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CRIMES AGAINST POLLUTION CAUSED BY ILLEGAL CONSTRUCTION IN TURKEY

Feridun Yenisey and Asiye Selcen Ataç

I got to know *Julian Conrad Juergensmayer* when he visited Istanbul several times to teach classes on American law. *Dr. Asiye Selcen Ataç* who assisted me in this article, was also one of the students in his courses. Thereafter, Study Space 2013 was held in Istanbul under his leadership. I was honored to be invited to Georgia State University by him to talk about comparative aspects of Urban Law.

In this article, I would like to talk about some criminal law aspects of Urban Law for readers of *Festschrift II*, prepared for *Julian Conrad Juergensmayer*: General background of Urban Law in Turkey and the so-called *construction pollution crimes* introduced into the Turkish Penal Code in 2005.

I. MAIN CHARACTERISTICS OF TURKISH URBAN LAW

1. Zoning

Urban planning helps the development of a city for the future, aims to serve the public interest, and brings some limitations to the property rights of individuals through administrative regulations.¹ Implementation of urban plans affects human rights as well.

The state has the negative obligation to not violate basic rights of individuals through its interactions. The state also has a positive obligation to protect human beings from basic rights' violations. In the field of urban law, the state has a positive obligation to secure an environment where individuals may live without being

¹ In the Ottoman Empire, land belonged to the state (*miri arazi*). Private land ownership emerged after *Tanzimat* (1839). With the establishment of the Turkish Republic in 1923, *Atatürk* set a goal for restoring cities under the motto; "health, cleanness, beautifulness," thus planning efforts focused on the redistribution of land ownerships forms. The historical parts of Istanbul were reconstructed after the elections in 1950; the aim was to transform it into a modern city. From the early 1980s, policies were based on privatization. Hotels and business centers were constructed. With the purpose of facilitating development of the housing industry and construction techniques, *Housing Development Law No. 2985 (TOKİ)* was introduced in 1984 and revised later on. Currently, the landscape of Istanbul has changed with shopping malls, the third bridge across the Bosphorus, the undersea *Marmaray* tunnel, and the new Istanbul Airport. The Airport, operating since 2019, had most of its construction supported by foreign investment in the form of "build, operate, transfer" (*yap işlet devret*).

endangered by natural disasters such as earthquakes or flooding. Therefore, urban planning is one of the positive obligations of the state.

The main principles for protection of the environment and urban development, and for land use planning in Turkey are regulated in the Constitution (*Anayasa*; AY, Articles 56 and 57). The governing statute is *The Construction Law* (*Imar Kanunu*; IK), dated 3 May 1985, Law No. 3194. The definitions, aims, and categories of urban development plans are regulated therein (Articles 5, 6 and 8, IK).

The relationship between the central government and local governments is administered by the Ministry of Interior, which regulates the administrative divisions of the country and the general administration of provinces and municipalities (Articles 126 and 127, AY). The governor (*vali*) is the representative of the Ministry of Interior, and as the general director of local governments, he is empowered to perform the duties of tutelage, inspection, training, guidance and regulation related to municipalities, and may suspend any organ or members of elected local municipalities from office, if there is a pending investigation or prosecution related to their duties (Article 127/4, AY).

Local municipalities are public legal entities, and the principle of decentralization applies to them. They are administrative units which stand outside the central government hierarchy and they are, to an extent, autonomous from the central government. The elections for local municipalities were held in June 2019 and resulted in changes of mayors of big cities such as Istanbul, Ankara and Izmir.

The relationship between the central government and local governments operate on the basis of cooperation.² The local government can make the decisions, but the governor has the power to refer any decision that contravenes the law to administrative courts. Land development plans will be prepared by municipalities or civil administration. They must make development plans public and have to publish a booklet of the plans and give them to anyone for a fee, to be determined (Article 8/1-b/4, IK). Approved land development plans shall be sent to the *Ministry of Environment and Urbanization* for finalization. The Ministry is authorized to make or amend the land development plans, as well as disaster plans and plans for mass housing. The Ministry also authorizes land development plans of interest to more than one municipality or settlement plans of places with airports etc. (Article

² There are three types of local governments in Turkey: special provincial administrations, municipalities and villages. Each province in Turkey has a *special provincial administration* consisting of a general provincial council, a provincial executive committee, and, as its head, the governor.

