

The role of courts in open space conservation

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- This is a presentation of a study that analyzed 33 court rulings in cases related to open space planning decisions
- Study objectives were:
 - Examine the reasons for appealing to court
 - Identify the parties involved in each case
 - Analyze judicial considerations in ruling



Planning and Building Law 1965 (PBL)

- Status of open spaces is determined in statutory land use plans that are approved by the planning system
- Structure and procedures of the planning system are based on the Planning and Building Law 1965, including:
 - The hierarchy, structure and authoritative powers of planning commissions
 - The order and essence of the planning decision making process
 - The legal status of approved plans (land development must conform to plans directives)

Principles embedded in the Law

- **Hierarchical** 3-tiered system – local, district, national
- **Control** of higher tier over lower - local plans approved by district planning commission, etc.
- **Public participation** limited:
 - Public is informed about the plan in late stages of the planning process
 - Only direct stakeholders and non-governmental organizations have the right to submit objections to the relevant plan

The study cases

- 33 court rulings included in the study
- Each ruling is focused on a certain development project with conflicting interests between development and conservation
- Projects diversified in terms of: project type, scale, spatial location

Common attributes of the study cases

- **Subject** – conflicts over open space conservation in general or specific aspects (e.g., conservation of a certain species or habitat)
- **Time period** – cases that were brought to court during the period 1990-2010, which was characterized by:
 - Acceleration of development processes
 - Decline of former strict farmland preservation policy measures
 - Increase in environmental awareness
 - Growing concerns over open space values and biodiversity conservation needs

- **Judicial instance** – all cases were discussed and ruled by administrative courts (district or supreme)
- **Planning decisions** – in all cases the appeals to court challenged statutory planning decisions (approval or rejection of land use plans)
- **Public impact** – all cases appeared in public mass communication (written & electronic) and received much public attention (demonstrating the intensity of the conflicts involved)

Findings



Characteristics of the appeals

- **Spatial location** – 15 appeals (45%) relate to projects within the Tel-Aviv Metropolis, indication to heavy demand pressures in this area
(the rest are scattered over the country)

