

On the Spatial and Legal Problems That Will Arise After Zoning Amnesty

TESEV Good Governance Debates aims to share with the public, different opinions and recommendations on issues that are under TESEV's working areas



Akif Burak Atlar

Project Manager - TESEV

Akif Burak Atlar graduated from Mimar Sinan Fine Arts University, Department of Urban and Regional Planning in 2009. In 2017, he received his Master's Degree in Urban Planning program at the same university. He took part in the planning team of The Environmental Plan for Central and Eastern Black Sea Region provinces. He joined TESEV as a project manager in October, 2018. Since 2010, he serves as Secretary of the Board of UCTEA Chamber of Urban Planners İstanbul Branch

This debate is translated from its original (Turkish) by Begüm İçelliler

The resurfacing of 'populist' legal arrangements such as raises for civil servants and pensioners, minimum wage policies, paid military service and debt restructuring that carry along vote potential are a strange tradition of our country's politics. Zoning Peace is a legal arrangement that was part of the omnibus bill passed in the run up to the 24 June elections. As the 2018 version of zoning amnesties which have been recurring throughout Turkey's urban history and creating spatial and legal chaos by redefining zoning rights, it has taken its place in the urban planning dictionary. What will then be the practical outcome of this new edition zoning amnesty?

In effect since 18 May 2018, the new zoning amnesty bill aims to "register buildings that are undocumented or against licensing conditions and establish zoning peace", and covers buildings that "have been built before 31 December 2017 against relevant legislature and legal framework". Upon completion of application for unlicensed buildings or buildings lacking requisite permits, the palliative Building Registration Certificate is issued and thus, peace amongst relevant parties is established. Of course the peace is not for free; it comes with a cost. In a statement last month, Minister of Environment and Urbanization, Murat Kurum stated (1) that 8 million 150 thousand applications have been made for the Building Registration Certificate, which has generated a revenue of 5 billion 120 million Turkish lira (TL). This actually means that the revenue has fallen short of expectations. When the law first became a topic of discussion, then Minister Mehmet Özhaseki stated that a total of 40-50 billion TL in revenues was expected, which would be used for the purposes of urban regeneration and earthquake preparation (2). How the revenue generated from zoning amnesty is to be used is a potential research topic on monitoring public administration. How about the Building Registration Certificate, issued for a price - can that be a matter of rational urban planning? Let's try to answer this question in sections, keeping in mind the impending local elections.

What does the Building Registration Certificate stand for?

The Building Registration Certificate, akin to the past Land Allocation Certificate, offers an intermediate status to buildings evaluated on the basis of zoning peace. One can apply for the Building Registration Certificate through E-State (E-Devlet), with the applicant's own declaration and supporting documents. The deadline, initially 31 October 2018, has been reset to 31 December 2018. You can see the types of buildings covered and the rights defined by the Certificate on Table 1.

As you can see on Table 1, a wide range of unlicensed buildings gain a new legal status with the Building Registration Certificate, and these rights remain valid until the building completes its economic lifespan. In other words, the buildings concerned will be able to use their new rights until demolished for whatever reason.

Considering that over 8 million applications have been made, it is impossible to predict for how long these temporary rights will remain valid for each certificate. This jeopardizes zoning activities of every kind and size which will be prepared as per Zoning Law No.3194 and others in the short to medium term. Data collected through studies such as measuring land use and the physical properties of buildings, and texture, density and property analysis will change depending on the economic lifespan of buildings that hold the Building Registration Certificate. These variations will mean that spatial plans will encounter technical and legal obstacles in reaching their land use and housing aims (3).

