



# Analysis of environmental impact assessment practices and legislation in turkey

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## ABSTRACT

In Turkey, as a developing country, environmental impact assessment (EIA) is a critical key for environmental protection. EIA is not regulated in Turkey by means of law, but through a decree put into force on the basis of the relevant provision of the Environmental Law. The Environmental Impact Assessment (EIA) System, which embodies the “prevention principle” of the environmental law, is an important tool for environmental protection. This tool has a private importance for Turkey since it is a developing country, and it entered the Turkish law in 1983 with the Environmental Law. Besides, the EIA Regulation, which shows the application principles, became effective in 1993. Because Turkey is a candidate for European Union (EU), the EIA Regulation has been changed due to the EU compliance procedure, and its latest version became valid in 2014. This study aims to emphasize The EIA system in Turkey to supervise the efficiency of this procedure and point the success level.

According to the methods, firstly In the introduction part, general EIA concept, its importance, and some notations are mentioned. Following that, the legislation, which builds the EIA system, has been analyzed starting from the 1982 Turkish Constitution. Then, the legislation rules are explained due to the basic steps of the EIA procedure and analysed court decisions. In order to shed light upon the application, the EIA final decisions given until today, the results, and their distributions to the industries are assessed.

## 1. Introduction

Efforts have been made only to prevent current pollution in recent years, but on realizing how costly and hard to do so, it has been understood that to prevent pollution just before it occurs is a more accurate method (Turan and Esra Deniz, 2017). Practicing formerly adopted react-and-cure strategy with the understanding of eliminating the impacts of development on environment, in other words the approach of “pollute first, then clean up”, has been understood to be hard both technologically and economically (Jenkins, 1991; Rezaei-Moghaddam and Karami, 2008; Davies and Sadler, 1997). Therefore, the necessity of adopting another strategy, which is anticipate-and-prevent, has risen. (Serter, 2005; Ozer, 1996; McDonald and Brown, 1995; Simonis, 1989).

For this reason, Environmental Impact Assessment (EIA) study has become inevitable for the projects and activities where natural resources shall be used and negative effects on the environment are expected (Peker 1996; Serter 2005; Demiral and Evin 2014; Loomis and Dziedzic, 2018).

EIA, is the single and decisive document that aims for achieving sustainable healthy environmental conditions through the “anticipate-and-prevent” strategy (Esgicioglu 2007, Turan and Esra Deniz, 2017, Ross 1994, LeBlanc and Manitowabi 1995; Hilson, 2003). Several definitions have been made on EIA process, which is one of the application means of anticipate-and-prevent strategy, in domestic and foreign

sources until now (Palmer 1992; CMO 2016, Turan and Esra Deniz, 2017). The common ground where all these definitions meet is that EIA is a kind of monitoring and assessment process that starts primarily before the activity, continues with the observation of the impacts of the construction phases and still goes on even after the activity ends (Aydin 2003; Glasson et al., 2013, Turan and Esra Deniz, 2017, Rosenberg et al., 1986; Fox et al., 2006).

## 2. The main legal basis of Turkish environmental legislation

Within the Turkish Environmental Legislation, Republic of Turkey 1982 Constitution Act includes important regulations on the preserving of the environment and the natural resources. The Article 56 of the Constitution states that everyone has the right to live in a healthy and well-balanced environment and that it is the duty of the State and its citizens to protect the environment and prevent pollution (Gunes and Coskun Aydin et al., 2004; Gencay and Birben, 2016). On the other hand Article 43 states that the coastlines are under rule and use of the State and emphasizes that public interest shall be regarded primarily while using the seas, lakes, stream banks and coastlines (Yucel, 2008). Another Article of the Constitution that concerns the environment is the one on the protection of the soil. According to the Article, which is Article 44, the State is responsible for ensuring the productive use of the land, improving it and preventing it from being lost by erosion. Article 45 is also another provision related to land and agriculture. According

to this article, the State is obliged to prevent misuse and destruction of agricultural lands and meadows (Tekelioglu, 2010).

1982 Constitution Act, which refers to the right to live a healthy and well-balanced life, also includes provisions on urbanization. With the Article 57, the Constitution regulates that the State is to meet the dwelling needs within the scope of a planning that considers the characteristics of the cities and environmental conditions (Kiziroglu, 2013). The Article related to natural resources and wealth, which is the 168th one, enacts that natural wealth and the resources of the country is under the rule and use of the State. The State holds the rights for exploration and management of these natural resources (Kartalkanat, 1993). However, the State is authorized to transfer these rights to real and legal persons for a certain period of time. Article 169 concerns forests, one of the most important natural resources, and states that the State shall adopt the necessary laws and measures for the protection of forests and the extension of their lands. The same Article also states that all forest lands are under control of the State and the State forests shall be managed and exploited by the State in accordance with the law. The possession of the forest lands by the State may not be transferred or these forest lands may not be owned through lapse of time (Ayanoglu, 1996; Velioglu, 2008).

