



# Turkish Court of Accounts

Performance Audit Report

## THE PLANNING AND AUDIT OF THE COASTAL UTILIZATION

Summarized Version



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## INTRODUCTION

- Turkey has a coast line of 1785 km in Black Sea Region, 1089 km in Marmara Region, 2805 km in Aegean Region, 1577 km in Mediterranean Region and 1067 km in islands. The geological features of the seas surrounding our country are different from each other. While the Mediterranean Sea is one of the eldest; the Aegean Sea is one of the youngest seas of the world. The coasts which are one of the most important natural resources of our country are used for various purposes such as industrial and tourism investments, water products, construction of domiciles, ports and docks. Thus, coasts are facing with the threat of deterioration of the natural environment due to dense construction activities. Especially in recent years, the practices in the coastal zones have been conducted without due care to the coastal features and as a result of this situation, our coasts are seriously destroyed. Deterioration of the natural structure of our coasts shall pave the way for the risk of threat to our revenues from tourism and economy in the near future.
- The legal definition of coast in Turkish Law System and the principle of coastal protection were first stated in the Civil Code No: 743 which was adopted in 1926. The comprehensive arrangements regarding coasts was started to be made in 1970s. With the Ministerial Decree No: 7/52 dated 01.12.1970; the sale of the public lands at sea sides and by lakes, allocation of these lands for camping, transfer to real and legal persons by means of right of easement are forbidden. The first legal arrangement concerning the zoning legislation about the development and planning on coastal was made with the Additional Article 7 added to the Law No: 1605 dated 07.11.1972 and coastal zones are included in the physical plan. In this way, it is decided that building that is not open to public can not be constructed by private individuals and adding stories to the existing ones is forbidden within the distance stipulated by the Ministry of Public Works and Settlement provided that it is not less than 10 meters by seas, lakes and rivers. The protection and utilization of the coasts are safeguarded under the Constitution with the statement in Article 43 of the 1982 Constitution that *“Coasts are under the sovereignty and disposal of the state. In the utilization of sea costs, lake shores or river banks and of the coastal strip along the sea and lakes, public interest shall be taken into consideration with priority. The width of coast and coastal strips according to the purpose of utilization and conditions of utilization by individuals shall be determined by law.”* The Coastal Law no: 3086 was adopted on 12.01.1984. However; several important articles of this law was annulled by the Constitutional Court and its decree of

annulment was published in the Official Gazette No: 19160 dated 04.17.1987. During the period passed until the adoption of the new Coastal Law No: 3621 dated 04.17.1990; the practices regarding the coasts were conducted under the Circular No: 110 and dated 07.15.1987 issued by the Ministry of Public Works and Settlement. Afterwards, due to the frequent amendments to the coastal legislation; several institutions have been put in charge of coastal activities in terms of different aspects up to now and thus an integrated coastal administration could not be established and within the legal arrangements made at that time, only what type of buildings and at which distance they could be constructed was defined.

- Other coastal countries suffering from similar problems have started to take measures for the protection of the coasts since 1970s and tried to implement special types of management by attaching great importance to this field. In this context, it is observed that they are applying arrangements such as promoting protection through establishing laws and main policies on the management of coastal strips, forming coastal commissions, establishing the private laws concerning the planning of coastal lands and the laws in general, defining the coastal strips and the buffer zones broadly. In our country the issues regarding the coasts are regulated with more than one law rather than a comprehensive arrangement and a special institutional structure about coastal management does not exist. Due to the fact that the management policies ensuring the protection-utilization balance of the coasts have not yet been established, that the studies of the scientific world have not been taken into consideration properly and that our legal arrangements and implementations have focused solely on the utilization and obtaining revenue from the coasts and not on the good use of the coasts; the provisions of our legislation on the protection of the coasts have been ignored and the haphazard practices performed without getting permission that damage the natural structure can not be prevented.

### **AUDIT ISSUE AND EXAMINATION**

- **Audit Issue:** In this performance audit study titled “Planning and Audit of the Coastal Utilization”, the following main issues are examined:
  - ✓ To what extend the practices implemented at the coastal lands are planned, whether the plans prepared are appropriate for the characteristics of the coasts, what kind of problems are faced with during the planning studies,
  - ✓ Whether the studies on the identification of the Coast Edge Lines which is the first step of the planning and implementation is healthy or not,
  - ✓ Whether the practices at coastal lands were audited effectively or not.”