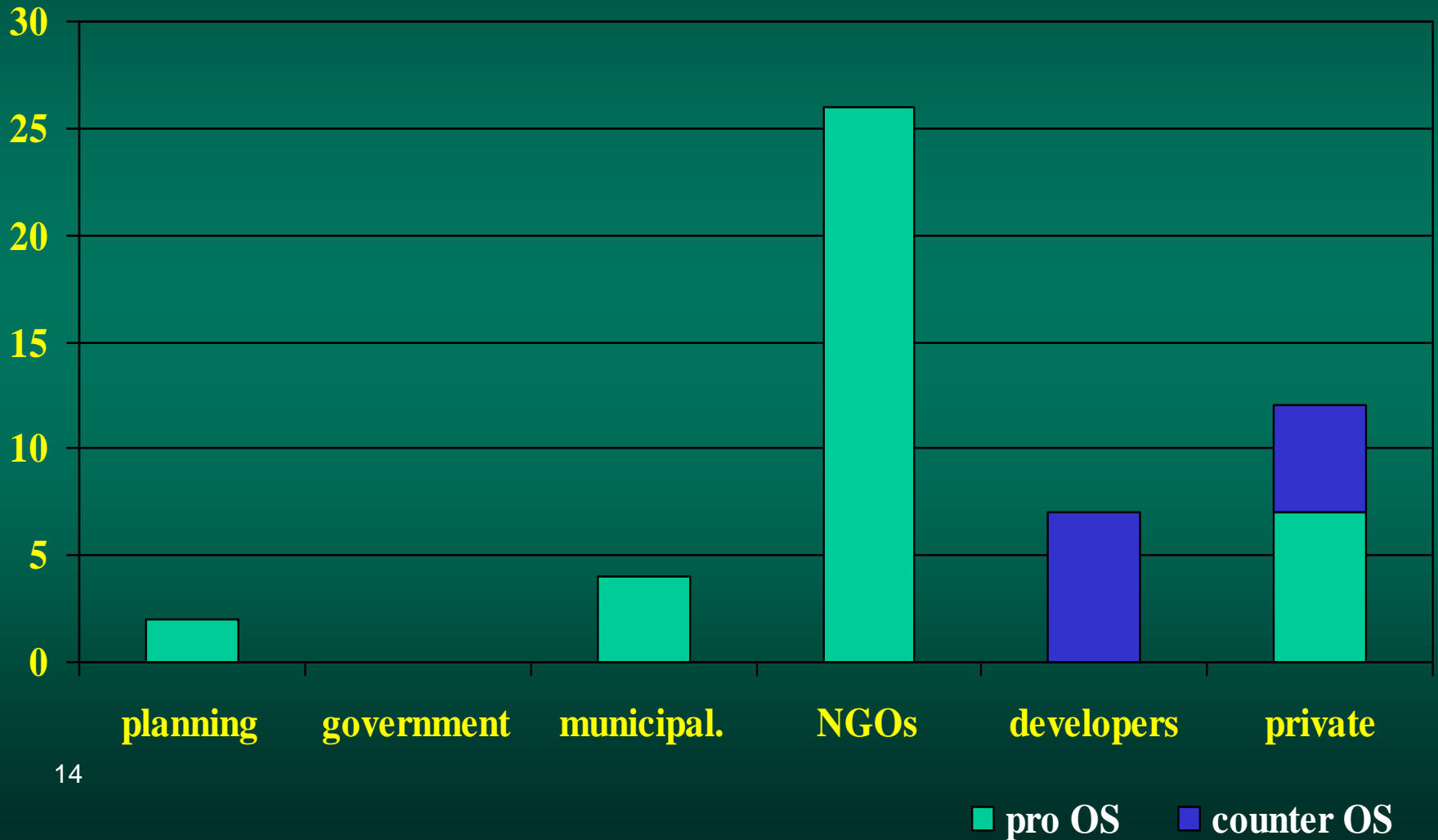
- **Challenged open space values** – examples:
 - Coastal zone - 10 (8 of them within the TMR)
 - unique species or habitat – 13
 - unique landscapes – 21
 - agricultural lands – 10
 - urban open space – 11
 - heritage values - 6

- **Basic essence** – all appeals were **opposed** to decisions of planning commissions
- **Conservation interests**
 - 21 appeals (64%) **supported** the interest of open space conservation
 - 12 appeals were contradictory to the conservation interest

