

THE PROBLEM OF ELIGIBILITY OF UNCERTIFIED GECEKONDU
POSSESSORS IN URBAN TRANSFORMATION IMPLEMENTATIONS IN
TURKEY

THE CASE OF ANKARA DIKMEN VALLEY 4th AND 5th PHASES URBAN
TRANSFORMATION AND DEVELOPMENT PROJECT

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IN TURKEY**

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URBAN TRANSFORMATION AND DEVELOPMENT PROJECT**

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ABSTRACT

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With the emergence of urban transformation concept in 1980s, the concept of eligibility has also started to be discussed as a new term in Turkey. However, the absence of a sustainable urban transformation law which defines the criteria of eligibility of stakeholders has undoubtedly brought about violations and disagreements between stakeholders. Especially the uncertified gecekondu possessors who are not determined as eligible stakeholders have been subjected to forced and arbitrary evictions. This study aims to clarify the problem of eligibility of uncertified gecekondu possessors in urban transformation and attempts to determine the criteria for the eligibility of this particular group. It argues that since the claims of uncertified gecekondu possessors like right to adequate housing, labor and possession have moral characters which do not depend upon legal acts, they can not be criteria of eligibility. The legal property ownership must be the criteria of eligibility in urban transformation practices in the law. On the other hand, this study urges that no matter living in a legal or illegal housing, the vulnerable families who lack of basic economic security and living in the project area must be determined as eligible stakeholders.

In the first part of this master study, the problem of eligibility was discussed from theoretical perspective. In the second part, this problem was discussed in the case of Dikmen Valley 4th and 5th phases Urban Transformation Project. The knowledge obtained from the case can be useful for the local governments to develop sustainable policies on this particular problem.

Key Words: Urban Transformation, Eligibility, Uncertified gecekondü possessors, Possession, Property Rights

ÖZ

TÜRKİYE’DEKİ KENTSEL DÖNÜŞÜM UYGULAMALARINDAKİ BELGESİZ GECEKONU SAHİPLERİNİN HAK SAHİPLİLİĞİ SORUNU

ANKARA DİKMEN VADİSİ 4. VE 5. ETAP KENTSEL DÖNÜŞÜM VE GELİŞİM PROJESİ ÖRNEĞİ

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Türkiye’de 1980li yıllardan itibaren kentsel dönüşüm kavramının gelişmesiyle birlikte yeni bir terim olarak hak sahipliliği kavramı da tartışılmaya başlanmıştır. Ancak hak sahipliliği kıstaslarını tanımlayan kapsamlı bir kentsel dönüşüm yasası bulunmaması aktörler arasında anlaşmazlıklara ve gerilimlere neden olmaktadır. Özellikle belgesiz gecekondü sahipleri hak sahibi olmadıkları için evlerinden zorla tahliyelere maruz kalmaktadır. Bu çalışma belgesiz gecekondü sahiplerini hak sahipliliği sorununu açıklığa kavuşturmaya çalışacak ve bu gruplarını hak sahipliliği olma kıstasları konusunda öneriler geliştirecektir. Bu tez çalışması belgesiz gecekondü sahiplerinin ortaya koydukları “emek”, “zilyetlik” ve “barınma hakkı” gibi söylemlerin herhangi bir yasal dayanağı olmayan ahlaki söylemler olduğunu ve bu yüzden hak sahibi olabilmek için bir kıstas olamayacağını iddia etmektedir. Diğer yandan içinde yaşadığı mülkün yasal durumu her ne olursa olsun, temel ekonomik güvencesi olmayan kırılgan grupların kentsel dönüşüm projelerinde hak sahibi yapılmasının gerekli olduğunu savunmaktadır.

Bu tez çalışmasının birinci kısmında hak sahipliliđi kavramı teorik bir çerçevede ele alınmıştır. Tezin ikinci kısmında ise örneklem olarak seçilen Ankara Dikmen Vadisi 4. ve 5. etap Kentsel Dönüşüm Projesi'ndeki belgesiz gecekondü sahiplerinin hak sahipliliđi sorunu tartışılmıştır. Alan çalışmasında elde edilen bilgiler dönüşüm uygulamalarını hayata geçiren yerel yönetimler için gerekli politikaların oluşturulmasına altık oluşturabilir.

Anahtar Kelimeler : Kentsel Dönüşüm, Hak Sahipliliđi, Belgesiz Gecekondü Sahipleri, Zilyetlik, Mülkiyet Hakları

To My Parents...

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TABLE OF CONTENTS

ABSTRACT.....	iv
ÖZ.....	vi
ACKNOWLEDGMENTS.....	ix
TABLE OF CONTENTS.....	x
LIST OF TABLES.....	xiii
LIST OF FIGURES.....	xiv
CHAPTER	
1. INTRODUCTION	
1.1. Approaching the Issue and Problem Definition.....	1
1.2. Formulation of Research Question	2
1.3. Main Hypothesis	2
1.4. Formulation of Sub-Questions.....	3
1.5. Research Methodology.....	3
1.6. Scope of the Study.....	5
1.7. The Objectives of the Study.....	6
2. LITERATURE SURVEY	
2.1. The Concept of Urban Transformation.....	7
2.2. Recent Urban Transformation Experiences in Turkey.....	8
2.3. Legal Basis of Urban transformation Implementations in Turkey.....	10
2.4. Problem of Eligibility in Urban transformation.....	12
2.5. The Eligibility of Uncertified Gecekondu Possessors.....	12
2.5.1. Claims in favor of.....	13
2.5.1.1. “Labor” as the Rational Basis of Eligibility.....	14
2.5.1.2. “Possession” as the Rational Basis of Eligibility	15
2.5.1.3. Öner Yıldız Case.....	17
2.5.1.4. “Right to adequate housing” Rational Basis of Eligibility.....	18
2.5.1.4.1. The Concept of Right of Adequate Housing	18
2.5.1.4.2. Philosophical Basis of Right to Adequate Housing.....	21

2.5.1.4.3. Legal basis of Right to Adequate Housing	22
2.5.1.4.4. Are States Obligated to Build Homes for Everyone?.....	29
2.5.2. Claims Against.....	30
2.5.2.1. Changing Meaning of Gecekondu.....	31
2.5.2.2. Critics of Labor Theory.....	32
2.5.2.3. Changing Meaning of a Right to Property.....	33
3. CASE STUDY: THE PROBLEM OF “ELIGIBILITY” OF UNCERTIFIED GECEKONDU POSSESSORS IN THE CASE OF ANKARA DIKMEN VALLEY 4th AND 5th PHASES URBAN TRANSFORMATION AND DEVELOPMENT PROJECT	
3.1. History of First Gecekondu Development in the Valley	35
3.2. Earlier Planning Decisions for Dikmen Valley.....	36
3.3. Dikmen Valley 1st and 2nd Phases Urban Transformation Project.....	37
3.3.1. Eligibility of Gecekondu possessors in the Dikmen Valley the 1st and 2nd Phases Urban Transformation Project.....	39
3.4. Dikmen Valley 4th and 5th Phases Urban Transformation and Development Project.....	41
3.4.1. Eligibility of Gecekondu Possessors in the Dikmen Valley the 4th and 5th Phases Urban Transformation Project.....	45
3.5. Interview Analysis on the Problem of Eligibility in Urban Transformation.....	49
3.5.1. Perception of Uncertified Gecekondu Possessors.....	49
3.5.2. Court Decisions on the Project.....	54
3.5.2.1. Sub Findings.....	57
3.5.3. Perception of Greater Municipality of Ankara	60
3.5.3.1. Sub Findings	62
3.5.4. Perception of Consultant Firm of the Project.....	64
3.5.4.1. Sub Findings.....	66
3.5.5. Perception of Title and Title Deed Owners	66
3.5.5.1. Sub Findings	68
4. CONCLUSION AND SUGGESTIONS.....	69
REFERENCES.....	75

APPENDICES

A. DECISION OF COUNCIL OF GREATER MUNICIPALITY.....83

B. DECISION OF COUNCIL OF BOROUGH OF GREATER MUNICIPALITY OF ANKARA.....86

C EXAMPLE OF DEMOLISHMENT NOTIFICATION OF GREATER MUNICIPALITY OF ANKARA.....88

D DECISION OF ANKARA SIXTH ADMINISTRATIVE COURT.....89

LIST OF TABLES

TABLES

Table 1 Housing Right Legislation, Review of International and National Legal Instruments, Reports No: 1, UN 2002	25
Table 2 The Effects of Number of Eligible Stakeholders on the Spatial Development, Planning Department of Greater Municipality, 2003.....	46
Table 3 Property Ownership in Dikmen Valley 4th And 5th Phases.....	46
Table 4 Housing Provision in Dikmen Valley 4th and 5th Phases Urban Transformation Project, Greater Municipality of Ankara Council Decision Dated 17.02.2006, Numbered 483.....	48
Table 5 Agreements on the Housing Provision in Dikmen Valley 4th And 5th Phases Urban Transformation Project, Ankara Büyükşehir Belediyesi, Emlak İstimlâk Daire Başkanlığı Faaliyet Raporu, 2007.....	49
Table 6 Uncertified Gecekondu Possessors Living in Dikmen Valley Project According to Use of Their Gecekondu.....	51
Table 7 Site Based Analysis on Dikmen Valley 1st and 2nd Phases Urban Transformation Project, Devecigil: 2003.....	59

LIST OF FIGURES

FIGURES

Figure 1 The Flow Chart of Claims of Uncertified Gecekondu Possessors to be an Eligible Stakeholder Urban Transformation.....	14
Figure 2 Rio De Janeiro: Favela Rochina Is The Largest Urban Slum In South America Source: www.smileinternational.org, last accessed: 20.10.2008.....	26
Figure 3 Inadequate Housing in Zimbabwe, Source: www.smileinternational.org, last accessed: 19.10.2008.....	27
Figure 4 Housing in Informal Settlements, Kibera, Nairobi Kenya Source: www.smileinternational.org, last accessed: 19.10.2008.....	27
Figure 5 Informal Housing in Dikmen Valley, Ankara.....	28
Figure 6 Houston: Private Property Becomes a Commodity.....	34
Figure 7 Inadequate Living Conditions in the Dikmen Valley.....	36
Figure 8 Dikmen Valley Urban Transformation Zones, Personal Achieve.....	38
Figure 9 Dikmen Valley 4th And 5th Phases Urban Transformation and Development Project Area, Personal Achieve.....	41
Figure 10 Dikmen Valley 4th And 5th Phases Urban Transformation and Development Project Area Aerial Photo, Personal Achieve.....	42
Figure 11 Dikmen Valley 4th And 5th Phases Urban Transformation and Development Project Proposed Urban Design and Landscape Project, Personal Achieve.....	44

Figure 12 Press Statements by Uncertified Gecekondu Owners, Kizilkoyun, F. Milliyet, 2007.....	50
Figure 13 Forced Evictions in Dikmen Valley, Milliyet, Kizilkoyun, F. 2007.....	53
Figure 14 The Way of Expression of Uncertified Gecekondu Possessors of Themselves, Barınma Hakkı Gazetesi, August 2008.....	58
Figure 15 Dwelling Units Designed For Eligible Stakeholders and Luxury Block Designed For Investors, Personal Achieve.....	60
Figure 16 Decision of Greater Municipality of Ankara Council.....	63
Figure 17 Decision of Greater Municipality of Ankara Council.....	64

CHAPTER 1

INTRODUCTION

1.1. Approaching the Issue and Problem Definition

This master study attempts to clarify the problem of eligibility of uncertified gecekondü possessors in urban transformation practices in Turkey. The reason why the study focuses this problem is that the Draft Planning and Development Bill for Urban transformation debated in the Grand National Assembly of Turkey since 2008 determines uncertified gecekondü possessors who prove that they built their gecekondü before 12th of November 2004 as eligible stakeholders¹ in further urban transformation projects (Draft Planning and Development Bill, article 6, 2008). This study finds the problem of eligibility of uncertified gecekondü possessors in urban transformation worth to discuss because of three main reasons:

First, it will help to understand the changing dynamics in the property pattern of different urban transformation districts. For instance, in the 1st and 2nd phases of Dikmen Valley Urban Transformation Project, which has been regarded as a successful case, there were roughly no uncertified gecekondü possessors. Almost all the gecekondü were constructed in 1970s and have title deed certificate. Therefore, no violation like the right to adequate housing emerged. However, with the 4th and 5th phases of the Dikmen Valley Project, struggle of uncertified gecekondü possessors to be eligible stakeholder has come to the agenda as a new fact in urban transformation and needs to be clarified.

Second, taking into account the fact that most of the dwellings about which the further urban transformation projects will be implemented are legally unauthorized; this will

¹ Taking into account of urban transformation, eligibility means to have the legal adequateness to claim a right on the new real estates constructed through the urban transformation project.

lead to the practice of forced evictions of several vulnerable groups who live in these unauthorized gecekondu. These forced evictions will result in violations of civil and political rights such as the right to adequate housing, the right to the security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.

Third, regarding uncertified gecekondu owners who prove that they built their gecekondu before 12th of November 2004 as eligible inhabitants will increase the numbers of dwelling unit produced for eligible inhabitants in urban transformation projects. This increase in the numbers of dwelling unit may intensify the density of district. Therefore, the quality of the living environment may decrease. This article can be commented as a new version of “development clemency”. If this article added to the law, it will trigger the gecekondu development and thus, it will be impossible to implement urban transformation projects. Therefore, the urban sustainability, which is the main concern of urban transformation, may not be achieved.

1.2. Formulation of Research Question

The main research question of this master study is that what should be the criteria of determining uncertified gecekondu possessors as eligible stakeholders in urban transformation law? This question will be at the center of the entire study.

1.3. Main Hypothesis

The main hypothesis of this study is that since the claims of uncertified gecekondu possessors like right to adequate housing, labor and possession have moral characters which do not depend upon legal acts, they can not be criteria of eligibility. The legal property ownership must be the criteria of eligibility in urban transformation practices in the law. On the other hand, that no matter living in a legal or illegal housing, the vulnerable families who lack of basic economic security and living in the project area must be determined as eligible stakeholders.

1.4. Formulation of Sub-Questions

To develop a new understanding to the concept of eligibility in urban transformation it was necessary to divide the main question into sub questions. The literatures which can be related to these sub questions were reviewed and some findings were obtained. Besides literature review some of the answers of sub questions came from the case study. The questions to be debated in the literature chapter consist of two main parts. In first part the theories which are in favor of the eligibility of uncertified gecekondu possessors will be discussed than the counter claims will be debated. The following sub questions will be answered in the literature review.

- Can the theory of **labor as the basis of private property** be defended as the rational basis of being an eligible stakeholder in urban transformation practices?
- Can the **possession** be defended as the rational basis of being an eligible stakeholder in urban transformation practices?
- Can the claims of **right to adequate housing** be defended as the rational basis of being an eligible stakeholder in urban transformation practices?
- Today, how **the changing meaning of gecekondu** is perceived from different point of views?
- What is the **changing meaning of right to private property** and its relations with the expectations of eligible stakeholder owners in urban transformation?
- What are the critics of **labor theory**?

1.5. Research Methodology

The problem of uncertified gecekondu possessors will be discussed in the specific case of Dikmen Valley 4th and 5th phases of the Urban Transformation Project in chapter three. Among different qualitative research designs, the methods of “case study” will be used to investigate and answer the research question. The site based field work investigated in the study is especially useful for gaining an understanding of

the complexities of urban transformation implementations in Turkey since it reveals perceptions of particular cultures to the problem of eligibility in urban transformation. The detailed explanation of the methodology will be made in the chapter of case study.

The qualitative interrogation methodology consists of two types. First one covers the press statements and in-depth interview with the stakeholders both affected by the project and decision makers. Second type is based on the quantitative analyses of the formal documents. Thanks to the in-depth interviews, some formal documents were investigated. These documents consist of press statements of stakeholders, newspaper reports decisions of council and court decisions. The interviews will be practiced with 4 different interest groups. These are:

1. Uncertified gecekondü possessors;
2. Greater Municipality of Ankara;
3. Competent Authorities of the consultant firm of the project;
4. Title and title deed owners.

Through the interviews, roughly %70 of the uncertified gecekondü possessors refused the interviews because of uncontrolled fear. This indicates that it is much more difficult to apply a research based on interview in a low- income districts of the city compared to apply in middle or high income districts.

Nevermore, the in-depth interviews with the lawyer of the uncertified gecekondü possessors living in the valley have provided sufficient information about the problems, perceptions and expectation and legal combat of them to be an eligible stakeholder. At this point it is necessary to mention here that, although the responses of stakeholders to the questions reflect their specific perceptions rather than facts, these interviews were useful in terms of understating the phenomenon regardless of the perceptions of stakeholders. Furthermore, the interviews revealed how these groups react to the concept of eligibility because of having information only from hearsay about the practices of municipality.

On the other hand, most of the managing the project in Greater Municipality of Ankara refused the interviews except for competent authorities of the consultant firm of the project. Therefore, most of the claims of these particular stakeholders were gathered and combined from the press statements and official documents related to the projects obtained from the municipality.

These interviews are generally informal conversations in which the researcher is listener and participants are explainer in general. After the interviews with the participants, the information's gained through the interviews were separated. Those which are irrelevant to the research sub-questions were eliminated. The relevant ones were broken into small segments which reflect a single or a specific thought about the perception of the concept of eligibility. This provided a mean through which the experiences of participants were understood.

In this context, the relevant information gained through the interviews was classified according to the social and legal position of interviewees. Then, some sub-findings were obtained from them. Finally these sub-findings were re-analyzed to answer main the research question.

