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NEW REGULATION TO REGISTER THE ANOMALOUS CONSTRUCTIONS AND FINANCE URBAN REGENERATION PROJECTS IN TURKEY: DEVELOPMENT PEACE

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ABSTRACT

In the past year a brand new term, Development Peace, has been introduced by the Ministry of Environment and Urbanization of Turkey (MEUT) to register the constructions contrary to development and finance urban regeneration activities. Development Peace has been announced as a regulation in order to establish agreement between the owners of the irregular constructions and the government by providing Construction Registration Deed (CRD) on condition that a certain payment must be made based on the property value. The irregular properties except those constructed on private land and on public land reserved for social facilities will benefit from the regulation. Development Peace covers all kinds of constructions that are not in accordance with the Development Law. In May 18th, 2018 a temporary article explaining this new regulation has been added to the Development Law No. 3194 in Turkey. The anomalous constructions are not a newly discovered problem in Turkey and come from the past. The MEUT has taken the initiative and offered a solution for the majority of the buildings in Turkey. The Development Peace, in addition to its many benefits for the people owning irregular properties, will support urban regeneration projects with the income collected through its implementation. While the government forgives the citizens involved in illegitimacy, the law abiding citizens might be demoralized as the formers are getting rewarded. Development Peace-like regulations might have a pitfall such as encouraging the people that have tendency to violate laws. Therefore, the government should take precautions instead of authorizing irregular constructions. On the other hand, this new regulation covers all kinds of constructions no matter how resilient they are against natural hazards (esp. earthquakes), which is the other flawed side of the regulation.

Keywords: *Development Peace, Urban Regeneration, Construction Registration Deed, Irregular Construction, Turkey*

1. INTRODUCTION

Development Peace is a new term introduced by the MEUT to find solutions to the constructions contrary to the development plans, unauthorized, or contradictory to the appendices of the permits given (Ministry of Environment and Urbanization, 2018a). In Official Gazette (No. 30425 and Date: May 18th, 2018) Law on Restructuring of Tax and Some Other Debts and Making Changes on Some Laws (original title: Vergi ve Diğer Bazı Alacakların Yeniden Yapılandırılması ile Bazı Kanunlarda Değişiklik Yapılmasına İlişkin Kanun) has been published and a temporary article (No. 16) has been added to the Development Law No. 3194 by that Law (Official Gazette, 2018a). The purpose of the temporary article is to explain the content of the Development Peace regulation. The information covered in this study are mostly based on this explanatory temporary article of Development Law.

In the booklet prepared by the MEUT to introduce the Development Peace, the former Minister (Mehmet Ozhaseki) stated their happiness for having the citizens and the Government forgive each other by means of the Development Peace (Ministry of Environment and Urbanization 2018a). In the booklet, the mutual forgiveness are described by the term “helalleşmek”. “Helalleşmek” is a term that does not have a direct corresponding in English vocabulary and is used between two or more parties in case they have rights on each other and they forgive each other by paying some compensation or without any compensation, disclaiming any right.

The objective of the Development Peace is to register the constructions that are contradictory to the development plans, unauthorized, or contradictory to the appendices of the permits given. In this way, it is aimed to provide legality for the irregular constructions. These constructions will be registered by providing Construction Registration Deed (CRD).

2. STATEMENT OF THE PROBLEM

The irregular constructions covered by the new regulation include housings, commercial properties, agricultural constructions, solar power plants etc. The majority of these anomalous constructions consist of housings. In Turkey, the housings contrary to the development plans comprise over 50% of the housings constructed, which corresponds 13 million individual housing units. The residents in these buildings are mostly low-income citizens. The housings incompatible with the development plans were mainly constructed between 1950 and 2000. The development-based issues between the citizens and the municipalities resulted in piling up the files in the courts and the municipalities, for some reasons, are not able to manage to demolish the buildings contradictory to the development plans. On the other hand, the residents of the buildings in dispute are not able to get water, electricity, and natural gas services connected to their houses and are making use of these services unlawfully. As the irregular residential and commercial units are not registered, they cannot be pledged as collateral and not be used as an economic asset (Ministry of Environment and Urbanization, 2018a).

