



The Effects Of Supreme Courts' Decisions On Environmental Protection in Turkey

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Deformation on environment due mostly to human activities brings about destructive effects on all living beings. It has been recognized by the Constitution that everyone has the right to live in a healthy and stable environment, and that it is the duty of the state and citizens to develop the environment, to protect environmental health and to prevent environmental pollution. The Law of Environment has been enacted in order to protect the environment and natural resources, to prevent water, soil and air pollution and to guarantee the plant and animal species and natural historical wealth of the country. With the Environmental Impact Assessment Regulations, prepared on the basis of this law, it has been obliged to take reports from competent authorities in determining the positive and negative effects of projects on environment and in defining the measures to be taken in order to prevent or minimize the negative effects so as not to damage the environment. In legal regulations, however, there are some provisions to relax the limitations or to be exempt from the limitations in the legislation to protect the environment.

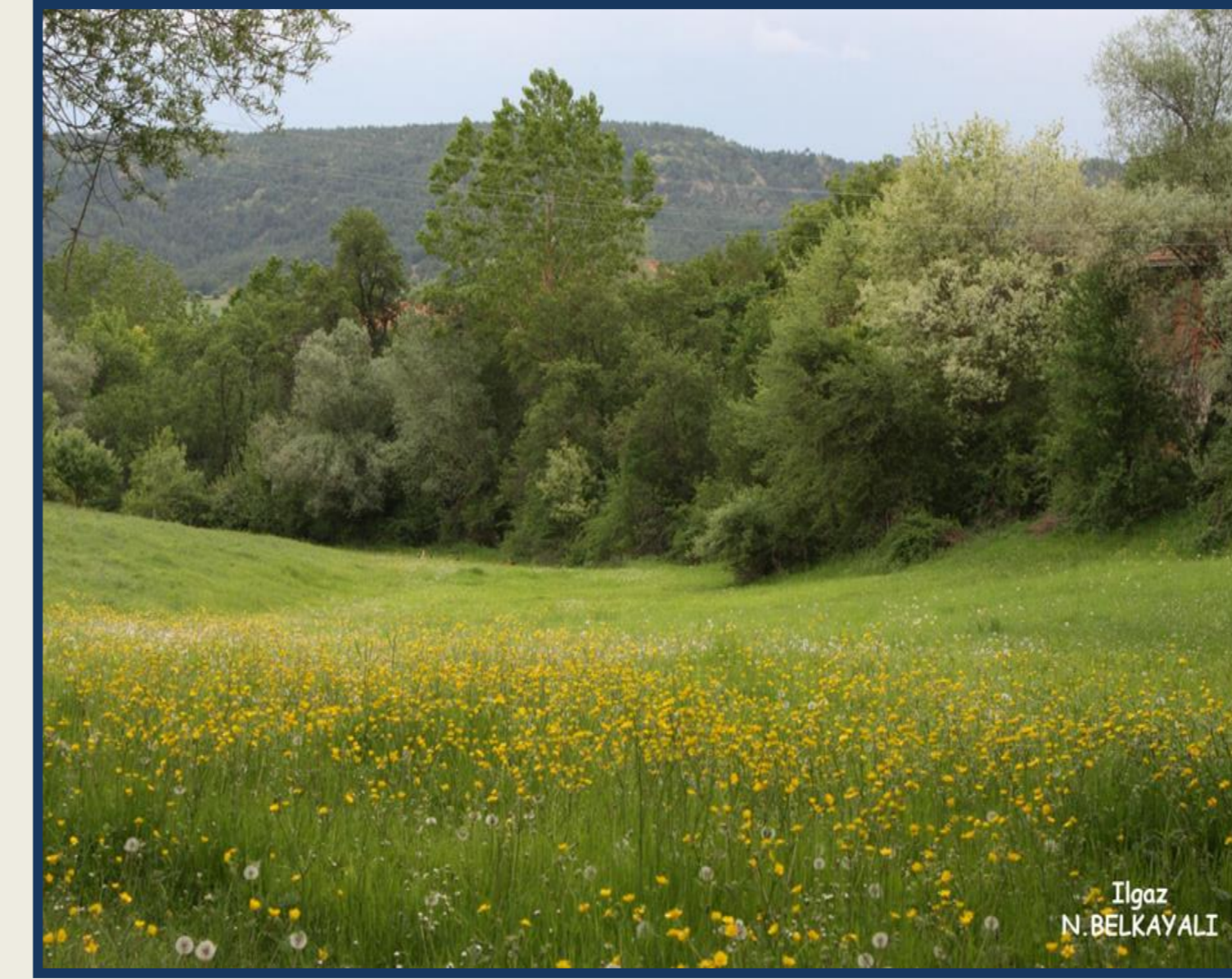
The Environmental Impact Assessment (EIA) is legally the process of preventing negative effects of the activities which may have significant effects on the environment from planning through construction, from operation to the final part. It is also examining the scientific methods and techniques before decisions are taken about the project, taking the necessary precautions, and preventing negative effects of the project, and inspecting and monitoring of these impacts and measures.



