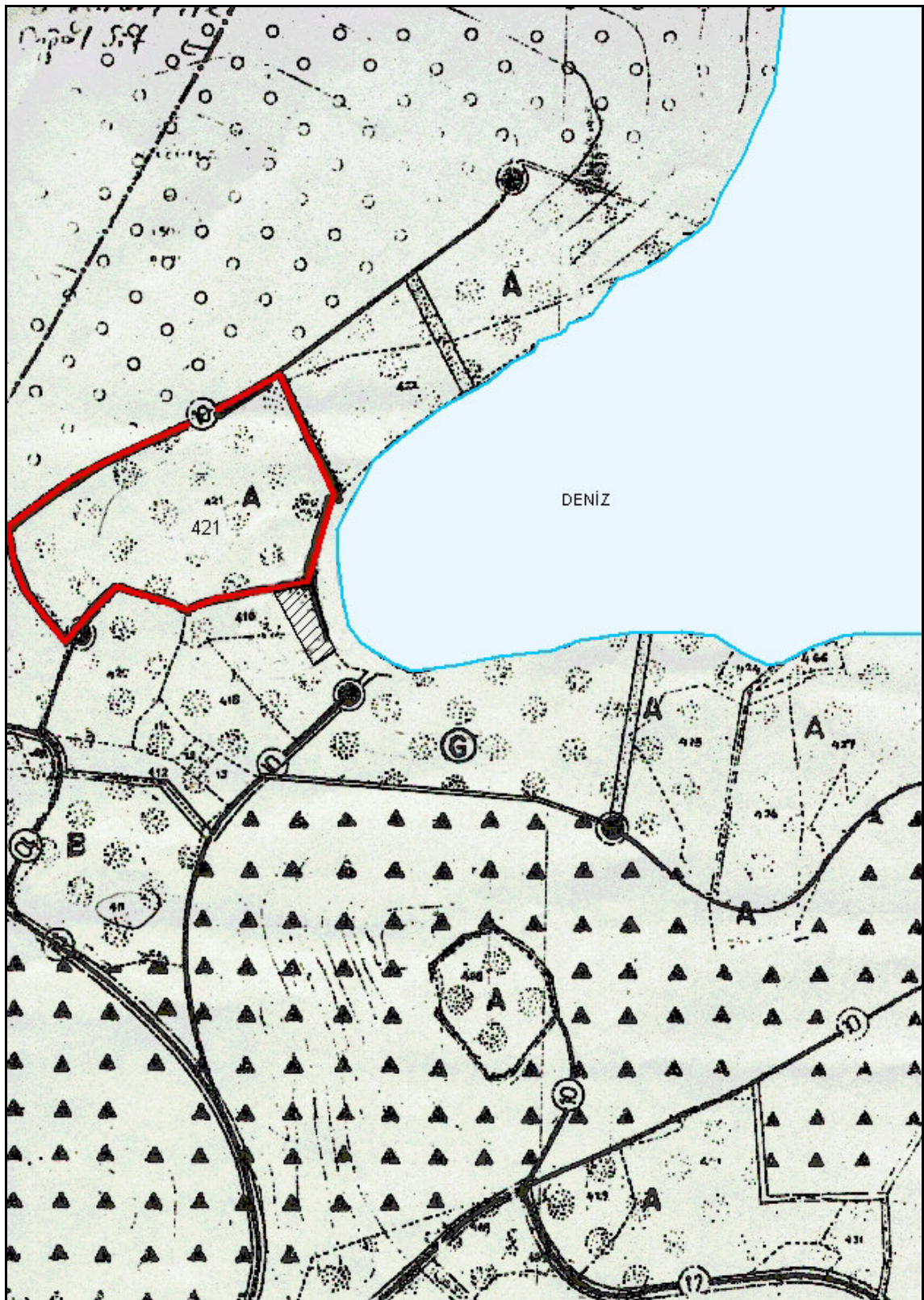


Figure 6.4. The Situation of the Construction and Coastal Edge line in Dispute
Approved on January 22, 1989 (Source: Özdemir et al. 2001b)



6.1.4 Lawsuit No: IV

Experts of the case: Assoc. Prof. Dr. Semahat ÖZDEMİR ,Dursun ÇELİK and Prof. Dr. Cemal ARKON

This lawsuit was filed in 2001 in the Province of Muğla, Datça District, Mesudiye Village. The scope of the lawsuit can be briefly summarized as the demand for the cancellation of the usage relating to the immovable property at city block 101, parcel number 62 located at the Mesudiye Village from the 1/1000 scale Protection Implementation Plan as approved by the Presidency of the Special Environmental Protection Areas on May 25, 2000.

The map of the area was made by the related company in order to ensure commencement of the holiday complex project which was given start in the year 1978 by the plaintiff whereas, the coastal edge line was determined and at the same time, the project was approved by the Protection Council in 1991 upon the receipt of positive opinion by all related authorities.

However, the subsequent process comprised 3 major changes. Firstly, a provision as to the prohibition of the construction of an accommodation facility within the first 100 meter portion in the road direction from the sea was enforced as per the Coastal Law numbered 3830 that was introduced in the year 1992.

Another modification was made within the borders of the Special Environmental Protection Area of the Mesudiye Village. The last modification was the decision on the protection area entered into force in the year 1996 and made for the definition of a 1st grade protection area of 100 meters north between the land and the coastal edge line of the parcel 62 towards the land. Consequently, 3 modifications that influence the area where the parcel 62 is situated, indicates the impossibility to construct an accommodation facility with any plan.

With the following claims the plaintiff has applied to the Muğla Administrative Court on April 16, 2001 upon cancellation of the decision as approved in the 1/1000 scale Protection Implementation Plan for Mesudiye, by the Presidency of the Special Environmental Protection Areas with respect to the city block 101, parcel 62 property made on May 25, 2000.

