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Access to justice in environmental matters in Turkey: A case study from the ancient city of Allianoi

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Abstract

Access to justice in environmental matters is one of the three rights established by the Aarhus Convention, but because Turkey does not adhere to the convention, it is not regulated by municipal law. However, some national plans and strategies have been defined and a series of targets have been set. In the case study, the issue of access to justice was assessed for judicial procedure initiated against a dam project and the threat of destroying Allianoi, a culturally significant ancient city. The dam project was closely followed by the Turkish public. The assessment was carried out by applying the Access Initiative Method to the sample case. The data were controlled by a SWOT analysis based on the legislation and practice of access to justice. The study suggests that the basic qualities of access to justice in environmental matters in Turkey are sufficient, although there are some deficiencies.

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1. Introduction

The concept ‘access to justice in environmental matters’ became part of world public opinion and the legal literature in the 1990s. An international convention (the Aarhus Convention) that addresses this issue has been presented for ratification, and is the result of international assemblies

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held on environmental matters. The Aarhus Convention supports access to justice, access to information and public participation in environmental matters. It is a significant convention that has greatly contributed to the development of environmental democracy in the world. It constitutes the grounds for the principle of access to justice in environmental matters, which is the focus of this study. Reviewing events leading up to the convention highlights the importance of this issue.

The 1992 Rio Earth Summit, in which 178 countries participated, addressed the fundamentals of sustainable development. It was resolved to take concrete steps regarding access to information, public participation in decision making and access to justice for sustainable environment and natural resources management (DeRose et al., 2003). In 1995, environment ministers of member states to the United Nations European Economic Commission assembled in Sofia. They agreed to prepare an international convention in line with the resolutions adopted at the Rio Earth Summit. In 1998, the convention was prepared during the Fourth Ministerial Conference 'Environment For Europe' in Aarhus, Denmark. In 2001, it went into effect, regulating public participation in environmental matters, access to information and access to justice (Gunes, 2010). Ten years after the Rio Earth Summit, in 2002, national governments confirmed their commitment to these principles (Von Frantzius, 2004; Quental et al., 2011). Access to information, justice and participative administration are crucial elements that directly influence public health, quality of life and national development.

The right of access to justice, described at the Rio Earth Summit and later in the Aarhus Convention, is especially significant with respect to transparency, comprehensiveness and effectiveness of environmental democracy (Gunes and Aydin, 2004).

Access to fair justice by everybody, under the same judicial procedures, and availability of these procedures to everyone, must be ensured (Ebbesson, 1998; Deborah, 2004; Thomson, 2013).

As ensured by European Convention on Human Rights, the right of access to justice means that everyone has the right to bring civil rights claims to court, as stated in article 6 of the convention (Van Dijk et al., 1998). The mechanism of access to justice must be comprehensible by people with minimum legal knowledge of trial procedures (Elveris, 2006).

Basically, access to justice, as defined by Aarhus Convention, is a means for correcting erroneous administrative decisions on environmental issues by a court or an independent and impartial body established by law. The right to justice pertains to two kinds of situations. First, any person who considers that his or her request for environmental information has been ignored, refused or not dealt with in accordance with the convention shall be ensured access to a review procedure before a court or another independent and impartial body. Second, any member of right shall be ensured a review procedure before a court of law or another independent and impartial body to challenge the substantive and procedural legality of any decision, act or omission concerning 'specific activities' that may affect the environment (Ebbesson, 2002; Lee and Abbot, 2003).

2. Access to justice in Turkey

As it is still in the negotiation process for EU membership, Turkey has not yet signed the Aarhus Convention, which has been signed by the European Union and 43 other states. Turkey has some reservations about the convention, which is one of the requirements for EU membership. The most significant concern is that the convention grants rights regardless of citizenship or domicile. Such rights are thought to violate Turkey's independence rights and specifically may cause serious issues with respect to transboundary waters (Gunes, 2010).

Even though it is not a party to the Aarhus Convention, Turkey has been conducting a series of legal studies to contribute to the development of environmental democracy and for EU

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