

**REVIEW OF THE CAPACITY TO SUE IN TURKISH ADMINISTRATIVE
JURISDICTION IN TERMS OF ACTION FOR ANNULMENT OF
ENVIRONMENTAL IMPACT ASSESSMENT (EIA) DECISIONS¹**

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ABSTRACT

Environmental Impact Assessment (EIA) refers to a process that must be carried out in accordance with the law before the implementation of an environmentally influential project. The decisions made at the end of this process are administrative acts. According to Article 125 of the Turkish Constitution, as a rule these decisions are subject to the supervision of the administrative judiciary.

Environmental Impact Assessment (EIA) report is a precondition for the applicability. Also, EIA report is an effective administrative decision that states that the project owner's project can be carried out in terms of environmental law. This decision will affect the permissions of the project and the project owner required from the competent authorities regarding the prospective project, as well as the people of the region where the project will be carried out. In accordance with the provision of Article 2 of the Turkish Administrative Judicial Proceedings Law, administrative act must violate an interest to have the capacity to file an action for annulment. A person or a legal person who is not interested in the project which has been informed about the EIA decision may file an annulment action about the decision. This is a necessity and result of "participation principle" in environmental law. In this study, it is aimed to discuss the approach of Turkish administrative jurisdiction to the subject.

Keywords: Environmental Impact Assessment (EIA), Right to Sue, Standing to Sue, Capacity to Sue, Violation of Legal Interest.

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İDARİ YARGIDA DAVA AÇMA EHLİYETİNİN ÇEVRESEL ETKİ DEĞERLENDİRMESİ (ÇED) KARARLARININ İPTALİ DAVASI AÇISINDAN DEĞERLENDİRİLMESİ

ÖZET

Çevresel Etki Değerlendirmesi (ÇED), çevreye etkili bir projenin icrasından önce gerçekleştirilmesi yasa gereği zorunlu olan bir süreci ifade etmektedir. Bu süreç sonunda verilen kararlar idari işlem niteliğindedir. Anayasa'nın 125'inci maddesinde yer alan hüküm uyarınca, bu kararlar kural olarak idari yargının denetimine tabidir.

Çevresel Etki Değerlendirmesi (ÇED) raporları, projenin icra edilebilirliğinin ön koşulu olmakla birlikte, proje sahibinin projesinin çevre hukuku bakımından yürütülebilir olduğunu ifade eden icrai (etkili) bir idari karar niteliğindedir. Bu karar, proje ve proje sahibinin ileriye yönelik projesi ile ilgili yetkili idare/idarelerden alması gereken izinleri etkileyeceği gibi, projenin gerçekleştirileceği yöre halkını da etkilemektedir. İdari Yargılama Usulü Kanunu'nun 2'nci maddesinde yer alan hüküm gereği, iptal davası açma ehliyetine sahip olmak için idari işlemin menfaat ihlaline neden olması gerekmektedir. Hakkında ÇED kararı verilen proje ile ilgisi olmayan bir kişi veya tüzel kişi de, kararın iptali davası açabilir. Bu durum çevre hukukunda "katılımcılık ilkesi"nin bir gereği ve sonucu olup, bu çalışmada idari yargının konuya yaklaşımının tartışılması amaçlanmaktadır.

Anahtar Kelimeler: Çevresel Etki Değerlendirmesi (ÇED), Dava Hakkı, Taraf Ehliyeti, Dava Ehliyeti, Menfaat İhlal

INTRODUCTION

In the 125th article of the Constitution, it is stated that the judicial remedy is open for all kinds of administrative acts and transactions of the administration. According to Article 2 of the Administrative Procedure Law, there are two types of cases in the Administrative Court. These are action for annulment and full remedy action.

The issue of the action for annulment is administrative act. Damage suffered due to administrative action or transaction is subject to a full remedy action. The right to sue action for annulment against transactions that are allegedly against the law is used in the context of right to legal remedies. By using the right to sue, the right of that case is protected. In order to use right to sue, the claimant must have a legitimate, legally protected benefit in opening this case. Here the claimant must have a right to be protected in a full remedy action in order to use right to sue in accordance with the administrative jurisdiction law. In order to use right to sue action for annulment in accordance with the law of administrative proceeding, the claimant must have an interest to be protected in the action for annulment. Both in administrative and judicial proceedings, this issue is subject to a self-examination by the court at every stage of the case. The administrative court examines whether the claimant has a "litigation capacity" in the first examination. If a person who does not have a legal capacity to file a lawsuit is sued, the case is rejected at the stage of first examination.

