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THE CONCEPT OF PUBLIC INTEREST AS A GUIDING PRINCIPLE FOR COASTAL ZONE MANAGEMENT IN TURKEY: STOCKHOLDERS vs. STAKEHOLDERS

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1. THE CONCEPT OF PUBLIC INTEREST

Although it has become one of the most controversial concepts in political science, the public interest is still a promising criterion to find out the right way in public affairs. There is no doubt that the difficulties involved in defining it are not a justification to ignore this concept altogether as a workable and practical instrument.

An individualistic or utilitarian approach presupposes that it consists of the arithmetic sum of the interests of private individuals and trying to maximize its components could maximize it as a whole. Hobbes, Hume and Bentham are some of the representatives of this line of thought. On the other hand, according to a second approach which is based on the belief that there exists a different public or general interest, independent of, and superior to the interests of every individual. The names of Jean Jacques Rousseau and William Pareto are often associated with this second approach. A third way of defining the term of public interest is to base it on certain subjective value judgements concerning political choices and moral values as maintained by well-known monist philosophers such as Plato, Aristoteles, Hegel and Marx. The latter, for example, saw the public interest in the dictatorship of the working classes or proletariat while Hegel has simplified the matter by equating the concept with the interests of the State.

A final definition of the concept of public interest is a variant form of the monist conceptualization of public interest that aims at minimizing the role of the public sector in economic and social life. Globalization, competitiveness, constant technological innovation, liberalization, deregulation and privatization are the main instruments to achieve its ends. According to this new conception, urban and environmental sustainability could be best realized if left to the interplay of the market forces.

Everyone in society, representatives of local and central governments and civil society organizations, tend to consider themselves as authorized to interpret the term, although its content, scope, and boundaries change from one culture to another. The power to interpret the concept of public interest for each country must be clearly stated in their respective constitutions and laws. Regardless of the ambiguity of this term, public interest has become more important nowadays as the gradual deterioration of national resources, degradation of biocentric values and the violation of the rights of societies have become worldwide concern. Within national boundaries environmental issues have to be considered within the context of this term since the environmental problems caused by particular groups in order to maximize their own profits and interests have to be confronted and solved by public institutions, in cooperation with the citizens themselves.

2. PRINCIPLES OF COASTAL ZONE MANAGEMENT IN TURKISH LEGISLATION

The term, public interest, is used in the Turkish Constitution of 1982 in several articles, including the one pertaining to the protection of coastal areas, without a clear definition of the concept. It is used for example in connection with the reasons for restricting the use of the fundamental rights and freedoms, eminent domain power of public authorities and the right to private property. The specific provision of the Constitution (Art.43) emphasizes that "Coastal areas are under the possession and supervision of the State. In the utilization of coastal belts surrounding the seas, lakes and rivers, the public interest shall be given the priority. The width of the coastal belts taking into consideration their use and the possibilities and conditions of their utilization by individuals shall be regulated by law".

Within this general legal framework, details regarding the coastal management are found in several different acts of Parliament. According to Article 19 of the Municipal Law of 1930 (No: 1580), powers of possession, management and supervision of coastal areas within municipal boundaries belong to the

municipality. The Law on Coastal Areas of 1990 (No: 3621, *Official Gazette*: 17 April 1990, No: 20495) defines the main concepts related to coastal areas. The most important one among these is certainly the concept of *coastal belt* because of its potential implications for orderly and sustainable development. It is defined in the Law (Art.4) as beginning from the *coastal line* in the direction of land from the water at the distances shown below:

- a) The places that are horizontally 20 meter wide *in the areas for which implementation plans are to be prepared.*
- b) Places which are horizontally 50 meters wide *in settled areas within and outside boundaries of the municipality or adjacent areas* whether they have a master plan or environmental protection plan or not.
- c) Places that are 100 meters wide horizontally *in non-settled areas within or outside the boundaries of municipalities or adjacent areas*, whether they have a master plan or not.
- d) Coastal areas are, as stressed above, under possession and supervision of the State and they have to be accessible to equal and free use of citizens. The Law, following the wording of the Constitution, establishes the principle that in the utilization of coasts and coastal belts, public interest will be given priority (Art.5).
- e) The Law prohibits, as a rule, building activities in coastal areas. Wells, hedges, rails, wire-fences, ditches, stakes and similar obstacles cannot be constructed in these areas and no sand, pebble, etc. can be taken away. No wastes and remnants which might have polluting effects, like rubber, soil, and the like, and garbage may be discharged along the coast.

