

**ADMINISTRATIVE JUSTICE IN EUROPE**

**Questionnaire on the inventory and typology of review by the courts of administrative authorities in the 25 Member States of the European Union.**

*The aim of this questionnaire is to know as precisely as possible which are the modes, bodies, and ways of controlling administrative acts and action in the 25 Member States of the European Union.*

*In view of the diversity of the legal systems of these Member States, these questions try to encompass the various situations, but also to obtain detailed answers to particular cases.*

*For certain questions, additional explanations are provided in italics below it. These explanations incorporate elements from Recommendation R (2004) 20 of the Committee of Ministers of the Council of Europe (see in annex).*

*When it is possible, answers to these questions should systematically stress the difference between the highest appeal courts /supreme courts and lower courts or tribunals.*

**Preliminary Questions**

1. Could you give the main dates in the evolution of the review of decisions and acts of Administrative authorities? [20 lines max.]

<b>10 May 1868</b>	<b>: Establishment of the Council of State</b>
<b>23 December 1876</b>	<b>: Establishment of the Constitution and its effect (First and the only Constitution of Ottoman Empire)</b>
<b>4 November 1922</b>	<b>: Termination of its activities as the duties and authorities were vested to the Grand National Assembly of Turkey</b>
<b>20 January 1921</b>	<b>:Principal Law of Organisation (The first Constitution of emerging Turkish State)</b>
<b>20 April 1924</b>	<b>: Principal Law of Organisation</b>
<b>7 December 1925</b>	<b>: Effect of the Law no: 669 on the Council of State</b>
<b>30 December 1938</b>	<b>: Effect of the Law no: 3546 on the Council of State</b>
<b>20 July 1961</b>	<b>: Establishment of the Constitution of the Republic of Turkey</b>
<b>31 December 1964</b>	<b>: Effect of the Law no: 521 on the Council of State</b>
<b>9 November 1982</b>	<b>: Establishment of the Constitution of the Republic of Turkey</b>
<b>20 January 1982</b>	<b>: Effect of the Law no: 2575 on the Council of State</b>
<b>20 July 2016</b>	<b>: Enactment of the appeal method before Regional Administrative Courts</b>

2. Does the review by the courts of administrative acts and actions aim to submit administrative authorities to law and protect individual rights, in other words to the rule of law? Alternatively, is it only a review of the good functioning of the administration? [one page max.]

**The Constitution in Article 2 describes the Turkish Republic as a state of law that is a state obedient to the rule of law. The basis of the review by the courts of administrative acts and actions are stated in Article 125 of the Constitution. Recourse to judicial review is available against all actions and acts of administration and the administration is liable to compensate for damages resulting from its actions and acts.**

However, same article draws the limits of judicial review: **Judicial power is limited to the verification of the conformity of the actions and acts of the administration with law. No judicial ruling shall be passed which restricts the exercise of the executive function in accordance with the forms and principles prescribed by law, which has the quality of an administrative action and act, or which removes discretionary powers.**

According to the Council of State, all actions and functions of the administration must be in conformity with law and the constitution. In a state bound by the principle of the rule of law, the law absolutely prevails over all institutions of the State. An action for annulment is the principal remedy against illegal administrative acts, regulations by-laws and best option to force the administration to obey the rule of law. Although it is not an *actio popularis*, even the breach of a personal interest not a right, is sufficient to bring such a suit with the court. On the other hand, in order to commence a full remedy action (a compensation case) the plaintiff should have a standing to sue, which now means the existence of concrete, personal, actual and direct damage arising from the act and action of the Administration, the Council of State still considers these cases as a tool for implementing rule of law and thus differs them from individual compensation cases dealt by the ordinary judiciary.

According to the Council of State it is illegal to establish any administrative act even if by authority deduced from the law, if it is to restraint any right or freedom to the extent of making it impossible to be exercised.

3. What is the definition of an administrative authority in your country? Does this definition include all public legal entities and private legal entities exercising public authority? [10 lines max.]

The term “administrative authority” includes the public institutions and organizations authorized to perform administrative transactions and person or persons authorized to make decisions on behalf of the administration, and also private legal entities in cases authorized by legislation.

4. Is there a classification of administrative acts in your country? [5 lines max.]

*The usual classification identifies individual acts and general normative acts. It separates unilateral acts and contracts awarded by administrative authorities.*

Administrative acts are classified by the case-law of the Council of State. Unilateral acts are composed of individual acts which make changes in the legal status of one individual or general normative acts, regulations, by-laws, general orders etc. which affect the status of several persons. An administrative contract is the only bilateral act of the administration, but the administrative authority is still in a dominating position.

## **I – WHO REVIEWS ADMINISTRATIVE ACTS?**

*The expression “administrative acts” may be understood in accordance with Recommendation R (2004) 20 of the Committee of Ministers to Member States on judicial review of administrative acts, that is to say : « legal acts – both individual and normative – and physical acts of the administration taken in the exercise of public authority which may affect the rights or interests of natural or legal persons ; situations of refusal to act or an omission to do so in cases where the administrative authority is under an obligation to implement a procedure following a request ». It is also possible to refer to Resolution R (77) 31 on the protection of the individual in relation to the acts of administrative authorities.*

## A – COMPETENT BODIES

5. Is the review of administrative acts undertaken by general bodies related to the administrative authorities, and similar to courts? [In the affirmative, please refer to questions 22 and 62] [5 lines max.]