- The plaintiff was asked for opinions neither at the planning stage, nor during the pending period.

- Since the 1/1000 scale Protection Implementation Plan developed by the related authority is prepared without taking into consideration the existing flora, 2 olive trees of minimum 700 years of age will be cut off due to the 10 meter road crossing the plaintiff's parcel upon a plan decision.

- The decisions on the plan are made disregarding the presence of many tourism facilities in Kızılbük.

- The plan is not feasible to be implemented.

- The development conditions on the partial implementation plan that includes the plaintiff's 101 city block and parcels numbered 62, 63, and 93 are ignored by the Mesudiye 1/1000 scale Protection Implementation Plan although such were deemed appropriate as Floor Area Ratio is 0.30 by the decision numbered 1816, dated February 13, 1991 of the Council No.2 of the Protection of Cultural and Natural Values, İzmir.

The Presidency of the Special Environmental Protection Areas has refused the lawsuit on cancellation filed by the plaintiff on the following grounds:

- The plaintiff lacks any concrete claims to assert on his own property.
- The area subject to the lawsuit is included within the borders of the Special Environmental Protection Area on October 22, 1990.

- The city block numbered 101, parcel 62 of the plaintiff falls within the 1st grade natural protection area.

- According to the Master Plan approved on January 9, 1998 as well as the modification dated March 12, 2001, the said parcel has been defined as "agricultural areas" and "areas subject to protection of the natural characteristics".

- The Floor Area Ratio 0.08 decision as suggested on the plan which is subject to the lawsuit was generated in accordance with the decisions given by the upper scale Master Plan.

- The Mesudiye 1/1000 scale Protection Implementation Plan was issued in compliance with the Coastal Law.

- The land dedication rate for services and facilities above 35 percent does not constitute any reason that would require the cancellation of the plan.

According to the assessment conducted by specialized experts, the decision given on the Mesudiye 1/1000 scale Protection Implementation Plan with respect to the city block 101, parcel 62 as approved on May 25, 2000 is considered suitable for the principles of planning and the public interest due to the following reasons:

- It is issued in accordance with the conditions of planning and structuring stipulated by the 1/25 000 scale Master Plan.
- The plan which is subject to the lawsuit is prepared in compliance with the coastal law in force and the regulations on the protection areas.
- The pedestrian walkway in question can also be designed by a protective arrangement for the trees, without cutting the olive trees specified by the plaintiff.
- A decision conflicting with the development plan is not feasible as per the laws and protective area related decisions in force.

The decision in question is considered appropriate according to the planning principles and public interest by expert of the case.



Figure 6.6. The Master Plan Approved on March 12,2001

(Source: Özdemir et al. 2001c)

6.1.5 Lawsuit No: V

Experts of the case: Assoc. Prof. Dr. Semahat ÖZDEMİR Dursun ÇELİK and Prof. Dr. Cemal ARKON

This lawsuit was filed in 2001 in the Province of Muğla, Datça District, İskele Region and Azmakbaşı Area. The scope of the lawsuit can be briefly summarized as the demand of the owner of the property situated at Azmakbaşı, city block 154, parcel 144, for cancellation of the decision relating to the parcel 144 on the 1/5000 scale Development Plan that was approved by the Presidency of the Special Environmental Protection Areas on March 30, 2001.

The Datça district and its environs were defined and announced as a Special Environmental Protection Area on October 22, 1990. This was followed by the fact that the complete parcel was designated as a park on the 1/1000 scale implementation plan that was approved in 1991. The 1/1000 scale implementation plan was again approved in the year 1997. However, this time parcel 144 was designated as a recreational area. The said development plan which was made from the downsized fotocopy of the implementation plan in question by 1/5000 scale was approved approximately one month later. Obviously, the said plan was referring to the whole parcel as recreational area.

In the year 2000, the 1/1000 implementation plan of the same area was approved upon an arrangement on parcel 144 in the form of a park, green area. However, as a result of the plaintiff's lawsuit on cancellation as filed by the Muğla Administrative Court, the Court has given decree number 2001/532, merit number 2002/103 dated October 11, 2001 on the cancellation of the relating portion of the parcel. The reason for this decision is that the recreational area use the specified in the 1/5000 scale Development Plan was still in force. Meanwhile, the 1/5000 scale development plan that was referring to the said property as "green area" on March 30, 2001, one month prior to the decree on cancellation by the Court of Muğla was approved by the Presidency of the Special Environmental Protection Areas. This is the 1/5000 scale development plan of which the plaintiff demands cancellation.

The grounds submitted by the plaintiff based on his demands are as follows:

- While the property was planned as a recreation area on 1/1000 scale implementation plan approved in 1997, the 1/1000 scale implementation plan of the same area was approved in the form of a park, green area later in 2000.
- In the year 2000, the suspension of the proceedings was resolved upon by the Muğla Court as a result of the plaintiff's lawsuit on the cancellation of the 1/1000 scale implementation plan of the same area.
- The 1/1000 scaled implementation plan which was approved in the year 2000 was revised and implemented as 1/5000 scaled development plan by the Presidency of Special Environmental Protection Areas and the said parcel in this plan subject to the lawsuit was referred to as green area.
- The objection raised by the plaintiff on the revision of the 1/5000 scale development plan approved by the Presidency of Special Environmental Protection Areas was refused upon a decision by the Municipal Council and that the said refusal was not submitted to the Presidency of Special Environmental Protection Areas.
- The plaintiff has suffered a loss upon the decisions resulting from the new arrangements made on the 1/5000 scale development plan subject to the lawsuit and the plaintiff has undertaken the required arrangements on the said parcel on a licensed basis and in accordance with the previous arrangement.