9/1, İK). The Ministry also has the power of control of over all applications in regard to compliance with planning. If there are some irregularities in existing buildings that cannot be corrected to bring the building into compliance or that the owner refuses to correct irregularities, the Ministry may decide to demolish such buildings (Article 8-g, İK).

There are regional plans which are applicable in several cities. This structure helps facilitate a nationwide application of planning, and if there is a regulation in upper level planning, it will be applicable to the lower level planning as well.

2. The Importance of the Building Permit for Limitations on Property Rights

a) Limitations on Property Rights

Local land development plans shall comprise the *master plan* and the *implementation plan* (Art. 8/1-b, İK). Master plans and implementation plans of places within municipal boundaries are under the authority of relevant municipalities. Building permits are issued according to the related urban plan. If there is a change in the urban plan, the permit will lose its legal basis and will be held void.

One of the ways property rights are limited by administration is through the denial of the owner's applications concerning building permits. A landowner Ms. Çiftçi applied to open a sand-producing facility on her agricultural land. After denial of the permission, she applied to the Constitutional Court seeking relief against the restriction of her basic property rights (Article 35, AY). The Court ruled on her individual petition, however, that her property right may be restricted to protect superior public rights.³ An interference with the right to the peaceful enjoyment of possession must achieve a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

The Turkish Constitutional Court also has the power to control legal regulations to assure their conformity to the Constitution. In this capacity, the Court found no violation of the Constitution where an individual contracted to sell a portion of his agricultural land to another person, but was not permitted to accomplish the transfer of the title to it; the Court held that restrictions that prohibit transfer of portions of, but not the whole, property created by *The Act on Land*

³ Article 13, paragraph 1 of the *Act on Land Protection and Regulations Related to Usage of the Land* (July 3, 2005, No. 5403) requires that agricultural land may not be used for other purposes (*Necmiye Çiftçi and Others v. Turkey* dated December 30, 2014, No. 2013/1301).

Protection and Regulations Related to Usage of the Land are necessary to protect the unity of agricultural land.⁴

Similarly, the Court did not find a violation of Article 35 of the Constitution (basic property right) in the demolishing of houses built in violation of the restrictions of the *Law for Protecting Cultural Heritage*, dated July 21, 1983, No. 2863.⁵

As houses built illegally over the course of one night were very common, in 1966, the *Squatter Houses Law* No. 775 was enacted with the goal of expropriating the occupied land and ultimately providing public housing for the needy people.⁶ But this goal was not achieved. Therefore, by Law dated February 24, 1984, *The Act on Interactions Related to the Buildings Built in Violation of Construction Law and the Act on Squatter Houses*, No. 2981 the government recognized existing squatter housing as a political favor for voters at that time. This favor did not convey ownership of the land, but provided that the illegal occupiers of land could obtain a document (*tapu tahsis belgesi*) acknowledging their possession of the housing and providing that they could continue to live in the squatter houses. This document could later be transferred into a deed conveying title if the land planning changed in the future and building houses there would be permitted. Ms. *Ayşe Öztürk* had owned a squatter house since 1972, and had received a document (the *tapu tahsis belgesi*) conveying the right to occupy the land in 1985, and she paid taxes. In 2007, that land was declared a natural protection area and her house was demolished by the state without paying her any compensation. After exhausting available legal remedies, she applied to the Constitutional Court, alleging the violation of her basic property rights. In the case *Ayşe Öztürk v. Turkey* (dated June 30, 2015, No. 2013/6670), the Turkish Constitutional Court established that being an illegal occupier, she was not the owner of the land, but demolishing her house without expropriating it and without paying any damages was violating her property rights.

⁴ Thus, in such a case the property right may be restricted (decision of the Court of Constitution, dated May 15, 2012, No. 2012/70; published in Official Gazette July 21, 2012).

