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NEED FOR NEW APPROACHES IN URBAN CONSERVATION  
(WITH SPECIAL REFERENCE TO TRANSFER OF DEVELOPMENT  
RIGHTS)

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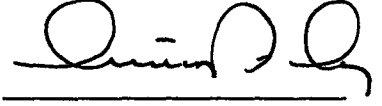
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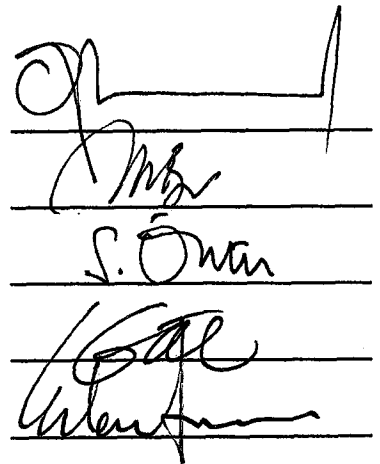
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## ABSTRACT

### NEED FOR NEW APPROACHES IN URBAN CONSERVATION (WITH THE SPECIAL REFERENCE TO TRANSFER OF DEVELOPMENT RIGHTS)

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The purpose of this thesis is to determine Turkey's deficiencies in conservation policies, to develop certain recommendations for solving conservation problems of the country, and to propose a model for conserving its cultural values. For this aim, in the first chapter, the meanings of conservation and urban conservation, and main conservation problems of historical buildings and areas of Turkey are given.

The second chapter reveals the conservation policies of Turkey and England in terms of their laws, their organizations concerned with conservation and their expenditures on conservation. Then, the conservation policy of Turkey is compared with England's to obtain legal, organizational and financial deficiencies of Turkey. By evaluating the differences between the conservation policies of Turkey and England's, certain necessities to overcome deficiencies of Turkey in conservation are obtained, such as rearranging conservation organizations and conservation act, finding new financial resources, and encouraging voluntary organizations.

In the third chapter, Transfer of Development Rights (TDR) is offered as a new instrument to conserve Turkey's built heritage. Firstly, the reason for why Turkey needs an instrument for conserving its historical buildings are explained. Second, in order to clarify what TDR is, the characteristics of TDR program are explained and some of TDR proposals are given as an example. Last of this chapter, the applicability of TDR in Turkey is discussed. For This aim, the evolution of the TDR concept in Turkey is offered and legal supports for the program are pointed out.

Last of all, in the forth chapter, the main reasons for unsuccessful conservation applications are summarized. Then, in order to spread out conservation consciousness, to upgrade organizations concerned with conservation of historical values and the conservation act, and to solve economical problems of historical site, some solutions are proposed.

**Keywords:** Conservation, Urban Conservation, Cultural Heritage, Transfer of Development Rights (TDR)

## ÖZ

### KENTSEL KORUMADA YENİ YAKLAŞIMLARA DUYULAN GEREKSİNİM (İMAR HAKLARININ TRANSFERİ KAVRAMINA REFERANSLA)

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Bu tezin amacı Türkiye'nin koruma politikasındaki eksiklikleri ve problemleri tesbit ederek sorunların çözümüne yönelik yeni bir yaklaşım geliştirmektedir. Bu amaçla tezin birinci bölümünde koruma ve kentsel koruma kavramları ele alınmış ve Türkiye'de tarihi dokuyu korumada karşılaşılan sorunlar belirlenmiştir.

İkinci bölümde, Türkiye ve İngiltere'de ki koruma politikaları yasal, kurumsal ve finansal açılarından incelenerek karşılaştırılmış ve iki ülkenin koruma politikalarındaki farklılıklardan yararlanılarak Türkiye'nin eksik noktalarının tesbit edilmesi amaçlanmıştır.

Üçüncü bölümde Transfer Development Rights "TDR" (İmar Haklarının Transferi) programı Türkiye'nin kentsel dokusunu korumak için yeni bir model olarak irdelenmiştir. İlk olarak Türkiye'nin kültürel değerlerini korumak için neden yeni bir modele ihtiyaç duyduğu anlaşılmış, TDR hakkında detaylı bilgi verebilmek için TDR'nin özellikleri sıralanmış, çeşitli amaçlarla kullanılması

önerilmiş TDR örnekleri incelenmiştir. Bu bölümün sonunda TDR programının Türkiye için uygulanabilirliği tartışılmıştır. Bu amaçla, Türkiye’de TDR’ın gelişimi anlatıldıktan sonra, program için yasal dayanak araştırılmıştır.

Tezin sonuç bölümünde, Türkiye’nin koruma uygulamalarındaki başarısızlığının ana nedenleri özetlenmiştir. Daha sonra koruma bilincinin yayılması, kentsel korumadan sorumlu kuruluşların iyileştirilmesi ve koruma yasasının yeniden ele alınması son olarakta kentsel korumanın ekonomik sorunlarının çözümüne yönelik öneriler sunulmuştur.

Anahtar kelimeler: Koruma, Kentsel Koruma, Tarihi Miras, İmar Haklarının Transferi



To My Parents

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## PREFACE

The thesis has two main purposes: the first aim is to develop certain recommendations for solving conservation problems of Turkey; and the second aim is to propose a new model for conserving Turkey's historical buildings and areas.

In order to realize the first aim, the conservation problems of Turkey's cultural heritage have to be determined properly. For this reason, the current conservation policies of Turkey are discussed and legal, organizational, financial frameworks of Turkey are investigated in detail.

After a chance of visiting England, which is one of the most successful countries in conservation, it is thought that if England is chosen as an example, Turkey's deficiencies in conservation will be perceived easily.

Actually, England is not the most appropriate example for Turkey because their social and economic structures, their level of development, their current conservation legislations, their organizations charged with conservation and their conservation terminologies are completely different. Unlike Turkish, the English has a wide conservation consciousness so they force the Government for conserving cultural values and take part in conservation studies. Although in England, the process of conservation is from base to ceiling, in Turkey it is from ceiling to base. In fact, *"in no other country is the preservation of national heritage based on criteria similar to ones in England."*<sup>1</sup>

After investigating England's conservation policies in detail, Turkey's conservation polices will be compared with this country's policies. From this

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<sup>1</sup> Encyclopedia of World Art, Vol:11, New York, 1959-1968, p.698.

comparison, it is aimed to reveal the main differences between Turkey and England in conservation, rather than showing their similarities in conservation. It is believed that this comparison will be a source of inspiration for Turkey to overcome its deficiencies in conservation and Turkey will take certain lessons from England especially to rearrange its conservation organizations and conservation act.

In order to develop an applicable and effective model, which is the second aim of the thesis, the model namely Transfer of Development Rights (TDR) is interpreted for Turkey. TDR has been studied especially in US for a long time to preserve open spaces, environmentally sensitive areas, landmarks, and historical buildings. TDR is recommended for conserving historical heritage of Turkey because the program gives a chance to conserve such values with compensating owners of them by breaking the linkage between particular land and its development potential and by permitting the shifting of the unused development rights from one property to another.

Briefly, in order to realize aims of the thesis, firstly the reasons for unsuccessful applications of Turkey in conservation are to be determined properly. Then England is taken as an example to overcome certain deficiencies of Turkey in conservation. Lastly, the TDR program of US is recommended as a new model for conserving historical buildings and areas of Turkey.

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## CHAPTER 1

### INTRODUCTION

#### 1.1 THE MEANINGS OF CONSERVATION AND URBAN CONSERVATION

In general meaning, “*conservation*” is described as the preservation and protection of environment.<sup>2</sup> In the Building Conservation Directory this description is enlarged as the process by which the deterioration of environment, a building, a structure or a material is prevented.<sup>3</sup>

In the Encyclopedia of Urban Planning the word “conservation” is defined in two senses: In the broadest sense, it means the wise use and management of all resources, both natural and man-made, and the careful planning of those resources to meet our future needs. In the narrowest sense, it refers to the conservation of buildings or groups of buildings and their surroundings, In this sense “conservation” means improvement, protection, or enhancement.<sup>4</sup>

“*Urban conservation*”, which is a kind of conservation, is an action of preventing built properties, that mainly consist of historical and architectural buildings, structures, monuments and the built-up environment created by these architectural edifices, and natural environment from decay.

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<sup>2</sup> Essential English Directory, Published by William Collins Sons & Co. Ltd., First Published 1988, London, p.161.

<sup>3</sup> The Building Conservation Directory, Published by Cathedral Communications Limited, London, 1994, p.129.

<sup>4</sup> Encyclopedia of Urban Planning, Arnold Whittick, Editor in Chief, New York, 1974, p.294.

The main factors that cause the decay in the built heritage are the human actions and the force of nature. “*The biggest and most usual threat comes from random demands imposed by modern life: population pressures, increased prosperity, public services, private speculation, migration to cities, etc.*”<sup>5</sup> In addition to these unintentional human actions, in some cases, people damage cultural property intentionally. Several reasons of these kinds of actions are the predominance of other interests, ignorance or indifference to the artistic values of the objects or a lack of awareness of the need for preservation.<sup>6</sup> On the other side, earthquakes, hurricanes, floods, landslides and fires can be given as examples for the force of nature on cultural properties.

There are several ways for conserving historical buildings and their surroundings. “*The three safest ways of preventing old buildings being pulled down are gaining direct control of them by ownership or otherwise; making the owner ashamed of wanting to pull them down, and having laws saying they may not be pulled down*”<sup>7</sup>. The last one is the most common way to conserve built property all over the world. Each country has its own law, which reflects the outlook of the country on conservation. Although the conservation laws have a common aim, their characteristics differ mainly with respect to the interpretation of property rights and to the organization of the services responsible for the application of these laws.

Conservation of cultural property has different scales and dimensions. It ranges from a building to the whole city and it has social, economic, cultural, political, administrative dimensions. Therefore, the required skills for

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<sup>5</sup> SHANKLAND, Graeme. “Why Trouble With Historic Towns”, The Conservation of Cities, Prepared by Unesco, Published by the Unesco Press, First Published 1975, Paris, p. 27.

<sup>6</sup> Encyclopedia of World Art, Vol:11, New York, 1959-1968, p.688.

<sup>7</sup> KENNET, Wayland. Preservation, Published by Maurice Temple Smith Ltd., London, 1972, p.15.

conservation studies cover a wide range; including those of the urban planner, architect, engineers of several specializations, a craftsman related to each material, archeologist, art historian and antiquary, building constructor, economist, manager, sociologist etc.

Cultural property has been wanted to be conserved because of its cultural architectural, aesthetic, historic documentary, archeological, economic, symbolic, social, spiritual, political and use values.

Conservation of historical buildings is of great importance because of the certain reasons pointed out below:

Historical buildings are a major resource for obtaining information about the past because they make possible it to get more knowledge about the people and culture that produced them.

Historical buildings are symbols of our cultural identity and continuity. They offer a link between the present and past generations. *“To any generation, an identifiable past offers a line of communication with others between: the living, the dead, and those still to be born. It provides a reference to previous experience, an illustration of how men went about a civilized environment, a reservoir and perpetual source of historical delight; a culture to be accepted, altered, rejected, re-interpreted or rediscovered”*<sup>8</sup>

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<sup>8</sup> SHANKLAND, Graeme. “Why Trouble With Historic Towns”, The Conservation of Cities, Prepared by Unesco, Published by the Unesco Press, First Published 1975, Paris, p.p. 25-27.

Historical buildings cause the cities to get diversity because they are distinguishable from one city to another. Actually a city without historical buildings has less character and this kind of city is like a man without memory.<sup>9</sup>

Old parts of the city are like an open museum. However, unlike the values in the museums, the buildings have been adapted to modern life standards and they have been used for different aims such as residence, commerce, or tourism.

## 1.2 THE CONSERVATION PROBLEMS OF HISTORICAL BUILDINGS AND AREAS OF TURKEY

Immovable cultural values have been commonly tried to be conserved in Turkey the Antiquities Act Numbered 1710 was put into force in 1970. In 1983, the last and current Conservation of Cultural and Natural Property Act Numbered 2863 was passed. However, up to now it has been seen that Turkey has not been successful in conservation of historical buildings and areas. Certain reasons for this failure are given below:

### **Problems Caused by Rapid Urbanization**

Turkey has been in a rapid urbanization process since 1950, so the values of the lands rose day by day, and lands in the cities became means of big profit through speculation. Especially, increasing demand for land near the city center, where generally historical buildings are situated, raises the prices to very high levels. On the other hand, land owners could not take advantages of their lands because of restrictions concerning the conservation of cultural values.

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<sup>9</sup> SHANKLAND, Graeme. "Why Trouble With Historic Towns", The Conservation of Cities, Prepared by Unesco, Published by the Unesco Press, First Published 1975, Paris, p.p. 25-27.

Actually the type of a city affects the degree of the pressure for developing. If historical buildings are in a small city which is developing slowly, they are generally fulfilling the requirements of ongoing life and so they are conserved spontaneously.<sup>10</sup> However, if the buildings are in a city which is developing rapidly, it is hard to conserve them. In that case there is a strong demand for the center of the city and historical buildings are subject to strong pressure for developing.

The other difficulty is to integrate old areas to the other parts of cities because the historical buildings were designated to meet the needs of the users in the past. Nevertheless, as a result of the changes caused by social, economic and technological developments, people's needs, tendencies and thoughts change. Therefore, the historical buildings have lost their efficiency and they have been forced to change. Mostly, original functions of them have been converted to another one such as from residence to commerce or storage.

Especially since 1950, a lot of people have immigrated to big cities for different aims: for instance, to find jobs, to be educated, to obtain modern life standards. Generally, the immigrants are in a low-income group so they can afford to live either in squatters or historical buildings because rents and selling prices of these kinds of buildings are lower than the buildings on the other sides of the city.

### **Environmental Problems Of Historical Sites**

At historical sites, infrastructural services, such as, running water and sewerage are generally insufficient because of increase in population. Additionally, roads are too narrow and there are not enough areas open to public such as parks, playgrounds.

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<sup>10</sup> ŞAŞMAZ, Alev. Conservation Practice in Bodrum an Evaluation Study, Master Thesis, METU, 1983, p.31.

Historical buildings and their surroundings are in bad conditions because, neither owners of them nor municipalities spend enough money on maintenance and repair of the areas, so the problems of the buildings and areas continue to rise.

### **Problems Related To Occupants Of Historical Buildings**

Although social and economic structures of occupants are different for each historical site, there are certain similarities as follows:

Social, economic and technological developments bring about change of people's needs, tendencies, thoughts and life styles, and historical buildings generally can not answer the changing preference of users.

Generally, owners of historical buildings prefer to move to new residential areas of cities to obtain modern life standards. Thus, the buildings are either purchased or rented by the low-income groups who may be new comers to the city. These kinds of users cause increase in deterioration of historical buildings because they usually can not afford the costs of maintenance and they have not enough conservation consciousness.

Sometimes, decisions for conservation of historical sites are not applied because of the shared-ownership.

### **Structural Problems Of Historical Buildings**

Structural problems of historical buildings are the results of the structural deformation and material deterioration. The certain reasons of the physical deterioration of historical buildings are given below:

The occupants of the historical buildings do not maintain and repair them regularly.



Some of the historical buildings are not used. This causes a rapid deterioration of the buildings.

Generally, the ratios of tenants are more than the ratios of house-owners in the historical sites and tenants usually prefer not to spend any money on maintenance and repair of historical buildings. On the other hand, house-owners of historical buildings can not afford the cost of maintenance and repair.

The materials of historical buildings, such as timber, are expensive materials and it is difficult to provide them.

Historical buildings are commonly either used under their capacity or divided to obtain more residential units. These applications damage architectural, aesthetic and historical characteristics of historical buildings.

Natural factors also lead to structural deterioration of historical buildings.

### **Functional Problems Of Historical Buildings**

Functional problems of historical buildings are caused by the changing of the original function of them. Some reasons for this changing are as following:

Generally historical buildings were designed for extended families. However, now they have to be used by nuclear families. Therefore, most of them have been divided either vertically or horizontally by their owners in order to increase their earnings from renting. On the contrary, some of them are used under their capacity.

The majority of historical sites are under pressure for commercial use and service sector because they are situated in the center of cities. Thus, mostly the buildings are altered for the new functions.

In historic houses, generally wc, bathroom and kitchen are in garden. These features of the buildings bring about the difficulties in usage for today's users.

After summarizing the main problems of historical buildings and areas in Turkey, it can be concluded that, in order to be successful in conservation, historical buildings should be adapted to modern life's conditions and needs, and new economical instruments should be found to maintain and repair them.



## CHAPTER 2

### THE HISTORIC BUILDINGS AND AREAS CONSERVATION POLICIES IN TURKEY AND IN ENGLAND

In this chapter, the conservation policies of Turkey and England are talked about in terms of the evolution of the conservation concept in these countries, their laws, rules and regulations about conservation, the organizations concerned with conservation and money that they spend on conservation. Then, the policies of Turkey are compared with England's policies for obtaining Turkey's deficiencies. At the end of this chapter, the main problems of Turkey in conservation are obtained from this comparison. In order to be successful in conservation, Turkey has to give precedence to solve these problems.

#### 2.1 THE HISTORIC BUILDINGS AND AREAS CONSERVATION POLICIES IN TURKEY

##### 2.1.1 THE EVOLUTION OF CONSERVATION CONCEPT FOR CULTURAL VALUES IN TURKEY

In Turkey, the concept of conservation started to spread after the second part of the 19th century. The first legal decision concerning conservation was taken under the Penal Act (Ceza Yasası), in 1858. According to Article 133 of this Act, those who damage sacred and monumental constructions were sentenced to imprisonment and fined.

The first legal measure in the field of historic conservation was the "*First Act for Antiquities*" (I. Asar-ı Atika Nizamnamesi) in 1869. The Act was interested with movable antiquities from the ancient times.

The “*Second Act for Antiquities*” (II. Asar-ı Atika Nizamnamesi) was came into force in 1874. By this Act, “*the concept of conservation items was extended to comprise all man-made objects that had been inherited from the previous periods and considered to be ‘antiquities’ and ‘State Property’*”.<sup>11</sup>

In 1884, the “*Third Act for Antiquities*” (III. Asar-ı Atika Nizamnamesi) was issued, which expanded the old definition of antiquities and prohibited antiquities to be taken out of the country.

The “*Forth and Last Act for Antiquities*” (IV. Asar-ı Atika Nizamnamesi) remained in force from 1906 to 1973. According to this Act, all movable and immovable values were defined as the State Property. It also took under protection the movable and immovable antiquities of Turkish-Islamic visual arts and thus enlarged the definition of immovable antiquities.

The “*Act for the Protection of Monuments*” (Muhafaza-i Abidat Nizamnamesi) was enacted in 1912. “*This Act gave permission to municipalities for the demolishing of monumental buildings which had to be pulled down for various reasons only after their decorations, inscriptions etc., had been recorded and documented*”<sup>12</sup>

In 1917, the “*Committee for the Protection of Antiquities*” (Muhafaza-i Asar-ı Atika Encümeni) was established in Istanbul to carry out researches on antiquities keeping the photographs and the documents in archives.

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<sup>11</sup> ZEREN, Nuran. Evaluation of the Historic Value Conservation Concept in Turkey, İstanbul, 1990, p.1.

<sup>12</sup> ZEREN, Nuran. Evaluation of the Historic Value Conservation Concept in Turkey, İstanbul, 1990, p.7.

The program of the First Parliament of Turkey included the collection and protection of national antiquities and suggested that the Directorate of Turkish Antiquities (Türk Asar-ı Atika Müdürlüğü) must have been established for this aim.

In 1951, the “*Superior Council of Immovable Antiquities and Monuments*” (GEEAYK) (Gayrimenkul Eski Eserler ve Anıtlar Yüksek Kurulu) was established to take conservation decisions, to determine main principles and programs related conservation, restoration, maintenance and repair of antiquities and monuments.

In 1973, as an improvement in the concept of conservation in Turkey, the “*Antiquities Act Numbered 1710*” (Eski Eserler Kanunu) was put into force replacing the Forth Act for Antiquities. The 1710 introduced the concept of conservation areas which were to be designated by reason of historic or archeological merit or natural beauty.

The last act, called the “*Conservation of Cultural and Natural Property Act Numbered 2863*” (2863 Sayılı Kültür ve Tabiat Varlıklarını Koruma Kanunu), came into force in 1983, replacing the two previous acts, the “Antiquities Act Numbered 1710” and the “Superior Council of Immovable Antiquities and Monuments Act Numbered 5805”. In 1987, some articles of the 2863 were changed and new articles were added by the “*Conservation of Cultural and Natural Property Act Numbered 3386*” (3386 Sayılı 2863 Sayılı Kültür ve Tabiat Varlıklarını Koruma Kanununun Bazı Maddelerinin Değiştirilmesi ve Bu Kanuna Bazı Maddeler Eklenmesi Hakkındaki Kanun).

With the current act, the “Superior Council of Immovable Cultural and Natural Property” (KTVKYK) (Kültür ve Tabiat Varlıklarını Koruma Yüksek Kurulu) and its regional sub-councils, i.e. the “Regional Councils of Immovable Cultural and Natural Property” (KTVKK)” (Kültür ve Tabiat Varlıklarını Koruma

Kurulları) were established. Under this act, the term “site” was redefined and classified as historic, archeological, natural and urban. It also introduced a new type of planning, called “urban development plan for conservation”. Another significant improvement of this act is the “Contribution Fund for the Repair of Immovable Cultural Property to be Conserved Owned by Individuals or Corporate Bodies” (Özel Hukuka Tabii Gerçek ve Tüzel Kişilerin Mülkiyetinde Bulunan Korunması Gerekli Taşınmaz Kültür Varlıklarının Onarımına Katkı Fonu). The aim of the Fund is to provide funds to contribute to the restoration of listed buildings.

The evolution of the concept of conservation can be detailed as a Table 1.

**TABLE 1 TURKISH CONSERVATION AND PLANNING LEGISLATION**<sup>13</sup>

<b>DATE</b>	<b>LEGISLATION</b>	<b>DECREES OR EVENTS</b>	<b>PRINCIPAL CONTENTS</b>
<b>1858</b>	The Penal Act (Ceza Yasası)		According to Article 133 of the Act, those who damage sacred and monumental constructions were sentenced to imprisonment and fined.
<b>1869</b>	The First Act for Antiquities (I. Asar-ı Atika Nizamnamesi)		The Act aimed to conserve movable antiquities from the ancient times.
<b>1874</b>	The Second Act for Antiquities (II. Asar-ı Atika Nizamnamesi)		The concept of conservation items was extended.
<b>1884</b>	The Third Act for Antiquities (III. Asar-ı Atika Nizamnamesi)		The Act prohibited antiquities to be taken out of the country.
<b>1906</b>	The Fourth Act for Antiquities (IV. Asar-ı Atika Nizamnamesi)		All immovable and movable values were defined as the State Property.

<sup>13</sup> This table was prepared by using the paper of Nuran Zeren, called “Evolution of Historic Value Conservation Concept in Turkey”, İstanbul, 1990.

**TABLE 1 (continued)**

<b>1912</b>	The Act for the Protection of Monuments (Muhafaza-i Abidat Nizamnamesi)	This Act gave permission for the demolishing of monumental buildings which had to be pulled down for various reasons only after their decorations, inscriptions etc. had been recorded and documented.
<b>1922</b>	Instructions for Museums and Antiquities	A decree was issued to collect national antiquities of archeological and ethnological value, to keep them in museums and to evaluate them scientifically.
<b>1925</b>	The Act for Closing Down Convents, Cells and Tombs (Tekke ve Zaviyelerle Türbelerin Kapatılması Hakkında Kanun)	Antiquities collected from those institutions were put in local museums.
<b>1926</b>	The Turkish Penal Law Number 765 (Türk Ceza Kanunu)	Destruction of religious and/or monumental buildings would be fined or imprisoned.
<b>1929</b>	Roads and Bridges Act (Şose ve Köprüler Kanunu)	The protection of historic buildings were given to the Authority of Public Works.
<b>1930</b>	Municipalities Act Number 1580 (Belediyeler Kanunu)	Municipalities were given authority for the protection of historic buildings
<b>1931</b>	The Establishment of the Turkish Historical Society (Türk Tarih Kurumu)	Turkish history and civilization would be studied scientifically and the origins of Turkish Cultural History would be discovered.
<b>1933</b>	The Municipal Law for Construction and Roads Number 2290 (Belediye Yapı ve Yollar Kanunu)	Monumental old buildings, designated and listed buildings would be protected by allowing 10 m. space on all four sides.
<b>1934</b>	Collecting Printed Materials and Works Act Number 2527 (Basma Yazı ve Eserleri Derleme Kanunu)	Information related with antiquities would be collected.

**TABLE 1 (continued)**

<b>1937</b>		The Ankara Citadel and its vicinity were included in the scope of conservation for the first time.
<b>1940</b>		The Establishment of the Board for the Preservation of Antiquities (Eski Eserleri Koruma Encümeni)
<b>1951</b>	The Establishment and Task of the Superior Council of Immovable Antiquities and Monuments Act Number 5805-GEEAYK ( Gayrimenkul Eski Eserler ve Anıtlar Yüksek Kurulu Teşkiline ve Vazifelerine Dair Kanun)	GEEAYK was established. A group of experts from related branches of various universities and also from related ministries and institutions would decide upon the principles and the programs for preservation, maintenance, repair and restoration of immovable antiquities and monuments, would follow up and supervise the implementation of such work and would offer scientific counselling.
<b>1953</b>		GEEAYK adapted principle No. 155
<b>1956</b>		Old buildings should be given a function to keep them alive.
		Historic buildings would be repaired and maintained in spite of the danger of collapse.
		GEEAYK Decision No. 466
		The measured drawings of historic buildings should be submitted to GEEAYK for keeping in archives even if they were not found worth conservation.
		GEEAYK Decisions No.506
		The boundaries of historic buildings.
	Construction Act Number 6785 (Imar Kanunu)	Clause No.25 stipulated that special regulation would be prepared to define the boundaries of historic buildings.



*TABLE 1 (continued)*

<b>1957</b>	Construction Regulation (Imar Yönetmeliği)	Clauses 39 and 40 defined the area to be taken under protection around historic buildings. The minimum distance of the new buildings from the historical buildings would be 10 m. of and no new buildings would be allowed within a distance equal to the height of the historic building. No new buildings would be allowed within 30 m. of those archeological sites without development plans.
	GEEAYK Decisions No.607 and No.407	Istanbul City Walls (Land and sea walls) would be preserved.
	Handing over the Antiquities with Historic and Architectural Value with a Foundation Status to the General Directorate of Foundations Act Number 7044 ( Aslında Vakıf Olan Tarihi ve Mimari Kıymeti Haiz Eski Eserlerin Vakıflar Umum Müdürlüğüne Devrine Dair Kanun)	This Act stipulated the conservation of buildings originally owned by Foundations.
<b>1960</b>	The Appropriation of Antiquities and Historic Monuments Owned by Individuals Act Number 7463 (Hususi Şahıslara Ait Eski Eserlerle Tarihi Abidelerin İstimlaki Hakkındaki Kanun)	The State limited the statutory rights of individuals on the immovable antiquities they own; owners of immovable antiquities had to repair and restore the antiquities and monuments according to the principles and projects suggested.
<b>1961</b>	The 1961 Constitution	Clause No.50, assigned to the State the task of conserving of the antiquities and monuments of historic and cultural value.

**TABLE 1 (continued)**

<b>1962</b>		GEEAYK Decisions No 1800	Antiquities could not be divided into plots and no new construction would be permitted on them.
<b>1963</b>		GEEAYK Decisions No.2052	Historic mosques could not be pulled down to be replaced by new ones.
<b>1964</b>	Regulation for Trading Antiquities (Eski Eser Ticaret Yönetmeliği)		The terms for trading the movable antiquities were defined and prevent these antiquities from being smuggled out of the country.
<b>1966</b>		GEEAYK Decisions No. 3296	No additions would later be made by development plans or by regulations to the buildings constructed according to GEEAYK Decisions next to historic buildings.
<b>1967</b>		GEEAYK Decisions No. 3674	The concept of historic monuments to be conserved was enlarged from a single building to the dimensions of whole environment.
<b>1968- 1972</b>	The Second Five-Year Development Plan		In its policies the plan stipulated that legal measures be taken to better conserve those antiquities open to wear and tear and to other negative effects that efforts be put up towards a better maintenance of these antiquities, necessary measures be taken to prevent smuggling of historic values out of the country.
<b>1970</b>		GEEAYK Decision No.5384  GEEAYK Decision No.5550	Historic buildings at the point of collapse would not be demolished, but conserved.  Legal arrangements should be made to provide financial aid for the protection of antiquities in private ownership.

**TABLE 1 (continued)**

<b>1970</b>	GEEAYK Decision No. 5595	The first decision for conserved historic houses in the Bosphorus Coastal Zone to be listed.
<b>1971</b>	GEEAYK Decision No.5948	The pardon for illegal constructions to be issued by all the municipalities would not apply to constructions related with historic buildings.
<b>1972</b>	GEEAYK Decision No.6555	Any historic building burnt down collapsed or demolished, whether intentionally or by accident would be replaced by a new building of the same size and the same form on the same plot.
	Real Estate Tax Act Number 1610 ( Emlak Vergisi Kanunu)	Listed historic buildings to be conserved would be given 1/10 tax reduction.
	Additional Clause No.6 of Act No 1605, bringing some changes to Act No.6785 for Construction (Imar Yasası)	New arrangements were made for urban conservation according to which the right to expropriate and/or to provide financial and technical aid for historic buildings and their close environments.
<b>1973</b>	Antiquities Act Number 1710 (Eski Eserler Kanunu)	New arrangements on the conservation of movable and immovable antiquities, and new definitions and limitations for the values to be conserved were adapted; the concept of conservation was enlarged to comprise building complexes and natural or natural/ man-made sites in addition to the monuments of architectural value. The act defined as monument all kinds of immovable architectural objects in which important historic events took place,

**TABLE 1 (continued)**

<b>1973</b>	Antiquities Act Number 1710 (Eski Eserler Kanunu)	which still retained certain archeological historic and artistic characteristics, and statues of similar quality which had to be conserved and brought back to life. Sites were defined as natural or natural/man-made topographical areas to be conserved and brought back into use in terms of their architecture, unity and contribution to the environment; classified they were also as historic, archeological and natural.
<b>1973-1977</b>	The Third-Five Year Development Plan	In the policies and principles of the plan, conservation would be limited to keeping archives and rearranging museums. Historic monuments, artistic objects, art works, ruins and other cultural remains would be conserved and improved so as to prevent them from being destroyed or smuggled out of the country.
<b>1976</b>	GEEAYK Decision No.8891	It defined the term "urban site" which had not taken place in Act No.1710 for Antiquities, as follows "those places which reflect homogeneously the social, economic and cultural conditions in a certain part of lived-in cities during a certain period, and which should be protected and brought back into use in terms of their special properties or their historic, scientific, artistic, archeological, ethnographic, literary or legendary significance."