1.6. Scope of the Study

The scope of this thesis study covers the evaluation of urban transformation concept in Turkey from 1980s till 2000s. This is the period in which capitalist countries sought deregulation and former socialist countries sought more market participation, and the relationship between government intervention and the market economy was re-examined. According to the dominant explanation of urban transformation within this context, urban transformation is the revitalization and improvement of the socially, physically and economically disabled districts of a certain urban metropolitan area with the collaboration of public and private sectors. First practical applications were from the Western European countries. Particularly lands lost their industrial functions due to the decentralization of industry to the city skirts. First urban transformation projects

(flagship projects) were implemented in different European Countries. For instance, The Symphony Palace and Cultural Center in Birmingham, The Canary Wharf in London Docklands and The Waterstad in Rotterdam are only some of them.

On the other hand, the literature review is limited to the investigation of the eligibility of uncertified gecekondu possessors in urban transformation practices in Turkey. The investigations targeting other groups are excluded.

1.7. The Objectives of the Study

The study aims to gain a new insight into the problem of eligibility in urban transformation practices. It attempts to discover the nature of the claims of uncertified gecekondu possessors to be an eligible stakeholder in urban transformation practices. It is hoped that this study will provide a means through which the reader can judge the effectiveness of urban transformation policies in Turkey concerning the problem of eligibility.

CHAPTER 2

LITERATURE REVIEW

2.1. The Concept of Urban Transformation

Depending on the different urbanization culture and urban problems of the countries, definition and perception of urban transformation concept of countries may change. For instance, in Turkey, commonly accepted definition of urban transformation is the redevelopment in gecekondu districts. However, since there are no gecekondu areas in many European countries; their definition of transformation does not include gecekondu problem as in the case of Turkey. According to Donnison, urban transformation is a solution of urban problems (Donnison, 1993). On the other hand, Roberts defines urban transformation as an integrated vision and action which leads to resolution of urban problems and which seeks to bring about a lasting in the economic, physical, social and environmental condition of an area (Roberts, 2000: 9:36). According to Robert, urban transformation has five main aims:

- It provides a relation between the social problems and physical conditions;
- It meets the need of change in the physical pattern of the city;
- Depending on the quality of life, it introduces an approach through which economic success can be achieved;
- It defines the strategies that suggest the efficient use of urban space and thus prevent the urban sprawl;
- Finally it reshapes the urban policies.

Couch and Fraser urge that urban transformation is a regeneration of a lost urban economical activity or a redevelopment of a damaged social function. It is to create social inclusion where there is social exclusion. It is to re- provide the ecological balance and urban environmental quality where they are lost (Couch & Fraser, 2003: 17).

In conclusion, an objective definition of urban transformation covers all the interventions that lead to transform the city in terms of social, physical and economical relations. This indicates that there is no an absolute definition of urban transformation. On the contrary, its definition changes according to the historical context of urbanization.

2.2. A New Model Instead of Upgraded Implementation Plans to Transform the City: Recent Urban Transformation Experiences in Turkey

As a common characteristic of a developing country, rather than strategic intervention, historical evaluation of urban transformation in Turkish planning system has evolved according to the contextual and practical experiences in Turkey. Unfortunately, due to political abuse; the political decisions considering urban space have brought about the gecekondü development more than half of which are now rental and used as investments instrument rather than as shelter for many people in Turkey since 1960s.

First of all, it should be known that the “gecekondü development” in Turkey has always been a subject of the debates of political parties in Turkey. From the early republic period until today, many politicians have used this problem as a tool for their political objectives. Partial solutions were produced to the gecekondü problem with a pragmatic perspective. “*The preparation and approval of upgraded implementation plans through the Amnesty Law on Settlement Development*” numbered 2981 legislated in 1985 by the Turgut Özal cabinet is a dramatic example of the situation. It can be commented that this law triggered the illegal gecekondü development in all cities in Turkey. As the government supported and comforted the gecekondü, more and more gecekondü have occurred. Particularly in 1980s, some gecekondü properties were given a chance to turn into legal assets so that new buildings were constructed instead of gecekondü. Small informal building makers acquired these properties from the gecekondü residents in exchange with a share from the new building to be constructed. With this strategy, people living in gecekondü were provided with relatively improved life standards. However, this policy could not create the urban unity. To sum up, this big political

failure considering the urbanization policies has created today's unsafe, unqualified and unhealthy urban conditions in our towns.

The urban transformation implementations in Turkey usually deal with the gecekondu problem. Until 1990s, the most important legislative tool for the transformation of cities at the single apartment level has been the preparation and approval of upgraded implementation plans through the Amnesty Law on Settlement Development numbered: 2981. However, the articles in this law consider only the physical dimension of urban transformation. It brings solutions just at the single plot level taking into account the property problems in gecekondu areas. This partial approach makes the transformation of the whole gecekondu district very difficult. While some of the plots were transformed into legal forms others could not. Therefore, the chance of creating a qualified urban environment and social services became very difficult.

Since the early 1980s, a new urban transformation tool has come to the agenda to improve the quality of problematic urban districts. Unlike the solutions proposed in the law numbered 2981, this new model of urban transformation includes some new planning tools such as participation and collaboration of public and private sectors. In literature, 1st and 2nd Phases Dikmen Valley Project is considered to be the first example of participatory planning. In the further sections the history of this project will be evaluated in detail.

Although this new approach introduces new concepts to the urban transformation most of the implemented cases in Turkey are criticized by the experts of urban transformation, non governmental organizations such as chambers of city planners and architects and universities. Among the criticized case implementations, the most popular ones are those realized in Ankara. The most important critics are based on the following arguments:

- Those urban transformations produces partial- pragmatic solutions to the problems they are not managed with a comprehensive approach which includes long term solutions, so they are not sustainable.
- Social dimension of urban transformation is not considered

- They do not consider the public interest; on the contrary, it serves as a way of getting income for the local authorities and different interest groups, Therefore the main objective of urban transformation cannot be achieved.

The implementation process of these new instruments in urban transformation projects have many different aspects compared to the previous cases. Main differences are about the legal bases, participation models. Undoubtedly, some of these differences are necessary and helpful for the elimination of the problems caused by the bureaucratic operations and thus acceleration of the transformation process. On the other hand, some issues are uncertain. For instance, the absence of comprehensive legal instruments for urban transformation implementations leads to conflicts among different parties. In addition to this, the problem of eligibility is open the dispute.

2.3. Legal Basis of Urban Transformation Implementations in Turkey

Taking into account the legal differences, it is observed that this model of urban transformation is not practiced according to Turkish Reconstruction Law numbered 3194. On the contrary, recent urban transformation projects have been implemented where the law of Turkish Reconstruction is insufficient to solve the problems. There are three basic laws which are legal bases of these urban transformation projects in Turkey. These are:

- Law on the Restoration, Preservation, Conservation, Maintaining and Utilization of Worn Out Historical and Cultural Immovable Assets No. 5366
- Law On Municipalities Assets No. 5393
- Law On Greater City Assets No. 5216
- the law of North Ankara Entrance Urban transformation Project Assets No. 5104

The law No 5366 is a framework consists of 9 articles that gives authorization to the Municipalities of initiating urban transformation projects. According to the 3rd article of law:

“The renovation projects and their implementation in regions identified as renovation areas, which have been prepared or commissioned by the special provincial administration and municipality shall be undertaken by the respective special provincial administrations and municipalities or be implemented upon being commissioned to public institutions and organizations or real and legal persons. In these areas, a joint implementation with the Housing Development Administration shall be possible, while the implementation may also be delegated to the Housing Development Administration.”

Secondly, according to the 73rd article of Law on Municipalities Assets No. 5393:

“The municipality may adopt urbanization and development projects in order to reconstruct and restore the ruined parts of the city; to create housing areas, industrial and commercial zones, technology parks and social facilities; to take measures against the earthquake risk or to protect the historical and cultural structure of the city. The areas to be subject to urbanization and development projects shall be announced under the decision of the absolute majority of the entire members of the Municipal Council.” (Municipality Law, Article: 73)

Thirdly, according to the 7th article of law on Greater City:

“Greater Municipalities can act with the powers conferred upon by Articles 69 and 73 (Amended Phrases: 5335 - 21.4.2005 / Article 28/ Article 2) of the Municipal Law.”

Finally, the law of North Ankara Entrance Urban transformation Project is a specific example of partial solutions to the urban problems. However, it is a matter of fact that different parts of cities have different problems and need different solutions both legally and physically. From this perspective this law can be a successful case. On the other hand, since the development plans of cities are prepared through a hierarchical discipline these kinds of partial solutions may include some risks from the comprehensive perspective of urban planning.

In conclusion, it seems that although certain laws have made it possible to initiate urban transformation projects in Turkey, the absence of a sustainable and effective urban transformation law which defines the criteria of eligibility has undoubtedly brought about the violations and disagreements between the stakeholders. Nevermore, the studies

on the preparation of an urban transformation law containing a standard approach applicable to all urban areas have continued for the last two years. The recent “Draft Planning and Development Bill” prepared in June 2008. The final form of urban the bill has not yet been enacted. Although there are many critical issues to be discussed in this bill, the main focus of this study is about the criteria of eligibility defined in this bill. The 2nd paragraph of the 6th article in the Draft Planning and Development Bill reveals that the uncertified gecekondü possessors who prove that they built their gecekondü before 12th of November 2004 will be determined as right holders. The main focus of this master thesis is to discuss this article from different point of views.

2.4. The Problem of Eligibility of Local People in Urban Transformation

With the emergence of urban transformation concept in 1980s, another new term has also started to be discussed in Turkey. The issue of eligibility in urban transformation project became a critical problem. However, the absence of a sustainable and effective urban transformation law which defines the criteria of eligibility has undoubtedly brought about the violations and disagreements between the stakeholders.

At this point it is necessary to clarify the meaning of the “eligibility”. Taking urban transformation account, eligibility means to have the legal adequateness to claim a right on the new real estates constructed through the related urban transformation project.

2.5. The Eligibility of Uncertified Gecekondü Possessors in Urban Transformation

The increase in the popularity of urban transformation raised the protest and critics against it as well. There have been many groups objecting the urban transformation policies from different points of views; but the most notable one

comes from the uncertified gecekondü possessors. In this context, this section aims to clarify the problem of eligibility of uncertified gecekondü possessors in urban transformation. Because, it is the organized protests of these uncertified gecekondü possessors in the media that lead the non governmental organizations (chambers of professions, universities) to criticize the urban transformation practices in Turkey.

As a method, first fo all, the claims which are in favor of uncertified gecekondü possessors to be an eligible stakeholder will be debated. After that the counter arguments against their eligibility will be focused.

2.5.1. Claims in Favor of Uncertified Gecekondü Possessors to be an Eligible Stakeholder in Urban Transformation

The demands of uncertified gecekondü possessors to be an eligible stakeholder in urban transformation have some justifiable bases. These claims can be combined around three main concepts. These are:

1. labor,
2. possession
3. Right to adequate housing.

This section will discuss whether they can be accepted as the criteria to be eligible stakeholder. Accordingly, first, the individual **labor** to construct the gecekondü becomes the rational basis of possession, than this **possession** becomes the rational basis of right to adequate housing; and finally **right to adequate housing** becomes the rational basis of to be an eligible stakeholder in urban transformation practices. Therefore, in this section, all these claims will be attempted to clarify whether they can be rational basis to be an eligible stakeholder for the uncertified gecekondü possessors in urban transformation or not.

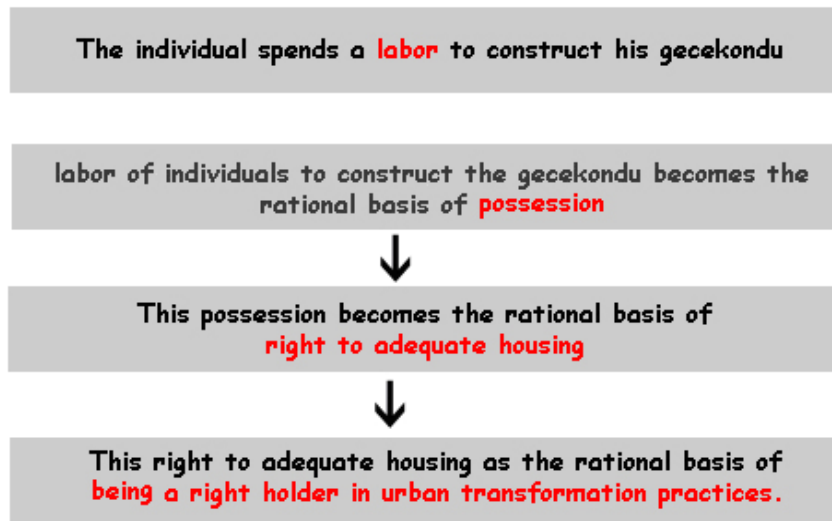


Figure 1 The Flow Chart of Claims of Uncertified Gecekondu Possessors to be An Eligible Stakeholder of Urban Transformation

2.5.1.1. Labor as the Rational Basis of Eligibility of Uncertified gecekondu possessors in Urban Transformation

This section will try to investigate whether the labor of uncertified gecekondu possessors to build their dwellings can be a rational basis to be an eligible stakeholder in urban transformation practices or not.

According to Locke, although the resources on the earth are for everyone one can claim to right to a property if he obtained it with his own effort because he has a unquestionable right to his own effort (Locke, 1988: 42).In other words, “every man has private property in the production of his own labor. Similar to Locke, Nozick also argues that some certain historical and social conditions produce a right to property (Doğan, 2007:84).Contrary to the central distribution, the equal distribution of justice make it necessary to have a historical knowledge about the historical conditions of goods that a man still possesses (Nozick, 1974:52). When the effort is mixed to the land, not only he can claim to right for his effort but also for that resource (Aysel, 2007:86).

In this context, at first appearance, the theory of labor developed by Locke seems to support to claims of uncertified gecekondu possessors to be an eligible stakeholder in urban transformation.

2.5.1.2. Possession as the Rational Basis of Eligibility of Uncertified Gecekondu Possessors in Urban Transformation

In addition to labor, the claim of uncertified gecekondu possessors to be eligible stakeholder also arises from “possession” of their dwellings in urban transformation practices. Therefore, it is necessary to investigate whether a possession can be a rational basis for housing right or not.

Turkey, unlike the Ottoman Empire that accepted the possession as the basis of property, adopted the absolute property ownership which is the basis of Roman law system. According to the 683rd article civic law of Turkey, while absolute ownership is regarded as the basis of legal property rights, the possession is defined as the actual domination on the property in the 973rd article of the law. Many decisions of the Council of State in Turkey indicate that ownership is a more valuable and worth of protection compared to possession. (Anayasa Mahkemesi Kararları Dergisi, E.1994/77: 176). These decisions indicate that the possession is not regarded as a right to property but a physical domination. What is important is that possession is necessary to enhance the social order and it does not require owning the property. On the contrary, ownership is complete control on physical objects (Günay, 1999:35). Buckland and McNair focus on the legal aspects of ownership. Whereas property is roughly legal ownership; possession is roughly the actual enjoyment (Buckland and McNair, 1952:62). Similarly, in Encyclopedia Americana, property, in its broadest sense, is anything that may be possessed or become the subject of ownership. In its legal context, property emphasis the rights of “ownership” (Encyclopedia Americana, 1978). To illustrate, the dwellers of gecekondu do not own the house and land but posses them. Günay argues that the efforts in the last decade to legalize unauthorized

buildings (gecekondu) in Turkey aim at converting possession into ownership (Günay, 1999:35).

Possession should not be confused with a temporary arrest on a good. There must be a continuous relation between the possessor and possessed good as in the case of gecekondu. Furthermore, possession must be witnessed by the third parties. There must be an edict to possess a good. A man cannot be the possessors of a drug put on his pocket unknowingly. Someone who claims to possess must gain the good through his own effort. For instance a man who has fished is the real possessor of fishes. However, this judgment cannot be generalized because, for instance, a man who found prehistoric Greek monument which is highly valuable for human history must consign it to the state. In other words, possession does not require owning the property legally.

Conclusion and Sub findings

In conclusion, The Constitutional Law of Turkish Republic does not regard the possession as a right to property but a physical domination. In such condition, the claims of uncertified gecekondu possessors based on possession to be an eligible stakeholder in urban transformation project become an unjustifiable claim because it was valid in the period of Ottoman Empire. However, this may lead to many violations of uncertified gecekondu possessors in further urban transformation practices especially in Ankara where the possession is a strong and organized institution.

In spite of this, the International laws are sometimes in contradiction with the national laws. For instance, a decision of The European Court of Human Rights about a case is remarkable in terms of understanding the approach of court to the meaning of the concepts of “property” and “property rights”. The court finds the possession of an uncertified gecekondu possessor as a right to property.

2.5.1.3. Who has to be an eligible stakeholder in the Forthcoming Urban Transformation Law in Turkey? The Decision of European Court of Human Rights: Öner Yıldız Case

The case originated in an application against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) by two Turkish nationals, Mr Ahmet Nuri Çınar and Mr Maşallah Öner Yıldız, on 18 January 1999. Relying on Articles 2, 8 and 13 of the Convention and on Article 1 of Protocol No. 1, the applicants submitted that the national authorities were responsible for the deaths of their close relatives and for the demolition of their property as a result of a methane explosion on 28 April 1993 at the municipal rubbish tip in Ümraniye, Istanbul. They further complained that the administrative proceedings conducted in their case had not complied with the requirements of fairness and promptness set forth in Article 6 -1 of the Convention.

What is remarkable is the approach of court to the meaning of the concepts of “property” and “property rights”. The 124th paragraphs of the court reports give some clues about this approach. According to this paragraph, “the Court reiterates that the concept of “possessions” has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: the issue that needs to be examined is whether the circumstances of the case, considered as a whole, may be regarded as having conferred on the applicant title to a substantive interest protected by that provision. Accordingly, as well as physical goods, certain rights and interests constituting assets may also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision” (paragraph: 124)

The Chamber considered the fact that the applicant had occupied land belonging to the Treasury for approximately five years could not confer on him a right that could be regarded as a “possession”. However, it considered that the applicant had been the owner of the structure and fixtures and fittings of the dwelling he had built and of all the household and personal effects which might have been in it, notwithstanding the fact that the building had been erected in breach of the law.

