THE CONCEPT OF PUBLIC HEALTH IN TURKISH PLANNING LEGISLATION

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ABSTRACT

THE CONCEPT OF PUBLIC HEALTH IN TURKISH URBAN PLANNING LEGISLATION

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'Modern' urban planning came out within a legislative framework involving a conception of "healthy city". In this thesis, the historical development of Turkish urban planning legislation is analyzed by looking for the evolution of "healthy city" conception involved in it. In this direction, first the constitutional development of Turkey is analyzed. Then, The Law of Public Sanitation No. 1593, the Law of Municipalities No. 1580, and the Urban Development Law No. 3194, which are the fundamental laws of Turkish urban planning legislation, are discussed from the point of view of "healthy city" conceptions involved in them. Conclusively, the insufficiency and inadequacy of urban planning legislation for today's needs and contemporary urban planning approaches are put forward with a critical approach.

Keywords: Public Health, Urban Planning Legislation, Healthy City.

ÖZ

TÜRK KENT PLANLAMA MEVZUATINDA KAMU SAĞLIĞI KAVRAMI

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'Modern' kent plânlama, "sağlıklı kent" kavramsallaştırmasını içeren bir yasal çerçeveyle ortaya çıkmıştır. Bu tez içerisinde, Türk kent plânlama mevzuatının tarihsel gelişimi, içerdiği "sağlıklı kent" kavramsallaştırmasının evrilişi açısından incelenmektedir. Bu doğrultuda, öncelikle anayasal gelişmeler analiz edilmektedir. Daha sonra, Türk kent plânlama mevzuatının temelini oluşturan 1593 sayılı Umumi Hıfzıssıhha Yasası, 1580 sayılı Belediye Yasası ve 3194 sayılı İmar Yasası, içerdikleri "sağlıklı kent" kavramsallaştırmaları açısından tartışılmaktadır. Sonuç olarak, bugünün gereksinimleri ve çağdaş kent plânlama yaklaşımları açısından, kent plânlama mevzuatının yetersizliği ve uygunsuzluğu, eleştirel bir yaklaşımla, ortaya konulmuştur.

Anahtar Kelimeler: Kamu Sağlığı, Kent Planlama Mevzuatı, Sağlıklı Kent.

To Kıvılcım and my parents

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INTRODUCTION

One of the goals of 'modern' urban planning has been to plan and design "healthy city". In fact, this goal has established the justfication basis of 'modern' urban planning discipline, both in theoretical and practical terms. Therefore, the conception of "healthy city" has always been one of the basic problematics of 'modern' urban planning action and discipline through its historical development.

Through the development process of 'modern' urban planning, the changes, which occurred simultaneously in the conceptions of "health" and "healthy city", have always had an impact on the city, not only in spatial terms, but also on the political, economic, social and cultural realms of life, as well. In other words, for being able to plan and design the future physical environment for/as a "healthy city", it has always been essential to take into consideration the conception of "health" of the individual and the society.

It is not just a historical coincidence that, 'modern' urban planing and public health came out together, almost in an unseparated form, through the Industrial Revolution. The emergence of the industrial town, as a rupture in the history of city in the European world, brought out new problematics that should be resolved. On one side, the technological and economic progress and on the other side, the intensity of change in all

realms of life, deeply changed all the conceptions of the individual and the society. As Hobsbawm (1990: 65) explains, "the Industrial Revolution represented a new economic relationship between men, a new system of production, a new rhythm of life, a new society and a new historical era". Therefore, industrial capitalism prevailed and changed all political and social institutions, economic relations and cultural strucures.

Through this fundamental transformation of human life, all the settlement structure of the European countries went under a tremendous change. The 'Coketown', with its unsanitary physical conditions, emerged as a consequence of the industrial capitalism. The misdemeanors of the industrial capitalism reached to its summit at the 'Coketown' (industrial town) that, it became essential to remedy the diseases of the new system. As Mumford (1989: 446) states,

> The new industrial city had many lessons to teach; but for the urbanist its chief lesson was what to avoid. By reaction against the industrialism's misdemeanors, the artists and reformers of the nineteenth century finally arrived at a better conception of human needs and urban possibilities. In the end the disease stimulated the antibodies needed to overcome it.

At this historical point, 'modern' urban planning and public health entered to the stage, almost in an unseparated form, for remedying unhealthy city of the industrial capitalism. It was inevitable to regularize the urban physical environment of the industrial capitalism because of three basic reasons. First, it was essential to have a "healthy" labour army for industrial capitalism to survive. Secondly, unsanitary conditions of the industrial town reached to a level that, it started to effect all the classes. Although the burgeoisie had escaped to suburban areas for being able to protect itself, the unsanitary conditions of the city even expanded to those areas. Lastly, the working class recognized the potential power of itself in the system and socio-political upheavals came out, which were also

including demands for better and healthy living conditions. Therefore, 'modern' urban planning and public health were constituted to resolve the unsanitary conditions of the industrial city.

In this thesis, the emergence of 'modern' urban planning and public health is signified by establishing a new framework as "healthy city vs. unhealthy city". With the "unhealthy city" conception, first, the agglomeration of the pathogenic problems in the city, through the Industrial Revolution, is explained. In this historical process, it is obvious that, both the 'modern' urban planning and public health are founded within a legislative framework. The first regularization is made by public health laws, which consist of mostly spatial regularization for establishing sanitary conditions in the city. Later, it is conceieved that, the sanitary conditions for the preservation of health of the individual and the society can be realized within the urban planning legislation, which would enable a sanitary physical environment for the society. Hence, we can say that, "healthy city" is developed within the legislative framework of 'modern' urban planning and public health.

It is difficult to make a unique definition of "health" and "healthy city". In other words, the definitions of both "health" and "healthy city" have a dynamic character that they change due to the historical development in political, economic, social and cultural realms of society. While "health" is defined as 'the mere absence of disease or infirmity' in the beginning, the contemporary definition is made as 'the state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity' in the preamble to the charter of the World Health Organization. By this definition, "health" becomes a complicated issue, which should be considered in a wide spectrum, with so many social and economic determinants. (Cohen, 1989: 1-6)

On the other side, the definition of "healthy city" also has a wide scope with reference to its content and context, in the historical development of urban planning discipline. The conceptual elaborations of urban planning action can give us some clues about the definition of "healthy city". While "healthy city" is seen as standardized, geometrical, rationalized physical environment towards the end of the 19th century and in the beginning of the 20th century; asymmetric, irregular, and imaginative physical environment has also been advocated as the essence of "healthy city" in the same era, as another approach. (Günay, 1988: 25-27) Today, the discussions in which the concepts like 'sustainability' and 'quality of life and living environment' are taking place. All these remark a different type of "healthy city" conception. Conclusively, it can be said that, through the historical development of urban planning discipline, one of the basic goals has always been to define "healthy city" with reference to changing structure of the society within the political, economic, social and cultural realms, parallel to the technological progress in the world. The only constant determinant of a "healthy city" conception has always been the establishment of sanitary physical and social infrastructure in the city, which has been a common denominator in all urban planning approaches and discussions. However, this basic conception can not be seen sufficient by itself for the definition of "healthy city", in contemporary sense.

Therefore, the conceptions of "health" and "healthy city" stay as the fundamental problematics of 'modern' urban planning discipline, because of their dynamic character. On the other side, it is obvious that, 'modern' urban planning and public health have developed within their legislative framework that has involved "health" and "healthy city" conceptions. Thus, the aim of the thesis is defined as the elaboration of "healthy city" conceptions in urban planning legislation. By this way, it is possible not only to understand the historical development of 'modern' urban planning

in a wider perspective, but also to develop a critical framework on the ideology of 'modern' urban planning.

In this approach, this thesis concentrated on Turkey, after making a brief discussion on the origins of 'modern' urban planning in the European world. At this point, it is significant to underline that, there is a deviation at the historical basis of the emergence of 'modern' urban planning in Turkey. While modern urban planning comes out because of the problematics of industrial capitalism in rapidly growing industrial towns in Europe, Turkey could not establish industrial capitalism at that era. Although the initiation of modernization movements of Turkey can be dated back to the beginning of the 19th century Ottoman Empire, Turkey stayed as the agricultural based economy with a highly rural population, which is exploited by the European world. Therefore, it is not possible to claim that, there were the problems of industrial capitalism in Turkey. In fact, there was no industrial city in European sense. The problems of Turkey can be more truly stated as undevelopment.

When we look at the problems of the cities in the late Ottoman era, it can be summed up as the rehabilitation of the 'sick man' which was identified mostly with the capital city of the Empire. Istanbul and the other big cities of the Empire had sanitary problems, but these problems were not originated because of industrialization. On the other side, modernization was mostly understood as the beautification of the big cities, only with their spatial forms, by the intelectual bureaucrats and officers of the era.

With the foundation of the Republic of Turkey in the 20th century, the success of the new regime was identified with the planning of the new capital city. Ankara would be the model for the development of the other cities in Anatolia, which had mostly pre-industrial character. Although industrialization was defined as one of the objectives in the way of development of the Republic, diadvantages of the poor heritage of the

Ottoman Empire and the historical phenomena like the Great Economic Crisis at the world scale, in the 1930s, slowed down the economic and social development. On the other side, the development of public health was another important issue for the new regime. Population of Turkey was low and unhealthy because of wars and insufficient health services. Thus, the improvement of health of the population became another objective of the Republic. Under these conditions and constraints of the era, urbanization was seen as the main strategy of industrialization by increasing a healthy population. By the way, it took time for Turkey to articulate to the world economy of industrial capitalism.

In this thesis, instead of discussing the development of urban planning in Turkey, the scope is narrowed by focusing on the historical development of the legislative framework of the 'modern' Turkish urban planning, by analyzing the "healthy city" conception in it. By this approach, not only the unique character of the historical development of 'modern' urban planning in Turkey can be better grasped, but also a critical framework can be developed for the actual urban planning practice.

Methodologically, first, it was essential to analyze the historical development of Turkish urban planning action within its legislative framework, through the modernization movements of Turkey. As mentioned above, the origins of the modernization movements go back to the 19th century of the Ottoman Empire, initiated by the Proclamation of the Tanzimat. Although there is a rupture with the foundation of the Republic of Turkey in the 20th century, a continuum can also be followed in the history of Turkish urban planning legislation. Therefore, the analysis of each of the fundamental laws of urban planning legislation is made by starting from the Tanzimat period of the Ottoman Empire.

The main methodological problem was the wide and dispersed characteristic of the Turkish urban planning legislation. There are so

many laws, by-laws and regulations that directly and indirectly determine urban planning action. Therefore, only the fundamental laws, which determine directly the urban planning in Turkey, are taken into analysis. These laws are the Public Sanitation Law No. 1593, the Law of Municipalities No. 1580, and the Urban Development Law No. 3194.

The Public Sanitation Law No. 1593 is analyzed because of being the fundamental law that involves the conception on the preservation of individual health and public health in Turkey. The Law of Municipalities No. 1580 includes detailed provisions for establishing a sanitary urban environment. And the Urban Development Law No. 3194 appears as the basic law that defines the scope of urban planning action in Turkey. As mentioned above, all these laws are analyzed with their predecessors for being able to reach a more complete discussion in the historical development of Turkish urban planning legislation, in its modernization process.

Before going into an analysis of these laws, the constitutional development of Turkey is discussed. As the Constitution is the highest level of law determining the framework of all other laws, by-laws and regulations, it is seen essential to look for the development of "healthy city" conception in the constitutions of Turkey.

After analyzing the constitutional development of Turkey and the historical development of fundamental laws of urban planning in Turkey, from the point of view of "health" and "healthy city" conceptions involved in them, a schematization is made as tables at the end of each chapter. The historical development of the Urban Development Law(s), which stands as the basic law(s) of urban planning action in Turkey, is used as a basis for summing up the other laws. Lastly, a more conceptual conclusion is developed for conceiving the "healthy city" conception of urban planning action within its legislative framework.

In this thesis, the most difficult task was the translation of the laws. While translating them into English, I used different books, which are all stated in the references, and utilized from the discussions which I have made with my supervisor. It is very possible that, I might have made some mistakes in the translation. As the wording of the laws is so important, I added the original forms of the stated articles of the Constitutions, Public Sanitation Law No. 1593, The Law of Municipalities No. 1580 to the appendix, in Turkish. As the urban development laws and related by-laws should be read completely, I did not put them to the appendix.

CHAPTER 2

UNHEALTHY CITY vs. HEALTHY CITY

The conventional reading and writing practice of the history of 'modern' city is based on the distinction of pre-industrial city vs.[1] industrial city. This distinction not only points out basically the Industrial Revolution as the main cause of rupture in the history of city, from which the 'modern' city came out, but also emphasizes the Industrial Revolution as "the most fundamental transformation of human life in the history of the world", in a wider sense, as well. (Hobsbawm, 1990: 13)

In this historical transformation process, one of the most radical changes occur in space, at every scale, in an intense form. On one scale, the balances between regions and countries of European or 'world'[2] economy are re-established, on another scale the physical fabric of the cities go under a tremendous change. The cities not only grow in size and population, quantitavely, but also the economic, social and cultural structures of the cities change rapidly and dramatically, in qualitative sense. These quantitative and qualitative changes at every scale, especially concentrated in the city, have two basic aspects: 'intensity of

[1] Indeed, pre-industrial city and industrial city is both a rupture and a continuum simultaneously. It is mostly inclined to understand as, they are only basically and solely opponents of each other. The "vs." means more and it should be covered in a dialectical sense in historical materialism that, the duality is the antithesis of each other and a synthesis can only be reached by taking them into consideration together.

change' and 'technological and economic progress'. These aspects make the transformation process to reach a revolutionary level, through which the distinction of pre-industrial city vs. industrial city is perceieved keenly by the historians.

However, the Industrial Revolution does not bring 'the greatest happiness to the greatest number' as it is expected to be. On the contrary, intensity and progress of the Industrial Revolution reveals another distinction on/in cities as "unhealthy city vs. healthy city". Once again, the role attained to the city in the history of civilization becomes an obligation that should be taken into consideration.

In other words, the fundamental question of urban planning, "what will be the form and function of the city (for the people)?" emerges once again in this transformation period of history, as the basic problematic. Therefore, 'the pre-industrial city vs. industrial city' distinction becomes insufficient to answer this basic question. The additional perspective of 'unhealthy city vs. healthy city' can help us to construct a wider framework.

In this chapter, first the basic paradigms of the Industrial Revolution will be briefly discussed. Then, a more descriptive analysis of the 'unhealthy city' will be made as the first phase of the Industrial Revolution. Lastly, the second phase of the Industrial Revolution, which signifies the emergence of 'modern town planning' and 'modern public health' together within a legislative framework, will be discussed.

[2] In this era, the European economy and 'world' economy could be used synonymously as Hobsbawm (51, footnote) mentions "the European economy was the centre of a world-wide network, but *not* that all parts of the world were involved in this network".

2.1. Industrial Revolution: Agglomeration of the Pathogenic Problems in the City

Marked with the Industrial Revolution in the history of the city, a passage occurred from pre-industrial city to industrial city. This passage, indeed, did not provide any solution to the fairly existing problems, at the begining. (Benovolo, 1971: 1; Schubert, 1996: 60) On the contrary, Industrial Revolution not only agglomerated all the existing problems of pre-industrial town and countryside to the new 'industrial town', but also added new problems, as well.

As a general tendency, to interpret all the changes which emerged within the Industrial Revolution solely as a positive outcome is a big mistake. Instead, these changes should be analyzed and its greatest product 'industrial town' should be re-evaluated.

Therefore, the paradigms of the Industrial Revolution and its impacts on the newly emerging 'industrial town' should be taken into consideration. The capitalism was strenghtening and prevailing with the support of the technological developments. Indeed, technological and economic paradigms of the era were both preparing and justfying the essential changes in the political and social spheres of the society.

In this section, I will concentrate, first, on the technological, economic and political paradigms those have prepared and justified the Industrial Revolution with its big setbacks. Then, a more descriptive analysis of the industrial town, more truely named as 'Coketown', will be presented under the topic of 'unhealthy city', with the light of these basic paradigms of the era.

2.1.1. The Technological Paradigm of the Industrial Revolution: The Order of Machine / Mechanical Regularity

Two dissimilar types of experience were establishing the leading philosophy of the era. Mumford (1989: 450) explains these experiences as:

> One was the rigorous concept of mathematical order derived from the renewed study of the motions of the heavenly bodies: *the highest pattern of mechanical regularity*. The other was the physical process of breaking up, pulverizing, calcining, smelting, which the alchemists, working with the advanced mine workers of the late Middle Ages, had turned *from a mere mechanical process into the routine of scientific investigation*. As formulated by the new philosophers of nature, this new order had no place for organisms or social groups, still less for the human personality. Neither institutional patterns nor esthetic forms, neither history nor myth, derived from the external analysis of the 'physical world': *The machine alone could embody this order*. (*italics* mine)

In a more simplified form, it can be said that, the technological paradigm of the era was 'the order of machine against the nature'. It means that, human beings, from that time on, could reign on the nature by utilizing the order of machine. Thus the ultimate point would be to reach the highest pattern of mechanical regularity.

The order of machine prevailed to the world with mining and mechanization. On one side, mining activity was not only demolishing the natural environment, but also "disordering the communal environment". (Mumford: 450) On the other side, the railroad, as the symbol of the mechanization, universalized the mining activity by taking the products of mining to anywhere it could go. "Wherever the iron rails went, the mine and its debris went with them." (Mumford: 451) And lastly, the factories took their place along the railroad sidings, which both added its negative

impacts to natural environment, city, society as noise, smoke, bad working conditions, etc., at every scale.

2.1.2. The Political and Economic Paradigm of the Industrial Revolution: Utilitarianism and Laissez Faire

Supported with the technological paradigm, 'the order of machine', Industrial Revolution developed within the main political and economic doctrines of the era, named 'utilitarianism' and 'laissez faire'. These two paradigms worked together, and transformed the whole spheres of life at every scale, from nations, settlement structures, societies, to individual behavior.

Utilitarianism, synonymously known with the names of Jeremy Bentham and John Stuart Mill, reached to its summit smiltaneously with the Industrial Revolution. Bentham was defining the major premise of the utilitarianism, at the very beginning of his book, *The Principles of Morals and Legislation*, in 1789, as,

> *Mankind governed by pain and pleasure.* Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it... *The principle of utility* recognizes this subjection, and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law. (Bentham, 1970:1-2)

In 1824, Bentham added, or substituted the principle of utility with the *greatest happiness or greatest felicity principle* which became the creed

of utilitarianism. He explained this principle as, "the greatest happiness of all those whose interest is in question, as being the right and proper, and only right and proper and universally desirable , end of human action" (Bentham, 1970: 1, footnote). This principle has seen the individual interest as the fundemantel base of human action.Therefore, utilitarianism was based on the 'atomistic individual', or 'self-seeking individual' by Mumford's phrase.

For Bentham, society was the arithmetic sum of these atomistic individuals. Therefore, utilitarians even tried to construct a calculus of happiness, "felicic calculus", of the society by taking into account each individual's pleasure and pain who are composing that society.[3] Felicic calculus was working so simple:

> Hapiness was the object of policy. Every man's pleasure could be expressed (at least in theory) as a quantity and so could his pain. Deduct the pain from the pleasure and the net result was his happiness. Add the happinesses of all men and deduct the unhappinesses, and that government which secured the greatest happiness of the greatest number was the best. The accountancy of humanity would produce its debit and credit balances, like that of business. (Hobsbawm, 1990: 79)

In addition to all these, utilitarianism with its all basic definitions, and especially with its felicic calculus, was looking for a rational and legislative basis for "public interest". However, it was implicitly defining the public interest (with the aid of 'sanctions'[4]) on the basis of atomistic individual.

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[3] As Scarre (1996: 75) states, "Bentham himself scarcely apprehended the severity of the technical problems involved in plotting the values of pleasures and pains on a numerical scale (particularly when so many 'circumstances' contribute to determining that value); and he underestimated the difficulty of interpersonal comparisons. Yet he did concede, with more realism than he is sometimes given credit for, that 'It is not to be expected, that this process should strictly pursued previously to every moral judgement, or to every legislative or judicial operation.' The notion of calculus should, however, always be 'kept in view' as an ideal model of rational deliberation, to which actual deliberations should conform as closely as possible."

[4] Look to the 'introduction' of Bentham's book, *The Principles of Morals and Legislation*, for a brief discussion on sanctions, written by Laurence J. Lafleur.

The reflection of utilitarianism on the economic activity was the belief of an 'economic harmony with the maximized public good', that would come out without any restriction or regulation of any institution hindering the free expansion of self-seeking individual and enterprise. (Benovolo, 1971: 10; Mumford, 1989: 452; Hobsbawm, 1990: 18) The name for this pre-ordained harmony was "*laissez faire*".

Therefore, not only all the existing institutional and traditional structures should be demolished, but also the whole duty of government should be reduced "to guard property, to protect rights, to ensure the freedom of choice, and freedom of enterprise of the atomistic individual". (Mumford, 1989: 448)

2.2. Unhealthy City: 'Coketown'

As a result of the basic paradigms of the Industrial Revolution, the industrial town became a totally new urban environment in which different types of pathogenies agglommerated. In this section, I will argue the birth and the development of the "unhealthy city".

In the second half of the 18th century, population started to increase rapidly in England. The total population of England almost doubled twice in a century. 'In 1800 the population was about 10$^{1/2}$ million; by 1850 it had increased to nearly 21 million and by 1900 it had nearly doubled again to 37 million'. (Telling, 1982: 3) The population not only increased, but also its pattern changed. Because of the fall in infant mortality, the percentage of the young people increased. It means that, the labour reserve increased. On the other side, the technological developments especially in the cotton industry changed the population balance between town and country. The people were weaving in the country house as a

family organization, in a scattered way. Then, mechanical force replaced manpower. First, the water enrgy was used, later the steam engine came. As Benovolo (1971: 3-6) explains,

> This forced the weaving industry to abandon its scattered organization and to concentrate in large workshops where the necessary energy was available, at first near water courses and later, near coal-mines, as coal was needed to fuel Watt's steam engine... When jenny (a new type of spinning machine) was invented, the cotton industry worked 3.800.000 pounds a year, increasing in 1775, with the appearance of the steam loom, to 18 million, to 123 million in 1810 and 273 million in 1830.

The cotton industry was the first step of the Industrial Revolution. The Industrial Revolution reached to its summit with iron and steel production, as the second step. The development of industry brought a new form of production 'factory'. The people migrated from agricultural areas to the 'cramped districts that were built near the factories', by Benovolo's phrase.

Therefore, the new industrial towns were born, and the existing villages and towns grew rapidly. Manchester's population increased from 12.000 to 95.000 between the 1750s to 1800. In 1850, its population was 400.000. In hundred years, Glasgow and Leeds grew ten times. In the 1850s, Glasgow's population was 300.000, and Leeds' population was170.000. (Benovolo, 1971: 7)

The complementary last step of the Industrial Revolution was the development in the networks of communication, because of the demands of trade. The railway network was established, canals were opened.

The reflections of these developments on town and country were dramatic. The virgin agricultural countryside was invaded by the railways and therefore by mining activity. The ecological balance was demolished.

In rapidly grown towns, the factory became the nucleus, and the railway projected the limits of town. Every component of the town was growing 'without design' by Mumford's phrase, with reference to the political and economic paradigm of the Industrial Revolution, utilitarianism and laissez faire. 'The town itself consisted of shattered fragments of land, with odd shapes and inconsequential streets and avenues, left over between the factories, the railroads, the freight yards and dump heaps.' (Mumford, 1989: 461)

Slum became one of the major components of the industrial town. Engels (1987: 70-71) describes that,

> Every great city has one or more slums, where the working class is crowded together. True, poverty often dwells in hidden alleys close to the palaces of the rich; but in general, a separate territory has been assigned to it, where removed from the sight of the happier classes, it may struggle along as it can. These slums are pretty equally arranged in all great towns of England, the worst houses in the worst quarters of the towns; usually one or two-storied cottages in long rows, perhaps with cellars used as dwellings, almost always irregularly built. These houses of three or four rooms and a kitchen form, throughout England, some parts of London excepted, the general dwellings of the working class. The streets are generally unpaved, rough, dirty, filled with vegetable and animal refuse, without sewers or gutters, but supplied with foul, stagnant pools instead. Moreover, ventilation is impeded by the bad, confused method of building of the whole quarter, and since many human beings live crowded into a small place, the atmosphere that prevails in these working-men's quarters may readily be imagined.

The first phase of the Industrial Revolution was a 'without design' period, in which the "unhealthy city" emerged and became mature with all its pathologies. Benovolo (1971: 11-12) states that,

> Thus while liberal thought was successfully brushing aside the old restrictions of laws and customs –a

> revolution which, in Europe and America, was almost completed between 1776 and 1832- the towns and countryside were left practically without any adequate measures for town and country planning.

On one side, starting from the 1840s, the Industrial Revolution entered its second phase and reached to its summit with high demand of coal production, iron and steel industries. On the other side, England simultaneously went under a socio-political crisis with the unbearable conditions of living environment and working conditions of the working class. It was inevitable to take necessary measures against industrialism's misdemeanours. 'In the end the disease stimulated the antibodies needed to overcome it.' (Mumford, 1989: 446)

2.3. Healing the Unhealthy City: Emergence of Modern Public Health and Modern Urban Planning

Modern urban planning and public health came out in the second phase of the Industrial Revolution with a legislative basis, as a remedy to the misdemeanors of the industrailization. Benvolo (1971: xi) argues that at the very beginning of his book as,

> The birth of modern town-planning did not coincide with the technical and economic movements which created and transformed the industrial town; it emerged later, when these changes began to be felt to their full extent and when they began to conflict, making some kind of corrective intervention inevitable.

The unsanitary conditions of the slums were prevailing to whole city as contagious and epidemic diseases[5]. Although, slum was separated from the suburb of the bougeoisie, 'the streets were a mingle-mangle, a

hodge-podge, where the constermonger, the businessman, the prostitute, the clerk, the nanny, the crossing-sweeper jostled for space'. (Stallybrass & White, 1986: 127-128) On the other side, taking care of the health of labour reserve was essential for a healthy economy. Brockington (1965: 2-3) explains the essence of the emergence of modern public health in this way as,

> The climate of opinion favourable to public health, when it did come, depended more upon enlightened self-interest than on a visionary dedication; the development of a social conscience often followed when diseases of squalor were seen to endanger the lives and health of the rich and poor alike; and when the health of industrial workers became an important consideration in improving output. There was little evidence until then that the authorities recognized any direct and continuing responsibility for the health of the people.

Therefore, Edwin Chadwick[6], who is one of the major founders of modern public health, made a research for the government first on London, then extended his study to England. It was published as *Report on the Sanitary Condition of the Labouring Population of Great Britain*[7], in 1842. Chadwick was concluding that, the establishment of sewage and water networks, improving housing conditions and cleanliness of districts and streets were the most primary and significant requirements for sanitation. (Illich, 1995: 194-195; Ulusel & Koç, 1999: 196) His empirical system of sanitation, dependent upon an 'inviolable circuit of incoming and outgoing fluids', as an essential of urban life. (Brockington, 1965: 4)

Therefore, 'to bring back fresh air, pure water, green open space, and sunlight to the city became the first object of planning'. (Mumford, 1989:

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[5] In fact, for bourgeoisie, slum had a meaning more than contagious and infectious diseases. Slum was seen as the breeding place of immorality at the same time. For a discussion from this point of view, look Stallybrass & White, 1986: 125-148.

[6] Chadwick worked in Benthamite circles in 1820s and from 1830-1832 worked closely with Bentham himself. (Stallybrass & White, 1986: 139)

[7] This report became an instant best-seller, and more than 10.000 copies were distributed free. (Stallybrass & White, 1986: 125)

475) Basically two approaches developed in town planning for reaching this objective. First one was the approach of the utopians. The utopians were rejecting the existing physical and social structure of the towns. They tried to create towns and communities within a new ideological perspective, in an experimental way, as an alternative to existing towns and their social structure. Owen and Fourier planned and established new settlements with their social and economic organization, in a very detailed way. They did not develop legislation for a country, but stated the rules of new way of life with detailed site plans and architectural plans at ideal villages and Phalanstery.[8] Conclusively, they believed that, they could establish a happy society by regularizing space and organizing social life.

The second approach was 'tackling the various technical needs connected with the growth of the industrial town and to cure its individual effects'. (Benovolo, 1971: 35-38) The specialists and officials like Chadwick were supporting this approach. The experiences approved that to deal with individual effects was inefficient. On the other side, the disorder and overcrowding of the industrial towns were raising sanitation problems. It was soon understood that, not only so many preventive measures should have to be taken to develop sanitation in towns, but they should also be coordinated as well. Therefore, industrial towns should be regularized both with physical norms and regulations on the social life. In this way, sanitary legislation became the forerunner of 'modern' urban planning legislation. As Benovolo (1971: 93) underlines, 'It was already obvious that future sanitary legislation would have to develop within the general framework of town planning legislation'. Thus, in England, a legislative framework developed on public health, including provisions on spatial norms for sanitation and guiding to town planning

[8] For experiments of the utopians, look Benovolo, 1971: 39-84; Mumford, 1992.

action. Then, 'modern' urban planning legislation was constituted for developing public sanitation and health.

2.4. Conclusive Remarks

The Industrial Revolution developed in two phases. In the first phase, a new spatial organization came out with the technological developments and the new form of production. A new social organization emerged as industrial capitalism, and a new type of city grew out in a disordered, overcrowded and unsanitary way, as coketown. In sum, the people started to live in unhealthy cities containing political, economic, and social problems in them.

The second phase of the Industrial Revolution came out as a reaction to the misdemeanors of the first phase. It is conceived in the middle of the 19th century that, a legislative framework should be developed for public health basically consisting of the regularizations on spatial norms of cities. Chadwick, the sanitary reformer of the era, was emphasizing the environmental aspects of hygiene rather than its personal aspects, in his public health approach. (Brockington, 1965: 5) Therefore, the fist public health laws consisted of so many and detailed provisions on the regularization of physical environment in the cities. 'It was already obvious that future sanitary legislation would have to develop within the general framework of town planning legislation'. (Benovolo, 1971: 93)

Later, it is proved by the trend analysis of diseases that the most primary determinant of the health of a society is environmental conditions. (Illich, 1995: 24) At this point, any study that tries to understand the essence of urban planning action, at different scopes, should always keep in mind the origin of 'modern' urban planning. Here, there are two different types of relations that should be concentrated on. First, the realtionship of

urban planning with law. Secondly, its direct relation with public health. In sum, it can be said that, urban planning action comes out for maintaining public health and justifies itself within a legislative framework.

In the following sections of the thesis, I will concentrate on the development of urban planning legislation from the point of view of public health, in Turkey. In other words, I will look for the "healthy city" conceptions involved in the fundamental laws that have determined the general framework of Turkish urban planning practice.

At this point, it should be emphasized that, the emergence and development of 'modern' urban planning in Turkey has had a different basis and path. Although the problems of public health and sanitation in the cities of Turkey have also been among the basic elements, which have influenced and determined the emergence and development of Turkish 'modern' urban planning and its legislation, it also has an unique characteristic related with the economic and social undevelopment of Turkey. As Turkey could not articulate to the industrial capitalism, which had already started in the end of the 18th century, -or more truly stated, as it has articulated to the industrial capitalism with its agriculture based economy as a peripheral country- the reason of the emergence and development of 'modern' urban planning can not be explained solely by the misdemeanors of industrialization. In fact, there has not been a significant industrialization and naturally no industrial city untill the mid of the 20th century. In the next chapter, while analyzing the historical development of Turkish urban planning legislation from the point of view of "healthy city" conception involved in them, the basic characteristics of urbanization in Turkey will be explained by making a brief discussion on the conditions and constraints of each historical periodization.

CHAPTER 3

THE FRAMEWORK OF URBAN PLANNING LEGISLATION AND CONSTITUTIONAL DEVELOPMENTS OF TURKEY

As it is discussed in the previous chapter, 'modern' urban planning and public health emerged in an unseparated form within a legislative framework, in the western world. As the first attempts to regulate urban areas came out in public health laws, then it is understood that, "healthy city" would be developed within urban planning action with its legislative framework. Therefore, for finding out "healthy city" conception of 'modern' urban planning action, it is essential to analyze the legislative framework of urban planning. So, the thesis will concentrate on the Turkish urban planning legislation to expose the development of "healthy city" conception of urban planning action in Turkey.

In this chapter, first the basic characteristics of urban planning legislation will be discussed. Then, the legislative framework of urban planning will be refined with respect to aim and scope of the thesis. Lastly, the constitutional development of Turkey will be analyzed.

3.1. The Basic Characteristics of Urban Planning Legislation in Turkey

The functions of the political power had emerged as making war and peace, the maintenance of public order and the organization of enrichment. Then, in the 18th century, a new function was added as 'the disposition of society as a milieu of physical well-being'. (Foucault, 1980: 170) Later, through the development of western democracy and with the emergence of social state governed by the rule of law, new functions were added as public works, education, social security, etc. Therefore, as Payaslıoğlu (1991: 22) explains,

> These developments plus the tremendous progress in science and technologies have forced the states to legislate in almost all aspects and areas of social life, to establish ever new and expanding organizations, and to reshape and redirect the relations among private persons as well as those between them and the public institutions. For all these activities there is need for specific legislation ie. *systematic set of rules with specific goals.* (*italics* mine)

Therefore, both the Ottoman Empire and the Republic of Turkey also established 'systematic set of rules with its specific goals' for urban planning. It is called as urban planning legislation, in this thesis. And a part of this legislation, which defines its specific goal as planning "healthy city", is discussed. Later, I will turn to this discussion that which laws are selected.