**The administration's control is ensured by independent administrative courts. Internal review by the administrative authorities is limited and ad hoc, but then these agencies' decisions themselves are subject to judicial control.**

6. Could you describe the organization of the court system in your country, indicating which courts or tribunals are competent to hear disputes concerning acts of the administration? If possible, try to respect the pattern hereafter. [15-20 lines max. + chart]

*If all the courts are competent to review administrative acts, specify whether such review is reserved to specialized courts or tribunals for administrative disputes. If this review assumed by several kinds of courts, present a basic chart of tribunals in charge of this control.*

*If judicial review of administrative acts and action is assumed by all courts, specify if it is reserved to highest courts or if it can be exerted by lower courts? In each situation, is the review assigned to specialized chambers for administrative affairs?*

*If review by the courts of administrative acts and action is assumed by administrative tribunals, describe the jurisdictional organization, indicating if this control is the exclusive competence of general administrative tribunals or whether it is assigned in part to specialized administrative tribunals competent to hear specific types of dispute (concerning, for example, pensions, taxes, immigration and nationality matters, employment).*

*If there is a constitutional court in your country, specify whether it is competent to review administrative acts and actions.*

**In the Turkish system all administrative cases governed by administrative law fall within the competence of the administrative courts, except a very limited number of cases referred by law to the ordinary courts.**

### ADMINISTRATIVE JUDICIARY

<b>Council of State</b>	
<b>Regional Administrative Courts</b>	
<b>Administrative Courts</b>	<b>Tax Courts</b>

**Administrative courts are the courts of first instance with general jurisdiction except those to be settled in the Council of State in the first instance and the cases that fall under the duties of the tax courts. The regional administrative courts are in charge of examining and concluding the requests for appeal, resolving disputes regarding duties and jurisdiction between the administrative and tax courts within their jurisdictions and performing other duties assigned by laws.**

**The Council of State is the highest administrative court. It examines and concludes the decisions taken by administrative courts and tax courts and the requests of appeal brought against the decisions related to the actions heard in the Council of State as the court of first instance. The duty of the Council of State as the authority of appeal is limited to inspecting the contradictions to the law arising in the form of non-**

**application or misapplication of a rule of law. It concludes the administrative cases written in the Act no.2575, as the court of first and last instance. It presents its opinion about the concession agreement and contracts related to the public services and fulfills other duties assigned by laws.**

## **B – RULES GOVERNING COMPETENT BODIES**

7. If the review of administrative acts and action lies within the competence of the ordinary courts, is that competence delimited by texts (such as a Constitution, or parliamentary legislation) or by case-law? [10 lines max.]

**As a general principle, all administrative cases governed by administrative law fall within the competence of the administrative courts, except a very limited number of cases referred by law to the ordinary courts.**

8. If the review of administrative acts is carried out by administrative courts or tribunals, are the existence, competence and duties of those courts or tribunals governed by specific rules? Are such rules set out in texts or in the case-law? [10 lines max.]

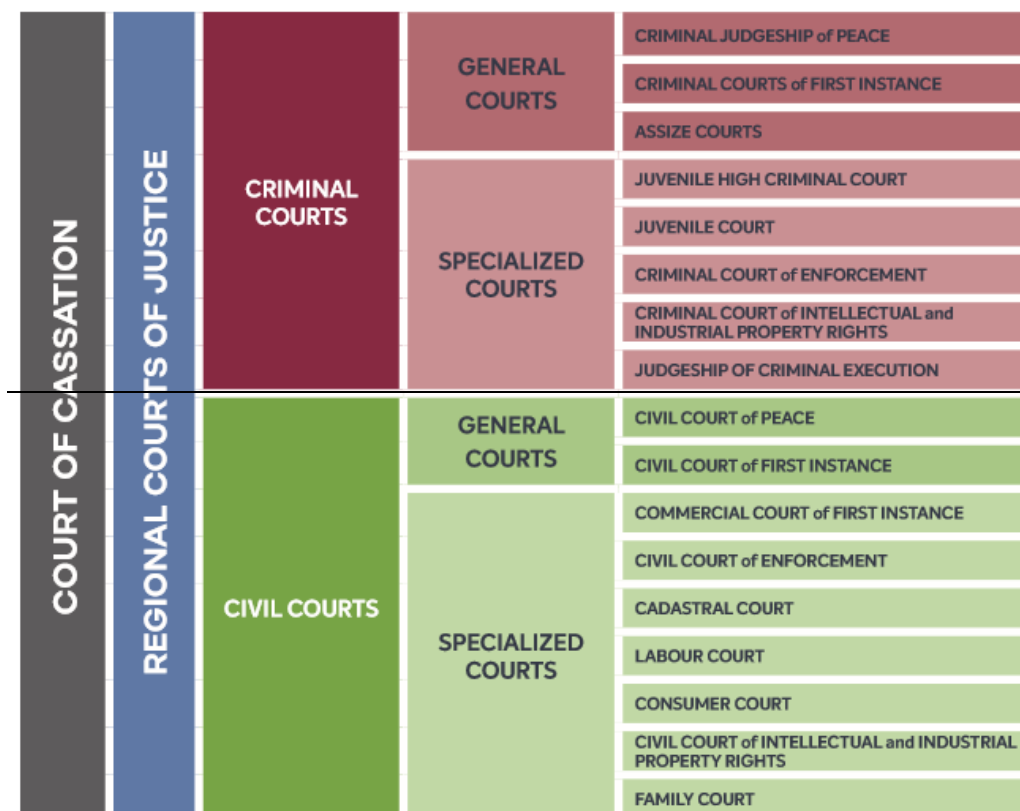
**In 1982 three laws (The Council of State Act- Dated 6 Jan.1982, Law No: 2575; Act On The Establishment And Duties Of Regional Administrative Courts, Administrative Courts And Tax Courts Dated 6 Jan.1982, Law No: 2576; Procedure of Administrative Justice Act- Dated 6 Jan. 1982, Law No: 2577) established the administrative courts in Turkey.**