The Court considers that the applicant's proprietary interest in his dwelling was of a sufficient nature and sufficiently recognized to constitute a substantive interest and hence a "possession" within the meaning of the rule laid down in the first sentence of Article 1 of Protocol No. 1, which provision is therefore applicable to this aspect of the complaint (Paragraph: 129).

The court finds possession as a right to property in this case. This approach of the court is critical since it may become a precedent of other gecekondü possessors in the future urban transformation projects. This possibility also indicates that the meaning of the concept of property rights in the forthcoming urban transformation law has to be dealt with a broader sense. However, on the other hand, the decision of the court may lead to a paradox. For instance, this decision may become a precedent for an application claiming that like gecekondü, the unauthorized villas or luxury constructions must be handled according to the first sentence of Article 1.

2.5.1.4. The Claims of "Right to Adequate Housing" of Uncertified Gecekondü Possessors as the Rational Basis of Eligibility in Urban Transformation

There are many claims but above all the right to adequate housing is the most debated argument of uncertified gecekondü possessors to be an eligible stakeholder in urban transformation. This section will try to clarify whether this claim is acceptable or not. Before analyzing the claims, it is necessary to develop the knowledge on the concept of right to adequate housing.

2.5.1.4.1. The Concept of Right of Adequate Housing

Housing is an indispensable part of ensuring human dignity. First of all, it provides the physical needs for the security and protection from the bad weather conditions; secondly, it fulfills the psychological needs for privacy and personal space of people.

Finally, a house is a place where the important social relationships are forged and nurtured. The Committee on Economic, Social and Cultural Rights (CESCR), which is a body of independent experts that monitors implementation of the International Covenant by its States parties, underlines a series of factors that must be satisfied to consider a shelter as adequate or not. These factors are defined in the section of the right to adequate housing (CESCR, paragraph 8).

Legal security of tenure: Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups

Availability of services, materials, facilities and infrastructure: An adequate house must contain certain facilities essential for health, security, comfort and nutrition.

Affordability: Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials.

Habitability: Adequate housing must be habitable, in terms of providing the inhabitants

with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing ^{5/} prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

Accessibility: Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

Location: Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centers and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should neither be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

Cultural adequacy: The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in

the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.

2.5.1.4.2. Philosophical Basis of Right to Adequate Housing

Some scientists stress on the difference between positive and negative rights. The classification of rights as “*positive and negative*” is based on the relation of rights with the duties. According to the general agreement, if a thing upon which a right is claimed loads a duty to the other side then this is called positive right. “*Positive living right*” would require helping to a man who otherwise will die. On the contrary, the negative rights do not load a duty to the other side Right of speech, property rights and freedom of faith are categorized as Negative rights. Social security rights like education, health are defined as positive rights. According to libertarians, positive rights exist only as long as a contract is signed no them. On the contrary, negative rights do not need such a contract.

As far as the *housing rights* are concerned, these findings indicate that housing right is classified as the positive right and it loads some duties to the state to fulfill of this right such as improvement of housing conditions, creation of equity of opportunity in the process of housing supply. In other words, the duty of the state is to increase the supply of locally affordable, safe housing. However, there are some criticisms to the distinction of rights as positive or negative. Jan Narveson, a professor of philosophy, also criticizes the distinction between positive and negative rights and finds it meaningless. He clarifies his argument with the example of right to shelter. While some define right to shelter as a negative right, some can define it as positive right (Narveson, 2008). Whereas the defenders of negative rights may claim that people have a right to shelter but no one has duty to enforce that right; the defenders of positive right may claim just the opposite (Narveson: 2008). In addition, he says that the questions “what one has a right to do” and “who will enforce it (if anybody will)” are separate issues According to him, if a right is negative there should not be an enforcement to do it. He refuses the approach that suggests the enforcement of a duty for a negative right.

Finally, Henry refuses this distinction and affirms that since the protection of negative rights sometimes requires positive actions in reality they cannot be treated as negative at all and therefore may need a contract (Henry, 1996: 36).

On the other hand, in philosophy of law, rights are classified as *basic and non – basic rights* according to their degree of priority. According to Henry, basic rights are those that cannot be sacrificed in favor of non- basic rights (Henry, 1996:15). It may be wrong to perceive the relation of “Basic and Non – basic rights” in a hierarchical way. To illustrate, one may have the basic rights but cannot the non basic ones. The enjoyment of the basic right does not imply the enjoyment of non basic rights. But the opposite is true: the enjoyment of all non- basic rights is strictly depended on the existence of basic rights

According to this explanation, *Housing Rights* are classified as basic rights. Right to have a minimal economic security” such as adequate housing, clothing, food, minimal preventive public health care, and a livable unpolluted environment cannot be sacrificed in favor of any non- basic rights. Henry stresses on the necessities of guaranteeing those basic rights through constitutional contracts and arrangements that define the duties. He argues that guaranteeing basic rights is a pre-condition of enjoyment of all other non basic rights. Unless the basic rights are legally, guaranteed, the enjoyment of any other right cannot be realized in real world (Henry, 1996:16).

2.5.1.4.3. Legal Basis of Right to Adequate Housing

In the previous title, the vitality of housing was mentioned and found that unless legally guaranteed the enjoyment of right to adequate housing cannot be realized in real world (Henry, 1996:16). This part will stress on the legal dimension of housing. Right to adequate housing is recognized in different covenants and conventions but above all the Universal Declaration of Human Rights is maybe the most important one. The 12th and 25th paragraphs of the Declaration reveal a brief explanation of housing right:

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks

Article 25: Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Second, International Covenant on Economic Social and Cultural Rights internationally declares the universality of housing rights as well. According to the 11th article of the Covenant:

Article 11: "The States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself[or herself] and his [or her] family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

The more than 140 Governments, included Turkey, which have voluntarily bound themselves to promote and protect the rights contained in the covenant are required under articles 16 and 17 to submit reports "on the measures which they have adopted and the progress made in achieving the observance of the rights recognized" in the Covenant (UNDP, Human development report, 2000:35-36). UN states that who complying with the norms established under the Covenant are obligated to give reports about the situation in their countries within one year of ratifying the treaty, and thereafter once every five years (UNDP, Human development report, 2000: 35). States are required to answer 26 specific questions on housing rights under a series of guidelines developed by the Committee on Economic, Social and Cultural Rights to assist. Some of the questions are listed below.

- The number of persons currently classified as living in 'illegal' settlements or housing;

- The number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction;
- The number of persons whose housing expenses are above any government-set limit of affordability, based upon ability to pay or as a ratio of income.
- The number of persons on waiting lists for obtaining accommodation, the average length of waiting time and measures taken to decrease such lists as well as to assist those on such lists in finding temporary housing.
- The number of persons in different types of housing tenure by social or public housing; private rental sector, owner-occupiers: 'illegal' sector; and others.

Third, United Nations -HABITAT organization develops a lot of global programmes with countries from all over the world about human settlements. Housing right programme is one of them. The programme attempts to assist national states and other stakeholders to ensure the full awareness of the right to adequate housing.

"We reaffirm our commitment to the full and progressive realization of the right to adequate housing, as provided for in international instruments." The Istanbul Declaration (para.8) and the Habitat Agenda (para. 39)

Finally, according to the studies of the United Nations, close to half of the world countries have indeed enshrined the right to adequate housing in their respective constitutions (UNDP Human development report 2000 Housing Rights, 2000:6). Following are example of articles from Some Nation's Constitutions which prove that they recognize the housing rights:

- Nicaraguans have the right to decent, comfortable and safe housing that guarantees familial privacy. The State shall promote the fulfillment of this right.(art. 64, Nicaragua)
- Everyone shall have the right for himself and his family to a dwelling of adequate size satisfying standards of hygiene and comfort and preserving personal and family privacy, (art. 65(1), Portugal)
- Each person has the right to housing. No one may be arbitrarily deprived of housing. (Art. 40(1), Russia Federation)

- The state shall take measures to meet the need of housing within the framework of a plan which takes into account the characteristics of cities and environmental conditions and supports community housing projects. Constitution of Turkish Republic (art.57: Right to Housing)

Table 1 Countries with the Constitution containing reference to the Housing Rights, Review of International and National Legal Instruments, Reports No: 1, UN 2002 P: 37

Afghanistan	Equatorial Guinea	Paraguay
Argentina	Estonia	Peru
Armenia	Ethiopia	Philippines
Austria	Fiji	Poland
Bahrain	Finland	Portugal
Bangladesh	Germany	Republic of Korea
Belgium	Guatemala	Russian Federation
Bolivia	Guyana	Saint Lucia
Bosnia and Herzegovina	Haiti	Sao Tome and Principe
Brazil	Honduras	Seychelles
Burkina Faso	Hungary	Slovakia
Cambodia	Iran (Islamic Republic of)	Slovenia
China	Jordan	South Africa
Colombia	Kyrgyzstan	Spain
Costa Rica	Mali	Sri Lanka
Cuba	Mexico	Suriname
Democratic People's Republic of Korea	Namibia	Sweden
Democratic Republic of the Congo	Nepal	Switzerland
Dominica	Netherlands	Turkey
Dominican Republic	Nicaragua	Ukraine
Ecuador	Nigeria	Uruguay
El Salvador	Pakistan	Venezuela
	Panama	Viet Nam
	Papua New Guinea	

The adoption of these national laws of one distinction or another – that have a bearing upon the satisfaction of the core elements of housing rights – are treated under international law as a key element of the progressive realisation dimensions of the housing rights. Without exception, every government has explicitly recognized to one degree or another human rights dimensions of adequate housing. However, in spite of the declaration of housing rights in international and national laws, housing supply has always been a crisis in the nations living a transition economy like Turkey. The statistics evidently indicate that the declarations do not guarantee the protection of housing rights in practice. According to the statistics conducted by the United Nations Human Settlement Program, in the third millennium, the number of people living in inadequate

housing conditions around the world is about 1.1 billion. An estimated 100 million of them are homeless (UN, A major commitment of the Habitat Agenda, 2001). Available data suggest that increasing proportions are women and children. Most of the tenants do not have housing security and live in informal houses particularly in developing countries. But the national governments claim that they lack of capacity and resources to eliminate the unsatisfied housing conditions and implement the necessary housing programs. To sum up, the right to adequate housing creates a dilemma regarding the housing provision of states.

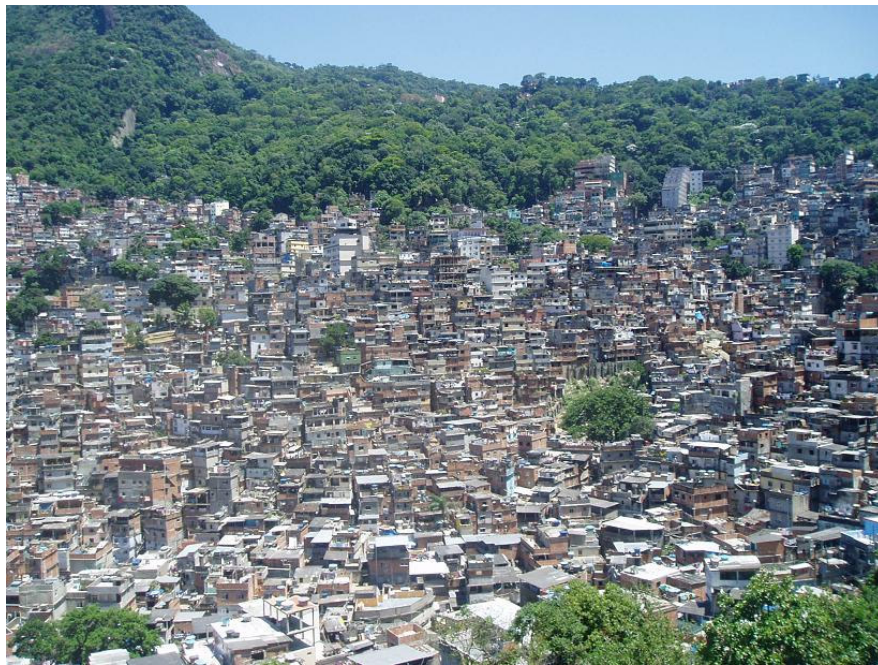


Figure 2 Rio de Janeiro: Favela Rocinha is the largest urban slum in South America



Figure 3 Inadequate housing in Zimbabwe



Figure 4 Housing in informal settlements, Kibera, Nairobi Kenya

The studies conducted by the United Nations Human Settlement Program indicate another dramatic fact about the need for adequate housing around the world. According to the statistics, the annual need for housing in urban areas of developing countries alone is estimated at around 35 million units during 2000-2010 (UN, A major commitment of the Habitat Agenda, 2001). This means that it is necessary to built nearly 95.000 dwelling unit per day in order to improve housing conditions to acceptable levels in developing countries (UN, A major commitment of the Habitat Agenda: 2001).



Figure 5 Informal housing in Dikmen Valley, Ankara,

In conclusion, the scale of housing deprivation and housing-related human rights violations throughout all corners of the world clearly raise doubts as to the sufficiency or effectiveness of legislative strategies towards ensuring the enjoyment of the right to adequate housing by all sectors in any society. Consequently, it is sometimes claimed that policy-based or socially strategic approaches to the global housing crisis can provide for more effective solutions. This implies that the pursuit of appropriate legal arrangements to secure the full enjoyment of housing rights will be invariably futile. In the best case scenario, it is argued, it will at best protect those with adequate housing, but it will do desperately little for those without (UN, Housing right Legislation: 34)

2.5.1.4.4. Are States Obligated to Build Homes for Everyone?

The articles, programmes and declarations about housing rights do not mean that the state is responsible for meeting the housing need of each member. For instance, the final report of the Special Rapporteur of the Sub-Commission of UN in 1995 provides guidance into how the right to adequate housing should be approached by firmly stating that this right should not be taken to imply:

- That the State is required to build housing for the entire population;
- That housing is to be provided free of charge by the State to all who request it;
- That the State must necessarily fulfill all aspects of this right immediately upon assuming duties to do so;
- That the State should exclusively entrust either itself or the unregulated market to ensuring this right to all; or
- That this right will manifest itself in precisely the same manner in all circumstances and locations (UN, Housing right legislation, 2002: 17).

However, the state is responsible for the creation of equity of opportunity in the process of housing supply. In other words, the duty of the state is to increase the supply of locally affordable, safe housing, including through encouraging and promoting affordable home ownership and increasing the supply of affordable rental, communal, cooperative and other housing through partnerships among public, private and community initiatives. At the same time state is responsible for undertaking the all measures for the legislative recognition of housing right (UN, Housing right legislation, 2002: 17)

Conclusion and Sub findings

The statistics conducted by UN simply indicate that national and international declarations do not guarantee the protection of housing rights as far as a specific is concerned. Since the principles of applicability of protection of housing rights in

practice are not clearly defined in these national laws, this means that the administration is obligated to find house to every individual in that specific project.

There may be several reasons of this fact but above all, the difference between a moral right and a legal right explains the conflict briefly. Legal rights depend upon the existence of laws enacted by a government. Legal rights are, roughly, what the law says they are, at least insofar as the law is enforced. They gain their force mainly through legislation or decree by a legally authorized authority. Moral rights do not depend upon governments. They are defended by appeal to moral principles or they are themselves moral principles. Moral rights may seem to be eternal and unchanging, while legal rights obviously change when governments alter laws. In this context, the universal human rights are moral rights. Although some of them cannot be adopted in reality some can (Feinberg, 2002).

Al in all, it can be concluded that a demand for a right and a legal right are different things. Property rights are not rights on which citizen's claim like right to adequate housing but the rights which are recognized legally to them. They are the rights recognized by an authority, i.e. the state. On the contrary, the right to adequate housing declared in universal human rights has moral character. Because of all these reasons, although the claim of right to adequate housing of uncertified gecekondü possessors is recognized in different covenants and conventions and laws, it cannot be a rational basis to be an eligible stakeholder in urban transformation practices.

2.5.2. Claims Against:

Up to now, the rational claims in favor of uncertified gecekondü possessors (labor, right to adequate housing, and possession) to be an eligible stakeholder in urban transformation were discussed. These claims seem very reasonable at first. However, when analyzing the counter arguments in a broader sense or perspective, these rational bases become insufficient to support. In this title, the

eligibility of uncertified gecekondu possessors in urban transformation will be debated with reference to three different perspectives. These are:

1. Changing meaning of gecekondu fact.
2. Critics of labor theory
3. Changing meaning of a right to property

2.5.2.1. Changing Meaning of Gecekondu

In Turkey, through the literature written on the fact of gecekondu, many aspects of it have been stressed. While some dealt with its social dimension, others focused on its property relations. On the other hand, some regarded it as a design problem. Among them the studies of Prof. Dr Tansı Şenyapılı on gecekondu are very notable because unlike other, she attempted to develop a theoretical framework and it helps to understand the changing meaning of gecekondu fact. In her study, she classified the development of gecekondu into 4 main time periods. First one is the years between 1945 and 1950. This is the period when mass migrations started to the big cities from villages. Those immigrants had built their gecekondu on public lands to survive in the city and worked in marginal jobs. The second period covers 1950 and 1960. This period the gecekondu family gained non marginal economical statues. In other word, they changed their jobs into marginal jobs. Political negotiating power of gecekondu families had dramatically increased in the city during this period. The third period is between 1960 and 1970 during when the consumer functions of gecekondu family developed. Thanks to the increasing political power of gecekondu possessors who invaded the publicly owned lands, many infrastructural investments were made in gecekondu districts. The final period covers 1970 and 1980s. This is a critical period because in 1985, the preparation and approval of upgraded implementation plans through the Amnesty Law on Settlement Development” numbered 2981 legislated by the Turgut Özal cabinet. This law meant to legitimize the gecekondu. With this law, the gecekondu possessors have started to fight to obtain a title deed

for their illegal dwellings. Small informal building makers acquired these properties from the gecekondu residents in exchange with a share from the new building to be constructed. Many gecekondu possessors derived huge amounts of revenues because of this legitimization. Therefore, gecekondu become a trade sector rather than a shelter. The studies of press achieve of Önder Şenyapılı reveals the perception of changing meaning of gecekondu from different point of citizens, especially in Istanbul.

