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**Constitutional Problems that Occur when Environment
Protection Policies are tried to be realized by Taxes in
Turkish Law**

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Constitutional problems that occur when environment protection policies are tried to be realized by taxes in turkish law

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Abstract

Taxation is among fundamental tools used in environment protection policies. Due to its interference with individual property rights, it must be used very carefully. Trying to protect the environment by combining tax and environment policies may cause several problems. When environment protection policies are implemented via taxes, two basic problems occur. The first problem is the conflict of Constitutional norms. Environment protection is a task assigned to our government with Article 56 of the Constitution. This task is conflicting with other Constitutional duties of the government such as social justice protection, providing economical development and human health protection. There are some questions discussed such as what is more important for the government, the environment protection or providing development; shall the polluting activities of the low class community be permitted, how shall the income losses that the government encounters within environment protection policies be compensated?The second problem is that the regulations founded result in undesired outcomes due to unexpected changes in consumer preferences. Especially taking environment protection measures by tax policies on the low class community may result in opposite outcomes such as increasing environmental pollution.In this study, the results of three different decisions taken by the government in order to fulfill its Constitutional duties in Turkey will be assessed. The first one is regarding the free coal serving to poor families, the second is regarding the low tax implementation on oils to encourage the industry, and the third one is regarding the quadruple increment on Motor Vehicles Tax.

Keywords: environmental protection policies, taxation,constitution

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Introduction

Environment protection is a task assigned to our government within Article 56 of the Constitution. There are many tasks assigned to government with the Constitution. Affording public expenses, providing social justice and economical development, protecting the principle of equality, maintaining the right to live in a healthy and even environment to individuals are some of them. The fact that the government is trying to fulfill several duties and using tax policies as a tool for this effort cause two main problems.

The first problem is that the environmental regulations prevent the government to fulfill its other Constitutional duties.

For instance, environment taxes have a negative impact on development and employment and this situation conflicts with the duty of government to provide economical development.

Another example is, financial losses encountered by government to fulfill the purpose of environment protection, and increasing the taxes in order to compensate the taxation losses and afford public expenses; but in such cases the principles of equality in taxation and social justice are breached.

Another conflict is the negative impact of industrial investments for economical development on human health.

The second basic problem is that sometimes the desired results can not be obtained with the policies applied to protect the environment. One of the significant reasons of this is the regulations cause unexpected changes in consumer choices and the economical activities that are harmful to environment cannot be stopped.

In this sense, when taxation measures are to be taken within environment protection policies, the balance between the purposes of government and possible changes in consumer choices should be considered seriously.

In this study, the conflicts that occur between Constitutional norms when environment protection policies are tried to be realized by taxes will be observed and explained by several examples.

THE FIRST FUNDAMENTAL PROBLEM: CONFLICTS BETWEEN CONSTITUTIONAL NORMS

The examples of government's constitutional duties are providing social justice and equality, as well as the right to live in a healthy and even environment to individuals, and economical development.

The basic purpose of all duties undertaken by the government is providing the public benefit¹. However, when the government tries to fulfill all of these duties, Constitutional norms conflict with each other². Some of the problems are as below:

- 1- *Which one is more important for a government, protection of the environment or human health?*

The concept or protection of human health is very wide. It is clear that the environment should be clean for human health. Besides, in order to prevent or recover from diseases, medical investments are necessary should be considered within this scope. Many subjects such as providing clean water to individuals, management of water sources, and vaccination production for public health require industrialization

¹ Please refer to M.Günday (2003) Administrative Law pg.16 ; and T.Akilloğlu (1988) "Thoughts on Public Benefit" pg.1-3

² Please refer to O.Canyaş (2011) Doctorate Thesis pg.154-165

and technological investments¹. Government's duty on human health is implied in many Constitution decisions². The duty to protect the environmental and human health is assigned to government with Article 56 of the Constitution.

Constitutional Norm on Protection of Environment and Health

Article 56 of the Constitution of the Republic of Turkey: "Everyone has the right to live in a healthy and even environment. Improving the environment, protecting the environmental health and preventing pollution are the duties of the government and citizens. Government plans health institutions uniformly and regulates their services to maintain that everybody lives their lives in a mental and physical health, and provide cooperation by saving on human and material force and increasing productivity. Government fulfills this duty by utilizing and inspecting public and private health and social institutions. There may be a general health insurance implemented by law in order to provide health services widely."

