The Anthropocene: Politik–Economics–Society–Science

Zerrin Savaşan
Vakur Sümer
Editors

Environmental Law and Policies in Turkey

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Editors
Zerrin Savaşan
FEAS, Department of International Relations
Selçuk University
Konya, Turkey

Vakur Sümer
FEAS, Department of International Relations
Selçuk University
Konya, Turkey

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To the next generation, in the hope that you will protect the environment more successfully than your predecessors

Preface

When we began the process of preparing an edited volume on Turkish environmental law and policies, the plan was to prepare a book on the concerns and challenges of Turkish environmental law and policies and also on learned lessons, new perspectives, and solutions with the tentative title 'Environmental Law and Policies in Turkey: Addressing the Concerns and Challenges.'

Indeed, the main objective was to study the key themes of Turkish environmental law and policies in order to conceptualize the concerns and challenges; to improve the research through analysis of how to understand the lessons learned to date while covering all aspects of Turkish environmental law and policies today; and, with a prospective academic perspective, to focus on how to advance and solve them by well-argued new perspectives and alternative methods. So, it had three main dimensions: the past, present, and future of Turkish environmental law and policies.

However, the process has been more intense and tough than we guessed. Due to the very complicated structure and huge number of legal documents and institutions concerning the main research subject of 'Turkish environmental law and policies,' adhering to the main objective with its three dimensions has not been easy in many respects. So, from the outset and during the whole process, we had a critical problem to deal with: how to draw the framework of that complicated structure in order to simplify the issue and make it more understandable despite all its aspects and, while doing this, avoid restricting its scope and meaning and pursue our main objective with its three dimensions. To resolve this problem, we decided to shift the topic and the focus from concerns and challenges to just law and policies and to just provide the main framework of the operation of the system with its main regulations and institutions and learned lessons.

The book still consists of chapters specifically on the concerns and challenges of Turkish environmental law and policies, e.g. environmental cases in Turkey by Emel Türker Alpay, addressing the challenge of food security by Sezin İba Gürsoy, exploring environmental justice by Caner Sayan and Ayşegül Kibaroğlu; and all other chapters, one way or another and more or less, discuss the concerns and challenges of their topics; but now, predominantly and more precisely, it involves

just two dimensions of the originally intended book: past and present. The learned lessons no longer address the future aspect with its prospective academic perspective on how to advance and solve the challenges by well-argued new perspectives and alternative solutions whereby Turkey requires further assistance to implement the future process. Additionally, it does not cover many key themes of Turkish environmental law and policies that should be dealt with separately and specifically, such as air pollution; marine pollution; water pollution; solid and/or hazardous waste; the protection of flora and fauna including the matters of land degradation, deforestation, wetlands, and biodiversity; agricultural policy; urban planning and green/sustainable cities; Turkey's energy strategy and its impact on the environment; and new concepts like environmental security, environmental governance, environmental diplomacy, and environmental peacebuilding.

In short, there is a need for further work on this topic for the editors to complete the dimensions of the main objective of the book. But, many aspects of this huge topic 'Turkish environmental law and policies' also need to be further studied by all other scholars working on the subject as well. Given the fact that environmental issues are becoming a matter of vital importance day by day all over the world, and it is open to discussion whether the policies applied under Turkish environmental law and politics are always examples of the most mature and well-established ones; and also that environmental issues are not top of the agenda in the country because of security concerns and political and economic fluctuations; it is extremely important to produce qualified academic works on different aspects of the subject, to propose solutions to the problems through them and to make them applicable in practice, thereby informing and influencing decision-makers.

Through this book, we have achieved a very small part of our objective. However, it still makes a useful contribution to knowledge, given the previous absence of this kind of systematic book on Turkish environmental law and policies. Indeed, providing a systematic comprehensive analysis of Turkish law and environmental policies through high-quality, interdisciplinary papers, which can be used not only as a valuable source of information but also as tools to support teaching and research and assist in decision-making, this book will hopefully be of significant value to graduate and postgraduate students, researchers, and policy-makers working on Turkish environmental law and policies.

While coming to the end of this process – full of challenges and tensions but also full of motivation resulting from new avenues to explore – we hope this book will be the precursor of new works dealing more explicitly with learned lessons, new perspectives and solutions, and of specific works on fundamental themes of Turkish environmental law and policies, such as air pollution, marine pollution, and water pollution.

Konya, Turkey
July 2019

Zerrin Savaşan
Vakur Sümer
Editors

Acknowledgements

Through this work, we intended to provide a notable contribution to environmental scholarship in Turkey. However, during the process of compiling the book, we realized that it is more challenging than that we could ever have imagined, but rewarding at the same time. So, at this stage, while we are glad to be at the end of the road with its all ups and downs, and getting ready for new adventures, *we* would like to acknowledge the help of all the people involved in it and, more specifically, the authors and reviewers who took part in the peer review process, the series editor and the English language editor, as this work would not exist without their efforts, support and encouragement.

Firstly, we would like to thank each and every one of the authors and to acknowledge their valuable contributions, time, and expertise.[1]

Secondly, we wish to acknowledge the reviewers' academic guidance, insights, criticisms, comments and suggestions to improve the quality, coherence, and content presentation of the chapters.

Thirdly, we wish to express our deepest gratitude to our book's series editor, PD Dr. Hans Günter Brauch, for his time, energy and assistance, constant willingness to help out and endless humane support and patience. We are also very appreciative of him because of his support of young authors and scholars of different disciplines, countries, religions and cultures, and their career goals.

Fourthly, we are also very appreciative of Dr. Vanessa Greatorex, English language editor of the book, whose willingness to help out with linguistic issues and ensure the text flows smoothly has helped enormously.

Moreover, we are also eternally indebted to our families for their constant loving encouragement and inexhaustible patience throughout the work. They have always motivated us during most difficult times, and have never given up encouraging us in all our work, always being the people we could turn to during those hard times, even though it has not usually been easy for them either.

[1]The editors are in no way responsible for views expressed in the book or for authorial errors and other lapses that may have occurred. All responsibility belongs solely to the authors themselves.

Last and not least, a very special thank you to everyone in the publishing team for their editorial help. They enabled us to carry out this work successfully and turn our idea into reality; likewise they help many others do the same.

Konya, Turkey
July 2019

Zerrin Savaşan
Vakur Sümer
Editors

Contents

Abbreviations

AFAD	Afet ve Acil Durum Yönetim Başkanlığı (Disaster and Emergency Management Presidency)
ARIP	Agriculture Structural Reform Implementation Project
BAU	Business as usual
CEMS	Continuous Emission Measurement System
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COP	Conference of the Parties
COREPER	Committee of Permanent Representatives
DAC	Development Assistance Committee
DHFL	Decree Having Force of Law
DIS	Direct Income Subsidy
DSI	Devlet Su Isleri (State Hydraulic Works)
EC	European Community
EEA	European Environment Agency
EIA	Environmental Impact Assessment
EIAR	Environmental Impact Assessment Report
EIE	Elektrik Isleri Etüd Idaresi (General Directorate of Electrical Power Resources Survey and Development Organization)
EMEP	European Monitoring and Evaluation Programme
EPASA	Special Environmental Protection Agency
EPDK	Enerji Piyasasi Duzenleme Kurumu (Electricity Market Regulatory Authority)
EU	European Union
FAO	Food and Agriculture Organization
FCS	Food Consumption Score
FSKP	Fethiye Saklikent Koruma Platformu (Fethiye Saklikent Conservation Platform)

GAP	Guneydogu Anadolu Projesi (Southeastern Anatolia Project)
GD for EIA	The General Directorate for EIA, Permission and Control
GDNAP	General Directorate of Natural Assets Protection
GEF	Global Environmental Facility
GFSI	Global Food Security Index
HEPP	Hydroelectricity Power Plants
ICJ	International Court of Justice
ICN	International Conference on Nutrition
IEL	International Environmental Law
IL	International Law
IMF	International Monetary Fund
INDC	Intended National Determined Contribution
IOM	International Organization for Migration
LULUCF	Land use, land use change and forestry
MARPOL	International Convention for the Prevention of Pollution from Ships
MDGs	Millennium Development Goals
MoEF	Ministry of Environment and Forestry
MoEU	Ministry of Environment and Urbanization
MSI	Market surveillance and inspection
NAP	National Agriculture Project
NFD	Negotiation Framework Document
NGO	Non-Governmental Organization
NPAFN	National Plan of Action for Food and Nutrition
OECD	Organization for Economic Co-operation and Development
OG	Official Gazette
OJ	Official Journal
PAC	Provisional Activity Certificate
PCA	Paris Climate Agreement
PCB	Polychlorinated biphenyl
PYD	Democratic Union Party
Rio+20	United Nations Conference on Sustainable Development
SEA	Strategic Environmental Assessment
SEPA	Special Environmental Protection Area
TAF	Turkish Armed Forces
TEL	Turkish Environmental Law
TGNA	Turkish Grand National Assembly
TMMOB	Türkiye Mühendis ve Mimar Odalari Birligi (Union of Chambers of Turkish Engineers and Architects)
TR	Turkish Republic
TRC	Turkish Red Crescent
UN	United Nations
UNDP	UN Development Programme
UNECE	UN Economic Commission for Europe
UNEP	UN Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change

US EPA	United States Environmental Protection Agency
USA	United States of America
UYAP	Ulusal Yargı Ağı Bilişim Sistemi (National Judiciary Informatics System)
VCLT	Vienna Convention on the Law of Treaties
WFP	World Food Programme
WFS	World Food Summit
WHO	World Health Organization
YPG	People's Protection Units

Chapter 1
Introduction

Zerrin Savaşan

Turkey has become party to a range of environmental agreements at both global and regional levels. With a view to contributing to efforts to address environmental problems, its interest in environmental issues goes back to the 1960s, and it recognizes the 'protection of environment' as a long-term policy with its Third Five Year Development Plan (1973–1977). The progress on environmental matters continued during the establishment of the Ministry of Environment in 1991. In 1995, the process of preparing the National Environmental Action Plan (NEAP) began under the coordination of the State Planning Organization, the Ministry of Environment and the World Bank. This process has involved different study groups on different key themes of Turkish environmental policies, each including several experts from universities, ministries, research organizations, NGOs and the private sector. As a result, the NEAP was adopted in 1998, and a number of institutional and legislative environmental reforms have been put in place. In 2001, Turkey's Local Agenda 21 Program was selected as a world-wide best practice by the UNDP, and with its Sustainable Development Report (2012), it undertakes to further enhance the programmes applied in the last ten years to contribute towards accomplishing the sustainable development goals.

In its development on environmental issues, the EU accession process also plays an important role, and this can be easily understood by on-going negotiations with the EU on a range of environmental issues under the Chapter on Environment and Climate Change. Even if attaining EU accession country status has accelerated the development of various aspects of Turkish Environmental Law (TEL), since 2005 the EU-Turkey relations in general have been characterized by stagnation. So, unfortunately, the last decade and a half or so – from 2005 to date – does not represent a period of continuous progress in the development of environmental law, management and protection. Even though, through learning and persuasion processes, the EU-style of policy-making is still partly implemented in practice, its

Dr. Zerrin Savaşan, Assistant Professor, Department of International Relations, Sub-department of International Law, Selçuk University, Konya, Turkey. e-mail: szerrin@selcuk.edu.tr.

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impact on Turkey's domestic change and hence on the development of environmental law, management and protection is not high. Therefore, the overall transposition of the EU *acquis* goes on in a limited way, and as a result, the capacity for implementation and enforcement to ensure compliance still needs to be further strengthened. And so, it is still debatable whether it has now become a mature and well-established policy area within the country.

In brief, since the 1960s, environmental law and policies in Turkey have undergone successive waves of change. Turkey's efforts and achievements to address and overcome the environmental concerns and challenges during this period should not be underestimated. However, the road towards providing effective and applicable environmental policies in the country seems to be a long and troublesome one, and to require strengthened efforts from all stakeholders.

Indeed, Turkey still has many environmental concerns and challenges that need to be dealt with, e.g. during the UN climate change negotiations (COP 21) in Paris, Turkey was criticized for several reasons, such as increasing its greenhouse gas emissions, not talking about any commitment or reduction targets, and allocating financial resources for building more coal-fired power plants, as well as planning two nuclear power plants. The current ways of coping with these challenges can fail to produce effective environmental policies based on the sustainable development principle.

As the existing methods can fail to produce effective outcomes in practice, Turkey also needs to seek alternative methods and new solutions based on the lessons learned from past experiences in order to address these challenges successfully.

This book aims to be one of the first to conduct a systematic and comprehensive analysis of Turkish law and environmental policies. It is also designed to be the precursor of new publications which deal more explicitly with learned lessons, new perspectives, and solutions (with which Turkey may require further assistance in the future), and also of specific works on the concerns, challenges and management methods regarding fundamental themes of Turkish environmental law and policies, such as air pollution, marine pollution and water pollution.

Therefore, it features research which provides a general systematic analysis of key issues of Turkish environmental law and policies, and it highlights the related concerns and challenges. Thus, under four main sections thought as the basic structure of the book – Environmental Law in Turkey, Environmental Management in Turkey, Addressing Environmental Struggles in Turkey, Environmental Justice Movements from Bottom-up – it aims to increase knowledge by disseminating the findings on environmental issues.

Following a multidisciplinary approach, with chapter contributions from leading international scholars in different related fields, it aims to be of significant value to graduate and postgraduate research students and policy-makers working in the field of Turkish environmental law and policies.

Furthermore, given the previous absence of this kind of comprehensive book on Turkish environmental law and policies, it makes a meaningful contribution to Turkish environmental scholarship.

After this introductory section, the book unfolds into four thematic parts which consist of chapters anchored to the overarching theme of the relevant part.

The first part is entitled 'Environmental Law in Turkey.' Chapters in this part provide a historical perspective and general understanding of the legal settings of Turkish Environmental Law.

In the first chapter, 'Development Process of Environmental Law in Turkey: The EU Impact', Zerrin Savaşan argues that although gradual changes occurred during the republican era which started in 1923, the main wave of change has occurred within the context of Turkey's prospective membership of the European Union.

Savaşan divides the development of Turkey's environmental law into five stages: (1) Pre-1982 Constitution period, (2) From 1982 Constitution to the EU candidacy (1999), (3) From EU candidacy (1999) to accession country status (2005), (4) From accession country status (2005) to the opening of the chapter on environment (2009), (5) The opening of the chapter on environment (2009) and onwards.

She argues that the EU conditionality strategy indeed plays the most important role in developing environmental law and policies in the country, but that the EU impetus has been lost, particularly after the opening of accession negotiations in October 2005, which brought stagnation to the reform process in Turkey's environmental legislation. Thereafter, the EU-style of policy-making has still been partly implemented in practice through EU-induced learning processes, so there is at least some minor evolution in the field. Yet, the real challenge in Turkey's environmental law is not related to the transposition of new (generally European) legislation but rather to proper implementation of it; and Turkey's recent situation, which is mostly dominated by hotly disputed political, economic and security issues, does not provide a proper arena to discuss and handle with such things.

In 'Drawing a General Framework for Turkish Environmental Law', presented by Zerrin Savaşan, the author sketches a general framework of Turkish Environmental Law based on a general assessment of the Turkish legal system's different branches under both private law (civil law, obligations law) and public law (constitutional law, international law, administrative law, criminal law) with their fundamental features concerning environmental issues. Based on her analysis, she concludes that the protection of environment under Turkish Environmental Law is dominantly regulated under public law, significantly by administrative law. Even though remarkable progress has been made, particularly through the impact of the EU accession process in recent years, further development is still required, not only in terms of legislation but also of implementation, compliance and enforcement. More importantly, it requires further academic study with more detailed legal analyses of each branch to demonstrate the achievements, shortcomings and future prospects of each branch with regard to environmental issues. Such analyses should also be supported by studies in the fields of compliance, implementation, enforcement and case-law, and by comparative analyses on different legal systems of different countries.

The second part, entitled ‘Environmental Management in Turkey’, provides an overall understanding of the evolving and prevailing paradigms of legislation and administrative practices in environmental policy in Turkey.

Süheyla Suzan Gökalp Alıca provides a thorough analysis of the evolution and current status of environmental legislation and administration in Turkey. Throughout her contribution, which is entitled ‘Environmental Administration in Turkey’, she explains the institutionalization efforts which have been going on for approximately forty years. She asserts that the environmental public administration could not function effectively because its budget was inadequate and its staff were not endowed with sufficient authority. Since the initial period when the environmental organization was established as an Undersecretariat, its conflict of authority with other public entities and institutions has not ended and the managerial problems are not just limited to conflicts and overlapping authorities, duties and responsibilities; uncertainty and instability in environmental organization also prevent the development of an effective environmental administration system. Giving a detailed information the new presidential governmental system adopted as a result of the referendum on constitutional amendment (16 April 2017), and the Presidential and Parliamentary General Elections (24 June 2018), and stating that the reorganisation of environmental administration is still ongoing, she argues that institutionalisation is a significant problem in Turkey and the improvement of environmental protection is not possible without solving this problem.

The second part continues with a chapter on a highly contested subject in Turkey’s environmental policy, namely Environmental Impact Assessment (EIA). Şule Güneş explains how EIA has become the main environmental management tool in Turkey, and stresses that even though a considerable number of EIA applications are made in Turkey, the efficiency of EIA as a tool is still debatable due to structural and paradigmatic reasons. She identifies the means and tools as well as the process of incorporating the EIA system into the Turkish environmental agenda. She also evaluates the EIA procedure from a critical perspective, focusing on the strengths and weaknesses of the whole system. In her conclusion, she underlines that the way to identify and address the challenges is greatly conditioned by the political discourse, which is shaped by the political culture of society. Turkey’s commitment to sustainability as a value is expected to be more strongly reflected in the environmental field and will hopefully also stimulate both the practitioners and decision-making bodies to address the core challenges faced in the EIA system.

The second part ends with ‘Instruments of Environmental Compliance in Turkey’ by Zerrin Savaşan. In this chapter, the author provides an assessment of the environmental compliance mechanism operating in Turkey. It is effectively a continuation of the previous chapters which provide background information on environmental law and administration in Turkey, as it focuses on the functioning of Turkey’s environmental law in practice, examining its implementation, compliance and enforcement to give the reader a better understanding of legal matters in practice. In this respect, she examines the ways of ensuring environmental implementation, compliance and enforcement on the basis of environmental permits and licences, environmental impact assessment (EIA) applications and decisions,

reporting, monitoring and inspecting systems, and administrative fines and suspension as tools of environmental enforcement.

The third part, 'Addressing Environmental Struggles in Turkey', which discusses environment-related challenges, starts with Emel Türker Alpay's contribution, which focuses on the legal side of the environmental question in Turkey. In her chapter titled 'Environmental Cases in Turkey: A Project Experience', she analyses environmental cases, discussing the project process, challenges and results of the EU-funded 'Turkey's Map of Environmental Violations' Project undertaken by Transparency International Turkey and the Environmental Law Association. She describes the environment in which this project was run, and the challenges faced during the Project. She also summarises its results, stressing some important legal decisions which address the environmental struggle. In her concluding argument, she indicates that Transparency International Turkey and the Environmental Law Association have taken the first step towards a more powerful struggle against environmental conflicts and have increased the number of good examples which have the potential to increase efforts to safeguard the environment for future generations.

Sezin İba Gürsoy contributes a chapter on food security in Turkey. She outlines the capacity of the food supply system in Turkey and uncovers the concerns about ensuring food security in Turkey, discussing the threats posed by the changing demographic structure, refugee crises, climate change, increasing land and water scarcities for food production and food price volatility. In her conclusion, she suggests that to protect its own food security and to have sustainable agricultural production, Turkey should institute sustainable land use and product planning, conserve agricultural biodiversity, support family farming, and utilise effective agricultural and environmentally compatible methods. Additionally, it should increase support for rural agricultural development programmes which encourage environmental protection on agriculture lands. As a result, she argues that to guarantee future food security Turkey should establish agricultural policies compatible with social and economic policies at macro level.

Under the fourth thematic part, 'Environmental Justice Movements from Bottom-up', R. Caner Sayan and Ayşegül Kibaroğlu, in their chapter 'Exploring Environmental Justice: Meaningful Participation and Turkey's Small-Scale Hydroelectricity Power Plants Practices', present a picture of the participatory processes around the establishment and operation of small-scale hydroelectricity power plants. The authors of the chapter start by exploring the concept of meaningful participation within the framework of environmental justice. Providing specific references to Turkey's recent experience of building several small-scale Hydroelectricity Power Plants (HEPPS), they scrutinise the process, including its entrenched legal framework. They come up with suggestions to elaborate further on the concept of meaningful participation by delineating its four components: consideration and inclusion of locals in the policy processes; representation of the concerns and recommendations of locals in the policy process; the ability of locals to influence the policy process; the efforts of state institutions and state administration to ensure public participation. On the basis of a qualitative methodology

with discourse and legal document analysis as well as mass and social media analysis of Turkey's HEPP policies, they conduct a field-study in south-western Turkey which includes observations on the social and environmental impacts of Turkey's small-scale HEPP venture.

In their concluding remarks, they indicate the malfunction of meaningful participation in the HEPP processes in Turkey, referring to their case studies, which show that despite the existence of a relevant legal framework in the Turkish legal system, especially within the EIA by-laws, a degree of meaningful participation has not been achieved within the official process. Instead, it has been accomplished through the locals' own attempts.

The book ends with a conclusion by Zerrin Savaşan. As a wrapping-up argument, Savaşan mentions the continuities and changes that Turkey's environmental policy has undergone in the last few decades. Savaşan reiterates that it is necessary for Turkey to establish a well-structured and well-functioning environmental management system, involving legal, administrative and judicial capacity to ensure its successful implementation, compliance and enforcement. Indeed, the findings laid out in different chapters of this book already demonstrate that a mechanism which includes rich legislation and institutionalisation already seems to exist in Turkey, along with active and engaged participation in international efforts to deal with environmental problems; but this mechanism does not work well without the will to take serious steps and without taking into account the balance between protection of the environment and development.

Lastly, the author also highlights the need for specific works on the concerns, challenges and management methods regarding fundamental themes of Turkish environmental law and policies; and for works on the practical side of the subject, that is, on the fields of compliance, implementation, enforcement, case-law and comparative analyses of different legal systems of different countries, to support and complement the systematic comprehensive analysis of Turkish environmental law and policies within this particular book.

Chapter 2
The Development Process of Environmental Law in Turkey: The EU Impact

Zerrin Savaşan

Abstract Turkish environmental law has greatly changed and improved since the establishment of the Turkish Republic in 1923. While progress has mostly been gradual, the EU accession process had a notable impact.

In order to understand the present situation of Turkish environmental law, it is essential to obtain an analytical overview of the past and ongoing initiatives related to its development process.

In this chapter, to make the development process of Turkish environmental law clear and easy to understand, this analysis is divided into five main phases: (1) Pre-1982 Constitution period, (2) From 1982 Constitution to the EU candidacy (1999), (3) From the EU candidacy (1999) to accession country status (2005), (4) From accession country status (2005) to the opening of the chapter on environment (2009), (5) The opening of the chapter on environment (2009) and onwards.

Keywords Turkish environmental law · Development process · 1982 Constitution · EU candidacy · EU accession

2.1 Introduction

In Turkey, even though environmental concerns were not regarded as one of the country's priorities for a very long time, there have been attempts to protect the environment since the very early stages of the republic's establishment. Indeed, in the 1930s Turkey started to become party to treaties on environmental issues; e.g. it became party to the Convention on Whale Hunting in 1934.

The importance given to environmental issues began to increase in the 1970s as a result of the rise in environmental awareness and sensitivity to environmental problems around the world.

Dr. Zerrin Savaşan, Assistant Professor, Department of International Relations, Sub-department of International LawInternational Law, Selçuk University, Konya, Turkey. e-mail: szerrin@selcuk.edu.tr.

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It continued to increase in the 1990s due to Turkey's rapidly growing economy, population, industrialisation and urbanisation, and their effects on the environment.

However, in the last couple of decades concern for the environment has considerably increased (even if still it cannot be claimed that it has become a priority for the country), reaching its highest levels in the 2000s due to the impact of the EU accession process.

Indeed, Turkey's economy experienced high levels of rapid sectoral growth, particularly in the fields of energy, industry, transport and tourism, in the 1990s. This economic boom caused seriously high levels of unfavourable environmental pressures, risks and threats, which may give rise to serious environmental degradation in the long term.

After the concept of sustainable development entered the world agenda through the Brundtland Report, prepared by the World Commission on Environment and Development in 1987, Turkey was confronted with the challenge of ensuring the balance between its economic growth and environmental progress – a difficult task, as its development interests sometimes supersede environmental concerns because of its economic growth capacity.

In the Seventh Development Plan (1996–2000), it adopted sustainable development as a key principle and objective, and prepared its national reports on sustainable development for submission to the World Summit on Sustainable Development held in Johannesburg in 2002 and the United Nations Conference on Sustainable Development (Rio+20) held in Rio de Janeiro in 2012. Through an amendment made to the Environment Act (Act No. 2872) in 2006, sustainable development was integrated into Turkey's legal framework as well.

So, on the basis of this principle, legislative, institutional and technical development in the field of environmental issues as part of the environmental management in the country has been conducted over the years.

Regarding the strengthening of legislation, between the establishment of the Turkish Republic in 1923 and the recent period, a great number of legal documents related to the protection of the environment – international agreements (multilateral, regional and bilateral), legal regulations (acts, decree-laws, by-laws), official statements, circulars, resolutions, national strategies, plans and programmes etc. – have been adopted and enacted. Given the fact that many others regarding different aspects of environmental protection are still in the process of being prepared or adopted, it has become necessary to provide an analytical overview of previous and ongoing initiatives related to the development of Turkish environmental law.

In order to make this analysis and to understand the present situation of Turkish environmental law, the research is based on comprehensive data collected as a result of a detailed search for the related legal/official documents on international environmental law (IEL), Turkish law, and the EU accession process.

The development process that Turkish environmental law has passed over the years is revealed in five main phases: (1) Pre-1982 Constitution period, (2) From 1982 Constitution to the EU candidacy (1999), (3) From the EU candidacy (1999) to accession country status (2005), (4) From the accession country status (2005) to the opening of the chapter on environment (2009), (5) The opening of the chapter on environment (2009) onwards.

These phases are determined according to the milestones which have seriously affected the current status of Turkish environmental law. The EU accession process has arisen as the key determining factor in setting out the phases, because during the analysis it was found that environmental legislation is relatively new in Turkey, and although Turkey's EU membership process has lost its momentum since 2005, Turkish environmental law has developed remarkably over the years in pursuit of the harmonization criteria within the framework of the EU accession process.

2.2 Pre-1982 Constitution Period

In the first period, neither the 1924 nor the 1961 Constitution recognised environmental rights or even mentioned the protection of the environment. Also, under the legal system, there was no other regulation directly related to environmental rights, or to the protection and development of the environment or the prevention of environmental degradation.

Nevertheless, in many regulations, there were provisions indirectly related to the environment and involving opportunities regarding the protection of environment.[1]

Furthermore, Turkey started to become party to international agreements related to environmental issues from the 1930s onwards – e.g. the Convention on Whale Hunting (1934). It had become party to several environmental agreements at different levels – multilateral, regional, bilateral – by 1982.[2]

[1]These regulations include the following: Village Affairs Act No. 442 (1924), Harbor Act No. 618 (1925), Civil Code No. 743 (1926), Obligations Code No. 818 (1926), Penal Code No. 765 (1926), *Waters* Act No. 831 (1926), General Sanitation Act No. 1593 (1930), Public Hygiene Act No. 1593 (1930), Municipalities Act No. 1580 (1930), Forest Act No. 3116 (1937), Land Hunting Act No. 3167 (1937), Provincial Administration Act No. 5442 (1949), Petroleum Act No. 6326 (1954), Forest Act No. 6831 (1956), Agricultural Pesticides and Agricultural Quarantine Act No. 6968 (1957), Groundwater Act No. 167 (1960), Slum Act No. 775 (1966), Water Products Act No. 1380 (1971). See at: www.mevzuat.gov.tr.

[2]E.g. Agreement on the Establishment of a General Fisheries Council for Mediterranean (1954), Supplementary Agreement No. 15 signed with the UN Food and Agriculture Organization (1957), Convention for the Establishment of the European and Mediterranean Plant Protection Organization (1965), Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water (1965), International Convention on the Protection of Birds (1967), Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space Including the Moon and Other Celestial Bodies (1968), Convention on Third Party Liability in the Field of Nuclear Energy (1968), Convention Concerning the Protection of Workers Against Ionizing Radiation (1969), European Convention for the Protection of Animals During International Transport (1971), Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea Bed and the Ocean Floor in the Subsoil thereof (1972), Convention on the Prohibition of the Development, Production of Stockpiling of Bacteriological and Toxin Weapons, and on Their Destruction (1975), Bilateral Agreement on the Technical Assistance for the Research of Pesticides on the Black Sea Fishes signed with Federal Republic of Germany (1975), Agreement on an International Energy Program (1981), Convention for the Protection of Mediterranean Sea Against Pollution (1981), Project Agreement on Pollution Controlling and Manufacturing of the Controlling Tools signed with the UN (1981).

It also adopted the highly significant Stockholm Declaration on Human Environment (1972) and the Helsinki Declaration on European Security and Cooperation (1975, 1980).

Along with the development plans of governmental policies on economic and social issues, environmental concerns were first recognised and addressed in the 1970s, through the Third Five Year Development Plan (1973–1977) prepared by the State Planning Organization (1972: 866–868). In line with these developments, in 1974 the Coordination Council For Environmental Problems, involving eight ministers, was established, and in 1976 the Coordination Council For Environment Research was set up under the Scientific and Technological Research Council of Turkey (Ministry of Environment and Urbanization, 2011b: 178). In the Fourth Development Plan (1979–1983), environmental problems were addressed in detail – in the first part, fourth section under the title 'environmental problems'; in the second part, third section under the title 'environmental problems'; and in the third part, sixth section section under the title 'Health of Environment' (State Planning Organization, 1979: 83–83, 295, 462).

In addition to them, in 1978, an Environment Organization was founded under the Prime Ministry, which was transformed into a General Directorate of Environment in 1983 (Decree Law No. 222) and into the Undersecretariat of Environment in 1989 (Decree Law No. 389). It is worth noting that, for the first time, an organization responsible for the coordination and cooperation of all national and international policies concerning environmental issues was built up through this organization.

In sum, in this period, even if there were no direct links to environmental issues within the Constitution and other legal documents, an examination of the developments related to environmental concerns shows signs of an intention (even if not strong, nevertheless there, as can be inferred from the fact that the first usage of the appellation 'National Park' goes back to 1958) to ensure, develop and maintain effective policies for the protection of the environment (Ministry of Environment and Forestry 2007).

2.3 From the Constitution of 1982 to the EU Candidacy (1999)

The 1982 Constitution for the first time directly referred to the right of environment and guaranteed it as a human right. Thus, it opened a new phase in Turkish Environmental Law.

With entry into force of the Environment Act No. 2872 (1983),[3] protection of the environment began to be directly and specifically regulated under the Turkish legal

[3]See Akgündüz (2009: 161–169) for the first environment act (called the Environment Statute) in history, which was adopted in the Ottoman Empire in 1539 through Sultan *Suleiman,* the Lawgiver.

system. Many By-Laws were enacted to enforce different aspects of the provisions of the Environment Act.[4] In addition to the Environment Act and its related By-Laws, some other regulations were specifically related to the environment as well.[5] The country also continued to actively participate in various multilateral, regional and bilateral environmental agreements in this period, l[6] and approved several declarations on environment.[7] Thus, by 1997, Turkey had adopted 38 conventions, 29 declarations and 15 bilateral agreements on environmental protection (NEAP, 1999: 12). Additionally, it developed and implemented strategy

[4]Such as on the Fund for Prevention of Pollution (1985), on the Protection of Air Quality (1986), on Noise Control (1986), on the Fines To Be Imposed on Ships and Other Sea Vessels (1987), on the Control of Water Pollution (1988), on Solid Wastes Control (1991), on Environmental Impact Assessment (1993), on the Control of Harmful Chemical Substances and Products (1993), on Medical Wastes Control (1993), on Hazardous Wastes Control Management (1995) and Revision of the Regulation on Environmental Impact Assessment (1997). See at: www.mevzuat.gov.tr.

[5]They can be illustrated as follows: Conservation of Cultural and Natural Property Act No. 2863 (1983), National Parks Act No. 2873 (1983), Construction Act No. 3194 (1985), Mining Act No. 3213 (1985), Decree Law No. 383 on the Establishment of an Environmental Protection Institution (1989), Coastal Act No. 3621 (1990). See at: www.mevzuat.gov.tr.

[6]Some of those are: Convention Concerning the Protection of the World Cultural and Natural Heritage (1983), Convention on Long-range Transboundary Air Pollution (1983), Protocol for the Protection of the Mediterranean Sea Against Pollution from Land-based Sources (1983), Convention on the Conservation of European Wildlife and Their Natural Habitats (Bern Convention) (1984), Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP) (1985), the Agreement signed with the Federal Republic of Germany on the Improvement of Large Leafed Trees in the Black Sea Region (1989), Vienna Convention on the protection of the Ozone Layer (1990), Montreal Protocol on Substances that Deplete the Ozone Layer (1990), Convention on Early Notification of a Nuclear Accident (1990), Convention on Prevention of Pollution from Ships (MARPOL) (1990), Project Agreement signed with the Federal Republic of Germany on the Conversation of Nature and Environment (1991), Basel Convention on the Control of Transboundary Movements Hazardous Wastes and Their Disposal (1994), Convention on the Protection of the Black Sea Against Pollution (1994), Protocol on the Protection of the Black Sea Marine Environment Against Pollution from Land Based Sources (1994), Protocol on Cooperation in Combating Pollution of the Black Sea Marine Environment by Oil and Other Harmful Substances in Emergency Situations (1994), Protocol on the Protection of the Black Sea Marine Environment Against Pollution by Dumping (1994), Convention on International Trade in Endangered Species of Wild Fauna And Flora (CITES) (1996), Protocol Concerning Specially Protected Areas in the Mediterranean (1996), Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and Their Disposal (1996), Cooperation Agreement on the Environment signed with Turkmenistan (1997), Protocol on the 1979 Convention on Long-range Transboundary Air Pollution on Long-term Financing of the Co-operative Convention on Biological Diversity (1997).

[7]Such as Genoa Declaration on Mediterranean Sea (1985), UN/EC Flora, Fauna and Living Environment Protection Declaration (1988), European Environment and Health Charter (1989), Atmospheric Pollution and Climate (Noordwijk) Declaration (1989), Euro-Mediterranean Environment Charter (1990), UN/EC Sustainable Development (Bergen) Declaration (1990), New European (Paris) Charter (1990), UN/EC Espoo Ministerial Accord (1991), Rio Declaration on Environment and Development (1992), Agenda 21 (1992), Declaration on Forestry on Principles (1992), Central Asia and Balkan Republic Environment Ministers Declaration (1994), Barcelona Resolution (1995), OECD Environment Ministers Declaration (1998).

documents and plans which set forth the objectives and actions and provided a comprehensive analysis of the subject. Examples include the National Plan for In Situ Conservation of Plant Genetic Diversity (1998) and the National Environmental Action Plan (1999).

In the Five Year Development Plans of this period, namely the Fifth (1985–1989), the Sixth (1990–1994) and the Seventh (1996–2000) ones, it is observed that environmental issues were embedded in the plans in a more developed and detailed way. In the Seventh Plan, sustainable development was adopted as one of the basic principles and objectives and it was also decided to prepare a National Environment Strategy for effective environmental management (State Planning Organization, 1995: 19–21, 192).

This progress in environmental issues stemmed partly from the establishment of the Ministry of Environment in 1991 by Decree Law No. 443, in Force of Law on the Establishment and Duties of the Ministry. This is because it reorganized its predecessor, the Undersecretariat of the Environment, becoming the organization responsible for overall coordination of all environmental law and policies in the country. Thus, it enabled the country to be actively involved in environment-related concerns and challenges under the organization of a Ministry with more responsibilities and power to implement the necessary environmental policies.

2.4 From EU Candidacy (1999) to Accession Country Status (2005)

After Turkey was declared a candidate country at the EU Summit held in Helsinki in 1999, the next two decades witnessed significant amendments to the existing legislation and the creation of new regulations and institutions in the field of environmental issues in Turkey, as a result of the EU harmonization process.

In the same year that it was declared a candidate country, Turkey applied to participate in the activities of the European Environment Agency (EEA) and became a full member of it in 2003 on conclusion of the Accession Agreement signed with the EU.

In accordance with the Accession Partnership Document established in 2001 by the European Council (revised in 2003, 2006 and 2008), which drew the framework of negotiations with Turkey for accession to the EU, the National Programme for the Adoption of the *Acquis*, involving a separate section on environmental issues (2001: 403–434) with a detailed plan and time frame for the approximation of the national environmental legislation with the EU *acquis*, was prepared in 2001 (and updated in 2003 and 2008).

In fact, in order to meet the EU's related requirements, the EU accession process has provided Turkey with a roadmap for the adaptation and improvement of the environmental legislation and also its implementation, compliance and enforcement involving certain targets that should be achieved before the accession. Thus, by the

date of its accession, Turkey could be able to effectively apply all EU environmental *acquis* consisting of a wide range of legal documents.

However, besides its administrative and financial challenges, this roadmap which will prepare Turkey for EU membership also raises significant challenges with respect to the approximation of existing environmental legislation. In fact, it requires the full transposition of the EU environmental *acquis* in a relatively short time, while many aspects of Turkey's legislation on environmental issues differ from EU law, so it is not possible to expect the complete adoption of the *acquis* as a short-term prospect.

Despite these challenges, Turkey started to make progress in terms of its transposition of the environmental *acquis* through the support of the EU and relevant projects generated within the scope of the Turkey-EU Financial Cooperation.[8]

Indeed, the following developments provide examples of this progress:

- A new By-Law on Environmental Impact Assessment (EIA) (OJ No. 25318), amending almost all provisions of the Directive on Environmental Impact Assessment, was adopted, except for a few troublesome areas such as procedures for public and transboundary consultations. The By-Law on Environmental Impact Assessment (EIA) has been amended eighteen times on different dates since its first adoption (OJ No. 21489) in 1993, most recently in 2016 (No. 29619).[9]
- Under the new Public Procurement Act (No. 4734), a positive Environmental Impact Assessment Report (EIA) is required to launch public procurement procedures (Article 5(6)).
- Under the Act on the Amendment of the Law for Establishment of Industrial Zones and Organized Industrial Areas (Act No. 4737), a positive Environmental Impact Assessment Report (EIA) is required before investment in industrial zones (Art. 3). Through its amendment under Act No. 5195, with additional articles (Art. 3A/3B), the way has also opened for decisions stating that 'EIA is not necessary'.
- In accordance with the EU *acquis*, during this period there were also many amendments to many laws and the creation of new ones, such as the Municipalities Act No. 5393 (2004), the Consumer Protection Act No. 4077 (amended in Act No. 4822 in 2003), the Animal Protection Act No. 5199 (2004), and the Act on Protection of Cultural and Natural Property No. 2863 (amended in Act No. 5226 in 2004).[10]

[8]For the relevant projects implemented within the scope of 2002–2006 Turkey-EU Financial Cooperation see at: http://www.ab.gov.tr/files/SEPB/cevrefaslidokumanlar/list_of_2002_2006_projects.pdf.

[9]See all texts, including amendments, at: http://www.csb.gov.tr/gm/ced/index.php?Sayfa=sayfa&Tur=webmenu&Id=254 and http://www.csb.gov.tr/gm/ced/index.php?Sayfa=sayfa&Tur=webmenu&Id=11223.

[10]See at: www.mevzuat.gov.tr.

- The regulations adopted in diverse fields during this period have also aided the transition to the EU *acquis* to some extent, e.g. the adoption of the By-Law on the Implementation of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES Convention) (OJ No. 24623), the By-Law on the Protection of Wetlands (OJ No. 24656) to ensure the implementation of the Convention on Wetlands (Ramsar Convention), and the By-Law on Soil Pollution Control (OJ No. 24609).[11]
- To increase the effectiveness of the environmental inspection system, a new By-Law on Environmental Inspection (OJ No. 24631 (repetitive)) is adopted. This regulation clarifies the procedures and principles for environmental inspectorates, environmental management departments and certified inspection companies etc.
- Another important development which can be shown for this period is the progress of the Environmental Reference Laboratory,[12] as it has been a great success and made significant advances in a very short time.
- The Act on the Right of Accession to Information (Act No. 4982) in 2003 and also a By-Law for the implementation of this Act (OJ No. 25445) were also adopted. Given that the accession to environmental information can make it easier for the public to participate in the related activities on environmental issues and can thus strengthen environmental governance, this act and relevant regulation is of great importance.
- The Act Approving the Biodiversity Convention's Cartagena Protocol on Biosafety (Act No. 4898) was adopted on 17 June 2003.
- The merging of the Ministry of Environment with the Ministry of Forestry in 2003, under Act No. 4856, renamed the Ministry of Environment and Forestry.

Even if this appears, at first sight, to be a remedy for the common concerns on environmental protection and the integration principle on environmental policies within the country, in practice, it still results in challenges due to the disordered and fragmented allocation of responsibilities between the two ministries and their staff, and the reflection of this disorder in implementation, enforcement and compliance. The next amendments to the organization of the Ministry were made in June 2011, with the establishment of the Ministry of Environment, Forestry and Urbanization through Decree Law No. 636, and in July 2011 when the Ministry of Environment, Forestry and Urbanization was divided into two ministries: the Ministry of Environment and Urbanization (Decree Law No. 644) and the Ministry of Forestry and Water Affairs (Decree Law No. 645). The Ministry of Agriculture and Forestry was recently established with the abolition of the regulations of the Ministry of Food, Agriculture and Livestock and the Ministry of Forestry and Water Affairs

[11]See at: www.mevzuat.gov.tr.

[12]To analyse the development of these laboratories see at: https://lab.csb.gov.tr/.

regarding their organization and duties (Decree Law No. 703, Articles 27–28; Presidential Decree No. 1, Articles 410–440).[13]

It remains debatable whether the last situation is better than the previous one for pursuing a robust environmental policy, because of the merging of two conflicting agendas – environment and construction/urbanization (i.e. a development agenda) – and the exclusion of the environmental responsibilities for forests and water, which are primary elements of the natural environment according to the mandate of the Ministry of Environment (Güneş, 2015: 225); and subsequently the merging of different but somehow related fields – food, agriculture, livestock, forestry, water – under the same structure of the Ministry of Agriculture and Forestry.

Additionally, the frequent alterations within the administrative structure of the Ministry also have the potential to cause substantial failures in the operation of the system, as they result in a high rate of staff-competence turnover in the field of environmental management.

2.5 From the Accession Country Status (2005) to the Opening of the Chapter on Environment (2009)

In 2004, at the Brussels Summit (2004), the Council of the EU agreed to start discussing Turkey's accession negotiations. After just one year, Turkey attained 'Accession Country' status in 2005, and negotiation talks officially began at the Intergovernmental Conference of 3 October 2005 with the Negotiation Framework Document (NFD) involving the principles, rules, and chapters regarding EU-Turkey negotiations.

This was particularly important in the development process of Turkish Environmental Law, as the EU negotiation process determined the regulations adopted in line with the EU *acquis* and the method of putting the *acquis* into force and implementing it.

After the screening process was completed for the Environment Chapter in 2006, two opening benchmarks were determined for the opening negotiations in this chapter:

1. The preparation of a comprehensive strategy including the information and plans for the transposition of the *acquis* in this chapter.
2. The implementation of the applicable environmental *acquis*.

Consequently, one of the first results of the opening negotiations was the preparation of the EU Integrated Environmental Approximation Strategy (2007–2023) in 2006 which contains the information, plans and timetables with regard to

[13]Decree Law No. 703, OJ Date: 9.7.2018, No: 30473. See at: http://www.resmigazete.gov.tr/eskiler/2018/07/20180709M3.pdf; Presidential Decree No. 1, OJ Date: 10.7.2018, No. 30474, See at: http://www.mevzuat.gov.tr/MevzuatMetin/19.5.1.pdf.

the required environmental improvements and the necessary arrangements on the administrative, financial and legal sides for compliance with the EU Environmental *Acquis* (Ministry of Environment and Forestry, 2006b).

Another was Turkey's Programme for Alignment with the EU *Acquis* (2007–2013), involving the *transposition of all the EU legislation, hence environmental* legislation (Chapter 27) was itself adopted in 2007.

The National Action Programme Against Desertification and the National Rural Development Strategy were the other strategy documents adopted during this period (Ministry of Environment and Forestry, 2006a; State Planning Organization, 2006).

In parallel with this dynamism arising from being an EU Accession Country, there were many amendments to legislation and the creation of new laws in accordance with the EU *acquis*. The most important of those was the 2006 amendment to the 1983 Environment Act. Others examples are: the Metropolitan Municipalities Act No. 5216 (2005), the Act Pertaining to Principles of Emergency Response and Compensation for Damages in Pollution of Marine Environment by Oil and Other Harmful Substances No. 5312 (2005), and the Misdemeanour Act No. 5326 (2005).[14]

In addition to those, regulations were also adopted on different aspects of environmental protection, such as the control of harmful waste, air quality and and management, waste management, marine and coastal area management, water and soil protection, and chemicals; and also on climate change, such as the by-law on decreasing ozone-depleting substances.[15]

However, besides these achievements and improvements, there were still some deficiencies and troublesome areas which negatively affected the development and implementation of TEL in this period. To illustrate, though the EIA Directive had already, to a large degree, been adopted in this period, due to the non-establishment of fully fledged procedures (i.e. procedures for public and transboundary consultations), the challenges of implementation and enforcement continued to arise.

Because procedures for public and transboundary consultations were not fully aligned and implemented, there are still serious concerns regarding the transboundary aspects of the EIA, around the EU-backed Nabucco pipeline project, the Turkish-Russian nuclear power plant project, and the large number of planned hydro-power projects for which neither an EIA nor a strategic environmental assessment (SEA) has yet been carried out.

The unratification of the Kyoto Protocol, and also the unwillingness to become a party to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo EIA Convention)[16] and the UN Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in

[14]See at: www.mevzuat.gov.tr.

[15]For the list of the by-laws, decree-laws, circulars, and communiqués adopted to date on different sectors of the environment see at: https://cygm.csb.gov.tr/tebligler-i-441.

[16]For the countries which are parties to the Convention see at: https://treaties.un.org/Pages/showDetails.aspx?objid=080000028002887c&clang=_en.

Decision-Making and Access To Justice in Environmental Matters (Aarhus Convention)[17] are among the other prominent areas seriously criticized in this period.

Turkey became a party to the Kyoto Protocol – which was adopted in 1997 and entered into force in 2005 – on 26 August 2009. As it was not party to the Convention during the negotiations of the Kyoto Protocol, it was not listed in Annex-B of the Protocol. Therefore, it did not undertake any emission reduction commitments during the first commitment period (2008–2012). This was because it became a party to the UNFCCC – which was adopted in 1992 and entered into force in 1994 – on 24 May 2004. It took so long to become party to the Convention because of the debate on its status under the Convention. Indeed, as an OECD country, it was originally listed under both Annex-I and Annex-II lists. After that, Turkey objected to being listed under Annex-II, due to its special status. Until its special situation was recognized under Decision 26/Conference of the Parties (COP)-7, it chose to be out of the Convention.

In 2012, at COP-18 (Decision 2/COP.18), the second commitment period (2013–2020) of the Protocol was adopted. As Turkey preserved its special status and was therefore listed only under Annex-I instead of being listed under both Annexes (see relevant decisions: Decision 1/COP-16, Decision 2/COP-17, Decision 1/COP-18, Decision 21/COP-20), it did not have any reduction commitment in the second period, just like in the first period (Decision 1/COP-18, para. 94–96).

Lack of progress in the adoption of the *acquis* on environmental liability and of the Strategic Environmental Assessment (SEA) Directive on the organization of water management on a river basin basis are other problematic areas of this period among many others.

In conclusion, even if attaining EU accession country status has accelerated the development of TEL in various aspects, the overall alignment with and adoption of the EU *acquis* was still not high during this period, and as a result, the capacity for implementation and enforcement to ensure compliance needed to be further strengthened. Yet, the fact that he years from 2002 to 2005 are referred to as the 'best ever' years of Europeanization in Turkey (Öniş, 2008), EU-Turkey relations in general have been characterized by stagnation and marked by increasing tensions because of the impact of the debate on the EU's absorption capacity, the possibility of introducing a privileged partnership with Turkey and controversy over the Cyprus issue (Hauge et al., 2016). Therefore, the last few years – from 2005 onwards – unfortunately do not represent a period of continuous progress in the development of environmental law, management and protection. However, the EU-style of policy-making was still partly implemented in practice, and there were at least some minor changes which can be traced. So it may be argued that, through learning and persuasion processes (by EU-funded projects, programmes and policy

[17]For the countries which are parties to the Convention see at: http://www.unece.org/env/pp/aarhus/map.html.

networks, including different international actors and using the EU as a model),[18] its impact on Turkey's domestic change and so on the development of environmental law, management and protection has continued, albeit in a limited way (Savaşan, 2019).[19]

2.6 The Opening of the Chapter on Environment (2009) and Onwards

In parallel with the necessary changes made in the administrative, financial and legal fields to comply with the EU Environmental *Acquis* for improving environmental protection, the evaluation report for Turkey on the fulfilment of the opening benchmarks for the Chapter on Environment (Chapter 27) was endorsed by the Committee of Permanent Representatives (COREPER) on 12 November 2009 (European Commission, 2007). After that, at the Brussels Summit held on 21 December 2009, this Chapter was opened for negotiations (Council of the European Union, 2009).