The life has changed...

When I look at Avcılar, I can not see any presumption of innocence. What happened, who sold and who bought, to how much Money...

Today, at first appearance, my feeling about the gecekondu is not a “presumption of innocence”

On the contrary, I have feelings, once I felt for gecekondu owners, for municipal police. They try to defend themselves from the attacks of gecekondu possessors (N, Ö, Benim gecekonducularım Şirindi... Sabah, April 2005)

In conclusion, this short explanation of the changing meaning of gecekondu fact makes it necessary to review the rational claims of uncertified gecekondu possessors in a broader sense to determine the strategies regarding eligibility of them in urban transformation practices.

2.5.2.2. Critics of Labor Theory

Locke claims that every man has private property in the produce of his own labor. This theory has been criticized from different perspectives but above all the critics of Jeremy Waldron is remarkable concerning eligibility of uncertified gecekondu possessors in urban transformation practices in Turkey. The main objection of Waldron to the theory is that when the effort is added or transformed to the matter (concrete property) for the first time, it is lost as the years went by (Jeremy, 1983:40). He declares that it is impossible for the people to accept the principle of property which bases on labor, if this will cause their poverty.

2.5.2.3. Changing Meaning of Right to Property

Besides Waldron, some authors stress on the changing meaning of a right to property in the last decade to criticize the theory of labor as the basis of private property and to indicate that the theory has lost its function. This fact is especially important to understand the expectations of gecekondü possessors from urban transformation projects. According to Günay, private property has gained a total private absolute character. In the 21st century land became a commodity and it became to be perceived as a right to its revenue.

Production of a private space on privately owned land is not as important as the revenue gained from that property. This means that private property is a private right to its revenue emerging from ownership. Günay defines this changing perception of private property as the “Consolidation of private space” (Günay, 1999).

In addition to Günay, Jacobs gives some clues about how private property is perceived in the society, particularly in American society in the 21st century and about the future of private property:

- In the first decade of 21st century the nation state itself will become even more irrelevant. As this happens, the -centrality land- based private property as an important social institution will decline
- Private property issues will rise in importance, but they will be related to the intellectual property, not land-based private property.
- Social conflict over private property will increase
- A shift from a focus on land for its value (its value to us as a directly productive resource) to land for its exchange value (our purchase of property specifically focused on how it will appreciate in value as an economic investment). To put differently, private property became a marketable commodity (Jacobs, 2004:139-174).



Figure 6 Houston: Private property becomes a commodity on which the owner gets revenue

Sub findings from the Critics

In conclusion, based on the findings from these critics, determining uncertified gecekondü possessors as eligible stakeholder in urban transformation seems to cause many unfair revenues of illegal groups. The case study will indicate that the main concern of gecekondü possessors is to own a real estate from the project in any way.

CHAPTER 3

CASE STUDY

THE PROBLEM OF ELIGIBILITY OF UNCERTIFIED GECEKONDU POSSESSORS IN THE CASE OF ANKARA DIKMEN VALLEY 4th AND 5th PHASES URBAN TRANSFORMATION AND DEVELOPMENT PROJECT

3.1. History of First Gecekondu Development in the Valley

Ankara is one of the cities where the topography has always affected the physical development. Ankara consists of Çubuk, Dikmen, İmrahor and Hatip çayı Valleys. These valleys start from the outskirts of the city and end at the city center. They create both opportunities and threats for the development of the city. For instance, Ankara faces air pollution problems frequently since it was founded in a cavity. According to Tekeli, if the valleys are used as the green areas, they will contribute to the solution of air pollution of the city via creating wind circulations. At the same time through this policy the inner parts of the city which lack of green areas will be forested.

Dikmen Valley covers about a land of 250 hectares. Through the urbanization process of the valley which was constituted by the Dikmen stream, there have always been infrastructural problems. Among these problems, the most notable one is the environmental pollution caused by the drainage wastes. In addition, the geological problems also lead to the land slips. The southern part of the valley usually faces flood threat. The implementation of the Dikmen Valley projects was developed not only to eliminate the inadequate housing conditions of the inhabitants by moving them to the suitable sites but also to prevent the natural disasters caused by the geomorphology of the valley.

The valley, where illegal housing has been present since 1950s, is one of the most central districts of Ankara Formation of the gecekondu started from an 800 meter

distance from the National Assembly Palace, spread around the valley up through the Or-An district, a 5 kilometer zone.



Figure 7 Inadequate living conditions in the Dikmen Valley

3.2. Earlier Planning Decisions for Dikmen Valley

The greenery policy of Dikmen Valley has lasted from early republic period till 2000s. First planning decision for the valley was given by the master plan of Jansen. In this plan valley was planned as a green corridor of the city. No construction was permitted within the valley. This planning decision was also valid in the next city plans. Both in the master plan of Yücel and Uybadin prepared in 1957 and in Ankara Master Plan of 1990 which was prepared in the 1970s, Dikmen Valley Green Area Project is decided for the valley (Mühürdaroglu, 2005:101). In the Nazım plan of Ankara prepared in 1982 the surrounding of the city has been plan as green belt. The valleys were planned as the

recreational areas. Similarly, “Botanik Park” and “Seymenler Park” Dikmen Valley were also planned as a recreational corridor of Ankara (Mühürdaroglu, 2005: 102). However, this plan did not propose solutions for the inadequate housing conditions of inhabitants. In addition, valley was planned as green corridor in the 2015 Structural Plan of Ankara which was prepared in 1985. However, with the approval of the ‘Green Area Project’ in 1986, the protests of the gecekondu residents living in the valley began. The planning decisions were not realistic because they also did not propose solutions for the housing problems of gecekondu residents. Finally the project was cancelled since the court recognized the claim of the residents (Devecigil, 2003:160). In conclusion, many plans had been prepared for the valley; however, no one was realistic and implemented. Both the population of the city and unauthorized housing supply were increasing in the late 1980s the period during which the mayor of Greater Municipality of Ankara was Mehmet Altınoy.

3.3. Dikmen Valley 1st and 2nd Phases Urban Transformation and Development Project

First realistic rehabilitation attempts for the Dikmen Valley had taken a start in late 1980s with the election of Murat Karayalçın as the mayor of Greater Municipality of Ankara. In 1986, as the mayor of Ankara Metropolitan Municipality, Murat Karayalçın has taken an initial step in the first urban transformation project of Turkey focusing on the socio-economical levels and expectations of the residents living in the valley. The Dikmen Valley Projects had been planned as five stages (Dikmen Valley Housing and Environmental Development Project Feasibility Report, 1991). Two stages have been realized until 2008 and the third stage had been constructed. In the last stage of the project, certain advancements are taken and negotiations with the occupiers are still continuing.

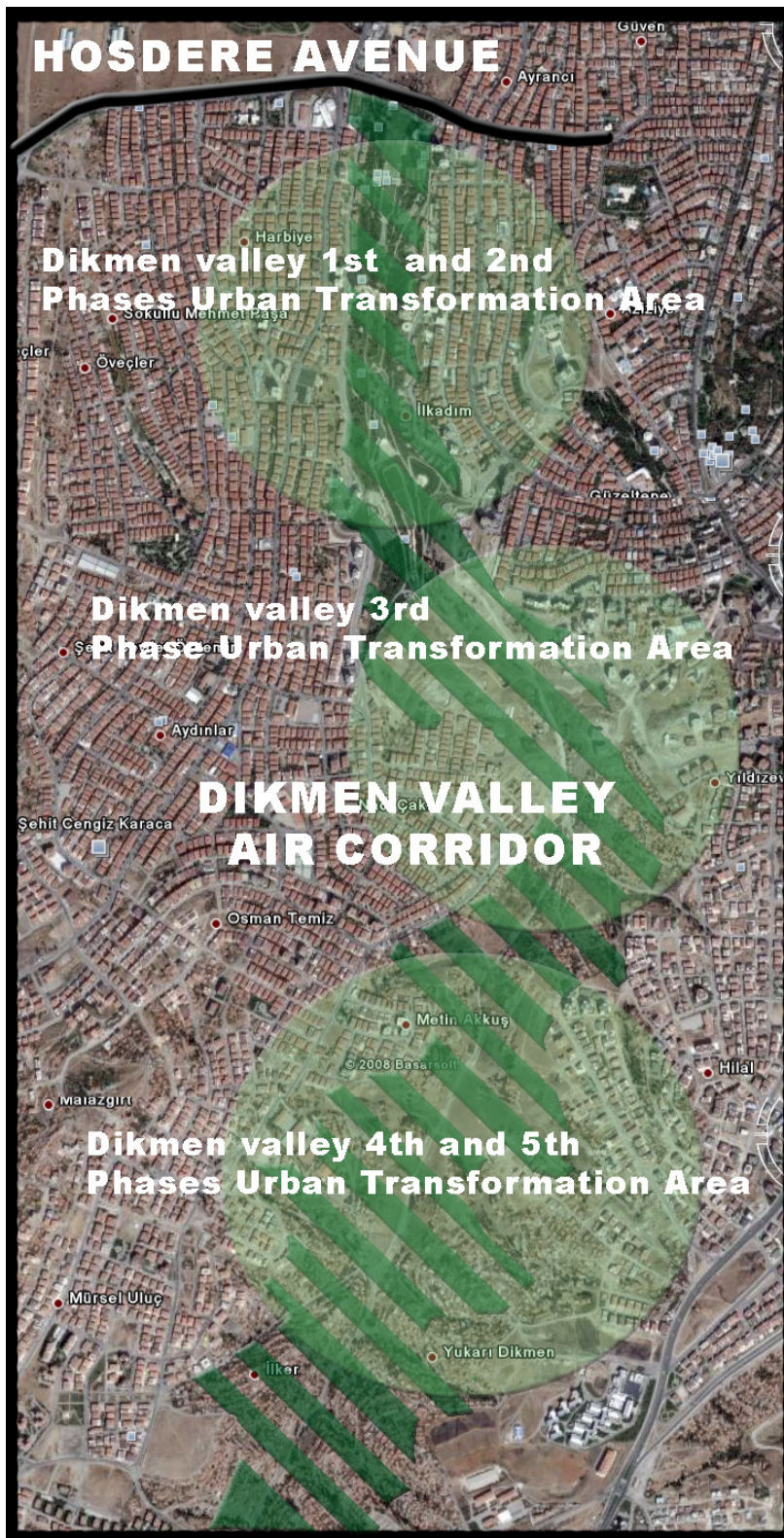


Figure 8 Dikmen Valley urban transformation zones

In order to manage the project cooperation between the Chairmanship of the Development Department of the Metropolitan Municipality and a municipal company called Metropol İmar Inc. Co. was founded (Mühürdaroglu, 2005:102). Among the objectives of the company there were various urban functions in the valley such as housing, commerce and recreation. According to the report of the project, the main aim was.

“To enable the disrupted ecological balance to be set up again”, to create a cultural and recreational corridor to serve the whole city, and to solve the housing problem of present squatter owner inhabitants of the valley through a participatory rehabilitation model” (Mühürdaroglu, 2005: 102)

3.3.1 Eligibility of Gecekondu Possessors in the Dikmen Valley the 1st and 2nd Phases Urban Transformation Project

It is a fact that compared to the further urban transformation implementations in Ankara “Dikmen Valley 1st and 2nd Phases Urban Transformation Projects” were realized with a more participatory way. For this particular reason, although the most of the people living in the valley were against the project at the beginning later they have profoundly wanted to be a part of the project and voluntarily participated the project, turn down their own gecekondu and acquired the dwelling units reserved for them with the completion of the site. The participatory meetings have been effective on the change of the attitude of residents. Besides this, the social democrat values of the Municipality may have been a factor for the embracement of the project by the residents. This urban transformation project was also implemented in collaboration with the non governmental organizations and universities and Çankaya Municipality. Murat Karayalçın who was the mayor of Ankara Greater Municipality has assigned specialists to the key positions like master planning units of the municipality and in Metropol İmar Inc. Co. many academics contributed to the project in different aspect. The 1/5000- scaled master plans and the 1/1000-scaled application development plans were prepared in the collaboration with the Çankaya Municipality.

However, it was not discussed enough why this project had such a success. This study claims that this was because of the absence of uncertified gecekondü possessors in the valley. Almost all the gecekondü were constructed in 1970s and have title deed certificate. All the debates regarding eligibility were about the title deed owners and legal land owners. According to the reports of Greater Municipality, %45.5 of the valley consists of private property and the rest belongs to public authorities (Dikmen Valley Housing and Environmental Development Project Feasibility Report, 1991). Since there was no uncertified gecekondü possessor in the valley no violation like the right to adequate housing emerged as in the case of later phases. It is mainly this absence of uncertified gecekondü possessors that caused the emergence of a public sense about the project's success in terms of participation. On the contrary of debates of eligibility of uncertified gecekondü possessors in the later phases, the discussions were just about the eligibility of land owners. At the beginning of the project the land owners were not allowed to be an eligible stakeholder. The reason was to minimize the number of eligible stakeholders. If the land owners were allowed to be an eligible stakeholder, the number of houses to be produced in the valley would increase. This would prevent the transformation of valley in the way of protecting its natural character (Devecigil, 2003). Against such a policy, about %80 of the legal land owners brought suit to increase the prices of the land against the Greater Municipality (Devecigil, 2003). Therefore Municipality was obligated to pay high expropriation prices. This decreased the feasibility of the project. However, the opinions of some experts about the project are very interesting, For instance, Ömer Kiral argues that:

“Determining the land owners as eligible stakeholders means to make a trade... We ignored this speculative dimension of the project.”
(Devecigil: 2003).

On the other, hand the interviews with the technical groups, reveal another fact:

“Determining the uncertified gecekondü possessors as eligible stakeholders means to punish the legal property owners”
(Devecigil: 2003).

3.4. Dikmen Valley 4th and 5th Phases Urban Transformation and Development Project

Dikmen Valley 4th and 5th Phases Urban Transformation and Development Project, which was declared as urban transformation area by the Greater Municipality of Ankara in 2006, is the final step of Dikmen Valley Projects. The transformation area is about 176 ha in size and there are approximately 4000 gecekondur in the district (<http://www.ankara.bel.tr>). As the city expanded Dikmen Valley has become one of the central zones where the land prices increased dramatically.



Figure 9 Dikmen Valley 4th and 5th Phases Urban Transformation and Development Project area



Figure 10 Dikmen Valley 4th and 5th Phases Urban Transformation and Development Project area aerial photo

According to report of this project, it was prepared with a new planning perspective. That is to say, it formulates the finance and organization models which are vital for the realization of plan decisions were reformulated with innovative methods (Dikmen Vadisi 4. ve 5. etap Kentsel Dönüşüm ve Gelişim Alanı Kentsel Tasarım Projesi Ön Projesi Açıklama Raporu, 2006: 1). All eligible stakeholders are evaluated in an egalitarian and fair way in this project. Main objectives of the project are:

- To form a green corridor which reaches to the city center and protects the ecological values of the city;
- To create recreational, cultural, commercial and social centers which will serve to citizens;

- With “participatory and self financing methods” to supply high quality residents supported by the developed infrastructural systems to “inhabitants who have right to property”;
- In order to preserve public resources, to develop a self sufficient urban transformation model by inducing the Public private partnerships in this big scale urban transformation project.

The conceptual project had been developed by an Urban Transformation Company, the consultant firm, with the advices of certain academicians who have experience in urban transformation. The final project will also contain an international garden zone where diplomatically recognized nations would have a chance to be represented with their ethnical gardening habits, thus, function as a civil representative. They would also be given an opportunity to apply their own ethnical cuisines in chosen areas. Finally, there will be a monorail system which will not only cover the whole project site, but also complete a link to the downtown area so that a new attraction site would be provided to the people of Ankara.



Figure 11 Dikmen Valley 4th and 5th Phases Urban Transformation and Development Project
Proposed Urban Design and landscape project

3.4.1. Eligibility in the Dikmen Valley the 4th and 5th Phases Urban Transformation Project

On the contrary of 1st and 2nd phases, the later phases of Dikmen Valley Urban Transformation Projects have many new dimensions in terms of its stakeholder map. It is obvious that there are many dimensions but above all the following two are the most remarkable ones to clarify and justify the transformation process.

First of all, unlike in the case of 1st and 2nd phases, with the 4th and 5th phases of the Dikmen Valley Project, struggle of uncertified gecekondü possessors for being an eligible stakeholder has come to the agenda as a new fact in urban transformation.

Second, the policies of Greater Municipality to the problem of participation in urban transformation become to change. In other words, while in the period of Murat Karayalçın participatory planning was on the agenda; in the period of Melih Gökçek, a counter policy to participation is adopted. According to Devecigil, the case of Dikmen Valley Urban Transformation Projects indicates that the urban sustainability seems to be aim of technical groups of municipalities rather than an aim which is known and accepted by the local inhabitants (Devecigil, 2006). For instance, the interviews conducted with the planning department of Greater Municipality of Ankara indicate that

“After 2003 the Municipality does not consider the participation of eligible stakeholders to the decision making process as a necessary policy because the eligible stakeholders do not hesitate to collaborate with the municipality after showing the success of 1st and 2nd phases” (Devecigil, 2003).