Norm's conflict within itself

In the same norm, the government is assigned to protect both environment and human health. It is clear that environment protections is important for human health and there is no conflict in this. However, when human health is thought widely, the fact that insufficient development leads to poverty and poverty has a negative effect on human health demonstrates the conflict within the norm.

2- Which one is more important for a government, environment protection or providing social justice?

Social justice is defined as the balance situation maintained socially by considering some criteria such as life standard, income level in different part of the society within the scope of opportunity equality³. Maintaining social justice is one of the duties assigned for the government by our Constitution. The notion of social justice is one of the principles frequently implied by the Constitutional Court⁴. Maintaining social justice sometimes conflicts with the duty of environment protection.

Constitutional Norm on Protecting Social Justice

Preliminary Provisions of the Constitution of the Republic of Turkey : "..... that every Turkish citizen has the right and authority to prolong a honored life and improve his/her material and spiritual assets accordingly within the national culture, civilization and law order by utilizing the basic rights and freedoms in this Constitution as required by equality and social justice....."

Constitutional Norm on Environment Protection

Article 56 of the The Constitution of the Republic of Turkey: "Everyone has the right to live in a healthy and even environment. Improving the environment, protecting the environmental health and preventing pollution are the duties of the government and citizens."

Conflict Between Norms

Poverty is an important source of inequality between individuals. Poor people are more open to threats that come from the environment. Despite this, it is possible that the poor are more senseless towards environment, for instance using cheap fuels even though it pollutes the environment and avoiding any costly liability for environment

¹ Please refer to C.Kroenke (2008) "Socioeconomic Status and Health: Youth Development and Neomaterialist and Psychosocial Mechanisms" pg.31-42 ; B.G.Link ve J.Phelan (1995) "Social Conditions as Fundamental Causes of Disease" pg.80-94

² Please refer to Constitutional Court Decree ES:2010/75 KS:2011/150 KG:3/11/2011

³ Please refer to Ş.Gözübüyük Constitutional Law s.142

⁴ Please refer to Constitutional Court Decree KS:2010/055 ES:2008/110 KG:01/04/2010

protection. Permitting poor people to pollute the environment for social justice or similar decisions are an example of the conflict between two Constitutional norms.

3-Which one is more important for a government, providing development or protecting the environment?

The conflict between development and environment protection has always been a discussion topic¹. In several decisions of the Constitution, it is seen that the Constitutional Court gives importance to the duties of both maintenance of development and environment protection². When we look at the subject through constitutional norms, we see two basic norms.

Constitutional Norm on Environment Protection.

Article 56 of the Constitution of the Republic of Turkey : “Everyone has the right to live in a healthy and even environment. Improving the environment, protecting the environmental health and preventing pollution are the duties of the government and citizens....”

Constitutional Norm on Providing Development

Article 166 of the Constitution of the Republic of Turkey: “It is government’s duty to plan the rapid economic, social and cultural development, especially industrial and agricultural ones, evenly and in harmony within the country, provide their most productively usage by making outlines and evaluations of country sources and establish necessary organizations....”

Conflict between norms

Huge economic activities damage the environment or have the potential to harm the environment inevitably. The government’s efforts to fulfill both purposes of economical development and environment protection generate two purposes that are in conflict within the same norm.

4- Which one is more important for a government, finding financial sources or the principle of equality?

Principle of equality is one of the basic principles of the government. It is secured with the Constitution³. Government’s right to collect taxes in order to fulfill its duties is an authorization granted by the Constitution⁴. Government’s breach of the principle of equality is often witnessed in order to supply financial sources.

Constitutional Norm on Principle of Equality

Article 10 of the Constitution of the Republic of Turkey: “Everybody is equal before the law regardless of language, race, color, gender, political opinion, philosophical belief, religion, communion and similar reasons...”

Norm That Form the Constitutional Base of Government’s Right to Collect Taxes

¹ Please refer to L.G.Thorp, M.D.Kaplowitz, F.Lupi,F.X,Yeboah (2011) “Exploring the middle ground between environmental protection and economic growth”. Public Understanding of Science 0 (0):1-14 , Please refer to M.U.Cohen (1996) “Science and Environment: Assessing Cultural Capacity for Ecological Modernization” Public Understanding of Science 7:149-167

² Please refer to Constitutional Court Decrees ES:2006/99 KS:2009/009 KG:15/1/2009 ; ES:2010/075 KS:2011/150 KG:03/11/2011; ES:2009/24 KS:2011/75 KG:12,05,2011; ES:2010/7 KS:2011/172 KG:22/12/2011

³ Please refer to Constitutional Court Decree ES:2006/95 KS:2009/144 KG:15/10/2009 and Kemal Gözler (2000) Turkish Constitutional Law Ekin Bookstore Publications pg.180-189

⁴ Please refer to N.Çağan (1982) Authorization of Taxation, Kazancı Law Publications pg.4

Article 73 of the Constitution of the Republic of Turkey: “Everybody is obliged to pay taxes according to their financial ability. The fair and justice distribution of tax burden is the social target of the financial policy.”

