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## **LEGAL LIABILITY AND LOSSES ARISING FROM POLLUTION RESULTING FROM THE ACTIVITIES OF COASTAL FACILITIES: IN TURKEY SAMPLE**

### **Abstract**

The seas are the common heritage of humanity in terms of social, cultural, economic and biological aspects. Pollution is the biggest and imminent threat to this heritage. Although shipborne pollution has been the subject of many academic studies, the importance of coastal pollution has been overlooked for years.

In this study, first of all, the technical dimension of the subject was discussed and the concept of coastal facility was examined. The pollution caused by the pollutants originating from the coastal facilities has been put forward and the damage caused by the pollution has been tried to be determined.

Afterwards, the nature and basis of the legal liability for the damages arising from the pollution originating from the coastal facilities were examined within the scope of the Law No. 5312 of 3.3.2005 on the Principles of Intervention in Emergency Situations in the Pollution of the Marine Environment with Petroleum and Other Harmful Substances and the applicability of this law. As a result, it has been proposed to find a solution to the damage caused by pollution caused by coastal facilities, all of which carry out dangerous activities, within the framework of the general provisions of the Environmental Law and the Law of Obligations regulating the liability of danger.

**Key words:** Coastal Pollution, Marine Pollution, Responsibility, Coastal Facility, Marine Environment

**Güləndam Gündüz qızı Quliyeva**

### **Sahil obyektlərinin fəaliyyəti nəticəsində çirklənməyə bağlı hüquqi məsuliyyət və itkilər: Türkiyə nümunəsi**

#### **Xülasə**

Dənizlər sosial, mədəni, iqtisadi və bioloji aspektlər baxımından bəşəriyyətin ümumi irsidir. Çirklənmə bu irs üçün ən böyük və qaçılmaz təhlükədir. Gəmilərlə çirklənmə bir çox akademik araşdırmanın mövzusu olsa da, sahil çirklənməsinin əhəmiyyəti illərdir diqqətdən kənar qalmışdır.

Bu işdə, ilk növbədə, mövzunun texniki ölçüsü müzakirə edilmiş və sahil obyekti anlayışı araşdırılmışdır. Sahil obyektlərindən əmələ gələn çirkləndiricilərin törətdiyi çirklənmələr ortaya qoyulmuş və çirklənmənin vurduğu ziyan müəyyən edilməyə çalışılmışdır.

Daha sonra "Sahil ərazilərinin çirklənməsi zamanı fəvqəladə hallara müdaxilənin prinsipləri haqqında" 3.3.2005-ci il tarixli 5312 nömrəli Qanun çərçivəsində sahilboyu obyektlərdən yaranan çirklənmə nəticəsində dəyən zərərə görə hüquqi məsuliyyətin mahiyyəti və əsasları araşdırılmışdır. Nəticədə, araşdırmada bütün təhlükəli fəaliyyətlə məşğul olan sahilyanı obyektlərin çirklənməsi nəticəsində dəymiş ziyanın Ekoloji Qanunun və məsuliyyəti tənzimləyən Öhdəliklər Qanununun ümumi müddəaları çərçivəsində həllinin tapılması təklif olunub.

**Açar sözlər:** Sahil çirklənməsi, dəniz çirklənməsi, məsuliyyət, sahil obyekti, dəniz mühiti

### **Introduction**

Marine pollution is an international issue that concerns all humanity due to its social, economic, environmental and legal dimensions. The issue of sea pollution is also of vital importance for Turkey, which is surrounded by the sea on three sides and benefits from this relationship on a commercial and cultural level.

As it is known, the issue of pollution caused by the operation of the ships used in maritime transportation and the accidents involved in the pollution of the marine environment has been discussed

at the international level since the beginning of the 20th century, and the need for joint action has emerged.

As a result of these discussions, a legal regime has been established by regulating the principles of liability and compensation for pollution damages, which are becoming increasingly heavy with multilateral and bilateral agreements, especially for the elimination of marine pollution damages caused by oil.

On the other hand, although the pollution caused by oil and other harmful substances that may arise from the activities of coastal facilities is another important source of marine pollution and causes increasing damage day by day, it has not attracted the attention of the international community as much as oil pollution from ships (Ağsakal, 2019:56).