⁵ It ruled that the definition of the crime contained in Article 65 of Act No. 2863, which gave the power of determining the elements of the crime in the future, and the details of protection of cultural heritage to an administrative authority was impermissibly vague and a violation of due process of law (decision of the Court of Constitution, dated April 11, 2012, No. 2012/53; published in Official Gazette September 13, 2012).

⁶ Squatter houses surround cities; such irregular organization has been a great social problem for decades in Turkey. *Çetin Özek*, 'Türkiye'de Şehirleşmenin Ana Nitelikleri ve Ceza Adaleti Yönünden Yol Açabileceği Sorunlar in: *Şehirleşmenin Doğurduğu Ceza Adaleti Sorunları Sempozyumu*, 17-19 Aralık 1973, İstanbul, p. 68.)

b) Construction Amnesty Regulation of 2019

There are many buildings constructed illegally in Turkey, and this situation results in administrative or civil cases and criminal prosecutions which constitute a large workload for the courts. Also, municipalities cannot carry out the demolition of buildings that are against urban law and regulations for many reasons. In order to find a solution for such problems, the provisional article 16 was inserted in the Construction Law under the motto of *urban peace* with the aim of registering buildings which were built in violation of building permits or without building permits.

In the event the owner of an illegally constructed building made an application to the Ministry of Environment and Urbanization, or to the institutions and organizations authorized by the Ministry until 31/10/2018, he has received a *building registration certificate* if the conditions in this article were fulfilled and the registration fee was timely paid. The period for an application for a building registration certificate was extended by the Presidential Decision until 15/6/2019, and the period for the payment of the fee until 31/12/2019. As a result, according to the June 2019 statement of the Ministry of Environment and Urban Planning, 10,079,000 citizens applied for the *urban peace*.

The main aim of this amnesty regulation is facilitating the preparations against disaster risks through urban transformation. As a consequence of self-reporting of urban law violators, the government was able to register buildings which were built against the provisions of the Construction Law. The other benefit is the creation of a financial source for accomplishing urban transformation plans. The building registration certificate gives the owners of illegal buildings the right to use the building until urban transformation is achieved, which is a benefit to the citizen.

II. CRIMES AGAINST POLLUTION CAUSED BY ILLEGAL CONSTRUCTION

Part three of the Turkish Penal Code regulates crimes committed against the population. The first section deals with conduct that causes public threat, the second section contains crimes against the environment and the third section deals with the protection of public health. Pollution Caused by Illegal Construction is one of the environmental crimes. The first crime is defined as *building houses without a building permit, or in violation thereof*. The second crime is *providing water and electricity for illegally functioning construction sites*. The third type of crime is *tolerating industrial activities in illegally constructed buildings*.

The protected legal interest is the right to live in a safe building in a healthy environment. The aim of the law maker is to protect the urban environment and to

ensure the construction of the building so as to not cause environmental pollution.⁷ Buildings should be constructed according to the rules set in urban planning. Urban law-related crimes are applicable only for conduct committed after October 12, 2004.

The victim of the crime of pollution caused by illegal construction is the society as a whole. There is no single individual who is identified as the victim. Municipalities, however, may be considered as victims of this crime since they have the power to issue building permits and may intervene, as a victimized third party, in criminal proceedings brought by the public prosecutor.

1. Building Houses Without a Building Permit or in Violation Thereof

It is a crime to construct a building without obtaining a building permit, or to build it while violating the contents of the building permit (Article 184/1, TCK). For this reason, definitions of the concepts of “building,” “construction,” “without building permit” and “against building permit” are very important for this crime.

Any change in urban plan is an administrative decision, and it may make a previous permit illegal after the change.⁸ Such changes are important in view of the construction pollution crime. In cases where an existing urban plan is deleted, the previously issued permit shall be void automatically.

Urban planning does not only include buildings but also covers streets, airports and other facilities. The narrow definition of this crime deals only with illegally built housing.

