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Evaluating the right to live in a healthy environment during the covid-19 pandemic

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Abstract

Everyone has the right to live in a healthy and balanced environment. The right to the environment includes the right to live in a healthy and balanced way or the right to demand and the right to resist the creation of all kinds of environmental problems that threaten humane living conditions. This study aimed to evaluate the right to live in a healthy environment within the scope of the pandemic process, based on observations and literature information. Data was collected from Turkey's population and the environmental and legal laws of Turkey were discussed. Based on the study, after examining both national and international legislation, it is obvious that both individuals, the state, international organizations, civil society, and multinational structures have to prevent the violation of this right to a healthy environment.

Keywords: Covid-19; Environmental Right; Healthy Environment; Pandemic.

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1. Introduction

Since their existence, humans have benefited from nature and tried to dominate it by relying on knowledge and technical progress. A search for dominance in nature has disrupted the existing harmony between man and the "environment" in which he lives. When he felt strong enough with the opportunities provided by science, he started to use nature unlimitedly and even exploit it. However, human beings have lived for a long time unaware of these damages to nature. Especially in the 20th century, the pressure of rapid technological developments on nature has reached dangerous dimensions. Societies have just begun to become aware of the problems that have arisen in time and reached gigantic proportions between them and their environment. While he thought he was the master of the world, it was understood that it became necessary to compromise with nature and even to submit to it (Keleş & Hamamcı, 1993; Kuzu, 1997).

The COVID-19 virus first appeared on December 30, 2019, and was announced to the world by the World Health Organization (WHO) on March 11, 2020, that it was a global epidemic (WHO, 2020). The global epidemic that took place in the last year has greatly increased the need to live in a healthy environment. The transformation of the COVID-19 virus into a global epidemic directly affects human rights, including the right to live in a healthy environment.

With the onset of the epidemic, increasingly stringent measures were taken by governments all over the world, and closures were implemented to initially isolate cases and stop the transmission of the virus, and then slow the rate of spread. The measures taken have been stepped up, from the isolation of symptomatic individuals to the banning of mass gatherings, the forced closure of schools and businesses, and even compulsory house arrest. Home closures have led to significant changes in energy use, air pollutant emissions, and the character of urban waste (Mahato et al., 2020; Aldaco et al., 2020; Prata et al., 2020; Klemes et al., 2020;Yurtsever,2020).

During the COVID-19 Pandemic process, the most important environmental risks in hospitals and other businesses have been waste, water, air, and chemicals. Waste management has become an even more important issue in this period, especially since wastes contain chemical and biological pollution and include COVID-19 during the pandemic period (T.C. Ministry of Environment and Urbanization, 2020). Studies show that air pollutant concentrations can be greatly reduced and there is an improvement in air quality, thanks to the quarantine (partial and full) measures implemented with the onset of the epidemic. On the other hand, with the increase in pollution, contamination and diseases increase. Since COVID-19 is a respiratory disease, air pollution can increase the rate of respiratory SARS-CoV-2 virus infection (Frontera et al., 2020; Yurtsever, 2020). In addition, the adsorption of the SARS-CoV-2 virus to pollutants such as dust, soot, and PM in the air may cause long-range transport and spread of the virus (Qu et al., 2020; Yurtsever, 2020).

In particular, individuals who do not leave their homes due to the restriction of social mobility and have to spend much longer time in closed areas are also exposed to indoor building pollutants in these areas. It is observed that there are not enough data and studies to assess the effects of the pandemic on exposure to these pollutants. While staying at home constitutes an effective strategy for protection from the virus, the extent of the health problems caused by indoor pollutants and the poor ventilation of the buildings is unknown (Yavuz, 2020).

Along with these negativities, the measures taken during the period when the epidemic increased also affected the use of open green spaces. It is known that these areas cannot be used as a result of restrictions and precautions taken. Green areas have positive effects on human mental and physical health that cannot be underestimated (Sanesi et al., 2006). Since the majority of the population lives in city centers, the healthy use of these areas is important in terms of meeting people with the environment to some extent.

The importance of the right to live in a healthy environment before the pandemic period has evolved after the pandemic into a fundamental human right and an inevitable right in terms of the right to life. As it is known, urban parks, green areas, biotopes that have survived from the past to the present, forests,

wetlands, semi-natural areas, and recreation areas affect urban health due to their natural features (Pouya, 2016).

