



**SCREENING CHAPTER 27
ENVIRONMENT**

AGENDA ITEM: ENVIRONMENTAL LIABILITY

**Country Session: The Republic of TURKEY
29 May - 02 June 2006**



LEGAL FRAMEWORK

- Constitution
- Law No. 2872 on Environment amended by the Law No.5491
- Law No. 2577 on Procedure of Administrative Justice
- Law No. 5312 on Response to Emergencies and Compensation of Losses in Case of Pollution of Marine Environment from Oil and Other Harmful Substances



LEGAL FRAMEWORK (CONT'D)

Article 56 of the Constitution

- “everyone has the right to live in a healthy and balanced environment”
- It is a duty of the state and citizens to improve the natural environment, protect the environmental health and prevent environmental pollution

Article 125 of the Constitution

- All actions and procedures of the administrative authorities are subject to access to justice



LEGAL FRAMEWORK (CONT'D)

Article 3/g of the Environmental Law

- Polluter pays principle
 - Circumstances where the competent authorities should take necessary measures
 - Recovery of the costs from the polluters

Article 15 of the Environmental Law

- In case of failure to fulfil the requirements stipulated by the Environmental Law and its By-laws, activities will be terminated temporarily or permanently by the competent authority

Article 28 of the Environmental Law

- The liability of the polluters who caused environmental damage
- Responsibility without taking into consideration whether fault exists



LEGAL FRAMEWORK (CONT'D)

- Article 28 of the Environmental Law reserves polluter's responsibility according to the general provisions.
- These general provisions take place in the Article 41 of the Law No. 818 on Obligations.
- In article 41 it is stated that, the person who deliberately and intentionally or in negligence harms the other person unjustly should compensate the damage that he caused.



LEGAL FRAMEWORK (CONT'D)

Article 30 of the Environmental Law

Application to the competent authorities:

- Everyone who suffers from or aware of any activity which pollutes or harms the environment, may request the necessary measures to be taken or that activity to be stopped by applying to the relevant competent authorities.
- If this request is refused it is possible to access to justice under the provisions of the Constitution and Law No. 2577 on Procedure of Administrative Justice.



LEGAL FRAMEWORK (CONT'D)

Law No. 5312 on Response to Emergencies and Compensation of Losses in Case of Pollution of the Marine Environment from Oil and Other Harmful Substances

- Intervention and preparedness to be applied in emergency situations in order to eliminate the risk of pollution stemming from ships and facilities on the shore or to decrease, limit and remove pollution
- Determination and compensation of damages resulting from incident
- Competent authorities
- Notification obligation
- Financial security instruments



LEGAL FRAMEWORK (CONT'D)

Access to justice

The natural and legal persons have right to access to a court so as to have the procedural and legality of the acts reviewed or failure of the competent authority to act under the Article 125 of the Constitution and the Law on Procedure of Administrative Justice.



LEGAL FRAMEWORK (CONT'D)

Law on Procedure of Administrative Justice

- The persons concerned may request the administrative authorities to implement an act or take an action that may be the subject of a lawsuit in parallel with the Article 30 of Environmental Law
- Before bringing an action, the person concerned may request the abolishment, withdrawal, alteration of the administrative act or the implementation of a new act from the superior authority, if there is no superior authority, from the authority that implements the Law.



LEGAL FRAMEWORK (CONT'D)

Law on Procedure of Administrative Justice

- The persons whose rights have been violated by an administrative action must apply to the relevant administration for the rectification of the situation, before bringing a lawsuit.
- When this application is refused wholly or partly, persons can file a legal action against administrative authority.



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Thank you for your attention