TO WHAT EXTENT IS IT POSSIBLE TO CONDUCT MINING ACTIVITIES IN AGRICULTURAL AREAS AND ESPECIALLY OLIVE GROVES: SOLUTION EXPECTATIONS OF ENTERPRISES*

TARIM ALANLARINDA VE ÖZELLİKLE ZEYTİNLİK ALANLARDA MADEN İŞLETME FAALİYETLERİNİN GERÇEKLEŞTİRİLMESİ NE DERECE MÜMKÜNDÜR: İŞLETMELERİN ÇÖZÜM BEKLENTİSİ

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ABSTRACT

Overlapping of mining areas and agricultural areas can occur frequently. In agricultural areas, the most common problems in mining occur in olive groves. In the case of overlapping of mining areas and olive fields, the "Law on Breeding of Olives and Vaccination of Wilds" (Olive Law) is taken into consideration. As a result of the amendment made in Article 20 (1) of this Law in 1995, the following provision was envisaged: "Except for the olive oil factory located within the olive grove and at least 3 kilometers (km) from these fields, the facility that leaves chemical waste, dust and fumes that can prevent the vegetative and generative development of olive groves cannot be built and operated." However, in practice, it is observed that mining is not allowed within 3 km without examining whether mining will prevent the vegetative and generative development of olive groves. Thus, when these banned areas are brought together, the areas where mining can be done in Turkey have been narrowed to a great extent. It is an erroneous approach to suggest that mining is superior to olive cultivation and vice versa compared to mining and olive cultivation. Olive and mining are two different economic activities that must be maintained for the country's economy. For sustainable development, these activities need to be continued without hindering each other. It is expected for necessary regulations to be made in the Turkish mining legislation by taking the applications of the countries, which have a coast to the Mediterranean and are developed in terms of olive industry, into account.

Keywords: Environmental impact assessment, Land use, Mining, Mining legislation, Mining license, Mining operation.

* This study was conducted by developing the subtitle of Taşkın D. Yıldız's doctoral thesis (Yıldız, 2020j) and the international book (Yıldız, 2020h) published from the same thesis.

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ÖZ

Maden işletme sahalarıyla tarım sahalarının çakışması sıkça yaşanabilmektedir. Tarım alanlarında madencilik konusunda en çok sorunlar zeytinlik alanlarda yaşanmaktadır. Maden alanları ile zeytin alanlarının çakışması halinde "Zeytinciliğin Islahı ve Yabanilerinin Aşılattırılması Hakkındaki Kanun" dikkate alınmaktadır. 1995 yılında bu Kanunun 20. maddesinin 1. fıkrasında yapılan değişiklik sonucunda, "Zeytinlik sahaları içinde ve bu sahalara en az 3 km mesafede zeytinyağı fabrikası hariç zeytinliklerin vegatatif ve generatif gelişmesine mani olacak kimyevi atık bırakan, toz ve duman çıkaran tesis yapılamaz ve işletilemez" hükmü öngörülmüştür. Ancak, uygulamada; gerçekleştirilecek madenciliğin zeytinliklerin vegatatif ve generatif gelişmesine engel olup olmayacağı incelenmeksizin, 3 km mesafe içerisinde madencilik faaliyetlerine izin verilmediği görülmektedir. Böylece, engellenmiş bu alanlar bir araya getirildiğinde Türkiye'de madencilik gerçekleştirilebilecek sahalar büyük ölçüde daralmıştır. Madencilikle zeytinciliği kıyaslayarak, madenciliğin zeytincilikten daha üstün olduğu ya da bunun aksini ileri sürmek yanlış bir yaklaşımdır. Zeytincilik ve madencilik ülkelerin ekonomisi için devam ettirilmesi mecburi iki farklı ekonomik faaliyettir. Sürdürülebilir kalkınma için bu faaliyetlerin birbirlerini engellemeden sürdürülmesi gerekmektedir. Dünyada Akdenize kıyısı bulunan zeytincilik sektöründe gelişmiş ülkelerin bu konudaki uygulamaları dikkate alınarak Türk maden mevzuatında gereken düzenlemelerin yapılması beklenmektedir.

Anahtar Sözcükler: Alan kullanımı, Çevresel Etki Değerlendirmesi (ÇED), Maden hukuku, Maden işletmesi, Maden ruhsatı, Madencilik.

1. Introduction

Mining activities are a whole of various processes. They start with exploration, continue with ore production and ore enrichment, and also include the closure of the workplaces and the environmental regulations following the depletion of the resources (Yıldız, 2020h; Yıldız and Kural, 2020). In this period, it shall be determined how tolerable and acceptable the environmental damage is (Smith and Naito, 1998). In this direction, mining rights management agencies should review the mining plans and the statements of environmental impact when inspecting the applications for mining rights and should encourage the rational and effectual extraction of mineral resources. Additionally, they should ensure the audit during mining activities by aiming for the protection of the ecological environment (Ziran, 1999). As a way of handling the effects of mining on environment, several regulations were made, hence ensuring an opportunity for sustainable development (Zvarivadza, 2018).

Strict, impractical, and non-operable environmental regulations may prevent development or lead to the continuation of negative effects. Sustainable development cannot be promoted in both situations. The combination of the proper policy, regulations, administration, application, and organization of the related people is entailed for successful environmental management (Intarapravich and Clark, 1994).

To develop and implement a project, mining companies are required to obtain a series of government-approved legal licenses and permits (Journal of Mining Turkey, 2014). Mining licenses obtained within the scope of mining legislation are the sole assurances of mining investments. The license is very important for mining investments, just like the importance of the land built on an industrial facility. Additionally, it is the initial and essential condition for providing foreseeability in the sector. Within the scope of provisions determined by the laws, the investors arrange their feasibilities and investments (Koruç, 2016; Sökmen, 2018). In a competitive mining

investment environment, safe mining rights are regarded as a critical constituent (Ayisi, 2017).

Even in today's world, for several countries, obtaining the necessary permits and licenses are the initial problems out of the most significant problems of mining. Investor companies can face major losses due to delays during the permitting process. What is more unfavorable than this situation is the possibility of could not obtaining the permit at all or the withdrawal of the investments by companies (Kahraman and Dessureault, 2012).

There can be no improvement for any kind of sector if there are no capital inflows. The assurance of license and investment shall be secured by laws and regulations to have capital inflows and to make investments to a sector (Yıldız, 2020d). Out of the most worrisome risks for investors, on the other hand, any kind of legal changes that may affect the investment negatively is the primary risk (Pritchard, 2005). It is laid stress by Bastida that there is an existence of key legal protections for the security of mine production by several mining investors. A need for profitable mining exists in the presence of uncertainties concerning the performing of a mining project (Bastida, 2001). For ensuring all of this, internationally accepted rules which are essential for a safe environment of investment are as follow (Journal of Mining Turkey, 2012):

• Reliability to the administration,

• Protection of acquired rights,

• License reliability,

• Prevention of unfair competition,

• Legal reliability,

• Accountability (accountability of the administration along with the accountability of investor),

• Equal application of laws and regulations to all.

The rights entitled to investors in the mine legislations form the major resource of legal guarantee for mining investors (Yıldız, 2013: 1989). Matters closely related to license security such as the span of mining licenses and the procedure of extension of these spans are the first ones come to mind (Topaloğlu, 2011; 2019). It is required that mining investors obtain certain permits to conduct mining operation activities in Turkey (Yıldız 2020b, 2020c; 2020f; 2020h). The usual period for these permits may take 1–3 years or even exceed. Miners are not in the favor of situations in which an unforeseen land-use problem occurs after beginning to conduct mining operation activities. The reason for the unfavorable situation is that high permit fees for land overlaps are paid by mining investors prior to getting an operation permit (Yıldız, 2019; 2020a; 2020e; 2020f; Yıldız and Kural, 2019). Concurrently, some problems occur because of the permit periods in these land overlaps (Yıldız, 2021; Yıldız et al., 2019a; 2019b; 2020). License security is the initial and essential aspect the mining investors take into consideration when making decisions on their investments (Yıldız and Kural, 2020). Also, the cancelation of a license should not be easily fulfilled when security is given and the holder of the license should not struggle with extra bureaucracy (Yıldız, 2017a).