This means, the claimant's allegations in the lawsuit petition cannot be examined even according to procedural law rules. This situation is especially important in action for annulment against EIA decisions. Judicial review of EIA decisions must be carried out in terms of legislative compliance in the triangle of environment, technology and economy.

In this study, the issue of having capacity of bringing action for annulment of EIA decisions is examined in accordance with administrative law. Our aim is to evaluate with concrete examples how the "standing to sue" and "capacity to sue" as legal technical concepts of the judicial procedure are applied in the action for annulment of the EIA decisions affecting the local community.

1. GENERALLY CONDITIONS OF THE CAPACITY OF BRINGING ACTION IN TURKISH ADMINISTRATIVE JURISDICTION

It is compulsory for the claimant to have the capacity of bringing action in accordance with article 14/3-c of the Administrative procedure law (APL) for the examination of a case in the administrative court. Both in the Civil Procedure Law and in the Administrative Procedure Law, the concept of "legal capacity" is examined in two different titles, namely standing to sue and capacity to sue. Article 31 of APL clearly states that the rules of the code of civil procedure (CoCP) on the legal capacity will also apply to the administrative jurisdiction. According to article 50 of CoCP, a natural or legal person who has the capacity to have rights and obligations (jus capiendi) possesses standing to sue. So he has the right of bringing action. However, a natural or legal person who has standing to sue must have capacity to act according to Article 51 of the CoCP in order to bring an action either personally or by attorney. Otherwise, on behalf of the person who has standing to sue, his/ her parent or legal guardian, or in other words the legal representative, brings action. According to Article 10 of the Civil Code, every adult who has the ability to distinguish and who is not interdicted has capacity to act. A person who has capacity to act, also has the capacity to sue. As a result, in practice, the issue of standing to sue is very clear, because every natural person and legal person has standing to sue. The problem is that the circumstances of the capacity to sue must be determined in a case.

In the judicial justice or administrative judiciary, anyone who has capacity to sue to bring an action is required to have the legal interest of bringing that action. CoCP 114/1-d refers legal capacity and 114/1-h indicates the legal interest of claimant; these should be found in cause of action. Unlike the judicial justice, in the administrative jurisdiction, it is expressed separately both the action for annulment and the full remedy action, which are included in the scope of the 2nd article of APL, in the context of existence of a legal interest in bringing an action. In order to have capacity to sue in action for annulment, a person who has the capacity to act, must have a violation of interest from the administrative act at issue according to APL 2/1-(a). If there is no legal interest in bringing action for annulment of the claimant in the administrative court, it is decided to dismissal of the action in accordance with the Article 15 of the APL. In order to bring a full remedy action, violation of right is sought according to APL 2/1-(b).

1.1. Having Capacity to (Act) Using Civil Rights

The rules governing the use of civil rights (capacity to act) that indicate who will have the capacity to sue are set out in Article 9 and further of the Civil Code. In this context, in terms of natural person, full competent person has capacity to sue. In terms of minorities with power of discernment and interdicted, the case must be filed by the legal representative, with the exception of strictly dependent rights to person. Legal entities shall acquire the capacity to act if they have the necessary bodies according to the law and foundation documents, in accordance with Article 49 of the Civil Code. According to Article 71 of the Code of Civil Procedure, anyone who has a capacity to sue can file or follow a case directly or through the attorney appointed by him/ her. The attorney must be a lawyer at the bar in accordance with Article 35 of the Law on Advocacy.