Turkish Penal Code Art. 184, subsection 4, explicitly mentions that violations of urban planning within a municipal area or in areas that are subject to a special urban regime will be punished. Therefore, construction outside of the

⁷ *Handan Yokuş Sevük*, Çevre Hukuku Doğal Çevrenin Korunması, Adalet 2017, p.262; *Tuğrul Katoğlu*, Yeni Türk Ceza Kanunu ve Çevreye Karşı Suçlar, Mülkiye Dergisi, 29 (246), (133-157), p.144. Due to the harm given to the environment and the danger created, people may lose their right to live in a healthy environment. All relevant departments of law, particularly criminal law, should participate in the struggle for environmental protection. Also, communities, individuals and the government should cooperate. Turkish Law on Environment has been influenced by the German Law (*Yener Ünver/Ayşe Nuhoğlu*, Federal Almanya Çevre Ceza Hukuku, İstanbul, Beta, 1999, p.3).

⁸ Regulations require that changes in urban plans should be the very last resort, thus the principle of continuity of planning should be protected. If there are other means to achieve the needs emanating from social or ecological developments, there should be no change in plans.

municipal borders is not covered.⁹ Municipality boundaries are determined according to the Article 4, 5, 6 of the Municipality Act, Article 5, 27 and provisional article 2 of the Metropol City Municipality Act.¹⁰

Areas subject to a special urban regime are also not defined in any law. In doctrine, these are areas subject to a special urban regime and are regulated by specific laws setting forth urban procedures and principles different from the Construction Law because of their economic, cultural, natural or other characteristics and due to public interest.¹¹

2. The Concept of the Building in Criminal Law

A building is either on land or on water, constructed under the earth or over the earth, and a movable or immovable facility. The main building and additional extensions as well as authorizations and repairs are included in the concept of construction. Walls, stairs and attics are also included in the concept of construction. Article 184/1 of the Penal Code penalizes only violations in the process of constructing the illegal building but not the existence of the building once built.

As the concept of a building is not defined in the Penal Code, the definition in Construction Law is important for criminal law.¹² Article 5 of the Construction Law defines a building as “capable of individual usage, covered and available for human habitation, work, entertainment or praying, capable of protecting belongings

⁹ Master plans and implementation plans for areas outside municipal boundaries and adjacent areas shall be made by governorships or by the relevant administration (Article 8/1-b/2, İK).

¹⁰ *Gülsün Ayhan Aygörmöz Uğurlubay*, Çevreye Karşı Suçlar Türk ve Alman Çevre Ceza Hukukunda Güncel Sorunlar, 2015, p. 506, 507.

¹¹ These areas are regulated by a special law because they have complementary and protective urban procedures and principles, such as Code No: 2634, Law for the Encouragement of Tourism, No: 4737, Industrial Districts Zones Law, 3218, Free Zones Law, Act No. 2960, Istanbul Bosphorus Protection Law, *Nezih Sütçü*, İmar Kirliliğine Neden Olma Suçunun Tahlili, Legal Hukuk Dergisi, Mart 2005, Yıl: 3 Sayı 2, (979-994), p.979.

¹² Article 69 of the Law of Obligations regulates the civil obligations and responsibilities of the owner of a building. The owner of a building has to cover all damages emanating from the defects or lack of maintenance of the building. This Law defines the concept of construction and differentiates between building (*bina*) and construction (*yapı*). Only immovable facilities are considered as buildings or construction. Obligation law also considers constructions built only for purposes of harboring movable goods as a construction. From the view point of criminal law, such buildings shall not be considered as buildings within the scope of the crime of construction pollution. But violations may be sanctioned with an administrative fine set by Articles 32 and 42 of the Construction Law.

and animals”. This definition takes forward the aim of usage and makes it a requirement that it is covered. Therefore, an illegally built swimming pool, a wall around the garden or a dock at the sea shore would not be punished. Such conduct would be a misdemeanor and be punishable by an administrative fine according to articles 32 and 42 of Construction Law.

Even if the definition in Article 5 of the Construction Law mentions movable buildings such as motorhomes and caravans, such vehicles shall not be considered as fitting within the scope of the crimes of construction pollution. If any individual is living in a motorhome or caravan, he shall not be punished according to Article 184/1, TCK.