- **Audit Objectives:** The objectives of the performance audit on the “Planning and Audit of the Coastal Utilization” are as follows:
  - ✓ Identifying the main problems came across during the studies of coastal planning,
  - ✓ Taking the necessary legal and administrative precautions with a view to ensuring the efficient usage of the coasts without harming the natural structure,
  - ✓ Establishing an effective audit structure in order to prevent the irregular usage of coasts and the destruction of the natural structure.
- **Audit Methodology:** In the audit conducted by the Performance Audit Group;
  - ✓ In the audit taken as basis during the preparation of the reports; the legislation on the planning and implementation of the coastal utilization was examined; interviews were made with the administrators and staff of the central and provincial units of the institutions responsible for the coasts and with the experts in this field; the documents and papers collected from the relevant institutions and organizations were examined and analyzed; observations were made at coastal lands; international documents and previous studies of the other SAIs concerning this issue were examined.
  - ✓ The documents, papers, notes taken during the interviews, the working papers concerning the studies that have been made, which constitute the basis of the findings reached are being kept at the Presidency of the Turkish court of Accounts.
  - ✓ The opinions of the General Directorate of Technical Research and Implementation under the Ministry of Public Works and Settlement and the Directorate of Local Administrations of the Ministry of Interior were received and evaluated.
- In the reports prepared in accordance with the Additional Article 10 of the TCA Law No: 832; the problems and deficiencies detected and the recommendations regarding these are stated.

## SUMMARY

- A separate management model specific to coastal zones has not yet been produced in our country. The authority and duty to plan the utilization, to approve the plans and to deliver opinion are distributed among different institutions. The fact that different institution are entitled with the authority by laws in the field of planning leads to disputes among the institutions which are brought to courts. Besides, there are disputes on the authority regarding the utilization of coastal zones among the institutions.

- The Environmental Physical Plans which lay down the principles that are to be applied by planners, implementing institutions, investors and individuals in the planning of coastal lands have not been finalized. The lack of the upper scaled guiding plans constitutes a risk to the preparation of healthy plans. There are several problems encountered in the acquisition of the maps and other data necessary for the planning activities. It is observed that information sharing among the institutions is not adequate in this field.
- In the protection of coastal lands, the balance between protection and utilization can not be secured and it is seen that mostly the purpose of utilization is focused on. Despite the fact that there are provisions concerning the protection of coasts in the legislations of the institutions whose field of activities are relevant to coasts; these provisions are not taken into account when it comes to implementation phase. It is seen that problems have occurred due to the fact that the principles of planning are the same for each and every coast; they are not flexible and the plans are not updated. In the approval of the plans regarding the coastal filling it is not investigated whether the criteria such as “public interest”, “non-existence of better alternatives”, “inadequacy of coastal lands” are taken into account or not. The common practice in this field is generally the submission of the plan describing the actual situation for approval only after the filling is completed. Whether the fillings supposed to be completed according to plans are in compliance with the plans in reality is not audited.
- Also there are problems in the designation of the coast edge lines which is the first and foremost element for the planning and implementations in the coastal lands. Updated and compiled data on which coasts the edge line is designated do not exist. Due to lack of maps and inadequate allocation; the programs for the designation of coast edge lines can not be prepared; only upon demand and when the holders of the demands have the required maps prepared; the studies can be conducted.
- There are not any arrangements which include the scientific criteria that form the basis of the work of the commission responsible for the designation of the coast edge lines. This situation leads to faulty designations and incorrect implementations in planning and structuring. Also there is not any data regarding how many designations have been changed due to error, what are the reasons of the errors, how many of them were brought to court and their results which can be helpful for analysis. The courts may take different decisions on the coast edge line designations of the same coastal strip and this situation leads to hesitations in the implementation. The minutes of coast edge line designation have not yet been standardized and these minutes have no detailed information both for the examination made during the approval phase at the Ministry of Public Works and Settlement and for the trials in courts. The existing map layouts in which the coast edge lines are designated are not filed and can not be found when required. This situation results in risks of repetitions in the studies conducted in the same field.
- The actions for rescission of the title deeds concerning the private ownership in the coasts which are under the sovereignty and disposal of the state is generally brought

long time after the designation of coast edge lines. During the period passed until the rescission, the properties in coastal lands changed hands and become subject to legal disputes. A system has not yet been established which prevents the unjust treatments to the owners of the fixed assets which were constructed and used in compliance with the land registers, physical plans and licenses; but found out to be within the coastal lands after the designation of the coast edge lines.