However, it stands out as a necessity to understand and apply in a way that the mentioned rules of the Civil Code to respond to the demands and requirements of the administrative disputes (Kaplan 2011). In the field of Administrative Law, because of there isn't any restrictive principle and rule relating to capacity to sue is recognized only by naturel person and legal entity, although there is no legal entity of the public administration bodies having certain authorities and duties in the administrative structure, they have standing to sue and capacity to sue for disputes arising from their activities.⁵

1.2. Violation of Legal Interest from the Administrative Act

In terms of the action for annulment, the concept of subjective legal capacity states that the natural or legal persons whose legal interests have been violated by administrative acts are competent to file a suit (Karahanoğulları 2007). A violation of legal interest is a procedural law condition that is not relevant to the essence of the action for annulment, but only for the acceptance of the case (Özdek 1991). Serious and reasonable relevance between administrative act of the subject matter and claimant must be understood as an violation of legal interest.⁶ Any person or organization that has interest in an administrative activity and is determined to be serious enough to file a suit can bring an annulment action related to the mentioned activity.⁷ If the action for annulment is brought in absence of the violation of legal interest, it shall be dismissal of legal capacity pursuant to Article 15/1-b of APL. Thus, it is not possible to proceed to the examination stage on merits of the case. It can even be argued at every stage of the case in which the claimant has no violation of legal interest and also the judicial body may investigate this issue by itself.

⁵ General Assembly on the Unification of Judgments of Council of State of Turkey, Case No: 1971/1, Decision No: 1979/1, Date: 08.03.1979, www.kazanci.com.

⁶ Council of State Administrative Lawsuit General Assembly of Turkey, Case No: 1989/430, Decision No:1990/18, Date: 02.02.1990, www.kazanci.com.

⁷ 8th Office of Council of State of Turkey, Case No: 2010/2, Date: 27.01.2010, www.kazanci.com.

Settled case laws of Council of State are stated that, the violation of the interests must be legitimately, personally and actually.⁸ In other words, administrative act which is the subject matter of action of annulment must violate the claimant's legal interest, a serious and reasonable relationship must exist between the administrative act and the claimant.⁹ No action for annulment can be brought for a non-existent interest. The personal interest means, not that an administrative act has been applied directly to the person, but also directly or indirectly influences that person (Özdek 1991).¹⁰ However, administrative jurisdictions prefer a broader interpretation particularly concerning the environmental law and the right to the environment, in terms of the condition of personal interest; rather than the requirement of violation of interest personally, the approach is focused on the application of interest and sensitivity (Demirkol 2012). In fact, the target in the relation people establish with the administration is acting in accordance with the law by administration and properly benefiting people from rights recognized by the constitution and law. Protecting personal interests is valuable only if it is a tool of that (Karahanoğulları 2007). According to the Council of State, judicial interpretations made by the point of capacity of bringing action of local people, associations, unions and professional organizations reveal the fact that the action for annulment is one of the most important factors of providing rule of law.¹¹ As a matter of fact, the Constitutional Court accepts that the State should abolish all the restrictions that limit right to legal remedies and ensure the realization of justice by spreading judicial review as a requirement of the rule of law principle.¹²

2. RELATIONSHIP BETWEEN EIA DECISION CONCEPT AND CONCEPT OF VIOLATION OF LEGAL INTEREST

According to Article 2 of the Turkish Environment Act; EIA is defined as the determination of the positive and negative effects of the planned projects on the environment, the prevention of negative effects or the measures to be taken in order to reduce the minimum loss that will not harm the environment, the determination and evaluation of the selected place and technology alternatives and observing and control of the implementation of projects. The EIA is a process aiming at the disposal or minimization of the possible negative effects of an activity belonging to a public or private person that cause on the environmental assets which are accepted as common interests by everyone, by allowing third parties to submit their opinions (Saygılı 2007). In the EIA process, it is evaluated whether a drawback in terms of preservation of the environment exists when the activity is carried out in the place indicated (Alıca 2011).

⁸ Council of State Administrative Lawsuit General Assembly of Turkey, Case No: 2001/415, Decision No: 2001/737, Date: 19.10.2001; 5th Office of Council of State of Turkey, Case No: 2006/5136, Decision No: 2006/4140, Date: 19.09.2006.

⁹ 10th Office of Council of State of Turkey, Case No: 1988/1415, Decision No: 1990/ 361, Date: 22.02.1990.

¹⁰ Council of State Administrative Lawsuit Assembly of Turkey, Case No: 2004/2163, Decision No: 2004/788, Date: 07.10.2004.