In the EU Common Position, there are six closing benchmarks, one political and five technical, for the Chapter on Environment (called Chapter on Environment and Climate Change since 2012). Those are:

Political benchmark:

- Fulfilling the necessary obligations set out in the Additional Protocol to the Association Agreement between Turkey and the EU (2005).

Technical benchmarks:

- Adopting the EU's horizontal environmental legislation, including its transboundary aspects. That means that legislation involving the subjects related to the EIA, strategic environmental assessment (SEA), environmental liability, and accession to environmental information, requires alignment with the following Directives: Directive 2011/92/EU, Directive 2001/42/EC, Directive 2003/4/EC.
- Adopting the *acquis* in the field of water quality, specifically its Framework Water Protection Law, and establishing River Basin Protection Action Plans, requires alignment with the Directive 2000/60/EC.
- Adopting the *acquis* in the field of industrial pollution control and risk management requires the alignment with the Directive 2010/75/EU, Council Directive 1996/82/EC (Seveso-II).

[18]On policy learning, stipulating that domestic change comes through the enduring alteration of thought processes or behavioural intentions of domestic actors, see Checkel (2005); Sabatier (1988).

[19]On EU-induced learning in the field of environment and climate policy as a mechanism of EU influence on transnational networks, see Busch and Jörgens (2005); Lenschow (2012).

Adopting the *acquis* in the remaining sectors of this chapter requires alignment with the Directive 2008/50/EC on air quality, Directive 2008/98/EC on waste management, Directive 2009/147/EC, Council Directive 1992/43/EEC, Council Directive 1999/22/EC on nature protection, Directive 2010/75/EU, Council Directive 1996/82/EC (Seveso II) on industrial pollution control and risk management, Directive 2002/49/EC on noise, Regulation (EC) No. 1272/2008, Regulation (EC) No. 1907/2006 on chemicals, and also Decision No. 406/2009/EC on climate change.

- Improving the capacity and the coordination of the administrative bodies at all levels, including inspection services.

Thus, it is expected that Turkey should be fully prepared to ensure the implementation and enforcement of the EU requirements in all sectors – horizontal sector, air quality, water, waste management, nature protection, industrial pollution prevention and risk management, chemicals, noise and climate change – at the date of accession. Therefore, Turkey continues its preparations to adopt the EU's legislation on these sectors in the framework of the chapter on environment and climate change,[20] through such developments, among others, as the establishment of the air emissions coordination board to coordinate between different institutions for activities required under the UNECE Convention on Long-range Transboundary Air Pollution, the adoption of its National Basin Management Strategy (2014–2023) (Ministry of Forestry and Water Affairs, 2014), the preparations on river basin management plans, the foundation of the Water Institute to provide scientific advice on water management issues, the discussions on participation in the EU Civil Protection Mechanism, and the adoption of its National Waste Management Plan (2008–2012) (Ministry of Environment and Forestry, 2008).

In December 2018, the Environment Act (No. 2872) was changed. The amendments included new provisions on the protection of the environment, the prevention and elimination of environmental pollution, plastic bags, reduction in the use of plastic packaging, deposit application, and obtaining guarantees for the prevention of pollution.[21] It is too early to evaluate the potential results of these provisions in practice.

With respect to the climate change issue, after the adoption of the Paris Climate Agreement through Decision 1/COP-21, the Intended National Determined Contribution (INDC) system was accepted for the PCA, as different from the Protocol system (Decision 1/COP-21, para. 12–21, Art. 3–4, PCA). When

[20]For the list of the by-laws, decree-laws, circulars, and communiqués adopted to date on different sectors of the environment see at: https://cygm.csb.gov.tr/tebligler-i-441. Also, for the projects implemented within the scope of 2007–2013 Instrument for Pre-Accession Assistance (IPA) replacing the financial instrument for Turkey, see at: http://www.ab.gov.tr/index.php?p=92&l=2.

[21]See at: http://www.resmigazete.gov.tr/eskiler/2018/12/20181210-4.htm. OJ (10 November 2018), No. 30621; Act No. 7153.

submitting its INDC with a greenhouse gas reduction target on 30 September 2015,[22] Turkey also signed the PCA on 22 April 2016. Thus, even though it is not legally binding, Turkey has an emission reduction target for the first time. Though there is criticism of this target [see Mazlum et al. (2015), Sayman (2015), Gündoğan and Turhan (2015)], it is expected that Turkey will continue to cope with climate change by decreasing its shortcomings.

In line with this aim, it adopted a National Climate Change Strategy by the Ministry of Environment and Forestry with UNDP/GEF support in 2010 (Ministry of Environment and Forestry, 2010). The first National Climate Change Action Plan was adopted to implement it in 2011 (Ministry of Environment and Urbanization, 2011a), and a Climate Change Department was reestablished within the Ministry of Environment and Urbanization (which was already established within the Ministry of Environment and Forestry) and a High Level Coordination Committee for climate change to increase coordination among relevant institutions.

Nevertheless, Turkey still needs to make further efforts in all aspects of the environment to eliminate the shortcomings and uncertainties in the legislation, powers and responsibilities of institutions, and to enhance collaboration and coordination between all institutions, as the Tenth Five Years Development Plan (2014–2018) also underlines Ministry of Development (2014).

The framework legislation on nature protection has still not been adopted and potential Natura 2000 sites have not yet been identified; the current regulations allowing development and infrastructure activities in wetlands, forests and natural site areas, on the other hand, are contrary to the *acquis*.

Remarkably, the thing which makes the situation worse for Turkey is that while there are already a great number of areas that need to be improved, the retrogressions through exceptions and exemptions – such as Provisional Art. 3, Environment Act; Provisional Art. 3, By-Law on EIA – made in amendments to the existing legislation, such as amendments to the EIA legislation on different dates from 1993 to date,[23] introducing additional exemptions which allow several large infrastructure projects to be excluded from EIA procedures (through Provisional Articles 3 and 2, with the 2014 amendment), such as micro hydropower plants and the third bridge project on the Bosphorus, designed to be the highest bridge in the world – are inconsistent with the requirements of the EIA Directive. An increasing number of other investment and construction projects are planned across the country, particularly in the fields of energy and transport. These include Canal İstanbul, a waterway from the Marmara Sea to the Black Sea; a new airport in Istanbul designed to be the busiest in the world; the construction of nuclear power plants like Akkuyu Power Plant, and Sinop Power Plant; and the creation of new pipelines, such as the Trans-Anatolian Pipeline Project to connect Azerbaijan to Turkey for

[22]For all INDCs submitted see at:
http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx.

[23]See all texts including amendments at:
http://www.csb.gov.tr/gm/ced/index.php?Sayfa=sayfa&Tur=webmenu&Id=254 and
http://www.csb.gov.tr/gm/ced/index.php?Sayfa=sayfa&Tur=webmenu&Id=11223.

the export of Caspian natural gas. Such projects have led to serious debate and criticism, opposition and objections on environmental grounds due to their potentially dramatic impacts on the environment. Even though their economic and geopolitical benefits are also acknowledged, when designing and implementing energy, transport and infrastructure projects it is essential to establish a balance between environmental concerns and profit-orientated development, and those investments should not be contrary to nature protection obligations.

There are also several cases being challenged in the courts and decisions being given regarding EIA regulations, such as the decisions of the Constitutional Court in Paragraph 3/Article 10, Environment Act (excluding activities relating to petrol, geothermal, and mining seeking activities from the scope of EIA),[24] and in Provisional Article 3, Environment Act (providing exemptions);[25] and the decisions of the Council of State in Provisional Article 3, By-Law on EIA,[26] on the Gebze Orhangazi İzmir Highway[27] and on the Ilısu Dam Hydroelectric Plant Project.[28] These exemptions are still maintained in the latest amendment (Provisional Articles 2–3, By-Law on EIA, adopted in 2014, OJ No. 29186).

Moreover, there are crucial challenges in the phase of implementation of all the above-mentioned documents adopted by Turkey. For example, despite the necessity of the cooperation of all stakeholders in line with the principle of governance more or less expressed in all those documents, it is clear from practical observation that, "an actual multi-actor process did not take place" in that field (Şahin, 2016: 126).[29] In the last regular progress report of Turkey, this is clearly stated: "In all areas, more attention needs to be given to enforce legislation whilst many areas require further significant progress to achieve legislative alignment with the EU *acquis*" (European Commission, 2016: 8, 86–88). This situation emphasizes the necessity of instilling environmental awareness in everyone, in particular legislators, policy-makers and executives, to overcome the image of Turkey as a country engaging with environmental issues solely because of international diplomacy and a desire to be recognized and accepted, rather than because it genuinely wants to address the challenges and find effective domestic responses to them (Uzelgun and Şahin, 2016).

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[24]See decision of the Constitutional Court (15 January 2009), Docket No. 2006/99, Decision No. 2009/9, in: OJ (8 July 2009), No. 27282.

[25]See decision of the Constitutional Court (3 July 2014), Docket No. 2013/89, Decision No. 2014/116, in: OJ (4 July 2015), No. 29406.

[26]See decisions of the Council of State – Sixth Chamber (2 February 2011), Docket No. 2008/8999, Decision No. 2011/165. Council of State – Fourteenth Chamber (10 January 2013), Docket No. 2008/13522, Decision No. 2013/4 and Docket No. 2011/11139, Decision No. 2013/9.

[27]See decision of the Council of State – Fourteenth Chamber (28 December 2011), Docket No. 2011/15826.

[28]See decision of the Council of State – Fourteenth Chamber (18 October 2012), Docket No. 2012/3269.

[29]For details of the different actors working on different aspects of climate change in Turkey see Şahin (2014). For detailed information on climate change movement in Turkey see Baykan (2013).

Overall, it could be argued that the rise of environmental awareness and sensitivity to environmental problems in Turkey reached its highest levels in the 2000s because of the impact of the EU accession process. The EU conditionality strategy arising from the accession process indeed played the most important role in developing environmental law and policies up to the opening of accession negotiations in October 2005.[30] Although its influence began to decrease after that, the EU-style of policy-making is still partly implemented in practice,[31] and there are at least some minor changes which can be traced. However, Turkey's recent situation, which is mostly dominated by hotly disputed political, economic and security issues,[32] has the potential to create an obstacle to environmental issues being a priority on the country's agenda.

[30]The stagnation after October 2005 results from both sides due to the following reasons:

On the EU's side: Opposition of some member states to Turkish EU membership (see Aydın-Düzgit and Kaliber, 2016; Aydın-Düzgit and Noutcheva, 2012; Kubicek, 2011; Yılmaz, 2014; Parker, 2009), enlargement fatigue in the EU (see Szolucha, 2010), the world/EU financial crisis (see Braun and Tausendfund, 2014), and the rise of Islamophobia in Europe (Saz, 2011).

On Turkey's side: Perception of unfair treatment/decline in support for EU membership (see Aydın-Düzgit and Noutcheva, 2012), the domestic context in Turkey (see Kalaycıoğlu, 2011), decreasing governmental interest in EU membership (see Özbudun, 2014; Kaliber, 2014), granting a more crucial role to the alternative economic and geostrategic options than to Western ties (see Börzel and Soyaltın, 2012; Öniş and Yılmaz, 2009).

[31]This is because of the impact of a number of high-level visits, Leaders' meetings in May 2017 and March 2018 and a High Level Political Dialogue in July 2017, with dialogue opportunities on foreign and security policy, notably on Syria, Libya and Iraq, and a counter-terrorism dialogue held in November 2017, with cooperation in the areas of energy, transport and economy and trade, supported by high level dialogues (European Commission, 2018: 3); and because of the long-term effects of the projects of the Instrument for Pre-Accession Assistance (IPA) "result[ing] in new institutional constraints, or stipulating social learning processes…" (Bürgin, 2016: 106).

[32]E.g. there are very critical security challenges specifically in the south-east part of the country. In fact, Turkey has been struck by several deadly terrorist attacks by PKK (Kurdistan Workers' Party) and Da'esh (Arabic acronym: Dawlat al-Islamiyah f'al-Iraq wa al-Sham) in the recent period, specifically just before the failed coup attempt period; there is an ongoing Syrian civil war and asylum problem resulting from that war on Turkey's borders, leading to an EU-Turkey Joint Action Plan to halt irregular bulk refugee flow into the EU (European Commission, 2015); cross-border/counter-terrorist operations (such as Operation Euphrates Shield, launched in August 2016; Operation Sinjar, launched in April 2017; Operation Idlib Shield, launched in October 2017; and Olive Branch Operation [Operation Afrin], launched in March 2018) were conducted by the Turkish Armed Forces (TAF) to fight against terrorism and to prevent a terror corridor forming along its southern borderline by PKK – listed as a terrorist organization not just by Turkey, by also the USA and the EU – its Syrian offshoot, the Democratic Union Party (PYD), and its armed wing, the People's Protection Units (YPG); Turkey's new agenda was mostly dominated by security issues and political debate over the new governmental system adopted after a hotly disputed referendum on 16 April 2017, the presidential election on 24 June 2018, local elections on 31 March 2019, and, after that, by the economic troubles which escalated soon after the presidential elections and were still going on at the time of writing.

2.7 Conclusion

In this chapter, the development process of Turkish environmental law was revealed in five main phases: (1) Pre-1982 Constitution period, (2) From 1982 Constitution to the EU candidacy (1999), (3) From the EU candidacy (1999) to the accession country status (2005), (4) From the accession country status (2005) to the opening of the chapter on environment (2009), (5) The opening of the chapter on environment (2009) and onwards.

These phases were drawn on the basis of the EU accession process, which has been a key factor in Turkish environmental law being developed remarkably and rapidly until the current stagnation period.

In this respect, based on the examination, during the first phase it was found that, even if there were no direct links to environmental issues under the Constitution and other legal documents, there was still a tendency (albeit not strong) to ensure, develop and maintain effective policies on the protection of environment.

During the second period, this tendency started to manifest itself in tangible outcomes, such as the reference made by the 1982 Constitution to the right of environment, the entry into force of Environment Act No. 2872 (1983), and the establishment of the Ministry of Environment in 1991.

After Turkey was declared a candidate country, the impact of the EU accession process meant the last two decades have witnessed significant amendments to existing legislation and the creation of new regulations and institutions, although the signs of a growing crisis in EU-Turkey relations started to appear.

This progress and dynamism continued when accession country status was gained. However, during this period, due to little progress in EU-Turkey relations, the overall alignment and adoption of the EU *acquis* has not been at a prominent level. Therefore, progress in the fields of implementation, enforcement and compliance is not anticipated. As a consequence of the opening of the Chapter on Environment (2009), Turkey is now expected to guarantee the implementation and enforcement of the EU requirements in all sectors – the horizontal sector, air quality, water, waste management, nature protection, industrial pollution prevention and risk management, chemicals, noise and climate change – at the date of accession. So it is essential for Turkey to sustain its efforts to adopt the EU's legislation in these sectors undertaken in the framework of the Chapter on Environment and climate change without dismissing environmental concerns, demands and movements. However, transposition itself is not adequate to provide the implementation, enforcement and compliance without sacrificing environment in favour of development.

While it is already insufficient on its own to deliver concrete protection of the environment, the retrogressions through exceptions and exemptions wrought by amendments to the existing legislation make it worse. This situation demonstrates that the primary challenge is not adoption of the legislation, but internalizing the necessity for environmental protection and improvement, and thus implementing that legislation fully and properly in practice. This internalization is required by all

on the basis of Art. 56(2) of the 1982 Constitution (also Art. 3(a), Environment Act), and particularly by those affecting the process directly – legislators, policy-makers and executives.

Given the current stalemate in the full EU membership process, although the EU-induced learning processes can still be driving force for Turkey, as mentioned above, the EU's conditionality strategy has lost its influence, and it is not anticipated that Turkey will get involved in more ambitious and better coordinated environmental policies which will be able to provide this internalization in the near future.

The limits on Turkish civil society – referring to the Taksim Square demonstrations of 2013 (known as the Gezi Park protests) – combined with post-failed coup attempt measures are regarded as one of the key reasons for this situation (Werz, 2017). Yet, as mentioned above, due to both sides' acts and decisions, the stagnation of EU-Turkey relations had already begun more than a decade ago at the start of accession negotiations in 2005. Indeed, while Turkey was cooperating with the EU to be in line with the EU harmonization process, the EU continued to support Turkish accession in a limited way and failed to give a clear commitment to its accession.

In the current period, on the EU's side, the ongoing unclear position of the EU on Turkey's membership and the multiple challenges faced by the EU in itself, such as the Brexit process, the rise of right wing politics, authoritarian tendencies in some member states (e.g. Hungary and Poland), and the economic crisis, make it complicated for the EU to develop a good strategy which will be acceptable to both sides. On Turkey's side, the EU accession process is not on the country's agenda due to other previously mentioned priorities; sometimes the suspension of relations with the EU and alternatively getting engaged with other regions can even be suggested by the ruling party. Moreover, because the change in Turkey's governmental system from a parliamentary to a presidential system, with constitutional changes approved in the referendum of 16 April 2017, came into effect with the presidential election held on 24 June 2018, and because the effects of this on the legal and institutional structure and processes of the country are still in the development stage, it is not possible to predict their effects on Turkey's environmental law and politics with any certainty. However, due to security concerns and political and economic fluctuations in the country, it is unlikely that environmental issues will be one of Turkey's priority areas in the near future.

References

Akgündüz, Ahmet (2009). *İslam ve Osmanlı Çevre Hukuku* [Islam and Ottoman Environmental Law], Osmanlı Araşt (Istanbul: Vakfı).

Aydın-Düzgit, S.; Kaliber, A. (2016). "Encounters with Europe in an Era of Domestic and International Turmoil: Is Turkey a De-Europeanising Candidate Country?", in: *South European Society and Politics*, 21, 1: 1–14.

Aydın-Düzgit, S.; Noutcheva, G. (2012). "Lost in Europeanisation: The Western Balkans and Turkey", in: *West European Politics*, 35: 59–78.
Börzel, T.; Soyaltin (2012). "Europeanization in Turkey: Stretching a Concept to its Limits?" Kolleg-Forschergruppe 'The Transformative Power of Europe', Working Paper Series, No. 36, Free University Berlin.
Braun, D.; Tausendpfund, M. (2014). "The Impact of the Euro Crisis on Citizens' Support for the European Union", in: *Journal of European Integration*, 36, 3: 231–45.
Bürgin, A. (2016). "Why the EU Still Matters in Turkish Domestic Politics: Insights from Recent Reforms in Migration Policy", in: *South European Society and Politics*, 21, 1: 105–118.
Busch, P.O.; Jörgens, H. (2005). "International Patterns of Environmental Policy Change and Convergence", in: *European Environment*, 15, 2: 80–101.
Checkel, J.T. (2005). "International Institutions and Socialization in Europe: Introduction and Framework", in: *International Organization*, 59, 4 (Fall): 801–826.
Gündoğan, A.C.; Turhan, E. (2015). "Türkiye'nin Seragazı Azaltim Taahhütü: Dağ Fare Doğuruyor [Turkey's Green House Gas Reduction Commitment: The Mountain has brought forth a Mouse]" (8 October), at: http://www.diken.com.tr/turkiyenin-seragazi-azaltim-taahhutu-dag-fare-doguruyor/ (retrieved 12 May 2017).
Güneş, Ahmet M. (2015). *Çevre Hukuku* [Environmental Law] (Istanbul: On İki Levha Yayıncılık).
Hauge, Hanna-Lisa *et. al.* (2016). "Mapping Periods and Milestones of past EU-Turkey Relations" (September 2016). FEUTURE Working Paper, at: http://www.iai.it/sites/default/files/feuture_2.pdf (retrieved 5 May 2017).
Kalaycıoğlu, E. (2011). "*Kulturkampf* in Turkey: Constitutional Referendum of 12 September 2010", in: *South European Society and Politics* (Taylor & Francis): 1–22.
Kaliber, A. (2014). "Europeanization in Turkey: In Search of a New Paradigm of Modernization", in: *Journal of Balkan and Near Eastern Studies*, 16, 1: 30–46.
Kubicek, P. (2011). "Political Conditionality and European Union's Cultivation of Democracy in Turkey", in: *Democratization*, 18, 4: 910–993.
Lenschow, A. (2012). "Conclusion: What Are the Bottlenecks and Where Are the Opportunities for Greening the European Union?", in: Lenschow, A. (Ed.): *Environmental Policy Integration: Greening Sectoral Policies in Europe* (London: Earthscan Publications): 219–233.
Mazlum, Cerit Semra; Gündoğan, Arif Cem, (2015). "Paris Anlaşmasına Doğru İklim Değişikliği Müzakereleri ve Türkiye [Climate Change Negotiations and Turkey Towards the Paris Agreement]." (6 November), at: https://tr.boell.org/tr/2015/11/06/paris-anlasmasina-dogru-iklim-degisikligi-muzakereleri-ve-turkiye (retrieved 2 May 2017).
Öniş, Z. (2008). "Turkey-EU Relations: Beyond the Current Stalemate", in: *Insight Turkey*, 10, 4: 35–50.
Öniş, Z.; Yilmaz, Ş. (2009). "Between Europeanization and Euro-Asianism: Foreign Policy Activism in Turkey During the AKP Era", in: *Turkish Studies*: 7–24.
Özbudun, E. (2014). "AKP at the Crossroads: Erdoğan's Majoritarian Drift", in: *South European Society and Politics*, 19, 2: 155–167.
Parker, O. (2009). "Cosmopolitan Europe and the EU-Turkey Question: The Politics of a Common Destiny", in: *Journal of European Public Policy*, 16, 7: 1085–1101.
Sabatier, P.A. (1988). "An Advocacy Coalition Framework of Policy Change and The Role of Policy-Oriented Learning Therein", in: *Policy Sciences*, 21, 2/3: 129–168.
Savaşan, Z. (2019): "Climate Governance in Turkey: A Forward-looking Perspective," in: *Turkish Studies* (May), 1–31.
Sayman, R.Ü. (2015). "İklim Değişikliği ile Mücadelede Çarpan Etkisi: Paris Anlaşması [Multiplier Effect on Combating Climate Change: Paris Agreement]", at: https://www.linkedin.com/pulse/iklim-de%C4%9Fi%C5%9Fikli%C4%9Fi-ile-m%C3%BCcadelede-%C3%A7arpan-etkisi-paris-anla%C5%9Fmas%C4%B1/?originalSubdomain=tr (retrieved 8 December 2019).
Saz, G. (2011). "Turkophobia and Rising Islamophobia in Europe: A Quantification for the Negative Spillovers on the EU Membership Quest of Turkey", in: *European Journal of Social Sciences*, 19, 4: 479–491.

Szolucha, A. (2010). "The EU and 'Enlargement Fatigue': Why Has the European Union Not Been Able to Counter 'Enlargement Fatigue'?", in: *Journal of Contemporary European Research*, 6, 1: 107–122.

Şahin, Ü. (2016). "Warming A Frozen Policy: Challenges To Turkey's Climate Politics After Paris", in: *Turkish Policy Quarterly* (Summer 2016), 15, 2, at: http://turkishpolicy.com/files/articlepdf/warming-a-frozen-policy-challenges-to-turkeys-climate-politics-after-paris_en_3947.pdf (retrieved 12 May 2017).

Uzelgun, M.A.; Şahin, Ü. (2016). "Climate Change Communication in Turkey" in: *Oxford Research Encyclopedia of Climate Science* (December), at: https://www.researchgate.net/publication/309375083_Climate_Change_Communication_in_Turkey (retrieved 7 May 2017).

Werz, M. (2017). "The European Union and Turkey in 2017, Move on or Apart?" (24 July), Center for American Progress, at: (retrieved 7 September 2017) https://www.americanprogress.org/issues/security/reports/2017/07/24/436488/european-union-turkey-2017-move-apart/ (retrieved 7 September 2017).

Yılmaz, G. (2014). "EU Conditionality is not the Only Game in Town! Domestic Drivers of Turkey's Europeanization", in: *Turkish Studies*, 15, 2: 303–323.

Other Materials

Accession Partnership Document (2001) (revised in 2003, 2006 and 2008), at: http://www.ab.gov.tr/index.php?p=123&l=2 (retrieved 10 May 2016).

Accession Agreement to the European Environment Agency and European Information and Observation Network (2003). Decision No. 2003/5325, in: Official Journal (OJ) (18 May), No. 25052, at: http://www.resmigazete.gov.tr/eskiler/2003/03/20030318.htm#3 (retrieved 11 May 2016).

Act on the Amendment of the Law for Establishment of Industrial Zones and Organised Industrial Areas (No. 4737), in: OJ (19 January 2002), No. 24645, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.4737.pdf (retrieved 11 May 2016).

Act No. 5195, in: OJ (22 June 2004) at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.4737-20020109.pdf (retrieved 11 May 2016).

Act No. 7153 in: OJ (10 November 2018), No. 30621, at: http://www.resmigazete.gov.tr/eskiler/2018/12/20181210-4.htm (retrieved 15 January 2019).

Act Approving the Biodiversity Convention's Cartagena Protocol on Biosafety (No. 4898), at: http://www.resmigazete.gov.tr/eskiler/2003/06/20030624.htm#3 (retrieved 11 May 2016).

Act on the Establishment and Duties of the Ministry of Environment and Forestry (No. 4856), at: https://www.tbmm.gov.tr/kanunlar/k4856.html (retrieved 11 May 11 2016).

Act on the Right of Accession to Information (No. 4982), in: OJ (24 October 2003), No. 25269, at: http://www.resmigazete.gov.tr/eskiler/2003/10/20031024.htm#1 (retrieved 11 May 2016).

Act on Approval of Accession Agreement to the European Environment Agency and European Information and Observation Network (No. 4794), at: http://www.resmigazete.gov.tr/eskiler/2003/01/20030128.htm#1 (retrieved 11 May 2016).

Additional Protocol to the Association Agreement between Turkey and the EU (2005), at: http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?redirect=true&treatyId=1561 (retrieved 11 May 2016).

By-Law on for the implementation of the Act on the Right of Accession to Information, in: OJ (27 April 2004), No. 25445, at: https://www.mevzuat.gov.tr/MevzuatMetin/21.5.20047189.pdf (retrieved 8 December 2019).

By-Law on the Implementation of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES Convention), in: OJ (27 December 2001), No. 24623, at: http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.5427&MevzuatIliski=0&sourceXmlSearch= (retrieved 11 May 2016).

By-Law on the Protection of Wetlands, in: OJ (30 January 2002), No.24656, annulled by By-Law on the Protection of Wetlands, in: OJ (17 May 2005), No. 25818, at: http://www.resmigazete.gov.tr/eskiler/2005/05/20050517-2.htm (retrieved 11 May 2016).

By-Law on Soil Pollution Control (2001), in: OJ (10 December 2001), No. 24609 at: http://www.resmigazete.gov.tr/eskiler/2001/12/20011210.htm#3 (retrieved 11 May 2016).

By-Law on Environmental Inspection (2002), in: OJ (5 January 2002), Repetitive No. 24631, at: http://web.deu.edu.tr/atiksu/ana52/cevdenet.htm (retrieved 11 May 2016).

By-Law on Environmental Impact Assessment (EIA) (1993), in: OJ (7 February 1993), No. 21489, at: http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/21489.pdf&main=http://www.resmigazete.gov.tr/arsiv/21489.pdf (retrieved 11 May 2016).

By-Law on Environmental Impact Assessment (EIA) (2016), in: OJ (9 February 2016), No. 29619, at: http://www.resmigazete.gov.tr/eskiler/2016/02/20160209.htm (retrieved 11 May 2016).

By-Law on Environmental Impact Assessment (EIA) (2003), in: OJ (16 December 2003), No. 25318, at: http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2003/12/20031216.htm&main=http://www.resmigazete.gov.tr/eskiler/2003/12/20031216.htm (retrieved 11 May 2016).

By-Law on Environmental Impact Assessment (EIA) (2014), in: OJ (25 November 2014), No. 29186, at: https://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.20235&MevzuatIliski=0&sourceXmlSearch= (retrieved 8 December 2019).

Constitutional Court (15 January 2009), Docket No. 2006/99, Decision No: 2009/9, in: OJ (8 July 2009), No. 27282, at: http://www.resmigazete.gov.tr/eskiler/2009/07/20090708-9.htm (retrieved 19 June 2016).

Constitutional Court (3 July 2014), Docket No. 2013/89, Decision No. 2014/116, in: OJ (4 July 2015), No. 29406, at: https://www.resmigazete.gov.tr/eskiler/2015/07/20150704-14.pdf (retrieved 8 December 2019).

Council of State – Sixth Chamber (2 February 2011), Docket No. 2008/8999, Decision No. 2011/165.

Council of State – Fourteenth Chamber (10 January 2013), Docket No. 2008/13522, Decision No. 2013/4; Docket No. 2011/11139, Decision No. 2013/9; (28 December 2011), Docket No. 2011/15826; (18 October 2012), Docket No. 2012/3269.

Council Directive 96/82/EC (9 December 1996) on the control of major-accident hazards involving dangerous substances, at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996L0082&from=EN (retrieved 8 December 2019).

Council Directive 92/43/EEC (21 May 1992) on the conservation of natural habitats and of wild fauna and flora, at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992L0043&from=EN (retrieved 8 December 2019).

Council Directive 1999/22/EC (29 March 1999) relating to the keeping of wild animals in zoos, at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31999L0022 (retrieved 8 December 2019).

Council of the European Union (Brussels, 16-17 December 2004). Presidency Conclusions, at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/83201.pdf (retrieved 11 May 2016).

Council of the European Union (Brussels, 10 July 2009). 11225/2/09 REV 2, at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/108622.pdf (retrieved 11 May 2016).

Council of the European Union (Brussels, 12 October 2005). Negotiation Framework Document, 12823/1/05 REV 1.

Decision 406/2009/EC (2009) of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020, at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009D0406&from=EN (retrieved 9 December 2019).

Decision 26/CP.7 (2001). Amendment to the list in Annex II to the Convention. Report of The Conference of The Parties on its seventh session (Marrakesh, 29 October-10 November 2001), Addendum Part Two: Action Taken by The Conference of The Parties, Volume IV, FCCC/CP/2001/13/Add.4 (21 January 2002), at: http://unfccc.int/resource/docs/cop7/13a04.pdf#page=5 (retrieved 11 May 2016).

Decision 1/CP.16 (2010). The Cancun Agreements: Outcome of the work of the *Ad Hoc* Working Group on Long-term Cooperative Action under the Convention, Report of the Conference of the Parties on its sixteenth session (Cancun, 29 November-10 December 2010). Addendum Part Two: Action taken by the Conference of the Parties at its sixteenth session. FCCC/CP/2010/7/Add.1 (15 March 2011), at: http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page=2 (retrieved 11 May 2016).

Decision 2/CP.17 (2011). Outcome of the work of the *Ad Hoc* Working Group on Long-term Cooperative Action under the Convention, Report of the Conference of the Parties on its seventeenth session (Durban, 28 November-11 December 2011). Addendum Part Two: Action taken by the Conference of the Parties at its seventeenth session. FCCC/CP/2011/9/Add.1 Action (15 March 2012), at: http://unfccc.int/resource/docs/2011/cop17/eng/09a01.pdf#page=2 (retrieved 11 May 2016).

Decision 1/CP.18 (2012). Agreed outcome pursuant to the Bali Action Plan, Report of the Conference of the Parties on its eighteenth session (Doha, 26 November-8 December 2012). Addendum Part Two: Action taken by the Conference of the Parties at its eighteenth session. FCCC/CP/2012/8/Add.1 (28 February 2013), at: http://unfccc.int/resource/docs/2012/cop18/eng/08a01.pdf (retrieved 11 May 2016).

Decision 2/CP.18 (2012). Advancing the Durban Platform, Report of the Conference of the Parties on its eighteenth session (Doha, 26 November-8 December 2012). Addendum Part Two: Action taken by the Conference of the Parties at its eighteenth session. FCCC/CP/2012/8/Add.1 (28 February 2013), at: http://unfccc.int/resource/docs/2012/cop18/eng/08a01.pdf (retrieved 11 May 2016).

Decision 21/CP.20 (2014). Parties included in Annex I to the Convention whose special circumstances are recognized by the Conference of the Parties Report of the Conference of the Parties on its twentieth session (Lima, 1–14 December 2014). Addendum Part Two: Action taken by the Conference of the Parties at its twentieth session. FCCC/CP/2014/10/Add.3 (2 February 2015), at: http://unfccc.int/resource/docs/2014/cop20/eng/10a03.pdf#page=42 (retrieved 11 May 2016).

Decision 1/CP.21 (2015). Adoption of the Paris Agreement Report of the Conference of the Parties on its twenty-first session (Paris, 30 November-13 December 2015). Addendum Part Two: Action taken by the Conference of the Parties at its twenty-first session. FCCC/CP/2015/10/Add.1 (29 January 2016), at: http://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf#page=2 (retrieved 11 May 2016).

Decree Law (No. 222), in: OJ (8 June 1983), No. 18071, at: http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/18071.pdf&main=http://www.resmigazete.gov.tr/arsiv/18071.pdf (retrieved 6 May 2016).

Decree Law (No. 389), in: OJ (29 September 1989), No. 20297, at: http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/20297.pdf&main=http://www.resmigazete.gov.tr/arsiv/20297.pdf (retrieved 3 May 2016).

Decree Law in Force of Law on the Establishment and Duties of the Ministry (No. 443). OJ (21 August 1991), No. 20967, at: http://www.basarmevzuat.com/dustur/khk/5/3755/a/khk443.htm (retrieved 7 May 2016).

Decree Law on the establishment of the Ministry of Environment, Forestry and Urbanization (No.636), in: OJ (8 June 2011), No. 27958 (repetitive), at: http://www.resmigazete.gov.tr/eskiler/2011/06/20110608M1-4.pdf (retrieved 7 May 2016).

Decree Law (No. 645) on the establishment and duties of the Ministry of Forestry and Water Affairs, in: OJ (4 July 2011), No. 27984, at: http://www.resmigazete.gov.tr/eskiler/2011/07/20110704M1-2.htm (retrieved 7 May 2016).

Decree Law (No. 644) on the establishment and duties of the Ministry of Environment and Urbanization, in: OJ (4 July 2011), No. 27984, at: http://www.resmigazete.gov.tr/eskiler/2011/07/20110704M1-1.htm (retrieved 9 May 2016).

Decree Law (No. 703) on the Changes in Some Acts and Decree Laws for the Purpose of Adaptation to the Changes in the Constitution, in: OJ (9 July 2018), No: 30473, at: http://www.resmigazete.gov.tr/eskiler/2018/07/20180709M3.pdf (retrieved 21 January 2016).

Directive 2011/92/EU, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment Text with EEA relevance, at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0092 (retrieved 9 December 2019).

Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0042&from=EN (retrieved 9 December 2019).

Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0004&from=EN (retrieved 9 December 2019).

Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0060 (retrieved 9 December 2019).

Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) Text with EEA relevance, at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ%3AL%3A2010%3A334%3A0017%3A0119%3Aen%3APDF (retrieved 9 December 2019).

Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0050&from=EN (retrieved 9 December 2019).

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (text with EEA relevance), at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0098&from=EN (retrieved 9 December 2019).

Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:020:0007:0025:EN:PDF (retrieved 9 December 2019).

Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise – Declaration by the Commission in the Conciliation Committee on the Directive relating to the assessment and management of environmental noise, at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0049&from=EN (retrieved 9 December 2019).

European Commission (2007). Screening Report Turkey, Chapter 27 – Environment (22 June 2007), at: http://ec.europa.eu/enlargement/pdf/turkey/screening_reports/screening_report_27_tr_internet_en.pdf (retrieved 8 May 2016).

European Commission (2015). EU-Turkey Joint Action Plan (15 October 2015), MEMO/15/5860, at: http://europa.eu/rapid/press-release_MEMO-15-5860_en.htm (retrieved 8 May 2016).

European Commission (2016). Turkey 2016 Report (Brussels, 9 November 2016) SWD (2016) 366 final, {COM(2016) 715 final}, at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_turkey.pdf (retrieved 8 May 2016).

European Commission (2018). Turkey's Progress Report (Strasbourg, 17 April 2018). SWD (2018) 153 final, at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf (retrieved 8 May 2016).

Ministry of Development (2014). Tenth Five Year Development Plan (2014–2018), at: http://www.sbb.gov.tr/wp-content/uploads/2018/11/Onuncu-Kalk%C4%B1nma-Plan%C4%B1-2014-2018.pdf (retrieved 9 December 2019).

Ministry of Environment and Forestry (2010). Turkey's National Climate Change Adaptation Strategy and Action Plan (2010–2020), at: http://iklim.cob.gov.tr/iklim/Files/strateji%20kitapcik_turkce_pdf.pdf (retrieved 11 May 2016).

Ministry of Environment and Forestry (2008). National Waste Management Plan (2008–2012), at: http://www.cygm.gov.tr/cygm/files/eylemplan/atikeylemplani.pdf (retrieved 11 May 2016).

Ministry of Environment and Forestry (2007). National Biological Diversity Strategy and Action Plan, at: https://www.cbd.int/doc/world/tr/tr-nbsap-v2-en.pdf (retrieved 11 May 2016).

Ministry of Environment and Forestry (2006a). National Action Programme Against Desertification. Ministry of Environment and Forestry Publication No: 250, at: http://extwprlegs1.fao.org/docs/pdf/tur169410.pdf (retrieved 9 December 2019).

Ministry of Environment and Forestry (2006b). EU Integrated Environmental Approximation Strategy (2007–2023), at: https://www.joi.or.jp/modules/investment/custom/documents/TUR_EU_INTEGRATED_ENVIRONMENTAL_APPROXIMATION_STRATEGY.pdf (retrieved 11 May 2016).

Ministry of Environment and Urbanization (2011a). Turkey's National Climate Change Action Plan (2011–2023), at: http://iklim.tarim.gov.tr/dosya/idep.pdf (retrieved 11 May 2016).

Ministry of Environment and Urbanization (2011b). Environment Situation Report. Directorate General of Environmental Impact Assessment, Permit and Inspection (Ankara: Altan Matbaacılık) at: https://webdosya.csb.gov.tr/db/ced/icerikler/tcdr_2011-20180308151518.pdf (retrieved 9 December 2019).

Ministry of Forestry and Water Affairs (2014). National Basin Management Strategy (2014–2023), at: http://www.resmigazete.gov.tr/eskiler/2014/07/20140704-23.htm (retrieved 11 May 2016).

National Programme for the Adoption of the *Acquis* (2001) (updated in 2003 and 2008), at: http://www.ab.gov.tr/?p=194&l=2 (retrieved 11 May 2016).

Presidential Decree (No.1), in: OJ (10 July 2018), No. 30474, at: http://www.mevzuat.gov.tr/MevzuatMetin/19.5.1.pdf (retrieved 13 January 2016).

Public Procurement Act (No. 4734), in: OJ (22 January 2002), No. 24648, at: https://www.tbmm.gov.tr/kanunlar/k4734.html (retrieved 11 May 2016).

Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (text with EEA relevance), at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R1272&from=en (retrieved 9 December 2019).

Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No. 793/93 and Commission Regulation (EC) No. 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02006R1907-20140410&from=EN (retrieved 9 December 2019).

State Planning Organization (2006). National Rural Development Strategy, at: http://www.resmigazete.gov.tr/eskiler/2006/02/20060204-9-2.pdf (retrieved 11 May 2016).

State Planning Organization (1999). National Environmental Action Plan (1999), at: https://www.undp.org/content/dam/turkey/docs/Publications/EnvSust/neap-turkey.pdf (retrieved 11 May 2016).

State Planning Organization (1995). Seventh Five Year Development Plan (1996–2000), at: http://www.sbb.gov.tr/wp-content/uploads/2018/11/Yedinci-Be%C5%9F-Y%C4%B1ll%C4%B1k-Kalk%C4%B1nma-Plan%C4%B1-1996-2000%E2%80%8B.pdf (retrieved 9 December 2019).

State Planning Organization (1989). Sixth Five Year Development Plan (1990–1994), at: http://www.sbb.gov.tr/wp-content/uploads/2018/11/Alt%C4%B1nc%C4%B1-Be%C5%9F-Y%C4%B1lll%C4%B1k-Kalk%C4%B1nma-Plan%C4%B1-1990-1994%E2%80%8B.pdf (retrieved 9 December 2019).

State Planning Organization (1984). Fifth Five Year Development Plan (1985–1989), at: http://www.sbb.gov.tr/wp-content/uploads/2018/11/Be%C5%9Finci-Be%C5%9F-Y%C4%B1ll%C4%B1k-Kalk%C4%B1nma-Plan%C4%B1-1985-1989.pdf (retrieved 9 December 2019).

State Planning Organization (1979). Fourth Five Year Development Plan (1979–1983), at: http://www.sbb.gov.tr/wp-content/uploads/2018/11/D%C3%B6rd%C3%BCnc%C3%BC-Be%C5%9F-Y%C4%B1ll%C4%B1k-Kalk%C4%B1nma-Plan%C4%B1-1979-1983%E2%80%8B.pdf (retrieved 9 December 2019).

State Planning Organization (1972). Third Five Year Development Plan (1973–1977), at: http://www.sbb.gov.tr/wp-content/uploads/2018/11/%C3%9C%C3%A7%C3%BCnc%C3%BC-Be%C5%9F-Y%C4%B1ll%C4%B1k-Kalk%C4%B1nma-Plan%C4%B1-1973-1977%E2%80%8B.pdf (retrieved 9 December 2019).

Turkey's Programme for Alignment with the EU *Acquis* (2007–2013), at: http://www.ab.gov.tr/index.php?p=6&l=2 (retrieved 11 May 2016).

Turkish Constitution (1982), at: https://www.tbmm.gov.tr/anayasa/anayasa82.htm (retrieved 10 May 2016).

Turkish Constitution (1961), at: https://www.tbmm.gov.tr/anayasa/anayasa61.htm (retrieved 10 May 2016).

Turkish Constitution (1924), at: https://www.tbmm.gov.tr/anayasa/anayasa24.htm (retrieved 10 May 2016).

Turkish Environment Act (No. 2872), in: OJ (11 August 1983), at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2872.pdf (retrieved 17 May 2016).

Chapter 3
Drawing a General Framework for Turkish Environmental Law

Zerrin Savaşan

Abstract In this chapter, the aimed is to sketch a general framework of Turkish Environmental Law. In this respect, in order to question how environmental issues have been regulated in the Turkish legal system, an examination is made of its different branches under both private law (civil law, obligations law) and public law (constitutional law, international law, administrative law, criminal law).

This analysis is based on comprehensive data collected as a result of detailed research on the related legal documents of Turkish law. Since an elaborate legal analysis of this tremendous field is beyond the scope of this chapter, it just offers a general assessment of different branches of both public and private law with their fundamental features concerning environmental issues.

Keywords Administrative law · Civil law · Constitutional law · Criminal law · International law · Obligations law · Private law · Public law · Turkish environmental law

3.1 Introduction

The Turkish Environment Act (No. 2872) is the basic legislation influencing Turkish Environmental Law (TEL). It entered into force on 9 August 1983, as the first act adopted specifically to protect and improve the environment and prevent its degradation.

Dr. Zerrin Savaşan, Assistant Professor, Department of International Relations, Sub-department of International Law, Selçuk University, Konya, Turkey. e-mail: szerrin@selcuk.edu.tr.

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It was comprehensively amended in 2006 through the Act on the Amendment of the Environment Act (No. 5491). This amendment was specifically designed to harmonize existing regulations with European Union (EU) standards, improve implementation, compliance and enforcement, and thus overcome the challenges encountered in the environmental field.[1]

The Act is divided into six sub-sections: (1) Objective, Definitions and Principles, (2) High Environment Board and Its Tasks, (3) Precautions and Prohibitions Regarding Environmental Protection, (4) Fund for the Prevention of Environmental Pollution, (5) Criminal Provisions, (6) Miscellaneous Provisions.

Complementary to the Environment Act determining fundamental principles regarding the subject, several regulations (by-laws, circulars, communiqués etc.) on diverse aspects of the environment (such as the prevention of pollution, environmental impact assessment, air quality protection, air pollution control and water pollution control) have also been issued and enacted over the years.[2]

Because these regulations involve specific rules and procedures and other details which clarify and elaborate the requirements and commitments set forth in the Environment Act, they are also quite important for ensuring implementation, compliance and enforcement.

In addition to the Environment Act and relevant regulations, there is also other legislation relating to public or private law, or both, involving provisions directly or indirectly related to environmental issues under Turkish Environmental Law. Given the proliferation of legislation through the harmonization process within the EU accession negotiations, the scope of the legislation has become more vast and complicated, and includes many different issues intertwined with various sectors. Such a wide scope of legislation, forming a very complex and comprehensive field, increases the difficulty of understanding the general structure of Turkish environmental law. Therefore, it is necessary to create a neat framework to provide an updated review and assessment of its general principles and norms.

In this chapter, the aim is to analyse how environmental issues are regulated in the context of the Turkish legal system under its different branches. In this respect, touching upon both private law (civil law, obligations law) and public law (constitutional law, international law, administrative law, criminal law), a general assessment will be made of Turkish Environmental Law.

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[1]In December 2018, the Environment Act (No. 2872) was amended to include new provisions on the protection of the environment, the prevention and elimination of environmental pollution, plastic bags, reduction of the use of plastic packaging, deposit application, and obtaining guarantees for the prevention of pollution. See OJ (10 November 2018), No. 30621; Act No. 7153, at: http://www.resmigazete.gov.tr/eskiler/2018/12/20181210-4.htm.

[2]For a list of the by-laws, decree laws, circulars and communiqués adopted to date on different sectors of the environment see at: https://www.csb.gov.tr/gm/cygm/index.php?Sayfa=sayfa&Tur=webmenu&Id=267.

3.2 Turkish Environmental Law: In the Context of Private Law

It is not easy to find a substantial number of examples which refer to the protection of the environment in the context of private law under TEL. This is largely because the protection of the environment is predominantly regulated under public law and notably under administrative law due to its characteristic of involving public and common interests – not specific individuals but all humanity (Güneş, 2015: 301–303). However, though not directly related to the protection of the environment, the provisions regarding the rights of neighbours and the rules on legal liability do make use of private law to protect the environment and cope with environmental challenges.

Under the Civil Code (No. 4721), two important articles, Articles 730 and 737, arise as the most important provisions regarding the indirect protection of the environment. They contain provisions on the right to property and the limitations of the right in line with Article 35, 1982 Constitution, and also Article 683, Civil Code.

In fact, Article 35, 1982 Constitution sets forth that, "Everyone has property and inheritance rights. These rights may be restricted by law just for the purpose of public interest. The exercise of the right to property shall not be against the public interest."

On the other hand, Article 683, Civil Code, in accordance with the Constitution, states that: "The owner is entitled to the use, enjoyment and disposition of his property, as he wishes, within the limitations of the law order."

Thus, it is clear that, even if everyone has the right to property, this right is subject to some limitations under the law. Article 737, Civil Code, regulates one of these limitations which is also indirectly related to the protection of the environment.

The article states that:

> Everyone, while using his competencies arising from immovable property and in particular conducting his enterprise activities, is obliged to abstain from disorderly conducts which can affect his neighbours in a negative manner.
>
> Particularly, causing annoyance with smoke, steam, soot, dust, smell, making noise and tremors which exceed tolerable levels among neighbours according to the immovable property's situation, quality and local custom is forbidden.
>
> The rights proper to the local custom and related to the *equalization of sacrifices* arising from unavoidable disorderly conducts are reserved.

That is, while using the rights and competencies regarding the property, it is essential to take care of the neighbour's rights as well. Activities conducted on the property which could bother or negatively affect the neighbours are forbidden by this article (note that such activities are not restricted to the ones listed under the article; the usage of the word 'particularly' indicates that the activities listed are just examples) (Güneş, 2015: 308).

What is the liability of owners who do not care about their neighbours' rights and exceed their own property right and its boundaries, impacting the environment as a result?

Article 730, Civil Code responds to this question, revealing the owner's liability with the followings words:

> A person who suffers or encounters the risk of harm due to the immovable property owner's usage of his property right against the legal limitations of this right may sue for restitution and compensation for the risk and harm.
>
> The judge can decide the equalization of the damages arising from disorderly conducts which are proper to the local custom and unavoidable, as due compensation.

In line with the wording of the article, it should be noted that the liability regulated here is not a liability with fault, but instead an 'absolute (objective) liability (liability without fault)'. Indeed, as it does not allow the owner to prove that he is not liable for the risk or the harm in question, it can be defined as 'aggravated objective liability' (Güneş, 2015: 312).

With respect to liability, in addition to the Civil Code, it is necessary to examine the provisions under the Obligations Code (No. 6098). There are four main articles which can be applied with regard to the liability of the parties causing environmental destruction or polluting the environment under this Code.

Of those, Article 49, Obligations Code on liability for tortious acts, states that: "Any person who causes damage to another person, committing a tortious and unlawful act, is obliged to repair that damage."

Article 66, on the other hand, regulates the liability of the employer for the damage caused by the employee. It puts forward that:

> The employer is obliged to repair the damage caused to others by his employee in the performance of the work assigned to him.
>
> The employer is not held liable if he proves that in the selection, instruction and supervision of that employee he took all due care to prevent the emergence of the damage.
>
> Unless the employer in an enterprise proves that the organisation of such enterprise is sufficient to prevent the emergence of the damage, he is obliged to repair the damage caused by that enterprise's activities.
>
> The employer has the right of recourse against the employee who caused the damage for the compensation paid to the extent that he is liable in person.