In some situations, although the operation permit is granted, there can occur a number of problems later in the production process (Yıldız et al., 2017; 2019a; 2020a; Yıldız, 2020b; 2020d). It is a frequent scene that license holders encounter conditions and legislative obligations later on which did not exist on the date of the license obtention because there is an abundance of legislation and the frequent legislative amendments by the bag laws. From the start of license law, because of the new conditions became compulsory by the legislation, a lot of licenses can be canceled or be compelled to be abandoned by the holders (Çankaya, 2018: 86). Mining law happens to be changed too often and provisions regarding the reduction of license security continue to increase (Ministry of Development, 2018: 127; YMGV, 2019: 14). One of the still unresolved provisions for many years is the envisaged legislative provisions for mining in agricultural areas, especially in olive groves. Agricultural lands and, within this scope, olive groves and mining activities frequently overlap (Yıldız, 2020h). Although the olive grove is not defined in Olive Law and the regulations based on this law, prohibitions regarding chemical waste, dust, and smoke are imposed. Due to these prohibitions, in Marmara, Aegean, and Mediterranean Regions, mining investments and activities become impracticable and, even, mining facilities face the risk of being closed down (YMGV, 2018: 31). Solving the mining issue in olive groves is the expectation of the mining industry. In this study:

In Section 2, the mining operation activities permit process, and the authorized administrations in this process are briefly explained.

In Section 3, the legislative problems for mining activities in agricultural lands are examined.

In Section 4, the envisaged legislative problems in olive groves within the scope of agricultural areas are discussed. By considering the legislation applications regarding mining by the countries that have a coast to the Mediterranean and are developed in terms of olive industry, suggestions are included for the necessary regulations to be made in Turkish mining legislation.

2. Permission Process and Authorized Administrations

Mining operation permit is given to the operating license holder on the condition that EIA decision, land ownership permit, operating license and work permit, other licenses and permits are obtained (Yıldız, 2020h; Yıldız and Kural, 2020) (Figure 1). The operating license holder is granted an operation permit within 3 years with the fulfillment of the stated permissions. In Turkey, permits regarding mining are issued in compliance with the related Ministries' and institutions' laws, Mining Law and the Regulations' provisions. Within this sense, it is required that the relevant Ministries and institutions shall pay regard to both the mining legislation and the provisions of their own regulations while reviewing the permit period (Yıldız, 2020b; 2020h; Yıldız and Kural, 2020). Permits in mining activities and the authorized institutions granting these permits are presented in (Table 1).

An operating license is a necessity for the extraction of minerals. However, it is not enough and following the obtainment of this license, it is required that several licenses and permits shall be acquired for the fulfillment of the production by the authorized institutions until the operation permit is taken (Yıldız, 2020b; Yıldız and Kural, 2020). As seen in the Table, the land use permit is a permit required for mining operation activities. For this permit, it is necessary to obtain a non-agricultural use permit from the Provincial Directorate of Agriculture. There are several issues such as overlapping of legislations foreseen for the permits, the profusion of authorities giving

permits, and the ambiguity in the permit criteria that can cause delays and, in fact, large losses in mining investments (Yıldız, 2020b; Yıldız and Kural, 2020).

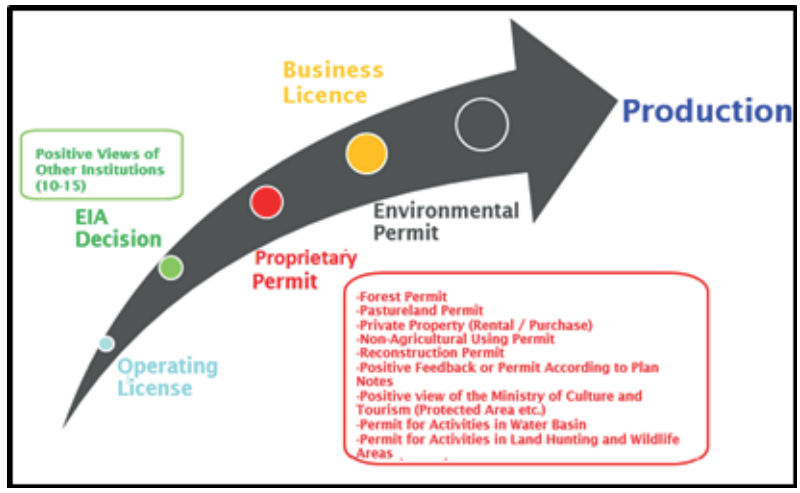

Figure 1. Operation permit process (representation)[1]
Reference: (TÜMMER, 2017).

It was foreseen that relevant public institutions and organizations will generally grant the land permits such as pasture, forestlands, agricultural and protected areas and will grant the permits (other than EIA) such as business license and work permit in compliance with the principles stated in the EIA report. Within this framework, the following is the rule stated in Article 7 of the Mining Law No. 3123 in Turkey: *"The Ministry of Environment and Forestry shall conclude the transactions of environmental impact assessment. The related ministries, other public entities and institutes shall conclude the transactions pertaining to other permissions during the process of environmental impact assessment latest within three months."* (Yıldız 2020d; Yıldız and Kural, 2020). Here, it was aimed to have license holders of mining to begin production activities right away by enabling the simultaneously fulfilled EIA and other permit processes. Yet, in practice, problems such as the inability to start other permit procedures without EIA approval and the inability to finalize other permit procedures within three months from the application date occur (Cankurtaran, 2008) still continue to exist (Yıldız and Kural, 2020).

1 Ownership permits in this way are forest, pasture, and private ownership permits. The other listed ones are placed under this heading even though they are land use permits. These can be considered within the scope of the permits entered into the MAPEG datas (Yıldız, 2020i).

Table 1. Permits in mining operations and authorized institutions

	Permits to be obtained	Authorized institution
1	Mining operating license	General Directorate of Mining and Petroleum Affairs (MAPEG)
2	Positive document of Directorate General of EIA, Permit, and Inspection	Ministry of Environment and Urbanization (MEU)
3	Mining operation permit	MAPEG
4	Waste storage permit	MEU
5	Pre-emission and emissions permits	Ministry of Health
6	Land use permit	Provincial Directorate of Agriculture
7	Land use permit	Landholder
8	Forest permit	Ministry of Agriculture and Forestry (MAF)
9	Site selection permit	MAPEG
10	Facility permit	MEU
11	Rangeland removal	MAF
12	Positive opinion of the Ministry of Culture and Tourism	Ministry of Culture and Tourism
13	Business license and work permit	Municipal and Provincial Special Administrations
14	Business declaration	Social Insurance Institution, Ministry of Labor, Tax Administration
15	Reconstruction permit	MEU or Municipality
16	Building permit	MEU or Municipality
17	Electricity license	Turkish Electricity Distribution Corporation
18	Water license	General Directorate of State Hydraulic Works (GDSHW) or Municipality
19	Explosives storage building permit	Ministry of Interior and MEU
20	Explosive authorization license	Ministry of Interior
21	Other Permits	Military, GDSHW et al.

References: (TBMM, 2010; Yıldız, 2020h; Yıldız and Kural, 2020).

The averagely determined periods for obtaining a permit are 1 year for forestland, 9 months for pasture land, and 6 months for owned lands. Permission for non-agricultural use of the area can be obtained in approximately 3-12 months. However, issuing these permissions can exceed the determined periods. The mining sector expects to shorten these permit processes (Yıldız 2020h; Yıldız and Kural, 2020).

3. The Effects of Legislation on Mining Operation Activities in Agricultural Areas

Land use areas in Turkey can be classified as forest, pasture, water, and agricultural lands, and other lands. Agricultural lands among these constitute 31.1% of the total area of Turkey (Figure 2).

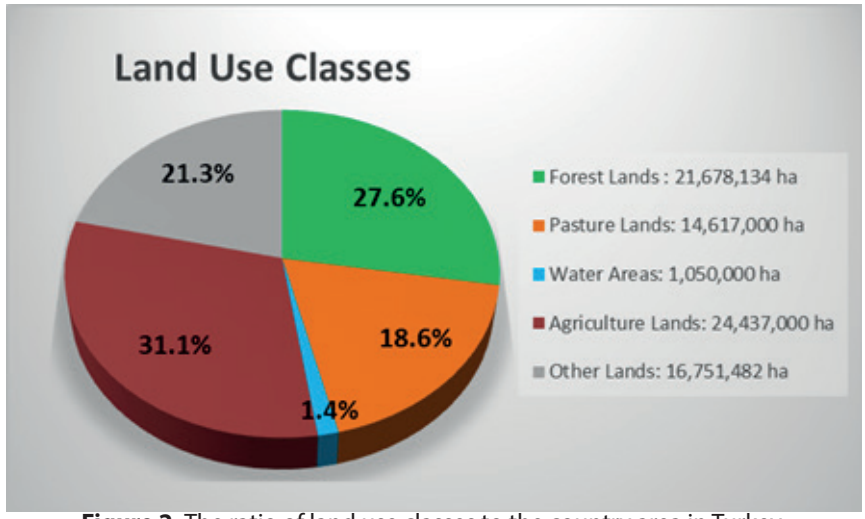

Figure 2. The ratio of land use classes to the country area in Turkey.
Reference: The Figure was drawn in (Yıldız, 2020a) by adapting from the data of the (MFWM, 2014).