There is currently some discussion about the application of criminal law at the beginning of construction. If someone has broken the ground for a building, but did not obtain a building permit, he shall be punished for an attempted crime of construction pollution, if the ground breaking has progressed far enough to be able to identify the first walls at the basement level; there is no need to wait until the building is fully completed.

When the permit is issued, the contractor or the owner must commence construction within two years or the permit will expire. In that case, the builder needs to obtain a new permit. If the builder uses the expired permission, he will be criminally prosecuted. But if the building permit has been annulled by an administrative court decision after the construction has started, the crime of construction pollution does not apply. However, if the builder continues to build after the court decision, he will be criminally liable.

There is a difference between the building permit and the building inhabitation permit. The building permit, issued by municipalities and the governor, is an authorization to the building owner, recognizing that the building foreseen for construction fits into the urban planning. This is a document that recognizes that the intended building is legal from the viewpoint of administration. In order to start with the construction, the building owner has to obtain this document in advance (Article 21, IK). The building inhabitation permit however, shall be issued at the end of the construction and identifies that the building is constructed according to the law and is in conformity with all rules to be followed. This permit is required to enjoy services of electricity, water and other urban services.

III. THE PERSONS LIABLE AND SANCTIONS

1. Criminal Responsibility

The persons liable for crimes of pollution caused by illegal constructions can only be natural persons.¹³ Turkish Criminal Law does not consider legal entities criminally responsible.¹⁴ Legal entities are only subject to measures if there is a legal statute where administrative responsibilities are explicitly laid out. Under current existing provisions, there is no responsibility allocated to legal entities in Turkey.

The contractor may be the perpetrator of the crime as the person who built the building.¹⁵ Also, the contractor and the owner of the building may jointly commit the crime. The contractor shall be the only criminally responsible person in case of acting against the building permit.¹⁶

There is some discussion in jurisprudence about criminal responsibility of construction workers. If the worker employed by the contractor does not know the illegality of the construction, he will not be punished.¹⁷

Another discussion is related to the persons who knowingly utilize an illegally built building. The principle of legality as defined in criminal law requires a narrow understanding of the wording used in a criminal statute. Since the

¹³ The perpetrator of this crime is the owner of the building or his legal representative, either are obligated to obtain the building permit. The constructor who is working as the builder may also be the perpetrator of this crime. The other possibility is to consider them as actors committing the crime jointly; the contractor may be accountable as a single suspect in the case if he willfully acted against the building permit (*Aygörmez Uğurlubay*, cited in footnote 10, p.518).

¹⁴ There are some scholars who advocate in favor of criminal responsibility of legal entities in cases of crimes against the environment. (*Ersan Şen*, *Çevre Ceza Hukuku Ceza Hukuku Açısından Sağlıklı Bir Çevrede Yaşama Hakkı*, İstanbul, 1994, p.141). For the criminal responsibility of legal entities see also, *Klaus Tiedemann* (*Çeviren Ayşe Nuhoğlu*), *Avrupa Birliği Hukukunda Tüzel Kişiler Hakkında Uygulanan Yaptırımlar ve Ceza Hukukunun Avrupalılaştırılması*, in: *Tüzel Kişiler Hakkında Uygulanan Yaptırımlar, Bahçeşehir Üniversitesi Yayınları İstanbul 2013*, (31-40); *Ozan Ercan Taskın*, *Maddi ve Muhakeme Hukuku Boyutuyla Çevre Ceza Hukukuna Dair Bazı Tespitler, Kısmi Öneriler*, CHKD, Cilt 3, Sayı 1, 2015, (119-166), p.136-141.

¹⁵ The contractor may be a real person. However, contractors often can emerge as construction partnerships (*Özer Seliçi*, *İnşaat Sözleşmelerinde Müteahhidin Sorumluluğu*, *Fakülteler Matbaası*, İstanbul 1978, p.18).

¹⁶ *Aygörmez Uğurlubay*, cited in footnote 10, p.518.

