

Considering the Statutory Protection of Soil in Turkey with Regard to Existing Law

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Abstract: Many countries in the world have guaranteed protection of their soil by means of statutory protection. Their use of soil therefore has been governed by legislative resolutions and respect for ecological concerns. In Turkey, the soil is viewed as a means of production and its use and protection has been traditionally left to the farming community. It is generally considered that Articles 44 and 45 of the Constitution grant a *general* right of protection to soil. However a major problem appears to be the lack of a code of law detailing *specific* rights over soil and its usage. Whereas several administrative bodies are considered to have authority in this matter, the lack of a specific code with detailed areas of responsibility means that this authority is never exercised. Therefore there is a problem of legislation. The second problem, already referred to is land usage. Soil in Turkey has been solely regarded as an agent of production without any regard to the issues of economic sustainability or environmental protection. The political strength of the farming lobby in Turkey has prevented the development of an environmental protection code to ensure balanced ecological development. The purpose of this study is to consider what legislative measures may be taken for the protection of soil, having regard to social requirements.

Key words: Soil regulations, usage of soil, legislative authority, sustainability, soil erosion

INTRODUCTION

The environment is generally understood to be the intricate system of balance held between biological, geographic and social factors which determines human physical and mental development. The biggest threat to this balance is pollution. The rapid pace of industrial expansion has contributed to the pollution of fundamental natural resources; the air, water and soil. The restoration of clean natural resources is regarded as a guarantee for healthy life in Turkey^[1]. In order to achieve this, several steps have been taken^[2].

In order to combat threats to the environment, it is necessary to develop a community sense of awareness. Everybody must be encouraged to take an individual responsibility for environmental protection. On a national and international level this has been expressed in the slogan "The right to live in a healthy and well preserved environment". It is only through developing this sense of awareness that environmental protection can be achieved by identifying potential problems and dealing with them before they become environmental threats. This has been formalized in Article 1 of the Rio Declaration issued by the Conference on Environment and Development held on June 3-14, 1992. That article stated that "Individuals are at the hub of stable and sustainable development and have the right to enjoy a healthy and fruitful life".

In addition to national, political, economic and education elements in a programme of environmental protection, there is also a clear need for a legislative role. Only the law can ultimately guarantee environmental rights.

The purpose of this study therefore is to examine the statutory framework that exists in Turkey in respect to environmental protection and to consider what additional legislation is required to ensure effective environmental regulation.

Basic legislative agreements for soil protection in

Turkey: The first Turkish legislative enactment in the field of soil protection was the Code of Environment Law no. 2872. As stated earlier, the purpose of the code is to "Take the necessary measures to protect the environment, especially to prevent the pollution of water, air and soil having regard to economic and social development targets and considering the rights of both the present and future generations". Article 3 of the code dealing with basic principles identifies the purpose of the code to be the protection of the environment and the prevention of pollution.

Paragraph (a) of the same article clearly places a legal responsibility for environmental protection on all real and judicial persons. So this definition clearly extends legal responsibility to ordinary citizens and legal bodies, both

Turkish and foreign. The code adopts the principle of strict liability – liability without the necessity of fault being proved. Anybody proved to have caused environmental damage will be considered responsible regardless of fault. As this concept is unrelated to criminal law, so are the sanctions. Under articles 20, 21 and 22 Code, financial penalties are applicable for breaches of the code. With regard to the inflation rate in Turkey, these penalties can sometimes be considered ineffective although the Council of Ministers has authority to increase these penalties. In our opinion the fines must not be determined by the legislators but should be regarded as an administrative act with regard to the value gained or damage caused^[3].

However, in addition to purely administrative sanctions for environmental damage, in appropriate cases criminal sanctions must be imposed. This is to ensure that people have regard for community rights and interests over individual rights in the environment. Therefore to have an effective legal sanction, civil, criminal and administrative resources must be employed.

A draft bill on soil protection: In this section, we will consider the draft bill on Soil Protection in relation to the statutory provisions of the constitution and other codes. As previously stated, the purpose of the existing code is to ensure protection of the soil in equilibrium with its useful productiveness with the framework of a “sustainable development approach”.

Authority and responsibilities regarding soil protection are clearly stipulated in the bill. The primary responsibility as set out in clause 5 “Responsibility, authority and duty” rests on the state. “The state, together with the social sector is responsible to protect, develop and use productively the natural resources of the earth”.

Under the present constitutional position, the state cannot be compelled to enforce environmental and social rights. In this respect the bill marks a major breakthrough. Under Clause 10 the duty and responsibility for protecting and developing soil usage is considered to be a national one and a public one. As the clause relates to national entities, it may be argued that its provisions do not extend to foreigners resident in Turkey. However, it would not be equitable for foreign residents to be excluded from this responsibility under the bill.