In the previous section, it was mentioned that land owners were not allowed to be an eligible stakeholder in the earlier phases to minimize the number of eligible stakeholders. But this caused about %80 of the legal land owners brought suit to increase the prices of the land against the Greater Municipality (Devecigil, 2003). Therefore municipality was obligated to pay high expropriation prices. This decreased the feasibility of the project. To increase the feasibility of the 3rd, 4th and 5th phases, Greater Municipality of Ankara has decided to make the land owners an eligible stakeholder.

However, this increased the spatial densities of the valley. The densities in the 3rd, 4th and 5th phases increased from 1,26 to 2,00 and from 1,42 to 2,55 respectively.

Table 2 The Effects of Number of Eligible Stakeholders on the Spatial Development, Planning Department of Greater Municipality, 2003

THE EFFECTS OF NUMBER OF ELIGIBLE STAKEHOLDERS ON THE SPATIAL DEVELOPMENT						
Phase	Area		Numbers of planned dwelling		Numbers of planned population(citizen/ha)	
	1994	2000	1994	2000	1994	2000
3	21,2	28,6	663	1039	125	145
4 and 5	67,7	176	1503	4200	89	95

According to the statistics conducted by the Greater Municipality of Ankara, about %80 of the land in the project area belongs to public property (Emlak İstimlâk Daire Başkanlığı Faaliyet Raporu, 2007).

Table 3 Property Ownership in Dikmen Valley 4th And 5th Phases

PROPERTY OWNERSHIP IN DIKMEN VALLEY 4TH AND 5TH PHASES				
Number	Owner	m2	hectare	%
1	Public Domain	247,541	24,75	18,3
2	Municipality Of Çankaya	6,477	0,64	0,5
3	Ankara University	3,373	0,37	0,3
4	Governorship Of Ankara	6,347	0,63	0,5
5	Greater Municipality of Ankara	791,667	79,16	58,4
6	Private Ownership	299,784	29,97	22,1
	Total	1355,189	135,52	100,0

In the project area, which contains about 4000 gecekondu, the ownership analysis and the appraisal of the immovable assets had been completed. Thus, the “*Housing Provision Program*” for the people of the Dikmen Valley was determined by the council of Greater Municipality of Ankara in 17th of February in 2006. The criterion of the determination of the eligible stakeholders is the private “property ownership”. Accordingly those who;

- have a title deed on the planned plots
- have a title deed on the unplanned land (Cadastral property)
- have a title deed certificate (this group is determined as an eligible stakeholder according to the preparation and approval of upgraded implementation plans through the Amnesty Law on Settlement Development numbered 2981) Those who prove that he built his gecekondu on the lands that belong to government before 10th of October 1985 are determined as eligible stakeholders as long as they pay 2000 YTL to the administration.
- have a title deed according to the Gecekondu Law numbered 775 (those who pay property tax regularly and those who do not any real estate within the boundaries of city of Ankara)

are determined as eligible stakeholders (Greater Municipality of Ankara council decision numbered 483).² According to the housing provision program, there will be approximately eight thousand units on the site where the apartments will have a size varying 100, 120, 150, 175, 200 and 225 square meter in sizes (Greater Municipality of Ankara council decision, article 1b, 2006).

Have a title deed on the planned plots

Gross 120 m2 dwelling unit for each 240 m2 plot;
Gross 150 m2 dwelling unit for each 300m2 plot;
Gross 175 m2 dwelling unit for each 350 m2 plot;
Gross 200 m2 dwelling unit for each 400 m2 plot;
Gross 225 m2 dwelling unit for each 450 m2 plot;

Have a title deed on the unplanned land (Cadastral property)

² Please see Appendix A for the whole content of the decision

Gross 120 m2 dwelling unit for each 400 m2 plot;
 Gross 150 m2 dwelling unit for each 500m2 plot;
 Gross 175 m2 dwelling unit for each 583 m2 plot;
 Gross 200 m2 dwelling unit for each 666 m2 plot;
 Gross 225 m2 dwelling unit for each 750 m2 plot;

On the other hand, about 1100 eligible stakeholders according to the preparation and approval of upgraded implementation plans through the Amnesty Law on Settlement Development numbered 2981 will be taken to the housing program. As long as they accept the Housing Contract prepared by the Municipality they will have the right to a 100m2 dwelling unit for their each 400 m2 plot (Greater Municipality of Ankara council decision, article 2a.2b, 2006).

Table 4 Housing Provision in Dikmen Valley 4th And 5th Phases Urban Transformation Project, (Greater Municipality of Ankara Council Decision Dated 17.02.2006, Numbered 483)

HOUSING PROVISION IN DIKMEN VALLEY 4th and 5th PHASES URBAN TRANSFORMATION PROJECT							
	100	120	150	175	200	225	Total (m²)
Number of Houses to be constructed	1038	197	54	15	15	15	1329

1322 gecekondü have been demolished till now.³ The number of houses to be demolished is 346 (Emlak İstimlâk Daire Başkanlığı Faaliyet Raporu, Ankara, 2007). On the other hand, council decisions reveal that about %70 of the inhabitants have made an agreement with the municipality. The rest, about 700 owners, majority of whom consists of uncertified gecekondü possessors, have not made any agreements and protest the project. The number of legal eligible stakeholders that made agreements is 1123 and they constitute %67 of total agreed inhabitants.

³ Please see Appendix C for Example of Demolishment Notification of Greater Municipality of Ankara

Table 5 Agreements on the Housing Provision in Dikmen Valley 4th And 5th Phases Urban Transformation Project, (Ankara Büyükşehir Belediyesi, Emlak İstimlâk Daire Başkanlığı Faaliyet Raporu, 2007)

AGREEMENTS ON THE HOUSING PROVISION IN DIKMEN VALLEY 4th and 5th PHASES URBAN TRANSFORMATION PROJECT					
	Agreed	%	Not Agreed	%	Total(people)
have a title deed on the planned plots	73	50	72	50	145
have a title deed certificate	1050	95	50	5	1100
uncertified	505	46	596	54	1101
wrecked sale	40		0		40
Total	1668	70	718	30	2386

3.5. Interview Analysis on the Problem of Eligibility in Urban Transformation

The unstructured interviews are very useful as they lets the people choose their own way of expressing their thought. When they express themselves as much as possible they give some clues about the other expectations from the project and perceptions of the right to adequate housing concept. The interviews were practiced with 4 different interest groups. These are:

1. Uncertified gecekondü possessors,
2. Greater Municipality of Ankara ,
3. Competent Authorities of the consultant firm of the project,
4. Title and title deed owners.

3.5.1. Perception of Uncertified Gecekondü Possessors about the Problem of Eligibility

The uncertified gecekondü possessors (about 600 families) in the valley have formed an association to justify their claims to right to adequate housing against the decision of Greater Municipality. They insist on being an eligible stakeholder in the project. The association, called as the office of right to adequate housing, is very important in terms

of the solidarity between the inhabitants against the forced evictions of municipality. They even established a web page to catch attention of larger population. They call the Greater Municipality of Ankara to the full and progressive realization of their right to adequate housing and fulfill this right by improving the conditions. The most notable argument to justify their claims is maybe declared by the picketer of the group as:

“As in the case of other similar gecekondu districts, any politicians did not take into consideration us. In general we were perceived as a problem of illegality. During these years we all solved our problems by our own ways. Through the development process of the district, our population became to increases and this caught the attention of politicians whose main aim was to pull our votes. Their policies were to legitimize us. They gave street number to our houses. Although it was limited, some infrastructures were provided to us. Both the water and electricity taxes were collected by administrations.”



Figure 12 Press statements by uncertified gecekondu possessors

The uncertified gecekondu possessors living in Dikmen Valley project areas is classified according to use of their gecekondu. The following table indicates theses different groups.

Table 6 The uncertified gecekondü possessors living in Dikmen Valley project according to use of their gecekondü

Those living in their uncertified gecekondü
Those rent out their uncertified gecekondü
Those living as tenant in uncertified gecekondü
Those having an uncertified gecekondü but do not use it.

Through the interviews, most of the uncertified gecekondü possessors refused the interviews because of uncontrolled fear. This indicates that it is much more difficult to apply a research based on interview in a low- income districts of the city compared to apply in middle or high income districts. Nevermore, approximately 22 interviews were conducted with different uncertified gecekondü possessors.

The perception of an uncertified gecekondü possessor is remarkable in terms of indicating his approaches to initiation of the project. He says that:

“Our valley, the name of where was not known until 1990s, has been a central district after 1990s. Therefore many construction developers started to deal with the valley to make an investment.” (N.Ş, Dikmen Valley, 2009)

Similarly, another owner claims that:

“However, the political, economical and social changes in any public sphere, from educations to health, gradually started to show itself through this urban transformation project. These policies do not give any priority to the human factor but look for to increase the capital accumulation for capital owners.” (F.Ş, Dikmen Valley, 2009)

The office of right to adequate housing has been a place where the inhabitants frequently come together to resist on forced evictions in an organized way. In order to justify their valid claims and to show the determinateness, make press statements. One of the inhabitants interviewed at the office stresses on the unreality and inapplicability of the alternatives proposed by the Municipality. To the question “*Why don’t you accept the conditions suggested in the Contract?*” he urges that:

“We, as the inhabitants of Dikmen Valley, took the opinions of lawyers and other experts. We declare that the uncertified gecekondü possessors the majority of whom are the disadvantaged and vulnerable groups work in temporary jobs or get minimum wage. The rest survive the helps of their relatives. The conditions suggested to us are not realistic and applicable. The municipality suggests some housing plots in Doğukent district in consideration of the payment of 16000 YTL. We are not able to pay 16.000 YTL.” (S.S, Dikmen Valley, 2009)

The unstructured interviews indicate that the uncertified gecekondü possessors do not trust of the press statements of the Municipality about the project. One says:

We have constructed these gecekondü with our own efforts, (www.dikmenvadisi.org, press statements)

“To initiate the project, the municipality of Ankara wants us to abandon our homes in which we have been living for many years. In this context, no matter we have a title deed or not, we are forced to sign an official contract which was prepared only by the municipality and leave the valley within 7 days. (F.Ş, Dikmen Valley, 2009)

“We have been living in the valley for years but according to the housing program prepared by municipality we are not determined as an eligible stakeholder. We are illegal groups.” (F.Ş, Dikmen Valley, 2009)

Similarly, some other uncertified gecekondü possessors indicate the inconsistency between the promises of Municipality and the decision specified in the council decisions of municipality.

“The principle of compromise in urban transformation practices is mentioned by politicians. However, in practice, this principle becomes a mean of dictating of previously taken decisions by the municipality thorough using the public authority or force. We think that this is obviously in contradiction with the principle of public interest declared in the Constitutional law.” (www.dikmenvadisi.org, press statements)

We are not to develop urban transformation project as long as it is in favor of public interest. (A.D, Dikmen Valley, 2008)

We want to live in a livable locally affordable and safe environment, not more. We want to a platform through which we can defend our housing rights; we want to believe in the fairness of the project. (www.dikmenvadisi.org, press statements)

“The forced evictions will lead to trigger many social problems. Therefore the practice urban transformation will not be a solution to the social problems in the future as the advocators and of urban transformation claim unless they are

implemented through right based policies instead of absolute property based.”
(www.dikmenvadisi.org, press statements)



Figure 13: Forced eviction in Dikmen Valley (Milliyet, Kizilkoyun, F. 2007)

During the in dept interview, when asked “*Do you believe that you are legally an eligible stakeholder?*” Their answers to the question are remarkable. They are aware of being illegal, however, they claim to right to adequate housing:

Yes. We have a right to adequate housing. This is our legal rights and defined in the law. We know that the court decision in our favor do not legitimate our homes. However, as we declared from the beginning of the urban transformation process, we are not in favor of the gecekondü development. However, in our cities where the unemployment rates are high and poverty is increasing, we believe in the solutions of gecekondü problem with participatory methods and right based policies that consider the right to adequate housing.” (www.dikmenvadisi.org, press statements)

Some interviews are important because they indicate that the practices of urban transformation cannot find permanent solutions the gecekondü problem but postpone the problem to other districts. The following is an example:

“According to the housing right program, 250 YTL- rent subsidies will be provided for eligible stakeholders who compromised and transferred their properties to the municipality during the construction period of new housing blocks. The annual- increase in the rent will be determined by the municipal committee. However, those who signed the contract because of fear or bust and abandoned their houses face with economic problems. They cannot even pay the rents of houses they moved. There are many inhabitants in this conditions and returned to the valley or another gecekondü district. There are even inhabitants who are forced to prevent their children to go to school because of fear of forced evictions. “(www.dikmenvadisi.org, press statements)

Taking into consideration the policies to protect the housing rights in practice, they propose some alternatives that must be taken by the municipality:

Our right to adequate housing must be guaranteed in practice and the forced evictions must be prevented. We demand that those vulnerable groups who live in possessed their illegal gecekondur should be determined as eligible stakeholders and given social dwellings in the district. The rent subsidies must be increased and given also to the illegal groups. The repayments of the leases must be started after the delivery of dwellings. We must be informed about the exact date of submission of the dwellings and the contract must be signed under the supervision of a public notary.” (T.Ş, Dikmen Valley, 2008).

3.5.2. Court Decisions on the Project

The violations arising from forced evictions of uncertified gecekondur possessors have slowed down the process of transformation of Dikmen Valley. For this reason, the process was moved the juridical platform. According to the announcement in the name of inhabitants in Dikmen Valley; the forced evictions of about 200 gecekondur were postponed due to the decisions of Ankara Administrative Courts. With the help of these decisions a reasonable protest has emerged to the forced evictions by the inhabitants (<http://www.dikmenvadisi.org>).

In this section the court decisions about the ongoing process of the Dikmen Valley 4th and 5th Phases Urban Transformation and Development Project will be mentioned. According to Ender Buyukçulha, the lawyer of uncertified gecekondur possessors, there are two kinds of law suits. While the Administrative Courts deal with procedure of the implementation of the project, the Criminal Courts of First Instance deal with the personality rights. The evaluation of court decisions will focus on the decisions of Administrative Courts rather than Criminal Courts.

The law suits in the Administrative Courts consist of two different cases. Some of them are litigated for the cancellation of the whole project and some of them are partial law suits which are litigated against the notifications of Greater Municipality of Ankara. Followings are the examples of decisions of Administrative Courts about the law suits

which were litigated against the notifications and for the nullification of the whole project.

Decisions of Administrative Courts about the law suits which were litigated against the notifications and for the nullification of the whole project

Approximately 300 inhabitants in the valley have litigated against the demolition notifications of Greater Municipality of Ankara (Archive reports of the Office of Right to Adequate Housing). About 25 of them have title deed or title deed certificate and the rest are inhabitants who live in uncertified gecekondü. Out of 25 law suits which are litigated against the notifications of Greater Municipality of Ankara by the right holders; Administrative Courts passed a judgment for the plaintiff in two suits. On the other hand, out of 280 law suits Administrative Courts passed a judgment for the defendant in about 40 suits. Then the inhabitants filed an appeal (temyize başvurmak) to the Council of State.

Decision of Ankara Sixth Administrative Court (dated 28.05.2008 and base numbered with 2007/986, decision numbered with 2008/984)

Plaintiff: inhabitants of Dikmen Valley; **Defendant:** Greater Municipality of Ankara⁴

Brought suits are still continuing against the demolition notifications of the Greater Municipality of Ankara in 2007. The court decision about the determination of right holders in the Dikmen Valley Project is notable. According to the well-reasoned statement of the Court, the legal situation of the real estate belonging to the Plaintiff, has not yet determined whether it has a titled deed certificate or not; and stressed that it cannot be demolished before an arrangement is performed with the Plaintiff.⁵

This court decision indicates that the many demolition notifications of the Greater Municipality of Ankara are illegal. Furthermore, it can be commented that the decision

⁴ Please see Appendix D for the whole content of the decision.

of Ankara Sixth Administrative Court may become a precedent (emsal) to the demolition notifications of the Greater Municipality of Ankara in the other phases of the project.

Criminal accuses have a critical importance because they indicate the social problems, like violence, destruction and psychological problems generated by the forced and arbitrary evictions of Greater Municipality of Ankara on those who claim a right to adequate housing. The law suits still continue. According to the advocate of the inhabitants, unless the juridical process is reached to a conclusion, the practices of forced evictions and destructions of Greater Municipality cannot be consistent with the legal principles.

Decisions of Administrative Courts about the law suits which were litigated for the nullification of the whole project

There are 2 law suits litigated for the cancellation of whole project and one of them is adjudicated.

Decisions of Ankara Third Administrative Court (dated 24.10.2007, base numbered 2006/1547 and decision numbered 2007/2188.)

Plaintiff: inhabitants of Dikmen Valley; **Defendant:** Greater Municipality of Ankara
Motion for stay of the uncertified gecekondü possessors of Dikmen Valley Project was evaluated by the court and Dikmen Valley 3rd phase urban transformation project initiated by the Greater Municipality of Ankara is nullified with the court decision of Ankara Third Administrative Court dated 24.10.2007.

According to the well-reasoned statement of the Court, some of the planning decisions considering the development rights in this project is found to be inconsistent to the planning and urbanization principles. Especially the court has concluded that the decision on development rights in the valley cannot be made by the Greater Municipality alone and this decision includes some contradictories to the public interest.

At this point it is necessary to mention that the council decisions of Greater Municipality of Ankara cover the 3rd, 4th and 5th phases all together. Therefore the court decisions about the 3rd phase can also be handled for the 4th and 5th phases. In other words, it can be commented that the counter arguments (right to adequate housing) against the 3rd, 4th and 5th phases of urban transformation projects have been verified and supported by the court decisions.