¹⁷ *Aygörmez Uğurlubay*, cited in footnote 10, p.519.

legislation only mentions persons who built or allow to be built a building illegally, there is no criminal responsibility for persons who utilize them.

There is a similar discussion related to the provision of electricity or water for construction sites for building illegal construction. The definition of this crime punishes only authorities who give a permission for such connections. Therefore, a worker who personally makes the water supply connection or who makes the wire connection for electricity shall not be punished. The person who commits this crime is the person who built a building without a permit or who let someone build the building. For this reason, the authority which exercises control over the construction may also be punished. The contractor is liable as well as the owner of the land.

The controlling public authority should not be liable because the Act No. 4708 related to the *Construction Audit*, Article 9 makes it a different kind of crime if the controller neglects his duties of supervision, punishing him with up to three years of imprisonment; and in cases of false reporting, this will be punished according to the offence of forging documents under the Penal Code. This kind of criminal responsibility is relevant in cases against the mayor, who carries the ultimate responsibility in municipalities.

Another type of crime that is related to the crime of construction pollution arises from the failure of public authorities who do not report crimes as regulated in Article 279 TCK. If the public servant learns of, or gets any knowledge about, an illegally built building, he is obligated to report this crime to the prosecution authorities. In cases where the public servant may also be the suspect of such construction pollution crime, he would be reporting his own crime, thus violating the principle of *nemo tenetur*, which would be a self-incrimination. In such instances, the public servant does not have the obligation to report his crime.

2. Permitting Industrial Activities in Buildings Built Without a Building Permit (article 184/3, TCK).

The third crime within the scope of construction pollution is tolerating industrial activities in a building built without a building inhabitation permit. If a building is designed for special purposes, danger emanating from industrial activities can be diminished or reduced. But if during the construction of the building special requirements within that building have not been considered, any industrial activity in an illegally established building would pose a great danger in the future.

Taking this into consideration, the lawmakers designed a special crime. For the purposes of the principle of legality in criminal law, the concept of *industrial activities* must be defined with exact borders. However, the Turkish Penal Code does not include such a definition and utilizes the definition of industrial activities in related statutes outside of criminal law.

There are many definitions in regulations related to trade. If someone studies this law and its regulations, he can make a list of 90 items related to industrial life. For example, workplaces dealing with sand, milk production facilities, bakery, ice factory, production of alcoholic beverages, workshops for repairing car, printing houses etc. are considered as *industrial activity*, and this list is not exhaustive.

These kinds of criminal definitions, which are dependant upon administrative regulations, are very problematic from the viewpoint of criminal law. The Penal Code should have included some criterion in connection with the hazards or the dangers of industrial activities.

Giving permission for industrial activities in illegally built construction is another point of discussion for criminal responsibility. The authority for giving permission rests with the technical units of municipalities. The technical unit has to conduct an investigation about the suitability of the construction for the industrial work to be performed in it; meanwhile, this authority also has to check whether the building has been constructed legally according to the administrative regulations. The mayor may also be held responsible if he didn't appoint a qualified person in this technical unit and did not supervise their activities.

3. Providing Services for Construction Sites or Building Houses Without a Permit (Article 184/2, TCK)

Whoever gives permission for the supplying of electricity, water and telecommunication services to construction sites for constructing buildings for which a building permit has not been granted shall be punished (Article 184/2, TCK). This crime is designed as a tool of preventive criminal law. There are similar provisions of preventive criminal law in the fields of child pornography and terrorism. In some instances, the lawmaker prefers to block preparatory activities of a crime, which, if not stopped, could lead to someone else engaging in the commission of a crime.

The concept of *construction sites* is relevant for this crime. Construction sites shall be defined as buildings under construction together with offices related to technical, administrative and social facilities, and depots for storing building

materials and tools. Those facilities are temporary, used only during the construction. And at the end of the construction of the main building, they must be demolished.

The legislature made it a crime to supply the construction sites with electricity, water and telecommunication services, but did not criminalize supplying illegally established buildings with such services.