**TABLE 1 (continued)**

<b>1978</b>	GEEAYK Decision No.10200	Building would be classified as Group 1, 2, and 3 in terms of the amount of the intervention needed.
<b>1979-1983</b>	The Fourth-Five Year Development Plan	The plan assigned more importance to the principles of planning and conservation of the cultural heritage within the scope of "cultural policies", "the social targets of the plan", "urbanization and municipalities and tried to establish a relationship between conservation and other sectors, especially tourism.
<b>1983</b>	<p>The Conservation of Cultural and Natural Property Act Number 2863 (Kültür ve Tabiat Varlıklarını Koruma Kanunu)</p> <p>The first Master Plan for the Conservation of the Bosphorus in Istanbul was approved.</p> <p>The Protection of Environment Act Number 2872 (Çevre Kanunu)</p> <p>The Bosphorus Act Number 2960 (Boğaziçi Kanunu)</p>	<p>GEEAYK was abolished to be replaced by "The Superior Council of Immovable Cultural and Natural Property (KTVKYK)" as a central office in Ankara, and "Regional Councils of Immovable Cultural and Natural Property (KTVKK)" were established in places chosen by the Ministry. The concepts of Urban Site and Development Plan for Conservation emerged and put into the related laws.</p> <p>Rural and urban areas would be conserved together with their natural resources and historic values.</p> <p>The first special act stipulated the conservation of the cultural, historical, natural values on the Bosphorus would be conserved.</p>

TABLE 1 (continued)

1984	Regulation for the Superior Council and the Regional Sub-councils of the Immovable Cultural and Natural Property (Taşınmaz Kültür ve Tabiat Varlıkları Yüksek Kurulu ve Koruma Kurulları Yönetmeliği)	The general principles for the functioning of the councils were determined and the Ministry decided to establish its regional councils in eleven centers.
	Regulation for taking out of any Bringing into the Country the Movable Cultural and Natural Property (Korunması Gerekli Taşınabilir Kültür ve Tabiat Varlıklarının Yurtdışına Çıkarılması ve Yurda Sokulması Hakkındaki Yönetmelik)	The principles related with this subject were determined by this regulation
	Regulation for the Registration and Listing of the Immovable Cultural and Natural Property to Be Conserved (Korunması Gerekli Taşınmaz Kültür ve Tabiat Varlıklarının Tespiti ve Tescili Hakkında Yönetmelik)	Methods, principles and prerequisites for registration and listing the property were formally defined.
	Regulation Setting the Principles for Carrying out the Excavation Work Related with Cultural and Natural Property (Kültür ve Tabiat Varlıkları ile İlgili Olarak Yapılacak Sondaj ve Kazılar Hakkındaki Esasları Belirleyen Yönetmelik)	

*TABLE 1 (continued)*

<b>1985-1989</b>	The Fifth Five-Year Development Plan	Conservation Principles adopted under the title "National Policies of Culture": Necessary measures would be taken to maintain and to revive cultural values; public and private institutions of conservation would carry out their activities of designation, listing, repair and protection according to certain priorities adopted in keeping with the national cultural policy; incentives would be created for individuals to buy historic buildings with the aim of conservation; museums would be opened to such educational and cultural activities as exhibitions, lectures and seminars; new educational facilities would be created and encouraged for the training of such specialists as architects, restorers, decorators, technicians etc.
<b>1985</b>	Regulation for The fund for the Contribution to the Restoration of Immovable Cultural Property to be Conserved Owned by Individuals or Corporate Bodies Subject to Private Law ( Özel Hukuka Tabi Gerçek ve Tüzel Kişilerin Mülkiyetinde Bulunan Korunması Gerekli Taşınmaz Kültür Varlıklarının Onarımına Katkı Fonu Yönetmeliği)	A new set of methods and principles were adopted for the cash, material and technical aid and for the loans to be issued for the maintenance and restoration of the cultural property listed according to Act No.2863

*TABLE 1 (continued)*

<b>1987</b>	<p>Act No.3386 Altering Some Clauses of Act No.2863 Stipulating the Conservation of Cultural and Natural Entities and Adding Some New Clauses to the Said Act (3386 Sayılı 2863 Sayılı Kültür ve Tabiat varlıklarını Koruma Kanununun Bazı Maddelerinin Değiştirilmesi ve Bu Kanuna Bazı Maddeler Eklenmesi Hakkındaki Kanun)</p> <p>Regulation for the Protection of Acquired Rights Encountered While Listing and Registration the Immovable Cultural and Natural property and Sites to be Conserved (Korunması Gerekli Taşınmaz Kültür ve Tabiat Varlıklarının Tespit-Tescili ve Sit Alanı İlanı Sırasındaki Müktesep Hakların Korunması ile İlgili Yönetmelik)</p>	<p>KTVKYK and KTVKK were reorganized.</p> <p>The standards for registration and the documents to be drawn after registration were defined; the legend to be used in the conservation plan were defined.</p>
<b>1988</b>	<p>KTVKYK Decisions No.10</p> <p>KTVKYK Decision No.14</p>	<p>Immovable cultural and natural property could not be demolished on the excuse that they were in danger of collapse.</p> <p>The new decision classified the immovable cultural and natural property to be conserved in four groups in terms of the amount of intervention needed on them</p>



**TABLE 1 (continued)**

<b>1988</b>	KTVKYK Decision No.15	Immovable cultural and natural property could not be demolished on the excuse that they were in danger of collapse.
	KTVKYK Decision No.16	Those causing cultural and natural property to be destroyed in any way would be liable, construction would only be permitted on old building on condition that the former facade and the former building height could be re-constructed according to the documents if they were available; if they were not, the building would be reconstructed as suggested by the related conservation committee.
<b>1989- 1994</b>	The Sixth Five-Year Development Plan	The plan assigned more importance to the policies and principles of conservation of the cultural heritage within the scope of "Settlement and Urbanization", "Culture", "Tourism". Conservation policies and principles adopted under the title "Settlement" and "Urbanization": The physical plan should be closely adhere to all stages of the settlement; historical, cultural and natural values should be conserved when the plans are drawn and the existing population density should not be increased. Under the title "Culture": The conservation, maintenance, repair and restoration of the cultural values should be taken up giving priority to the Turkish and Islamic Art; legal administrative, financial and practical arrangements should

**TABLE 1 (continued)**

<b>1989-1994</b>	The Sixth Five-Year Development Plan	be made to improve and guarantee the maintenance, repair and preservation of the works belonging to the religious foundation. Under the title "Tourism": Values representing the cultural and natural heritage of the mankind should be effectively conserved, tourism activities and investment should be planned and implemented observing the principles of not damaging the environment and cultural landscape.
<b>1989</b>	The Regulation for The Superior Council and Regional Councils of Immovable Cultural and Natural Property ( Kltr ve Tabiat Varlıkları Koruma Yksek Kurulu ile Koruma Kurulları Ynetmeliđi)	The responsibilities, duties and authorities of the KTVKYK and the KTVKK are determined.
<b>1990</b>	The Regulation for Exchanging of Government's Properties with Cultural and Natural Property to be Conserved on Which All Constructions are Prohibited ( Kesin İnşaat Yasađı Getirilen Korunması Gerekli Taşınmaz Kltr ve Tabiat Varlıklarının Bulunduđu Sit Alanlarındaki Taşınmaz Malların Hazinaya Ait Taşınmaz Mallar ile Deđiştirilmesi Hakkındaki Ynetmelik)	This regulation makes exchanging of properties on which all constructions are prohibited with the Government's properties possible.

*TABLE 1 (continued)*

<i>1995</i>	The Last Principle Decrees of the KTVKYK	The KTVKYK classified buildings in two groups as a Grade I and Grade II buildings, in terms of their historical and aesthetic importance. Additionally, the Council took decisions about the types of intervention to historical buildings, the main principles of restoration and control of applications.
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The Table 1 gives us certain clues to understand conservation policies of Turkey as follows:

Historical values of Turkey have been tried to be conserved from ceiling by conservation decisions and laws. Mostly, Turkish Governments have preferred to conserve historical buildings by using passive, prohibitive and punitive policies since the beginning of conservation studies. It is really interesting that the first legal decision concerning conservation was made under the Penal Act in 1858.

Another significant point is that cultural properties have been defined as the State property since 1900s and the State has limited the statutory rights of individuals on the cultural properties they own. The Governments have expected the owners to conserve historical buildings without any technical and financial assistance. Actually up to 1987, there was no funds to aid owners of historical buildings.

## 2.1.2 THE CURRENT CONSERVATION LEGISLATION IN TURKEY

The basic planning system for preserving historical buildings, landmarks and conservation areas in Turkey is described in this section.

The main pieces of planning legislation about buildings of special architectural or historical interest and conservation areas are as follows:

- The Conservation of Cultural and Natural Property Act Numbered 2863, which came into force in 1983. ( 2863 Sayılı Kùltür ve Tabiat Varlıklarını Koruma Kanunu)
- The Conservation of Cultural and Natural Property Act Numbered 3386, which changed some articles of the Act Number 2863. It has been in force since 1987. (3386 Sayılı 2863 Sayılı Kùltür ve Tabiat Varlıklarını Koruma Kanununun Bazı Maddelerinin Deęiştirilmesi ve Bu Kanuna Bazı Maddeler Eklenmesi Hakkındaki Kanun)

There are fifteen regulations about conservation of cultural and natural property. Some of them are as follows:

- The Regulation of the Listing and Registration of Immovable Cultural and Natural Property to Be Conserved, 1987. (Kùltür ve Tabiat Varlıklarının Tespit ve Tescili Hakkında Yönetmelik)
- The Regulation of Superior Council and Regional Councils of Immovable Cultural and Natural Property, 1989. (Kùltür ve Tabiat Varlıklarını Koruma Yüksek Kurulu ve Koruma Kurulları Yönetmelięi)
- Regulation for Contribution Fund for the Repair of Immovable Cultural Property to Be Conserved Owned by Individuals or Corporate Bodies Subject to Private Law, 1985. (Özel Hukuka Tabii Gerçek ve Tüzel Kişilerin

Mülkiyetinde Bulunan Korunması Gerekli Taşınmaz Kültür Varlıklarının Onarımına Katkı Fonu Yönetmeliği)

In applications, the decrees of the Superior Council and Regional Council are very important. Until the ends of 1994, 366 decrees were taken by the Superior Council and Regional Councils took 47.733 decisions to show way of application in historical and natural property.

**The Conservation Of Cultural And Natural Property Act Numbered 2863 And Numbered 3386**

The conservation acts show approaches of countries to conservation all over the world, because main principles for caring and conserving cultural and natural property are defined, relevant procedures and activities are regulated and the responsibilities of the organizations that will be in charge of setting essential principles and taking operational decisions are determined by these acts.

In Turkey, the last act about conservation of cultural and natural heritage came into force on 21.07.1983, replacing the Antiquities Act Numbered 1710 and the Superior Council of Immovable Antiquities and Monuments Act Numbered 5805. In 1987, some articles of the Act 2863 were altered and new articles were added by issuing the Act Numbered 3386.

The current conservation act has brought significant improvements as follows:

Conservation organizations have been decentralized and spread all over the country. Although the Ministry of Culture is determined as an unique Government department responsible for protecting movable and immovable cultural and natural property to be conserved, new departments were set up to perform some responsibilities of the Ministry. First, the "*Superior Council of*

*Immovable Cultural and Natural Property*” (KTVKYK) were established to designate main principals to conserve immovable natural and built heritage. Second, fifteen regional sub-councils, called “*Regional Councils of Immovable Cultural and Natural Property*” (KTVKK) were set up in different cities taking into consideration the intensity of the immovable cultural and natural heritage.

The first step for conservation of built and natural heritage is a listing and registration. The Ministry of Culture lists immovable cultural and natural property to be conserved by himself or benefits from specialists of concerned organizations. Then listed buildings are registered by the relevant regional council.

Another newness, which has been brought on by the last conservation act, is the “*urban development plans for conservation.*” After an area is proclaimed as a “site” all implementations of urban development plan in that area suspended. Within a month, the relevant regional council has to designate *the condition of construction during the transition period* until an urban development plan for conservation is prepared. Concerned provincial governments and municipalities are obliged to prepare such plans within a year and submit them the regional council for approval.

In this act, owners of immovable cultural and natural property to be conserved and their financial problems also are taken into consideration so in order to provide technical and financial assistance for preservation, restoration and repair of cultural and natural property to be conserved, the “*Contribution Fund for the Repair of Immovable Cultural Property to be Conserved Owned by Individuals or Corporate Bodies Subject to Private Law*” was established.

Detailed information about the current conservation act can be found in Appendix A.

## **The Last Principle Decrees Of The Superior Council Of Immovable Cultural And Natural Property**

The Superior Council took the last principle decisions about conservation, restoration and upkeep of immovable cultural property, in its meeting number 34, on 28.02.1995.

The types of intervention to historical buildings, the main principles of restoration and control of implementations have been determined by the Council as principal decrees, in the last meetings. The types of intervention to historical buildings have been grouped into two categories: maintenance and repair.

The maintenance of buildings is the process of keeping it in a good condition by regularly checking it. The materials, structures, plans of buildings are not changed by maintenance. The implementations of maintenance of historical buildings can be done after relative regional councils make the decisions and implementations are controlled by municipalities and relative museum directorates.

If a building needs to be repaired, relative regional council prepares projects of restoration and restitution. The main repair principles are given as below:

- The physical, structural, historical characteristics of a building are conserved.
- It is aimed that buildings are conserved without demolishing and only if it appears to the regional council that a historical building may cause danger, the building can be destroyed.
- The historical elements of buildings are conserved.
- For any change in the function of historical buildings and new elements, which are added due to new functions, owners or occupiers of the buildings have to get opinion of the relative regional council.

Furthermore, in the same meeting, the KTVKYK classified buildings in two groups as Grade I and Grade II buildings, in terms of their historical and aesthetic importance.

**Grade I Buildings:** These are buildings which have to be conserved because of their historical, aesthetic and memorial importance (including military and religious buildings). The buildings are classified into two categories: buildings that were originally used as a residence and buildings that were not originally used as a residence.

**Grade II Buildings:** These are buildings which are parts of identity of urban and environment, and have traditional and local importance.

### **2.1.3 ORGANIZATIONS CONCERNED WITH CONSERVATION OF HISTORIC BUILDINGS AND AREAS IN TURKEY**

The Ministry of Culture is the most responsible and authorized Government's department for conserving the cultural and natural property, in Turkey. However, many public institutions have certain rights, responsibilities and authorities in certain cases, which are determined in the Conservation Act Number 2863. The Ministry of Tourism, the Ministry of Environment, the Ministry of Urban Development, the Directorate General of Pious Foundation can be given as an example for these kind of institutions.

All local authorities have responsibility rather than authority for protecting cultural and natural properties.

The Economic and Social History Foundation of Turkey (Türkiye Ekonomik ve Toplumsal Tarih Vakfi), The Monument -Environment Foundation of Turkey (Türkiye Anıt - Çevre Vakfi - TAÇ), the Traditional Crafts Foundation (Geleneksel El Sanatları Vakfi) can be given as an example of foundations.



There are several voluntary organizations which can not play an important role to conserve historical buildings and areas such as the Institution of Touring and Automobile of Turkey (Türkiye Turing ve Otomobil Kurumu), the Society for the Conservation of Historic Building of Turkey (Türkiye Tarihi Evleri Koruma Derneği).

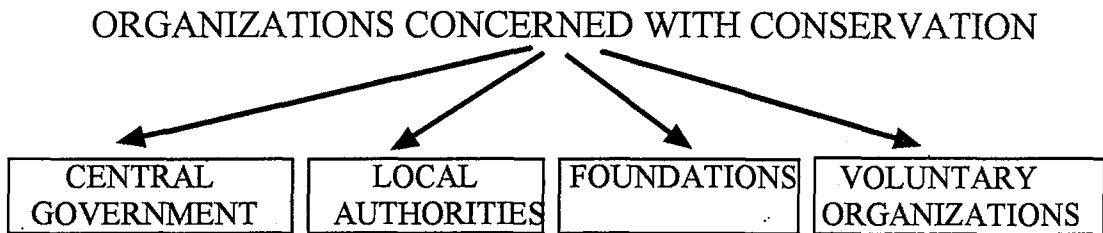


Figure 2.1. Organizations Concerned with Conservation in Turkey

### 2.1.3.1 CENTRAL GOVERNMENT

#### 2.1.3.1.1 THE MINISTRY OF CULTURE

The Ministry of Culture is the unique government department responsible for taking or having others take measures to protect immovable cultural and natural property to be conserved and for supervising such measures whoever owns or administers the property. (Article (10) of the Conservation Act)

The Directorate General of Conservation of Cultural and Natural Property (Kültür ve Tabiat Varlıklarını Koruma Genel Müdürlüğü) has been set up to perform the duties of conservation of immovable cultural and natural property on behalf of the Ministry of Culture. On the other hand, the Directorate General of Monuments and Museums has been established to take certain responsibilities and authorities of the Ministry about movable cultural and natural property to be conserved.

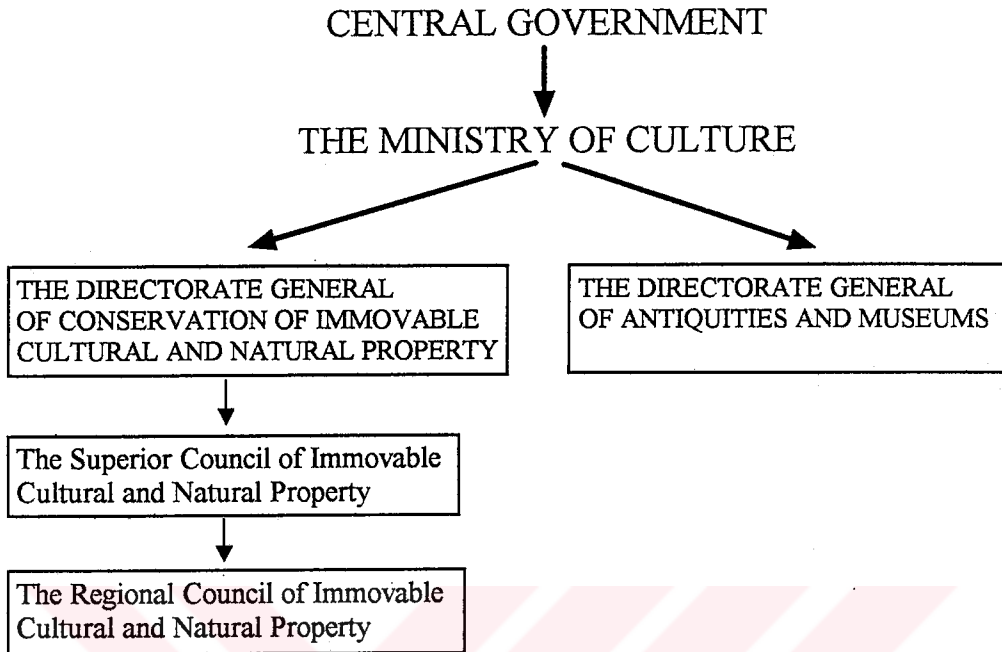


Figure 2.2. Central Government Organizations Concerned with Conservation in Turkey

The Superior Council of Immovable Cultural and Natural Property (Kültür ve Tabiat Varlıklarını Koruma Yüksek Kurulu) and Regional Council of Immovable Cultural and Natural Property (Kültür ve Tabiat Varlıklarını Koruma Kurulu) have been set up by the current Conservation Act in order to scientifically guide for intervention in movable cultural and natural property.

### **The Directorate General of Conservation of Immovable Cultural and Natural Property**

The Directorate General of Conservation of Immovable Cultural and Natural Property has been set up to perform some responsibilities and authorities of the Ministry of Culture about conservation of immovable cultural and natural property. The duties of the Directorate General are as follows:

- Proposing alteration on the Conservation Act Number 2863 and on regulations of the Act.
- Making a draft act or regulations for solving local problems of cultural and natural property. For instance, the Conservation and Development Act of Kapadokya has been prepared as a draft by the Directorate General.
- Doing researches and listing immovable cultural and natural property on all over the Country.
- If municipalities want, it makes an urban development plan for conservation by itself or it makes such plans prepared private offices by adjudicating.
- Spending money on repair, maintenance and restoration of cultural property and their surroundings which are important for both Turkey and the world, such as the Conservation Project for the Cultural and Natural Property of Pamukkale, the Conservation and Development Project of Kapadokya, the Conservation and Upgrading project of the Ankara Castle and Safranbolu.
- Expropriating historical buildings and repairing them for Regional Councils.
- Arranging national and international seminars, conferences and cultural activities.

### **The Superior Council of Immoveable Cultural and Natural Property**

The Superior Council of Immoveable Cultural and Natural Property was based at Ankara.

The duties of the Superior Council are determined in the Conservation Act as follows:

- Designating principles to be adopted for the conservation and restoration of immovable cultural and natural property to be conserved.
- Coordinating the Regional Councils, if it is necessary.
- Assisting the Ministry of Culture on the implementation of adopted principles and evaluating their results. (Article(51))

The Superior Council meets at least twice a year. When necessary, the Ministry of Culture may call to Council to extraordinary meetings.

The Council meets absolute majority of members, resolutions are issued with the concession of three-fourths of the members present.

The Superior Council consists of eight natural and six representative, total fourteen members. Its members are: the Under-secretary of the Ministry of Culture, the Assistant Under-secretary of the Prime Ministry, the Assistant Under-secretary of the Ministry, the General Director of Antiquities and Museums, the General Director of the Ministry of Urban Development, the General Director of Agriculture and Forestry, the General Director of Foundations or his Assistant, and six members chosen by the Ministry of Culture among the heads of the regional councils. (Article (53))

The chairman of the Superior Council is the Counselor of the Ministry of Culture. His assistant replaces him in his absence.

### **The Regional Council of Immovable Cultural and Natural Property**

Regional Councils of immovable Cultural and Natural Property were based at various regions to be designated by the Ministry of Culture. There are seventeen Regional Councils which were situated in Istanbul (3), İzmir (2), Ankara, Bursa, Antalya, Edirne, Trabzon, Diyarbakır, Adana, Erzurum, Kayseri, Konya, Eskişehir and Kapados.

The responsibilities and authorities of Regional Councils can be summed up as follows:

- Registering immovable cultural and natural property to be conserved which are listed by the Ministry of Culture.
- Determining a group of immovable cultural and natural property to be conserved.
- Designating within a month the condition of construction during the transition period until an urban development plan for conservation is prepared, after registering a site area.
- Approving both urban development plan for conservation and every changes of this plan.
- Determining an area of immovable cultural and natural property to be conserved.
- Abolishing a registration of immovable cultural and natural property to be conserved, when it lost its characteristics.
- Taking decisions to guide the implementation of principle of immovable cultural and natural property to be conserved. (Article (57))

Public institutions (including municipalities) and individual and corporate bodies have to conform decisions of Regional Councils.

Regional Councils have five members, three of which are chosen by the Ministry of Culture among scholars at each of the branches of architecture, archaeology, art history, urban planning. Other two members are determined by the Institutions of Superior Education (Yüksek Öğretim Kurumu-YÖK). When necessary, representatives of public institutions (including municipalities) concerned with topics on the agenda can be invited to the meetings of Regional Councils without voting.

Regional Councils meet once a week. When necessary, the chairmen may call the councils to extraordinary meetings.

The Councils meet with a two-thirds of their members and issue resolutions with the concession of two-thirds of the members present.

Regional Councils elect their chairman and his assistant among members. In the absence of the chairman, his assistant replaces him.

#### 2.1.3.1.2 THE OTHER PUBLIC INSTITUTIONS CONCERNED WITH CONSERVATION OF IMMOVABLE CULTURAL AND NATURAL PROPERTY

Although, according to current Conservation Act, the Ministry of Culture is an important Government's organization for preserving cultural and natural property, by the same law a lot of public institutions are proved rights, responsibilities and authorities for conserving the property. Some of them and their duties can be summarized as follows:

The Chairmanship of the Turkish National Parliament is responsible for protecting cultural and natural property administered by the Turkish National Parliament. Furthermore, the Directorate General of National Palaces depends on the Turkish National Parliament.

The Ministry of National Defense is responsible for protecting and evaluating cultural and natural property administered by the Ministry of National Defense or property existing in military zones and near national borders. A protocol prepared between the Ministry of National Defense and the Ministry of Culture determines principles to be adopted for the protection of such property.

The listing of immovable cultural and natural property which belong to the Directorate General of Pious Foundations and individual or corporate bodies are done by the Directorate General of Pious Foundations. (Article (7)). The preservation and evaluation of immovable cultural and natural property which belong to the Directorate General of Pious Foundations and individual or corporate bodies are administered by the Directorate General. (Article (10))

Property belonging to foundations administered by the Directorate General of Pious Foundations and those transferred to the same Directorate with legislation Number 7044 (Transfer of Antiquities with Historic and Architectural Significance That are Subjects of Foundations to the Directorate General of Pious Foundations) can be assigned to the use of State parties, public institutions, national charity organizations or can be rented to individual or corporate bodies with the approval of the Directorate General of Pious Foundations provided the foreseen function of the property is compatible with its character. (Article (14)) Immovable cultural and natural property to be conserved and conservation areas that are originally parts of foundations but have partially or totally been transferred to the ownership of individual or corporate bodies can be expropriated by the Directorate General of Pious Foundations. (Article (15))

In certain cases, which are determined in the Conservation Act, the Ministry of Tourism, the Ministry of Agriculture and Forestry, the Ministry of Environment, the Ministry of Finance and the Ministry of Urban Development have been obtained rights, responsibilities and authorities for protecting immovable cultural and natural property.

#### 2.1.3.2 LOCAL AUTHORITIES

Local authorities have not got too much rights, authorities and responsibilities for conserving immovable cultural and natural property in Turkey.

After the Ministry of Culture determines an area as an urban, natural, historical or architectural site area, the concerned Regional Council registers the decisions of the Ministry and designates the conditions of construction during the transition period. The local authority has to prepare an urban development plan for conservation within a year. On the other hand, the municipalities can want the Directorate General of Conservation of Immovable Cultural and Natural Property

or the Bank of Provinces (İller Bankası) to prepare such plan instead of him. The municipality is obligated to approve the plan to the Regional Council.

Urban development plans for conservation are applied by municipalities under controls of Regional Councils. However, Regional Councils can not inspect the implementation of such plans sufficiently and successfully. Moreover, municipalities have not too willing to protect these values due to lack of real demand for conservation. Thus a lot of cultural and natural values have been lost .

The other duty of municipalities is to participate the meetings of regional councils, if the topics on the agenda concern them.

#### 2.1.3.3 FOUNDATIONS CONCERNED WITH CONSERVATION OF IMMOVABLE CULTURAL AND NATURAL PROPERTY

Well-known examples of foundations concerned with conservation include The Economic and Social History Foundation of Turkey, the Monument - Environment Foundation of Turkey (TAÇ), the Traditional Crafts Foundation, and the Environment Foundation of Turkey (Türkiye Çevre Vakfı).

##### **The Economic and Social History Foundation of Turkey**

The Economic and Social History Foundation of Turkey was set up in 1991 by 264 historians, social scientist, librarians, archivists and other concerned individuals. The aim of the Foundation is to create a distinguished archival collection of sources relating to the political, economic, social and cultural heritage of the Ottoman Empire as well as modern Turkey, and to promote historical studies based on and dealing with this heritage.

The creation of a major non-governmental archive which includes manuscripts, documents, photographs, films, posters, commemorative articles and



rare publications of historical importance is a fundamental objective of the Foundation.

The initial capital of the foundation consists solely of contributions from founding members. A particular advantage of the Foundation is the presence, among its founding members, of a pool of dedicated and talented scholars with diverse interests in research, thus creating an atmosphere conducive to all kinds of historical studies, individual or collective.

### **The Monument-Environment Foundation of Turkey (TAÇ)**

The Monument-Environment Foundation of Turkey was established in 1976 to protect our cultural heritage and to spread it all over the world.

The main aim of the Foundation is to develop a new restoration and conservation principles for traditional Turkish architecture and to guide this kind of studies on historical buildings.

#### **2.1.3.4 VOLUNTARY ORGANIZATIONS**

In Turkey, voluntary organizations can not play an important role to conserve historical buildings and areas. Except for the Institution of Touring and Automobile of Turkey (Türkiye Turing ve Otomobil Kurumu), voluntary organizations can not spend their money on restoration, maintenance and upkeep of historic buildings directly because of their insufficient budgets. They generally arrange seminars, conferences about conservation to spread the conservation consciousness and to increase demand for conservation.

The Society for the Conservation of Historic Building of Turkey (Türkiye Tarihi Evleri Koruma Derneği), and a few local organizations, such as the Society for the Conservation of Historic buildings of Safranbolu, the Society for Beautify

Historic Buildings of Beyoğlu are other examples of voluntary organizations, in Turkey.

### **The Institution of Touring and Automobile of Turkey (TOURING)**

The Institution of Touring and Automobile of Turkey (Türkiye Turing ve Otomobil Kurumu) is the most common example of voluntary organizations in Turkey. The Touring was established by a few intellectuals under the leadership of Reşit Saffet Atabinen, in 1923.

Initially, it worked as a department of government to make Turkey famous. For this aim, the first tourist poster, the first tourist guideline, the first highway map of Turkey were prepared by the Touring. Moreover it open the first languages courses and arranged conferences, seminars to introduce cultural and natural values of Turkey to the world.

Main activities of the Institution of Touring and Automobile of Turkey can be categorized into two sub-titles:

#### **The Activities of Touring for Conserving Historical Values of Turkey:**

After the historical buildings are restored or maintained by the Institution of Touring and Automobile of Turkey, the Touring decorates them as a tourist establishment such as hotels, cafe, restaurant, and operates them. These buildings are either purchased or rented for a long time by the Institution. However, there are several examples that the historical buildings were restored by the Touring as donations.

The Touring also maintains the historical cemeteries. Furthermore, the Institution helps museums for their needs.

### The Other Activities of Touring:

- Maintaining the doors of customs of Turkey and managing them as a tourist establishment.
- Preparing a passport for automobiles for both enter Turkey and leave from Turkey. The main income of the Touring is obtained from this procedure.
- Building establishments of tourism and operating them such as the Koru Hotel in Bolu.
- Arranging conferences, seminar about tourism and historical and natural heritage of Turkey.
- Publishing books about tourism, historical and natural values of Turkey.
- The Touring has a library contains more than 10.000 books about traveling, tourism and history of Turkey.
- Maintaining parks and managing them.

The income and expenditure of the Touring is given in Table 2.

**TABLE 2 THE INCOME AND EXPENDITURE OF TOURING<sup>14</sup>**

	<b>INCOME (TL)</b>	<b>EXPENDITURE (TL)</b>
<b>1970</b>	2.891.811.85 TL	2.173.750.28
<b>1975</b>	39.988.343.78	17.630.280.62
<b>1980</b>	585.446.616.37	213.438.678.24
<b>1983</b>	1.652.966.783.10	551.580.035.38
<b>1984</b>	131.016.032.34	617.852.862.34
<b>1985</b>	68.765.350.35	452.738.528.58
<b>1986</b>	136.005.497.73	790.128.678.39
<b>1987</b>	164.386.170.97	581.143.287.88

Actually, the Touring which is the most affective voluntary organizations of Turkey, has not worked in conservation area since 27 March 1994, the time that local elections were done.

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<sup>14</sup> Turing, Published by The Institution of Touring and Automobile of Turkey, 1989, p.19.

## 2.1.4 GRANTS AND LOANS OF CENTRAL GOVERNMENT, LOCAL AUTHORITIES, AND VOLUNTARY ORGANIZATIONS

According to informations obtained from the Directorate General of Conservation of Immovable Cultural and Natural Property, 44.921 buildings and values were registered in Turkey, until 1995. They are given in terms of their functions as follows:

Historical buildings owned by privately:	30.084
Religious buildings:	5009
Cultural buildings:	4754
Administrative buildings:	632
Military buildings:	561
Industrial buildings:	382
Cemeteries:	1582
Martyrdoms:	179
Monuments:	155
Natural values:	907
Archeological ruins:	676

Additionally, 2768 archeological site areas, 310 natural site areas, 116 urban site areas and 51 historical site areas were determined until 1995.

### 2.1.4.1 GRANTS AND LOANS OF CENTRAL GOVERNMENT

According to the Conservation Act Number 2863, the Ministry of Culture and other public institutions who own immovable cultural and natural property are responsible for their preservation. Furthermore, they have to allocate some allowances for this aim in their budgets. However, these allowances generally are insufficient.

The Ministry of Culture is the main governmental organizations making grants and loans for conservation of historical buildings. However, the Institution of Collective Residence (Toplu Konut İdaresi) has been preparing a regulation to make loans for upgrading of historical buildings and their surroundings.

The other financial aid to the owners of the registered houses is property tax reduction. The owners of the registered houses can pay only 10% of the property tax for their houses.

#### 2.1.4.1.1 THE MINISTRY OF CULTURE AND THE CONTRIBUTION FUND FOR THE REPAIR OF IMMOVABLE CULTURAL PROPERTY TO BE CONSERVED OWNED BY INDIVIDUALS OR CORPORATE BODIES

As regards the Article (12) of the Conservation Act the Ministry of Culture provides financial and technical assistance and credits for the preservation, maintenance and repair of cultural and natural property to be conserved in private and public ownership.

For this purpose the “Contribution Fund for the Repair of Immovable Cultural Property to be Conserved Owned by Individuals or Corporate Bodies” was established by regulation. Although this regulation was prepared by the Ministry of Culture in 1979, it came into force in 1987.

The Fund is provided with allowances from the State Budget each year and interest from credits distributed from this Fund.

The Central Aid Council of the Fund determines maximum and minimum limits of credits and unreturned aids. Only up to 70% of estimated cost is given to owners of historical buildings. Loans are made for a period of 10 years and interest for loans is 25%.

After the Council makes a decision to give a credit or unreturned aid to an owner, the Development Bank (Kalkınma Bankası) determines the value of mortgage.

From 1987 to 1994, approximately 40 historic buildings restored by taking loans. Before 1990, the politics of the Ministry was to give little credits to a lot of owners, but after that time this politics has been changed to give more loans to less owners.

#### 2.1.4.1.2 THE INSTITUTION OF COLLECTIVE RESIDENCE AND REGULATIONS OF LOANS FOR UPGRADING OF HISTORICAL BUILDINGS AND THEIR SURROUNDINGS

The regulation of Loans for Upgrading of Historical Buildings and Their Surroundings has been prepared by the Institution of Collective Residence in 1994. It will be come into force after certain changes will be done in the Act of the Institution.

The aim of the regulation is to manage to conserve historical buildings with their surroundings and to use them as residence by making loans.

Loans are given to municipalities which have urban development plans for conservation and owners of historical buildings only if they give an authority for conducting procedures to municipality.

There are three kinds of loans for each area: Loans for conservation of texture of the area, loans for restoration of historic buildings in the area, and loans for infrastructure of the area.

The Institution will determine Technical Adviser Firms for each project, among the firms which the Ministry of Culture will give certificate to show their applicability. Then a municipality will chose one of them. The firm will prepare

application projects and plans of urban conservation area, files of adjunction. Additionally, the firm will control applications.

The loans of the Institution of Collective Residence for municipalities to upgrade urban site areas and infrastructure will be equal to prices of adjunction. The loans will be repaid with in the period of 10 years and the National Bank for Reconstruction and Development will designate the way of repaid.