Within the framework of these provisions regulated in the Constitution there are also extensive laws concerning environment and other related matters. The main laws in this regard are as follow

- Environment Law (Law No 2872, 1983)
- Forestry Law (Law No 6831, 1956)
- National Parks Law (Law No. 2873, 1983)
- Bosphorus Conservation and Zoning Law (Law No. 2960, 1983)
- Construction Law (Law No 3194, 1985)
- Code of Protection of Cultural and National Properties (Law No 2863, 1983)
- Coastal Law (Law No. 3621, 1990)
- Law on Hunting Law No. (Law No 4915, 2003)
- The Law for the Encouragement of Tourism (Law No. 2634, 1982)
- The Law for Underground Water (Law No 167, 1960)
- National Afforestation and Erosion Control Mobilization Law (Law No. 4122, 1995)
- Mining Law (Law No. 3213, 1995)
- Animal Protection Act (Law No 5199, 2004)
- The Turkish Criminal Law (Law No 5237, 2001)
- The Law of Misdemeanor (Law No, 5326, 2005)
- Turkish Code of Obligations (Law No 6098, 2011)

### 3. Environmental impact assessment conception in Turkish environmental legislation and the legal basis of the conception

Article 2 of the Environment Law No. 2872 of 1982 defines environment as the biological, physical, social, economic and cultural environment where living beings interact throughout their lives. Environmental protection, on the other hand, means the whole efforts to prevent deterioration and destruction on environmental values and the ecological balance; efforts to eliminate existing destruction; efforts to enhance and develop environment and the efforts to prevent environmental pollution. The Law defines (EIA) under the same Article as well. According to this definition EIA is a process of evaluating the likely beneficial and adverse environmental impacts of a proposed project. It includes the studies for either prevention of the negative impacts or minimizing them. EIA is defined also as a designating and evaluating process for the preferred project field and technological alternatives. It also includes the monitoring of the project practices.

EIA is a system based on the environmental impact of the projects to be carried out within the Turkish Environmental Legislation (Coskun and Turker, 2011). Besides EIA, “strategic environmental assessment” (SEA), which is a larger scaled system defined in Environment Law, was also promulgated with the Regulation issued on April 08, 2017. SEA is

defined in the Law as environmental assessment studies carried out with a participant approach in order to integrate environmental values to the plan and to minimize the possible effects of the plan or the program and assist the decision makers and includes a written report. SEA involves in the process before the approval of the approval requiring plan or the program which means the very beginning of the planning process. In brief, Environmental Impact Assessment is the name of a process.

EIA is based on the basic principles set out in Turkish Environmental Legislation. Basic principles on environmental protection can be found in Environment Law (Article 3) within Turkish Environmental Legislation. These principles are as follows:

- Government, professional chambers, associations and non-governmental organizations being in the first place, every citizen is responsible for the protection of the environment and prevention of pollution.
- The Ministry and local administrations cooperate with professional chambers, associations and non-governmental organizations in all kinds of activities concerning the protection of the environment.
- They pay regard to sustainable development principle within the land and resource processes.
- The impacts of the activities on natural resources are assessed in the long term basis within the scope of sustainable development principle.
- Participation is essential in policy-making on environmental issues.
- It is essential to use environmentally compatible technologies during all kinds of activities.
- The expenditures for the prevention, restriction, removal and remediation of pollution and deterioration shall be covered by those who cause pollution and deterioration.
- Economic instruments and incentives are used for the protection of the environment and prevention of pollution.
- The necessary arrangements are made to fulfill the national rights and obligations that arise as a result of international agreements signed for the resolution of environmental problems to which the Country is a party.

The membership process of the European Union has a great influence on the development of the Turkish environmental legislation. Within this context, EIA regulation has been formed during the EU harmonization process.

As is known EU has more than 561 legal regulations in the environmental field, including all annexes and technical adaptations (Tuncay, 2006).

The Union complies these regulations under nine separate titles (TUSIAD, 2002). Adaptation on the following nine separate titles have been made in the Turkish Environmental Legislation and they have been put into practice.

- Air Quality
- Noise Pollution Management
- Water Quality
- Waste Management
- Industrial Pollution Control and Risk Management
- Chemicals and Conservation of the Nature
- Climate Change
- Nuclear Safety and Radiation Protection
- Horizontal Legislation

Seven different sub-titles (EIA, Strategic EIA, Access to Environmental Information, Reporting, The European Environment Agency, Financial Instruments for Environment (LIFE), The Policy, Civil Protection) lie under the mentioned horizontal legislation title (Gokmen and Demir, 2015; Tuncay 2006). EIA is one of these sub-titles on which the EU puts great emphasis. The Union, imposes obligation of EIA report presence in

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