

The administrative and legal tools of development policy are not eco-friendly

Cengiz Aktar* and Barış Gençer Baykan*

Executive Summary

Housing, transportation and energy projects, which form the basis of the development initiatives in the recent years, are not seeking environmental and social sustainability. In order to meet energy requirements investments are being made on fossil fuel instead of renewable energy resources; protected areas are being opened up; and the environmental impact assessment (EIA) procedures are being bypassed. As urban transformation is not being pursued through a participatory approach, it may lead to violations of housing and shelter rights. While achievements in the field of environmental protection are being undermined, efforts are being made to exempt from judicial supervision the projects that will inflict serious environmental damage. As understood in cases such as Nature Law, Urban Transformation Law, 2B Law, administrative framework for Nuclear power plants, HEPPs, stay on execution and EIA exemption; administrative and legal tools of the development policy are not eco-friendly. On the other hand, policies on climate change are also being put off due to concerns that they will hamper development.

It is well known that the blind faith which believes in unrestrained growth is doomed. Yet, the human arrogance defending that the system will survive in any case is delaying awareness and consciousness in this field. In Turkey, development is based on consumption; a careless, outdated and unrestrained economic model. This signals a disaster for Turkey's natural, cultural and urban heritage. We are facing a huge construction wave which is being carried out in a disorderly fashion in the absence of any consultation, supervision, and human and nature perspective. While there is energy, construction and unjust earnings – which feed one another- on one side of the scale, there is nature, human perspective, urbanisation and civilisation on the other. The projects developed in the recent years, which accelerated the process of capitalizing on natural assets are not taking on board environmental and social sustainability. Nuclear power plants, fossil fuel power plants, hydroelectric power plants, 3rd Airport, 2nd Istanbul City, Channel Istanbul, Taksim project, 3rd Bridge, OVIT - the longest tunnel to connect the Black Sea region to Anatolia are just to name a few. In this research brief, we will address the state of play concerning development policy tools which threaten natural assets as well as the cultural and urban heritage.

Nature Law

At the end of May 2012, the first 14 articles of the 'Draft Law on the Conservation of Nature and Biological Diversity' were approved at the Environment Committee of the TGNA. The draft whose preparatory work had been on-going since 2003 was finalised in 2009. However, it met with the opposition of the European Commission and the Initiative to Monitor the Code on Nature which consists of 74 NGOs. Though the draft Code was withdrawn, it was as usual put into the legislative process once again after a certain period of time had elapsed. The draft Code destroys *per se* all achievements undertaken in the field of nature protection since 1958. It paves the way for the changing or overall lifting of boundaries of protected areas. All national and local boards, which included in the decision-making processes the scientific circles, the relevant public institutions, civil society organisations and the inhabitants of protected areas, have been taken out of the bill despite being in the previous draft. Instead of being conserved, natural and cultural protection areas are being opened up for the use of the mining, energy, industry, agriculture and tourism sectors through vaguely defined terms such as "balance between utility and conservation" and "high public interests". The boards that will identify the protected areas are not independent; their appointments

* Assoc. Prof. Dr. Cengiz Aktar, Head of EU Relations Department, cengiz.aktar@bahcesehir.edu.tr

• Research Assistant Dr. Betam, baris.baykan@bahcesehir.edu.tr

are being made by the Ministry of Environment and Urbanisation. In the past, protection boards and courts were able to prevent interventions that could harm the nature in the 1234 protected areas of Turkey. Yet, if this Law is enacted as it is, then the independent Protection Boards will not have any powers left in relation to natural protection areas. As a result of this Law Turkey, which has one of the unique natural habitats in the world with more than 3500 endemic plant species, may end up losing this heritage in an irrevocable manner.

Urban Transformation Law

The so called Transformation of Areas under Disaster Risk Law” will create room for central and local administrations to operate in an unprecedented and unsupervised manner in real estate areas, under the pretext of earth quake risk. This Law abolishes the prohibitive provisions in Land Protection and Usage, Olive Cultivation, Pastures, Forestry, Tourism Promotion, Bosphorus, Military Zones and Coastal Areas Codes that restrict land use. With the “Draft Law Amending the Building Supervision Law as well as Various Other Laws” on the pipeline, the Ministry of Environment and Urbanisation will transfer to private institutions the power to issue authorisation for demolition and construction activities that will begin together with the Urban Transformation Law. This Law will also rule out the relevant powers of chambers of engineers and architects. Recently, especially in Istanbul –in Sulukule, Ayazma and Tarlaş- urban transformation initiatives had led to the violation of social, economic and cultural rights, threatened citizens’ housing and shelter rights and had been implemented according to the interests of the construction sector rather than a participatory perspective. The Urban Transformation Law contradicts with the Laws, regulations and resolutions aiming at the protection of cultural and historic heritage.