3.5.2.1. Sub- Findings from Interviews with the Uncertified Gecekondu Possessors

First, the interviews in the study reveal many phenomenological findings but above all “this following one” is maybe the most notable one to understand the phenomenon: The interview with the uncertified gecekondu possessors indicate that the expectations of behind the claim to be an eligible stakeholder may differ. The in-dept and unstructured interviews reveal that whereas some of the uncertified gecekondu possessors are, without dispute, lack of basic economical security; some have more one real estate in the different districts of the city and do not live in the valley but just possesses their unused gecekondu. In spite of this, they claim themselves to have a right to adequate housing and to be an eligible stakeholder in the project which is not acceptable.

Second, the in dept interviews indicate that, the uncertified gecekondu possessors make their justification of claim to be an eligible stakeholder with an inadequate and insufficient information about the process because they have information only from hearsay about the practices of municipality. This leads them to believe in any speculation whatever they hear not matter it is correct or not. Furthermore, the way of their expression they adopt, expectations and protests are not effective to make any progress in realizing their aims. For instance they organizing open air cinema facilities, play music.



Figure 14 The Way Of Expression of Uncertified Gecekondu Possessors Of Themselves

Third, the uncertified gecekondu possessors argue that they have been living in the valley for many years and they established some social order. Therefore they insist on an “*improvement on site.*” (Yerinde Islah). They do not want to abandon the valley and claim that:

“Most of our demands were realized in the previous urban transformation project in the valley. It was implemented by social democrat politicians. The repayments were collected after the submission of the dwellings and the rents subsidies were higher than those suggested in this one. Similar rights and advantages were taken into consideration in the North Ankara Entrance urban transformation project as well.”

However, a site based analysis, conducted to measure the mobility of old gecekondu possessors after the 1st and 2nd phase was completed, reveals that the claim of improvement on site is unrealistic. According to study, in 2003 about %70 of the eligible stakeholders living in a gecekondu before the project was realized has moved to another district (Deveciğil: 2003). The interviews with the eligible stakeholders living in a gecekondu before the project reveal the reasons. According to study, Most of gecekondu possessors mentioned about the social and cultural problems. They complained about

the insufficiency in design criteria like accessibility to the park, usage of too much concrete and loose of green areas , height of buildings, insufficient surface area of the flats, and the lack of retail services in the valley.

Table 7 Site based analysis on Dikmen Valley 1st and 2nd phases urban transformation Project, Devecigil: 2003

	Number of Social Housing Constructed		Ratios %	
	According to Usage	According to Home Ownership	Ratio of Living in Dwellings after project	Ratio of Home Owners
Tenant	315		36	
New Owner	117	156	13	18
Right Holder	342	618	39	70
Municipality	Not Known	107	12	12
Total Units	882	882	100	100

Forth, this study reveals that the main aim of gecekondü possessors no matter they are right holder or not is to own a dwelling unit in the project. However, after owning a dwelling their expectations form the project immediately changes. For instance, according to the study, the expectations of those who built their gecekondü on the public land have dramatically increased after they were determined as an eligible stakeholder. Especially, those who had more than one gecekondü on a single plot have found their owning only one dwelling as unequal treatment. Devecigil argues that the earlier expectations of gecekondü possessors were realized. However, they described the final situation as insufficient (Devecigil, 2006)



Figure 15 Dwelling Units Designed For Eligible Stakeholders and Luxury Block Designed For Investors

Fifth, as discussed at the literature chapter, the claims of uncertified gecekondü possessors based on right to adequate housing of to be an eligible stakeholder is not a legal claim .Their claims have moral character which do not depend upon legal acts. These claims do not provide a legal protection to them. Their lack of legal protection leads to violations like forced evictions and arbitrary evictions and protest of the project.

3.5.3. Perception of Greater Municipality of Ankara about the Problem of Eligibility

Most of the managers in Greater Municipality of Ankara refused to make interviews except for competent authorities of the consultant firm of the project. Therefore, claims of these particular stakeholders were gathered and combined from the press statements and official documents related to the projects obtained from the municipality.

First of all, it is necessary to understand the perception of greater municipality concerning participation. The policies of greater municipality to the problem of eligibility become to change with the headship of Melih Gökçek, while during the headship of Murat Karayalçın participatory planning was on the agenda; during

the headship of Melih Gökçek a counter policy to participation is adopted. For instance, the interviews conducted with the Planning department of Greater Municipality of Ankara indicate that:

“After 2003, the municipality does not consider the participation of eligible stakeholders to the decision making process as a necessary policy because they do not hesitate to collaborate with the municipality after showing the success of 1st and 2nd phases”(Devecigil, 2003).

Second, in this project, the uncertified gecekondü possessors are not excluded from the project. They are provided with some options. According to the Gecekondü law numbered 775, about 1000 uncertified gecekondü possessors are determined as eligible stakeholders in the *Housing Provision Program*. Some housing plots belonging to the Greater Municipality of Ankara in Doğukent Project area will be allocated for the owners of uncertified houses according to the law on municipalities numbered 5393. The sizes of these housing plots change between 200 and 250 m² in size (Greater Municipality of Ankara council decision, article 3a, 2006).

250 YTL- rent subsidies will be provided for eligible stakeholders who compromised with the Greater Municipality of Ankara and transferred their properties to the municipality during the construction period of new housing blocks. The annual- increase in the rent will be determined by the municipal committee (Greater Municipality of Ankara council decision, article 3a, 2006).

Third, the Greater Municipality of Ankara declared a press statement in 2007 and claimed that:

“All these kinds of acts are ideological. The Greater Municipality of Ankara has suggested some alternatives like a title deed of a plot in Doğukent District or a dwelling unit constructed by TOKİ in Karacaören with a 15 years time loan for those who are not eligible stakeholders so that they were not aggrieved by the project. However, because of the organized pressures and provocations of some ideological groups those eligible stakeholders hesitate to make an agreement with the Municipality.” (Milliyet, Kizilkoyun, 2007).

Fourth, the legal authorities from the Municipality argue that all the implementations are legal acts. The municipality implements this project according to the, 73rd article of

Municipality Law which is the legal basis of urban transformation implementations. This article recommends an agreement with the owner:

Article 73: “In evacuation, demolition and expropriation of the buildings subject to urbanization and development project, it is recommended to reach to an agreement with the owners. The actions to be filed by the owners of the property within the scope of urbanization and development project shall be dealt in priority by the courts and decision shall be given without delay.” (Municipality Law, Article: 73

3.5.3.1. Sub- Findings from Interviews with the Competent Authorities from Greater Municipality of Ankara

The evaluation of the formal documents gained by the Greater Municipality of Ankara reveals that all the acts of Municipality are legal acts. There is no illegal practice.

On the other hand, the policies of Greater Municipality of Ankara disturb the legal rights of title and title deed owners. In this context, housing provision program can be criticized based on three main arguments.

First of all, this contract is a legal document that shows the transfer of right of property of the land owner to the municipality. To put differently, it states that if the land owners transfer their property rights to the Greater Municipality of Ankara they will have a right to own a resident after the project is materialized. However, this document does not make any explanations considering the date of submission of the residents. Municipality claims that the residents will be submitted to the shareholders after the rewarding the illegal gecekondü owners, 18 months starting from the date of sign of contract. However, these explanations do not guarantee the submission on the declared date. This kind of Contractual Rights is criticized by John Rawls:

“.....but it is possible to conceive of contracts made outside of a legal framework and to rest purely upon moral principles; however, such contracts are less secure than contracts made within a legal framework, for clear reasons.”(Jan Garrett, 2004).

Second, the contract of property rights is not signed under the supervision of a public notary that provides the trust between the two stakeholders. It is very understandable that land owners do not want to sign a contract prepared by Greater Municipality alone. Even if they want to sign, they claim that “this process should be performed under the supervision of a public notary. The decision of the municipality regarding the property owners who do not compromise:

“.....The properties of the property owners who do not accept and the sign the Housing Contract will be expropriated according to the law numbered 4560” (Greater Municipality of Ankara council decision, article 6, 2006).

Unquestionably this decision is in contradiction with the “participation” and “compromise” principles which were declared in the report of the project. To illustrate, the plots of those who do not accept the terms in the housing provision program will be expropriated by the Municipality. Those eligible stakeholders will not be able to bring suit against the municipally.

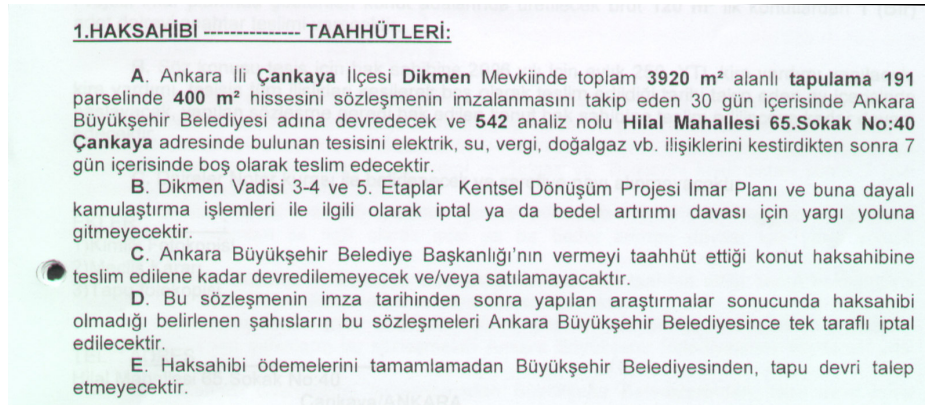


Figure 16 Decision of Greater Municipality of Ankara Council, 17.02.2006, 483

ANKARA BÜYÜKŞEHİR BELEDİYESİNİN TAAHHÜTLERİ:

A. Ankara Büyükşehir Belediye Başkanlığı 1.A' da tapu kaydı belirtilen taşınmaz karşılığında haksahibi ----- adına 1/1000 ölçekli Dikmen Vadisi 3-4 ve 5. Etaplar Kentsel Dönüşüm Projesi imar planında gösterilen konut adalarında üretilecek brüt 120 m² lik konutlardan 1 (Bir) adet daireyi anahtar teslimi verecektir.

B. Söz konusu tesis için hak sahibine 2006 yılı için aylık 250.-YTL kira yardımı yapılacak, kira yardımı, tesisin tüm ilişkileri kesilerek boş olarak teslim edildiği tarihi takip eden ay içerisinde başlayacak, yapılan sözleşme gereği hak edilen konut hak sahibine teslim edilinceye kadar devam edecektir.

C. Daireler Noter kurusu ile belirlenecek ve şerefiye payı alınmayacaktır.

Figure 17 Decision of Greater Municipality of Ankara Council, 17.02.2006, 483

3.5.4. Perception of Competent Authorities of the Consultant Firm of the Project about the Problem of Eligibility

The opinions of project managers of the Dikmen Valley Urban transformation projects about the problem of eligibility of uncertified gecekondu possessors are very remarkable. To illustrate, I want to share opinions of the secretary of decision-making committee of Dikmen Valley 1st and 2nd phases urban transformation project. According to the secretary:

“The only critical role of the land owners in the project was that they were allowed to determine some of the qualities of the housing blocks such as the type of the balconies, the color of the buildings. Land owners could not be active in the determination of critical issues”

(T, T; Interview with the secretary of decision-making committee, 2009)

As far as the problem of eligibility of uncertified gecekondu possessors is concerned, the coordinator argues that:

“To make illegal groups eligible stakeholders is an illegal act. It can be claimed that if they are determined as eligible stakeholder owners, it becomes impossible to decode who really inhabits in transformation district for a long time and who are speculators. To say differently, land speculators, who in fact do not inhabit in the valley and aiming a property investment, may simply claim to be an eligible stakeholder by constructing a four sided box resembling a gecekondu”

(T, T; Interview with the secretary of decision-making committee, 2009).

The coordinator also stresses on the spatial results of making uncertified gecekondü possessors an eligible stakeholder.

“We experienced in the 1st and 2nd phases that to increase the number of eligible stakeholders also means to increase the densities in the Valley. In this context, to make about 1000 underfeed gecekondü possessors in the 4th and 5th phases means to produce minimum 1000 dwelling units except for the dwellings produced for title owners.” (T, T; Interview with the secretary of decision-making committee, 2009).

On the other hand, the director of Metropol İmar .A.Ş during the Dikmen Valley urban transformation project urges the claims of housing right of uncertified gecekondü possessors

“Determining vulnerable groups living in uncertified gecekondü; and the speculative act of uncertified gecekondü possessors is a critical problem. The difference between the goals of two parties must be briefly defined it seems that unless an effective and sustainable legislative arrangement which integrates the vulnerable groups living in uncertified gecekondü to the urban transformation implementations is prepared this conflict cannot be solved” (A, D; Interview with the director of Metropol İmar .A.Ş, 2009).

“The related local municipality is not responsible for meeting of housing need of tenants by one by in a specific urban transformation project. It is the State that is obligated to supply the affordable and adequate housing provision for its citizens.” (A, D; Interview with the director of Metropol İmar .A.Ş, 2009).

Finally, Interviews with the competent authorities of the consultant firm of the project indicate some critical facts which are not known in the widely about the success of Dikmen Valley urban transformation projects. To illustrate, according to the information obtained during the interviews with the director of Dikmen Valley 1st and 2nd phases urban transformation project:

“Whereas eligible stakeholders could get minimum 80 m2 dwelling unit in the 1st and 2nd phases; this was increased from 80 to 100 m2 in the 4th and 5th phases”

“It is a mistake to make prejudices about the decisions taken by the Greater Municipality of Ankara regarding the later phases” (T, T; Interview with the secretary of decision-making committee, 2009).

3.5.4.1. Sub- findings from Interviews with the Competent Authorities of the Consultant Firm of the Project about the Problem of Eligibility

Interviews with the competent authorities from Greater Municipality of Ankara indicate some critical facts which are not known in the widely about the success of Dikmen Valley urban transformation projects. These detail information make it necessary to review Dikmen Valley 4th and 5th urban transformation projects in broader sense. For instance when compared to earlier phases in the 4th and 5th phases, eligible stakeholders are advantageous in terms of the alternatives they are provided.

3.5.5. Perception of Title and Title Deed Owners about the Problem of Eligibility

The Perceptions of title and title deed owners about the problem of eligibility of uncertified gecekondü possessors in urban transformation are remarkable. 20 interviews were conducted with this particular group.

Most of title deed owners who, once upon a time (until 1985) also built their gecekondü on the publicly owned lands, consider uncertified gecekondü possessors as illegal. The acquired rights of title deed owners gained through the law numbered 2981 determine their perception about gecekondü. During the interviews with the title deed owners, it was observed that almost 8 of the title deed owners out of 10 in the valley think that making uncertified gecekondü possessors an eligible stakeholder is an illegal act.

“I believe that all the protests of uncertified gecekondü possessors to be an eligible stakeholder are speculative. Their legal situations do not let them to be an eligible stakeholder” (Ö, Ö, Dikmen Valley: 2009)

On the other hand, it is a very interesting fact that the expectations of those title deed owners who once built their gecekondü on the public land have dramatically increased after they were determined as an eligible stakeholder. Especially, those who had more than one gecekondü on a single plot have found their owning only one

dwelling as unequal treatment when compared themselves with the legal land owners (Devecigil, 2006)

However, to develop a better understanding of the problem of eligibility of uncertified gecekondu possessors, it is vital to be sensitive about the thoughts of legal title owners and legal tenants. Approximately 10 interviews were performed with this particular group and led to some dramatic facts. Most of the interviewees stress on the changing meaning of gecekondu fact. These interviews were not conducted with inhabitants living in the Project area but with those who live in legal buildings next to the project areas like Öveçler:

“I feel myself as a “clot”

“Because I could not build a gecekondu because of my fear in 1970’ but those did. Today they become rich and I am still a tenant.” (Y, S.Öveçler, 2009)

Another title owner argues that:

I have been living in Ankara since I was born. However, I do not have not any house. I believe that determining those uncertified gecekondu possessors as eligible stakeholders decrease the reliability on state and on urban transformation practices (Ö, Z. Öveçler, 2009)

Another one claims that:

When I was young, the aim of gecekondu possessors was just to have a shelter but not commercial facilities (D.G. Öveçler, 2009)

The rise in the capital accumulation from the Property sector provided opportunities illegal gecekondu possessors to derive improper personal benefits. According to Sabri Ateş, the head of real estate agents:

“Those who invaded the publicly owned lands are being rewarded. For instance, today, the owner of a gecekondu located at a central district generates an earning approximately 500.000 dollar. This is an unequal treatment to the citizens who obey the laws” (Hürriyet; Zorlu’’ya komşu gecekondulara piyango, 15.03.2007).

3.5.5.1 Sub- Findings from Interviews with the Title and Title Deed Owners

The finding obtained from the interviews with this particular group indicates that they mainly stress on the changing meaning of gecekondü fact. They feel that determining uncertified gecekondü possessors as an eligible stakeholder in urban transformation will decrease the reliability of public authorities.

They think that such kind of a policy means to punishment the legal property owners through laws. This will also decrease the transparency of policies in urban transformation practices.

CHAPTER 4

CONCLUSION AND SUGGESTION

The concept of urban transformation, as a new political instrument of local governments on space, has many dimensions to be discussed. Its legal dimension, financial issues, design, property relations and participation are only some of them. However, with the emerging of urban transformation concept, another new term started to be discussed. *The issue of eligibility* has become a critical problem. However, the absence of a sustainable and effective urban transformation law which defines the criteria of eligibility has undoubtedly brought about the violations and disagreements between the stakeholders. Different interest groups, who affected by the practical operations, have started to claim to be an eligible stakeholder regardless of their legal conditions. While the forced evictions on the uncertified gecekondü possessors in the urban transformation projects have forced them to organize mass protests and demonstrations against the implementations of local authorities, those citizens who obey the laws have suffered from the policies rewarding the illegal gecekondü owners.