The loans of the Institution to owners for restoration and maintenance of historical buildings will not be more than 70% of estimated cost. After three months from the concerned Regional Councils will approve the restoration projects, owners of historical buildings will start to repaid loans which will be repaid within the period of 15 years.

#### 2.1.4.2 GRANTS AND LOANS OF LOCAL AUTHORITIES AND VOLUNTARY ORGANIZATIONS FOR URBAN CONSERVATION

Local authorities do not make grants and loans for repair of historical buildings, in Turkey. Actually, most of them have not enough budget for preparing their urban development plan for conservation even.

Except for the Institution of Touring and Automobile of Turkey, no voluntary organization and foundation that pays its fund for direct conservation of historic buildings which are privately owned. They generally arrange cultural activities, seminars, and conferences to spread conservation consciousness.

## 2.2 THE CONSERVATION POLICIES OF HISTORIC BUILDINGS AND AREAS IN ENGLAND

### 2.2.1 THE EVOLUTION OF CONSERVATION CONCEPT FOR CULTURAL VALUES IN ENGLAND

In England, certain laws have been made to conserve historic buildings since 1882. (Table 3)

During the medieval period, there is no evidence of any interest in the preservation of earlier buildings for their own sakes. Houses were altered, enlarged or rebuilt in their style of their day to suit the needs of their occupants. However with the Renaissance a sound buildings would be retained and altered as necessary.<sup>15</sup>

In the beginning of nineteenth century, a desire to preserve old buildings for their historical meanings rather than economic meanings started to spread. Nevertheless, at that time, old buildings were conserved only if they conformed to the current idea of beauty or piety of antiquity.

The first Ancient Monument Act was passed under a Liberal Government in 1882. This Act gave protection to certain “Scheduled” Ancient Monuments.

After the first World War, the Town and Country Planning Act 1932 was passed. It is one of important laws about conservation because it allowed local authorities to make ‘a preservation order’ in respect of any building in their area which was of ‘special architectural or historic interest’. In addition, there was a provision for compensation to any person whose ‘legal rights in respect of’ the relevant property were ‘infringed or curtailed’ by the Preservation Order.

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<sup>15</sup> CUNNINGTON, Pamela. How Old Is Your House? , Published by Alphabooks, Sherborne, Dorset, England, 1980, p.219.



Preservation Orders could also be placed on trees, groups of trees, and areas of woodland. <sup>16</sup>

The decades between the World War I and the World War II a considerable development in voluntary activity was seen.

The 1944 Town and Country Planning Act was the basis of 1947 Act which is the foundation of present land use planning system. In the 1944 Act, Parliament empowered the Minister of Town and Country Planning to prepare list of buildings of special historic and architectural interest. The 1947 Act consolidated and improved the local authorities power to preserve listed buildings whether or not the owners wished them preserved.

The last act about buildings and areas of special architectural or historic interest is the Planning (Listed Building and Conservation Areas) Act 1990, which consolidates certain enactments relating to such buildings and areas.

**TABLE 3 BRITISH CONSERVATION AND PLANNING LEGISLATION<sup>17</sup>**

<b>DATE</b>	<b>LEGISLATION</b>	<b>CIRCULARS, ETC.</b>	<b>PRINCIPAL CONTENTS</b>
1882	Ancient Monuments Protection Act		Prehistoric monuments, First legislation: preceded by various Commons Bills sponsored by Sir John Lubbock: defeated as they 'involved unjust interference with private property'.
1900	Ancient Monuments Protection Act		Extended consideration to medieval buildings.
1907	National Trust Act		
1913	Ancient Monuments Consolidation and Amendment Act		Provided for Lists of buildings whose preservation was considered. Owners of such

<sup>16</sup> KENNET, Wayland. Preservation, By Maurince Temple Smith Ltd., London, 1972, p.p.39

<sup>17</sup> The Character of Conservation Areas, Royal Town Planning Institute Planning Policy Commissioned Study, Reported by plan Local to the Royal Town Planning Institute, Oct. 1992, p.p.127-137.

*TABLE 3 (continued)*

1913			buildings must apply for permission to alter or demolish.
1923	Housing Act		Town Planning Schemes could be prepared for built-up sites 'on account of the special architectural, historic or artistic interest attaching to a locality'.
1931	Ancient Monuments Act		Local Authority preservation schemes for monuments and surrounding areas permitted.
1932	Town & Country Planning Act		Preservation schemes for buildings and groups of buildings other than ancient monuments. Building Preservation Orders.
1933		Circular 1305, Ministry of Health	Re-iterates Circular 940.
1936	Housing Act		Desirability of preserving existing works of architectural or historic interest.
1937	Bath Corporation Act		To facilitate preservation of city's character.
1939	National Trust Act		
1944	Town & Country Planning Act		Foreshadowed 1947 planning system.
1947	Town & Country Planning Act		Set up current planning system.
1953	Historic Buildings and Ancient Monuments Act		Grants to repair and maintain buildings and contents. Powers to acquire.
1957	Housing Act		Part V: Sections 9 and 9(1A): Repair notices.
1958	Housing (Financial Provisions) Act		Local Authority grants for improvement of older houses.
1961	Public Health Act		Section 27- notices to owners of 'ruinous or dilapidated' property to repair or demolish.
1962	Town & Country Planning Act		
	Local Authorities (Historic Buildings) Act		Grant aid possible from Local Authorities for repairs and maintenance.
		MoHLG, Planning Bulletin No 1	Mentions preservation of qualities of town centers.
1963	Town & Country Planning General		Article 5 Directions

**TABLE 3 (continued)**

1963	Development Order	MoHLG, Circular 51/63  MoHLG, Planning Bulletin No 4 MoHLG, Circular 28/66, Development near buildings of special architectural or historic interest	Publicity for certain developments  Recommends Local Authorities to seek expert advice from architects before refusing schemes on architectural grounds.
1967	Civic Amenities Act	53/67 Civic Amenities Act 1967- Parts I and II	Conservation Areas introduced. Grants and loans for repair and maintenance of listed and unlisted historic buildings: grant aid to local preservation societies.
1968	Town & Country Planning Act  Housing (Financial Provisions) (Scotland) Act	61/68 Town & Country Planning Act 1968- Part V Historic Buildings and Conservation	Listed Building Consent applications introduced. Conservation Area Advisory Committees should be introduced.  Extends to Scotland the provisions of the Housing (Financial Provisions) Act 1958, covering Legal Authority grants for the improvement of older houses.
1969	Housing Act  Development of Tourism Act	Development Control Policy Note 1969/7: Preservation of Historic Buildings and Areas	General Improvement Areas introduced: grants for environmental improvements in GIAs.  Section 4 provides for grant aid for conversions of old buildings to new uses: administered by English Tourist Board.  Advise note.
1971	Town & Country Planning Act		Section 277 is slight revision of 1967 Act. Section 58 introduces Building Preservation Notices.

**TABLE 3 (continued)**

1971		56/71 Historic Towns and Roads	Section 114 provides for the acquisition of derelict Listed Buildings.  New road development should respect historic towns.
1972	Town & Country Planning (Amendment) Act	86/72 Town & Country Planning (Amendment) Act 1972- Conservation	Section 8: demolition control over unlisted buildings may be extended to cover entire Conservation Areas. Section 10 permits grants to be made for preservation or enhancement in 'outstanding' Conservation Areas.
	Local Government Act		Care for the conservation of existing communities: professional advice for conservation : European Architectural Heritage Year Grants.
1973	46/73 Conservation and Preservation: Local Government Act 1972	Building Societies Association: joint memorandum of agreement with government	Mortgage application by purchasers of new buildings given priority second only to first-time buyers.
1974		(Local Government Reorganization) 102/74 Town & Country Planning Act 1971- Historic Buildings and Conservation	Criteria for Listing Buildings: warning against excessive restoration; overlap between listing of Historic Buildings and Scheduling of Ancient Monuments.
	Town & Country Amenities Act	147/74 Town & Country Amenities Act 1974	Blanket control of demolition in all Conservation Areas; duty of Local Authorities to publish proposals for preservation and enhancement in Conservation Areas; publicity for applications affecting Listed Buildings and their settings; failure of Local Authorities to set up CAACs noted. Pressure to designate.

**TABLE 3 (continued)**

1974	Housing Act	<p>further Conservation Areas.</p> <p>Housing Action Areas introduced, with 75% grants (90% in hardship cases). Local Authorities have new compulsory purchase powers.</p> <p>Grants for GIAs introduced at 65% (75%). Improvement Intermediate, Special and Repair Grants at 50% (65%) introduced.</p>
1975	<p>14/75 Housing Act 1974: Parts IV, V, VI: Housing action Areas, Priority Neighborhoods and General Improvement Areas</p> <p>17/75 Town &amp; Country Amenities Act 1974</p>	
1976	<p>Architectural Heritage Fund established</p> <p>7/77 Town &amp; Country Planning Act 1971: Developments by Government Departments</p> <p>23/77 Historic Buildings and Conservation Areas- Policy and Procedure</p> <p>26/27 Compulsory Purchase Orders- Procedures</p> <p>1977 General Development Order</p>	<p>£1 000 000 revolving fund, administered by Civic Trust.</p> <p>Crown buildings and Listing.</p> <p>Consolidation of all earlier circulars. Various factual appendices.</p> <p>Limits work required under Section 115 of the 1971 Act (Repairs Notices).</p> <p>Permitted Development defined. Article 4 deals with cases where this may be controlled in</p>

**TABLE 3 (continued)**

1976	<p>HM Customs &amp; Excise Note 175: Construction Industry: Alteration and Repairs and Maintenance.</p> <p>Town &amp; Country Planning (Listed Buildings &amp; Buildings in Conservation Areas) Regulations, 1977</p>	<p>Conservation Areas if an Order made.</p> <p>VAT at current rate (15%) levied on all repairs and maintenance, not on new construction.</p> <p>Details Listed Building Consent system.</p>
1978	Inner Urban Areas Act	Section 5 and 6: loans/grants in specific areas for improvement of amenities.
	Town & Country Planning (Listed Buildings in Conservation Areas) Regulations	Listed Building Consent to be sought from Local Authority. For their own buildings, Local Authorities must apply to Secretary of State. Appeals may be made to the Secretary of State re demolition control of unlisted buildings in Conservation Areas.
1979	Ancient Monuments and Archaeological Areas Act	Section 48 inserts into the 1972 Act provision for recovering grant monies if property sold within a given period, or if terms of grant not completed with.
1980	National Heritage Act	Section 3: the National Heritage Fund may make grants or loans for the acquisition, maintenance or preservation of buildings, objects etc. of particular interest.
	Housing Act	Improvement Grants (of 1974 Act). Higher eligible expense limits with HAAs.
	Local Government Planning and Land	Adds Section 54A to 1971 Act: application may be made to the Secretary of State to say that a

**TABLE 3 (continued)**

1980	<p data-bbox="654 663 829 751">21/80: The improvement of older housing</p> <p data-bbox="654 789 868 871">22/80 Development Control: Policy and Practice</p>	<p data-bbox="911 352 1268 632">building will not be Listed for 5 years. All consents limited to 5 years or other specified period. Listing criteria extended. 'Outstanding' Conservation Area designation previously necessary for Section 10 Grants withdrawn. Areas of Special Advertising control.</p> <p data-bbox="911 663 1253 695">House renovation Grant system.</p> <p data-bbox="911 789 1268 871">Aesthetic control of development: alternative uses for historic buildings.</p>
1981	<p data-bbox="654 877 858 1157">12/81 Historic Buildings and Conservation Area Town &amp; Country Planning (Enforcement Notices and Appeals) Regulations</p> <p data-bbox="654 1188 839 1335">Town &amp; Country Planning (Enforcement (Inquiries Procedure) Rules</p> <p data-bbox="654 1367 872 1577">Town &amp; Country Planning (National Parks, Areas of Outstanding Natural &amp; Conservation Areas) Special Development Order</p> <p data-bbox="362 1619 572 1703">Local Government, Planning and Land (Amendment) Act</p>	<p data-bbox="911 877 1182 909">Explanation of 1980 Act.</p> <p data-bbox="911 1188 1239 1272">Enforcement notices to require alleviation of unauthorized work: procedure and appeals.</p> <p data-bbox="911 1367 1258 1556">These two measures relax Permitted Development outside Conservation areas, and in those areas designated post- April 1981: within pre- April 1981 areas control remains strict.</p> <p data-bbox="911 1619 1253 1766">Enforcement procedure for unauthorized works. Removal of some (dormant) powers of Secretary of State regarding Conservation Areas.</p>
1983	National Heritage Act	Set up Historic Buildings and Monuments Commission for

**TABLE 3 (continued)**

1983		England: which may make grants for the preservation of historic buildings, may acquire them, or may give grants to Local Authorities or National Trust for acquisition.
1984	Finance Act (budget)	Levied 15% VAT on new construction, passed in commons 19/3/84. Listed Buildings and churches exempted by Amendment, May 1984.
1986	Housing and Planning Act	Section 40 and Schedule 9 Part I amend legislation on Listed Buildings and Conservation Areas.
	8/87 Historic Buildings and Conservation Areas-Policy and Procedures	Explains provisions of 1986 Act and consolidates all extent advise, replacing 23/77
	Town & Country Planning (Listed Buildings and Buildings in Conservation Areas) Regulations	Updating of regulations. Minor changes.
	Town & Country Planning Act 1971: Current Working of Provisions relating to Historic Buildings & Conservation Areas	HMSO publication consolidating various amendments of 1971 Act.
1990	Town & Country Planning Act	Supersedes most of the 1971 Act.
	Planning (Listed Buildings and Conservation Areas) Act	Supersedes previous legislation. Incorporates rest of 1971 Act, and parts of other Acts including 1974 Town & Country Amenities Act.



Table 3 gives us certain clues to understand conservation policies of England as follows:

Cultural values of England have been conserved by the government-society partnership since conservation studies started. Possibly, in the beginning, the society made pressure on a government to take measure for conserving historical buildings. The passed time of the first act related to conservation and the established time of the first voluntary organization, which was aimed conservation of cultural heritage, can support this statement. While the first voluntary organization, namely the Society for Protection Ancient Buildings, was set up in 1877, the Ancient Act came into force in 1882. Thus, it can be said that historical values of England have been conserved by the efforts of the society.

The English Governments have attached importance to the concept of private property since 1882. They have given technical and financial aids to owners, who have been restricted to conserve historical buildings, since 1932. Additionally, the governments have made grants local authorities for improvement of older houses since 1958, and have given grant aids to local preservation societies since 1967.

## **2.2.2 THE CURRENT CONSERVATION LEGISLATION IN ENGLAND**

The basic planning system for preserving historical buildings, landmarks and conservation areas in England is described in this part.

The main pieces of planning legislation about buildings of special architectural or historic interest and conservation areas are as follows:

- Town and Country Planning Act 1990
- The Planning ( Listed Buildings and Conservation Areas ) Act 1990,
- The Planning ( Listed Buildings and Conservation Areas ) Regulations 1990

- The Town and Country Planning General Development Order 1988
- The Town and Country Planning (Control of Advertisements) Regulation 1989
- Department of Environment Circular 18/84
- Department of Environment Circular 8/87
- Ancient Monuments and Archaeological Areas Act 1979.
- Planning Policy Guidance Notes

While the Acts and Orders set out the framework of the planning system, the Circulars and Guidance Notes, which are very detailed, explain current policies on development proposals.

### **The Planning (Listed Buildings And Conservation Areas) Act 1990**

The current and last conservation act of England came into force on 24 May 1990 to organize the legislative framework of the planning system about the conservation of the special architectural or historic interest.

This act gives the responsibility and authority for conserving built heritage to the Secretary of State for the National Heritage, certain national agencies, i.e. the English Heritage, the Royal Commission on the Historical Monuments and local authorities.

According to the act, the responsibility for listing buildings rest with the Secretary of State. Additionally, the Secretary of State has the power to approve, with or without modifications such lists compiled by local authorities, by the English Heritage or by individuals or special interest groups.

Local planning authorities can also use the listing process to stop the demolition or alteration of a building. In that case, the authority can serve “*building preservation notice*” on owners and occupiers of buildings, and request the Secretary of State to consider including the building in a list. The building

preservation notice remains in force for a maximum of six months, or until the Secretary of State issues his decision if that is sooner. Moreover, if it appears to the local planning authorities to be urgent that a building preservation notice should come into force, they may, instead of serving the notice on the owner and occupier of the buildings, affix the notice conspicuously to some object on the building.

After a building has been listed, the local planning authority is able to exert more control over development of the land or building. One of them is called "**listed building consent**", which must be obtained from the local planning authority. Listed building consent is required for altering, extending or demolishing to a listed building that would affect its character. "*The local planning authority or, as the case may be the Secretary of State may grant or refuse an application for listed building consent and, if they grant, may grant it subject to conditions*".<sup>18</sup>

Another power that local planning authority have is called "**listed building enforcement notices**". If an owner ignore the need to obtain listed building consent or overlook a condition of consent, the local planning authority can issue a listed building enforcement notice, which requires the building to be restored to its former state.

In conservation areas, local planning authority has similar powers to control development. The planning regulations are much stricter in conservation areas. In addition to the normal requirements to obtain planning permission for works to buildings and changes of use, there are additional controls. In conservation areas, while some types of development require planning permission, some of them are permitted.

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<sup>18</sup> Planning (Listed Building and Conservation Areas) Act 1990, Published by HMSO, London, 1990, p. 11.

In order to demolish a building in conservation area “*conservation area consent*” must be obtained from a local planning authority. If an owner does not obtain conservation area consent to demolish his building, a local planning authority may issue a “conservation area enforcement notice” when unauthorized demolition takes place.

The English Conservation Act also consists certain sections which show way to the owners of listed buildings for objecting to decisions of a local planning authorities. For instance, if an owner of a listed building applies for listed building consent for the alteration or extension of it, and an authority refuses such consent or grants it subject to conditions, the owner can want compensation for his losses, or he can serve a “*listed building purchase notice*” on local planning authority.

In the act, offences for unauthorized works which affect the character of a listed building are determined. If anyone demolishes, alters or extends a listed building without obtaining listed building consent, he is guilty of an offence and the penalty can be a fine of unlimited amount or up to twelve months imprisonment, or both.

Detailed information about the current conservation act can be found in Appendix B.

### **Circular 8/87 Of Department Of Environment**

Circular 8/87 clarifies the policies and procedures concerning listed buildings and conservation areas in England under the guidance of the Town and Country Planning Act 1971. The main principles to select historical buildings for the list and the ways to grade them are explained in the circular.

### How The Buildings Are Chosen

The principals of selection for the list were drawn up by the Historic Buildings and Monuments Commission, the English Heritage, and the Commission cover five groups:

- All buildings built before 1700 which survive in anything like their original condition are listed.
- Most buildings of 1700 to 1840 are listed, however some selection is necessary.
- Between 1840 and 1914 only buildings of definite quality and character are listed, and the selection is designed to include the principal works of the important architects.
- Between 1914 and 1939, selected buildings of high quality are listed. There are three building styles for this period: modern, classical and others.
- After 1939, a few outstanding buildings are listed

When buildings are being considered for listing special attention is paid to:

- Special value within certain types, either for architectural or planning reasons or as illustrating social and economic history (for instance, industrial buildings, railway stations, schools, hospitals, theaters, town halls, markets, exchanges, almshouses, prisons, lock-ups, mills).
- Technological innovation or virtuosity. For example, the use of cast iron, prefabrication, or the early use of concrete.
- Association with well-known characters or events.
- Group value, especially as examples of town planning such as, squares, terraces or model villages.

## Grading

The buildings are classified in grades to show their relative importance as follows:

**Grade I Buildings :** These are buildings of exceptional interest (only about 2 per cent of listed buildings so far are in this grade).

**Grade II\* Buildings:** These are particularly important buildings of more than special interest (some 4 per cent of listed buildings).

**Grade II Buildings:** These are buildings of special interest, which warrant every effort being made to preserve them

### **2.2.3 ORGANIZATIONS CONCERNED WITH CONSERVATION OF HISTORIC BUILDINGS AND AREAS IN ENGLAND**

The Department of Environment and the Department of National Heritage are two principal Government's departments concerned with conservation of the natural environment and built heritage. In addition, some national agencies have been set up to perform many of the government functions. Some of these agencies are English Heritage, the Royal Commission on the Historical Monuments, English Nature, the Countryside Commission and the Rural Development Commission.

All local authorities are responsible for the conservation of the natural environment and built heritage.

Voluntary organizations also play a vital role in conservation. While some of them look after Britain's built heritage, others conserve the natural environment. The National Trust, the Civic Trust, the Society for the Protection of Ancient Buildings, Ancient Monuments Society, Save Britain's Heritage are some of important voluntary organizations concerned with built heritage. Council for the Protection of Rural England, Farming and Wildlife Advisory Group, Open

Space Society, Royal Society for Nature Conservation are several voluntary organizations interested in conservation of the natural environment.

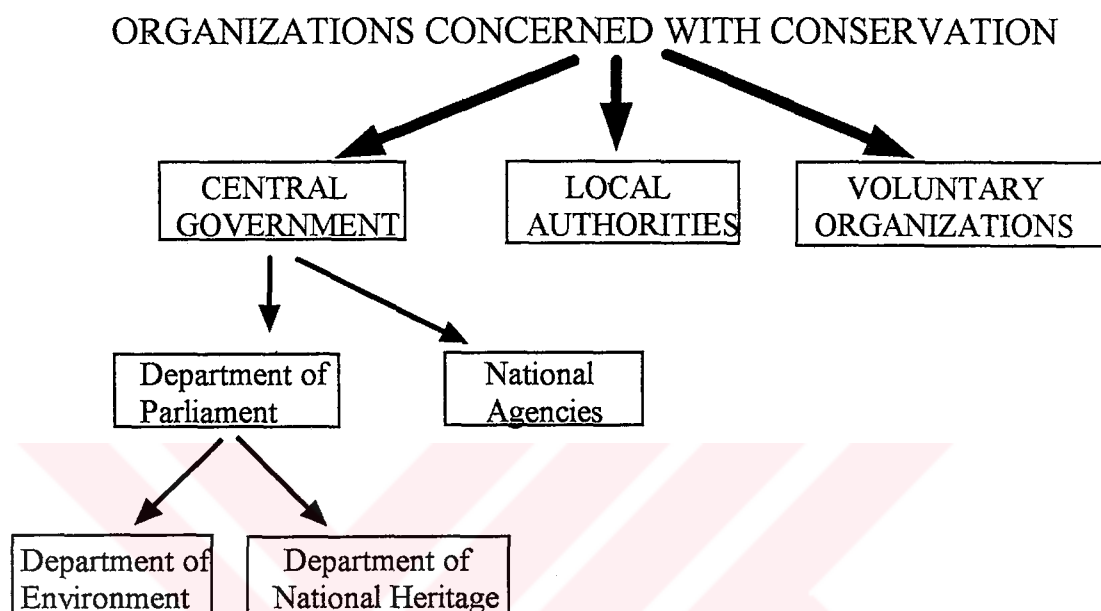


Figure 2.3. Organizations Concerned with Conservation in England

### 2.2.3.1 CENTRAL GOVERNMENT

Until 1992, when the Department of National Heritage was set up as a new government department, the Department of Environment was the unique government department responsible for conservation of natural values and built heritage. The responsibility of the Department of Environment on the conservation of built heritage was transferred to the Department of National Heritage at that time. (Figure.2.4)

#### 2.2.3.1.1 THE DEPARTMENT OF ENVIRONMENT

The aim of the Department of Environment is to protect natural values. The main responsibilities of the department are:

- administration of land use planning;
- administration of countryside and nature conservation policies;
- control of pollution;
- designation of areas of special conservation interest<sup>19</sup>

The English Nature, the Countryside Commission and The Rural Development Commission are the main natural conservation agencies which perform some functions of the Department of Environment.

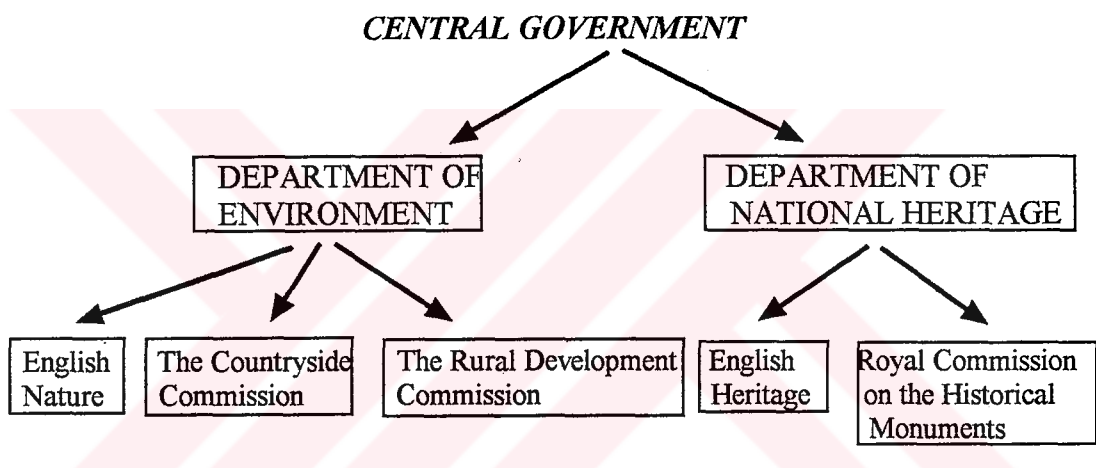


Figure 2.4. Central Government Organizations Concerned with Conservation in England

#### 2.2.3.1.2 THE DEPARTMENT OF NATIONAL HERITAGE

“Preserve the past, shape the future” is the best sentence which summarizes the main aim of the Department of National Heritage.

The department is charged with:

- preserving ancient sites, monuments and historic buildings and increasing their accessibility for study and enjoyment, both now and in the future;

<sup>19</sup> Conservation, Published by HMSO, London, 1993, p.p.2-3.



- listing buildings of special architectural or historic interest;
- scheduling ancient monuments to protect them from demolition or alteration and making decision on scheduled monument consent;
- upkeeping historical monuments, some of which are owned by the department for this aim;
- maintenance of the royal parks, which are open to public, and royal palaces;
- the protection of historic wrecks off the coast of England.

The Department of National Heritage works with the English Heritage and the Royal Commission on the Historical Monuments of England which are national agencies concerned with built heritage.

The department provides strategic leadership and guidance on government's objectives and priorities. It spend main part of its budget, approximately £1 billion each year, on different sectors for accomplishing its role. (Figure 2.5.)

#### ***2.2.3.1.3 NATIONAL AGENCIES CONCERNED WITH BUILT HERITAGE***

There are two main national agencies concerned with built heritage: English Heritage and Royal Commission on the Historical Monuments of England.

#### **The Historic Buildings and Monuments Commission for England, English Heritage**

The Historic Buildings and Monuments Commission for England, commonly known as English Heritage, was established under the National Heritage Act 1983. It is the largest independent organization with statutory responsible for heritage conservation in the country. It is the government's official adviser on conservation legislation concerning the historical environment.

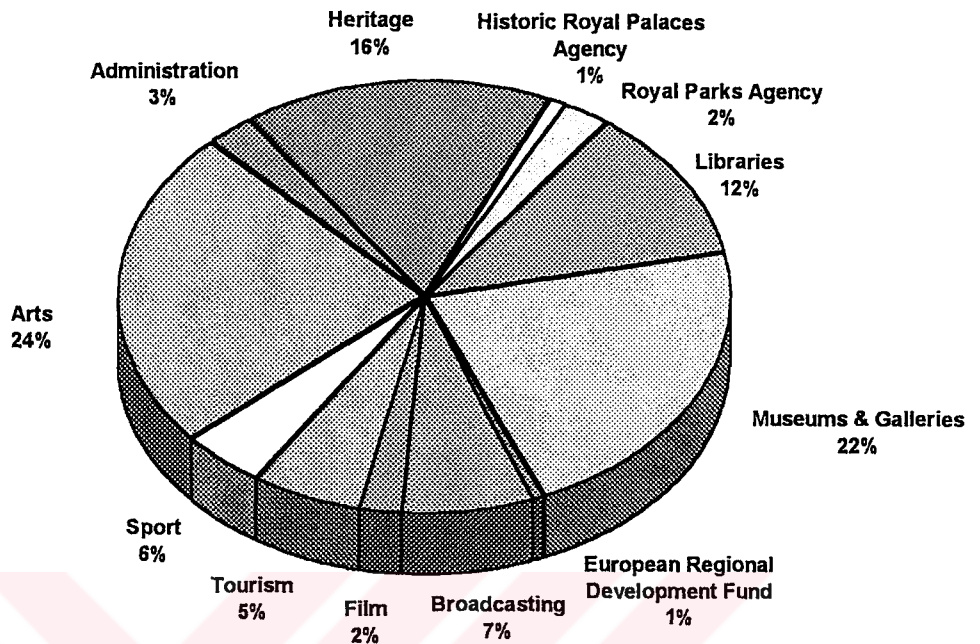


Figure 2.5. The Department of Natural Heritage Expenditure by Sector, 93-94<sup>20</sup>

The main works of English Heritage are as follows:

- It gives advise the Secretary of State for the Environment and for National Heritage on their respective heritage casework.
- It compiles lists of buildings to suggest the Secretary of State that it appears to English Heritage these buildings are of special architectural or historic interest and they must be conserved.
- It gives advise local planning authorities about applications for listed building consents to demolish or alter listed buildings.
- It is responsible for the preservation, management and presentation of 404 of the country's most important historic buildings and ancient monuments. About 350 of them are open to public.

<sup>20</sup> Preserving The Past, Shaping The Future, Published by Department of National Heritage, July 1994, p.15.

- It gives grants for the repair of ancient monuments, historic buildings and buildings in conservation areas.
- It provides owners of listed buildings and ancient monuments technical and professional advice based on experience and research.

English Heritage describes the value of their heritage like this: *“To understand our past helps us to come to terms with the present and provides the foundations for the future. Our heritage plays an important educational role, but, even more importantly, a vital social role. It also plays an important role in the economy. Tourism is a major producer of invisible earnings for the country. It is our stately homes and historic monuments, our battlefields and fortresses, our landscapes which draw visitors to our shores and money into our economy.”*<sup>21</sup>

Because of its point of view, that is, the heritage has an economic role, it opens most of its historic properties to the public. The charges of them range from 70 pence to £5.40 and during 1992/93, nearly 5 million people visited these historic sites, this number is 45 million for last ten years. It has also shops and restaurants in historic sites.

English Heritage also organizes a large number of special events every year at the historic sites under its control to bring history to life. These vary from concerts and plays to recreations of historic events. They were started in 1985 and since that time about 12.5 million people attended these special events.

It produce a wide range of publications including guide books to its properties, educational publications for teachers, leaflets on grant schemes, advise leaflets on practical conservation techniques, academic and specialist books, an annual report and accounts, general interest history books and tourist guides, a popular interest magazine for its members.

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<sup>21</sup> Managing England's Heritage Setting Our Priorities for The 1990's, English Heritage, October 1992, p.2.

English Heritage is mainly sponsored by the Department of National Heritage. Its expenditure for 1992/93 was £115.7 million of which £101.9 million (87%) was funded from central government. £14.6 million (13%) was obtained from its trading and other activities. It has about 320,000 members. Subscription rates are £17.50 for individual membership.(Figure 2.6.)

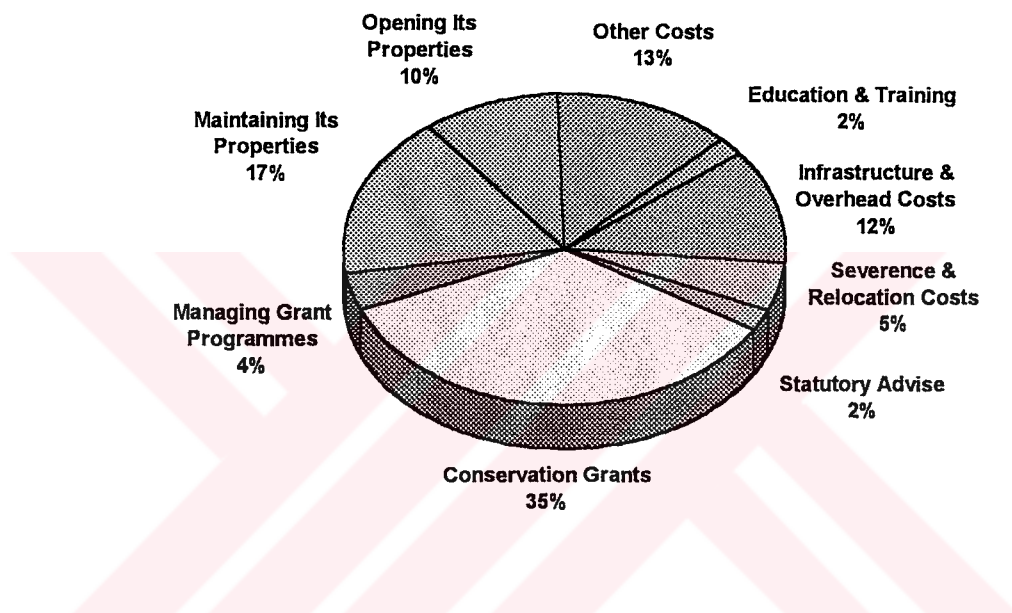


Figure 2.6. English Heritage's Expenditure in 1992/93.<sup>22</sup>

### Royal Commission on the Historical Monuments of England

The Royal Commission on the Historical Monuments of England (RCHME) was established in 1908 to prepare documents of all old buildings and structures in England. The RCHME is primarily concerned with buildings pre-dating 1714. Its most fundamental activity is compiling and maintaining the National Monuments Record which is a public archive recording the architecture

<sup>22</sup> A Guide to The Work of English Heritage, Published By English Heritage , London, 1994.

and archaeology of England. After owners of listed buildings get consent for their demolition or part-demolition, the RCHME has one month to record them.