- There are many legal arrangements relevant to coastal lands. These legal arrangements hold different institutions responsible for the coastal lands and these institutions perform audit activities in terms of different aspects without any coordination among themselves; thus this situation is decreasing the effectiveness of the audit. The institutions auditing the same coastal lands do not take action against the infringements and wait for the others to do it. The exchange of letters among these institutions is excessive and time taking and this in return leads to permanency of the illegal acts.
- It is observed that the institutions which have the function to control the acts at the coastal lands; especially the municipalities are in need of personnel who are eligible and well-informed about the coastal legislation. Some municipalities have hesitations concerning their limits of power to control. Also the local administrations have technical problems; mutual aid among the public institutions can not be ensured and in some regions due to technical impossibilities infringements can not be abolished. The extended legal and administrative procedures, in compliance to the court decisions pose risk to the preventive activities against the infringements at coastal lands and have negative effects on those responsible for auditing and preventing such kind of acts.
- Due to irregular audits at coasts and obtaining information only from complaints regarding the illegal acts destroying the natural structure; at which regions such acts are common, their reasons, increasing and decreasing trends are not known; policies can not be established to take effective measures; precautions can not be taken in due time. Identified infringements at coasts have been the subject of time consuming exchanges of letters and in general no action is taken against these acts. It is hard and costly to prevent such kind of acts which were not prevented at the initial stage and it is getting impossible to restore the destroyed natural structure back again.
- The fact that the illegal acts are still going on through taking mesne profits at the coastal lands which are under the sovereignty and disposal of the State shows that these areas are not adequately protected or that occupations are condoned for the sake of profit. The acts which are subject of the issue of mesne profits have been continuing for so many years and in general, the occupations are not removed. These acts are not only unjust utilizations, but also the acts that destroy the natural structure of the coasts. Increase in the occupations in terms of number and area shows that apart from the inadequacy of audits in this field, the amount of the mesne profit is not discouraging. There are areas in which the occupations have not yet been identified and continuing for long years and the mesne profit is not taken. Instead of taking mesne profit, lately the practice of renting has

become more common at coastal lands and thus, the acts that destroy the natural structure of coasts are still going on.

- Not only the individuals and private companies but also the public institutions and organizations are utilizing from coasts in a way that is unlawful, that harms the natural structure and limits the equal and free utilization. Especially even the institutions responsible for the audit of the practices at coasts are acting in violation of coastal legislation and thus, this decreases the effectiveness of the controls at coastal lands.
- In order to take the opinion of the relevant institutions; our draft report was sent to General Directorate of Technical Research and Implementation under the Ministry of Public Works and Settlement and to the Directorate of Local Administrations of the Ministry of Interior on 9 February, 2006. It is stated in the responding letter dated March 3, 2006 of the General Directorate of Technical Research and Implementation under the Ministry of Public Works and Settlement that “*The studies concerning the institutions authorized in planning that are mentioned in the so-called report, problems, contradictions among these institutions about planning and the issues regarding the filling activities are handled by our Ministry within the framework of the Draft Bill on the Amendments to Some Articles of Coastal Law No: 3621 and these studies are still going on.*” The draft Bill was received in the annex of the letter. In the response letter dated April 20, 2006 received from the Directorate of Local Administrations of the Ministry of Interior, it is stated that “*We are sharing the same opinions on the issues laid down in report.*” The evaluation of the opinions of the institutions is in Annex 1.

## RECOMMENDATIONS

- It is necessary to make regulations that are to rearrange and simplify the separation of powers on planning. The authority on planning which is given to different institutions by different laws should be reorganized under one single arrangement and it would be favorable to delegate this authority to an institution specialized in this field. With a view to preventing the time and money losses caused by the long lasting exchange of letters among the institutions and organizations whose opinion are taken at the planning phase; it is thought that it would be beneficial to work with a committee composed of the representatives or experts of the institutions whose opinions are to be taken.
- The characteristics of the coasts and which type of utilization is appropriate for them should be identified and upper scaled plans should be produced. An information system should be established which create opportunity to the institutions to take correct decisions and which shows all the characteristics and priorities of the coasts. The up-to-date maps and information required for the planning studies must be ensured to be stored within a system open to the access of all the relevant institutions.