Article 69 is related to the liability of the owner of a construction, and it sets out that:

> The owner of a building or any other construction is obliged to repair the damage caused by defects in their construction and failures in their maintenance.
>
> The usufructuary and the holder of the right of residence are also severally liable together with the owner for the damage caused by failures in the building's maintenance.
>
> The liable persons' right of recourse against persons liable to them for these reasons is reserved.

Finally, Article 71 on risk liability and equalization can also be claimed to with environmental liability, when an enterprise causes environmental pollution, degradation or destruction.

> Where damage results from the activity of an enterprise posing considerable risk, the owner of such enterprise and, if there is one, the business administrator are severally liable for such damage.
>
> Having taken into account its nature or material, means or powers used in the activity, if it is deduced that an enterprise is likely to cause frequent or serious damage, even when all due care expected from a specialist in such activities is exercised, such enterprise is accepted to be an enterprise posing considerable risk. In particular,
>
> If a specific risk liability is provided in any other law for enterprises posing similar risks, such enterprise is also considered as an enterprise posing considerable risk.
>
> Special liability provisions provided for a specific risk situation are reserved.
>
> Even if such activity of an enterprise posing considerable risk is allowed by the legal order, injured parties can claim equalization of the damage caused by the activity of such enterprise as due compensation.

Even if there are provisions related (indirectly) to the environmental liability in both Civil and Obligations Codes, the basic regulation on environmental liability is involved in the Article 28, Environment Act (No. 2872). Indeed, according to Article 28(1, 2), Environment Act:

> Parties polluting the environment and parties causing environmental destruction will be held responsible for pollution and degradation regardless of the existence of any fault.
>
> The indemnity liability of the polluting party under general provisions due to the damage incurred is also reserved.
>
> The claims for compensation for the damage caused to the environment lapse five years after the date on which the injured party and the one liable for compensation learnt of the damage.

That is, the Act also adopts 'objective liability' which does not seek any fault when pollution or degradation of the environment has occurred. Allowing the application of general provision on indemnity liability, it also provides the option to rely on 'the principle of competition of the liabilities' (Art. 28(2)) (Güneş, 2015: 337). In other words, the owner can also be held liable under other liability rules; this provision is not an obstacle to applying other rules or to holding the owner liable under those rules.

Thus, in line with the second paragraph, the person who suffers from the risk or harm caused by the owner can apply for compensation based on different provisions, such as the provisions of the Civil Code (Article 730-737), the Obligations Code (Articles 49, 66, 69, 71) demonstrated above, and some other related acts, such as the Biosafety Act No. 5977 (Article 14 regarding the liability on genetically modified organisms), and the Turkish Petrol Act No. 6491 (Article 22(4) related to the liability – absolute or objective – of the owner of the petrol rights stemming from damage occurring on the related land due to his or her operations) (Güneş, 2015: 340; Turgut, 2012: 301).

3.3 Turkish Environmental Law: In the Context of Public Law

Under Turkish environmental law, environmental issues are primarily regulated under public law, through the legal provisions adopted within constitutional law, international law, criminal law and, remarkably, administrative law.

3.3.1 Under Constitutional Law

In the Turkish legal system, the first time that protection of the environment was directly regulated under the constitution was in the 1982 Constitution.

It was not even mentioned in the earlier Constitutions of 1924 and 1961. Nevertheless, in a very broad interpretation, Article 49 (para. 1) of the 1961 Constitution is regarded as the basis of environmental protection and development in Turkey. This Article states that: "It is the responsibility of the state to ensure that everyone leads a healthy life both physically and mentally…" That is, this Article implies that the protection and improvement of the environment need to be taken into account as part of a healthy life.

Building on this, the Constitution of 1982 (Art. 56(1)) states: "Everyone has the right to live in a healthy and balanced environment." Thus, the 1982 Constitution indirectly refers to the right of environment as a human right entitling citizens to live in a healthy environment (under Art. 3(e), Environmental Act, through the 2006 amendment, the right of environment is mentioned directly via the right of participation). It is regulated under the title 'Health services and protection of the environment (Part 2: Fundamental Rights and Duties, Chapter 3: Social and Economic Rights and Duties, section VIII. Health, the environment and housing)', and therefore comes under social rights as a human right accepted as one of the third generation rights (Güneş, 2015: 161), (for the debate on the status of the right of environment see Turgut, 2012: 85–87). Additionally, the same article points out that: "It is the duty of the State and the citizens to improve the environment, to protect the environmental health and to prevent environmental pollution" (para. 2).

It thus stipulates that it is the common duty of both the State (hence all its public institutions and organizations) and the citizens to provide appropriate conditions for the protection and development of the environment (see also Art. 3(a), Environment Act).

Subsequent paragraphs also elaborate how the State can function in this task in practice, but rather than environmental protection it stresses health protection via these paragraphs:

> The State shall regulate central planning and functioning of the health services to ensure that everyone leads a healthy life physically and mentally, and provide cooperation by saving and increasing productivity in human and material resources (para. 3)

> The State shall fulfil this task by utilizing and supervising health and social assistance institutions, in both the public and private sectors. In order to establish widespread health services, general health insurance may be introduced by law (para. 4).

Several articles also touch upon the duties of the State regarding environmental protection and its different aspects. To illustrate, the State is held responsible for taking the measures required to benefit from the sea coasts, lake shores, river banks, the coastal strip along the sea and lakes (Art. 43); to maintain and promote efficient land cultivation and prevent its loss through erosion (Art. 44); to prevent improper use and destruction of agricultural land, meadows and pastures (Art. 45); to provide housing, for which plans are prepared on the basis of the characteristics of cities and also environmental conditions (Art. 57); to protect the historical, cultural and natural assets and wealth (Art. 63); to preserve, improve and manage forest areas and their integrity (Art. 169); and also to improve their inhabitants' living conditions and cooperation between these inhabitants and the State (Art. 170).

That is, the 1982 Constitution encompasses various provisions on the duties of the State regarding environmental protection, and hence provisions directly or indirectly related to the protection and development of the environment. However, with regard to these duties of the State, the Constitution also brings a very important exception to performing them. Indeed, Article 65 frankly puts forward that: "The State shall fulfil its duties …*within the capacity of its financial resources, taking into consideration the priorities appropriate with the aims of these duties*" [emphasis added].

According to this article, the State may therefore decide to fulfil the social and economic duties assigned to it by the Constitution on the basis of the priorities in line with its aims. More importantly, it may conduct them within the limits of its financial resources, i.e. it is not obliged to fulfil them if its financial capacity to do so is inadequate.

3.3.2 Under International Environmental Law

International Environmental Law (IEL) provides appropriate legal frameworks on environmental issues and thus promotes cooperation and coherent action among different parties at different levels, global, regional and national.

It is a young field particularly developed with the aid of the United Nations (UN) through the organization of global conferences like the United Nations Conference on Sustainable Development (Rio+20), held in Rio de Janeiro in 2012. Other factors which have helped to increase public attention on environmental problems at international level since the late 1960s include the establishment of numerous institutions, specialized agencies and semi-autonomous bodies like the United Nations Environment Programme (UNEP), and the environmental treaties adopted as a consequence of the UN's efforts, like the ones on Biodiversity, Climate Change and Desertification, which derive directly from the 1992 Rio Conference.

Turkey is actively involved in many global and regional initiatives and various organizations particularly affiliated to the UN and the EU, as well as numerous others.

As IEL is a subset of international law, its sources include treaties (Art. 2.1(a), VCLT), custom, general principles, judicial decisions[3] and juristic writings (Art. 38, ICJ Statute). Of those, treaties require further attention under IEL, because environmental treaties form an important part of it.

In order to identify the status of international environmental treaties under Turkish Environmental Law, it is essential to refer to the last paragraph of Article 90, 1982 Constitution, which states: "International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional."

That means that international environmental treaties duly put into effect have the force of law under the hierarchy of norms, and so become part of domestic law.

The same paragraph also states that: "In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail."

So, if the environmental treaty involves fundamental rights and freedoms – even though the right of environment is not directly incorporated into many international environmental treaties, the ones involving provisions on the protection and development of the environment can be broadly interpreted as being indirectly related to the right of environment (Güneş, 2015: 365) – its provisions take precedence over domestic laws consisting of different provisions on the same matter.

In brief, then, Turkey's attitude towards international environmental treaties affects its domestic law as well. Its choice to accede to the treaty has a direct influence on domestic law.

Turkey has become party to nearly all key treaties which address different environmental problems. It signed the Paris Agreement on 22 April 2016 following the Paris Climate Conference (COP-21) in December 2015,[4] and became a party to the United Nations Framework Convention on Climate Change (UNFCCC) on 24 May 2004 and to the Kyoto Protocol on 26 August 2009. Even though it has not been included in the Annex B Countries of the Protocol because of its special circumstances and is therefore not obliged to reduce emissions during the first commitment period (2008–2012), through the Paris Agreement it has promised to decrease its

[3]The International Court of Justice (ICJ) has considered relatively few cases with environmental aspects, but, for the first time, reached a decision on an issue particularly relevant to environmental problems in the Gabcikovo-Nagymaros Dams Case (1997). Even though, contrary to expectations, it failed to determine what the concepts and principles of environmental law are, and there is no applicable treaty provision on this issue, it assessed the principle of sustainable development as a general principle of international law (IL).

[4]For the list of signatories and parties of the Paris Climate Agreement see at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&lang=en.

greenhouse gas emission levels to contribute to the goal of the Agreement to limit global warming to well below 2 °C. As a first step, on 30 September 2015 it submitted its Intended National Determined Contribution (INDC), with a greenhouse gas reduction target (including land use, land use change and forestry (LULUCF)) of up to 21% below business as usual (BAU) by 2030.

However, there are also treaties to which Turkey is not yet party, such as the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), and the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo EIA Convention), which are very important in Turkey's EU accession process. This is because, while the Espoo (EIA) Convention sets out the parties' obligations on EIAs and on notifications regarding projects that are likely to have an adverse environmental impact across boundaries, the Aarhus Convention provides the public with the right to access environmental information (Art. 4-5), participate in environmental decision-making (Art. 6-8), and access justice in environmental matters (Art. 9). So, they are both key conventions on the protection of environment. Therefore, Turkey should align with the related *acquis* of both conventions.

3.3.3 Under Criminal Law

The regulations regarding environmental matters under Turkish Criminal Law can be analysed in two periods:

1. Regulations by 2005: Adoption of specific provisions regarding environmental issues under both the Criminal Code (No. 5237) and the Misdemeanour Act (No. 5326).
2. Regulations before 2005: Provisions under the Criminal Code (No. 765), which indirectly assists in the protection of the environment, e.g. Art. 369 on the crime of setting fire to cereal crops, which is regulated under the section on crimes which cause great danger through fire, flood and water overflow, and so on; Art. 394 on the crime of causing a public health risk by adding poison to public drinking water or to other food and drink intended for human consumption under the section regarding the public health, food and drink crimes. In the third book on Misdemeanours, there are also three related articles: Art. 526, Art. 566, Art. 577.

Of those, Art. 526 is about non-compliance with the authorities' orders and instructions. According to the article, anyone can be punished who does not comply with an order given through due judicial processes, or by the authorities for the purpose of protecting public security and public order or public health, or who does not comply with the measures taken by the authorities in this manner. This article is thus indirectly related to the protection of environment.

Article 566 deals with misdemeanours which expose the public to the risk of danger. According to this article, even if an act results from carelessness or lack of experience, it incurs a penalty if it places any person at risk of damage or could cause significant loss to property.

The final provision, Article 577, regulates the penalty for animal abuse. As with the previous provisions, it provides indirect regulation for the protection of the environment.

In this period, it is also possible to find some criminal provisions indirectly related to the protection of the environment in some other regulations, e.g. the Environment Act (No. 2372, Art. 26, predating the 2006 amendment); the Forest Act (No. 6831 from Art. 91 onwards); the Water Products Act (No. 1380, Art. 36); the Land Hunting Act (No. 3167, Art. 21); the Harbour Act (No. 618, Art. 15); the General Sanitation Act (No. 1593, Art. 282); the Protection of Cultural and Natural Property Act (No. 2863; Art. 65) (Güneş, 2015: 273).

In line with the EU accession and harmonization process, EU Decision 2003/80 led to two important developments regarding the protection of the environment under Turkish criminal law:

1. The adoption of a specific category for environmental crimes through the 2005 amendment. The date of the Code's entering into force is taken as the baseline (Art. 344, Criminal Code) of the Criminal Code (No. 5237), under the third chapter: crimes against the community, second section: crimes against the environment.
2. The adoption of a Misdemeanour Act (No. 5326) in 2005; again, the date of the Act's entering into force is taken as the baseline (Art. 44, Misdemeanours Act), containing specific provisions and sanctions on environmental issues under Articles 36(1), 41(1-6), and 42.

Among those, with respect to the adoption of a specific category for environmental crimes under the Criminal Code (No. 5237), it should be first of all underlined that the Code not only involves a specific category for environmental crimes, but also incorporates the protection of the environment among its objectives, stating: "The objective of the Criminal Code is to protect the individual rights and freedom, public order and security, rule of law, public health and *environment*, and social peace, as well as to prevent the committing of crimes" [emphasis added].

Environmental crimes and the penalties envisaged for them are set out in the Code, in Articles 181, 182, 183 (where the protection of the environment is handled in a direct manner) and 184 (where it is handled in an indirect manner). The environmental crimes included through the 2006 amendment to the Code fall into just two categories: pollution of the environment (Articles 181, 182, 184) and causing noise (Art. 183).[5]

[5]For detailed information on environmental crimes in the context of the Turkish Criminal Code, see also Yılmaz (2013: 110–288) and Uğurlubay-Aygörmez (2015: 385–453, 454–463, 470–477, 500–537).

Under Article 181, if a person deliberately discharges leftovers or waste into the ground, water or air, contrary to the technical procedure determined in the relevant laws and in such a way as to cause environmental damage, he or she is liable to be punished by imprisonment of between six months and two years. Smuggling leftovers or waste into the country is punished by imprisonment of between one and three years. In its third and fourth paragraphs, the aggravating grounds concerning the crime are also identified in detail. According to them, the term of imprisonment is increased if such waste causes permanent adverse effects on the soil, water or air, serious illness in human beings or animals, reduces the reproductivity of living beings, or changes the natural characteristics of flora and fauna. The final paragraph indicates that, due to the acts mentioned in the first and second paragraphs of the article, special security precautions are applied to legal entities in line with Article 20, Criminal Code, involving the principle of the individuality of criminal liability and stressing that no punitive sanctions may be imposed on the legal entities, except sanctions in the form of security precautions stipulated under the law (see Art. 60, Criminal Code for the details of security precautions for legal entities).

If the person acts negligently when committing the acts mentioned in the first paragraph, he or she is punished by a judicial fine, unless the leftovers or waste indelibly affect the ground, water or air. If they have an indelible effect, he or she is punished by imprisonment of two months to one year. If they cause incurable diseases in human beings or animals, or have a detrimental effect on fertility, or change the natural characteristics of animals and plants, the term of imprisonment is increased to one to five years.

Under Article 184, crimes resulting from pollution caused by construction are revealed by the penalties specified for these crimes. Accordingly, if a person constructs a building – or lets it be constructed – without obtaining a construction permit or contrary to the permit, he or she can be imprisoned for one to five years.

Allowing electricity, water or phone lines to be installed on premises initiated without a construction permit is also punishable by imprisonment lasting one to five years.

The performance of any kind of industrial activity in buildings which do not have an occupancy permit is also prohibited by the article. Anyone violating it is sentenced to imprisonment of two to five years.

The other environmental crime regulated under the Code is causing noise (Art. 183). In line with the Environment Act (Art. 14), stipulating that it is forbidden to create noise and vibration above the standards specified in the relevant regulations in such a way as to destroy the tranquillity and peace, or the physical and mental health of individuals, anyone causing noise which results in the deterioration of any other person's health is punished with imprisonment lasting two months to two years or with a judicial fine (see also Art. 36, Misdemeanours Act for administrative fines for the crime of causing noise, and the related Circular (2006/10) on administrative fines). In addition, in accordance with the standards set out in the By-Law on the Assessment and Management of Environmental Noise, necessary measures should be taken by the activity holders to minimize the noise and

vibration originating from transportation vehicles, construction sites, company premises, workshops, offices, entertainment places, service buildings and residences.

In addition to those defined under the specific category of environmental crimes, under the Criminal Code (No. 5237) there are some other crimes indirectly related to the conservation of the environment, as in the previous Criminal Code (No. 765). These are regulated under different titles, such as crimes causing general danger (Articles 171-174), endangering public safety deliberately (Art. 170), endangering public safety negligently (Art. 171), scattering radiation (Art. 172), causing explosion by atomic energy (Art. 173), the storage or delivery of hazardous substances without permission (Art. 174); and, under the title of the crimes against public health (Articles 185, 186, 193), adding toxic substances (Art. 185), trade of decayed or transformed food or drugs (Art. 186), and the production and trade of toxic substances (Art. 193).

Besides those regulated under the Criminal Code, two crimes are dealt with under Article 26, Environment Act under the title of judicial penalties. These already existed before the amendment of the Criminal Code, but were slightly altered through the 2006 amendments to the Environment Act.

In Article 26(1) about providing wrong and misleading information contrary to the provisions of Article 12(3-4), Environment Act on the inspection and obligation of notification and providing information, the penalty was increased from six months to one year of imprisonment.

Meanwhile, Article 26(2), on arranging and using wrong and misleading documents, refers to the provisions of the Criminal Code on forgery of a document, which is handled under two separate types of crimes: forgery of an official document (Art. 204) and forgery of a personal document (Art. 207).

In addition to the regulation of environmental violations via the Criminal Code, there is also provision to impose the administrative sanctions set out in the Misdemeanours Act and the Environment Act. This suggests that under Turkish Criminal Law it is possible to commit environmental misdemeanours (not just environmental crimes). Misdemeanours are offences which are regarded by the law as less serious than felonies but which nevertheless have a negative impact on others or the environment. The law responds to environmental misdemeanours by imposing administrative sanctions (Art. 2, Misdemeanours Act).

Whereas the book on Misdemeanors under the Criminal Code (No. 765) includes three provisions which are indirectly related to the protection of the environment (the previously outlined Arts. 526, 566 and 577), the Misdemeanours Act of 2005 contains provisions which are directly related to environmental matters, such as Art. 36(1) on causing noise and Art. 41 (1-6) on pollution of the environment.

This Act not only involves specific provisions on environmental misdemeanours, but also includes the protection of the environment among its objectives, e.g. the Criminal Code (No. 5237) (Art. 1, Misdemeanours Act).

The Environment Act (Art. 20) also addresses misdemeanours related to the environment. Even though the term ‘misdemeanour’ is not used in the Environment Act, when administrative sanctions are identified as the applicable response to

violations, such violations can be defined as environmental misdemeanours rather than crimes, in accordance with the definition of 'misdemeanour' in Art. 2, Misdemeanours Act (Güneş, 2015: 299).

3.3.4 Under Administrative Law

Before becoming an independent branch of law, environmental law was regarded as a sub-branch of administrative law. Even after becoming an independent branch, it has continued to maintain strong links with administrative law, as the rules and tools of administrative law still influence the way it operates (Güneş, 2015: 215; Turgut, 2012: 67). Hence, the functions related to environmental issues, such as legislation, implementation and enforcement of the legislation, administration and also adjudication, are carried out by the relevant state institutions and agencies which are authorized in these fields.

Therefore, under Turkish Environmental Law, the State has been the key actor in adopting the necessary regulations and institutions for the protection and improvement of the environment, in line with Article 56(2) of the 1982 Constitution. Indeed, Art. 56 specifically imposes the duty of improving the natural environment, protecting environmental health and preventing environmental pollution on the State and its citizens.

Because the interaction between environmental law and administrative law is so wide-ranging and comprehensive, for the sake of clarity the regulation of environmental issues under administrative law will be scrutinized under four sub-sections: administrative organization, public services, environmental police and judicial protection.[6]

3.3.4.1 Administrative Organization

Under Turkish Administrative Law, the administrative structure is organized in accordance with the principles of centralized administration and decentralized administration. In practice, the unity and integrity of the centralized and decentralized administrations and also their operation in cooperation with each other can only be regulated by law and must conform to the principle of legality, which requires all law to be clear, ascertainable and non-retrospective (Art. 123, 1982 Constitution).

It is fundamentally composed of central administration and local administration (Art. 126, Art. 127, 1982 Constitution). On the basis of the principle of integrity, the administration forms a whole in terms of its organization and functions. Indeed, to ensure the functioning of local services in conformity with the integrity principle,

[6]For further details see also Güneş (2015: 103–138, 215–258).

the central administration has the power of administrative tutelage over the local administrations, in compliance with the principles and procedures set forth by law (Art. 127(5), 1982 Constitution).

3.3.4.2 Central Administration

The central administration comprises several provinces designated on the basis of geographical situation, economic conditions and public service requirements. The provinces are further divided into lower levels of administrative districts (Art. 126, 1982 Constitution).

Under the central administration, public services are conducted in a hierarchy which depends on the Presidency and the ministries headed by a member of the government or Minister. In the provinces and other lower levels of administrative districts, official representatives of the government control the local administration on behalf of the government.

With regard to environmental issues, the key authority under the central administration is the Ministry of Environment and Urbanization.

It was established by Decree Law No. 644 on the establishment and duties of the Ministry of Environment and Urbanization in July 2011 as a result of the division of the Ministry of Environment, Forestry and Urbanization into two ministries: the Ministry of Environment and Urbanization (Decree Law No. 644) and the Ministry of Forestry and Water Affairs (Decree Law No. 645 on the establishment and duties of the Ministry of Forestry and Water Affairs).

The merger of two Ministries was designed to increase the administration's efforts to recognize environmental concerns and support environmental management. The other objectives of this new institutional structuring are to provide adequate resources and competence on environmental matters, to accelerate the influence of environmental issues on policy-making, and to ensure the implementation and enforcement of the related norms. However, due to the potential emergence of conflicts of interest between the Ministry's contrasting responsibilities for environmental issues and construction/urbanization, and consequent concerns that environmental considerations will be subordinate to the implementation of major construction and urbanization projects, merging these two different areas of responsibility under the same ministry has been heavily criticized (Güneş, 2015: 225).

The duties of the Ministry listed in Decree No. 644 (Art. 2(1)) indeed display a significant imbalance between those related to housing and those specifically related to the environment. There are eighteen sub-paragraphs under the first paragraph of Article 2. Yet, except for three sub-paragraphs directly related to the protection of the environment (Art. 2, para. 1 (a, b, c, l)), and two indirectly related to it (Art. 2, para. 1 (m-o)), the others are more about the Ministry's role in construction, housing and public works.

Those concerning the protection of the environment are as follows:

- To prepare related legislation on environment, monitoring, implementation and supervision (Art. 2, 1-a),
- To set up policies and principles, develop standards and criteria, and prepare programmes for the conservation of the environment, its improvement and the prevention of environmental pollution. In this context, to achieve education, research, project design, action plans, and pollution maps, to identify their application grounds and to monitor them, to conduct the related activities on climate change (Art. 2, 1-b),
- To conduct activities related to waste management, to assess the environmental impacts of any plant and activity causing or with the potential to cause pollution, to monitor them and to govern noise control (Art. 2, 1-c).
- To determine the plans and policies for taking the necessary precautions to cope with global climate change (Art. 2, 1-l).
- To conduct the preparations made at national level in cooperation with related institutions for monitoring international works concerning the assigned tasks of the Ministry and contributing to them (Art. 2, 1-m).
- To achieve the other tasks assigned by the legislation (Art. 2, 1-o).

Under the provisions of Decree No. 644, the Ministry is empowered as the key actor for protecting and improving the environment, except on matters relating to forestry and water. However, since forests and water are primary elements of the natural environment, excluding these from the Ministry of Environment's remit and leaving them to another Ministry is also considered problematic (Güneş, 2015: 225).

Decree No. 644 also involves detailed provisions regarding the organization of the Ministry, which basically consists of central and local organizations (Art. 3).

With the central organization, headed by the Minister (Art. 4), Under Secretary and Deputies of the Under Secretary (Art. 5), there are eight General Directorates – such as the General Directorate for Environmental Management (Art. 6(b), Art. 8), the General Directorate for Environmental Impact Assessment, Permit and Inspection (Art. 6(c), Art. 9), and the General Directorate for the Protection of Natural Assets (Art. 6(g), Art. 13A), which are the only ones directly related to the protection of environment – and also eight Directorates – such as the Strategy Development Directorate, and the Counselling and Inspection Directorate – which undertake tasks as the service units of the Ministry (Articles 6-25).

In addition to those, the Ministry also has Provincial Directorates of Environment and Urbanization, which function at provincial level as its local organization (Art. 26-28, Decree Law No. 644). The permanent organs, namely the Higher Board for Environment (see also Articles 4-5, Environmental Act and the By-Law on the Working Procedures and Principles of the Higher Board for Environment and Local Environmental Boards), the Local Environmental Boards and the Environment and Urbanization Council, are also worth mentioning here, as they are important bodies which provide effective environmental governance.

Regarding the Higher Board for Environment, the Environment Act (Art. 4) states that citizens, academia, and independent experts should be invited to Board meetings according to the topics and expertise field due to be discussed, and their views and suggestions should be noted before preparation of the meeting's agenda (By-law No. 28727, Art.7).

Apart from the Ministry of Environment and Urbanization and its affiliated bodies, the Ministry of Agriculture and Forestry is foremost among the other organizations which have responsibility for certain elements of environmental issues. Through its sub-bodies, such as the General Directorate of National Parks and Nature Conservation, the General Directorate of Water Management, and the General Directorate of Combating with Desertification and Erosion, it protects the environment in a direct manner (see Articles 2, 7, 8 and 9, Decree Law No. 645).[7]

There are also many other different institutions which have varying roles in the field of the environment. These include the Ministry of Food, Agriculture and Rural Affairs, the Ministry of Energy and Natural Resources, and the Ministry of Development and their affiliated bodies; sectoral bodies, such as the Commissions established for examining Environmental Impact Assessment reports (Art. 4(s), Art. 8-14, By-Law on the Environmental Impact Assessment); advisory bodies, such as the Environment and Urbanization Council (see Art. 27, Decree Law No. 644; By-Law on Environment and Urbanization Council), and the Forestry and Water Council (see Art. 21, Decree Law No. 645; By-Law on Forestry and Water Council); and also local administrations.

3.3.4.3 Local Administrations

Local administrations are established to respond to the common local needs of their inhabitants.

They are public corporate bodies whose establishment principles and decision-making organs elected by the electorate are determined by law. There are three kinds of local administration recognized under the Constitution: provinces, municipalities and villages (Art. 127(1), 1982 Constitution).

Due to the fact that it is not convenient to conduct all public services concerning environmental issues via the central administration, and in line with the principle of decentralization, duties and powers regarding the environment are also assigned to the local administrations by relevant laws, such as Municipality Act No. 5393 (see Art. 14-15), Metropolitan Municipality Act No. 5216 (Art. 7i), Special Provincial Administration Act No. 5302 (Art. 6-7),[8] and Village Act No. 442 (Art. 13-14).

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[7]It was established when the regulations regarding the organization and duties of the Ministry of Food, Agriculture and Livestock and the Ministry of Forestry and Water Affairs were abolished (Decree Law No. 703, Articles 27-28; Presidential Decree No. 1, Articles 410-440).

[8]Through Act No. 6360, special provincial administrations were abolished, and the borders of the Metropolitan Municipalities were regulated as the territorial borders of the provinces.

3.3.5 Public Services

Under the 1982 Constitution (Art. 56), the responsibility for improving the environment, protecting environmental health and preventing environmental pollution is assigned mainly to the State (and citizens). Indeed, the State (together with all its public institutions and organizations) is required to provide the appropriate conditions for the protection and development of the environment. The Environment Act (Art. 3) and also Decree Law No. 644 on the establishment and duties of the Environment and Urbanization Ministry both acknowledge this situation (Art. 3).

The services provided by the State and its associated bodies to protect the environment in consequence of public interest are thus defined as a type of public service under the category of administrative public services.

Under the 1982 Constitution (Art. 128), the fundamental and permanent functions of public services are carried out by public servants and other public employees. However, through some contractual assignment procedures, private institutions and individuals can also be assigned to perform public services.[9]

3.3.5.1 Environmental Police

Environmental police are entrusted with ensuring and maintaining environmental public order. They are defined as a type of private administrative police.

In Turkey, at both general and private levels, different institutions have police powers in the protection of the environment.

At general administrative police level, in the context of central administration, the Council of Ministers, the Minister of Internal Affairs, the province governors and district governors all have different rights – recognized by diverse acts and by-laws – related to the usage of police authority. In the context of local administration, it is again possible to find out similar competences granted to the local administrations by various acts and by-laws. The decisions taken by the authorities of the general administrative police are applied in practice by police, gendarmes, municipal police, village guards, and the relevant staff of the governorship.

At private administrative police level, the Minister of the Environment and Urbanization performs as the head of the police headquarters, and related activities are conducted by the staff of the Ministry or the staff of the general administrative police.

In some circumstances, the Ministry can transfer its powers – e.g. on inspection or making decisions involving administrative sanctions – to another institution (see Art. 12, Art. 24, Environment Act). In addition to its own staff, the Ministry can also benefit from the input of environmental officials or environmental volunteers (added Article 2 and 3, Environment Act) (Güneş, 2015: 248–249).

[9]For details of these procedures see Gözler/Kaplan (2014: 227–243).

3.3.5.2 Judicial Protection

According to Article 125(1), 1982 Constitution, recourse to judicial review is available against all acts and actions of administration. In practice, this provision means that all acts and actions, in individual or regulatory form, performed by administrative bodies, such as central or local administrations, public corporate bodies, autonomous administrative organs, or public professional organizations, but also those carried out by judicial and legislative organs in their administrative capacity, can be subject to judicial review.

When challenging one of those acts or actions before the court, two types of cases are recognized under administrative law (Art. 2.1(a–b)), Procedure of Administrative Justice Act):

1. Action for annulment, requiring the violation of the interest by the act in question and the claim that the act is illegal because one of the following: competence, form, reason, subject or aim.
2. Full remedy actions, requiring the violation of the individual rights directly by the administrative acts or actions.

In accordance with these provisions, to bring an action for annulment against an administrative act is subject to the existence of the violation of the interest. For full remedy action, there should be a direct violation of the individual rights by the act/action in question, and damage occurring from this violation that needs to be compensated.

On the other hand, under Article 30(1), Environment Act, 'everybody' who is confronted with damage due to any activity causing environmental pollution or degradation, or who becomes aware of such activities, can demand measures to be taken or the cessation of that activity.

When the provisions of the above-mentioned Procedure of Administrative Justice Act and the Environment Act are addressed together, it can be argued that environmental cases should be evaluated as *action popularis*, and can be brought before the court by 'everybody' without seeking the condition of the violation of an interest or individual rights. However, in practice, under case-law, while it is predominantly accepted that there is no need to seek the violation of an interest in actions for annulment regarding environmental issues, in full remedy actions the violation of individual rights still arises as the condition for taking an action before the court.[10]

[10]For more details on the related debate see Güneş (2015: 253–257).

3.4 Conclusion

In this chapter, rather than an elaborate legal analysis of all aspects of these branches of both public and private law, a general assessment with their main features concerning environmental issues was made.

The main points which can be inferred from this assessment are as follows:

- The first time that the protection of the environment was directly regulated under the constitution was in the 1982 Constitution.
- The right of environment is indirectly referred to in the 1982 Constitution as a human right granting people the right to live in a healthy environment; and it is directly referred to through the right of participation in the 2006 amendment to the Environmental Act (Art. 3(e)).
- Turkey is actively included in most of the legal frameworks and institutions on environmental issues, particularly those affiliated to the UN and the EU, provided by international environmental law (IEL).
- Turkey's decision to accede to an environmental treaty can have a direct impact on its domestic law if that environmental treaty involves fundamental rights and freedoms. Even when the right of environment is not directly stated, if the treaty involves provisions on the protection and development of the environment, it can be broadly evaluated as indirectly related to the right of environment. In this case, under Art. 90(5), 1982 Constitution, the treaty's provisions prevail over Turkey's domestic laws if they differ on the same matter.
- With respect to the regulations regarding environmental matters under Turkish Criminal Law, criminal provisions under the Criminal Code (No. 765) indirectly assisted in the protection of the environment before 2005. However, by 2005, environmental protection had advanced through the adoption of specific provisions regarding environmental issues under both the Criminal Code (No. 5237) and the Misdemeanour Act (No. 5326).
- The State and its affiliated organizations are the key actors in the adoption of the necessary regulations and institutions for the protection and improvement of the environment and in their implementation, enforcement, administration and adjudication. Consequently, environmental law and administrative law interact in many fields.
- With regard to environmental matters, it is only possible to have recourse to private law through the provisions on the rights of neighbours and the rules on legal liability.

In short, protection of the environment under Turkish Environmental Law is predominantly regulated under public law, significantly by administrative law. Even though remarkable progress has been made, particularly through the impact of the EU accession process in recent years, environmental protection still needs to be further developed not only in terms of legislation but also implementation, compliance and enforcement. More importantly, further academic studies with more detailed legal analyses are required. These academic works should be made by each

branch to demonstrate the achievements, shortcomings and future prospects of each branch regarding environmental issues. They should also be supported by studies on the practical side of the subject, that is, on the fields of compliance, implementation, enforcement[11] and case-law, and further enhanced through comparative analyses of the different legal systems of different countries.

References

Gözler, Kemal; Kaplan, Gürsel (2014). *İdare Hukukuna Giriş* [*Introduction to Administrative Law*] (Bursa: Ekin Bookstore Publications).

Güneş, Ahmet M. (2015). *Çevre Hukuku* [*Environmental Law*] (Istanbul: On İki Levha Yayıncılık).

Turgut Yılmaz, Nükhet (2012). *Çevre Politikası ve Hukuku* [*Environmental Law and Politics*] (Ankara: İmaj Yayıncılık).

Uğurlubay-Aygörmez, Gülsün Ayhan (2015). *Çevreye Karşı Suçlar, Türk ve Alman Çevre Hukukunda Güncel Sorunlar* [*Crimes Against Environment, Current Problems in Turkish and German Environmental Law*] (Ankara: Yetkin Yayınları).

Yılmaz, Sacit (2013). *Çevre Hukuku Bağlamında Türk Ceza Kanunundaki Çevre Suçları* [*Environmental Crimes in the Turkish Penal Code in the Context of Environmental Law*] (Ankara: Adalet).

Other Materials

Act on the Amendment of the Environment (No. 5491). *Official Journal* (OJ) (26 April 2006, at: http://www.resmigazete.gov.tr/eskiler/2006/05/20060513-1.htm (retrieved 13 May 2016).

Act (No. 6360), in: OJ (6 December 2012), No. 28489, at: http://www.resmigazete.gov.tr/eskiler/2012/12/20121206-1.htm (retrieved 13 May 2016).

Act (No. 7153). OJ (10 November 2018), No. 30621, at: http://www.resmigazete.gov.tr/eskiler/2018/12/20181210-4.htm (retrieved 15 January 2019).

Biosafety Act (No. 5977), in: OJ (26 March 2010), No. 27533, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5977.pdf (retrieved 10 May 2016).

By-Law on the Assessment and Management of Environmental Noise, in: OJ (4 June 2010), No. 27601, at: https://www.resmigazete.gov.tr/eskiler/2010/06/20100604-5.htm (retrieved 9 December 2019).

By-Law on the Working Procedures and Principles of the Higher Board for Environment and Local Environmental Boards, in: OJ (3 August 2013), No. 28727, at: http://www.resmigazete.gov.tr/eskiler/2013/08/20130803-2.htm (retrieved 10 May 2016).

By-Law on the Environmental Impact Assessment, in: OJ (25 November 2014), No. 29186, at: https://resmigazete.gov.tr/eskiler/2014/11/20141125-1.htm (retrieved 9 December 2019).

By-Law on Environment and Urbanization Council, in: OJ (20 October 2011), No. 28090, at: http://www.resmigazete.gov.tr/eskiler/2011/10/20111020-7.htm (retrieved 10 May 2016).

By-Law on Forestry and Water Council, in: OJ (31 March 2012), No. 28250, at: https://resmigazete.gov.tr/eskiler/2012/03/20120331-3.htm (retrieved 9 December 2019).

[11]See *infra* Chap. 6 on 'Environmental Compliance Mechanism: Turkey's Case' for an analysis of the current structure of Turkey's compliance, implementation and enforcement mechanisms.

Circular on Administrative Fines (2006/10), at: http://www.resmigazete.gov.tr/eskiler/2006/06/20060607-13.htm (retrieved 10 May 2016).
Civil Code (No. 4721), in: OJ (8 December 2001), No. 24607, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.4721.pdf (retrieved 10 May 2016).
Convention on Environmental Impact Assessment in a Transboundary Context (Espoo EIA Convention) (1991), at: http://www.unece.org/env/eia/about/eia_text.html (retrieved 11 May 2016).
Criminal Code (No. 5237), in: OJ (12 October 2004), No. 25611, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5237.pdf (retrieved 10 May 2016).
Criminal Code (No. 765), in: OJ (13 March 1926), No. 320, at: http://www.ceza-bb.adalet.gov.tr/mevzuat/765.htm (retrieved 10 May 2016).
Decree Law (No. 645) on the establishment and duties of the Ministry of Forestry and Water Affairs, in: OJ (4 July 2011), No. 27984, at: http://www.resmigazete.gov.tr/eskiler/2011/07/20110704M1-2.htm (retrieved 7 May 2016).
Decree Law (No. 644) on the establishment and duties of the Ministry of Environment and Urbanization, in: OJ (4 July 2011), No. 27984, at: http://www.resmigazete.gov.tr/eskiler/2011/07/20110704M1-1.htm (retrieved 9 May 2016).
Decree Law (No. 703) on the Changes in Some Acts and Decree Laws for the Purpose of Adaptation to the Changes in the Constitution, in: OJ (9 July 2018), No. 30473, at: http://www.resmigazete.gov.tr/eskiler/2018/07/20180709M3.pdf (retrieved 21 January 2019).
EU Decision 2003/80, Council Framework Decision 2003/80/JHA of 27 January 2003 on the Protection of the Environment Through Criminal Law, in: OJ 29 (5 February 2003): 55–58, at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003F0080&from=EN (retrieved 15 December 2019).
Forest Act (No. 6831), in: OJ (8 September 1956), No. 940, at: http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=1.3.6831&MevzuatIliski=0&sourceXmlSearch= (retrieved 10 May 2016).
Gabcikovo-Nagymaros Dams Case (1997), at: https://www.icj-cij.org/en/case/92 (retrieved 15 December 2019).
General Sanitation Act (No. 1593), in: OJ (6 May 1930), No. 1489, at: http://www.resmigazete.gov.tr/arsiv/1489.pdf (retrieved 10 May 2016).
Harbour Act (No. 618), in: OJ (20 April 1941), No. 95, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.3.618.pdf (retrieved 19 May 2016).
ICJ Statute (1920), at: https://www.icj-cij.org/en/statute (retrieved 15 December 2019).
Land Hunting Act (No. 3167), in: OJ (3 May 1937), No. 3603, at: http://www.resmigazete.gov.tr/arsiv/3603.pdf (retrieved 10 May 2016).
Metropolitan Municipality Act (No. 5216), in: OJ (23 July 2004), No. 25531, at: http://www.resmigazete.gov.tr/eskiler/2004/07/20040723.htm (retrieved 10 May 2016).
Misdemeanour Act (No. 5326), in: OJ (31 March 2005), No. 25772, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5326.pdf (retrieved 14 May 2016).
Municipality Act (No. 5393), in: OJ (13 July 2005), No. 25784, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5393.pdf (retrieved 11 May 2016).
Obligations Code (No. 6098), in: OJ (4 February 2011), No. 27386, at: http://www.resmigazete.gov.tr/eskiler/2011/02/20110204-1.htm (retrieved 17 May 2016).
Presidential Decree (No. 1), in: OJ (10 July 2018), No. 30474, at: http://www.mevzuat.gov.tr/MevzuatMetin/19.5.1.pdf (retrieved 13 January 2019).
Procedure of Administrative Justice Act (2577), in: OJ (20 January 1982), No. 17580, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2577.pdf (retrieved 10 May 2016).
Protection of Cultural and Natural Property Act (No. 2863), in: OJ (23 July 1983), No. 18113, at: http://www.resmigazete.gov.tr/arsiv/18113.pdf (retrieved 11 May 2016).
Special Provincial Administration Act (No. 5302), in: OJ (4 March 2005), No. 25745, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5302-20131010.pdf (retrieved 10 May 2016).
Turkish Constitution (1982), at: https://www.tbmm.gov.tr/anayasa/anayasa82.htm (retrieved 10 May 2016).

Turkish Constitution (1961), at: https://www.tbmm.gov.tr/anayasa/anayasa61.htm (retrieved 10 May 2016).
Turkish Constitution (1924), at: https://www.tbmm.gov.tr/anayasa/anayasa24.htm (retrieved 10 May 2016).
Turkish Environment Act (No. 2872), in: OJ (11 August 1983), No. 18132, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2872.pdf (retrieved 17 May 2016).
Turkish Petrol Act No. 6491, in: OJ (11 August 2013), No. 28674, at: http://www.resmigazete.gov.tr/eskiler/2013/06/20130611-5.htm (retrieved 10 May 2016).
United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) (1998), at: http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf (retrieved 11 May 2016).
Vienna Convention on the Law of Treaties (VCLT) (1969), at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (retrieved 15 December 2019).
Village Act (No. 442), in: OJ (7 April 1924), No. 68, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.3.442.pdf (retrieved 10 May 2016).
Water Products Act (No. 1380), in: OJ (4 April 1971), No. 13799, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.1380.pdf (retrieved 10 May 2016).

Chapter 4
Environmental Administration in Turkey

Süheyla Suzan Gökalp Alıca

Abstract Institutionalization efforts that started in 1978 in Turkey have been going on for approximately forty years. Within this process, the budget, staff and authorities of environmental public administration were left weak. It failed to show the expected performance in any period and could not function effectively. Since the initial period when the environmental organization was established as an Undersecretariat, its conflict of authority with other public entities and institutions has not ended and it has had to function in coordination with these institutions which had all organized and completed their institutionalization prior to the environmental organization. The managerial problems are not only limited to conflicts and the overlap of authorities, duties and responsibilities. Uncertainty and instability in environmental organization prevent the development of an effective environmental administration system. Currently, the reorganization of environmental administration is still ongoing. Institutionalization is a significant problem in Turkey, and improving environmental protection is not possible without solving this problem.

Keywords Environmental administration · Conflict of authority · Institutional structure and restructuring

4.1 Introduction

Since the late 1960s, many national and international documents have expressed the urgent need to protect the environment. Legal arrangements designed to settle environmental problems were formalized with the adoption of the 1982 Constitution and the Environmental Law (No. 2872). The scope of environmental legislation has been greatly extended over the past ten years. The EU accession process gave Turkey some responsibility for introducing a series of fundamental reforms. One of the prerequisites of membership of the Union is the approximation

Dr. Süheyla Suzan Gökalp Alıca, Associate Professor of Environmental Law, Ankara Hacı Bayram Veli University, Law Faculty, Ankara, Turkey. e-mail: salica2015@gmail.com.

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of national law and EU law contained in the *acquis communautaire*. The approximation process of the environmental sector covers not only transposition of all related legislation and enforcement but also the reorganization of the institutional structure.

Turkey began taking an interest in environmental concerns during the 1970s. In 1978, the Prime Ministry Undersecretariat of the Environment was established. It was responsible for the coordination of all national and international activities concerning the environment. The Undersecretariat was the institution expected to set environmental policies, to coordinate and prepare regulations, and to cooperate with other ministries. The Undersecretariat of the Environment was replaced by the Ministry of Environment in 1991. This new structure caused diversification in the Ministry's responsibilities and an expansion of its staff, and endowed the administration with the authority to implement and enforce policies for the protection and conservation of the environment. The institutional structure continued to change and in 2003 the Ministry of Environment and Forestry was founded. This institution harmonised many European Union directives on the environment and was divided into two different ministries in 2011: the Ministry of Environment and Urbanization, and the Ministry of Forestry and Water Affairs.

The conflict of authority over environmental matters has been ongoing between the two ministries. This institutional restructuring was still on the agenda at the time of the mid-term evaluation, and thus there is still a fundamental authorised institution. The establishment of all these organizations was made by Decree-Law. In accordance with the new constitutional changes, the Decree-Law will not be enacted as of 2018. Turkey has a new government model and presidential system. This new Presidential Government System has also affected environmental administration.

4.2 Turkish Environmental Legislation

4.2.1 Legal Framework

The reasons for the occurrence of environmental problems, their importance, characteristics, and recommendations to settle them are covered by many scientific areas and disciplines. The law has played an important role in the quest to settle problems related to the environment, which have been among the prominent issues on the World's agenda for the last forty years. Investigating these problems makes it possible to understand the reasons for, objectives, key targets and principles of environmental law. Environmental law covers such issues as protecting and developing the environment, compensating for environmental pollution and damage, and creating resources for all these, together with proposing sanctions.

The 1972 Stockholm Declaration, which is the most important international document providing the necessary basis for legal arrangements on the protection of

the environment, emphasizes the importance of protecting and developing the environment surrounding mankind for the sake of humanity and worldwide economic development. The capacity to change the natural environment might create the opportunity to improve the quality of life for all people; if this capacity is enjoyed wrongly or carelessly, this might cause immeasurable costs and harm to humans and environment.

4.2.1.1 The Turkish Constitution – Right to Environment

The environmental problems in Turkey began with urbanization in the 1970s. After that, the legal framework for issues related to the environment emerged in the form of legal arrangements designed to settle these problems. "Environmental law" started to be recognized as a new and independent branch of law within the legal system on the adoption of the 1982 Constitution and the Environmental Law (Aybay, 1992: 213).

Turkish environmental legislation consists of primarily the 56th Article of the Constitution, which is directly related to the environment, together with other articles indirectly related, Environmental Law No. 2872 and its related by-laws, and other legal arrangements. There is a legal provision regarding Right to Environment in Article 56 of the 1982 Constitution under the heading "Health Services and Protection of Environment", mentioned in the "Social and Economic Rights and Duties" part of the section "Fundamental Rights and Duties" in the Constitution. Article 56 stipulates that "Everyone has the right to live in a healthy and balanced environment. It is the State's and citizens' duty to improve the environment, protect environmental health and prevent environmental pollution. The State shall regulate central planning and functioning of the health services to ensure that everyone leads a healthy life physically and mentally, and provide cooperation by saving and increasing productivity in human and material resources. The State shall fulfill this task by utilizing and supervising the health and social assistance institutions, in both the public and private sectors." The 1982 Constitution regulated the right to health and right to the environment in the same article and became one of the constitutions recognizing the right to the environment on quite a comprehensive basis with Article 56. The right to the environment has been emphasized in many judicial decisions because this relevant provision, which grants the right to make direct claims to the relevant public authority, is directly applicable.

According to the 1982 Constitution, other articles related to the protection of nature are as follows:

- In Article 43 of the Constitution, it is decided that the coasts are under the sovereignty and disposal of the State, and in the utilization of sea coasts, lake shores or riverbanks, and of the coastal strip along the sea and lakes, public interest shall be taken into consideration with priority.
- Article 63 of the Constitution says that the State shall ensure the conservation of historical, cultural and natural assets and wealth, and shall take supportive and

promotive measures towards that end. In parallel with this provision, in Law No. 2863 on the Protection of Cultural and Natural Heritage enacted in 1983, the concepts of cultural heritage, natural heritage and site area are defined, and housing in these areas without permission is forbidden. Mentioned law defines movable and immovable cultural and natural heritages that must be preserved and introduces provisions to arrange operations and effects and to establish an organization that is to take principled decisions and enforce them.
– Article 168 says that natural wealth and resources shall be placed under the control of and put at the disposal of the State, and also says that the right to explore and exploit resources belongs to the State.

4.2.1.2 Environmental Law No. 2872

Environmental Law[1] No. 2872 took effect on 11 August 1983 as a specific law regarding the protection of the environment after the 1982 Constitution, which had specifically regulated the right to the environment. Activities to amend the Environmental Law continued over a period of more than ten years. The Environmental Law, prepared as a blanket statute in order to follow developments closely, left the implementation largely to by-laws and communiqués. The purpose of the Environmental Law can be redefined as follows: "to ensure the preservation of the environment, which is a common asset of all living beings, through sustainable environment and sustainable development principles". The Law outlines Turkey's environmental policy in general terms.

The general principles pertaining to the protection and improvement of the environment and the prevention of the pollution are as follows:

(a) Everybody, but primarily the administration, chambers of commerce and non-governmental organizations, is responsible for protecting the environment and preventing pollution and they are obliged to adhere to the measures taken and principles established on the subject.
(b) In all the activities directed towards the protection of the environment, the prevention of environmental destruction and eliminating pollution, the Ministry and local administrations, chambers of commerce, associations and non-governmental organizations will cooperate if needed.
(c) Authorized agencies which decide on land and resource utilization and conduct project evaluation should observe the sustainable development principle throughout the decision-making process.

[1]The Environmental Law was amended many times via the Law dated 8 June 1984 (No. 222), the Law dated 3 March 1988 (No. 3416), the Decree Law dated 13 March 1990 (No. 409) and the Decree Law dated 9 August 1991 (No. 443).