The Presidency of the Special Environmental Protection Areas has refused the plaintiff's lawsuit together with the submissions of the following grounds:

- Including the area subject to the lawsuit, Datça and environs are determined and announced as Special Environmental Protection Area on October 22, 1990.
- The area subject to the lawsuit was designated as a park on the 1/1000 scale Datça-İskele Implementation Plan as approved by the Presidency of the Special Environmental Protection Areas on November 6, 1991.
- The 1/25 000 scale Master Plan that belongs to the Datça-Bozburun Special Environmental Protection Area was approved by the Presidency of the Special Environmental Protection Areas in the year 1994 and at the same time, the required modification was approved on January 9, 1998 according to the borders of the protection area as determined on the said Master Plan by the Council number 2 for the Conservation of Cultural and Natural Assets, İzmir.

- The latest modification made on the Master Plan approved by the Presidency of the Special Environmental Protection Areas in 1994 was made on March 12, 2001 with respect to the borders of the Strategic Military Region.

- The 1/5000 scale development plan that includes the parcel 144 subject to the lawsuit that was approved on October 14, 1997 and the plaintiff's parcel on the 1/1000 scale implementation plan approved on September 19, 1997 remains in use as recreation area.

- The 1/5000 development plan approved by the Presidency of the Special Environmental Protection Areas on March 30, 2001 was submitted to the Muğla Protection Council for positive feedback and also in this plan the parcel subject to the lawsuit remains in use as park.

- The Revision Implementation Plan of the İskele Area issued by the municipality in consideration of the objections made to the 1/1000 scale implementation plan that was approved in 2000 as well as the inconsistencies was submitted to the Presidency of the Special Environmental Protection Areas on June 27, 2001.

- The parcel subject to the lawsuit falls within the first 50 meters of the coastal band, right behind the coastal edge line.

- According to the Coastal Law, no building or facility open for public interest is feasible on the plaintiff's parcel.

Meanwhile, the cancellation of the modification made on the 1/1000 scale implementation plan approved by the Muğla Administrative Court on April 21, 2000 was decided on October 11, 2001. The reason was the conflict between the use of the 1/5000 scale plan and that of the 1/1000 scale plan.

The Revision Implementation Plan of the İskele area that was submitted to the municipality on June 27, 2001 was acknowledged by the Presidency of Special Environmental Protection Areas on January 16, 2002. On this plan, parcel 144 was reserved for use as park area.

The lawsuit on cancellation filed by the plaintiff was rejected by the Municipality of Datça with the submission of the relevant reasons are as follows:

- The plaintiff did not raise any objection against the plans within the period where the 1/5000 and 1/1000 scale plans were pending.

- The arrangements were based on public interest.

According to the survey made by specialized experts, the decisions given on the parcel 144 of both the 1/5000 scale development plan revision approved on March 30, 2001 and the 1/5000 scale development plan revision approved on January 16, 2002:

- Were overlapping with the decisions resulting from the Master Plan.
- The parcel subject to the lawsuit was reserved as “park” on the 1/1000 scale implementation plan approved on June 5, 1991.

The decision in question is considered appropriate according to the planning principles and public interest by expert of the case.

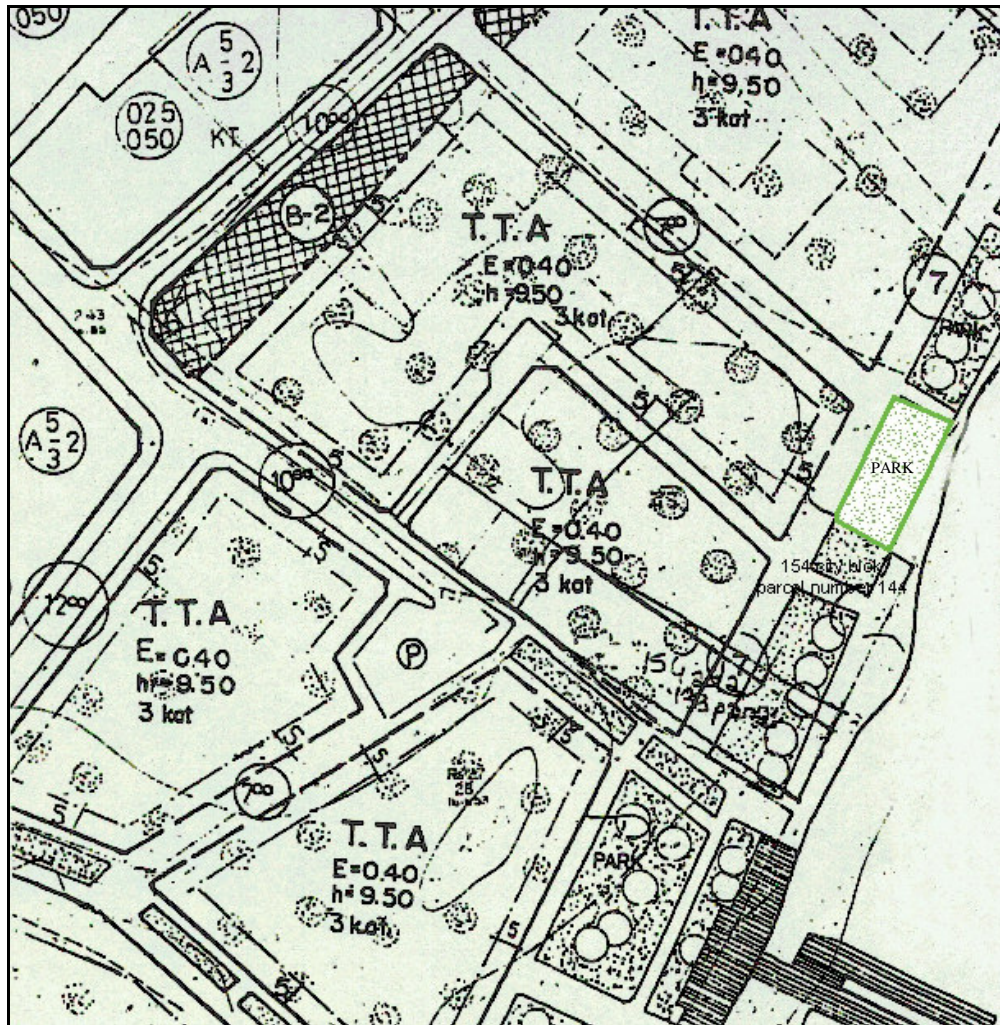


Figure 6.7. The Implementation Plan Approved on June 05, 1991

(Source: Özdemir et al. 2001d)