This percentage distribution brings with it frequent overlap of agricultural lands with mining areas. In such cases, comprehensive studies are conducted to ensure that mining enterprises do not harm the environment and do not adversely affect agricultural production in the city where mining is conducted. In this framework, in the EIA projects of mining enterprises, Soil Capability Class Maps (Figure 3) and Soil Group Maps (Figure 4) of the mine area and land use cases across the province are created.

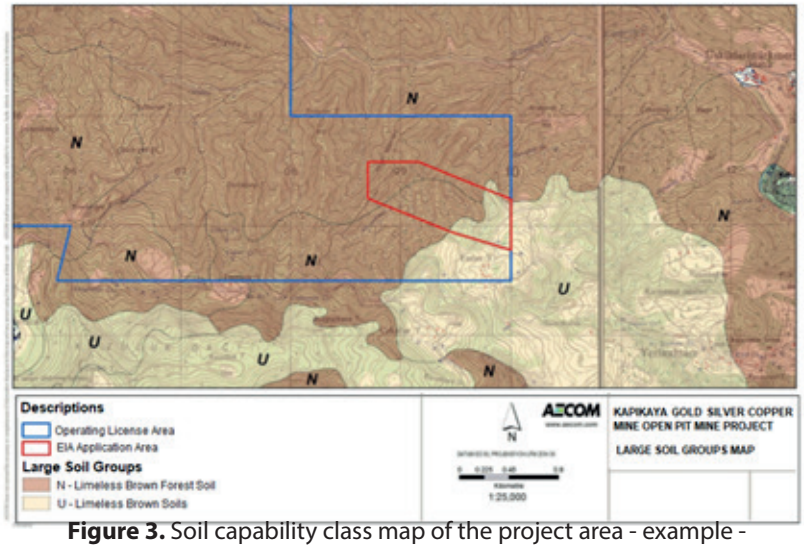

Figure 3. Soil capability class map of the project area - example -
Reference: Figure 3 is the English translation of the Figure referenced from (AECOM, 2014).

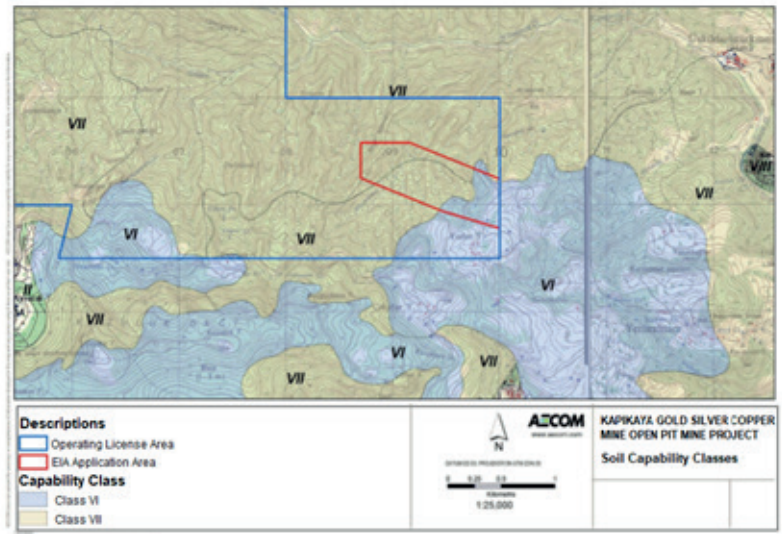

Figure 4. Large soil group map of the project area –example-
Reference: Figure 4 is the English translation of the Figure referenced from (AECOM, 2014).

Thus, it is determined how much dry and irrigated farming is done and how many vineyards, olives, and gardens are located in the lands of this class (in full detail with meadow-pasture, forest-shrub cover and settlement areas) (Figure 5).

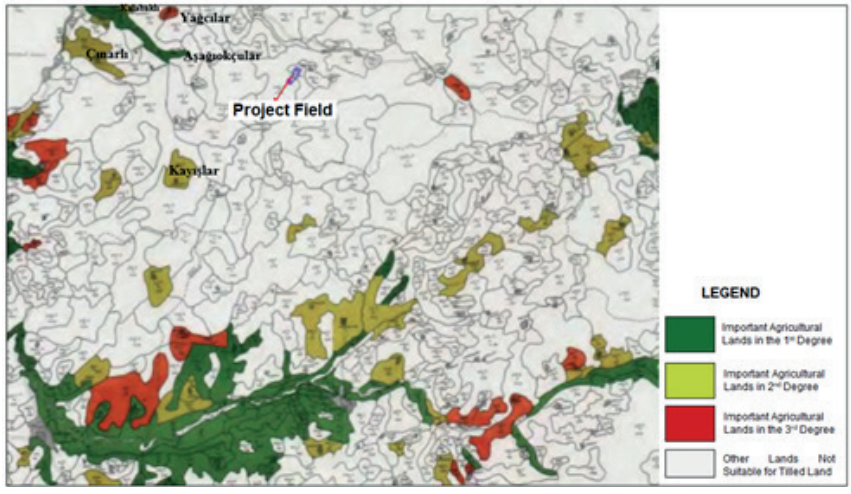

Figure 5. Mining project area and surrounding agricultural areas.
Reference: Figure 5 is the English translation of the Figure referenced from (Nazka, 2014).

Thus, the approximate surface area of the EIA application area to the soil ability class and large soil group class is found. Then, it is revealed whether the mining activities to be conducted will affect the agricultural production potential of the agricultural lands in the province. A large

part of the areas where mining projects are conducted in such extensive works is located on the private-registered lands. Such lands are registered in the "Land Registration" as "fields" and "olive groves". In the expropriation of these areas for mining, difficulties arise from the implementation of the Olive Law and the Soil Protection and Land Use Law (TBMM, 2010: 277).

Article 13 of the Soil Protection and Land Use Law No. 5403 provides the following provision: *"Absolute agricultural lands, special product lands, cultivated lands, and irrigated lands can not be used for purposes other than agricultural production. However, provided that there is no alternative area and the Board deems appropriate, the Ministry may permit the 'out of purpose use requests' of these lands for mining activities, which have been decided by the relevant ministry, provided that they comply with the soil conservation projects."*

Therefore, to mining in agricultural areas that coincide with the mineral reserves, first of all, non-agricultural use permit must be obtained. Parallel to the rapid growth of the world population, with the increase of urbanization, "used out of purpose of lands" has emerged as a result of more need for agricultural and industrial activities. "Agricultural areas used for out of purpose" indicate the area lost as a result of using the lands in accordance with the characteristics of the land for activities such as urbanization, agriculture, and industry (MEU, 2018). In Turkey, between the years 1989-2017, a total of 2,583,004 hectares (ha) of agricultural land were allowed to non-agricultural uses (MEU, 2018; MAF, 2018). In 2017 alone, a total of 7401 "non-agricultural use permits" applications were made and "non-agricultural use permits" were granted for 38,678 ha (MEU, 2018). (Figure 6).

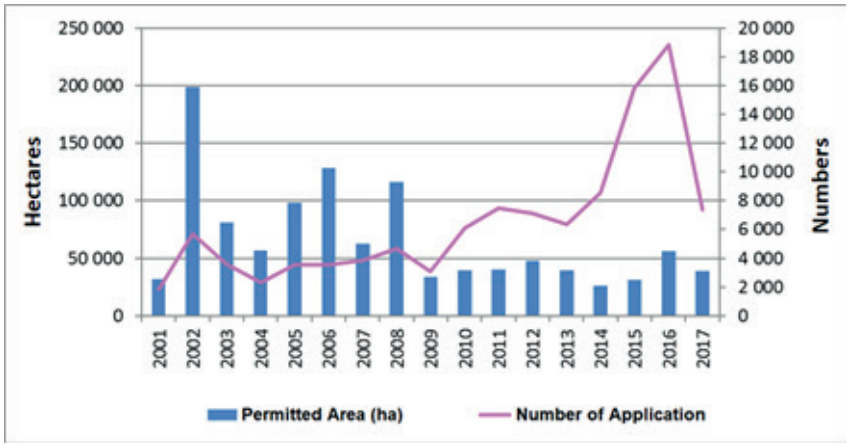

Figure 6. Used out of purpose of agricultural lands (2001-2017).
Reference: Figure 6 is the English translation of the Figure referenced from (MAF, 2018).