In coastal areas, only the following constructions may be allowed, in accordance with the principles of the master plans:

- a) Infrastructure and establishments like wharf, harbor installations, shelters, quays, breakwaters, bridges, passage ways, containing walls, lighthouses, slipping places, boat houses, salt pans, fishing nets, refineries and pumping stations, built to protect and to use the coast in the public interest.
- b) Special constructions and establishments like dockyards, the places used for breaking down old ships, establishments of reproduction and breeding of underwater products, which cannot be constructed elsewhere than on the coast because of the characteristics of their operations. These constructions and establishments cannot be used for other purposes than the ones stated in their original licenses.

Not only on the coasts, but also along the coastal belts, no construction and establishment is allowed within the prescribed distances, if the implementation plan for the area has not been worked out. In case there is an implementation plan, only the following building activities may be allowed:

- a) Constructions and establishments to serve the objective of the protection and use of the coasts in the public interest.
- b) Constructions and establishments which could not be realized elsewhere than the coastal belts.
- c) Buildings and establishments of tourism for daily use, excluding residences.
- d) Roads, open parking lots, green spaces, playgrounds and social and technical infrastructures. These exceptional constructions cannot be used for purposes other than the ones for which they are permitted. These constructions and establishments cannot prevent access to the coast.

In cases where the master plans prepared for the protection of coasts and coastal belts fall within the provisions of the Law on the Encouragement of Tourism, because of the characteristics of the region the plans are to be approved and finalized in accordance with Article 7 of the said Law. The power to control the implementation of the plans lies with the municipalities for the plans encompassing areas within the boundaries of municipalities and adjacent areas, and with the governor's offices outside these boundaries. Constructions with no license at all, or conflicting with the principles of the license and with its appended documents, are subject to the regulations in the City Planning Law of 1985 (No: 3194).

One of the major sources spoiling coastal areas in recent years has been the construction activity which have taken place on the lands reclaimed from the seacoast or river bank. There are several provisions in the Law on Coastal Areas to regulate building activities in these areas. Thus, in principle, all demands for land reclamation have to go through the Ministry of Public Works and Settlements through the governor's offices, depending on the location of the locality concerned, prepare a master plan for the lands thus acquired, in accordance with the City Planning Law, if the Ministry finds it appropriate to reclaim land from the coast in that region. These plans have to be ultimately approved by the Ministry of

Public Works or by the Ministry of Tourism for places within the jurisdiction of the Law on the Encouragement of Tourism.

The territories acquired as a result of land reclamation are also in the possession and supervision of the State. The number of construction activities to be allowed in these areas by the respective legislation is limited and comprised of the following:

- a) Constructions and establishments realized with the purpose to
- b) protect and use coastal areas exclusively in the public interest;
- c) Constructions and establishments which can only take place in coastal areas because of their nature;
- d) Technical and social infrastructures like roads, open parking lots, green spaces, and playgrounds.

3. INTERPRETATIONS OF THE CONSTITUTIONAL COURT

The first law on coastal zone management in Turkey was passed in 1984 (Law No: 3086, *Official Gazette*: 1 December 1984, No:18592). It was followed by a second Law in 1990 (Law No: 3621, *Official Gazette*: 17 April 1990, No:) because of the cancellation of the first upon recourse to the Supreme Court on the grounds of unconstitutionality. It is rather surprising that the latter too was cancelled partly again by the Constitutional Court because some of its provisions were conflicting with the constitutional provision of the protection of coastal areas primarily in the public interest. As a result, the final Law on Coastal Areas was passed in 1992 (Law No: 3830, *Official Gazette*: 11 July 1992, No: 21281) to regulate the matter in compliance with the Constitution.

The reasons given for the decisions taken by the Constitutional Court have been published in the *Official Gazette*. Their examination provides a sound view of how the High Court interprets the principle in the Constitution with regard to the protection of coastal zones. According to the Constitutional Court (*Official Gazette*: 10 July 1986, No: 19160 and 22 January 1992, No: 21120), the definitions of the coast and coastline are not clear; the principles governing the use of coastal areas are unsuitable for free and equitable use of the coasts and they constitute a potential threat to coastal zones by allowing private ownership and private building rights; provisions concerning the use of coastal strips are not formulated in accord with the principle of the public interest and the rules allowing the acceptance of private ownership rights born before 1972 as "acquired rights" is incompatible with the principle that no private ownership right can be established in the coastal strips.