**The powers and duties of the administrative courts are specified by the Procedure of Administrative Justice Act.**

## **C – INTERNAL ORGANIZATION AND COMPOSITION OF COMPETENT BODIES**

9. If judicial review is assumed by ordinary courts, describe their internal organization and specify if they comprise specialized chambers, and how these are composed. [10-15 lines]

## CIVIL AND CRIMINAL COURTS



10. If judicial review is assumed by administrative courts, present their internal organization. Distinguish between the highest and the lower courts. Could you provide a chart or a diagram? [15 lines max. + chart and diagram]

**Administrative and tax courts shall consist of one president and an adequate number of members. Panel of court shall be composed of the president and two members. However, cases the monetary value of which is below the certain threshold set out by law are ruled by a single judge.**

**Each regional administrative court shall have at least two chambers: the administrative chamber and the tax chamber. Where necessary, the number of the chambers can be increased or decreased by the Council of Judges and Prosecutors upon the proposal of the Ministry of Justice. The chambers shall consist of a single president and an adequate number of members**

**Currently, in the Council of State, there are 12 chambers, including 1 administrative chamber and 11 litigation chambers. In each chamber, there is one president and a sufficient number of members and rapporteur judges. The panel of each chamber shall be composed of the president and four members and decides by absolute majority.**

## ADMINISTRATIVE JUSTICE

### ADMINISTRATIVE COURTS



#### D – JUDGES

11. Do the judges who review administrative acts belong to a specific category? Specify whether different categories of judges exist according to the various kinds of control of administrative authorities. [10 lines max.]

**The members of the administrative courts have the same status reserved for the members of the judicial order. The judge reporters and public prosecutors of the Council of State shall be appointed by the Supreme Council of Judges and Public Prosecutors among administrative justice judges who have served for five years and have a positive employment record. All of them are appointed, supervised and promoted by the Council of Judges and Public Prosecutors like members of ordinary courts.**

**The members of Council of State are elected by the Council of Judges and Public Prosecutors from judges and public prosecutors who serve in administrative justice and by the President of the Republic from other positions. Council of State members are elected for twelve years and it is not possible to be elected twice as a member of the Council of State. The President, Chief Public Prosecutor, Vice-Presidents of the Council of the State and the Presidents and Members of the Chambers, as members of a high judicial organ, shall serve with security of tenure provided by the Constitution of Turkish Republic and the law.**

12. How are judges in charge of judicial review of administrative authorities recruited? [10 lines max.]

*Specify if this recruitment is made by regular or exceptional competitive examination, or by vocational selection? Distinguish, if need be, between courts.*

**Candidates, graduated from law faculties or faculties of political science, administrative sciences, economics and finance (including sufficient legal knowledge in curriculums), who succeed in competitive written and oral examinations held by the Ministry of Justice must then go through a period of training at the Justice Academy and at the courts. Candidates with PhD degree take only oral exam. After the training period and a final exam, the Council of Judges and Public Prosecutors decide on their acceptance to the profession. Members of the Council of State are elected by the Council of Judges and Public Prosecutors amongst senior administrative judges and by the President of Republic amongst high level civil servants.**

13. What is the professional training of judges in general? [5 lines]

**Pre-service training of candidate judges and prosecutors is performed by the Justice Academy of Turkey, an institution with scientific, administrative and financial autonomy. On the other hand, Council of Judges and Public Prosecutors has been performing the task to provide in-service training of judges and prosecutors, mainly in cooperation with the the Justice Academy of Turkey.**

14. How is their career structure organized? [5 lines]

*Briefly describe the modes of promotion for length of service or merit.*

**The rules for promotion of judges are based not only exclusively on seniority but also on the consequences of assessments performed about them. Assessment procedure evaluates professional skills such as accuracy in the judgments, compliance with ECtHR decisions and rapidity in finalizing a case. It is closely related to the rules of promotion. Appraisal files of judicial inspectors are also taken into account for promotion. Final promotion is determined by the Council of Judges and Public Prosecutors. No assessment procedure is available for members of the Council of State.**

15. How is their professional mobility organized? [5 lines]

*Do judges move from court to court? Is it possible for a member of the judiciary to take up a position in the public administration?*

**Pursuant to Act on Judges and Prosecutors (No.2802), judges and prosecutors shall be appointed to the equal or higher posts with their acquired rights, salaries and degrees by change of location pursuant to the By-law on Appointment and Transfer issued by the Council of Judges and Prosecutors. The places where ordinary and administrative judiciary organizations exist are classified as regions according to their geographic, economic conditions and social, health and cultural opportunities and deficiencies, transportation and other facilities. The term of office in each region shall be determined accordingly.**

## **E – ROLE OF COMPETENT BODIES**

16. What are the different kinds of recourse against administrative acts and action in your country? [20 lines]

*Specify if the judge can overrule the act, modify it, cancel a contract awarded by an administrative authority and a private person. Indicate if he can also award damages to a claimant who has suffered harm as a consequence of an act of the administration (a fault committed by the body).*

*You may wish to use the following classifications.*

*This classification is usually based on the distinction between review of the lawfulness of an act (“contrôle de légalité”) and full review.*

*The review of lawfulness means the Court may annul an administrative act or simply declare what the law is, or the rights of the respective parties (this aims to determine the nature, validity and scope of an act). We can distinguish the review of the lawfulness of unilateral acts and the review of the legality of contractual acts.*