In line with the protection of irrigated and fertile agricultural lands, Law No. 5403 envisaged provisions for not opening agricultural land to construction other than marginal agricultural lands unless it is mandatory (MEU, 2018). Where lands are suitable for agricultural production and where lands are scarce, fertile lands need to be protected. Pursuant to article 13 of the Law No. 5403 and the "Regulation on the Protection, Use and Planning of Agricultural Lands" for carrying out mining operations, the public interest decision was foreseen by the Ministry of Energy and Natural Resources (MENR) on absolute agricultural land, private product land,

cultivated and irrigated agricultural lands. In the continuation of this decision, it was envisaged to give non-agricultural use permits[2] by the land of the city where the activities will be conducted (Tanrıvermiş, 2018: 160). For agricultural lands other than these lands, "non-agricultural use" allocation is made by the governorships (Çağatay and Aliefendioğlu, 2019: 224). Mine license holders conduct their activities in a way that will not harm the environment and agricultural lands. In addition, they are obliged to return to their previous qualification after the allocation period expires during mining operations. On the other hand, besides the public benefit given pursuant to the Expropriation Law No. 2942, the fact that a second public benefit is given within the framework of the Law No. 5403 constitutes a repeat transaction and causes a considerable loss of miners' time (Tanrıvermiş, 2018: 160).

Mining license holders are obliged to obtain the necessary permissions from the Ministry in case the area where the operation will take place within an area under the protection of the MAF. The license holders obtain information about the field they plan to conduct the operation activity by applying to the Provincial Directorate of Agriculture with the necessary documents. It is notified to the regional agricultural directorates that the field of activity is the agricultural area or pasture qualification (Özel, 2006: 99-100). The Provincial Directorate of Agriculture examines the application of the license holder, creates an inspection commission for the field of activity, and prepares a technical report by examining this area on site. Within the framework of the prepared technical report, the file of the mine license holder is created and presented to the pasture commission, and the decision is made by the commission. "Non-agricultural use permit" is given by the MAF, especially for the mining production activities approved by the Ministry in the agricultural classes in the area, absolute agricultural lands, special product lands, and economically efficient planted agricultural lands and for the irrigated agricultural lands. Mining activities are permitted in agricultural areas, considering the following criteria:

• If there is soil above the permitted mining area, they are scrapped and stored in a suitable area and used in recultivation works after the end of the activity,

• During the mining activities, necessary measures are taken in the annual report or operation project to prevent damage to the nearby agricultural land from the activities conducted,

• After determination of mine spreading areas and reserves, agricultural areas that are sufficient for production are allowed,

• These areas are harmonized with the environment with the recultivation activities to be conducted after the activities are completed,

• Marginal agricultural lands, excluding the agricultural lands mentioned above and whose characteristics are determined by the MAF, are granted permission by the Governorship for non-agricultural land use. The mining license holder is obliged to comply with all the commitments stipulated in the permit phase. The permit expires when the owner of the license completes his business or leaves the license for any reason. The licensee is obliged to make the field where it operates to make it suitable for agriculture again. They make this field usable for agriculture

2 The number of non-agricultural use permit applications and permit area information requested for mine operation activities could not be obtained. However, it can be said that the number of mining license applications in Turkey may be in line with the increase and decrease. See this topic (MAPEG, 2019).

by means of recultivation activities. If they don't, it is envisaged to apply sanctions by the Governorship (Özel, 2006: 101-102).

In the Mining Law Permission Regulation in the past, according to Article 35 titled Production activities in agricultural areas; "*... the marginal agricultural lands, other than the agricultural lands listed above and whose qualifications are determined by the Ministry of Agriculture and Rural Affairs, are given permission for non-agricultural use by the Governorship.*" Although this provision was included in the Permission Regulation[3], this was not the case in the "*Soil Protection and Land Use Law No. 5403*". As a matter of fact, this still poses problems in terms of performing mining activities. Namely, the following statement is included in the Article 13/ç clause regarding the used out of purpose of agricultural lands: "*Mining activities for which public interest decision has been taken by the relevant ministry, may be permitted by the Ministry provided that used out of purpose of these lands and soil protection projects are complied with.*". According to Article 13 of the Soil Protection and Land Use Law No. 5403, absolute agricultural lands and irrigated agricultural lands cannot be used for purposes other than agricultural production. However, provided that there is no alternative area and the board deems appropriate, the Ministry may permit requests for used out of purpose of these lands for mining activities, which are publicly favored by the relevant ministry, provided that they comply with soil conservation projects.

As it is seen, if the field of activity is agricultural land, public interest demand transactions are made according to the Soil Protection Law. The application file prepared according to this Law is sent to the Provincial Directorate of Agriculture and Forestry after the transactions are completed at the MAPEG. Then, it is presented to the Prime Ministry (MENR with the new regulation) from the Provincial Directorate. At this stage, the process of starting to work for agricultural land is extended, and the end of the process takes one year. In addition, if the license holders have begun to work, they face high administrative fines (Kömürder, 2016: 72). At this point, it is considered that amendment in Article 13 of the Law No. 5403 will bring benefits in terms of paving the way for the sector (TBMM, 2010: 277). It is important to conduct the permitting processes in agricultural areas by a single institution to speed up the processes. In parallel, for the marginal and other agricultural lands that have high soil and topographic limitations and low agricultural potential, a "soil protection project" should not be required in line with the area limitations specified in the Law (Kömürder, 2016: 72).

In an article in the Journal of Agriculture and Forestry (Çevik and Bağcı, 2019), it is stated that an agricultural land of 3 million ha in Turkey is idle. It is mentioned that there is a loss of ~13 billion TL every year for this reason (Şahin, 2021: 100). Mines, on the other hand, must be operated where they are located. Therefore, the mine producer has no option to choose the production area. The land on which mining will take place is essentially received for a temporary period. In other words, while the production activity continues and the reserve is consumed, it is possible to rehabilitate and restore the soil to the former fertility by using the necessary technologies. Most of the time, income from mining is tens of times more than income from agriculture in the same area. In accordance with the principle of economic benefit, it is necessary to act on the principle of bringing the lands used in accordance with their productivity before

3 Mining activities conflicted with this Law, and there were troubles. Here, too, the Mining Law Permit Regulation could not be applied through the ministry authorized by the relevant legislation and the regulation affiliated to these ministries. Therefore, it was necessary to ensure that the permit regulation of the ministry and all mining institutions became operational (Onur, 2008: 55).

use. Accordingly, as a result of the coordination of other relevant Ministries, some obstacles placed before mining should be removed (Şendeniz, 2002).

Another regulation, Regulation on Soil Pollution Control and Point Source Contaminated Sites, which has technical and administrative problems in practice, was put into effect on 08/06/2015. Within the scope of this regulation, there is no legal legislation yet, even in EU legislation[4]. This Regulation is a compilation of approaches developed for "Superfund laws," a very special application in the USA, which is known to cause significant legal and economic difficulties in implementation. As a result of the application problems and the economic problems it created in the mining sector, it was revised (simplified) only in the USA, provided that it is applied only for highly contaminated abandoned sites (Superfund sites) (Zanbak, 2015: 64).

Soil pollution is a very important issue in the sense of environmental protection in terms of preserving the quality of the soil. Within this framework, legislation can be considered in all countries (including the USA and EU countries) to protect the quality of the land. In this case, it is seen that there is no general legislation implementation in this regulation, which was put into effect in 2015 in the industrial activity areas where businesses operate. Besides, considering the practices of the last 30 years in the USA, it has been understood that this kind of legislation shows a very limited benefit in terms of environmental protection. According to Zanbak, this kind of regulation will put bureaucratic dilemmas instead of improving the environmental protection efforts in Turkey. Also, considering the experience in the USA, it should also be taken into account that this kind of regulation implementation (in other words, due to the suspicion that all kinds of work sites are contaminated) can often lead to unnecessary hesitation (Zanbak, 2015: 68) and even provocative behaviors that prevent mining. First of all, it should not be ignored that mining can be done together with agriculture in accordance with the legislation. One of the examples of agriculture and mining in Turkey is Efemçukuru Gold Mine. The most striking feature of this place is that there is a vineyard established on a 65 ha area raised by miners, about 50 meters from the entrance of a gallery that goes underground (Figure 7). In these vineyards where viticulture techniques are applied at the highest quality, viticulture activities are a very good example showing that mining and agriculture can be maintained in the same area. There is an employment of approximately 20 people for agricultural activities under the control of agricultural engineers (Tuğ, 2013: 66, 70).