3. THE SCOPE OF THE DEVELOPMENT PEACE

The constructions, which are unauthorized or contradictory to the appendices of the permits given, in urban and rural areas will be in the scope of the Development Peace provided that they had been constructed before December 31th, 2017. Bosphorous coastal band, Sultanahmet and Suleymaniye Regions of the Historical Peninsula, and Gelibolu Historical Area will be out of the scope. Figure 1 shows a view from the Historical Peninsula, İstanbul (Emlaknews, 2018). The area where the Development Peace will not be applied has been surrounded and highlighted in Figure 2 (Ministry of Environment and Urbanization, 2018b). The constructions built on another’s property and on public land reserved for social service areas are also out of the scope. If the CRD-given constructions are on the land owned by municipalities, the owners of these constructions can pay the market value of the property of the municipality and gain the ownership (Ministry of Environment and Urbanization, 2018a).



Fig. 1. A view of the Historical Peninsula, İstanbul (Source: Emlaknews, 2018)

The condominiums that had been built in defiance of development plans have property ownership problems due to lack of occupancy permits. After getting the CRDs, if all the owners in a condominium give consent and cede the areas coinciding with public spaces (roads, green fields, parks etc.), type conversion and apartment ownership will be recorded without seeking for occupancy permit at the directorates of land registry. In that case, a payment must be made as much as the amount paid while getting CRD.



Fig. 2. The area (surrounded and highlighted) excluded from Development Peace in Historical Peninsula, İstanbul (Source: Ministry of Environment and Urbanization, 2018b)

After these procedures, exchange operations of the constructions will be legitimized, the property tax will

be collected on the basis of property type ‘building’, which was being collected based on the property type ‘plot’ before, and tax loss will be avoided by this way. Since the construction servitude and property ownership will be provided, it will be feasible to perform banking operations such as pledging the buildings as collateral and getting mortgage loan (Ministry of Environment and Urbanization, 2018a).

The constructions built on public land will be provided with CRD under the condition that the owners must apply to the Ministry of Environment and Urbanization and pay the market value of the plot, on which the construction built (Ministry of Environment and Urbanization, 2018a).

4. FORMER PRACTICES BEFORE DEVELOPMENT PEACE IN TURKEY

The activities against development and construction laws are called as development crime. The laws about shanty/squatter’s houses (in Turkish: gecekondu) can also be related to development crime (Keleş, 2015). The term “gecekondu” is used for the illegitimate houses and literally means “built overnight” (Türker-Devecigil, 2005). The constructions that were built without the required permissions and those that were not built in accordance with the previously obtained construction permission deeds are subject to punishment of fine or partly/full demolition. In Turkey, the situation in which the owners of the anomalous constructions are forced to pay certain amount of money or forgiven without any payment is called as development (or zoning) amnesty (Keleş, 2015).

Indeed, the anomalous constructions must be demolished in case of implementing the laws. However, the demolition attempts encounter resistance of pressure groups in terms of subjectivity. On the other hand, in terms of objectivity, it has been almost a permanent rule that the anomalous constructions are forgiven from time to time as the demolition of those constructions means loss of national wealth (Keleş, 2015). Akalın (2018) states that development amnesty-like regulations punish the cities instead of the people committing crime towards cities.

The legal regulations before development peace were mainly based on legalizing the gecekondu houses. Whilst the recent regulation, Development Peace, is a government declaration, the former regulations were all enacted as laws. Since the gecekondu phenomenon gained importance in 1940s, many laws had been enacted whose numbers are 5218, 5288, 6188, 7367, 775, 1990, 2805, 2981, 3290, 3366 (Keleş, 2015; Official Gazette, 1948a, 1948b, 1953, 1959, 1966, 1976, 1983, 1984, 1986, 1987).