1.1. Purpose of study

Changes in environmental conditions due to the pandemic make our need to live in a healthy environment questionable. With this study, the right to live in a healthy environment will be evaluated within the scope of the pandemic process, based on observations and literature information.

2. Materials and Methods

2.1. Population

The population under study was Turkey and its' environmental laws.

2.2. Data

Data was collected from previous researchers, Article 56 of the third part of the 1982 Constitution and the Environmental Law No. 2872 (1983) of Turkey. The collected data was then discussed based on existing literature**.** Data was also collected using observations.

3. Results

3.1. The Right to Live in a Healthy Environment in National and International Legislation

Environmental legal rules have emerged mainly as a result of a human-centered approach. It was founded on the principle of protecting existing natural resources and improving the polluted ones, taking into account the existence of human beings. This understanding has made itself felt both in domestic law and in the international arena. In particular, the reasons such as leaving a very flexible field of action to the states at the international level, allowing leaving the treaties, establishing more voluntary principles in the solution of environmental problems appear as important factors in the aggravation of the problem (Gupta, 2016).

As it is known, the "environmental right," which has been included in new laws or constitutions in recent years and is the most effective legal instrument of environmental protection, has been established to eliminate the gaps created by the inadequacies and gaps of environmental law both at the national and international level (Özdek, 1993; Gupta, 2016).

The right to the environment is regulated in Article 56 of the third part of the 1982 Constitution. The right to the environment is defined in Article 56 of our Constitution: "Everyone has the right to live in a healthy and balanced environment. It is the duty of the State and citizens to improve the environment, protect environmental health and prevent environmental pollution. The state should ensure that everyone lives in physical and mental health; It organizes health institutions to plan and provide services from a single source to realize cooperation by increasing savings and efficiency in human and material power. The state fulfills this duty by utilizing and supervising the health and social institutions in the public and private sectors. General health insurance can be established by law for the widespread fulfillment of health services. (Constitution of the Republic of Turkey, 1982).

An ecologically balanced environment that is the subject of the right to the environment; the natural structures of the environment, especially soil, water, air, climate, vegetation, biodiversity, cultural and natural assets, are preserved; It is an environment where it is kept away from pollution (Semiz, 2014). International law has an especially important place in the development of environmental law (Özdek, 1993; Gupta, 2016). Reasons such as the fact that environmental problems do not know borders and that the lost environmental values are the common heritage of all humanity necessitate addressing environmental

problems at the global level. As a requirement of this, global problems are subject to interstate agreements in the international arena. These regulations are the most important documents of international environmental law (Pazarcı, 1983; Kılıç, 2001).

The main source of international law is treaties, international custom, and general principles of law. These three basic principles are used in the solution of environmental problems between countries. These basic principles bring international organizations and states to the fore. Since the state is the only body that sets rules within the borders of the country, it has a much wider authority in terms of purpose and authority compared to international organizations (Pazarcı, 1983; Kılıç, 2001).

3.2. Legal and Scientific Definition of the Concept of Environment

The Turkish Language Association (2021) defines the environment as “near something, because of it, around it”. According to Environmental Law No. 2872 (1983), the environment is expressed as "the biological, physical, social, economic and cultural environment in which living things maintain their relations and interact with each other throughout their lives". The purpose of environmental law is to protect the environment, which is the common property of all living things, in line with the principles of sustainable environment and sustainable development.

Environmental law is defined as a branch of law that protects and develops the elements that make up the natural and artificial environment of human beings and regulates their legal status (Hamamcı, 1983; Kaypak, 2012). Environmental law can be expressed as the whole of studies aimed at protecting environmental values by creating legal guarantees (Ertan, 2004; Kaypak, 2012).

Since there cannot be an understanding that does not protect nature for the future of human beings, who are a part of nature, the basic philosophy of environmental law is considered as protecting nature and living life (plants, animals, and people). This protection is implemented in the form of protection from pollution. This protection, which tries to protect the environment despite the people; is based on the elements of preventing pollution before it occurs, treating emerging pollution, and improving the environment. (Ertan, 2004; Kaypak, 2012). In the light of this information, environmental law; is defined as all of the legal rules regulating the measures taken for the proper use of the environment, keeping it clean, protecting it from pollution, and cleaning the polluted environment (Kaypak, 2012).