The RCHME is funded by the Government.

#### 2.2.3.2 LOCAL AUTHORITIES

All local authorities are responsible for conservation of historic buildings and areas of special architectural or historic interest under the current act, the Planning (Listed Buildings and Conservation Areas) Act 1990.

The main duties of local authorities are as follows:

- If it appears to a local authority an unlisted building is under threat and it is a special architectural or historic interest, the authority serves “*building preservation notice*” to recommend the Secretary of State to include the building in a list.
- If a local authority considers that serving building preservation notice will take a long time and an unlisted building needs an urgent preservation, the authority has the power for temporary listing.
- After a building has been listed, an owner of a listed building has to obtained “*listed building consent*” from a local authority to demolish or alter the building. The local authority has the power both grant a listed building consent and grant it subject to conditions. The authority may also revoke or modify listed building consent.
- If an owner of listed building ignores to obtain listed building consent or he does not attach importance to conditions on consent, the local authority can issue a “*listed building enforcement notice*”.
- If the Secretary of State considers that a listed building can not be preserved by its owner, it may authorize a local authority to acquire compulsorily the building.

- If it appears the a local authority, a listed buildings need urgent preservation, the authority can bear its cost and then it can want the expenses of works from the owner.
- A local authority also is responsible for determining a borders of conservation areas.
- Any owner in conservation areas have to obtain “*conservation area consent*” from the local authority to demolish his building.
- A local authority has the power to serve “*conservation area enforcement notice*”, if an owner is not obtained conservation area consent.
- Local authorities may make grants or loans toward the cost of repairs or maintenance to building of special architectural or historic interest, whether or not they are listed.

### 2.2.3.3 VOLUNTARY ORGANIZATIONS

There are more than 100 voluntary organizations in England to preserve built heritage. While some of them are interested in only special buildings such as palaces, churches, cathedrals, Grade I and Grade II\* buildings, a majority of them are concerned with historic buildings without separating. Each voluntary organizations has different aim, for instance some of them run courses, seminars to train housing staff; some of them fund the cost of repair restoration and maintenance; some only give advise to the owners, architectures and local conservation bodies.

#### **The National Trust**

The National Trust for Places and Historic Interest or Natural Beauty, which was founded in 1895, is the largest voluntary group working for conservation in UK. The Trust owns and protects areas of landscape and historic buildings. Although it is an independent charity, the Government helps the Trust by giving grants in the same way as other owners of historic buildings.

Although the National Trust was not set up originally to protect historical buildings, it has aimed to preserve historic buildings and natural environment and to present them to the public since 1940s. In order to achieve this aim, the Trust owns such interests. It is an owner of about 230.000 hectares countryside. Its properties include 160 gardens, 59 villages, woodlands and nature reserves. It has protected approximately 853 km of coast since 1965.<sup>23</sup>

The Trust spent approximately £76 million on its properties in 1992, and its income for the same year was £84 million. It obtains its income from various sources. Some of its come from membership fees and donations. It has 2.186.384 members in 1994. *“297 properties of the Trust is open to public at a charge, including 89 large country houses, 43 houses associated with famous people, 24 castles and 159 gardens”*.<sup>24</sup> It uses some of its properties as shops. In addition, some of its properties are rented. The Trust runs more than 1000 outdoor and indoor public events each year.

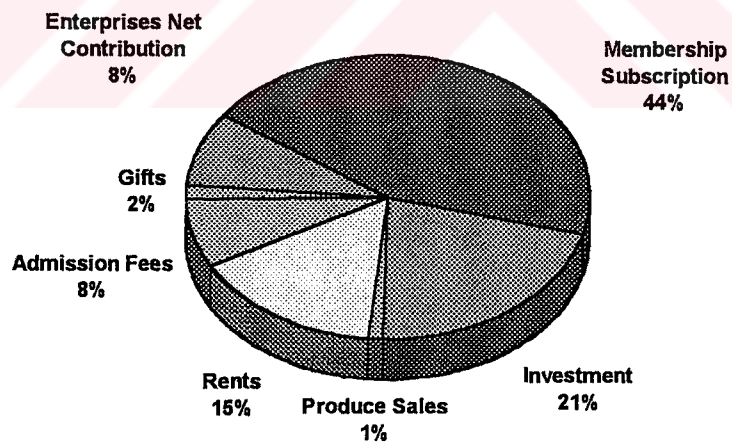


Figure 2.7. The Income of The National Trust in 1992

<sup>23</sup> Conservation, Published by HMSO, London, 1993, p.p.63-64.

<sup>24</sup> England Directory 1994- Organisations in the Tourism and Leissure Industry, Published by English Tourist Board, London, 1994, p.15.

## **The Civic Trust**

The Civic Trust, which was founded in 1957, is concerned with all aspects of civic design. The Trust receives government help for some of its work but it is principally dependent on public support in the form of sponsorship, donations and membership subscriptions. It has more than 300,000 members.

Main activities of the Civic Trust are:

- providing advice and assistance in urban regeneration;
- coordinating the works of local societies. More than 1000 such societies are parts of the Civic Trust Network;
- preparing and issuing booklets, exhibitions and films;
- giving awards for good design.

## **The Architectural Heritage Fund**

The Architectural Heritage Fund (AHF), which was established in 1976 is an independent charity. The aim of the AHF is to promote the permanent preservation of buildings, monuments and structures of particular historical and architectural interest for the benefit of public. In order to achieve this object, the AHF lends money to local preservation trusts and other charities which undertake the repair and rehabilitation of historic buildings. It has offered grants for a feasibility studies of such trusts and charities since 1990. A feasibility study is a tool for assessing the risk of a particular project.

Architectural Heritage Fund Loans are given both listed and unlisted buildings which are of special architectural or historic interest. The loans are normally for up to, but not more than, 50% of the estimated gross cost of any qualifying preservation project. However, the AHF is willing to lend up to 75% of estimated costs to the Association of Building Preservation Trusts, which is found in 1989 to provide substantial financial and practical support to owners and



professions of historic buildings. The AHF currently offers a maximum £175.000 per project to local preservation trusts, however, this amount is £250.000 per project for the Building Preservation Trusts.

Loans are normally made for a period of two years. Interest for each year is 5%. If the loan is not repaid within the agreed period, it may rise to 3% above base rate.

Between 1976 and 31 March 1994 the AHF supported more than 275 projects and lending almost £16.8 million.<sup>25</sup> In 1993-94 financial year, it gave £31.000 in grants for 19 feasibility studies.

It had a potential of £1 million in 1976. This capital has grown since that time and reached approximately £8 million in 1994. The AHF has obtained this money from different sources with different amounts.

- £250.000 from the Department of Environment
- £2.100.000 from the English Heritage
- £1.400.000 from the Secretary of State for Scotland
- £60.000 from the Secretary of State for Wales
- £1.000.000 from a potential capital of the AHF
- £3.190.000 from interest earnings & donations from companies, charitable trusts and individual

### **The Society For The Protection Of Ancient Monuments**

The Society for the Protection of Ancient Buildings was established in 1877 by William Morris. The aim of the Society is to save old buildings from decay, demolition and damage. In order to preserve historic buildings, the Society

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<sup>25</sup> The Architectural Heritage Fund- Loan Application Form-Notes for Applicants, Published by the Architectural Heritage Fund, London, 1994.

prefers repair to restoration. They believe that old buildings can not be preserved by making them new.

The Society provides technical advice to owners and professionals on repairs and alterations to historic buildings. It organizes conferences and courses on this subject and provides scholarships to students who study historic buildings and means of repairing them. It issues for only its members lists of threatened buildings for sale or lease.

It obtains its funds from its members. The fee of membership ranges from £18 to £300. It has approximately 5000 members.

#### **Upkeep The Building Conservation Trust**

Upkeep is independent educational charity. The aim of Upkeep is to train housing staff to provide good maintenance for all types of buildings so it organizes training courses for housing staff and educational programs for schools.

Over 1000 housing staff attend its course each year. They come from local authorities, housing associations, housing co-operatives, schools and colleges and charitable organizations.

Upkeep receives its funds from many of the services it provides. It is not funded by Government. Its income for 1994 is £73 000.

#### **2.2.4 GRANTS AND LOANS OF CENTRAL GOVERNMENT, LOCAL AUTHORITIES AND VOLUNTARY ORGANIZATIONS**

The statutory lists of buildings of special architectural and historic interest started in 1944 and a listing program was completed by English Heritage in 1993. There are :

Listed buildings:	443.700
Conservation areas:	7947
Scheduled monuments:	13740
Churches and cathedrals:	16364
Hotels of historic interest :	9191

In order to determine the condition of listed buildings, English Heritage surveyed 43 794 listed buildings in corporation with local authorities and other bodies, between April 1990 and March 1991.<sup>26</sup> The results can be adopted for all listed buildings as follows:

1. of listed buildings are at risk; approximately 32 500 listed buildings.
2. of them are in a vulnerable condition and need repair to prevent them falling into the “at risk” category; about 64 800 buildings.
3. vacant buildings; approximately 195 000 listed buildings.
4. Grade I and Grade II\* buildings are less at risk than Grade II buildings.
5. Listed buildings in conservation areas are less at risk than listed buildings outside conservation areas.

The costs of repairs, alterations and maintains of listed buildings usually more expensive than other buildings so the owners of them need financial help to preserve them. There are many sources of finance for such upkeep. “The Handbook of Grants”, which was published by the Museum Development Company, contains details of 150 grant programs from over 80 different organizations.

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<sup>26</sup> English Heritage Monitor-1994, Prepared by Max Hanna Sightseeinf Research, Richmond, Surrey, July 1994, p.9.

#### 2.2.4.1 GRANTS AND LOANS OF CENTRAL GOVERNMENT

English Heritage has administered central government grants and loans for works to listed buildings since 1984. There are different types of grants made by English Heritage:

- *“Grants for the repair of buildings of outstanding architectural or historic interest;*
- *Grants to local authorities towards the cost of acquiring property;*
- *Grants to the National Trust towards the cost of acquiring and maintaining buildings outstanding historic or architectural interest;*
- *Grants where the expenditure to be incurred will make a significant contribution towards preserving or enhancing the character or appearance of a conservation area;*
- *Grants towards the repair of buildings included in a town scheme.”*<sup>27</sup>

English Heritage has made grants of £269 million since 1983, the time it was established.

In 1992-93 the gross expenditure of English Heritage was £115.7 million and it spent £47.9 million (41.4% of its gross expenditure) on conservation of architectural or historic buildings and structures. However, English Heritage usually makes grants only Grade I and Grade II\* buildings. Its expenditure on conservation includes:

£13.4 million grants for secular buildings and monuments

£ 9.2 million grants for churches

£ 3 million grants for cathedrals

£ 7.4 million grants for town schemes

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<sup>27</sup> Circular 8/87, Department of Environment, 1987, London, p.42.

£ 7.3 million grants for rescue archaeology

£ 7.6 million for conservation works to its own monuments<sup>28</sup>

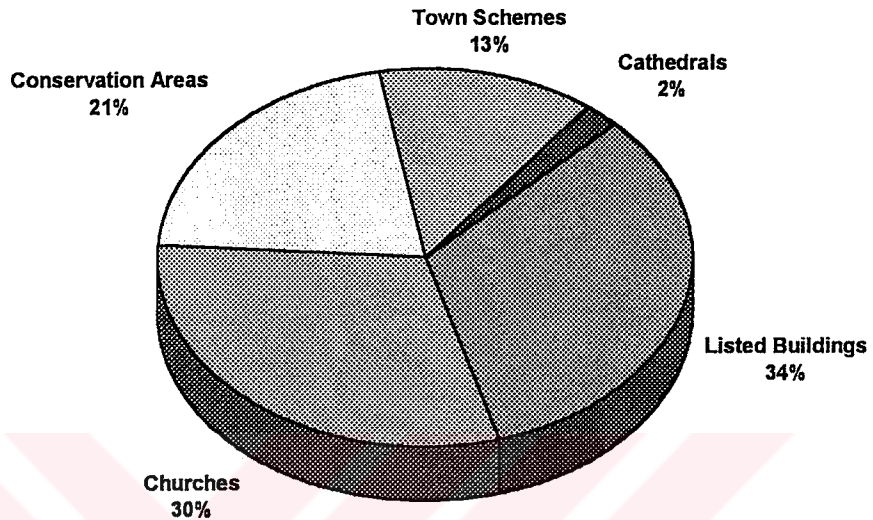


Figure 2.8. The Sharing of English Heritage's Grants, from 1983 to 1994.

In 1992-93, the Government also spent £68.2 million on different organizations concerned with conservation of special architectural or historic interest as follows:

£31.4 million on the Royal Palaces

£10.1 million on the Historic Royal Palaces Agency

£12 million on the National Heritage Memorial Fund

£11.9 million on the Royal Commission on Historic Monuments

£2.8 million on other bodies<sup>29</sup>

<sup>28</sup> English Heritage Monitor-1994, Prepared by Max Hanna Sightseeing Research, Richmond, Surrey, July 1994, p.20.

<sup>29</sup> English Heritage Monitor-1994, Prepared by Max Hanna Sightseeing Research, Richmond, Surrey, July 1994, p.20.

In addition to the Government's financial helps to the owners of special architectural or historic interests for repairs, maintenance and alterations, there is one more easiness for some owners of listed buildings. Although repairs and alterations to unlisted buildings are subject to *Value Added Tax (VAT)* at 17½%, VAT is not payable on building work to certain listed buildings. If the owners of listed buildings can obtain listed building consent, and the buildings are designed as dwellings or used for a relevant residential purpose or a relevant charitable purpose, alterations to listed buildings are not subject to VAT. A relevant residential purpose is one that provides residential accommodation for children, students, members of the armed forces, persons requiring personal care for various reasons. It also includes monasteries, convents and similar establishments. A relevant charitable purpose is one used by charity which provides social and recreational facilities for the local community.<sup>30</sup>

#### 2.2.4.2 GRANTS AND LOANS OF LOCAL AUTHORITIES AND VOLUNTARY ORGANIZATIONS

Local authorities make grants or loans for the repair of historic buildings which can be both listed and unlisted. Each local authority determines its grant and loan policies itself. In 1993-94 all local authorities in England spent £84.146.000 on conservation. However, this amount covers both built and natural heritage conservation.

In 1994, at the local level there are more than 106 building preservation trusts which organize on a regional, county or town basis, in England. Each trust has its own policies to give grants to repair historic buildings.

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<sup>30</sup> ANSELL, Val. "VAT & The Listed Building", The Building Conservation Directory 1994, Published by Cathedral Communications Ltd., London, 1994, p.15.

The main channel of private funds for historic buildings is the National Trust which purchases them for maintaining itself. Its expenditure on its properties reached £76 million in 1992.

The Architectural Heritage Fund is the major source for the building preservation trusts because it supported 275 projects and lent almost £16.8 million to such trusts between 1976 and 1994.

The National Heritage Memorial Fund was set up under the National Heritage Act 1980 by government to replace the National Land Fund, however, it is administered by the trustees. The aim of this fund is to assist the preservation and maintenance of buildings, works of art and other items of the national heritage by giving grants and loans. The Fund inherited the National Land Fund's money, approximately £12.4 million, and the Government pays an annual grant, which was £12 million for the 1992-93, to the Fund. The Fund made grants and loans totaling £12.291.755 in the 13 years.

The Commission of the European Union has a heritage budget and its grants are concentrated each year on a particular theme such as historic buildings and sites, historic parks and gardens, religious monuments. The Commission has funded more than 270 projects and has spent approximately 20.5 million Ecus on such themes.

## 2.3 COMPARISON OF CONSERVATION POLICIES OF TURKEY WITH ENGLAND'S

Probably, England is not the most appropriate example for Turkey to compare its conservation policies with Turkey's because their social and economic structures, their level of development, their current legislation, their organizations are completely unlike. Thus, this comparison aims at revealing the differences between England and Turkey in terms of their conservation policies. At the end of

the comparison, Turkey's deficiencies in conservation can be seen easily and several lessons from England can be taken to be successful in conservation.

To begin with, the main differences between two countries arise from their social structures. In contrast to the Turkish people, the English have a wide conservation consciousness, so they want to conserve their cultural heritage, they take part in conservation studies, and they force the government for conserving historical properties. Therefore, while in England the process of conservation is from base to ceiling, in Turkey it is from ceiling to base.

Second, in Turkey, cultural property has been accepted as the State property, so owners of them have not got any rights. On the other hand, in England, since the concept of private property has been given importance, the rights of owners have been tried to conserve, and their economic losses have been tried to compensate by the State.

Third, both of them have a special conservation act. Like England, in Turkey, movable and immovable cultural and natural properties are conserved by the Conservation Act. However, the Turkish Act is less comprehensive and clear than the English's. The former law has seven parts that are composed of 77 articles, 33 of which are connected with immovable cultural and natural heritage. On the other hand, the later law consists of four parts and six chapters. The 94 articles, 79 of which are directly related to preservation of historic buildings and conservation areas, constitute the law.

In Turkey, in addition to the Conservation Act, there are seventeen regulations and four instructions, because the main decrees about conservation are determined in the Act and, if it appears to be necessary, certain articles of the Act are detailed by regulations. On the contrary, there is only one regulation about conservation of listed buildings and conservation areas, in England.



Next, unlike England, in Turkey, all authorities, rights and responsibilities are given to organizations of central government to conserve cultural and natural property by the Conservation Act. The Directorate of Immovable Cultural and Natural Property, The Superior Council of Immovable Cultural and Natural Property and sixteen Regional Councils of Immovable Cultural and Natural Property undertake these duties on behalf of the Ministry of Culture. Local governments have not got any authority for conserving these values, but only certain responsibilities are given to them by the Act. For instance, although municipalities are responsible for preparing urban development plans for conservation, they can not approve them and they have to submit the plans to Regional Councils for approving. Nevertheless, in England, central organizations concerned with conservation, that are the Department of National Heritage and the English Heritage, determine main principals of conservation and provide strategic leadership and guidance. All responsibilities and authorities for conserving these values are given to local authorities, including serving building preservation notices and listed building enforcement notices, giving listed building consents and conservation areas consents, making a temporary listing.

The works of voluntary organizations in Turkey to conserve built and natural environment can not be compared with the English voluntary organization's works. There are approximately 10 voluntary organizations and foundations which can not work effectively and sufficiently in Turkey, but this number is 106 for England.

Then, in spite of the fact that Turkey has one-thirteen's registered historical buildings of England, the former one is not as successful as the second one to preserve them.

Furthermore, Turkey is different from England in its expenditures on cultural and natural property to be conserved. In Turkey there is only one Fund, which does not have enough budget, so it does not work effectively. There are no other funds, no contributions of local authorities and voluntary organizations, except for the Institution of The Touring and Automobile of Turkey. On the other hand, in England, in addition to central government both local authorities and voluntary organizations spend a lot of money on conservation of cultural and natural property.

Finally, in Turkey, cultural and natural properties are tried to be conserved only by laws without compensating owners of them. There is no article of the Act to protect owner's rights of historical buildings. However, in England, certain ways are described in the Act for protecting owner's rights. For instance, if an application of an owner for obtaining listed building consent is refused by a municipality, the owner can either want compensation for his losses or want the municipality to purchase his property by serving a listed building purchase notice.

## 2.4 STATEMENTS ON EVALUATION OF ENGLISH AND TURKISH CONSERVATION POLICIES COMPARISON

The main deficiencies of Turkey in conservation are obtained from the comparison of its conservation policies with England's. Although England has special conservation legislation, organizations and terminology, Turkey can take lessons from England, which is one of the most successful countries in conservation, to overcome its deficiencies in conservation as follows:

- The current conservation act of Turkey must be rearranged to abolish its deficiencies and loopholes.
- The responsibilities and authorities of local planning authorities must be increased.

- Voluntary organizations must be encouraged to work in conservation of historical buildings.
- New financial resources must be found.

### **The Necessity for Rearrangement of The Turkish Conservation Act**

Although current Conservation Act Numbered 2863 and 3386 has brought positive improvements such as “urban development plan for conservation”, “Contribution Fund for the Repair of Immovable Cultural property to be Conserved”, it has some deficiencies which cause uncertainty in conservation studies and affect people negatively. The main deficiencies of the Act are:

The construction time of immovable cultural property is given as a principle factor to determine immovable cultural and natural property to be conserved. In the section (a) of Article (6), this definition is given as “*Natural property to be conserved and immovable property built prior to the end of the nineteenth century*” Immovable properties which were built after the designated date will be conserved if the Ministry of Culture considers worthy of conservation for their significance and characteristics. Like, all old buildings can not be considered as cultural property to be conserved, some new buildings may be considered as worthy of conservation.

According to Article (7) of the Act, “*adequate number of exemplary works representing their periods are designated as cultural property to be conserved in view of the means of the State available for this purpose*”. It is obvious that the determination of “adequate number of exemplary works” is an inappropriate sentence to support conservation studies.

With the 2863 and 3386, the Superior Council (KTVKYK) and Regional Councils (KTVKK) were set up, replacing the Superior Council of Immovable Antiquities and Monuments. However, both KTVKYK and KTVKK consist of

governmental officials, so the Government, in some cases, can put pressure on these councils.

As a result, the Conservation Act of Turkey must be rearranged to cover its deficiencies and loopholes.

### **The Necessity for Increasing Local Authorities' Responsibilities and Authorities in Conservation**

According to the Act Numbered 2863, the Ministry of Culture is an unique governmental department, charged with protecting immovable cultural and natural property to be conserved. Both the Superior Council, that is responsible for making a principle decision about conservation of immovable cultural and natural property to be conserved, and the regional councils, which make decisions to guide the implementation of principles set by the Superior Council, assist the Ministry. Although the duties of the regional councils are determined in the act, it has been observed since the councils were set up that the councils present many problems as follows:

Seventeen regional councils, that were set up in different cities of Turkey, can not work effectively because there are 2768 archeological sites, 310 natural sites, 116 urban sites and 51 historical sites in the country.<sup>31</sup> According to the Turkish legislative framework about conservation, the regional councils approve urban development plans and every changes of them, register immovable cultural and natural heritage and determine a group of them. Moreover, owners or occupiers in conservation areas have to get permission from the KTVKK for every alteration, restoration, repair, maintenance etc. Therefore, the councils are generally late for making decisions on time, and they can not control implementation of their decisions.

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<sup>31</sup> Kültür ve Tabiat Varlıklarını Koruma Genel Müdürlüğü 1994 Çalışmaları, Ankara, p.122.

The KTVKK consist of governmental officials, so in some cases, public institutions and may be private pressure groups can press the councils while making their decisions or for chancing the decisions. Even, according to Article (55) the members of the Superior Council and the Regional Councils can be removed of duty without explaining reason, if the Culture Minister deems necessary. The last and striking example of this application was seen in İzmir Regional Council. *“After the new members were appointed to this council, and the chairman was changed, the council started to make more radical decisions about conservation areas. Especially, after the decisions about the Çeşme Peninsula, the Culture Minister, under the pressures of the profiteer groups, removed the members of the Council.”*<sup>32</sup>

In summary, although the numbers of conservation organizations have been increased, and they have been decentralized with this Act, this structure is not enough for successful conservation implementations because of the certain reasons, some of which are pointed out above. Additionally, if the lack of conservation consciousness is taken into consideration, the solution of the problem will become harder. Because people, who elect members of municipality assemblies and mayors of municipalities, could make pressure on them not to implement the decisions of regional councils. Thus, local authorities could prefer to destroy cultural values rather than conserving them.

On the contrary, there is no direct responsibility and authority that was given to municipalities for protecting historical buildings and sites, in the Turkish legislation. In the Article (15) of the Municipalities Act Numbered 1580, which came into force in 1930, the duties of them were grouped into 77 clauses but none of them was related to conservation. Only in the Article (115) of the Act, local

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<sup>32</sup> ABACIOĞLU Asuman, “Koruma Kurulu Görevden Alındı”, Cumhuriyet, 30.11.1995, p.4.

authorities were given authority for the protection of historical buildings that were used collectively, such as markets for valuables (bedesten), covered bazaar (kapalı çarşı).

Furthermore, the Conservation Act Numbered 2863 and 3386 has given limited responsibilities and authorities to municipalities. The duties of them can be summed up as follows:

After an area is declared as a site and relevant regional council designates the conditions of construction during the transition period until an urban development plan for conservation is prepared, municipality is obligated to prepare such a plan within a year.

The registered buildings, which are designated for a cultural use in an urban development plan for conservation, can be expropriated by municipalities within the approval of regional councils.

Lastly, if the topics on the agenda are concerned with local authorities, mayors of the municipalities or their consultants are invited to meetings of regional councils.

Briefly, like in England, the responsibilities and authorities of municipalities must be risen in Turkey, because local authorities are elected by people who live these at settlements and they are responsible to them. Especially, after the conservation consciousness spreads out in Turkey, municipalities will be more successful in conservation than the regional councils.

### **The Necessity for Encouraging Voluntary Organizations**

One of the most important reasons for the English success in conservation is the studies of voluntary organizations. In England, a lot of people participate in conservation works of the organizations. Voluntary organizations both give

technical aid to owners of historical buildings and make grants or loans toward the cost of repairs, maintenance of the buildings.

On the contrary, in Turkey, there is a few voluntary organizations. If these organizations worked more effectively, they would help to spread out conservation consciousness.

### **The Necessity For Finding New Financial Resources**

Turkey is a developing country and it has a limited source. The Turkish Government prefers to make productive investments, instead of spending its sources on restoration , maintenance of historical buildings and areas. On the other hand , generally low-income groups live at historical sites so they can not afford costs of conservation.

For instance, like in England, in Turkey a *Millennium Fund* should be established. The English Government intends to set up this Fund to support “*the restoration of buildings that symbolize and enrich British life; help for local communities and voluntary groups to run their own Millennium projects for local restoration schemes; and Millennium bursaries for young or newly retired people offering their time to schemes designed to change the face of Britain by the year 2000.*”<sup>33</sup>

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<sup>33</sup> Conservation, Published by HMSO, London, 1993, p. 8.

## CHAPTER THREE

### TRANSFER OF DEVELOPMENT RIGHTS (TDR), A NEW INSTRUMENT TO PRESERVE BUILT AND NATURAL ENVIRONMENT, AND THE INTERPRETATION OF TDR FOR CONSERVATION AREAS OF TURKEY

The aim of this chapter is to propose a new instrument called “*Transfer of Development Rights (TDR)*” for conserving cultural values of Turkey. Firstly, it is tried to explain that why Turkey needs a new instrument to conserve historical buildings and their environment. Then the TDR program is introduced and lastly the applicability of TDR in Turkey is discussed.

#### 3.1 THE NEED OF A NEW INSTRUMENT FOR CONSERVING HISTORICAL BUILDINGS OF TURKEY

The main reason for unsuccessful conservation implementation in Turkey is the economical and social structure of Turkey. Rapid urbanization, rapid increase in population, migrations to cities are principal problems of Turkey, because Turkey is a developing country and it has limited sources that are not distributed equally. Therefore, a sharing scuffle for getting more portion from these sources can be seen in each layer of the society. In this structure, urban development plans are also thought as a tool of sharing because the values of immovable properties are depend on the uses, which determined by these plans.

If the deficiency of conservation consciousness is added to this structure, the difficulty in reaching a successful conservation application can be seen easily. Actually in the society, each person accepts the necessities of conservation of historical buildings and criticizes people who damage them. However, if their



buildings are registered, they generally object to the decisions of the Regional Councils and bring a suit against the relative regional council for depreciating grades of buildings, or damaging their buildings.

The principal reason of this behavior is the passive and prohibitive conservation policies of Turkey because the historical buildings are tried to be conserved by restricting owners of them without compensating economical losses of owners. Actually, conservation decisions cause several losses of owners in terms of economical as follows:

- Historical sites are generally situated in the centers which are under pressure for developing. In this part of the city, there is a rising demand for lands because lands have a “development potential value” which means the value provided by the high density. This increasing demand also raises the prices of land to very high levels. While in the surroundings of the conservation area, owners can get a lot of money due to the situation of the area, owners in the conservation area can not reap profit from this increasing value. Owners of registered and unregistered buildings in conservation areas have economical losses because all new constructions and demolitions are restricted and rise in density are controlled by an urban development plan for conservation.
- Although historical buildings need to be maintained and repaired regularly, both owners of historical buildings and tenants of them usually prefer not to spend any money on maintenance and repair of them. Actually, most of them can not afford the cost of restoration, either. Thus, the values of historical buildings decline day by day.
- Generally owners of historical buildings prefer moving to new residential areas of a city to obtain modern life standards. The buildings are either purchased or

rented by the low-income groups because prices of the buildings are cheaper than the other sides of the city.

On the other hand, the Turkish Government prefers to make productive investments because it has limited sources. Therefore, owners of historical buildings can not get any money from the Government for their losses. Actually, in order to support owners of historical buildings economically, the Government formed the Fund, namely “The Contribution Fund for the Repair of Immovable Cultural Property to be Conserved Owned by individuals or Corporate Bodies”, in 1987. However, this fund can not work effectively due to its insufficient budget.

As a result, Turkey needs a new effective and applicable instrument, which will encourage owners of historical buildings to protect their buildings, will compensate owners for their economical losses and will not burden any cost on the government to conserve cultural properties.

Transfer of Development Rights (TDR), which is a land-use tool that addresses one of the key issues of growing urban areas: namely, how to accommodate pressures for growth and development and at same time preserve resources such as water supplies and farmlands and important features such as landmarks and historical buildings,<sup>34</sup> is proposed to realize these aims.

### 3.2 TRANSFER OF DEVELOPMENT RIGHTS (TDR) AS A NEW APPROACH FOR PRESERVING HISTORICAL BUILDINGS, LANDMARKS, FARMLANDS AND OPEN SPACES

Transfer of Development Rights (TDR) is a land use regulation instrument whose aim is to preserve certain values such as historical sites, landmarks and

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<sup>34</sup> PIZOR, Peter. “A Review of Transfer of Development Rights”, The Appraisal Journal, July 1978, p.387.

open spaces. TDR has been proposed to remove some dissatisfactions of existing land use regulation tools.

When an area is brought under zoning, one of the land use regulations, some analysis are done to determine certain uses on land. Firstly, analysis of natural components are made to define suitable or unsuitable lands for development. Then other factors which influence development, such as the growth trends of existing cities and towns, the impact of transportation corridors that divide an area and make subparts of it accessible are obtained from further analysis. Afterwards, each suitable development area is considered as a planning district and certain uses such as residential, commercial and industrial are determined for each district. In addition, building height, floor area, human density, building function etc., are defined for the area as main tools of zoning control.

Although at the outset of planning and zoning process all lands have same development potential, after zoning regulation some of them will have more advantages for developing. As a result while planning and zoning regulations give some landowners certain economic gains, in some cases the regulations effect some landowners negatively in terms of economic. This subject was described by Professor Hagman as the “ *windfall and wipeout phenomenon* ”.<sup>35</sup> Windfall is an increase in the value of real estate because of zoning regulations and wipeout is a decrease in the value of real estate. “*TDR is a proposed land use policy tool designed to overcome the windfall-wipeout dilemma*”.<sup>36</sup>

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<sup>35</sup> BARRESE, James T. “Efficiency and Equity Considerations in the Operation of Transfer of Development Rights Plans ”, Land Economics, Vol.59, No.2, May 1983, p.235.

<sup>36</sup> BARROWS, Richard L., Bruce A. Prenguber. “Transfer of Development Rights: An Analysis of a New Land Use Policy Tool”, American Journal of Agricultural Economics: 57(4), Nov 1975, p.549.

In some cases, in addition to zoning regulation, strong restrictions, which usually cause wipeout, are imposed on landowners to preserve certain values such as historic buildings, landmarks and open spaces. The landowners of these values either can get restricted permissions to use their development rights or they can't use them at all. Development rights is a development potential of land, that is the difference between the existing use of parcel and its potential use permitted by zoning. These unused development rights have become the subject of transfer since 1950s.

### 3.2.1 THE CHARACTERISTICS OF TDR PROGRAM

TDR breaks the linkage between particular land and its development potential; and permits the shifting of the unused development rights from one property to another within designed zone or zones, under suitable planning control. *“(TDR), is premised on the idea that ownership of land entails ownership of a bundle of rights, including rights to access (easements), minerals (mineral rights), and undeveloped space above the parcel (air rights)”*.<sup>37</sup>

The main aim of TDR program is to preserve certain values with compensating landowners of them. Thus TDR is not only a design tool but also a fiscal tool. On the other hand, zoning regulation is commonly criticized with being only design tool because in zoning planners responsible for fitting physical and social planning goals without considering the economic impact of the regulations on owners. TDR gives restricted landowner a chance to sale his development rights to another landowner of determined district. Therefore landowner of restricted area would be compensated for his wipeout losses by sale of development rights.