*Full review entails the power not only to annul the act, but also to award damages for harmful administrative acts or actions, and the reworking of an administrative decision. It is now possible to add the power to order the administrative authorities to do or not to do something).*

*On the question of damages, that is to say public authority liability, it is possible to distinguish between extra-contractual liability and contractual liability.*

Pursuant to Procedure of Administrative Justice Act, there are three types of administrative actions: Actions for annulment are filed by those whose interests have been violated by the administrative procedures to repeal such procedures based on their illegality due to one of its aspects such as competence, form, reason, subject and purpose. Full remedy actions are filed by those whose personal rights have been directly violated due to the administrative actions and procedures. The concerned persons can directly file a full remedy action to the Council of State, administrative and tax courts due to an administrative procedure that violates their rights or file the actions of annulment and the full remedy actions together. They can also file the action of annulment first, and, upon the resolution of the action for annulment, bring the full remedy action as of the notification of the decision on this matter or from the notification of the decision to be taken if an action against this decision is filed. A full remedy action can also be filed due to damages arising from the performance of a procedure, within the time limit for the action starting from the date of performance. The third type of administrative actions are the actions regarding disputes arising between the parties due to any kind of administrative contracts made for the performance of a public service except for disputes arising from the concession agreements and contracts for which arbitration is stipulated.

The administrative jurisdiction is limited to the supervision of the compliance of the administrative actions and procedures with the law. The administrative courts cannot review the expediency of an action. No ruling can be made that has the characteristic of an administrative action and procedure, which restricts the performance of the executive function in accordance with the forms and principles prescribed by the laws and the decree laws of the Presidency of the Republic, or in a manner that will remove discretionary powers

17. Do mechanisms exist for the delivery of a preliminary ruling? (apart from the procedure under Article 234 of the Treaty establishing the European Community) [5-10 lines]

*In such a mechanism, many bodies (ordinary jurisdiction, financial jurisdiction, constitutional court or non-judicial body) determine the nature, validity and scope of an act.*

If a court hearing a case finds that the law or the presidential decree to be applied is unconstitutional, or if convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it shall postpone the consideration of the case until the Constitutional Court decides on the issue. If the trial court is not convinced of the seriousness of the claim of unconstitutionality, such a claim, together with the court judgment, shall be decided upon by the competent authority of appeal. The Constitutional Court shall decide on the matter and declare its judgment within five months of receiving the contention. If no decision is reached within this period, the trial court shall conclude the case under legal provisions in force. However, if the trial court receives the decision of the Constitutional Court until the judgment on the merits of the case is final, the trial court is obliged to comply with it. No claim of unconstitutionality shall be made with regard to the same legal provision until ten years elapse after publication in the Official Gazette of the decision of the Constitutional Court dismissing the application on its merits.

18. Does a competent body have only judicial functions or does it also have an advisory role vis-à-vis the executive or the legislature? In the affirmative, specify the various aspects of

these consultative functions, and if they are exclusive to the body or the highest jurisdiction. [5-10 lines]

**The Council of State is the consultation and examination authority of the Supreme Administrative Court assigned by the Constitution of the Republic of Turkey. It is entrusted to give its opinion on the conditions and the contracts concerning public services under which concessions are granted.**

19. Where the body plays both a judicial and an advisory role, how are its respective duties organised? [10-15 lines]

*Specify if a body can successively deal with a case in both its consultative and judicial capacity. In this case, is it a normal practice, and do mechanisms exist to make sure members of this body cannot serve in both a judicial and an advisory capacity at the same time?*

*Specify if the question of the compatibility of such double functions (consultative and judicial) with the right to a fair hearing has ever been raised before a national court or before the European Court of Human Rights.*

**Administrative duties and disputes relating to administrative matters are examined by the First Section and the Board of Administrative Affairs. First Section of Council of State does not have any judicial power besides its administrative and advisory function. Judges who are assigned to work at the administrative decision-making organs of the Council do not deal with cases which may arise as a result of decisions taken by them in their consultative or administrative capacity.**

## **F – ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN COMPETENT BODIES**

20. Do the highest appeal courts have an instrument or a procedure to ensure the harmonised and uniform application and interpretation of law ? [10 lines]

*Specify whether it is possible for the highest appeal courts to resolve divergences in the case-law as between the various lower courts. Indicate the appropriate proceedings. Are there any proceedings analogous to the French “avis contentieux” ? (a reference to the Conseil d’Etat may, in certain circumstances, be made by an administrative tribunal (first instance) or an administrative court of appeal) for an opinion.*

**If a difference or conflict arises between the decisions of law Divisions or the Plenary Sessions of the Administrative and Tax Law Divisions, either given by the same organ or by the different ones, or when it is deemed necessary to modify a previous decision on the unification of conflicting judgments, upon the reference of the issue by the President of the Council of State, receiving the opinion of the Chief Public Prosecutor, the Assembly on the Unification of Conflicting Judgments shall examine the matter and decide on the unification of the conflicting judgments or modification of its previous decision if it deems it necessary. The unification of the conflicting judgments or the modification of the previous unification decision may be requested by the President of the Council of State, relevant Divisions, Plenary Sessions of the Administrative and Tax Law Divisions or the Chief Public Prosecutor. Those who are affected by the conflicting decisions may apply to the Council of State with the request of unification. The Divisions and organs of the Council of State, administrative courts and the administration must comply with these decisions.**