The basic characteristic of urban planning legislation is its being a part of public law, and administration law. (Akıllıoğlu, 1986: 93; Tan, 1976: 8-9) And it is also claimed that, urban planning legislation partly carries a private law character. (Erkün, 1999: 11) The objectives of maintaining public interest and protecting public health and public property, etc are the most common terms used by the planners, that reflect the dominant public law side of urban planning action.

Another characteristic of urban planning legislation is its two-way relation between planning and law. On one side, the laws define the limits of planning action mostly by restrictions, on the other side, urban planning action refines itself mostly with plans drawn on maps and additional reports, which come out as a legal documents. These legal documents, which we call plans, are binding for everyone including the organs, the institutions, and officials of the state. (Keleş, 1990: 108-109)

Lastly, urban planning legislation has a characteristic of having a wide scope. It means that, as urban planning takes into account economic, social and cultural realms of urban structure and life, its legislation appears so wide and dispersed. This discussion will be developed in the next section for the refinement of urban planning legislation with respect to aim and scope of the thesis.

3.2. The Refinement of Legislation with Reference to "Healthy City" Conception of Urban Planning Action

As mentioned above, urban legislation has a wide scope in the form of laws, by-laws and regulations that reflect the different objectives in different types of urban planning action. For example, there are different laws and related by-laws on the preservation of historical monuments and urban fabric; disposition of the use of coasts; renewal of the squatters areas, etc., in Turkey. In addition to that, there are laws and by-laws that are not directly related with the aim and scope of urban planning, but contain provisions related with it. The Public Sanitation Law and the Law of Municipalities in Turkey has that kind of a character. In fact, for urban planning action, the fundamental law with its by-laws is the Urban Development Law No. 3194.

In this thesis, the main problematic is formulated as, to analyze the development of "healthy city" notion in urban planning legislation in Turkey. Then, it becomes essential to refine and select the laws that are directly related with this problematic.

First, the Public Sanitation Law No. 1593 will be analyzed because of being the fundamental law, which has established the conception on the preservation of individual and public health, in Turkey. The "healthy city" conception, with its modernist meaning, first appears in this law. Secondly, the Law of Municipalities No. 1580 will be discussed with its provisions for establishing a sanitary urban environment. And lastly, the Urban Development Law will be taken into consideration, as it has defined the basic scope of urban planning action. All these laws will be analyzed in a historical perspective, with their predecessors. In fact there are so many other laws and by-laws determine the "healthy city" notion in Turkish legislation, but mentioned laws appear as the most fundamental and significant ones on this issue.

Before analyzing these laws, the constitutional development of Turkey will be discussed. As the constitution is the highest level of law that, 'all other laws should be in conformity with its rules and provisions' (Payaslıoğlu, 1991: 53), it is essential to look for the constitutional roots of "healthy city" conception in its widest sense, in a historical perspective.

3.3. Constitutions of Turkey

In this section, first the definition, subject and the structure of constitutional law will be briefly explained. In addition to that, the basic characteristics of a constitution will be defined. Secondly, the constitutional developments of Turkey will be discussed in each constitutional period, not only by exposing the basic characteristics of the

constitutions but particularly analyzing each of them from the point of view of "healthy city" conception. The basic questions will be: Is there any conception on "health" and "healthy city"? If there is any implicit or explicit conception, then how is it formulated? Lastly, how can we evaluate or interpret these conceptions with their impacts on urban planning practice?

3.3.1. The Features of Constitution(s)

The constitutions are legal rules, which are mostly embodied in a systematic code of law, as a sort of social contract mainly structured on two subjects. The first subject covers a set of rules concerning the organization and the interrelations of organs and institutions of a state. The second set of rules defines the basic rights and duties of the citizens. On the other hand, as it has been in the Constitution of the Turkish Republic, there may be a third set of rules including provisions concerning various subjects. This third category of provisions mostly appear under the effect of political, economic and social conditions in a country with the prevailing ideas of the time. (Payaslıoğlu, 1991: 49, 53, 95-97)

One of the basic characteristics of the constitutions is their being the *highest level of law*. As Payaslıoğlu (1991: 53) states that, "This means that all other laws should be in conformity with their rules and the provisions of constitutions are binding for everyone including the organs, the institutions, and officials of the state". This is declared in the 1982 Constitution of the Republic of Turkey as:

> The provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs, and administrative authorities and other agencies and individuals. Laws can not be in conflict with the

> Constitution. (1982 Constitution of the Republic of Turkey, art.111)

Another basic characteristic of the laws in general and particularly of the constitutions is their *extent in details*. Although, the basic principle of enactment is mostly phrased as "the least law is the best law", there have always been complaints about the need of more detailed provisions, because of the abuses and arbitrariness in the regulation of social relations by more abstract and general laws in force. In addition, as legal rules are mostly based on past experiences and observations, they are also expected to be applicable to future cases. Payaslıoğlu (1991: 110) argues that,

> Legal rules, particularly those in the nature of high level norms or principles (such as constitutional provisions) are advised to be formulated in a general and abstract way so that they may cover unexpected novel cases and eventualities.

In this way, Gözübüyük (1993: iii-iv) defines two terms on the extent in details of a constitution as *'detailed constitution'* and *'framing constitution'*. While evaluating the constitutional developments in Turkey, he claims that, the last two Constitutions of the Republic of Turkey (1961 and 1982 Constitutions) have been formulated as detailed constitutions.

Constitutions are mostly made, in many cases, in the wake of social and political upheavals such as revolutions, wars, coup d'Etats, or lesser political crisis. (Payalıoğlu, 1991: 95) The constitutions of Turkey are made in such cases too. But, as a problematic attitude, the reason and resolution of the cirisis are mostly reduced to being only a constitutional problem, in Turkey. Therefore it has been assumed that, the change of the constitutional provisions and formulating them in a detailed way would resolve all the problems like a magic stick.

As the constitutions become inadequate, ineffective and inefficient to maintain the needs of a society, because of the political, social, economic and technological changes in time, amendments in the provisions of the constitutions become essential. At that point another characteristic of the constiution comes out as its being a *rigid* or a *flexible* one. If there are special procedures for the amendment of a constitution, it is called rigid constitution. The last two constitutions of the Republic of Turkey have included related provisions on the amendment of the constitution[1]. So, they are rigid constitutions. On the other hand, flexible constitution is defined by Payaslıoğlu (1991: 96) as follows:

> Flexible constitutions are not in principle subject to such special procedures for their amendments. They are amended following the general procedures for enacting the laws in the legislatures.

Gözübüyük (1993: iii) evaluates the essential amendments of a constitution from the point of view of democracy as;

> Government and the cadres establishing the government have not only to comply with the Constitution and all other laws in force, but also interpret them in a democratic way. To amend the inadequate laws, which do not maintain the needs of society, is the basic understanding of a state governed by the rule of law.

3.3.2. The Constitutional Developments of Turkey

"The Constitution Law movements of Turkey go back to the first half of the nineteenth century". (Gözübüyük, 1993: iii) Parallel to the modernization movements, starting in the 19th century Ottoman Empire,

[1] As examples, for the special procedures to be followed in the constitutional referenda of the constitutional amendments, look at the second and fourth article of the 1982 Constitution of the Republic of Turkey.

there emerges both a social demand and a political impression for a constitution.

In this section, the constitutional developments of Turkey will be analyzed. The constitutional development of Turkey will also show us the birth and the development of the Republic of Turkey, from a different point of view. Each Constitution in Turkey signifies a new period with different priorities in political, economic and social realms of life in the country. Therefore, the basic aspects of these laws will be briefly discussed at the beginning of each new constitutional period of the Turkish Republic. Then the analysis of the Constitutions of Turkey will be made by looking for their conceptions on "health" and "healthy city".

Turkey has had five constitutions since the second half of the 19th century. These are 1876, 1921, 1924, 1961, and 1982 Constitutions. Indeed, the last three ones are mostly accepted as having a more constitutional character. The first two Constitutions are mostly seen as the efforts to transform the political system to a more democratic character.

3.4. 1876 Constitution (Kanunu Esasi)

In the 19th century, there emerged reactionary thoughts against the absolute monarchy, especially among the Ottoman intellectuals, bureaucrats and officers. This law is the result of political pressures of these Ottoman intellectuals, bureaucrats and officers on the Empire. These intellectuals (authors like Şinasi, Ziya Paşa, Namık Kemal), bureaucrats and officers[2] (like Mehmet Fuat Paşa, Mehmet Emin Ali Paşa, Ahmet Mithat Paşa) have believed the establishment of a

[2] For a more detailed information about the characteristics of these civil-military bureaucrats and officers, look at Ergun, T., & Polat, A., 1978, pp: 70-74.

parliament which would control both the Emperor and the government, defined by a constitution. They have believed in western parliamentary democracy, which could re-enforce the Ottoman Empire. (Gözübüyük, 1993: 3-10)

Therefore, 1876 Constitution[3] had a character of instituting a constitutional monarchy. "This Constitution was suspended in 1878, restored in 1908, amended in 1909 enlarging the power of the legislature". (Payaslıoğlu, 1991: 97) Nevertheless, in the 1876 Constitution, there is nothing explicitly stated about "health" or any conception to reach a "healthy city".

Only, in the article 110 -in the section defining province (*vilayat*)- organizing road and services (...*turuk ve mearib tanzimi*...) would be managed with reference to a law on public works (...*bir umuru nafiaya müteallik mevad*...) is mentioned. Province Council (Vilayat Meclisi) would be responsible from these works. (Gözübüyük, 1993: 24) There was already a regulation in force, that is Road and Building Regulation (Turuk ve Ebniye Nizamnamesi), dated 1864. Then, in 1882, instead of this regulation, the Building Law (Ebniye Kanunu) came being in force. (Artukmaç, 1969: 19-24) Indeed, the article in this Constitution, and the related laws and regulations of the period were mostly made for the fire sites in Istanbul. Nonetheless, 1876 Constitution Law neither mentions anything about "health" nor gives us a conception of "healthy city".

3.5. 1921 Constitution (Teşkilatı Esasiye Kanunu)

1921 Constitution came out under the extraordinary conditions of the national independence movement, that has begun in Anatolia. The main

[3] 1876 Constitution is mostly imported from The 1875 French Constitution, and 1831 Belgium Constitution. (Gözübüyük, 1993: 4)

feature of this constitution is its keen intention towards a new political system. (Gözübüyük, 1993: 39-43) It was declaring that, the sovereignity belonged to the nation and it vested the legislative and executive powers in the National Assembly. (Payaslıoğlu, 1991: 98)

As 1921 Constitution has arisen both to realize the national independence movement and to open the way to a republican regime, the articles of the law, naturally, do not include anything about "health" or the conception of "healthy city".

Similar to the 1876 Constitution of the Ottoman Empire, in the Province (Vilayat) section of the 1921 Constitution (art. 11), organization and administration of health and public works *(...Sıhhiye,...,Nafia,... işlerinin tanzim ve idaresi)*, among other works like economy, agriculture, social services, etc., is under the responsibility of Province Councils (Vilayet Şuraları). (Gözübüyük, 1993: 45) Nevertheless, 1921 Constitution does not develop any conception on "health" or "healthy city".

3.6. 1924 Constitution (Teşkilatı Esasiye Kanunu)

After the national independence movement has been won, under the reign of the parliament with the 1921 Constitution, there emerged essentiality of a new constitution for the needs of a new nation and a new regime. Thus, the 1924 Constitution[4] came out by extending the previous Constitution. (Gözübüyük, 1993: 51-55)

In this Constitution, similar to the Constitution of the Ottoman period, the basic rights and freedoms are briefly stated. On the other side, economic

[4] 1924 Constitution is not prepared by directly importing any foreign countries' constitutional law. However, it is also known that, there are some articles taken from The French and Poland Constitutions. (Gözübüyük, 1993:51)

and social rights are not stated. Although this Constitution is a brief, simple, well-structured, and consistent law, it does not involve any conceptions on "health" or "healthy city". Only the sixth chapter of the Constitution (articles 89-91) is devoted to the definition of the administrative division of Turkey as provinces, administrative districts, sub-districts, and vilages with respect to geographical and economic relations. These are declared as juristic persons.

3.7. 1961 Constitution

After the Second World War, Turkish parliamentary system entered into the multi-party system era. In 1950, Democrat Party won the elections with a great majority in the parliament. Turkey still being in the formation of parliamentary customs, the great imbalance in the National Assembly caused tensions between government and opponent parties. Therefore, a political crisis emerged and spread to whole country, engaged with economic problems and social upheavals. Before the 1957 elections, all the opponent parties joint to announce a common declaration for resolving the political crisis. In this declaration, the political crisis was being formulated simply as a constitutional problematic. (Gözübüyük, 1993: 83-92)

Therefore, with "the May 27, 1960 coup a new constitution was prepared jointly by a constituent assembly and the National Unity Committee (the military junta) and approved by the majority of the voters (% 61.5) in a referendum in 1961". (Payaslıoğlu, 1991: 98) Since all the problems were simply reduced to a constitutional problematic, the 1961 Constitution came out as a detailed constitution in its extent, and a rigid constitution, requiring special quorums for its amendment. (Payaslıoğlu, 1991: 98)

1961 Constitution brings a new conception on the defintion of the state. In addition to its national, democratic and secular qualities, which were all taking place in the previous Constitution, Republic of Turkey is defined also as a *'social state governed by the rule of law'*. It is declared in the second article of the Constitution as follows:

> The Republic of Turkey is a national, democratic, secular and social State governed by the rule of law, loyal to the human rights and based on the fundamental tenets set forth in the Preamble[5]. (1961 Constitution of the Republic of Turkey, art. 2)

The essence of being 'a state governed by the rule of law' is maintaining a state order to the citizens under the security of law. 1961 Constitution fulfills this task by defining the preconditions of the application of law and establishing its related independent institutions in related articles. On the other side, being a social state has a wider definition. Gözübüyük (1993: 88) summarizes the qualities of being a social state, which are diffused in many articles of the Constitution as:

> For realizing the social state, the Constitution foresees the regulation of economic and social life with respect to justice, full work principle, and reaching to a level of life suitable to human honour; the promotion of economic, social and cultural development within democratic ways; the realization of development by planning...

In this way, the basic rights, freedoms and duties of citizens are categorized in the Constitution, in a detailed style. There are four categories as follows:

1. Fundamental rights and duties.
2. The rights and duties of the individual

[5] Payaslıoğlu (1991: 97) defines the preamble of a constitution as "a statement indicating some of the events that led to its making, the way it is made and adopted, and its underlying philosophy and principles."

3. Social and economic rights and duties.
4. Political rights and duties.

The general and specific restricitions on the basic rights and freedoms are also mentioned in the Constitution. The general restriction principle taking place in the first chapter of the second part, 'fundamental rights and duties', as the eleventh article, underlines the restrictions which can be applied to all fundamental rights and freedoms.

> Exercise of the fundamental rights and freedoms may be restricted only by law, in conformity with the letter and spirit of the Constitution, with the aim of safeguarding the integrity of the State comprising its territory and the nation, the Republic, national security, public order, *public interest*, general morals and *general health* or for special reasons designated in the relevant articles of the Constitution. (*italics* mine)
>
> Law can not touch the essence of the fundamental rights and freedoms.(1961 Constitution of the Republic of Turkey, art.11)

The general restriction principle of the 1961 Constitution indeed contains the initial motive of urban planning action by mentioning "public interest" and "general health" as restriction criteria. This issue will be discussed later, after exposing the specific restrictions stated in the Constitution, related with "health" and "planning".

One of the specific restrictions, related with our topic, is mentioned in the second chapter of the second part, 'the rights and duties of the individuals'. The eighteenth article of the 1961 Constitution is on 'travel and residence freedom'. It states that,

> Everyone is entitled to freedom of travel. This freedom may be restricted by law only for safeguarding the national security and the preservation of the epidemic diseases.

> Everyone is entitled to freedom of residence in any place he/she wants to. This freedom may only be restricted for for the purpose of safeguarding national security, preservation of the epidemic diseases, protecting the public property, promoting social, economic and agricultural deveopment and with the law. (1961 Constitution of the Republic of Turkey, art. 18)

In 1961 Constitution, there are two other different types of restrictions which are specifically developed on 'the social and economic rights and duties'. The first one is stated, in the last article of this chapter, as 'the limits of economic and social tasks of the State'. This article mentions that,

> The State is limited to realize the tasks defined in this chapter ('the social and economic rights and duties') with its capacity of economic development and fiscal resources. (1961 Constitution of the Republic of Turkey, art. 53)

The second type of restriction specifically for the third chapter of the second part, 'the social and economic rights and duties' in the 1961 Constitution is related with the ability of making the decrees having the force of law[6]. According to this article, listing 'the duties and power of the Grand National Assembly of Turkey' (article 64) the Assembly can only make decrees having the force of law on 'the social and economic rights and duties' chapter but not on the other three chapters of rights and duties. It is stated in the 1961 Constitution as follows:

[6] Payaslıoğlu (1993: 100) defines 'decrees having the force of law' and explains the issue for Turkey as: "In democratic systems legislative power is vested in the representative assemblies ie. in principle they alone have the authority to make laws. But taking into consideration such facts as the normally slow parliamentary procedures for enacting laws and the requirements of modern socio-economic conditions which may call for quick action, the executive branch of governments are sometimes empowered to make legal rules in status equal to laws enacted by the legislatures. In Turkey such a power was first recognized for the Council of Ministers in the 1961 Constitution and is also included in the Constitution of 1982."

> The fundamental rights and duties included in the First and Second Chapter of the Second Part of the Constitution and the political rights and duties listed in the Fourth Chapter, can not be regulated by decrees having the force of law. (1961 Constitution of the Republic of Turkey, art. 64)

It can be concluded that, the 1961 Constitution gives feedback to (urban) planning action mostly not directly stated articles on related issues, but indirectly through the restrictions set forth by it.

The forty ninth article of the 1961 Constitution called 'the health right' is directly related with "health" and urban planning action. It is mentioned in the third chapter of the second part of the Constitution, 'the social and economic rights and duties'. It states that,

> Health Right:
>
> It is duty of the State to make everybody to live in body and spirit health and to get medical services.
>
> State takes all the necessary measures for the needs of housing, with sanitary conditions, for poor and low-income families. (1961 Constitution of the Republic of Turkey, art. 49)

Conclusively, the 1961 Constitution can be evaluated in two ways from our point of view. First, with its conception of "health", specifically in an article, directly stated as "health right". Secondly, within its comprehensive 'social state governed by the rule of law' definition, generally diffused in many articles, indirectly underlining the importance of "health" and pointing out the initial motives of urban planning action for a "healthy city", mostly with restrictions.

In the health right article, "health" is defined in two ways. First, it is simply seen as the condition of well-being of individual life bodily and spiritually, in a medical sense. For that reason, the State has the duty of maintaining

medical services. Secondly, the meaning of "health" is extended to housing -basic living environment as a shelter- in a sanitary sense. It is understood that, as the poor and low-income families are assumed not to be able to maintain sanitary conditions for their housing, state is seen responsible for producing housing in sanitary conditions for these groups.

These two different types of meanings can also be considered as a natural part of being a social state governed by the rule of law. A social state should maintain health and healthy shelter to its citizens and it has also to make laws on these issues as a state governed by the rule of law. In another way, this article can be interpreted as an initial motive of urban planning action, particularly developing the preconditions of sanitary housing for poor and low-income families and generally planning cities with sanitary conditions. This can be easily justified when the rapid growth of the cities is taken into consideration in that period, mostly as squatters (gecekondus).

It is important to recognize that, the 1961 Constitution initiates planning as the main way and means of economic, social and cultural development (stated in the articles 41 and 129)[7]. Therefore, Turkey not only entered its planning era, but also as a type of planning action, urban planning gained its legal basis at the constitutional level. It is not only stated specifically and directly, as it is in the article 49, but also generally and indirectly with the restrictions defined in the Constitution. It can be seen contradictory that, the justification of generally planning and particularly urban planning come out by the restrictions stated in the Constitution. Indeed, this is another type of relation of (urban) planning action with law.

[7] In these articles, not only planning is accepted as the main way and means of economic, social and cultural development but the State Planning Organization is also founded as a constitutional institution.

There are basically two types of relations between planning (in its most general meaning) and law. First, the role of law as restricting and framing planning and secondly, the role of law as a planning tool. In the first type of relation, it is unarguable that all the tasks and activities should be in conformity with the restrictions of law. Therefore, all the planning actions should be in conformity with the Constitution (and also laws, decrees having the force of law, by-laws and regulations, in the hierarchy of legal rules). In the second type of relation, planning can accomplish its tasks only within the existence of an appropriate and adequate legal basis and tools. (Tan, 1976: 8)

Parallel to these two types of relation between planning and law, urban planning actions are not only defined within the restrictions of related legal rules at different levels, but also planning actions necessitate appropriate and adequate legal rules at different levels and at different realms of social life as well.

If we re-evaluate and interpret the general and specific restrictions of the 1961 Constitution in this direction, we can find out some different types of "health" and "healthy city" conceptions.

In the general restriction on the basic rights and freedoms (art. 11), public interest and general health appear as two basic conceptions which are mostly utilized as the main justification basis of urban planning action for a city as "healthy city". In other words, the Constitution enables urban planners to justify their professional practices, for accomplishing their task of planning cities, with reference to public interest and general health. In addition, the Constitution points out that, the laws (which should be appropriate to the letter and spirit of the Constitution) can also put specific restrictions on every action, including urban planning. It means that, the laws related with urban planning will set forth some other restrictions defining the scope, means and ends of urban planning action.

One of these specific restrictions is mentioned in the article 18, on the freedom of residence. It is stated in the article that, "freedom of residence may be restricted for the preservation of epidemic diseases, protecting public property, promoting social, economic and agricultural development and with the law". Therefore, urban planning profession can not allow residential developments which can cause epidemic diseases, giving harm to public property and putting obstacles to social, economic and agricultural development. Then, another conception on "healthy city" for an urban planner can be formulated as settlements with sanitary conditions (that would not cause epidemic diseases), with plans protecting public property, and keeping social, economic and agricultural development.

The scope of (urban) planning, as a duty of the state, within the conception of "healthy city" above, becomes a very hard work in every sense. Then the 1961 Constitution develops a limitation especially for the social and economic duties of the State. It is stated in the article 53 that, accomplishing the economic and social tasks defined in this chapter ('the social and economic rights and duties'), including the definition of the scope of planning and the health right, is restricted with the State's capacity of economic development and fiscal resources. This can be interpreted as, the conceptions of "health" and "healthy city" for (urban) planning action by the State can only be realized with its capacity of economic development and fiscal resources.

It can be concluded that, the 1961 Constitution gives feedback to urban planning action, with its conceptions of "health" and "healthy city", mostly not with directly stated articles on related issues, but indirectly through the restrictions set forth by it. It should also be emphasized that, the 1961 Constitution is the first one defining "health" directly and relating it with the sanitary conditions of housing.

3.8. 1982 Constitution

Starting at the end of the 1960s, growing in the 1970s, political, economic and social problems and reactionary social upheavals expanded to whole country. The political consciousness spreading in the working class and among the university students came out with a new political system demand. The rising of left movement was seen as a great threat to the sacred existence of the Republic of Turkey, damned and distorted not only by the nationalist and conservative right, but also by the Turkish Armed Forces. Therefore, another coup occurred in 1980, September 12. The reason and the aim of the 1980 coup reflected to the Preamble of the 1982 Constitution as follows:

> As the result of the 12 September 1980 operation carried out by the integral part of the Turkish Nation, the Turkish Armed Forces, acting in response to a call from the Nation, at a time when separatist and destructive civil war, unprecedented in the Republican era, against the integrity of the eternal Turkish motherland and the nation and the existence of the sacred Turkish State was imminent...

The 1982 Constitution was prepared jointly by a Constitutive Assembly and the National Unity Council (the military junta). With a referendum in 1982, it was approved by the majority of the voters (% 91.37) with a participation ratio of % 91.27. Once again, the whole political, economic and social problems were seen as constitutional problematic and reduced to constitutional level. Therefore, the 1982 Constitution came out, similar to the 1961 Constitution, as a detailed constitution in its extent and a rigid constitution, requiring special and complex quorums for its amendment, as it is stated in the article 175. Furthermore, the 1982 Constitution is not only more solid than the 1961 Constitution, but it also aims to establish a healthy and strong democratic order than simply returning to democratic life. (Gözübüyük, 1993: 185-193)

Similar to the definition of the state in the 1961 Constitution, the main feature of the state as being a social State governed by the rule of law is kept and extended with a few additional concepts as follows:

> The Republic of Turkey is a democratic, secular and social State governed by the rule of law, respecting human rights within the concepts of public peace, national solidarity and justice, loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble. (1982 Constitution of the Republic of Turkey, art. 2)

On the other side, as it seems similar with the 1961 Constitution from the point of view of the regulation of rights and freedoms, the 1982 Constitution has a significant difference in its essence. Gözübüyük (1993: 191) formulates that difference as,

> While both of the Constitutions underline the existence of the State as a precondition, the 1961 Constitution gives its priority to the individual and sees the State responsible from the liberation of the individuals. On the other side, the 1982 Constitution gives its priority to the State expressed as "the indivisible integrity of the State comprising its territory and the nation".

In this way, the general and specific restrictions on the rights and freedoms are enlarged in the 1982 Constitution. There are two additional articles to the general restriction principles stated in the first chapter of the second part, which are called as 'prohibition of the abuse of fundamental rights and freedoms'[8] (art. 14) and 'suspension of the exercise of fundamental rights and freedoms' (art. 15). While the fourteenth article regulates the prohibition of the abuse of fundamental rights and freedoms mostly from the point of view of the expression "violating the indivisible integrity of the State comprising its land and the

nation, of jeopardizing the existence of the Turkish State and Republic..."; the fifteenth article defines the suspension of the exercise of fundamental rights and freedoms under extraordinary conditions like "times of war, mobilization, martial law, or state of emergency". These two articles may be evaluated as the reactionary provisions against the conjunctural developments in Turkey, in that era.[9] From our point of view, the thirteenth article, "restricition of fundamental rights and freedoms", as the general restriction principle, is directly related with our topic. It states that,

> Exercise of the fundamental rights and freedoms may be restricted by law, in conformity with the letter and spirit of the Constitution, with the aim of safeguarding the integrity of the State comprising its territory and the nation, the Republic, national sovereignty, national security, public order, general tranquility, *public interest*, general morals and *general health* and also for special reasons designated in the relevant articles of the Constitution. (1982 Constitution of the Republic of Turkey, art. 13) (*italics* mine)

As it is mentioned for the 1961 Constitution, public interest and general health as two of the general principles restricting the fundamental rights and freedoms, repeated in the 1982 Constitution, establish the constitutional justification basis of urban planning action for a "healthy city" conception.

When the 1982 Constitution is analyzed for finding out conceptions on "health" and "healthy city", there comes out specific articles on these issues, stated in the second and third chapter of the second part, as specific rights and duties and restrictive conditions for them. The first one

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[8] In fact, article 14, 'the prohibition of the abuse of fundamental rights and freedoms' is previously added to the 1961 Constitution in 1971.

[9] It should not be forgotten that, the 1982 Constitution came out under the threat of an imminent civil war. But it is also equally important that, it is an anti-democratic constitution with its numerous articles, which have been discussed since then. It can be claimed that, its main aim has all been to establish a politically less participatory system in Turkey. (Gözübüyük, 1993: 191-192)

is the article 23, "freedom of residence and travel", stated in the second chapter of the second part, "the rights and duties of the individual".

> Everyone is entitled to freedom of residence and travel.
>
> Freedom of residence may be restricted by law for the purpose of preventing crime, promoting social and economic development, *ensuring sound and orderly urbanization*, and protecting public property... (1982 Constitution of the Republic of Turkey, art. 23) (*italics* mine)

For the first time, urbanization is mentioned directly in a constitution of Turkey, by this article. It is stated equally with the promotion of social and economic development and the protection of public property. Indeed, a sound and orderly urbanization should take into account these issues. Therefore, this article can be interpreted as the basis of a "healthy city" conception not only by mentioning that, urbanization should be sound and orderly, but also promote social and economic development and protect public property, in a comprehensive way. It is essential to underline that, the constitutional basis of urban planning action comes out as a restriction principle on the right and freedom of residence, which can be directly formulated as housing in urban planning jargon. As housing can not be considered by itself, this article, with its restrictive approach, may be reflected to all types of settlement components like the location of industry, social services, recreational areas, etc.

In addition to the statement of urbanization, the 1982 Constitution includes a section called "health, environment and housing" which enables us to reach a conception of "health" and "healthy city". It is the eighth section of the third chapter of the second part. This section consists of two articles, named as "health services and the protection of the environment" (art. 56), and "the right to housing" (art. 57). The first article of this section is stated as:

VIII. Health, Environment and Housing
A. Health Services and the Protection of Environment

> Everyone is entitled to live in a suitable and healthy environment.
>
> It is the duty of the State and the citizens to develop the natural environment, to protect the environmental health, and to prevent the environmental pollution.
>
> To ensure that all citizens lead their lives in conditions of physical and mental health and to secure cooperation in terms of manpower and equipment, through economy and increased productivity, the State regulates central planning and functioning of the health services.
>
> The State carries out this function by utilizing and supervising the health and social assistance institutions, in both the public and private sectors.
>
> In order to establish widespread health services general health insurance may be introduced by law. (1982 Constitution of the Republic of Turkey, art. 56)

This article consists of two parts. In the first part, "health" is defined. In this definition, "health" is directly related with environment, meaning of which may be considered, in its largest extent, as natural and man-made environment. It is assumed that, if a suitable and healthy environment could be produced, then the citizens would be healthy, in an environmental health sense. In other words, the contemporary thought of the major and dominant effect of environment on health of individuals and society is accepted. Then, it has become not only a right for the citizens, but also a duty of both the State and the citizens to develop the natural environment, to protect environmental health and to prevent environmental pollution. Therefore, the right of health directly refers to a series of restrictions for the protection and development of both the natural and man-made environment (i.e. every type and sort of settlements) which are developed in related provisions of laws on

environmental assets and urban planning. Conclusively, it can be said that, urban planning action reaches to a constitutional basis within a conception as, healthy environment for the health of citizens which may be expressed specifically for urban planning as "healthy urban environment", including the natural assets in and out of the urban area.

In the second part of the article, the aim and form of the provision of health services is defined. The aim of the provision of health services is not only defined as a duty of the State to promote the body and mental health of all citizens, in a medical sense, but also as a precondition of economy and increasing productivity of labour force and equipment. In other words, the article is implying the direct relation between the enrichment of the state and the health of the labour force not only as a means of production but also in its relation with the equipment in the production process. The form of the provision of health services is mentioned in the form of central planning. Then, "healthy city" conception of the Constitution may also be interpreted as, constructing healthy urban environment which should take into account the relation of provision and location of health services and economic production (processes) for the reproduction of labour.

The other article in the eighth section of the third chapter of the second part is named as "the right to housing" and stated as:

> B. The Right to Housing
>
> The State shall take measures to meet the needs for housing, within the framework of plan, which takes into account the characteristics of cities and environmental conditions and supports the mass housing projects. (1982 Constitution of the Republic of Turkey, art. 57)

In the 1982 Constitution, the context and content of housing are enlarged compared to the 1961 Constitution. While the 1961 Constitution mentions

the duty of the State as taking necessary measures for sanitary conditions for poor and low-income families, as an extension of the right of health; in the 1982 Constitution, State is responsible to take measures to meet the needs of housing for all, as an extension of economic development when it is related with the previous article in the same section. It should also be emphasized that, while the target group of the 1961 Constitution is obtained exactly as poor and low-income families, the 1982 Constitution does not define a special target group, which means that the State is responsible for the housing of everyone. When this condition is considered within the fiscal resources of the State, there comes out an unrealistic attitude of the State to realize this duty. (Keleş, 1990: 288-289) In fact, this unrealistic condition is expressed in the last article of the social and economic rights and duties chapter, called 'the extent of social and economic rights' which states that,

> The State shall fulfill its duties as laid down in the Constitution in the social and economic fields by ensuring the maintenance of economic stability within the limits of its fiscal resources. (1982 Constitution of the Republic of Turkey, art. 65)

On the other side, 'the right to housing' article states a general framework from which a "healthy city" conception can be formulated. This framework is drawn as the existence of a planning action that would take into account the characteristics of the cities and environmental conditions. In other words, with this article, the State supports urban planning action by mentioning its basic aspects. Therefore the "healthy city" conception in this section comes out as "planned city". Additionaly, the form of the development of housing is shown as mass housing, by the support of the State, in the article.

In the 1982 Constitution, within its detailed structure, there are other articles related with "health" and "healthy city" conceptions. These

articles, at the same time, refer to planning action by restrictions defining the scope of urban planning action or by legal tools to realize urban planning action. These articles are "the property rights" (art. 35); "public interest" section including the "utilization of the coasts" (art. 43), "land ownership" (art. 44) and "expropriation" (art. 46); "protection of historical, cultural and natural assets" (art. 63); "local administration" (art. 127); "(development) planning" (art. 166); and "protection and development of forests" (art. 169)

Conclusively, it can be claimed that, the 1982 Constitution develops the "health" and "healthy city" conceptions mostly with particular articles, pointing out directly the planning action in general and urban planning in particular. While health is defined in relation to environment in its largest sense, its relation with housing is established with the following article. And both "health" and housing is conceptualized within the framework of (urban) planning. On the other side, urbanization is mentioned, besides social and economic development and protection of public property, for the first time in this Constitution, in a restrictive attitude on residence.

3.9. Conclusive Remarks on the Constitutional Development of Turkey

Constitutions are the highest level of laws, binding upon all other laws, organs of the State, other agencies and individuals. They are made within the political, economic and social conditions of a country at a moment in its historical development. Thus, analyzing the constitutional development is essential for us to understand the development of general framework of "healthy city" conception, in the legislative evolution of Turkey. In other words, to analyze the constitutional development is an initial point of understanding how the "healthy city" conception is developed with its legal basis, in Turkey.