It was also added that since the coastal zones are natural continuations of seas, lakes and rivers, their use could be made possible only when they are kept accessible to all citizens. The Constitution established a rational and valid criterion in line with contemporary understanding. In this context, reducing the width of the coastal strip to simply 20 meters would contradict the principle of public interest, so it should be set at least at 100 meters. In other words, its width has to be as large as to allow a) the construction of installations to meet the needs of health, clean air and recreation of the people, convenient for enjoyment from the sea and the sun, and b) the building of an appropriate coastal road, c) benefit from the sea as a natural wealth and resource and finally d) construction of installations to be used for this purpose. One of the most remarkable points in this respect is that the Constitutional Court has based its decisions on the role of the public interest in the protection of coastal zones both on the constitutional principles concerning the coasts (Art.43) and the right to environment (Art.56). It would be reasonable to assume that the legislator has taken into consideration all of these considerations in reformulating the respective provisions of the new law on Coastal Zone Management.

4. WHOSE INTEREST IS THE PUBLIC INTEREST?

The judiciary is much less open to controversies on the struggle for power or economic interests as compared with either the executive or the legislator. Therefore, leaving the definition of the public interest to its jurisdiction is quite right. In the case of coastal protection, the Constitutional Court insisted in giving priority to public interest, as ordered by the Constitution, in the sense that coastal areas must be open to all citizens at all times. Its interpretation is well reflected in its above-mentioned decisions.

However, it is not always that easy to agree on the exact meaning of the concept of public interest. As mentioned above, there are views that private individuals may ensure the prevalence of the public interest if they prove themselves conscious citizens with a high degree of public awareness in environmental

matters. More recently, new concepts are being developed to be used as operational instruments, inspired by the influence of world-wide globalization and liberal world views, suggesting the interests of individuals and the business, despite the fact it is the biggest source of pollution, on the one hand, and those of the society, on the other, can be harmonized within the rules of the market economy, without having recourse to the instruments of public regulations. In fact, very few industries, businesses or manufacturers include pollution prevention among their objectives. Nevertheless, production, services, consumption, transportation, construction and other activities, which are the basic factors of a high standard of living, create waste that inevitably results in degradation of the environment. The axiom "I produce, therefore I have the right to pollute" unfortunately still applies to many aspects of human activity.

Despite these realistic observations, there is increasing concern among business leaders to behave consciously enough to comply with their moral responsibilities towards the bio-environment, in many parts of the world. Their concern has various sources, and some entrepreneurs and enterprises have attempted to include environmental dimensions in their production activities. They perform analyses as to the likely benefits of modifying their conduct to adapt themselves to new regulations, both to rationalize their costs and to improve their productivity. Other enterprises owe their own birth, existence and survival to progress in the environmental field. An environmentally conscious market is rapidly growing all over the world. Therefore, many companies specialize in pollution control, waste-treatment, consultation, communication or the production of "green products". These products are either new or the result of alterations of old goods and services. For some companies, however, environmentally friendly behavior is merely same kind of "fashion", aimed at enabling them to send environmental messages to their clients.

Whatever the reasons may be, the business world is showing signs of increasing concern for the protection of the bio-environment. According to a survey carried out by a French research institute in 1989, for 32 percent of the business leaders interviewed, protection of the environment is a priority objective and, for 60 percent, even though not a priority, it is still a very important goal. No one admitted that it was an unimportant goal. Furthermore, 85 percent felt the need to be mobilized to do something regarding the environment and 57 percent believed they had some responsibility towards the environment (Vatimbella, 1992).

It is clear that a "green capitalism" is rapidly emerging. There is, however, as many signs for being optimistic as pessimistic. Concern for profit maximization and the degradation of environmental values are consequences of human behavior. The adverse impacts of globalization with *a priori* considerations make us behave more responsibly. The concepts of autonomy and freedom have to be carefully distinguished from selfishness. Solidarity among members of the same society, among nations, neighboring countries and between present and future generations must constitute an integral component of a very much different *new concept of public interest* as required by worldwide globalization. The scope of the word *public* in the concept of public interest has to be enlarged as much as possible. Since ethical values are considerably integrated with public interest, the question of "profit for whom" has to be continuously asked for. It seems that in the 21st century, "business is business" will have to change into "business is no longer simply business". Finally, one must not forget that public interest in its broadest sense can only be protected by effective legal systems and institutions, at national as well as international levels. Moral and legal sanctions have to complete each other in order to guarantee the survival of fundamental biocentric values (Keles, 1996).

The business world is developing a series of legal and economic instruments that might help to achieve the objective of cooperation between the public authorities and the private sector in order to save the environment. Contractualization, environmental impact studies, Eco-auditing and Eco-labeling are some of these new liberal techniques. Even the role of the state is changing altogether as a result of globalization. As rightly observed by Breunung and Nocke, "in practice, the state has to stick with what seems likeliest to solve the problem. From being a sovereign authority, it becomes a negotiating partner. Consensus, cooperation and exchanged based negotiations often replace unilateral legal commands". And they continue to say that "politics can no longer maintain its monopoly on the definition of the public interest in these conditions. It is at the very least hard to see why general interests should be upheld only because the seal of the law is retroactively placed on the outcome of cooperative state action. Nor is there any spontaneous reason for the assumption that industry, citizen's movements and other participants in negotiating processes will act as representatives of general social interest and not in their own" (Breunung and Nocke, 1994). According to such beliefs, the object of a firm is no longer confined to profit maximization, because as the firms increase in size, they act with effects for society. In other words, they begin to have an expanded social function. It is argued that "Firms grow into a quasi social institution" (Breunung and Nocke, 1994).