¹¹ 8th Office of Council of State of Turkey, Case No: 2010/2, Date: 27.01.2010, www.kazanci.com.

¹² Constitutional Court of Turkey, Case No: 1995/27, Decision No: 1995/47, Date: 21.9.1995, Official Journal: 10.04.1996/22607.

The EIA described as a process is ultimately an administrative decision. Pursuant to article 6/3 of the Environmental Impact Assessment Regulation, unless the Environmental Impact Assessment Positive Decision or the Environmental Impact Assessment Not Required Decision is taken, encouragement, approval, permission, building license and occupancy permit regarding project cannot be carried out, the investment for the corresponding project cannot be started and tendered. The project owner can make the applications for the activity according to this decision. The definition of both decisions is contained in article 4 of the same Regulation. According to this, the EIA positive decision denotes the one of the Ministry stating that there is no objection with regard to environment in realization of the project, the EIA Not Required Decision indicates that the potential negative effects of the project on the environment are at acceptable levels in accordance with the relevant legislation and scientific principles as a result of the measures to be taken and thereupon the ministry's decision stating that no environmental inconveniences have been observed in carrying out the project. As can be seen, both decisions make the project realizable and for this reason, they are effective administrative acts (Saygılı 2007; Alca 2011). Because of this nature, both EIA Positive and EIA Not Required Decisions can be subject to action for annulment in the administrative jurisdiction.

When we establish a relationship between the above-mentioned EIA decisions and the violation of the interest, increasing awareness of environmental problems primarily results that the Council of State handles the capacity of bringing actions with a broader interpretation, particularly in relation to environmental issues (Erhürman 2011; Özdek 1991). In other words, the administrative jurisdiction finds enough the violation of the public interest in disputes concerning the environment at first examination stage and does not seek the condition of violating the personal interests of the claimants (Demirkol 2012). An opposite comment is against the principle of participation of environmental law. This tendency is also seen in the EIA reports which we will examine in detail below. This also allows to put the right of environment in the Constitution into practise (Demirkol 2012; Özdek 1991). This opinion has been expressed in a decision of the Council of State Administrative Judicial Chambers as "it is accepted in jurisprudences of the Council of State that the capacity of bringing action will be determined through a broad interpretation for issues related to public interest such as environment, protection of historical and cultural values, zoning implementation etc."¹³ As a result of this approach, it has been accepted in the Council of State jurisprudences that it is possible to bring an action as a citizen, a town or district resident.¹⁴

¹³ Council of State Administrative Lawsuit Assembly of Turkey, Case No: 2004/3, Decision No: 2005/2371, Date: 06.10.2005; Council of State Administrative Lawsuit Assembly of Turkey, Case No: 2005/1582, Decision No: 2007/378, Date: 21.03.2007; 8th Office of Council of State of Turkey, Case No: 2006/3763, Decision No:2007/702, Date: 09.02.2007, www.kazanci.com.

¹⁴ Council of State Administrative Lawsuit Assembly of Turkey, Case No: 2004/741, Decision No: 2004/1854, Date: 11.11.2004, www.kazanci.com.

3. VIOLATING AN INTEREST FROM EIA DECISIONS

According to the (e) of paragraph 1 of Article 3 of the Turkish Environment Act, the right to participate in the formation of environmental policies is essential. Turkish Ministry of Environment and Urbanism and local governments have to obligation to create conditions in which occupational chambers, associations, non-governmental organizations, and citizens will use the environmental right. In the Environmental Impact Regulation, instead of the concept of “citizen”, the concept of “folk” has been used. The concept of “folk” is defined as Citizens of the Republic of Turkey, foreigners residing in Turkey, one or more legal entities under national legislation or association, organization or groups of the legal entities in the Regulation. By this definition, it is understood that the concept of the “folk” covers every Turkish citizen even if they do not reside in Turkey, foreigners who reside in Turkey even if they are not Turkish citizens and legal entities or groups of legal entities recognized by national legislation. “Relevant folk” are defined as people who are affected or likely to be influenced by the project planned to be realized. The concept of “impact” used in this study is also defined in the Regulation. Accordingly, the “impact” is a possible change in a temporary or permanent, positive or negative situation in a short or long term, directly or indirectly, in environmental elements during preparation, construction, and the operation or after the operation. The “impact area” is defined as the area that a planned project is affected before, during, and after the operation. All these definitions are important in determining the relevance of the EIA process and the interest of people.