## **II – HOW ARE ADMINISTRATIVE ACTS AND ACTIONS REVIEWED BY THE COURTS?**

### **A. ACCESS TO JUSTICE**

21. How significant are the pre-conditions for access to the courts in your system of control of administrative authorities? [This question supplements questions 5 and 61] [10-15 lines]

*Specify if the obtaining of a prior administrative act or/and the introduction of a prior recourse to administrative authorities constitute preconditions for review by the courts. Indicate if these preconditions are required in every kind of litigation or only in certain types of dispute.*

*This possibility is provided for by the Recommendation R (2004) 20, which indicates that natural and legal persons may be required to exhaust remedies provided by national law before having recourse to judicial review. The length of the procedure for seeking such remedies should not be excessive (art. B. 2. b).*

**Procedure of Administrative Justice Act states that, before bringing an action, the person concerned may request the abolishment, withdrawal, alteration of the administrative act or implementation of a new act from the superior authority, if there is no superior authority, from the authority that implements the act. This application shall suspend the time limit that has started to run. If no response is given within sixty days, the request shall be deemed to be dismissed. When the application is dismissed or deemed to be dismissed, the time limit shall rerun and the period passed until the application date shall be taken into account. This provision has general application and is not compulsory. On the other hand, the persons whose rights have been violated by an administrative action must apply to the relevant administrative authority for the rectification of the situation within one year from the notification or the date they learn the action by another way and in any case within five years from the action, before bringing an action, according to article 13 of the said law.**

22. Who may bring a case before the court? (natural persons, legal entities such as associations, companies, etc., local authorities or other administrative bodies or authorities). [10 lines]

*State whether it is possible in your country for there to be proceedings for judicial review in which both the applicant and the defendant are “collectivités infra-étatiques”.*

**According to Procedure of Administrative Justice Act, the plaintiff, as well as being a real person, can also be a legal entity or a public body. However, as a rule, the plaintiffs' interests must have been violated or their personal rights have been damaged by the administrative procedure. The administrative units within the hierarchical authority cannot bring lawsuits against one another or against the superior authorities as plaintiffs. Nonetheless, the local administrations, in particular, may bring administrative actions against the superior authority, under certain conditions.**

23. For every situation, specify the conditions that must be satisfied in order for an application for judicial review to be admissible? [10-15 lines]

*Do persons or bodies that want to challenge an administrative act or operation have to demonstrate an interest in the annulment of this act, that they have a particular interest in this annulment? Do they have to prove that one of their rights has been infringed?*

*It is possible to refer to the Recommendation R (2004) 20, article B, 2°): « Judicial review should be available at least to natural and legal persons in respect of administrative acts that directly affect their rights or interests. Member states are encouraged to examine whether access to judicial review should not also be available to associations or other persons and bodies empowered to protect collective or community interests ».*

**Plaintiffs have to demonstrate an interest in the annulment of the contested act. The interest violated, as well as being a common interest, can also be a right protected by the law. The concept of a violation of interest is broadly interpreted in cases related to issues the public interest, such as the protection of the environment, historical and cultural values.**

**Access to judicial review is available to associations as well as other bodies empowered to protect collective or community interests.**

24. Is recourse to the courts subject to time-limits? [10 lines]

*Specify whether it is obligatory for claimants to be informed of these time-limits, and whether the court may grant an extension of the time-limits. Specify the various rules and technical points regarding time-limits for bringing proceedings: general time-limits (explicit, implicit), specific time-limits (according to the nature of the proceedings, or to the distances involved) and the method for calculating time-limits.*

*The period of time allowed for the initiation of judicial review proceedings must be reasonable (Recommendation R (2004) 20, art. B. 2. c). Try to specify how this period of time is calculated: from the date of the administrative act, the date of its notification...?*

**According to Procedure of Administrative Justice Act, the time limits for filing an action is sixty days in the Council of State and at the administrative courts and thirty days at the tax courts, unless otherwise specified by the special laws. These time limits run on the date of written notification and from the date following the promulgation date of statutory instruments whose promulgation is required. If the last day of the time limit coincides with a holiday, the last day of the time limit extends to the end of the working day following the holiday. In addition, if the last day of the time limit coincides with the judicial holiday, then these periods will be deemed to be extended for seven days starting from the date following the last day of the holiday. Under the case-law of the Council of State time limit runs from the date of acknowledgement when there is no formal notification.**

25. Are there certain administrative acts or actions that are not open to review by the courts? [10 lines]

*Specify whether certain acts or actions are not open to review by the courts because they are regarded as too unimportant, or, on the contrary, because they are regarded as being too "sensitive" [links with high administration or politics].*

**Pursuant to the article 125 of the Constitution, recourse to judicial review shall be available against all actions and acts of administration. However, there are some exceptions: In concession, conditions and contracts concerning public services and national or international arbitration may be suggested to settle the disputes arising from them. Only those disputes involving an element of foreignness may be submitted to international arbitration. Recourse to judicial review shall be available against all decisions taken by the Supreme Military Council regarding expulsion from the armed forces except acts regarding promotion and retiring due to lack of tenure. The decisions of the Council of Judges and Prosecutors, other than dismissal from the profession, shall not be subject to judicial review. The decisions of sport federations relating to administration and discipline of sportive activities may be challenged only through compulsory arbitration. The decisions of Board of Arbitration are final and shall not be appealed to any judicial authority. No appeal shall be made to any authority against the decisions of the Supreme Board of Election.**

26. Are applications for review by the courts subject to screening procedures ? Distinguish between first instance, appeal, and highest jurisdiction. [10-15 lines]