On the other hand, Bregman and Jacobson, pointing out the advantages of self-regulation as a legal system for coordination, distinguish between two types of coordination as developed and underdeveloped. Developed kind of coordination is the one that requires individuals to express and take positions in the public interest as a part of their projects while underdeveloped coordination is conceived as the one that does not force individuals to formulate and pursue a public interest separate from their own interests (Bregman and Jacobson, 1994, p. 208).

They maintain that in underdeveloped versions of coordination, the public interest appears only as a constraint on individual interests. They simplify the matter further by emphasizing that in the classical theory of contract, public interest means no more than the interest expressed by the State, in other words, it is equated with the direct state regulation of contract formation and administration. Another aspect of the public interest according to Bregman and Jacobson is that the public interest promoted by regulation is static. It is static in the sense that it does not change from project to project. Self-regulation, by contrast, promotes a dynamic public interest, constantly evolving from project to project.

A closer look at the new approaches to environmental protection suggests that one should be more careful about the chances they provide to maximize the public interest. Such an assumption seems to me reasonably valid particularly if the use and protection of coastal regions are at stake. In fact, François Ost drawing the attention to a decision of the French Council of State underlines the need to be cautious in this respect. He points out that the Council of State decided that “government cannot contractually divest itself of its police powers and the techniques of contractual negotiation would prevent a number of risks” in terms of the legal regime of the public service (Ost, 1994).

One of these is the risk of breakdown in equality between firms. Because there is the danger that the most powerful among them would, through contract, secure privileges. The second is the risk of public authorities being trapped or bought by the firms that they are supposed to control and to regulate. In other words, environmental contracts might bring about collusion between public decision-makers and private entrepreneurs so as to place the former under the influence of the latter. In other words, “the norm protecting natural environments would never go beyond the concessions allowed by industrial sectors. A final risk is the one of reducing the democratic nature of public action by “privatization”. This assertion can be based on two assumptions: a) In some of the powerful interest groups there is a very low degree of internal democracy in their negotiation with the State. b) For some of them, there is the question of representativeness within the sector concerned. More broadly, the difficulty of identifying the requirements of the general interest in terms of a process of summation of group interests has been pointed out. There is a real risk, of course, of distorting policies in favor of the short-term and most powerful interests, while the interests of future generations require advocates of the long-term.

It has been pointed out, for example, that Eco-auditing, which is a tool for the firm's environmental administration aiming at the systematic, periodic and objective evaluation of its policy, program and equipment in that sphere, has to be conceived as a complement rather than a substitute for, respect for environmental standards and regulations, because the tool itself has a purely voluntary foundation. Firms conform to it if they want to, and for the sites and products where they feel that it might be advantageous. This means that private firms will develop an internal system of environment protection in accordance with their own needs and choices. François Ost believes that this is to push the “logic of self” very far (Ost, 1994, p. 352).

On the other hand, Eco-labeling aims at singling out the least polluting products. The assessment is made throughout the product's lifetime from manufacture to disposal, through transport, treatment and use. This system too is optional. Once awarded, the Eco-label can be used only by means of a contract between the firm concerned and the competent authorities. Therefore, we ought to know that that the statement 'eco' is no longer necessarily synonymous for environment protection or the public interest (Ost, 1994, p. 356).

5. CONCLUDING REMARKS

There is no doubt that there may be indisputable advantages of using the tools of the private sector in all environmental matters in general and in the coastal zone management in particular. However, since the profit maximization goal of the private firms has not changed and will not be changed in the near future, to sacrifice this objective to the concerns of environmental protection does not seem likely. As a result, the interest of the society as a whole in environment will always be of a secondary nature. In other words, a concept of public interest defined in accordance with the needs and potentials of the private firms

could not answer the basic question of the coastal zone management that will be on the agenda of the country for a long time to go. The traditional concept of public interest seems to be more useful and operational in this context. It might be harmed as a result of attempting it in narrowly economic terms (Owens, 1997, p. 89). This is another reason why the assessment of the public interest is too important to be left to stockholders instead of stakeholders for the protection of coastal zones as well as of other environmental values.

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