When the former regulations are compared to the recent one, Development Peace, it will be noticed that the most of the old practices targeted only gecekondu houses whereas Development Peace comprises all types of constructions (not only houses). Gecekondu houses sooner or later gain legitimacy by government actions (Buğra, 1998). The earliest regulations (e.g. Law No. 5218, 5228) were mainly about allocating land, based on some conditions, to the citizens living in the municipality. Some of the requirements to benefit from

the past regulations were as follows (Official Gazette, 1948a, 1948b, 1953, 1966, 1983, 1984, 1986, 1987):

- To have been stayed within the boundaries of the municipality at least one year (Law No. 5218),
- Not having any dwelling or any plot of land to build a house (Law No. 5218),
- The worth of the plot to be assigned will be paid by installments without any interest in ten years (Law No. 5218),
- In the case of having more than one unauthorized dwellings within the municipality boundary, the provisions of the law are utilized for only one of them (Law No. 5218),
- In order to get a plot that belongs to the municipality, the person or his/her spouse must not own any dwelling or plot (Law No. 5228),
- The people obtained plots from the municipality must start constructing their houses in one year after receiving the plots and after expiration of that one year-period they must complete the construction within two years (Law No. 5228),
- The people that are the owners of the dwellings, which were built without any permit in areas not suitable for housing or that were built in areas suitable for housing, but not having required permits are provided with housing units by the municipality on condition that the owner of the illegitimate house must demolish the anomalous structure and remove the salvage before the allocation of the house by the municipality (Law No. 6188),
- The plots in the gecekondu prevention zone are primarily given to the citizens that became houseless due to the rehabilitation and clearance of the gecekondu houses and the citizens that do not have any dwelling unit (Law No. 775),
- According to the provisions of this law, the citizens which will be allocated with plots must be poor or low-income, they and their spouses or their minor children are required to not having any plot suitable for building a house inside the boundaries of any municipality (Law No. 775, Law No. 2805),
- The right holder, whose gecekondu is not preserved, will be provided with plot in the same area or in another gecekondu prevention zone (Law No. 2805),
- The dwellings contrary to the development law, whether those that will be preserved or the ones that will be preserved after rehabilitation, are subject to payments such as permit fee, fine payment and worth of the plot in order to be issued permanent or temporary permit and residential usage license (Law No. 2805),
- Bosphorus and Dardanelles, the places defined or will be defined according to Law No. 2863, military forbidden zones and security zones are out of scope (Law No. 2981),
- In case of having a gecekondu on a private land, consent of the owner of that private land must be obtained in order to benefit from this law (Law No. 2981),
- The land owner can demand to sell the land to the person who has gecekondu on that land according to the market value determined by the court. The gecekondu owner can make cash payment or (if the land and gecekondu owners agree on it) payments by installments (Law No. 3290),

- In the areas determined by rehabilitation development plan or cadastral plan, the right holders can be directly provided with title deed instead of title assignment deed (Law No. 3366).

More detailed information about development amnesty regulations in Turkey can be found in Akalın (2018). As some of them listed above, the former legislations, which were considered as development amnesty, had regulations such as allocating plots to the people letting them built houses or providing people with firm houses on condition that clearing out the gecekondu houses. On the other hand, the new regulation, Development Peace, has a broader spectrum since it comprises all types of constructions including houses. Development Peace also differs from the past practices with regard to its scope as given in Section 3 entitled “The Scope of the Development Peace”.

5. DEVELOPMENT AMNESTY IN OTHER COUNTRIES

As irregular settlements like gecekondu is not a phenomenon peculiar only to Turkey (Keleş, 1978), development amnesty is not as well. In other countries it is not unusual to observe development amnesty regulations. In South Cyprus, an amnesty regulation had been announced as a one-off opportunity covering the anomalous buildings built before April 8th, 2011. The construction date must be validated by an oath of architect/civil engineer. In addition to the property owners, developers could apply to benefit from the amnesty and in case they miss to apply, they would be required to pay fine. The issued document within the scope of the amnesty was Certificate of Completion and all available problems of the buildings with irregularities could be solved with this certificate (Koutsolambros, 2011).