The number of such samples is increasing day by day. There are even companies that switch from mining companies to the olives sector[5]. In addition, it should not be overlooked that there is a need for mineral use not only in agricultural tools and machinery but also in artificial fertilizers used for agricultural activities (Figure 8). However, problems in mine-agricultural land conflicts still persist. The majority of problems in the field of mining activities in agricultural areas are experienced in olive groves. For this reason, this issue is examined in more detail below.

4 EU member states adopt an autonomous legislative framework that is inhomogeneous and creates a great uncoherences in soil conservation (Ronchi et al., 2019).
5 See (Journal of Mining Turkey, 2014: 6).

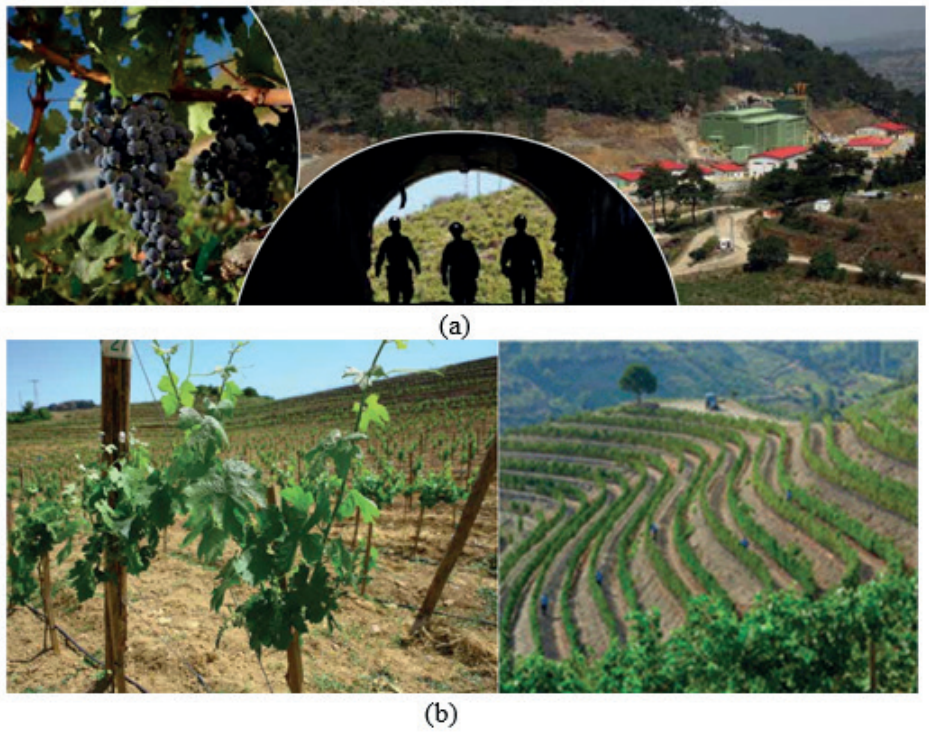

Figure 7. Agriculture and mining in Efemçukuru gold mine
Reference: (Tuğ, 2013: 66, 70; Köse, 2019: 81).

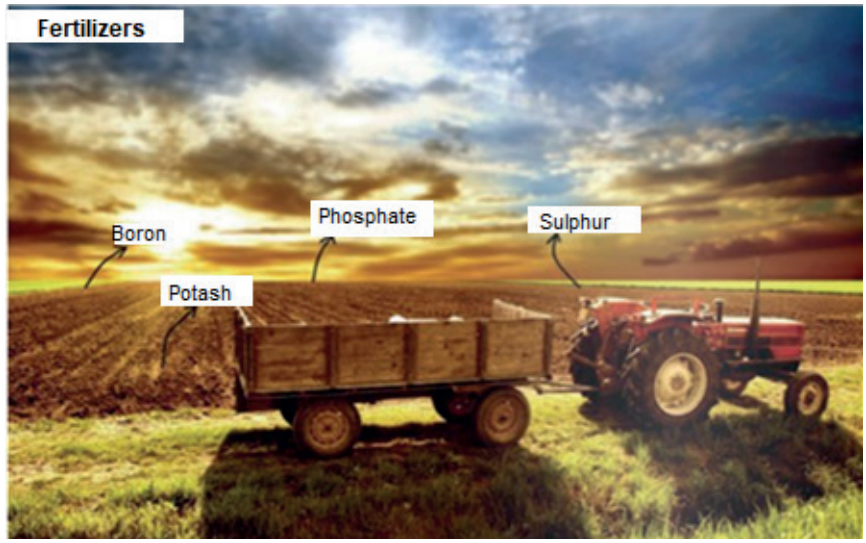

Figure 8. Mineral use in artificial fertilizers
Reference: (Köse, 2019: 108).

4. Effects of Legislation on Mining Operation Activities in Olive Areas

4.1. Problems Regarding Conflicts of Olive Groves and Mine Areas

Problems with olive groves date back to past years. For past years, the definition of terms such as olive grove, olive grove field, facility, chemical waste, dust, and smoke has not been made in Law No. 3573. Additionally, the absence of numerical limit values associated with waste (Yıldız, 2012: 54) has prevented mining activities for many years and brought the mining industry to an unpredictable point. The Law No. 3573 entered into force for the first time on 26/01/1939 and was intended to develop olive fields under the conditions of that day[6]. This law has been amended after its entry into force and is still in force. As a result of the amendment made in the first paragraph of Article 20 in 1995, the following provision was envisaged in this Law: "*Except for the olive oil factory located within the olive grove and at least three km from these fields, the facility that leaves chemical waste, dust and fumes that can prevent the vegetative and generative development of olive groves cannot be built and operated.*" According to the article, mining within 3 km of olive groves can only be prevented if it will prevent the vegetative and generative development of the olive groves. However, chemical wastes and limit concentrations and dust and smoke limit concentrations that will prevent the vegetative and generative development of olive groves have not been determined. In practice, mining is not allowed within 3 km without examining whether mining will prevent the development of vegetative and generative olive groves (TÜMMER 2010). In the arrangement, it is also noteworthy that it is an exaggeration to create a 3-km protection belt around the olive groves with a solid area closure approach[7]. Again, there was no definition of olive groves in legal regulations. In addition, it was not clear how large a field it was and how many olive trees it had to be considered as an olive grove. In practice, it is seen that even a single tree, which does not have any other olive trees near hundreds of meters, is accepted as an olive grove. Considering that olive trees exist in most of Turkey, this situation significantly restricts the mining activity areas. When we look at world applications, it is seen that such restrictions are not applied. The top five countries where olive cultivation is made in the world today are Spain, Italy, Greece, Morocco, and Turkey. When the laws of these countries are examined, the following provision is included in their laws: "*The monument trees cannot be approached within ten meters.*" Other than that, there are no restrictions. Thus, a "*monumental tree*" was defined in these countries instead of olive groves, and mining activities were conducted in a way that would not harm monumental trees. In Turkey, it is beneficial to make the arrangement in this way (Onur, 2010: 420; TÜMMER et al., 2013). When olive cultivation is considered in Turkey, besides modern nurseries, olive trees grown at random distances in the mountains can be seen. While the number of olive trees per decare in Spain is around forty, this rate is eight in Ayvalık, where

6 There is some information about the sensitivity to the environment and olive fields where agriculture was conducted during the mining activity even during the Ottoman period before this Law came into force. In one of these, in 1906, a petition was sent, indicating the destruction of the vineyard, garden, olive groves, and fields that were saved in the Gemlik region for exploration. Based on this petition, it is stated that the mining exploration activities have been decided to be stopped by the Ministry of Interior (Bozkurt, 2018: 23-25). This example is an example showing that the sensitivity from the past has reached the present day with the Law. However, it should be noted that mining is a field of activity that has to be conducted on-site and has high investment risk. Today, it is not possible to prevent mining around the world with such complaints.