Building Registration Certificate

Coverage

Buildings which are against zoning
Buildings with construction servitude but with no condominium
New buildings that have not been able to get a permit for various reasons
Housing Cooperatives against zoning legislation, with extra floors and flats
Annexes that are part of the independent sections of buildings with permits
Buildings with functions not defined within zoning
Unregistered buildings
Solar Power Plants
Prefabricated buildings
Buildings with the land allocation certificate
Buildings shown as social facilities in zoning but have not been built as such
Buildings against the setback distances as specified in the zoning legislation
Buildings completed as of 31 December 2017, with incomplete plastering and painting
Cottages built on registered land with no license or against the licensing agreement
Buildings on immovable properties of the Treasury or on 2B lands
Buildings against zoning and that have been sealed by the relevant municipality

Rights

The right to use the buildings for the duration of the building's economic lifespan
The right to transfer from construction servitude to condominium, and the right to change types
Cancellation of the decision to demolish, as per Housing Legislation, and cancellation of administration fees
The right to access water, electricity and natural gas services
The right to apply for business license
Rights regarding selling and lending
The right to purchase immovable properties of the Treasury

A Situation Assessment in Terms of Spatial Protection Principles

There exist numerous legal arrangements that seek to limit Turkey's housing legislation and activities from a conservation point of view. Housing activities are subject to substantive limitations by Conservation Law No. 2863, Coastal Law No. 3621, Forest Law No. 6831, Bosphorus Law No. 2960, as well as myriad legislations and international agreements on wetlands, wild life, biological diversity and environmental values. A glance at failed cases in conservation shows how these legal tools, incredibly detailed and seemingly effective on paper, have been sidestepped by loopholes and economic incentives. Though the situation had been far from perfect, it is safe to say that zoning amnesty has sidestepped conservation laws en masse: Building Registration Certificate has gained a legal status totally exempt from this legal framework.

We can see on Table 1 that the range of buildings eligible for the Building Registration Certificate is incredibly wide. On Table 2 we can see which unregistered buildings are excluded from Zoning Peace.

When the list of excluded areas are examined, it becomes apparent that there are **no exceptions made for the protection of pastures, natural, urban, architectural or mixed protected areas, agricultural land, coasts or forests**. Every unlicensed building in these areas will be legalized regardless of its quality, function or environmental impact. It is therefore safe to predict that there will be irreversible damage on areas which are very important in terms of conservation and sustainability principles. On the other hand, there will be an urgent need for comprehensive revisions in existing conservation plans regarding these areas.

Constitutional and Legal Framework

Besides zoning law and relevant legislation mentioned above, zoning amnesty also needs to be explored in terms of Constitutional law. The Union of Chambers of Turkish Engineers and Architects has stated that "Constitutional provisions are foundational legal rules that bind legislative, executive and judicial branches, administrative authorities and other agencies and persons. Laws cannot be against the Constitution",

Building Registration Certificate

Buildings which are not covered

Buildings associated with the private property of a third party
Buildings on Treasury land provided for the purpose of social facilities
Buildings in special lands detailed in the provisional Article 16 of Housing Law No. 3194
Buildings that occupy certain parts of the Bosphorus coastal strip and the preview area as specified in Bosphorus Law
Buildings that occupy certain parts of the Historical Peninsula in İstanbul
Buildings in Historical Area defined under Article 2(e) of Law on Creation of Directorate of Çanakkale Wars Gelibolu Historical Area No. 6546

Table 2: Buildings which are not covered by the zoning amnesty
*Prepared using data compiled by Ministry of Environment and Urbanization:
<https://imarbarisi.csb.gov.tr/>

thus asserting the supremacy and binding force of the Constitution as codified in Article 11. As such, the Chamber has appealed to the Council of State to repeal the provisional Article 16 of the zoning law (5). Other constitutional provisions on which the appeal stands are Article 63 of the protection of historical, cultural and natural assets, Article 169 of the protection and development of forests, Article 43 of the utilization of the coasts, Article 45 of the protection of agriculture, animal husbandry, and persons engaged in these activities and Article 56 of health services and protection of the environment.

Zoning Peace in Terms of Disaster Risks

The law's main purpose as stated in its text is, "in preparation for disaster risks, to register buildings which are unlicensed or against licensing conditions". The transfer of revenues made from applications to urban regeneration projects is described in the provisional Article 16 of Zoning Law as follows:

"Finance Minister is authorized to allocate funds to Ministry's budget as per Law No. 6306. These funds are utilized through transfers to regeneration project special budgets." But there exist no intermediary mechanisms for measuring the condition or durability of certificated buildings against disasters. When we consider the fact that the building that has been granted amnesty is an unlicensed one, it stands a high chance that the provisional permit, issued on the basis of declaration, will have been issued for a high risk building. This means that, contrary to the aims of Disaster Law No. 6306, many of unregulated buildings which have received no engineering or architectural support will be legalized.