In the last 10 years, the urbanization concentrated in coastal areas with the rapidly increasing population all over the world, on the other hand, due to the economic advantages it provides, due to the industrial facilities established close to the coasts for industrial activities, land-based sea pollution has increased tremendously, and it has started to attract attention besides ship-borne pollution.

Although the subject is expressed with an umbrella concept as land-based marine pollution, the pollution caused by industrial and industrial activities in the coastal areas or the pollution from domestic, agricultural and similar sources are very different, so it needs to be examined separately.

In this direction, coastal facilities, which are in the industrial and industrial activities branch and have a typical hazard potential, are considered as the main source of pollution due to the size and number of the activities carried out (Güneyli 2020:125).

#### **Definition and Legal Character of the Coast**

In order to be able to define the pollution caused by coastal facilities, we must first reveal the legal nature of the coast and then the content of the concept of coastal facility in accordance with national and international legislation. In general terms, the coast is defined as the piece of land surrounding any natural body of water. (2) For a more technical definition, the legal regulation that should be looked at is the Coastal Law.

#### **Coastal Facility Concept**

Coastal facility, on the other hand, is a pier, port, shelter, berthing place, which can be built on the coasts and on the areas gained through filling and drying -in cases where the public interest requires- in Article 6 of the Coastal Law, titled "Coastal Protection, Construction Prohibition, Structures to be Built on the Coast and the Sea".

Based on this definition, the basic elements of the coastal establishment are; first of all, these facilities should be located only on the coasts or on the areas recovered by filling and drying. Secondly, it is not possible for some of these facilities to be constructed offshore, for example the pier or shipbreaking site, etc.

This obligation is the result of the act performed during the realization of the activity or the fact that the work performed as a result of the activity requires direct contact with the sea. Finally, it has been regulated that the permanently constructed structures adjacent to the structures mentioned in the first two elements will also be included in the coastal facility (Yıldırım, 2020 :109).

#### **Coastal Facilities as Pollutant**

A wide variety of activity types can be considered for such facilities. In our world, where technology is advancing very rapidly, it cannot be expected to be practical since a list of activities prepared to name the facilities must be constantly renewed (Atamer, 2019:187). For this reason, it is necessary to determine these facilities, which carry out activities that carry a risk of danger above the normal, by limiting them to certain legal criteria due to the damage caused by the pollution they will expose to the environment.

The Intervention and Damage Compensation Law has put forward a very general expression as a criterion to limit these types of activities. As determined in the law, the criterion for coastal facilities is to carry out activities that will cause pollution in the seas by oil and other harmful substances.

A definition that makes this scope more concrete is given in the 'Coastal Facilities Marine Pollution Compulsory Liability Insurance Tariff and Instruction Communiqué ("Liability Insurance Communiqué") published pursuant to the Law on Intervention and Damage Compensation.

According to the Communiqué, coastal facilities, as businesses that are required to take out compulsory liability insurance; refineries, ports and stations where petroleum and petroleum products are loaded or unloaded, filling facilities, storage facilities, gas terminals, power plants, industrial production facilities, ports and piers where loading or unloading are made, terminals, shipyards, shipbreaking facilities, shipbuilding and repair are the facilities where such activities are carried out.

#### **Pollutants That Cause Pollution in the Sea**

It must be admitted that the pollution caused by these facilities, which carry out activities that are considered dangerous, and the resulting damages are large and serious. Therefore, it is necessary to define the environmental pollution that may be caused in a way that is not open to discussion, and based on these definitions, the technical equipment and international standards that the coastal facilities should have should be inspected and recorded throughout their activities (Başpınar, 2018:44).

This is the subject of domestic law regulations. We need to know the characteristics of the pollutants created by the activities in order to understand the pollution phenomenon and more importantly, to remove the pollution. Pollutants; garbage, sewage, chemicals, industrial wastes, toxic pesticides, petroleum and its derivatives and similar substances.

Therefore, different intervention and control techniques should be applied to pollutants in the form of liquid, solid, radiation, dust or vapor that will cause different effects in marine areas.

It will be tried to determine the general characteristics of the pollutants to be produced by the coastal facilities, based on the distinctions regarding the pollutants reflected in various legislations related to pollution.

First of all, in determining the limit values of pollutants in national legislation and international conventions, there is a distinction between “low and high concentration pollutants”. Pollutants evaluated in high concentration levels are generally considered as very dangerous pollutants and require urgent intervention in their spread to the environment (Çağa, 2018:111–112).