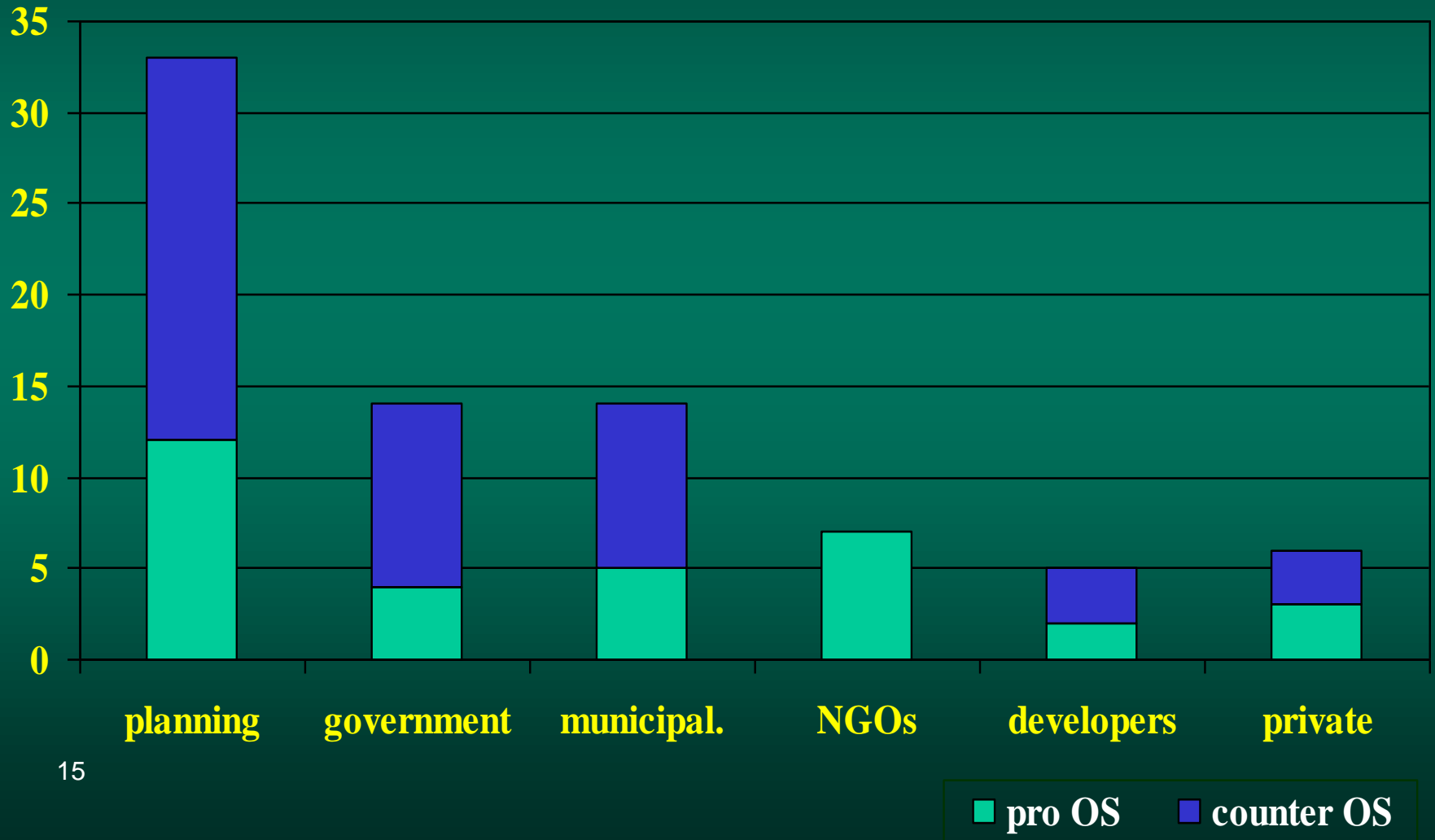
Parties involved in the appeals

- In **all** appeals planning commissions were involved as respondents
- Additional parties (either appellars or respondents):
 - Government ministries and organizations
 - Local municipalities
 - NGOs – non-governmental organizations
 - developers
 - Private persons

Appealers according to support of open space conservation (OS)