The environment's gaining a legal characteristic has been the result of several developments in the social field. The most important of these developments is that environmental problems gained great importance after the second half of the 20th century when they reached dangerous levels and became one of the leading, multidimensional and multidimensional problems for all societies. Until the 20th century, although environmental problems that adversely affected the living environment and health of people were encountered, serious environmental problems that threatened the living life as a whole and even the ecological balance that constitutes the whole of these relations did not arise. It is clearly understood that it affects humanity and the future of the world. At a time when the global ecological (environmental) destruction is no longer a foresight, the climate changes, the natural life disappears, the understanding of consumption covers our lives, and even the genes can be controlled, the culture of destruction increasingly threatens the social order (Erdoğan, 2009; Kaypak, 2012).

3.3. Environmental Right in the Covid-19 Pandemic Process

The purpose of the rules of law is to maintain order in society. The existence of an authority that will ensure this order and set the rules is inevitable. With the formation of legal rules, the relationship of the state with individuals and the relationship of individuals with the state is placed within the framework of certain rules. In case of non-compliance with the rules, punishment of those who do not abide by the rules is a requirement of the rule of law. Although there is no problem in the implementation of this understanding in domestic law, it is not possible to implement it due to sovereignty problems in the international arena.

However, it should be noted that international relations between states and organizations are carried out within the framework of certain rules (Kılıç, 2001).

When the state's "environmental protection" is mentioned, we encounter 3 basic principles as the way of implementation (Mutlu, 2016):

- The state's protection against actual/contemporary environmental hazards (Hazard Avoidance Principle).
- Elimination of actual environmental damage by the state.
- The state's prevention of future dangers and damages in terms of the environment (Hazard and Risk Prevention Principle).

The transformation of the COVID-19 virus into a global epidemic directly affects human rights, especially the right to life and health. Considering the indivisibility of human rights, the right to health; It is seen that it is a multidisciplinary field that should be evaluated together with many right categories such as the right to life, the right to environment, and the right to development (Tihek, 2021). The right to health is among the fundamental rights and freedoms that are protected in the context of international conventions and national legislation.

Article 25 of the Universal Declaration of Human Rights, which is the basis of international human rights conventions, states that “Everyone has the right to food, clothing, housing and medical care for the health and well-being of himself and his family.” formatted. In addition, the 12th article of the UN Covenant on Economic, Social and Cultural Rights states, “To promote environmental health and industrial cleanliness in all aspects, to prevent, treat and control epidemics, local diseases, occupational diseases, and other diseases, and to all kinds of diseases in case of illness. It imposes responsibilities on the States Parties to the Convention in terms of “creating the necessary conditions for the provision of health care and care”.

In the article of the Convention, the right to health is addressed concerning the right to the environment. As we know, in Article 56 of our Constitution, the right to health is regulated with the title of "health services and protection of the environment" concerning the right to the environment. According to this article, “Everyone has the right to live in a healthy and balanced environment. It is the duty of the State and citizens to improve the environment, protect environmental health and prevent environmental pollution. This provision of the Constitution shows that not only the State but also all citizens have duties regarding the right to health. In fact, in Article 12 of our Constitution, it is clearly stated that “fundamental rights and freedoms include duties and responsibilities of a person towards society, family and other persons” (Tihek, 2021).

In this context, the use of open green space during the pandemic period is important in terms of the duties of the state and citizens. The active use of these areas by the citizens within the framework of predetermined rules and the measures to be taken by the state in this context, the use of open green areas has been ensured. Thus, the transmission of the COVID-19 virus caused by the use of these areas has been minimized (Sönmez & Zencirkıran, 2021).

In terms of the spread of the epidemic, some measures are taken, and the use of open green spaces is continued. Among the exemplary practices made in green areas, which are used extensively in the world and our country, to maintain social distance, circles with a diameter of 2.5-4 meters were drawn at intervals of at least 1.5 meters, and open green areas were used by citizens following the social distance rule. Thus, the transmission of the COVID-19 virus has been tried to be minimized. The importance of grass fields in terms of human health during the pandemic process has reached an undeniable dimension within the framework of the studies carried out in this process and the research results and findings obtained. While meeting the increasing demand for urban open spaces within the scope of normalization processes, it is a necessity to maintain social distance in these areas to prevent the epidemic. And yet, it is possible to say that after the pandemic process, the need for the increase in quality and quantity of grass areas has changed, as well as the way of use (Sönmez & Zencirkıran, 2021).