(d) The benefits of the economic activities to be performed and their effects on natural resources are evaluated on a long-term basis within the framework of the sustainable development principle.
(e) The right of participation in the establishment of environmental policies is essential. The Ministry and the local administrations are obliged to establish an environment of participation which will make it possible for chambers of commerce, associations, non-governmental organizations and citizens to enjoy this right of theirs.
(f) The utilization of environmentally compliant technologies that reduce waste at source and make the recovery of waste possible are essential with the purpose of utilizing natural resources and energy in an efficient manner in all the activities undertaken.
(g) The expenses incurred for preventing, limiting, and eliminating environmental pollution and deterioration and improving the environment shall be paid by the polluter or whoever causes the deterioration. The necessary expenses incurred by public institutions and establishments due to lack of initiative by the polluter in taking the necessary measures to prevent, eliminate or reduce the pollution or the deterioration or in cases where these measures are taken by the competent authorities directly, shall be collected from the polluter in accordance with Law No. 6183 on the Collection of Public Claims.
(h) To uphold the standards for the protection of the environment and the prevention and elimination of environmental pollution, which are mandatory in terms of adherence, a variety of strategies will be used. These include encouraging payment of taxes, fees, and contributions towards the cost of renewable energy sources and clean technologies; reduction in the use of plastic bags and plastic packaging; deposit schemes, emission fees, pollution costs and collateral for pollution prevention; and economic instruments and incentives, such as the collection of emission and pollution charges and mechanisms based on the market value of recyclable waste.
(i) The necessary technical, administrative, financial and legal arrangements for the utilization of the rights and carrying out of the responsibilities which are the results of the international agreements that we are a party to and which are directed towards the resolution of the regional and global environmental problems, shall be realized under the coordination of the Ministry.
(j) The necessary technical, administrative, financial and legal arrangements for the protection of the environment, the prevention of environmental pollution and the solving of environmental issues shall be carried out under the coordination of the Ministry. The subjects within the scope of the Law on Atomic Energy Commission (No. 2690) shall be administered and implemented by the Turkish Atomic Energy Commission.

The Law amending the Environmental Law, which contained regulations for the protection of the environment and the prevention of environmental pollution, was published in the Official Gazette and entered into force in 2018 (Official Gazette, 10 November 2018, No. 30621). According to the new law, mechanisms such as the

protection of the environment, the prevention and elimination of environmental pollution, plastic bags, reduction in the use of plastic packaging, a deposit scheme, and obtaining guarantees for the prevention of pollution are to be used. To prevent environmental pollution, from 1 January 2021 the Ministry of Environment and Urbanization will make the deposit scheme compulsory for packaging. Under the deposit scheme, the points of sale of the packaged products will participate in the deposit collection system. For the efficient management of resources and the prevention of environmental pollution caused by plastic bags, a charge will be made when plastic bags are given to the user or consumer at points of sale. The base fee to be applied will be determined by the commission to be established by the Ministry of Environment and Urbanization. It will not be less than 25 pennies and will be updated each year. An administrative penalty of 20 per cent more than the participation fee will be applied to those who are determined not to pay their share of the contribution: 100 Turkish Liras per tonne to the market before the deposit is applied, and 100 Turkish Liras per tonne will be given to the points of sale. The owners of motor vehicle owners who do not have exhaust gas emission measurements will be fined 250,000 Turkish Liras. If the same vehicle causes emissions that are contrary to the standards set by the regulations, the penalty will be 2,500 Turkish Liras.

4.2.1.3 By-Laws on Environment

By-Laws have been issued on environmental impact assessment, air pollution control, water pollution control, dangerous chemicals and waste control etc. A Supreme Environment Board, chaired by the Prime Minister (now President), has been established, and its main tasks include the formulation of targets, policies and strategies, the definition of legal and administrative measures to include environment aspects in economic decisions, and the resolution of environment-related disputes among the ministries and agencies. Agencies, institutions and enterprises that may damage the environment due to their activities will be obliged to prepare an Environmental Impact Assessment Report. Individuals and companies who wish to be involved in waste transportation and/or collection, except household waste, must obtain a licence from the Ministry. Municipalities are also obliged to set up or organize household solid waste disposal facilities. Procedures and principles for specifying hazardous chemicals, their production, importation, labelling, classification, storing, risk assessment, transportation and exportation will be defined by a separate regulation. Importation of hazardous wastes is prohibited. Penalties for any violation of the law are given in detail.

According to Article 8, “It is prohibited to diffuse, directly and indirectly, all kinds of waste and scraps into a recipient environment, store, transport, avert, or conduct similar activities by violating the standards and methods determined by corresponding regulations and causing damage to the environment.

In cases of potential pollution, the authorities concerned are responsible for preventing the pollution, and in cases of pollution occurrence, the polluting parties are responsible for preventing the pollution, eradicating its impact or taking necessary precautions."

Article 11 is related to "Permits, treatment and disposal liabilities". Ports, shipyards, shipwrights, ship-breakers, and coastal facilities such as marinas are obliged to hold valid permits and to make or to have made for all their related activities Ministry-approved facilities for the storage, transportation and disposal of their own waste, including oil, dirty ballast, sludge, slop waste water, solid and liquid waste, and oily water.

The liability of polluters who cause environmental damage (Article 28) is related to "Responsibility without taking into consideration whether fault exists". Article 28 of the Environmental Law underlines a polluter's responsibility according to the general provisions. These general provisions appear in the Turkish Code of Obligations, which states that any person who unjustly harms another person deliberately and intentionally or through negligence should compensate for the damage that he or she caused.

The right to obtain information and make applications to the authorities is regulated in Article 30. Everyone who is harmed by an activity that pollutes or disturbs the environment or anyone who is informed of such an activity can apply to the concerned authorities and ask for necessary measures to be taken or for the activities to be stopped.

Everybody has the right to access information pertaining to the environment within the scope of the Law on The Right To Obtain Information (9 October 2003, No. 4982). However, requests for information pertaining to breeding areas, rare species or similar subjects that may damage environmental values can be declined within the scope of the same law.

4.2.1.4 Harmonization with the EU Legislation

In Turkey, quite extensive and comprehensive environmental legislation is in place, and new by-laws are incorporated into it within the scope of harmonization with EU legislation. This legislation relates to a great many sectors and public institutions, and it is complex. The number of government agencies responsible for implementing legislation is quite high. The irregular structure of the legislation and conflicts of power with many different institutions and organizations causes chaos and confusion in terms of solving environmental problems. Ever since people started to live collectively, there have been efforts to create a legal order to regulate the use of natural resources such as water, soil and mines, and legal arrangements related to the protection and utilization of these assets have been devised. These arrangements are formulated for various purposes, such as public health, construction planning and regulating neighbourhood relations; they are not specifically designed to settle environmental problems. In line with the Environmental Law, several By-Laws have

been issued since 1983.[2] Complementary to the Environmental Law and its By-Laws, other laws and international conventions governing the protection of the environment have been put into force.

As can be seen, complex and contradictory environmental legislation is in force, and the various judicial bodies authorized to address legal disputes base their choice of judicial solution to a problem on the nature of the dispute. Considering the nature of environmental conflicts, constitutional judgment, the judiciary or administrative judgment are used to satisfy legal requirements.

4.3 Environmental Auditing, Environmental Permits and Sanctions

4.3.1 Monitoring and Auditing in Environmental Law

According to Environmental Law (Article 12), the Ministry of Environment and Urbanization has the authority to monitor and audit whether the provisions of this legislation are adhered to or not. When necessary, the aforesaid authority can be delegated to the following institutions by the Ministry: special provincial administrations, municipalities with established environmental auditing units, the Undersecretariat of Maritime, Coast Guard Command, and the persons commissioned with control and inspection under the Highways Traffic Act. The audits are conducted in accordance with the procedures and principles determined by the Ministry.

The audits of military establishments, military areas and military field exercises to be performed within the framework of this legislation, and the actions to be taken as a result of the said audits, are to be carried out in accordance with the By-law that will be prepared jointly by the General Staff, the Ministry of National Defence, the Ministry of Internal Affairs and the Ministry of Environment and Urbanization.

Turkey has a By-Law on Environmental Auditing, the purpose of which is to describe the environmental audit procedures and principles, and to specify the qualifications and obligations of: the people who conduct the audits; environmental

[2]These include the By-Law on Air Quality Control; the By-Law on Water Pollution Control; the By-Law on Noise Control; the By-Law on Environmental Impact Assessment; the By-Law on Control of Toxic Chemical Substances and Products; the By-Law on Packaging and Packaging Waste Control; the By-Law on the Control of Tyres which have completed their life; the By-Law on Control of Hazardous Waste; the By-Law on Control of Solid Waste; the By-Law on the Control of Medical Waste; the By-Law on Waste Vegetable Oil Control; the By-Law on Soil Pollution Control; the By-Law on Excavation Soil, Construction and Demolition Waste Control; the By-Law on Waste Oil Control; and the By-Law on Control of Used Batteries and Accumulators.

management units and officers; and companies authorised to provide environmental services (Ulutaş et al., 2011: 254). Within this context, this By-Law is an important tool which supports cleaner production in cases where responsibilities and obligations regarding cleaner production are given or summarised. By-Laws are also examined effectively during the audits. This By-Law may create an internal audit discipline within the facility and can again be a useful tool in cases concerning issues related to cleaner (sustainable) production within the scope of thorough auditing (Ulutaş et al., 2011: 255). According to the By-Law on Environmental Auditing, companies whose facilities have caused or may have caused pollution, or that are subject to auditing under the Environmental Law, must establish an environmental auditing unit within the facility to ensure compliance with environmental requirements and conduct annual audits at facilities. Additionally, the last stage of the EIA process is the "Monitoring and Auditing of the Investment" stage. It is necessary to monitor and audit the owners of operations to which a "Positive EIA Decision" or an "EIA Not Required Decision" has been issued, to check whether or not they are complying with their commitment. It is our opinion that this stage is the most important stage in terms of the EIA fulfilling its objective. However, it is difficult to claim that this stage reaches its objective through proper means. It is observed that in Turkey the issuing of an "EIA Positive Decision" is perceived to mean that the project has been given a general permit in terms of the environment and that the project has been completely absolved in terms of compliance with environmental requirements. However, the reality is that this administrative process does not remove the obligation to obtain all other environmental permits, nor does it generate the result that these permits are no longer required.

The monitoring and auditing process is about checking to see if operations are started within a certain period after the decision has been issued and whether the construction of the project, operation and termination are being done in accordance with the specified measures. Another objective of auditing is to determine impacts that were not foreseen and to make sure that the necessary measures are taken. During the restructuring of the Ministry of the Environment and Urbanization, the permit and auditing aspects of EIA have been united under the same directorate. Therefore, it is expected that the matters which are committed to at the end of an EIA process will be monitored more seriously.

According to Article 18 of the By-law, the Ministry of the Environment and Urbanization is responsible for monitoring and auditing whether or not the project owner is carrying out the commitments specified in the EIA Report or Project Presentation File. If the Ministry deems it necessary, this task will be undertaken with the assistance of the relevant agencies and organizations. According to the By-law, after receiving a "Positive Environmental Impact Assessment" or "No Environmental Impact Assessment Necessary" decision, the project owner or authorized representative is obligated to submit monitoring reports on the beginning, construction, operation and post operation periods to the Ministry or Governorship.

4.3.2 Environmental Permit and Licence

In Turkey it is obligatory to obtain a single consolidated permit, which is valid for a period of five years, instead of obtaining separate environment permits (e.g. an emission permit and a water discharge permit).

The purpose of the By-Law on Environmental Permit and Licence is to clarify the processes and procedures to be used in applications for certificates, permits and licences. Another purpose of the By-Law is to introduce a more consistent, practical and clear system for addressing the problems which previously caused delays in the implementation of projects and which have also caused financial losses for project investors and operators.

The By-Law sets forth a "temporary activities certificate" and two types of permits, an "environmental permit" and an "environmental permit and licence". The environmental permit covers air emissions, environmental noise, deep sea discharge and hazardous waste discharge, whereas the environment licence addresses the technical sufficiency of the applicant facility. The facilities listed in Annexes 1 and 2 of the By-Law must obtain either a Permit or a Permit and Licence.

Pursuant to the By-Law, temporary activity certificates may be executed electronically for one year, while the Permits or Permits and Licences may be executed electronically for five years but may be renewed upon application at least 180 days before the expiration date of the Permit or Permit and Licence. The renewed Permit or Permit and Licence should be obtained before the expiration of five years following the issuance of the relevant Permit or Permit and Licence.

4.3.3 Administrative Sanctions According to Environmental Law

Environmental administrative sanctions have importance and significance in Turkish legislation. In Turkey, the Ministries and municipalities represent effective governmental authority against environmental problems. This has resulted in administrative sanctions occupying their proper place in the context of environmental law. Similarly, Environmental Law has been prescribed as a tool through which orders and prohibitions are designed to provide environmental protection. It also supports environmental administrative sanctions.

Violations of the general prohibition against pollution under the Environmental Law include:

- Discharging any type of waste directly or indirectly into the receiving environment.
- Storing, transporting and removing any type of waste and residues, or engaging in similar activities, in a manner detrimental to the environment and in violation of standards envisaged in the environmental by-laws.

There are two types of sanctions:

- Monetary sanctions. Monetary fines vary depending on the seriousness of the violation, and are updated every year. There are more than twenty-four categories, and the fines in each category vary depending on the seriousness of the violation. In addition, some of the violations are not clearly listed, and therefore officials may need to interpret the regulations to determine the applicable fines.
- Operational sanctions. For violation of the permitted requirements and discharge limits and standards, the Ministry of Environment and Urbanization may:
  - suspend the facility wholly or partially until the violation is rectified;
  - grant a remediation period, which cannot exceed one year.

An official memorandum is kept by the authorized inspection staff with respect to the offences for which the payment of administrative fines is anticipated under this Act. This official memorandum is submitted to a competent authority to which the inspection staff reports. The said competent authority evaluates the official memorandum. The concerned party is notified of the decision concerning the application of a fine by the authority that administers the penalty in accordance with the provisions of the Law on Notifications (11 February 1959, No. 7201).

The payment period for administrative fines is thirty days from the date of notification. Legal proceedings against administrative fines can be initiated from the date that these fines are notified to the parties concerned.

The commencement of legal proceedings does not suspend the collection of the administrative fine imposed by the administration. Administrative fines which are imposed by institutions and authorities are collected by way of receipts that are printed and distributed by the Ministry after obtaining the approval of the Ministry of Finance. The fine-payer's tax office is notified of administrative fines which are not paid within the specified deadline so that the fine can be collected in accordance with the provisions of the Law on the Procedures for Collection of Public Receivables (No. 6183).

Under Article 26 of the Environmental Law, entitled "Penalties of a Judicial Nature", it is a crime to submit incorrect or misleading information pursuant to the obligation to submit notification and information under Article 12 of the Law, or to prepare or use incorrect and misleading documents in the application of the Law. According to this Article, in conflicts concerning an EIA that has been submitted to the court, the EIA is to be suspended until the completion of the judicial process.

While the authority for making decisions on administrative enforcement under the Environmental Law belongs to the Ministry of the Environment and Urbanization, this authority can also be used by agencies and offices which have been given the authority to conduct audits. The administrative enforcement set forth in the Law is decided on by general managers in the Ministry headquarters and by provincial managers in the rural districts, and a record is prepared by the authorized auditing personnel concerning the actions that have required administrative enforcement. A case may be filed in the administrative court within thirty days of the receipt of the administrative enforcement notification. However, taking legal action will not prevent the collection of the fine that has been issued by the administration.

4.3.4 Environmental Criminal Penalties in the Turkish Criminal Code

Turkey has a fairly comprehensive set of criminal provisions dealing with environmental matters. While in the older Turkish Criminal Code there were no rules regarding environmental crimes, environmental offences were mentioned in the Turkish Criminal Code under the headline of "The Offences Against Environment". In this text, four crimes were set out. These are the *intentional pollution of environment* in Article 181, the "*pollution of environment by negligence*" in Article 182, *causing noise pollution* in Article 183, and *pollution caused by construction* in Article 184. The arrangement of environmental crimes under a specific heading assigned environmental pollution an injustice value according to protected jural advantages. Additionally, the first article of the new Turkish Criminal Code (2004), specifically mentions protection of the environment as one of its aims, thereby demonstrating the importance placed by law makers on environmental matters.

Articles about environmental crimes also exist in the first part of the third volume under the headline 'The Crimes Creating General Danger' in the Turkish Criminal Code's 'Crimes Against The Public'. These crimes are: *scattering radiation* (Article 172), *causing explosion by atomic energy* (Article 173) and *storage or delivery of hazardous substances without permission* (Article 174). It is possible to see some laws about the punitive regulations concerning the protection of natural and urban nature in Public Health Law, Environmental Law, Fisheries Law and Forest Law. Apart from these laws there are some misdemeanours relating to the protection of environment in the Misdemeanour Law. Every ordinary citizen may apply to protect nature upon hearing about infractions, and they may want the authorities to take necessary precautions without searching for damage and benefit conditions.

4.4 Environmental Administration in Turkey

4.4.1 New Presidential Government System in General

Following the constitutional amendment of the referendum on 16 April 2017, the Presidential and Parliamentary General Elections held on 24 June 2018 were held in Turkey. As a result of this amendment, the new government system, called the Presidential Government System, was adopted both legally and de facto. The president will directly or indirectly determine and execute all public policies that are of concern to society, from security to foreign policy, education and health, and will follow their implementation under the new system for five years (Sobacı et al., 2018).

The presidential government system puts an end to the use of executive authority by a parliament (TGNA). It envisages the exercise of executive power by a person who is elected directly by the people to serve for five consecutive years.

The general characteristics of the Presidential Government System are as follows:

- The executive is single-headed and elected directly by the people.
- The President is not politically responsible against the parliament and is responsible to the people.
- Apart from being able to nominate political parties in the parliament, the executive is severed from the parliament.
- The President and ministers cannot propose laws directly. Ministers cannot be a deputy.
- The President sends a message to the parliament about the Turkey's domestic and foreign policy.
- The Turkish Grand National Assembly has the power to monitor the President, Vice President and ministers under criminal responsibility through a parliamentary investigation.
- The President has the right to rescind and the parliament to renew elections.
- The election periods of the President and the Parliament are the same.
- The President is no longer impartial and is a political party.
- The President elects and appoints the Vice President and ministers.
- The Ministers are directly responsible to the President and not to The Turkish Grand National Assembly.
- The President may make regulatory acts under the name of the Presidential Decree without the authorization of the parliament.
- The President may regulate the establishment and removal of ministries, duties and powers of the ministries, organizational structure and establishment of central and provincial organizations.
- The public legal entity is also established by the Presidential Decree.
- The President appoints senior public executives or approves assignments.
- The President may declare a state of emergency.
- The President may ask the parliament to renegotiate the laws.

4.4.2 How the Presidential Decree Was Regulated in the Turkish Constitution

The President of the Republic may issue presidential decrees on matters related to executive power. The fundamental rights, individual rights and duties included in the first and second chapters and the political rights and duties listed in the fourth chapter of the second part of the Constitution are not regulated by a presidential decree. No presidential decree may be issued on the matters which are stipulated in

the Constitution to be regulated exclusively by law. No presidential decree may be issued on the matters explicitly regulated by law. In the case of a discrepancy between the provisions of the presidential decrees and the provisions of the laws, the provisions of the laws prevail. A presidential decree will become null and void if the Grand National Assembly of Turkey enacts a law on the same matter (Turkish Constitution, Article 104/17).

The President of the Republic may issue by-laws to ensure the implementation of laws, provided they are not contrary thereto (Turkish Constitution, Article 104/18).

Decrees and by-laws come into effect on the date of publication in the Official Gazette, unless a later effective date is determined (Turkish Constitution, Article 104/19).

The President of the Republic also exercises powers of election and appointment, and performs the other duties conferred on him or her by the Constitution and laws (Turkish Constitution, Article 104/20).

4.4.3 Characteristics of Presidential Decree

- The Presidential Decree is a regulatory legal proceeding. It is under the law in the norms hierarchy. The Presidential Decree cannot be enacted in matters which are envisaged to be regulated exclusively by the law and clearly regulated by the law.
- If the provisions in the Presidential Decree and the laws differ, the provisions of the law apply.
- Neither the fundamental rights and duties of individuals nor political rights and duties are regulated by the Presidential Decree. Social and economic rights and duties can be regulated by the Presidential Decree. (The right to environment is included in social and economic rights and duties.)
- Judicial review is carried out by the Constitutional Court. In addition to the legally guaranteed subject matter, there is a legislative audit if the Turkish Grand National Assembly enacts a law that conflicts with the Presidential Decree.

4.5 New Goverment Model

In the new government model, certain structures called Presidencies, Heads or Departments work under the President. These are: the Department of General (Chiefs of) Staff; the Department of National Intelligence; the Department of Defence Industries (in the now defunct government structure, this was an undersecretariat, but in the new system it has been promoted to a department); the Department of National Security; the Department of Religious Affairs; the Department of State Supervision; the Department of Communication; and the Department of Strategy and Budget.

The Department of Communication and the Department of Strategy and Budget are founded as newly formed bodies under the new government model. The Department of Communication coordinates all matters regarding the Press, and the publications and communications of and by the State and the President.

4.5.1 Environmental Institutions in Turkey

Many institutions at central and local level in Turkey have environmental functions and powers. The majority of these institutions have been functioning for a long time, but some of them are new. Duties and authorities are distributed among numerous institutions, which is not conducive to the implementation of a national environmental policy and this has caused a coordination problem in the implementation process.

After the decision taken at the United Nations Conference on the Human Environment held in Stockholm in 1972 regarding the need for national and international organizations to safeguard the environment, institutional frameworks were established in all countries. In Turkey efforts to build an institutional framework also began in the 1970s. The Environmental Problems Coordination Board, comprising the Ministries of Interior, Health and Social Assistance, Development and Housing, chaired by the Minister of Energy and Natural Resources, was established by a Decree (12 February 1973, No. 7/5836) in order to ensure coordination among authorized public institutions and local administrations entrusted with environmental duties. Following a decision by the Council of Ministers, the Prime Ministry Undersecretariat of Environment was set up in 1978 to determine the environmental policy and ensure the necessary coordination. Later on, in 1984, the Undersecretariat of Environment was transformed into the General Directorate of Environment affiliated to the Prime Ministry. Five years later, in 1989, it was promoted to the level of Undersecretariat via Decree Law No. 389. In 1991, the Ministry of Environment was set up through Decree Law No. 443. With the Statute on the Organization and Duties of the Ministry of Environment and Forestry (8 May 2003, No. 4856), Decree Law No. 443 was abolished and the Ministry of Environment and Forestry was set up. After Turkey's elections in June 2011, the government's public environmental administration was restructured. The Ministry of Environment and Urbanization (MoEU) was established in 2011 by Decree No. 644 (OG, 4 July 2011, No. 27984).

The Ministry of Forestry and Water Affairs was also established in 2011. After that important changes have been made through the first Presidential Decree in Turkey's state organization in 2018 (OG, 10 July 2018, No. 30734). The duties of the Ministry of Environment and Urbanization were organized under Article 97 of this Presidential Decree. In this decree, the duties of the Ministry of Environment and Urbanization were arranged in the same way and two major General Directorates were added to the Ministry organization. These are the General Directorate of National Real Estate and the General Directorate of Local Administrations.

4.5.2 Organization of the Ministry of Environment and Urbanization

The Ministry of Environment and Urbanization was established with the merger of the Ministry of Public Works and Settlement [Bayındırlık ve İskan Bakanlığı] and the Ministry of Environment [Çevre Bakanlığı]. Its mission is to achieve the vision of the ministry, preparing all types of legislation, technical documents and standards within the architecture, engineering and contracting services by using every type of plan, map, study and project as well as construction technology and construction materials production; and to provide every type of coordination, education and control service in order to obtain the synergy for nationwide implementation.

The main responsibilities of the Ministry of Environment and Urbanization are:

- Legislation and regulation related to the protection of the environment, the prevention of pollution, public works, construction and building, including occupational legislation
- Every planning and implementation activity, including strategic spatial planning
- Protecting and improving the environment and mitigating issues arising from climate change
- Transformation projects designed to reduce disaster damages
- A strong building audit system
- Constructions with high energy efficiency
- Developed construction cooperatives, and innovative housing policies
- National "Geographic Information System" studies
- Providing guidance, technical and financial support to local governments
- Every mission and process is carried out on natural sites and protected areas under the responsibility of the Ministry
- Putting in order the relationship between local administrations and central authority.

The main departments of the Ministry are the General Directorate of Spatial Planning, the General Directorate of Environmental Management, the General Directorate of Environmental Impact Assessment, Permission and Inspection, the General Directorate of Natural Assets Protection, the General Directorate of National Real Estate, the General Directorate of Local Administrations, the General Directorate of Construction Affairs, the General Directorate of Infrastructure and Urban Transformation Services, the General Directorate of Vocational Services, the General Directorate of Geographic Information Systems, and the Supreme Technical Board.

4.5.3 Administration of the Protected Areas

There are mainly two different institutions for the administration of the protected areas in Turkey. There exist more than one status in the protected areas and they are

grounded on different legal arrangements, leading to managerial issues in their implementation. Using the different policies of different institutions to manage protected areas hinders the establishment of coherent standards and rules.

In the restructuring process, the institutional structure of environmental protection has been completely changed. The former Special Environmental Protection Agency (EPASA), responsible for Special Environmental Protection Area (SEPA) sites, has been reformed under the new Ministry of Environment and Urbanization as the General Directorate of Natural Assets Protection (GDNAP) in combination with the branch of the Ministry of Culture and Tourism responsible for protected natural sites (the number of which is estimated to be 1265). In addition, the former Ministry of Environment and Forestry has been reformed as the Ministry of Forestry and Water Affairs, under which is the General Directorate of Nature Protection and National Parks, which is responsible for national parks and other similar protected areas. In this sense, Turkey has two structures under two separate ministries responsible for natural protected areas. The types of protected areas under each are significantly different, as SEPAs, SITs and national parks all have a different scope, rationale, and level of protection. The Environmental Protection Agency for Special Areas (EPASA) was effectively dismantled, with staff reassigned to new duties under the General Directorate of Natural Assets Protection in 2011. This institutional restructuring is still on the agenda at the time of the mid-term evaluation, and thus there is still a fundamental conflict related to the authorised institution.

4.5.4 Environmental Impact Assessment (EIA) Authority

The authorized administrative body in the EIA process, which includes scoping, final assessment and decision-making, is the Ministry of Environment and Urbanization. In accordance with the Presidential Decree (Article 97), the Ministry of Environment and Urbanization has the authority and responsibility for "the environmental impact assessment of any facility or activity which generates or carries the potential to generate pollution by releasing wastes in the form of solid, liquid and gas into the receiving environments". In order to undertake this responsibility, the General Directorate of Environmental Impact Assessment, Permission and Inspection has been established as one of the main service units of the Ministry.[3]

The Ministry of Environment and Urbanization is responsible for administering various phases required by the EIA. The Ministry makes the decision in relation to the Environmental Impact Assessment of military projects as well, having received

[3]The responsibilities of the General Directorate regulated in Article 104 of the Presidental Decree include performing the environmental impact assessment and strategic environmental assessment, making the required decisions, monitoring and controlling.

the views of the relevant institution. According to Article 5 of the EIA Regulation titled 'authority', the Ministry is entitled to make the "EIA Approved", "EIA Not Approved", "EIA Required" or "EIA Not Required" decisions for the projects subject to the regulation. However, the Ministry can transfer, if required, its right to make the "EIA Required" or "EIA Not Required" decision to the Governorate, within defined limits.

Making the above-mentioned determinations is addressed by the legislation as a critical authority. For projects subject to EIA, no incentive, approval construction or building use permit can be given and no investment can be initiated, nor can it be opened to tender, unless a prior "EIA Approved" or "EIA Not Required" decision has been received. In line with this principle, "EIA Approved" and "EIA Not Required" decisions concern all public institutions engaged in giving incentives, approvals, permits and licences. In compliance with this regulation, EIA should be undertaken during the planning phase and before the licences are received in line with other legislation. During the EIA process, the convenience of the location of the activity is also assessed in terms of environmental protection. After this assessment, in the case of an agreement on the convenience of the location of the activity for environmental protection, the project owner is required to receive other permits required by legislation before beginning the investment.

In other words, the "EIA Approved" decision and "EIA Not Required" decision are not sufficient on their own for the activity to be realized. This process, including a scientific evaluation that the proposed activity has no adverse environmental impacts, is a pre-condition for attaining other permits and licences (Alıca, 2011) in case the realization of the activity is prohibited by other associated legislation. If any prohibition applies, the activity will not be permitted even with an "EIA Approved" decision or an "EIA Not Required" decision.

It is undoubtedly very important for environmental protection to apply EIA in the decision-making process of a project. Implementation of EIA after strategic and crucial decisions related to the project (determinations of other public offices) are made will conflict with the purpose of the EIA and lead to administrative, political and legal problems, for, in Turkey, receiving permission, approval or licences from other public institutions or opening tenders are procedures which require considerable time, money and effort.

After going through such a process, when an investor or project owner begins the EIA process, he or she may happen to exert administrative and political pressure so that the process is concluded swiftly, and such pressure can put the decision-making administrative authority in a tight spot. Therefore, this Article, which used to be a provision which was not binding on the other public institutions, was amended as a provision of law via the amendment of the Environmental Law in 2006, both guiding and binding other public institutions. Though this provision is included in the Environmental Law, it is proposed that, by itself, this inclusion is insufficient and that the EIA should be integrated into the laws which regulate the issuing of permits, approvals or licences (e.g. the Development Law) (Republic of Turkish Ministry of Environment and Forestry, 2009b: 39).

As a matter of fact, we see similar provisions in some other laws. For example, Clause 6 of Article 5 of the "Public Procurement Law" No. 4734 (OG 22 January 2002, No. 24648), identifies the EIA Approved certificate as a prerequisite for putting out for tender any project which, in accordance with the associated legislation, needs an EIA Report. However, an EIA Report will not be required for construction works to be given out by contract after natural disasters. Apart from the Ministry of Environment and Urbanization, what are the responsibilities of public institutions and organizations during the EIA process? The Ministry is responsible for the establishment of a Review and Evaluation Committee within its organization, comprising authorized representatives of the Ministry as well as the representatives of associated public institutions and the project owner. This committee is established with the purpose of determining the special format to be given for the project and the criteria of assessment, and reviewing and evaluating the EIA Report prepared in line with these principles. If deemed necessary, depending on the subject and type of the project and its planned location, representatives of universities, institutes, research institutions, trade associations, unions, confederations and non-governmental organizations can also be invited to the meetings of the committee. During the EIA process, in addition to the Ministry of Environment and Urbanization, the Ministry of Food, Agriculture and Livestock, the Ministry of Energy and Natural Resources, the Ministry of Health, the Ministry of Culture and Tourism, the Ministry of Transport, Maritime Affairs and Communication, and the Ministry of Science, Industry and Technology play a crucial role (Republic of Turkish Ministry of Environment and Forestry, 2009a: 30). These institutions should take into consideration the area coordinates of projects when evaluating the permits, approvals and/or licences for projects with an "EIA Approved"/"EIA Not Required" decision (Republic of Turkish Ministry of Environment and Forestry, 2009b: 39). It is essential to receive complete and clear explanations of the views of member institutions and organizations of the Review and Evaluation Committee and to clarify whether it is plausible to undertake the proposed project in line with the legislation of the associated administrative entity; and if so, to identify the precautions and commitments that need to be taken.

4.5.5 Strategic Environmental Assessment (SEA) Authority

While the Environmental Impact Assessment is carried out at project level, it is insufficient to influence the decisions taken at strategic level in the previous stages. The consideration of alternatives to a planned activity may be at the level of the location of the project and the quality of the technology alternatives. Within the framework of this requirement, the importance of applying environmental assessment to programmes and plans also arises.

According to OECD SEA Guidance, "SEA refers to a range of 'analytical and participatory approaches that aim to integrate environmental considerations into policies, plans and programmes and evaluate the inter-linkages with economic and

social considerations.' SEA can be described as a family of approaches which use a variety of tools, rather than a single, fixed and prescriptive approach. A good SEA is adapted and tailor-made to the context in which it is applied. This can be thought as a continuum of increasing integration: at one end of the continuum, the principle aim is to integrate environment, alongside economic and social concerns, into strategic decision-making; at the other end, the emphasis is on the full integration of the environmental, social and economic factors into a holistic sustainability assessment" (Strategic Environmental Assessment, 2006: 7).

Since July 2001, the Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment has been in force. The Member States had to transpose the Directive into national law within three years, i.e. by 21 July 2004. The SEA Directive does not contain the term "strategic environmental assessment", but deals with the "assessment of the effects of certain plans and programmes on the environment". However, as this term has meanwhile become widely accepted, and also for better readability, the present study will continue to use the term "strategic environmental assessment" (SEA).

The SEA Directive comprises specifications both for the SEA procedure and for the issues to be covered in an environmental assessment. The main matters of a SEA are as follows:

- assessment of significant effects on the environment
- examination of alternatives
- documentation (in an environmental report)
- consultations (of so-called "environmental authorities" and the public), if applicable, also across borders
- taking into account of results
- provision of information on the decision
- monitoring

The first provision in Turkish legislation on Strategic Environmental Assessment was regulated in Article 10 of the Environmental Law No. 2872. According to this provision, "the procedures and principles relating to the projects subject to Environmental Impact Assessment and the Strategic Environmental Assessment, as well as the relevant procedures and principles, shall be determined by the regulations to be issued by the Ministry of Environment and Urbanization." In addition to the above-mentioned provision, the definition of SEA is also set out in the Environmental Law No. 2872:

> Strategic environmental assessment: Before the approval of a plan or a programme that is subject to an approval, from the commencement of the planning and programming process, the environmental assessment studies, conducted with a participatory view that also includes a written report to assist the decision-makers and performed to ensure that the environmental values, are integrated into the plan and programme and the possible environmental effects of the subject matter plan or programme are minimized.

The By-Law on Strategic Environmental Assessment (OG, 8 April 2017, No. 30032) has been put into effect in order to regulate the administrative and technical procedures and principles to be complied with in the process of Strategic Environmental Assessment applied to integrate environmental elements into the process of the preparation and approval of plans and programmes which are expected to have significant environmental effects and to direct them towards sustainable development principles in order to ensure the protection of the environment.

The purpose of the By-Law is to provide a framework for the projects listed in Annex-1 and Annex-2 of the Environmental Impact Assessment By-Law prepared for the waste management, fisheries, energy, coastal management, spatial planning, forestry, industry, water management, agriculture, telecommunication, tourism and transport sectors. A Strategic Environmental Assessment is made, monitored, and given to the programmes. However, plans and programmes, financial plans and programmes, budget plans and programmes, development plans and transboundary plans and programmes within the scope of national defence and civil defence are excluded from the By-Law. Under the provisions of the By-Law, plans and programmes subject to SEA prepared in the fisheries and forestry sector will be implemented from 1 January 2020; plans and programmes subject to SEA prepared in coastal management, spatial planning, water management, the agriculture and tourism sector, and waste management are to be implemented from the date of publication in the Official Gazette; and plans and programmes subject to SEA prepared in the energy, industry, telecommunication and transport sectors will have been implemented since of 1 January 2003.

4.5.6 Environmental Planning Authority

The authority over environmental planning was granted to the Ministry of Environment in 1991. However, due to certain reasons, the Ministry did not use its power until 2000 and issued the Implementing Regulation on the Principles of Environment Planning on 04 November 2000. In accordance with legislation, the Ministry of Public Works and Settlement was authorized in territorial planning and implementing before 1991, and this administrative function was first delegated to the Ministry of Environment and later to the Ministry of Environment and Forestry in 2003. A legal procedure concerning which Ministry should have this authority took a very long time.

However, this function was also granted to local administrations (metropolitan municipalities, municipality and special provincial administration) as per new local administration legislation which came into effect in 2005. In this way, a legislation complexity emerged wherein the responsibilities at central and local level with regard to the preparation, approval and monitoring of environment plans are not set clearly. Furthermore, when delegating authority over territorial planning to local administrations, the capacities of these administrations were not taken into account;

expert and infrastructure deficiencies were overlooked. Therefore, in many provinces, the "provincial territorial plan" required by law could not be prepared. The cooperation and coordination efforts of the Ministry of Environment and Forestry in the implementation of territorial plans are inadequate. Authority concerning the preparation and approval of territorial plans was not exercised according to legislation. Sub-scaled plans cannot be prepared in compliance with Territorial Plans. Further, environmental protection approaches are not sufficiently reflected in Territorial Plans. Sectoral integration is weak in environmental planning, which in turn negatively affects sub-scaled plans. After the reorganization of the Ministry of Environment and Urbanization, a series of institutional and legislative arrangements were made regarding urbanization and spatial planning.

A new Ministry was established in order to set forth the new spatial planning approach across the country, establish the necessary institutional organization, formulate the legal framework of the proposed planning process, and determine general policies, guidelines and norms for solving problems related to urbanization, housing and planning. The Ministry of Environment and Urbanization was charged with the duty of preparing, in collaboration with the relevant institutions and organizations, the spatial plans at national and regional levels which guide settlements, housing and land use. In addition, the Ministry is responsible for guiding macro scale spatial planning systems, providing sustainable city development, revealing city brand potentials, realizing urban renewal implementations, forming cities protected against disasters, developing projects related to rural settlements, providing planned development of coastal areas, providing technical assistance and guidance to local administrations, mitigating irregular urbanization caused by rapid growth, and building resilient cities.

Within this framework, risk zones and vulnerable buildings across Turkey were identified, and included in the scope of urban transformation in order to place irregular urbanization under control. Ultimately, the jurisdiction of metropolitan municipalities partially extended in 2004 was extended to provincial borders with the Metropolitan Municipality Law, which was amended in 2012 (Republic of Turkey Ministry of Environment and Urbanization, 2014).

4.5.7 Municipalities and Environment

Municipalities are the most 'autonomous' types of local government in Turkey. Metropolitan municipalities are administered according to the Metropolitan Municipality Law, enacted in 2004, and the Municipal Law, enacted in 2005, and other similar laws. According to the Turkish Constitution, all forms of local government (municipality, provincial local government and village) are regulated by law in accordance with the principle of decentralization (Arıba et al., 2014). A new law (No. 6360) on "The Establishment of Fourteen Metropolitan Municipalities and Twenty-seven Districts and Amendments at Certain Law and Decree Laws" entered into force in 2012 (OG, 06 December 2012, No. 28489). The metropolitan

municipality numbers increased from sixteen to thirty, and all metropolitan municipality borders were expanded to the provincial borders up to the end of the mentioned year by means of this Law. The new metropolitan system has led to structural changes in terms of the administrative, financial, zoning and planning order. This new system has increased the number of people that need to be taken to environmental services by municipalities and the area has expanded. This board is established as a decision-making mechanism above the Ministry of Environment and Urbanization and the Ministry of the Interior. The main tasks of decision-making, service production and the execution of local public services have been given to the Ministry of Environment and Urbanization (MoEU) (No. 1 Presidential Decree). Previously it was attached to the Ministry of Environment and Urbanization as the General Directorate of Local Authorities affiliated to the Ministry of Interior. The Ministry of Interior maintains its powers of inspection and investigation within the framework of administrative guardianship. When it is taken into consideration that the General Directorate of Local Administrations is connected to the Ministry of Environment and Urbanization together with the General Directorate of National Estate, Public Housing Administration, it can be seen that the local administrations are constructed within the scope of the evaluation of urban and rural areas.

Within the scope of the New Presidential Organization, the Local Government Policies Board was established. It is designed to determine the main policies related to local government, and deals with urbanization; local government; immigration and resettlement; environment, forest, water; and smart cities. It has been assigned and authorized to develop policy and strategy proposals in areas such as the Bosphorus zoning implementation programmes.

Returning to the issue of municipal environmental services, the Ministry of Environment and Forestry (now the Ministry of Environment and Urbanization) was entrusted with new functions and powers, and laws transferring environmental functions and powers to local administrations were later enacted. The Metropolitan Municipality Law, the Municipal Law and the Provincial Special Administration Law have covered broad functions and powers related to environment. The Municipal Law has been authorised to deliver "environment and environmental health services together with cleaning and solid waste services" and to have these services done on condition that these are common local needs. According to this, it is not clear which functions fall under the scope, however, pursuant to Article 84 of the same Law, entitled "Inapplicable Provisions",

> With this Law, limited to functions and services entrusted to the municipality,… in cases where there is incongruity in the Law on the Organization and Duties of the Ministry of Environment and Forestry with the provisions of this Law, the provisions of this Law are applicable.

Pursuant to the said Article, "environment and environmental health" services cannot be delivered by the Ministry of Environment and Forestry. However, this Article is not in line with the legislating technique. It is obvious that identifying which Articles in Organization Laws are incongruous with Municipal Law will cause complications in the legislation and implementation.

Metropolitan Municipalities are assigned duties and responsibilities, such as: the protection of the environment, agricultural lands and water basins, in line with the principle of sustainable development; forestation; the determination of areas for the storage of excavations, debris, sand and gravels and for the sale and storage of wood and coal, as well as taking necessary measures to prevent air pollution in the transportation of these goods; planning the metropolitan municipality solid waste management and, having completed this plan, delivering services related to the revaluation, storage and disposal of solid waste and excavations, excluding the collection solid waste at source, and carrying it to the transfer station; establishing and operating facilities for this purpose, as well as having them established and operated; carrying out services related to industrial and medical waste; establishing and operating facilities for this purpose, as well as having them established and operated; collecting or arranging the collection of waste from naval vessels; treating it; and making necessary arrangements related to this.

On the other hand, Article 4/3 of the Law on Local Administration Units (No. 5355), indicates the power of the Council of Ministers with regard to the environment when it states:

> In case projects related to water, waste water, solid waste and similar infrastructure services and protection of environment and ecologic balance are necessitated; the Council of Ministers can make a decision regarding affiliation of the relevant local administrations to a unit established for this purpose. Leaving the units mentioned in this paragraph depends on the permission by the Council of Ministers.

As is clear, a conflict of authority has been created among local management units themselves and it has not been clarified who would exercise which authority in which way.

From the 1930s onwards, waste management has been the subject of a number of legal arrangements starting in Turkey. Since then, the number of institutions assuming roles in the environmental field has increased (Turkish Court of Accounts, 2007: 1). However, the fields of authority and responsibility of the existing institutions were not changed when the new ones were established. As a consequence, this situation has resulted in overlapping powers. Moreover, the lack of effective coordination and cooperation among relevant institutions has weakened the operability of the system. With the effects of such factors as weak financial support and inadequate knowledge and equipment, it has not been possible to establish a sound waste management system up until now (Turkish Court of Accounts, 2007: 1).

The functions related to waste management constitute the most comprehensive responsibility area of municipalities with regard to the environment. Waste management is a type of management covering domestic, medical, hazardous and non-hazardous waste minimization, source separation, interim storage, the establishment of transfer stations where necessary, waste handling and transport, recycling, disposal, and operating and closing waste recycling and treatment facilities, as well as the processes of maintenance, monitoring and control after closure. As the fundamental implementing institutions, the financial, institutional and technical

capacities of municipalities should be strengthened. By taking the type and the population of the provinces into consideration, model waste management units should be established. The standards which should be applied in the operation and structuring of these units should be determined. The activities, which have vital importance in terms of environmental protection and human health and for the common future of humankind, should not be managed by irrelevant and unauthorized units (Turkish Court of Accounts, 2007: 7).

The framework legislation on waste management is the Environmental Law, Municipality Law, Metropolitan Municipality Law, and Municipality Revenues Law.

According to the Environmental Law, Article 11, the metropolitan municipalities and the municipalities are responsible for building and operating household solid waste disposal facilities, or they can have them built and operated by other parties. The parties which benefit and/or will benefit from this service should contribute to the expenses that will be incurred by the responsible administrations for investment in operations, maintenance, repairs, and improving and cleaning the systems. From those who benefit from these services, a fee for collecting, treating and disposing of solid waste is collected at a rate determined by the municipal commission. The fees collected in accordance with the provisions of this Article cannot be used in services other than the ones related to solid waste.

The concept of integrated waste management is a management type that has frequently been applied in recent years, but whose definition and implementation has only recently been understood. Integrated waste management addresses the elements of waste as a whole (including hazardous waste) and defines the objective of waste management as ensuring sustainability in respect of both the environment and the economy. The least pollutant and most economic waste management system is the one in which minimum waste is generated without hindering social life. To minimize the amount of waste, unnecessary use and consumption should be decreased, and waste needs to be recycled either as energy or as material. The ultimate disposal stage should be managed within the scope of these objectives and targets. Incineration is a method that reduces the greatest amount of waste transferred to ultimate disposal and ensures a significant return in the form of energy production.

In the European Union membership process, the establishment and implementation of waste management policies is one of the most significant chapters of the EU Environmental *Acquis*. The principles taken as the basis for the development of the waste management policy adopted in the EU as well as in Turkey can be listed as follows:

- Waste minimization and source separation,
- Reuse and recycling,
- Waste-to-energy production.

It is needless to state that municipalities must implement these principles and establish the recovery and recycling plants.

4.6 Conclusion

As is stated above, institutionalization efforts that started in 1978 have been going on for approximately forty years. Within this process, the environmental public administration of the budget, staff and authorities were left weak. It failed to show the expected performance in any period and could not function effectively. Since the initial period when the environmental organization was established as an Undersecretariat, its conflict of authority with other public entities and institutions has not ended, and it has had to function in coordination with institutions which have invariably completed their institutionalization prior to the environmental organization.

Developed countries have had difficulty in finding an environmental administration model as well. The reason for this is that the concept of environment has a very large and ambiguous scope. It has been quite difficult to set up a single decision mechanism in such an extensive and expansionist field.

When we consider the overview of environmental administration in Turkey, we see that the managerial problems are not only limited to conflicts and overlapping authorities, duties and responsibilities. Uncertainty and instability in environmental organization prevent the development of an effective environmental administration system. The foundations of Turkey's environmental administration system were laid with the Third Five-Year Development Plan (1973–1977); the principal characteristics of the system were identified in the 1982 Constitution, Environmental Law No. 2872 and on the establishment of the Ministry of Environment in 1991. The establishment of the Ministry, however, did not suffice to solve problems, and inadequacies in the organization led to criticism and to a new search for solutions. To this end, the Ministry of Environment was merged with the Ministry of Forestry, which had already been affiliated twice with the Ministry of Agriculture and Rural Affairs, and the Statute on the Organization and Duties of the Ministry of Environment and Forestry (No. 4856) was enacted. The duties of the Ministry of Environment and Urbanization were then organized under Article 97 of the Presidential Decree in 2018.

In general, the main institution for the implementation of environmental measures for the environment is the Ministry of Environment and Urbanization. There are other Ministries and agencies which also have responsibilities under the existing institutional framework. For example, the Ministry of Agriculture and Forestry has important responsibilities for protected areas. Moreover, the Ministry of Agriculture and Forestry has responsibility for the national inventory of biological diversity. This Ministry is also responsible for water affairs, including coastal waters. Institutional overlaps exist between the MoEU and the MoAF with regard to the protection of marine species and habitats and to marine protected areas. More specifically, the Branch Office for Species and Habitats under the Nature Protection General Directorate of the MoEU has overall responsibility for the protection of species and habitats. This overlaps with the responsibilities of the Department of Biodiversity and the Department of Sensitive Areas under the General Directorate for National Parks under the Ministry of Agriculture and Forestry.

Furthermore, the Directorate General of Maritime and Inland Waters Regulation under the Ministry of Transport, Maritime Affairs and Communications, Turkish Coastguard Command and Port Authorities have certain powers in terms of protecting the marine environment.

Additionally, the responsibilities for implementing international and regional obligations on the environment are also divided between the different Ministries. Coordination must be provided under the Council of Ministers, which has the final decision on establishing protected areas and handling other problems related to conflicts of authority.

The other public authorities that are relevant to nature protection and pollution prevention are the Ministry of Agriculture and Forestry for fisheries; the Ministry of Energy; and the Ministry of Health. Currently, the activity on the reorganization of environmental administration is still ongoing. Institutionalization is a significant problem in Turkey and the improvement of environmental protection is not possible without solving this problem.

References

Alıca, Süheyla Suzan (2007). "Environmental Problems in Turkey, Legal and Institutional Structure", Paper for the International Symposium on Environmental Accounting (Ankara, 30 May): 13–42.

Alıca, Süheyla Suzan (2008). "Environment Management in Turkey", in: *Journal of Ankara Bar Association* (Winter): 241–250.

Alıca, Süheyla Suzan (2010). "The Importance of Physical Planning in Terms of Environmental Protection and Authority Problems", in: *Paper for the International Congress on Urban and Environmental Issues and Policies* (Trabzon, Turkey, 3–5 June): 243–256.

Alıca, Süheyla Suzan (2011). "An Overview on The Environmental Impact Assessment In The Frame of Turkish Case Law", in: *Gazi University Faculty of Law Review*, XV, 3: 97–130.

Arıba, Nazlı Nalcı; Karatepe, Selma; Kılınç, Özgür (2014). *A Review of Turkey's "New Metropolitan Municipality Law" in Terms of the Subsidiarity Principle, Humanities and Social Sciences Review,* CD-ROM: 3,3: 173–180.

Aybay, Aydın (1992). "Çevre ve Hukuk [Environment and Law]", in: Keleş, Ruşen (Ed.): *İnsan Çevre Toplum* [*Human Environment Society*] (Ankara: İmge Kitapevi).

Republic of Turkish Ministry of Environment and Forestry, General Directorate of Environmental Impact Assessment and Planning (2009a). *Environmental Impact Assessment (EIA) Handbook* (Ankara, January).