The first two constitutions (1876 and 1921 Constitutions) are mostly regarded as efforts to transform the regime into a more democratic system. The 1876 Constitution initiates the constitutional monarchy period in the Ottoman Empire. The 1921 Constitution is amended by the Grand National Assembly, during the Independece War, in Anatolia and aims to establish a republican regime.

The last three constitutions (1924, 1961, and 1982 Constitutions) have a more constitutional character, in contemporary sense. The 1924 Constitution is made with the foundation of the republican regime in Turkey. It establishes the framework of the new regime. The 1961 Constitution comes out with a coup, in a political crisis period. It aims to return to a peaceful democratic life, by giving priority to the liberation of the individuals. Lastly, the 1982 Constitution comes out again in a political crisis period with a coup. Its aim is defined as establishing a healthy and strong democratic order. The priority of this constitution is phrased as "the indivisibility of the integrity of the State comprising its territory and the nation".

When the basic features of these constitutions are analyzed, it can be concluded that, the first three constitutions (1876, 1921, and 1924 Constitutions) are framing in their extent and flexible in their amendment procedures. The last two constitutions (1961 and 1982 Constitutions) are made in the political crisis periods, under military juntas. And as the resolution of the political crisis was formulated as a constitutional problem, they came out as detailed constitutions in their extent and rigid in their amendment procedures.

When "healthy city" conceptions of these constitutions are anlayzed, it is seen that, the first three constitutions do not contain any explicit or implicit notion about "healthy city". Only a geographical administrative division with the provision of health services and public works is mentioned in a

very loose manner. In the 1961 Constitution, for the first time, "health" is declared as a right and it is related with sanitary housing conditions of poor and low-income families. This Constitution makes a rough "healthy city" conception indirectly, through the restrictions set forth in its various provisions. In the 1982 Constitution, "healthy city" conception can be taken out with more directly stated articles. "Health" is defined both in its environmental sense and in its relation with the reproduction of labour. Sound and orderly urbanization is put as a restrictive criterion equally with social and economic development and with protection of public property. Lastly housing is defined as a right within the framework of a plan.

In sum, "health" is seen just as a service at the very beginning; then it is formulated, in medical sense, as a bodily and mentally well-being of individual; and lastly in an environmental sense, as a well-being of both the individual and the society with a precondition of sanitary environment. Through this constitutional evolution, "healthy city" conception of urban planning action is first defined implicity as an extension of "health". The restrictive concepts framing the developmental planning action has also justified the urban planning action during this process. At the end, urban planning has gained its own constitutional basis with explicit provisions defining healthy environment for individuals and society.

TABLE 1: CONSTITUTIONAL DEVELOPMENT OF TURKEY WITH REFERENCE TO "HEALTH" AND "HEALTHY CITY" CONCEPTIONS

	historical condition	aim of the constitution	features of the constitution		"health" conception	"healthy city" conception
1876 Const.	political and social crisis	establishing constitutional monarchy	framing	flexible	no explicit or implicit conception	no explicit or implicit conception
1921 Const.	national independence war	transitionary period with sovereignty of nation	framing	flexible	no explicit or implicit conception	no explicit or implicit conception
1924 Const.	republican revolution	establishment of republican regime	framing	flexible	no explicit or implicit conception	no explicit or implicit conception
1961 Const.	coup d'Etat	returning to a peaceful democratic life by giving priority to the liberation of individual	detailed	rigid	1. Well-being of individual life bodily and spiritually, in medical sense 2. Sanitary conditions of housing as an extension of health	indirectly with restrictive provisions 1. General restriction principle on basic rights and freedoms including public interest and general health (art. 11) 2. Well-being of body and mental health (art. 49) 3. Housing with sanitary conditions for poor and low-income families (art. 49) 4. Restriction on the freedom of residence for preserving epidemic diseases, protecting public property and promoting social and economic development (art. 18)

TABLE 1: CONSTITUTIONAL DEVELOPMENT OF TURKEY WITH REFERENCE TO "HEALTH" AND "HEALTHY CITY" CONCEPTIONS (continued)						
	historical condition	**aim of the constitution**	**features of the constitution**		**"health" conception**	**"healthy city" conception**
1982 Const.	coup d'Etat	establishing a healthy and strong democracy by giving priority to the State	detailed	rigid	1. Living in a suitable and healthy environment. (art. 56) 2. Developing natural environment, protecting environmental health and preventing environmental pollution (art 56) 3. Well-being of body and mental health for reproduction of labour by the regulation of health services by central planning (art. 56)	directly stated provisions and restrictions in various provisions 1. General restriction principle on basic rights and freedoms including public interest and general health (art. 13) 2. Suitable and healthy environment by developing natural environment, protecting environmental health, and preventing the environmental pollution (art. 56) 3. Well-being of body and mental health for the reproduction of labour by the regulation of health services by central planning. (art. 56) 4. Taking measures to meet the needs of housing within the framework of a plan, which takes into account the characteristics of cities and environmental conditions and supporting 5. Restriction on the freedom of residence for ensuring sound and orderly urbanization, promoting social and economic development, and protecting public property (art. 23)

CHAPTER 4

THE PUBLIC SANITATION LAW AND THE LAW OF MUNICIPALITIES

In this chapter, first, the "Public Sanitation Law" No. 1593 will be analyzed to find out "health" and "healthy city" conceptions involved in it. Then, the "Law of Municipalities" No. 1580 will be discussed for the same purpose. For both of the laws, first, the developments that occurred in the Ottoman era will be briefly explained. Then, the changes that come out in the Republic period will be considered. Lastly, after the analysis of each law, a conclusive discussion will be made to expose the "health" and "healthy city" conceptions involved by these two laws, and the results will be schematized as tables. (Table 3 & 4)

4.1. The Public Sanitation Law No. 1593

The scope and aim of public sanitation can be defined as not only researching the reasons hindering the development of individual and society, but also preserve people from their effects and harms. Public sanitaion serves in two ways: The preservation of 'individual health' and the preservation of 'public health'. Food, beverage and clothing; conditions of working and resting; body cleaning; conditions and quality of housing and environment are the main issues, which are taken into account for the preservation of individual health. The most important

issue in the preservation of public health is to eradicate contagious and infectious diseases. (Yıldırım, 1985: 1320)

4.1.1. The Development of Public Sanitation in the Ottoman Empire

With reference to the definition of 'public sanitation' above, the development of public sanitation in the Ottoman Empire can be analyzed in two ways. The preservation of 'individual health' is considered as the duty of local administrative bodies. The evolution of the municipal administration through 'Kadı', 'İhtisab Nazırı' (Head of the Office for Control and Regulation of Urban Economic Affairs) and 'Municipality' had involved a series of public sanitation duties related to preservation of 'individual health'. The 'public health' side of the sanitation is developed by the central administration in the Ottoman Empire. The contagious and infectious diseases eradication became an important issue of the Empire in the end of the 19th century. In this way, 'quarantine' had already been developed with its research institutions, administrative units and legal basis, mostly as by-laws, with the cholera epidemics in 1831. Later, the application and then the production of vaccines and serums against the contagious and infectious diseases had been developed, in the end of the 19th century. (Akdur, 1999: 392-393; İlkin & Tekeli, 1993: 147-151; Moulin, 1996: 169-193; Sürmeli, 1963: 205-207; Yavuz, 1988: 123-142; Yıldırım, 1985: 1320-1338)

In sum, health, social assistance and public sanitation services had not been seen as the duty of the central administration until the end of the 19th century, in the Ottoman Empire. (Akdur, 1999: 392) Later, the bacteriology research institutions and vaccine preparation laboratories had been established. The qualifications of the doctors, medical education and the health institutions and pharmacies had been regulated by by-laws. Directorates and general directorates on health, social

assistance and public sanitation had been established. In spite of all these developments, the public sanitation services could be provided only in few big cities of the Empire.

4.1.2. The Development of Public Sanitation in the Republic of Turkey

The general structure of the public sanitation administration and legislation in the Ottoman Empire defines implicitly a division of labour between central administration and local administration. The individual health side of public sanitation is left to the municipalities with the duties of the regulation and control of urban development and public works; building sewerage system and public toilets, maintenance of lighting and cleaning of cities; inspecting the market-place and commerce; taking measures for hygiene; opening slaugterhouses, etc. for the preservation of individual health. The public health side of the public sanitation is executed by the central administration as the eradication of contagious and infectious diseases by establishing research institutions those producing vaccines and serums; directorates and general directoractorates organizing the preventive medicine applications, healing institutions and social assistance services; and efforts of expanding these services to the whole Empire. The last point reached by the Empire was the establishment of the General Directorate of Interior and Health ('Dahiliye ve Sıhhiye Nezareti'), in 1914, under the Ministry of Internal Affairs.

After the foundation of the Grand National Assembly of Turkey in 1920, the third law enacted was on the central organization of health, social assistance and public sanitation duties by a ministry. The Ministry of Health and Social Assistance (Sıhhiye ve Muavenat-ı İçtimaiye Vekaleti) was founded on 2 May 1920. There were few examples of that sort of an

organization even among the western countries, in that era. Brockington (1965: 6) expresses that,

> After the First World War, Turkey, Russia, and Yugoslavia, at once engaged upon gigantic efforts to 'develop', began their own schemes of public health with little if any reference to the European pattern.

When the general conditions and constraints of the era are reconsidered, the essentiality of the establishment of the Ministry of Health and Social Assistance can easily be conceieved. Not only the population has decreased severely, but also the sanitary conditions of the existing population were so poor. Both the contagious and infectious diseases, which have spreaded to whole country, and the wars, which have been going on for a long time, have prevented the provision of public sanitation services.

There was almost no organizational structure and legislative framework when the Ministry of Health and Social Assistance was founded. The heritage of the Ottoman Empire in this field was so poor. Although there had been some efforts of the Empire in the end of the 19th century and the beginning of the 20th century, these had been so dispersed and mostly realized only in few big cities. Under the hard political, economic and social conditions of the young Republic, the organizational scheme and the legislative framework were established in a short time.

First, with a law enacted in 1928, the power and the responsibilities of the health personnel were defined (Tababet ve Şuabatı Sanatlarının Tarzı İcrasına Dair Kanun, No. 1219). Following that, in 1930, the Public Sanitation Law No. 1593 was enacted. It was the fundamental law drawing the framework of the preservation of public and individual health by all types of sanitation, medical and social services with respect to general policies. Lastly, in 1936, 3017 numbered law (Sağlık ve Sosyal

Yardım Bakanlığı Teşkilat ve Memurin Kanunu) was enacted which had a complementary character on the establishment of central and local organizations of the Ministry, and making clear the power and responsibilities of them. (Akdur, 1999: 393-394)

Today, these fundamental laws are still in force and have established the legal framework in the development of health services, social assistance and public sanitation in Turkey. Among these laws, the Public Sanitation Law No. 1593 has a constitutive character on defining the organizational structure of the preservation of individual and public health with division of power and responsibility among the central and local administrations and organizations. Therefore, in this section, we will concentrate on the Public Sanitation Law to find out "health" and "health city" conceptions covered by it.

4.1.3. Analysis of the Public Sanitation Law No. 1593

Urban planners have mostly evaluated and utilized from the Public Sanitation Law partially, with the provisions which are complementary legal rules stating the duties of municipalities. In fact, it is necessary to make an overall analysis of the law to understand it with its basic features. Therefore, I will make an analysis of the law by concentrating on each chapter, which is related with the topic of the thesis, for not only conceiving the basic features of it, but also to find out the "health" and "healthy city" conceptions diffused in it.

Health Organizations (Chapter 1)

In the first section of the first chapter, in article 1, the aim and scope of the law is stated as:

> Improving health conditions of the country and eradicating all diseases or other harmful reasons which are giving harm to health of the nation and ensuring healthy growth of the future generations and meeting the medical and social assistance services of the public are from the public duties of the State. (The Public Sanitation Law, art. 1)

The essence of the article can be conceieved when the conditions and constraints of the era are reconsidered, which are expressed above. The general statement of 'improving health conditions of the country' and the loose definition as 'or (eradication of) other harmful reasons' may be considered as a path to reach a "healthy city" conception through this law. In the following article, the two different types of duties of the Ministry of Health and Social Assistance are stated as:

> The State duties covering public health and social assistance services are executed by The Ministry of Health and Social Assistance and the executive procedures of duties left to the provincial local administrations, municipalities and other local administrations are inspected by the Ministry of Health and Social Assistance... (The Public Sanitation Law, art. 2)

While the Ministry of Health and Social Assistance directly provides the health and social assistance services at nation wide, it has an inspection role on the executive procedures of duties which are given to the local administrations. In other words, on one side, the Ministry realizes health and social assistance works at national level as a central administration, on the other side, it inspects the health and social assistance duties of local administrations. Therefore, this two types of duties implies a division of labour between central and local administrations. This division of labour between the central and local adaministrations will be discussed later with regard to the definition of 'public sanitation', stated at the beginning of this section.

The third article lists the duties which will be realized directly by the Ministry, within the limits stated by their related budgets, as follows,

1. To take necessary measures for making boring to become easy and decreasing the child mortality.
2. To enforce and protect the health of mothers before and after boring.
3. To prevent the entry of contagious and infectious diseases to the country.
4. To eradicate contagious, infectious diseases and other reasons, which cause high number of deads, in the country.
5. To supervise the execution of the art of medicine and its branches.
6. To inspect food, drugs, poisonous and narcotic substances, and all types of vaccines and serums, except vaccines and serums for animals.
7. To inspect the works related with the preservation of childhood and youth health; the institutions related with the protection of child health and growth of the body.
8. To supervise school sanitation.
9. To supervise work place sanitation.
10. To inspect mineral waters and other water resources which have a healing quality.
11. To establish and operate public sanitation institutions, bacteriological laboratories, special institutions for health examination and analysis.
12. To establish and administer occupational training and education institutions or to inspect such institutions and issue licences to them.
13. To establish and operate special healing institutions for mental health or dormitories for disabled people.
14. To supervise the health of emigrants (from other countries).
15. To supervise the sanitary conditions of prisons.
16. To collect vital statistics.
17. To prepare health publications and to make health training.
18. To supervise sanitary conditions of transportation facilities. (The Public Sanitation Law, art. 3)

All these provisions on the duties of the Ministry of Health and Social Assistance draw a policy framework at national level, by pointing out

some priorities. The essence of the article can be expressed as, 'to create a healthy population within sanitary conditions, under the medical and social assistance services of the Ministry of Health and Social Assistance, by its supervision and inspection'. Then, in the forth article, the division of duties between the Ministry and the local administrations is defined, as:

> The works directly related city, town and village sanitation or medical and social assistance are left to the provincial local administrations, municipalities and other local administrations. When necessary, the Ministry establishes model institutions at some places for guiding these local administrations. (The Public Sanitation Law, art. 4)

In this article, the border line between the duties of central and local administrations is drawn. The city, town and village sanitation or medical and social assistance duties will be realized by the local administrations. The Ministry of Health and Social Assistance, as the central administration, will only guide to the local administrations by establishing models. This task of the Ministry came out as the establishment of 'Numune Hospitals' in big cities such as Ankara, Istanbul, Sivas, Erzurum and Diyarbakır.[1]

In the second part of the first chapter, the administrative and scientific organization scheme of the Ministry, at the central and local levels, are defined. In the third part of the first chapter, the organization of the Supreme Council of Health is stated with its duties, responsibilities and related procedures. Then, in the forth part of the first chapter, the duties of provincial local administrations and municipalities are stated. The eighteenth article mentions the issues for which the related budget of the

[1] In 1954, with the 6134 numbered law, the city hospitals that belong to the provincial local administrations, municipalities and foundations were connected to the Ministry of Health and Social Assistance. For the explanations on the reasons of this change look at Akdur, 1999: 394-395 and Tekeli, 1983: 41.

provincial local administrations[2] can be expended. These issues can be summarized as the medical institutions, personnel, medical equipment and medicines for 'social health'. Therefore, it can be said that, the provincial local administrations mostly deal with the preservation of 'public health' by making expenses as obtained in their related budgets. In the twentieth article, the public sanitation and social assistance duties of municipalities are listed as follows:

1. To maintain sanitary drinking and tap water with scientific qualities.
2. To establish sewerage system.
3. To establish slaughterhouse.
4. To establish cemeteries and deal with the burial and transportation of deads.
5. To collect and dispose all types of garbage.
6. To inspect the sanitary conditions of housing.
7. To establish cold and hot baths.
8. To inspect food and beverages, and to establish laboratories for the analysis of food at the city centers and other necessary places.
9. To abolish the causes which give harm to the public health at public spaces.
10. To help the eradication of contagious and infectious diseases.
11. To establish pharmacies where none exists.
12. To open emergency medical centers.
13. To establish and operate hospital, health centers, dormitories for needy and elder people and maternity hospitals.
14. To employ midwives for free aid to birth. (The Public Sanitation Law, art. 20)

In the following two articles (articles 21 and 22), it is mentioned that, the obligatory and optional duties of provincial local administrations and municipalities are stated with the related special laws[3].

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[2] For a brief study on the structure and duties of provincial local administrations, see Tortop, 1988: 3-15.

[3] The obligatory and optional duties for municipalities will be discussed in the next section on the 'Law of Municipalities' No. 1580.

Conclusively, we can say that, the first chapter of the 'Public Sanitation Law' draws the organization scheme of public sanitation in Turkey. The public sanitation duties are divided between the Ministry of Health and Social Assistance and local administrations. The duties of the Ministry of Health and Social Assistance are more general duties of supervision and inspection, at national level, for the preservation of 'public health'. On the other side, the public sanitation duties of local administrations have a more concrete character as directly stating the type and scale of services. While the provincial local administrations have duties of 'public health' preservation, the duties of municipalities are related mostly with the sanitation of physical environment and everday life for the preservation of 'individual health'.

In sum, we can simply conclude that, the Ministry of Health and Social Assistance organizes the public sanitation, health and social assistance services at a macro level, for the preservation of 'public health' of the whole population. While the Ministry leaves some of its duties to the local administrations, which are directly related with the sanitation of locality, it keeps the power of inspection over these administrations. At the mezzo level, the provincial local administrations take the preservation of 'public health' duties by establishing medical institutions, staying between the central administration and the municipalities. At the micro level, the municipalities have public sanitation duties for the preservation of 'individual health' at their localities, mostly under the inspection and guidance of central administration.

Eradication of Contagious and Infectious Diseases (Chapter 2)

In this chapter of the law, the preventive health measures are defined which will be taken both at the national frontiers and within the country. Then special parts are stated for malaria, trachoma, veneral diseases, and tuberculosis eradication. The meaning of making special provisions on each of these diseases can be conceieved better, when the conditions

and constraints of the era is reconsidered, that the law is enacted. It should be underlined that, almost no spatial regulation is considered for preventing contagious and infectious diseases in these parts[4].

Child Health (Chapter 6)

The Ministry of Health and Social Assistance is responsible from the child health. By the article 168, in this chapter, the municipalities are obligated to establish at least one or more gardens and sport facilities, with respect to their size of population, for the fresh air need of children.

Food, Beverages and Other Substances (Chapter 8)

In the first article of this chapter (art. 181), it is stated that, all types of food, and things and equipment related with the public health, which are stated in the article 183, are under the inspection of the Ministry of Health and Social Assistance. This duty is given to the municipalities within their boundaries by the by-laws and regulations made by the Ministry.

Another obligatory duty given to the municipalties is to build slaughterhouses of which the qualities and conditions are determined with type projects by a regulation made by the Ministry. (art. 198)

Mineral Waters and Hot Springs (Chapter 9)

All mineral waters and hot springs in Turkey may only be managed by the permission and under the inspection of the Ministry of Health and Social Assistance (articles 200, 202).

For establishing hot spring facilities, the map of the area for the project and the plan of the existing should be presented to the Ministry. In addition, the managers may demand preservation zones for their

[4] There are some provisions on the regulation of physical environment in special laws on these contagious and infectious diseases. For example, the 'Malaria Eradication Law'

facilities. Then, the boundaries of the preservation zone may be drawn based on the public interest, after required observations of the related Ministeries (articles 201, 204). By these statements, the necessity of planning action for natural assets and resources is implied in the law.

The municipalities which have so many mineral water and hot spring resources, having healing quality and public use, that have been approved by the related public offices, within their boundaries may demand to be announced as mineral water and hot spring places, after the necessary analysises are made by the related ministiries (art. 208). In the article 209, it is mentioned that, the municipalities have the power of levying taxes from the visitors of these facilities, which can only be expended for the beautification of the environment and increasing the capacity of resting of the visitors.

Cemeteries, Burrying Deads... (Chapter 10)

In the article 212, it is stated that, all municipalities have to establish cemeteries with respect to the annual death ratio of the locality. The location of the cemeteries is obtained by the health officers, with the criteria of the quality of the soil and environment; any unsanitary effect on the surrounding residential area and water resources; the sufficiency of the area. The arrangement and preservation of cemeteries are the duties of municipilaties.

City and Town Sanitation (Chapter 11)

As all the provisions stated in this chapter are directly related with the sanitation of cities and towns, they are among the duties of municipalities, under the inspection of the Ministry of Health and Social Assistance, with reference to the article 4, in the first chapter of the Public Sanitation Law.

No. 839 involves provisions on the improvement of environmental health conditions by abolishing marshlands and taking under control the mosquito breeding areas.

The first part of the chapter is on *'drinking and tap water'*. According to the provisions in this part, all the water system of cities and towns are not only established and maintained by the municipalities, but also preserved and inspected with respect to scientific regulations. It is an obligatory duty of the municipalities that, water should scientifically and technically be in drinkable quality (art. 236). Preservation zones for water resources should be drawn including their reserve areas. These preservation zones should be expropriated by the municipality, without looking whether they are inside or outside of the municipal boundaries. The use of the land in the preservation zone is totally prohibited (articles 237, 238). The municipalities takes necessary measures against water pollution (art. 242).

The second part of this chapter is on *'sewerage and annihilation of excrement'*. The establishment of the sewerage system is the duty of the municipalities. The sewerage can not be drained to rivers, unless there is no scientific objection which is approved and confirmed. The areas that will be used for the annihilation of excrement should be far away from the residential areas and should not be used for any other purposes (art. 244). The streets should be kept clean by the municipalities. All the garbage is carried and exterminated at the most proper area (art. 248). At proper places in the city, municipalities build modern public toilets and modernize the existing ones (art. 249).

The third part of the chapter is on *'housing'*. It is stated that, every housing and public building can not be constructed without getting a construction permit from the municipality. The health conditions of these buildings are checked with the project (art. 250). After the construction is completed the health and technical conditions of buildings are checked for a residence permit (art. 252) Even after getting the residence permit, all the buildings are kept under inspection for their health and technical conditions by the municipalities.

The forth part of the chapter is on *'hans, otels and public places'*. It is mentioned in the related articles of this part that, the health conditions of all otels, hans and guesthouses are obtained, inspected and a license is issued by the municipalities. Outside of the municipal boundaries these duties are done by the health officers of the central administration (articles 258, 260). If these places do not provide necessary health conditions and cause contagious disease to develop, then they can be closed until these conditions are maintained (art. 259). All necessary measures for public sanitation and security of all entertainment places, theaters, movies, bars, casinos, coffee-houses and similar places and places where people come together and baths are published and announced by the municipalities. At places where these measures are not partially or completely enabled, all types of meetings are prohibited (art. 261).

The last part of the chapter is on *'new settled or growing cities and towns'*. The cities and towns with a population of twenty thousand or more have to make future oriented plans for the growth or renewal in three years time after this law is put into force. This plan should include a map showing the direction and width of the streets that will be established or renewed, the places and conditions of public squares, public places, gardens and monuments. The plan should also include an annual-based program that is approved by the municipal council (art. 262). If the cities and towns with a population more than five thousand and less than twenty thousand have a population growth more than 15% between two population census, they have to make a plan as stated in the previous article. The cities and towns which are accepted as hot spring places as stated in the article 208 should also make a plan of the same type without taking their population into account (art. 263). These plans may be examined by the Ministry of Health and Social Assistance and The Minstry of Internal Affairs. The changes should be made according to the

- proposals of the Ministeries (art. 265). Every city and town establishes a police by-law on the health provisions stated in this law, with respect to the the needs of that city or town, in one year time after the entry of this law into force. This by-law includes the principles on essential minimum things that should be in a residence; residence requirements in public and common buildings; the health conditions of food market-places and other places related with hygiene, hans, otels, guésthouses, entertainment places and all other public places; and general issues related with the health and cleanlines of cities (art. 266). The health police by-laws can not be put into force before the examination and approval of the Ministry of Health and Social Assistance and Ministry of Internal Affairs (art. 267).

Unsanitary Establishments (Chapter 12)

The provisions in this part regulates the sanitary requirements about the conditions and locations of the industrial plants, manufacturing workshops, and other production establishments by categorizing them with respect to their hazardous effects on public health and environment.

The establishments and workshops which demolish the health and rest of the people living around them can not be opened without getting an official permit (art. 268). The establishments stated in the previous article are categorized into three classes:

1st Class: The ones which have to be far away from the residential areas.

2nd Class: The establishments; which are not necessarily to be far away from the residential areas, are the second class unsanitary establishments. Their facilities and locations should be examined for their effects on the health and rest of the people living around, before getting official permit.

3rd Class: These establishments may be in the residential areas but should be under sanitary inspection. (art. 269)

The Ministry of Health and Social Assistance prepares the list of establishments categorized in these three classes, by asking the opinion of the Ministry of Industry. Establishments which are not in this list is added to the list by following the same procedure (art. 270). For the first class establishments, only the Ministry of Health and Social Assistance may give official permit (art. 271). For the second and third class establishments, the official permit is given by the highest official of the central administration in the locality, after the examinations of local health officers (art. 272). The articles 271 and 272 lost their force with the by-law of Metropolitan Municipalities 3030. In the article 6/e of this by-law, it is stated that, the metropolitan municipalities give permits to the first, second and third class unsanitary establishments.

4.1.4. Conclusive Remarks on the Public Sanitation Law No. 1593

Thus, the analysis of the 'Public Sanitation Law' No. 1593 is made with its related provisions from which we can draw a framework on "health" and "healty city" conceptions. In this section, I will make a discussion on this law with reference to the definition of public sanitation. Therefore I will argue on the structure and the essence of the law to take out "health" and "healthy city" conceptions, which are essential for an urban planner.

Public sanitation can be defined as, not only researching the reasons hindering the development of individual and society, but also preserving people from their effects and harms. Public sanitation serves in two ways: The preservation of 'individual health' and 'public health'. Food, beverage and clothing; conditions of working and resting; body cleaning; conditions and quality of housing and environment are the main issues, which are taken into account for the preservation of individual health, in sanitation. The most important issue in the preservation of public health is to eradicate contagious and infectious diseases. (Yıldırım, 1985: 1320) With

reference to this definition, the Public Sanitation Law can be analyzed by separating the provisions on 'preservation of public health' and 'preservation of individual health'.

In the first chapter of the law, the basic structure of public sanitation with its organizational scheme and duties are defined. In other words, the first chapter consists of the definitions on:

1. The aim and scope of public sanitation.
2. Organization scheme of public sanitation.
3. The type of duties in public sanitation.
4. The division of duties between central administration and local administrations.

1. The aim and scope of public sanitation: It is stated in the first article. The target is defined as improving the 'conditions' of health. This will be realized by eradicating all diseases and other harmful reasons. Then the implicit definition of health comes out as 'the mere absence of all diseases' and 'all other harmful reasons' affecting health. Although the statement 'all other harmful reasons affecting health' is a very loose definition, by analyzing the rest of the law, it can be considered as 'all matters affecting the preservation of individual health'. These are stated in the definition of public sanitation as:

- Food, beverage, clothing,
- Conditions of work and rest,
- Body cleaning,
- Conditions and qualities of housing and environment.

All these matters are components of everyday life in a locality. Therefore, these have become mostly the duties of local administrations, especially of municipalities in Turkey.

Another important feature of the law is also mentioned in the first article by stating that, these are 'public' duties of the State. Thus, all duties put in the law gains a public character, which can also be justified by 'public interest'.

2. Organization scheme of public sanitation services: In the first chapter, the organizational scheme is drawn covering central administration by the Ministry of Health and Social Assistance, its councils, general directorates, and directorates including its local organizations. The local administrations appear as provincial local administrations, municipalities and villages. In fact, almost all of the duties given to the local administrations are concentrated on municipalities. Therefore, it can be said that, most of the public sanitation services are provided by the Ministry of Health and Social Assistance at the central administration level and by the municipalities at the local administration level.

3. The type of duties in public sanitation: There are mainly two types of duties in public services. These are 'supervision duties' and 'inspection duties'. And we know that, public sanitation covers the 'preservation of public health' and 'preservation of individual health'. When we join these two groups of duties, we see that, the supervision and inspection on the preservation of public health is realized by the Ministry of Health and Social Assistance, as it is stated in the provisions of the second chapter. In this chapter, the eradication of contagious and infectious diseases is stated with related central organizations, which are connected to the Ministry of Health and Social Assistance. On the other side, the municipalities realize almost all of the supervisional duties on the preservation of individual health. Although most of the inspectional duties on the preservation of individual health are given to the municipalities, the Ministry of Health also has some inspectional duties on the preservation of individual health. In addition, the Ministry inspects and guides to the

municipalities. In sum, if we draw a rough table on the type of duties on public sanitation (Table: 2), these divisions can be easily understood.

Table 2: The Type of Duties in Public Sanitation

	Preservation of public health	**Preservation of individual health**
Supervision duties	Ministry of Health and Social Assistance	Mostly by municipalities and partially by the Ministry
Inspection duties	Ministry of Health and Social Assistance	Mostly by municipalities and partially by the Ministry

4. The division of duties between central administration and local administrations: As it can be understood from table 2, there is a division of duty between central administration and local administrations in the provision of public sanitation. While the Ministry of Health and Social Assistance has mainly the duties on the preservation of public health in pubic sanitation, the local administrations, especially the municipalities have the duties on the preservation of individual health. In fact, this division of duties is not a sharp line; there are some complementary duties.

When we look at the duties of each administration, we reach different sorts of "health" and "healthy city" conceptions. It will be a better method to look at the duties of each administration, and then to discuss on the "health" and "healthy city" conceptions of them.

At the macro level, the Ministry of Health and Social Assistance has public sanitation duties that can be phrased as: 'To create a healthy population within sanitary conditions, under the medical and social assistance services of the Ministry of Health and Social Assistance, by its

supervision and inspection'. These duties include eradication of contagious and infectious diseases, child health, working place sanitation, mineral water and hot springs sanitation, supervision of unsanitary establishments, etc. Then, the "health" conception comes out as 'the mere absence of diseases for a healthy population'. In fact, it is difficult to formulate a "healthy city" conception at this level.

At the mezzo level, provincial local administrations make expenses on the medical facilities for supporting the development of public health and assistance, at the provinces. These administrations establish medical institutions with their personnel, medical equipment and medicines by the determined budget with the confirmation of the Ministry of Health and Social Assistance. At the mezzo level, "health" conception appears as 'the curing of diseases', in a medical sense. Therefore, "healthy city" can be considered as 'the urban environment enabling medical services'.

At the micro level, municipalities create a sanitary urban environment for the preservation of individual health, by establishing technical and scientific infrastructure network; inspecting the sanitary conditions of food and beverage; keeping the sanitary conditions and qualities of the urban environment and housing; and making development plans and programs. Then, "health" conception of the municipalities can be phrased as, 'sanitation of urban environment for a better living of citizens'. In fact the conception of "health" defines simultaneously the "healthy city" conception. (For a brief summary of all these arguments, look at Table 3)

Conclusively, it can be claimed that, for an urban planner, the conception of "health" at the macro level will correspond to regional planning action. The conceptions of "health" and "healthy city" at the mezzo and micro level directly refer to urban planning action. In a way, public sanitation for the preservation of individual health defines one of the basic paradigms of urban planning action. A city with technical and scientific infrastructure;

sanitary urban environment with a scientifically allocated city garbage area and cemeteries; planned and inspected housing areas; allocation of social services including hospitals, health centers and dormitories; preservation of water resources and other natural assets, etc. has always been the aim and scope of urban planing.

TABLE 3: "HEALTH" AND "HEALTHY CITY" CONCEPTIONS WITH REFERENCE TO PROVISION OF PUBLIC SANITATION BY ORGANIZATIONS AT DIFFERENT SCALES

Organization	Scale of public sanitation provision	Preservation of public health	Preservation of individual health	"health" conception	"healthy city" conception
Ministry	macro	Eradication of contagious and infectious diseases.	1. Child health & school sanitation. 2. Occupational health & working place sanitation. 3. Mineral water and hot springs sanitation.	Mere absence of diseases for a healthy population.	—
Provincial Local Administrations	mezzo	Establishing medical institutions with their personnel, medical equipment and medicines.	—	Curing of diseases.	Urban environment enabling medical services.
Municipalities	micro	1. To help the eradication of contagious and infectious diseases. 2. To establish hospitals, emergency medical centers, health centers, maternity hospitals, pharmacies and dormitories. 3. To employ midwives for free aid to birth.	1. Establishing technical and scientific infrastructure network. 2. Inspecting the sanitary conditions of food and beverage. 3. Keeping the sanitary conditions and qualities of the urban environment and housing. 4. Making development plans and programs	Sanitary urban environment for a better living of citizens.	Sanitary urban environment for a better living of citizens.

4.2. The Law of Municipalities No. 1580

In this section, the "Law of Municipalities" No. 1580 will be analyzed to find out the "health" and "healthy city" conceptions involved in it. But, before going into that analysis, it is necessary to have a look on the historical development of municipal system and its legal basis in Turkey, from the same perspective.