The environmental impact of pollutants with low concentrations is either unknown or minimal. This is why they are often referred to as “contaminants”. On the other hand, in the distinction of fixed or variable source pollutants, it is clear that the source of the fixed source pollutant has a physical connection with a structure or place.

Tanker leaks are the best example of variable source pollutants unrelated to a specific geography. Finally, when the separation of toxic and non-toxic pollutants is simplified, it can be evaluated as a very dangerous and less dangerous / non-hazardous pollutant distinction (Atamer, 2019:145–146).

#### **Marine Pollution Caused by Coastal Facilities**

In the 4th article of the Regulation on the Control of Pollution Caused by Pollution, Hazardous Substances in Water and its Environment, “Natural or as a result of human activity, direct or indirect substances or discharge of energy to the aquatic environment”.

Again, in the 3rd Article of the Water Pollution Control Regulation, water pollution is defined as “A negative change in the chemical, physical, bacteriological, radioactive and ecological characteristics of the water source and is observed directly or indirectly in biological resources, human health, fisheries, water quality and other water quality. It is defined as the discharge of material or energy wastes that will cause preventive deterioration when used for other purposes.

The focus of these definitions is the introduction of substances and/or energies into the environment, which have the ability to endanger the ecological system and damage the health of living organisms, mostly by human hands, which adversely change the aquatic ecosystem or deteriorate the characteristics and structure of the water source (Başpınar, 2018:32).

#### **Mandatory Liability Insurance**

In cases where the legislator envisages danger liability, it generally obliges the operators to provide liability insurance as an obligation. Although, theoretically, insurance cannot be made in cases of unlimited liability because the amount covered must be shown in the insurance contract. In practice, however, since such an upper limit cannot be known for pollution damages, insurance will only be made by showing a high limit. From this sentence, as the premium amount to be paid by the insurance increases, the cost of the operator will also increase and this cost will spread to all steps of the process as a chain.

In this respect, Intervention and Damage Compensation Law m. 8/3 et al. Articles of “Coastal facilities are obliged to take out financial liability insurance against damages under this law.” brought the ruling. The law also envisages a sanction restricting the granting of an operating license to the operators who do not comply with this requirement (Demir, 2019:18).

In fact, the strict liability cases regulated by the Law and which do not allow any proof of salvation are foreign to the maritime law, which regulates the pollution damages caused by ships as well as coastal facilities is happening.

In view of the magnitude of environmental pollution damages, the Legislator has regulated the minimum coverage amounts that will affect the insurance premium burden to be imposed on the coastal facility owner/operator within the scope of the Liability Insurance Communiqué pursuant to the Intervention and Damage Compensation Law.

### Conclusion

The sources of pollution in marine areas are not only from ships, but also from coastal facilities, many of which operate in industrial activities, pollution occurs due to the mixing of land-based oil and other harmful substances into the sea, and the damage arising from this pollution occurs. This situation has increased the importance of the regulations on the measures to be taken at the international and local level for the protection of the marine environment from pollution.

The regulation on the compensation and compensation of the damage caused by the pollution of the seas by oil and other harmful substances originating from the coastal facilities has been set forth with the provisions of the Intervention and Damage Compensation Law, which is a special law.

This study, which evaluates the Law in terms of coastal facilities, shows that liability arising from marine pollution arising from both ship-based and coastal facilities and compensation for these damages are included in the same articles.

However, although marine pollution and other harmful results, both from ships and from coastal facilities through pollutants, seem to be of similar nature and the victim is not allowed to bear the damage as per the general principles, it is aimed to compensate and compensate all the damage suffered.

As a result, the Intervention and Damage Compensation Law, based on the typical dangerousness of the activities, according to our assessment, does not allow the owner or operator to be liable for pollution losses originating from coastal facilities. It has been regulated as a special hazard liability provision in accordance with 6/1.

Here, the legislator wanted to base the responsibility of the operator of the facility on the liability of the facility for the damage caused by pollution originating from coastal facilities, by making a special regulation, to the extent that it can be “sufficiently” based on the typical danger of the facility.

However, this type of responsibility cannot be clearly understood from the wording of Article 6. Another shortcoming of our study is that the legislator should have defined in this special law the scope of the typical hazard specific to coastal facilities in such a way as to ensure that the coastal facility as a dangerous phenomenon is evaluated within the scope of hazard liability, which it did not do.

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