Republic of Turkish Ministry of Environment and Forestry, General Directorate of Environmental Impact Assessment and Planning (2009b). *1st National EIA Workshop, Booklet of Conclusions* (Ankara, January, 25–27 February).

Republic of Turkey Ministry of Environment and Urbanization (2014). *TURKEY Habitat III National Report* (December), at: http://habitat3.org/wp-content/uploads/TURKEY-HABITAT-III-NATIONAL-REPORT_FINAL_V2.pdf (retrieved 15 December 2019).

Sobacı, M.Z.; Miş, N.; Köseoğlu, Ö. (2018). "Turkey's New Government Model and the Presidential Organization", in: *Seta Perspective*, 45 (July 2018), at: https://setav.org/en/assets/uploads/2018/07/45_Perspective.pdf (retrieved 21 May 2019).

Strategic Environmental Assessment (2006). Practice-Orientated Training for Policy Makers, Administration Officials, Consultants and NGO Representatives, Training Manual. This training is based on the OECD Development Assistance Committee (DAC) Guidance: Applying Strategic Environmental Assessment: Good Practice Guidance for Development Cooperation (Paris, 2006), at: https://www.undp.org/content/dam/aplaws/publication/en/publications/sea-task-team/gtz-sea-training-manual/GTZ_sea_training_manual.pdf (retrieved 15 December 2019).

Turkish Court of Accounts (2007). "Waste Management in Turkey National Regulations and Evaluation of Implementation Results", *Performance Audit Report* (January), (Ankara).

Ulutas, F.; Alkaya, E.; Böğürcü, M. (2011). "A Comparative Analysis of Turkish And European Union Environmental Legislation Regarding Cleaner (Sustainable) Production Concept", in: *International Journal of Environment and Sustainable Development*, 10, 3: 246–266.

Chapter 5
Environmental Impact Assessment in Turkey: A Principal Environmental Management Tool

Şule Güneş

Abstract Environmental Impact Assessment (EIA) has been one of the core areas which is addressed in parallel with the overall developments in the environmental field. The projects which require EIA extend to a wide range of sectors which necessitate the use of technical tools and methodologies and require the stakeholders to hold the respective qualifications. A considerable number of EIA applications were made in Turkey. This paper identifies the means and tools as well as the course of conduct for the incorporation of the EIA systematic into the Turkish environmental agenda. The EIA Procedure is evaluated from a critical perspective in order to identify the strengths and weaknesses of the whole system and turn the Turkish EIA structure into an efficient tool for protection of natural resources and cultural assets.

Keywords Turkey · Environmental impact assessment

5.1 Introduction

It has been more than two decades since the introduction of the EIA practices in Turkey which affected a considerable number and variety of projects. Between 1993 and 2018 the number of EIAs conducted amounted to 5341; of these, 5288 ended in "EIA is Positive" decisions, and only 53 in "EIA is Negative" decisions. The breakdown of "EIA is Positive" decisions was: 27% Oil and Mining; 24% Energy; 13% Waste and Chemicals; 11% Industry; 7% Transportation and Coast; 13% Agriculture and Food; 5% Tourism and Housing sectors. Concerning the projects that were subject to selection and elimination criteria, 61,699 applications were made to the Ministry of Environment and Urbanization (MoEU), but "EIA is Required" was the outcome for only 1,005 project proposals, while the remaining 60,694 applications were finalised with the decision that "No EIA is Required". The sectoral composition of the "No EIA is Required" decision was: 49% Oil and

Dr. Şule Güneş, Associate Professor, Middle East Technical University, Department of International Relations, Ankara, Turkey. e-mail: gunes@metu.edu.tr.

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Mining; 15% Agriculture and Food; 12% Industry; 9% Waste and Chemicals; 7% Tourism and Housing; 6% Energy; 2% Transportation and Coast (Official Statistics on EIA in Turkey, 2018).

The EIA system in Turkey entered a new development phase upon the approval of the Turkish candidacy for full membership of the European Union (EU) in 1999 at Helsinki. The harmonization of Turkish environmental legislation with the EU standards was intensified with the announcement of the National Programme for the Adoption of the EU Acquis on 19 March 2001 following the declaration of the Accession Partnership for Turkey by the EU Commission on 8 March 2001. The adaptation process of the Turkish EIA legislation in line with the EU EIA Directive began with the adoption of the 2002 EIA By-Law, which was subsequently replaced by the 2003, 2008, 2013 and 2014 EIA By-Laws (Tekayak, 2014).

The Strategic Environmental Assessment (SEA) By-Law, which was drafted in 2005, has finally been adopted as part of the harmonization efforts of Turkey with the EU as well (SEA By-Law, OG, 8 April 2017, No. 30032). SEA practices began after the entry into force of the Draft SEA By-Law in 2017. There are eleven ongoing projects related to SEA which are supervised by the Directorate of Water Management of the Ministry of Agriculture and Forestry. In 2018 projects related to water management in various locations of Turkey – such as Gediz, the Northern Aegean, Küçük Menderes, Burdur, Akarçay, Yeşilırmak, and the Western Mediterranean, which aims to develop the River Basin Management Plans – began. There are also projects concerning management plans related to river floods in Çoruh and the eastern Blacksea basins; the Asi and Seyhan basins; and the Lake Van and Konya Enclosed Basins, which were all initiated in 2019 (SÇD Uygulamaları, 2019).

The purpose of this article is to shed light on the Turkish EIA procedure by taking into account the potential problems and the strengths related to various stages of the EIA. The author does not aim to identify specific cases related to EIA practices and develop empirical results; rather, the legal foundations of EIA procedure will be examined.

5.2 Legal Foundations of EIA in Turkey

Concerning the legal basis of EIA in Turkish law, the Turkish Constitution should be the point of departure. Environmental protection and the prevention of environmental harm are constitutional duties of both the Turkish State and its citizens, and the conduct of EIA can be considered one of the most efficient tools for this purpose. Article 56/1-2 of the Turkish Constitution states that:

> Everyone has right to live in a healthy, balanced environment.
>
> It is the duty of the State and the citizens to improve the natural environment, to protect environmental health and to prevent environmental pollution (Article 56/1-2, Constitution).

EIA as a legal obligation derives from Article 10 of the Environment Code, which imposes a general obligation without specifying any technical details on how to conduct EIA. Environment Code Article 10 provides that:

> The institutions, agencies and establishments that can lead to environmental issues due to their planned activities will prepare an 'Environmental Impact Assessment Report'.

In order to ensure the application of Article 10 of the Environment Code, the Ministry of the Environment issued the EIA By-Law in 1993, in accordance with the mandate given by Article 124/1 of the Turkish Constitution, such that:

> The President, the ministries, and public corporate bodies may issue by-laws in order to ensure the implementation of laws and presidential decrees relating to their jurisdiction, as long as they are not contrary to these laws and decrees (Article 124/1, Constitution).

Starting with the adoption of the 1993 By-Law, seven EIA By-Laws have been adopted in Turkey.[1] The final EIA By-Law, which was adopted in 2014, applies for the time being. It is comprised of 31 articles, 3 provisional articles – incorporated into Article 29 – and annexes which provide rules on institutional and procedural elements of the EIA procedure.[2] The 2014 EIA By-Law was subject to amendments in 2016, 2017, 2018 and 2019.[3]

Turkey is also under an obligation to conduct EIA as part of its commitments which derive from international environmental law. Article 90/5 of the Turkish Constitution provides that international agreements duly put into effect have force of law in Turkey. Turkey is party to various international hard law and soft law instruments which obligate the Party States to conduct EIA. Turkey has signed the 1976 Helsinki Final Act and adopted the 1972 Stockholm Declaration, the 1992 Rio Declaration and Agenda 21, which all impose EIA as soft-law requirements. Turkey is among the Party States to the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Convention on Biological Diversity. Concerning the protection of the marine environment of the Mediterranean and the Black Sea, Turkey is party to both the 1995 Barcelona Convention (also the former 1976 version) and the 1992 Bucharest Convention. All these conventions require the Party States to conduct EIA as part of their treaty obligations. Turkey is not yet party to UNECE Conventions such as the Espoo Convention, the SEA Protocol, or the Aarhus Convention. Under these

[1]The EIA by-laws include the 1993 EIA By-Law (OG, 7 February 1993, No. 21489); the 1997 EIA By-Law (OG, 23 June 1997, No. 23028); the 2002 EIA By-Law (OG, 6 June 2002, No. 24777); the 2003 EIA By-Law (OG, 16 December 2003, No. 25318); the 2008 EIA By-Law (OG, 17 July 2008, No. 26939); the 2013 EIA By-Law (OG, 3 October 2013, No. 28784); and the 2014 EIA By-Law (OG, 25 November 2014, No. 29186).

[2]Annex I provides the list of the projects which are subject to EIA; Annex II lists the projects which are subject to Selection and Elimination Criteria; Annex III provides the EIA General Format; Annex IV includes the Selection and Elimination Criteria which should be the basis for the Project Presentation File; Annex V covers sensitive and vulnerable areas.

[3]OG, 9 February 2016, No. 29619; 26 May 2017, No. 30077; 14 June 2018, No. 30451; 19 April 2019, No. 30750.

circumstances, Turkey cannot be forced to accept compulsory obligations related to transboundary EIA, but there is no legal impediment to Turkey conducting transboundary EIA voluntarily on a bilateral or multilateral basis. There are a few cases where Turkey is involved in a transboundary EIA process as well. Besides the Baku-Tiblis-Ceyhan pipeline project, a draft protocol was concluded between Turkey and Bulgaria with respect to transboundary aspects of the Nabucco Project (which was then cancelled), which involved transboundary consultation and exchanges of information (Güneş, 2007).

The EU accession process directed institutional developments towards the provision of more comprehensive EIAs. Turkey's candidacy for full membership increased the motivation to incorporate EU environmental standards. Being one of the most significant horizontal legislations, the EU Directive on EIA constitutes a primary legislative tool towards which the Turkish EIA system has been aligned.

Turkish EIA legislation has evolved and has acquired a highly competent legislative standard compared to EU EIA legislation, but since 1993 it has been confined solely to EIA at project level. The EIA legislation falls short of covering EIA on policies, plans and programmes. This narrow conception of EIA has been supplemented by the adoption of legislative and institutional measures on Strategic Environmental Assessment (SEA). The Draft By-Law on SEA, which was prepared in 2005 by the Ministry of Environment and Forestry (MoEF), entered into force in 2017.

Turkey's strategy of adaptation to the EU environmental *Acquis*, which requires the transposition of the EU SEA Directive as well as the EU EIA Directive, was reflected in Article 4 of the SEA By-Law, which is entitled "Adaptation to European Union Legislation", and includes confirmation that "This By-Law has been prepared in accordance with the legislation of the EU taking into consideration the European Parliament and the Council Directive on the Evaluation of Environmental Impacts of Certain Plans and Programmes dated 27/6/2001 and numbered 2001/42/EC".

Transboundary EIA, which exists in the EU *Acquis*, has not been incorporated in Turkish legislation, and this omission was reported by the EU in the Progress Reports on Turkey. The latest EU Progress Reports on Turkey reiterated that EU horizontal legislation has largely been transposed in terms of both EIA and SEA, with the exception of transboundary EIA. Concerning the practical application of EIA, the exemption of various mega and infrastructure projects from the EIA process was expressed as a concern. The court decisions related to these exempted projects were considered a positive stance which is expected to be influential in the practice of EIA (Turkey's Progress Report, 2018).

Court Decisions related to EIA also deserve attention with respect to the legal foundations of EIA in Turkey. There are various administrative law cases related to the annulment of the EIA decisions of the MoEU which were approved by the Council of State as the highest administrative court of appeal. On the other hand, the Council of State has repealed the provisions of the EIA By-Law which are contrary to the Environment Code (Alıca, 2011).

Besides the administrative courts, some appeals were made to the Constitutional Court against the EIA-related provisions of the Environment Code, on the basis of unconstitutionality. In 2009, the Constitutional Court annulled the third paragraph of Article 10 of the Environment Code,[4] which exempted oil, geothermal and mining exploration activities from the EIA procedure (Constitutional Court Decision, 15 January 2009, E: 2006/99, K: 2009/). The repeal of this provision that was considered contrary to the Constitution was significant in terms of its legal consequences. The exempted activities were included within the scope of the EIA procedure as a result of this decision. The Constitutional Court Decision taken in 2015 was also related to exempted projects. This time Provisional Article 2 was partially repealed by the Constitutional Court (Constitutional Court Decision, 3 July 2015, E: 2013/89, K: 2014/116).

The Constitutional Court also considers individual complaints that have reflections on EIA practices. In a recent decision concerning an individual complaint with regard to dismissal of the Action for Annulment against the EIA decision taken by the MoEU, the Constitutional Court decided in favour of the applicant. Refusal by the administrative court and the Council of State of appeals against the EIA decision on the basis of the statute of limitations was found contrary to the Right to Access to Courts, which is stipulated in Article 36 of the Constitution (Constitutional Court Decision, 25 December 2018, No. 2014/14359).

5.3 The Stages of the EIA Process

5.3.1 Application and Screening Stage

5.3.1.1 Project Owners' Obligations

The EIA process is conducted by the actors envisaged in the EIA By-Law under the supervision of the MoEU by the General Directorate of EIA, Permit and Inspection (GD for EIA) (DHFL on the Organization and Duties of the MoEU, Article 9). The Turkish EIA By-Law is based on a comprehensive understanding of the EIA process, which extends even post operation works of the planned investments. The 2014 EIA By-Law, Article 4(i) provides that "EIA Process refers to the process which starts with the application filed for conducting an environmental impact assessment for the project proposed to be carried out and comprises construction, operation and post operation works".

Article 6 provides that "Any natural or legal person planning to carry out a project governed by this By-Law shall procure that an EIA Application File and EIA File for their projects subject to EIA or a Project Presentation File subject to

[4]This provision was incorporated in Article 10 of the Environment Code in 2006 by law amendment (26 April 2006, No. 5491).

Selection and Elimination Criteria are drawn up by organizations qualified by the Ministry and that they are submitted to appropriate authorities and comply with their obligations assumed in connection with the project".

5.3.1.2 Agencies and Institutions Qualified by the Ministry

Starting with the 2013 EIA By-Law, agencies and institutions qualified by the Ministry have been given an active role throughout the EIA process.[5] The preparation and presentation of EIA application files and Project Presentation Files are no longer conducted by the project owners but by "Qualified EIA Agencies" (Turan-Güner, 2017: 45) The necessary information concerning the progress of the investment process related to commencement and construction periods should also be provided by them (2014 EIA By-Law, Article 4(b)).

A Certificate of Competency is provided by the MoEU in accordance with the principles and procedures set up by a Circular adopted in 2009.[6] The purpose of the Circular is to regulate the rules and procedures with regard to the provision of Certificates of Competency to the agencies and institutions which are going to prepare the EIA Application File, EIA Report and Project Presentation File (Circular, Article 1). The obligations of the Qualified EIA Agencies are identified in detail in Article 9 of the Circular. The MoEU monitors and controls the Qualified EIA Agencies and may suspend or cancel their Certificate of Competency (Circular, Article 10). There are 329 Qualified EIA Agencies that have acquired a Certificate of Competency, but some of the Certificates have expired and some were terminated by the MoEU.

5.3.1.3 Projects Subject to EIA

In the Turkish EIA system the projects which require EIA are listed in Annex I and Annex II of the EIA By-Law. Categorization is based solely on the type, size and scale of the projects. Compared to more advanced classifications such as the ones applied by the World Bank, this listing falls short of identifying projects on the basis of the location, sensitivity, nature or magnitude of their potential impacts (Arıkan, 2011). Project location and site sensitivity are addressed in the EIA Introduction File prepared in accordance with the General Format identified in Annex III and the Project Presentation File prepared for Annex II projects according to the format provided in Annex IV of the EIA By-Law.

[5]Agencies/Institutions Qualified by the Ministry will be referred as 'Qualified EIA Agencies' throughout the article.

[6]Yeterlik Belgesi Tebliği [Communiqué on Qualification Certificate], OG (18 December 2009), No. 27436.

Annex 1 projects are directly subject to EIA. Upon the application of the Qualified EIA Agencies, the MoEU conducts the screening process for the projects listed in Annex I. Projects in which the total capacity increase is equal to or above the threshold value given in Annex I are also subject to this procedure (2014 EIA By-Law, Article 7/1(c)). The Qualified EIA Agencies prepare an EIA Introduction File in accordance with the General Format provided in Annex III; it should include all the necessary information on the type, life period, purposes, necessity, physical features and location of the project. The characteristics of the land to be used in the construction and operation phases, the major environmental impacts of the project proposal, the main alternatives to the project, and the reasons for choosing the selected area should also be identified. Public participation has been given special attention and requires Qualified EIA Agencies to propose methods for the involvement of the public in the EIA process and the inclusion of public opinions. A non-technical summary of the information obtained on all these items from various institutions should also be submitted within the EIA Introduction File.

The EIA Introduction File is reviewed by the MoEU. If the MoEU decides that the EIA Introduction File is incomplete, it is returned to the 'Qualified EIA Agencies' for correction. Upon correction it is resubmitted to the MoEU for examination. If the application conforms to the elements required by Annex III of the EIA By-Law, the scoping process is initiated by the establishment and invitation of the Commission to its first meeting, during which the scope and determination of special formats will be conducted.

Certain projects require the MoEU to determine the EIA procedure separately. These include military projects and the projects to be implemented under extraordinary situations (2014 EIA By-Law, Articles 23, 24). For integrated projects which consist of several related projects the Ministry may require the preparation of only a single EIA (2014 EIA By-Law, Article 24).

5.3.1.4 Annex II Projects

The projects listed in Annex II and whose total capacity increase is equal to or above the threshold value given in Annex II are subject to a selection and elimination process before a formal EIA process is applied (2014 EIA By-Law, Article 15/1(b)). For these projects a Project Presentation File is prepared which takes into consideration the elements envisaged in Annex IV, including the characteristics of the project, the possible impacts, the alternatives, and the reasons for the selection of the proposed alternatives. The MoEU conducts the screening process for the projects subject to selection and elimination criteria on a case-by-case basis and gives a decision on whether the project requires EIA or not. If an "EIA is Required" decision is given, the project will be subject to the EIA procedure on the same basis as the projects listed in Annex I (2014 EIA By-Law, Article 7. 1(b)). In cases where a "No EIA is Required" decision is made, this will constitute environmental clearance and the project owner can proceed with the project proposal by completing the requirements other than EIA.

The only basis for the environmental evaluation of projects that are subject to selection and elimination is the Project Presentation File, which should be prepared in accordance with Annex IV of the EIA By-Law. When an "EIA is Required" decision is made in response to a project proposal, the EIA process will begin with the scoping and format determination. So the lack of scoping will be supplemented in the subsequent phase through the EIA process. But in "No EIA is Required" decisions, lack of scoping is a major deficiency, as this decision constitutes environmental clearance for the project, allowing the project owner to proceed with the project.

There is not a guarantee of the 'No EIA is Required' decisions to be taken on the basis of objective environmental criteria where the cumulative impacts are considered and with the involvement of the the Public. So that, the quality of 'No EIA is Required' decisions are questionable. Post project monitoring and control exercised over these projects is an important opportunity but do not guarantee the employment of environmental standards sufficiently. It becomes much more difficult to conduct monitoring and control appropriately over these projects which extends variety of different sectors and amounts to very high in number. Out of 61,699 applications made to the Ministry, 60,694 Project Proposals were finalised with a decision 'No EIA is Required' in between 1993 and 2018 (Statistics on EIA, 2019). This concern translates into a major weakness for the EIA systematic for 'No EIA is Required' decisions due to lack of any further scoping process which can be applied for these projects. Considering the large number of projects which were given environmental clearance, it turns out to be an urgent necessity to take severe measures to bring much more convincing and satisfactory environmental criteria for the Projects listed in Annex II.

5.3.2 Scoping Phase

The content of the EIA Report will be determined during the scoping phase. Scoping is very critical since it is the stage where the terms of the EIA and the environmental standards to be fulfilled by the EIA report are identified. The quality of this process will be directly reflected in the overall quality of the final EIA Report. In the 1993 version of the Turkish EIA By-Law, the scoping stage was not identified and this situation was severely criticized in environmentalist circles. As a result, 'scoping' as a distinct phase was incorporated into Turkish EIA legislation.

The scoping process is conducted by the Commission, which is constituted by the MoEU. Article 8/4 provides that "The Ministry [shall] establish a Commission which consists of officials of the Ministry, the project owner, Agencies/Institutions Qualified by the Ministry and representatives of relevant public institutions and organizations. The Commission assigned for the scoping phase functions for the examination and evaluation of the EIA Report as well (2014 EIA By-Law, Article 4/1(s)).

The scoping process is conducted upon public participation meeting. This is the only extensive meeting required throughout the EIA process which aims to inform the public and receive corresponding questions and suggestions related to the planned project (2014 EIA By-Law, Article 9). The Commission should identify the environmental impacts to be addressed by the EIA Report according to the main headings in the EIA General Format which is provided in Annex III of the EIA By-Law. The scoping process involves the preparation of a Special Format which includes the details to be addressed by the EIA Report by taking into consideration the concerns and recommendations expressed during the public participation meeting. The Commission determines the issues to be included and excluded from the format and assigns a working group to prepare the Special Format. There is a need to conduct the scoping and special format determination phase in a much more systematic manner in order to ensure the coherence and uniformity of EIA Reports as well as to conduct a more thorough examination and assessment process. Due to their significance, cumulative impact assessments can be integrated into the scoping phase. In the EIA By-Law, cumulative impact assessment is not compulsory but there is no legal impediment to incorporate the requirement to conduct a cumulative impact assessment in the EIA Report (Boşça-Hamamcı, 2013: 46).

The Special Format designed for each project proposal is valid for only eighteen months (2014 EIA By-Law, Article 10/4). In other words, the decision taken at the end of the scoping process obligates the Qualified EIA Agencies to prepare and submit the EIA report to the MoEU for examination and assessment within eighteen months. If the EIA Report is not prepared within this period of time, the entire application will be void.

5.3.3 The EIA Report and Its Legal Nature

The EIA Report is defined as "the report to be prepared in accordance with the predetermined special format for a project shown in Annex I list of EIA By-Law or such projects for which 'EIA is Required' decision has been given by the Ministry" (EIA By-Law Article 4/1 (e)). There is no further clarification about the content of the EIA Report in the EIA By-Law to identify its legal characteristics.

In the Turkish EIA system, the EIA Report is prepared by the Qualified EIA Agencies, whereas in some other countries the administrative authorities prepare it. In order to qualify to prepare the EIA Report, a Certificate of Competence should be obtained from the Ministry of MoEU (2014 EIA By-Law, Article 26). Qualified EIA Agencies are responsible for preparing the EIA Report in accordance with the special format, which includes the necessary information about the planned project and its impacts; the evaluation and documentation of the possible impacts; and the project owner's commitments to avoid or eliminate the possible negative impacts of the project.

The EIA Report provides information and guidance to the administrative body which is in the position to give environmental clearance for the projects. It constitutes a preparatory transaction which is taken into consideration by the

administrative units when making the final decision on the EIA. So the EIA Report is not an executory administrative transaction independent of the final decision on EIA but a step behind this. The EIA Report falls short of creating a legal consequence on legal subjects, and does not have an executory legal value on its own (Saygılı, 2007). For EIA Reports to acquire a legal value, it is necessary for the MoEU to make a final administrative decision by either approving or rejecting the project proposal. This explains why the EIA Report cannot be subject to judicial review separately from the final decision on the EIA (such as "EIA is Positive" or "EIA is Negative"). Although it cannot be annulled in isolation, if the final decision on EIA (which is executory in character) is subject to annulment, it is possible to assert the unlawfulness of the EIA Report before the administrative courts as well.

5.3.4 Examination and Assessment of the EIA Report

When the EIA Report is prepared, it should be submitted to the MoEU for review and to get the final decision. When the MoEU receives the EIA Report, it informs the public (2014 EIA By-Law, Article 11/3). The review and assessment of the report are conducted mainly by the Commission in continuous interaction with the Qualified EIA Agencies if modifications to the EIA Report are required.

During the examination and assessment meetings, the Commission examines and assesses whether: the EIA Report and its appendices are sufficient and appropriate; the likely environmental impacts of the project have been sufficiently and comprehensively examined; the necessary measures to mitigate likely negative effects have been included; examinations and assessments need to be made in order to determine if solutions have been devised to address the comments and suggestions received at the Public Participation Meeting and during the process (2014 EIA By-Law Article 12/9). One of the major challenges of this stage is lack of sufficient systematic guidelines to be followed by the Commission.

5.3.5 Final Decision on EIA

Based on the final version of the EIA Report, the MoEU may either give "EIA is Positive" or "EIA is Negative" decisions. The decisions should be communicated to the public, the project owner and relevant institutions. "EIA is Positive" and "EIA is Negative" decisions take into consideration the assessment and evaluation of the Commission and public comments on the EIA Report. They both constitute administrative law transactions which are subject to administrative and judicial appeal either by the project owner or interested persons.

The EIA decisions are not just simple procedural decisions; they are legally binding for other governmental authorities as well. EIA clearance as a prerequisite for proceeding with a project is considered one of the peculiarities of the

Turkish EIA system which makes it different from the system in many other countries (Turgut, 2003).

> According to the 2014 EIA By-Law Article 6/3,
>
> No incentive, approval, permission, construction and usage licence can be given, no investment can be initiated, nor any tender may be awarded for projects subject to this By-Law, unless an "EIA is Positive" decision or "No EIA is Required" decision is made.

The "EIA is Positive" decision constitutes environmental clearance for the project, and the project owner can proceed to conduct further permission and licensing transactions. There is a statute of limitation on the "EIA is Positive" decision. If the project is not initiated within seven years, the "EIA is Positive" decision is invalid (EIA By-Law, Article 14/4). The "EIA is Negative" decision is an impediment to proceed with the project.

The Ministry and Governorates should announce the content of the "EIA is Positive" or "EIA is Negative" decision to the public (2014 EIA By-Law, Article 14/3). Reasons are not necessarily included. However, being required to include the 'reasons' in the announcement of the Final Decision on the EIA would have the potential to pressurize and force administrative bodies to take measures with regard to access to information, public consultation and transparency. The administrative bodies would be obliged to explain under which conditions they made the decisions, and would have to identify why they did not choose to make a different decision, which would help to improve the quality of the EIA.

5.3.6 Monitoring and Control

In the Turkish EIA system, the project cycle is taken into consideration as a whole. The EIA By-Law envisaged the EIA process as a system which includes the monitoring and control phases. The "EIA is Positive" and "No EIA is Required" decisions given by the MoEU constitute environmental clearance and provide the project owner with the opportunity to proceed with further permission requirements and finally to launch the project. The MoEU continues the monitoring and control activities over these projects at post-project level with the aim of revealing any unpredictable and unacceptable impacts and providing feedback to inspire future EIA practices (Saygılı, 2007).

While the previous stages of the EIA process are conducted on a planned activity which has not yet been put into practice, monitoring and control are exercised over an investment which actually operates. As the project proposal has already been put into force by the monitoring phase, examination, control and assessment are performed over an existing activity.

> This is categorized as a process for
>
> checking whether the project has been carried out in accordance with the development consent, rather than 'impact monitoring' or 'impact audit' (Turgut, 2003).

During the monitoring and control phase, the fulfilment of the project owner's commitments and the issues envisaged in the EIA Report or Project Presentation File are examined. If it is concluded that the commitments have not been adequately addressed, the project owner is given a deadline to fulfill them. The investment will be suspended if the commitments are not put into action within the time extension. To continue with the project, the project owner should meet all the envisaged commitments (2014 EIA By-Law, Article 19/1(b)).

The monitoring and control phase includes both procedural and substantive elements. The checks ascertain whether or not the investment has been initiated and has started to operate within the statutory time period. The site of the investment, the installations and constructions are subjected to physical examination to discover whether they are in line with the requirements designated by the official permit. In order to ensure the efficiency of the monitoring and control, it is the duty of the Qualified EIA Agencies to communicate with the MoEU and the concerned Governorate about the dates of the course of conduct of all the phases of the investment, such as the commencement, construction, operation and post-operation.

The existing scientific capacity of Turkish experts can be channelled to provide systematic monitoring and control over the wide range of projects which are currently operating. In order to attain a fruitful outcome there is a need for strong organizational restructuring in Turkish EIA bureaucracy to develop permanent units which are trained and employed to ensure the efficient functioning of monitoring and control on a sectoral basis.

5.4 Conclusion

There are major challenges with respect to proper implementation of the EIA in Turkey. Systematic compilation of data about the state of the environment and a comprehensive inventory are needed to identify the problems and opportunities related to EIA applications. Though the MoEU provides extensive information on EIA, it is not possible to obtain the necessary knowledge about EIA practices case by case. Academic research should also be promoted to obtain a comparative database which systematically encompasses the existing knowledge and practices.

The EIA process should be improved through the integration of substantial and procedural elements into EIA legislation. During the Workshop on EIA, organised by the MoEU between 15 and 17 April 2019,[7] visionary ideas were put forward by the MoEU at the highest level. It was suggested that the EIA process should be more proactive rather than reactive. In the face of striking environmental risks, there were proposals for the compulsory inclusion of sustainable development targets such as energy efficiency, zero waste, and zero emission in EIA Reports.

[7]Hereafter I will refer this event in short as the '2019 Workshop on EIA'.

The court decisions on EIA are useful for clarifying environmental norms as well as identifying the conditions for the proper implementation of EIA. The need for coordination between the MoEU and the Governorates with respect to court judgements related to "No EIA is Required" decisions was emphasized by the participants during the 2019 Workshop on EIA. These decisions are mostly taken at Governorate level and, in the case of court appeals, strong coordination between the MoEU central units and the Governorates is required. Dissemination of the court decisions to all the Governorates is necessary to identify and solve the problems which have similarities. This may provide coherent implementation of the EIA legislation throughout the country.

Concerning the substantial shortages related to various modes of impact assessment, the entry into force of the SEA legislation can be considered a positive achievement. There is also a need for steps to be taken for the integration of cumulative environmental assessment and social impact assessment. The integration of cumulative environmental assessment into legislation and practice will improve the overall quality of the EIA process from the scoping to the EIA preparation phase. Under current EIA legislation, there is no legal impediment to conduct cumulative impact assessment within the context of the project proposal's special format, but it would be better to make it mandatory. During the 2019 Workshop on EIA, the integration of cumulative impact assessment into EIA practices as a compulsory obligation was one of ideas shared in common. There were also calls to integrate social impact assessment, which is not part of the current EIA By-Law, into the EIA process as well. It was agreed that the narrow understanding and poor implementation of the public participation requirement of the EIA By-Law must be extended towards the comprehensive coverage of social impact assessment.

There are challenges related to the actors responsible for the proper implementation of the EIA process. In the face of the high number of projects which require EIA, the organizational structure and functioning of the MoEU and the Governorates should be strengthened and consolidated. There is also a need to address the challenges related to the Qualified EIA Agencies. The quality of the EIA process is directly linked to the quality of the Qualified EIA Agencies. These agencies are diverse in terms of magnitude and capabilities, which can result in EIA practices of varying standards. A classification system could address these challenges. Qualified EIA Agencies are not organized on a sectoral basis, such as energy, transportation, agriculture, mining etc. Once they get the Certificate of Competency, they are eligible to conduct EIA in every sector. Sectoral specialization and expertise are needed to increase the overall quality of the EIA. These agencies have difficulty in finding experts all the time. The creation of a '*common expert pool'* could be a good solution to this problem. In order to improve the quality system as a whole, the MoEU could be advised to set up an awards system alongside the current system, which is based on sanctions. The Commission has a significant role to play throughout the EIA process, starting with scoping and continuing with the examination and evaluation phases. While EIA Reports are prepared by the Qualified EIA Agencies, examination and evaluation of these

reports are conducted by the Commission members, who are not necessarily experts on EIA. It would be worth developing a qualification strategy to improve the capability of Commission members, encompassing all the relevant ministries which are also engaged in the EIA Process.

In Turkey, the conduct of EIA is a legal obligation which derives from both national and international law. In the early days of the adoption of EIA as a policy objective, Turkey was not ready to translate EIA into practice. Turkish Environment Code Article 10 became operational after a decade under the 1993 EIA By-Law. EIA is not the sole instrument for protecting nature and the environment, but this initial decade did provide a good opportunity to acquire experience of EIA. There has been significant development in Turkey with respect to the scientific and technical capacity of EIA. The administrative capacity of the MoEU is also remarkable compared to the 1990s.

The way to identify and address the challenges is greatly conditioned by the political discourse, which is shaped by the political culture of society. Turkey's commitment to sustainability as a value can be expected to be reflected more strongly in the environmental field and will hopefully stimulate both the practitioners and decision-making bodies to address the core challenges faced in the EIA systema as well.

References

Alıca Süheyla Suzan (2011). "Çevresel Etki Değerlendirmesinin Yargı Kararları Çerçevesinde İncelenmesi [Examination of Environmental Impact Assessment within the Framework of Judicial Decisions]", in: *Gazi Üniversitesi Hukuk Fakültesi Dergisi*, XV, 3: 97–130.

Arıkan, Esra (2011). "Relationship Between World Bank and National Requirements", in: *Environmental Assessment, ECA Safeguard Training for PIUs* (Ankara).

Boşça, Aysun V.; Hamamcı Nihan Ş. (2013). "Kümülatif Çevresel Etki Değerlendirmesi [Cumulative Environmental Impact Assessment]", in: *Uluslararası ÇED Kongresi* (8–10 November 2013), *Bildiri Kitabı* [*Conference Proceedings*]: 33–47.

Güneş, Şule (2007). *Uluslararası Hukuk Açısından Çevresel Etki Değerlendirmesi* [*Environmental Impact Assessment in Terms of International Law*] (Ankara: Siyasal Kitabevi).

Innanen, E.R. Sally (2004). "Environmental Impact Assessment System in Turkey: Capacity Building for European Union Accession", in: *Impact Assessment and Project Appraisal*, 22, 2: 141–151.

Saygılı, Abdurahman (2007*). Çevre Hukuku Açısından Çevresel Etki Değerlendirmesi* [*Environmental Impact Assessment In terms of Environmental Law*] (Ankara: İmaj Kitabevi).

Tekayak, Deniz (2014). "An Overview of Environmental Impact Assessment in Turkey: Issues and Recommendations", in: *Ankara Avrupa Araştırmaları Dergisi*, 13, 2: 133–151.

Turan, Emine Su; Güner, Esra Deniz (2017). "Türkiye'de Çevresel Etki Değerlendirme Mevzuatındaki Değişimler [Revisions in Environmental Impact Assessment Legislation in Turkey]", in: *Artvin Çoruh Üniveristesi, Doğal Afetler Uygulama ve Araştırma Merkezi, Doğal Afetler ve Çevre Dergisi* (January 2017), 3, 1: 39–47.

Turgut, Nükhet (2003). "EIA with Reference to the EU Directive", in: *Environment Policy and Law*, 33, 3–4: 163–169.

Other Materials

Amendment to EIA By-Law (2016), in: *Official Gazette*, at: www.resmigazete.gov.tr/2016Degisikligi (retrieved 20 April 2019).
Amendment to EIA By-Law (2011), in: *Official Gazette*, at: www.resmigazete.gov.tr/eskiler/2011Degisikligi (retrieved 20 April 2019).
Circular on the Certificate of Competence (2009), in: *Official Gazette* (18 November 2009), No: 27436, at: www.resmigazete.gov.tr (retrieved 5 March 2019).
Constitutional Court Decision, E:2006/99, K:2009/ (15 January 2009), at: from www.anayasa.gov.tr (retrieved 15 June 2018).
Constitutional Court Decision, E:2013/89, K:2014/116 (3 July 2015), at:. www.anayasa.gov.tr (retrieved 15 June 2018).
Constitutional Court Decision, No: 2014/14359 (25 December 2018); Press Release (22 February 2019), at: www.anayasa.gov.tr (retrieved 5 March 2019).
DHFL on the Organization and Duties of the MoEU, No: 644, in: *Official Gazette* (4 July 2011), No: 27984, at: www.resmigazete.gov.tr (retrieved 8 April 2018).
Draft By-Law, Ministry of Environment and Urbanisation (8 April, 2005), at: http://www.cevreveorman.gov.tr (retrieved 20 April 2016).
EIA By-Law, in: *Turkish Republic Official Gazette* (25 November 2014), No. 291869, at: http://www.MoEU.gov.tr (retrieved 20 June 2019).
Official Statistics on EIA in Turkey, MoEU (2018), at: www.cedgm.gov.tr (retrieved 8 April 2019).
Stratejik Çevresel Değerlendirme (SÇD) Uygulamaları [Strategic Environmental Assessment (SEA) Applications], Çevresel Etki Değerlendirmesi [Environmental Impact Assessment], İzin ve Denetim Genel Müdürüğü [General Directorate of Permit and Inspection], at: www.scd.csb.gov.tr (retrieved 20 April 2019).
SEA By-Law, in: *Turkish Republic Official Gazette* (8 April, 2017), No: 30032, at: http://www.MoEU.gov.tr (retrieved 20 February 2019).
Strategy Document, EIA Training and Information Centre, Turkey, *Roadmap for Quality* (February 2006) at: www.cedgm.gov.tr (retrieved 20 April 2019).
Turkey's Progress Report, Section 4.27, Chapter 27: Environment (2018), at: https://www.ab.gov.tr/siteimages/kapbtablolar/20180417-turkey-report.pdf (retrieved 25 April 2019).
Turkish Constitution, at: www.anayasa.gen.tr/1982ay.htm (retrieved 20 April 2019).
Turkish Environment Act (9 August 1983), in: *Official Gazette* (11 August 1983), No. 18132, at: www.mevzuat.adalet.gov.tr/html/631.html (retrieved 14 February 2019).
Yeterlik Belgesi Tebliği [Communiqué on Qualification Certificate], *Turkish Republic Official Gazette* (18 December 2009), No: 27436.

Chapter 6
Instruments of Environmental Compliance

Zerrin Savaşan

Abstract This chapter focused on Turkish environmental law in practice, based on its implementation, compliance and enforcement. The methods of ensuring environmental implementation, compliance and enforcement aree analysed on the basis of environmental permits and licences, environmental impact assessment (EIA) applications and decisions, reporting, monitoring and inspecting systems, and administrative fines and suspension as tools of environmental enforcement.

Keywords Turkish environmental law · Implementation · Compliance · Enforcement

6.1 Introduction

To ensure the timely implementation and enforcement of environmental legislation and compliance with it, and thereby prevent or reduce environmental infringements, it is vital to establish an effective environmental management system which incorporates a well-functioning legal, administrative and judicial capacity.

Environmental compliance mechanism arises here as a key process. For the effective operation of the mechanism in practice, the institutions, organizations and facilities whose activities may cause environmental pollution or harm are required to establish environmental management units, employ environmental representatives or use the services of environmental consultancies authorized by the Ministry (Supplementary Item 2, Environment Act). Their authorization, obligations, and other related procedures and principles are comprehensively regulated under the By-Law on Environmental Representatives, Environmental Management Unit and Environmental Consulting Firms. Additionally, qualification certificates are required for private and public laboratories authorized by the Ministry (by the

Dr. Zerrin Savaşan, Assistant Professor, Department of International Relations, Sub-department of International Law, Selçuk University, Konya, Turkey. e-mail: szerrin@selcuk.edu.tr.

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Environmental Reference Laboratory)[1] to conduct environmental measurements and analyses in conformity with the By-Law on Qualification of Environmental Measurement and Analysis Laboratories.[2]

This mechanism involves ensuring implementation of and compliance with the requirements of the Environment Act and related By-Laws through permitting, monitoring and inspecting the activities of the facilities, and, if it deems necessary, through enforcing the related facilities by imposing administrative measures, sanctions or fines when any non-compliance with these legal and technical requirements specified in environmental legislation is identified.

This chapter provides an assessment of the environmental compliance mechanism operating in Turkey. It was prepared as a continuation of the studies in Chaps. 2 and 3, respectively entitled "The Development Process of Environmental Law in Turkey: The EU Impact" and "Drawing A General Framework for Turkish Environmental Law". Whereas in these chapters background information on Turkish Environmental Law was given, here the focus is on the functioning of Turkey's environmental law in practice based on the implementation, compliance and enforcement of it, the aim being to provide the reader with a better understanding of how the legislation works in practice.

While making this study, the aim is not to question whether, how and under what conditions Turkish environmental law influences environmental quality by altering the behaviour of actors, therefore no effort is made to demonstrate its effectiveness. Instead, its purpose is simply to provide an in-depth understanding of the existing structure of compliance, implementation and enforcement and describe their current features in order to open avenues for discussing the options for a further improved system, and to support academic debate on the subject by contributing useful input. This is because almost all legal acts, codes and rules developed under TEL are relatively new. They are indeed still at the stage of establishment or development, or passing through several amendments at different times after being adopted. Consequently, the compliance, implementation and enforcement cannot be regarded as fully tested. Moreover, it is quite difficult to measure the effectiveness of TEL – or even its likely effectiveness in practice – since it forms a very complex structure with various relevant acts, institutions, processes and dynamics that need to be investigated in detail. Finally, compliance, implementation and enforcement can all be affected by a great range of factors, such as the characteristics of the activity, of the act/code/rule, of the parties, of the institution applying the act/code/rule, and even the stance of NGOs regarding that act/code/rule.

[1]See the details at: http://laboratuvar.cevre.gov.tr/anasayfa-eng.asp.

[2]The Project for Automation of the Authorization Process of Environmental Measurement and Analysis Laboratories enables all kinds of documents and information to be sent and viewed electronically instead of as hard copy, and includes all licensing processes starting with the application procedures for laboratory authorization (Olgun 2015).

6.2 Environmental Permits and Licences

According to the Environment Act (Art. 11), facilities which have adverse environmental effects must get permits to operate, and institutions doing business with facilities in the fields of waste recovery, recycling and disposal also have to obtain licences.

The facilities that are obliged to obtain an environmental permit or an environmental permit and licence to be able to operate are included in Annex List 1 and Annex List 2 of the By-Law on Environmental Permit and Licence adopted in 2014. To implement an integrated regime based on the related EU directives (Directive (2008)/1/EC and Directive 2010/75/EU), the practice of requiring just one environmental permission application – instead of separate waste management permits and discharge permits (emission, noise, deep-sea discharge and hazardous substance discharge permits) – has been adopted and applied to these sorts of facilities since 1 April 2010.

While the Ministry is entitled to grant Provisional Activity Certificates and Environmental Permits or Environmental Permits and Licence Certificates for the activities and facilities included in Annex List 1, the Provincial Directorates of Environment and Urbanization grant the same certificates to those included in Annex List 2 (Art. 6, By-Law on Environmental Permit and Licence).

The process for granting Environmental Permits and Licence Certificates functions in practice as follows:

1. *Prior Authorization*: The facilities listed in Annex 1 and Annex 2 submit the documents specified in Annex 3A and Annex 3B. They are evaluated for thirty days. Within the evaluation process, if some deficiencies are determined, these are notified to the relevant unit of the applicant. The applicant has sixty days to remove the deficiencies and make improvements. When the application is brought before the competent authority at the end of sixty days, it is re-evaluated within twenty days. If the application is not found proper to the conditions, it is rejected. If found proper, it is endorsed, and a Provisional Activity Certificate (PAC) valid for one year is provided to the applicant (Art. 8, By-Law on Environmental Permit and Licence).
2. *Substantial Authorization*: A facility that has received a PAC applies within six months to the competent authority for a five-year permit, and its application is evaluated for sixty days by that authority. If some deficiencies are found during the evaluation process, these are notified to the relevant unit of the facility. The facility has ninety days to remove the deficiencies and make improvements. When the application is brought before the competent authority at the end of the improvement process, it is re-evaluated within thirty days. At the end of this period, if the application is not found proper to the conditions of getting permit, it is rejected and the PAC of that facility is cancelled. If found proper, its one-year PAC is converted into a five-year environmental permit (Art. 9, By-Law on Environmental Permit and Licence).

Within the scope of the By Law, there are twenty-one licensing issues under five different fields (Ministry of Environment and Urbanization, 2015: 17):

- Recovery (hazardous waste, non-hazardous waste, waste oil, waste vegetable oil, waste batteries and accumulators, expired tyres, waste packaging);
- Disposal (waste incineration and co-incineration, plants for advanced thermal processing [pyrolysis, gasification], regular storage);
- Interim storage (plants for interim storage);
- Treatment (medical waste sterilization, packaging waste collection and separation, recycling plants for ships, plants for fuel derived from waste, tanker sanitization, treatment of metal and expired vehicles, temporary storage for expired vehicles, electronic equipment waste, facilities for waste admissions);
- Purification (Polychlorinated biphenyl [PCB] Purification).

According to the Environmental Inspection Report, since the integrated approach began in 2010, 14,380 activities or facilities in total have been granted by PAC, and 10,320 activities or facilities have been granted by Environmental Permit or Environmental Permit and Licence Certificate (Ministry of Environment and Urbanization, 2015: 18).

With regard to import and export permits and other related activities, the following can be listed as examples:

- Scrap Metal Importer Certificates – regulated pursuant to Art. 4 (1,3), Communiqué on Import Inspection of Metal Scraps That are Under Control Relating to Protection of Environment.
- Registration Certificates of Importers of Solid Fuels – regulated under Art. 4, Communiqué on Import Inspection of Solid Fuels That are Under Control Relating to Protection of Environment.
- Transactions concerning hazardous waste export/import – regulated under Art. 22, 23 of the By-Law on the Management of Waste.
- Ensuring import of batteries and accumulators in conformity with the Art. 24 of the By-Law on the Control of Used Batteries and Accumulators.

6.3 Environmental Impact Assessment (EIA) Applications and Decisions

Based on Art. 10(1), Environment Act, the institutions, agencies and facilities that have the potential to cause environmental problems due to their planned activities and projects have to prepare an Environmental Impact Assessment Report or Project Introduction File.

The details concerning the preparation of these reports are provided in the By-Laws (Art. 10(3)). As the first By-Law on the issue entered into force in 1993, the implementation of the related procedures on the EIA became possible ten years

after the Environment Act entered into force. The relevant by-law has been amended a total of eighteen times.[3] By-Law No. 29186, which became effective in 2014 and was amended by By-Law No. 29619 in 2016, constitutes the most recent version which is in force right now.

The preparation of the EIA Application File, EIA Report and Project Introduction File is conducted by the organizations awarded qualification certificates by the Directorate General of EIA, Permit and Inspection, in accordance with the Communiqué on Proficiency Certificate (Art. 6, Art. 26, By-Law on EIA).

In the scope of the assessment, the possible positive and negative impacts of the planned activities and projects on the environment are considered, and corresponding measures to prevent, minimize or eliminate any negative environmental impacts should be clarified. This clarification is achieved by assessing various factors, such as the location of the project and its use of technological facilities, and monitoring the implementation of the project in practice.

The decisions on EIA are given by either the Ministry or Provincial Directorates of Environment and Urbanization. While decisions of "EIA Positive" or "EIA Negative" on the projects listed in Annex-1 are given by the Ministry, decisions of "EIA Required" or "EIA Not Required" on the projects listed in Annex-2 (projects subject to selection and elimination criteria) are given by Provincial Directorates of Environment and Urbanization (Art. 5, Art. 14, Art. 17, By-Law on EIA). Unless the decision of "EIA Positive" or "EIA Not Required" is made, approval, permission, incitement and investment for those projects should not be initiated or put out to tender, and incentives and construction and usage licences cannot be given (Art. 10(2), Environment Act; Art.7, By-Law on EIA).

If the construction or activity is started without initiating the EIA process or completing this process, an administrative fine is imposed at the rate of 2% of the value of the project (Art. 20(e), Environment Act). If an activity is begun without the relevant EIA decision, the facility which began it may be subject to the suspension of the relevant activity (Art. 19, By-Law on EIA).

According to the Environment Inspection Report, between 1993 and 2014 a total of 51,670 EIA decisions were made by the Ministry. Of those, there were 47,314 "EIA Not Required" decisions and 3,736 "EIA Positive" decisions (Ministry of Environment and Urbanization, 2015: 13). According to the report, the sectoral distribution of the projects decided as "EIA Positive" is as follows: projects in the oil and mining sector have a share of 26% (976), the energy sector has 24% (893) and the waste-chemicals sector has 13% (498). On the other hand, the sectoral distribution of the projects decided as "EIA Not Required" is as follows: the oil and mining sector has a share of 50% (23,405), the agriculture and food sector has 14% (6,819) and the industrial sector has 12% (5,749) (Ministry of Environment and Urbanization 2015: 14).

[3]See all texts, including amendments, at: http://www.csb.gov.tr/gm/ced/index.php?Sayfa=sayfa&Tur=webmenu&Id=254 and http://www.csb.gov.tr/gm/ced/index.php?Sayfa=sayfa&Tur=webmenu&Id=11223.

6.4 Reporting, Monitoring and Inspecting

To ensure implementation of and compliance with environmental legislation, it is also necessary to build confidence among stakeholders and in the public through establishing robust and effective reporting, monitoring and verification systems.

Hence, there is also a need for transparent and publicly available information which should be provided by stakeholders with minimum administrative burden.

Under Turkish Environmental Law, everyone has the right to access to information related to the environment in the scope of the Act on the Right of Access to Information No. 4982 (Art. 30(2), Environment Act).

The stakeholders should give the information and documents that the Ministry and the other respective competent authorities ask for, pay for the costs of analysis and measurements made by authorities, and ease the workload of the authorities during the inspection (Art. 12(3), Environment Act). When required by the Ministry or other concerned authorities, they should also share all other related information and documents about any element of their activity which could cause environmental pollution (Art. 12(4), Environment Act).