There are basicly three periods in which we can analyze the development of municipal organization with its legal basis. The first one is 1839-1923 period, that is starting with the Proclamation of Tanzimat by which the modernization movement had started in the Ottoman Empire. The second period is the 1923-1930 period. This period is a transitionary one in which an accumulation of experiments and knowledge on municipal organization has been gained in Ankara, where is the spatial laboratory of the new regime. Lastly with the enactment of the "Law of Municipalities" No. 1580 in 1930, a new era starts with a new municipal model. This law has established the legal basis of municipal development in Turkey, which is still in force.

While analyzing each of these periods, first the historical conditions and constraints related with the municipal organization and its legal basis will be discussed. Then, "health" and "healthy city" conceptions will be taken out from the municipal law(s) of each period.

4.2.1. 1839-1923 Period: The Municipal Heritage of the Ottoman Empire

The Proclamation of the Tanzimat, in 1839, points out a rupture in which the social life and administrative system of the Ottoman Empire had been

reorganized and modernized[5]. Parallel to that, the local administrative system had also gone under a change and modernized. (Tekeli & Ortaylı, 1978: 6) Tekeli (1994: 2) briefly argues that,

> The collapse of the traditional system on one side and the emergence of new requirements on the other, necessiated the development of new patterns of administration and a new system for the control of urban growth.

In the 19th century, the Ottoman cities, especially the port cities (of the East Mediterranean) of the Empire had experienced structural changes. These cities had necessiated reorganizations in the services and new urban forms for being able to articulate to the 19th century international trade. The western countries forced the Empire to establish modern municipal organizations to enable especially sanitation services and traffic systems in these cities.[6]

Therefore, the old system based on the municipal, administrative and judicial duties of the Kadı, who had some official servants such as Police Superintendent (Subaşı), Superintendent in the charge of city garbage (Çöplük Subaşı), Head Architect (Mimarbaşı), had become insufficient. With the abolishment of the Janissary Corps by Mahmut II in 1826, the Kadı lost all his official servants and became an ineffective status. So the Office for Control and Regulation of Urban Economic Affairs (İhtisab Nezareti) was established, but the İhtisab Nazırs could not fulfill their tasks either. (Tekeli, 1994: 13-14; Tekeli, 1982-1983: 29-30; Tekeli & Ortaylı, 1978: 17-18)

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[5] Ortaylı (Tekeli, İ. & Ortaylı, İ., 1978: 7) explains that, "After Tanzimat, intellectual bureaucrats would strengthen cadres authority of themselves for re-establishing the unfunctional institutions and the collapsed central authority of the Empire; to reorganize the fiscal, administrative and judicial realms of the state."

The main municipal development occurred in the Ottoman Empire with the establishment of Municipal Administration (Istanbul Şehremaneti) and later, the Sixth District (Altıncı Daire-i Belediye). These municipal organizations should be considered as the local administrative bodies for providing urban services and developing urban physical structure, rather than a transition to a more democratic local government. For the Tanzimat intellectual bureauctrat, the municipal body has a unique function, that is to establish a city which is developed, clean and well-lighted. (Tekeli & Ortaylı, 1978: 3-24)

With the 1876 Constitution, the constitutional period of the Ottoman Empire starts. Tekeli (1994: 19) states that, "In 1877, two of the first bills of law that the Parliament (the Meclis-i Mebusan) took up were related to 'Dersaadet' (Istanbul) and the Provincial Municipalities." The 1877 Laws of Municipalities have been accepted as the origin of modern municipal legislation and organization in Turkey.

The duties of the municipalities were listed in the 'Dersaadet' (Istanbul) and the Provincial Municipalities Laws as: The regulation and control of urban development and public works; environmental health services like building sewerage system and public toilets, maintenance of lighting and cleaning of the cities; management of municipal property; recording real estates; making population census; controlling the market-place and commerce; taking measures for hygiene; opening slaughterhouse and schools; establishing fire brigade; collecting municipal incomes, etc. (Tekeli & Ortaylı, 1978: 20, 80)

Conclusively, the local administrative experiences of the Ottoman Empire reached to its summit with the 1877 'Dersaadet' (Istanbul) and Provincial

[6] For further studies on the port cities of the Empire, look at Keyder, Ç., Özveren, Y. E., & Quataert, D. (eds.), 1994; Tekeli, İ.,1996; Tekeli, İ., 1994; Tekeli, İ. & Ortaylı, İ., 1978; Yerasimos, S., 1996.

Municipalities Laws, which have established the origin of modern municipal organization and legislation in Turkey. Two important issues should be emphasized for the municipal organization and legislation development of the Ottoman period. First, the municipalites have been seen as the local administrative bodies for promoting the urban development and public works, rather than being democratic local government bodies. Therefore, there has come out a "healthy city" notion with the efforts of establishing sanitary conditions for public order, enrichment and totally for rehabilitating the Empire, within a centralized authority perspective. Secondly, Istanbul, as the capital city of the Empire, has always had a priority in the development process of local administration. Istanbul became the spatial laboratory of the accumulation of experiments and knowledge on municipal vision. A similar development occurred in Ankara, at the beginning of the republic period of Turkey, which will be discussed later. Thus, except a few important cities, which are mostly the port cities, the rest of the Empire could not get any benefit from this municipal development. On the other side, the specific position of Istanbul has enabled an accumulation of knowledge in the municipal development process, which has been inherited to the young Republic.

4.2.2. 1923-1930 Period: The Transitionary Period for a Municipal Model for the New Regime

With the foundation of the Republic in 1923, a transitionary period started for the organization and legislation of municipalities, which lasted untill 1930. In this period, a series of laws were enacted directly or indirectly related with municipalities. Before going into an analysis of these laws, the main problems those make essential the reorganization of municipal administration and the basic constraints and conditions of the period will be briefly explained.

There were two basic problems those make essential the reorganization of municipal administration and the enactment of related legal framework. First, most of the western cities of Turkey were devestated by fires during the Independence War. These cities should be redeveloped. In addition, there occurred a general minority exchange which resulted with the lack of small scale manufacturing and services in these cities. Under these conditions, these cities would have to be revived. Secondly, Ankara became the capital city of the new regime. The success of the new regime was identified with Ankara. Therefore, a modern, revolutionary and anti-emperialist capital city should be developed with all its spatial symbols and modern urban everday life against Istanbul, which was symbolizing the old regime. (Tekeli, 1998: 4-6; Tekeli & Ortaylı, 1978: 27-28)

The development of the municipal administration for the resolution of these two basic problems would be realized within the constraints and conditions of the era. The first constraint was the insufficiency of the accumulated experiences on municipal organization and legislation inherited from the Ottoman Empire[7]. Ottoman urban administration passing through the steps of Kadı - İhtisap Nazırlığı - Municipality could not provide an effective, efficient and adequate municipal organization and legal framework for the basic problems of the new regime. Secondly, the political power of the İttihak and Terakki organized around the municipalities was another constraint for the new regime. Therefore, the reorganization of the municipalities with a new legal framework should take into account the political balances. Thirdly, as a condition of the period, the population growth and urbanization rates were low in this

[7] The municipal heritage of the Ottoman Empire to the Republic is listed by Tekeli (1978:30-31) as follows: "389 municipalities in the boundaries of the Republic, 20 of which have regular drinking water system, 4 of which have electricity, 17 of which have slaughterhouses, 7 of which have sport facilities, 29 of which have parks and gardens,

period, except Ankara. In fact, one of the objectives of the State was to increase the population. Therefore, to promote the health conditions became essential, and the municipalities were seen as the most adequate administrative organizations to reach this objective. As it will be discussed later, so many health and sanitation duties were given to the municipalities. Lastly, the money had lost value because of the high inflation during the wars, as a condition of the period. For the fulfillment of the municipal duties, the fiscal resources was insufficient. (Tekeli & Ortaylı, 1978: 28-30)

Under these constraints and conditions, a series of laws were enacted, directly or indirectly related with the municipalities, in this period. Among these laws, three of them were directly on "health" or "sanitation" and some others were indirectly including provisions related with "health" or "sanitation". The three laws directly on health and sanitation can briefly be explained as follows:

1. The Potable Water Law (Sular Kanunu) No. 831 was giving the duty of maintenance of drinkable water to the municipalities, for improving health and sanitary conditions.
2. The Malaria Eradication Law (Sıtma Savaş Kanunu) No. 839 was including provisions on the improvement of environmental health conditions by abolishing marshlands, taking under control the mosquito breeding areas.
3. Lastly, the Animal Health Police Law (Hayvan Sağlık Zabıtası Kanunu) No. 1234 was enacted for improving the health conditions in urban areas and defined new duties to the municipalities. (Tekeli & Ortaylı, 1978: 36)

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90 of which have orderly established market-places. In sum, there is almost no municipal infrastructure inherited from the Empire."

In this period, not only health and sanitation, but also social assistance works were among the duties of the municipalities. In sum, 1923-1930 period had been a period of accumulation of experiments and knowledge for a precise definition of a municipality model for the Republic. This municipality model would also carry the duties of preserving the health of population and establishing the sanitary conditons of urban environment. In spite of that, the enacted laws on municipalities were so dispersed that they could not establish a model. On the other side, "healthy city" conception is reflected to the new capital city of the Republic. Ankara became the spatial laboratory of the Republic for establishing a municipality model and developing sanitary urban space and modern life with the accumulation of experiments and knowledge involved in these laws.

4.2.3. The Law of Municipalities No. 1580: The Establishment of the Municipal Model for the Republic

In the first half of the 1930s, besides the "Law of Municipalities" number 1580 on 3 April 1930, a series of other laws were enacted, which have established the municipality model of the Republic as a whole. The other laws are, the "Public Sanitation Law" No. 1593 on 6 May 1930; the "Municipalities Bank Establishment Law" No. 2031 on 1 June 1933; the "Law of Buildings and Roads" No. 2290 on 21 June 1933; and the "Municipal Expropriation Law" No. 2497 on 9 June 1934. Although some amendments were made later, these laws are still in force and establish the framework of today's municipality in Turkey. (Tekeli, 1994: 70; Tekeli, 1978: 45)

Before going into an analysis of the Law of Municipalities No. 1580 from the point of view of the "health" and "healthy city" conceptions involved in

it, the historical background and the main features of the law will be briefly discussed.

The Law of Municipalities and other related laws were made in the single-party period of the Republic with the goal of modernization, stated as 'reaching the contemporary civilization level'. Tekeli (1982-1983: 31) mentions that, "It is said in the covering memorandum of of this law that the existing municipalities are incapable of keeping step with the modernization Turkey desires to achieve". Indeed, the relationship between the goal of modernization and the establishment of municipal model has reflected to the speeches of the political leaders in that era. In 1935, İsmet İnönü says that, "The urban development of Turkey and the civilized lives of our citizens under orderly municipal administration are dependent on the rise of municipalities". In the same year, Atatürk declares a similar vision as,

> Every place that will be home to the Turkish people shall be the examples of health, cleaning, beauty, and modern culture.
>
> We want mayors, who are directly involved in these works besides other organizations of the State, to work with this vision and thought. (Tekeli, 1978: 46-47)

Therefore, the reorganization of the municipalities with its legal framework is based on the modernization ideology of the new regime as not only creating "healthy" and "civilized" cities, but also realizing the transformation at the Anatolian cities which have had pre-industrial characteristics. (Tekeli, 1978: 48)

The Law of Municipalities has two basic features. First, large number of functions and responsibilities are given to the municipalities. The duties

are stated one by one by the 'listing principle'[8]. Definition of the duties as a list and the consequences of that are argued by Tekeli (1982-1983: 40) as,

> The law numbered 1580 which was passed in 1930 in fact designates a very wide area of duties for municipalities. As a matter of fact, in all this time that passed since then, there were almost no complaints about limitiations regarding the duties of municipalities. More complaints are made about the municipalities not being endowed with enough resources to be able to carry out these duties and about the fact that they have had to yield these duties to the central administration in the course of time. Whenever mayors wanted to be active in some way in their cities, they could easily find support for their practices in the law numbered 1580.

The second basic feature of the law is that, the duties of the municipalities are categorized as 'obligatory' and 'optional' with respect to their income levels. Taking the income levels as the basic criterion instead of size of population can be explained with the economic policy of the era, which is highly sensitive to the devaluation of the money. (Tekeli, 1978: 57) On the other side, this categorization became unfunctional in the 1950s with the high inflationist monetary policies. Therefore, all the duties listed in the law became obligatory for all municipalities. (Keleş, 1994: 193-194)

Consequently, if the separation of 'obligatory duties' and 'optional duties' is not taken into consideration, the duties of the municipalities can be categorized in seven groups. Keleş (1994: 194) defines these groups as follows:[9]

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[8] There are three principle ways of defining the duties and services of municipalities. For a brief explanation of these principles, look at Keleş, 1994: 192-193.

[9] Keleş takes this categorization from a study made by the Ministry of Internal Affairs of which I omitted one of the categorizations because of its high intersection with the other groups.

1. Health and social assistance duties.
2. Public works and urban development duties.
3. Education duties.
4. Agricultural duties.
5. Economic duties.
6. Transportation duties.
7. Other duties.

In this section, the duties stated in the Law of Municipalities will be analyzed within "health" and "healthy city" conceptions, involved in them. Because of that, we will concentrate on the first two groups of duties. First, the 'health and social assistance duties' and the 'public works and urban development duties', which have taken place in the article fifteen, will be listed[10]. Then, the issues in these categories will be interpreted by the "health" and "health city" conceptions.

Health and Social Assistance Duties of the Municipalities:

To ensure order and cleanliness of public places. (provision 1)

To inspect food and beverages, including their storage, with respect to sanitary conditions and conformity with regulations. (provision 2)

To supervise public sleeping, cleaning and recreation places for cleanliness, sanitary and physical safety; to issue licences for them, to prescribe their service hours and to prohibit their operations if necessary. (provision 3)

To combat infectious and contagious human and animal diseases and to take necessary measures in conformity with the regulations and to cooperate with the government organizations. (provision 4)

To issue burrial licences of the dead. (provision 5)

[10] While listing the duties, the number of the provisions will be given in parenthesis. When it is an obligatory duty for all municipalities, nothing will be mentioned. If is an obligatory duty with respect to income level of municipality, or if it is an optional duty, it will also be mentioned in the parenthesis. For the English translation of these provisions, I utilized from the 'Turkish Government Organization Manual' which is a publication of the Institute of Public Administration for Turkey and the Middle East, in 1966, (349-351).

To slaughter animals only in municipality slaughter-houses. (provision 6)

To make hygenic and technical examinations of workers, service employees and tradesmen who are in contact with the people. (provision 8)

To designate the locality and conditions for manufacturing plants, installations, market-places and depots which may affect the public health, rest and peace and to issue licences for them. (provision 13)

To take necessary measures for beggars. (provision 17)

To protect deserted and lost children, people who faint in the streets, etc. (provision 18)

To avoid and prohibit events and control people who violate the order, security, health and peace of the municipal area, without permission and illegaly. (provision 19)

To collect and dispose of trash and garbage. (provisions 23-24)

To provide water and keep it clean and hygenic. (provision 25)

To build public toilets. Ensuring the hygenic conditions of toilets in public and private buildings. (provision 27)

To make medical and scientific examinations and analysis of humans, animals and property upon request, or upon legally prescribed situations, to issue a medical report. (provision 29)

To provide social assistance for the poor, needy and orphans. (provision 34)

To make technical inspection of engines, boilers and chimneys of industrial plants and prevent their being hazardous. (provision 38)

To set up and operate hygienic and sanitary catgut-houses, etc. which are considered as complements of slaughter-houses. (provision 40: additional obligatory duty for municipalities with an income of 50.000 TL and more)

To build depots for explosives. (provision 41)

To establish dormitories for the orphans and to provide free pharmacy, birth and child care homes; to establish and operate mental institutions, cleaning and sterilization places, provided that the installations, organizations and locations are approved by the Ministry of Health. (provision 45: additional obligatory duty for municipalities with an income of 200.000 TL and more)

To provide employment for the unemployed and unsettled; to send back unemployed people to their communities; to protect abandoned women and children. (provision 48)

To set up and operate medical care and emergency centers. (provision 52)

To establish and operate free or free-charging municipal hospitals, and also veterinary hospitals for domestic animals, provided that the plans are approved by the Ministry of Health and Social Assistance. (provision 53: additional obligatory duty for municipalities with an income of 200.000 TL and more)

To administer hot springs of the municipality; to set up seaside and all other kinds of bathing places, and to inspect those for which permits have been issued for operation. (provision 56)

To establish pharmacies in places where none exists; to employ midwives to provide free medical and examination and obstetrical services. (provision 57)

To establish and operate market-halls for retail or wholesale products such as meat, margarine, fish, olive oil, cheese, vegetables, pickels, saltedfish and the ones like stated which require sanitary protection, at definite places and under supervision of municipality. (provision 58: additional obligatory duty for municipalities with an income of 50.000 TL and more)

To build and operate dormitories for the poor. (provision 69: optional duty for all municipalities)

To establish hygenic public laundry houses or to give permission to be eslablished and inspect them. (provision 75: optional duty for all municipalities)

To inspect hygenic conditions of the plants, workers, and worker houses. (provision 76)

To enable and control the appropriateness of the roads, parks, gardens and recreational areas, social and cultural service sites, and transportation facilities for the use and accessibility of the disabled people. (provision 78)

To establish occupation courses, occupational training centers and dormitories for the young and adult disabled people with the cooperation of the related institutions and agencies. (provision 80)

To take lower prices or free-charging the transportaiton, social and cultural services for the disabled people. (provision 81)

The health and social assistance duties of the municipalities, numerated in the fifteenth article of the Law of Municipalities No. 1580 are categorized by Tekeli (1978: 81-83) in three sub-groups, as follows:

1. The environmental health and sanitation duties.
2. Duties of establishing and operating healing health institutions.
3. Social assistance duties.

The 'environmental health and sanitation duties' are stated in the provisions 1, 2, 3, 4, 5, 6, 8, 13, 19, 23, 24, 25, 27, 29, 38, 40, 41, 56, 58, 75, 76. When these provisions are analyzed, it can be concluded that, there are two type of duties defined in these provisions. The first one is the sanitary controlling duty of the municipalities by inspection and supervision of urban life with its all socio-economic components. Secondly, to build, establish and operate urban infrastructure both for the urban environment sanitation and the preservation of public health. (Tekeli, 1978: 81-82)

'Duties of establishing and operating healing health institutions' are stated in the provisions 45, 52, 53, 57. The preservation of public health duty is extended to the duty of establishing healing institutions by the hands of municipalities in these provisions. These duties were yielded to the central administration after the Second World War, mainly because of insufficient fiscal resources of the municipalities[11]. (Tekeli, 1978: 82)

'Social assistance duties' are stated in the provisions 17, 18, 34, 69, 78, 80, 81. These duties were also yielded to the central administration after the Second World War. (Tekeli, 1978: 83)

For being able to reach a more complete evaluation, the public works and urban development duties of the municipalities should also be taken into consideration. So, these duties taking place in the fifteenth article of the Law of Municipalities will also be listed and then will be analyzed.

> Public Works and Urban Development Duties of the Municipalities:
>
> To issue permits for construction, repair and additions and to prohibit any construction without permit. (provision 12)
>
> To protect forests, cropfields, stacks of grain, vineyards, gardens, shurbery, meadows, pastures and other land from damage. (provision 21)
>
> To arrange streets and squares of the municipal area in accordance with plans and programs, to assign them names and numbers, to equip and protect them. (provision 31)
>
> To build and repair sewerage system. (provision 32)
>
> To regulate and maintain municipal water and water sources. (provision 35)

[11] For the reasons of yielding the duties to the central administration by the municipalities, look at Tekeli, 1983: 41-42.

To construct and run public wharfs, quays and bridges according to a plan. (provision 36)

To organize and develop burned out and open fields. (provision 37)

To issue technical inspection reports on construction and installations. (provision 39)

To build depots for explosives. (provision 41)

To build squares and market places. (provision 42)

To build and operate municipal theatres, cinemas, hotels, casinos, museums, zoos and botanical gardens. (provision 59: optional duty for all municipalities)

To establish ice-plants, cold storage facilities, water tanks and dairies. (provision 61: optional duty for all municipalities)

To build and administer fuel markets and warehouses. (provision 62: optional duty for all municipalities)

To establish flour mills and construction material plants. (provision 65: optional duty for all municipalities)

To build and operate bread bakeries. (provision 66: optional duty for all municipalities)

To establish the appropriateness of the urban development plans, at their preparation and implementation steps and at the construction and settlement permission steps to the related standards of the Turkish Standards Institute; to inspect the implementations and to take necessary measures for the integrity. (provision 79)

The public works and urban development duties of the municipalities can be categorized in two sub-groups. First, developing urban environment by building, establishing and operating urban infrastructure for the sanitation of urban area and life, by urban planning and making programs. Secondly, controlling the economic, social and cultural relams of urban

environment and natural assets with the duties of inspection and supervision. (For a brief summary of all these arguments, look at Table 4)

4.2.4. Conclusive Remarks on the Law of Municipalities No. 1580

The 'health and social assistance duties' and the 'public works and urban development duties' of the municipalities together establish a general framework on the conception of "health" and "healthy city".

In this law, "health" is conceptualized through "healthy city", in urban sanitation sense. The urban environment is seen as the basic physical element for developing all the social, economic and cultural realms of life, by planning and programming. Therefore for being able to develop modern and civilized cities, the preservation of public health is seen as the outcome of establishing sanitary urban infrastructure. Then, it is extended to establishing healing institutions, ensuring social assistance and the preservation of natural assets. For the sustainability of the modern and civilized cities, controlling is seen essential as a part of the conception of "healthy city". Therefore, inspectory and supervisory duties not only on physical environment, but also on social, economic and cultural realms of urban life are defined by the law and related by-laws, for municipalities. (For a brief summary of all these arguments, look at Table 4)

Conclusively, it can be argued that, "health" has been considered as the core concept of municipal duties. In this way, urban development is defined within the framework of planning. In fact, developing sanitary urban environment by planning and programming has become an objective since the 1930s. In that era, this has been stated by Reuter as, "Urbanism means cleaning, cleaning and again cleaning". (Tekeli, 1978:

80) In the next chapter, for conceieving the development of this kind of an urbanism, the Urban Development Law No. 3194 will be analyzed.

TABLE 4: "HEALTHY CITY" CONCEPTION IN THE DEVELOPMENT OF MUNICIPAL LEGISLATION

	Characteristic of the period	Conditions and constraints of the period	Municipal organization	Legal Basis	"healthy city" conceptions
1839-1923	The modernization movements in the Ottoman Empire.	1. Necessitated reorganizations in the services and new urban forms. 2. Western countries forced the Empire to establish modern municipal organizations.	Kadı ↓ İhtisab Nezareti ↓ Sixth District ↓ 'Dersaadet' and Provincial Municipalities	Mecelles 'Dersaadet' and Provincial Municipalities Laws	developed, clean and well-lighted city Establishing sanitary conditions for public order, enrichment, and totally for rehabilitating the Empire, within a centralized authority perspective.
1923-1930	A transitionary period for the organization and legislation of municipalities.	1. Insufficient municipal heritage of the Empire. 2. Political balances should be taken into account. 3. To increase population by promoting health & sanitary conditions. 4. Insufficient fiscal resources.	Municipalities	Provincial Municipalities Law + 1. Waters Law 2. Malaria Eradication Law 3. Animal Health Police Law, etc.	Ankara as the spatial laboratory of the Republic for establishing a municipality model and developing sanitary urban space and modern life within the accumulation of experiments and knowledge involved in new laws.

TABLE 4: "HEALTHY CITY" CONCEPTION IN THE DEVELOPMENT OF MUNICIPAL LEGISLATION (continued)					
	Characteristic of the period	**Conditions and constraints of the period**	**Municipal organization**	**Legal Basis**	**"healthy city" conceptions**
1930+	Within the goal of "reaching the contemporary civilization level", a new municipal model.	Single-party period of the Republic with the goal of modernization stated as 'reaching to contemporary civilization level'.	Municipality	"Law of Municipalities" No. 1580, on 3 April 1930	In urban sanitation sense, to develop modern and civilized cities by planning and programming of sanitary urban infrastructure, establishing healing medical institutions, ensuring social assistance and preserving natural assets. For the sustainability of the modern and civilized cities, controlling social, economic and cultural realms of life by inspection and supervision.

CHAPTER 5

THE EVOLUTION OF URBAN DEVELOPMENT LAW IN TURKEY

In this chapter, I will concentrate on the "Urban Development Law" No. 3194 to find out "healthy city" conception involved in it. But when the Urban Development Law and its related by-laws are analyzed in themselves, a problematic comes out for the aim of the thesis. This law and its related by-laws basically consist of spatial norms defining the use of land for public interest. In other words, this law is mostly reduced to a bundle of legal rules for 'drawing' urban plans. In fact, it is true that, hierarchial urban planning action at city-scale is realized within the legal rules put by this law and its related by-laws. But, this law and its related by-laws are not the only legal resouces of urban planning action. In addition, "health" and "healthy city" conceptions involved in the "Urban Development Law" can not be conceieved by only an analysis which will be made in itself.

Therefore, this law will be used like a base map on which all other laws, which are analyzed untill now, will be superimposed. In this way, not only the Urban Development Law will be analyzed to find out "healthy city" conception involved in it, but also the main legislative framework on urban planning will be put together for being able to capture the essence of urban planning action with its "healthy city" conception. At the end of the section, the evolution of "healthy city" conception in urban planning legislation will be schematized as a table (Table 5), by juxtaposing the

"healthy city" conceptions developed in different legal resources, which are discussed through the thesis. Before going into that sort of analysis, first the historical evolution of urban development laws in Turkey will be briefly summarized.

5.1. The Legislative Development of Reconstruction in the Ottoman Period

The first 'modern' urban planning activity in the Ottoman Empire can be dated to the Selim III era. It is known that, Melling had prepared a plan for the barracks of the new army and the area surrounding it (Tekeli & Ortaylı, 1978: 106). But the origin of urban planning, in the Ottoman period, has been accepted as the Cerificate (İlmuhaber), in 1839. This document had come out as a result of Helmut Von Moltke's planing studies on Istanbul. In fact, Von Moltke had been hired to improve street network, he had also drafted a plan for the city and proposed a renovation scheme. Although his plans had not been implemented, his policy framework on urban planning, which had been supported by Mustafa Reşit Paşa, had formed the essence of the Tanzimat period urban planning action. This policy framework can be summarized in two headings. First, a scientific approach should be developed for urban planning, similar to the western world. Therefore, the street network should be regularized in the form of straight and wide arteries, by pursuing mathematical and geometrical rules. Secondly, the existing construction material and technology should be changed. It was seen essential for not only enhancing fire preservation by converting timber buildings to 'kargir' (stone or brick), but also for presenting a modern image glorfying the imperial honnor. (Çelik, 1993: 50-51; Erkün, 1999: 12; Tekeli, 1994: 22-24)

In a decade, the essence of the Certificate (İlmuhaber) was carried to a series of legal documents. In 1848, the Building Regulation (Ebniye Nizamnamesi) and the Building Declaration (Ebniye Beyannamesi) were issued. In 1858, the Regulation on Streets (Sokaklara Dair Nizamname); in 1863, the Street and Building Regulation (Turuk ve Ebniye Nizamnamesi); in 1875, the Regulation on Construction Methods in Istanbul (Istanbul ve Belde-i Selasede Yapılacak Ebniyenin Suret-i İnşaiyesine dair Nizamname); and lastly in 1882, the Building Law (Ebniye Kanunu) were issued respectively. (Çelik, 1993: 51; Tekeli, 1994: 24-30)

The common issue in the regularization of urban area was the improvement of communication and establishment of citywide uniformity in the network. Therefore, as Çelik (1993: 51) summarizes, the streets were classified according to width as:

> The 1848 Building Regulation (Ebniye Nizamnamesi) proposed three types of streets: Main avenues (büyük caddeler), which would be a minimum of 7.60 meters wide; ordinary avenues (adi caddeler), 6.00 meters wide; and other streets (sair sokaklar) 4.50 meters wide. In the 1863 Street and Building Regulation (Turuk ve Ebniye Nizamnamesi), two more categories were established; this time the widest arteries were envisioned as 11.50 meters, whereas the width of fifth category (other streets) remained 4.50 meters. The 1882 Building Law (Ebniye Kanunu), however, retained the five-category classification and the 11.50-meter width for the main streets, but increased the width of the fifth category from 4.50 to 7.60 meters. All regulations stressed to eliminate dead ends[1].

In 1849, the Building Regulation and the Building Declaration were made applicable only to Istanbul as the Building Regulation ('Ebniye

[1] On the reasons of eliminating dead end streets, there are different arguments. As examples of these different arguments, look at, Yerasimos, 1996: 13; Faroqhi, 1998: 274; Tekeli & Ortaylı, 1978: 76.

Nizamnamesi'). Opening of vacant land and former vegetable gardens to construction was left to the decree of the Sultan. Not only the building permits of boat landing, for mosque courtyards and for public squares were prohibited, but also construction of new bachelor hostels were not allowed. (Tekeli, 1994: 25)

As the former regulations could not control the growth of the city, in 1858, all former building (ebniye) codes were consolidated in the Regulation on Streets (Sokaklara Dair Nizamname) as a passage to the 1863 Street and Building Regulation (Turuk ve Ebniye Nizamnamesi). Tekeli (1994: 26-27) and Çelik (1993: 51-52) underline distinct features of the 1863 Street and Building Regulation (Turuk ve Ebniye Nizamnamesi) as:

1. It was not applied only to Istanbul, as did the previous ones, but was also to apply *all other cities and large towns.*
2. It ruled that all development be based on a *plan.*
3. For the first time, *infrastructure elements* such as water, sewage, and gas systems were mentioned in the regulations. It was ruled that repair and maintenance of these systems be performed under the supervision of the government. The cost would be levied from property owners.
4. During the street enlargements, *an equal portion of expropriation could be made from both sides*; the owners were *not given the right to appeal*, but were forced to donate the portion of their property necessary for the operation. In the reorganized neighborhoods, the owners woud be assigned new lots in accordance with the value of their previous properties.
5. The regulation also brought recommendations for reducing fire hazards as did the former regulations. One issue unique to this regulation was the introduction of *monetary penalties* for those who disobeyed.
6. The articles of the Regulations relating to former fire sites stated that a map was to be prepared for such areas on which the parcels of land of all property owners would be shown. Dimensions of these parcels would be recalculated by deducting the land that

would be used for widening of streets. A new plan would then be based on the parceled size of plots obtained by altering the shape of sites near to *squares* or *rectangles* on the basis of their previous shapes and dimensions.

7. In order to open new areas to construction, maps (plans) showing the new plots would have to be prepared and delivered to the Ministry of Commerce (Ticaret Nezareti) which would examine and determine any modifications necessary in view of the *public interest*. In these areas, construction should also consist of *square* (murabba) or *rectangular* (müstatil) blocks. (*italics* mine)

In the Ottoman period, the types and techniques of construction were issued in the 1848 Building Declaration (Ebniye Beyannamesi), and the 1875 Regulation on Construction Methods in Istanbul (Istanbul ve Belde-i Selasede Yapılacak Ebniyenin Suret-i İnşaiyesine dair Nizamname). In the 1848 Building Declaration, detailed information was given about the techniques of two types of 'kargir' construction. The 1875 Regulation on Construction Methods in Istanbul brought zoning application to the capital city that was divided into primary and secondary zones. While only the 'kargir' construction was allowed in the primary zone, timber construction was allowed in the secondary zone, by taking necessary measures against fire. (Çelik, 1993: 52; Tekeli, 1994: 25, 27-28)

In 1876, the constitutional period of the Empire started with the 'Kanuni Esasi'. And in 1877, the 'Dersaadet' (Istanbul) and Provincial Municipalities Laws were enacted by the Parliament (Meclis-i Mebusan). These fundamental changes brought up a new law on urban planning action. In 1882, the Building Law (Ebniye Kanunu) was enacted. This law stayed in force until 1933, extending to the Republican period of Turkey.

The distinctive aspects of the 1882 Building Law from the previous regulations come out in few issues as:

1. The building heights were correlated to street widths.
2. The widening of streets were realized by withdrawing the frontage line of buildings. Either the municipality would cutt off the part of the building and restore the rest of it, or the owner of the building would do it by taking the expenditures from the municipality. Sidewalks were defined by the law.
3. When more than ten buildings were destroyed, in the fire hazards, the area would be qualified as 'disaster area' and considered as a 'field' (tarla) which should be replanned and replotted. This practice was called the new method (usul-u cedide). In this case, maximum one-forth of the pre-fire lot size could be expropriated free of charge.
4. In new areas which would be opened to construction, the owners would have to set aside land for public buildings such as police stations and schools.
5. In these new areas for reconstruction, land-owners were also to establish a sewage system.
6. This law was also including detailed rules concerning building permits, duties and penalties. (Akçura,1981: 52; Çelik,1993: 51-52; Tekeli,1994: 28-30)

Çelik (1993: 52) evaluates the ultimate goal of these regulations as 'a city with straight and uniformly wide streets defining rectangular or square blocks composed of stone or brick buildings'. On the other side, Akçura (1981: 51-52) criticizes the general approach of this regularization as not taking into consideration the traditional components of the Turkish and Islamic city, but following a western-oriented inspiration only in form, without capturing the socio-economic essence of the western world. In addition, Akçura (1981: 53) underlines that, the regularizations also directly include problematizations on the Turkish city. First, the regularizations on the streets and constructions are mostly made for preventing fire hazards, which is an identical problem of the Turkish cities. And secondly, the detailed measures on the vernacular

architecture principles of housing are stated in the regularization. In sum, it can be conluded that, this regularization movement is western-oriented by adapting it to the Turkish economic, social and cultural structure.