Conflict between norms

Government has tax expenses (discounts, exemptions, exceptions) in the area of environment friendly technologies to support them. In this case, the government has financial losses. When taxes in other areas are increases in order to compensate these losses, this may breach the principle of equality between individuals and unfair competition between sectors.

SECOND BASIC PROBLEM: DEVIATIONS IN CONSUMER CHOICES

Government generates several laws via execution in order to fulfill the duties assigned to it by the constitution. There are some regulations produced by the execution organ to realize these purposes in compliance with these laws. However, the desired targets cannot always be fully obtained. Consumers may cause different results by changing their choices instead of going towards the direction lead by the law. Environment protection may not be especially important for the poor. It is possible that such results happen in countries where more poor people and less dominancy of law are present.

EXAMPLES

There are many examples in Turkey about the problems mentioned above. Some of them are:

Example 1

Coal servicing for the poor

There was a decision taken in 2007 by the Board of Ministers¹ for servicing free coal for the poor families. The motive for this decision is the social justice principle that is present in the preliminary provisions of the Constitution. The main purpose is the effort to maintain social justice between the rich individuals who have no worries regarding heating and the individuals who are in cold because of poverty. The mentioned application constitutes a conflict between the purpose of maintaining social justice mentioned in the preliminary provision of the Constitution and the purposes of environment protection mentioned in Article 56. When it is considered that the government cannot provide the expensive energy to the poor for free due to financial concerns, cheap energy sources such as the freely served char coal possibly damage the environment. In other words, when helping the poor is a purpose, the outcomes of this may not be as desired. Thus in 2011, there was a necessity to take a measure such as considering the quality of the char coal served due to the air pollution that occurred and there have been some standards implemented on served coal upon a new decree of the Board of Ministers².

Such applications also bring a high cost to the government. Both the cost of the served coal and the possible taxes that the government might have received if those coals were sold are sacrificed.

Example 2

The problem with oil numbered 10

¹ Please refer to 2007/13048 numbered Decree of Board of Ministers RG NO:26742 RG:30th December 2007

² Please refer to 2011/2320 numbered Decree of Board of Ministers RG NO:28095 RG:25th October 2011

Article 166 of the Constitution assigns the duty of taking necessary measures for the government for the development. One of the examples of this is the problem with the oil number 10. Oil number 10 is the general name for the substances used as diesel oil which is widely used under many brands in tin tanks (or in bulk) throughout the country in the diesel market. Government prefers to implement lower taxes on industrial oils like this one, to support the development. However these oils, which are comparatively cheaper, have begun to be used as fuel for vehicles, as an unexpected change in consumer choices. A company which uses illegal oil number 10 causes not only environment pollution, also troubles such as unfair competition against companies which do not use illegal oil, income loss for the government. Because of this, oil number 10 problem has become among the topics that the government is seeking for a solution in recent years¹.

Example 3

Problems resulting from the encouragement of LPG (likid petrol gaz)

Article 73 of the Constitution grants the government the right to collect taxes. Article 10 also implies the principle of equality. Therefore, equality and justice shall be provided in taxation. Practically, government may try to increase other taxes to compensate the tax losses it encounters because of encouraging some sectors. For instance, government kept the tax for the LPG used in the kitchen for social purposes, but consumers started using this in vehicles. In this case the Motor Vehicle Tax was increased gradually to 4 times higher. The subject was devolved to the Council of State. Even though the Council of State finds the compensation of treasury losses resulting from social policies with taxes as a legal right, it concluded that there was no reasonable ratio between the tool used for it and the mentioned purpose, and leaving the burden brought to the Treasury by the tax loss upon only some tax obligors was found against justice and extreme².