In accordance with the EIA Regulation, for the projects subject to the preliminary examination in the EIA process, the decisions of the Turkish Ministry of Environment and Urbanism are announced to the project owner and the folk after the preliminary examination. These decisions are “EIA is required” and “EIA is not necessary”. Also, the other decisions which are given after the examination of the project (EIA positive or EIA negative) are announced to the project owner and the folk. Undoubtedly, the person whose interest will be affected by the decisions of “EIA is necessary” and “EIA is negative” is the project owner. In Article 4 of the EIA Regulation, the project owner is defined as the real or legal person to perform the project. In practice, disputes seem to focus on “EIA is not necessary” and “EIA positive” decisions. For this reason, those who violate the interests from the “EIA is not necessary” and “EIA positive” reports will be examined below under separate headings.

3.1. Violating an Interest from “EIA is not Necessary” Decisions

In accordance with Article 17 of the EIA Regulation, The Ministry of Environment and Urbanism notifies the “EIA is not necessary” decision to the Governorate, the project owners and the institutions that have been qualified by the Ministry. The Governor’s Office announces this decision to the folk by announcement of public display or via internet.

In this arrangement, the concept of “the folk” which has the wider meaning than “the folk concerned” as mentioned above, has been used. However, the concept of “announcement of public display” defined in Article 4 of the Regulation refers to a written announcement about the EIA process the planned project to be realized. The announcement should hang at the places where the project will realize or are likely to be affected by the project, the offices of governor, district governor and mukhtar or hanger place in the village room.

Accordingly, although suspended notice may include the places where people live or are likely to be affected by the project, there is no such restriction in terms of announcement via internet. In case of an announcement via internet, it includes every real and legal person living in Turkey will effect an interest from the project and every Turkish citizen even if they don't live in Turkey. Therefore, with regard to the effects of the project, any real or legal person who can establish a relationship of interest even if they don't live in that region may have the capacity to file a case from the date of learning the announcement via internet.

There has never been a place for public participation on evaluations for projects subject to the EIA preliminary examination phase. Although these projects are closely related to human life, the fact that the people do not have the right to speak at this stage is also against the participation principle and the essence of EIA (Yılmaz Turgut 2012).

The ECHR has also ruled that in the case of granting a permit for gold mining in Ovacık within the borders of Bergama (İzmir): “As a result, interested persons should be able to court against any kind of action, act or omission if they are persuaded that their interests or opinions are not considered sufficiently in the decision-making process”.¹⁵

In practice, it is observed that citizens living in the region, municipalities, bar associations, the village headmen representing the village legal entity of the villages in or near the place where the activity will take place, agriculture chambers, cooperatives in the villages, foundations, non-governmental organizations, environmental communities and even the companies that have the place where the activity will take place can file action for annulment for “EIA is not Necessary” decisions.

A clear and direct arrangement that environmentalist individuals and communities may resort to judicial remedies as a spokesperson of public interest is not available in the national and international environmental legislation. However, it is argued that such an application is possible under the provisions of the Council of State's decisions based on the broad interpretation of the concept of interest as well as some provisions in the environmental legislation (Yılmaz Turgut 2012). However, it is necessary for these communities to have legal entities such as foundations and associations. For example, the case was filed for “EIA is not Necessary” decision about “Atilla 1 and 2 Hydroelectric Power Plant Project” planned to be done on Bolaman Stream in Ordu/Fatsa.¹⁶ Due to the fact that the plaintiff did not reside in the area where the project was planned to be built and was not registered to the local population, a current and legitimate interest was not violated. For this reason, the court ruled that the plaintiffs did not have the capacity to sue. On the other hand, the court decided to Derecikalan Neighborhood Officer cannot file a case because there is no capacity to sue because the neighborhood is not a legal entity. In addition, it cannot be said that the Hunting and Shooting Association has violated a current and legitimate interest. Therefore, there is no capacity to sue for this case. This decision has been approved by the Council of State.¹⁷

¹⁵ Öçkan et al./Turkey, Application No: 46771/99, Date: 29.03.2006.