When this regularization movement is evaluated from the point of view of healthy city" conception involved in it, there comes out a need for a broader framework. The other components of this broader framework is discussed in the previous sections of the thesis. That means if we consider this regularization movement with the developments in constitution, municipal administration and public sanitation legislation of the era, we can conclude at a more sophisticated level.

The 1876 Constitution does not involve any conception on "health" and "healthy city". In municipal legislation of the era, "healthy city" conception appears as 'establishing sanitary conditions for public order, enrichment, and totally for rehabilitating the Empire, within a centralized authority perspective'. In the public sanitation field, the preservation of individual health is seen as the duty of the local administrations and the preservation of public health is developed by the central administration. But public sanitation services of the era could not be satisfactory. Lastly, both the municipal and public sanitation legal framework concentrated on Istanbul, that is the basic symbol of the Empire. Some impacts of these developments were reflected especially to port cities and a few important large towns, because of the political pressures of the foreigners settled there.

Then, we can conclude that, "health" is seen as the 'health of the Empire', which is called 'sick man' in that era. Then, the Empire would be healed by adapting a western image in its cities and large towns, especially in its capital city, Istanbul. "Healthy city" conception of the era comes out as: A city with clean and well-lighted straight and wide streets, with rectangular or square blocks composed of stone or brick buildings which have water,

sewage and gas systems and precautions against fire hazards, all of which is forced by western-inspired cadres in authority. In other words, "health city" can be conceptualized as geometry, standardization, regularization, sanitation and security. But instead of all these conceptualizations, the basic attitude of the era came into scene as "beautification" (of Istanbul) as "healthy city" conception.

The words of Abdülhamid II may better express the "beautification" as the basic conception and approach of the era.

> In 1902, Abdülhamid II comissioned Joseph Antoine Bouvard, head architect of the city of Paris, to prepare a plan to beautify Istanbul. Salih Münir (Çorlu) Bey who was at the time ambassador to Paris was asked to undertake the necessary measures for the preparation of the plan. He suggested that the physical deterioration in Istanbul had met with criticism in the European press. The Sultan told to him that: "We either have to accept the criticisms and the blame and stay quiet, or clean, decorate and restore our capital. Only you can perform this task without flaw because you have been living in Europe for a long time. You have visited several countries in Europe and have seen their elaborately adorned cities. You have knowledge of urban design and engineering. I will give you extensive authority and responsibility. Go to France and bring back men who are learned in such subjects and who are really capable. Let us establish a comission of bureaucrats whom you will select and recommend who will work under your direction and my supervision. Let us initiate this phenomenon." (Tekeli, 1994: 40-41)

5.2. Urban Development Legislation in the Republic of Turkey

İn the Ottoman period, urban planning activities have concentrated on Istanbul, mostly as the piecemeal regularization of the fire sites. In the beginning of the 20th century, piecemeal urban planning activities

spreaded to the other cities of the Empire by the cartographers[2]. The foreign and Turkish cartographers have made not only the maps of some cities but also made drawings showing the street directions and regularizations. Although some famous urbanists were invited to Istanbul for making plans, it can be claimed that, most of the planning activities were realized by the cartographers in the Ottoman period.Therefore, the Republic of Turkey inherited this kind of an urban planning action from the Ottoman Empire. (Tekeli & Ortaylı, 1978: 106-107)

Paralel to piecemeal urban planning activities of the Empire, the Republic of Turkey inherited a piecemeal set of buiding and land regulations developed in the Ottoman cities in the 19th century. (Danielson & Keleş, 1985: 195) Building Law of 1882 stayed in force until 1933. Therefore, in 1923-1924, the western Anatolia cities, that were razed by the fires during the Independence War, were developed in accordance to this law, with 'street direction plans'. (Tekeli & Ortaylı, 1978: 107) Ankara, as the capital city of the new regime, gained an important status through this historical development. It became a spatial laboratory not only for a new municipal model but also for establishing a contemporary urban planning approach in Turkey. A special set of laws were enacted for the urban planning in Ankara, which would later be utilized for the development of Anatolian cities that had a pre-industrial character.

5.2.1. The Buildings and Roads Law No. 2290

The new legislative period for the development of cities of the Republic was initiated by the enactment of the Turkish Civil Code[3], in 1926. Then,

[2] 1909 is accepted as the modern organization of cartography in Turkey. For a brief history on the development of cartography in the Ottoman Empire, look at İlkin & Tekeli, 1993: 146-147.
[3] Turkish Civil Code is taken from the Switzerland and adopted to Turkey. (Erkün, 1999: 12)

in 1933, the Buildings and Roads Law (Yapı ve Yollar Kanunu) No.2290 was enacted, besides a series of laws on urban administration and reconstruction. In fact, the Building and Roads Law was adopted from the Berlin Municipality Building Regulation (Bauordnung). As the origin of the law was a building regulation, there were so many detailed provisions that should not be occupied in an urban development law. Erkün (1999: 12) argues that, in the troublesome conditions and constraints of the era, there were urgent needs expected to be resolved, and it was a quick solution. On the other side, Tekeli (1978: 76) argues that,

> It can be claimed that, the Republican cadres have followed a similar attitude while enacting detailed provisions in the Law of Municipalities No. 1580. An ideological training function is given to the law by stating the qualities and aspects of the city of the new regime.

The Building and Roads Law were consisting of povisions mainly on planning and programming, definition of construction, building permits and procedures, residence permits, and qualifications of professionals and technicians. The main articles of the law can be stated as:

1. Obligation of preparing maps and plans by municipalities. (articles 1,2)
2. Plans should be approved by the Municipality Council, highest central administrator of the locality, and lastly by the Ministry of Public Works. (art. 3)
3. Preparing five-year terms of planning and programming for application. (art. 5)
4. The rule of compulsory replotting (hamur) and to take up to 15% of land free of charge. (art. 6)
5. The ownership of areas for public welfare, such as roads and green areas in the jurisdiction of district local authorities, by the Treasury and foundations, could be transferred to municipalities by the decision of the Council of Ministers, for public interest. (art. 8)

6. Building permits and procedures. (articles 10, 14)
7. Temporary building construction is not allowed. (art. 16)
8. Obligation of residence permit for completely constructed building. (art. 11)
9. Provisions on the qualifications of professionals and technicians. (art. 18) (Artukmaç, 1969: 32-34; Tekeli, 1994: 72)

When we look at the relationships between the Building and Roads Law and other laws on urban administration and reconstruction, there appears a strong connection among them. The Building and Roads Law No.2290, the Law of Municipalities No.1580, and the Public Sanitation Law No.2293 together determine the legislative framework of urban planning of the era. The most significant issue is the obligation of urban planning action for developed, well-administered and sanitary cities. The only contradiction among these laws is that, the planning and programming time intervals, that should be made in accordance to Building and Roads Law, is mentioned as five year periods by the Law of Municipalities, and as in a three year time by the Public Sanitation Law.

In fact, when the provisions of these laws are analyzed, a tendecy of developing the existing urban areas come out as a conclusion. This is consistent with the low urbanization rate of the era, except Ankara. Therefore, "healthy city" conception of the era can be phrased as, "a modern image on the existing pre-industrial form and structure of the Anatolian cities by planning 'type' cities". At that point, the significance of Ankara, that was not only identified with the success of the new regime but also presented as a model for the development of other cities in Anatolia, should be underlined.

5.2.2. The Development Law No. 6785

After the Second World War, with the emergence of rapid urbanization, industrialization and concomitant demands for housing and social services in the cities, the Building and Roads Law became insufficient. This law was no more satisfactory for the development of cities of Turkey, most of which have grown in a dual structure form. Tekeli (1994: 106) describes the enactment process of the new urban development law as,

> Modification of the Law of Buildings and Roads number 2290 had been on the agenda ever since the First Building Congress (Birinci Yapı Kongresi) held in 1948. Furthermore, a New Development Congress was held by the Ministry of Public Works in order to discuss the preparation of a development plan consistent with the current needs of the city. Under the impact of these studies, Urban Development Law number 6785, dated 16 July 1956, was passed by the Parliament. This law abolished the detailed articles of the 1882 Law of Bulding and Roads and provided flexibility for urban planners to make plans conforming to the character and structure of each city.

As a parallel development, the Ministry of Reconstruction and Settlement was constituted, in 1958. As the urbanization and urban development problems reached to its summit that they could not be resolved only at city scale planning. The problematization should be reformulated at a higher level, in a comprehensive way. Therefore, the Ministry of Reconstruction and Settlement came out as a central administration organ, which specialized on urbanization and urban development. It was differentiated from the Ministry of Public works by concentrating on urban planning and research, rather than being a ministry directly concerned with investment and implementation. (Tekeli & Ortaylı, 1978: 146-147)

Therefore, with the constitution of the Ministry of Reconstruction and Settlement and the enactment of the 6785 Urban Development Law, the

problematization of urban development went under a change. The detailed provisions of the 2290 Building and Roads Law, which should be included in related regulations, were abolished in the 6785 Urban Development Law. Threfore, the legislative framework on urban development gained a more 'flexible' character in which the distinct local characteristics could be taken into account in planning action. In other words, urban planning action got the chance of producing urban plans carrying local characteristics by taking into account that settlement's specific needs and capacities, rather than drawing 'type cities'.

In 1972, the shortcomings in planning practice especially in big cities caused a promulgation of a new law numbered 1605. By this law, not only some amendments were made in the articles of the 6785 Urban Development Law, but also new addenda were put to it. After these changes, first, the concept of 'adjacent area' (mücavir saha) was extended by including the areas that are not necessarily be next to the municipal boundaries. Secondly, a new term was added to law as 'metropolitan master plan'. Therefore, by the 6785 Urban Development Law, two significant steps were taken towards regional and metropolitan planning.

Then, "healthy city" conception of the 6785 Urban Development Law comes out as "flexible urban planning taking into account the local features and capacities at city-scale, supported by regional and metropolitan planning". In other words, "healthy city" can be created by flexible urban planning, which is developed specificly for each settlement, and within a hieararchial and multi-scaled planning approach, among which there is consistency and compatability.

This conceptual framework of the 6785 Urban Development Law was an 'ideal' installation of 'comprehensive planning' for Turkey. But the actual developments in the urban planning activities of the era proved that,

comprehensive planning approach could not be installed successfully. On one side, the political tension between the central administration and the municipalities, in the 1970s, caused increasing tendency of taking power and responsibilities back to the center. On the other side, by producing so many by-laws established again detailed norms for 'type city' planning. Akçura (1982: 52-64) observes a continuity between the 1882 Building Regulation and the 1933 Building and Roads Law with respect to provisions consisting them. Although a rupture from this approach is tried to be established by the 6785 Urban Development Law, with the promulgation of 'type by-laws', the common spirit of the 1882 Building Law and the 2290 Building and Roads Law is revived again, which tries to establish a modern image on the cities, only as a form.

5.2.3. The Urban Development Law No. 3194

With the changing economic and social conditions, so many laws were enacted on different scopes related with urban planning. Therefore the 6785 Urban Development Law became insufficient and in 1985, the second urban development law of Turkey is enacted by the number 3194.

The 3194 Urban Development Law has a similar structure with the 6785. After the general principles are stated in the first chapter, provisions on plan, land and construction are laid. In this section, I will analyze the chapters of the 3194 Urban Development Law, which is till in force. Then I will make a discussion on the essence of it for reaching "healthy city" conception involved in this law.

In the first chapter, the general principles are stated. The aim of the law is to develop settlements and constructions on these settlements with respect to plan, science, health and environmental conditions. The scope of the force of law is defined at two levels. These are planning areas and

buildings, whether owned by individuals or by the State. It is also mentioned that, buildings should be constructed in accordance with the planning decisions. The essence of the law comes out in the third article as, 'any place can not be used in objection to principles of plans at all scales, its regional conditions, and provisions of by-laws'. Then the exceptions with reference to related laws are mentioned. Lastly, the terms used in the provisions of the law are defined. In sum, the first chapter of the law expresses that, all areas that wanted to be developed by making constructions or buildings of private or public character should be consistent with plans, which are produced with scientific methods by taking into account sanitary and environmental conditions.

The second chapter consists of provisions on developmet plan as:

1. First, the planning types with different aims and scopes are mentioned as 'regional plans', 'master plans' and 'application plans'.
2. Actual maps and development plans part explains the procedures of making actual maps and the criteria of obligatory or optional development plans making for different settlements.
3. Principles of preparation of plans and procedures of putting them into force are explained. Regional plans are prepared by the State Planning Organization. Urban development plans are prepared by the municipalities within their municipal boundaries and adjacent area boundaries. The areas outside of all types of municipal boundaries, the urban development plans are prepared by the provincial administration or the related authority. The urban development laws are composed of 'master plan' and 'application plan'. The consistency and compatability within the hierarchy of plans are emphasized. Lastly, how urban development plans be put into force is explained.
4. The powers of the Ministry of Public Works and Settlement on urban development plans are stated.

5. Five-year term programming for the urban development plans and related procedures of expropriations and restrictions on the use of land because of expropriations are stated.
6. The conditions and procedures of transferring the real estates to the municipalities, which are owned by the public.
7. The frontage line principle is explained.
8. The conditions and restrictions on the lands reserved for public services by the urban development plan.
9. Servitude rights are explained.

The third chapter contains the principles on the use of land which will be established by separating and joining, compulsory replotting, subdivision of land by planning action.

The forth chapter consists of provisions on construction. First, the definition of construction is made. Then, the principles of construction permit with respect to different areas and ownership types are stated. Residence and using permits are also stated in this chapter.

The other chapters of the law contains various provisions on such as dangerous buildings, penalties, by-laws, adjacent areas, provisions related with the 2960 Bosphorus Law, regularization of parking areas, etc.

The general structure and content of the 3194 Urban Development Law is so similar with the previous urban development law numbered 6785. Of course, there are some differences such as, the approval of the development plans is left to the municipalties within its boundaries; the street direction plans are abolished, which have been inefficient; the programming of urban development plans is extended to five-year period; the maximum portion of land which can be taken by the municipality free of charge during compulsory replotting is increased to 35%; detailed provisions on the construction place are abolished, etc.

Although there have been some developmets such as increasing powers and changing structures of municipalities, the essence of the Urban Development Law did not change. Therefore, "healthy city" conception involved in the 3194 Urban Development Law can be expressed in the same way with the 6785 Urban Development Law. That is, 'flexible urban planning taking into account the local features at city-scale, supported by regional and metropolitan planning'. In other words, "healthy city" can be created by flexible urban planning, which is developed specificly for each settlement, and within a hieararchial and multi-scaled planning approach, among which there is consistency and compatability. On the other side, Akçura's critique on the development of Turkish cities as just regularized modern images, only in form, keeps its relevancy.

5.3. Conclusive Remarks on the Evolution of Urban Development Laws in Turkey

In this section, I shall make a conclusive discussion on the historical evolution of urban development laws in Turkey. As mentioned above, when the urban development laws and their related by-laws are analyzed in themselves, a problematic comes out for the aim of the thesis. These laws and their related by-laws basically consist of spatial norms defining the use of land for public interest and public health. These laws are mostly reduced to a bundle of legal rules for 'drawing' urban plans. In fact, it is true that, hierarchial urban planning action at city-scale is realized within the legal rules put by these laws and their related by-laws. But, they are not the only legal resouces of urban planning action. In addition, "health" and "healthy city" conceptions involved in the urban development laws can not be conceieved by only an analysis which will be made in themselves.

Therefore, the historical evolution of urban development laws will be used like a basis on which all other laws will be superimposed, which are analyzed in previous chapters. In this way, not only the urban development laws will be analyzed to find out "healthy city" conception involved in them, but also the main legislative framework on urban planning will be put together for being able to capture the essence of urban planning action with its "healthy city" conception. This discussion can easily be followed from table 5.

In this approach, I shall discuss the development of "healthy city" conception in urban planning legislation by concentrating on four periods, which is showed at table 5. These periods are determined by the historical evolution of the urban development laws in Turkey. The constitutional development shows a parallelism with the urban development laws. On the other side, it can easily be followed from table 5 that, the development of laws on municipalties and public sanitation expose a different character.

When table 5 is analyzed, the urban development laws appear as the basis/axis of the evolution of urban planning action with its "healthy city" conception. The constitutional development shows a parallelism with the urban development laws.

The emergence of the municipal laws correspond to the establishment of constitutional monarchy in the Ottoman Empire. Although there had been municipal organizations before, the history of 'modern' municipal organization that has prevailed to whole Empire can be initiated by this date. 'In 1877, two of the first bills of law that the Parliament (Meclis-i Mebusan) took up were related to 'Dersaadet' (Istanbul) and the Provincial Municipalities'. (Tekeli, 1994: 19) Then, with the foundation of the Republic of Turkey, the Law of Municipalities No. 1580 was enacted and stayed in force. As the law consists of detailed provisions and

defines a large scope of duties for the municipalities, it could be adapted to the changes in the legislative framework in urban planning. Therefore, the Law of Municipalities will be evaluted in each period with reference to the changes at other laws.

The Public Sanitation Law, as the last component of the table 5, was enacted in the Republican period. It is till in force so that, it takes its place in table 5 for the last three periods. Public Sanitation Law contains the fundamental provisions that have determined the basic principle of urban planning action in Turkey. This principle can be stated as 'sanitary urban environment for a better living of citizens'. In fact, this phenomenon is consistent with the origin of modern urban planning and modern public health, which appeared in an unseparated form in the western world. In other words, it can be claimed that, the modernization movement, that has prevailed to whole country by the foundation of the Republic of Turkey, has followed the same progressive line with the western world for creating 'healthy cities' in Turkey.

After this overall analysis of the development of "healthy city" conception in urban planning legislation in Turkey, showed at the table 5, I shall concentrate on each of the four periods, mainly determined by the historical development of the urban development laws in Turkey.

5.3.1. The first period

This period covers the developments that are initiated by the foundation of the constitutional monarchy in the Ottoman Empire. Although one of the first laws enacted by the Parliament was on municipalities, no provision was written explicitly or implicitly conceptualizing a "healthy city" in the 1876 Constitution. Only an administrative division of the Empire was stated.

In fact, constitutional monarchy was a result of a modernization movement initiated and pressured by Tanzimat bureaucrats who foresaw the the re-enforcement of the Empire as a central cadres movement. They tried to import the western models at different fields of life and adapt it to the Empire. But, the changes they made came out mostly in form, without capturing and adapting the political, economic, social and cultural structures and mechanisms of the western world. This was also relevant for the changes in the urban development.

The fundamental law on urban development of the period has come out as the Building Law (Ebniye Kanunu) in 1882. This law was envisaging 'a city with clean and well-lighted, straight and wide streets, with rectangular or square blocks composed of stone or brick buildings which have water, sewage and gas systems and precautions against fire hazards, all of which is forced by western-inspired cadres in central authority'. By this formulation, it sounds that a contemporary urban planning approach had already been constructed in that era. But, the implementations came out as a beautification movement, almost all of which concentrated in Istanbul, for making the Empire to gain a 'modern and healthy image'. In that era, the Empire was called as 'sick man' by the western world.

Therefore, the resolution was the rehabilitation of the sick man which also reflected to the 1887 'Dersaadet' (Istanbul) and Provincial Municipalities Laws. These laws included provisions on establishing sanitary conditions for public order and the organization of enrichment. The dream of the bureaucrats was a 'developed, clean and well-lighted city'.

In this period, although there had been some developments in the preservation of individual and public health, a general law on public sanitation did not emerge.

The planning activities of the period had a piecemeal character, mostly realized on fire sites, by the foreign and Turkish cartographers and these activities mostly concentrated in Istanbul. Some big cities and towns were also regularized by street direction maps (plans). In the changing structure of the ownership of land in the Empire, the Building Law (Ebniye Kanunu) tried to protect private property and its institutions. Some measures were also taken to advance the public interest against the interest of private property, in fire sites and planning actions for widening the streets.

Conclusively, the Ottoman period can be phrased as, 'a beautification movement for making the Empire to gain a healthy and strong image, which was called as sick man'. From the point of view of the thesis, "healthy city" notion of the period can be formulated as, 'a healthy form for Istanbul only as an image'.

5.3.2. The second period

This period is started with the foundation of the Republic of Turkey. In the first ten years, the Building Law (Ebniye Kanunu) of the Ottoman Empire was utilized, especially in the reconstruction of the burned western Anatolia cities. On the other side, the planning experience was accumulated in Ankara, with special laws. Then, the Building and Roads Law was enacted in 1933, as the urban development law of the period. This period ends with the enactment of the 6785 Urban Development Law in 1956. Another significant development in this period was the enactment of the Turkish Civil Code, which was establishing the legal norms of modern way of life in Turkey. This law also regulated the property ownership.

Both the 1921 and the 1924 Constitutions had no provision explicitly or implicitly conceptualizing a "healthy city" conception. They included some provisions on the administrative division of the country.

Ankara became the capital city. The reconstruction of Ankara became one of the most important issues, because it is identified with the success of the new regime. In addition, Ankara would constitute a model for urban development and municipal administration for the other undeveloped cities of the Republic, which had pre-industrial form and structure.

In 1933, the urban development law of the period, named as the Building and Roads Law No.2290, was issued. This law would establish a modern image on the existing pre-industrial form and structure of the Anatolian cities, with reference to Ankara model. This would be done by the municipalities, for which a long list of duties were stated in the Law of Municipalities. Most of these duties were on developing sanitary urban environment not only with technical infrastructure, but also with health and social assistance services, for a modern way of life. The Public Sanitation Law simultaneously came out with provisions adding new duties to the municipalities. Its basic motive was 'sanitary urban environment for a better living of citizens'. In fact, this motive was the main goal of urban planning action. Therefore, these three laws were complementary on each other. The result was a long list of provisions for a modern and sanitary urban environment and life.

Indeed, this list of provisions were defining all the details of urban development and adminstration for a "healthy city" that, the "healthy city" conception of the era became a 'type city'. This can be interpreted as one step further of the 'beautification' movement of the Ottoman Empire, because the Republic was trying to construct a modern way of life in every field of life by establishing institutions like Public Houses (Halkevleri) and Village Institutions (Köy Enstitüleri).

In urban planning actions of the period, some measures were taken to advance the public interest against the interest of private property, when necessary.

5.3.3. The third period

This period starts with the enactment of the 6785 Urban Development Law, in 1956 and lasts until 1985. In this period, on one side, Turkey was meeting with rapid urbanization, industrialization, and concomitant demands for housing and social services. On the other side, there was a political crisis that is engaged with economic problems and social upheavals.

Then with the May 27, 1960 coup a new constitution was prepared and issued after a referendum in 1961. In this constitution, the Republic of Turkey is defined as 'a social state governed by the rule of law'. Consequently, first, restrictions were brought to basic rights and freedoms with public interest and general health justification. Secondly, health is defined as well-being of body and mental health. Thirdly, providing housing with sanitary conditions for poor and low-income families became a duty of the State. Forth, restrictions were brought to the freedom of residence for preserving contagious and infectious diseases, protecting public property and promoting social and economic development. Lastly, conceptual framework of development planning was established. In sum, all these issues were supporting a "healthy city" conception mainly on the basis of public interest, preservation of individual and public health, protecting public property, and promoting social and economic development. Therefore, by this constitution, not only necessary measures were taken to advance public interest against the interest of private property, but also conceptual basis of urban planning was

established at multi-scale. The State Planning Organization was established as a constitutional institution.

The 6785 Urban Development Law was also involving the feature of multi-scale planning at regional level. Then, metropolitan planning was added. With the establishment of the Ministry of Reconstruction and Settlement which was specialized on urbanization and urban planning, the multi-scale physical planning action reached to its summit. Another important feature of the 6785 Urban Development Law was its 'flexibility in urban planning' approach. Within this approach, urban planning action would take into account the local features and capacities during the city planning process.

On the other side, the 1580 Law of Municipalities and the 1593 Public Sanitation Law were supporting the general framework above with their detailed and long list of provisions.

Although, the "healthy city" conception of the legislative framework seems so positive and wide, basically because of the tensions between central administration and municipalities, "healthy city" conception of the era was narrowed. So many central interferences were made to municipalities. The basic tools of the central administration in these interferences were producing type by-laws and cutting the monetary resources of municipalities. Therefore, not only urban planning action lost its flexibility, but also multi-scale planning lost its essence. The result was 'type by-law cities' as an outcome of the conception of "healthy city" of the central administration.

5.3.4. The fourth period

After the 1982 Constitution, in 1985, a new urban developmet law was passed No. 3194. The 1982 Constitution added new concepts directly related with urban planning action. These were stated as, developing natural environment; protecting environmental health; and preventing the environmental pollution. Not only 'flexible' urban planning approach was directly mentioned, but also urban planning action itself was stated in this Constitution, as well. On the other side, as the target group of housing that will be supported by the State is not mentioned, this led to a movement of secondary housing of the middle and upper income classes that has invaded especially the coasts of Turkey.

The 3194 Urban Development Law was established again in a flexible approach that should take into account the local features and capacities of cities. In addition, the metropolitan municipal administration is developed in time and the tensions between central administration and municpalities decreased.

The municipalities, especially metropolitan municipalities utilized from the detailed and long list of duties that are stated in the 1580 Law of Municipalities. They developed big city projects and used new financial methods. The authority of issuing permits to unsanitary establishments were given to metropolitan municipalities. But, on the other side, the speculation on land was taken by the big capital which invested on construction sector. Therefore, 'type' mass housing emerged and prevailed to the peripheries of the cities. As the necessary measures were not taken, and as the big capital makes so much pressure on the municipalities, plan started to lose its meaning. Peacemeal planning and legitimization is transferred from squatter areas to middle and upper income classes' hygenic and safe mass housing areas. By this way, the cities have gone on growing rather than being planned and developed.

Even municipalities themselves started to make peacemeal planning in cities and constructed high rise blocks. The social services were conceieved as creating 'sterilized' and 'safe' environments parallel to consumerism.

All these transformations point out a new "healthy city" conception, that can be phrased as 'rent inclined big capital and municipality supported sterilized and safe cities'.

In sum of the analysis of these four periods, we can simply say that, a development can easily be in the conception of "healthy city" in Turkey. It starts as a 'beautification' movement, and then 'type cities' of Republican cadres are planned. This attitude is transformed to a 'type by-law cities' in the third period. Lastly, with the efforts of integrating Turkey to the 'new world order' since the 1980s, a 'rent inclined big capital and municipality supported sterilized and safe cities' conception has been expanding as "healthy city" conception in urban planning action.

TABLE 5: "HEALTHY CITY" CONCEPTION IN URBAN PLANNING LEGISLATION IN TURKEY

Evolution of Urban Development Laws		Constitutional Development		Law of Municipalities	Public Sanitation Law
Building Law (Ebniye Kanunu)	'Beautification' of Istanbul and big cities of the Empire by regularization. A city with clean and well-lighted straight and wide streets, with rectangular or square blocks composed of stone or brick buildings which have water, sewage and gas systems and precautions against fire hazards, all of which is forced by western-inspired cadres in authority.	1876 Constitution	No explicit or implicit conception.	1887 'Dersaadet' (Istanbul) and Provincial Municipalities Laws 'Developed, clean and well-lighted city' Establishing sanitary conditions for public order, enrichment, and totally for rehabilitating the Empire, within a centralized authority perspective.	Although there had been some development in the preservation of individual and public health, a general law on public sanitation did not emerge.
2290 Building and Roads Law	A modern image on the existing pre-industrial form and structure of the Anatolian cities by planning 'type cities'. Ankara is developed as a model with a special legal framework.	1921 & 1924 Constitutions	No explicit or implicit conception.	Ankara as the spatial laboratory of the Republic to establish a municipality model for developing sanitary urban space and modern life, within the accumulation of experiments and knowledge involved in new laws.	Urban environment enabling medical services. Sanitary urban environment for a better living of citizens.

TABLE 5: "HEALTHY CITY" CONCEPTION IN URBAN PLANNING LEGISLATION IN TURKEY (continued)

6785 Urban Development Law	Flexible urban planning taking into account the local features and capacities at city-scale, supported by regional and metropolitan planning.	**1961 Constitution**	Indirectly with restrictive provisions. 1. General restriction principle on basic rights and freedoms including public interest and general health. (art. 11) 2. Well-being of body and mental health. (art. 49) 3. Housing with sanitary conditions for poor and low-income families. (art. 49) 4. Restriction on the freedom of residence for preserving infectious diseases, protecting public property and promoting social and economic development. (art. 18) 5. Conceptual framework of development planning. (articles 41 and 129)	In urban sanitation sense, to develop modern and civilized cities by planning and programming of sanitary urban infrastructure, establishing healing medical institutions, ensuring social assistance and preserving natural assets. For the sustainability of the modern and civilized cities, controlling social, economic and cultural realms of life by inspection and supervision.	Urban environment enabling medical services. Sanitary urban environment for a better living of citizens.
3194 Urban Development Law	Flexible urban planning taking into account the local features and capacities at city-scale, supported by regional planning and metropolitan municipal administration and planning.	**1982 Constitution**	Directly stated provisions and restrictions in various provisions. 1. General restriction principle on basic rights and freedoms including public interest and general health (art. 13) 2. Suitable and healthy environment by developing natural environment, protecting environmental health, and preventing the environmental pollution (art. 56) 3. Well-being of body and mental health for the reproduction of labour by the regulation of health services by central planning. (art. 56) 4. Taking measures to meet the needs of housing within the framework of a plan, which takes into account the characteristics of cities and environmental conditions and supporting mass housing projects. (art. 57) 5. Restriction on the freedom of residence for ensuring sound and orderly urbanization, promoting social and economic development, and protecting public property. (art. 23)		

CHAPTER 6

CONCLUSION

In this chapter, I shall first discuss the common features of the laws that have been analyzed through this thesis. By this discussion, I shall construct a critical framework on the conception of "healthy city" in Turkish urban planning legislation. Then, I shall try to develop a conceptual basis for a new urban planning approach for emphasizing the stimulation of an essential discussion for developing a new "healthy city" conception in Turkey.

Turkish urban planning legislation that have been analyzed and discussed through the thesis, on the basis of four fundamental laws, have some common features. These common features contain the conception of "healthy city". Therefore, first, it is necessary to emphasize these common features.

All of these four laws have detailed provisions, deeply defining every point, like explaining something to an ignorant person. In other words, from the point of view the thesis, all these laws have the tendency of increasing control of the central cadres on urban area and dictating a type of urban development with a predefined image at the central administration level. In this way, the detailed provisions of the 1580 Law of Municipalities and the 2290 Building and Roads Law are established for creating and expanding the modern city image of the Republican

cadres to the cities of the Anatolia. Indeed, the 1961 and 1982 Constitutions and 1593 Public Sanitation Law have a similar character, probably because of the same attitude.

The 6785 and 3194 Urban Development Laws are established as a general framework with a flexible structure, at the beginning. Then, as an extension of the same dominant attitude, by-laws on urban planning were prepared by the Ministry of Public Works and Settlement (before by the Ministry of Reconstruction and Settlement), which were connected to these laws, tended to create 'type by-law cities' in Turkey.

Conclusively, the intellectual bureaucrat and technocrat cadres of the Republic have always imposed their modernist progressive attitude to the city without making the society being participant to the development of its living areas. While the central cadres were developing strategies from top to down, the society responded by tactics and have tried to transform the urban development for its ends. As a result, urban development in Turkey became unsatisfactory for both sides.

Secondly, all of the laws, that are analyzed and discussed, have a conception of "healthy city" in a bio-physical sense. In other words, the health of individual is conceieved as the mere absence of disease and the health of society is preserved and sustained by the establishment sanitary infrastructure. The conception of "healthy city" in urban planning has developed very parallel to this approach. On the other side, socio-psychological dimension of health has not been taken into consideration. Although, mental health is mentioned in the laws, no planning tool or component is defined for the preservation of mental health. In fact, the socio-psychological dimension of urban planning is much more related with urban design, at the micro level in which the everyday life folds out.

In addition, socio-psychological dimension of urban planning, better formulated as urban design, should also take into account new phenomena in social life, ie. the new realities that we are facing to. The single parents, lonely living youth, increasing number of elders with the changing population pattern are so new issues for Turkey. But they are staying as social phenomena of new times and these issues should have to be added to the conception of a "healthy city".

Thirdly, it is significant to recognize that, the Public Sanitation Law and the Law of Municipalities stay almost static with little amendments for adaptation to the changing political, economic, social and cultural changes. On the other side, the constitutions and urban development laws have a more dynamic character, which have gone through structural changes in their historical development. This phenomena can be explained with the dynamic character of the society and the city. While political, economic, social and cultural structures change rapidly through the development of Turkey in the 20th century, it is essential to make changes in the related legislative framework. The constitutions have gone under a change by the political and socio-economic upheavals. On the other side, urban development laws have evolved by the changing needs of the society on the urban area. However, this explanation does not totally reflect that, the evolution of urban development laws have satisfied and developed a "healthy" urban planning approach in Turkey. If the legislative framework is not developed as a whole, these partial changes can not satisfy a "healthy" urban development.

Additionaly, if the enactment dates of the laws on public sanitation and municipalities are taken into account, we can easily conclude that planning a "healthy city" is highly difficult for a developing country like Turkey. Therefore, the legislative framework of urban planning should be restructured as a whole.

Through the historical development of urban planning legislation, which is discussed through the thesis by its fundamental laws, the establishment of comprehensive planning approach can easily be observed, especially in the historical development of urban planning laws. While the 6785 Urban Development Law takes 'construction' as the basic component through its structure, the 3194 Urban Development Law concentrated on 'plan' as the basic component. The deductive method of the 3194 Urban Development Law, and the other laws discussed, within the comprehensive planning approach has been advocated and supported by urban planners, for a long time, in Turkey. Today, it is obvious the deductive method of comprehensive planning approach can not satisfy a contemporary "healthy city" development. On the other side, the replacement of the deductive method of comprehensive planning with a totally inductive method of another urban planning approach does not seem as the final solution.