2B Law

It aims at generating revenue from the sales of Treasury lands that have lost the characteristics of a forest due to looting since 2003. According to Forest Engineers Chamber, out of the 27 million dönüm (1 dönüm equals 920 square meter) of forest land that vanished 20% was lost due to forest fires, 8% due to mismanagement by the forestry administration staff and 56% as a result of legislative amendments. The newly adopted Code will allegedly lead to further looting of forests. 2Bs cover an area of 473 thousand 419 hectares in Turkey and are located mainly in the Marmara, Aegean and Mediterranean regions. Among provinces, Antalya tops the 2B list with 45 thousand 548 hectares. Antalya is followed by Mersin with 39 thousand 287 hectares and Balıkesir with 34 thousand 887 hectares. 2Bs, which occupy more than 31 thousand 706 hectares in Ankara, amount to 18 thousand 233 hectares in Istanbul and 14 thousand 772 hectares in Izmir. TEMA foundation draws attention to the Article 169 of Constitution which stipulates "The State shall enact the necessary legislation and take necessary measures for the protection of forests and the extension of forest areas. Forest areas destroyed by fire shall be reforested; other agricultural and stockbreeding activities shall not be allowed in such areas. All forests shall be under the care and supervision of the state", and suggests considering, when setting criteria for deforestation, various conditions such as "maintaining the integrity of the forest". "no damage on hydraulic and soil regime", "no damage on self-regenerative capacity of the surrounding forest ecosystems", "preserving the efficiency, effectiveness and profitability levels of forestry works" etc. as a whole.

Nuclear Power Plants

Turkey has been planning to set up nuclear power plants for 40 years. Recently, "Agreement of Cooperation on Building and Operation of Nuclear Power Plant in Akkuyu Area" signed between Turkey and Russia was endorsed by the Parliament on July 15th 2010 and was promulgated in the Official Journal dated October 6th 2010 and no. 27721. Preference for an international agreement with Russia has aimed to prevent nuclear power plant process from being subject to judicial review and to pave the way for building nuclear power plants without heeding any law, tender or specifications. Setting up of four nuclear reactors of 1200 MW each in Akkuyu Power Plant is calculated to cost 25 billions of Dollars and to cover 5 % of Turkey's energy need in 2022. The planned VVER-1200 model, not having been used before anywhere in the world, will be tested for the first time in Turkey. Turkey will buy, for 15 years, 70% of the electricity to be generated by two reactors and 30% of the electricity to be generated by the other two from Akkuyu NGS Co. for 12,35 dollar cent per kilowatt/hour. This costs almost twice more than the price quoted per kilowatt/hour in nuclear power plants in EU. Referring to a study conducted by USA Energy Department's Energy Information Administration on a comparison of initial investment costs of power generating sources of different types, Energy expert Özgür Gürbüz, states that 1 Kw installed power costs 2438 dollars for wind power plants to be set up on land, 3076 dollars for HEPPs, 1000-2000 dollars for power plants running on natural gas (depending on various types),

4692 dollars for solar power plants, 4755 dollars for solar photovoltaic plants and 6000 dollars for nuclear power plants. The nuclear power plant project does not state where and how radioactive waste will be stored and how security of transportation and storage will be ensured. It is unclear how response to an accident or a leakage will be organized, how measures will be taken in such cases and who will cover the costs for damages incurred. According to the report by Greenpeace Mediterranean, Akkuyu Nuclear Power Plant Project EIA Application File does not cover "decommissioning of the Power Plant and Impacts of its Dismantling" and merely deals with the impact of its building and operation.

Administrative Framework for HEPPs

Following the Regulation on Water Use Rights Agreement in 2003 and Electricity Market Law no. 4628, building and operation of HEPPs were handed over to the private sector. Water Management Coordination Board was set up by the Prime Ministerial circular in March 2011 mainly to speed up the construction of HEPPs. About 2000 HEPPs are expected to be built. According to the Nature Association which contacted State Hydraulic Works, no stream will be spared by Turkey's HEPP network in 2023. All streams are in catchment program. This will end up desertification and depopulation of the rural area; and ecological refugee movements; complete eradication of agricultural production and livestock breeding which have already been dependent on foreign countries. It should be noted that HEPPs, which are supposed to be clean and sustainable as they do not emit smoke, are being utilized by Turkey to acquit its evidently polluting power generation industry through international carbon market.