4. Conclusion

In this study, the COVID-19 epidemic was evaluated within the framework of the importance of urban open green spaces in terms of the right to live in a healthy and balanced environment, based on the observational information and the knowledge obtained by scanning the relevant literature. The measures are taken during the period when the COVID -19 pandemic, which emerged on December 30, 2019, and was declared a global epidemic on March 11, 2020, increased, adversely affected the use of open green spaces. The importance of the right to live in a healthy environment before the pandemic period has evolved after the pandemic into a fundamental human right and an inevitable right in terms of the right to life. In this context, the regulation of the right to live in a healthy environment in terms of legal rules has been put forward as the subject of our study.

As a result of a human-centered approach, environmental legal rules have made themselves felt both in the national and international arena in line with the principle of protecting existing natural resources and improving the polluted ones and has taken place in our country with constitutional and legal regulations. Our national legislation is important to eliminate the rights and existing gaps that are not adequately protected at the international level, as a means of effectively protecting the environment and living in a healthy environment.

When both national and international legislation is examined, it is obvious that both individuals, the state, international organizations, civil society, and multinational structures have to prevent the violation of this right. In this context, in line with the importance of the use of open green areas, regulations that will ensure the active use of these areas by the citizens are inevitable.

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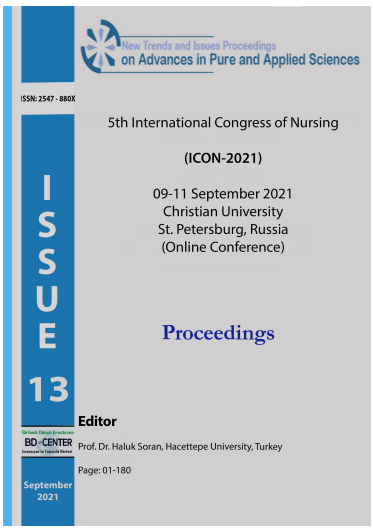
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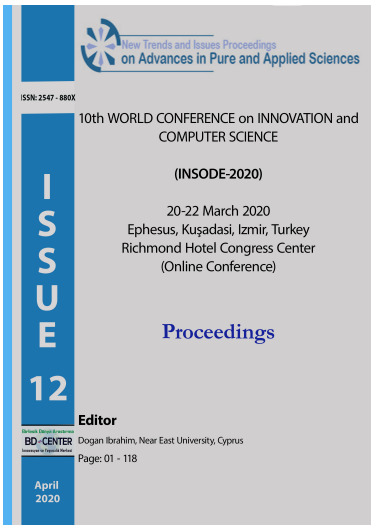
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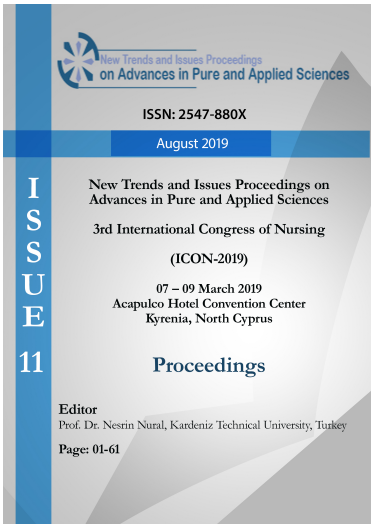
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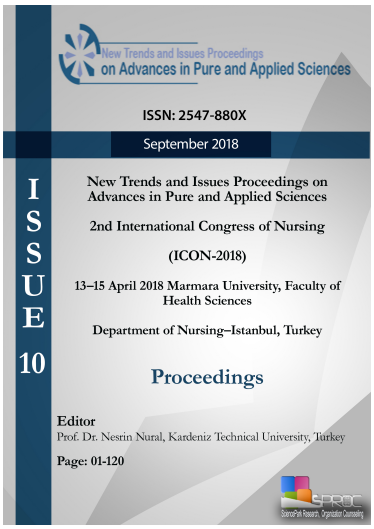
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