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<sup>37</sup> PIZOR, Peter J. “ Making TDR Work ”, A Study of Program Implementation, Journal of The American Planning Association, Spring 1986. p. 203

In the beginning of the TDR program, two districts are determined: a preservation or transferor area which is restricted to low density uses to conserve certain values such as historical sites, landmarks, open spaces, farmlands and environmentally sensitive lands; and a transfer or transferee area which is suitable for development. Transfer occurs either privately or through the intermediary of a public agency charged with this function and designed as the Development Rights Bank or trustee. Development rights are purchased from the bank or owners of transferor properties by developers who want to build bonus densities on other parcels. Thus by using TDR, owners of restricted properties are compensated, the buyers gain extra densities, municipalities reap profit from either the sales which are done from Development Rights Bank or the preservation of certain values without bearing the costs of preservation.

The rights to be transferred can be seen in Figure.3.1 : A is a building height of the landmark building, whose owner is restricted, and B is a premised building height for this area. The difference between B and A gives the unused development rights of the landmark building. These development rights are shared between four owners of adjacent lots. These owners use bonus building height which is shown as a dark.

In order to clarify the TDR process, Carmichael gives simple example.<sup>38</sup> He chooses three owners, each of who has 100 acres land. The first owner's land (A) should support no more than 25 residential units; the second's land (B) should support 100 residential units, and the third's land (C) is suitable for higher density use with 175 units. Then he develops a formula to show if TDR is used, how the economic loses of A's owner will be compensated. (Table 4)

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<sup>38</sup> CARMICHAEL, Donald M., " Transferable Development Rights As A Basis For Land Use Control ", Florida State University Law Review, Vol.2:1, 1974, p.p.100-101.

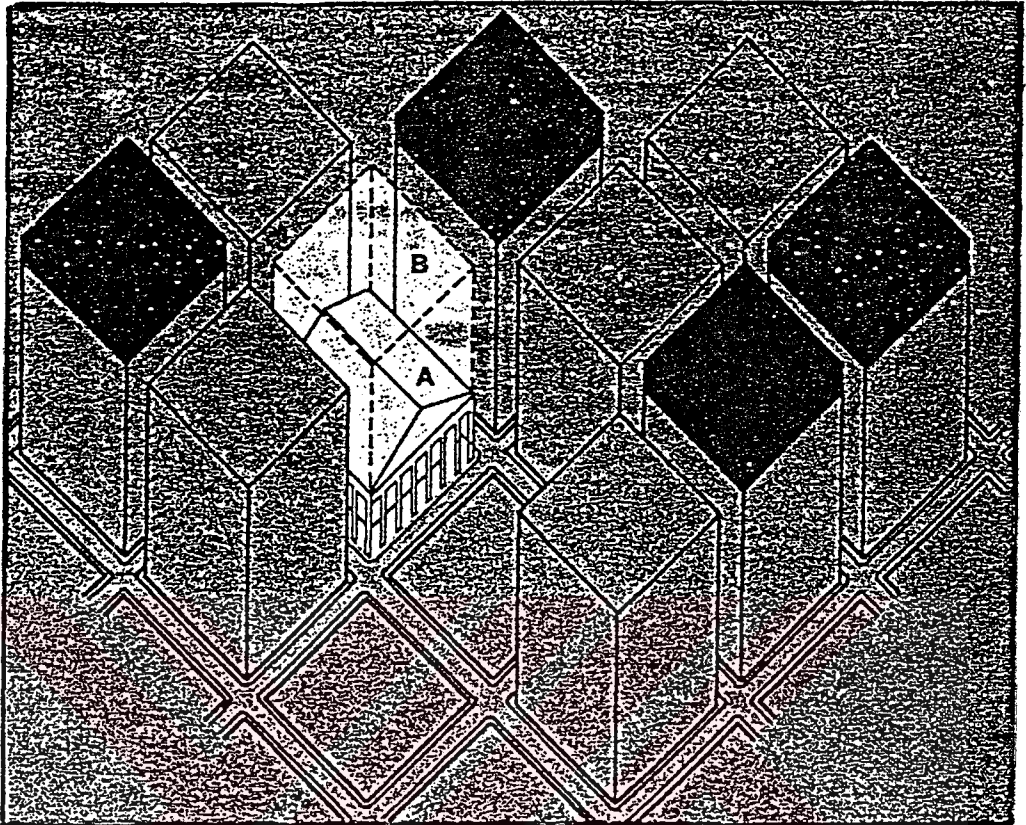


Figure 3.1. A Rights to be Transferred <sup>39</sup>

Hypothetically, 300 dwelling units may be placed on the 300 acres, although there are the differences in the permitted densities. If the 300 units were converted into 300 development rights and allocated on a per-acre basis, this would be the result:

After the allocation of rights, the owners are free to do as they wish. A's owner may develop at any density up to 25 units and sell his surplus rights, he may elect to sell all 100 rights and forego development unless he later buys more rights

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<sup>39</sup> COSTONIS, John. "Whichever Way You Slice It, DRT is Here to Stay", Planning, July 1974b, p.14

or may elect to retain all 100 rights although he can use only 25. B and C's owners have similar choices. If C's owner wishes to develop to the permitted density of 175 units, he must purchase additional rights.

**TABLE 4 THE SIMPLE EXAMPLE OF TDR <sup>40</sup>**

<i>Owner</i>	<i>Acres</i>	<i>Development Rights</i>	<i>Allowed Density in Number of Units</i>	<i>Comments</i>
<i>A</i>	100	100	25	holds 75 unusable or surplus rights
<i>B</i>	100	100	100	holds rights necessary for allowable development density
<i>C</i>	100	100	175	75 rights short of number needed to meet allowable density
<b>Total</b>	300	300	300	

**3.2.1.1 THE MAIN ROLES IN TDR PROGRAM**

The main roles in TDR program are shared out by:

1. The owners of transferor area;
2. TDR agency , that is a facilitator. The agency is generally designed as the Development Rights Bank by municipality to assist in TDR exchanges;
3. Developers of transferee area.

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<sup>40</sup> CARMICHAEL, Donald M., " Transferable Development Rights As A Basis For Land Use Control ", Florida State University Law Review, Vol.2:1, 1974, p.100.

In the TDR program, the owners of preservation area are compensated for whatever economic rights they may lose as a result of restrictions which are applied to conserve certain values of the area such as historical buildings, landmarks, open spaces, environmentally sensitive lands. Although the uses of development rights are limited, the owners obtain a new chance to cash in their development rights to money. They can sell their development rights to the facilitators or developers.

TDR agency, commonly known as Development Rights Bank, is founded in the beginning of the program by municipality and acts as an intermediary. The bank both buy development rights from the owners and sell them to the developers. In addition to these functions, if the owners want, the bank finds purchasers for them. In certain cases, especially for public interests, the bank has power to expropriate development rights of the owners who do not want to join the program.

Developers of transferee area would purchase development rights from transferor area to built bonus densities. They can buy development rights from either the owners of preservation area or the bank.

### ***3.2.1.2 THE DEVELOPMENT RIGHTS MARKET***

TDR program separates development rights, that is development potential of land, from the bundle of property rights and gives permission to use these rights on other property. These rights would be transferred through a market.

The development rights market leads to the success of the TDR program. In order to be set up the market, an important decision is to determine which lands will be preserved and which lands will be developed. The other important factors are the borders of transferor and transferee area, the cost of development rights,



the units of development rights in preservation area, and the permitted densities on transferee area.

The development rights market can be arranged in some different forms. Pizor separate the means of the transfer into three groups by investigating all proposals about TDR:<sup>41</sup>

1. **Open market:** In open market, development rights are purchased like the existing situation in real estate transfers. The price of development rights is established by negotiation between a willing buyer and a willing seller.
2. **The modified market with a Development Rights Bank:** In this situation the bank is established by the governmental organization to create the TDR operation. That bank serves as a floor or purchaser of last resort for the development rights.
3. **One-time sales:** In this kind of situation, a government or private group purchase the rights and then development rights are retired.

The development rights market has two sides: supply side and demand side.

#### ***3.2.1.2.1 SUPPLY OF DEVELOPMENT RIGHTS***

In preservation area, the owners have development rights to sell. Price for each unit of development rights is different because the development rights supply is affected by the size of the preservation area, by the types of use of development rights on transferee area , e.g. developers of transferee area have to pay more money to build commercial building than residence.

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<sup>41</sup> PIZOR, Peter J. "A Review of Transfer of Development Rights ", The Appraisal Journal , p.395, July 1978.

If preservation area is a small, there are a few owners. This situation would result in less development and higher prices for development rights than a larger area.

A possible shape for an aggregate supply curve is shown in Figure 3.2..

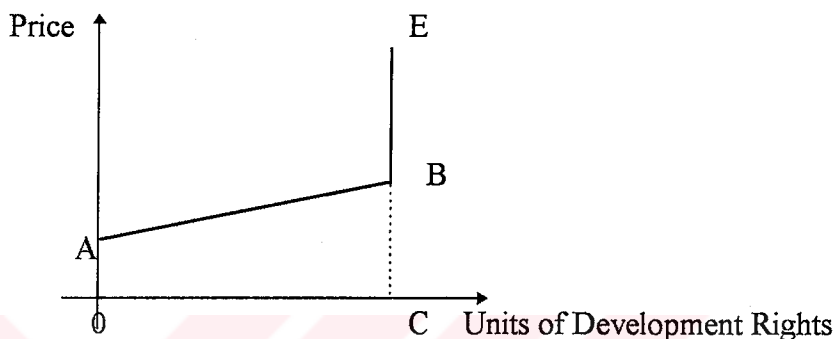


Figure 3.2. Supply of Development Rights<sup>42</sup>

If each owner of development rights determines their own prices, the result is a positively sloped development rights supply curve (AB). Because *“the owners of development rights may calculate their prices according to whether they feel their lands could have been developed and what compensation they desire for the lost development opportunities”*<sup>43</sup>. After the (B) point where the premised development rights have been exhausted, the price is continuing to increase so the inelastic segment (BE) is obtained.

There are two main reasons which would produce the supply curve (ABE): First, in preservation area each owner has different development rights and different perceptions due to the profitability of development in the transfer

<sup>42</sup> FIELD, Barry C., and Jon M. Conrad, “Economic Issues in Programs of Transferable Development Rights”, Land Economics, 51 (4) , November 1975, p.333.

<sup>43</sup> BARROWS, Richard L., Bruce A. Prenguber, “Transfer of Development Rights: An Analysis of a New Land Use Policy Tool”, American Journal of Agricultural Economics: 57(4) Nov 1975, p.550.

area. Second, the some owners of transferor area would not want to sell their development rights as soon as the TDR program starts because of two main reason : To begin with, TDR is a new program and they have a suspicion about it so they may prefer to wait and see its work. Lastly, they may believe that future development alternatives increase the demand for development rights and so the values of them.

#### ***3.2.1.2.2 DEMAND OF DEVELOPMENT RIGHTS***

A strong demand for development rights will be compensated restricted owners so it is necessary for the success of TDR program. Because of this, transfer area must be selected from development zones of a city. However the size of transfer area affects the program. If transfer area is a small, developers may avoid to purchase development rights from transferor area and they may prefer to build their buildings outside the transfer area. If transfer area is a large, in that case, there will be administration problems.

Furthermore, usually development zones of a city have high density levels due to a plan of a city so developers will not need to purchase development rights. As a consequence, there are two ways to determine transfer area: it would be development area where the strongest demand for development would be found, or the decisions of a city plan about development area which is chosen as a transfer area would be changed.

The premised density on transfer area also affects the demand of development rights.

In Figure 3.3, two different marginal development cost curves ( $MC_1$  and  $MC_2$ ) which are affected from the type of the TDR program and marginal revenue curve ( $MR_1$ ) are shown.

If the TDR agency determines a price for each unit of development rights, marginal development cost curve can be shown as  $MC_1$ . In this case,  $D_1$  is an optimal development density for this area, from the developer's point of view. If as a part of TDR program  $D_2$  is determined as the density of transfer area, developers have to purchase development rights from transferor area to have the optimal density  $D_1$ . Therefore the area of the triangle  $abc$  gives the aggregate payments for development rights.

If the TDR agency gives freedom to owners of preservation area to sell their development rights for whatever price they are able to get,  $MC_2$  will be a new marginal development cost curve. After the point of premised density,  $D_3$ , there is a rising marginal cost curve.  $D_4$  is now an optimum development density, from the developer's point of view. Consequently, according to this situation, the aggregate payment for development rights becomes the area of the triangle  $ghk$ .

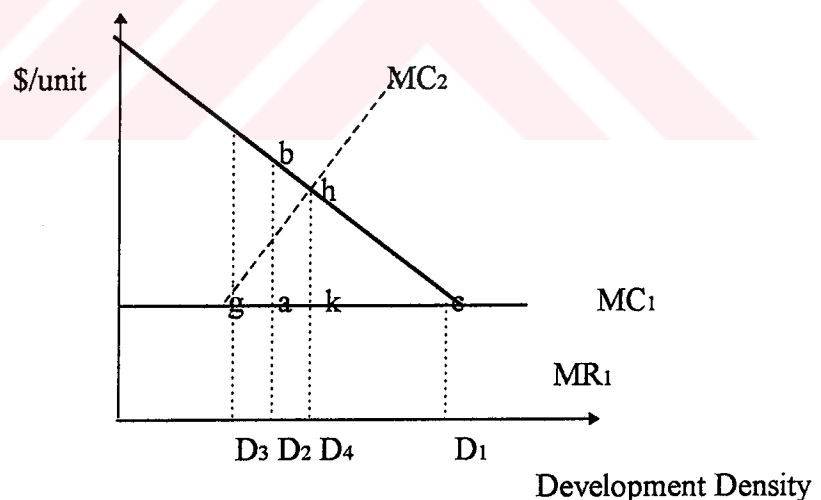


Figure 3.3. Marginal Revenue and Cost Curves Associated With Developing a Given Area to Different Densities.<sup>44</sup>

<sup>44</sup> FIELD, Barry C. and Jon M. Conrad, "Economic Issues in Programs of Transferable Development Rights", *Land Economics*, 51(4), November 1975, p. 335.

### **3.2.1.3 VALUE OF DEVELOPMENT RIGHTS**

There are several methods to define the value of development rights:

Firstly, in the open market variation of TDR program, the value of development rights is established by negotiation between a willing seller and a willing buyer .

Secondly, the value of development rights can be found in the modified market with a Development Rights Bank. In this situation, the Bank determines a purchase price and selling price for each unit of development rights.

Lastly, the difference between the value of property without restrictions, subject only to zoning and other limitations common to other similar properties and the value of property with restrictions gives the value of development rights.

Additionally, different uses of development rights on transfer area affect the value of development rights. As an example, if developer builds commercial building or industrial building on transfer area, he has to pay more money than builds residence.

### **3.2.1.4 THE UNITS OF TRANSFER**

In zoning, the concepts of floor area and floor ratio are commonly used. For this reason, in TDR proposals and studies the square meter and the square foot are accepted as the two simple and main units of transfer.

The other units of transfer are the cubic foot, the cubit, which is offered by Professor James Graaskamp and the dollar's worth..<sup>45</sup>

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<sup>45</sup> SHLAES, Jared. "The Economics of Development Rights Transfer", The Appraisal Journal, October 1974, p.533.

The cubic foot accepts that the height of a structure may have as much planning impact as its floor area. However, this unit of transfer may be seen unfairness from the owners point of view since the owners who have the same floor areas but different ceiling heights will have different development rights.

The cubit, an ancient measure of length, is approximately equal to the length of the arm from elbow to fingertips.

The dollar's worth is not appropriate, if there is a rapid inflation. In that case, it would require an additional layer of calculations to translate a dollar's worth at the source of the transfer into a dollar's worth at its final destination.

### ***3.2.1.5 SHARING THE COST OF TDR***

The cost of TDR may be borne by landowners of preservation area, landowners of transfer area, developers of transfer area, final consumers of preservation area and transfer area, and municipality.

The landowners in preservation area may not be fully compensated for the lost opportunity to develop, however, they can reap profit from the sales of their development rights. If they spend the money, which is obtained from the sales, to upgrade their buildings or their lands, the prices of properties automatically will increase. Thus the landowners in transferor area will not bear the cost of TDR.

TDR gives the landowners of transfer area additional rights to build more stories than they have with zoning. If the landowners want to build these additional stories, they have to purchase development rights from preservation area. Therefore the cost of TDR will not borne by the landowners of transferee area because they certainly will reap profit from these additional stories.

There are two alternatives for developers of transferee area to build more: Either they can purchase additional lands and increase floor areas of structures, or they can buy development rights from preservation area and rise heights of structures. Developers will prefer to increase heights of structure by purchasing development rights only if this way is cheaper than the other. As a result developers will not bear the cost of TDR.

After TDR, there is a rapid increase in rents and selling prices of buildings and lands in transferor area. Because the money obtained from the sales of development rights will be spent on buildings and lands upgrading. Additionally, after an area is determined as preservation area, this choice brings the area a lot of prestige. Thus after TDR, final consumer of transferor area, who are tenants and purchasers, may have to pay more. On the other hand, rents and selling prices after TDR will be approximately similar to rents and selling price before TDR on transferee area because developers build more by purchasing development rights from transferor area, which is cheaper than buy additional lands. Therefore final consumers of transfer area will not pay more.

Generally, municipalities can not pay the costs of conservation of landmarks, historic sites and open spaces. Because landmarks and historic buildings usually are situated in the center of cities so the costs of nationalization are very high. On the other hand, open spaces conservation are also very expensive since municipalities have to purchase large areas. Municipalities obtain chances by TDR to conserve landmarks, historic buildings and open spaces either without any cost or a little cost to them. After municipality and planning authority determine transferor and transferee areas, municipality establishes Development Rights Bank. The Bank both sell development rights to developers and purchase them from owners of preservation area. Municipality can use the money either to buy new development rights from transferor area or to maintain historic buildings,

landmarks and open space. In addition, municipality performs its main duties such as public interest, public health, safety, morals and general welfare by preserving and maintaining these values. Therefore, TDR will be cost free in terms of its impact on municipal finances.

### **3.2.1.6 THE LEGALITY OF TDR**

*“TDR has been offered as a compromise means of compensation to landowners, and most legal commentators have considered it to be an exercise of the police power, as is zoning.”*<sup>46</sup> There are two principal existing sources of legal authority for land use regulation: the police power and the power of eminent domain.

The police power provides for the maintenance of the public health, safety, morals and general welfare. This kind of land use regulation typically has direct impact on the major expectations of the owners to develop their properties as they wish. The owners are restricted by using police power without compensation.

The power of eminent domain is very costly power because the restricted buildings or lands are purchased by municipality with paying their prices. These prices are determined by considering the highest and the best use values of properties.

In order to distinguish between the police power and the power of eminent domain many tests have been suggested such as the harm/benefit test, the degree or extent of harm test, the physical invasion test and the arbitral-enterprise test. The harm/benefit test and the degree or extent of harm test can be explained briefly as follows:

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<sup>46</sup> PIZOR, Peter J., “A Review of Transfer of Development Rights”, The Appraisal Journal, July 1978, p.388.



In 1904, Professor Freund suggested “harm-benefit test”, which was updated by Professor Dunham in 1958. *“If the purpose of the regulation is to prevent a harm it is an exercise of the police power. If the regulation attempts to confer a benefit on the public at the expense of a private landowner, it constitutes an exercise of the power of eminent domain.”*<sup>47</sup>

The degree or extent of harm test distinguishes between the power of eminent domain and police power on the basis of the degree of diminution in the value of the property. If the legal authority uses its power of eminent domain, it acquires the property by paying its existing economic value. If the value of property is diminished without compensation, the authority uses its police power.

Addition to the existing sources of legal authority, John Costonis has offered a new power called the accommodation power. *“The accommodation power view of compensation is based on a hierarchy of possible values for any parcel of land. These range from the traditional notion of highest and best use down to land that is so restricted by environmental and other regulations that it actually has a negative value”*.<sup>48</sup> Costonis has described a new term that is “a reasonable and beneficial use level”. According to the accommodation power concept, compensation would be required only if the value fell below a reasonable and beneficial use level. A reasonable and beneficial use level of the property is less than the highest and the best use value of the property, however it is more closely fair market value of the property.

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<sup>47</sup> KLEINER and MADELEINE., “The Unconstitutionality of Transferable Development Rights”, The Yale Journal, Vol. 84, 1975, p.1104.

<sup>48</sup> PIZOR, Peter J., “A Review of Transfer of Development Rights”, The Appraisal Journal, July 1978, p.389.

### 3.2.2 THE TDR PROPOSALS

The possibility of shifting development rights to new locations has been talked about by planners for a long time. TDR has been studied especially in US, however, in Britain, under Town and Country Planning Act 1947 the concept of “development value” was mentioned and the method was experienced on a country-wide scale.

The purpose of TDR programs is to preserve certain values such as historic buildings, landmarks, open spaces, farmlands and environmentally sensitive areas with compensating their owners. For this aim, a lot of proposals have been offered for different places in different countries. Some of them are given to clarify the aims of TDR programs.

**TABLE 5 TDR PLANS: PROPOSED GOALS, TRANSFER AREA SELECTION BASIS<sup>49</sup>**

<i>LOCATION</i>	<i>PROPOSED GOALS</i>	<i>BASIS FOR TRANSFER AREA SELECTION</i>
GEORGETOWN, Washington	The purpose of this proposal is to preserve the Historic Georgetown District and to provide funds for the waterfront restoration. Because a new zoning ordinance permitted large buildings which would destroy the District's scale and the waterfront was deteriorating into an industrial slum.	The transfer area was selected by considering metro subway system which was creating pressure for removal of the ten-story limit on buildings in the city and the unused development rights of the waterfront would be transferred to allow high density development near the metro routes.
NEW YORK CITY	To protect historical landmarks.	The City Planning Commission may permit development rights to be transferred to adjacent lots from lots occupied by landmark buildings.
CHICAGO	The Chicago Plan is a proposal for preserving architectural landmarks.	The City Council would determine one or more “Development Rights Transfer Districts”, with the recommendation of the Landmark Commission and the City Planning Commission.

<sup>49</sup> BARRASE T. James., “Efficiency and Equity Considerations in the Operation of Transfer of Development Rights Plans”, Land Economics, Vol.59, No.2, May 1983, p.239.

**TABLE 5 (continued)**

NEW JERSEY	The New Jersey proposal focuses on establishing permanent protection for particular areas of farmland, open space, or critical environmental concern	To create a market, the municipality must determine transfer districts where a new and higher density of development will be permitted.
BUCKINGHAM TOWNSHIP, Pennsylvania	The purpose of this article is to permanently protect a vital natural resource: farmlands and agricultural soils.	The creation of a market for certificates of development rights is essential if the transfer of such certificates is to be real alternative to development. The implication here is that the location of the transfer area will be determined primarily by the ability of that area to generate a given market value for DRCs. Any connection between the preservation area and transfer areas will be purely coincidental.
PUERTO RICO	The purpose of this proposal is to preserve Phosphorescent Bay in Puerto Rico is an unique ecological resource whose waters explode at dusk with the luminescence of billions of tiny dinoflagellates.	The land of Puerto Rico comprehends three types of areas: urban, non-urban and transitional the transferee districts. The Puerto Rico Planning Board would determine transfer districts which could be located elsewhere on the island and they would be selected either from transitional areas or urban areas.
SUNDERLAND, Massachusetts	To preserve the prime agricultural land along the Connecticut River.	Transfer area would be selected from other areas of the Town which are more suitable for high-density development.
SCOTTSDALE, Arizona	To preserve the natural character and aesthetic values of the McDowell Mountains.	The location of the transfer areas shall be designed to minimize public outlays for utilities. No mention is made of a relationship to the preservation area.
COLLIER COUNTRY, Florida	Within Collier Country there are certain areas, which because of their unique assemblages of flora and/or fauna, their aesthetic appeal, historic or archeological significance or their contribution to their own and adjacent ecosystems, make them worthy of special regulations. The purpose of this proposal is to assure the maintenance of these environmental and cultural resources and to encourage the preservation of the intricate ecological relationships within the system.	The transfer area shall be any area not specified as an area to be protected.

In order to reveal the basis for preservation and transfer areas selections, procedures and aims of TDR proposals, the Puerto Rico Plan, the Chicago Plan and the New York Plan are talked about in detail. The Puerto Rico Plan has been offered to protect Phosphorescent Bay, which is an environmentally value, however, the Chicago Plan and the New York Plan have been suggested to preserve historical sites and landmarks.

### ***3.2.2.1 TDR FOR PRESERVING AN ENVIRONMENTALLY VALUE: THE PUERTO RICO PLAN***

Phosphorescent Bay in Puerto Rico is an unique ecological resource whose waters explode at dusk with the luminescence of billions of tiny dinoflagellates. After its accessibility increased because of highway construction and other capital improvement, the area has became more attractive for industrial development. Therefore the land prices have been risen because of increasing demand and the purchases of lands have been became unfeasible for public.

Transfer of Development Rights has been proposed for the Bay to decrease the threat on this ecological resource. The proposal proceeds from two givens: the general pattern of development in Puerto Rico and the existing regulatory power of the Puerto Rico Planning Board. First. The land of Puerto Rico comprehends three types of areas: urban, non-urban and transitional. Urban areas are the coastal cities which contain most of the population and industry. Non-urban areas include the rugged interior and the environmentally sensitive locations of the islands. Transitional areas, which are imminent targets for residential and commercial development, are surround cities. Second, the Puerto Rico Planning Board would use its powers. The Board must prepare an island-

wide comprehensive plan, which may address the subject of natural resource protection as well as other land use and social welfare concerns of the islands.<sup>50</sup>

The procedure of proposal can be summarized as follows:<sup>51</sup>

1. The Puerto Rico Planning Board would prepare an inventory of the island's known environmentally sensitive areas. The Board would designate these areas as Protective Environmental Zones (PEZ's) and it would prescribe criteria and related procedures for designating other areas in the future. In the PEZ, development which might be threat the protected resource would be prohibited. Other forms of development would take a permission only if they comfort with applicable planning criteria of a nonenvironmental nature.
2. Property owners within the PEZ would be permitted to challenge the PEZ designation and regulations before the Board. Because if the owners could not take a permission to be joined the planning decisions, they would object to the decisions and would apply the court. If the court found designations or regulations defective, the Board could have to compensate the owners. In this case, the amount of payments which would be paid for compensating landowners, would be difference between the highest return that is possible under the uses permitted in the PEZ and the minimum return that is required to satisfy constitutional requirements.
3. The Board would fund compensation awards through sale of the frozen development potential to the transferee districts. These districts could be located elsewhere on the island and they would selected either from transitional areas or urban areas.

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<sup>50</sup> COSTONIS, John J. "Development Rights Transfer : An Exploratory Essay", The Yale Law Journal, Vol. 83: 33, p.92, 1973.

<sup>51</sup> COSTONIS, John J. "Development Rights Transfer : An Exploratory Essay", The Yale Law Journal, Vol. 83: 33, p.93, 1973.

In this proposal, floor area would not use as a unit of transfer, because dollar value of the frozen development potential of the restricted parcel would be preferred.

### ***3.2.2.2 TDR FOR PRESERVING HISTORIC SITES AND LANDMARKS: THE NEW YORK PLAN AND THE CHICAGO PLAN***

In America, the procedures of preservation of historic buildings and landmark can be summarized as follows:<sup>52</sup>

1. The conventional municipal ordinance is prepared by the City Landmark Commission with the advise of the City Planning Commission. This ordinance enumerates the cultural, aesthetic and historic criteria. The Landmark Commission is responsible for designation of individual buildings and districts.
2. After designation, landowners of individual landmarks or buildings within the historic districts have to get permission from the Landmark Commission for any demolition or alteration.
3. The Commission has to prepare a compromise plan within a grace period which is usually 180 days.

The New York Plan and the Chicago Plan have been offered to preserve historical sites and landmarks because the conventional municipal ordinances have ignored the economic realities so they could not be successful.

There are two main differences between these proposals, whose aim are the same. In New York Plan, development rights would be transferred to adjacent lots in certain districts within the City. However, under the Chicago Plan, the City

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<sup>52</sup> COSTONIS, John J. "The Chicago Plan: Incentive Zoning and The Preservation of Urban Landmarks", Harvard Law Review, Vol:85, 1972, p.p:580-84,

Council would determine one or more “Development Rights Transfer Districts,” with the recommendation of the Landmark Commission and the City Planning Commission. Next, according to the first plan, the floor area of transferee lots would not be increased more than 20% above their authorized level. Nevertheless, this ratio would be 15% under the second plan.

#### 3.2.2.2.1 THE NEW YORK PLAN

TDR was proposed for New York to be protected landmarks in the sixties. “In 1968 the New York Zoning Law as amended to permit the transfer of “air rights” from a lot with landmark building to a noncontiguous lot ”.<sup>53</sup>

New York landmark owners could transfer the authorized but unbuilt floor area of their landmarks to adjacent lots in certain districts within the city. The choosing of transferee lot was strongly limited under the law and it was defined as lot which was contiguous to or across a street or intersection from a landmark lot; it might also be one of a series of lots that connect with the landmark lot. The floor area of transferee lots would not be increased more than 20% above their authorized level, except for they were located in high density commercial zones.

The procedures for obtaining approval of a proposed transfer can be offered as follows:<sup>54</sup>

1. The development plans of New York must be examined by the New York Landmark Commission to determine whether the new development’s materials, design, scale and location are compatible with the landmark.

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<sup>53</sup> WOODBURY, Steven R., “Transfer of Development Rights: A New Toll for Planners”, Journal of the American Institute of Planners, Vol:41, No:1, January 1975, p.5.

<sup>54</sup> COSTONIS, John J. “The Chicago Plan: Incentive Zoning and The Preservation of Urban Landmarks”, Harvard Law Review, Vol:85, 1972, p:585.

2. The owners of the landmark and the transferee lot must then apply to the Commission for preliminary approval of the transfer. Site plans of landmark and transferee lots, which are showing the proposed development of them, are necessary for the application.
3. The Commission would prepare a report which explains the effect of the proposed transfer upon the landmark.
4. The Commission must give decision that would either recommend approval or not.
5. If the Commission recommends approval, the application then goes to the Board of Estimate, which has final authority to grant or deny application.

#### *3.2.2.2 THE CHICAGO PLAN*

The Chicago's Old Stock Exchange Building was located in the Chicago's Loop. This area, where land prices are very high, consists of most of the City's other architectural values. Although the Exchange Building was a thirteen stories building, under present zoning regulations forty-five stories authorized for its site. The used method for preserving landmarks and historic buildings in America caused to demolish the Building to make way for the a forty-five story office building in 1972 because the method ignored the economic realities. After this incident the studies for preserving these values have increased and some proposals have been developed. One of the Proposals is Transfer of Development Rights which is mentioned as " Chicago Plan " was offered by John Costonis and Jared Shlaes.

The Plan can be summed up as follows:

The City Council would determine one or more "Development Rights Transfer Districts," with the recommendation of the Landmark Commission and



the City Planning Commission. Transfer districts would serve as a marketing area for development rights and they would contain landmarks and historic buildings. *“The amount of transferable development rights would be the difference between the interior square footage allowed for a building on that site under present zoning, and the square footage which the landmark actually contains”*.<sup>55</sup> Under the Chicago Plan transfer would be measured in terms of lot area rather than floor area.

Development rights would be transferred from transferor district, however, transferee lot would not be increased more than 15% of its actual lot area. This value was determined by municipality, planners and architects of Chicago to decline the risk of urban design abuse and to compensate the landowners.

Under the Chicago Plan, landmark owners would be compensated with two ways. They can sell their development rights to owners of transferee properties within the district. In addition, the real estate taxes of the transferor lots would be dropped because the restrictions on properties for preserving landmarks and historic buildings would cause a sharply decline in value.

The Chicago Municipality would be entitled to obtain the unused development rights of landmarks owners by purchasing or condemning, if they don't want to sell their rights by this procedure, but insisted on either cash compensation or the right to redevelop their sites. A Development Rights Bank would be set up to fund these acquisition costs and other expenses of the transfer program.

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<sup>55</sup> WOODBURY, Steven R., “Transfer of Development Rights: A New Toll for Planners”, Journal of the American Institute of Planners, Vol:41, No:1, January 1975, p.5.

The Development Rights Bank would have three sources for obtaining development rights:<sup>56</sup>

1. The principle source would be landmarks owners who reject the transfer option and insist that the municipality pays them a cash for their losses. In that case the bank has a force to receive the unused development rights of landmark owners.
2. The second source would be the city itself because it has some landmarks. Thus the bank would sell the development rights and would obtain money from these sales.
3. The third source would be landmarks owners who donate their lot areas. This kind of donation has traditionally played in the American preservation movement so it would be highly possible.