The Ministry is entitled to ask public institutions and agencies and natural and legal entities for every type of data and information related to the environment which it deems necessary; and those asked for data and information are obliged to supply them promptly and without charge (Supplementary Item 7, Environment Act).

Within the scope of monitoring activities, not only the facilities themselves but also the related authorities monitor the activities of those facilities. In other words, based on their own internal monitoring mechanisms, facilities submit relevant information and data to national authorities. The competent national authorities then assess these reports and submit the findings through predetermined indicators.

The Ministry is charged with establishing the necessary institutional infrastructure regarding the measurement, monitoring and inspection activities and others related to the resolution of environmental problems (Supplementary Item 5, Environment Act). On examining the current system, it can be seen that the system is already designed to prevent fragmentation and aims to be better coordinated, more coherent and to work in close collaboration with all related units in conformity with the requirements of the EU *acquis*.

Through its Directorate on Laboratory, Measurement and Monitoring under the General Directorate of EIA, Permission and Inspection, the Ministry of Environment and Urbanization is responsible for monitoring air, soil, water and industrial pollution. It also monitors the regulation of EIAs. In fact, following an "EIA Positive" decision, the project owners are obliged to obtain monitoring reports on the initiation and construction periods of the investment from the authorized institutions and agencies, which are obliged to submit them to the Ministry (Art. 18, By-Law on EIA). After receiving the "EIA Positive" decision the project owners

are also obliged to notify the Ministry of the developments in the process of investment in the periodic order determined by the by the institutions and agencies granted proficiency by the Ministry (Art. 27b, By-Law on EIA, 2016 amendment).

Under Turkey's inspection system, on the other hand, the Ministry of Environment and Urbanization is again stipulated as the key unit for making decisions about administrative enforcements and conducting inspections under the Environment Act (Art. 12(1) and Art. 24(1,2)). Indeed, it is the key regulatory authority for taking relevant necessary actions. It carries out its powers and tasks particularly in accordance with the By-Law on Environmental Inspection, but also based on other related legislation, such as the By-Law on EIA and the By-Law on Environmental Permit and Licence. However, it should be stressed that some other public institutions and authorities mentioned in Art. 12(1), Environment Act, namely provincial special administration, municipalities which have established environmental inspection units, the undersecretariat of maritime affairs, coastguard command, and the inspectors determined in accordance with the Highways Traffic Act No. 2918, are also delegated with the power of inspection.

These inspection activities can be conducted regularly under the annual or multi-year programmes (planned/routine inspections) or unregularly (unplanned/non-routine) (Ministry of Environment and Urbanization, 2015: 21).

They can be performed by the central Directorate (Directorate General of Environmental Impact Assessment, Permit and Inspection) and/or the Provincial Directorates of Environment and Urbanization.

The Directorate General carries out its inspection activities on EIAs, on facilities at risk of major industrial accidents, and on markets.

Regarding Provincial Directorates' Inspection Activities, it can be seen that through the Combined Inspection Programme of 2014 for all Provincial Directorates, prepared pursuant to Art. 22, By-Law on Environmental Inspection, 1,064 facilities were included in the programme and 43,674 environmental inspections in total were conducted in 2014 (Ministry of Environment and Urbanization, 2015: 28).

Regarding inspection activities on EIAs, in 2014 alone, the following inspections were carried out by the Directorate General of EIA in line with the By-Law on Environmental Inspection (Ministry of Environment and Urbanization, 2015: 24–25):

- Combined environmental inspections in 40 facilities in 2014.
- Inspections in 20 coastal facilities in İzmir, Kocaeli, Tekirdağ, Samsun, Mersin, Bursa and Yalova in conformity with the Act on Principles of Emergency Response and Compensation for Damages in Pollution of Marine Environment by Oil and Other Harmful Substances, No. 5312.
- EIA Monitoring and Control works in 78 facilities.
- Eight hospitals in Ankara within the scope of the By-Law on Medical Waste Control.

- Unplanned inspections in 34 facilities in Kırıkkale, Çorum, Samsun, Hatay, Mersin, Balıkesir, Çanakkale and Bursa by central organization of the Ministry, within the scope of the Communiqué on the Continuous Emission Measurement System (CEMS).[4]

In total, 295 inspections (255 unplanned, 40 planned) were conducted just in 2014.

Regarding implementation of the By-Law on Preventing and Mitigating the Effects of Major Industrial Accidents, the Project conducted to strengthen the institutional and administrative capacity of general and local authorities implementing Seveso-II (Directive 96/82/EC)[5] on the prevention and control of catastrophic accidents is worth noting here. This is particularly because, among its many other contributions, the works on the development and maintenance of the 'Seveso Notification System' operating under the Ministry's Environmental Information System arises as a very important tool in preventing major industrial accidents and responding to them on time (Ministry of Environment and Urbanization, 2015: 26).

Market surveillance and inspection (MSI), on the other hand, is one of the opening criteria of the chapter on Free Movements of Good in the EU membership negotiations. Therefore, there are two significant regulations prepared in line with the *acquis* about market surveillance and inspection: the Act on Preparation and Implementation of the Technical Legislations Regarding the Products (No. 4703) and the By-Law on Market Surveillance and Inspection of Products. According to those, the producers can only introduce safe products to the market, and the public institutions responsible for market surveillance and inspection activities should implement relevant By-Laws specifically prepared for such products.

A Market Surveillance and Inspection Coordination Board has also been established to ensure coordination between the institutions conducting market surveillance and monitoring activities through the related By-Law (Art. 12-15, By-Law on Market Surveillance and Inspection of Products). The action plans of this Board are assessed by the Market Surveillance Inspection and Product Safety Evaluation Board founded under the Communiqué of the Prime Ministry No. 2011/12.

6.5 Environmental Enforcement: Administrative Fines and Suspension

When any non-compliance with the requirements of the related acts – mainly the Environment Act, or relevant By-Laws – is identified during inspections, administrative fines (Art. 20(a-y), Environment Act) or other measures like suspension of the activity (Art. 15, Art. 30, Environment Act) can be imposed on facilities that act

[4]See also the explanations about the Communiqué to understand it further at: http://enofis.com.tr/mevzuat/faydali/seos_aciklama.pdf.

[5]See also Seveso-I (Directive 82/501/EEC) and Seveso-III (Directive 2012/18/EU).

contrary to the environmental legislation to bring those non-compliant parties to compliance. As well as administrative measures, some other judicial fines can also be applied in line with Art. 26 of the Environment Act, but they will not be analysed or elaborated on here.

6.5.1 Administrative Fines

According to the Environment Act (Art. 3(g)), the polluter – the individuals and legal entities causing direct or indirect environmental pollution because of their activities (Art. 2, Environment Act) – should pay all the costs concerning the prevention, limiting and cleaning up of pollution and of improving the environment by combating pollution.

All the necessary expenditure of public institutions and agencies arising from the polluter's failure to take the necessary measures to cease, eliminate or decrease the pollution or degradation, or from the direct action of the authorized public institutions and agencies taking those measures, are collected from the polluter, pursuant to the Act on the Collection of Public Receivables, No. 6183.

There are various administrative fine categories under Art. 20(a-y). In each category, the fines vary depending on the nature of the violation, such as discharging any type of substances into the air, water or soil, or storing, transporting and removing any type of waste and residues in a manner detrimental to the environment. If the violation is not clearly listed under these categories, it is necessary to interpret the regulations concerned to determine the applicable fines. Administrative fines imposed because the violation of the related environmental regulations has been identified in different sectors, such as air, waste, water, and also in the EIA, are applied pursuant to the Communiqué on Administrative Fines updated every year.[6]

If the acts necessitating administrative fines recur within three years, the administrative fines indicated in the Environment Act are doubled on the second and subsequent occasions (Art. 23, Environment Act).

The key authority which decides on these fines is the Ministry, but in line with Article 12, Environment Act, other institutions granted the authority to conduct inspections can also use the same power as the Ministry. It is again used by the Directorate Generals in the central organization of the Ministry, and by Provincial Directors in the local organization (Art. 24, Environment Act).

[6]For the recent Communiqué on Administrative Fines (2019/1), see at: http://www.resmigazete.gov.tr/eskiler/2018/12/20181231-6.htm.

6.5.2 *Suspension of the Activity*

The competent authorities (Directorate General of EIA or Provincial Directors) can also decide to suspend the activities partially or completely for a definite or indefinite period based on the nature of the violation and type of the activity (Art. 15, Environment Act). It may be decided to grant facilities which are in non-compliance with the related legislationa period – no longer than one year and just once – for remediation in accordance with that legislation (Art. 15(1)). If the violations are not resolved within the specified period, the activity is suspended by the competent authorities when the given period comes to an end. If no time is granted, the authorities suspend the activity immediately. Activities detrimental to the environment and human health are suspended without granting any additional time for correction (Art. 15(2)). Activities begun without first conducting EIA are suspended by the Ministry, the activities begun without preparing a project introduction file are immediately suspended by the highest local authority (Art. 15(3)).

6.6 Conclusion

As already examined in detail in Chap. 2 on "The Development Process of Environmental Law in Turkey: The EU Impact", Turkey's environmental legal development has particularly taken place over the recent decades. As a candidate country for membership of the European Union, its environmental record is under scrutiny and this scrutiny process has arisen as the main driving force behind its environmental reforms.

In fact, as a candidate country, Turkey should adopt the EU *acquis* as a whole. So, through the legal and institutional reforms which have been put in place to take Turkey closer to the level prevailing in the EU, its environmental law and institutional structure have steadily expanded and grown. Today most of the necessary legislative and institutional requirements are already in effect in Turkey.

Nevertheless, for full implementation of the *acquis* and compliance with it, it is not sufficient simply to transpose the legislation. The candidate country also needs to establish a well-structured and well-functioning environmental management system with the legal, administrative and judicial capacity to ensure its implementation, compliance and enforcement. So, implementation, compliance and also enforcement (which can be used as a tool for providing both) are all the most significant challenges for candidate countries.

Despite its legal and institutional progress, Turkey is still experiencing difficulties in putting its promises and commitments into practice – in other words, challenges in their implementation, compliance and enforcement. Therefore, the standard of environmental protection is far below the desired level. If environmental legislation is not reasonably and correctly implemented in a timely manner and/or complied with and/or enforced, it just remains in a theoretical form, and is not reflected in practice, so its impact remains low, or even non-existent.

Therefore, together with establishing its legal and institutional basis, the implementation, compliance and enforcement of environmental legislation should be one of the fundamental objectives of environmental protection. On the other hand, managing an effective system which ensures successful implementation, compliance and enforcement in the environmental field, as in many other fields, is one of the hardest challenges and has still not been achieved fully in many other countries, not just Turkey.

In relation to this, this chapter attempted to devote attention to Turkish environmental law in practice by focusing on the issues of implementation, compliance and enforcement, utilizing a comprehensive literature review and data collected as a result of a detailed search of the related official documents on IEL, the EU accession process and Turkish environmental law and policies. The study analysed ways to ensure environmental implementation, compliance and enforcement on the basis of the current system. Therefore, it evaluated environmental permits and licences, environmental impact assessment (EIA) applications and decisions, reporting, monitoring and inspecting systems, and administrative fines and suspension as tools of environmental enforcement.

Nevertheless, to conduct detailed research on the practical side of law, it is necessary to focus on two different fields: the issues of implementation, compliance and enforcement; and the judicial cases regarding environmental issues. In addition, after explaining and assessing the current situation, it is also necessary to concentrate on the lessons learned, challenges faced and priority areas for coping with the challenges and recommendations in these fields.

This study forms just one part of the necessary research into the practical side of Turkish environmental law. In fact, it merely evaluates the current situation. Although it is promising for future academic studies, as its findings open the way for new academic studies on the lessons learned, challenges faced, and priority areas for coping with these challenges and recommendations that can contribute to strengthening Turkey's environmental progress in the fields of implementation, compliance and enforcement, it is still necessary to focus not just on those challenges of implementation, compliance and enforcement and recommendations to resolve them, but also on the case law and challenges and recommendations in this field to address the overall functioning of Turkey's environmental legislation in practice.

References

Act on Principles of Emergency Response and Compensation for Damages in Pollution of Marine Environment by Oil and Other Harmful Substances No. 5312, in: *Official Journal* (OJ) (11 March 2005), No. 25752, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5312.pdf (retrieved 8 June 2016).

Act on the Right of Access to Information No. 4982, in: OJ (24 October 2003), No. 25269. at: http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=1.5.4982&MevzuatIliski=0 (retrieved 8 June 2016).

Act on Preparation and Implementation of the Technical Legislations Regarding the Products No. 4703, in: OJ (11 July 2001), No. 24459, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.4703.pdf (retrieved 8 June 2016).

By-Law on Market Surveillance and Inspection of Products, in: OJ (17 January 2002), No. 24643, at: http://www.mevzuat.gov.tr/MevzuatMetin/3.5.20013529.pdf (retrieved 8 June 2016).

By-Law on Environmental Representatives, Environmental Management Unit and Environmental Consulting Firms, in: OJ (21 November 2013), No. 28828; Amendment in: OJ (6 May 2014), No. 28992, at: http://www.resmigazete.gov.tr/eskiler/2013/11/20131121-1.htm (retrieved 8 June 2016).

By-Law on Qualification of Environmental Measurement and Analysis Laboratories, in: OJ (25 December 2013), No. 28862, at: http://www.resmigazete.gov.tr/eskiler/2013/12/20131225-1.htm (retrieved 7 June 2016).

By-Law on Preventing and Mitigating the Effects of Major Industrial Accidents, in: OJ (30 December 2013), No. 28867, at: https://www.resmigazete.gov.tr/eskiler/2013/12/20131230M1-1.htm (retrieved 15 December 2019).

By-Law on Medical Waste Control, in: OJ (22 July 2005), No. 25883, at: http://www.resmigazete.gov.tr/eskiler/2005/07/20050722-16.htm (retrieved 2 June 2016).

By-Law on Environmental Permit and License, in: OJ (10 September 2014), No. 29115, at: http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.20033&MevzuatIliski=0&sourceXmlSearch= (retrieved 8 June 2016).

By-Law on the Management of Waste, in: OJ (2 April 2015), No. 29314, at: http://www.resmigazete.gov.tr/eskiler/2015/04/20150402-2.htm (retrieved 8 June 2016).

By-Law on the Control of Used Batteries and Accumulators, in: OJ (31 August 2004), No. 25569, at: http://www.csb.gov.tr/gm/cygm/index.php?Sayfa=sayfa&Tur=webmenu&Id=266 (retrieved 8 June 2016).

By Law on Environmental Impact Assessment, in: OJ (25 November 2014), No. 29186, at: http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.20235&MevzuatIliski=0&sourceXmlSearch=%C3%87evresel%20Etki (retrieved 17 May 2016).

By-Law on Amending the By-Law on the Environmental Impact Assessment, in: OJ (9 February 2016), No. 29619, at: http://www.resmigazete.gov.tr/eskiler/2016/02/20160209.htm (retrieved 17 May 2016).

By-Law on Environmental Inspection, in: OJ (21 November 2008), No. 27061, at: http://www.resmigazete.gov.tr/eskiler/2008/11/20081121-4.htm (retrieved 27 May 2016).

Communiqué of the Prime Ministry No. 2011/12, in: OJ (6 September 2011), No. 28046, at: https://resmigazete.gov.tr/eskiler/2011/09/20110906-3.htm (retrieved 15 December 2019).

Communiqué on the Continuous Emission Measurement System (CEMS), in: OJ (12 October 2011), No. 28082, at: https://www.resmigazete.gov.tr/eskiler/2011/10/20111012-6-1.pdf (retrieved 15 December 2019).

Communiqué on Proficiency Certificate, in: OJ (18 December 2009), No. 27436, at: http://www.alomaliye.com/2009/12/18/yeterlik-belgesi-tebligi/ (retrieved 15 December 2019).

Communiqué on Import Inspection of Metal Scraps That are Under Control Relating to Protection of Environment, Product Safety and Inspection (2016/23), in: OJ (31 December 2015), No. 29579 (4. Repeated), at: http://www.resmigazete.gov.tr/eskiler/2015/12/20151231M4-28.htm (retrieved 17 May 2016).

Communiqué on Import Inspection of Solid Fuels That are Under Control Relating to Protection of Environment. Product Safety and Inspection (2016/7), in: OJ (31 December 2015, No: 29579 (4. Repeated), at: http://www.resmigazete.gov.tr/eskiler/2015/12/20151231M4-12.htm (retrieved 17 May 2016).

Communiqué on Administrative Fines (2019/1), in: OJ (31 December 2018), No. 30642, at: http://www.resmigazete.gov.tr/eskiler/2018/12/20181231-6.htm (retrieved 17 June 2019).

Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control, at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0001&from=EN (retrieved 15 December 2019).

Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ%3AL%3A2010%3A334%3A0017%3A0119%3Aen%3APDF (retrieved 15 December 2019).

Highways Traffic Act No. 2918, in: OJ (18 October 1983), No. 18195, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2918.pdf (retrieved 17 May 2016).

Ministry of Environment and Urbanization (2015). *Environmental Inspection Report 2014, Directorate General of Environmental Impact Assessment, Permit and Inspection, and Department of Environmental Inventory and Information Management* (Ankara: SAR Matbaacılık Bas), at: https://webdosya.csb.gov.tr/db/ced/editordosya/cevre_denetim_raporu_ingilizce2014.pdf (retrieved 15 December 2019).

Olgun, Soner (2015). "Çevre Analiz Hizmeti Veren Laboratuvar Sektöründe Süreçler ve Gelişmeler [Processes and Developments in Laboratory Sector Providing Environmental Analysis Services]", at: http://turklab.org/wp-content/uploads/2015/10/SONER-OLGUN-%C3%87evre-Analiz-Hizmeti-Veren-Laboratuvar-Sekt%C3%B6r%C3%BCnde-S%C3%BCre%C3%A7ler-ve-Geli%C5%9Fmeler.pdf (retrieved 15 December 2019).

Seveso-I (Directive 82/501/EEC), Council Directive of 24 June 1982 on the major-accident hazards of certain industrial activities, at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31982L0501&from=EN (retrieved 15 December 2019).

Seveso-II (Directive 96/82/EC), Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01996L0082-20120813&from=EN (retrieved 15 December 2019).

Seveso-III (Directive 2012/18/EU), Directive 2012/18/EU of the European Parliament and of The Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC, at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:197:0001:0037:EN:PDF (retrieved 15 December 2019).

Turkish Environment Act No. 2872, in: OJ (11 August 1983), No. 18132, at: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2872.pdf (retrieved 17 May 2016).

Chapter 7
Environmental Cases in Turkey: A Project Experience

Emel Türker Alpay

Abstract This article seeks to discuss the project process, challenges and results of the EU-funded "Turkey's Map of Environmental Violations" project conducted by Transparency International Turkey and the Environmental Law Association. It describes the environment in which this project was run and the challenges faced during the project, and summarizes some of its results to point out important legal decisions which will contribute towards resolving the environmental struggle.

Keywords EU-funded project · Environmental conflicts · Environmental violations · Transparency international turkey · Environmental law association

7.1 Introduction

In a world with a rapidly growing economy, investments in energy, transportation and infrastructure have been increasing wildly. These investments have created environmental and human rights violations, especially in developing countries like Turkey. Even though these investments are thought to be in the public interest, they create great conflicts between the State and the public.

Energy investments, as an example of these controversial areas, give a clear picture of these conflicts, ranging from hydropower conflicts in the Black Sea region (BirGün, 23 May 2016) and conflicts around coal power plants across Turkey (Kuzey Ormanları, 2016) to renewable energy investments across Turkey (Evrensel, 2016). Unfortunately, these conflicts reveal that investment plans ignore human rights, environmental values and due processes. Even though it is self-evident that the law should be the main tool for avoiding these conflicts by

Emel Türker Alpay, Ph.D. Student, Socio-Environmental Studies, Ankara University, Ankara, Turkey. e-mail: emel.trker@gmail.com.

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championing for common good instead of pure economic interests, the examples quoted demonstrate that lawful monitoring and evaluating mechanisms either do not exist or have been rendered dysfunctional.[1]

Keeping this short background in mind, it is important to look at the situation of the protection of the environment under the law to understand both the background to these conflicts and most of the challenges faced by the people in the environmental movement and during the project. In Turkey, the right to environment is under the protection of both the Constitution and the laws. The Constitution of the Republic of Turkey (1982) defines the right to environment as follows:

> Article 56: Everyone has the right to live in a healthy and balanced environment. It is the duty of the State and citizens to improve the natural environment, to protect the environmental health and to prevent environmental pollution.

Based on the Constitution, Turkey has a wide range of legislation on environmental protection and environmental rights protection.[2] However, deregulation and re-regulation practices have made these regulations useless, non-applicable or impractical, as in the example of the Environmental Impact Assessment Directive (Çoban et al., 2015). It has undergone seventeen changes since 1993 and each change has opened more space for environmental violations by creating exceptions for some Environmental Impact Assessment Reports.[3]

Besides these kinds of difficulties, Turkey's legal system is very complex, lacks practicality and is changing very rapidly (Berk, 2011). Lawyers, judges, prosecutors and people face thousands of new legislative papers and decisions day by day. Because many of these are complex and impractical, people are both scared of and exhausted by the system, as their struggle and any suits brought before the courts by them could turn into counter-struggles and counter-suits (Sol, 2016). Even if they are courageous enough to deal with legal ways, the expertise reports which are essential for legal cases are very costly (Artvinden, 2015).

Over and above this, a public survey in Turkey showed that 41.4% of 3,000 participants are totally unaware or ignorant of the legal system and relevant laws in general (Berk, 2011). In such an environment, access to information, participation and monitoring, which are the main components of a democratic society, become more important. However, in this complex law system, those might become limited as well. There are some data websites and law magazines which could make the information accessible, but it is not possible to follow all of them to keep track of these rapid changes, and it is also expensive to access all of them (Açık Ders, n.d).

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[1]The Dirençevre map, which was created by the Political Ecology Working Group, shows the environmental conflicts in Turkey. It was inspired by the EJOLT project, which maps ecological conflicts around the world; see at: http://www.ejolt.org/.

[2]Available at the web page of the Ministry of Environment and Urbanization, Laws; see at: https://mevzuat.csb.gov.tr/#!/.

[3]Amendments to the Environmental Impact Assessment Directive can be reached at: http://www.csb.gov.tr/gm/ced/index.php?Sayfa=sayfa&Tur=webmenu&Id=254.

UYAP (National Judiciary Informatics System)[4] is another tool for accessing information. However, it is not possible for ordinary people to retrieve closed cases to support their own cases. Only related authorized people (lawyers, judges etc.) are allowed to reach these closed cases fully. Participation and monitoring mechanisms like the Environmental Impact Assessment Directive, which is crucially important in environmental struggles, do not work effectively. Public Participation Meetings under the Environmental Impact Assessment Directive are not conducted properly. They are mostly perfunctory, and people are not aware of the devastating results of projects (Politeknik, 2015).

Despite of these limitations, civil society organizations, activists and local movements have become the main actors in the environmental struggle in solidarity with each other. They use both street activism and legal practices. There are organizations which give their support to legal struggles against environmental violations, but it is still hard to obtain information. It is also important for people in these struggles to reach other people with the same problems and share their know-how. In such situations, technology could close the physical distance and provide many different opportunities.

Transparency International Turkey and the Environmental Law Association got their idea for their EU-funded project,[5] "Turkey's Map of Environmental Violations", from the setting where environmental violations have become a debatable issue. In this hectic environment, these two associations pooled their ideas on more transparent, participatory and accountable law practices. They started the project to contribute to more transparent environmental policies, create an interactive platform for sharing information on environmental law cases, and empower citizens in environmental law cases.

This chapter aims to summarize this project experience, provide some information about its main findings, and state its challenges. To make it easier to understand why this project was undertaken, the background of the project will be given first. Then the scope of the project, main findings and suggestions arising from the sample cases will be shared with the aim of guiding and helping new cases in the area. In the final section, the challenges of the project will be outlined to inform future projects and struggles.

[4]National Judiciary Informatics System: "The Ministry of Justice has prepared a 'National Judiciary Informatics System (UYAP)', which is to implement a very ambitious information system between the Courts and all other institutions of the Ministry, including prisons. UYAP has equipped these institutions with computers, network and internet connection to give them access to all the legislation, the decisions of the Court of Cassation, judicial records, judicial data of the police and army records. Thus, UYAP establishes an electronic network covering all Courts, Offices of Public Prosecutors and Law Enforcement Offices together with the Central Organization of the Ministry of Justice," see at: http://www.e-justice.gov.tr/.

[5]For information about the program Developing Civil Dialogue among CSOs Grant Scheme, see at: http://www.cfcu.gov.tr/program/255.

7.2 Background of the Project

Transparency International Turkey and the Environmental Law Association first met at an Environment and Transparency Workshop held by Transparency International Turkey in 2013. At the workshop, the importance of the law in environmental struggles was one of the topics, and the lack of common knowledge about environmental law and the increasing need for this knowledge were emphasized. After this workshop two organizations started to work together to create a project which was expected to contribute to the environmental struggle by taking steps to explain the law to environmental activists. By taking this workshop as a first step and keeping in mind that the law in environmental struggles is a complex and lesser known area, the aims of the project were: to create transparency in environmental legislation and implementation; and to monitor and highlight environmental law cases and important decisions which could influence new environmental cases. It was also defined as a first step in exploring the vast area of environmental struggles and a chance to open new paths for new projects and research.

The project was chosen for funding by the European Union under the Developing Civil Dialogue among CSOs Grant Scheme in 2014. The project team consisted of technical staff who did the mapping and organized workshops, lawyers who worked actively in finding and analysing court case decisions, and two experts who are academics. Environmental law cases closed by high courts which would not cause any speculation because they are closed cases (European Court of Human Rights, Constitutional Court, Court of Appeal, and Council of State) were found and examined by the project team.

Out of around 10,000 high court decisions, 200 decisions chosen according to the aim of the project were examined by the project team. Twenty decisions were analysed in depth and used for the interactive maps which show the relations between legislation, institutions and concepts that were used to make decisions by the related high court.[6] In addition to interactive maps, there is a report (Alpsoy, 2015) which summarizes the project and results and a leaflet[7] on how to use right to information and how to read court case decisions easily.

The project used the technique of network mapping to reveal the relationships between concepts and actors. This makes it easier to understand the connections between them. Network mapping is a digital tool which reveals the relationships between various actors or nodes. This technique visualizes the connections to make them more understandable, thus abstract data turn into a map of relations. As GraphCommons, who provided their platform to shape the project maps, puts it,[8]

[6]The project web site: http://www.cevredavalariharitasi.org/ (no longer working).

[7]The leaflet can be reached at: http://www.seffaflik.org/wp-content/uploads/2015/05/Kitapcik.pdf.

[8]GraphCommons: "Graph Commons is a collaborative 'network mapping' platform and a knowledge base of relationships. Graph Commons members have been using the platform for investigative journalism, data research, civic activism, strategizing, organizational analysis,

"You can map relationships at scale and unfold the mystery about complex issues that impact you and your community." Network mapping has been used as a tool mostly by social movements to visualize complex relations. With this feature, network mapping could be labelled a platform of open data which supports availability of data and access to data, re-use and redistribution of data and universal participation (Open Data Handbook, n.d.).

7.3 The Network Map Project

The problems stated above also affected the project itself. Accessing court cases was the major problem of the project as they are not available to the public. Experts participating in the project reached decisions through some law programs and their network. At the beginning, the project staff expected to reach a large number of decisions which would give a picture of the situation of environmental cases in Turkey, but this did not happen due to the difficulty of reaching cases. In order to cope with this difficulty, the project lawyers wrote a petition to the Council of State to obtain permission to access the court's decisions. However, the answer was not affirmative.[9] Thus, the scope of the network map changed many times and the project team decided to show the interaction among important cases.

After many workshops within the project group, with academics, press and activists in different regions of Turkey, a large number of judicial decisions were gathered for sharing with everyone who needs them, interactive maps were created to show the relationships between legislation, institutions and concepts that were basis for reaching those decisions, and a report and a leaflet were produced.

7.3.1 Primary Issues in Network Maps

Even though there will be a more detailed analysis of chosen decisions, there are some prominent deductions from these decisions. Regarding environmental violation areas, industrial activities, mining, hydroelectric power plants and substructure and urbanization are identified as the main violation areas. With respect to the general environmental struggle picture of Turkey thorough the eyes of Dispossession Networks and Diren Çevre, it is apparent that conflict areas match the project's environmental violation areas. The project team hoped that the

systems design, exploring archives, art curating and whatnot." Available at: https://graphcommons.com/about.

[9]However, it is important to note that the Council of State said that it has been working on a system which will enable public access to the decisions of the court.

decisions chosen would give some clues for forthcoming court cases by highlighting important points to use.

Two prominent concepts that are used as the basis for decisions are public interest and the right to environment. Public interest is a controversial concept and different interpretations of the concept lead to different results. As there is no common definition of public interest (Tezcan/Poyraz 2013), its interpretation in a case depends on the judge of the case. At this point, economic and social good mostly conflict with each other. For example, while hydroelectric power plants are economically profitable, they could be socially and environmentally devastating, as seen in the Black Sea region in different cases. Therefore, careful interpretation is very important in environmental struggles. This very project highlighted cases that interpreted the public interest in favour of the environment to multiply the positive effect.

Above all, the right to access to information has a very crucial impact throughout the whole process, because it means that the public can monitor, evaluate and participate in decision-making processes when they have information. In this respect, transparency has a big impact on all systems of the government in a democratic state.

7.3.1.1 Report

The project report is one of the end products of the project. In the first part it outlines the project and explains how to read the project maps, and in the second part it digs into the findings of the mapping to highlight important points. The third part of the report examines environmental law in general, and makes a suggestion about Article 56 of the Constitution, which is about the right to environment and access to information and justice. This part gives a picture of related issues and makes some recommendations.

During the examination of decisions and the mapping of these decisions, definitions of the concepts that judges use as a basis were hard to agree and hard to explain. It was also difficult to understand and interpret the maps. Moreover, people have little knowledge of these concepts. Therefore, the project team decided to add an annex of concepts in which definitions of the concepts were written by the project's experts. They aimed to provide a clearer picture of the concepts which people might encounter.

7.3.1.2 Leaflet

Even though access to information was one of the main aims of the project, the project team realized during the project workshops that it is important to inform people about the access to information as a first step. For this reason, the team decided to prepare a document in which they explained how to use the right to access to information. The team also realized that reading and finding the desired

pieces of information in court case decisions is hard and complicated, especially when the Constitutional Court's tens of pages of decisions are taken into consideration. Thus, the team decided it would be appropriate to prepare a document to make it easy to read those court case decisions. These two intentions were combined in a leaflet. The first part of the leaflet explained the right to access to information and the process for using the right to access to information. The second part of the leaflet explained how to reach court case decisions and then gave some tips to make reading those decisions easier.

7.3.1.3 Working in the Field

After all the evaluations and teamwork, the project team decided on the court decisions and network maps. Even though the technical process was completed by the project team, it was believed from the outset that the possible end users of the maps, the report and the leaflet would be the most important element. To serve this crucial end, three different meetings and workshops with these three different groups were organized: the Press, academics and activists. Activist meetings were held in three different cities to reach activists from different environmental struggles. Istanbul was chosen for ease of transportation. Izmir was chosen as being a point where the fight against coal-fired power plants is intensive and has a long history. As Mersin is planned to be the location of Turkey's first nuclear power plant and has been campaigning against the nuclear power plant since the 1970s, it was chosen as the third city for holding an activists' meeting. These meetings were held because cooperation is always one of the key terms in an environmental struggle. As people deal with the same problems in similar contexts, cooperation enables people to be more powerful together. Opinions, suggestions and critiques from these meetings and workshops were crucial to the project and were used to complete the project and its new pathway. All the products of the project are accessible through the project website and Transparency Turkey's website. In addition to this, there is a Facebook page[10] where members can interact on new cases.

7.4 Sample Cases Examined: Main Findings

The idea behind the project was to contribute to the environmental struggle. After having difficulties in reaching the court decisions, the project team focused on the decisions which were important but stayed under shadow. The importance of the cases was decided by the lawyers and academics of the project by assessing whether:

[10]The Facebook group can be reached at: https://www.facebook.com/groups/728138383963357/?fref=ts.

- They are closed cases (to avoid causing any speculation);
- They contribute to the struggle of NGOs, locals and activists and can help them build a better law case by setting an example;
- They are filed after 2005 (with some exceptions, such as the Bergama mining case, which is a milestone in environmental law struggles in Turkey) by observing legislation changes;
- They include as many principles, legislation and comments as possible.

After digging into these judicial decisions, some conclusions could be drawn as follows:

- Circumventing the Law
  There are many situations in which related administrative offices or corporations try to circumvent the law. One of these practices in environmentally destructive projects is to divide the project area into pieces so its size is below the numbers stated in the Environmental Impact Assessment Directive, meaning there is no need to have an Environmental Impact Assessment Report (EIAR) for the project. However, there are some good decisions which set examples for taking a holistic view, such as Council of State Judicial Chamber 6, docket no. 2009/15183; Council of State Judicial Chamber 6, docket no. 2010/3901; and Council of State Judicial Chamber 10, docket no. 2001/598. In these decisions, mining and hydroelectric power plant construction sites are evaluated as a whole with their main construction areas, end products, and connections to the electric grid. Therefore, these areas would be subjected to EIARs as they become huge projects when all these elements are included.
- Protection of the environment as Superior Public Interest
  In investment projects, while economic interests are highly prioritized (as expected), in general, environmental or social interests are ignored. In this regard, it is important to highlight decisions which are of superior public interest not on solely economic grounds but under the Constitutional principles and which prioritize a healthy environment. In this sense, in the decision of Council of State Judicial Chamber 6, docket no. 2010/2375, the principle of the social state governed by the rule of law, which exists in the Constitution (Article 2), was emphasized. The court's assessment is based on protecting the environment as the superior public interest because the State must provide a healthy environment for its citizens without favouring economic interests, according to the principle of the social state governed by the rule of law.
  To illustrate, Constitutional Court, docket no. 2007/105 and Council of State Administrative Judicial Chamber, docket no. 2009/722 could be shown as the crucial ones for referencing and commenting on the constitutional principles in a broad and holistic approach, and the protection of the environment was assessed as the public interest in these decisions.
- International Agreements
  International agreements are very important for establishing an international regime with similar values. Turkey has ratified lots of international agreements

regarding environmental issues, and in many high courts' decisions it is possible to see the references to those agreements. This is particularly because Article 90 of the Constitution states that:

> In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

Even if it is mostly ignored in practice, it is very important for the court to state this in its decision and to take it as a ground rule. Council of State Judicial Chamber 6, docket no. 2010/2375 and Council of State Judicial Chamber 10, docket no. 2009/1713 refer to liabilities arising from international agreements. In this regard, sustainable development and protection of the environment are evaluated as priorities. Decisions evaluate the consistency of practices with both national and international agreements.

- Urgent Expropriation
  Urgent expropriation is an increasing problem that is seen in most environmental cases. Private properties are expropriated to construct energy investments or urban transformations. Under Expropriation Law (No. 2942) Article 27, it is possible to apply this only under extraordinary security problems with the agreement of the Council of Ministers. However, most energy investment areas have been urgently expropriated, mostly to prevent conflicts in these areas (Rize Haber, 2016). In this sense, the decision by Council of State Judicial Chamber 6, docket no. 2008/8773 is very important for stating the rules of urgent expropriation, decided in favour of environmental interests.
- Expertise Reports
  As mentioned before, expertise reports are crucial for environmental cases as they are the important components of the decisions made by the courts. However, these reports are very expensive (Kuzey Ormanları, 2015) and people in environmental struggles mostly collect this money by campaigning for it. It should be acknowledged that this is not easy for these people. Keeping this in mind, Council of State Judicial Chamber 14, docket no. 2012/1672 categorized this payment as public interest and directed this payment to the Treasury Department or related defendant administrative office. Even though this is not a common practice in Turkish law, it would be useful to use this decision as an example in future cases and it would lighten the burden on environmental activists.

7.5 Challenges of the Project

From the beginning of the project to the end of it, there were many challenges. The very first challenge was the timeline of the project. Although it was planned to finish all activities in the predicted timeline, it was discovered that the project required a massive amount of work, especially in terms of access to the decisions

and their analysis. It should be acknowledged that due to these problems, self-expectations of the project team were not met as they were quite ambitious in the context of such a difficult working area. Despite the problems, it is believed that the end product is a new open data tool which can empower those engaged in an environmental struggle. Also, the report and the leaflet are useful tools for people participating in this struggle.

Another challenge was financial. Unfortunately, as it was an EU-funded project, Transparency International Turkey and the Environmental Law Association do not have sufficient financial and administrative capacity to keep the project running after the end of the project period. This is the reason why the project showed very little improvement after the project timeline. However, both sides have been working to keep the maps, website and Facebook page running, alive and functional.

Regarding the gathering of documents, as explained many times above, access to decisions is a problem in itself, as the legal system does not allow the public to access decisions. All the other ways to get the decisions are either difficult or expensive. Considering that obtaining access to previous decisions is the first step in filing a powerful case, difficulty in accessing decisions creates a huge obstacle for the people and projects who would like to create a new tool to help environmental campaigners build a successful legal case.

Adding to all the above challenges, being an EU project is a problem in itself in gathering information and reaching activists and other key people. Even though being an EU project mostly opens the door to information, especially in social and environmental rights movements, many people (especially those with political backgrounds) and organizations distance themselves from the project and are unwilling to share information and/or experience. As the court case decisions are thought to be critically important information, people and organizations do not want to share what they have. They are afraid of giving this valuable information to the wrong hands and fear they would pass it to their opponents (big companies who deal with similar court cases from environmental groups, foreign organizations, etc.). Despite this being understandable to some extent, it should also be understood that it hinders the struggle to be more powerful and creates different groups within the struggle.

7.6 Concluding Remarks

The environmental/ecological struggle has become an increasingly important battleground in Turkey. Energy investments, thousands of construction sites for new buildings, mining sites, and urban transformation projects have all turned into environmental conflict areas. People living in these areas and environmental activists have been in a multi-dimensional fight both against the State and the corporations. Struggle goes on both in courts and on streets. Even though street activism is valuable and important for raising the voices of people whose rights are violated,

struggles in the legal field are also significant, but it is an expert specific area and less known by ordinary people.

In this framework, Transparency International Turkey and the Environmental Law Association tried to create an initial step for a more open and accessible struggle in the field of law for environmental conflicts. It provided opportunities for discussing the challenges stated above and a good starting point for other projects and the environmental struggle in Turkey.

This paper stated and evaluated crucial steps, problems and findings of the project by taking primary problematic areas in this struggle into consideration. Considering circumventing the law, protection of the environment as a superior public interest, international agreements, urgent expropriation, expertise reports, and decisions in favour of people were given as examples, as it is believed that an increase in the number of good examples will increase the power of the struggle.

Even if it is hard to run this kind of projects, it is important that an increase in the number and quality of them is crucial for environmental struggles, because these examples provide more space for people to connect with each other and share information and they also serve to improve transparency, ease of access to information and participation in processes.

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References

Açık Ders (n.d.). "BBY 309 Hukuk Kaynakları ve Erişim Ders Notları [BBY 309 Law Sources and Accession Lecture Notes]", in: *Ülkemizde Hukuk Kaynaklarına Erişim ve Veri Bankaları* (Ankara: Ankara University, Open Class Materials).

Alpsoy, Arif Nihat (2015). *Çevre Davaları: Mevzuat, Kurum ve Kavram İlişkileri* [*Environmental Cases: Legislation, Institution and Concept Relations*]. (Istanbul: Uluslararası Şeffaflık Derneği/Çevre Hukuku Derneği).

Artvinden (2015). "Türkiye'nin En Büyük Çevre Davasında 18 Bin TL Keşif Ücreti [18 Thousand TL Discovery Fare in Turkey's Largest Environmental Litigation]", at: https://www.artvinden.com/en-buyuk-cevre-davasinda-18-bin-tl-kesif-ucreti/ (retrieved 16 July 2016).

Berk, Seda Kalem (2011). *Türkiye'de Adalete Erişim: Göstergeler ve Öneriler* [*Access to Justice in Turkey: Indicators and Recommendations*] (Istanbul: TUSEV): 51–56.

Cengiz, Pelin (2014). "10 maddede Çevre Yönetmeliği'nde yapılan değişiklikler ne anlama geliyor? [What do the amendments to 10 articles in the Environmental Regulation mean?]", at: https://kuzeyormanlari.org/2014/11/26/10-maddede-cevre-yonetmeliginde-yapilan-degisiklikler-ne-anlama-geliyor/ (retrieved 15 December 2019).

Constitutional Court (2007). Docket No. 2007/105, in: Alpsoy, Arif Nihat: *Çevre Davaları: Mevzuat, Kurum ve Kavram İlişkileri* (Istanbul: Uluslararası Şeffaflık Derneği/Çevre Hukuku Derneği).

Council of State (2001). Judicial Chamber 10, Docket No. 2001/598, in: Alpsoy, Arif Nihat: *Çevre Davaları: Mevzuat, Kurum ve Kavram İlişkileri* (Istanbul: Uluslararası Şeffaflık Derneği/Çevre Hukuku Derneği).

Council of State (2008). Judicial Chamber 6, Docket No. 2008/8773, in: Alpsoy, Arif Nihat, *Çevre Davaları: Mevzuat, Kurum ve Kavram İlişkileri* (Istanbul: Uluslararası Şeffaflık Derneği/Çevre Hukuku Derneği).

Council of State (2009). Judicial Chamber 6, Docket No. 2009/15183, in: Alpsoy, Arif Nihat, *Çevre Davaları:Mevzuat, Kurum ve Kavram İlişkileri,* (Istanbul: Uluslararası Şeffaflık Derneği/ Çevre Hukuku Derneği).

Council of State (2009). Administrative Judicial Chamber, Docket No. 2009/722, in: Alpsoy, Arif Nihat, *Çevre Davaları: Mevzuat, Kurum ve Kavram İlişkileri* (Istanbul: Uluslararası Şeffaflık Derneği/Çevre Hukuku Derneği).

Council of State (2009). Judicial Chamber 10, Docket No. 2009/1713, in: Alpsoy, Arif Nihat, *Çevre Davaları: Mevzuat, Kurum ve Kavram İlişkileri* (Istanbul: Uluslararası Şeffaflık Derneği/ Çevre Hukuku Derneği).

Council of State (2010). Judicial Chamber 6, Docket No. 2010/2375, in: Alpsoy, Arif Nihat, *Çevre Davaları: Mevzuat, Kurum ve Kavram İlişkileri* (Istanbul: Uluslararası Şeffaflık Derneği/Çevre Hukuku Derneği).

Council of State (2010). Judicial Chamber 6, Docket No. 2010/3901, in: Alpsoy, Arif Nihat, *Çevre Davaları: Mevzuat, Kurum ve Kavram İlişkileri* (Istanbul: Uluslararası Şeffaflık Derneği/Çevre Hukuku Derneği).

Council of State (2012). Judicial Chamber 14, Docket No. 2012/1672, in: Alpsoy, Arif Nihat, *Çevre Davaları: Mevzuat, Kurum ve Kavram İlişkileri* (Istanbul: Uluslararası Şeffaflık Derneği/ Çevre Hukuku Derneği).

Çevresel Etki Değerlendirmesi Yönetmeliği No. 29186 (2014), in: OJ (25 November 2014), No. 29186, at: http://www.resmigazete.gov.tr/eskiler/2014/11/20141125-1.htm (retrieved 16 July 2016).

Çoban, Aykut; Özlüer, Fevzi; Erensü, Sinan (2015). "Türkiye'de Doğanın Neoliberalleştirilmesi ve Bu Sürece Karşı Mücadeleler [Neoliberalization of Nature in Turkey Struggles Against This Process]", in: Çoban, Aykut (Ed.): *Yerel Yönetim Kent ve Ekoloji* (Ankara: İmge Kitabevi).

Evrensel (2016). "Mordoğan RES'lerinin Yürütmesi Durduruldu [Mordoğan WPP's Execution was stopped]", in: *Evrensel.net.,* 5: 6, at: https://www.evrensel.net/haber/279378/mordogan-reslerinin-yurutmesi-durduruldu (retrieved 27 June 2016).

Kuzey Ormanları (2015). "Mahkemenin Akkuyu için Bilirkişi Ücreti: 60 Bin TL [Expert Fee of the Court for Akkuyu: 60 Thousand TL]", at: https://kuzeyormanlari.org/2015/10/17/mahkemenin-akkuyu-icin-bilirkisi-ucreti-60-bin-tl/ (retrieved 16 July 2016).

Kuzey Ormanları (2016). "Yırca'dan sonra Kolin'i Kozluören'de de termik santral direnişi bekliyor [Resistance of thermal power awaits Kolin in Kozluören after Yırca as well]", in: *Kuzey Ormanları Savunması*, 3: 31, at: http://www.kuzeyormanlari.org/2016/03/31/yircadan-sonra-kolini-kozluorende-de-termik-santral-direnisi-bekliyor/ (retrieved 27 June 2016).

Ministry of Environment and Urbanization, at: https://www.csb.gov.tr/ (retrieved 16 July 2016).

Open Data Handbook (n.d.). *What is Open Data?* at: http://opendatahandbook.org/guide/en/what-is-open-data/ (retrieved 16 July 2016).

Politeknik (2015). "Yaşam savunucuları 3. Havalimanı'nın göstermelik ÇED toplantısını iptal ettirdi [Life advocates cancelled 3rd Airport's EIA show-meeting]", in: *Politeknik*, 8, 20. at: http://politeknik.org.tr/yasam-savunuculari-3-havalimaninin-gostermelik-ced-toplantisini-iptal-ettirdi/ (retrieved 16 July 2016).

Rize Haber (2016). "Arhavi'de HES için 'Acele Kamulaştırma' Kararına Tepki [Reaction to 'Rush Expropriation' Decision for HEPP in Arhavi]", at: http://www.rizehaber.org/Haber/Arhavi-de-Hes-Icin-Acele-Kamulastirma-Kararina-Tepki-7327.html (retrieved 16 July 2016).

Sol (2016). "Zile direnişi davası başlıyor: HES'e izin vermeyen 54 yurttaş, 16 yıla kadar hapisle yargılanıyor! [Zile resistance trial begins: 54 citizens who do not allow HEPP, are being tried for up to 16 years in prison!]", in: *Sol.* 5: 9, at: http://haber.sol.org.tr/toplum/zile-direnisi-davasi-basliyor-hese-izin-vermeyen-54-yurttas-16-yila-kadar-hapisle (retrieved 16 July 2016).

Şan, Ömer (2016). "AYM'den tarihi karar: HES yaşam hakkını ihlal ediyor! [Historical decision from Constitutional Court (CC): HEPP violates the right to life!]", in: *BirGün*, 5: 23, at: http://www.birgun.net/haber-detay/aym-den-tarihi-karar-hes-yasamhakkini-ihlal-ediyor-113189.html (retrieved 27 June 2016).

Tezcan, Ayhan Melih; Poyraz, Ufuk (2013). "Kamu Yararı Kavramının ve Türkiye'deki Yasal Dayanaklarının Kentsel Politikalar Açısından Değerlendirilmesi [Concept of Public Interest and Evaluation of Its Legal Basis in Turkey in terms of Urban Policy]", in: *Çağdaş Yerel Yönetimler,* 1–21.

The Constitution of the Republic of Turkey (1982), in: OJ (9 November 1982), No. 17863, at: https://global.tbmm.gov.tr/docs/constitution_en.pdf (retrieved 27 June 2016).

Chapter 8
Addressing the Challenge of Food Security in Turkey

Sezin İba Gürsoy

Abstract Over the next few decades the world faces an historic challenge with the nexus of food security, economic development, and global environmental change. The challenge of the coming years is to produce enough food to meet the needs of nine billion people while also preserving and enhancing natural resources for future generations. Going forward, agriculture will need to adapt to a changing climate in order to ensure adequate food production. Concerns regarding the additional challenges that come with meeting food security have distinctly risen on political and policy agendas in recent years.

This chapter focuses on the ability and capacity of the food supply system in Turkey to provide its national food security in the face of growing challenges in production, resource supply and self-sufficiency. Although Turkey is a net food exporting country, it is anticipated that domestic food insecurity will rise in the coming decades. Through discussing the threats posed by the changing demographic structure, refugee crises, climate change, increasing land and water scarcities for food production and food price volatility, this chapter tries to uncover the concerns about ensuring food security in Turkey.

Keywords Food security · Agriculture · Turkey · Climate change · Nutrition

8.1 Introduction

As the world population continues to increase, much more effort and innovation will be needed in order to sustainably increase agricultural production, improve the supply chain and enhance global food security. The dramatic rise in global food prices and the crisis of 2007/2008 triggered international organizations to promote a comprehensive and unified response to the food security challenge. Continuing population and consumption growth will mean that the global demand for food will

Dr. Sezin İba Gürsoy, Assistant Professor, Department of International Relations, Faculty of Economics and Administrative Sciences, Kırklareli University, Kırklareli, Turkey. e-mail: seziniba@gmail.com. This chapter is a revised version of the author's phd thesis.

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increase. Projections show that the world needs to produce at least 50% more food to feed 9.1 billion people by 2050 (FAO, 2009). Statistics like these raise many questions. Can humanity feed all these people? If so, how can this be achieved through environmentally sustainable methods?