7 There have also been applications where a facility that has obtained an EIA report is subject to re-inspection by the MAF. (Çanga, 2005: 237). In fact, according to the regulation prepared on the basis of Article 17 (Amended by Law No. 4086 of February 28, 1995) of the Law No. 3573 of January 26, 1939, mining projects, whether or not there were scientific grounds, were getting stuck in this legislative obstacle during the EIA phase (Yıldız, 2012: 54).

olive cultivation is the most intense in Turkey. In addition, it is stated that olive grove fields in Turkey are 1.1% of the country's surface area. However, mining that can be done in these fields is ignored by some sections. When the 3-km activity restrictive protection areas envisaged by the Olive Law are taken into consideration around olive trees, olive groves cover about 10% of Turkey's land. When these banned areas are brought side by side, the areas where mining can be done in Turkey are significantly reduced (Yıldız, 2012: 54).

Indeed, the regulation in article 20 of the Law on Olive Production prevents the production of mineral reserves in very large areas[8] (İMMİB, 2008: 54-55; TÜMMER, 2010). With the mentioned provision, it is almost impossible to conduct mining activities in the Aegean, Marmara, Mediterranean, and the even Black Sea and Southeastern Anatolia regions, which are among the regions where olive cultivation is intense throughout Turkey. Because, when there are such demands, the experts of the MAF do not permit these conflicts. Even planting 3-5 olive trees near the mining sites has been preventing mining for years. For this reason, it can be said that this creates the appearance of an obstacle to industry and mining, rather than the protection of olive groves.

The 3 km distance requirement in the Olive Law does not exist in any country in the world (Şahin, 2010: 8). Indeed, even in Spain, Italy, and Greece, which realize 70% of the world's olive oil production, and in more developed countries than Turkey, there is no limit of 3 km. However, the implementation in Turkey has made a mining investment made in 10-15 years unable to be produced due to 3-5 olive trees. In Turkey, there have been instances where mining investors planting *olive trees* around their facilities were notified that they should stop their mining activities (Kasapoğlu, 2010b: 6).

In addition, based on the Olive Law, it is envisaged to establish a commission of 11 people. In this commission, 8 organizations represented the olive sector, and only 3 organizations represented the mining sector. Thus, the mining and olive sector has been shown to be facing for years (Şahin, 2010: 8).

To open the way for the mining, a regulation was introduced in the 2nd article of the Regulation amending the Regulation on the Breeding of Olives and the Vaccination of the Wilds, published in the Official Gazette No. 28253 dated April 03, 2012 (Yıldız, 2012: 54-55). With this regulation, investments that have been decided by the Ministries for public benefit and mining operations that have been decided by the relevant Ministry for public interest can be allowed. This permission will be granted by the MAF, if there is no alternative area and it is in compliance with the EIA, and if it is determined by the Ministry's research institutes or universities that plants will not harm vegetative and generative development. However, in practice, difficulties are still encountered in overcoming this problem (Zanbak, 2013: 62). The most important change in the

8 Paragraphs 4, 5, 6, and 7 added to Article 23 of the Regulation on Law No. 3573 also draw attention. These are as follows: "4) Sand, gravel, stone chips, and lime mining activities cannot be conducted in the olive grove field. Other mining activities are conducted with the permission of the Ministry of Agriculture and Rural Affairs (MARA) - now the MAF. 5) During the mineral exploration activities to be conducted in the olive grove, the olive tree cannot be cut. In cases where the cut is essential, permission is obtained from MARA. 6) Natural and legal persons operating mining activities within the olive grove deposit 50% of the accrued state right of the mine extracted from these areas into a special account to be opened in the budget of the MARA for use in the development, reclamation and promotion of olives. 7) For each olive tree that needs to be cut due to mining activities, the estimated net income of the tree within 15 years is calculated and paid to the owner by the real and legal person operating the mine" (İMMİB, 2008: 55; TÜMMER, 2010).

regulation was the definition of olive groves. The most important change in the regulation was the definition of olive groves. In this amendment, olive groves included some areas outside the forest boundaries, which were under the jurisdiction and disposition of the State. These areas are defined as follows, provided that they are at least 2.5 ha area:

• Areas with wild olive groves, pistachios and carob and all kinds of gumwood or personal land, and registered in the deed in this way.

• Areas outside the forest boundaries and consisting of maquis groves and shrubbery suitable for olive cultivation, not covered by the Law No. 2924 on Supporting the Development of Forest Villagers, dated October 17, 1983[9].

However, this legislation could not be implemented hence continuing the hindrance of mining. It is stated that besides the registered olive groves, millions of olive trees are being planted in many areas without any research. In addition, it is stated that 3-5 decares or even 10-30 olive trees planted near the old enterprises are prevented from investments due to the application of the 3-km boundary. In fact, it is stated that the capacity increase applications of the mining areas belonging to the important industrial establishments that have been working for 20 years and exporting to 15 countries abroad have been prevented even due to the presence of 30-40 olive trees (Anıl, 2015: 430-431, 435). This case created by the legislation caused mining to become unenforceable and continues to be.

However, if we look at the clause of Mining Law 7/6, the following provision is said: "M*ineral exploration activities are not subject to any permission other than those listed in this law. Operating activities are conducted according to this Law and the regulation to be issued by the Ministry.*" In addition, Law No. 3573 was removed from the text when it was included in the Mining Law draft. There is no rule in the Mining Law that requires permission for olive groves. According to Law No. 3573, Law No. 5177 is the next Law. According to Çanga, there is no rule in the Mining Law that requires the need for permission for olive groves. Therefore, if the permissions and conditions related to olive groves for mining activities are not found in the Regulation to be issued by the Council of Ministers and MENR, the said Law is not applicable for the mining facilities to be established (Çanga, 2005: 169, 237).

It is not in the public interest to base the olive law and implementing regulations on a protection purpose envisaged in 1939, in case the location and coordinates of the mines cannot be changed. These regulations, which bring indescribable damages to mining and industry, need to be changed objectively. In addition, this arrangement should not be applied for areas that were later planted with olive trees, or for areas formed with one or two decares or even 10-15 trees (Anıl, 2015: 442-443).

According to Article 23 of the "*Regulation on Breeding of Olives and Vaccination of Foreigners*"; "*A facility that produces chemical waste, dust, and smoke that can prevent olive trees from growing in the olive groves and facilities located at least 3 km from these fields cannot be built and operated. The*

9 However, according to the definition in this regulation, a significant amount of the Mediterranean and Aegean Region of Turkey has been declared as olive grove. Nevertheless, with this definition, the location, soil structure, topography, climate, geography, and elevation of the region to be defined as olive grove should be determined whether it is suitable for cultivating olives or growing olive trees. In addition, the economic size to be determined by the MAF should be defined, and the minimum amount of products available from this region should be determined (Yıldız, 2012: 55).

construction and operation of olive oil factories and small-scale agricultural enterprises to be built in these areas are subject to the permission of the MAF. However, if there is no alternative area and it is in accordance with the EIA Report, if it is determined by the Ministry research institutes or universities, where the plants will not harm vegetative and generative development; ç)[10] *Those who want to engage in mining activities, oil and natural gas exploration and operation activities, and above-mentioned activities, whose public interest decision has been made by the relevant Ministry, apply to the district's largest civilian supervisor with the approved documents of the relevant Ministries. The applicant establishes an olive garden in an area suitable for planting norms and equivalent size by the provincial/district directorate, provided that measures are taken to prevent damage to the environment. The applicant establishes an olive garden in an area suitable for planting norms and in an area that will be deemed appropriate by the provincial/district directorate of equivalent size, provided that measures are taken to prevent damage to the environment (determined by the EIA report).*"

This regulation ensured that industrial enterprises and mining enterprises could be opened if there were no alternative areas and if they complied with the EIA Report, and if it was determined through the ministry research institutes or universities that plants would not harm vegetative and generative development. However, the definition of olive grove field and paragraph 1(b) of Article 23 of this regulation have been annulled by the 8th Department of the Council of State (Council of State, 2012). After the objection to this decision, in its decision numbered 2013/157 Council of State, Plenary Session of the Chambers for Administrative Cases approved the decision of 8th Department of Council of State (Council of State, 2013). After the decisions, regardless of whether or not it is registered in a 3-km circle around the mine sites, the activities of the mine operation sites are terminated by administrative lawsuits (Anıl, 2015: 423-424, 435).