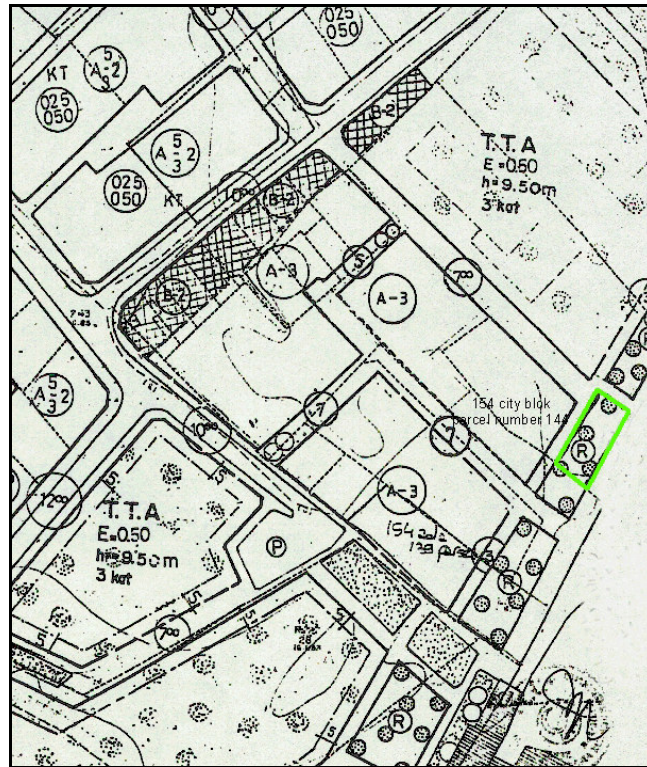


Figure 6.8. The Implementation Plan Approved on September 09, 1997
(Source: Özdemir et al. 2001d)

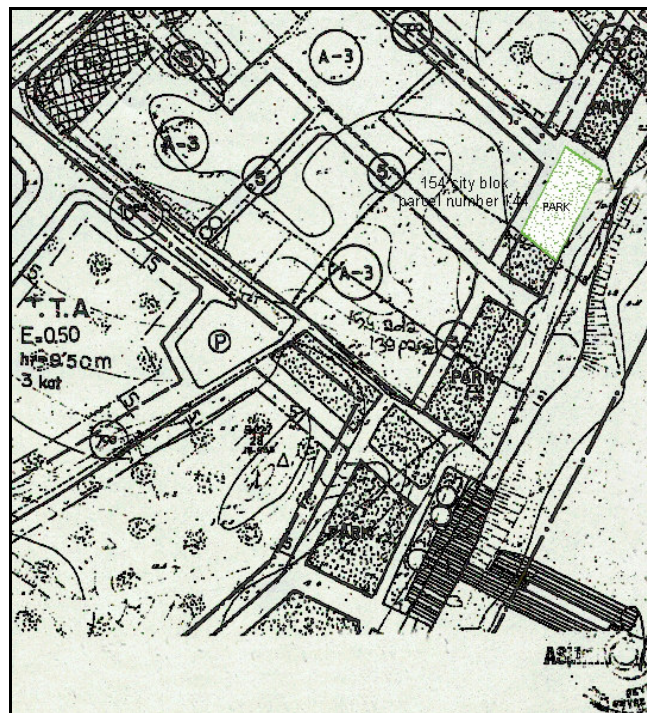


Figure 6.9. The Implementation Plan Approved on April 21, 2000
(Source: Özdemir et al. 2001d)