Clause 19 in the second chapter entitled “Protection and Usage of Soil” determines that the state will formulate strategies and programs and supervise their implementation. Clause 20 provides that in determining the principles applicable to soil usage, regard shall be had to committees which express the public point of view.

As can be seen, both clauses are general in character, they do not specifically detail what the state has to do.

Contrary to the specific duty and responsibility laid on the state in Clause 5, Clause 19 is not mandatory in nature. Similarly in Clause 20, the state determines the principles to be applied in soil protection but there are no penalties specified for breach thereof.

Clauses 21 and 22 can be considered to be more positive. Clause 21 entrusts the state with the power to decide land usage. Clause 22 which is applicable to agricultural land, places on the state a duty to take all necessary measure to protect land usage within the concept of sustainable development and soil conservation. Thus the primary responsibility in law is placed on the state for soil conservation, recognizing the fact that this is a task beyond the scope of individual effort.

Clause 26 deals with the key issue of soil erosion. The state is actively empowered to take preventative measures through authorized organizations against the natural hazards of earthquakes, floods, avalanches and other natural disasters. Thus the state is a major player in this critical area of soil erosion, one of the major threats to land conservation which causes irreparable damage. The same clause also specifies which public bodies are empowered with regard to these measures, thus resolving the confusion over division of responsibility. Similarly Clause 27 is preventative in nature with regard to soil pollution. The relevant public authorities again (as in Clause 26) are clearly identified in taking action against soil pollution by agricultural inputs and solid liquid gasses stemming from unsuitable land usage. Clause 27 not only identifies authorized parties, it also places legal liability for soil pollution on governmental and private person. This applies to real and judicial entities and therefore the ambiguities encountered in Clause 10 do not apply here^[4]. The provisions of Clause 27 therefore apply to both local and foreign entities which possess legal personality. In the second paragraph of Clause 27, it is incumbent upon the state to take preventative measures against soil pollution. However the nature of these measures and the manner of their application is not specified. This question needs to be addressed. The problem is that in the bill as a whole, penalties are not specified, with the exception of Clause 37. Even in this clause the penalties are not a deterrent.

In the provisions of the bill land usage, land being used for special crops, special conservation lands, forests and pastures and lands for other agricultural uses may not be used for non-agricultural purposes except for defense, mining and petrol exploration. In these cases permission must be obtained from the Soil Conservation and Reform High Authority. Clause 37 deals with instances of use of agricultural land for non-agricultural purposes without the appropriate authorization mentioned in Clause 31. Even where authorization is granted, the soil usage must be

compatible with soil conservation, otherwise penalties will be applied.

The purpose of punishment in these cases is to act as a deterrent and to protect the rights of the community and individuals and to prevent repetition. The penalties prescribed in Clause 37 cannot therefore be regarded as adequate. As we noted earlier, a system of fines as prescribed by the code is inefficient. The bill goes no further than the code in this respect and does not even prescribe amounts to be applied as financial sanctions. Restoring the land to its former condition is not always possible and even if it were, it would be too long a process. To be a successful deterrent, punitive damages must be applied.

The bill provides for the establishment of a fund whose revenue will be derived from a levy on the sale of land, crops and livestock being 0.1%. In addition to this, alternative sources of funding must be found. Above all the legislation must bear some resemblance to the reality. Any laws which ignore the reality of the needs and requirements of the community will be invalid. We therefore consider that the proposed source of fund revenue will be a great burden on the community and alternative sources should be sought. Instead of taxing the community, the cost should be met by adequate fines for environmental violations.

The state must become more active in its role of environmental protection. As stated earlier, the purpose of the state in punishing individuals is to prevent the violation of common interests and to protect the rights of individuals. It is also to prevent repetition of the offense. This can only be successful where the punishment is a deterrent. However, the punishments in most cases are not a deterrent for environmental violations^[6].

The most basic principle is that life should be lived in harmony with nature. This is an inalienable principle. Man

is an adaptable creature who can adapt to his surroundings. People at every level of society are capable of adapting to their surroundings. Problems arise only when adaptation is carried out in a negative way rather than a harmonious one. This leads to serious consequences^[6].

By understanding the principle "Nature is Nature", the first step can be made toward creating a world in harmony. The proposed bill examined in this study makes the state more active in its role of environmental protection. It deserves more examination over and above the provisions of the constitution. The definition and identification of public responsibilities will also enhance ecological well-being. After certain amendments we hope the bill will become law and importantly, enforced as law.

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