*If the answer is in the affirmative, specify the nature of that procedure (whether it is an admission procedure or an accelerated processing procedure), the steps in that procedure (in particular, whether or not a hearing is involved), the form of that procedure (in particular, whether it is in the hands of a single judge or whether several judges are involved), whether it is necessary to state the full grounds for the application or merely a brief statement of the reasons, the average length of time within which the application must either be refused or allowed to proceed, and whether the question of the compatibility of that procedure with European and international conventions has been examined by the national courts or by the European Court of Human Rights.*

**Petitions shall be examined by one investigating judge to be assigned by the president of chamber in the Council of State, and the president of the court or a member to be assigned by the president of the court at the administrative and tax courts. The petitions are examined to see if they comply with the rules stated in the Procedure of Administrative Justice Act. The examination shall be finalised within no later than fifteen days from the date of receipt of the petition. If the petitions are found to be unsuitable to the conditions stated in the said Act, they shall be rejected by the judge or committee of judges that has the power for adjudication. An extra period of 30 days is given for renewal of these petitions. A hearing is not involved at this stage. A brief statement of the reasons will be sufficient. An appellate or appeal request, as the case may be, can be made against a decision taken by the Council of State or the courts, upon the initial examination, except for those written in the Act.**

27. How must the application be presented? Are there specific forms or is the applicant free to choose the format ? [5-10 lines]

**The suits are filed with signed petitions addressed to the presidency of the Council of State, administrative or tax courts. In the petitions, names, surnames and addresses of the parties and their counsels (if they have any), subject and reasons of the case, written notification date of the administrative act, disputed amount in full remedy actions and tax cases, are indicated.**

28. Has the possibility of bringing proceedings via the Internet been envisaged in your country or is it already possible? Are there reflections or plans for the introduction of tele-procedures or e-procedures (e-registry office) ? [5-10 lines]

**UYAP is an e-justice system as a part of the e-government, which has been developed in order to ensure fast, reliable, soundly operated and accurate judicial system including all courts and judicial institutions in Turkey. Citizens can reach and examine their case information via Internet and learn the day fixed for the trial without going courts. By using their electronic or mobile sign they can examine their files through internet. SMS messages can also be sent to people who need to be warned when to attend court. In addition, lawyers can pay their case fee from their office and/or on Network in Bars rooms through internet banking and UYAP. They can litigate an online claim or dispute to courts and review their cases by electronics means. They can also submit their petition online via UYAP.**

29. Is there a pecuniary charge for lodging an application for judicial review (in the form of stamp duty, tax or registry fees)? [5 lines]

**When administrative suits are filed, postage and fees are charged. Amounts of these charges are stated in the law.**

29. Is recourse to a solicitor / lawyer or counsel compulsory? [5-10 lines]

*Specify whether the assistance of a solicitor/lawyer or a barrister/advocate is compulsory or facultative? Is there any difference between the position in practice and the legal position, strictly speaking? Is the situation different according to the seniority of the court (highest court or lower ones)?*

**In administrative suits, it is not compulsory to ask for an advice of a lawyer or a counsel. On this issue, there are no discrepancies between the lower level courts and the Council of State.**

31. As regards the costs of the proceedings, can they be paid through legal aid? [10 lines]

*Specify conditions for access to legal aid, in particular, whether access depends on the applicant's financial resources. Is this aid granted by the court or by an independent body? Can a refusal to grant legal aid be challenged before the courts?*

**It is stated in the Procedure of Administrative Justice Act that as far as the legal aid is concerned, the provisions of the Civil Procedure Act shall apply.**

**Persons who have no ability to partially or totally afford necessary litigation or enforcement costs without putting livelihood of himself or his family in a significantly difficult position, may apply for legal aid in his claims and pleas on the condition that his claims explicitly have no legal ground. Public benefit associations and foundations also may apply for legal aid under some conditions. Legal aid application can be made to bar associations or courts in every stage of the proceedings. If the request for legal aid is rejected by Bar Association, the requestor may apply to the president of the bar association. The decision will be final. Against the court's decision of rejection on legal aid application, it is possible to appeal the decision to the relevant court. The decision is final after the appeal examination.**

32. Is there a fine for abusive or unjustified applications? [5 lines]

**There are no penalties foreseen for abusive or unjustified applications.**

## **B. MAIN TRIAL**

33. Which fundamental principles govern the main trial hearing? The right to *inter partes* proceedings, the rights of the defence/the right to a fair hearing, the balance of written and oral elements in the proceedings. Do these principles derive from national law (legislation or/and case-law) or European law (Convention for the Protection of Human Rights and Fundamental Freedoms for example) or both? [15 lines max.]

*The Recommendation of 2004 indicates that the proceedings should be adversarial in nature, public other than in exceptional circumstances, that the judgment should be pronounced in public, and give the grounds on which it is based. The equality of arms between the parties of the proceedings should be also respected.*

**A hearing shall be held upon the request of either party in actions for annulment and full remedy actions (exceeding a certain limit of money stated in the Act), which are filed in the Council of State, administrative and tax courts. A hearing can be held in the appellates and appeals, depending on the request of the parties and based on the decision of the Council of State or the relevant regional administrative court. The Council of State, the court and the judge can decide to hold a hearing on their own motion regardless of the above-mentioned conditions. Procedure of Administrative Justice Act states that hearings are open to the public; in cases where public morality or public security requires, all or part of the hearings are held in closed sessions, by the decision of the court. Each of the parties is given two chances to present their oral arguments. The presence of the Public Prosecutor in the hearings held at the Council of State is compulsory. After the prosecutor disclose his/her written opinion, the last words of the parties are asked. The decision is rendered within fifteen days from the hearing. The right to *inter partes* proceedings, the rights of defense, the balance of written and oral elements in the proceedings is respected.**