Although it is very difficult to develop a complete framework, the basic features of a new approach can be discussed as follows:

1. A new institutional and legislative structure is essential which can utilize both deductive and inductive methods within a new urban planning approach. These two methods can be utilized as antithesis of each other to reach a synthesis. The needs and demands at different scales can be balanced by simultaneously using these two methods as a counter check of decision-making on urban area.

2. As a requirement of the simultaneous use of inductive and deductive methods in urban planning, the decision-making process should be open and transparent to society. A new institutional and legislative framework can bring together the bureaucrats, technocrats and the society together for decision-making at different scales. Therefore, both the insufficiency of the strategies of decision-makers in their

offices and the demolishing tactics of the society in different urban areas can be challenged.

3. It is essential to establish a multi-disciplinary team-working including the social groups for conceiving the needs and demands of the society for keeping sustainable the development of the country. Therefore, not only an institutional and legal framework should be established for a multi-disciplinary approach, but also the formal urban planning education and the training of both the urban planners and the society should be realized mutually. In other words, universital education should diffuse into the everyday life of the society as apart of it. In this way, new social phenomena of the country can be really conceieved.

The very general framework proposed above stays very conceptual at the moment. But it is not possible to develop a detailed and precise framework in the limits of this thesis. The only aim is to emphasize the stimulation of a discussion for developing a new "healthy city" conception in Turkey.

Lastly, it should be stressed that, the "healthy city" notion of urban planning can be extended to every aspect urban life. The earthquake experiences of Turkey in 1999 proved that, in a more general sense, the 'disasters' should be taken into the extent of "healthy city" conception of urban planning action.

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APPENDIX A

RELATED ARTICLES OF THE CONSTITUTIONS OF TURKEY IN TURKISH

1876 Anayasası

Vilâyat

Madde 110 – Vilâyat Mecalisi Umumiyesinin vezayifi yapılacak kanunu mahsusunda beyan olunacağı veçhile turuk ve meabir tanzimi ve itibar sandıklarının teşkili ve sanayi ve ticaret ve felâhatın teshili bir umuru nafiaya müteallik mevad hakkında ve umuma ait maarif ve terbiyenin intişarı yolunda müzakerata şâmil olmakla beraber tekâlif ve mürettebatı miriyenin sureti tevzi ve istihsalinde ve muamelatı sairede kavanin ve nizamatı mevzua ahkâmına muhalif gördükleri ahvalin müteallik olduğu makam ve mevkilere tebliğile tashih ve ıslahı zımnında arzı iştikâ etmek selâhiyetini dahi muhtevi olacaktır.

1921 Anayasası

Vilâyat

Madde 11 – Vilayet mahalli umurda manevi şahsiyeti ve muhtariyeti haizdir. Harici ve dahili, siyaset, şer'i, adlî ve askeri umur, beynelmilel iktisadî münasebat ve hükûmetin umumi tekâlifi ile menafiî birden ziyade vilâyata şâmil hususat müstesna olmak üzere Büyük Millet Meclisince vaz edilecek kavanin mucibince Evkaf, Medaris, Maarif, Sıhhıye, İktisat, Ziraat, Nafia ve Muaveneti içtimaiye işlerinin tanzim ve idaresi vilâyet şûralarının salâhiyeti dahilindedir.

1924 Anayasası

ALTINCI FASIL
Mevaddı müteferrika

Vilâyat

Madde 89 – Türkiye coğrafi vaziyet ve iktisadi münasebet noktai nazarından vilâyetlere, vilâyetler kazalara, kazalar nahiyelere münkasimdir ve nahiyeler de kasaba ve köylerden terekkübeder.

Madde 90 – Vilayetlerle şehir, kasaba ve köyler hükmi şahsiyeti haizdir.

Madde 91 – Vilâyetler umuru tevsii mezuniyet ve tefrikı vezaif esası üzerine idare olunur.

ALTINCI BÖLÜM
Türlü Maddeler

İller

Madde 89 – Türkiye, coğrafya durumu ve ekonomi ilişkileri bakımından illere, iller ilçelere, ilçeler bucaklara bölünmüştür ve bucaklar da kasaba ve köylerden meydana gelir.

Madde 90 – İllerle şehir, kasaba ve köyler tüzelkişilik sahibidirler.

Madde 91 – İllerin işleri, yetki genişliği ve görev ayrımı esaslarına göre idare olunur.

1961 Anayasası

BİRİNCİ KISIM

GENEL ESASLAR
II. Cumhuriyetin nitelikleri

Madde 2 – Türkiye Cumhuriyeti, insan haklarına ve Başlangıç'ta belirtilen temel ilkelere dayanan, millî, demokratik, lâik ve sosyal bir hukuk devletidir.

İKİNCİ KISIM

TEMEL HAKLAR VE ÖDEVLER
Birinci Bölüm

GENEL HÜKÜMLER

II. Temel hak ve hürriyetlerin özü, sınırlanması ve kötüye kullanılmaması

Madde 11 – (20.9.1971-1488) – Temel hak ve hürriyetler, Devletin ülkesi ve milletiyle bütünlüğünün, Cumhuriyetin, millî güvenliğin, kamu düzeninin, kamu yararının, genel ahlâkın ve genel sağlığın korunması amacı ile veya Anayasanın diğer maddelerinde gösterilen özel sebeplerle, Anayasanın sözüne ve ruhuna uygun olarak, ancak kanunla sınırlanabilir.

Kanun, temel hak ve hürriyetlerin özüne dokunamaz.

Bu Anayasada yer alan hak ve hürriyetlerden hiçbirisi, insan hak ve hürriyetlerini veya Türk Devletinin ülkesi ve milletiyle bölünmez bütünlüğünü veya dil, ırk, sınıf, din, ve mezhep ayırımına dayanarak, nitelikleri Anayasada belirtilen Cumhuriyeti ortadan kaldırmak kasdı ile kullanılamaz.
Bu hükümlere aykırı eylem ve davranışların cezası kanunda gösterilir.

İkinci Bölüm

KİŞİNİN HAKLARI VE ÖDEVLERİ

III. Seyahat ve yerleşme hürriyeti

Madde 18 – Herkes, seyahat hürriyetine sahiptir; bu hürriyet, ancak millî güvenliği sağlama ve salgın hastalıkları önleme amaçlarıyla kanunla sınırlanabilir.

Herkes, dilediği yerde yerleşme hürriyetine sahiptir; bu hürriyet, ancak millî güvenliği sağlama, salgın hastalıkları önleme, kamu mallarını koruma, sosyal, iktisadî ve tarımsal gelişmeyi gerçekleştirme zorunluğuyla ve kanunla sınırlanabilir.
Türkler, yurda girme ve yurt dışına çıkma hürriyetine sahiptir. Yurt dışına çıkma hürriyeti kanunla düzenlenir.

Üçüncü Bölüm

SOSYAL VE İKTİSADİ HAKLAR VE ÖDEVLER

IV. İktisadî ve sosyal hayatın düzeni

Madde 41 – İktisadî ve sosyal hayat, adâlete, tam çalışma esasına ve herkes için insanlık haysiyetine yaraşır bir yaşayış seviyesi sağlanması amacına göre düzenlenir.

İktisadî sosyal ve kültürel kalkınmayı demokratik yollarla gerçekleştirmek; bu maksatla, millî tasarrufu arttırmak, yatırımları toplum yararının gerektirdiği önceliklere yöneltmek ve kalkınma plânlarını yapmak Devletin ödevidir.

VII. Sağlık hakkı

Madde 49 – Devlet, herkesin beden ve ruh sağlığı içinde yaşayabilmesini ve tıbbî bakım görmesini sağlamakla ödevlidir.

Devlet, yoksul veya dar gelirli ailelerin sağlık şartlarına uygun konut ihtiyaçlarını karşılayıcı tedbirleri alır.

XI. Devletin İktisadî ve sosyal ödevlerinin sınırı

Madde 53 – Devlet, bu Bölümde belirtilen iktisadî ve sosyal amaçlara ulaşma ödevlerini, ancak iktisadî gelişme ile malî kaynaklarının yeterliği ölçüsünde yerine getirir.

ÜÇÜNCÜ KISIM

CUMHURİYETİN TEMEL KURULUŞU

Birinci Bölüm

YASAMA

A) Türkiye Büyük Millet Meclisi

II. T.B.M.M.'nin görev ve yetkileri

a) Genel olarak

Madde 64 – (20.9.1971-1488) Kanun koymak, değiştirmek ve kaldırmak, Devletin bütçe ve kesin hesap kanun tasarılarını görüşmek ve kabul

etmek, para basılmasına, genel ve özel af ilânına, mahkemelerce verilip kesinleşen ölüm cezalarının yerine getirilmesine karar vermek, Türkiye Büyük Millet Meclisinin yetkilerindendir.

Türkiye Büyük Millet Meclisi kanunla, belli konularda Bakanlar Kuruluna kanun hükmünde kararnameler çıkarmak yetkisi verebilir. Yetki veren kanunda çıkarılacak kararnamelerin amacı, kapsamı ve ilkeleriyle bu yetkiyi kullanma süresinin ve yürürlükten kaldırılacak kanun hükümlerinin açıkça gösterilmesi ve kanun hükmünde kararnamede de yetkinin hangi kanunla verilmiş olduğunun belirtilmesi lâzımdır.

Bu kararnameler, Resmi Gazetede yayımlandıkları gün yürürlüğe girerler. Ancak kararnamede yürürlük tarihi olarak daha sonraki bir tarih de gösterilebilir. Kararnameler, Resmî Gazetede yayımlandıkları gün Türkiye Büyük Millet Meclisine sunulur.

Yetki kanunları ve Türkiye Büyük Millet Meclisine sunulan kararnameler, Anayasanın ve yasama meclisleri içtüzüklerinin kanunların görüşülmesi için koyduğu kurallara göre, ancak, komisyonlarda ve genel kurullarda diğer kanun tasarı ve tekliflerinden önce ve ivedilikle görüşülüp karara bağlanır.

Yayımlandıkları gün Türkiye Büyük Millet Meclisine sunulmayan kararnameler, bu tarihte yürülükten kalkar. Değiştilerek kabul edilen kararnamelerin değiştirilmiş hükümleri, bu değişikliklerin Resmi Gazetede yayımlandığı gün yürürlüğe girer.

Anayasanın ikinci kısmının birinci ve ikinci bölümlerinde yer alan temel hak ve hürriyetler ile dördüncü bölümde yer alan siyasî haklar ve ödevler kanun hükmünde kararnamelerle düzenlenemez. Anayasa mahkemesi, bu kararnamelerin Anayasaya uygunluğunu da denetler.

İkinci Bölüm

YÜRÜTME

D) İktisadî ve Malî Hükümler
IV. Kalkınma

a) Kalkınma plânı ve Devlet Plânlama Teşkilâtı

Madde 129 – İktisadî sosyal ve kültürel kalkınma plâna bağlanır. Kalkınma bu plâna göre gerçekleştirilir.

Devlet Plânlama Teşkilâtının kuruluş ve görevleri, plânın hazırlanmasında, yürürlüğe konmasında, uygulanmasında ve

değiştirilmesinde gözetilecek esaslar ve plânın bütünlüğünü bozacak değişikliklerin önlenmesini sağlayacak tedbirler özel kanunla düzenlenir.

1982 Anayasası

BAŞLANGIÇ

Ebedî Türk Vatan ve milletinin bütünlüğüne ve kutsal Türk Devletinin varlığına karşı, Cumhuriyet devrinde benzeri görülmemiş bölücü ve yıkıcı kanlı bir iç savaşın gerçekleşme noktasına yaklaştığı sırada;

Türk Milletinin ayrılmaz parçası olan Türk Silahlı Kuvvetlerinin, milletin çağrısıyla gerçekleştirdiği 12 Eylül 1980 harekâtı sonucunda, Türk Milletinin meşrû temsilcileri olan Danışma Meclisince hazırlanıp, Milli Güvenlik Konseyince son şekli verilerek Türk Milleti tarafından kabul ve tasvip ve doğrudan doğruya O'nun eliyle vaz olunan bu ANAYASA :

- Türkiye Cumhuriyetinin kurucusu, ölümsüz önder ve eşsiz kahraman Atatürk'ün belirlediği milliyetçilik anlayışı ve O'nun inkılap ve ilkeleri doğrultusunda;
- Dünya milletler ailesinin eşit haklara sahip şerefli bir üyesi olarak; Türkiye Cumhuriyetinin ilelebet varlığı, refahı, maddi ve manevi mutluluğu ile çağdaş medeniyet düzeyine ulaşma azmi yönünde;
- Millet iradesinin mutlak üstünlüğü, egemenliğin kayıtsız şartsız Türk Milletine ait olduğu ve bunu millet adına kullanmaya yetkili kılınan hiçbir kişi ve kuruluşun, Bu anayasada gösterilen hürriyetçi demokrasi ve bunun icaplarıyla belirlenmiş hukuk düzeni dışına çıkamayacağı;
- Kuvvetler ayrımının, Devlet organları arasında üstünlük sıralaması anlamına gelmeyip, belli Devlet yetkilerinin kullanılmasından ibaret ve bununla sınırlı medeni bir işbölümü ve işbirliği olduğu ve üstünlüğün ancak Anayasa ve kanunlarda bulunduğu;
- Hiçbir düşünce ve mülahazanın Türk milli menfaatlerinin, Türk varlığının Devleti ve ülkesiyle bölünmezliği esasının, Türklüğün tarihi ve manevi değerlerinin, Atatürk milliyetçiliği, ilke ve inkılapları ve medeniyetçiliğinin karşısında korunma göremeyeceği ve lâiklik ilkesinin gereği kutsal din duygularının, Devlet işlerine ve politikaya kesinlikle karıştırılmayacağı;
- Her Türk vatandaşının bu Anayasadaki temel hak ve hürriyetlerden eşitlik ve sosyal adalet gereklerince yararlanarak milli kültür, medeniyet ve hukuk düzeni içinde

- onurlu bir hayat sürdürme ve maddi ve manevî varlığını bu yönde geliştirme hak ve yetkisine doğuştan sahip olduğu;
- Topluca Türk vatandaşlarının milli gurur ve iftiharlarda, milli sevinç ve kederlerde, milli varlığa karşı hak ve ödevlerde, nimet ve külfetlerde ve millet hayatının her türlü tecellesinde ortak olduğu, birbirinin hak ve hürriyetine kesin saygı, karşılıklı içten sevgi ve kardeşlik duygularıyla ve "Yurtta sulh, cihanda sulh" arzu ve inancı içinde, huzurlu bir hayat talebine hakları bulunduğu;

FİKİR, İNANÇ VE KARARIYLA anlaşılmak, sözüne ve ruhuna bu yönde saygı ve mutlak sadakatle yorumlanıp uygulanmak üzere,

TÜRK MİLLETİ TARAFINDAN, demokrasiye âşık Türk evlatlarının vatan ve millet sevgisine emanet ve tevdi olunur.

BİRİNCİ KISIM

GENEL ESASLAR

II. Cumhuriyetin nitelikleri

Madde 2 – Türkiye Cumhuriyeti, toplumun huzuru, milli dayanışma ve adalet anlayışı içinde, insan haklarına saygılı, Atatürk milliyetçiliğine bağlı, başlangıçta belirtilen temel ilkelere dayanan, demokratik, lâik ve sosyal bir hukuk Devletidir.

İKİNCİ KISIM

TEMEL HAKLAR VE ÖDEVLER

BİRİNCİ BÖLÜM

GENEL HÜKÜMLER

II. Temel hak ve hürriyetlerin sınırlanması

Madde 13 – Temel hak ve hürriyetler, Devletin ülkesi ve milletiyle bölünmez bütünlüğünün milli egemenliğin, Cumhuriyetin, milli güvenliğin, kamu düzeninin, genel asayişin, kamu yararının, genel ahlâkın ve genel sağlığın korunması amacı ile ve ayrıca Anayasanın ilgili maddelerinde öngörülen özel sebeplerle, Anayasanın sözüne ve ruhuna uygun olarak sınırlanabilir.

Temel hak ve hürriyetlerle ilgili genel ve özel sınırlamalar demokratik toplum düzeninin gereklerine aykırı olamaz ve öngördükleri amaç dışında kullanılamaz.

Bu maddede yer alan genel sınırlama sebepleri temel hak ve hürriyetlerin tümü için geçerlidir.

III. Temel hak ve hürriyetlerin kötüye kullanılamaması

Madde 14 – Anayasada yer alan hak ve hürriyetlerden hiçbiri, Devletin ülkesi ve milletiyle bölünmez bütünlüğünü bozmak, Türk Devletinin ve Cumhuriyetin varlığını tehlikeye düşürmek, temel hak ve hürriyetleri yok etmek, Devletin bir kişi veya zümre tarafından yönetilmesini veya sosyal bir sınıfın diğer sosyal sınıflar üzerinde egemenliğini sağlamak veya dil, ırk, din ve mezhep ayırımı yaratmak veya sair herhangi bir yoldan bu kavram ve görüşlere dayanan bir devlet düzenini kurmak amacıyla kullanılamazlar.

Bu yasaklara aykırı hareket eden veya başkalarını bu yolda teşvik veya tahrik edenler hakkında uygulanacak müeyyideler, kanunla düzenlenir.

Anayasanın hiç bir hükmü, Anayasada yer alan hak ve hürriyetleri yok etmeye yönelik bir faaliyette bulunma hakkını verir şekilde yorumlanamaz.

IV. Temel hak ve hürriyetlerin kullanılmasının durdurulması

Madde 15 – Savaş, seferberlik, sıkıyönetim veya olağanüstü hallerde, milletlerarası hukuktan doğan yükümlülükler ihlâl edilmemek kaydıyla, durumun gerektirdiği ölçüde temel hak ve hürriyetlerin kullanılması kısmen veya tamamen durdurulabilir veya bunlar için Anayasada öngörülen güvencelere aykırı tedbirler alınabilir.

Birinci fıkrada belirlenen durumlarda da, savaş hukukuna uygun fiiller sonucu meydana gelen ölümler ile, ölüm cezalarının infazı dışında kişinin yaşama hakkına, maddî ve manevî varlığının bütünlüğüne dokunulamaz; kimse din, vicdan, düşünce ve kanaatlerini açıklamaya zorlanamaz ve bunlardan dolayı suçlanamaz; suç ve cezalar geçmişe yürütülemez; suçluluğu mahkeme kararı ile saptanıncaya kadar kimse suçlu sayılamaz

İKİNCİ BÖLÜM

KİŞİNİN HAKLARI VE ÖDEVLERİ

V. Yerleşme ve seyahat hürriyeti

Madde 23 – Herkes; yerleşme ve seyahat hürriyetine sahiptir.

Yerleşme hürriyeti, suç işlenmesini önlemek ve sosyal ve ekonomik gelişmeyi sağlamak, sağlıklı ve düzenli kentleşmeyi gerçekleştirmek ve kamu mallarını korumak;

Seyahat hürriyeti, suç soruşturma ve kovuşturması sebebiyle ve suç işlenmesini önlemek;

Amaçlarıyla kanunla sınırlanabilir.

Vatandaşın yurt dışına çıkma hürriyeti, ülkenin ekonomik durumu, vatandaşlık ödevi ya da ceza soruşturması veya kovuşturması sebebiyle sınırlanabilir.

Vatandaş sınır dışı edilemez ve yurda girme hakkından yoksun bırakılamaz.

XII. Mülkiyet hakkı

Madde 35 – Herkes, mülkiyet ve miras haklarına sahiptir.

Bu haklar, ancak kamu yararı amacıyla, kanunla sınırlanabilir.

Mülkiyet hakkının kullanılması toplum yararına aykırı olamaz.

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SOSYAL VE EKONOMİK HAKLAR VE ÖDEVLER

III. Kamu yararı

A. Kıyılardan yararlanma

Madde 43 – Kıyılar, Devletin hüküm ve tasarrufu altındadır.

Deniz, göl ve akarsu kıyılarıyla deniz ve göllerin kıyılarını çevreleyen sahil şeritlerinden yararlanmada öncelikle kamu yararı gözetilir.

Kıyılarla sahil şeritlerinin kullanılış amaçlarına göre derinliği ve kişilerin bu yerlerden yararlanma imkân ve şartları kanunla düzenlenir.

B. Toprak mülkiyeti

Madde 44 – Devlet, toprağın verimli olarak işletilmesini korumak ve geliştirmek, erozyonla kaybedilmesini önlemek ve topraksız olan veya yeter toprağı bulunmayan çiftçilikle uğraşan köylüye toprak sağlamak amacıyla gerekli tedbirleri alır. Kanun, bu amaçla, değişik tarım bölgeleri ve çeşitlerine göre toprağın genişliğini tespit edebilir. Topraksız olan veya yeter toprağı bulunmayan çiftçiye toprak sağlanması, üretimin düşürülmesi, ormanların küçülmesi ve diğer toprak ve yeraltı servetlerinin azalması sonucunu doğuramaz.

Bu amaçla dağıtılan toraklar bölünemez, miras hükümleri dışında başkalarına devredilemez ve ancak dağıtılan çiftçilerle mirasçıları tarafından işletilebilir. Bu şartların kaybı halinde dağıtılan toğrağın Devletçe geri alınmasına ilişkin esaslar kanunla düzenlenir.

D. Kamulaştırma

Madde 46 – Devlet ve kamu tüzelkişileri; kamu yararının gerektirdiği hallerde, karşılıklarını peşin ödemek şartıyla, özel mülkiyette bulunan taşınmaz malların tamamını veya bir kısmını, kanunla gösterilen esas ve usullere göre, kamulaştırmaya ve bunlar üzerinde idarî irtifaklar kurmaya yetkilidir.

Kamulaştırma bedelinin hesaplanma tarz ve usulleri kanunla belirlenir. Kanun kamulaştırma bedelinin tespitinde vergi beyanını, kamulaştırma tarihindeki resmi makamlarca yapılmış kıymet takdirlerini, taşınmaz malların birim fiyatlarını ve yapı maliyet hesaplarını ve diğer objektif ölçüleri dikkate alır. Bu bedel ile vergi beyanındaki kıymet arasındaki farkın nasıl vergilendirileceği kanunla gösterilir.

Kamulaştırma bedeli, nakden ve peşin olarak ödenir. Ancak tarım reformunun uygulanması, büyük enerji ve sulama projeleri ile iskân projelerinin gerçekleştirilmesi, yeni ormanların yetiştirilmesi, kıyıların korunması ve turizm amacıyla kamulaştırılan toprakların bedellerinin ödenme şekli kanunla gösterilir. Kanunun taksitle ödemeyi öngörebileceği bu hallerde, taksitlendirme süresi beş yılı aşamaz; bu takdirde taksitler eşit olarak ödenir ve peşin ödenmeyen kısım Devlet borçları için öngörülen en yüksek faiz haddine bağlanır.

Kamulaştırılan topraktan o toprağı doğrudan doğruya işleten küçük çiftçiye ait olanlarının bedeli her halde peşin ödenir.

VIII. Sağlık,çevre ve konut

A. Sağlık hizmetleri ve çevrenin korunması

Madde 56 – Herkes, sağlıklı ve dengeli bir çevrede yaşama hakkına sahiptir.

Çevreyi geliştirmek, çevre sağlığını korumak ve çevre kirlenmesini önlemek Devletin ve vatandaşların ödevidir.

Devlet, herkesin hayatını, beden ve ruh sağlığı içinde sürdürmesini sağlamak; insan ve madde gücünde tasarruf ve verimi artırarak, işbirliği gerçekleştirmek amacıyla sağlık kuruluşlarını tek elden planlayıp hizmet vermesini düzenler.

Devlet, bu görevini kamu ve özel kesimlerdeki sağlık ve sosyal kurumlarından yararlanarak, onları denetleyerek yerine getirir.

Sağlık hizmetlerinin yaygın bir şekilde yerine getirilmesi için kanunla genel sağlık sigortası kurulabilir.

B. Konut hakkı

Madde 57 – Devlet, şehirlerin özelliklerini ve çevre şartlarını gözeten bir planlama çerçevesinde, konut ihtiyacını karşılayacak tedbirleri alır, ayrıca toplu konut teşebbüslerini destekler.

XI. Tarih, kültür ve tabiat varlıklarının korunması

Madde 63 – Devlet, tarih, kültür ve tabiat varlıklarının ve değerlerinin korunmasını sağlar, bu amaçla destekleyici ve teşvik edici tedbirleri alır.

Bu varlıklar ve değerlerden özel mükliyet konusu olanlara getirilecek sınırlamalar ve bu nedenle hak sahiplerine yapılacak yardımlar ve tanınacak muafiyetler kanunla düzenlenir.

XIII. Sosyal ve ekonomik hakların sınırı

Madde 65 – Devlet, sosyal ve ekonomik alanlarda, Anayasa ile belirlenen görevlerini, ekonomik istikrarın korunmasını gözeterek, malî kaynaklarının yeterliliği ölçüsünde yerine getirir.

ÜÇÜNCÜ KISIM

CUMHURİYETİN TEMEL ORGANLARI

İKİNCİ BÖLÜM

YÜRÜTME

II. Bakanlar Kurulu

C. Görev sırasında güvenoyu

Madde 111 – Başbakan, gerekli görürse, Bakanlar Kurulunda görüştükten sonra, Türkiye Büyük Millet Meclisinden güven isteyebilir.

Güven istemi, Türkiye Büyük Millet Meclisine bildirilmesinden bir tam gün geçmedikçe görüşülemez ve görüşmelerin bitiminden bir tam geçmedikçe oya konulamaz.

Güven istemi, ancak üye tam sayısının salt çoğunluğuyla reddedilebilir.

IV. İdare

C. İdarenin kuruluşu

2. Mahallî idareler

Madde 127 – Mahallî idareler; il, belediye veya köy halkının mahallî müşterek ihtiyaçlarını karşılamak üzere kuruluş esasları kanunla belirtilen ve karar organları, gene kanunda gösterilen, seçmenler tarafından seçilerek oluşturulan kamu tüzel kişileridir.

Mahallî idarelerin kuruluş ve görevleri ile yetkileri, yerinden yönetim ilkesine uygun olarak kanunla düzenlenir.

Mahallî idarelerin seçimleri, Anayasa'nın 67 nci maddesindeki esaslara göre beş yılda bir yapılır. Kanun, büyük yerleşim merkezleri için özel yönetim biçimleri getirebilir.

Mahallî idarelerin seçilmiş organlarının, organlık sıfatını kazanmalarına ilişkin itirazların çözümü ve kaybetmeleri, konusundaki denetim yargı yolu ile olur. Ancak, görevleri ile ilgili bir suç sebebi ile hakkında soruşturma veya kovuşturma açılan mahallî idare organları veya bu organların üyelerini, İçişleri Bakanı, geçici bir tedbir olarak, kesin hükme kadar uzaklaştırabilir.

Merkezî idare, mahallî idareler üzerinde, mahallî hizmetlerin idarenin bütünlüğü ilkesine uygun şekilde yürütülmesi, kamu görevlerinde birliğin sağlanması, toplum yararının korunması ve mahallî ihtiyaçların gereği gibi karşılanması amacıyla, kanunda belirtilen esas ve usuller dairesinde idarî vesayet yetkisine sahiptir.

Mahallî idarelerin belirli kamu hizmetlerinin görülmesi amacı ile, kendi aralarında Bakanlar Kurulunun izni ile birlik kurmaları, görevleri, yetkileri, maliye ve kolluk işleri ve merkezî idare ile karşılıklı bağ ve ilgileri kanunla düzenlenir. Bu idarelere, görevleri ile orantılı gelir kaynakları sağlanır.

DÖRDÜNCÜ KISIM

MALÎ VE EKONOMİK HÜKÜMLER

İKİNCİ BÖLÜM

EKONOMİK HÜKÜMLER

I.Planlama

Madde 166 – Ekonomik, sosyal ve kültürel kalkınmayı, özellikle sanayiin ve tarımın yurt düzeyinde dengeli ve uyumlu biçimde hızla gelişmesini, ülke kaynaklarının döküm ve değerlendirilmesini yaparak verimli şekilde kullanılmasını planlamak, bu amaçla gerekli teşkilâtı kurmak Devletin görevidir.

Plânda millî tasarrufu ve üretimi artırıcı, fiyatlarda istikrar ve dış ödemelerde dengeyi sağlayıcı, yatırım ve istihdamı geliştirci tedbirler öngörülür; yatırımlarda toplum yararları ve gerekleri gözetilir; kaynakların verimli şekilde kullanılması hedef alınır. Kalkınma girişimleri, bu plana göre gerçekleştirilir.

Kalkınma planlarının hazırlanmasına, Türkiye Büyük Millet Meclisince onaylanmasına, uygulanmasına, değiştirilmesine ve bütünlüğünü bozacak değişikliklerin önlenmesine ilişkin usul ve esaslar kanunla düzenlenir.

IV. Ormanlar ve orman köylüsü

A. Ormanların Korunması ve geliştirilmesi

Madde 169 – Devlet, ormanların korunması ve sahaların genişletilmesi için gerekli kanunları koyar ve tedbirleri alır. Yanan ormanların yerinde

yeni orman yetiştirilir, bu yerlerde başka çeşit tarım ve hayvancılık yapılamaz. Bütün ormanların gözetimi Devlete aittir.

Devlet ormanlarının mülkiyeti devrolunamaz. Devlet ormanları kanuna göre, Devletçe yönetilir ve işletilir. Bu ormanlar zamanaşımı ile mülk edinilemez ve kamu yararı dışında irtifak hakkına konu olamaz.

Ormanlara zarar verebilecek hiçbir faaliyet ve eyleme müsaade edilemez. Ormanların tahrip edilmesine yol açın siyasî propaganda yapılamaz; münhasıran orman suçları için genel ve özel af çıkarılamaz. Ormanları yakmak, ormanı yok etmek veya daraltmak amacıyla işlenen suçlar genel ve özel af kapsamına alınamaz.

Orman olarak muhafazasında bilim ve fen bakımından hiçbir yarar görülmeyen, aksine tarım alanlarına dönüştürülmesinde kesin yarar olduğu tesbit edilen yerler ile 31.12.1981 tarihinden önce bilim ve fen bakımından orman niteliğini tam olarak kaybetmiş olan tarla, bağ, meyvelik, zeytinlik gibi çeşitli tarım alanlarında veya hayvancılıkta kullanılmasında yarar olduğu tespit edilen araziler, şehir,kasaba ve köy yapılarının toplu olarak bulunduğu yerler dışında, orman sınırlarında daraltma yapılamaz.

YEDİNCİ KISIM

SON HÜKÜMLER

I.Anayasanın değiştirilmesi seçimlere ve halkoylamasına katılma

Madde 175 – (17.5.1987-3361) Anayasanın değiştirilmesi Türkiye Büyük Millet Meclisi üye tamsayısının en az üçte biri tarafından yazıyla teklif edilebilir. Anayasanın değiştirilmesi hakkındaki teklifler Genel Kurulda iki defa görüşülür. Değiştirme teklifinin kabulü Meclisin üye tamsayısının beşte üç çoğunluğunun gizli oyuyla mümkündür.

Anayasanın değiştirilmesi hakkındaki tekliflerin görüşülmesi ve kabulü bu maddedeki kayıtlar dışında kanunların görüşülmesi ve kabulü hakkındaki hükümlere tabidir.

Cumhurbaşkanı Anayasa değişikliklerine ilişkin Kanunları bir daha görüşülmek üzere Türkiye Büyük Millet Meclisine geri gönderebilir. Meclis, geri gönderilen kanunu üye tamsayısının üçte iki çoğunluğu ile aynen kabul ederse Cumhurbaşkanı bu Kanunu halkoyuna sunabilir.

Meclisce üye tamsayısının beşte üçü ile veya üçte ikisinden az oyla kabul edilen Anayasa değişikliği hakkındaki Kanun, Cumhurbaşkanı tarafından

Meclise iade edilmediği takdirde halkoyuna sunulmak üzere Resmi Gazetede yayımlanır.

Doğrudan veya Cumhurbaşkanının iadesi üzerine, Meclis üye tamsayısının üçte iki çoğunluğu ile kabul edilen Anayasa değişikliğine ilişkin kanun veya gerekli görülen maddeleri Cumhurbaşkanı tarafından halkoyuna sunulabilir. Halkoylamasına sunulmayan Anayasa değişikliğine ilişkin Kanun veya ilgili maddeler Resmi Gazetede yayımlanır.

Halkoyuna sunulan Anayasa değişikliklerine ilişkin kanunların yürülüğe girmesi için halkoylamasında kullanılan geçerli oyların yarısından çoğunun kabul oyu olması gerekir.

Türkiye Büyük Millet Meclisi Anayasa değişikliklerine ilişkin kanunların kabulü sırasında bu Kanunun halkoylamasına sunulması halinde Anayasanın değiştirlen hükümlerinden, hangilerinin birlikte hangilerinin ayrı ayrı oylanacağını da karara bağlar.

Halkoylamasına, milletvekili genel ve ara seçimlerine ve mahalli genel seçimlere iştiraki temin için, kanunla para cezası dahil gerekli her türlü tedbir alınır.

APPENDIX B

RELATED ARTICLES OF THE PUBLIC SANITATION LAW NO. 1593 IN TURKISH

UMUMİ HIFZISSIHA KANUNU
(GENEL SAĞLIĞI KORUMA YASASI)

BİRİNCİ BÂP
(BİRİNCİ ALAN)

Sıhhî teşkilât
(SAĞLIK KURULUŞLARI)

BİRİNCİ FASIL
(BİRİNCİ BÖLÜM)

Devlet hidematı sıhhıyesi ve sıhhî merciler
(KAMU SAĞLIK GÖREVLERİ VE SAĞLIK OTORİTELERİ)

Madde 1 – Memleketin sıhhî şartlarını ıslah ve milletin sıhhatine zarar veren bütün hastalıklar veya sair muzır âmillerle mücadele etmek ve müstakbel neslin sıhhatli olarak yetişmesini temin ve halkı tıbbi içtimai muavenete mazhar eylemek umumî devlet hizmetlerindendir.