¹⁶ Ordu Administrative Court, Case No:2011/627, Decision No:2011/942, Date: 05.07.2011.

¹⁷ 14th Office of Council of State of Turkey, Case No:2011/15665, Decision No: 2012/1738, www.kazanci.com.tr.

When examining individual applications, the Constitutional Court considers the criterion as to whether or not they have been resident in the area, while evaluating the relationship of violation of interest in disputes. For example, a case against the hydroelectric power plant project, which was filed for the cancellation of the “EIA is not necessary” decision, was rejected due to timeout. Therefore, it was alleged that the right of access to the court and the right of the prosecution to protect the material and spiritual existence of the person due to the negative effect that the residents of the region had on their lives would be violated. While the Constitutional Court evaluating the individual application, considered that: “Are some of the plaintiffs claiming to be affected by the project who reside outside the village of Taşova and Umutlu villages, actually reside where they claim? Do they have immovable properties in the affected areas of the project? If they have legal interests in filing a case, have they made the announcements in their settlements?”.¹⁸

In the case against the process of exemption of the project of Gebze - Orhangazi - İzmir Motorway (including İzmit Gulf Transit and Connection Roads) from the EIA process, the capacity to sue of bar associations is discussed. In the decision of the 14th Office of Council of State.¹⁹

Although in the Council of State’s decisions the capacity to sue is widely interpreted, in matters of public interest, such as protection of the environment, historical and cultural values, zoning practices; it is stated that the lawsuits based on the right of environment in the 56th article of the Constitution will not constitute a precedent for this case. It is also stated that professional organizations like public institutions are based on regulations that allow them to have the legal capacity to file lawsuits such as the environment and the zoning plan and to allow them to file lawsuits related to their areas of duty in their constitutional laws. As a result of the absence of a similar regulation in the bar association legislation, it was concluded that, considering the organizational purposes, the legitimate, personal and up-to-date interest were not affected and therefore the benefit relation was not found.

However, in the decision of the Council of State Administrative Lawsuits General Assembly²⁰, has decided as follows: “*The Bar Association is obliged to protect and defend the rule of law as well as its professional activities with the title of the professional organization to which the lawyers in the trial are affiliated. It should be accepted that the Chairman of the Izmir Bar Association has interest for claiming that the judicial decision has not been enforced. For this reason, This Chamber judgment in the case concerning the refusal of the capacity to file is therefore not in accordance with law.*”²¹

Because of the environmental issues that concern the public interest, it is stated that capacity to sue must be considered broadly. So the bar association which is the task of protecting the supremacy of the law should be able to sue in these matters (Berberoğlu 2009).

¹⁸ Constitutional Court of Turkey, Application No: 2013/5974, Date: 10.3.2016, Official Journal: 05.05.2016/29703, www.kazanci.com.tr.

¹⁹ 14th Office of Council of State of Turkey, Case No: 2011/13742, Decision No: 2011/796, Date: 21.9.2011.

²⁰ Case No: 2011/2123, Decision No: 2013/4686, Date: 25.12.2013, www.kazanci.com.tr.

²¹ For a similar decision, see the Council of State Administrative Lawsuits General Assembly, Case No:2004/2163, Decision No:2004/788, Date: 07.10.2004, www.kazanci.com.tr.

3.2. Violating an Interest from “EIA Positive Decisions”

According to EIA Regulation Article 8/5; It is announced to the public by the Ministry and the Governor’s Office that the EIA process is started and the other information, in the way announcement, until the EIA process is completed. In accordance with paragraph 7 of the same article, depending on the nature of the project, the type and location of the Project, if deemed necessary, the Ministry may also invite universities, institutes, research and specialized institutions, professional chambers, trade unions, associations, representatives of non-governmental organizations as members of the Commission meetings.

The possibility of the participation of the people envisaged by the mentioned arrangement is important in terms of determining the contradictions to the law that have not yet been passed on to the decision stage of the project. For example, it has been argued before deciding on the project yet, that the EIA Reference File for the Akkuyu Nuclear Power Plant Project was not prepared properly and in accordance with Article 8/2 of the EIA Regulation, by an association. But this request was rejected. In the case filed by the association, The Council of State decided that the plaintiff who had a current and legitimate interest in the case, had the capacity to sue, because of the transaction was of a quality that directly affected the scope and objectives of the plaintiff stated in the constitution of the association.²²

According to Article 9 of the Regulation, in order to inform the public about the investment and to receive opinions and proposals related to the project, Public Participation Meeting is held at a central place and hour determined by the governorship.