Food security is a multi-layered concept and is usually applied at three levels of aggregation: national, regional, and household/individual. There are many definitions of food security, but the most common definition is the availability of food and people's ability to access it (Mcdonald, 2010: 15). The term "food security" was first utilized in a policy context at the 1974 World Food Congress. The Food and Agriculture Organization (FAO) subsequently came up with the following definition, whereby food security

> exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.

One of the main components affecting food security is agriculture. Agriculture is an extremely important sector that influences the environment through its direct impact on land cover and the ecosystem. The agricultural sector is a special component of food security planning in developing countries such as Turkey. This chapter introduces the concept using a conceptual framework with the basic determinants, pillars and indicators of food security. Food security can be analysed through many different lenses; but for the purpose of this chapter the focus on food security will be through the lens of agriculture. The chapter will start with the definition of basic terms and concepts and will continue with an overview of food production, food supply and nutritional status trends in Turkey. However, food imports are only one dimension of food security and relate to the macro level of national food security from a supply side perspective. Other variables that help determine a region's or country's food security status include wealth levels, income distribution, and fiscal position.

Agriculture is one of the most important sectors in Turkey and makes a substantial contribution to its economy. Among the most pressing problems facing Turkey are the effects of rapid population growth, environmental degradation and the refugee crises. This chapter sheds light on these challenges and discusses the prospects for developing more sustainable and resilient food systems for the future. The growing refugee crisis in Turkey has also greatly influenced its food security. Understanding these problems and how they affect a country's productive capacity and its ability to feed future generations is the first step towards overcoming them.

8.2 The Development of the Food Security Concept

The concept of food security, which is a highly complex issue, has been defined in at least 200 ways (Smith et al., 1992: 24). In fact, the first of these definitions emerged after World War Two when malnutrition was a serious problem. For example, during the war, in May 1943 President Franklin D. Roosevelt convened a

conference specifically "to consider the goal of freedom from want in relation to food and agriculture" (Mcdonald, 2010: 16). This conference was the first step in the creation of the Food and Agricultural Organization of the United Nations on October 1945 (UNDP, 1994; Shaw, 2007; Christopher/Maxwell, 2005).

After the war, the right to food and an obligation to help all states provide and secure that right was affirmed by many international initiatives. For instance, the rising interest in food security can be found in The Universal Declaration of Human Rights of 1948 (UN General Assembly, 1948). This declares:

> Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Another initiative was the 1966 International Covenant on Economic, Social and Cultural Rights, which mentioned "the fundamental right of everyone to be free from hunger", and has outlined "the right of everyone to an adequate standard of living for himself and his family, including adequate food" (UN, 1966, cited in Mcdonald, 2010).

However, food security as a concept originated in the mid-1970s during discussions on international food problems at the time of a global food crisis (Clay, 2002). According to the 1974 World Food Summit, food security is defined as

> availability at all times of adequate world food supplies of basic foodstuffs to sustain a steady expansion of food consumption and to offset fluctuations in production and prices (UN, 1974).

In the early 1980s, following Amartya Sen's seminal work on entitlement analysis, the definition of food security used by the FAO was expanded to include both physical and economic access (Sen, 1981). According to Nobel Prize laureate and economist Sen, food insecurity is not a problem of food production or availability but of people's limited ability to mobilize resources and rules to access food. Sen argued that individuals need entitlements to food and this will depend, amongst other things, on their income and assets. Sen's analysis has shown that it is not just the supply side of food that is important in ensuring individual food security but also demand side factors. Thus in 1983 the FAO expanded its concept to include Sen's approach: "Ensuring that all people at all times have both physical and economic access to the basic food that they need" (FAO, 1983). Nonetheless the highly influential 1986 World Bank report "Poverty and Hunger" focused on the temporal dynamics of food insecurity. It introduced the widely accepted distinction between chronic food insecurity, associated with problems of continuing or structural poverty and low incomes, and transitory food insecurity, which involved periods of intensified pressure caused by natural disasters, economic collapse or conflict.

During the 1990s, food security literature has broadened to address market-orientated economic growth, agricultural development, poverty reduction, demographic trends, rising incomes, changing food consumption patterns, gender issues,

and the environment. Food security was recognized as an issue from the individual to the global level. Another definition of food security came from the 1992 International Conference on Nutrition (ICN) held in Rome, which defined food security as "access by all people at all times to the food needed for a healthy life" (FAO/WHO, 1992). A broader perspective was adopted in the UNDP, 1994 Human Development Report, which included food security as one of the component aspects of human security (UNDP, 1994). The most commonly used definition of food security was developed at the World Food Summit of 1996. The definition that was developed at the summit was that food security at the individual, household, national, regional and global levels [is achieved]

> when all people at all times have both physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.

This definition is again redefined by the FAO in "The State of Food Insecurity 2001":

> Food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life (FAO, 2002: 8).

Food security is a broad concept that is more than food production and food accessibility. In reality it contains four pillars, namely: food availability, food accessibility, utilization and stability of food supply (FAO, 2006). The FAO defines the four pillars of food security as follows:

Food availability – food is available to people in sufficient quality and quantity and there are no significant fluctuations. The food is supplied by domestic production or imported commercially or via food aid.

Food access means the access of individuals to adequate resources, which provide them with appropriate food for a nutritious diet. Accessibility is the key issue when discussing food security.

Food utilization refers to food quality and nutritional content. This relates to health, HIV/AIDS, access to water and clean energy sources. It means that people have sufficient knowledge and skills to handle and store food safely – for example hygiene, storage facilities, clean water, and health care.

Food stability – the FAO's fourth dimension of food security – takes into account the consequences of sudden shocks. Food security is "a situation" that does not have to occur for only a moment, a day or a season, but that, with sustainability, lasts on a permanent basis.

For food security objectives to be realized, all four dimensions must be fulfilled simultaneously (EC – FAO Food Security Programme, 2008). Moreover, each of these components needs to be considered at the level of individuals, households, and the entire globe.

One of the resolutions of the 1996 World Food Summit was to halve the number of undernourished by 2015, while the Millennium Development Goals (MDGs), set in 2000, aspired to reduce by half the proportion of people suffering from hunger.

The first MDG aimed to "eradicate extreme power and hunger" by 2015. However, this target was not achieved. Experience shows that only accountability by states which produce food and regulate policies can hope to achieve access to sufficient nutritious food, and this means that access to food needs to be treated as a human right, and not as an outcome of a productive economy (Elver, 2015).

8.3 Assessing Food Security in Turkey

Turkey, a middle-income country with a growing population, is among the world's twenty largest economies. In 2001 a new macro-economic policy reform was launched and, as a result of this reform, it is estimated that Turkey is the world's seventh largest agricultural producer (OECD, 2011). Hence Turkey is regarded as one of the major agricultural countries, particularly in view of its peasant-based culture and economy. The agricultural sector is characterized by a large number of farms (three million based on the 2001 census), most of which are small (average farm size six hectares) and use production methods that are not highly developed.

According to the Global Food Security Index (GFSI), Turkey is ranked 48th out of 113 and has a 64.1 score in the field of food security (EUI, 2018). Like other countries, Turkey is also affected by global challenges to food security. According to the food security index, the strengths which score more than 85 are nutritional standards, food safety, the proportion of the population under the global poverty line, sufficiency of supply, and volatility of agricultural production. The variables that influence Turkey's score negatively include public expenditure on agricultural research and development, gross domestic product per capita and political instability (EUI, 2016).

The conspicuous problems that are highlighted in studies on Turkey include fluctuations in the agricultural and food supply – which increase external dependency – and unfair redistribution of income (Eraktan/Yelen, 2012; Kıymaz/Şahinöz, 2010). The contraction of agricultural areas is another factor affecting Turkey's food security. When this is combined with a decline in agricultural production, the allocation of fertile agricultural land for industrial purposes and urbanization can be seen as a significant risk to food security. However, one positive development occurred towards the end of the 2000s when regulations on food safety gained momentum. The legal measures on food safety taken in Turkey at this time became the driving force for the negotiation process with the EU. Within this context, the Decree Having the Force of Law No. 560, concerning the 'Production, Consumption and Inspection of Food Stuffs', was enacted by 1995. It contains provisions for hygienic and technical production, processing, preservation and storage of food. In June 2004 the final element of this process, the 'Food Law', was enacted for the first time in Turkey (Ministry of Agriculture and Rural Affairs, 2004). Through this amendment, issues like the establishment of a National Food Codex Commission, risk analysis, the formation of scientific committees, the establishment of a National Food Assembly and food banks, crisis management and traceability have found their place in law.

Despite all these significant developments, deficiencies in the implementation of the legislation and insufficient supervision mean that the desired level of food safety in Turkey has not been achieved.

When creating a food security policy, it is important to consider how to develop the country's agricultural sector and how its agricultural policies are implemented. When asking for general information about the food security of a country, the four pillars of food security should first be examined. When evaluating food security in Turkey, it can be seen that agricultural production still remains a key part of Turkey's economy. Turkey's food and agriculture industry is one of the country's largest sectors and also Turkey's largest employer and a major contributor to its GDP. It is responsible for 7.1% of the GDP and a quarter of the employment in the country. The total number of people employed in the agricultural sector was 5.30 in 2016. With its developing and growing economy, young and dynamic population, and strategic location in the world, Turkey has become one of the major countries in the region. With respect to its climate and land nature, Turkey is suitable for the production of various products (Pekcan, 2006: 160). Despite all this, it is expected that the effects of climate change will cause significant changes in the unemployment ratio. Consequently, the economy of the country would be negatively affected and food security would be threatened.

When observing agricultural policies in Turkey from a historical perspective, the development in agricultural production was shaped by the different policy approaches. The self-sufficiency policy in agriculture during the 1950s resulted in an increase in production and productivity between the years 1960–1980. In the 1960s, the agriculture sector in Turkey entered a new era of mechanic technologies. Towards the end of the 1980s, due to market liberalization trends at that time, agriculture policies turned to a market-orientated structure. Market liberalization also brought new migration movements from rural areas to big cities, which negatively affected rural development in the 1990s. The gradual decline of the share of agriculture in the national income over the years may be seen as indicative of the accumulation of a low-efficiency labour force in the agricultural sector (Ataç, 2011). Until the early 2000s, price supports for commodities complemented trade-related measures (particularly tariffs) and farm input subsidies.

In 2001, the Agriculture Structural Reform Implementation Project (ARIP) designed by the World Bank and the IMF was to be implemented. One of the aims of ARIP was to thoroughly re-design Turkish agriculture (Karapınar et al., 2010). According to the ARIP, the subsidy structure had to be changed into what then was called a "direct income subsidy" (DIS). DIS is an important agricultural policy applied as a tool to influence the level of income transfers to the target agricultural producers from public sources. In July 2013, Turkey enacted the tenth development plan for 2014–2018. The plan's main objective for the agriculture sector was to develop a globally competitive and environmentally friendly sector capable of providing sufficient balanced nutrition to the population. Current challenges faced in agriculture include small and fragmented agricultural businesses, insufficiencies in market access and lack of extension and training services for farmers (Ministry of Development, 2014). After these developments, The National Agriculture Project

(NAP) that was launched in November 2016 has divided Turkey into 941 production basins, and supports nineteen products based on the production basin of each product. With this model of production, the government aims to transform the current agricultural system into a more planned and organized one. NAP can be seen as a project of "food security" that will overcome structural problems in Turkish agriculture; transform Turkish agriculture into a planned, conscious, and adequate production process; regulate the market in order to stabilize the difference between production and price; support the producers and their income; decrease agricultural imports; and expand agricultural income.

Assessing the population in terms of food security, the ability of countries to provide food to feed its population, is important. Availability is one of the four main pillars of food security. Production, self-sufficiency, poverty and trade issues are related to availability. In Turkey the agricultural population is gradually declining. According to TUIK (2016), the number of employees in the agricultural sector decreased by 30,000 people compared to the previous year (TUIK, 2016). While the agricultural population is declining the total population is increasing. As of the end of 2015, with nearly 3 million registered Syrian refugees in Turkey, Turkey's population has exceeded 80 million (Kirişçi, 2014: 27–28).

Another factor that plays a role in limiting future food supply in Turkey is the contraction of agricultural areas. The population has increased continuously in Turkey. Agricultural land is shrinking. Between 1988 and 2015 the agricultural area in Turkey contracted by 7.5%, while cultivated areas have decreased by 16%. Kıymaz/Şanhinöz (2010) argue that non-agricultural use of fertile land in Turkey, erosion and pollution caused by industrialization, the use of improper irrigation techniques, and the effects of climate change could increasingly limit the availability of agricultural land (Kıymaz/Şahinöz, 2010: 17). This limited arable land means a decline in production and a shift away from sustainable food security. The fact remains that Turkey's agricultural sector has a lot of small farmers with limited cultivable land. These farmers often work with older inherited agricultural machinery, as they cannot afford new equipment. This is a challenge to the future productivity of the agricultural sector in Turkey.

In addition to domestic production, foreign trade is also a significant driver for ensuring food supply. According to Ören and his colleagues, since the 1990s Turkey has increased its imports of food products, and today Turkey has lost its net exporter position, which is seen as a serious threat (Ören et al., 2008). Tariff applications in agricultural imports are among the negative factors in terms of food security due to lower consumer welfare and the blocking of free trade. In 2014 the share of agricultural exports in Turkey's trade was 11.4%, while the share of imports reached 5.1%. Kıymaz/Şanhingöz (2010: 17) suggest that if the overall trade deficit is a structural problem in Turkey, it could jeopardize the medium- and long-term food security of the country.

Due to Turkey's geographical location, climate change will have a huge impact on the country. According to TUİK, total cereal production decreased by 16% during the 2007–2008 drought. Increased demand for food, consumer awareness, drought, fluctuations in agricultural production, and an increase in prices have all

contributed to the concern over food security/insecurity in Turkey. To guarantee the food security of the growing population, to maintain price stability, and to create a food policy for refugees, Turkey should increase its safety stock, especially cereals, meat, milk powder and sugar products (Koç, 2012). TUİK (2016) estimates that cereal production decreased by approximately 8.8% compared to the previous year. Aside from self-sufficiency, it shows that these rates are eroding Turkey's food security. If the right policy response is not given, Turkey's food security in the long term may become unsustainable.

Another important condition for ensuring food security is economic accessibility to food. As described in Amartya Sen's first chapter, access to food is an important component of food security. Low income levels, unemployment, rising food prices and poverty make food accessibility more difficult. For low-income masses in Turkey, even if they are not at hunger level, insufficient and unbalanced nutrition is a significant issue. The most important factors influencing food consumption patterns are income level and lack of knowledge.

Low-income families consume more bread, while high-income families consume more meat and meat products. The problem is not the unavailability of foods, but its misdistribution among groups, based on different socio-economic levels, gender and age groups. The highest share of expenditure by households in Turkey is 24.8% on housing/rent and 19.7% on food and non-alcoholic beverages (TUİK, 2016). When investigating nutritional habits, nutrition in rural areas is largely based on cereals, and meat consumption remains quite limited.

8.4 Technical Support for Food Security

Most countries that are in the process of reforming their institutions in order to develop their agricultural sectors and achieve their food security objectives need technical support. After the commitments made at the 1996 World Food Summit, Turkey gave priority to developing a number of activities and action plans. In order to be able to prepare long-term development plans, increase training and capacity development, raise awareness of global food security issues, and gain technical support, Turkey decided to expand its cooperation with the FAO.

A 'Workshop on Development of Food and Nutrition Action Plans in Southern European Countries', organized by the WHO and the FAO in March 2002, prompted Turkey to develop the National Plan of Action for Food and Nutrition (NPAFN). To this end, three working groups on food security, food safety and nutrition were established. These groups were responsible for developing the action plan, coordinating studies, finalizing the NPAFN and monitoring its implementation. The first phase of the NPAFN was completed by July 2002. Pekcan (2006: 160) listed the general objectives of NPAFN as follows:

(1) To show the current state of food security, food safety and nutrition in Turkey;
(2) to make clear the issues in current policy implementation; and
(3) to advise on new policy applications and requirements for legislative or administrative changes.

With the development of Turkey-FAO relations, the Sub-Regional Office was established in 2007 in Ankara. The FAO's technical expertise is usually transferred to Turkey through the projects formed in the context of the Technical Cooperation Programme (TCP). According to the FAO, projects will "aim to restore healthy ecosystems, promote environmentally friendly agricultural practices and raise levels of knowledge among government institutions" for farms and communities in Turkey. One example of such a project includes the climate-smart agriculture (CSA) approach, which was developed in 2010 and combines issues such as improving efficiency, reducing losses, and climate change adaptation and mitigation.[1] FAO-Turkey Partnership Programmes aim to provide a substantive, financial and operational framework for active cooperation on food security, poverty alleviation and the sustainable management of forests and tree resources. The second phase of the FAO-Turkey Partnership Programme (2015–2019), with a US$10 million budget, will focus on food security and nutrition, agricultural and rural development, the protection and management of natural resources, agricultural policies and food safety.[2] The 30th FAO Regional Conference held in Turkey highlighted the importance of Turkey's partnership with the FAO for extending technical expertise and better assisting neighbouring countries. This partnership would also help Turkey assist Syrian refugees both in local communities and camps as part of its humanitarian work.

In addition to these initiatives, after the Paris Agreement of 2015 the FAO stated that it would kick off projects and household surveys in Turkey and the region to ensure food security and agricultural sustainability by addressing climate change.

8.5 A Life Support: Syrian Refugees and Food Security in Turkey

The war in Syria has been ongoing since 2011. Turkey has become a major destination for refugees escaping regional conflict zones, and hosts the highest number of Syrian refugees in the world – about 3 million. If the refugee population increases rapidly, Turkey could begin to experience challenges in providing access to food and water. The majority of refugees are dependent on the provision of food assistance, and due to this it is not possible to describe Turkey as possessing all four

[1]See at: http://www.hurriyetdailynews.com/fao-to-help-turkish-agriculture-cope-with-climate-change.aspx?pageID=238&nID=99018&NewsCatID=345.

[2]See at: http://www.fao.org/3/a-ax280e.pdf.

pillars of food security. Consequently, increases in the refugee population and their food consumption are a threat to Turkey's food security.

The food security sector continues to provide support to Syrians located both in camps and outside camps. This is managed by several organizations for providing food security in Turkey. The main and also leading agency is the World Food Programme (WFP) that cooperates with other partners, such as the International Organization for Migration (IOM), the Food and Agriculture Organization of the United Nations (FAO) and four other NGO. Their activities are based on ensuring the four pillars of food security as much as possible. Therefore, their main goals include encouraging stable access to food, especially for people suffering from the Syrian crisis, supporting food availability, and sustaining production and utilization of food. They also want to provide food assistance in a more effective and coordinated way.

The majority of Syrian refugees rely on humanitarian food assistance as their primary source of food. In 2012, a very important step was taken with the creation of an electronic voucher system. This system was established as the most beneficial contribution in guaranteeing food security assistance to Syrian refugees in Turkey (3RP, 2015) by the WFP in cooperation with the Turkish Red Crescent (TRC) and the Disaster and Emergency Management Presidency (AFAD). According to research conducted by the WFP, 90% of refugees in camps, supported by the WFP and the TRC, have an adequate diet and an acceptable Food Consumption Score (FCS), which is comprised of the quantity and diversity of the diet of refugees. Poor or borderline food consumption is rare in these camps and the majority of refugees have acceptable food consumption (WFP, 2013). The introduction of the Electronic Food Card Programme allows camp residents to meet their food and other needs by purchasing goods from supermarkets inside the camps (Kirişçi, 2014: 27–28). However, about 90% of Syrian refugees in Turkey remain outside camp settings and have limited access to basic services. The International Organization for Migration also distributes food vouchers to Syrian refugees outside camps. The E-card Food Programme is provided to 150,000 refugees in camps and to 82,122 refugees living outside camps. In the near future, the WFP wants to increase its support to about 735,000 refugees and develop a more sophisticated off-camp programme.

In 2014, Turkey became the WFP's largest supplier of food commodities in the world. Food consumption scores are banked into three groups: poor, borderline, or acceptable. The WFP's current study showed that a food consumption score of 71% of interviewed households of Syrians is acceptable. Borderline food consumption is typical for 23% of households and poor food consumption is suffered by 6% of households. This means that, in total, 29% of households are not able to meet their food needs. The composition of daily intake is inadequate, and data show that these households eat oil, cereals and sugar almost every day, dairy products and vegetables roughly every second day, and pulses twice a week. In Turkey there is a lack of data on the food security of off-camp refugees. It is difficult to monitor the off-camp situation and gather data, but the data that are available reveal a precarious

food security situation among off-camp Syrian refugee households: almost one-third of the households are food insecure, with a majority of 66% at risk of food insecurity (WFP, 2016).

8.6 Conclusion

In today's changing and globalized world, nearly 915 million people suffer from hunger or undernourishment. Over the past decade, food crises around the world have highlighted the importance of agricultural development and food security in all countries. Globalization has led to increasing interdependence between countries, and food security has acquired both national and international threats.

At the World Food Summit (WFS) in 1996 the heads of state and government stated:

> We pledge our political will and our common and national commitment to achieving food security for all and to an ongoing effort to eradicate hunger in all countries, with an immediate view to reducing the number of undernourished people to half their present level no later than 2015 (FAO, 1996).

As a result, several countries have indeed demonstrated such political will by taking successful action to reduce the prevalence of hunger and malnutrition. Nation states have started to produce strategies to ensure food security by utilizing developing technology.

Turkey, which restricted the ability to export, continues to run at a deficit in foreign trade and has a dependent industry in terms of raw materials, technology and energy. The food security score of Turkey is too low, and the risk is still ongoing. Following recent developments, Turkey has fluctuated in terms of food self-sufficiency. For instance, while Turkey is self-sufficient in fruit, vegetables and meat, it is not self-sufficient in the milk and cereals groups within the food availability dimension (Niyaz/İnan, 2016: 1).

Therefore, in order to protect its food security, Turkey must primarily ensure sustainable agricultural production by raising farmers' incomes and living standards. Raising public awareness is also crucial for food security. A potential expansion in agriculture might also help increase employment in agriculture. To contribute to political stability and have an effective foreign policy in the region, Turkey should continue to improve the effectiveness of its food aid. Hence Turkey needs to set sustainable and environmentally friendly food security policies in line with national interests. However, with a growing population, including refugees, and taking into account the geographical conditions and also the gradually increasing dependence on foreign sources, it is both crucial and troublesome to ensure food security for all country.

Bülent Şık emphasizes the key strategies for ensuring food security, such as family farming and peasant agriculture, re-adjusting public policies, and the actors and improving working conditions of the production of food items. Şık criticizes the

understanding of food security in Turkey, which tends to take a superficial approach and dwells not upon the causes but upon the factors of the issue at hand. Turkey lies in a geographical region which will be confronted with a very serious drought in the next thirty years. Thus, it should create a food security agenda, plan control programmes, support family farming, form an independent unit on climate change and food security, and develop future-orientated peaceful plans and policies.[3] In this regard, Turkey should embrace new agricultural policies which ensure its food security. Raising public awareness is also crucial for food security.

As one of the most important global challenges, food security has remained a priority on the G20 agenda since Turkey began its presidency, after Australia's summit in November 2014. At the G20 summit in May 2015, the Agriculture Ministers' Meeting in Istanbul offered G20 members, international organizations, observer countries and other invited countries the opportunity to exchange constructive views on agriculture and food security. At the Agriculture Ministers' Meeting an agreement was made on a communiqué on food security and sustainable food systems. The communiqué covered actions to reduce food losses and waste in the interests of establishing sustainable food systems. It also covered enhancing employment and income in rural areas by improving the participation of female and young farmers in the agriculture sector; reducing poverty; stressing the role of the private sector in improving sustainable efficiency by focusing on the needs of small enterprises and farmer families; and other issues of importance to G20 members. The communiqué asked the summit leaders in Antalya to prepare a G20 Action Plan on Food Security and Sustainable Food Systems for final approval in November 2015. Particular attention was given to supporting food security in the developing world, focusing on sustainable food systems and improving productivity in smallholder farms. Turkey was the first G20 Presidency to implement the Food Security and Nutrition Framework (G20 Leaders' Communiqué, 2015).

In conclusion, to protect its own food security and to achieve sustainable agricultural production, Turkey must institute sustainable land use and product planning, preserve agricultural biodiversity, support family farming, utilize effective agricultural and environmentally compatible methods, and increase support for rural agricultural development programmes which encourage environmental protection on agricultural land. Consequently, it is necessary to establish agricultural policies compatible with social and economic policies at macro level to guarantee future food security.

References

Ataç, Ela (2011). "Rural Poverty Dynamics: An Evaluation on Agricultural Policies of Turkey", in: *Gazi University Journal of Science*, 24, 3: 559–572.

Barrett, Christopher B.; Maxwell, Daniel G. (2005). *Food Aid After Fifty Years: Recasting Its Role* (Routledge: New York).

[3]See at: https://tr.boell.org/en/2015/11/17/there-food-security-turkey.

EC – FAO Food Security Programme (2008). Food Security Information for Action Practical Guides, at: www.foodsec.org/docs/concepts_guide.pdf (retrieved 12 January 2019).
Economist Intelligence Unit (EUI) (2016), at: http://foodsecurityindex.eiu.com/Country/Details#Turkey (retrieved 12 January 2019).
Elver, Hilal (2015). "Why are there still so many hungry people in the world?" in: *Guardian* (19 February 2015), at: https://www.theguardian.com/global-development/2015/feb/19/why-hungry-people-food-poverty-hunger-economics-mdgs (retrieved 12 January 2019).
Eraktan, Gülcan; Yelen, Berna (2012). "Üretici, Tüketici ve Yoksulluk Olgusu Yönünden Türkiye'de Gıda Güvencesi [Food Security in Turkey Regarding Producer, Consumer and the Case of Poverty]", in: *10. Ulusal Tarım Ekonomisi Kongresi Bildirileri [10th National Agricultural Economics Congress Proceedings]*, (Konya, 5–7 September).
Evrendilek, Fatih; Ertekin, Can (2002). "Agricultural Sustainability in Turkey: Integrating Food, Environmental and Energy Securities", in: *Land Degradation & Development*, 13: 61–67.
FAO (1983). *World Food Security: A Reappraisal of the Concepts and Approaches. Director General's Report* (Rome: FAO).
FAO/WHO (1992). *International Conference on Nutrition. Final Report of the Conference* (Rome: FAO).
FAO (1996). "Rome Declaration on World Food Security", World Food Summit (13–17 November 1996), at: http://www.fao.org/3/w3613e/w3613e00.htm (retrieved 23 July 2016).
FAO (2002). The State of Food Insecurity in the World 2001 (Rome: FAO).
FAO (2006). Food Security, Policy Brief (June 2006), at: http://www.fao.org/forestry/13128-0e6f36f27e0091055bec28ebe830f46b3.pdf (retrieved 12 January 2019).
FAO (2009). High-Level Expert Forum, "How to Feed the World 2050" (Rome: FAO).
G20 Leaders' Communiqué (2015). Antalya, Turkey (16 November 2015).
Karapınar, Barış Adaman Fikret; Özertan, Gökhan (Eds.) (2010). *Rethinking Structural Reform in Turkish Agriculture: Beyond the World Bank's Strategy* (New York: Nova Science Publishers).
Kıymaz, Taylan; Şahinöz, Ahmet (2010). "Dünya ve Türkiye – Gıda Güvencesi Durumu [World and Turkey – Food Security Status]", in: *Ekonomik Yaklaşım*, 21, 76: 1–30.
Kirişçi, Kemal (2014). *Syrian Refugees and Turkey's Challanges: Going Beyond Hospitality* (Washington, D.C.: Brookings Institute).
Koç, A. Ali (2012). "Dünya Gıda Krizi ve Gıda Fiyatlarında Oynaklığın Sürdürülebilir Kalkınma ve Yoksulluk Etkileri: Küresel ve Ulusal Politika Tepkileri [World Food Crisis and Sustainable Development and Poverty Effects of Volatility in Food Prices: Global and National Policy Reactions]", in: *10. Ulusal Tarım Ekonomisi Kongresi Bildirileri [10th National Agricultural Economics Congress Proceedings]*, (Konya, 5–7 September).
Mcdonald, L. Bryan (2010). *Food Security* (Cambridge: Polity Press).
Ministry of Agriculture and Rural Affairs (2004). Production, Consumption and Inspection of Food Stuffs, Decree Having the Force of Law No. 560 (24 June 1995).
Niyaz, Özge Can; İnan, İ. Hakkı (2016). "Türkiye'de Gıda Güvencesinin Mevcut Durumunun Değerlendirilmesi [Assessment of the General Situation Regarding Food Security in Turkey]", in: *Adnan Menderes Üniversitesi Ziraat Fakültesi Dergisi*, 13, 2.
OECD (2011). *Evaluation of Agricultural Policy Reforms in Turkey* (Paris: OECD Publishing).
Ören, M. Neca; Alemdar, Tuna; Bahadır, Betül (2008). "Türkiye'de Tarım Politikalarının Güvencesi Üzerine Etkisi [Effects on Assurance of Agricultural Policies in Turkey]", in: *VIII. Ulusal Tarım Ekonomisi Kongresi Bildirileri [8th National Agricultural Economics Congress Proceedings]* (Bursa).
Pekcan, Gülden (2006). "Food and Nutrition Policies: What's Being Done in Turkey", in: *Public Health Nutrition*, 9, 1A: 158–162.
Sen, Amartya (1981). *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Clarendon Press).
Shaw, John D. (2007). *World Food Security: A History since 1945* (New York: Palgrave Macmillan).

Smith, Marisol; Pointing, Judy; Maxwell, Simon (1992). "Household Food Security, Concepts and Definitions: An Annotated Bibliography", in: *Development Bibliography*, No. 8, (Brighton: University of Sussex, Institute of Development Studies).
TUIK (2016). Labour Force Statistics.
UN General Assembly (1948). *Universal Declaration of Human Rights* (10 December).
UN (1974). *Report of the World Food Conference* (5–16 November).
UNDP (1994). *Human Development Report* (Oxford and New York: Oxford University Press).
UN High Commissioner for Refugees (2016). Syria: 3RP Regional Monthly Update – Food Security (April 2016).
World Food Programme (2016). "Off-Camp Syrian Refugees in Turkey: A Food Security Report" (April 2016).

Chapter 9
Exploring Environmental Justice: Meaningful Participation and Turkey's Small-Scale Hydroelectricity Power Plants Practices

R. Caner Sayan and Ayşegül Kibaroğlu

Abstract This chapter explores the emerging concept of meaningful participation within the framework of environmental justice, with specific reference to Turkey's recent experience of building several small-scale hydroelectricity power plants (HEPP). The paper scrutinizes the HEPP process, including its entrenched legal framework, and attempts to come up with suggestions to elaborate further on the concept of meaningful participation.

Keywords Environmental justice · Meaningful participation · Small-scale hydroelectricity power plants · Turkey

9.1 Introduction

Turkey has traditionally identified its hydroelectricity potential as one of its key national energy sources and has been constructing dams and reservoirs to harness this potential. Throughout its history, constructions of mega-dams, particularly on the Tigris and Euphrates rivers as a part of the South-eastern Anatolia Project (Turkish acronym: GAP) enabled Turkey to generate electricity and implement a regional development programme based on hydro-constructions; however, they were also criticized due to their social, cultural and environmental impacts on local communities, cultural and historical heritage and local habitats in south-east Turkey. Such criticisms are still arising, particularly in the case of the construction of Ilısu Dam in the same region (Ilhan, 2009).

Since the 1980s, when neoliberal policies started to dominate world politics, Turkey has introduced neoliberal notions to its economy (Boratav, 2012). Water management and the energy sector emerged as the first sectors which have been

Dr. R. Caner Sayan, United Nations Unitersity Institute for Water, Environment and Health (UNU-INWEH), Hamilton, Ontario, Canada. e-mail: canersayan@gmail.com.

Dr. Ayşegül Kibaroğlu, Professor, Chair of the Department of Political Science and International Relations, MEF University, Istanbul, Turkey. e-mail: aysegul.kibaroglu@mef.edu.tr.

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reformed in accordance with neoliberal notions (see Başkan, 2011; Kibaroğlu et al., 2009; Harris/Islar, 2013). This has led Turkey to experience a paradigm shift in its water management and energy sector from state-led constructions of mega-dams to the private sector-led constructions of small-scale hydroelectricity power plants (HEPP, hereafter), particularly in the 2000s (see Sayan/Kibaroğlu, 2016). Currently, it is estimated that Turkey has authorized and/or constructed around 1500 HEPPs throughout the country to maximize its utilization of its hydropower potential. Although these small-scale HEPPs have fewer social and environmental impacts than mega-dams, these constructions are widely associated with local opposition movements due to their social, economic, cultural and environmental impacts, such as loss of livelihoods, decrease in water availability, deforestation and loss of water use rights. Local communities also opposed to HEPPs, as they perceive the process of planning and construction to be non-transparent and non-democratic (Hamsici, 2010). This chapter therefore focuses on the process of small-scale HEPP construction, as it represents the most recent paradigm in Turkey's water management and energy sector, and explores why local communities perceive it as non-transparent and non-democratic.

We explore the emerging concept of "meaningful participation" within the framework of environmental justice, with specific reference to Turkey's recent experience of building several small-scale HEPPS. We scrutinize this process, including its entrenched legal framework, and come up with suggestion to elaborate further on the concept of meaningful participation by delineating its four components. We mainly adopt a qualitative methodology with discourse and legal document analysis as well as mass and social media analysis of Turkey's HEPP policies. Additionally, we have conducted a field-study in south-western Turkey to strengthen our empirical analysis. To enrich our analysis we scale up our study to include observations and remarks on the social and environmental impacts of Turkey's small-scale HEPP venture.

9.2 Procedural Environmental Justice: Meaningful Participation

Since the late 1970s, the concept of environmental justice has become an integral part of environmental social sciences. As a contested concept, it "address[es] questions of inequality, fairness, and rights with respect to environmental conditions and decision-making processes" (Holifield, 2012: 592).

With the evolution of the concept, its theoretical focus has shifted from the redistribution of environmental burdens and benefits across society towards other dimensions of justice, such as recognition and participation (see Schlosberg, 2007, 2013). Procedural environmental justice refers to people's participation in environmental governance (Schlosberg, 2004). It also suggests that more democratic and more participatory decision-making processes on environmental issues can tackle the recognitional and distributive environmental injustices within society

which occur because of undemocratic and non-participatory processes (Holifield et al., 2009). This body of literature also places issues like the enforcement of environmental laws, access to information, transparency, accountability and access to legal processes on the agenda. Authors like Hunold/Young (1998) and Shrader-Frechette (2002) highlight the deliberative democracy in addressing procedural inequalities experienced in environmental decision-making processes. Additionally, the Aarhus Convention is utilized by Mason (2010), De Santo (2011), and Walker/Day (2012) as the key way to pursue procedural justice in similar processes.

Within these discussions, one concept emerges as "the central concern of procedural environmental justice": *meaningful participation* (Holifield, 2012: 592). Accordingly, environmental justice literature identifies meaningful participation as a prerequisite for attaining justice in environmental governance (Schlosberg, 2004; Paavola/Adger, 2006; Holifield, 2009). Although the concept can be defined in different ways, Solitare's (2005: 921) approach to the concept as 'successful communicative planning requir[ing] conditions that allow all citizens to participate freely and equally' is seen as one of the broadest and most open-ended definitions of the concept.

The prerequisites of meaningful participation have been seen in two ways. In the first, Solitare (2005: 921) lists the conditions of meaningful participation as follows:

> For citizens to want to participate: (1) there must be a commitment to their involvement from all …; (2) they must be aware of the opportunities to participate; (3) they must have time, as a resource, to commit to the process; (4) they must trust that other[s] are fair and honest; and (5) the issue under consideration must be one they perceive to be a problem.

The United States Environmental Protection Agency (US EPA, 2013), on the other hand, defines them as follows:

> Meaningful involvement means that: (1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) their concerns will be considered in the decision-making process; and (4) the decision-makers seek out and facilitate the involvement of those potentially affected.

The prerequisites of meaningful participation are not radically different in either of these approaches. The delineation of such prerequisites indicates that meaningful participation should be guaranteed in environmental governance. This makes the process fairer, and ultimately the decision is more likely to be widely accepted by the community. This is because the representation of the affected population can be ensured and decisions taken as a result of such an inclusive process can be regarded as legitimate, since it gives the affected population a chance to influence the decision-making process (see Solitare, 2005; Paavola/Adger, 2006; Holifield, 2012). Although there are similarities with deliberation, this concept is more open-ended and more applicable to the contextual studies.

The concept of meaningful participation inherently carries the main assumption of procedural (environmental) justice, asserting that fair processes are likely to lead to fair outcomes. Despite the concept's relation to deliberative models, it is not too

idealistic or Western-centric, since each country or community may have an understanding of meaningful participation which is not necessarily centred on deliberative democracy or the principles of the Aarhus Convention. Instead, as seen in environmental justice literature, meaningful participation may provide a more contextual outlook on socio-environmental injustices. For instance, Solitare (2005) highlights that her implementation of the concept stays within the limits allowed by US legislation and the legislation of individual states. A similar approach can be taken for this research. Accordingly, the field-study findings and comprehensive analysis of the legal framework of Turkey's HEPP process demonstrates that local populations expected a degree of meaningful participation, as indicated by Solitare (2005) and the US EPA (2013), within the limits of Turkey's legislative framework. For this research, as a result of findings from our field-study (i.e. interviews, narratives, videos) about the HEPP process in south-western Turkey, the conditions of meaningful participation can be defined as follows:

1. Consideration and inclusion of locals in the policy process;
2. Representation of the concerns and recommendations of locals in the policy process;
3. Ability of locals to influence the policy process;
4. The efforts of state institutions and administration to ensure public participation.

When the general HEPP process of Turkey and the relevant legal framework are uncovered, it is possible to see instances of these four components of meaningful participation. For example, the Environmental Impact Assessment (EIA) by-laws (2003, 2008, 2013, 2014) underline that companies whose projects fall under Annex I of the by-laws are required to conduct public participation meetings and reflect the locals' concerns and recommendations in their final project files to obtain EIA clearance before they initiate HEPP constructions. This clause straightforwardly implies that the by-laws urge companies to include local communities into the HEPP process and encourage them to raise their voices. In doing so, the by-laws explicitly aim to achieve the representation of locals' concerns and recommendations in the HEPP process, and pave the way for the locals to influence the policy process. The same by-laws also require the state agencies to monitor the conduct of those public participation processes, which suggests that the State has to ensure their proper conduct. Above all, as revealed further in the following sections, an understanding of 'meaningful participation' is not too distant or idealistic in the Turkish context. In fact, the notion was frequently referred to in the narratives of interviewees, and was detected in the relevant legal, official and organizational documents.

9.3 Methods and Case Study Selection

We applied a qualitative methodology. Discourse analysis, document analysis (i.e. legal documents) and mass media/social media analysis were adopted to analyse Turkey's HEPP policies. In order to achieve an empirical depth in this work, fieldwork was conducted in Saklıkent (south-western Turkey), Istanbul and Ankara in 2014. State Hydraulic Works (DSI, Devlet Su Isleri) engineers, NGO representatives, local communities, local administrators and lawyers were among the participants in individual semi-structured interviews conducted during the field study. Additionally, for deeper analysis of the Saklıkent HEPP case, four focus group meetings were conducted with the local communities in the basin.

Each HEPP results in a unique set of socio-spatial transformations, shaped by its historical, geographical, and technical particularities. Consequently, each case study revealed different forms, levels, and patterns of socio-environmental relations and public participation. This chapter seeks to illustrate how hydropower development disregards the meaningful participation of local communities by focusing on a particular case study from Turkey – the Saklıkent HEPP in south-western Turkey, one of nearly 1500 HEPPs under development in the country. Saklıkent was mainly chosen because HEPP cases in south-western Turkey are relatively underrepresented in the newly emerging literature on HEPPs in Turkey. Furthermore, the Saklıkent case represents a completed process: all pending court processes were completed; public opposition was over; and the HEPP construction was withdrawn. This enabled us to track the entire process and see how legal and administrative processes at national level were reflected in a real-life case.

Saklıkent Valley is located in south-western Turkey, parts of which have been recognized as a national park for its renowned natural beauty. Strolling through Saklıkent Valley, scenic views intertwine with ancient ruins, easily grabbing attention. Amid this tremendous natural beauty are the main water sources supporting the basin: the Esen Stream and its tributaries. Following the stream away from the national park and approaching the Valley's borders by following the stream, small settlements begin to appear, completing the scene. When visiting these settlements, it becomes apparent that the stream and natural beauty are seen as the main livelihoods of the local communities. This is not just apparent from conversations held in the basin; the greenhouses, fruit gardens, fish-farms, agricultural plots, small touristic businesses, tourists wandering around and trout restaurants speak for themselves.

In December 2008 two HEPPs were licensed to the same company for construction towards the borders of the Valley (Demir, 2011). These HEPPs were expected to generate 9.67 MW of electricity. They would also include a reservoir, covering 230,000 m^2 within the basin. Local communities did not welcome these HEPPs, however, and they organized a series of opposition movements and initiated court cases between 2010 and 2013. Due to this public opposition, the construction company inquired as to the possibility of withdrawal by applying to the

Electricity Market Regulatory Authority (EPDK) [Enerji Piyasasi Duzenleme Kurumu] on 30 April 2013. This was approved by EPDK on 26 May 2013, meaning that the company withdrew from the process (Evrensel, 2013).

9.4 Meaningful Participation and Saklıkent HEPP

To analyse the HEPP process of Saklıkent, it is first necessary to look at the planning and tendering and licensing processes to make an initial analysis of the meaningful participation of local communities and nature. The proposed HEPP was licensed in December 2008, and the licensed company convened the two EIA-bound meetings in the villages neighbouring the construction site in April 2010 (see Demir, 2011). This shows that this HEPP had already been planned, implemented, evaluated, approved, and licensed before December 2008, since these steps need to be completed prior to licensing (see the 2003 By-Law). A water use rights agreement between the state and company had also been signed before this date, according to the By-Law (2003). This implies that the majority of the processes required for the above steps were undertaken without public participation. Accordingly, it can be stated that the state institutions and company were the only participants in the majority of this HEPP process.

It can be claimed that the local community was, in theory, included into the HEPP process during the EIA phase. In the Saklıkent basin, there were two EIA-bound meetings conducted by the company before it attempted to initiate the construction, since this HEPP fell under Annex I of the EIA by-laws (2008, 2013, 2014), requiring the company to obtain EIA clearance by going through an EIA process. As previously stated, the first element of meaningful participation is considering local communities and including them in the policy processes. To evaluate whether the locals were included to the HEPP process or not, and the degree of representation of their concerns and recommendations, it is essential to analyse how they were informed about the process and the EIA meetings.

The participants of Focus Group Interview 1 at Demirler Village claimed that it was their *mukhtar* (village head) who mentioned the potential HEPP construction around the village. They maintained that the *mukhtar* had immediately communicated with the volunteers in Fethiye, as a result of which the legal struggle was initiated. These participants reported that locals came across the company employees when they were reportedly conducting feasibility measurements in the area prior to the construction process (Focus Group Interview 1). One environmental activist from Fethiye added that the *mukhtar* coincidentally encountered the company representatives, whom he knew from the EIA meeting (the first meeting detailed below), and they had a confrontation there, after which *mukhtar* took a proactive role against HEPPs in his village.

In Focus Group Interview 2, conducted in the neighbouring village, Esen, the EIA-related meeting was indicated as the first occasion when locals were officially informed about the potential HEPP construction. This meeting was mentioned

particularly in Esen, which may be because the first EIA meeting was convened in this village, the participation of which was 'high' according to Group Interview 2. The Group 2 participants additionally maintained that people from neighbouring villages also showed interest in this first meeting, as corroborated by, for example, the participants of Group Interview 1. The participants of Group Interview 2 claimed that the meeting was 'tense'. In their contention, the informants were nervous, and the locals became nervous when the informants refrained from disclosing the potential harms of the HEPP construction. One of the participants of Group Interview 2 also stated that the DSI and EPDK officials present at that meeting sided with the company, which further annoyed the locals.[1]

The second EIA meeting was conducted one day after the previous one in April 2010 in Palamut Village, where Group Interview 4 was conducted. The participants of Group Interview 3 stated that they (and other people from that village) attended this meeting, and the informants constantly told them that the village would not be damaged, and that the minimum water flow, i.e. 10% as determined by the water use rights agreements, would always be assured by the company. No reference was made to the potential harmful impacts of the project. The participants of Group Interview 4 emphasized that the company promised to repair their irrigation canals, which had not been repaired and activated by the state for over 60 years. The participants also highlighted that the landowners, whose lands would be expropriated and inundated by the small reservoir associated with HEPP, were not offered any alternatives.

These two meetings were not the only ones conducted for the potential HEPP construction in Saklikent, however. One local administrator in the stream's basin mentioned another meeting undertaken in Kas, which is around 50 km away from the basin. He said that a state institution conducted this meeting in November 2011, when the benefits of the potential HEPP constructions were described. Videos of that meeting (see Facebook page of Fethiye Saklikent Koruma Platformu [Fethiye Saklikent Conservation Platform, FSKP]) confirm his account. It is important to note that this meeting was not undertaken within the EIA process. According to this local administrator, at this meeting, the recommendations of the local people were immediately "opposed and repelled" by the officials. He maintained that the entire meeting was based on notions of the "commercial benefits of HEPPs" and "their contributions to the villages", while these benefits were "not persuasive", "quite rhetorical", and "not bound to any protocol". Like the majority of the participants of the group interviews cited above, he also highlighted that it was the volunteers who actually tried to inform the locals about these projects and provided a more convincing account of the whole HEPP process. As a result, the locals committed themselves to conducting protests and initiating the legal fight against the HEPP.

[1]According to the EIA by-law, state institutions should monitor the meetings, which is the reason why these officials were present at that meeting. Here the participant notes that, instead of observing the meeting impartially, the state representatives were backing the company's arguments during the meeting, which contravened their remit and consequently annoyed the locals.

All of the empirical data presented up to this point has demonstrated that the HEPP process and the relevant legal framework did ostensibly include locals during the EIA process, after the completion of planning and licensing. However, from the narratives of these interviewees, it appears that the locals were informed late and improperly. The potential negatives of the HEPP were concealed from them, and no alternatives were offered to the villagers apart from the limited expropriation fee. Most importantly, as indicated by a local administrator, the informants undermined the comments and recommendations of the locals during this process. This was confirmed by the other group interviews when they described the EIA process. Accordingly, it could be said that the locals' inclusion and recognition in the Saklıkent HEPP process was limited, consisting only of the EIA meetings. Furthermore, the representation of their concerns was not ensured in this process, as indicated by the interviews cited above.

From this point, the analysis can move on to the third element of meaningful participation, which is whether the local community was able to influence the HEPP process. It can be purported that locals were able to assert their concerns during the HEPP process, but not through the EIA meetings and legal framework of HEPPs which were supposed to ensure their participation. Instead their participation in the pre-construction process of the HEPP was made meaningful through alternative ways. As corroborated by the local interviewees, they unilaterally organized a series of activities to raise awareness of the potential HEPP issue of Saklıkent at local level, which were also publicized at national level. Interviewees narrated these activities. They recounted that demonstrations were initiated after the scientists and volunteers from Fethiye informed them of the potential harms of the HEPPs. The *mukhtars* of the basin then collaborated with each other and let each other know about every single development regarding the HEPP issue, while also using their contacts in the local branches of the ruling party to transmit their concerns about the HEPP process to the high-level officials in Ankara. Their actions were confirmed by the participants of Group Interview 4, in which one of them stated that they even attended a national protest in Ankara on HEPP issues as the representatives of the Saklikent HEPP resistance, to make their cause visible at national scale.

Meanwhile, at local scale, marches, protests, informal public information meetings, and picnics were organized by FSKP.[2] In addition, the concerned villages also managed to collect the necessary amount of petitions, and initiated court cases to stop the construction of the Saklıkent HEPP. The EIA clearance, granted in 2012, was cancelled by a court decision in April 2015.[3] Other cases were never concluded since the company officially stepped back from the HEPP project in December 2013 due to the public opposition (Evrensel, 2013). All these attempts demonstrated that the official EIA process, which is supposed to lead to meaningful participation of the locals to the HEPP process by including them to the process, representing their comments and recommendations about the HEPPs, and providing them with the

[2]The copies of the calls of these activities are filed with the author.

[3]The court decision is filed with the author.

necessary conditions to participate in the process, failed. Hence the locals adopted alternative methods such as protests and legal struggles to influence the HEPP process.

By analysing these protests and legal struggles, the fourth element of meaningful participation, which examines the State's efforts to ensure the participation of locals, can be assessed. Instances of this component can be found in the pre-construction and construction stages of the HEPP. It can be seen here that the locals did not face pressure or obstructions by the state institutions. However, state institutions did not make much effort to ensure their participation either. At least, by examining locals' claims about the EIA meetings, it can be seen that the participation of locals was not achieved in practice, and the process was not managed properly. Concerning this HEPP case, there is not much to say about the State's efforts to ensure public participation, which is implied in the process itself, but the situation can be clarified by the anecdotes provided by two volunteers from Fethiye, who took part in this HEPP process and attended these EIA meetings. Accordingly, one NGO representative describes the EIA-bound meetings convened in this basin as follows:

> They announced the meeting there [referring to the first meeting conducted in Esen] in a newspaper distributed in Muğla [referring to the fact that the locals may not have access to that newspaper since it is distributed in a limited area], so it is obvious that they tried to conceal something. Once we went there, we slowly understood. The man in front of us was an engineer, the company employee. [He was] very annoyed, very nervous. He was chewing gum, was talking slowly. [We asked] how many trees will be cut down? He does not know. How much excavation will be carried out? He does not know. How long will the construction continue? He does not know. So, there is a trick there…He said like we will do this, nothing is going to happen, in fact, the water will rise a little bit, nothing else will happen etc.

