

## **RIGHT TO (SUN) LIGHT**

"The Sun", which used since ancient times of Egypt and Mesopotamia, nowadays comes into prominence as a clean, environmentally-friendly and unlimited alternative source of energy in "electricity generation" in order to decrease the use of fossil fuels and external dependency for energy resources. As one of the sunniest countries in Europe, Turkey also experiences a rising trend towards solar energy. As a matter of fact, the record level of applications for solar energy licenses between 10 and 14 June, coming to an aggregate of 8900 MW (where the allocation capacity was limited to 600 MW by the EMRA) is the herald of the growing "solar market" and increasing number of "solar investors". Investors act on the hope and the idea that in the long term the system will start to bring profit. They prefer roof mounted or field installation type solar energy facilities, and estimate an electricity generation level proportionate to measurements they take, and base their plans on these estimations. However, while the investors are making their calculations and installing the solar panels, they take the contemporary conditions as a base for their plans and calculations. Therefore, they naturally fail to account for the potential risks of "shadowing" or "prevention of solar access" in the future.

Well then, what if your neighbour decides to erect a high-rise next to your property, and this tall building cut off the sun of the solar energy facility in which you invested so much money, and you end up unable to generate solar energy at the original efficiency? If not today, I believe this issue will become an important subject of controversy and will bring need for "regulation" in very close future. In other words, I am heavily stressing on the need to regulate the conditions of "Solar Access" or "Right to Sunlight".

Right to light can be defined as the right to access sunlight (solar radiation) without any obstruction from adjacent objects. In other words, this right means newly erected buildings, facilities, planted trees should "not create barrier for solar access or overshadow the existing solar energy facilities. The risk of "obstruction of solar access" or "overshadowing" is especially more important for the rooftop installations in urban areas where space is limited and housing density is high. This right is recognised in USA and UK and brought into question with reference to 1832 Prescription Act in UK, and it is interpreted in scope of property law and is a subject of judicial orders in the USA.

Turkish legislations do not include any legal regulations regarding "solar access rights" or "right to sunlight" as yet. Doubtlessly, the principal reason for this lack is the fact that this matter has not come into question nor constitutes a necessity as yet. However, this does not mean that the issue will not have to be tackled in the future. The "risk of overshadowing" which directly affects the efficiency of investments and thus the investors as well as the "right to sunlight" must be expressly defined as a right under the Electricity Market Law, the conditions of enjoying this right should be stipulated in detail, and the sanctions to apply in case of obstruction of this right should be carefully covered. Again, necessary changes regarding this matter should also be made in the Building Code. Legal arrangements should be made to prohibit erection of buildings, etc. which will result in overshadowing in areas where solar energy facilities are situated, and if such new buildings, plantings, systems, etc. are permitted, it should be required to ensure that such new buildings, plantings, systems, etc. do not impair or obstruct the solar access of the adjacent facilities. In this scope, as an example, systems intended for measurement of overshadowing may be developed, the ratio of permitted overshadowing may be determined or overshadowing may be limited to a certain percentage. In addition, the owner of the existing solar energy facility may be granted the right to demand changes on the plan of the new building, or an obligation to minimise overshadowing may be imposed on owners of new buildings. In case the new building is already built and overshadowing is present, even at a lower rate, then indemnification of losses arising from overshadowing may be contemplated. Thus, "right to sunlight" can be secured by these and other similar sanction mechanisms. It would also be beneficial to make similar legal arrangements for "wind energy" in order to prevent building erections which "obstruct wind access" and which has or may have an adverse effect on investment, or at the very least to ensure indemnification of any damage or loss arising from such obstruction.

As the article calls for an eloquent finish, let us simply say, as did Diogenes, "Stand out of my light!"