### **3.2.2.3 THE RESULTS OF EXPERIENCE**

Although a lot of TDR proposals have been offered for different aims in different countries, these proposals could not be put into practice commonly. Therefore there are only several TDR experiences. (Figure 3.4.) Buckingham Township, Pennsylvania, South Brunswick Township, New Jersey and the town of Eden are some of them. These experiences give certain results as follows:

1. *“TDR is very complex at the level of implementation. The idea, although simple in concept, is new to the landowners, assessors, attorneys and the other actors in the land use arena. It will require a substantial amount of educational groundwork among these and other key professions dealing with land use before it is widely accepted.”*

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<sup>56</sup> COSTONIS, John J. “The Chicago Plan: Incentive Zoning and The Preservation of Urban Landmarks”, Harvard Law Review, Vol:85, , 1972, p:597-598.

2. *TDR is a massive tool. Properly implemented, it has the capability of preserving large land areas. It is not appropriate for all planning situations. For limited applications more conventional planning techniques may be better suited to attain smaller density transfers. It also follows that as a massive tool TDR must be placed within the context of a balanced, comprehensive plan. TDR is a planning tool and by itself is no substitute for a sound planning program.*
3. *Successful TDR programs will need to be based on a physical plan and a financial analysis of the markets for housing, raw land and development rights. Consideration also should be given to identifying community goals and objectives and blending a TDR program with community character.*
4. *It also is becoming evident that TDR is not a no-growth alternative. If marketability is to be ensured, purchasers for development rights must be present, and this in turn will lead to the construction of additional dwelling units.*
5. *Conspiracies are difficult to maintain in large market situation, particularly because scarcity of development rights would be likely to drive their price upwards.*
6. *The optimum size for the viable operation of a TDR program has not been resolved; however, a number of considerations would appear to be desirable. The number of landowners in both the preservation and transfer area must be sufficiently large to ensure that a market could be created. Moreover, the areal extent of the area to be preserved should be enough to accomplish the preservation goals of the program. More acreage would be needed to preserve farmland, while relatively small amounts of land might be needed to accomplish the goals of a unique site or preserve historic areas.*
7. *It is not enough merely to transfer density from lower to higher density districts. Planning considerations for the transfer districts will include decisions to select one growth center or multiple centers.*<sup>57</sup>

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<sup>57</sup> PIZOR, Peter J., "A Review of Transfer of Development Rights", The Appraisal Journal, July 1978, p. 390.

### 3.2.3 THE BRITISH EXPERIENCE ON TDR

The British has an experience of development rights on a country-wide scale, under the Town and Country Planning Act 1947.<sup>58</sup> The 1947 Act, which is the basis of the present planning system in England, was prepared and passed by the Socialist Government. However, after the Conservative party obtained power in 1953, certain characteristics of the Act were amended. Actually, in the British experience, development rights were expropriated by the Government. Therefore, this model could be called as "*Purchase of Development Rights (PDR)*" instead of "Transfer of Development Rights (TDR)". Unlike the TDR program, the PDR burdens cost of conservation on the government. However, the aim of these programs is the same, that is, compensating restricted owners for their economical losses.

The purpose of the act have been judicially described as: "*The legislation is for the orderly development of countryside, to prevent unsightly development, to prevent the development of too crowded areas, to prevent the development taking place of industrial buildings and plant in what should be a residential districts and industrial districts, and so forth.*"<sup>59</sup>

The features of the 1947 Act can be summarized as follows:

**1. The Preparation of Development Plans:** Each local planning authority was required to prepare a development plan. Before preparing their development plans, they had to do social, economic and physical surveys of the areas.

The survey was to encompass thirteen major areas of information- physical

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<sup>58</sup> PIZOR, Peter J., "A Review of Transfer of Development Rights", The Appraisal Journal, July, 1978, p.396.

<sup>59</sup> GARNER, J.F., Practical Planning Law, Published by Croom Helm LTD, London, 1981, p.64

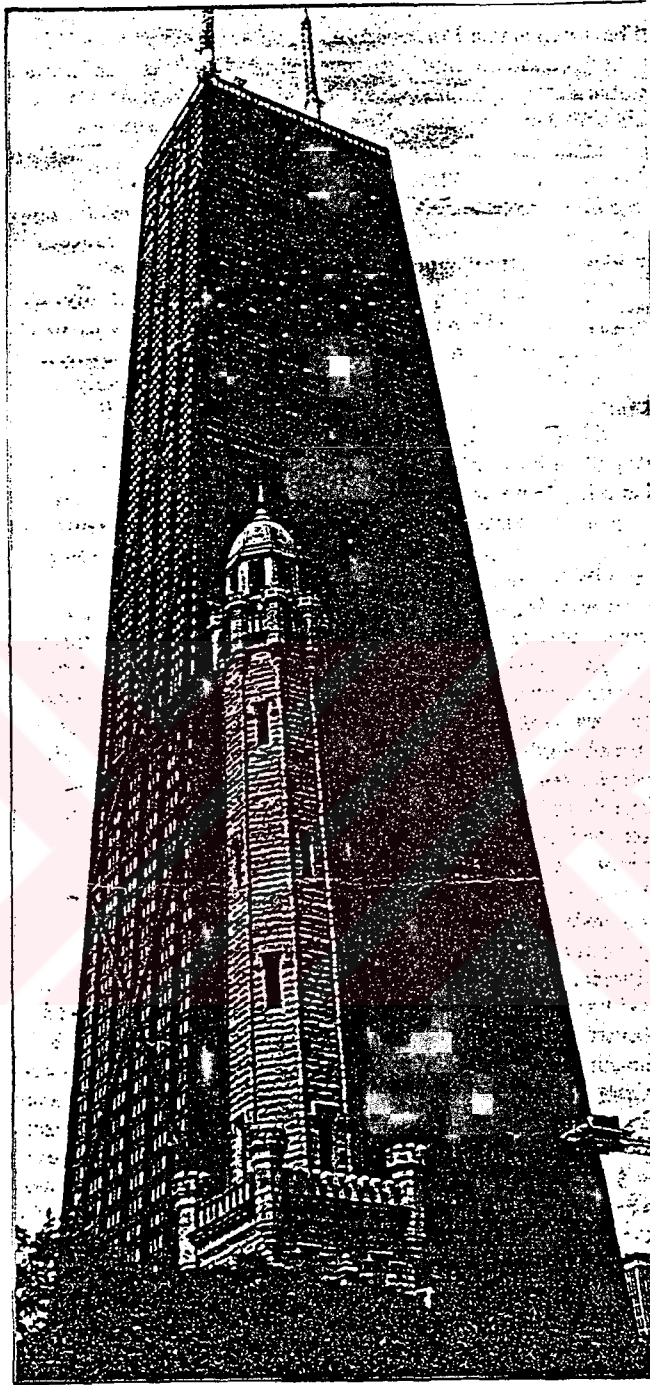


Figure 3.4. TDR for Preserving Landmarks - The Chicago Water Tower<sup>60</sup>

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<sup>60</sup> COSTONIS, John J., "Whichever Way You Slice It, DRT is Here to Stay", *Planning*, July 1974b, p.12.

conditions, ancient and historic structures, rural-community structure, population, industry and employment, minerals, agriculture and forestry, communications, government developments, public utilities, social services, parks and conservation areas, and holiday development. In addition the survey was meant to entail highly detailed investigation of each topic.<sup>61</sup>

A development plan was to cover a period of 20 years, however, it was to be reviewed every five years. The plan was to be prepared and sent to the Department of Central Government concerned with planning within three years. The purpose of the development plan was to indicate:

*“The manner in which a local planning authority proposes that land in their area should be used, whether by carrying out thereon of development or otherwise, and the stages by which any such development should be carried out.”*<sup>62</sup>

**2. The Increased Powers of Local Authorities:** After the 1947 Act came into force, local authorities had wider powers for undertaking development and compulsory acquisition of land. In addition, financial assistance to local authorities was risen to discharge their functions such as the acquisition of land and its development.

**3. The New Proposals of The Act: The Central Land Board, The Need For Planning Permission, Existing Use Value and Development Value, Development Charge:** Under the 1947 Act, the value of land was divided into two parts: existing use value, that is land without the benefit of any planning

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<sup>61</sup> ROBERTS, Neal Alison, The Reform of Planning Law, Published by The Macmillian Press Ltd, London, 1976, p.70.

<sup>62</sup> WILLIAMS Anne, Town And Country Planning Law, Published by Macdonald & Evans Ltd, Estover, Plymouth, 1981, p.4.

permission, and development value, that is land with the benefit of the planning permission. After development plan was prepared by local authority and the plan was approved by the Department of Central Government dealing with planning , land owner would have certain development rights, which were called as “ right to develop” by English. All development rights were nationalized by the State, after the Act. A fund of £300 million was set up to enable landowners to be compensated for the loss of the development value of their land. In addition, land owners or developers needed the permission of the local planning authority for all developments. The difference between existing use value and development value was defined as a development charge and a new body, which was called the Central Land Board, was set up for the levying of development charges. If the local planning authority given the permission for developments to land owners or developers, they had to pay development charges to the Central Land Board.

### 3.3 THE APPLICABILITY OF TDR IN TURKEY

TDR has been commonly used for different aims, in different countries for almost 30 years. However, the modern idea is that “the right to develop land” has been considered as a quantifiable and transferable incident of land ownership since the 1920’s, in zoning.<sup>63</sup>

Pooling of development rights has been accepted as the earliest sample of TDR. As an example of this earliest type, Senator Goodman drew part of his inspiration from his boyhood in a southern California town, where oil had been discovered. *“With every backyard a potential spigot for the underlying pool of oil, there was incentive for the place to turn into a forest of derricks. To prevent this, the town mandated no more than one oil derrick per block. Each property*

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<sup>63</sup> CHARMICHAEL, Donald M., “Transferable Development Rights As a Basis For Land Use Control”, Florida State University Law Review, Vol.2:1,1974, p.47.

*owner on the block shared in the proceeds of the derrick in proportion to the size of his lot.”<sup>64</sup>*

Purchase of development rights may be considered as the second step in the evaluation of the TDR. In that case, right to develop is purchased by public institutions. This kind of TDR was experienced in England, in 1947.

It would appear today that there is no a pattern of TDR program because 66 instances of TDR and TDR-like programs was determined only in America, in 1977.<sup>65</sup> Although all TDR and TDR-like programs have the same aim, which is the conservation of historical and natural heritage with compensating owners of them, the applications of the programs can be different for each example. Therefore, in order to apply TDR in Turkey, the TDR program must be adapted for conditions of the country.

### **3.3.1 THE EVOLUTION OF THE TDR CONCEPT IN TURKEY**

In Turkey, the first TDR proposal aimed to protect historical sites was developed in 1983 by Polat SÖKMEN, who is an instructor at the Department of City Planning in Mimar Sinan University.

The applicability of TDR in Turkey has been researched at the Department of City Planning in Middle East Technical University since 1992 by Doç. Dr. Murat BALAMİR and his students. In 1992-93 educational year, Öveçler was chosen as a transferor area and Maltepe-Demirtepe was determined as a transferee area. The purpose of the social and economic analysis was to reveal the application possibility of TDR. Öveçler is a squatter area and needs to be

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<sup>64</sup> WOODBURY, Steven, “Transfer of Development Rights: A New Tool for Planners”, Journal of The American Institute of Planners, Vol.41:1, January 1975,p.p.4-5.

<sup>65</sup> PIZOR, Peter J., “A Review of Transfer of Development Rights”, The Appraisal Journal, July 1978, p.386.



upgraded, but, neither owners nor occupiers of the area have got enough money for spending on the buildings because they are generally from low-income groups. On the other hand, Demirtepe is situated in Kızılay, a main center of Ankara, so it is under pressure for developing. Additionally, there is a strong demand for this area from the high-income groups. It is thought that the demand for the area will increase after the Ankaray is completed. The aim of the studies was to find sources to upgrade Öveçler by using TDR.

The studies about the TDR program have been gone on in the METU.

### **3.3.2 THE LEGAL SUPPORT FOR TDR IN TURKEY**

Although there is not any act or regulation to organize transfer of development rights in Turkey, this concept can be related to certain articles of “the Conservation Act”, “the Construction Act” and “the Procedures to be Applied to the Constructions Built Against the Regulations of the Development Plans and the Squatter Settlements and for Altering one Article of the Construction Act no 6785”.

“The Regulation for Exchanging of Government’s Properties with Cultural and Natural Property to be Conserved On Which All Constructions are Prohibited” (Kesin İnşaat Yasağı Getirilen Korunması Gerekli Taşınmaz Kültür ve Tabiat Varlıklarının Bulunduğu Sit Alanlarındaki Taşınmaz Malların Hazineye Ait Taşınmaz Mallar ile Değiştirilmesi Hakkında Yönetmelik) came into force in 1990. The support of this regulation is the section f of Article (15) of the Conservation Act. According to this regulation, if an area is designated as a “site” and if all constructions on parcels of cultural and natural properties to be conserved are prohibited, owners of them can want to exchange their properties with Government’s. For five years, this regulation has been mostly used for exchanging cultural and natural property at Grade I and Grade II natural and archeological site.

The second legal support for TDR can be the Article (18) of the Construction Act Numbered 3194, dated 1985. With this article, municipalities have been given an authority to rearrange the borders of immovable properties without asking their owners. According to the Article (18), commonly known as “the dough rule (Hamur Kuralı)”, municipalities can combine all lands, with or without buildings, in an area and parcel up the area again. Moreover, local authorities can get up to 35% of previous parcels as a “share of arrangement partnership (Düzenleme Ortaklık Payı)”.<sup>66</sup>

Lastly, “the Act Numbered 2981 for the Procedures to be Applied to the Constructions Built Against the Regulations of the Development Plans and the Squatter Settlements and for Altering one Article of the Construction Act no 6785” dated 1984 (2981 Sayılı İmar ve Gecekondu Mevzuatına Aykırı Yapılara Uygulanacak Bazı İşlemler ve 6785 Sayılı İmar Kanununun Bir Maddesinin Değiştirilmesi Hakkındaki Kanun) can be a legal support for TDR. With this Act, authorities of municipalities have been enlarged, and new authorities have been given for transferring development rights from one property to another. Local authorities can give new lands or shares in different areas to the owners of squatter to apply the decisions of plans.<sup>67</sup>

Briefly, some related legal supports can be found for the TDR program, but, they are not enough, so new and special regulation is needed for applying the TDR, in Turkey.

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<sup>66</sup> SÖKMEN Polat, “Kent Planlama İçindeki Yeri Tarihi Çevre Korumasının”, Tarihi Kentlerde Planlama Düzenleme Sorunları, 1987, p.66.

<sup>67</sup> BALAMİR, Murat. “Aktarılabilir İmar Hakkı Kavramı ve Türkiye’de Uygulanması”, İller Bankası 60. Yıl Yayını, İstanbul, 1993, p.185.

## CHAPTER FOUR

### CONCLUSIONS AND PROPOSALS

In this chapter, firstly main conclusions of the thesis are presented to reveal the real reasons for unsuccessful applications of conservation decisions. Then, proposals for solving some of these problems are offered.

#### 4.1 CONCLUSIONS

The concept of conserving historical buildings especially started to spread out after 1970, when the Antiquities Act Numbered 1710 came into force. However, during this period, both conservation decisions and conservation plans have not been applied in practice successfully. The main reasons for unsuccessful applications of conservation plans in Turkey are given below:

1. There is not enough conservation consciousness in the society.
2. There is not enough demand for conservation.
3. There is no determined policies of central government for conservation.
4. Historical buildings and sites have been tried to be conserved by the Conservation Act and conservation decisions of the Ministry of Culture, by restricting their owners.
5. There is no financial and technical assistance of the government to owners of registered buildings. However, generally low-income groups live at the urban sites and they can not afford the cost of maintenance and conservation.

6. The structures of the society have changed. Whereas, the historic buildings were designated to meet the needs of the users in the past. As a consequence, they can not answer today's user's needs.
7. The historic buildings are generally situated in the center of the city where lands are more expensive than the other parts of the city. Additionally, lands in the center have high development potentials. Therefore, it is obvious that restricted owners, who are mostly from low-income groups, do not want to conserve their historical buildings, because the buildings are a liability to them for reaping profit from their lands.
8. At historical sites, generally, the ratio of tenants is more than the ratio of house-owners, because house-owners prefer to live in new development areas of the city. On the other hand, tenants, who may be a new comer to the city, prefer to live at the historical sites because rents of buildings are cheaper than the other sides of the city. In fact, historical sites are seen as an alternative to squatter's areas from the tenants' points of view. Additionally, tenants generally have not got enough money for maintenance of the buildings. Even if they have, they do not spend their money on repairing of the buildings because they do not have enough conservation consciousness.
9. The current conservation act of Turkey is not clear and comprehensive enough. It has certain deficiencies and loopholes.
10. Seventeen regional councils are not enough for making conservation decisions on time and for controlling implementations of the decisions.
11. Turkey has to find new financial sources for conserving its cultural heritage. Nevertheless, a model must not burden any cost on the government like TDR.

That is because Turkey is a developing country and it has limited sources, so the Turkish Governments have to make productive investments.

## 4.2 PROPOSALS

### 4.2.1 PROPOSALS FOR SPREADING OUT CONSERVATION CONSCIOUSNESS AND FOR UPGRADING ORGANIZATIONS CHARGED WITH CONSERVATION OF HISTORICAL VALUES AND THE CONSERVATION ACT

General proposals for solving some problems of Turkey in conservation of cultural heritage are gathered into sub-titles as follows:

#### **Proposals for spreading out conservation consciousness:**

If the public do not want the conservation of historic buildings, it is hard to reach success in the conservation studies. Therefore, conservation consciousness must be spread out. For this aim, the public should be educated by giving lessons to them at schools; by arranging seminars and conferences; by using publication instruments such as newspapers and television etc.

The aim of this effort is to indicate the public that:

- Conservation of historic buildings is necessary for the public interest.
- Conservation of historic sites does not prevent development of the city.
- Conservation of historical values is the main means for showing cultural timelessness of the country
- Conservation of historical buildings is more important for future generations because historical buildings are symbols of the past generations and they link the past to the future.

### **Proposals for upgrading organizations charged with conservation of historical values and the conservation act:**

In order to upgrade organizations charged with conservation of historical buildings in Turkey, England can be taken as an example. The two important factors for the English success in conservation are: England has very detailed conservation act, and unlike in Turkey, in England historic buildings are not conserved from the center of the country by central government organizations. Conservation principals are determined by the central government and conservation decrees are applied by local authorities.

Like in England, in Turkey local authorities must be given more responsibilities and authorities, for conserving historical buildings and areas because seventeen regional councils are not enough for making decisions on time and for controlling applications of the decisions in Turkey.

In Turkey, municipalities generally have not got adequate technical and financial means for conservation. Furthermore, most of them have not got conservation consciousness and demand. For this reason, in the beginning, responsibilities and authorities for conservation should be shared between local and central governments of the cities. In each city, which has conservation area, new institutions should be established with the central-local partnership, so they would consist central and local officials. These institutions would work as sub-councils of regional councils and they may be called as "***Local Conservation Council (LCC)***". Their members would be: the governor of the city or his assistant, the mayor of the city or his assistant, the director of the urban development department of municipality, an architect, an urban planner or a civil engineer of the same department, two members of relative regional council who would be chosen by the Ministry of Culture.

The LCC would perform some of the responsibilities of the regional councils, such as:

- Owners or occupiers of buildings in conservation areas would get permission from the LCC for all alterations, repairing, restoration and demolition of buildings.
- The Council would control the applications of decisions of the regional councils.
- The LCC would recommend the regional councils to register the special architectural and historic interest.
- If the LCC considered that an unlisted building needs an urgent preservation, the authority would have the power for temporary listings, until the regional council issues his decision, as in England.
- The LCC would suggest an assembly of municipality to make a decision for applying the TDR program.

Moreover, central government should encourage voluntary organizations, which play an important role in conservation. As in England, voluntary organizations both will help the government to spread out conservation consciousness and will supply the owners of historical buildings with financial and technical assistance.

On the other side, the last Conservation Act of Turkey needs rearranging because it has certain deficiencies, such as “adequate number of exemplary works” and “the built time of immovable cultural properties”.

#### **4.2.2 PROPOSALS FOR SOLVING ECONOMICAL PROBLEMS OF HISTORICAL SITE AREAS**

The most important reason for why historical buildings and areas are not conserved in practice originates from the economical structure of Turkey and people who live in these areas.

Turkey is a developing country and the government has limited budget. Thus, the government can not allocate enough money from his budget for conserving historical buildings or for helping their owners. Historic buildings and sites have been tried to be preserved by loading costs of conservation on the owners of them.

On the other hand, at historical sites generally low-income groups live and the ratio of tenants is more than the ratio of house-owners. It is obvious that tenants, who may be new comers to the city, do not spend any money on maintenance of the buildings. They will live in the buildings until they obtain better economical conditions. House-owners, even if they have enough money, do not spend any money on maintenance of the buildings, either, because they think that their economical losses result from these buildings and they generally damage the buildings deliberately.

As a result, Turkey needs new fiscal tools to conserve historic buildings and sites until the conservation consciousness will spread out, the income level will increase, and the Turkish Government will have enough money to spend on conservation. In this thesis, TDR is proposed as a fiscal tool to conserve Turkey's historical buildings, urban and historical sites. However, it must be adapted to social, economic and organizational structure of Turkey.

In the beginning of the TDR program, a preservation and transfer area are designated. This determination is the most important decision for the success of



the program, because development rights would be transferred through the development rights market and the formation of the market depends on the selection of preservation and transfer areas.

Preservation areas would be in the center of cities where historical buildings are mostly situated. On the other hand, there are two alternatives for selecting transfer area: It would be one of the development areas of the cities, like the Chicago, the New Jersey, the Puerto Rico proposals, or adjacent lots or areas as the New York proposal. Actually, in Turkey, with the TDR program it is aimed to conserve historical buildings so if transfer area is selected from adjacent lots or areas to preservation area, it could damage cultural values. (see Figure 3.4, p.115). Therefore, it is better to select transfer area from the development zones of the cities. In order to exemplify the determination of preservation and transfer areas, the Alparslan Quarter was determined as a preservation area and Konutkent was chosen as a transfer area in Ankara. (Appendix C)

There is no pattern to determine sizes of preservation and transfer areas, which would affect the success of the TDR program, too. The sizes of preservation and transfer areas must be enough for compensating owners in preservation areas and forcing developers in transfer areas to purchase development rights from preservation areas.

In the TDR program, in order to assist TDR exchanges, the TDR agency is founded either by privately or publicly. The agency both buys development rights from the owners and sells them to the developers. For Turkey, this agency should be established as a new department of municipality with supports of central government. Although in Turkey, the Regional Councils for Immovable Cultural and Natural Property to be Conserved make all decisions about historical buildings and areas, since they have been set up, time has shown that historical values of Turkey have not been conserved successfully by these Councils because they can

not work effectively. Therefore, the authorities and responsibilities of local authorities for protection of historical buildings should be increased.

The Development Rights Department (DRD) should have two sub-units: the administration unit, which would make decisions about the TDR program, should consist of natural and representative members, like the Superior Council and the Regional Councils. Natural members are the governor of the city, the mayor of municipality, the director of urban development department and an architect, an urban planner or a civil engineer of the same department, the director of financial department and an accountant of the department. One of the representative members would be chosen by the Ministry of Culture among scholars at each of the branches of architecture, archeology, art history, urban planing, management, social sciences, and two of them would be selected by the Ministry from the members of the relative regional councils. The implementation unit would apply the decisions of the administration and consist of staffs of municipality.

After the Municipality Assembly makes a decision for application of the TDR program to conserve historical buildings and areas, the duties and responsibilities of the DRD would start:

1. Preservation and transfer areas, the borders of the areas would be determined by the DRD.
2. The Department would designate potential development rights of each building in preservation area and it would prepare certificates, which would show transferable development rights for each owner. In the TDR proposals, the rights to be transferred are the differences between the development rights of property without restrictions, which can be used in the surrounding of the conservation area, and the used development rights of the property.

3. The increase level of the transferee lot's floor area would also be determined by the DRD. For instance, the floor areas of transferee lots would not be increased more than 15% above than their authorized levels in the Chicago proposal and 20% in the New York proposal.
4. The DRD would define units of transfer. The square meter is the most common and the simplest unit of transfer used in the TDR proposals.
5. The value of development rights for each unit would be determined by the Department in order to prevent speculation. The DRD would define various selling and purchasing prices for different uses of development rights in the transfer area.
6. As in the other TDR proposals, the DRD would both buy development rights from the owners and sell to the developers. Additionally, if any owner or developer requested, it would find purchasers or sellers for him.
7. Especially for public interests, the DRD would have power to expropriate historical buildings if owners of them did not want to join the program.
8. If owners of historical buildings requested, the DRD would provide them technical and professional advice for restoring, maintainance and repairing the buildings.
9. The Departments also would control the applications of projects of restoration and maintain of historical buildings, instead of the Regional Councils,

The DRD would obtain its income from various sources:

- The first income of the DRD would come from the sales of certificates to the owners of historical buildings.

- When the Department assists TDR exchanging and finds purchasers for the owners of preservation area and sellers for the developers of transfer area, it would get a commission.

Additionally, if a special regulation is prepared for the TDR program in Turkey and if there is an article which would be similar to the Article (18) of the Construction Act, a local authority would be able to get certain percentage of the increase level of the transferee lot's floor area.<sup>68</sup> For instance, if the DRD determines that the floor areas of transferee lots could be increased more than 25% above than their authorized levels, 10% of these extra development rights could be got by a municipality. The money obtained by this way would be collected in a fund namely the "*Conservation Fund*". The municipality would have to spend this money on upgrading of historical buildings and their surroundings.

Briefly, use of the TDR program will bring certain profits as follows:

Firstly, the owners of historical buildings in preservation area will be compensated for their economic losses. It is a big possibility that the use of the program will change the owner's opinion about conservation of cultural properties positively. Because with TDR, they will have a chance to sell their unused development rights. If they spend some of the money obtained from these sales on restoration and maintenance of their buildings, rent and selling prices of the buildings will automatically increase.

Second, both central and local government will obtain a chance to conserve cultural values without any cost.

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<sup>68</sup> SÖKMEN Polat, "Tarihi Çevre Korumasının Kent Planlama İçindeki Yeri", Tarihi Kentlerde Planlama Düzenleme Sorunları, 1987, p.66.

Next, developers of transferee area will obtain a chance to built more, so they will possibly reap profit from these additional stories.

On the other hand, the TDR program can be criticized at one point that it brings changing of occupiers in conservation areas, so the conservation of social structure is impossible with the TDR program. Because after the program, the quality of environment will change positively, so the selling and renting prices of historical buildings will climb. If it is taken into consideration that generally low-income groups live in conservation areas, they may have to immigrate from the areas. However, if a municipality makes a decision to conserve social structure with physical structure and certain measures are taken in the beginning of the program, this problem will be automatically solved. For example, a municipality should aim upgrading of the area instead of gentrification of the area and it should spend incomes of the Conservation Fund on maintenance, repairing, restoration and modernization of historical buildings and their surroundings. Historical buildings will be brought up to contemporary standards by these kinds of interventions, so they will be kept in use, which is the best way of preserving historical buildings. Additionally, their selling and renting prices would not increase sharply. As a result, their occupiers would not have to move to other sides of the city.

Furthermore, it must not be ignored that mostly the ratio of tenants is more than the ratio of owners at historical sites. Thus, an authority has to take certain measures to prevent tenants from being influenced negatively by the TDR program. For instance, a “*tenants organization*” should be established for this aim.

The other economical suggestions are:

1. The government should give loans at low interest to the owners of historical buildings for maintaining the buildings.
2. Like in England, the government should establish a special fund for covering expenses of conservation. This fund would be supported by a national lottery such as Milli Piyango, Kazı Kazan.
3. Like the model of the Build-Manage-Transfer (Yap-İşlet-Devret), a new model for historic buildings should be developed such as the Restore-Manage-Transfer (Restore Et-İşlet-Devret).<sup>69</sup>
4. People, who get profit from historical buildings by managing them, should spend some of their income on maintenance of historic buildings.

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<sup>69</sup> Kültür ve Tabiat Varlıklarını Koruma Kurultayı 14-16 Mart 1990, Published by Kültür Bakanlığı, Ankara, p.121.

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## APPENDIX A

### THE CONSERVATION OF CULTURAL AND NATURAL PROPERTY ACT NUMBERED 2863 AND 3386

The last act about conservation of built and natural heritage came in to force on 21.07.1983, whose number is 2863. However, on 17.06.1987, in order to alter some articles of the Act Numbered 2863 and to add new articles to the act, The Act Numbered 3386 was accepted.

After general decrees of the Act are talked about, decrees about immovable cultural and natural property to be conserved are explained in detail.

#### **GENERAL DECREES OF THE ACT**

General decrees of the Act are described in Part 1 of the Act.

#### **Aim, Content and Definitions of This Act**

The aim of this act is to define movable and immovable cultural and natural property to be conserved, to regulate relevant procedures and activities, to institute and assign the responsibilities of the organization that will be in charge of setting essential principles and taking operational decisions (Article (1)).

This Act concerns both movable and immovable cultural and natural property to be conserved, and the obligations and responsibilities of individual and corporate bodies (Article (2)).

In Article (3), which was changed by the Act Number 3386, definitions which are pertaining to this legislation are given as follows:

- 1) "Cultural Property" is all movable and immovable property, above and under ground or under water that belongs to the prehistoric and historic periods and relates to scientific, culture, religion and the fine arts.
- 2) "Sites" are areas that are products of civilizations from the prehistoric period to the presents and constitute towns or remains of towns reflecting the social, economic, architectural and other qualities of their era or places where significant historic events have occurred and designated territories to be conserved for their natural characteristics.
- 3) "Conservation" is operations for preservation, maintenance, repair, restoration and change of function of immovable cultural and natural property and preservation, maintenance, repair and restoration of movable cultural property.
- 4) "Areas of Conservation" is an area to be imperatively conserved for the protection and preservation of immovable cultural and natural property within their historical context.

### **Obligation to Notify**

Those who discover movable or immovable cultural and natural property and those who know or learn that such property exists on the land they own or use are obliged to notify the nearest museum directorate or, in villages, the administrator within three days (Article (4)).

### **Quality of Being State Property**

All movable and immovable cultural and natural property that needs to be conserved and is found on property belonging to the state, public institutions or private institutions and individuals is considered state property (Article 5)).

## **IMMOVABLE CULTURAL AND NATURAL PROPERTY TO BE CONSERVED**

### **Immovable Cultural and Natural Property to Be Conserved**

Immovable cultural and natural property to be conserved is determined in Article (6) of this Act as follows:

- a) Natural property to be conserved and immovable property built prior to the end of the nineteenth century,
- b) Immovable property built after the designated date but considered worthy of conservation by the Ministry of Culture for their significance and characteristics,
- c) Immovable cultural property within sites,
- d) Without regard to date of construction or registration, buildings and sites that have witnessed significant episodes of the National War of Independence and the proclamation of the Republic of Turkey and houses used by Mustafa Kemal ATATÜRK for their relevance to our national history.

However, immovables that have been declared unworthy of preservation for their architectural, historical, esthetical, archaeological or other characteristics by the Superior Council are not considered immovable cultural property to be conserved.

In the same article, historic palaces, houses, sea-side residences and mansions, remains of historic roads, castles, excavation sites are given as some of immovable cultural properties to be conserved.

### **Listing and Registration**

The Ministry of Culture lists immovable cultural and natural property to be conserved either by himself or benefits from specialists of concerned organizations.



The historical, artistic, regional and other characteristics of cultural and natural property are taken into consideration during listing. Adequate number of exemplary works representing their periods are designated as cultural property to be conserved in view of the means of the State available for this purpose.

Listed buildings determined by the Ministry of Culture are registered by the Regional Council. (Article (7))

### **Authority Taking Decisions Concerning Conservation Areas**

Regional Councils are authorized to designate conservation areas that have been registered according to Article (7) and whether new constructions and installations can be allowed within such areas.

In the designation of conservation areas, the criteria of the preservation of cultural and natural property within an adequate portion of their environment to ensure their conservation within context is taken into consideration. (Article (8))

### **Prohibition of Unauthorized Use and Intervention**

According to Article (9), which was changed by the Act Number 3386, all constructional and physical intervention in cultural and natural property to be conserved, their use or change of function are prohibited, if they are contrary to decisions of the Regional Councils. Repair, construction, installation, sounding partial or total demolition, excavation and similar activities are considered as constructional and physical intervention.

### **Authorization and Procedures**

The Ministry of Culture is responsible for taking or having others take measures to protect immovable cultural and natural property to be conserved and for supervising such measures whoever owns or administers the property.

The Chairmanship of the Turkish National Parliament, the Ministry of National Defence and the Directorate General of Pious Foundations are responsible for protecting and administering cultural and natural properties which they have.

Other public institutions who own immovable cultural and natural property are responsible for their preservation in keeping with legislation.

The preservation of immovable cultural and natural property owned by public institutions is financed by allowances put in their budget each year for this purpose.

The budget of Ministry of Culture is provided with adequate allowances each year to carry out these services

The Ministry of Culture can establish foundations for the preservation and evaluation of cultural and natural property. (Article (10))

### **Right and Responsibility**

Owners of immovable cultural and natural property are eligible to benefit from all rights and exemptions recognized by this Act provided they conform to the instructions of the Ministry of Culture concerning their maintenance and repair.