An independent activist also describes these meetings:

> We attended [those meetings]. At the beginning we thought that these meetings may be beneficial. We were thinking that the signatures collected there and discussions held would lead to the right outcome. We then learnt through experience that EIA meetings were used by the companies during the legal processes to prove that they had actually informed the local people. The public consultation process is superficial. We learnt how these reports and discussions held there were just token as follows: Many of these meetings are conducted under the supervision of the Ministry of Forestry [and Water Affairs]. We saw that the official reports did not reflect the complaints made there; on the contrary, we saw that the language of these reports was quite positive [about the project]. In fact, in one of those meetings, I asked for a copy of the official record, which NGO representatives and/or *mukhtars* may request on behalf of the participants, but the guy did not want to give it…For this reason, we witnessed that at many places, public servants act maliciously in favour of the companies. We realized that these meetings are not useful.

The anecdotal accounts and group interviews reviewed above affirmed that the processes supposed to ensure public participation were not adequate to convince people. On the contrary, they led to further suspicion about the HEPP project in the local people's minds. In addition to this information, local activists and NGO representatives also praised the efforts of the *mukhtars* of this basin in the HEPP

process. They highlighted that all of the *mukhtars* stuck together, even when the company tried to approach them individually to negotiate about the process, and mobilized their subjects in all these processes. Since all of them shared the same cause, their stance was solid against construction of the HEPP. This is important, because, in traditional Turkish rural life, if you want to do anything in a village, or if you want access to any village, you should first talk to the *mukhtar*. For this reason, companies generally try to persuade the *mukhtar* before they initiate constructions, as indicated in a series of interviews conducted with the DSI officials.

In the context of the Saklıkent HEPP case, the company and the state did not do much to reflect the locals' concerns in their projects, and did not disclose the potential harm to the locals throughout the entire process. The full participation of the local people in this process was not attained, which led to the neglect of their concerns and recommendations in this process, hindering their meaningful participation. The administration or state institutions did not provide the necessary conditions for meaningful participation, rather the local people and volunteers sought for alternative ways to influence this HEPP process. It could be concluded that the meaningful participation of locals (by the legal framework) was quite limited in the HEPP case of Saklıkent, but participation became meaningful when locals established their own ways to raise their concerns, which eventually led to the withdrawal of the company from the HEPP process.

9.5 Scaling up the Debate: Meaningful Participation in Turkey's HEPP Process

The problems revealed so far are mainly peculiar to the case study area; however, similar issues are widely seen in Turkey's HEPP processes. Representatives of two prominent national-level environmental NGOs respectively argue that:

> It [referring to the HEPP process] is fundamentally a 'rights' issue…The hydrological cycle has to be recognised and it has to serve to [provide] water, to [support] fish living and feeding from that basin, to [produce] rain conceived through evaporation from that source, needed by the basin's farmer. Water is the right of humans and all living organisms of that cycle. And the process that Turkey's water politics and HEPPs have brought us does not recognise that right. In fact, they operate in the worst possible way. It is okay if you [referring to the state] consult people and get their opinions [in the HEPP process] and then make a bad decision, but even that is not the case. They seek neither public nor expert opinion. In fact, [even] EIA Reports are full of lies. All EIA Reports [in Turkey] are approved…They are copies of each other. Thus, the intention [of the State] is not to have equitable water management and there is no political commitment to ensure it. Even worse, the Ministry [of Forestry and Water Affairs] does not advocate such a[n equitable and participative] policy[-making process].

> There are sensitive issues about HEPPs…like the existence of national parks, wetlands, forestry areas which represent actual HEPP sites. I need to inform you that every single river [stream] of Turkey is projected for HEPP development! It raises the question: Do we not have any wetlands or nature protection area or forestry? It is easy to infer that HEPPs do

> not consider what needs to be considered in the process… [For example, the] EIA process has…to be conducted prior to constructions… [but] it remains superficial…We see cases in which constructions began without completing the EIA process…In addition, there are people using that water for their livelihoods. They are disregarded too in the HEPP process.

These extracts imply that Turkey's HEPP processes are not conducive to the components of meaningful participation. The roots of these missing elements in Turkish politics lie in the focus on modernization and modernist legacies. This, in turn, illustrates how the Turkish state perceives meaningful participation in the HEPP process.

As clearly indicated in Bozdogan/Kasaba (1997) and Adaman/Arsel (2005), policy-making processes are inherently centralized and operated with a top-down perspective. This can be seen in Turkey's HEPP process, as its operation is introduced at administrative level, shown in Fig. 9.1 (see also Ozerol et al., 2013). The operation of the process and the roles of the relevant actors are explained in this section, based on the By-law on Principles and Practices on Signing the Water Use Right Agreements for Electricity Production in the Electricity Market (2003). These operations and roles are also corroborated by the NGO representatives, DSI officials and private sector representatives interviewed for this study.

The DSI, operating under the Ministry of Forestry and Water Affairs, and EPDK under the Ministry of Energy and Natural Resources, can be thought of as the key

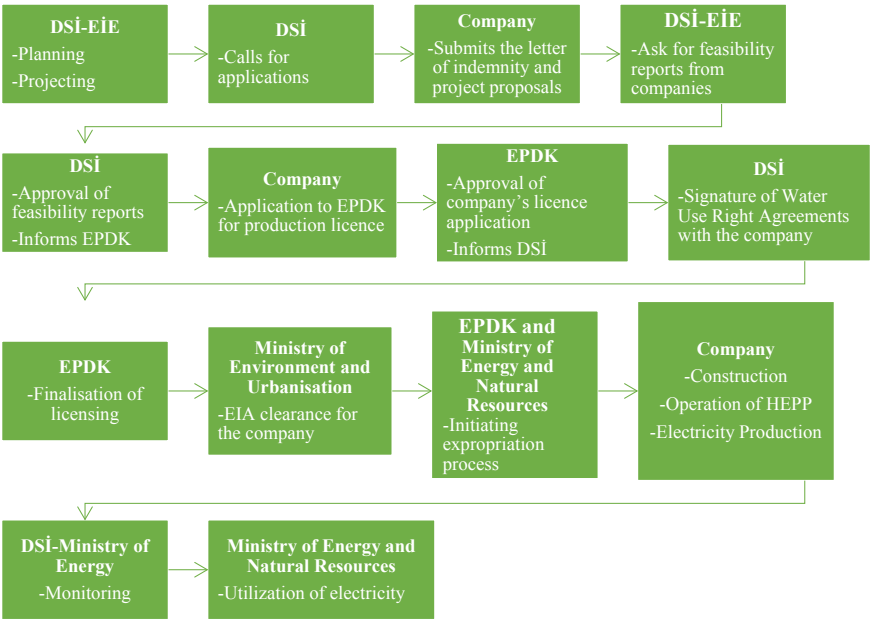

Fig. 9.1 Overview of the HEPP process in Turkey. The author's own illustration heavily based on 2003 By-law, also described by the interviewees. Same figure appears in the author's publication (Sayan, 2019)

institutions governing the HEPP process. According to the 2003 By-law and its amendments in the years of 2008, 2013 and 2014, the DSI and/or the General Directorate of Electrical Power Resources Survey and Development Organization (EIE) under the Ministry of Energy and Natural Resources [Elektrik Isleri Etüd Idaresi[4]] initially develop the available projects, and DSI then announces them on its website, where the application process for the companies are detailed (see Clause 5). In these initial steps, companies apply to the projects they are interested in by submitting a letter of indemnity and proving their capacity to undertake the advertised projects (see Clause 6). When completing the applications, the DSI and EIE require applicants to submit a feasibility report for the projects (see Chap. 3 of the by-law, particularly Clause 8). If these feasibility reports are approved, successful applicants are informed that they are qualified to sign a water use rights agreement, and the EPDK is simultaneously informed of this decision (see Chap. 4, Clause 10 of the By-Law). Once this decision is made, companies have to apply to the EPDK to get an electricity generation licence. If the EPDK decides that it is appropriate to issue an electricity generation licence to a company, it then allows the DSI to sign the water use right agreement with the company. Then, the company and DSI sign the agreement, and the EPDK is informed; this finalizes the licensing process (see Chap. 4 of the 2003 By-law).

The application and licensing are not the only elements of the HEPP process. Companies which sign water use rights agreements with the DSI also have to receive EIA clearance (see Clause 12 of the 2003 by-law). The most recent by-law, issued in November 2014, indicates that each project has to receive EIA clearance from the Ministry of Environment and Urbanization before investments and constructions of relevant projects can be initiated. This clearance may be in the form of approval of the EIA Report submitted by the companies or state institutions to the Ministry, which is required for a list of projects named in Annex I of the By-law, including run-of-the-river HEPP constructions with capacities above 10 MW. The ultimate decision is either the "EIA is positive" or the "EIA is negative". Clearance may also be in the form of the approval of a file introducing the project to the Ministry, which is evaluated by a method of selection and elimination. Here, when a project falls under Annex II of the By-law including small-scale HEPPs (with capacities between 1 and 10 MW), a commission within the Ministry of Environment and Urbanization gives the ultimate decision. This commission may either decide on "EIA required", meaning that the company has to go through the process implemented for Annex I projects, or "EIA not required", which authorizes the companies to operate. Projects not mentioned in Annex I and II are not required to go through an EIA process. Other annexes of the By-law refer to the environmental legislation of Turkey, detailing the legal framework regarding the environment that must be taken into consideration by applicants in their EIA process.

[4]The EIE was abolished in 2011, and its duties were transferred to the General Directorate of Renewable Energy, operating under the Ministry of Energy and Natural Resources. This Directorate was later transferred to the General Directorate of Electricity Works in July 2018.

Annex I and Annex II are important, as they define which projects have to go through an EIA process, or a selection and elimination process, while unnamed projects are exempted from an EIA process since their environmental impacts are considered to be minor. In the case of small-scale HEPP developments, according to the 2003 By-law on EIA, projects should go through an EIA process if their capacities are above 50 MW, while those with capacities between 10 and 50 MW fall under selection and elimination criteria. This implies that HEPPs below 10 MW are not required to follow any of these procedures. According to the 2008 By-law, the HEPPs with capacities above 25 MW are required to follow an EIA process, while those between 0.5 and 25 MW have to follow the selection and elimination criteria; the rest are exempted from the EIA. Each by-law overrules the previous one and does not include the projects initiated before its issue, leading to complications in implementation.

These by-laws require compulsory public participation meetings for projects going through the EIA process (Clause 9, 2014 By-law). In fact, the EIA process is the only time when the public can participate in the policy process (including HEPPs). According to the by-laws, the meeting content, date and place should be announced at least ten days before the meeting in a local (or national) newspaper. In addition, the meeting is supposed to be convened in the most convenient place for the local people. The purpose of those meetings is indicated to be 'receiving the public's opinions and recommendations regarding the projects' (Clause 9, Section 1). Accordingly, the recommendations and opinions of the public represented at the public participation meetings is one of the criteria through which the Ministry evaluates the EIA process. If the company fails to provide evidence of the meeting, the EIA process will end negatively, leading them to lose their license and invalidating water use rights agreements, as stated in the template water use rights agreements (2003 By-law).

However, when examining its implementation, it is seen that the framework fails to achieve meaningful participation, confirming the claims of Interviewee 1 and the participants of Group Interview 8. According to a statistical sheet published by the Ministry of Environment and Urbanization (2015b), in the years between 1993 and 2014, 3736 projects under Annex I (not just HEPPs) were given "EIA is positive" status (24% of which were energy projects), while only 33 were indicated as "EIA is negative". 47,314 projects analysed under Annex II resulted in the decision "EIA not required" (6% of which were energy projects), and 638 were designated "EIA required" for the same period. Another official source, a parliamentary inquiry replied to in 2013 (Bayraktar, 2013), clearly indicates that out of 655 energy projects (general), 274 HEPPs were given "EIA is positive" status, while out of 2588 energy projects (general), 1082 HEPPs were designated "EIA not required". This response, and other relevant sources, do not clearly indicate how many of the HEPPs are granted the status of "EIA required" or "EIA is negative". However, the Union of Chambers of Turkish Engineers and Architects (TMMOB) [Türkiye Mühendis ve Mimar Odalari Birliği] report (2011) indicated that 'none' of the HEPPs were given "EIA is negative" status. This suggests that the number of

projects subjected to a proper EIA process is relatively small, which makes meaningful participation debatable in Turkey's HEPP process.

Additionally, before companies start to construct power plants, the expropriation process has to be conducted in the cases which require it. This process is governed by the EPDK, while expenses and expropriation fees also have to be afforded by the companies (interview with a company representative; see also Law No. 2942, 1983). To complete this process, the relevant permits for the HEPP construction have to be issued by the governorates and local branches of the relevant state institutions at local scale. Expropriation decisions do not particularly seek the consent of landowners, especially when undertaken under "urgent expropriation" (interview with a lawyer; see also Law No. 2942, 1983). According to Law No. 2942 (1983), landowners do not have the right to challenge an expropriation decision; they are only allowed to challenge the value of their property predetermined by the state/courts. Furthermore, if the lands or properties belong to the State, the company can appropriate it without seeking public consent (see Leblebici, 2012).

After the completion of these bureaucratic steps and during construction of the HEPP, the DSI or private companies assigned by the DSI conduct the monitoring process. The DSI and the Ministry of Energy and Natural Resources are also supposed to undertake routine controls during HEPP operation, as indicated by a DSI official. When it comes to the trading of the electricity produced in those power plants, the Ministry of Energy and Natural Resources offers incentives to companies and purchases their electricity (EIE, 2014). This entire process is depicted in Fig. 9.1, which also briefly demonstrates the responsibilities of the actors involved in this process.

The examination of this general HEPP process (and Fig. 9.1) may reveal that Turkey's administrative traditions have been shaped by modernist notions. The general HEPP process (Fig. 9.1) itself is governed in a highly centralized way, as shown by the case study. For example, potential HEPP projects are prepared and planned in the headquarters of the DSI and Ministry of Energy and Natural Resources (and its affiliated institutions) in Ankara, where companies apply to them and their applications are evaluated and approved (interview with a DSI official). It is obvious that only a few actors are included actively in this process, namely the DSI, the Ministry of Energy and Natural Resources (EPDK and Directorate General of Renewable Energy), Ministry of Environment and Urbanization, and the companies (corroborated by the interviewees cited above). Public participation only becomes part of the process (after the completion of planning and tendering of the projects) during the later stages of the process via the EIA process. However, as demonstrated by the above cases, not every HEPP is subject to an EIA process, which would ensure meaningful public participation. As the capacities of most of Turkey's HEPPs are below legal limits, companies can submit their project files to the Ministry to get "EIA not required" status without engaging with locals, implying the system is operated centrally, minimizing public participation.

DSI officials interviewed for this study confirmed these points in their narratives, and reinforced the above-pictured HEPP process as being the norm. DSI officials

and also the company representative interviewed highlighted the necessity for more involvement of the DSI in the entire process, demanding more centralization. DSI officials, as argued throughout this research, based their claims on the notion that DSI has the best knowledge of water, reflecting modernist notions of rationality and technocratic governance. In these interviews, public participation and bottom-up approaches in water management are ignored, while the knowledge of local people has been criticized; they are not seen as being capable of making meaningful contributions to the HEPP process, since it does not correspond to the technocratic understanding of water management. A long-term employee of the local branch of DSI in Fethiye, for instance, confirmed that HEPPs are actually 'state projects', where it is only DSI preparing and calling for companies' applications. He tacitly admitted there were deficiencies in the way public participation is handled in the HEPP process, but put the blame for this on the companies. He and his colleague said that "if DSI approves a project, it means that it is appropriate", and implied that DSI officials are biased against public participation, since the projects planned and approved by DSI are considered to be 'appropriate'. It appears that the meaningful participation of locals is inherently not welcomed in water management in Turkey, and centralized and rationalized technocratic water management is perceived as being necessary. Based on such evaluations introduced by DSI bureaucrats, this also implies the State's expertise in water management, all of which are consistent with the notions hitherto discussed under the banner of modernization.

Furthermore, these narratives show that these discussions are centred on other modernist legacies, namely national pride and developmentalism (see Adaman et al., 2016). For example, two DSI officials, both of whom currently hold key positions in the DSI, frequently referred to developmentalist and nationalist elements when they justified the operation of the HEPP process in Turkey. They emphasized that the HEPPs and water are our "national resources", which are "very important" and should be utilized. When they further advocated the HEPP process and its centralized nature, they approximately meant that "if you want electricity, there is a price for that and you have to pay this price", emphasizing the prioritization of the developmentalist approach in the HEPP process.[5] Furthermore, another DSI official underlines the importance of 'national resources' in electricity generation; he proposes to "obtain the maximum energy we can get out of that", which holds both nationalist and developmentalist elements. The company representative also implied similar issues by highlighting the necessity to "dam every single brook" to "afford energy needs of Turkey" for economic development. He demanded that state institutions show greater initiative and take more financial responsibility for further planning. These examples and analyses show that the modernist legacies of nationalism, and particularly developmentalism, still prevail in the recent HEPP processes, when their operation is viewed at national scale.

[5]Due to the positions of the participants in this group interview, the interview was not recorded. However, they let me make notes when they were responding, so the quotation is not the exact wording.

They are used to justify the centralized and top-down nature of the HEPP process by these key actors. However, most importantly, this understanding paves the way for the creation of controversial legal frameworks which permit HEPP constructions in sensitive environments and non-inclusive HEPPs. Any action boosting development is justified under these circumstances, in which public consent and participation are not necessarily required to be sought – see key legislation, including but not limited to the Law on Expropriation (No. 2942, 1983), the Law on Resettlement (No. 5543, 2006), the 2003 By-law on Water Use Right Agreements and the 2005 Law on Renewables as well as environmental acts including the Law on Forestry (No. 6831, 1956), providing numerous exceptions which allow construction on ecologically and socially sensitive and vulnerable areas.

9.6 Concluding Remarks

It could be claimed that the non-participative approaches present in HEPP processes come from the modernist legacies of nationalism and developmentalism in Turkish politics. Analyses of the local HEPP process showed that the locals did not accept these modernist legacies, or the non-inclusive HEPP process itself. The Saklıkent case and some others analysed by Hamsici (2010), Islar (2012a, b), and Aksu et al. (2016) also display the fact that locals were against the non-inclusive operation of the HEPP process. The local interviewees demonstrated that they wanted to meaningfully participate in HEPP processes, as these might significantly impact their lives. However, due to the modernist legacies embedded in Turkish politics, a degree of meaningful participation has not been achieved within the official process. This is despite the existence of a relevant legal framework in the Turkish legal system, especially within the EIA by-laws. Instead, in the case studies, meaningful participation was obtained through the locals' own efforts (see Hamsici, 2010 for numerous similar cases in Turkey). This malfunction of the meaningful participation element in HEPP processes can be concluded through an independent local activist's explanation, in which he criticized the entire HEPP process and the administration's reluctance to include local people in HEPP processes, while underlining the will and role of the locals in the achievement of their meaningful participation:

> The official part of the story [referring to the State] does not make any effort to protect [people and the nature]. Everything is lumbered on the people who will be affected by those projects. They become their own engineers, their own academics, their own peasants, their own farmers, their own protesters and their own environmentalists.

References

Adaman, Fikret; Akbulut, Bengi; Arsel, Murat (2016). "Türkiye'de Kalkınmacılığı Yeniden Okumak: HES'ler ve Dönüşen Devlet-Toplum-Doğa İlişkileri [Re-reading Turkey's Developmentalism: Hydro-Power Plants and Changing State-Society-Environment Relationships]", in: Aksu, Cemil; Erensu, Sinan; Evren, Eren (Eds.): *Sudan Sebepler: Turkiye'de Neoliberal Su-Enerji Politikalari ve Direnisler* [*Neoliberal Water-Energy Politics and Resistance Movements in Turkey*] (Istanbul: İletişim).

Adaman, Fikret; Arsel, Murat (2005). "Introduction", in: Adaman, Fikret; Arsel, Murat (Eds.): *Environmentalism in Turkey: Between Democracy and Development?* (Aldershot: Ashgate Publishing Company): 1–12.

Aksu, Cemil; Erensu, Sinan; Evren, Eren (Eds.) (2016). *Sudan Sebepler: Turkiye'de Neoliberal Su-Enerji Politikalari ve Direnisler* [*Neoliberal Water-Energy Politics and Resistance Movements in Turkey*] (Istanbul: İletişim).

Bayraktar, Erdogam (2013). *İstanbul Milletvekili Sedef KÜÇÜK'ün Yazılı Soru Önergesi* [*Parliamentary Inquiry of Sedef KÜÇÜK, MP of İstanbul*] (17 December) (Ankara: The Ministry of Environment and Urbanization, Directorate of Strategic Planning).

Bozdoğan, Sibel; Kasaba, Resat (Eds.) (1997). *Rethinking Modernity and National Identity in Turkey* (Seattle: University of Washington Press).

Demir, Nurettin (2011). *Petition for Parliamentary Inquiry* (Ankara: The Deputy Presidency of Republican People's Party of Turkish Grand National Assembly).

De Santo, Elizabeth M. (2011). "Environmental Justice Implications of Maritime Spatial Planning in the European Union", in: *Marine Policy,* 35, 1: 34–48.

Hamsici, Mahmut (2010). *Dereler ve İsyanlar* [*Brooks and Revolts*] (Ankara: Nota Bene).

Harris, L.M.; Islar, M. (2013). "Neoliberalism, Nature and Changing Modalities of Environmental Governance in Contemporary Turkey", in: Atasoy, Yildiz (Ed.): *Global Economic Crisis and the Politics of Diversity* (London and New York: Palgrave MacMillan).

Holifield, Ryan (2009). "Actor-Network Theory as A Critical Approach to Environmental Justice: A Case against Synthesis with Urban Political Ecology", in: *Antipode,* 41, 4: 637–658.

Holifield, Ryan (2012). "Environmental Justice as Recognition and Participation in Risk Assessment: Negotiating and Translating Health Risk at a Superfund Site in Indian Country", in: *Annals of the Association of American Geographers,* 102, 3: 591–613.

Holifield, Ryan; Porter, Michael; Walker, Gordon (2009). "Introduction Spaces of Environmental Justice: Frameworks for Critical Engagement", in: *Antipode,* 41, 4: 591–612.

Hunold, Christian; Young, Iris Marion (1998). "Justice, Democracy, and Hazardous Siting", in: *Political Studies,* 46, 1: 82–95.

İlhan, A. (2009). *Social Movements in Sustainability Transitions: Identity, Social Learning and Power in the Spanish and Turkish Water Domains* (unpublished PhD thesis, Universitat Autonoma de Barcelona).

Islar, Mine (2012a). "Privatised Hydropower Development in Turkey: A Case of Water Grabbing?" in: *Water Alternatives,* 5, 2: 376–391.

Islar, Mine (2012b). "Struggles for Recognition: Privatisation of Water Use Rights of Turkish Rivers", in: *Local Environment: The International Journal of Justice and Sustainability,* 17, 3: 317–329.

Kibaroğlu, A.; Başkan, A.; Alp, S. (2009). "Neo-liberal Transitions in Hydropower and Irrigation Water Management in Turkey: Main Actors and Opposition Groups", in: Huitima, Dave; Miejerink, Sander (Eds.): *Water Policy Entrepreneurs: A Research Companion to Water Transitions Around the Globe* (Cheltenham: Edward Elgar Publishing Limited).

Leblebici, Nese (2012). "Hidroelektrik Santrallerin Kurulması İçin Gerekli Olan Arazilerin Elde Edilmesi [Obtainment of the Lands Required to Construct Hydroelectric Power Plants]", Paper for the 12th Turkey Energy Congress, Ankara.

Mason, Michael (2010). "Information Disclosure and Environmental Rights: The Aarhus Convention", *Global Environmental Politics,* 10, 3: 10–31.

Özerol, Gul; Özen-Tacer, Aysun; Islar, Mine (2013). "Public Participation as an Essentially Contested Concept: Insights from Water Management in Turkey", in: de Boer, Cheryl; Vinke-de Kruijf, Joanne; Ozerol, Gul; Bresser, Hans (Eds.): *Water Governance Policy and Knowledge Transfer: International Studies on Contextual Water Management* (London: Earthscan): 128–147.

Paavola, Jouni; Adger, W. Neil (2006). "Fair Adaptation to Climate Change", in: *Ecological Economics,* 56, 4: 594–609.

Republic of Turkey, The Ministry of Environment and Urbanisation (2015a). *Aydın-Muğla-Denizli Planlama Bölgesi 1/100000 Ölçekli Çevre Düzeni Planı Değişiklik Listesi* [*List of Changes in 1/100000-Scaled-Zoning-Plan of the Region of Aydın-Muğla-Denizli*], at: https://webdosya.csb.gov.tr/db/mpgm/editordosya/file/CDP_100000/amd/amd_DEGISIKLIK_LISTESI.pdf (retrieved 21 August 2015).

Republic of Turkey, The Ministry of Environment and Urbanisation (2015b): *İlk ÇED Yönetmeliği'nin yayımlandığı 1993 yılından 2014 yılı sonuna kadar verilen ÇED kararları* [*EIA Decisions from the Issue of the First EIA By-law (1993) to the End of 2014*], at: http://www.csb.gov.tr/db/ced/icerikbelge/icerikbelge2910.pdf (retrieved 25 August 2015).

"Saklıkent HES'ten kurtuldu! [Saklıkent Was Saved from HPP!]", in: *Evrensel* (10 December 2013), at: https://www.evrensel.net/haber/73875/saklikent-hesten-kurtuldu (retrieved 1 August 2014).

Sayan, R.C. (2019). "Exploring Place-Based Approaches and Energy Justice: Ecology, Social Movements and Hydropower in Turkey", in: *Energy Research & Social Science,* 57 (November 2019), at: https://www.sciencedirect.com/science/article/pii/S2214629618311678?dgcid=author (retrieved 21 July 2019).

Sayan, R.C.; Kibaroğlu, A. (2016). "Understanding Water-Society Nexus: Insights from Turkey's Small-scale Hydropower Policy", in: *Water Policy,* 18: 1286–1301.

Schlosberg, David (2004). "Reconceiving Environmental Justice: Global Movements and Political Theories", in: *Environmental Politics,* 13, 3: 517–540.

Schlosberg, David (2007). *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford: Oxford University Press).

Schlosberg, David (2013). "Theorising Environmental Justice: The Expanding Sphere of a Discourse", in: *Environmental Politics,* 22, 1: 37–55.

Shrader-Frechette, Kristin (2002). *Environmental Justice: Creating Equality, Reclaiming Democracy* (Oxford: Oxford University Press).

Solitare, Laura (2005). "Prerequisite Conditions for Meaningful Participation in Brownfields Redevelopment", in: *Journal of Environmental Planning and Management,* 48, 6: 917–935.

Union of Chambers of Turkish Engineers and Architects (*Türkiye Mühendis ve Mimar Odaları Birliği*, TMMOB) (2011). *TMMOB Hidroelektrik Santraller Raporu* [*Turkish Union of Chambers of Engineers and Architects' Report of Hydroelectric Power Plants*] (Ankara: TMMOB).

United States Environmental Protection Agency (US EPA) (2013). *Basic Information*, at: http://www.epa.gov/environmentaljustice/basics/ejbackground.html (retrieved 1 February 2013).

Walker, Gordon; Day, Rosie (2012). "Fuel Poverty as Injustice: Integrating Distribution, Recognition and Procedure in the Struggle for Affordable Warmth", in: *Energy Policy,* 49: 69–75.

Chapter 10
Conclusion: Creating a Path Forward for Turkish Environmental Law and Politics

Zerrin Savaşan

The branches of law are usually divided into two broad categories: private law and public law. Of those, the former regulates the relationships between citizens, while the latter regulates the relationships between citizens and the State and between States. But some law branches may also have a mixed public/private character.

Environmental law is one those branches. Indeed, it has many aspects under private law – like tort, nuisance (public and private) and property law – and under public law – like state regulations involving setting standards, authorization of activities, prescribing procedures to be carried out like EIA, identifying land or species that must be protected, banning or punishing some activities, environmental crime etc.

Therefore, environmental law emerges as a legal system which operates on the basis of all related law branches which aim to provide environmental protection and improvement through preventing environmental degradation before it occurs and remedying the harmful consequences, risks and threats which damage the environment.

In line with this, Turkish environmental law also emerges as a legal system composed of principles and norms arising from different law branches under both public and private law, and thus involves a wide scope of legislation.

In sum, under Turkish Environmental Law, the protection of the environment is directly regulated under the Constitution, initially with the 1982 Constitution, and it is predominantly regulated under public law, and significantly by administrative law, i.e. environmental law and administrative law have a very large field of interaction. However, only through the provisions regarding the right of the neighbour and the rules on legal liability is it possible to refer to private law on environmental matters.

Turkey is actively included in most of the legal frameworks and institutions related to environmental issues, particularly those affiliated to the UN and the EU,

Dr. Zerrin Savaşan, Assistant Professor, Department of International Relations, Sub-department of International Law, Selçuk University, Konya, Turkey. e-mail: szerrin@selcuk.edu.tr.

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provided by international environmental law (IEL). To date, it has become party to a range of environmental agreements at both global and regional level. Turkey's decision to accede to an environmental agreement can have a direct effect on its domestic law if that environmental treaty involves fundamental rights and freedoms. Even though the right of environment is not directly incorporated, as it involves provisions on the protection and development of the environment, it can be broadly evaluated as indirectly related to the right of environment. Under Art. 90 (5), 1982 Constitution, its provisions prevail over laws with different provisions on the same matter. Additionally, the right of environment is indirectly referred to as a human right granting the right to live in a healthy environment under the 1982 Constitution; and directly referred to through the right of participation under the Environment Act (Art. 3(e), 2006 amendment). Therefore, the right of participation should be considered a key element in the formation of environmental politics. Consequently, even if the State and its affiliated organizations arise as the key actors in the adoption of the necessary regulations and institutions and their implementation, enforcement, administration and also adjudication for the protection and improvement of environment, the Ministries and the local administrations should provide opportunities for citizens and professional organizations etc. to use their rights of environment, and environmental policies should be strengthened by the efforts and participation of all stakeholders in the decision- and policy-making processes.

The EU accession process plays an important role in Turkey's development on environmental issues. Indeed, in recent decades Turkey's environmental legal and political development has chiefly been precipitated by the impact of the EU accession process. As a candidate country for EU membership, its environmental record is under scrutiny, and this scrutiny process has arisen as the main driving force for its environmental reforms. In fact, as a candidate country, Turkey must adopt the EU *acquis*. So, through the legal and institutional reforms which have been put in place to take Turkey to a level closer to that prevailing in the EU, the scope of Turkish environmental law and politics has steadily and widely advanced and changed, particularly before the current stagnation period, signs of which have been seen since 2005.

It recognizes the 'protection of environment' as a long-term policy with its Third Five-Year Development Plan (1973–1977). The progress on environmental matters continued with the establishment of the Ministry of Environment in 1991. The structure of the Ministry was amended in 2003 and 2011, resulting in two ministries: The Ministry of Environment and City Planning (Decree No. 644) and the Ministry of Forestry and Water Affairs (Decree No. 645). Recently, the regulations of the Ministry of Food, Agriculture and Livestock and the Ministry of Forestry and Water Affairs were abolished; and the Ministry of Agriculture and Forestry, covering the tasks and competences of both, was established instead (Decree Law No. 703, Articles 27–28; Presidential Decree No. 1, Articles 410–440). In 1995, the process of preparing the National Environmental Action Plan (NEAP) began under the coordination of the State Planning Organization, the Ministry of Environment and the World Bank. This process has involved different study groups on different

key themes of Turkish environmental policies, each including several experts from universities, ministries, research organizations, NGOs and the private sector. As a result, the national environmental action plan was adopted in 1998, and a number of institutional and legislative environmental reforms have been put in place. In 2001, Turkey's Local Agenda 21 Programme was selected as a worldwide best practice by the UNDP, and with its Sustainable Development Report (2012) it undertakes to further enhance the programmes applied in the last ten years to contribute towards accomplishing the sustainable development goals.

Turkey already has most of the necessary legislative and institutional requirements in place. Its efforts and achievements to address and overcome environmental concerns and challenges should not be underestimated. Nevertheless, there are still many environmental concerns and challenges that need to be dealt with, and Turkey must find effective ways to cope with these challenges in order to produce environmental policies based on the sustainable development principle. The major challenges, among others, are regressions through exceptions and exemptions brought by amendments to the current legislation; the adoption of additional exemptions which allow several large infrastructure projects to be excluded from EIA procedures; ignorance of the necessity of establishing a balance between environmental concerns over profit-orientated and/or development projects related to energy, transport and infrastructure while designing and implementing these projects; and cooperating with all stakeholders in decision- and policy-making processes in line with the principle of governance.

Consequently, the standard of legislation and administration for environmental protection still falls far below the desired level. This is because the transposition of the *acquis* is not adequate for establishing policies which do not sacrifice environment in favour of development. If environmental legislation is not implemented reasonably, correctly and in a timely manner, or complied with or enforced, a high proportion of environmental protection just remains in theoretical form, and is not reflected in practice, so its impact remains low, or even non-existent. Therefore, together with establishing a legal and institutional basis, putting the promises and commitments into action should be one of the fundamental objectives of environmental protection. It is necessary for the country to establish a well-structured and well-functioning environmental management system, with the legal, administrative and judicial capacity to ensure its successful implementation, compliance and enforcement (which can be used as a tool for providing both).

On the other hand, managing an effective system which ensures successful implementation, compliance and enforcement in the environmental field is one of the hardest challenges and has still not been fully achieved in Turkey. The findings conveyed in different chapters of this book frankly display that even if there appears to be a mechanism in Turkey, including rich legislation and institutionalization and actively engaged participation in international efforts to deal with environmental problems, this mechanism does not work without the will to take serious steps and necessary measures in a timely fashion at the highest level and without taking into account the balance between the protection of environment and development and also the obligation to protect nature.

Given the current stalemate in the full EU membership process, it is unlikely that this situation will change soon. Indeed, although the EU-style of policy-making is still partly implemented in practice through EU-induced policy learning processes, given Turkey's recent situation, which is mostly dominated by hotly disputed political, economic and security issues, it is not realistic to see environmental issues as a priority area on the country's agenda in the near future. This can be easily seen in the on-going negotiations with the EU on a range of environmental issues in the chapter on Environment and Climate Change. That is, in a nutshell, the road towards having environmental policies capable of producing impacts based on the sustainable development principle seems to be a long and troublesome one for Turkey.

This book aims to be one of the first to conduct a systematic comprehensive analysis of Turkish environmental law and policiess. Therefore, it includes research which deals with the key themes of Turkish environmental law and policies and highlights the concerns and challenges about them, and also, learned lessons, new perspectives, and responses indicating that Turkey requires further assistance in the future process. Thus, while covering many aspects of Turkish environmental law and policies today under four main sections (not articulated in the contents) – Environmental Law in Turkey, Environmental Management in Turkey, Addressing Environmental Struggles in Turkey, Environmental Justice Movements from Bottom-up – it aims to improve the research through studies on how to understand the lessons learned to date, and from an academic perspective, how to advance and solve them woth well-argued new perspectives and alternative ways.

However, there is still a need for specific works on the concerns, challenges and management methods regarding fundamental themes of Turkish environmental law and policies, such as air pollution; marine pollution; water pollution; solid and hazardous waste; the protection of flora and fauna, including the matters of land degradation, deforestation, wetlands, and biodiversity; agricultural policy; urban planning and green/sustainable cities; climate change adaptation and mitigation; Turkey's energy strategy and its impact on the environment; renewable energy and green technologies. Further studies are also required on concepts like environmental security, environmental justice, environmental governance, environmental education, environmental movements, NGOs, the impacts on the economy and financial challenges.

They should also be supported by works on the practical side of the subject, that is, on the fields of compliance, implementation, enforcement, case-law and comparative analyses of the different legal systems in different countries.

It is hereby hoped that this book will take the lead in fostering that kind of future research on Turkish environmental law and policies and will induce new contributions in the field.

About the Zerrin Savaşan

Zerrin Savaşan obtained her Ph.D. degree from the Department of International Relations, Middle East Technical University (METU); her Masters degree from the Department of European Studies, METU; and her Bachelors degree from Ankara University's Law Faculty. At present she is an Assistant Professor in the Department of International Relations, Sub-department of International Law, Faculty of Economic and Administrative Sciences, Selçuk University. Her post-doctoral research on "Enhancing Compliance Through Cooperation Opportunities Between Informal Environmental Compliance Networks And Multilateral Environmental Agreements", was conducted with the aid of a scholarship granted by The Scientific and Technological Research Council of Turkey (TÜBİTAK-2219). Her Ph.D. research on "Compliance Mechanisms under Multilateral Environmental Agreements" was supported by scholarships provided by The Council of Higher Education (YOK) of Turkey at the Max Planck Comparative Public Law and International Law Institute, Heidelberg University, Germany; and by the Academic Staff Training Programme (OYP) of Turkey in the Center for Environmental Studies, Vrijie University, Amsterdam, The Netherlands.

Among her major publications are: "Climate Governance in Turkey: A Forward-looking Perspective", in: *Turkish Studies* (Taylor & Francis, 2019): 1–31; "A Brief Assessment of the Paris Climate Agreement and Compliance Issue", in: *Journal of International Relations*, Special Issue: Paris Climate Agreement: Transition to a Low-Carbon and Climate Resilient Society, 14, 54 (2017): 107–125; *Paris Climate Agreement: A Deal for Better Compliance? Lessons Learned from the Compliance Mechanisms of the Kyoto and Montreal Protocols*, APESS Series, Vol. 11 (Cham-New York-Heidelberg-Dordrecht-London: Springer International Publishing, 2019); "Legitimacy Questions of Non-compliance Procedures: Examples from the Kyoto and Montreal Protocol", in: Voight, Christina (Ed.),

Z. Savaşan and V. Sümer (eds.), *Environmental Law and Policies in Turkey*,
The Anthropocene: Politik—Economics—Society—Science 31,
https://doi.org/10.1007/978-3-030-36483-0

International Judicial Practice on the Environment: Questions of Legitimacy (Cambridge: Cambridge University Press, 2019): 364–388; "Coping with Global Warming: Compliance Issue Compliance Mechanisms Under MEAs", in: Zhang, XinRong; Dincer, Ibrahim (Eds.): *Energy Solutions to Combat Global Warming* (Lecture Notes Energy Series, 33), (Springer International Publishing, 2017): Chapter 37; "Gathering Information Under Compliance Mechanisms: Potential New Ways For Current Challenges", in: de Bree, Martin; Ruessink, Henk (Eds.): *Innovating Environmental Compliance Assurance* (INECE, 2015): 171–194; "The Role of Networks in Ensuring Compliance And Strengthening Coordination: A Comparative Analysis of INECE, ECENA, RENA and REC Turkey", in Faure, Michael; De Smedt, Peter; Stas, An (Eds.): *Environmental Enforcement Networks: Concepts, Implementation and Effectiveness* (Cheltenham: Edward Elgar Publishing, 2015): 68–104.

Address Dr. Zerrin Savaşan, Assistant Professor, Selçuk Üniversitesi, Alaaddin Keykubat Kampüsü, İktisadi ve İdari Bilimler Fakültesi, Uluslararası İlişkiler Bölümü, Devletler Hukuku ABD, Oda No: A 112, Selçuklu, Konya.

Email szerrin@selcuk.edu.tr

Website https://www.selcuk.edu.tr/iktisadi_ve_idari_bilimler/uluslararasi_iliskiler/akademik_personel/bilgi/7223/en; https://tr.linkedin.com/pub/zerrin-sava%C5%9Fan/36/b96/5a9; https://selcuk.academia.edu/ZerrinSavasan; https://www.researchgate.net/profile/Zerrin_Savasan.

About the Vakur Sumer

Vakur Sumer received his Ph.D. on International Relations at the Middle East Technical University, Ankara, Turkey. He is an Associate Professor and faculty member in the Department of International Relations, Selçuk University, Konya, Turkey; and the Director of the Eurasian Research Institute at Akhmet Yassawi University, Almaty, Kazakhstan. He has worked as a post-doctoral fellow at the Global Research Institute at the University of North Carolina – Chapel Hill, NC, USA, and as a visiting scholar in the Department of Environmental Science and Policy at the University of California – Davis, CA, USA. He was also a researcher at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany in 2012. His areas of focus include water issues, transboundary rivers, environmental politics, and Turkey's accession to the European Union. He is a Member of the International Studies Association (ISA) and the International Water Association.

Among Vakur Sumer's major publications are: *Water and Politics in Turkey, Structural Change and EU Accession* (London: IB Tauris: London, 2016); Filho, Walter Leal; Sumer, Vakur (Eds.), S*ustainable Water Use and Management: Examples of New Approaches and Perspectives* (Berlin-Heidelberg: Springer Verlag, 2014); "Environmental Peacebuilding in the Middle-East" (with Tobias Ide and Larissa Aldehoff), in: Swain, A.; Öjendal, J. (Eds.), *Routledge Handbook of Environmental Conflict and Peacebuilding* (Abingdon: Routledge, 2018): 175–187; "Transboundary Water Relations in the Asi Basin: The Case of Syrian-Turkish Relations" (with Aysegül Kibaroglu), in: Kibaroglu, Aysegül; Jaubert, Ronald (Eds.): *Water Resources Management in the Asi-Orontes River Basin: Issues and Opportunities*, (MEF University: Graduate Institute of International and Development Studies, 2016): 137–152; "Turkey's Foreign Policy Orientation in the Water Context and the Orontes Basin" (with Aysegül Kibaroglu), in Ballabio, R.;

Z. Savaşan and V. Sümer (eds.), *Environmental Law and Policies in Turkey*,
The Anthropocene: Politik—Economics—Society—Science 31,
https://doi.org/10.1007/978-3-030-36483-0

Comair, F.G.; Scalet, M.; Scoullos, M. (Eds.): *Science, Diplomacy and Transboundary Water Management: The Orontes River Case* (UNESCO, 2015): 57–78; "Climate Change and Water Issues in Mesopotamia: A Framework for Fostering Transboundary Cooperation in Euphrates-Tigris Basin", in: Leal, Walter (Ed.): *Handbook of Climate Change Adaptation* (Berlin–Heidelberg: Springer Verlag, 2014); "Legal Context in Water Management Policy in Turkey: Evolution of a Complex Framework in Three Stages", in: Kibaroğlu, Ayşegül; Wolfrum, Rüdiger; Mehring, Sigrid; Kirschner, Adele (Eds.): *Water Law and Cooperation in the Euphrates Tigris Basin: A Comparative and Interdisciplinary Approach* (Leiden: Brill, 2013); "Challenges for Turkey to Implement the EU Water Framework Directive" (with Cagri Muluk), in: Kibaroğlu, Ayşegül; Klaphake, Axel; Kramer, Annika; Scheumann, Waltina (Eds.): *Turkey's Water Policy, National Frameworks and International Cooperation* (Berlin: Springer Verlag, 2011): 43–68; "Theoretical Insights into the Actorness of the EU and WTO in a Globalizing World", in Unay, Sadık; Senel, Muzaffer (Eds.): *Global Orders and Civilizations: Perspectives from History, Philosophy and International Relations* (New York: Nova Publishers, 2009): 189–196.

Address Dr. Vakur Sumer, Associate Professor, Selçuk Üniversitesi, Alaaddin Keykubat Kampüsü, İktisadi ve İdari Bilimler Fakültesi, Uluslararası İlişkiler Bölümü, Selçuklu, Konya.

Email vsumer@gmail.com

Biographies of Contributors

Aysegül Kibaroğlu is the Chair of the Department of Political Science and International Relations at MEF University in Istanbul, Turkey. She was a Visiting Professor at the University of Texas in Austin, LBJ School of Public Affairs in 2016. Her areas of research include: Middle East transboundary water politics, international water law, Turkey's water policy, political geography, and environmental security. Prof. Kibaroğlu worked as Advisor to the President of the Southeastern Anatolia Project (GAP) from 2001 to 2003, and she has been a founding member of the Euphrates Tigris Initiative for Cooperation (ETIC) since May 2005.

Address Dr. Ayşegül Kibaroğlu, Professor, Department of Political Science and International Relations, MEF University, Ayazaga Cad. No: 4 Maslak, 34396 Sariyer Istanbul, Turkey
Email aysegul.kibaroglu@mef.edu.tr
Website http://polsir.mef.edu.tr/en/akademik-kadro and http://lbj.utexas.edu/directory/faculty/ayseg-l-kibaroglu.

Emel Türker Alpay is currently a Ph.D. student of Socio-Environmental Studies at Ankara University. She graduated from Boğaziçi University (Foreign Language Education Department), and later took her Master's degree at İstanbul Bilgi University (Human Rights Law Department) with a thesis entitled "United Nations Climate Change Regime: Equity or Fairness for Indigenous People". She has worked for Greenpeace Mediterranean both professionally and voluntarily. She was formerly the project coordinator of "Turkey's Map of Environmental Violations" project conducted by Transparency International Turkey and the Environmental Law Association.

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Address Ms. Emel Türker Alpay, Beyciler Mh. 1698 Sk. Prestij Konutları No: 27/D3/3 81030 Merkez-Düzce, Turkey.
Email emel.trker@gmail.com

Ramazan Caner Sayan is an early career academic who is currently working for United Nations Unitersity Institute for Water, Environment and Health (UNU-INWEH), Hamilton, Ontario, Canada. He obtained his Ph.D. degree from the University of Dundee in May 2016 and worked as a postdoctoral researcher, consultant and part-time lecturer at the same university between 2016 and 2018. His research expertise and interests are in the broad fields of environmental and development politics, particularly water governance. His publications have appeared in prestigious outlets such as *Water Policy*, *Local Environment* and the *International Journal of Water Governance*.

Address Dr. Ramazan Caner Sayan, United Nations Unitersity Institute for Water, Environment and Health (UNU-INWEH), Hamilton, Ontario, Canada.
Email canersayan@gmail.com

Sezin İba Gürsoy is Associate Professor of International Relations at Kırklareli University. She has a Ph.D. from Istanbul University (European Union programme). Her current research interests focus on theories of security, food and water security, environment security and climate change. She is also co-head of the Department of International Relations at Kirklareli University.

Address Dr. Sezin İba Gürsoy, Bulgurlu mah.Garanti konaklar A- 2 D.8 İstanbul, Turkey.
Email seziniba@gmail.com

Süheyla Suzan Gökalp Alıca is an Associate Professor at Hacı Bayram Veli University's Law Faculty, where she specializes in environmental law. From 1988 to 1991 she was a trainee judge and judge in Arpaçay-Kars. After that she worked as an environment expert and legal adviser at the Ministry of Environment from 1991 to 2007. Her activity was mainly related to preparing draft environmental regulations and dealing with environmental legal problems to find solutions to disputes of the Ministry of Environment. She also has a postgraduate diploma in environmental law from Ankara University. She has given many seminars and conferences on environmental law. She has also published several articles on environmental law and administrative law. Dr. Alica is currently responsible for training in environmental law and administrative law. She is also a legal adviser at UNDP and EU Projects.

Address Dr. Süheyla Suzan Gökalp Alıca, Associate Professor, Ankara Hacı Bayram Veli University, Law Faculty, Ankara, Turkey.
Email salica2015@gmail.com

Şule Güneş is an Associate Professor in Public International Law who has more than 25 years' experience of research, teaching and consultancy on environmental and marine issues. She is also among the founders and current members of the Steering Committee and the Academic Board of the Earth System Science Programme at the Graduate School of Natural and Applied Sciences and a faculty member at the Continuing Education Centre for the certificate programmes on 'Applied Hydrographic Education' and 'Climate Change, Adaptation Policies and Turkey'. She has written various publications on environmental, marine and international law issues. Her book, entitled *Environmental Impact Assessment* (*EIA*) *within the context of International Law*, was published in Turkish by Siyasal Kitabevi in 2007.

Address Dr. Şule Güneş, Associate Professor, ODTU, İktisadi ve İdari Bilimler Fakültesi, Uluslararası İlişkiler Bölümü, Üniversiteler Mah. Dumlupınar Blv. No. 1, 06800 Çankaya, Ankara, Turkey.
Email gunes@metu.edu.tr

Vakur Sümer is a faculty member of the Department of International Relations, Selçuk University, Konya, Turkey; and the Director of the Eurasian Research Institute at Akhmet Yassawi University, Almaty, Kazakhstan.

Address Dr. Vakur Sümer, Associate Professor, Selçuk Üniversitesi, Alaaddin Keykubat Kampüsü, İktisadi ve İdari Bilimler Fakültesi, Uluslararası İlişkiler Bölümü, Selçuklu, Konya.
Email vsumer@gmail.com

Zerrin Savaşan is currently working as an Assistant Professor in the Department of International Relations, Sub-department of International Law, Faculty of Economic and Administrative Sciences, Selçuk University in Konya, Turkey.

Address Dr. Zerrin Savaşan, Assistant Professor, Selçuk Üniversitesi, Alaaddin Keykubat Kampüsü, İktisadi ve İdari Bilimler Fak., Uluslararası İlişkiler Bölümü, Devletler Hukuku ABD, Oda No: A 112, Selçuklu, Konya.
Email szerrin@selcuk.edu.tr
Website https://selcuk.academia.edu/ZerrinSavasan and https://www.researchgate.net/profile/Zerrin_Savasan

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