- The provisions of the legislation on the protection of the coasts must be executed in the planning studies. In order to ensure the balance between the protection and utilization of the coasts; what the effects of the types of utilizations provided for in the plans to the coasts shall be and how the negative effects can be decreased must be searched and accordingly, measures must be taken.
- At which coasts the studies on the detection of coast edge lines have been completed must be identified by the directorates of public works and settlement and these detections must be communicated to the Ministry of Public Works and Settlement which is the authority for approval and at which coasts these studies have not yet been finalized must be clearly seen. Especially, prioritization must be given to the regions which has importance in terms of tourism and is likely to be expanded due to housing and their coast edge lines must be detected. Maps must be supplied to the governorships in coordination with the public institutions producing maps.
- With a view to conducting healthy studies for detecting the coast edge lines; by taking the opinions of the scientists who are conducting studies and researches on coastal issues, the scientific criteria must be established regarding the determination of the natural borders of the areas formed with movements of water. Which data are to be studied by which occupational group in the detection commissions; what type of measurement and analysis are to be conducted must be identified and a form must be prepared with a view to ensuring that the minutes of detection have detailed and comprehensive content. In order to prevent the errors in the detections of coast edge lines; statistical study should be conducted on the reasons of the errors and which type of coasts these reasons are more common and according to the results to be obtained, the members of the commission should be provided with training seminars. A system must be established in order to ensure that the approved samples of layouts of the coast edge line detections are sent to the relevant institutions. In order to detect the ownerships; the layouts should also be sent to the Directorate of Land Registry. The properties left within the coastal region should be detected and this information should be communicated to the local financial institution as well.
- It is thought that the disputes on property in this field shall be decreased when the detections of the coast edge lines are conducted before or simultaneously with the studies of land registry. It is necessary to make legal arrangements in this field since annulment of deeds leads to unjust treatments to the owners after it is clarified that the property obtained legally before the coast edge line detections is within the coastal zone.
- In order to carry out an effective audit over the implementations at coasts, it is necessary to make legal arrangements so as to prevent the institutions to abstain from their duties regarding the prevention of infringements at coasts, to simplify the audit system and to define the powers and duties clearly.
- The personnel of the local administrations responsible for the control of the practices at coastal zones must be provided with training services on the issues such as which types

of practices can be performed at which conditions, how the audit should be performed, which procedures are to be applied for the irregular acts that damage and destroy the natural structure of the coasts. The local administrations must be ensured to act in cohesion in the field of implementation. It is thought that the effectiveness of the studies are to be increased when the units to be established under the governorships conduct the activities for the follow-up and collection of the information on the infringements of coastal law, finalization of the legal and administrative procedures on due time, follow-up of the execution of the court decisions, alerting the relevant institutions about the possible delays and ensuring cooperation and coordination among the institutions.

- The number and nature of the acts that destroy the natural structure at coasts, at which regions they are more common, their increasing and decreasing trends and reasons must be identified by the governorships and municipalities within cooperation, measures should be identified and implemented in the light of the data obtained and the infringements must be detected at initial phase and prevented.
- The utilizations that harm and destroy the natural structure of the coasts by means of mense profit or renting practices should not be permitted to continue. The coasts should not be rented if this limits or abolishes other's right to utilize equally and freely from the coasts.
- It is considered that the necessary sensitivity shown by the public institutions regarding the compliance with coastal legislation and removal of the existing occupations shall be a role model and have positive effect on the studies towards the prevention of other infringements at coastal lands.

***TCA's Performance Audit Reports:***

- The Road Maintenance and Betterment Activities of the General Directorate of Highways. (Pilot Project)
- Acquisition, Storage, Display, Recording and Inventory of Collection Objects of Turkish National Museum. (Pilot Project)
- The Activities in the Aftermath of Earthquake in Marmara Region in 1999.
- How well is İstanbul Getting Prepared for the Earthquake?
- Preventing and Dealing with Pollution from Ships.
- The Management of Medicine& Medical Equipment in the Hospitals.
- Preserving the Historical Monuments and Objects under the Responsibility of General Directory of Foundations.
- The Activities for Protecting National Forests.
- The Planning and Control of the Coastal Utilization
- The Activities Carried Out within the Framework of e-Transformation Turkey Project.
- The Public Web-sites During a Period of Transmission to e-Government.

***Performance Audit Projects Underway in 2006:***

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