Madde 1 – Ülkenin sağlık koşullarını düzeltmek ve ulusun sağlığına zarar veren bütün hastalıklar veya diğer zararlı âmillerle savaşmak ve gelecek kuşakların sağlıklı olarak yetişmelerini güvenlik altına almak ve halkı hekimlik ve sosyal yardım hizmetlerine ulaştırmak genel kamu görevlerindendir.

Madde 2- Umumî sıhhat ve içtimai muavenet hizmetlerine ait devlet vezaifi Sıhhat ve İçtimaî Muavenet Vekâleti tarafından ifa ve hususi idarelerle belediyelere ve sair mahalli idarelere bırakılan hizmetlerin sureti

icrası murakabe olunur. Millî Müdafaa teşkilâtına ait sıhhî işler müstesna olmak üzere bütün sıhhat ve içtimaî muavenet işlerinin mercii ve murakıbı bu Vekâlettir.

Madde 2 – Genel sağlık ve sosyal yardım hizmetlerini kapsayan devlet görevleri Sağlık ve Sosyal Yardım Bakanlığı tarafından yürütülür. Ve özel idarelerle belediyelere ve diğer mahalli idarelere bırakılan görevlerin yürütülme usulleri – adı geçen bakanlıkça – denetlenir. Millî Savunma kuruluşlarına bağlı sağlık işleri dışında olmak üzere bütün sağlık ve sosyal yardım işlerinin baş yürütücüsü ve denetleyicisi bu bakanlıktır.

Madde 3 – Sıhhat ve İçtimaî Muavenet Vekâleti bütçelerile muayyen hadler dâhilinde olarak aşağıda yazılı hizmetleri doğrudan doğruya ifa eder :

1. Doğumu* teshil ve çocuk ölümünü tenkis edecek tedbirler.
2. Validelerin doğumdan evvel ve doğumdan sonra sıhhatlerinin vikayesi.
3. Memlekete sarî ve salgın hastalıkların hululüne mümaneat.
4. Dâhilde her nevi intani, sarî ve salgın hastalıklarla veya çok miktarda vefiyatı intaç ettiği görülen sair muzır âmillerle mücadele.
5. Tababet ve şubeleri san'atlarının icrasına nezaret.
6. (2410 No.lu kanunla değişik) Gıdalar ile ilaçları ve bütün zehirli müessir ve uyuşturucu maddelerle yalnız hayvanlar için serumlar ve aşılar hariç olmak üzere her nevi serum ve aşıları murakabe.
7. Çocukluk ve gençlik hıfzıssıhasına ait işlerle çoçuk sıhhat ve bünyesinin muhafaza ve tekâmülüne ait tesisatın murakabesi.
8. Mektep hıfzıssıhası.
9. Mesai ve san'ant hıfzıssıhası işleri.
10. Maden suları ile sair havassı şifaiyesi olan sulara nezaret.
11. Hıfzıssıha müesseseleri ve bakteriyoloji lâboratuvarları ve alelumum hayatî muayene ve tahlillere mahsus müesseseler küşat ve idaresi.
12. Mesleki tedrisat müesseseleri küşat ve idare veya mümasili müessesatı murakabe ve bunlara müsaade itası.
13. Mecnunlarla sair ruhî hastalıklara mahsus tedavihaneler veya mâlûl veya herhangi bir noksanii hilkate malik olanları kabul edecek yurt veya müesseseler tesis ve idare.
14. Muhacirin sıhhat işleri.
15. Hapishanelerin ahvali sıhhiyesine nezaret.
16. Tıbbî istatistiklerin tanzimi.
17. Sıhhî neşriyat ve propagandalar.
18. Vesaiti münakale umuru sıhhiyesine nezaret.

Madde 3 – Sağlık ve Sosyal Yardım Bakanlığı, bütçeleri ile belirtilmiş sınırlar içinde olarak aşağıda yazılı görevleri doğrudan doğruya yapar:

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* Doğumu tezyit hakkındaki hükmü 557 sayılı Kanunla kaldırılmıştır.

1. Doğumu kolaylaştıracak ve çocuk ölümünü azaltacak tedbirler.[1]
2. Annelerin doğumdan önce ve doğumdan sonra sağlıklarının güçlendirilmesi ve korunması.
3. Ülkeye bulaşıcı ve salgın hastalıkların girmesini önlemek.
4. Ülkede her çeşit enfeksiyon, bulaşıcı ve salgın hastalıklarla veya çok sayıda ölümü sonuçlandırdığı görülen diğer zararlı amillerle savaş.
5. Tıp dalları ve bölümleri sanatlarının yürütülmelerini gözlemek.
6. Gıdalar ile ilaçları ve bütün zehirli etkili ve uyuşturucu maddelerle, yalnız hayvanlar için serumlar ve aşılar dışında olmak üzere her çeşit serum ve aşıları denetlemek.[2]
7. Çocukluk ve gençlik sağlığının korunmasına bağlı işlerle çocuk sağlığı ve yapısının korunma ve gelişmesi ile ilgili kuruluşların denetimi.
8. Okul sağlığının korunması.
9. Çalışma ve iş sağlığının korunması işleri.
10. Maden sularıile diğer şifa niteliği olan suları gözlemek.
11. Sağlığı koruma kurumları ve bakteriyoloji laboratuvarları ve genellikle hayatî muayene ve analizlere özel kuruluşlar kurup açmak ve yönetme.
12. Mesleki öğretim ve eğitim kuruluşları açmak ve yönetmek veya benzer kuruluşları denetlemek ve bunlara işletme izni verme.
13. Akıl hastaları ile diğer ruhsal hastalıklara özel tedavi kurumları veya sakat veya herhangi bir organ eksikliği olanları kabul edecek yurt ve kuruluşlar kurma ve yönetme.[3]
14. Göçmenlerin sağlık işleri.
15. Tutuklama ve cezaevlerinin sağlık durumlarına bakmak.
16. Tıbbî istatistiklerin tutulması ve hazırlanması.
17. Sağlık yayınları hazırlama ve sağlık eğitimi yapma.
18. Taşıt araçlarının genel sağlık hizmetlerine bakmak.

Madde 4 – Doğrudan doğruya şehir ve kasabalar, köyler hıfzıssıhasına veya tıbbî ve içtimaî muavenete müteallik işlerin ifası belediyelere ve idarei hususiyelere ve sair mahalli idarelere tevdi edilir. Vekâlet indelicap bu idarelere rehber olmak üzere bazı mahallerde numune tesisatı vücuda getirir.

Madde 4 – Doğrudan doğruya şehir ve kasabalar, köyler sağlığının korunmasına veya tıbbî ve sosyal yardımla ilişkili işlerin yürütülmesi belediyelere ve özel idarelere ve diğer bölgesel idarelere bırakılır. Bakanlık gerektiğinde bu idarelere öncü olmak üzere bazı yerlerde örnek kuruluşlar kurar.

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[1] 10.4.1965 tarih ve 557 sayılı kanunla bu fıkradaki "Doğumu çoğaltacak ve kolaylaştıracak" deyimi, "doğumu kolaylaştıracak" şeklinde değiştirildi.

[2] 19 Nisan 1934 tarih ve 2410 sayılı kanunla "aşılar" kelimesi "aşıları denetleme" şekline konulmuştur.

[3] Bu günün modern anlama ile rehabilitasyon, readaptasyon kurumları veya meşguliyet tedavisi yapan kurumları kasdeylemektedir.

DÖRDÜNCÜ FASIL
(DÖRDÜNCÜ BÖLÜM)

Vilâyet Hususî İdareler ve Belediyeler
(İL ÖZEL İDARELERİ VE BELEDİYELER)

Madde 18 – Vilâyet hususî idareleri bütçelerinde hususî idareleri bütçelerinde hususî kanuna tevfikan tefrik ve Sıhhat İçtimaî Muavenet Vekâletinin tensibiile sarfolunan sıhhî ve içtimaî işlere mahsus tahsisat, vilâyet merkezinde veya tensip olunacak sair mahallerde açılacak hastaneler veya dispanserlerle seyyar etibba teşkilâtına ve seyyar etüv tedarikine ve tephirat ve tathirat istasyonları tesisine ve verem ve firengi ve çocuk vefiyatı mücadelesine muhtas hıfzıssıhhai içtimaîye dispanserlerine ve sıtma ve frengi ilâcı tedarikine ve Sıtma Kanununda tasrih edilen ahvalde sıtma menbalarının izalesine sarfolunur.

Madde 18 – İl özel idareleri bütçelerinde özel kanununa göre ayrılmış veSağlık ve Sosyal Yardım Bakanlığı'nın onayı ile harcanan sağlık ve sosyal işlere ayrılmış giderler, il merkezinde veya uygun görülecek diğer yerlerde açılacak hastaneler ve dispanserlerle gezici tabipler kuruluşuna ve gezici etüv sağlanmasına ve sabit etüvler ve temizlik istasyonları kurulmasına ve verem ve frengi savaşları ve çocuk ölümlerini önlemek için toplum sağlığını korumak amacı ile çalışan dispanserlere ve sıtma ve frengi ilaçları sağlanmasına ve sıtma kanununda belirtilen hallerde sıtma kaynaklarının yok edilmesine ödenir.

Madde 20 – Belediyelerin umumî hıfzıssıhha ve içtimaî muavenete taallûk eden mesailden ifasile mükellef oldukları vazifeler aşağıda zikredilmiştir:

1. İçilecek ve kullanılacak evsafı fenniyeyi haiz su celbi.
2. Lağım ve mecralar tesisatı.
3. Mezbaha inşaatı.
4. Mezarlıklar tesisatı ve mevta defni ve nakli işleri.
5. Her nevi muzahrafatın teb'it ve imhası.
6. Meskenlerin sıhhî ahvaline nezaret.
7. Sıcak ve soğuk hamamlar tesisi.
8. Yenilecek ve içilecek maddelerin murakabesi ve vilâyet merkezler ile lüzum görülecek sair mahallerde gıda maddelerinin muayenesine mahsus lâboratuvarlar tesisi.
9. Umumî mahallerde halkın sıhhatine zarar veren âmilleri izale.
10. Sarî hastalıklarla mücadele işlerine muavenet.
11. Hususî eczane bulunmıyan yerlerde eczane küşadı.
12. İlk tıbbî imdat ve muavenet teşkilâtı.
13. Hastane, dispanser, süt çocuğu, muayene ve tedavi evi, aceze ve ihtiyar yurtları ve doğum evi tesis ve idaresi.
14. Meccani doğum yardımı için ebe istihdamı.

Madde 20 – Belediyelerin genel sağlığı koruma ve sosyal yardımla ilgili hizmetlerinin yürütülmesi ile yükümlü oldukları görevler aşağıda belirtilmiştir:

1. İçilecek ve kullanılacak suların bilimsel niteliklerinin sağlığa uygun olarak getirilmesi.
2. Lağım ve kanalizasyon kurulması.
3. Mezbaha yapılması.
4. Mezarlıklar kurulması ve ölülerin gömülmesi ve taşınması işleri.
5. Her çeşit çöplerin toplanması ve yok edilmesi.
6. Meskenlerin sağlık şartlarının gözetilmesi.
7. Sıcak ve soğuk hamamlar kurulması.
8. Yenilecek ve içilecek maddelerin denetimi ve il merkezlerinde lüzum görülecek diğer yerlerde gıda maddelerinin muayenesine özel laboratuvarlar kurulması.
9. Genel yerler halkın sağlığına zarar veren amilleri ortadan kaldırmak.
10. Bulaşıcı ve salgın hastalıklarla savaş işlerine yardım etmek.
11. Özel eczane olmayan yerlerde eczane açmak.
12. İlk yardım ve acil tıbbi bakım kuruluşlarını açmak.
13. Hastane, dispanser, süt çocuğu muayene ve tedavi evi, bakıma muhtaçlara ve ihtiyarlara yurtlar ve doğumevi kurma ve yönetme.
14. Ücretsiz doğum yardmı için ebe çalıştırmak.

Madde 21 – Vilâyet hususî idarelerile belediyelerin 18 ve 20 nci maddelerde gösterilen hizmetleri ifa için kanunu mahsuslarına tevfikan Vekâletçe tâyin olunan etibba ve sair memurin istihdam olunur.

Madde 21 – Özel İdareler ile belediyelerin 18 ve 20 nci maddelerde gösterilen görevlerini yürütmek için özel kanunlarına göre bakanlıkça tayin olunan tabipler ve diğer memurlar çalıştırılır.

Madde 22 – Belediyeler ve vilâyetler hususî idarelerince sıhhî ve içtimaî hizmetlerden hangilerinin ifası mecburi ve herhangilerinin ihtiyarî olduğu hususî kanunlarına tevfikan tâyin ve bu hizmetlerde istihdam edilecek tabip ve memurların kadrolarına İcra Vekilleri Heyetince musaddak bir talimatname ile tesbit olunur. Hükümet tabipleri olmayan yerlerde Belediye tabipleri nizamnamesine tevfikan Hükümet Tabiplerinin ifasile muvazzaf oldukları vazifelerle mükelleftirler.

Madde 22 – Belediyeler ve İller Özel İdarelerince sağlık ve sosyal hizmetlerden hangilerinin yürütülmesinin zorunlu ve hangilerinin isteğe bağlı oldukları özel kanunlarına göre belirtilir ve bu hizmetlerde çalıştırılacak tabip ve görevlilerin kadroları Bakanlar Kurulu'nca onaylanmış bir yönetmelikle saptanır. Hükümet tabipleri olmayan yerlerde

belediye tabipleri tüzüğüne göre hükümet tabiplerinin yürütmekle görevli oldukları hizmetlerle yükümlüdürler.

ALTINCI BÂP
(ALTINCI ALAN)

Çocuk hıfzıssıhası
(ÇOCUK SAĞLIĞININ KORUNMASI)

BİRİNCİ FASIL
(BİRİNCİ BÖLÜM)

Çocukluk ve gençlik korunması
(ÇOCUK VE GENÇLİĞİN KORUNMASI)

Madde 168 – Her şehir ve kasaba belediyeleri o şehir ve kasabanın vüs'at ve nüfusunun adedine göre icap eden büyüklükte küçük çocukların temiz hava almasına mahsus bir veya müteaddit bahçeler ve spor meydanları vücuda getirmeğe mecburdurlar.

Madde 168 – Her şehir ve kasaba belediyeleri o şehir ve kasabaların genişlik ve nüfusunun sayısına göre gereken büyüklükte küçük çocukların temiz hava almasına özel bir veya çok sayıda bahçeler ve spor meydanları kurmaya zorunludurlar.

SEKİZİNCİ BÂP
(SEKİZİNCİ ALAN)

Yenilecek ve içilecek şeyler ile kullanılacak bazı maddeler
(YENİLECEK VE İÇİLECEK ŞEYLER İLE KULLANILAN BAZI MADDELER)

Madde 181 – (3987 No.lu kanunla değişik) Bütün gıda maddelerile umumî sıhhate taallûk edip 183 üncü maddede envaı zikredilen eşya ve levazım, Sıhhat ve İçtimaî Muavemet Vekâletinin teftiş ve murakabesine tâbidir. Belediye teşekkül etmiş olan mahallerde bu murakabe Vekâletin bu kanun dairesinde ıstar edeceği nizamnamelerle talimatlara tevfikan belediye tarafından ve belediyelerin bulunmadığı yerlerde Vekâlet sıhhî teşkilâtına mensup memurlar tarafından icra edilir.
(22.9.1983 gün ve 2890 sayılı Kanunla eklenen fıkralar)

Sağlık ve Sosyal Yardım Bakanlığı belediyelerin bu teftiş ve murakabe hizmetlerini sürekli kontrol edebileceği gibi, lüzum gördüğü yerlerde veya lüzum görülen işlerde doğrudan doğruya teftiş ve murakabe etmek üzere memur görevlendirir. Gerektiğinde gıda maddeleri ile 183 üncü maddede

sayılan eşya ve levazımın bakanlıkça tespit edilecek laboratuvarlarda tetkikini sağlar.

Gıda maddelerinin kaynakta kontrolü esasları, Sağlık ve Sosyal Yardım Bakanlığınca altı ay içinde hazırlanıp Resmi Gazete'de yayımlanacak yönetmelikle düzenlenir.

Madde 181 – Bütün gıda maddeleri ile genel sağlıkla ilgili 183 üncü maddede türleri belirtilen eşya ve malzeme Şağlık ve Sosyal Yardım Bakanlığının denetim ve gözetimine bağlıdır. Belediye kurulmuş olan yerlerde bu denetim bakanlığın bu kanun gereğince çıkaracağı tüzüklerle yönetmeliklere göre belediye tarafından ve belediyelerin bulunmadığı yerlerde bakanlık sağlık kuruluşuna bağlı memurlar tarafından yürütülür.[1]

Madde 183 – Umumun istimaline mahsus olupta murakabeye tâbi olan eşya ve levazım aşağıda sayılanlardan ibarettir:

1. Gıda maddelerinin istihsali, ihzarı ve vezni ve muhafazası ve sevkiiçin kullanılan bilûmum eşya ve zarflar.
2. Cilt, saç, turnakların temizlenmesi, boyanması ve güzelleştirilmesi için kullanılan maddeler ve bütün sabunlar.
3. Oyuncular, duvar kağıtları, mumlar ve sun'î nebatat.
4. Gıda maddelerine karıştırmağa mahsus boyalar.
5. Umumun istimaline mahsus ve yukarıda zikredilen maddelere benzer mahiyette olup İcra Vekilleri Heyetince tâyin ve ilân edilecek maddeler.

Madde 183 – Toplumun kullanmasına özel olup ta denetime bağlı bulunan eşya ve malzemeler aşağıda sayılanlardır:

1. Gıda maddelerinin üretimi, hazırlanması ve tartılması ve korunması ve ulaştırılması için kullanılan bütün eşya ve kaplar.
2. Cilt, saç, tırnakların temizlenmesi, boyanması ve güzelleştirilmesi için kullanılan maddeler ve bütün sabunlar.
3. Oyuncaklar, duvar kağıtları, mumlar ve yapma bitkiler.
4. Gıda maddelerini karıştırmaya özgü boyalar.
5. Toplumun kullanmasına özel ve yukarıda sözü edilen maddelere benzer nitelikte olup Bakanlar Kurulu'nca gösterilip yayınlanacak maddeler.

Madde 198 – Hayvanların ve etlerin mezbahalarda muayeneleri hususî kanuna tevfikan yapılır.

Madde 198 – Hayvanların ve etlerin hayvan kesim yerlerinde muayeneleri özel kanuna göre yapılır.

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[1] 31 Mart 1941 tarih ve 3987 sayılı kanunla değişen şekli.

DOKUZUNCU BÂP
(DOKUZUNCU ALAN)

Maden suları ve kaplıcalar
(MADEN SULARI VE KAPLICALAR)

Madde 200 – Türkiye Cumhuriyeti arazisi dahilinde bulunan her nevi maden suları ile kaplıcaları işletmek için hususî hükümlerine tevfikan alınması lâzımgelen müsaade ile beraber bu suların şifalı hassalarının Sıhhat ve İçtimaî Muavenet Vekâleti tarafından tasdik edilmiş olması lâzımdır. Bu Vekâletçe şifalı hassaları veya tesisatının fenne muvafık olduğu tasdik edilmeyen maden suları bu nam ve unvan ile ticarete çıkarılamayacağı gibi kaplıcalara da tedavi maksadiyle eşhas kabul edilemez.

Madde 200 – Türkiye Cumhuriyeti toprakları içinde bulunan her türlü maden suları ile kaplıcaları işletmek için özel hükümlere göre alınması lazım gelen izin ile birlikte bu suların şifalı hassalarının Sağlık ve Sosyal Yardım Bakanlığı tarafından onaylanmış olması gereklidir. Bu bakanlıkça şifalı hassaları veya kuruluşunun bilime uygun olduğu onaylanmayan maden suları bu ad ve sanla ticarete çıkarılamayacağı gibi kaplıcalara da tedavi amacı ile kişiler kabul edilemez.

Madde 201 – İçmeğe mahsus maden suları ile yıkanmağa mahsus her nevi sıcak, soğuk kaplıcaların işletilmesinden evvel sahipleri veyahut bir şirket namına ise o şirketin idare meclisi reisi tarafından bir istida ile Sıhhat ve İçtimaî Muavenet Vekâletine müracaat edilir. Bu istidaya suyun işletilmesi için vekâleti aidesinden istihsal edilmiş olan ruhsatname sureti ve mütehassıs bir mühendis tarafından yapılan menbaın nısıf kutru asgari beşyüz metrelik bir daire dahilinde etraf ve civarının 1/200 mikyasında bir haritasile beraber suyun hikemi vasıflarını ve miktarını ve ne suretle bendedildiğini, mevcut veya mutasavver tesisatın şekil ve vasıflarını gözterir bir beyanname ve bir de tahlil raporu leffolunur. Vekâletçe lüzum görüldüğü taktirde mahsus memurlar vasıtasile sudan nümune alınıp Devlet müessesatında suyun tahlili tekrar icra edilir. Bu hususiaki masarif istida sahibine aittir. Hali hazırda mevcut ve işletilmekte olan maden suları ve kaplıcalar da bu mecburiyete tâbidirler. Bunların sahip veya müstecirleri kanunun mer'iyetini tarihinden itibaen birr sene zarfında bu maddede zikredilen vesikaları Sıhhat ve İçtimaî Muavenet Vekâletine tevdi ederler.

Madde 201 – İçmeye özel maden suları ile yıkanmaya özel her türlü sıcak-soğuk kaplıcaların işletmesinden önce sahipleri veyahut bir şirket adına ise o şirketin yönetim kurulu başkanı tarafından bir dilekçe ile Sağlık ve Sosyal Yardım Bakanlığı'na başvurulur. Bu dilekçeye suyun işletilmesiiçin bağlı bulunduğu bakanlıktan alınmış olan işletme izni örneği

ve uzman bir mühendis tarafından yapılan menbaın yarı çapı en az beşyüz metrelik bir daire içindeki çevre ve bitişiğinin 1/200 mikyasında bir harita ile beraber suyun fizik niteliklerini ve mikatarını ve ne suretle bendedildiğini, bulunan veya planlanmış kuruluş şeklini ve niteliklerini gösterir bir bildirge ve bir de analiz raporu bağlanır. Bakanlıkça gerekli görüldüğünde özel memurlar aracılığı ile sudan örnek alınıp devlet kuruluşlarında suyun analizi tekrar yürütülür. Bu konudaki harcamalar dilekçe sahibine aittir. Hali hazırda bulunan ve işletilmekte olan maden suları ve kaplıcalar da bu zorunluğa bağlıdırlar. Bunların sahip veya kira ile işleticileri kanunun yürürlüğü giriş tarihinden başlamak üzere bir yıllık sürede bu maddede sözü edilen belgelerin Sağlık ve Sosyal yardım Bakanlığı'na verirler.

Madde 202 – Maden suları ve kaplıcaları sıhhî noktai nazardan Sıhhat ve İçtimaî Muavenet Vekâletinin murakabesi altında olup bunlar her zaman teftişe tâbidirler. Bu sanayi sahip veya müstecirleri bu hususta her türlü kolaylığı göstermeğe mecburdurlar.

Madde 202 – Maden suları ve kaplıcalar sağlık yönünden Sağlık ve Sosyal Yardım Bakanlığı'nın denetimi altında olup, bunlar her zaman denetime bağlıdırlar. Bu endüstri sahip veya kira ile işleticileri bu konuda her türlü kolaylığı göstermeye zorunludurlar.

Madde 204 – Şifalı hassaları kabul edilmiş olan maden suları ve kaplıcaların terafında bir himaye mıntakası tesisini sahip veya müstecirleri talep edebilirler. Bunun için bir istida ve esbabı mucibe ve lâekal üç senedenberi tedavi maksadile gelen kimselerin adedini bildiren bir beyanname ile Sıhhat ve İçtimaî Muavenet Vekâletine müracaat olunur. İstida üzerine Sıhhat ve İçtimaî Muavenet ve İktisat Vekâletleri müştereken talebi tetkik ettikten başka mahallinde tefahhus ettirerek suyun umumun menfaatine yarayıp yaramadığını tesbit ve himaye mıntıkasının hududu tâyin edilir. Bu himaye mıntakası dahilinde her nevi yer altı toprak ameliyatı ve sondaj icrası memnudur.

Madde 204 – Şifalı hassaları kabul edilmiş olan maden suları ve kaplıcaların çevresinde bir koruma bölgesi kurulmasını sahipleri veya kiracı olarak işleticileri isteyebilirler. Bunun için bir dilekçe ve gerekçe ve en az üç yıldan beri tedavi amacıyla gelen kimselerin sayısını bildiren bir belge ile Sağlık ve Sosyal Yardım Bakanlığı'na başvurulur. Dilekçe üzerine Sağlık ve Sosyal Yardım ve Sanayi ve Teknoloji Bakanlıkları birlikte isteği inceledikten başka yerinde suyun genel toplum yararına yararlılığını anlamak için gerekli tesbit ve koruma alanının hududu tayin olunur. Bu koruma alanı içinde her türlü yeraltı toprak çalışmaları ve sondaj yapılması yasaktır.

Madde 208 – Hududu dahilinde veya yakınında havassı şifaiyesi ve umumun istifadesine yaradığı ait olduğu dairelerce kabul ve tasdik edilen bir veya müteaddit madeni menbalar veya kaplıcalar bulunan şehir ve kasabalar belediyelerinin talebi üzerine Sıhhat ve İçtimaî Muavenet ve Dahiliye ve İktisat Vekâletlerince yapılacak tetkikat neticesinde o şehir ve kasaba içme veya kaplıca mahalli olarak ilân olunur.

Madde 208 – Sınırı içinde veya yakınında şifa hassası ve toplumun faydasına yaradığı, bağlı bulunduğu dairelerce kabul ve onaylanan bir veya birçok madeni menbalar veya kaplıcalar bulunan şehir ve kasabalar, belediyelerinin isteği üzerine Sağlık ve Sosyal Yardım ve İçişleri ve Sanayi ve Teknoloji Bakanlıklarınca yapılacak inceleme sonucunda o şehir ve kasaba içme veya kaplıca yeri olarak yayınlanır.

Madde 209 – (5237 sayılı Kanunun 51/11. maddesiyle kaldırılmıştır.)

Madde 209 – İçme ve kaplıca yeri olarak yayınlanan şehirler belediyesi mevsiminde içme veya kaplıcaya gelenlerden kalma süresine özel olmak üzere bir vergi alınmasına yetkilidirler. Bu vergi gelirleri tümüyle şehir ve kasabanın güzelleştirilmesine ve tedavi için gelenlerin dinlenme olanaklarını ve zevklerini sağlama amacına konur ve harcanır. Vergi ölçüsü içme veya kaplıcaların yerine ve durumuna göre saptanır ve Sağlık ve Sosyal Yardım ve İçişleri ve Sanayi ve Teknoloji Bakanlıklarınca birlikte tesbit ve Bakanlar Kurulu Kararı ile onaylanır.

ONUNCU BÂP
(ONUNCU ALAN)

Mezarlıklar, ölülerin defni, mezardan çıkarılması ve nakli
(MEZARLIKLAR, ÖLÜLERİN GÖMÜLMESİ, MEZARDAN ÇIKARILMASI VE TAŞINMASI)

BİRİNCİ FASIL
(BİRİNCİ BÖLÜM)

Mezarlıklar ve ölülerin defni
(MEZARLIKLAR VE ÖLÜLERİN GÖMÜLMESİ)

Madde 212 – Her şehir ve kasabası belediyesi şehir ve kasabanın haricinde ve meskenlerden kâfi miktar uzakta olmak üzere şehir ve kasabanın nüfusuna ve senelik vefiyat umumiyesine nisbetle lâzım gelen bir veya müteaddit mezarlık mahalli tesisine mecburdur. Mezarlık olmak üzere intihap edilecek mahallerin toprağı, vasıfları ve civarındaki meskenler veya su menbaları için sıhhi bir mahzur bulunup bulunmadığı ve mesahai sathiyesinin kifayeti sıhhiye memurlarınca tâyin olunur. Bu mezarlıkların tanzim ve iyi bir halde muhafazası mahalli belediyelere aittir. Mezarlıkların etrafı behemehal duvarlarla tahdit edilir.

Madde 212 – Her şehir ve kasaba belediyesi şehir ve kasabanın nüfusuna ve yıllık genel ölümler oranına göre gerekli bir veya çok sayıda mezarlık yeri kurulmasına zorunludur. Mezarlık olmak üzere seçilecek yerlerin toprağı, niteliği ve çevresindeki meskenler veya su kaynakları için bir sağlık sakıncası bulunup bulunmadığı ve alanın yeterliliği sağlık memurlarınca saptanır. Bu mezarlıkların düzeltilmesi ve iyi bir halde korunması o yer belediyesinin görevidir. Mezarlıkların çevresi duvarlarla sınırlanmalıdır.

Madde 236 – İçilmek ve kullanılmak için getirilecek suların fennen içilmesine müsaade edilecek evsafta olması şarttır. Olmadığı taktirde bunların fennen icap ettiği surette temizlenmesine ve evsafının ıslahına belediyeler mecburdurlar.

Madde 236 – İçilmek ve kullanılmak için getirilecek suların bilimsel ve teknik yönden içilmesine izin verilecek nitelikte olması gereklidir. Olmadığı taktirde bunların bilimsel ve teknik yönden gerektiği şekilde temizlenmesine ve niteliğinin düzeltilmesine belediyeler zorunludurlar.

Madde 237 – Şehir ve kasabalarda tevzi edilmek üzere celbedilen su membalarının terafında behemehal bir himaye mıntıkası tesis edilmelidir. Bu mıntıkaların hudutları sıhhat memurları huzuriyle ihtisas erbabı tarafından menbaın gıda havzası üzerinde tayin edilir.

Madde 237 – Şehir ve kasabalarda dağıtılmak üzere getirilen su kaynaklarının çevresinde bir koruma bölgesi kurulması zorunlu olmalıdır. Bu bölgelerin sınırları sağlık memurları önünde uzman kişiler tarafından kaynağın beslenme alanı üzerinde tayin edilir.

Madde 238 – Himaye mıntıkası olmak üzere menbalar etrafında tayin ve tahdit edilen arazi belediye mıntıkası haricinde de olsa belediye tarafından belediye istimlak kanununa tevfikan istimlaki mecburi olup bu arazinin mesken yapılmak, ekilmek ve sair herhangi hususlar için istimali memnudur.

Madde 238 – Koruma bölgesi olmak üzere kaynaklar çevresinde tayin ve sınırlandırılan arazi belediye alanının dışında da olsa belediye tarafından Belediye kamulaştırma Kanununa göre kamulaştırılması zorunlu olup, bu arazinin mesken yapılmak, ekilmek ve diğer konular için kullanılması yasaktır.

Madde 242 – Dere, nehir ve çayların ve çeşmelerin televvüsünü mucip tesisat yapılmasına veya aşhas tarafından bu tarzda telvisat ikaına mümaneat olunur. Fabrika sularının fenni mahzurları tahakkuk eden yerlerde mazarratı izale edilmeden nehir ve derelere dökülmesi memnudur.

Madde 242 – Dere, ırmak ve çayların ve çeşmelerin kirlenmelerini kolaylaştıran kuruluşlar yapılması veya kişiler tarafından bu şekilde kirlenme meydana getirilmesine karşı konulur. Fabrika sularının bilimsel olumsuzlukları ortaya çıkan yerlerde zararları önlemeden ırmak ve derelere dökülmesi yasaktır.

İKİNCİ FASIL
(İKİNCİ BÖLÜM)

Mecralar ve müzahrefat imhası
(KANALLAR VE ATIKLARIN YOK EDİLMESİ)

Madde 244 – Mahsus kanuna tevfikan belediyelerce inşa ettirilmiş ve ettirilecek lağım ve çirkef mecralarının fenni mahzuru olmadığı kabul ve tasdik edilmedikçe dere, çay, nehirlere akıtılması memnudur. Fakat usul dairesinde mecralar muhteviyatının imhası için kullanılacak sahaların meskenlerden uzak olması ve bunların istimlak edilerek başka suretle istimal edilmemesi lazımdır.

Madde 244 – Özel kanuna göre belediyelerce yapılmış veya yapılacak kanal (lağım ve çirkef mecra) larının bilimsel sakıncası olmadığı kabul ve onaylanmadıkça dere, çay, ırmaklara akıtılması yasaktır. Bilimsel metodlar gereğince kanallar kapsamının yok edilmesi için kullanılacak alanların meskenlerden uzak olması ve bunların kamu adına alınarak başka işler için kullanılmaması gereklidir.

Madde 248 – Belediyesi olan her şehir ve kasabada sokakların yıkanmak ve süpürülmek suretile temiz tutulması mecburidir. Toplanan süprüntüler bunların etrafa yayılmamasına ve dökülmesine mani olacak vasıtalarla nakledilerek şehir ve kasabanın vaziyetine göre en münasip olarak kabul edilen şekilde imha veya ihrak edilir. Nüfusu ellibinden fazla olan şehirlerde bu süprüntüden istifade edilmek üzere lazım gelen tesisat yapılır. Sokaklarda veya evler içinde süprüntü birikip kalmaması için belediyelerce tedabir ittihaz olunur.