Stay of execution

The government's main stance is that the construction spree cannot be legally contained. In this framework, 3. omni-bus bill which was adopted in July 2012 introduce some provisions which will by-pass court decisions. Courts won't be able to order stay of execution before Administration sends its defence pleading, even if a court case may have been filed. We witnessed a similar case when the above-mentioned Sulukule project had been annulled by court order. In the court case which had been filed against the concept project in Sulukule which had been demolished after having been declared a renovation zone, the court decided to annul the project as there was no "public interest" to it, but constructions had been completed since no stay of execution had been ordered. It had not been possible by any means to order stay of execution in this project which led to dispossession of people of Sulukule of their homes although they had been living there since XI. century. The project also led to construction of 640 villas in a 1. degree protected area. New legislative amendments mean it will be impossible get a stay of execution ordered in the future.

Exemption from environmental impact assessment (EIA)

Following the same line of thought, an amendment made in April 2011 in Environmental Impact Assessment Regulation has dispensed with the need for EIA in projects which will launch investments in 2005 and which are yet in project stage. Amasra Fossil Fuel Power Station, 3. Bosphorus Bridge, Ilisu Dam and Gebze-Orhangazi-Izmir Motorway are concerned by this amendment. These legislative amendments mean biological diversity gems like Artvin, Rize, Tunceli, Mersin, Küre Mountain, Kaz Mountain will be vulnerable against investments. It will be possible to realize water transfer between river basins, sea embankments of 10.000 m2 and higher, transportation and infrastructure investments, water storage facilities, river type HEPPs of 10MW and higher, social lodgings, tourism facilities, mine pits and certain plants till 2013 with EIA exemption.

Climate change

Whilst all efforts are spent to implement development policy through above mentioned tools, all these have yielded a justification for the lack of policy on climate change. Turkey became the 185. State to be a party to the Kyoto Protocol in February 2009, four years after it entered into force in 2005 and was signed in 1997 within the framework of UNCCFC. When, in mid-2008, the bill endorsing accession to the Kyoto Protocol was submitted to the Parliament, the signature of the Protocol has led to divergence of opinions by public agencies. Whilst Foreign Affairs Ministry, Ministry of Environment, Forestry, Energy and Natural Resources and SGEU were in favours of its signature, SPO, Ministry of Transportation and Ministry of Industry and Trade were against due to its potentially high costs and concerns that it could put brakes on development. As for the business circles, TOBB and TISK had been against the signature of Kyoto Protocol on grounds that industrial growth would come to a standstill and that it did not fit well with the development status and the need for growth of the country, respectively. On the other hand, TÜSIAD had advocated the signature for Turkey to be efficient in EU accession framework and during the negotiation process after 2012.

According to the estimations of UNCCFC, Turkey, which is located in the Mediterranean Basin, is in an area highly susceptible to climate change. The first national communication submitted by Turkey to the UNCCFC in 2007 states that some of the repercussion of climate change on Turkey will be higher summer temperatures, less winter precipitations in western provinces, subsidence of groundwater, more frequent drought episodes, soil degradation, coast erosion and floods. These phenomena have negative effects on rural development and water resources which are needed for agro-industry and magnitude of these effects are expected to increase.

Turkey did not accede to Copenhagen Accord which was presented at the United Nations Climate Summit in 2009 with a view to reducing green house gases in a non-binding fashion and which had been based on " targets for developed country " and "voluntary pledges by main developing countries". Unless international climate talks yield binding resolutions, Turkey will continue to abstain from pursuing an effective fight against climate change in national and international arena and will justify this with its special circumstances. Turkey's Progress Report which was drafted by the European Commission and published November 2011 points to "very limited progress realized" in the field of climate change under the Environment Chapter and states that Turkey tends not to act in line with EU positions in international climate negotiations.

No greenhouse gas emission target was set in the Climate Change Action Plan (CCAP) which was presented by the Ministry of Environment and Forestry in June 2011. The plan uses nonspecific statements with no concrete targets such as "cutting greenhouse gases emitted by the use of energy (including the share of electricity) in industry" or "cutting equivalent CO₂ concentrations per GDP to be generated in industry till 2023".

Conclusion

Industrialization and anarchic urbanization in Turkey, combined with increasing population, puts a great pressure on ecosystem. It becomes more evident that development policies take a heavy toll on environmental and social sustainability, which is also detected by relevant state bodies and scientists. As understood in cases such as Code on Nature, Urban Transformation Code, 2B Code, administrative framework for Nuclear power plants, HEPPs, stay on execution and EIA exemption; administrative and legal tools of the development policy are not eco-friendly. Developing countries like Turkey do not have to follow an economic development which has been going on since the Industrial Revolution and which is based on unsustainable use of natural resources and on fossil fuels. They have other ways to go about for a sustainable growth; adequate technological progress and social support are there. It is no doubt necessary to provide for a growing economy and population, but there are tools which allow us to do the same with clean, sustainable and eco-friendly tools as well.