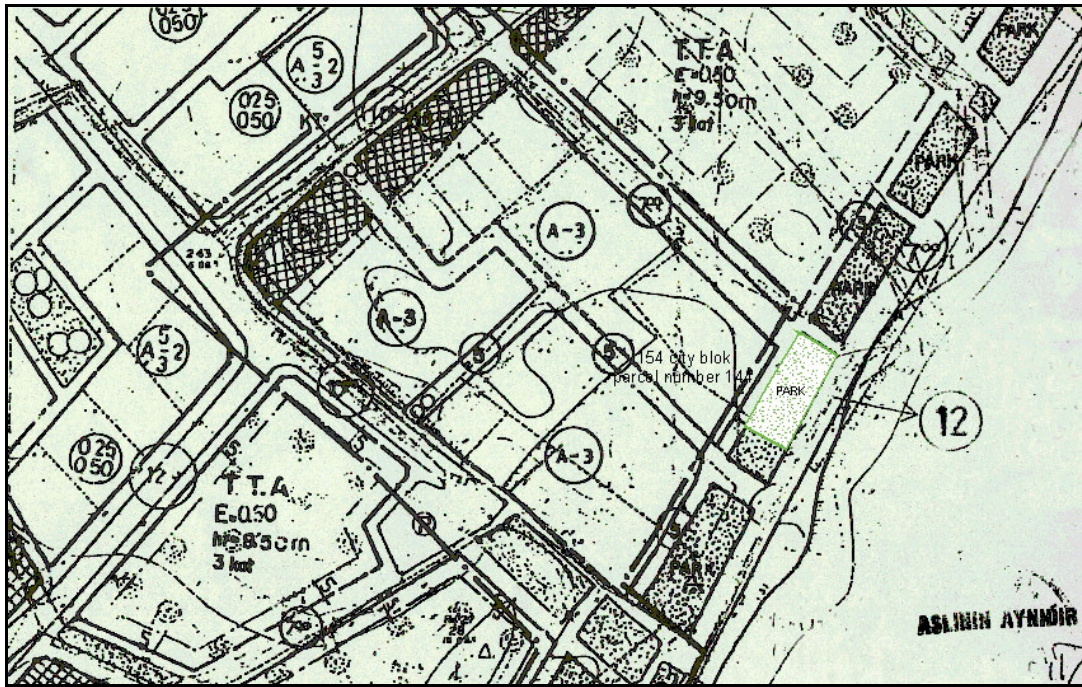


Figure 6.10. The Implementation Plan Approved on December 12, 2001
(Source: Özdemir et al. 2001d)

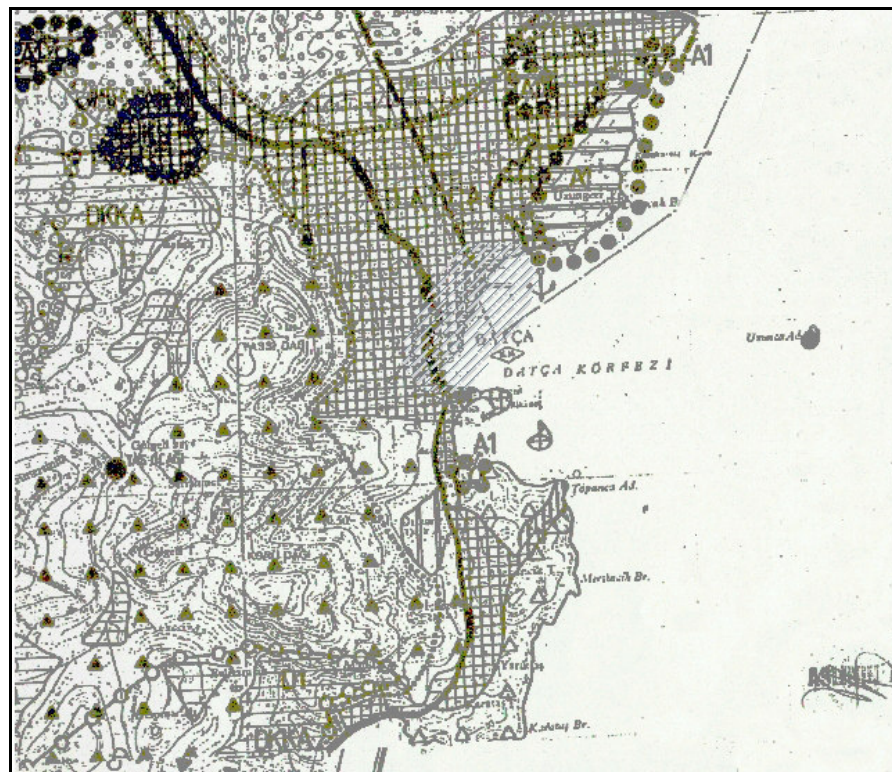


Figure 6.11. The Master Plan Scaled 1/25000 Approved on March 12, 2001
(Source: Özdemir et al. 2001d)

6.2. Results of the Lawsuits

In the previous section, an objective evaluation of the expert reports has been conducted and the claims and related reasons of all relevant parties were discussed. In this section, each expert report is discussed to find the answers to the queries that form the basis of this study. These include the impact of the legal gaps arising from the frequent modifications of the coastal law, the fragmentation of authority between the institutions, and their communication with local administrative bodies.

Lawsuit No. I: A brief review of the case showed that in the Master Plan that was issued upon a 49 year agreement between the General Directorship of Foundations and a private company for the holiday complex project subject to the parcels in conflict, the said parcels were planned as *areas subject to the protection of the agricultural quality*. Meanwhile, the relevant local government submitted a proposal for the selection of a suitable area for a pier construction as demanded from the 6th Regional Administration of the Railways, Harbours, and Airports considering that the present pier is not sufficient. Since all relevant investor institutions and authorities conducted their studies independently from each other, different projects and decisions generated for the same area were inevitable.

There are many issues that require special emphasis in this case. The most important factor is the lack of arrangements such as informative meetings that will ensure the participation of all related parties to the Master Plan. The current situation may cause different organizations and institutions to produce different projects for the same region. Another important issue is the failure of gathering the necessary information accurately during the Master Plan's preparation process and the lack of information of the local governments on the projects prepared in their own regions.

Consequently, all aforesaid aspects prove the lack of coordination between the local governments and other related entities. This situation is also stressing out the requirement for an integrated coastal management that will ensure a well planned implementation and monitoring of the coastal areas that represent a limited resource.

Lawsuit No. II: Upon a brief assessment conducted on the parties and the case, it is observed that while there were discussions on the conversion of the fishery shelter

operated by the municipality to a yacht marina, the *Muğla Bozburun Yacht Marina Area* project of 150 yacht capacity proposed by the Ministry of Transport and General Directorate for the Construction of Railways, Seaports, and Airports is an additional project for the same area.

At this point, the lack of coordination among the local governments, investor companies, and authorities as well as the failure of gathering the required information on both the present and possible projects planned, the achievement of the correct synthesis, and to the lack of participation of the stakeholders during the process of the preparation of the Master Plan which involves many institutions and entities as in the lawsuit no 1 requires special emphasis.