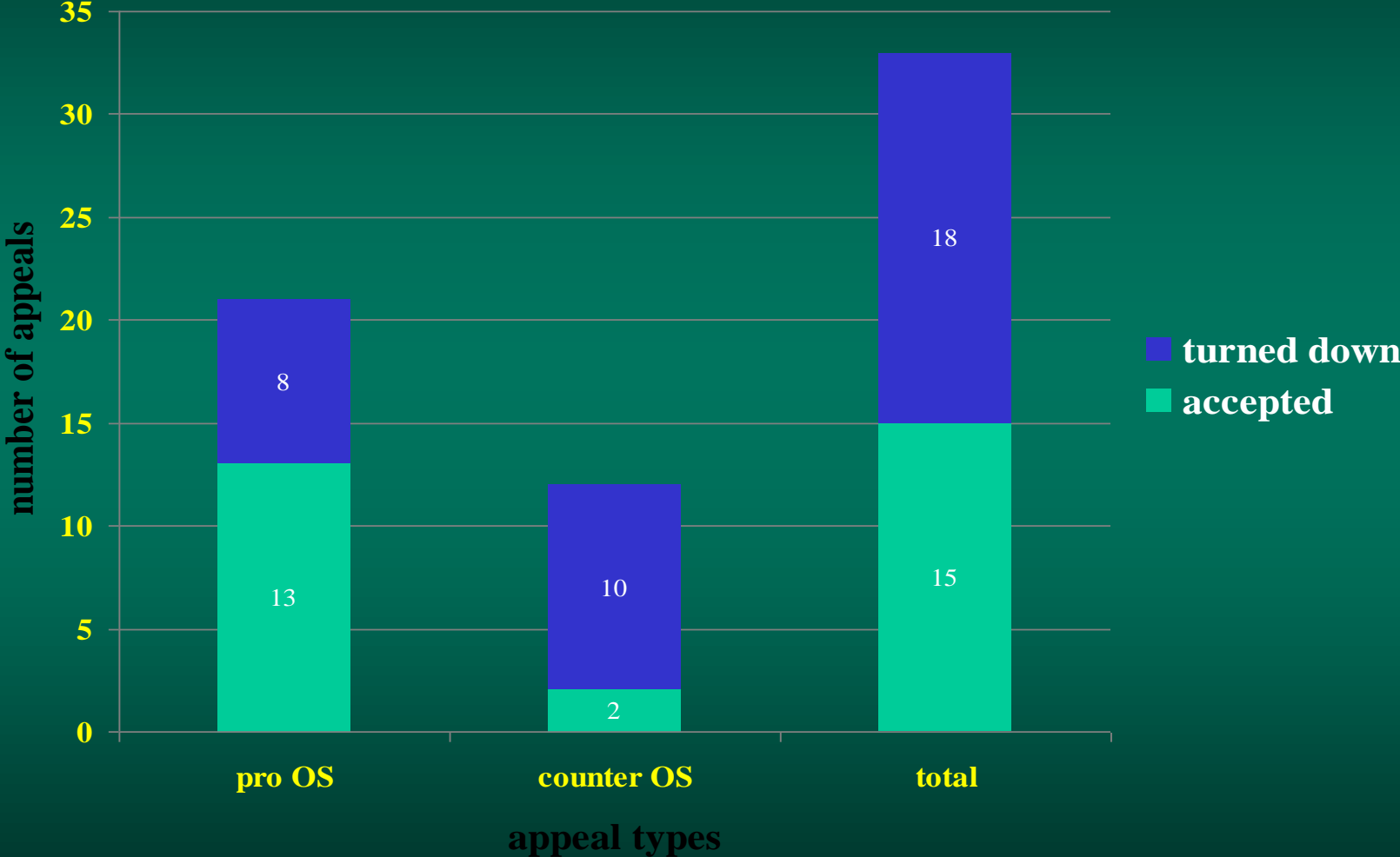
Respondents according to support of open space conservation (OS)



Judicial outcomes

- 15 appeals (45%) were fully or partially accepted, 18 were turned down (total=33)
- Out of 21 pro OS appeals - 13 (62%) were accepted
- Out of 12 counter OS appeals – only 2 (17%) were accepted
- The general trend is pro OS