Another amnesty regulation was prepared for the buildings that had unregistered construction work in City of Alameda, California, United States. The construction works of the buildings without any permit such as adding another room, remodeling kitchen, plumbing work for another sink were considered within the scope of the regulation. The unregistered dwelling units were also covered by that program. The subject properties would be inspected by a City Inspector in order to make sure there is not any safety issues related to the construction (City of Alameda, 2017).

In Township of Marlboro, New Jersey, United States, a building/zoning amnesty program has been announced that covers the buildings with irregularities based on defined codes. The construction works performed without required permits will not be subject to any fine. The buildings that have unpermitted construction works such as finished basements, fences, outdoor kitchens, driveway stanchions etc. will be covered by the amnesty program (Township of Marlboro, 2019).

In Italy, the people done building violations can benefit from two types of amnesty: formal building amnesty (Sanatoria) and substantial building amnesty (Condono). If anybody starts construction work without a building permit, they need to file a Sanatoria to regularize the ongoing work. In case of a construction

work against building rules, this issue needs to be solved by a government action, Condone law. The Condone laws establish the types of building irregularities and certain dates before which people should apply. In case of buying or selling a property, it is must be made sure that the permit or amnesty issues had been solved for that property (Studio Legale Metta, 2019).

The most noticeable difference between Turkey and other countries based on the established development (building/zoning) amnesties is that in Turkey development amnesty actions are taken by the central government as laws or declarations, while in the other countries, especially in North America, the development amnesties are regulated as local government (municipalities) programs and these programs mainly cover the extra work done as additions to the existing buildings.

Compared to the other countries, Turkey’s amnesty regulations for the irregular constructions are quite comprehensive leading to expectations for similar actions in the future and irresponsible behaviors. Sustainable amnesty anticipation is a troublesome situation threatening the sustainable planned development.

6. THE APPLICATION PROCEDURE FOR THE CONSTRUCTION REGISTRATION DEED

Applications will be made over e-government gateway (www.turkiye.gov.tr) or by applying to the institutions authorized by the MEUT. The applications could also be followed on e-government gateway (Ministry of Environment and Urbanization, 2018a). The e-government gateway is an internet site that provides access to all public services from a single source. This internet site has been in use since 2006. The citizens can perform queries on such as tax debt, traffic tickets based on the license plate, criminal record, case file and many others. On e-government gateway, under the menu ‘Newly Added Services’, there is a section titled ‘Development Peace Registration Operations’ (e-government gateway, 2018). The citizens can make registration application or verify construction registration deed under this section (Fig. 3). In Fig. 3, the page content has been given in English as well. In case the citizens need help, the Environment and Urbanization Provincial Directorates will be available for any information and support needed.

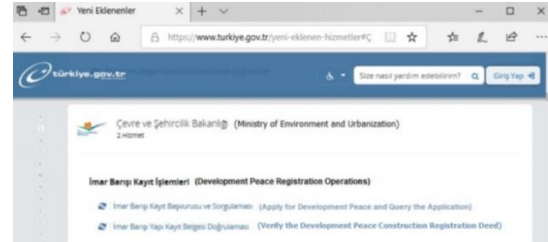


Fig. 3. ‘Newly Added Services’ page of e-government gateway (Source: e-government gateway, 2018)

The information needed to be entered over e-government gateway are as follows (Ministry of Environment and Urbanization, 2018c):

- e-government gateway password
- A valid phone number
- A valid e-mail address
- Address of the construction to be declared
- If title deed is present for the construction, the block and plot number for that construction
- Total construction area; areas of the residential and commercial properties separately (m²)
- Number of residential and commercial units in the construction
- Unit tax value of the land or plot (TRY/m²) (can be obtained from the relevant municipality)
- The area of the plot of the construction; if available the area in the land register, if not the declared area (m²)
- Construction class (will be selected from the options offered by the system)
- Specifying the contradiction to the development legislation
- Pictures of the construction and the part having the contradiction, one for each (in jpg, jpeg, or png formats)

Applications has begun in June 2018 and will continue until June 15th, 2019 (Posta Gazette, 2019). In order to calculate the amount that the owners need to pay to get CRD is calculated by summing up the value of the plot and the cost of the building on that plot and taking %3 of that sum for the residential units and %5 of the sum for the commercial units. Value of the plots is the market value calculated from Sales Comparison approach. Cost of the constructions is calculated based on the declaration entitled "Rules and Procedures to Provide Construction Registration Deed" that is published by MEUT. In this declaration, the fifth article covers the unit cost price to calculate the approximate costs of the constructions.