The most important issue is that the decisions on coastal use should be generated within the enforced coastal legislation framework, additionally considering the *public interest* aspect and the value added to the economy. The functional modification decisions on the plans prepared for the areas that are declared as protection area by the Presidency of the Special Environmental Protection Areas should be done through a more precise and careful analysis process. In the planning of coastal areas, a coastal management program that includes the mechanisms to ensure cooperation between different interest groups and features should be taken into consideration.

Lawsuit No. III: The diagnosis obtained upon a brief assessment of the parties and the case is the presence of a negative impact caused by the *legal gap* in the practice. The economic contribution of the coastal areas due to their natural potential and the geographical situation as well as the requirement of their protection in terms of their assets as well as the necessity of priority of a public interest oriented usage according to the provisions of the Constitutional origin is known.

The coastal legislation has become the subject of lawsuits at Constitutional Court and was frequently modified due to judicial decisions. The lawsuit in question is verifying this situation. The year 1989 in which the lawsuit was filed and the first construction license was granted is within a period in which the decree numbered 110 was cancelled, yet the Coastal Law numbered 3621 was not yet entered into force, in other words, it was a *legal gap* period. The conclusion reached from the expert report is; the fact that the license granted by the related local government was handed prior to the determination of the coastal edge line and that the structure subject to the claim was constructed in a 10 meter distance to the coastal edge line. So the situation of granting

of this construction license is illegal. In addition, the *acquired right* concept was interpreted contrary to the provisions of the coastal legislation that was valid during the said period.

Besides the legal gap mentioned, the issue that requires special attention is to consider with the practical decisions of the valid legal framework remaining from the previous period. Furthermore, no period between the Coastal Law numbered 3086 enforced in 1984 and the Coastal Law numbered 3830 that is in force today involves any provision that would permit construction within 10 meters of the coastal edge line. The minimum distance specified in all coastal laws is 30 meters. Another provision of all previous coastal laws is the fact that no structure may be constructed unless the coastal edge line is determined. However, it is certain that the construction was permitted without the assignment of any coastal edge line in the said case.

As a result of the frequent changes made on the coastal legislation, as it is evidenced in this lawsuit, a project that started in 1989 lasted for about 10 to 11 years and within such process the legislation suffered numerous modifications with the consequence that the local governments fail to comply with the relevant laws at the implementation stage.

In addition, although there is a common law and directive for the planning of the coastal areas, sometimes it is difficult to monitor implementations because there are different decisions taken by different administrations. However, the monitoring of the coastal development is the most important aspect for the protection of coastal areas. Instead of the provisions that seek solutions for daily issues and inquiries, the coastal legislation and directives should include provisions to start the coastal inventories upon consideration of the coasts as per their characteristics and ensure an organization to support the central, regional, and local population's active participation in the planning process.

Lawsuit No. IV: Upon a brief assessment of the situation of the parties and the case, the conclusion reached is that the holiday complex project has been on the agenda for 25 years and the natural changes which occurred during such long period of time, the legal and institutional changes resulted in projects already in progress in addition to the possible ones. These natural changes are explained below.

When we have a look at the specific situation in this case, it is observed that many changes have occurred in the area of the holiday complex project in question in

the 25 years. These include the fact that according to the border changes made in the decisions pertaining to natural protection areas, the said parcel remains within the *1st degree natural protection area*, that the parcel related to the determination of the new agricultural lands to be protected are described as *areas to be protected in terms of natural characteristics* and that according to the decision which revises the legal / authoritative structure, it falls within the *Special Environmental Protection Area* border and that upon changes of the implementation related constructional rights, the floor area ratio has been reduced to 0.08 from 0.30.

In addition to all the aforesaid changes, the parcel subject to the lawsuit is within the first 100 meters towards the land from the sea upon the change of the Coastal Law within the project period the new legislation does not permit the construction of accommodation premises within the first 100 meters which becomes another obstacle for the project.

It is inevitable for a tourism-related coastal project that is exposed to that much change due to such long period of construction time to become incapable of meeting the implementation related requirements of the changing legislation. Were the project in question capable of satisfying the conditions of an acquired right, the holiday complex would become feasible without consideration of the failure to meet any implementation related requirement. Thus, in order to avoid occurrence of such wrong development, it is obvious that the coastal potentials of these coastal areas must be evaluated by a coastal management program where the coastal potentials, the offered use, as well as the sector based variety is taken into consideration.

Lawsuit No. V: The conclusion reached upon a brief assessment of the parties and the case is that the permission of use granted between 1994 and 2002 for the parcel in question is revised as *park area and recreation area*. When we examine the lawsuit, we see that the Presidency of Special Environmental Protection Areas and the Ministry of Culture are the related authorities. Any changes made by these authorities on the decisions generated with respect to the geography that falls within the borders of authorization of these entities and the fact that such is affecting the physical plans in force result in the requirement of the revision of the said physical plans. The event subject to the claim becomes important right at this point. During a 10 year period that passed with respect to the parcel subject to the lawsuit, different plan decisions have been generated in addition to the approval of a wide variety of plans.

Consequently, the supply of information to the local governments on the requirements to be met by the relevant authorities to change the current situation as well as the reflection of the decisions generated or possible projects on the physical planning on a hierarchical basis is crucial. Considering the importance of the coasts in particular, in addition to the attention paid on the reasons of the coastal directives that must be complied with, such process should also be supported by the coastal management program.

6.3. Evaluation of the Lawsuits

When we analyze the information obtained upon review of the expert reports, we realize that in addition to the duty and authority related chaos among the coastal authorities, there are inconsistencies experienced during the physical planning process as well. The first of these inconsistencies is the fact that the hierarchical structure of the process starting from the macro scale and moving down to the Implementation Plan level is ignored. The second is the failure of taking into consideration of the dynamic part of the physical planning. Lastly, the importance of a correct acquisition of information and synthesis for the Master Plan is ignored due to the fact that the Master Plans involve many authorities and investors since they cover multiple settlements.