34. How is the judicial impartiality ensured in your country? [10-15 lines]

*Many recommendations of the Council of Europe exist on this subject, in addition to the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the Court of Human Rights (for example Recommendation R (94) 12. The principle is that judicial review should be exercised by a court established by law, the independence and impartiality of which are guaranteed (Recommendation R (2004) 20). Specify causes, reasons, conditions and procedures to prevent a judge from hearing a case where his impartiality is contested.*

**The impartiality of judges is guaranteed by the Constitution. The constitution states that, everyone has the right of litigation either as plaintiff or defendant, the right to a “fair trial” before the courts through lawful means and procedures, no one may be tried by any judicial authority other than the legally designated court, judges are independent in the discharge of their duties, no organ, authority or individual may give orders or instructions or make recommendations or suggestions to judges relating to the exercise of judicial power and the administration is obliged to comply with court decisions.**

**In the Civil Procedure Act on the other hand, the conditions for which a judge cannot try a suit, are clearly stated. Also in the Procedure of Administrative Justice Act, it is stated that if the parties have any suspicions on the impartiality of the judges, they have the right to challenge the judge. Main reasons which prevent judges from hearing a case are cases directly or indirectly related to them or their relatives, cases in which they advised one of the parties or declared their opinion if not legally required, where they have hostility against one of the parties, etc...**

35. After the application has been lodged, can the applicant rely on legal arguments raised for the first time in the course of the proceedings? [5 lines]

*Distinguish, if need be, between the levels of jurisdictions (first instance, appeal, highest jurisdiction).*

**After the suit is filed, plaintiffs cannot expand the demands. Parties cannot claim any right depending on the defense plea submitted after the “time limit”. However courts carry out all examinations about the cases before them, of their own motion.**

36. Which other persons can intervene during the main hearing ? [5 lines]

**Third party intervention is possible by those who consider that their interests or rights might be affected by the outcome of the case.**

37. Is there a representative of the State (“ministère public”) who may submit pleadings in cases concerning administrative law ? [10 lines]

**There is no representative of the state in administrative courts.**

38. Is there, in your legal system, an institution or a person who plays a role analogous to that of role played by the French “commissaire du gouvernement” before the Conseil d’Etat, that is to say, who is completely independent and impartial and who delivers an opinion in open court, analysing the legal arguments and suggesting how the case ought properly to be disposed of in a case? [10 lines]

**In actions that are tried in the Council of State in the capacity of the court of first instance, the written opinion of the public prosecutor on the justification shall be notified to the parties. The parties can submit their opinions in writing within ten days as of the notification. It is mandatory for the prosecutor to be present in the hearings of the cases held in the Council of State. After the parties are heard, public prosecutor shall disclose his/her written opinion. Afterwards, the parties shall be asked for their last words and the hearing shall be ended. In cases including a hearing, if the public prosecutor requests that an inspection, expert examination or evidence assessment is made or the procedure file is brought, and if these requests are not accepted by the competent chamber or board, he/she shall present his/her opinion on the merits separately in writing. Among decisions finally taken by the administrative and tax courts and the regional administrative courts, and those that are finalised without any appellate or appeal examination, the decisions whose nature is in contradiction with the law in force can be appealed against by the Chief Public Prosecutor upon the request of the concerned ministries or of its own motion, for the sake of law.**

39. How can proceedings come to an end before a decision is reached by the Court? [5 lines]

*Specify the reasons why the proceedings could come to an end prematurely, such as the death of the applicant or withdrawal of the application?*

**If a modification occurs in the personality or status of the parties due to death or any other reason, until the person who has the right to pursue the action applies; in case of decease of the plaintiff, until the administration renews its pursuit against the heirs of the deceased, the relevant Court decides to suspend the action. Admission on the part of the defendant and waiver also finalizes the case.**

40. Does the court registry itself forward the various written applications and pleadings to the parties ? [5 lines]

**The courts registry is responsible from notification the petitions and pleas to the parties or demanding documents that might be required by the judges from the parties and other persons.**

41. Who is responsible for providing the evidence ? The parties or the court? [5-10 lines]

**The courts shall carry out all examinations of their own motion. The parties themselves may also present evidences. The courts may ask the parties or any other persons and authorities to send documents and to present all kind of information.**

42. How is the hearing conducted? Is it public ? Can it take place *in camera* and in which circumstances ? Who can take part in the hearing and how (in writing, orally) ?

*The principle of the publicity of judicial proceedings is widely established at the European level ; however, hearings may take place in camera (with no spectators or witnesses) in many cases. Specify the situation in your country.*

**Under the Procedure of Administrative Justice Act hearings are open to public; in cases where public morality or public security requires, all or part of the hearings are held in closed sessions, by the decision of the court. The representatives of the defendant administration and the plaintiffs themselves or their legal representatives can take part in the hearing. Each of the parties is given two chances to present their oral arguments. Written presentation is also possible. The presence of the advocate-general in the hearings held at the Council of State is compulsory.**

43. When and how is judicial deliberation conducted? Who can take part in it ? [10-15 lines]

*Specify which members take part in the deliberation, in particular if a member who delivered an opinion in all independence and in public, can take part, actively or passively. Specify if rules governing deliberation are set by text or precedent, and if they have been recently modified, for example because of the case-law of the European Court of Human Rights.*