The unit cost prices are: 200 TRY/m² for the ordinary agricultural constructions, 600 TRY/m² for one to two-storey buildings and simple industrial constructions, 1,000 TRY/m² for three to seven-storey buildings and integrated industrial constructions, 1,600 TRY/m² for eight-storey or higher buildings, 2,000 TRY/m² for the luxury buildings, villas, shopping malls, hospitals, hotels (Ministry of Environment and Urbanization 2018d). The unit cost prices for the other construction types, which have been added to the declaration in 20 September 2018, are as follows: 2,000,000 TRY/MW for power plants, 1,500 TRY/m² for ports, harbors, and shipyards, 150 TRY/m² for retaining walls, fill areas, pools, sports areas, and other constructions not having building characteristics (Official Gazette, 2018b).

The deadline of the payments for CRD was first announced as December 31th, 2018. The MEUT has stated that in case of need, the period of application and payment can be extended by the Cabinet of Ministers (Ministry of Environment and Urbanization 2018a). As indicated by the MEUT, the payment deadline had been extended until June 30th, 2019, whereas the application deadline is June 15th, 2019 (Posta Gazette, 2019). Another update has been put into action with respect to the payment deadline just before it expired. In accordance with the presidential decree dated 1 July 2019 and numbered 30818, the applicants of CRD

applied before 15 July 2019 will be able to make their payments by 31 December 2019 (Ministry of Environment and Urbanization, 2019).

7. THE RELATION OF DEVELOPMENT PEACE AND URBAN REGENERATION

The collected fund from the regulation 'Development Peace' will be recorded as income in State budget and will be used to be prepared for the risks of earthquakes and other natural hazards, and finance the urban regeneration projects. The municipalities implementing urban regeneration projects will be provided loan with zero interest provided that they prefer 100% native construction materials (Ministry of Environment and Urbanization, 2018a).

As of July 20th, 2018, the number of applications to get CRD was 2,614,570. Among these applications, the housings have the highest number (2,340,450). The number of applications for the commercial properties, agricultural constructions, and solar power plants were 223,428, 50,611, and 81, respectively. The number of the irregular constructions that have been issued with CRD is 133,064 and an income of 659,506,741 TRY has been collected by providing CRDs. This income will be used in favor of urban regeneration projects. The cities having the highest number of applications have been given in Table 1 (Ministry of Environment and Urbanization, 2018e).

Table 1. The cities having the highest number of applications as of July 20th, 2018

City	Number of Applications
Istanbul	484,875
Izmir	242,604
Konya	156,613
Kocaeli	124,639
Bursa	123,039
Ankara	93,344
Gaziantep	76,605
Hatay	71,738
Antalya	70,739

Since the application deadline has been extended until June 15th, 2019, as of May 7th, 2019, the number of applications to get CRD has reached 9,698,238 and 16.5 billion TRY has been collected corresponding the applications (Posta Gazette, 2019).

The issued CRD will be valid until the reconstruction of the construction or the urban regeneration project. In case of the reconstruction the constructions, the development legislation in effect will be enforced and the CRD will not provide any acquired right (Ministry of Environment and Urbanization, 2018a).