Madde 248 – Belediyesi olan her şehir ve kasabada sokakların yıkanmak ve süpürülmek suretiyle temiz tutulması zorunludur. Toplanan süprüntüler bunların etrafa yayılmamasını ve dökülmesini önleyecek araçlarla taşınarak şehir ve kasabaların durumuna göre en uygun olarak kabul edilen şekilde yokedilir veya yakılır. Nüfusu ellibinden fazla olan şehirlerde bu süprüntüden faydanılmak üzere gerekli kuruluşlar yapılır. Sokaklarda veya evler içinde süprüntü birikip kalmaması için belediyelerce tedbirler alınır.

Madde 249 – Belediyelerce şehir ve kasaba dahilinde telvisata meydan vermemek üzere münasip mahallerde fenne muvafık şekilde aptes yerleri tesis ve mevcutları ıslah olunur. Belediye teşkilatı olmayan yerlerde bu mecburiyet köy ihtiyar heyetine aittir. Cadde ve sokaklarda meskenler kurbünde ve belediyelerce tayin edilecek hudutlar dahilinde açıkta def'ihacet etmek kat'i surette menedilir.

Madde 249 – Belediyelerce şehir ve kasaba içinde kirlenmeye meydan vermemek üzere uygun yerlerde bilimsel uyarlığı olan helalar kurulur ve bulunanları modernleştirilir. Belediye kuruluşları olmayan yerlerde bu zorunluluk köy ihtiyar kurullarına aittir. Cadde ve sokaklarda meskenler yakınında ve belediyelerce saptanacak sınırlar içinde açıkta abdes bozmak kesinlikle yasaktır.

ÜÇÜNCÜ FASIL
(ÜÇÜNCÜ BÖLÜM)

Meskenler
(MESKENLER)

Madde 250 – Mahalli belediyelerin ruhsatı olmaksızın her nevi mesken ve umuma mahsus binalar inşası memnudur. Müsaadenin istihsali için binanın projesi belediyeye tevdi edilir. Bunlardan umuma mahsus binalara ait bulunanlar hakkında sıhhiye heyetinin mütalaası alındıktan ve meskenlere ait olanların Sıhhat Vekaleti tarafından tesbit edilecek sıhhi şartlara muvafık bulunduğu ve her nevi binanınki mevzu nizamlara da uygun olduğu anlaşıldıktan sonra proje sahibine iade ve inşaata müsaade olunur. Bina sahipleri projelerin tevdiinden itibaren nihayet yirmi gün zarfında bir cevap alamadıkları taktirde inşaata başlamakta muhtardırlar.

Madde 250 – Bölge belediyelerinin izin belgesi olmaksızın her türlü mesken ve topluma özel binalar yapılması yasaktır. İzin belgesinin alınması için binanın projesi belediyeye verilir. Bunlardan topluma özel binalara ait bulunanlar konusunda sağlık kurulunun görüşü alındıktan ve meskenlere ait olanların Sağlık Bakanlığı tarafından tesbit edilecek, sağlık şartlarına uygun bulunduğu ve her türlü binanın konulmuş mevzuata da uygun olduğu anlaşıldıktan sonra proje sahibine geri verilir. Bina sahipleri projelerin belediyeye verilmesinden başlamak üzere en çok yirmi günlük sürede bir cevap alamadıkları taktirde yapıya başlamakta bağımsızdırlar.

Madde 252 – Yeni inşa edilerek sahibi oturacak veya kiraya verilecek binaların ilk defa iskanından evvel içinde oturacaklar için sıhhi ve fenni mahzurları olmadığı belediyelerce tasdik edilmeden iskan ve icarı memnudur. Bu tasdik için binanın, aralarında bir sıhhat memuru da bulunduğu bir heyet tarafından tetkiki ve rapor verilmesi lazımdır.

Madde 252 – Yeni yapılarak sahibi oturacak veya kiraya verilecek yapıların ilk defa içinde oturulmasından önce içinde oturacaklar için sağlık ve bilimsel-teknik sakıncaları olmadığı belediyelerce onaylanmadan içinde oturulması ve kiraya verilmesi yasaktır. Bu onaylama için yapının aralarında sağlık memurunun da bulunduğu bir kurul tarafından incelenmesi ve rapor verilmesi gerekir.

DÖRDÜNCÜ FASIL
(DÖRDÜNCÜ BÖLÜM)

Hanlar, oteller ve umumi mahaller
(HANLAR, OTELLER VE TOPLUMSAL YERLER)

Madde 258 – Bütün oteller, hanlar ve misafirhanelerin sıhhi şartları mecburi ve asgari olarak ihtiva etmeleri lazım gelen müştemilatı belediyelerce, belediye hudutları haricindeki yerlerde vilayet veya kaza sıhhat memurlarınca tayin ve murakabe edilir.

Madde 258 – Bütün oteller, hanlar ve misafirhanelerin sağlık şartları zorunlu ve en azdan kapsamaları gerekli ayrıntıları belediyelerce, belediye sınırı dışındaki yerlerde il veya ilçe sağlık memurlarınca saptanır ve gözetim altında bulundurulur.

Madde 259 – Sıhhi şartları haiz olmayan ve hastalıkların intikaline vasıta olduğu görülen otel, han ve sair misafirhaneler her türlü mahzurdan salim bir surette ıslahı sabit oluncaya kadar kapatılır.

Madde 259 – Sağlık şartlarını taşımayan ve hastalıkların bulaşmasına araç olduğu görülen otel, han ve benzeri misafirhaneler her türlü sakıncalardan güvenli bir surette düzeltilmesi sağlanıncaya kadar kapatılır.

Madde 260 – Otelcilik, hancılık edecek veya her hangi bir suretle olursa olsun ücretle misafir kabul edecek olanlar hususi müsaadeyi haiz olmalıdır. Bu müsaadeler belediye hudutları dahilinde belediyelerce, bu hudutlar haricinde valiler veya kaymakamlarca ita edilir. Müsaade verilmeden evvel bu mahallerin sıhhi mahzurlardan ari ve lazım gelen şartları haiz olduğu sıhhat memurlarınca da tesbit olunur.

Madde 260 – Otelcilik, hancılık edecek veya her hangi bir surette olursa olsun ücretle misafir kabul edecek olanlar özel izin belgesi almış olmalıdırlar. Bu belgeler belediye sınırları içinde belediyelerce bu sınırlar dışında valiler veya kaymakamlarca verilir. Özel izin belgesi verilmeden önce bu yerlerin sağlık sakıncalarından yoksun olmadığı ve gereken şartları kapsadığı sağlık memurlarınca saptanır.

Madde 261 – Bütün eğlence mahalleri, tiyatro, sinema, bar ve gazino ve kahve ve emsali yerler ve halkın bir arada toplanmasına mahsus sair umumi mahaller ve hamamlarda halkın sıhhatini vikaye ve selametini temin için riayeti lazım gelen tedbirler mahalli belediyelerce neşrü ilana

olunur. Bu tedbirlere kısmen veya tamamen riayet edilmeyen mahallerde her türlü içtimalar menedilir.

Madde 261 – Bütün eğlence yerleri, tiyatro, sinema, bar ve gazino ve kahve ve benzeri yerler ve halkın bir arada toplanmasına özel ve diğer genel yerler ve hamamlarda halkın sağlığını koruma ve güvenliğini uygulamak için uyulması gerekli tedbirler, bölgesi belediyelerince yayınlanarak duyurulur. Bu tedbirlere bir bölümü veya tümüyle uyulmayan yerlerde her türlü toplantılar yasaktır.

BEŞİNCİ FASIL
(DÖRDÜNCÜ BÖLÜM)

Yeni tesis olunacak veya tevsi edilecek şehir ve kasabalar
(YENİ KURULACAK VEYA GENİŞLETİLECEK ŞEHİR VE KASABALAR)

Madde 262 – Nüfusu yirmibin veya daha ziyade olan şehir ve kasabalar belediyeleri bu kanunun meriyeti tarihinden itibaren üç sene zarfında şehir veya kasabanın tevsi ve ıslahı için bir müstakbel şekil projesi tanzim etmeğe mecburdur.

Bu proje yeniden yapılacak veya ıslah edilecek sokakların istikamet ve genişliğini, meydanların, umumi mahallerin, bahçelerin ve abidelerin yerlerini ve vaziyetlerini gösteren bir haritayı ve yapılacak tesisatın senelere taksim edilmiş olmak üzere belediye meclislerince tasdik edilmiş bir programı ihtiva etmelidir.

Madde 262 – Nüfusu yirmibin veya daha çok olan şehir ve kasabalar bu kanunun yürürlüğünü kazanma tarihinden geçerli olarak üç yıl içinde şehir ve kasabanın genişletilmesi veya düzeltilmesi için geleceğe yönelik bir şehir projesi düzenlemeye zorunludur.

Bu proje yeniden yapılacak veya düzeltilecek sokakların yön ve genişliği, meydanların, genel yerlerin, bahçelerin ve abidelerin yerlerini ve durumlarını gösteren bir haritayı ve yapılacak kuruluşların yıllara bölünmüş olmak üzere belediye meclislerince onaylanmış bir programı kapsamalıdır.

Madde 263 – Nüfusu yirmibinden az ve beşbinden fazla olan şehir ve kasabalar belediyeleri de nüfusları her iki nüfus tahriri devresi arasında %15 miktarında bir çoğalma gösterdikleri takdirde bu tarzda bir proje ihzarına mecbur oldukları gibi nüfusu her neye baliğ olursa olsun 228inci maddede yazılı olduğu veçhile içme veya kaplıca mahalli olarak kabul edilen şehir ve kasabalarda bu projeyi tanzim ettirirler.

Madde 263 – Nüfusu yirmibinden az ve beşbinden çok olan şehir ve kasabalar belediyeleri de nüfusları her iki nüfus sayımı (yazımı) dönemi arasında %15 oranında bir çoğalma gösterdikleri taktirde bu tarzda bir proje hazırlanmasına zorunlu oldukları gibi nüfusu her neye ulaşırsa ulaşsın 208nci maddede yazılı olduğu üzere içme ve kaplıca yeri olarak kabul edilen şehir ve kasabalar da bu projeyi düzenler.

Madde 265 – Belediyelerce tanzim ettirilecek olan bu plan ve projeler icabında tetkik edilmek üzere Dahiliye ve Sıhhat ve İçtimai Muavenet Vekaletlerince talep edilebilir. Bu taktirde bu vekaletlerce teklif edilecek tadilatın kabulü mecburidir.

Madde 265 – Belediyelerce düzenlenecek olan bu plan ve projeler gereğince incelenmek üzere İçişleri ve Sağlık ve Sosyal yardım Bakanlıklarınca istenebilir. Böyle hallerde bu Bakanlıklarca öne sürülecek değişikliklerin kabulü zorunludur.

Madde 266 – Her şehir ve kasaba belediyesi bu kanunun meriyeti tarihinden itibaren bir sene zarfında o şehir veya kasabanın ihtiyaçlarına göre bu kanunun gösterdiği sıhhi hususlara ait bir zabıta talimatnamesi tertip eder. Bu nizamname, meskenlerin ihtiva etmeleri lazım gelen asgari müştemilatı, umumi ve müşterek ikametgahlardaki ikamet şeraitini, gıda maddeleri satılan veya sair temizliğe müteallik işlerle iştigal edilen mahallerin, han, otel, misafirhane, eğlence mahallerile bütün umumi yerlerin sıhhi şartlarını ve umumiyetle şehrin sıhhat ve temizliğine taalluk eden hususlara ait riayetleri lazımgelen kaideleri ihtiva eder.

Madde 266 – Her şehir ve kasaba belediyesi bu kanunun yürürlüğe giriş gününden başlayarak bir yıllık sürede o şehir ve kasabanın ihtiyaçlarına göre bu kanunun gösterdiği sağlık konularına ait bir kolluk yönetmeliği düzenler. Bu tüzük, meskenlerde bulunması gerekli en az derecedeki ayrıntıları, genel ve birleşik ikametgahlardaki oturma şartlarını, gıda maddeleri satılan veya diğer temizliğe ait işlerle uğraşılan yerlerin, han, otel, misafirhane, eğlence yerleriyle bütün genel yerlerin sağlık şartlarını ve genellikle şehir sağlık temizliği ile ilgili konularda uyulması gerekli prensipleri kapsar.

Madde 267 – Belediyelerin mensup oldukları vilayetler vasıtasile gönderecekleri sıhhi zabıta talimatnameleri Dahiliye ve Sıhhat ve İçtimai Muavenet Vekaletlerince tetkik ve tasvip edilmeden meriyete konulamaz.

Bu talimatnamede yapılacak esasa müteallik tadiller ayni şartlara tabidir.

Madde 267 – Belediyelerin bağlı bulundukları iller aracılığı ile göndereceklerı sağlık zabıta yönetmelikleri İçişleri ve Sağlık ve Sosyal Yardım Bakanlıklarınca incelenip uygun görülmeden yürürlüğe konulamaz.

Bu yönetmelikte yapılacak esasla ilgili değişiklikler aynı şartlara bağlıdır.

ON İKİNCİ BÂP
(ONİKİNCİ ALAN)

Gayri sıhhi müesseseler
(GAYRİSIHHİ KURULUŞLAR)

Madde 268 – Civarında ikamet eden halkın sıhhat ve istirahatini ihlal eden meüesseseler ve atelyeler bu kanun neşrinden itibaren resmi müsaade istihsal edilmeksizin açılamaz.

Madde 268 –Çevresinde oturan halkın sağlık ve dinlenmesini bozan kuruluşlar ve atölyeler bu kanunun yayınlanmasından başlamak kaydı ile resmi izin belgesi almadan açılamaz.

Madde 269 – 268inci maddede zikredilen müesseseler ve atelyeler üç sınıfa tekrif olunur:

Birinci Sınıf – Hususi meskenlerden behemahal uzak bulundurulması icap edenler.

İkinci Sınıf - Hususi meskenlerden behemahal uzaklaştırılması icap etmemekle beraber müsaade verilmezden evvel civarında ikamet edenlerin sıhhat ve ıstirahatleri üzerine gerek tesisatları ve gerekse vaziyetleri itibarile bir mazarrat yapmayacağına kanaat husulü için tetkikat yapılması iktiza eden müesseseler.

Üçüncü Sınıf – Meskenlerin yanında kalabilmekle beraber yalnız sıhhi nezarete tabi tutulması icap eden müesseselerdir.

Madde 269 – 268nci maddede sözü edilen kuruluşlar ve atölyeler üç sınıfa ayrılır:

Birinci Sınıf: Özel meskenlerden zorunlu olarak uzak bulundurulması gerekenler,

İkinci Sınıf: Özel meskenlerden zorunlu uzaklaştırılması gerekmemekle beraber resmi izin belgesi verilmezden önce çevresinde oturanların sağlık

ve dinlenmeleri üzerine gerek kuruluşları ve gerekse durumları yönünden bir zararlılık yapmayacağına kanı sağlamak için inceleme yapılması gereken kuruluşlar,

Üçüncü Sınıf: Meskenlerin yanında kalabilmekle beraber sağlık gözetimine bağlı tutulması gereken kuruluşlar.

Madde 270 – Bu kanuna müteferri olmak üzere bu üç sınıf müessese ve atelyelerin bir listesi Sıhhat ve İçtimai Muavenet Vekaletlerince İktisat Vekaletinin de mütalaası alınmak şartile tanzim olunur. Bu listede münderiç olmayan müessese ve atelyelerin hangi sınıftan addedileceği badehu yine aynı suretle tayin edilir.

Madde 270 – Bu kanuna bağlı olmak üzere bu üç sınıf kuruluş ve atölyelerin listesi İçişleri ve Sağlık ve Sosyal Yardım Bakanlığınca Sanayi ve Teknoloji Bakanlığı'nın da görüşü alınmak şartı ile düzenlenir. Bu listede olmayan kuruluş ve atölyelerin hangi sınıftan sayılacağı sonradan aynı usülle saptanır.

Madde 271 – Birinci sınıf müesseselerin tesisi için ancak Sıhhat ve İçtimai Muavenet Vekaletince müsaade olunur ve İktisat Vekaletine malumat verilir. Bu hususa müsaade almak üzere müessesenin bulunduğu mahalde en büyük mülkiye memuruna bir istida ile müracaat edilir. Bu istidaya müessesenin nev'i ile iştigal edeceği ve sair tafsilat kaydedilmelidir. Bu müracaat evrakı mahalli sıhhat memurlarının raporile Sıhhat ve İçtimai Muavenet Vekaletine gönderilir. Vekaletce icabında yaptırılacak tetkikat ve tahkikattan sonra resmi müsaade verilir.

Madde 271 – Birinci sınıf kuruluşların kurulması için ancak Sağlık ve Sosyal Yardım Bakanlığı'nca resmi izin belgesi verilir ve Sanayi ve Teknoloji Bakanlığı'na bilgi verilir. Bu konuda resmi izin belgesi almak üzere kuruluş bulunduğu yerde en büyük mülkiye memuruna bir dilekçe ile başvurulur. Bu dilekçeye kuruluşun türü ile çalışacağı alan ve diğer ayrıntıları kaydedilmelidir. Bu başvurma kağıtları sağlık memurlarının raporu ile Sağlık ve Sosyal Yardım bakanlığı'na gönderilir. Bakanlıkça gerektiğinde yaptırılacak inceleme ve araştırmadan sonra resmi izin belgesi verilir.

Madde 272 – İkinci ve üçüncü sınıf müesseselerin tesisi için mahalli sıhhat memurlarının muvafık raporları üzerine mahalli en büyük mülkiye memurunca resmi müsaade verilir ve Sıhhat ve İktisat Vekaletlerine bildirilir.

Madde 272 – İkinci ve üçüncü sınıf kuruluşların kurulması için bölge sağlık memurlarının uygun raporları üzerine bölgenin en büyük mülkiye memurunca resmi izin belgesi verilir ve Sağlık ve Sosyal Yardım ve Sanayi ve Teknoloji Bakanlıklarına bildirilir.

Madde 273 – Birinci sınıf müesseseler ve atelyeler civarında ve Sıhhat ve İçtimai Muavenet Vekaletince tasdik edilecek mesafe dahilinde meskenler veya insanların ikametine mahsus sair mahallerin bulunası memnudur.

Madde 273 – birinci sınıf kuruluşlar ve atölyeler çevresinde Sağlık ve Sosyal Yardım Bakanlığı'nca onaylanacak mesafe içinde meskenler veya insanların ikametine özel diğer yerlerin bulunması yasaktır.

APPENDIX C

RELATED ARTICLE OF THE LAW OF MUNICIPALITIES NO. 1580 IN TURKISH

BELEDİYE YASASI

Belediyenin Vazifeleri

Madde 15 – Belediyelerin kanunlar ve nizamnamelerle muayyen hukuku, bu mukabil beldenin ve belde halkının sıhhat, selâmet ve refahını temin, intizamını halelden vikaye maksadiyle yapacağı vazifeleri vardır.

Bu vazifeler aşağıda yazılanlarla, ayrıca kanun ve nizamname ve talimatnamelerle muayyen hususlardır:

1. Umuma açık olan yerlerin temizliğine, intizamına bakmak;
2. Yenilecek, içilecek ve umumun sıhhatına müteallik kullanılacak şeylerle yerlerinin mahsus kanun, nizamname veya talimatnamesine tevfikan murakabesi;
3. (Değişik: 150- 2.12.1960) Umumun yiyip içmesine, yatıp kalkmasına, taranıp temizlenmesine, eğlenmesine mahsus lokanta, birahane, gazino, kahvehane, kıraathane, meyhane, han, otel, hamam, sinema, tiyatro, bar, dansing ve emsali yerlerin ve bu mahallerde satılan ve kullanılan şeylerin temizliğine, sıhhılîğine ve sağlamlığına dikkat etmek ve kanun talimatname mucibince bu gibi yerlerin işletilmeleri için gece ve gündüz açık kalmalarına ve inzibati sebeplere nazaran zabıtaca verilecek ruhsat üzerine sınıflarına ve tariflerine göre bunlar için ruhsatname vermek ve açık kapalı bulunacağı saatleri mahallî en büyük mülkiye âmirinin de muvafakati alındıktan sonra tâyin eylemek, ücret tarifelerini tanzim ve tasdik etmek ve bu gibi yerlerde işi çeviren ve çalışanların ehliyet ve sıhhatleri müsait olup olmadığına göre işlemlerine izin vermek veya menetmek.

Ütücüler, kolacılar, lekeciler, giyim ve ev eşyası temizleyici ve boyacıları, ayakkabı tamirci ve boyacıları ve emsallerine ait ücret tarifelerini meslekî teşekküllerin de mütalâasını almak suretiyle tanzim ve tasdik etmek;

4. Salgın ve bulaşıcı insan ve hayvan hastalıklarının önüne geçmek ve yayılmasına mâni olmak için mahsus kanun, nizamname veya talimatnameleri mucibince tatbik edilen tedbirler hakkında hükûmet teşkilâtıyla birlikte çalışmak;
5. Ölenleri muayene etmek ve gömülmesine ruhsat vermek ve belediyelerce gösterilen mezarlıklardan başka yere ölü gömdürmemek, ücretli ücretsiz olan cenazeleri fennî şartlar dairesinde teçhiz, tekfin ve nakletmek, gömmek ve belediye mezarlıkları ve fennî cenaze yıkama yerleri tesis ve idare etmek ve hayvan ölülerini yaktırmak veya gömdürmek;
6. Sıhhî şartları cami, belediye salhanesinden başka yerlerde kasaplık hayvan kestirmemek;
7. Belediye depolarından başka yerlerde kanun ve nizam ve talimat ile muayyen miktar haricinde kabili iştial ve infilak maddeleri bulundurmamak buna riayet etmeyenlerin mallarını belediye deposuna kaldırmak ve satıldığında nısıf bedelini ceza olarak belediyeye almak;
8. Mürebbiye, sütnine, hizmetçi, çamaşırcı, uşak, hamal, şoför, arabacı, kayıkçı, berber, mevaddı gıdaiye satıcısı, süthanelerde hizmet edenlerle süt satanlar ve emsali ve halk ile temas eden hizmet erbabı işçilerin sıhhî ve fennî mauyenelerini yaptırmak, ehliyet ve sıhhat vesikası alanların işlemlerine izin vermek ve bunları daima tescil ederek müseccel olmayanları menetmek (Kayıkçıların ehliyetini tâyinde mahallî liman reislerinin mütâalası alınacaktır.);
12. Alâlûmum inşaat tamir ve ilâveler içinn kanun mucibince ruhsat vermek, kanunsuz veya ruhsatsız başlanan ve yapılmakata olan inşaatı men ile hususî kanunların hükümlerini tatbik ve kazalı binaları ve baca ve duvarları yıktırmak arsalarla yangın yerlerindeki kuyu ve çukur yerlerini kapattırmak veya tehlikeleri refetmek;
13. Umumun selâmet, sıhhat ve huzur ve istirahatine tesiri melhuz olan imalât, istihsalat müdehharat ve tesisatın yerlerini, harman, kabristan, pazar, gaz depoları, kömür depoları ve süprüntülük mevkilerini ve şartlarını evvelden tesbit ve ona göre ruhsta bağlamak (belediye yeniden yapılacak umumî ahır ve samanlıkların tâyin ve mevcut olanları sıhhî takyitlere tâbi tutar);
17. Dilencileri dilenmekten men edecek tedbirler almak;
18. Bırakılmış ve bulunmuş çocukları, delileri, dalanmış ve kudurmuşları, sokakta bayılanları, kazaya ve afete uğrayanları koruyup gözetmek;
19. Belediye kanun, nizam ve yasaklarına uymayan, kanunen ruhsata tabi iken ruhsatsız yapılan, belediyenin selamet, intizam, sıhhat ve huzurunu ihlal eden şeylere meydan vermemek ve bunları men etmek;

21. Belediye hududu dahilinde orman, tarla, harman, bağ, bahça, koru, çayır ve me'raları ve alelümum araziyi hasardan muhafaza etmek;
23. Sokak, meydan, iskele, köprü, pazar, panayır yerleri gibi umumi mahalleri daima temiz tutmak, yıkamak, temiz sularla sulatmak, kışın çamur ve karları ve buzları kaldırmak ve geçenlerin kaymamasını temin eylemek;
24. Umumi ve hususi yerlerin süprüntülerini muntazam ve fenni vasıtalarla toplatmak, kaldırmak ve ifna etmek;
25. 28 Nisan 1926 tarih ve 831 numaralı sular kanunu mucibince su getirmek, suları sıhhi ve temiz tutmak;
27. İhtiyaca göre umuma mahsus ücretli helalar yaptırmak;
Umumi ve hususi binalarda yapılması mecburi olan helaların sıhhi şartlara uygun olmasını temin etmek;
29. Kanun ve belediye kararlarının mecburi tuttuğu ahvalde veya ihtiyari olarak müracaat vaki oduğu taktirde insan, hayvan, eşya ve emlak hakkında harçlı harçsız, tıbbi, baytari, fenni, muayeneler, kimyevi ve bakteroyolojik tahliller yapmak ve şeraiti sıhhiye raporu vermek;
31. Beldenin sokak ve meydanlarını plana ve programa uygun olarak tanzim ve ıslah etmek, buna göre ağaçlamak, döşemek, aydınlatmak, süslemek, duracak, sığınacak, dinlenecek yerler yapmak ve iyi bir halde bulundurmak.
32. Beldenin plana ve programa uygun, 13 Mayıs 1926 tarih ve 839 numaralı kanuna ve diğer hususi ahkama tevfikan lağım ve çukurlarınnı inşa ve tamir etmek ve ettirmek;
34. Fakir ailelerin ikiz çocuklarına, alelûmum öksüz, fakir kimsesiz çocuklara para, hekim, ilaç, yeme, içme, giyecek, barınma, tahsil, terbiye cihetlerinden yardım etmek, fakir hastalara meccanen bakmak, ilaç vermek, fakir cenazelerini meccanen kaldırmak, alil, işten aciz olup da bakacak kimsesi olmayanlara bakmak;
35. Alelûmum belediyelere ait suları, çeşmeleri, sebilleri, parkları, havuzları, su taksim yerlerini, hazinelerini, kaynaklarını tanzim ve idame etmek;
36. Belediye sınırı dahilinde umuma mahsus iskele, rıhtım ve köprüleri plana göre inşa ve idame etmek;
37. Yangın yerlerini ve mahalle haline getirilecek yerleri kanun dairesinde tanzim ve imar etmek ve alelûmum inşaat, tamirat ve ilavat planlarını kanuna tevfikan tetkik ve tatbik etmek;
38. Aelûmum sınai müessese ve fabrikaların, elektrik, tenvirat, ve tesisatının makina ve motör ve inbiklerinin kazan, ocak ve bacalarının gerek ilk önce ve gerek sonradan muttariden ve muntazaman fenni muayenelerini icra etmek, etrafındakilerin sıhhatleri huzur ve malları üzerine fena tesir icra edip etmediklerini tetkik etmek, zararlarına mani olmak;
39. Kanunun mecburi tuttuğu ahvalde veya ihtiyari olarak müraacat vuku bulduğu taktirde her nevi inşaat ve tesisat için muayenei fenniye raporları ve şehadetnemeleri vermek veya mezkür tetkikatı yapacak müesseseye malik değilse en yakın bir müessese vasıtasiyle bu işleri temin etmek;

41. (Değişik: 6975 – 24.5.1957) Petrol kanununa göre petrol hakkı sahipleri tarafından yapılan ve petrol ameliyatından madut bulunanları hariç olmak üzere gaz ve her nevi müştail maddeler depoları yapmak;
42. Meydan ve pazar yerleri yapmak;
45. Yetimhane, eczahane, doğum ve emzirme ve mecburi olarak meccani doğum evleri tesisat ve teşkilatı ve mahalleri Sıhhat Vekaletince tayin ve tasdik edilmek şartiyle tımarhane, fenni tebhirhane ve tathir istasyonları vücude getirmek ve işletmek;
48. Yersiz, yurtsuz olanlara iş bulmak, bunlardan garip olup çalışamıyacakları memleketine göndermek, kimsesiz kadın ve çocukları korumak;
52. Sıhhi muavenet ve imdat merkezleri yapmak ve işletmek;
53. A: Plan ve tesisatı ve mahalleleri Sıhhat ve İçtimai Muavenet Vekaletince tasdik edilmek şartiyle beldenin ihtiyaciyle müntenasip ücretli, ücretsiz belediye hastanesi:
B: Ehli hayvan hastalıklarının tedavisi için hayvan hastanesi tesis etmek ve iletmek;
56. Belediyeye ait ılıcaları işletmek, deniz hamamları ve her nevi yıkanma müesseseleri açmak, açılmasına ruhsat verenlere nezaret etmek;
(Ek: 3014 – 12.6.1984) Yeteri kadar parasız halk plajları da açmak;
57. Eczanesi olmayan yerlerde hususi kanuna tevfikan eczane açmak, fakirlere parasız ve ucuz ilaç vermek, ücretli ücretsiz muayenehane, dispanser vücuda getirmek, fakirler için meccani doğum yardımını temin etmek üzere ebe istihdam etmek;
58. Her nevi et, yağ, balık, zeytinyağı, peynir ve sebze ve meyva, turşu ve tuzlu balık gibi muhafazası ve satılması sıhhi ve baytari şeraite tabi yenilecek şeylerin müzayedeli, müzayedesiz toptan alım ve satımının muayyen mahallerde ve belediye nezareti altında icrasını temin için haller tesis ve idare etmek (borsa muamelatı cereyan eden mahallerde borsaya tabi mevat hakkında hususi kanun ahkâmı tatbik olunur.)

(Ek:3035 – 28.6.1984)
Belediyelerce, gerçek veya tüzel kişilerin belediye hudutları içinde yaş meyve ve sebzelerin toptan alımı ve satımı için haller açmalarına izin verilebilir.

Nüfusu 250.000 ve daha yukarı olan belediyelerde açılacak toptancı hallerinin kuruluş, yönetim ve işleyişine ait usul ve esaslar, belediye meclisince tespit olunur.

Nüfusu 250.000'den az olan belediyelerde açılacak toptancı hallerinin kuruluş, yönetim ve işleyişlerine ait usul ve esaslar, Sanayi ve Ticaret Bakanlığınca çıkarılacak bir yönetmelikle tesbir olunur.

Bu yönetmeliklerle belirlenecek esaslara aykırı hareket edenler hakkında 1580 sayılıl Belediye Kanunu ile 80 sayılı Kanunun ceza hükümleri uygulanır. Toptancı hali kuracak olan gerçek ve tüzel kişilere lüzumlu krediler T.C. Ziraat bankasınca sağlanabilir.*

59. Belediye tiyatrosu, sineması, belediye oteli ve gazinosu, halk müzeleri ve hayvanat ve nebatat bahçeleri yapmak ve idame temek ve yaptırıp işletmek;

61. (Değişik:150 – 2.12.1960) Buz fabrikaları, sihhi kar kuyuları, her çeşit gıda ve zaruri ihtiyat maddelerinin muhafazasına mahsus soğuk hava mahzen veya depoları, umumi su depoları ve süthaneler, süt toplama merkezleriyle süt dağıtma teşkilâtı tesis etmek ve bunları işletmek veya hususi teşebbüs tarafından kurulan aynı mahiyetteki tesisleri sağlık ve teknik bakımlardan murakabe etmek;**

62. Mahrukat pazarları ve ardiyeleri yapıp idare etmek;

65. Belediye un ve inşaat malzemesi fabrikaları vücuda getirmek ve idare etmek;

66. Belediye fırınları yapmak ve işletmek;

69. Fakirler için yatı evleri yapmak ve idare etmek;

75. Fenni ve sıhhi umumi çamaşırhaneler yamak veyahut yapılmasına izin vermek ve bunları murakabe etmek;

76. Fabrika ve iş evlerinin amele ve meskenlerinin sıhhi teftişlerini yapmak (Bu teftiş, Devlet Demiryolları için idarenin müfettişleri ve imtiyazlı şirketler için de Hükümet tarafından mansup komiserler marifetiyle yapılır.);

78. (Ek: 30.5.1997 – KHK–572/4 md.) Bu maddede sayılan her türlü yapılar ve çevresinin, yolların, park, bahçe ve rekreasyon alanlarının, sosyal ve kültürel hizmet alanları ile ulaşım araçlarının özürlülerin kullanımına ve ulaşabilirliğine uygun olarak yaptırılmasını sağlamak ve denetlemek;

79. (Ek: 30.5.1997 – KHK–572/4 md.) İmar planlarının yapımı ve uygulanması ile yapıların inşaat ve iskan ruhsatı aşamasında, Türk Standartları Enstitüsünün ilgili standardına uygunluk sağlamak, uygulamaları denetlemek ve bütünlüğü sağlayıcı tedbirler almak;

80. (Ek: 30.5.1997 – KHK-572/4 md.) İlgili kurum ve kuruluşlarla işbirliği yaparak genç ve yetişkin özürlüler için bölgenin işgücü piyasasına uygun mesleklerde, meslek ve beceri kazandırma kursları, iş eğitimi merkezleri ve yaşamevleri açmak;

81. (Ek: 30.5.1997 – KHK-572/4 md.) Özürlüler için, ulaşım ile sosyal ve kültürel amaçlı hizmetlerden ücret almamak veya indirimli tarife

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* Bu bendin 24.6.1995 tarih ve 522 sayılı KHK'ya aykırı hükümlerinin yaş sebze ve meyveler konusunda uygulanmayacağı anılan KHK ile hükme bağlanmıştır.

** Bu arada yer alan "veya hususi teşebbüs tarafından kurulan aynı mahiyetteki tesisleri sağlık ve teknik bakımlardan murakabe etmek" ibaresi, 24.6.1995 tarihli 560 sayılı KHK'nin 21. Maddesiyle yürürlükten kaldırılmıştır.

uygulamak, belediyelere ait ve belediyeler tarafından işletilen veya kiraya verilen büfeler, otoparklar gibi işyerlerinin özürlüler tarafından işletilmesi konusunda kolaylık sağlamak.