Although it is stated in the regulation that EIA reports can be examined, it is a lack of regulation that their copies cannot be taken. However, if requested, copies of these documents must be given to the requesting authorities, in accordance with Article 5 of the Information Act (Yılmaz Turgut 2012). It should be noted, that the application for information should relate to the information or documents that must be found in the hands of the applicant institutions or organizations, in accordance with Article 7 of the Act. Negative response may be given to the applicant for any kind of information or document which may be generated on the basis of a separate or special study, research, analysis or analysis. Furthermore, according to Article 8 of the Act, information or documents published in institutions and organizations or disclosed to the public by publications, brochures, announcements and similar means cannot be subject to applications for information.

In accordance with Article 14 of the EIA Regulation, the “EIA positive” report is announced to the public by the Ministry and the Governor’s Office via the announcement of public display and internet.

²² 14th Office of Council of State of Turkey, Case No:2012/9094, Decision No: 2013/7096, Date: 24.10.2013, www.kazanci.com.tr.

The Council of State, in the case against the “EIA positive” decision, interpret the concept of interest broadly. The Council of State ruled that the plaintiff, who sustained his life in the same territory, could apply legal remedies for the selection of the landfill site as an ‘individual’ due to the allocation process, which has wide impacts on environment and community health. Therefore the Supreme Court has decided that it may be filed the action for annulment because of the plaintiff has a relative interest in it.²³

An individual application has been made to the Constitutional Court because of the positive decision of the EIA was not taken in respect of the switchgear built within the scope of the Cevizlik Regulator and Hydroelectric Power Plants Project and the case was rejected. The Court has decided as follows: *“One of the most important elements of procedural safeguards that must be provided to the individuals who are involved in environmental decision-making processes is the ability to carry out actions and omissions of public authorities in front of an independent judicial authority and to examine them as necessary. It is not only the possibility of submitting applications to these authorities; it is necessary for the relevant public authorities to approach the issue with due diligence and to establish a balance by considering all relevant interests. It is imperative for the individuals to obtain effective participation in the process, to present all the objections and evidence, to investigate and to meet the requirements of all effective claims.*

It is understood from the point of view of the applicant that the environmental problem that arises to the end of the work of the plant negatively affects the health and the quality of life, and there is no direct answer to the basic assertions that the environmental assessment made in this context is inadequate. For this reason, it is understood that the applicant’s allegations regarding such environmental complaints are not able to be properly assessed before the judicial authorities.

For the reasons stated, it must be decided that the applicant has violated the right to protect and develop the material and spiritual existence guaranteed by Article 17 of the Constitution.”²⁴

²³ 14th Office of Council of State of Turkey, Case No:1993/3894, Decision No: 1993/4975, Date: 19.11.1993, www.kazanci.com.tr.

²⁴ Constitutional Court of Turkey, Application No: 2013/2552, Date: 25.02.2016, Official Journal: 20.05.2016/29717, www.kazanci.com.tr.

CONCLUSION

Public authorities, who have a say in environmental decision-making processes, must approach the subject with due diligence and establish a balance by taking care of all related interests. Therefore, it is necessary for the individuals to be given access to all necessary information and documents with effective participation in the process. Individuals whose interests are affected in the EIA process have the opportunity to bring the actions or omissions of public authorities to an independent judicial authority.

The aim of the principle of good governance is that the administration acts in accordance with the law and that the people benefit from the rights granted by the constitution and laws. For this reason, administrative jurisdictions prefer an explanatory interpretation in terms of the personal interest, especially in their decisions regarding environmental law and environmental right.

Although it is a procedural procedure that the whether or not the interests of the plaintiffs are present in the first instance, the concept of interest is interpreted widely by administrative jurisdictions, especially in cases involving environmental issues. It is noteworthy that there is a tendency that the concept of interest is not converted into a precondition in the cases opened generally.

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