In this master study, the problem of eligibility of uncertified gecekondü possessors was discussed from different point of view. The main research question of this master study was “what should be the criteria of determining uncertified gecekondü possessors as eligible stakeholders in urban transformation law?” This question will be the central point of the entire study. The study consists of two main parts: The literature review and the case study.

In the part of Literature review, the concepts of urban transformation and gecekondü were debated. Then the problem of eligibility in urban transformation was discussed. After a brief introduction, the problem of eligibility of uncertified gecekondü possessors was focused on. As a methodology, first the theories which are in favor of uncertified gecekondü possessors (labor, possession and right to

adequate housing) to be an eligible stakeholder were debated. After that, the counter theories that can be defended against their eligibility were focused on. A theoretical debate about the changing meaning of gecekondü was held to develop a broader sense to the problem of eligibility. Finally, some sub-findings were obtained from this literature review. These findings were re-evaluated in the further sections to answer the main research question.

In the part of case study, the problem of eligibility of uncertified gecekondü possessors was discussed with reference to the specific case of Dikmen Valley 4th and 5th phases of the Urban Transformation Project. Among the different qualitative research designs, the method of “case study” was used to investigate and answer the research question. This site based field work investigated in the study was especially useful for gaining an understanding of the complexities of urban transformation implementations in Turkey since it reveals the perceptions of particular cultures to the problem of eligibility in urban transformation. Furthermore, the in-depth interviews with different interest groups indicated the various dimensions of the research question.

Especially, the in dept interviews with the lawyer of uncertified gecekondü possessors living in the valley have provided sufficient information about the problems, perceptions and expectation and legal combat of them to be an eligible stakeholder . Besides this particular group, the perceptions of other stakeholders in the project were obtained through these interviews, press statements and some formal documents about the project. These interviews revealed very notable point of views to the uncertified gecekondü possessors.

After the interviews, the relevant information gained through these interviews was classified according to the social and legal position of interviewees. Then, some sub-findings were obtained from them. Finally these sub-findings were re-analyzed to answer main the research question.

Major Findings of the Case Study

The case of Dikmen Valley indicates that the urban sustainability is a process shaped through the compression on the expectations of different interest groups. In this context, the major findings obtained from this master study are:

- The demands of uncertified gecekondü possessors to be eligible stakeholder in urban transformation practices are not legal demands but moral demands. There is no applicable legal basis in the backgrounds of their claims (labor, possession and right to adequate housing).
- Since the claims of uncertified gecekondü possessors such as the right to adequate housing, labor and possession have moral characters which do not depend on legal acts, they can not be criteria of eligibility. The legal property ownership must be the criteria of eligibility in urban transformation practices in the law. On the other hand, no matter living in a legal or illegal housing, the vulnerable families who lack of basic economic security and living in the project area must be determined as eligible stakeholders.

The interviews conducted for the case of Dikmen Valley 4th and 5th phases Urban Transformation Project supported this major finding in different ways:

First of all, if the uncertified gecekondü possessors who built the gecekondü before 12th of November 2004 will be allowed to be an eligible stakeholder, the number of houses to be produced in the urban transformation projects will increase. This will prevent the transformation of districts which lost functions. What is necessary to enhance the sustainable urban transformation projects is to minimize the number of eligible stakeholders.

Second, the site based interviews revealed that the claims of uncertified gecekondü possessors to be an eligible stakeholder is not a legal claim. Their claims, like right to adequate housing, have moral characters which do not depend upon legal acts. These

claims do not provide a legal protection. Their lack of legal protection leads to violations like forced evictions and arbitrary evictions.

Third, other claims of uncertified gecekondü possessors like labor and possession do not let them a legal right to be an eligible stakeholder in urban transformation. Because, according to the 683rd article of the Civil Law of Turkey, while absolute ownership is regarded as the basis of legal property rights, the possession is defined as the actual domination on the property in the 973rd article of the law. Many decisions of the Council of State in Turkey indicate that ownership is a more valuable and worth protecting compared to possession. These decisions indicate that the possession is not regarded as a right to property but a physical domination.

Fourth, the interviews indicated that the main aim of gecekondü possessors, no matter they are eligible stakeholder or not, is to own a dwelling unit in the project. However, after owning a dwelling their expectations from the project immediately change. This finding is important because it reveals that gecekondü possessors perceive their gecekondü as an investment tool for the future rather than as a shelter to survive.

Fifth, findings obtained from the interviews with title and title deed owners indicate that they mainly stress on the changing meaning of gecekondü. They feel that determining uncertified gecekondü possessors as an eligible stakeholder in urban transformation will decrease the reliability of public authorities. They think that such a kind of a policy means to reward the illegal gecekondü owners.

Finally, the evaluations on the formal documents of the project reveal that all the practices of Greater Municipality of Ankara are compatible with the laws. In other words, on the contrary of the claims of uncertified gecekondü possessors, there are no illegal implementations of Municipality. However, it is observed that all the professionals from different expertise object the urban transformation implementations in Turkey and protest them together with these illegal groups. But they ignore that fact that all urban transformation projects have their own dynamics and facts.

Therefore because of all these reasons, determining uncertified gecekondu possessors who prove that they built their gecekondu before 12th of November 2004 as eligible stakeholders will increase the numbers of dwelling unit produced for eligible stakeholders in the project area. This increase in the numbers of dwelling unit may intensify the density of district. Therefore, the quality of the living environment may decrease. This article can be commented as a new version of “*development clemency*”. If this article is added to the law, it will trigger the gecekondu development and thus, it will be impossible to implement urban transformation projects. Therefore, the urban sustainability, which is the main concern of urban transformation, may not be achieved. The Draft Planning and Development Bill needs to be reformulated. An effective and applicable article that protects the citizens obeying the laws against the illegal gecekondu development must be added to the forthcoming law.

However, the findings thorough interviews indicated that the problem of eligibility has many different aspects. For instance, there are also vulnerable families living as tenant in those uncertified gecekondu. This study suggests that no matter living in a legal or illegal housing, the tenant who is categorized in the disadvantaged groups must be determined as eligible stakeholder. The articles concerning these particular groups must be reviewed in favor of them. For instance, The 6th paragraph of the 7th article in the Draft Planning and Development Bill reveals that no matter it was legally built or not all the buildings can be demolished as long as a comprise is performed between the stakeholders (Draft Planning and Development Bill, article 7, 2006). However, as explained before, the second paragraph gives the administration the authority of the exportation. In such case, in addition to the legal property owners, the tenant living in legally built dwelling may also face forced evictions. This article is undoubtedly an infringement of the security of tenure. This also is an infringement the 8th paragraph of International Covenant on Economic, Social and Cultural Rights which was affirmed by Turkey. According to the paragraph:

“Tenure takes a variety of forms, including rental (public and private) accommodation, co-operative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures

aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups”(CESCR, paragraph:8)

Therefore, the Draft Planning and Development Bill needs to be reformulated so that it addresses to the issue of security of tenure. An effective and applicable article that protects the tenure both in practice and law must be added.

In conclusion, the information obtained from this case study makes it necessary to re-discuss the problem of participation of local people in a broader and deeper sense because as far as the uncertified gecekondu possessors are concerned, determining them as eligible stakeholder in urban transformation practices becomes an illegal practice.

This master study aimed the reader to gain a new insight to the problem of eligibility in urban transformation practices. It attempted to discover the nature of the claims of uncertified gecekondu possessors to be an eligible stakeholder in urban transformation practices. It is hoped that this study would provide a means through which the reader can judge the effectiveness of urban transformation policies in Turkey concerning the problem of eligibility.

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APPENDIX A

DECISION OF COUNCIL OF GREATER MUNICIPALITY OF ANKARA ABOUT THE DIKMEN VALLEY URBAN TRANSFORMATION AND DEVELOPMENT PROJECT

T.C.
ANKARA BÜYÜKŞEHİR BELEDİYESİ
BELEDİYE MECLİSİ

Karar No: 483

17.02.2006

- K A R A R -

Dikmen Vadisi 3, 4 ve 5. Etaplar içerisinde kalan hak sahipleri ile Konut Sözleşmesi yapılmasına ilişkin Emlak İstimlak Komisyonunun 16.02.2006 gün ve 03 sayılı raporu Büyükşehir Belediye Meclisinin 17.02.2006 tarihli toplantısında okundu.

Konu üzerinde yapılan görüşmelerden sonra; Dikmen Vadisi 3-4-5 Etap Kentsel Dönüşüm Proje sınırları içerisinde kalan tüm tapulu, imarlı, imarsız gayrimenkul sahipleri ve 2981 sayılı imar affı yasasına göre hak sahibi konumunda olan gecekonduların hak sahipleri ile tapusu, tapu tahsisi olmayan ancak durumu 775 sayılı yasaya uyan gecekonduların sahiplerine arsa ve konut tahsisi edilmesi hak sahiplerine konutları teslim edilmeye kadar kira yardımı yapılması gibi haklar değişik tarihlerde alınan Meclis Kararı ile sağlanmıştır.

Projenin daha önceki Etaplarında çıkan sorunları gidermek amacıyla alınan farklı Meclis Kararlarının uygulamada tekliği sağlamak amacıyla birleştirilerek yeni bir Meclis Kararı alınmasına ihtiyaç duyulmuştur.

BUNA GÖRE:DIKMEN VADİSİ 3-4 VE 5. ETAPLAR KENTSEL DÖNÜŞÜM UYGULAMA ESASLARI

MADDE 1: Tapulu, İmar ve Kadastro tapulu arsası ve arsası üzerinde tesisleri bulunan gayrimenkul sahipleri için;

a) Proje alanı içerisinde kalan ve üzerinde konutu bulunan tüm tapulu gayrimenkul sahipleri ile arsa miktarına bakılmaksızın konut sözleşmesi yapılacaktır.

b) Tapulu imarlı arsası olanlar için;

Her 240 m² arsa için Brüt 120 m² Daire

Her 300 m² arsa için Brüt 150 m² Daire

Her 350 m² arsa için Brüt 175 m² Daire

Her 400 m² arsa için Brüt 200 m² Daire

Her 450 m² arsa için Brüt 225 m² Daire

c) Tapulu imarsız Kadastro veya tapulama arsası olanlar;

Her 400 m² arsa için Brüt 120 m² Daire

Her 500 m² arsa için Brüt 150 m² Daire

Her 583 m² arsa için Brüt 175 m² Daire

Her 666 m² arsa için Brüt 200 m² Daire

Her 750 m² arsa için Brüt 225 m² Daire

d) İmarlı 100 m²' nin altında, Kadastro ve tapulama 167 m²' nin altında kalan binası arsa hissedarları ile sözleşme yapılmayacaktır. Ancak küçük hisse sahipleri aralarında anlaşarak hisselerini birleştirip imarlı 240m²-300m²-350m²-400m²-450m² kadastro ve tapulama 400m²-500m²-583m²-666m²-750m² büyüklüğü sağlamaları halinde hisse sayısına bakılmaksızın, hisseleri oranında tapulu hisselerine karşılık gelen 1 adet konut sözleşmesi yapılır.

e) İmarlı ve kadastro parsel hissedarlarına arsa miktarlarına göre proje alanı içerisinde üretilen ve üretilecek 120m²- 150m²-175m²- 200m²-225m²' lik konutlardan verilecektir.

f) Proje dahilinde bulunan arsa malikleriyle yapılan konut sözleşmesinden artan imarlı her 1m² arsa için 1m²/546.-YTL, kadastro/tapulama 1 m² arsa için 1m²/310.-YTL olarak Belediye tarafından ödenecektir, yine aynı şekilde sözleşme yapılan konutun karşılığı arsadan eksik imarlı her 1m² arsa için 1m²/546YTL, her Kadastro ve Tapulama 1 m² arsa için 1m²/310YTL, üzerinden Belediyeye borçlandırılacaktır.

T.C.
ANKARA BÜYÜKŞEHİR BELEDİYESİ
BELEDİYE MECLİSİ

Karar NO: 483

17.02.2006

- 2 -

g) Arsa miktarı birden fazla konut sözleşmesine imkanı sağlayan hak sahiplerinin, talepleri halinde hisse oranlarına karşılık gelecek şekilde Proje dahilinde üretilecek değişik tip konutlardan 120-150-175-200 ve 225 m2) konut sözleşmesi yapılabilir

h) Tapulu arsa sahiplerinin hisselerine karşılık gelecek konutun bir üs konutu ile sözleşme yapmak istemeleri halinde iki konutun arasındaki arsa m2'sinin en az %50 ve üzerinde olanlarla sözleşme yapılacaktır, bu oran altında kalan hissedar malikleri ile bir üst konut sözleşmesi yapılmayacak. Artan arsa Belediyece bedeli ödenerek satın alınacaktır.

i) İmarlı, Kadastro ve Tapulama arsa üzerinde bulunan, tesis ve müstemilatlar Bayındırlık Bakanlığınca her yıl yayımlanan birim fiyatları üzerinden Kıymet Taktir Komisyonlarınca belirlenen tesis bedeli, konut sözleşme borcundan düşülecek, maliklerin alacakları Belediyece peşin olarak ödenecektir. Arsa sahibinin Belediyeye borçlanması durumunda ise ödemeler sözleşme tarihinden itibaren 1 ay sonra başlamak üzere 48. ay eşit taksitler halinde ödenecektir.

j) Birden fazla konut sözleşmesi yapan hak sahipleri Belediye ye olan borçlarını sözleşme tarihinden itibaren 1 ay içerisinde defaten peşin olarak Belediyeye ödeyecektir.

l) Belediyeye borcu olan malikler zamanında borçlarını ödemedikleri takdirde yapılan konut sözleşmesi fes edilecektir.

k) Konut sözleşmesi yapan tapulu tesis malikleri sözleşme tarihinden itibaren 7 gün içerisinde elektrik; su; doğalgaz ve emlak vergi borçlarını kapatarak tesisi Belediyeye boş olarak teslim edecektir.

MADDE 2 : 2981 sayılı yasaya tabi tapu tahsis belgeli gecekonduların hak sahipleri için;

a) Tapu tahsis belgesi bulunan gecekonduların hak sahibi ile proje alanı içerisinde üretilecek 100 m2'lik hak sahibi konutlarından konut sözleşmesi yapılacaktır.

b) Her 400 m2 tapu tahsisli gecekonduların malikine 100 m2 konut verilecektir.

c) Tapu tahsis belgesindeki tahsis miktarı 400m2' den az olan maliklerin eksik arsa oranları konut sözleşmesi ile verilecek 100 m2'lik konut Bayındırlık Bakanlığı inşaat maliyet bedeli oranı ve zemininden hesaplanıp tesis ve müstemilata ait enkaz bedeli düşüldükten sonra borçlandırma yapılacaktır.

d) Tapu tahsisli tesis, müstemilat ve ağaçların kıymet taktir bedelleri Belediyenin Kıymet Taktir Komisyonunca belirlenecektir. Hak sahiplerine verilecek 100 m2'lik konutlar 2006 yılı içerisinde inşaat maliyet bedeli olarak 1m2/450 YTL. Üzerinden hesaplanacak, inşaat maliyet bedelinden malikin tesisine ait % 10 enkaz bedeli düşülecek geri kalan bedel sözleşme tarihinden itibaren bir sonraki aydan başlamak kaydı ile 48 ayda eşit taksitlerle Belediyeye ödenecektir.

e) 2981 sayılı yasa kapsamında geriye dönük arsa borcu olanların arsa borçları defaten Büyükşehir Belediyesine ödmeden konut sözleşmesi yapılamaz.

T.C.
ANKARA BÜYÜKŞEHİR BELEDİYESİ
BELEDİYE MECLİSİ

Karar NO: 483

17.02.2006

- 3 -

MADDE 3: Tapu ve Tapu tahsis müracaatı bulunmayan belgesiz yapı sahipleri için;

a) Belgesiz kaçak yapı niteliğindeki Gecekondu sahiplerine 5393 sayılı Belediye yasasının 69. maddesi kapsamında talepleri halinde Doğu Kent projesi içerisinde mülkiyeti Belediyeye ait (A) tipi Konut parsellerinden (200-250m2 arası) 1 parsel arsa tahsisi yapılacaktır.

b) Gece kondu sahibinin gecekonduyunun tesis, müsternilat ve ağaçları, Belediyenin Kıymet Taktir Komisyonunca belirlenecek kıymet taktir bedelinin % 10'u enkaz bedeli olarak hesaplanacak.

c) Gecekonduya ait enkaz bedeli sözleşme ile hak sahibine verilecek arsanın Kıymet Taktir Komisyonunca belirlenecek bedelinden düşülecek, kalan bedel gece kondu sahibi tarafından Belediyeye 10 yıla tekabül eden 120 ayda eşit taksitlerle ödeyecektir.

MADDE 4: Proje alanı içerisinde tesisi bulunan tapulu arsa maliki ile tapu tahsis belgesi bulunan hak sahipleri ile konut sözleşmesi yapıldıktan sonra gecekonducularını boş olarak Belediyeye teslim ettikleri tarihten itibaren aylık 250.- YTL kira bedeli, Belediyeye verilecek konutların teslim tarihine kadar ödenecektir. Kira artış bedelleri her yıl Belediye Encümenince belirlenecektir.

MADDE 5: Konut sözleşmesi yapan hak sahipleri sözleşme tarihinden itibaren konut ve müsternilatlarını tahliye ederek 7 (yedi) gün içerisinde tesislerini yıkıp boşaltanlara yıkım karşılığı enkazları kendilerine verilecektir.

MADDE 6: Proje dahilinde kalan ve Belediyemizle Konut sözleşmesi yapmayan İmarlı, Kadastro arsa sahipleri ile tapu ve tapu tahsisli tüm tesisler 2942 Sayılı yasayla değişik 4560 yılı yasa kapsamında kamulaştırılacaktır.