The lack of attention paid to the information gathering process that constitutes one of the most significant steps of the planning process prevents access to the correct information on all up-to-date and existing projects. From this point of view, coastal planning with physical content is realized with a static approach without taking into consideration different coastal features.

The analysis indicates that the problems relating to coastal planning originate from:

- The presence of multiple decision making mechanisms pertaining to coastal utilization,
- The lack of coordination between local governments, investor corporations, and institutions,
- The presence of authority of different entities in different situations for the same area,
- The lack of monitoring,

- Ignoring the reflection of upper scale plan decisions on the lower scales,
- The lack of the required importance and attention given to the information gathering process, and
- Ignoring the participation of the stakeholders and local population in the planning process.

6.4. Suggestions

With a coastal band of 8333 kilometers in total Turkey is the second only to Italy (8800 kilometers) with the longest coastal band among the European countries. The coastal areas formed by the length of the coastal band and the cultural diversities in addition to the natural beauty results in the inevitability of the pressure by the tourism sector. Consequently, this situation results in the rapid and careless exploitation of the coastal areas, damage of their natural and cultural assets and deterioration with time. As clearly observable in numerous applications, the many privileges granted to tourism are carelessly destroying all national assets from the archeological sites to freshwater areas, from precious natural protection areas to all coastal areas without any exception. In addition, the spoiled balance of the coasts has resulted in the disappearance of aquatic products and species. Particularly the coastal filling conducted in a careless manner harm the ecological balance irreparably “(Zafer and Güney 1997, Karabey 1976)”.

At this point, special emphasis should be put on the limited status of the coastal resources and consequently, each and every value lost will result in consequences affecting the tourism sector itself. However, the diversity in terms of the contributions to the national economy and the social – cultural benefits coastal tourism could bring when properly planned should not be underestimated. Coastal areas are no places where the use can be restricted completely for protective purposes to avoid the negative impacts of tourism. Coastal areas should be planned with the **protection-utilization balance**.

Coastal areas that constitute the resource of different sectors are planned with the lack of policies to protect the balance among users and aim at economic development. Today, we observe that the coastal areas are destroyed by the holiday villages, hotels and secondary housing structures. The reasons for such unaesthetic physical appearance are the strategies and policies generated with respect to the coasts.

Public or private persons carrying out the planning and/or implementation of the coastal settlements should have the sense of setting their target as protecting environmental values and leaving behind to the next generations an environment of natural beauty and values in its best form. Individuals or people possessing such sense are not sufficient for a rational coastal planning. The fragmentation of authority among the central and local government as well as the lack of coordination experienced between the local governmental authorities and the investor institutions and corporations also prevent an ideal planning approach.

In addition to the foregoing, in spite of the presence of a single law and directive for the planning of coastal areas and implementation of coastal planning, different decisions generated by a variety of administrations result in a more difficult exercising of the required . In fact, the most important aspect relating to the protection of coastal areas is monitoring coastal development.

The coastal legislation and directive in force has an approach of responding to daily problems and demands. For example, determining the coastal edge line is performed only upon demand. The coastal law does not include any article to ensure integration among the coastal areas. This situation results in partial planning with different approaches to the coastal band on which the local government has discretion. The lack of any provision related to acquired right of the structures in the rural areas and Special Environmental Protection Areas with certain characteristics, results in any building in these settlements to have acquired rights without caring of the traditional texture.

Consequently, the coastal law in force offers the same solutions to all coasts in all qualities. Nevertheless, the coastal legislation should comprise articles to trigger the generation of the inventories upon specific features of each coast and consist of provisions that feature a certain mechanism of monitoring on the coastal development as well as an organization that ensures active participation at central, regional, local, and public levels.

While the use decision of coastal areas is taken, it is ignored that coastal areas are limited resources and the coastal area profiles are not taken into consideration. It is obvious that neither the current legal and institutional arrangements, nor local organizations are sufficient to ensure sustainability of the coastal areas. In addition, it has been realized that the decisions in compliance with coastal legislation related to coastal areas are not satisfactory.

Coastal areas are planned with an approach that does not take into consideration the future and lacks the protection – utilization balance. Thus, priority of the public interest in terms of decisions on the use of coastal areas becomes impossible with an approach that lacks social awareness.

As a consequence, the requirement of considering the coastal planning process with a coastal management program is inevitable. Such a coastal management program must take into consideration the potentials of the coastal area as well as the fact that coastal areas are a consumed resource. The coastal management program should include the mechanisms to ensure active cooperation among different stakeholder and interest groups for an ideal coastal area planning. Furthermore, it also should include solutions for the planning of coastal areas with different characteristics in terms of the ecological, cultural, and natural values.

Below, coastal management experiences of a few countries are briefly reviewed. Beatley et al. (2002) considers coastal management not as an intervention to the natural system, but rather as a concept that affects this system and where the management of human behaviors under the impact of such systems is attempted. He describes coastal area management as the protection of the coastal area which is a natural resource, against human activities and vice versa. Beatley summarizes coastal management in **America** as a system implemented by the;

- State and private organizations,
- Profit and non-profit groups, and
- Developmental and environmental supporters and where a discussion environment is formed in which mutual opinions are exchanged and relevant policies are supported among groups in conflict and towards their own interest, within the process of generating coastal area focused policies. However, Beatley also states that coastal management forms a dynamic structure in which policies and plans to influence the development and protection of the coastal areas and resources are produced.