Judicial outcomes according to appeal types

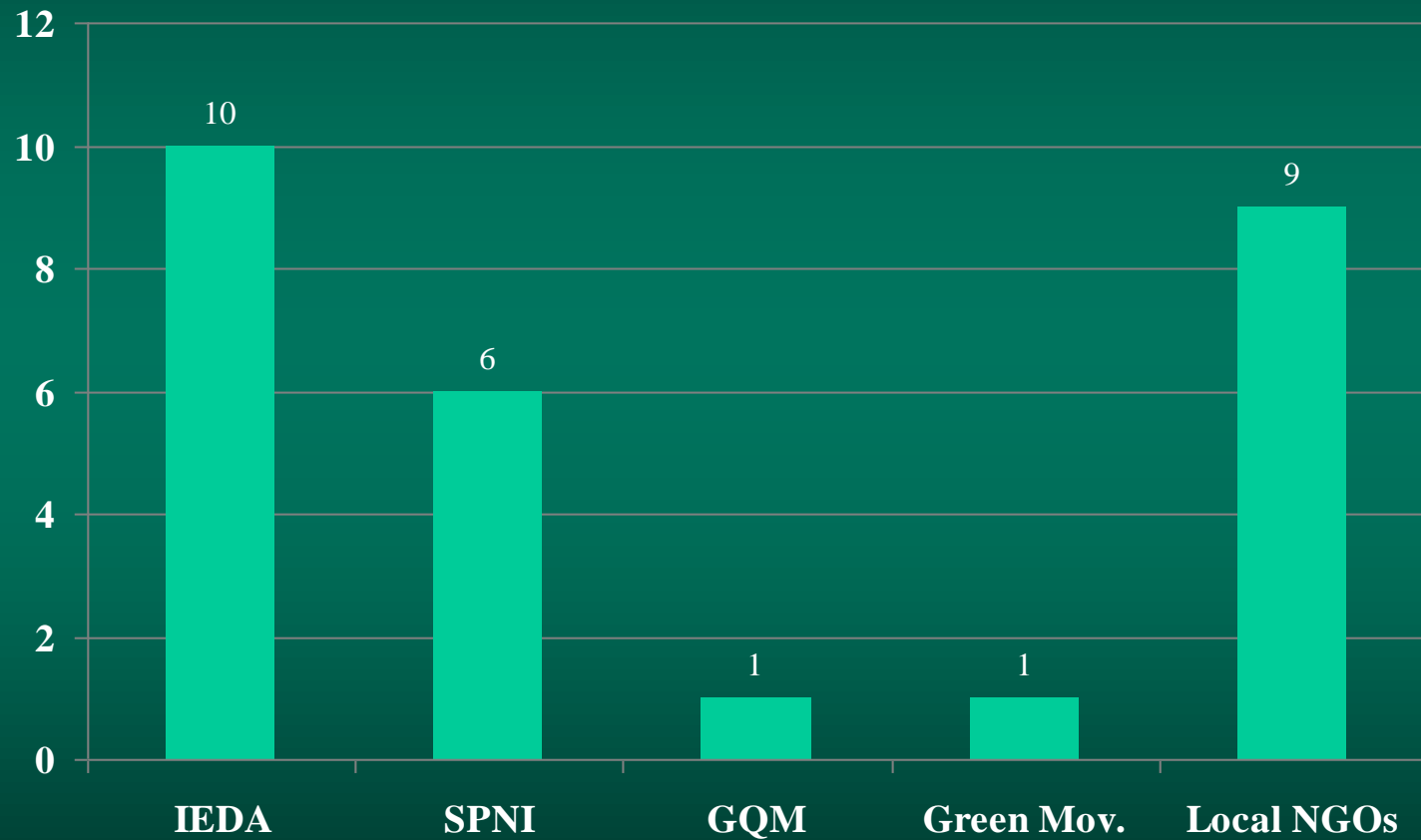


- In 14 cases (42%!) the court cancelled decisions of planning commissions
- Most of these decisions (12 out of 14 = 86%) were counter OS interest

Involvement of NGOs

- NGOs were involved in 25 appeals (75%), mostly as appellants challenging planning decisions
- Almost all NGOs (except 1) were environmentally oriented
- The main role was played by national-scale NGOs, especially the Israeli Environmental Defense Association (IEDA) and the Society for the Protection of Nature (SPNI)