We have to emphasize that the contractor does not have to obtain a special construction permit for establishing a construction site. This emanates from the temporary character of the construction site. However, if a temporarily built construction site shall not be demolished and remains as an additional building next to the main building, this shall constitute a crime of construction pollution under Article 184 TCK.

4. Sanctions

The main sanction foreseen for crimes against pollution caused by illegal construction is imprisonment.¹⁸ Buildings built contrary to statute shall also be demolished.¹⁹

Some violations of Construction Law, such as not informing the competent authorities of an irregularity, will constitute a misdemeanor²⁰ and will be punished by administrative sanctions.²¹

¹⁸ Any person who himself or through his agent, constructs a building without obtaining permission shall be sentenced to imprisonment from one to five years (Article 184/1, TCK). Any person who gives permission for the connection of a telephone, water or electrical supply to a construction site, upon which a construction is underway for which planning permission has not been granted, shall also be sentenced to imprisonment from one to five years (Article 184/2, TCK). The lower level of imprisonment term for permitting industrial activities in buildings without a building permit shall be two years, upper level remains as five years (Article 184/3, TCK).

¹⁹ If it has been determined by the municipality or the governorship that the construction was built contrary to the provisions of the Construction Law, this building shall be red tagged and the construction will be stopped immediately by hanging an injunction to stop building on the construction area. Any person who removes the seal or acts contrary to the aim of a seal and continues to construct, shall be punished for destruction of a seal pursuant to Article 203, TCK (*Mustafa Yılmaz, İmar Yaptırımları ve Yargısal Korunma*, Ankara 2002, s.92).

²⁰ If the building was built without a building permit or by disregarding an approved project, and the owner of the building or the contractor does not inform the administration within six labor days, they shall be sanctioned by an administrative fine (Article 42, İK).

²¹ While determining the fine, the ownership status, the characteristics of the location, the qualification of the location and its classification, the effect of the building on the environment and

But whoever brings the illegally built building into compliance with the law through his own²² efforts shall enjoy benefits emanating from his corrective actions, known under Turkish law as *effective remorse* (Article 184/5, TCK). This means that there will be no prosecution against him, the case will be dropped, and if there is a pending prosecution or an imposed sanction, they will be lifted together with all consequences.²³

FINAL REFLECTIONS

In this article, we have talked about important issues of urban planning, which are common problems for many big cities in the world. Nowadays, the whole nation in Turkey is discussing ‘the crazy project of the century’: Canal Istanbul, an artificial waterway between the Black Sea and Sea of Marmara. The canal will be 45 km long (nearly 28 miles) and 80 feet (25 meters) deep. With this canal, the Bosphorus will be completely closed to tanker traffic and two new peninsulas and a new island will be formed in Istanbul. A new city is planned to be established on 453 million square meters.

Future planning for healthy urban spaces requires attention to careful regulations of properly constructed buildings to create public spaces made available to all. These issues must be addressed around the world and Turkey can both learn from others and offer solutions that it has found useful for particular challenges. Professor *Juergensmeyer* is one of the experts well known in the world who has studied such problems and suggested solutions. We have to learn from his ideas and apply them for the future.

habitation, whether it is a threat for the life, goods and security or not and the importance of the violation should be taken into consideration. The administrative fine cannot be less than 500 TL (approximately 84 USD).

²² If the demolition of the building was carried out by the municipal officials, effective remorse clauses of Article 184/5 IK are not applicable in favor of the accused, as there is no ‘repentance’, which is the obligatory element of the effective remorse. The suspect should have been proactive in order to lift the consequences of his crime. It is almost impossible for an individual to achieve the demolishing of the building without utilizing technical equipments. Therefore, the general assembly or the Court of Cassation (CGK) has ruled that the owner of the building shall benefit from the effective remorse provisions if he does not object to the demolition and pays the expenses (CGK 25.10.2018, E. 2017/4-684, K. 2018/419).

²³ Some scholars argue that the application of effective remorse clauses have negative effects on the fight against illegal housing (*Mahmut Kaplan*, İmar Kirliliğine Neden Olma Suçu, Ankara 2018, s.286).