Owners can exercise all rights of ownership provided they are not contradictory to the principles established by this Act.

The property of owners that are unable to provide the maintenance and repair foreseen by this Act is expropriated through designated procedures. Property belonging to foundations is outside the scope of this decree.

With the consent of the Ministry of Culture, the Directorate General of Pious Foundations, provincial administrations, municipalities and other public institutions can provide technical staff and financial assistance to owners of immovable cultural and natural property mentioned above. (Article (11))

### **Contribution Fund for the Repair of Immovable Cultural Property to Be Conserved**

Financial and technical assistance and credits are provided by the Ministry of Culture for the preservation, maintenance and repair of cultural and natural property to be conserved in private and public ownership. (Article (12))

### **Prohibition to Transfer**

All kinds of immovable cultural and natural property to be conserved that is national property or that belongs to other public institutions can not be sold or donated to individual or corporate bodies without the consent of the Ministry of Culture. (Article (13))

### **Utilization**

Immovable cultural and natural property to be conserved can be assigned to the use of State parties, public institutions and national charity organizations or can be rented to individual or corporate bodies for certain periods of time with the approval of the Ministry of Culture. (Article (14))

### **Expropriation**

Immovable cultural property and conservation areas are expropriated according to the following procedures:

a) Immovable cultural and natural property to be conserved and conservation areas that have partially or totally been transferred to the ownership of individual

or corporate bodies are expropriated according to a program prepared by the Ministry of Culture. For this purpose, adequate allowances are provided to the budget of Ministry.

b) Immovable cultural and natural property to be conserved and conservation areas that are originally parts of foundations but have partially or totally been transferred to the ownership of individual or corporate bodies can be expropriated by the Directorate General of Pious Foundations. For this purpose, adequate allowances are provided to the budget of the Directorate.

c) If conservation areas of immovable cultural and natural property to be conserved are designated as parts of streets, parking areas or green areas in urban development plans, they are expropriated by municipalities, conservation areas of cultural property utilized by other public institutions are expropriated by these institutions.

d) The antiquity rareness and artistic value of immovable cultural property are not taken into consideration in their evaluation for expropriation.

e) Procedures of expropriation are designated by degrees of this Act and by those decrees of Expropriation Act Number 2942 that are not contradictory to this Act.

f) In the site areas, where all constructions are prohibited, if any owner apply, his property can be changed to one of national property. If there is a building on his parcel, its evaluation for expropriation is determined according to the Expropriation Act Number 2942. (Article (15))

#### **Prohibition of Illicit Building**

Illicit construction on movable cultural and natural property to be conserved and on their conservation areas is prohibited. Such illicit construction and buildings that do not comply with conservation plans and their regulations are dealt with according to urban development regulations. (Article (16))

## **Transition Period to Conservation Plans- Urban Development Plans for Conservation- Partial Plan Alterations**

According to Article (17), which was altered by the Act Number 3386, the proclamation of an area as a conservation site suspends the implementation of urban development plans in that area. Within a month, the Regional Council designates the conditions of construction during the transition period until an urban development plan for conservation is prepared. Concerned provincial governments and municipalities are obliged to prepare such plans within a year and submit them the Regional Council for approval.

With the preparation and approval of urban development plans for conservation, the conditions of the transition period are automatically suspended.

If the necessity arises to partially change urban development plans for conservation and the Regional Council approves such a change, the Regional Council informs the concerned municipality and related institutions through the provincial government.

The municipal council gives a decision within a month. If the municipality fails to take a decision in the foreseen period, the plan or proposal for alteration in the plan prepared by the Regional Council becomes definite.

## **Fundamentals for Constructions**

Immovable cultural property to be conserved is classified by the Regional Councils within three months of the application of the owner. Classified immovable cultural property is registered in title-deeds. Principles to be adopted for repair and construction can not be designated until property is classified.

Municipalities can not make alterations in the resolutions and approved projects of the Regional Councils for new construction or annexes to built in the

building lots of immovable cultural property. However, they supervise conformity of new constructions with general building regulations.

Buildings lots of immovable cultural property to be conserved can not be divided or joined so as not to alter the character of such property. (Article (18))

### **Obligation of Owners to Allow Inspection**

Owners of immovable cultural and natural property are obliged to allow specialists assigned by the Ministry of Culture to inspect, survey, photograph and take cast of the property. However, specialists have to conform to the privacy of residence and family. (Article (19))

### **Transportation of Immovable Cultural Property**

Immovable cultural property and its parts are fundamentally preserved in situ. However, in the case of necessity, they can be transported to a location designated by the Ministry of Culture with the consent of the Superior Council and with essential security measures. If the owner of the property faces damages in the transportation of the property, a commission formed in the Ministry of Culture designates an amount to be paid to the owner. (Article (20))


### **Exceptions**

Immovable cultural property registered as “immovable cultural property to be conserved” in the title-deed and classified in the I or II groups is exempted from all taxes and duties.

Repair and construction works of immovable cultural property implement in compliance with the decisions of the Regional Councils are exempted from municipal and all other taxation. (Article (21))

## **Penalties**

Actions against Article (9) of this Act:

- a) Those who deliberately demolish or damage immovable cultural and natural property to be conserved are sentenced to imprisonment from two to five years and fined fifty to two hundred thousand liras.
  - b) Those who illegally construct buildings incongruous to decisions of the Superior Council in conservation sites are sentenced to imprisonment from one to three years and fined fifty to two hundred thousand liras.
  - c) Those who illegally give permission for demolitions or new constructions are sentenced to imprisonment from two to five years and fined fifty to two hundred thousand liras. (Article (65))
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## APPENDIX B

### THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990

The aim of the Act is to organize the legislative framework of the planning system about the conservation of the special architectural or historic interest.

The Act consolidates certain enactments relating to special controls in respect of buildings and areas of special architectural or historic interest with amendments.

#### **LISTED BUILDINGS**

##### **Listing of Buildings of Special Architectural or Historic Interest**

A listed building, which has been included on a list which is compiled by the Secretary of State for the National Heritage, is a special architectural or historic interest. The Secretary of State also has the power to approve, with or without modifications, such lists compiled by the Historic Buildings and Monuments Commission for England, commonly known as English Heritage, or by other persons or bodies of persons, and may amend any list so compiled or approved (Section I (1)).

In this Act “listed buildings” means a building which included in a list compiled or approved by the Secretary of State. The definition of the listed building includes:

- a) the building itself;
- b) any object or structure fixed to the building;



c) any object or structure within the curtilage of the building which although not fixed to the building, forms part of the land and has done so since before July 1 1948 (Section I (5)).

After any list has been compiled or approved, it is issued by the Secretary of State and a copy of the list is sent to the local authority whose area or any part of whose area relates the list (Section 2 (1)).

### Building Preservation Notices

If an unlisted building is under threat and is appeared to a local planning authority to be of special architectural or historic interest, the authority has the power to serve “*building preservation notices*” on the owners and occupiers of buildings (Section 3 (1)).

By serving a building preservation notice, a local planning authority has requested the Secretary of State to consider including the building in a list (Section 3 (2)).

A building preservation notice comes into force as soon as it has been served on both the owner and occupier of the building to which it relates; and it remains in force for a maximum six months, or until the Secretary of State issues his decision if that is sooner (Section 3 (3)).

A building preservation notice is ceased to be in force if the Secretary of State either includes the building in a statutory list, or notifies the local planning authority that he does not intent to do so (Section 3 (4)).

If the Secretary of State refuses the request of the local planning authority, the authority may not issue a new building preservation notice for one year.

### Compensation For Loss or Damage Caused by Service of Building Preservation Notice

The owner is entitled to claim compensation from the local planning authority, within the prescribed time and prescribed manner, for any loss or damage resulting from the service of a building preservation notice (Section 29 (1-2)).

### Temporary Listing in Urgent Cases

If it appears to the local planning authorities to be urgent that a building preservation notice should come into force, they may, instead of serving the notice on the owner and occupier of the building, affix the notice conspicuously to some object on the building (Section 4 (1)).

### Issue of Certificate That Building Not Intended To Be Listed

If any person applies to the Secretary of State for planning permission for any development involving the alteration, extension or demolition of a building; or any such planning permission has been granted the Secretary of State may issue a certificate stating that he does not intend to list the building (Section 6 (1)).

This certificate prevents the serving of a building preservation notice or the listing of building for 5 years (Section 6 (2)).

### **Authorization of Works Affecting Listed Buildings**

After a building has been listed, the local planning authority is able to exert more control over development of the building or land.

Under the Act, all works affecting listed buildings are restricted. No one shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its

character as a building of special architectural or historic interest, unless the works are authorized (Section 7).

### Listed Building Consent

Anyone who wants to demolish a listed building or to alter or extend one in any way that affects its character, must obtain “ *listed building consent* ” from the local planning authority, or in some circumstances the Secretary of State (Section 8 (1 and 2)).

In 1985, the Department of the Environment issued a guide which states that “ *The fact that a building is listed as of special architectural or historic interest does not mean that it will be preserved intact in all circumstances, but it does ensure that the case for its preservation is fully considered, through the procedure for obtaining listed building consent.*”<sup>70</sup>

In order to carry out any of the following, a listed building consent is necessary:

- *demolition of any part of a listed building*
- *extensions to a listed building, whatever their size*
- *alterations to a listed building which would affect its character as a building of special architectural or historic interest*
- *to demolish or alter any object or structure attached to the listed building or within its curtilage*
- *put advertising on the outside or inside of a listed building*
- *painting or repainting the exterior or interior of the listed building.*

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<sup>70</sup> The Building Conservation Directory 1994, Published by Cathedral Communication Limited, London, 1994, p.10.

- *a change of use does not normally need a listed building consent except for an internal alterations are proposed which would affect its character.*<sup>71</sup>

### An Application for Listed Building Consent

An application for listed building consent is made to the local planning authority (Section 10 (1)).

Local Planning Authorities have special forms for applying listed building consent.

- “sufficient particulars to identify the building to which it relates, including a plan;*
- such other plans and drawings as are necessary to describe the works which are the subject of the application; and*
- such other particulars as may be required by the authority”*<sup>72</sup> must be added to an application form (Section 10 (2)).

A person who, applies for listed building consent, also has to take out an advertisement in a local newspaper for informing application (Section 11 (3)).

### Decision on Application

*“The local planning authority or, as the case may be, the Secretary of State may grant or refuse an application for listed building consent and, if they grant consent, may grant it subject to conditions”*<sup>73</sup> (Section 16 (1)).

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<sup>71</sup> WILLIAM John. The Which? Guide to Planning and Conservation, Published by Consumer’s Association, London, 1990, p.91.

<sup>72</sup> Planning ( Listed Building and Conservation Areas ) Act 1990, Published by HMSO, London, 1990, p.6.

<sup>73</sup> Planning ( Listed Building and Conservation Areas ) Act 1990, Published by HMSO, London, 1990, p.11.

The local planning authority should consider the following matters when determining an application for consent to either demolish or alter a listed building:

- *the importance of the building, bearing in mind the number of listed buildings in the neighborhood;*
- *when assessing the importance of the building: whether it has architectural interest or historical connections, or whether it illustrates the character of a past age or development of a particular skill or technology;*
- *the condition of the building, the cost of repairing and maintaining it in relation to its importance and whether grants have been promised or received from public funds;*
- *the importance of any alternative use for the site, and in particular whether the use of the site for some other public purpose would enhance the environment or other listed buildings area.<sup>74</sup>*

If the local planning authority proposes to give consent to demolish a listed building, it must notify the Secretary of State who gives a decision within 28 days, on the advice of English Heritage, whether or not to call in the application.

If permission to demolish is granted, one month is given the Royal Commission on the Historical Monuments of England to record the building (Section 8 (2)).

#### Grant of Consent Subject to Conditions

A local planning authority or, as the case may be, the Secretary of State has the power to impose conditions on grant of listed building consent. These conditions are:

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<sup>74</sup> Circular 8/87, Department of Environment, 1987, p. 27.

- a) *“the preservation of particular features of the building, either as part of or after severance from it;*
- b) *the making good, after the works are completed, of any damage caused to the building by the works;*
- c) *the reconstruction of the building or any part of it following the execution of any works, with the use of original materials so far as practicable and with such alterations of the interior of the buildings as may be specified in the conditions”*<sup>75</sup> (Section 17 (1)).

These conditions are valid five years or such other period (whether longer or shorter) beginning with the date on which the consent is granted (Section 18 (1)).

*“Any person interested in a listed building with respect to which listed building consent has been granted subject to conditions may apply to the local planning authority for the variation or discharge of the conditions ”*<sup>76</sup> (Section 19 (1)).

## Appeals

If an application for listed building consent is refused by the local planning authority, or granted subject to conditions, the applicant has the right of appeal to the Secretary of State (Section 20 (1)).

The Secretary of State has to give his decision within eight weeks (Section 20 (4)).

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<sup>75</sup> Planning ( Listed Building and Conservation Areas ) Act 1990, Published by HMSO, London, 1990, p.11.

<sup>76</sup> Planning ( Listed Building and Conservation Areas ) Act 1990, Published by HMSO, London, 1990, p.12.

## Compensation for Refusal of Consent To Alteration or Extension of A Listed Building and Compensation for Grant of Consent Subject To Conditions

If an owner of a listed building applies for listed building consent for the alteration or extension of it, and a local planning authority refuses such consent or grants it subject to conditions the owner can want compensation for his losses. In order to be compensated, the owner has to show that the value of the interest is less than it would have been if listed building consent had been granted or had been granted unconditionally. In this situation, the local planning authority pay that person compensation of an amount equal to the difference (Section 27 (1-2)).

The owner has one more rights to be compensated. When a listed building consent is refused or granted subject to conditions, any owner of the listed building may serve a “*listed building purchase notice*” on the council of the district where the land is situated. By serving this notice, the owner requires that council to purchase the land if he can claim that the land has become “incapable of reasonable beneficial use” (Section 32 (1-2)).

The council on whom a listed building purchase notice is served by an owner serves a notice stating that either the council are willing to comply with the purchase notice; or not, within the period of three months beginning with the date of service of listed building purchase notice (Section 33 (1-2)).

### Revocation and Modification of Consent

A local planning authority has to power to revoked or modified any listed building consent by making an order (Section 23 (1)).

Where local planning authorities submit such an order to the Secretary of State for confirmation, they shall serve notice on

- a) *“ the owner of the building affected;*
- b) *the occupier of that building; and*
- c) *any person who in their opinion will be affected by the order”*<sup>77</sup> ( Section 24 (2)).

If the owner and occupier of the land and all persons who in the authority’s opinion will be affected by the order have notified the authority in writing that they object to the order, this order does not take effect unless it is confirmed by the Secretary of State (Section 24 (1)). The Secretary of State may confirm an order either without modification or subject to such modifications as he considers expedient (Section 24 (5)).

If the owner and occupier of the land and all persons who in the authority’s opinion will be affected by the order have notified the authority in writing that they do not object to the order, instead of submitting the order to the Secretary of State for confirmation the local planning authority advertise the order and send a copy of one to the Secretary of State not more than three days after its publication (Section 25 (1 and 2)).

#### Compensation Where Listed building Consent Revoked or Modified

If a listed building consent is revoked or modified by a local planning authority, and if an owner can show that he has incurred expenditure in carrying out works which are rendered abortive by the revocation or modification; or he has sustained loss or damage which is directly attributable to the revocation or modification, the authority pay that person compensation in respect of that expenditure, loss or damage (Section 28 (1-2)).

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<sup>77</sup> Planning ( Listed Building and Conservation Areas ) Act 1990, Published by HMSO, London, 1990, p.14.



## Offences

*“If a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent, he shall be guilty of an offence.”*<sup>78</sup> (Section 9 (2))

If anyone demolishes, alters or extent a listed building without listed building consent, he is guilty of an offence and the penalty can be a fine of unlimited amount or up to twelve months imprisonment, or both (Section 9 (4)).

In proceedings for an offence under this section it shall be a defense to prove the following matters

- a) *“that works to the building were urgently necessary in the interest of safety or healthy or for the preservation of the building;*
  - b) *that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;*
  - c) *that the works carried out were limited to the minimum measures immediately necessary; and*
  - d) *that notice in writing justifying in detail the carrying out of the works was given to the local planning authority as soon as reasonably practicable”*<sup>79</sup>
- (Section 9 (3)).

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<sup>78</sup> Planning ( Listed Building and Conservation Areas ) Act 1990, Published by HMSO, London, 1990, p.6.

<sup>79</sup> Planning ( Listed Building and Conservation Areas ) Act 1990, Published by HMSO, London, 1990, p.6.

### Listed Building Enforcement Notice

When the need to obtain listed building consent is ignored by an owner or a condition on consent, which would affect the character of a listed building, is overlooked, a local planning authority can issue a “*listed building enforcement notice*” which requires the building to be restored to its former state (Section 38 (1-2)). A copy of a listed building enforcement notice must be served within 28 days on the owner and on the occupier of the building to which it relates and on any other person having an interest in that building which in the opinion of the authority is materially affected by the notice (Section 38 (3)).

A person having an interest in the building to which a listed building enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice (Section 39 (1)).

The local planning authority has the right to enter the land and carry out the steps specified in the listed building enforcement notice which have not taken by the owner within the determined period by the authority (Section 42 (1)).

Penalties for non-compliance with listed building enforcement notice are summary conviction, to a fine; and conviction on indictment, to a fine (Section 43 (1)).

### **Prevention of Deterioration and Damage**

#### Compulsory Acquisition of Listed Building In Need of Repair

If it appears to the Secretary of State that reasonable steps are not being taken for properly preserving a listed building, he may authorize the appropriate authority to acquire compulsorily the building and any relevant land; or he may himself compulsorily acquire them (Section 47 (1)).

*“The appropriate authority means:*

- a) the council of the county or district in which the building is situated, or*
- b) in the case of a building situated in Greater London, the Commission or the council of the London borough in which the building is situated, or*
- c) in the case of a building situated outside Greater London, the joint planning board for the area in which the building is situated, or*
- d) in the case of a building situated within the Broads, the Broads Authority;*

*Relevant land means the land comprising or contiguous or adjacent to it which appears to the Secretary of State to be required for preserving the building or its amenities, or for affording access to it, or for its proper control or management”*<sup>80</sup> (Section 47 (7)).

Before acquiring the building and any relevant land compulsorily, the authority serves a “*repair notice*” on the owner of the building. A repairs notice should specify the works which the local planning authority considers reasonably necessary for the proper preservation of the building. The owner must carry out these works. The notice also explains that if the works are not carried out within two months after the notice serve, the local planning authority may begin compulsory purchase proceedings (Section 48 (1)).

If an owner of a listed building deliberately lets it fall into disrepair redevelopment of the site, the authority may determine the value of this interest under the guidance of a direction for minimum compensation (Section 50 (1)).

According to a direction for minimum compensation, it is assumed

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<sup>80</sup> Planning ( Listed Building and Conservation Areas ) Act 1990, Published by HMSO, London, 1990, p.30.

- a) that planning permission would not be granted for any development or redevelopment of the site of the building; and
- b) that listed building consent would not be granted for any works for the demolition, alteration or extension of the building other than development or works necessary for restoring it to and maintaining it in a proper state of repair (Section 50 (4)).

#### Acquisition by Agreement

*“The council of any county, district or London borough or a joint planning board for an area outside Greater London may acquire by agreement*

- a) any building appearing to them to be of special architectural or historic interest; and*
- b) any land comprising or contiguous or adjacent to such a building which appears to the*

*Secretary of State to be required*

- building for preserving the or its amenities, or*
- for affording access to it, or*
- for its proper control or management ”*<sup>81</sup> (Section 52 (1)).

When the authorities acquire any building or land, they make such arrangements as to its management, use or disposal as they consider appropriate for the purpose of its preservation (Section 53 (1)).

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<sup>81</sup> Planning ( Listed Building and Conservation Areas ) Act 1990, Published by HMSO, London, 1990, p.33.

### Urgent preservation

The Secretary of State and a local planning authority, in its area, may execute any works which appear to them to be urgently necessary for the preservation of a listed building (Section 54 (1-2)).

The works may consist or include works for affording temporary support or shelter for the building (Section 54 (3)).

A notice which describes the works proposed to be carried out is given the owner of the building (Section 54 (5)).

The authority have a power for recovering the expenses of works from the owner of the building. For this aim, the authority give notice to the owner requiring him to pay the expenses of the works (Section 55 (1-2)).

*“The owner may within the 28 days of the service of the notice represent to the Secretary of State*

- *that some or all of the works were unnecessary for the preservation of the building; or*
- *in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time; or*
- *that the amount specified in the notice is unreasonable; or*
- *that the recovery of that amount would cause him hardship,*
- *and the Secretary of State shall determine to what extent the representations are justified”*<sup>82</sup> (Section 55 (4)).

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<sup>82</sup> Planning ( Listed Building and Conservation Areas ) Act 1990, Published by HMSO, London, 1990, p.35.

### Grants for repair and maintenance

Local authorities may make grants or loans towards the cost of repairs or maintenance to buildings of architectural or historic interest, whether or not they are listed (Section 57 (1)).

*“If, during the period of three years beginning with the day on which a grant is made towards the repair or maintenance or upkeep of any property, the grantee disposes of the interest held by him in the property on that day or any part of that interest, by way of sale or exchange or lease for a term of not less than 21 years, the local authority may recover the amount of the grant, or such part of it as they think fit, from the grantee in any court of competent jurisdiction”<sup>83</sup> (Section 58 (1)).*

### Damage to listed buildings

If, with the intention of causing damage to a listed building, any relevant person does or permits the doing of any act which causes or is likely to result in damage to the building, he shall be guilty of an offence and liable on summary conviction to a fine (Section 59 (1)).

## **ANCIENT MONUMENTS**

Ancient monuments of national importance are scheduled by the Secretary of State since the Ancient Monuments and Archaeological Areas Act 1979. Unlike listing, scheduling can be extended to non-architectural features within a building such as historic machinery and even moveable items like cars, ships and planes of historic interest. The term ‘ancient monuments’ commonly uses for Grade I, buildings of exceptional interest, or Grade II\*, particularly important buildings of more than special interest, listed buildings or archaeological remains.

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<sup>83</sup> Planning ( Listed Building and Conservation Areas ) Act 1990, Published by HMSO, London, 1990, p.36.

Unlike listed buildings, an application for planning permission of ancient monuments are made to the Secretary of State (Section 66 (1)).

## CONSERVATION AREAS

Although particular buildings have been preserved in England since 1930, groups of buildings was not protected until 1967.

Conservation areas are areas of special architectural or historic interest, rather than the individual buildings. *There are many different kinds of conservation areas. They may be large or small, from whole town centers to squares, terraces and smaller groups of buildings. They will often be centered on listed buildings, but not always. Pleasant groups of other buildings, open spaces, trees, an historic street pattern, a village green or features of historic or archaeological interest may also contribute to the special character of an area.*<sup>84</sup>

It is the duty of a local planning authority to consider from time to time which parts of its area are areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance (Section 69 (1)). Conservation areas are designated by a local authority. The Secretary of State also has the power to designate conservation areas. (Section 70 (1))

Before a conservation area has been designated, the local planning authority should make a well-presented proposal with maps, photographs and text explaining the particular character of the area and why it is desirable to preserve it.

A local planing authority has a duty to formulate and publish proposals for the preservation and enhancement of the areas (Section 71 (1)).

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<sup>84</sup> Circular 8/87, Department of Environment, 1987, p.14.

## Planning Controls In Conservation Areas

The planning regulations are much stricter in conservation areas. In addition to the normal requirements to obtain planning permission for works to buildings and changes of use, there are additional controls. In conservation areas, while some of the types of development requires planning permission, some of them are permitted.

Some of the types of development that can not take place without planning permission are:

- *some work which would affect the external appearance of buildings requires planning permission.*
- *trees can not be felled, topped, lopped or willfully damaged without notice*
- *loft and roof extensions always need planning permission*
- *in order to demolish any buildings, whether listed buildings or not, in conservation area, conservation area consent is necessary.*<sup>85</sup>

## Conservation Area Consent

A building in conservation area is not be demolished without “*conservation area consent*” of the appropriate authority that is a local planning authority or the Secretary of State. (Section 74 (1-2)) The aim of conservation area consent is similar to listed building consent and the process of getting first likes the process of getting second.

Normally, permission is not required to demolish an unlisted building. However, conservation area consent is necessary before the demolition of any building in a conservation area.

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<sup>85</sup> DENCH, Dame Judi. Conservation Planning, Published by Planning Aid, London, December 1990, p.p.16-17.



#### Article 4 Directions

Article 4 of the Town and Country General Development Order is also used as a means of protection of conservation areas by a local authority because the article gives a local authority the power to control and remove some or all permitted development rights of properties in conservation area.

#### Conservation Area Enforcement Notices

If conservation area consent is not obtained, the local planning authority may issue a “*conservation area enforcement notice*” when unauthorized demolition takes place.

#### Repairs to Buildings On Conservation Areas

An urgent repairs notice can be served on the owners of the building in the conservation area, if it appears to the Secretary of State that the preservation of the building is important for maintaining the character or appearance of that area (Section 76 (1-2)).

#### Grants and Loans For Preservation or Enhancement of Conservation Areas

The Secretary of State or English Heritage may make grants or loans to preserve or enhance the character or appearance of any conservation area. (Section 77 (1-2))

## APPENDIX C

### CASE STUDY TO EXEMPLIFY TDR IN HISTORICAL SITE AREAS OF TURKEY

In order to exemplify the TDR in historical site areas of Turkey and the selection criterias of preservation and transfer areas, a case study was done. For these aims, the Alparslan Quarter was chosen as a preservation area and Konutkent was determined as a transfer area. Although physical and social resources were done in the Alparslan Quarter to reveal conditions of historical site area in Turkey, informations about Konutkent were obtained from the Emlak Bank, which construct buildings with a construction institution namely MESA.

Actually this study is not enough to show applicability of TDR in historical site areas of Turkey because economical analysis were not done. The main aims of the study are to exemplify the characteristics of preservation and transfer areas, the social and economic structure of historical site areas of Turkey.

The Alparslan Quarter is situated in the second center of Ankara so it is under pressure for developing. Although in the historical site historical buildings are at most three-storied, in near surrounding of the area, buildings are built even eight stories. In the area, the buildings are commonly in a bad condition from the living standards of view. Additionally, the urban development plan for conservation for this area has not prepared yet, whereas the area were determined Grade II urban site area in 1980, and the Ankara Regional Council described the conditions of construction during transition period. This uncertainty effects the people live there or have buildings negatively. They generally do not spend any money on their buildings because they believe that their buildings will not preserved under an conservation plan and they will be able to demolish them.

Moreover, usually low income groups live in the area and most of them are tenants.

On the other hand, Konutkent is in the development zone of the city. It is situated outside of the city and generally medium or high income groups prefer this area to live because the buildings are on the whole in a good condition from the living standards of view. Developers can build up to fifteen stories. If the chance to build more stories are given them, developer will use this chance because there is a very strong demand for these areas.

## **THE CHARACTERISTICS OF THE ALPARSLAN QUARTER**

The Alparslan quarter is situated in the Hamamönü region and it is surrounded by the Ulucanlar Road in the north, the Talatpaşa Road in the south, the Samanpazarı region and the Altındağ Municipality in the west and the Akalar quarter in the east. (Figure C.1)

The Hamamönü region was determined as Grade II urban site area in 12.04.1980 by the Superior Council. The Council designated the conditions of construction during the transition period for the historical urban values of Ankara at that time. Before 1980, the urban development plan of Ankara, which was prepared in 1957 by “Uybadin-Yücel”, was applied. (Figure C.2). The conditions of construction has still in force and it will be used until an urban development plan for conservation is prepared. Although according to the Conservation Act, concerned municipality is obligated to prepare an urban development plan for conservation within one year and submit it to the approval of the Ankara Regional Council, such plan has not been prepared during 15 years.

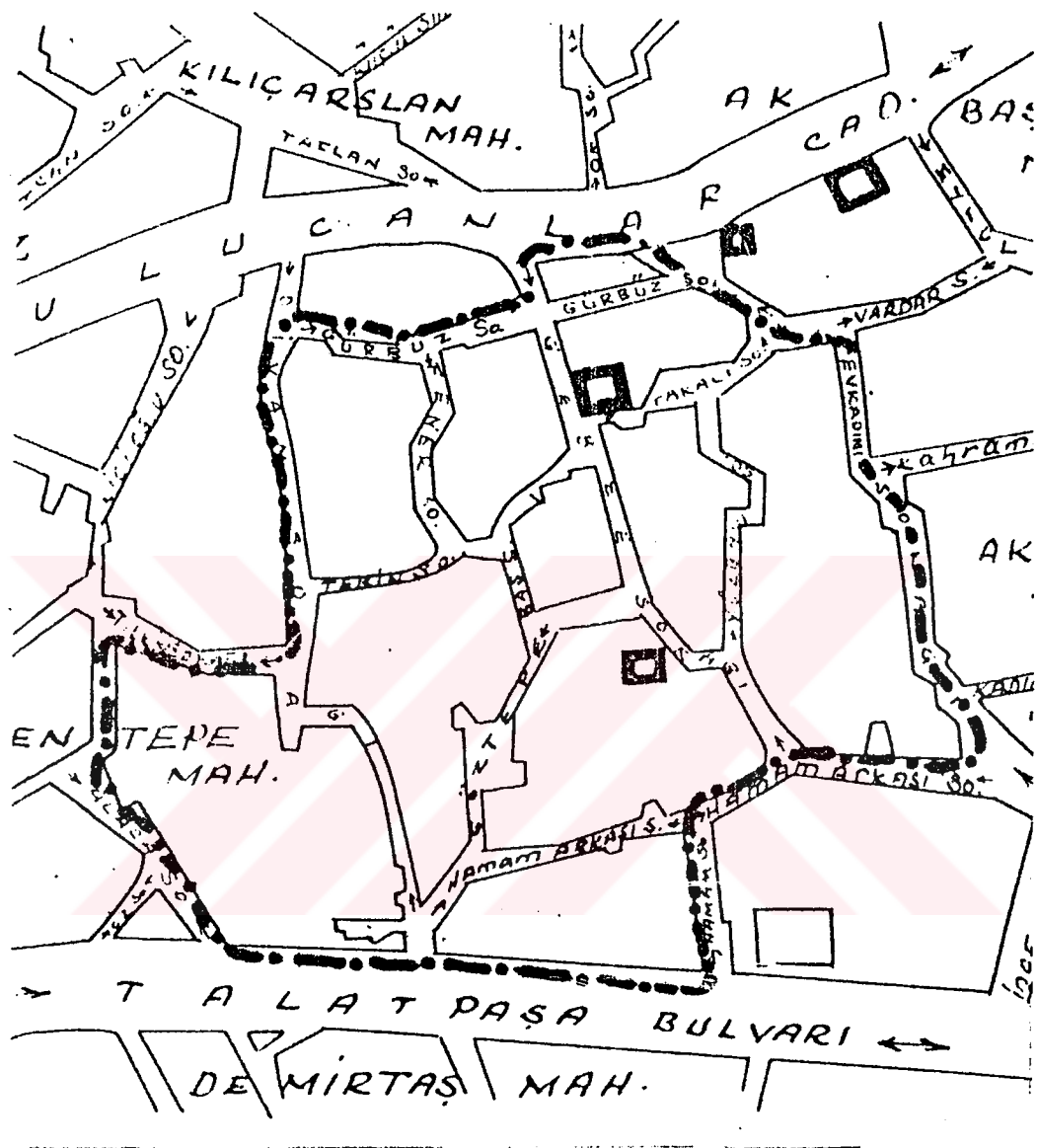


Figure C.1 The Alparslan Quarter

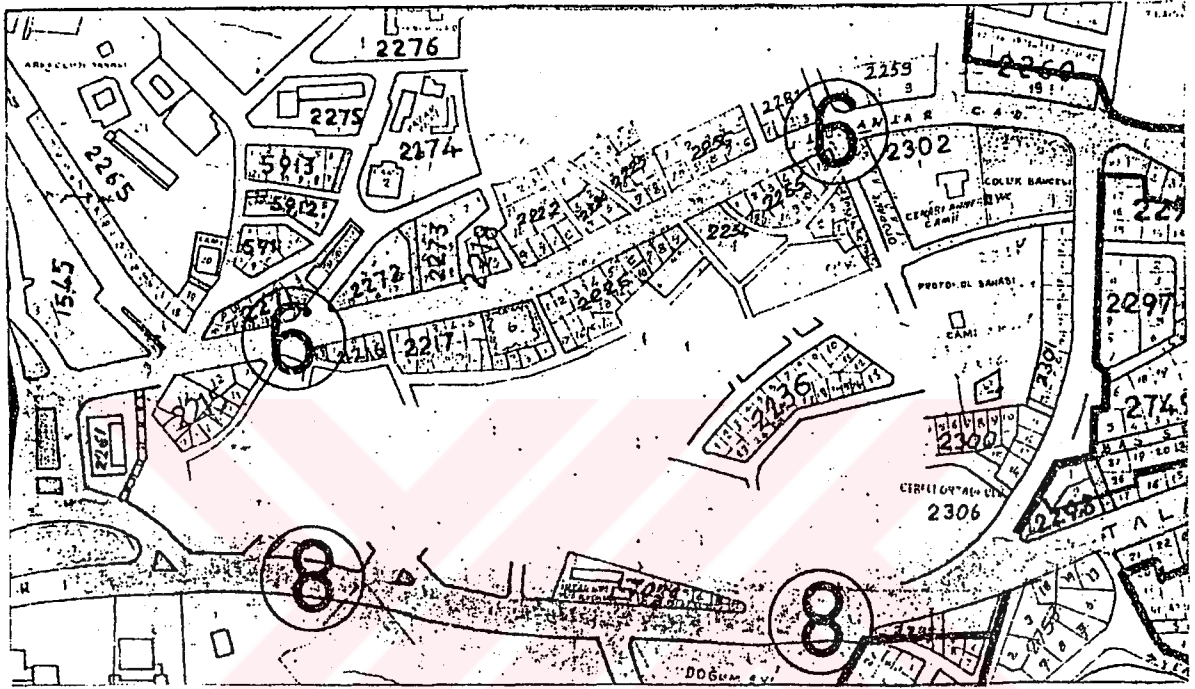


Figure C.2 The Alparslan Quarter in Yücel-Uybadin Plan's

## Physical Characteristics of The Alparslan Quarter

According to physical analysis done in the quarter, there are 211 buildings in the Alparslan quarter. 17 of them are listed buildings (8% of buildings). While 186 buildings are inhabited (88.2%), there are 16 unused buildings (7.6%), and the rest of them are ruins (4.2%). (Figure C.3) (Figure C.8)