Distribution of NGOs among appellers

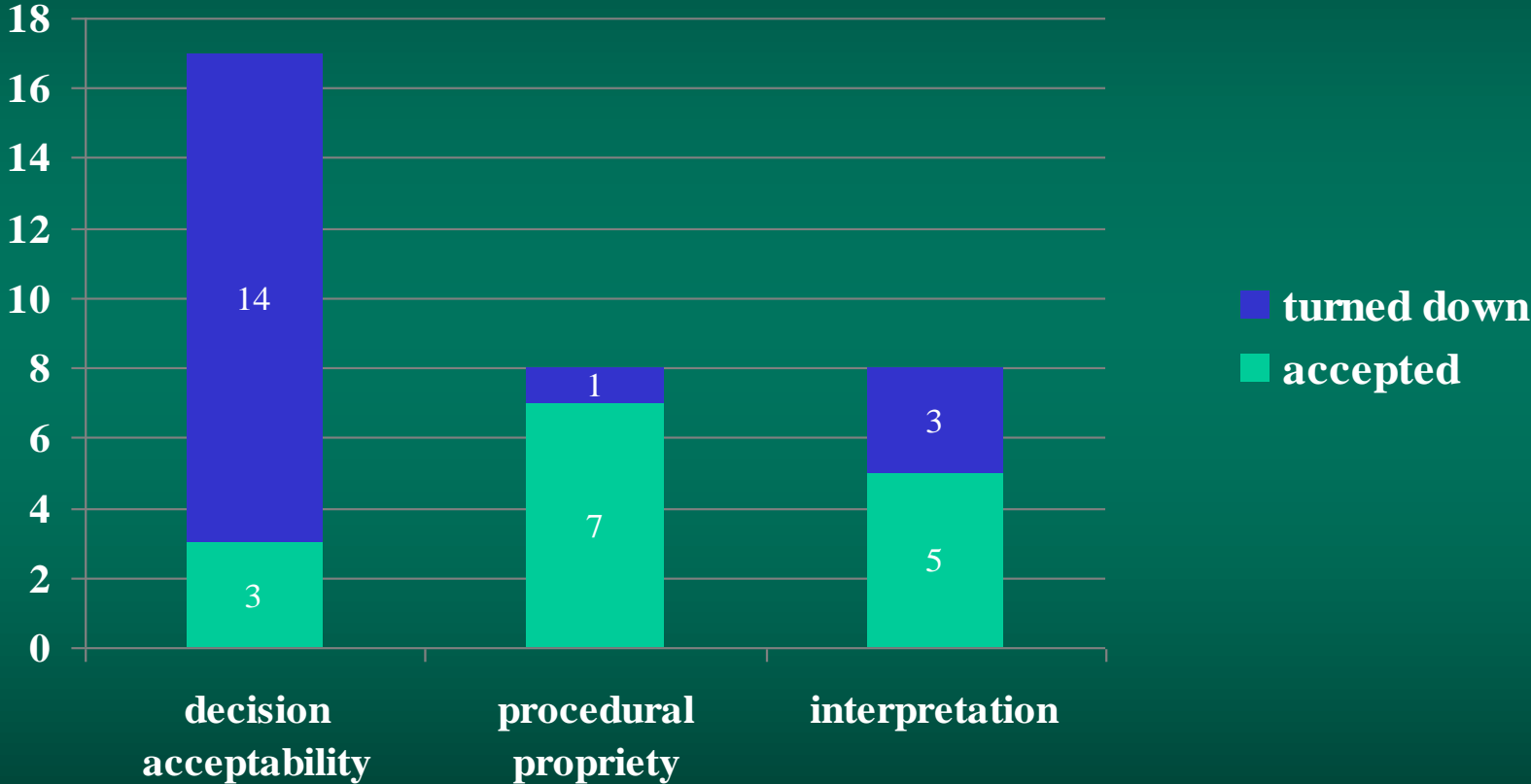


Considerations in ruling

Main judicial considerations were of 3 kinds:

- Considerations regarding the acceptability of planning **decisions** (such as: reasonability, proportionality, etc.)
- Considerations regarding the propriety of the decision making **procedures**
- Considerations based on **interpretation** of the law or of plan directives

Leading judicial consideration in rulings



Summary and conclusion



Functioning of the planning system

- Many planning decisions were canceled by the court
- Planning decisions were sometimes found unreasonable or deviated from proper procedures
- The control measures embedded in the system were insufficient in many cases
- There is **need for external control** over the planning system

The role of courts

- The court played a **monitoring role** – by controlling the acceptability and propriety of planning decisions and planning procedures
- By canceling or changing planning decisions the court actually helped balancing decisions towards conservation
- Court rulings established clearer guidelines for planning decision making

- However, the **role of the court is limited**:
it may intervene only when called to do so by others
through their appeals

The role of NGOs

- Most pro OS appeals were submitted by NGOs, few by private persons (free rider problem)
- NGOs acted as dominant agents in making the court involved in planning decisions
- The involvement of environmental NGOs (especially IEDA and SPNI) in appeals that brought about changes in planning decisions indicates their important role as “watch dogs” of the planning system

Maruani, T., 2011. The role of courts in open space conservation: lessons from the Israeli experience.
Landscape and Urban Planning 100, 364-368.



Thanks for your attention