8. DISCUSSION AND CONCLUSIONS

In the booklet prepared by the MEUT to introduce the Development Peace, the outcomes of the Development Peace are given as below:

- The owners applied to take advantage of Development Peace and obtained CRD will get water, electricity, and natural gas services connected to their constructions.
- There will be no need to worry for the owners obtained CRD, relating to having their constructions demolished by the municipalities.
- The decisions taken for the demolition according to the Development Law will be revoked and uncollectible fines will be omitted.
- The owners obtained CRD will be able to use their properties as an asset having economical value. This is highly important benefit of the regulation, since the irregular properties will gain formal representation and their confined potential value will be revealed as signified by De Soto (2000).
- In condominiums, apartment ownership for each residential unit will be established at the directorates of land registry by making the designated payments.

As pointing out the fact that the buildings incompatible with the development plans comprise over 50% of the buildings in Turkey, Development Peace has been announced by the MEUT as a solution to the constructions that are contradictory to the development plans, unauthorized, or contradictory to the appendices of the permits given. The Development Peace might seem as a problem solver as the irregular settlements and constructions will gain legality and the urban regeneration projects will be financed by this way. The government explains this regulation as mutual forgiveness and making peace with the citizens that have irregular constructions. However, the land where irregular constructions exist is not merely under the ownership of the government and the government should not decide on these properties on its own. The other citizens respectful to the laws also have rights on these properties. While the government forgives the citizens involved in infraction, the law abiding citizens might be demoralized as the formers are getting rewarded. Development Peace-like regulations might encourage the people that have tendency to violate laws. The government should take precautions instead of authorizing irregular constructions. The municipalities could benefit from the technologic advancements to monitor anomalous constructions, record the changes in the field, and create databases. Today there is a wide range of opportunities for the municipalities to utilize in their areas of responsibility such as satellite images, aerial photographs, Airborne-LiDAR (Light Detection And Ranging), Geographic Information Systems (GIS), Unmanned Aerial Vehicles (UAVs, drones).

In a constantly developing world, instead of temporary solutions, permanent approaches must be developed. Development Peace and similar regulations should not become a government policy. At first glance, the Development Peace seems to give a chance to low-income citizens to gain legitimacy for their irregular settlements. As stated above, however, these group of people are not the only beneficiaries of the regulation. The constructions built contradictory to the development plans or to the appendices of the permits given are within the scope of the regulation. That means the multi-storey buildings, commercial properties, industrial buildings will benefit from the regulation as well. The

profits of the owners of these properties are incomparable with the payments that needed to be paid by the owners to obtain CRD. In other words, the high-income citizens most likely will make enormous gains. Considering that the irregular constructions comprise the majority of the constructions in Turkey, the income expected from Development Peace regulation for the purpose of financing regeneration projects could be substantial. The question is that who will take the advantage of the regulation? Is it the government and the municipalities or the high-income owners that own high value properties?

From valuation point of view, the commercial properties cannot be valued as residential properties. In the Development Peace regulation, as stated before, both types of properties will be valued in the same way. The only difference is the percentage to be paid by the owners to get CRD. In valuation profession, the commercial properties are appraised by income approach instead of sales comparison approach as they yield income. In case of valuing income generating properties inappropriately, the gain from issuing CRD for this kind of properties will be less than normal.

Earliest form (July 2018) of the declaration of the MEUT entitled "Rules and Procedures to Provide Construction Registration Deed" has been changed in September 2018 and seems to be changed by the time of progress. The Development Peace regulation has newly put into action and it is likely to have further changes as the deficiencies discovered.

The Development Peace might seem in favor of the people occupying irregular constructions. While this kind of regulations make certain parts of community delighted, the law-abiding side of the society will be demoralized. Although the Development Peace is the most comprehensive action of the government with respect to irregular constructions as yet, it may cause expectations in the citizens such as the government might put into action similar regulations in the future as well. The government should develop policies to avoid irregularity and not to encourage the people having tendency to break the rules.

On the other hand, the rationale behind the urban regeneration projects in Turkey is mainly declared as constructing earthquake resistant buildings. However, this new regulation covers all kinds of constructions no matter how resilient they are against natural hazards (esp. earthquakes). While promoting durable constructions, legitimizing vulnerable buildings at the same time is another flawed side of the regulation and needs further consideration.

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