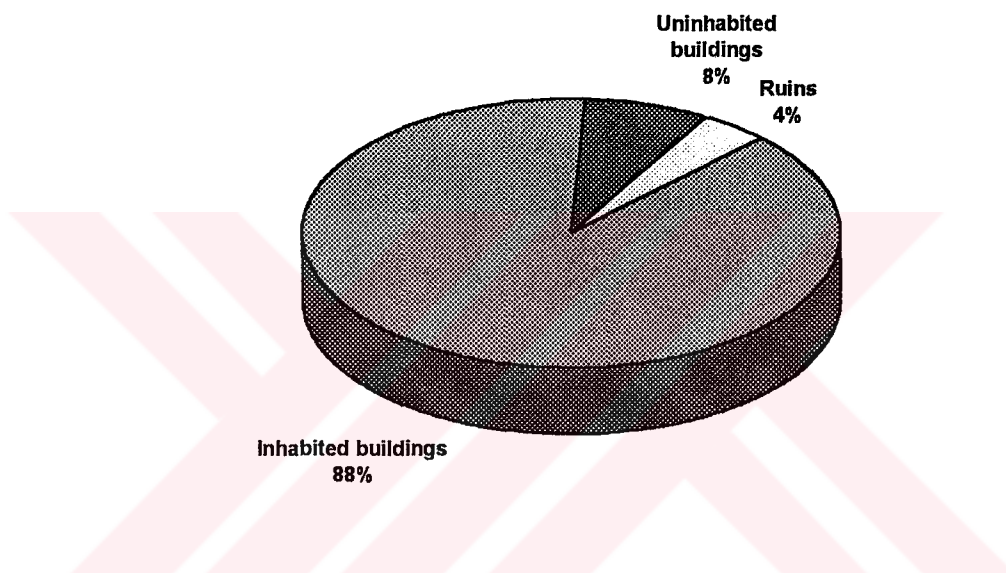


Figure C.3 The Percentage Of Inhabited-Uninhabited Buildings

Land use analyses show that 160 of inhabited buildings are used for residential purposes (86%). 6 of them have commercial use in their ground floors, 19 of them are commerce buildings (10%), 5 of them are warehouse (3%) and 2 of them are mosque (1%). (Figure C.4) (Figure C.9)

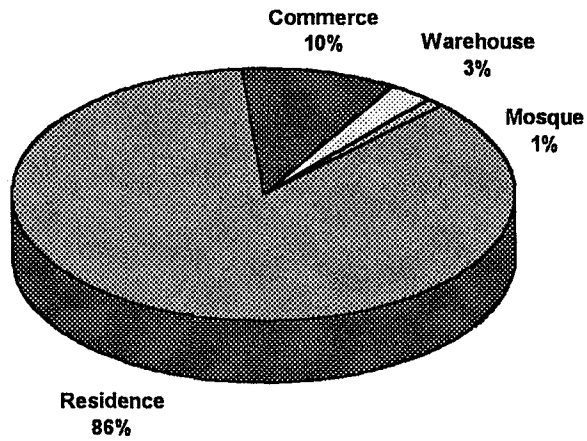


Figure C.4 Land Use Of The Quarter

63 % of buildings are 2 storied, (130 buildings), 32% of them are 1 storied, (65 buildings) and 5% of them are 3 storied, which are generally new buildings, (9 buildings). (Figure C.5) (Figure C.9)

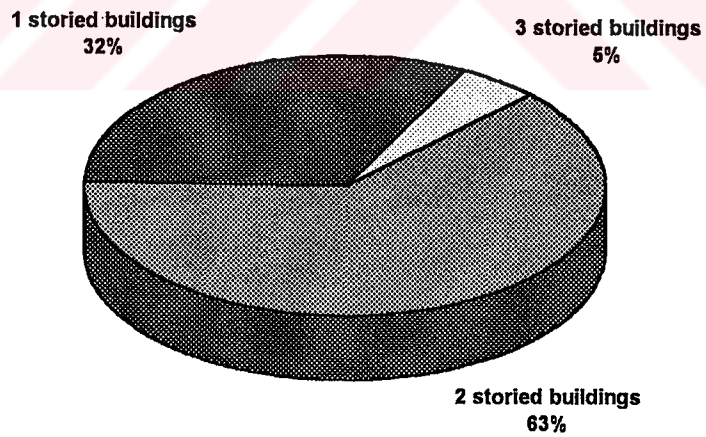


Figure C.5 The Percentage Of Buildings Stories

The majority of buildings are in a bad condition (139 buildings). Only 6.3% of buildings are in a good condition (13 buildings), and 23.4% of them are not too bad (50 buildings) (Figure C.6) (Figure C.8)

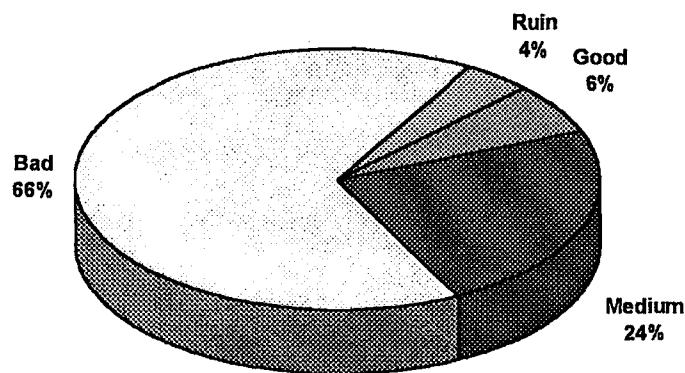


Figure C.6 The Conditions Of Buildings

The percentage of bricks or stone houses is very large (83.8%). There are 19 buildings which are made of timber (9%), and 15 buildings whose material is concrete (7.2%). (Figure C.7)

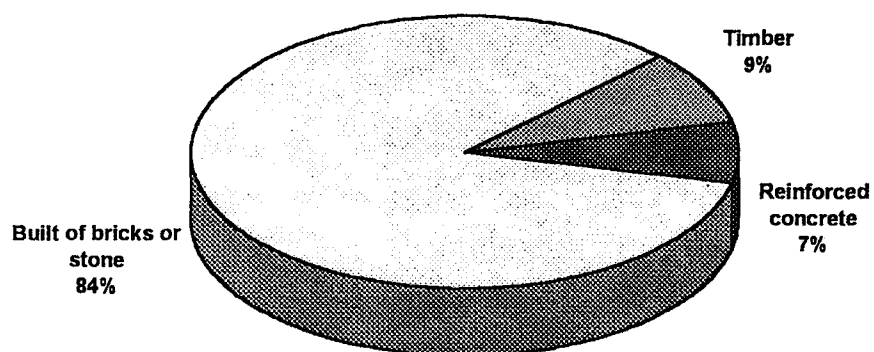


Figure C.7 The Materials Of Buildings



## **Social And Economic Structure Of The Alparslan Quarter**

Social and economic structure of the Alparslan quarter have been obtained from 24 questionnaires which were filled by people living there (3% of the families), and from interview with elder of the quarter.

The area of the quarter is about 30.000 m<sup>2</sup>. There is 160 housing units in settlements approximately 3500 population. The density of settlement is 117 person/hectare.

### **Demographic Characteristics of The Quarter**

The average population of family is 4.3 in the area. From this ratio, it can be said that most of the families are nucleus families. The average number of children is 2.6.

### **The Migration Features of The Quarter**

According to information which is given by the elder of the quarter, most of the families had migrated this quarter from Kayseri, Çorum, Yozgat, Niğde and Elazığ. This data supports the results of the questionnaire.

Most of the families live in their birthplaces before migrating to Ankara. The reasons for their migration are different. Only 16% of them came to Ankara because of their appointments. A big percentage of them (84%) preferred to migrate to Ankara for finding a job and for earning money. The other aims of them are to get a modern life standards, to provide a high education level for their children etc.

Although there are some of the families have lived in the same quarter more than 20 years (13%), 8% of the families have lived in the area less than a year. 37% of them have lived in the quarter between 1 and 5 years; 25% of them

have lived there between 6 and 10 years; 13% of them have lived in the area between 11 and 15 years. Finally, 4% of people have been there between 16 and 20 years.

The reasons for why they prefer the quarter to live can be summarized as follows:

- Rents of buildings in the area are not too high if they are compared with the rents of buildings in the other parts of Ankara.
- The quarter is situated in the center of the city
- Some of people have their relatives who have lived in the same quarter, too.
- Some of them have been there since their childhood

When the question is asked to learn their opinion about the best feature of the quarter, two main answers are obtained: It is situated in the center of city (72%) and the neighbor's relations (11%). Actually most of people thinks that there is a good relation between neighbors in the area (91%). 16% of them think that there is not any good features in the area.

The other question's result gives the problems of the quarter. 40% of people live there think that streets are too narrow so garbage trucks coal trucks and fire engines can not enter the area. There is not enough infrastructure (27%). Environment is dirty, unhealthy and neglected (18%). Buildings are too old and sometimes dangerous to live in (9%). Finally, there is no park, children's park or play pen in the area (6%).

#### Education Level of People

91.9% of people who live in the Alparslan quarter know reading and writing. Only 8.1% of them, who are generally old people, are uneducated.

## The Structure of Profession

According to informations which were obtained from the elder of the quarter, most of the working people in the quarter are workers in constructions sector. There are about 500 workers who live in the area and work in the development areas of Ankara such as Çayyolu, Batıkent, and Eryaman. Four or five of bachelor workers rent a house together and share it.

The results of the questionnaire supports this claim. 30% of working people work as building worker, 27% of them work as house painter. There are also some official in the area (14%). The other occupations are cook, tailor, hairdresser, waiter, etc.

## The Income Levels of People

The working people get their salaries by daily, weekly or monthly. There is a big difference in income level because it ranges from 5 million to 30 million. 70% of working people earn between 5 and 10 million. 13% of them earn between 11 and 15 million, 10% of them earn between 16 and 20 million and 7% of them earn more than 20 million.

41% of working people have not got any insurance, 36% of them have SSK insurance and 23% of them have BAĞKUR insurance.

## House-owners and Tenants

In the area, number of tenants (62%) are more than number of house-owners (48%) because rents of buildings are cheaper than the rents of buildings in the other sides of Ankara so leaseholds prefer this area.

Most of house-owners have lived in the area for a long time. 31% of them have lived in the same house between 11 and 15 years. While 23% of them have

been there between 6 and 10 years, same percent people have lived in their house more than 20 years. 15% of them have lived in the house between 16 and 20 years. On the other hand, most of leaseholds have stayed in the same house between 2 and 5 years (47%), 20% of them have lived in the house between 6 and 10 years, 13% of them have been there between 11 and 15 years and 13% of them have lived in the house more than 15 years. Only 7% of them have lived the house less than 2 years.

Although, according to the questionnaire, the house-owners think that the selling price of their houses ranges from 300 million TL to 1.5 billion TL, the elder of the quarter states that the selling price of houses for the area between 250 million TL to 600 million TL. There are a big difference in the rents of houses for example while some of houses are rented less than 500.000 TL (8%), 35% of them are rented more than 2 million TL. 26% of them are rented between 500.000 TL and 1 million TL; 23% of them are rented between 1 million TL and 1.5 million TL; 8% of them are rented between 1.5 million and 2 million.

Both house-owners and tenants have same problems in their houses. These are summarized as follows:

- There is a danger of demolition
- The buildings are too old and they must be repaired
- Three or four families share a house because most of the houses have been divided either vertically or horizontally by their owners, in order to increase their earnings from renting.
- Small and insufficient rooms
- Toilet and bathroom are outside of buildings
- There is not water in the house
- Roof leaks

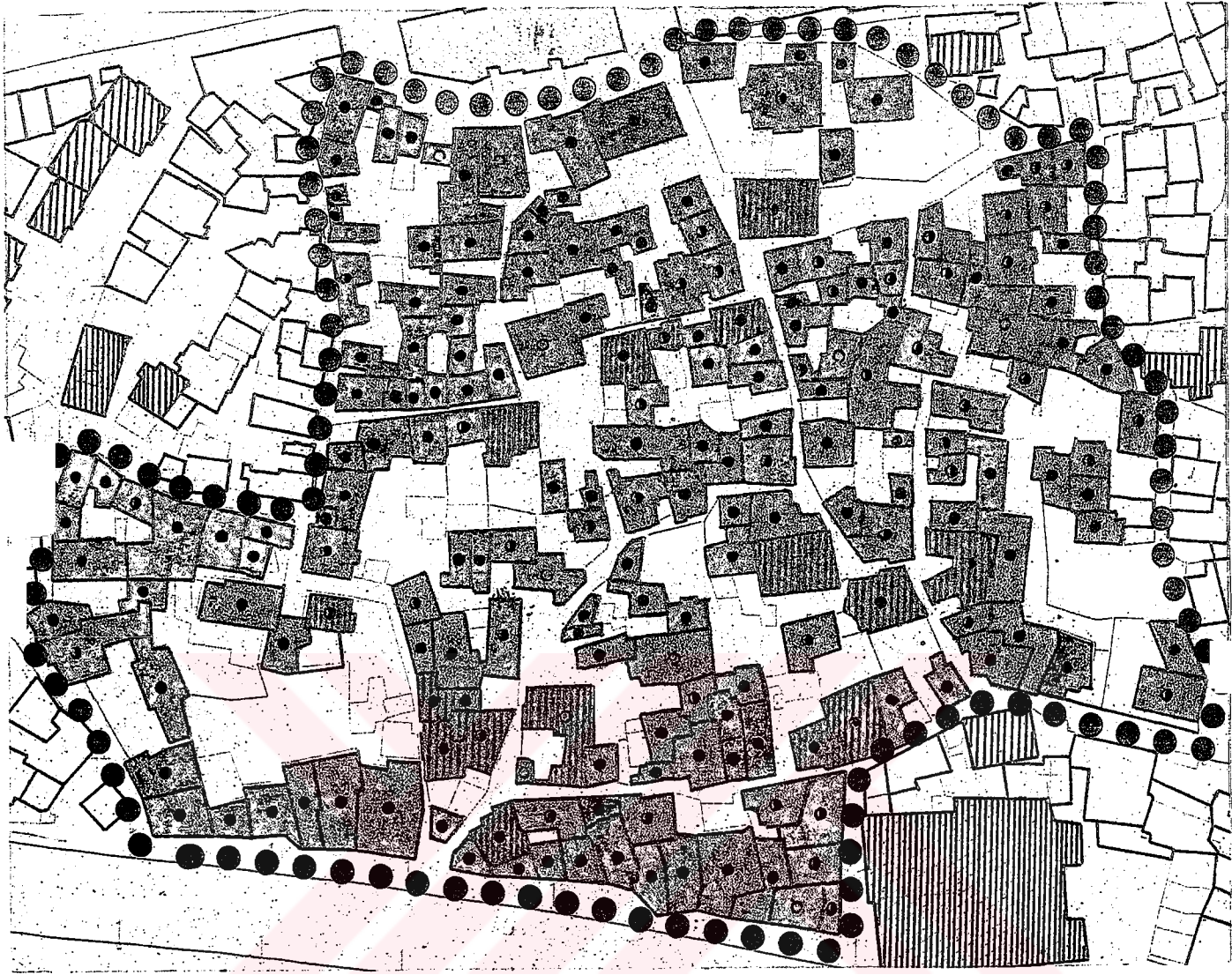









Figure C.8 Used-Unused Buildings and Conditions of Buildings in the Alparslan Quarter

LEGEND

	Used Buildings		Unused Buildings
	Ruin		Good
	Medium		Bad
	Registered Buildings		

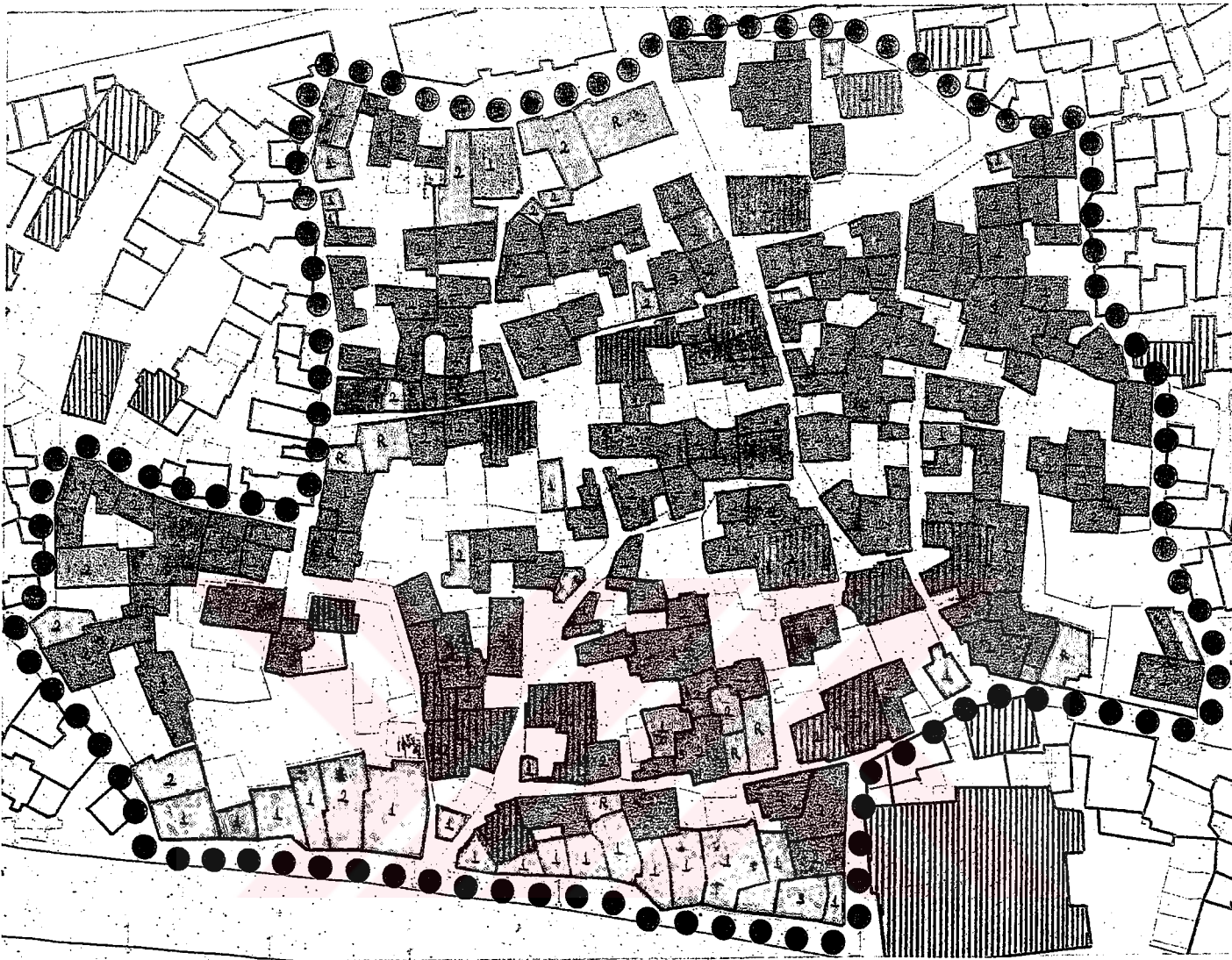










Figure C.9 Land Use of the Alparslan Quarter and the Building Stories

LEGEND

	Residence		Commerce
	Warehouse		Mosque
	Unused Buildings		Ruin
	Registered Buildings		n-storied Buildings

Although house-owners spend between 20 million TL and 50 million TL for repairing their house each year, leaseholds do not spent any money on repair of buildings except for painting.

While 54% of house-owners want to move from the quarter, this ratios is 92% for tenants.

## **THE CHARACTERISTICS OF KONUTKENT**

Konutkent is on the 22<sup>nd</sup> km of the Eskişehir Road from Kızılay. Konutkent is one of the development areas of Ankara. The Emlak Bank and the MESA, which is the construction institution, chose this area to built collective residence, in 1987. The buildings have been built for medium and high income groups because there is strong demand for the area from these people.

This trend of medium and high income groups to live in the periphery has been explained by some economists, such as William Alonso. They state that distance to center of city is the main factor to determine prices of land, which reach the highest level in the center. (Figure C.10) On the other hand, transportation cost increase from the city center to the periphery. The economist combine this theory with the individuals consumption theory. According to the theory, rich people generally prefer to live in the periphery because they want to live in large buildings, however it is hard to build large buildings in the center of the city due to high land prices. (Figure C.11) Moreover, transportation costs are not problem for them. On the contrary, low income groups prefer to live in the center of the city because although buildings are smaller in the center than the buildings in the suburbs, the price of buildings for renting or purchasing are less. Additionally, they pay less money for transportation.

These economic theories given above is clarify the reason for why medium and high income groups choose Konutkent to live.

Konutkent comprises two parts: Konutkent 1 and Konutkent 2. There is totally 2803 housing units in settlements approximately 11.000 population. Both high-stories buildings, i.e. fifteen-stories, and low-storied buildings, i.e. duplex, were built for different income groups. Almost ten various types of building were offered to consumer. Initially Konutkent 1 was built where the buildings are at least 101 m<sup>2</sup>. Then Konutkent 2 was constructed. The buildings are at least 122m<sup>2</sup> in the latter one.

The other difference of Konutkent arises from its environment plan. Unlike most of collective residences, the buildings were planned with their surroundings, in Konutkent. The aim of the plan is to create a “living city” so in the plan all people’s needs were tried to answered. For instance, Both Konutkent 1 and Konutkent 2 have shopping centers, including markets, pharmacy, restaurants, hairdresser; sport centers, including open and close swimming pools, gymnastic saloon; and healthy centers for people and animals. Additionally, both of them have primary and secondary schools. The number of parks, play areas for children and car parks were determined by taking the population of the area in consideration.

These values cause to increase in prices of land and buildings. The rents of the flats ranges from 7.5 million to 15 million and they are sold at least 2.5 billion. On the contrary, The rents of duplex and triplex start from 20 million and their selling prices are more than 10 billion.



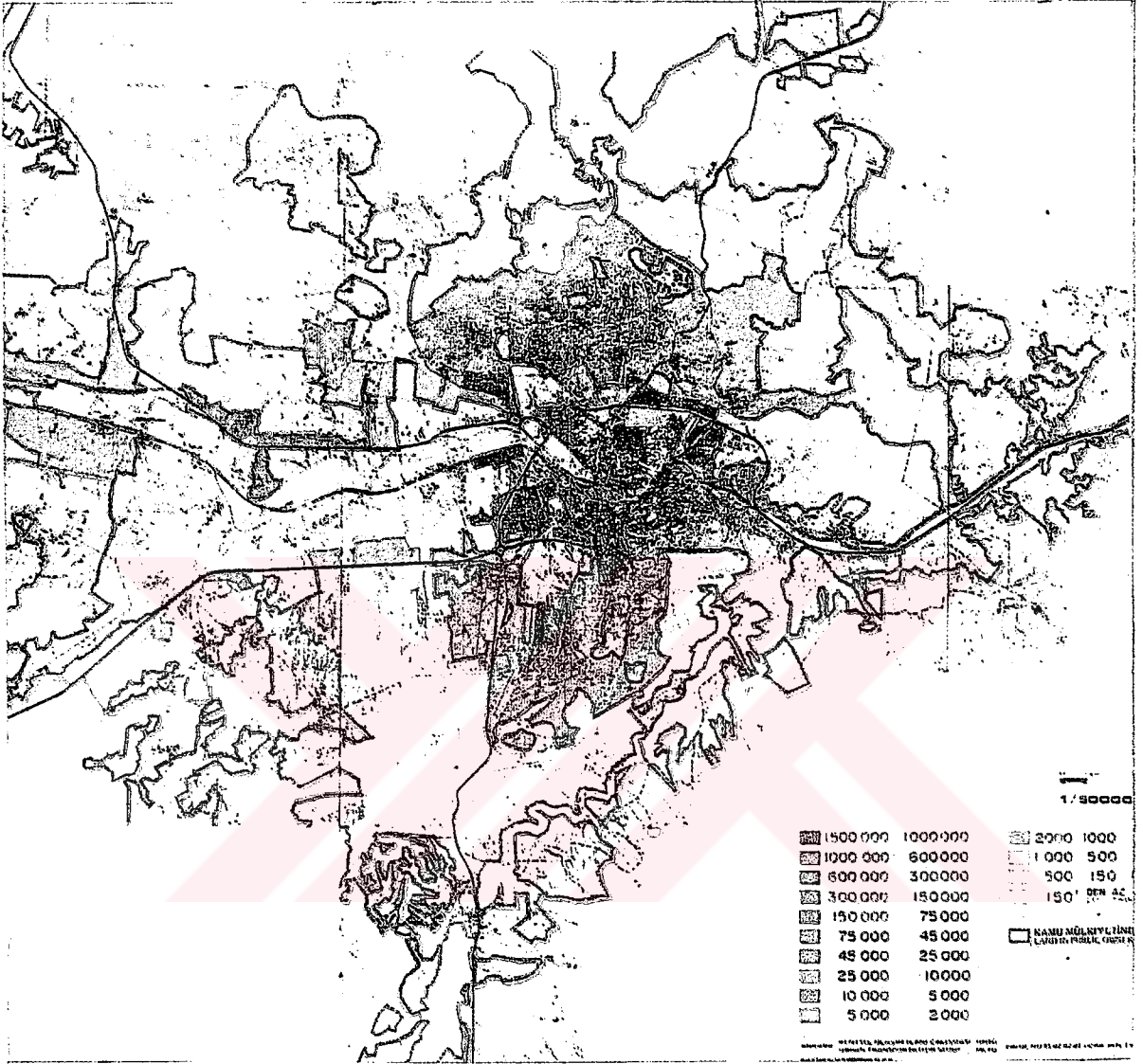


Figure C.10 The Price of Land<sup>86</sup>

<sup>86</sup> Ankara 1985'ten 2015'e, Ankara Büyükşehir Belediyesi, Ego Genel Müdürlüğü, ODTÜ Şehir ve Bölge Planlama Bölümü Çalışma Grubu, Published by Ajans İletişim, 1987, p. 101.

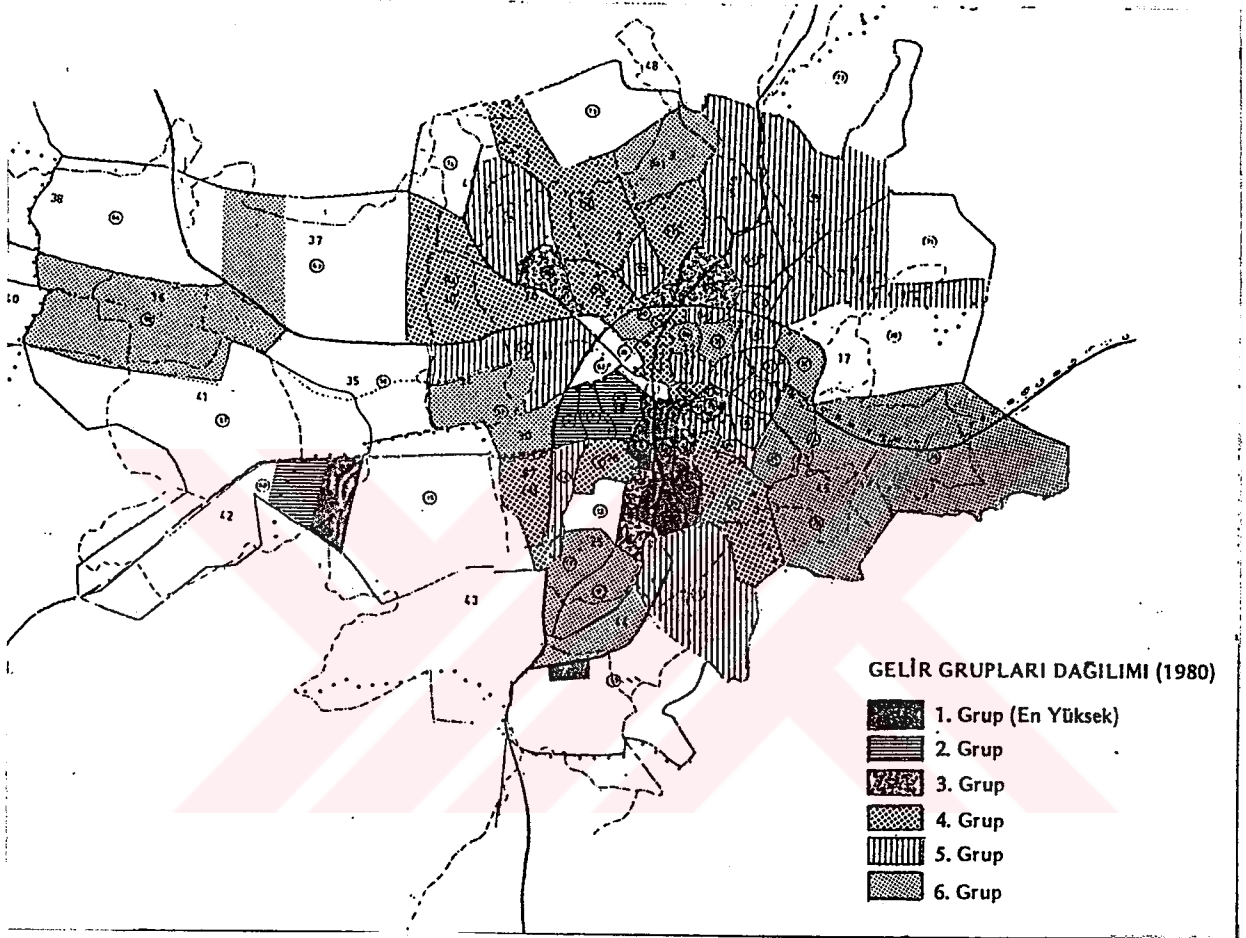


Figure C.11 The Location of the Income Groups, in Ankara<sup>87</sup>

<sup>87</sup> Ankara 1985'ten 2015'e, Ankara Büyükşehir Belediyesi, Ego Genel Müdürlüğü, ODTÜ Şehir ve Bölge Planlama Bölümü Çalışma Grubu, Published by Ajans İletişim, 1987, p. 168.

## **TDR IN THE ALPARSLAN QUARTER AND KONUTKENT**

In order to be an example for TDR program, the Alparslan quarter was determined as a preservation area and Konutkent was designated as a transfer area.

After the Ankara Regional Council designated the Alparslan quarter as a Grade II urban site area, the area restricted to low density uses to conserve historical buildings. In the area, the maximum height of buildings is three stories, however, outside the site area, buildings can be constructed up to eight stories on the Talatpaşa Road and up to six stories on the Ulucanlar Road. Therefore, if the Alparslan quarter had not been described as urban site area, the owners in the area would have built at least three stories more. By using the TDR program, they can sell these unused development rights to developers of transfer area.

On the other hand, Konutkent is suitable for development and there is a strong demand for this area from the middle and high income groups. As a result developers will want to build more stories because they can get extra income from the sales of these stories. In Konutkent, buildings can be built up to fifteen stories. After making decision to apply the TDR program, two different stories will be determined for Konutkent. One of them is a permitted story in the urban development plan, for instance, it will be ten stories. The other is extra story, such as five stories, which can be used provided that developers purchase development rights from the owners in Alparslan quarter.

In order to assist TDR exchange a Development Rights Department (DRD) will be founded in the beginning of the program by the Altındağ Municipality. The DRD both buy development rights from the owners and sell them to the developers. If the restricted owners want the department finds purchasers for them. Consequently, the municipality, in addition to restricted

owners and developers, will reap profit from the sales which are done through the bank and will obtain chance to conserve historical buildings and their surroundings either without any cost or a little cost to them.

The value of development rights should be determined for each unit of them by the DRD in order to prevent speculation.

The units of transfer should be the square meter.