Although the dust value to be formed after taking the necessary measures in the underground coal enterprises is at low levels, mining activity cannot be conducted. Thus, the front of the mining and energy sector has been significantly blocked with the decision of the 8th Chamber of the Council of State to stop for article 23 of the relevant regulation (Kömürder, 2016: 74).

In addition, if the field of activity is an olive grove, the process of demanding public benefit processes takes a long time, according to the Article 23 of the Regulation on the Implementation of the Law on Breeding of Olives and Vaccination of Wilds No. 3573. The application file prepared according to the said regulation is made to MAPEG. Subsequently, MAPEG sends a delegation to the land for the public benefit applied for and performs "it is for the public benefit" transactions. After the transactions are completed in MAPEG, the file is sent to the Provincial Directorate of Agriculture and Forestry[11]. It is also submitted to the opinion of MENR from the Provincial Directorate. At this stage, the process of starting to work for agricultural land is prolonged; the end of the process can reach one year (Kömürder, 2016: 74).

10 Revision of Official Gazette Date: April 12, 2012, Official Gazette Number: 28262.

11 However, since the past, the provision stipulated in Article 20 of Law No. 3573 prevents the production of mineral reserves in very large areas. Representatives of the Provincial Directorate of Agriculture, who are in the commissions established during the applications for opening a workplace and working license for mining activities, prevent the transition of the enterprises to the activity by ignoring the act of damaging stipulated by the Law and by preparing negative reports with non-objective opinions. As a result, the exploration and production of natural resources in every region of Turkey are in danger. This provision, which prevents mining, reveals a situation that cuts the way of mining economically and administratively (İMMİB, 2008: 54-55; TÜMMER, 2010).

Restrictions regarding olive groves are removed only for mining facility areas and on the condition that olive trees will be planted in proportion to the olive area. For the mining areas outside of the mining facility, the problems regarding the obtainment of this still permit continue (Kara, 2016: 25; Topaloğlu, 2016b: 25). In the presence of this legislation, as a result of the opinions asked to the Provincial Directorate of Agriculture in mining activities, the permitting process causes losses in mining investments within the scope of Law No. 3573.

4.2. Suggestions for Overlapping of Olive groves and Mining Areas

Olive and mining are two different economic activities that must be maintained for the country's economy. It is an erroneous approach to suggest that mining activities are superior to olive cultivation and vice versa compared to mining and olive cultivation[12] (Yıldız, 2004: 40; 2017b: 90). If these economic activities coincide, the legislation should be regulated in a way that allows for the decisions required by the country's interests (Yıldız, 2012: 54). There should be no Law application left to the discretion of every official in every region. The expectation of the mining sector is the existence of previously known and clear legislative arrangements (Kasapoğlu, 2010b: 6).

According to the mentioned Olive Law, olive fields cannot be narrowed. However, if the olive grove areas within the boundaries of the municipality are included in the scope of zoning, the total construction including infrastructure and social facilities cannot exceed 10% of the olive grove area[13]. The two sentences in this provision contradict each other. This provision is also not consistent in the presence of the provision that "the industrial facility that will affect the development of olives can be located more than 3 km from the olive grove area"[14].

As a result of this provision, olive trees are destroyed and summer houses are built instead. Despite this, there have been obstacles for decades not to be mined (Yıldız, 2012: 54; Şahin, 2010: 8). As Oğuz Güner points out, it is a matter of curiosity why Olive Law is not taken into consideration in such activities, especially when dense housing is going on in the coastal strips

12 In a TV show in Turkey, it was stated that the ton of olive oil, processed state of olive, is ~3500 USD ($), and the ton of marble blocks or natural stone is ~$500-600. However, this comparison is faulty because the comparison was made between the price of the processed state of olive and the price of the raw state of natural stone (Dinçer, 2018: 19). According to various sources, there are 900 million olive trees planted in ~10 million ha of olive groves worldwide. 160-170 million of these trees are in Turkey. 24.3% of olive groves are in Spain, 17.7% are in Tunisia, 11.1% are in Italy, 9% are in Greece, and 8% are in Turkey. Olive provided per tree in Turkey has been 11.7 kg/tree in 2015/2016 season. Approximately 1 kg of olive oil is produced from approximately 7.5 kg of olive seeds. In Turkey, 15260 tons of olive oil was exported in 2014/2015 season. As a result, it earned $60 million in revenue from the $3.9/kg unit price, $ 43 million with 20,000 tons of table olive exports, and $103 million in total with olive and olive oil exports (Yıldız, 2017b: 91-92). Mining exports in 2014 and 2015 were $4.590 and $3.859 billion. (MAPEG, 2019). Given the numbers, a prospectively planned increase in olive production is not anticipated. Olive growing in Spain, Italy, and Greece has been based on scientific agriculture for many years. Olive trees are planted at intervals of 5x5, 6x3, or 7x7 meters, and the trees are irrigated from the root zone by drip method. Thus, unnecessary and unwanted plants growing around the trees are prevented from growing. Also, in olive planted fields, rejuvenation is conducted with seedlings planted between trees before they age. In Turkey, besides modern olive fields, olive trees grown spontaneously at intervals are observed in the mountains. Olive trees in these areas, which need to be improved, are not visited except olive collection. In this table, it is not possible to increase olive production, improve and protect olive groves with the prohibitions introduced by the Law to the mining sector (Yıldız, 2004: 40; 2017b: 91-92).

13 The provision was approved in the text of the amendment made in the Olive Law in 1995.

14 According to Kasapoğlu (2010a: 499), this legislation change was made to transform some of the olive groves into tourism construction areas by considering the tourism areas gaining great value in regions such as Edremit at that time. This provision was introduced at the beginning in the presence of a mining restriction provision.

in western provinces in Turkey (Journal of Mining Turkey, 2011: 24). It is no longer possible to make olive cultivation again in the areas where olive trees are cut and summerhouse/dwelling is made. However, it is possible to plant olive trees in mining areas after the activities (Yıldız, 2004: 40; 2017b: 92).

The most striking difference between mining and olive cultivation activities is that there are place alternatives for planting olive trees and yet there is no place option for mining. In other words, mines have to be produced only where they are located (Yıldız, 2004: 40). It should not be overlooked that mining activities are mandatory but temporary activities. It is not correct and scientific to prohibit mining in the region without making any economic comparison, saying that there are olive trees in 3 km of the place where the mine is located (Aydın, 2010: 5). It should be noted that in the Mediterranean and Aegean regions, miners turn the areas they rehabilitate into olive groves. For example, in Aydın province, after the reserve in the coal area has been exhausted and the mine has been closed, approximately 20,000 olive trees have been planted in this area. Thus, the mined area was brought back to nature. Olive oils produced from olive groves grown in this region received first prize in an olive oil competition held in Italy (Köse, 2019: 134; URL-1). These examples are the most important evidence that mining and olive cultivation can be done together (Yıldız, 2012: 55-56). Olive trees are planted even in areas where olive trees are not grown around, by mining enterprises (Aydın, 2010: 5). There is no provision related to private property in the regulation. In this case, there is no obstacle to the emergence of a situation where miners may not be able to perform mining activities due to the olive trees they planted on their land (Yıldız, 2012: 55-56).

Even in Spain, Italy, and Greece, which are among the major countries where olives are grown in the European Union, there is no such ban. In these countries, only such prohibitions may apply, up to ten meters away from trees, to a degree not to prevent mining. Besides, there is no EU country where a law similar to Law No. 3573 is in force[15] (TMD, 2011: 43). The situation for olive trees in Turkey, on the other hand, has reached a high level to cause a mining operation not to be established nearby. If appropriate industries and consistent development and growth are desired in the regions, the olive law should not be applied in a way to prevent mining.

It is seen that even closed mining operations are not allowed in olive groves (Yeşilyurt, 2020). Instead of a 3-km restriction, more objective legislative provisions should be put in place and enforced to permit them, considering the criteria in the relevant environmental provisions (TMD Environment Unit, 2019: 63). To solve the problem of not getting permission for mining activities due to Article 20 of Law No. 3573, a change should be made in that article. And then restrictive/prohibitive provisions should be abolished, and solutions where all activities can be conducted together as much as possible should be produced[16]. In this context, according to the EIA Regulation, the activities with the decision of "EIA Positive"/"EIA Not Required"/"EIA Exempted" should have the conditions for obtaining Environmental Permit on Emission[17]. Thus,

15 The fact that there are no similar restrictions in the developed world countries in olive cultivation outside Turkey has also emerged from the official correspondence with the authorized units in these countries (TMD Environment Unit, 2019: 63).