Another example for coastal management is **Norway**. Featuring quite a large coastal area, the growth in the Norwegian tourism industry has resulted in increased problems and exposure of coastal areas to competition among different uses. Due to the damage of ecosystems by this competition, coastal planning became mandatory. In 1985, the coastal management plan was submitted by the Planning and Building Act. The coastal area planning was prepared at the municipal level and the requirements and wishes of the local population were given priority. In order to avoid disputes among the

coastal users in competition with each other, a democratic and effective management system was required where all shareholders were present, gave their opinions, and which distributed the coast accordingly. Depending on such a coastal management plan, the coastal areas within municipal borders were allocated for different usages. Therefore, coastal planning in Norway became quite restrictive “(Bennett 2000)”.

A final example for coastal management is the Coastal Development, Protection and Enhancement Act dated 1986 for the coastal areas in **France**. This act is consistent with other laws such as Coastal Act, Water Act, Spatial Planning, and Development Act. The different planning instruments used with these acts are the *marina area zoning plans*, *water management plan* and *regional nature park territorial planning directives*. France describes the Integrated Coastal Management as a **continuous and dynamic process that can be used for the protection and development of the coastal ecosystems within an integrated plan comprising the government and society, science and management and sector based and public interest**. Dividing coastal areas in terms of their characteristics (in other words, such as rural coastal area, coastal area as a shelter for different species, coastal areas rich for seashell production, coastal areas requiring protection, coastal area with agricultural origin, coastal area for economic development), France carries out arrangements in suitable areas with the above specified planning instruments such as the *marina area zoning plans*, *water management plan*, *regional nature park*, *territorial planning directives* “(Henocque, 2003)”.

As it is seen from the French and Norway examples above, the approaches of these countries in coastal planning are different. There should be a tendency to create a democratic participation in forming an organizational structure. The coastal areas should be divided according to different uses. As a result of this, unfair profit earned from the coastal areas should be prevented to an extent. In addition to this suggestion, the integrated coastal management recognized as a dynamic process similar to the French example should be applied with the support of laws in Turkey. With this approach, both the economic development and rural or coastal areas sheltering to many species could be protected.

CHAPTER 7

CONCLUSIONS

Coastal areas in addition to their natural beauties, consist of many different cultures of the civilizations. Besides, results of the negative impacts which competition produce between use of the coast as a resource and the sectoral diversity it presents are seen both in our country and the world.

Our country has enough instruments in terms of coastal area management. However, when these instruments that exist in theory are put in to practice, it is seen that there are critical problems in the planning of coastal areas and the management system. Before all else, it should be pointed out that one of the origins of these problems in Turkey is the existence of numerous institutions as well as a lot of legal arrangements related to coastal areas. The use decision taken on the coastal areas causes authority conflicts because more than one institution has a right to speak for one place at the same time. Lack of coordination among institutions and lack of communication among local governments result in uses where self interest takes priority. Planning decisions may result benefiting some specific persons other than the social benefit. This is due to the sectoral development characteristics of coastal areas. However, as stated in the law the coasts are under the sovereignty and disposal of the state as well as the public. The public interest should be taken into consideration in making the planning decisions.

Institutions with different authorities working on coastal areas should be in cooperation with each other. Otherwise, fragmented authority and responsibility areas hinder integrated planning of coastal areas. Different use decisions resulting from different authority mechanisms and implemented by economic purposes damage ecological balance and ruin the natural beauties of coastal areas when these areas should be used by providing a protection – utilization balance. Coastal areas should be planned:

- Sensitive to the environment,
- Considering the balance among the sectors which use the coast as a resource,
- With an approach that targets sustainable benefits.

In addition to these deficiencies in the planning of the coastal areas, another problem is the lack of coastal management approach in the coastal law. There are some other reasons which expose the need for coastal management: coastal law has a limited

scope, it faces present problems, it is self-contradictory, it has different implementations due to the frequent changes of the regulations, and it has no supervising mechanism. At this point it is seen that the existent coastal law is not sufficient for a coastal management approach. To be effective in protecting the coastal areas the coastal law should:

- Include an auditing mechanism in its structure,
- Have institutions do a coastal inventory,
- Have an organizational structure and solutions that take into account different coastal area profiles,
- Provide public participation in more democratic platforms,
- Be responsible from protection of coastal settlements and especially their traditional textures, and
- Include an approach which helps individuals of the society to share the coasts equitably.

Consequently, it is seen that currently coastal areas are planned by traditional physical approach with limited instruments. These result in some consequences such as increase in pollution, exploitation of the coastal resources, damages to coastal ecosystems, increasing competition among users, and destruction of natural and historical areas. At this point it is obvious that coastal areas should be planned with an integrated coastal management approach. The integrated coastal management should include the following principles:

- Care for the pollution of the ecological and natural environment,
- Consider the characteristics of the coastal resources,
- Provide a sustainable socio-economic development,
- Determine conservation strategies along with qualities identified,
- Include an adaptable dynamic structure against changes in the long term,
- Provide a balanced use opportunity for all shareholders,
- Ensure participation of all users, especially local public in solving the problems within coastal areas,
- Target an organizational movement with all institutions and organizations to solve local problems in the region,
- Target regional organizational structure in order to provide integration and coordination among local organizations and,

- Consider a sustainable approach in order to provide a protection – utilization balance.

Two important questions form the basis of this work. These are; “is it possible to provide protection-utilization balance between coastal resources and functions on the coastal areas by the existing coastal laws and regulations?” and “are general coastal laws and regulations sufficient for the conservation of coastal regions with different characteristics?” Literature review and analysis showed that there are different use decisions targeting different economic development objectives due to variety of authorities in the coastal areas. Therefore, these circumstances spoil the natural and ecological values of the coastal areas that should be used by protection-utilization balance. Besides, it is observed that there is no special problem solving methods and organizational structure of the coastal law for the different coastal area profiles.

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