

Gökçe

Objection!

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CRIMINAL ACT OF ILLEGAL CONSTRUCTION



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With the gradual increase in urbanization, many buildings around us undergo modifications, demolition and restoration works continue. Especially in recent years, both many new and unplanned buildings have been built and environment has been notably polluted. Certain acts have been criminalized in order not to destroy ecological balance and to protect environmental order.

In this context, criminal act of illegal construction is regulated under Article 184 of Turkish Penal Code (**TPC**) and the act of constructing or making someone else to construct a building without a construction permit shall constitute this crime. In this case, the contractor, subcontractor, master or foreman who constructs building and the building owner may be the perpetrator of this crime. Enacting the law regarding such crime protects people's right to live in a healthy and balanced environment. Therefore, anyone having such right, in other words everyone, will be considered as the victim of this crime.

In which cases does the criminal act of illegal construction occur?

Since criminal act of illegal construction can only be committed intentionally, a person shall only be punished in case where such person constructs a building without obtaining construction permit or intentionally and willingly constructs it against the construction permit.

Additionally, other conditions should also be exist for this crime to be occur. In order for criminal act of illegal construction to occur, the building which is constructed against the construction permit must have nature of a building. In this respect, constructions not having nature of a building and not overflowing shall not be within the scope of this crime.

On the other hand, when determining whether such crime has occurred or not, the nature of modification made inside of the building is just important as the nature of the building itself. Processes such as interior and exterior plastering, painting, whitewashing, joinery making, floor and ceiling coverings, electrical and plumbing reparations, roof reparations and building tile changing are not subject to a permit according to Zoning Law. Therefore, the crime will not occur in case where such modifications are within this scope.

It should be emphasized that balcony glazing - being frequently a subject of Supreme Court decisions - is not within the scope of this crime, it does not constitute a building-like construction or any overflow.

Another important matter is the moment of occurrence of such crime. According to Supreme Court's practice, beginning to construct a building without a permit or against a permit is sufficient for such crime to be occur. In addition, it is not necessary for for the building to be completed for the crime to occur.

What should be understood from the concept of “building”?

In the Supreme Court’s practice, the concept of building is defined in light of Zoning Law provisions. Accordingly, constructions that can be used by itself, that have a ceiling and where people can enter in it and that enable people to sit, work, rest, entertain or worship and that enable animals and belongings to be protected would be defined as buildings.

Therefore; gardens, greenhouses, walls, pools, piers, bridges, tunnels, roads and similar constructions constructed without permit or against permit, are not within the scope of this crime.

What should be understood from the concept of “construction permit”?

In terms of Zoning Law, a construction permit is a document showing that a permission has been given by the competent authority for constructing a building that is legally subject to obtaining a permission. It is mandatory for the document to include information on who will construct the building and on which lot and block the building shall be constructed, what kind of construction is permitted and payment information on required fees and taxes for such construction.

An essential point regarding construction permit is the scope of the permit. In practice, while constructing the building based on permits, they then make substantial essential modifications on the building afterwards. It should be noted that the structure can only be changed according to the scope included in the license. Otherwise, the substantial change made may constitute a crime. On the other hand, the construction permit is given for 2 years. If the construction has not been started or completed within this certain period, the construction will become unpermitted and so criminal act of illegal construction will occur.

What is the sanction for criminal act of illegal construction in TPC?

It is regulated under TPC that the person committing criminal act of illegal construction shall be sentenced for imprisonment from 1 year to 5 years.

Deferment of the announcement of the verdict shall not be applicable for this crime. In fact, a specific provision regarding effective repentance is regulated in paragraph 5 of the same article. Thus, the perpetrator shall benefit from this effective repentance provision if the buildings, constructed against construction permit, are brought in compliance with the permit and zoning plan.

What is the path that should be followed when faced with criminal act of illegal construction?

First of all, in determining whether the building is a building or not, an expert examination and a discovery should be made in the site. In this context, effective and detailed examination of the building is important in terms of whether a crime occurs or not.

In addition to this, construction permit must be examined in detail and whether the person is authorized for constructing the construction in terms of time period and scope of the permit must be evaluated.

It is recommended to get support from an expert lawyer, to follow the process carefully and to evaluate the solutions comprehensively.

Answers. Not theories.

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