Conflict of Authority between Central and Local Government

Zoning Peace and the related Building Registration Certificate are managed by Ministry of Environment and Urbanization. However, country-wide zoning authority is, save for exceptions, within local governments. The spatial correspondence of new rights brought about by 8 million applications and tracking the new circumstances will require significant cooperation between institutions. Moreover, they will necessitate comprehensive revisions in spatial plans, just like they do in conservation areas. Considering the rights defined in the Building Registration Certificate and their provisional status, one must expect many technical and legal problems which cannot be foreseen in a medium-term spatial plan. In short, urban planners in the public and private sectors, legal experts, authorities and of course, politicians will need to think through the side effects of the 2018 edition Zoning Peace for long years to come. The reason for the local election reminder at the beginning stems precisely from here.

Sale of Treasury Land and Property

The law does not only legalize unstable buildings which are against zoning. With it, the sale of Treasury and municipality land and property, which should be utilized for the public good, also begins. While the Building Registration Certificate is limited by the economic lifespan of the building, the supply of the land or property on which the unlicensed building stands may render the zoning demand permanent.

Concluding

The scope of the amnesty law called Zoning Peace is incredibly wide. This wideness gets in the way of talking through first the provisional gains by citizens who, in using their rights, have been struggling for shelter, as well as minor conflicts that could not be worked out for technical and legal reasons but which will be resolved with the law. Undoubtedly, this article would have looked differently if the law was narrower in scope, did not threaten the space or natural and cultural thresholds, or deepen social injustices and inequalities.

The 8 million applications submitted thus far will most likely reach 10 million by 31 December 2018. In order to evaluate comprehensively the possible implications of zoning amnesty, the content of the building registration system must be turned into detailed data, which must then be made public by the Ministry. Zoning amnesties, which first became public debate in 1948, have regained ground throughout the years in different forms, and sustained conflicts that still have not been solved to this day (6). These are news that the last one, too, will sustain similar results into the future, leaving a complicated and permanent layer in the spatial and legal framework.

Notes

1. <http://www.hurriyet.com.tr/ekonomi/son-dakika-imar-barisinda-son-basvuru-tarihi-uzatildi-41000226>
2. <https://www.dunya.com/ekonomi/imar-barisindan-beklenen-gelir-50-milyar-lira-haberi-414013>
3. Article 1 of Spatial Planning Construction Regulations state this aim as "conserving and developing physical, natural, historical and cultural values, maintaining the balance between conservation and usage, supporting sustainable development at the country, regional and urban level, establishing principles and procedures towards the creation and implementation of spatial plans that require decisions regarding land use and housing, and prepared for the creation of healthy and safe environments with a high standard of living..."
4. <http://webdosya.csb.gov.tr/db/imarbarisi/icerikler/tarih-yarimada-20180601150242.pdf>
5. Press release by the Union of Chambers of Turkish Engineers and Architects, dated 18 June 2018:
http://www.spo.org.tr/genel/bizden_detay.php?kod=9259&tipi=3&sube=0
6. Magazine for Planning (Planlama Dergisi), in its 1996 special issue on Zoning Amnesty offers a historical perspective on how previous similar legal arrangements were made 22 years ago:
http://www.spo.org.tr/yayinlar/dergi_goster.php?

For a detailed investigation of the production of spatial inequalities by Turkey's urbanization process, see The Social Architecture of Urbanization in Turkey (Türkiye Kentleşmesinin Toplumsal Arkeolojisi) by Erbatır Çavuşoğlu. Çavuşoğlu also touches upon other zoning amnesties in the Republican era.
<https://www.ayrintiyayinlari.com.tr/kitap/turkiye-kentlesmesinin-toplumsal-arkeolojisi/630>



Copyright © December 2018 All rights reserved. No part of this publication may be reproduced by electronic or mechanical means (photocopies, downloading, archiving, etc.) without the permission of the Turkish Economic and Social Studies Foundation (TESEV). The views expressed in his publication are those of the writers and may not correspond in part or in full to the views of TESEV as an institution.



TESEV would like to thank the Friedrich Ebert Stiftung for their support for this publication.