Bu nedenle; bundan önce Dikmen Vadisi Kentsel Dönüşüm Projesi 4 ve 5. Etaplar için Ankara Büyükşehir Belediye Meclisince alınan tüm kararların iptal edilerek; yukarıda madde ve bentleri yazılı şekliyle, proje uygulamasına esas alınmak üzere yeniden bir karar alınması, Dikmen Vadisi Kentsel dönüşüm projesi 3-4-5 ve doğu yakası Proje alanı içerisinde kalan Belediyemiz ile konut sözleşmesi yapmayan şahıslara ait taşınmazların 4650 sayılı kanunla değiştirilen 2942 sayılı kamulaştırma Kanunu kapsamında kamulaştırılması, Kamu Kurum ve Kuruluşlara ait taşınmazların 30. maddeye göre satın alınmasına ilişkin Emlak İstimlak Komisyonu raporu oylanarak oyçokluğu ile kabul edildi.

Meclis Başkanı
İ. Melih GÖKÇEK

Katip
Yakup KURTOĞLU

Katip
Yusuf YALÇINKAYA

APPENDIX B

DECISION OF COUNCIL OF BOROUGH OF GREATER MUNICIPALITY OF ANKARA ABOUT THE DIKMEN VALLEY URBAN TRANSFORMATION AND DEVELOPMENT PROJECT

1975

T.C.
ANKARA BÜYÜKŞEHİR BELEDİYE ENCÜMENİ

KARAR NO :735
KAYIT NO :2637

Emlak İstimlak Daire Başkanlığının 20.06.2006 tarih ve 5227 sayılı yazısı ve Başkanlığın 14.06.2006 tarihli havalesi Encümence incelenerek gereği düşünüldü.

İlgili Daire Başkanlığın yukarıda tarih ve sayısı belirtilen yazısında;
Dikmen Vadisi 4. ve 5.Etap içerisinde kalan Tapu ve Tapu Tahsis müracaatı bulunmayan belgesiz gecekondulu maliklerine 17.02.2006 tarih ve 483 sayılı Belediye Meclis Kararı ile durumu 775 sayılı yasaya uygun olarak Doğukent projesi içerisinde mülkiyeti Belediyemize ait A tipi imarlı konut adalarından 200 m2 hisse tahsis edilmesine karar verilmiştir.

Ancak; Bu kapsamda bulunan gecekondulu sahipleri bir kısım kasıtlı ve kötü niyetli kişilerce yapılan propagandanın etkisinde kalarak Belediyemiz ile anlaşma ve uzlaşmamakta kararlı görünmektedirler. Bu durumun projenin uygulanmasını geciktireceği anlaşılmış ve tedbir alınması gereği doğmuştur.

Bu nedenle 17.02.2006 tarih ve 483 sayılı Belediye Meclis kararı doğrultusunda 775 sayılı yasaya uygun olarak Dikmen Vadisi 4.ve 5.Etap proje alanı içinde olup tapusu ve tapu tahsisi bulunmayan 2981 sayılı imar affi müracaatı sona erdikten sonra kaçak yapılan; Bu bakımdan imar affi kapsamına girmeyen gecekondulu sahiplerine Belediye Meclis kararı ile teklif edilen Doğukent toplu konut alanı içinde İmarlı Belediye parsellerindeki 200 m2 arsa sözleşmesini 30 Haziran 2006 tarihine kadar İdaremizde yapmayan gecekonduların 775 sayılı yasanın 18.maddesine göre yıkım kararının yapılmasına, gereği için dosyanın Emlak İstimlak Daire Başkanlığına arz ederim. Denilmektedir.

- K A R A R -

Encümence yapılan görüşmede; Dikmen Vadisi 4. ve 5.Etap içerisinde kalan Tapu ve Tapu Tahsis müracaatı bulunmayan belgesiz gecekondulu maliklerine 17.02.2006 tarih ve 483 sayılı Belediye Meclis Kararı ile durumu 775 sayılı yasaya uygun olarak Doğukent projesi içerisinde mülkiyeti Belediyemize ait A tipi imarlı konut adalarından 200 m2 hisse tahsis edilmesine karar verilmiş olup, Bu nedenle Belediye Meclis kararı doğrultusunda 775 sayılı yasaya uygun olarak Dikmen Vadisi 4.ve 5.Etap proje alanı içinde olup tapusu ve tapu tahsisi bulunmayan 2981 sayılı imar affi müracaatı sona erdikten sonra kaçak yapılan; İmar Affi kapsamına girmeyen gecekondulu sahiplerine Belediye Meclis kararı ile teklif edilen Doğukent Toplu Konut Alanı içinde İmarlı Belediye parsellerindeki 200 m2 arsa sözleşmesini 30 Haziran 2006 tarihine kadar İdaremizde yapmayan gecekonduların 775 sayılı yasanın 18.maddesine göre yıkım kararının yapılmasına, gereği için dosyanın Emlak İstimlak Daire Başkanlığına gönderilmesine 22.06.2006 tarihinde oybirliği ile karar verildi.

Kadir Ramazan COŞKUN Ö.Faruk ERCİYES Sefa ALTIOĞLU Hasan UCAR Neriman ERBAHÇECİ
Encümen Başkan V. İ.D.B. İ.Buk Müş. H.L.D.B. Y.I.K.D.B.
Genel Sekreter

Yusuf YALÇINKAYA Yakup KURTOĞLU Ahmet CEYLAN Bayram KUBAŞIK Muhittin KARİK
Üye Üye Üye Üye Üye

Rap.M.ALI ERTÜRK
S/A

Sıra No: 735
Karar No: 2637
ASLI GİBİDİR

T.C.
ANKARA BÜYÜKŞEHİR BELEDİYE ENCÜMENİ

KARAR NO : 1200
KAYIT NO : 4295

Emlak İstimlak Dairesi Başkanlığının 12.10.2006 tarih ve 8441 sayılı yazısı ve Başkanlığın 11.10.2006 tarihli havalesi Encümence incelenerek gereği düşünüldü.

İlgili Daire Başkanlığın yukarıda tarih ve sayısı belirtilen yazısında;

Ankara Büyükşehir Belediye Meclisi'nin 17.02.2006 gün ve 483 sayılı kararı ile Dikmen Vadisi 4-5.Etaplar Kentsel Dönüşüm Konut ve Çevre Geliştirme Alanı ilan edilen proje alanı içinde yapılan incelemede tapulu ve tapu tahsisli yapılarla birlikte 2981 sayılı İmar Affı Müracaat süresinin bitiminden sonra kamu arazilerinin işgal edilerek kaçak gecekonduların yapılmış olduğu tespit edilmiştir.

5393 Sayılı Yasanın 73.maddesine göre Büyükşehir- Belediyesi Kentsel Dönüşüm Proje Alanı İlan edilen Dikmen Vadisi 4. ve 5. Etaplar Konut ve Çevre Geliştirme Proje Alanı içinde her türlü imar uygulaması yapmak ve 75 sayılı Gecekondu Kanununda Belediyelere verilen yetkileri kullanmada 5216 sayılı Büyükşehir Belediyesi Kanununun 7.maddesi ile Büyükşehir Belediyesinin görev, yetki ve sorumlulukları arasında sayıldığından;

Uygulamasına Başladığımız Dikmen Vadisi Kentsel Dönüşüm Projesinin hayata geçirilmesi için proje alanı içinde Y.Dikmen Mahallesi 29.Sokak No:5/1'de bulunan Hacı Ali ŞENOL'a ait gecekondunun kamuya (Belediyeye) ait 914 parsel üzerinde kaçak yapıldığı tespit edilmiştir.Adı geçen gecekondunun 775 sayılı yasa hükümlerine göre yıkım kararı alınması için yazımız ve eklerinin Encümen'e havalesini arz ederim.Denilmektedir.

- KARAR -

Encümence yapılan görüşmede; Dikmen Vadisi Kentsel Dönüşüm Projesinin hayata geçirilmesi için proje alanı içinde Y.Dikmen Mahallesi 29.Sokak No:5/1'de bulunan Hacı Ali ŞENOL'a ait gecekondunun kamuya (Belediyeye) ait 914 parsel üzerinde kaçak yapıldığı tespit edildiğinden, adı geçen gecekondunun 775 sayılı yasa hükümlerine göre yıkımına, gereği için evrakın Emlak İstimlak Dairesi Başkanlığına gönderilmesine 12.10.2006 tarihinde oybirliği ile karar verildi.

Kadir Ramazan COŞKUN Encümen Başkan V. Genel Sekreter	Ö.Faruk ERCİYES İ.Ş.D.B.	Sefa ALTIOĞLU İ.Hukuk Müş.	Hasan UÇAR H.İ.D.B.	Neriman ERBAHÇECİ Y.İ.K.D.B.
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Yusuf YALÇINKAYA Üye	Yakup KURTOĞLU Üye	Ahmet CEYLAN Üye	Bayram KUBAŞIK Üye	Muhittin KARİK Üye
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Rap.NATABAY
G/Ö



APPENDIX C

EXAMPLE OF DEMOLISHMENT NOTIFICATION OF GREATER MUNICIPALITY OF ANKARA

 T.C.
ANKARA BÜYÜKŞEHİR BELEDİYE BAŞKANLIĞI
EMLAK İSTİMLAK DAİRE BAŞKANLIĞI
Kamulaştırma Şube Müdürlüğü

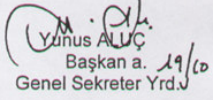
KISIM :M.06.ABB.0.15.01/2006/ 4003-8708 19.10/2006
KONU :Dikmen Vadisi 4.5.Etap
Kentsel Dönüşüm Prj.Hk.

Sn:Hacı Ali ŞENOL
Y.Dikmen Mah.29.SokNo:5/1
ÇANKAYA/ANKARA

Çankaya ilçesi,Yukarı Dikmen Mahallesi hudutları içinde bulunan Dikmen Vadisi 4.5.Etap Kentsel Dönüşüm Alanında kalan Y.Dikmen Mah.29.SokNo:5/1 de kayıtlı gecekondunuz 775 sayılı yasa hükümlerine göre kaçak yapı durumunda olması nedeniyle,Belediyemiz Encümen'inin 12/10/2006 gün ve 1200/4295 sayılı kararı uyarınca yıkılmasına karar verilmiştir.

Bu nedenle yukarıda belirtilen mevkii de bulunan gecekondunuzu yazımızın tarafınıza tebliğ edildiği tarihten itibaren 15(onbeş) gün içerisinde boşaltmanız,aksi takdirde emniyet güçleri refakatinde boşaltılacağı hususunu;

Bilgilerinize rica ederim.


Yunus ALUÇ
Başkan a. 19/10
Genel Sekreter Yrd.

İşl.Mem. :E.SAZAK 19.10/2006
Por.Sor. :S.ÜNVER 19.10/2006
Şb.Müd. :O.TOPRAK 19.10/2006
Dai.Bşk. : M. PAMUKSUZ 19.10/2006

APPENDIX D

DECISION OF ANKARA SIXTH ADMINISTRATIVE COURT, DATED 28.05.2008 AND BASE NUMBERED 2007/986, DECISION NUMBERED 2008/984

T.C.
ANKARA
6. İDARE MAHKEMESİ

ESAS NO : 2007/986
KARAR NO : 2008/984

DAVACI : Hüseyin Çetintaş
VEKİLİ : Av. Muzaffer Yılmaz, Av. Senem Yılmaz
İran Cad. No:21 Karum İş Merkezi
C Blok K:6 D:459 Kavaklıdere /ANKARA

DAVALI : ANKARA BÜYÜKŞEHİR BELEDİYE
BAŞKANLIĞI – ANKARA
VEKİLİ : Av. Hasan Gaffaroğlu / Aynı yerde

DAVANIN ÖZETİ : Davacı, Ankara ili Çankaya ilçesi Yukarı Dikmen Mahallesi 40. Sokak No: 8/B adresinde bulunan gecekondusunun 775 sayılı Yasa hükümlerine göre yıkımına ilişkin Ankara Büyükşehir Belediye Başkanlığı'nın 6.8.2007 gün ve 5646-9078 sayılı işlemi ile anılan işlemin dayanağı Ankara Büyükşehir Belediye Encümeninin 22.6.2006 gün ve 735/2637 sayılı kararının iptalini istemektedir.

SAVUNMANIN ÖZETİ : 5393 sayılı Yasanın 73. maddesi uyarınca Dikmen Vadisi Kentsel Dönüşüm Proje Alanı ilan edildiği, davacıya ait gecekondunun proje alanında kaldığı ve tapusu olmadığı bu nedenle imar affi kapsamına da girmediği, işlemin kamu yararı gözetilerek tesis edildiği, işlemin hukuka uygun olduğu ve davanın reddi gerektiği savunulmuş, ancak 3.12.2007 tarihinde mahkeme başkanlığına sunulan dilekçe ile yapılan araştırmalarla davacının taşınmazının tapu tahsisli olduğunun tespit edildiği ve 2981 sayılı Kanun hükümleri uyarınca işlem yapılacağı belirtilmiştir.

TÜRK MİLLETİ ADINA

Karar veren Ankara 6. İdare Mahkemesi'nce duruşma için önceden belirlenen 28.05.2008 tarihi saat 09:30'da davacı vekili Av. Suzan Yücel'in geldiği, davalı idareyi temsilen gelen olmadığı görülerek açık olarak duruşmaya başlandı. Gelen tarafa usulüne göre söz verilip dinlendikten sonra duruşmaya son verildi. Dava dosyası incelenerek, işin gereği görüldü;

5216 sayılı Büyükşehir Belediye Kanununun 7. maddesinin (c) bendinde, "Kanunlarla büyükşehir belediyesine verilmiş görev ve hizmetlerin gerektirdiği proje, yapım, bakım ve onarım işleriyle ilgili her ölçekteki imar planlarını, parselasyon planlarını ve her türlü imar uygulamasını yapmak ve ruhsatlandırmak, 20.7.1966 tarihli ve 775 sayılı Gecekondu Kanununda belediyelere verilen yetkileri kullanmak." büyükşehir belediyelerinin görev, yetki ve sorumlulukları arasında sayılmıştır.

30.07.1966 tarih ve 12362 sayılı Resmî Gazetede yayımlanarak yürürlüğe giren 775 sayılı Gecekondu Kanununun 2. maddesinde, gecekondu deyimini ile imar ve yapı işlerini düzenleyen mevzuata ve genel hükümlere bağlı kalınmaksızın, kendisine ait olmayan arazi veya arsalar üzerinde, sahibinin rızası alınmadan yapılan izinsiz yapıların kastedildiği, 18. maddesinde ise; "Bu Kanunun yürürlüğe girdiği tarihten sonra, belediye sınırları içinde veya dışında, belediyelere, hazineye, özel idarelere, katma bütçeli idarelere ait arsa ve arazilerde veya Devletin hüküm ve tasarrufu altında bulunan yerlerde yapılan, daimi veya geçici bütün izinsiz yapılar, inşa sırasında olsun veya iskan

1

T.C.
ANAYASA
6. İDARE MAHKEMESİ

ESAS NO : 2007/986
KARAR NO : 2008/984

edilmiş bulunsun hiçbir karar alınmasına lüzum kalmaksızın belediye veya Devlet zabıtası tarafından derhal yıktırılır" hükmüne yer verilmiştir.

Dava dosyasının incelenmesinden; Ankara ili Çankaya ilçesi Dikmen Vadisi Kentsel Projesi kapsamında kalan davacıya ait gecekondunun kamu arazisi işgal edilmek suretiyle yapıldığı ve tapusuz olduğundan bahisle Ankara Büyükşehir Belediye Encümeninin 22.6.2006 gün ve 735/2637 sayılı kararıyla 775 sayılı Kanun hükümleri uyarınca yıkımına karar verildiği, anılan işlemin iptali istemiyle bakılan davanın açıldığı anlaşılmaktadır.

Dosyadaki bilgi ve belgelerin incelenmesinden, Ankara Büyükşehir Belediye Başkanlığı tarafından 3.12.2007 tarihinde Mahkeme Başkanlığına sunulan ditekçede, davacıya ait yapının tapu tahsisli olup olmadığının tespit edilemediği, ancak daha sonra yapılan araştırmalarda taşınmazın tapu tahsisli olduğunun tespit edildiği, davacıya 2981 sayılı Kanun hükümlerine göre Belediye Meclis kararında belirtilen uygulamalar doğrultusunda işlem yapılacağı hakkında 25.9.2007 tarih ve 7151-11012 sayılı yazı ile bilgi verildiği, dava konusu taşınmazın antlaşma sağlanmadan yıkılmasının sözkonusu olmadığı belirtilmiştir.

Bu durumda davacının taşınmazı hakkında tapu tahsis belgesi bulunması nedeniyle 775 sayılı Kanun'un uygulanmasının hukuken mümkün olmaması nedeniyle dava konusu işlemin hukuka uyarlık bulunmadığı sonucuna varılmıştır.

Açıklanan nedenlerle dava konusu işlemin İPTALİNE aşağıda dökümü yapılan 94,30-YTL yargılama gideri ile Avukatlık Asgari Ücret Tarifesi Uyarınca takdir olunan 450,00-YTL vekalet ücretinin davalı idareden alınarak davacıya verilmesine, kararın tebliğinden itibaren 30 gün içinde Danıştay'a temyiz yolu açık olmak üzere 28.05.2008 tarihinde oybirliğiyle karar verildi.

BAŞKAN
ASUMAN YET
26425

ÜYE
HANİFE ÖZTAŞ BAYRAM
101147

ÜYE
İLHAN KARKA
101790

YARGILAMA GİDERLERİ:
Başvuru Harcı :13,10-YTL
Karar Harcı :13,10-YTL
Vekalet Harcı : 2,20-YTL
YD. Harcı :21,40-YTL
Posta Gideri :44,50-YTL
+-----
TOPLAM =94,30-YTL



RH 15/07/2008

RH 21/07/2008