16 As Prof. Dr. Caner Zanbak stated, olive trees planted in areas near the thermal power plant in Soma started to produce olive and these trees are not affected by the thermal power plant. In addition, when the literature studies are examined, there is no scientific study revealing the negative effect of the presence of dust on the cultivation of olives (TMD, 2018: 19-20).

17 It is possible to determine the mentioned emission data scientifically. To do this, by also taking the opinion of the relevant ministry that is MEU, MAF should determine the procedures and principles and the arbitrary treatments should be ended (AGÜB, 2020).

without any other bureaucratic procedures (such as the establishment of a commission in the Governorships), the control of the emission effect in the aim of the Law should be taken as a basis, and it should be ensured that other industrial activities other than olive cultivation can be performed (TMD et al., 2018: 31).

In this regard, instead of the expression "d*ust and smoke generating plant cannot be built and operated*" stated in article 20 of the Olive Law, limit values regarding dust level that will damage olive fields should be determined by making necessary studies on the subject (Kömürder, 2016: 75). As for the mining activities in olive groves, public interest decision[18] is obtained based on some documents requested, as stipulated by the regulation. However, according to Yıldız, it is more correct to clarify the concepts of chemical wastes, dust, and fumes that plants can extract with numerical values, which will prevent the vegetative and generative development of olive groves determined in article 20 of this Law. What prevents the vegetative and generative development of olive groves and the limit values of dust and smoke should be determined numerically[19] (Yıldız, 2012: 55).

There are already limit values determined by the MEU for each facility and mine. The issue of whether mining activities have an impact on the vegetative and generative development of olive groves should be addressed during the review and evaluation process conducted within the framework of the EIA legislation. In addition, the distance determined as 3 km in accordance with the relevant article of the Law in question must be re-examined. In Law, the definition of olive groves should be clearly defined. It would be correct to allow mining activity if the data calculated in the scientific content on the distance based on the location of the mine and the method of operation are below the limit values stipulated in the regulations (TBMM, 2010: 277; Ministry of Development, 2018: 209; Efendioğlu, 2020: 30). Waste, dust, and gas limits in the legislation that prevents the construction of the facilities within 3 km of olive groves should be regulated by considering the public interest. Also, these should be reorganized to allow for permits to be granted in the EIA process according to the solid, liquid, and gas concentration values in regulations issued pursuant to the Environmental Law (Köse and Oygür, 2017: 69; Efendioğlu, 2020: 30). If these are done, it will be clarified in the olive grove areas and with which facility the activities can be allowed within a minimum distance of 3 km (TMD et al., 2018: 32).

In addition, considering the long permitting process, it is important to conduct the permitting processes in olive groves by a single institution and to speed up the procedures. The draft Law on the Amendment of the Law on the Breeding of Olives and the Vaccination of the Wilds, which is pending in the Energy and Industry Commission in the parliament of Turkey, should be urgently put on the agenda and enacted (Kömürder, 2016: 75).

18 The documents requested by MAPEG for the public interest decision made pursuant to Law No. 5403 are briefly as follows: Layout plan of the area to be taken for "public interest decision" and the surrounding region, a document to be obtained from the Provincial Directorate of Agriculture stating that it is essential to take a "public interest decision," type of mine to be extracted, reserve amount, information about the project, current layout plan, and information on whether there is an agreement with the owners of immovable properties in the agricultural lands where the "public interest decision" is requested. Additionally, these documents will be requested for the decision of public interest in olive groves. When the documents to be requested for the decision of public interest are taken into consideration, it is seen that the evaluation will be made based on some data. However, the priority and effectiveness of these data in making public interest decisions are uncertain (Yıldız, 2012: 55-56).

19 If not to be determined, to clarify this situation, according to (TÜMMER, 2010), the following sentence should be added to the first paragraph of the Article 23 of the Regulation No. 3573: "Emission values specified in the Regulation on Control of Air Pollution Caused by Industrial Plants are taken into consideration in this regard".

There is a need for a designated material resource for the improvement of olive groves. The mining sector in Turkey has been making important financial contributions in the framework of legislation for years for forest afforestation activities. Similarly, in places with olive trees, mining should be possible under certain rules. And a reasonable share of income from this mining that does not cause investment risk in the mining sector should be used in the improvement of olive groves and olive trees and the creation of new olive nurseries. Accordingly, Article 20 of Law No. 3573 should be reorganized, and mining activities should be permitted within the framework of specified rules (Yıldız, 2017b: 92). In this framework, some of the views that the mining sector has agreed on since 2004 are as follows:

• Mining should be done in olive groves except for Group 1 minerals[20]. In these areas, altitude/ usufruct rights should be established, and expropriation should be possible.

• For the right of altitude and/or usufruct, during the mining activity (project duration +5 years), the maintenance fee is paid to the owner of the olive grove every year in return for their income from the olive grove (Yıldız, 2017b: 94).

• In the establishment of the right of easement and/or usufruct, this area should be expropriated if the license holder and the olive grove owner disagree. In expropriation, the public interest decision should be taken by the Ministry considering the cost-benefit analysis of both activities. The real estate and trees to be expropriated must be paid in advance, and the value of the tree must not be less than the 10-year income (Yıldız, 2017b: 94).

5. Conclusion and Suggestions

As prescribed by Law No. 3573, the banning of mining is an exaggerated arrangement by creating the 3-km protection belt around the olive groves. The definition of olive groves has not been made in legal regulations, and in order for an area to be accepted as an olive grove, it is not clear how large the area is and how many olive trees should be on it. Although it seems as if it was made in the Regulation that came into force in 2012, after the Council of State decision, in practice, it is seen that even a single tree, which does not have any other olive trees within hundreds of meters, is considered to be olive grove.

With the aforementioned provision, mining activities in the Aegean, Mediterranean, and Marmara regions have been prevented. As a matter of fact, experts of the MAF continue to disallow such requests. Even planting 3-5 olive trees near the mine operation sites has been preventing mining for years. For this reason, this case is more than the conservation of olive groves; it is an obstacle to mining and industry. The situation for the olive trees in Turkey has reached a serious level that causes a mining operation not to be established nearby.

Even in Spain, Italy, and Greece, which are among the major countries where olives are grown in the European Union, there is no such ban. In these countries, only such prohibitions may apply, up to ten meters away from trees, to a degree not to prevent mining. Besides, there is no EU country where such a law is in force. Moreover, it should not be overlooked that the Mining Law does not have a rule that requires permission for olive groves, and that the Law No. 5177 is the next Law according to the Law No. 3573. Since no regulations were made after these dates, the Olive Law is not applicable. Indeed, the 3-km limit stipulated in this law should be applied to the

20 See the mineral groups stipulated by the Mining Law No. 3213 (Yıldız, 2019: 26-27; Topaloğlu, 2016a: 16-21).

registered olive grove fields. In other words, this arrangement should not be applied for areas that were later planted with "olive groves" or created with 1-2 decares or even 10-15 trees.

Limit values regarding dust level that will damage olive fields should be determined by making necessary studies on the subject. It should be remembered that the MEU has the limit values for each quarry and facility. It will be useful to address the issue of whether mining activities have an impact on the vegetative and generative development of olive groves during the examination and evaluation phase within the framework of the EIA legislation. In addition, according to the relevant article of the Olive Law, the distance determined as 3 km should be re-examined. In Law, the definition of olive groves should be clearly defined. If the location of the mine is based on the method of operation and the data calculated in the scientific content on the distance is below the limit values stipulated in the regulations, it would be correct to allow mining activity. If these are done, it will be clarified in the olive grove areas and within 3 km of these areas, which activities will be allowed with which facility.

To solve the problem of not getting permission for mining operations due to Article 20 of Law No. 3573, a change should be made in that article. Thus, prohibitive/restrictive provisions should be abolished, and solutions should be produced where all overlapping activities can be conducted in the same area as possible. In all types of restrictions brought to mining areas, including olive fields, in advance, the mining investor should know the area to operate, and not be victimized. For this reason, if an evaluation will be made according to the public interest in the conflicts of olive and mining areas, the mining investors should know in which field they cannot mining in the application for a mining operating license, according to objective criteria.

Ethics Statement

No human studies are presented in this manuscript.

Author Contributions

The authors confirm being the sole contributor of this work and has approved it for publication.

Conflict of Interest

The authors declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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