CONCLUSION

When environment protection policies are tried to be implemented via taxes, there are some problems regarding the conflict of Constitutional norms. Besides, the regulations that are desired to be prepared cannot obtain the results due to the deviations in consumer choices. Governmental executives have to make a choice between duties each of which are assigned by the Constitution. Protection of environment and human health is a duty assigned to the government with Article 56 of the Constitution. This article conflicts within itself, with the duty of maintaining social justice defined in preliminary provisions, the duty of providing development in Article 166, principle of equality in Article 10, the duty of tax collection in Article 73 as shown in the examples. In such cases both legislation and execution organs have to use their judgment authorizations. Authorities of both execution organ and administration are not unlimited when they have to execute their judgment authorization. The main purpose to pursue is the public benefit. However, the concept of public benefit is obscure. How will it be decided on which public benefit comes first? Even though the answers to these questions lie within this study, it must be indicated that the answer is found in study areas such as sustainable development-environment, and human rights-environment in the literature.

¹[http://www.maliye.gov.tr/EADD_alma_Platformu/Bütçe_Sunuşları/2011/PBK_2011/PBK_Metin/2011_year_budget_presentation_speech_\(TBMM_Commission_for_Planning_and_Budget\).doc](http://www.maliye.gov.tr/EADD_alma_Platformu/Bütçe_Sunuşları/2011/PBK_2011/PBK_Metin/2011_year_budget_presentation_speech_(TBMM_Commission_for_Planning_and_Budget).doc) pg.74

² Please refer to State of Council, Committee of Tax Cases Offices Decrees.,E:2001/322,K:2002/71 and E:2002/492,K:2003/28

BIBLIOGRAPHY

- Akıllıoğlu, T. (1988) “Thoughts on Concept of Public Benefit”, İHİD, 9 (1-3):11-23.
- Canyaş, O. (2011) ‘Determining the Judgment Authority of Tax Management’ Ph. D. diss., Hacettepe University
- Çağan, N. (1982) Authorization of Taxation. İstanbul:Kazancı Law Publications
- Cohen, M.Ü. (1996) “Science and Environment: Assessing Cultural Capacity for Ecological Modernization” *Public Understanding of Science* 7:149-167.
- Gözler, K. (2000). *Turkish Constitutional Law*. Ankara: Ekin Bookstore Publications
- Gözübüyük, Ş. (1993). *Constitutional Law*. Ankara: Turhan Bookstore
- Günday, M. (2003). *Administrative Law*. Ankara: İmaj Publication, 7. Edition.
- Kroenke, C. (2008) “Socioeconomic Status and Health: Youth Development and Neomaterialist and Psychosocial Mechanisms”, *Social Science & Medicine* 66(1):31-42.
- Link, B.G. and J.Phelan (1995)., “Social Conditions as Fundamental Causes of Disease” *Journal of Health and Social Behavior* 35:80-94.
- Thorp, L.G. and Kaplowitz, M.D. and Lupi, F. and Yeboah, X.F. (2011) “Exploring the middle ground between environmental protection and economic growth”. *Public Understanding of Science* 0 (0):1-14.
- Şimşek, M. (2010). 2011 Year Budget Presentation Speech
[http://www.maliye.gov.tr/EADD_alma_Platformu/Bütçe_Sunuşları/2011/PBK_2011/PBK_Metin/2011_YEAR_BUDGET_PRESENTATION_SPEECH_\(TBMM_Commission_of_Planning_and_Budget\).doc](http://www.maliye.gov.tr/EADD_alma_Platformu/Bütçe_Sunuşları/2011/PBK_2011/PBK_Metin/2011_YEAR_BUDGET_PRESENTATION_SPEECH_(TBMM_Commission_of_Planning_and_Budget).doc_s.74) s.74 access date: 27th March 2012
- Decisions of Board of Ministers;
 S: 2007/13048 Date: 30th December 2007 RG: 26742
 S: 2011/2320 Date: 25th October 2011 RG: 28095
- State of Council, Committee of Tax Cases Offices Decrees
 15.2.2002, E: 2001/322, K: 2002/71;
 21.3.2003, E:2002/492,K:2003/28
- Constitutional Court Decrees:
 KS: 2009/144 ES: 2006/95 KG:15/10/2009
 KS: 2009/009 ES: 2006/99 KG:15/1/2009
 KS: 2011/150 ES:2010/075 KG:03/11/2011
 KS: 2010/055 ES:2008/110 KG:01/04/2010
 KS: 2011/150 ES: 2010/75 KG:03/11/2011
 KS: 2011/75 ES:2009/24 KG:12/05/2011
 KS: 2011/172 ES: 2010/7 KG:22/12/2011