The requirements to carry out an EIA directive had hardly come into force 10 years after the law's enactment with the regulations made under the Article 10 of the Environmental Law (law no. 2872) adopted in 1983. The EIA Directive which came into force in 1993 has been amended many times until today. The decrees of nullity given by the courts underlie on the basis of these changes. Each regulation issued in order to be more perfect; however, they caused more problems than the previous one in practice, and came into force as regulations that have negative outcomes for the environment. The EIA process in Turkey has gone through important stages in the application over the past 20 years. By means of the most recent updates of EIA Directive which made in 2014, the EIA Directive is significantly in accord with the Directive 85/337/EEC of the European Parliament stated that "Effects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes". However, hospitals and dialysis centers have been excluded from the scope of the EIA Directive with the new regulation. The subject matter relating to the mining, oil and gas exploration projects has been excluded from the regulation. The projects which are taken into public investment program prior to June 23, 1997 and started its production or operation as of the date of May 29, 2013 and facilities that are necessary for their implementation have been also excluded from the scope of EIA Directive.

The constitutional state serves for stability by limiting the political power with the law and creating the legal infrastructure which required for the regular maintenance of state activities. The essence of this stability is legal security and predictability. Among general requirements of being a constitutional state, the legislative, executive and judicial procedures and actions should be in accordance with the law. The international agreements to which Turkey is a party does not conduct any judicial review in the Turkish domestic law regulations. The legislature has the primary authority to regulate in Turkey. The Grand National Assembly of Turkey has the authority to issue regulations for the first time even there is no regulation on an issue. In accordance with the framework which designated in the Constitution, the legislation is made by the Parliament. However, based on the authority given by the parliament, the executive branch has also the authority to make regulations that have a power to change laws. These regulations are known as "Decree Law". Both the laws issued by the legislative body and supervisory authorities of the decree law are the Constitutional Court. In addition, in accordance with the laws, rules and regulations that are the nature of general regulatory can be come into force by the executive body. These arrangements cannot be contrary to the law, and have a lower level in the hierarchy of norms. The last instance for supervising the illegality of regulations is the Council of State. As a result, on the one hand, the Constitutional Court has the authority for the control of the overall regulatory procedures in force in Turkey; on the other hand, the control mechanism is implemented by the State Council.

Legal regulations for the protection of the environment are frequently subject to annulments. It is quite burdensome, and even impossible in some cases, to restore the environment after it has been polluted and disrupted. For this reason, instead of environmental clean-up and renewing the disrupted environment, methods to prevent the negative effects on environment are sought after from the outset and the correct operational frame for the administration is defined by the courts. However, the grounds for annulment specified in court orders are ignored by the administration and provisions allowing activities that damage the environment are intended to be enforced again with the new regulations. There are both the decree of annulments by the Constitutional Court related to the legal regulations that can have negative effects especially on environment and the positive contributions of State Council's grounds for annulment through the determination of unlawfulness of general regulatory processes that are accepted by the executive body on the protection of the environment.



The provisions of environmental law are being violated by the regulations that need to be come into force in accordance with law. These oppositions to the law are exempt from regulation by the EIA Directive amendments in spite of the being partially or completely canceled by the Supreme Court. In this way, it is seen to not abide by the Council's decision. It is also seen that upon opening the case against regulation for exemption, the rule which is subject to the case wanted to be regulated by law, and the Council of State's judicial control wanted to be forestalled. A regulation comes into force contrary to law is contrary to the state of law. The removal of investments which have an environmental impact from the scope of the application of the EIA would be interference with the right to a healthy and balanced environment. Investment and activities which would be held for development and economic growth must be carried out without polluting and destroying the environment because it is very difficult to restore the contaminated and the deteriorated environment. Instead of cleaning or repairing the polluted and deteriorated environment, preventive measures must be taken for pollution.

The State Council evaluated the changes made in the EIA Regulation in the framework of the concept of the public interest. According to the Council of State; it is seen that there is an inequality between persons or organizations that began their activities in fulfilling the obligations under the EIA regulations and persons or organizations that started their activities without taking into account the regulation and are given enough time to fulfill its obligations. In addition, giving extra time to get a report for the persons or organizations that began its production without preparing the EIA report would be contrary to the system. The State Council made decisions towards the importance of the environmental protection. In another decision, it is sentenced that the EIA process and the decisions which are the results of this process are administrative procedures that may be effective for the processes of other institutions and organizations

The Constitutional Court has decided that the prevention of the public investment projects that began its production or operation stage does not contribute to the prevention of adverse effects on the environment. In other words, the prevention of these investments that have the great contribution to the economic and social life would more adversely affect society according to the Constitutional Court.

As a conclusion, Turkey is a developing country which has many natural beauties with its natural structure intact. Political powers make large investments to ensure the country's development; however, these investments might have negative impact on the environment. High courts generally make decisions to avoid negative effects of the major economic investment on the environment. Sometimes, political powers make legal arrangements that are inappropriate for the legislation to protect the environment in order to achieve their goals which they promised to ensure the country's development. Most of the time, these regulations have been canceled by the courts. Today, unfortunately, it is not possible to say that the environment is fully protected neither Turkey nor the world.



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