**In the Council of State the judge-rapporteurs examine the case files and prepare a report on the facts and relevant law for each case and present their own opinions and comments orally and in writing. Once the matters have been clarified, the problems relating to competence and procedure, if any, and the issues in merits are decided upon, in sequence. The president of the chamber directs the deliberations and determines the subjects that will put on vote. The president and four members cast their votes; decisions shall be taken by majority, dissenting opinions are placed in the judgment.**

**In the regional administrative courts, administrative and tax courts, a president and two members take part in the deliberations. The president of the court/chamber directs the deliberations. The decisions shall be taken by majority, dissenting opinions are placed in the judgment.**

### **C. JUDGEMENT**

44. How are the grounds of the decision given? In details or more briefly? [5-10 lines]

*The Recommendation of 2004 indicates that courts should indicate with sufficient clarity the grounds on which they base their decisions. Although it is not necessary for a tribunal to deal with every point raised in argument, a submission that would, if accepted, be decisive for the outcome of the case requires a specific and express response. Is a detailed statement of reasons required, to enable applicants to understand the meaning and the scope of the decision ? Is such a consideration taken into account?*

**The Constitution and the Procedure of Administrative Justice Act set out general rules regarding the justification of decisions. Article 141 of the Constitution**

states that "all decisions of all courts are written with justification", while the article 24 (e) of the Procedure of Administrative Justice Act provides that judgments shall contain, the legal basis of the judgment, statement of the justification and conclusion. In order to guarantee a fair trial, Constitutional Court precedents set out that the courts must evaluate claims on the merits of a case and evidence in this regard; and show the reasonable grounds of a decision. While the courts are independent and free to make their decisions, it must be accepted that they are obliged to state adequately the grounds on which their decisions are based. The justification of court decisions must be sufficient, clear and understandable to ensure that a cause-and-effect relationship has been established.

45. What are the reference norms [international norms, European norms (Convention for the Protection of Human Rights, Community law), constitution, law, jurisprudence, personal conviction] ? [10 lines]

*Specify which reference norms are the most used, in particular whether the lawfulness of administrative acts is normally evaluated by reference to Community law or the Convention for the Protection of Human Rights.*

**Main reference norms are the Constitution, other legislation and jurisprudence. Furthermore, in accordance with article 90 of the Constitution of the Republic of Turkey, international agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.**

46. Which criteria and methods of review are used by the court? [15-20 lines max.]

*Specify whether the court only carries out a global control on the administrative authorities' appreciation of situations, or if it tries to find, for example, if other decisions, more respectful of citizens' rights, were possible. Specify if he can compare advantages and drawbacks of the decision. Indicate in which context this review can be done. Specify if a specific review is reserved for the acts translating the exercise of discretionary powers by administrative authorities, understood in the sense of the Recommendation R (80) 2 concerning the exercise of discretionary powers by administrative authorities (that is to say the power giving administrative authorities a certain liberty to appreciate which decision to take, and allowing them to choose the most appropriate amongst several legally grounded solutions).*

*Specify if the review by lower courts is different from the review by the highest courts.*

**It is stated in the Article 2 of the Procedure of Administrative Justice Act that the power of administrative justice is limited to verification of the conformity of administrative acts with law; courts cannot review the appropriateness of an act and action. No ruling can be made that has the characteristic of an administrative action and procedure, which restricts the performance of the executive function in accordance with the forms and principles prescribed by the laws and the decree laws of the Presidency of the Republic, or in a manner that will remove discretionary powers. Nevertheless, judicial control over the exercise of discretionary power ensures that, when an administrative authority exercises a discretionary power, it does so within the limits and purposes for which, under the law, it enjoys discretion.**

**Review by lower level courts is not different from the review by the Council, in this respect.**

47. How are legal costs apportioned? [5 lines]

*Specify if the court can exempt a party from paying costs*

**Legal costs shall be borne by the party/parties whose case is dismissed. In case of partial dismissal of a case, legal cost shall be apportioned amongst the parties taking into account of their rightfulness. The parties taking advantages of legal aid shall not be asked to pay costs, initially. Some administrative bodies are exempted, by law, from paying certain type of legal costs. Courts are not empowered to exempt a party from paying costs. Compulsory interveners may be exempted.**

48. Is it more usual for the case to be decided by a single judge or by a number of judges? [5 lines]

*Specify if there is a difference between lower and higher jurisdictions.*

**The Act on the Establishment and Duties of Regional Administrative Courts, Administrative Courts and Tax Courts (Act No: 2576) provides that actions of annulment and full remedy actions the disputed amount of which does not exceed certain limit of money shall be reviewed by a single judge. All disputes brought before the Council of State are dealt with by a committee of judges.**

49. Where the case is heard by several judges, is the expression of individual judicial opinions allowed (dissenting opinions)? [5 lines]

*Specify if there is a difference between lower and higher jurisdictions.*

**Section 24 of the Procedure of Administrative Justice Act states that judgments shall indicate, *inter alia*, whether it is rendered unanimously or by a majority vote and shall contain dissenting opinions, if there are any. There is no difference between lower and higher jurisdictions.**

50. Is the decision delivered in writing, or orally? [5 lines]

*Specify if it is pronounced in public, and notified to the parties, indicating the time-limit for notification.*

**According to the article 25 of the Procedure of Administrative Justice Act, a copy of the judgment, certified by the seal of the court and the signature of the president or the judge, head of the chamber or the board or a member to be assigned in the Council of State shall be sent to the parties; judgment are not delivered orally.**

## **D – EFFECTS OF DECISIONS AND EXECUTION OF JUDGEMENT**

51. What is the authority of the decision? Res judicata, stare decisis ? [5 lines]

*Specify if this authority is influenced by the nature of the challenged act, and if the judicial decision only produces effects for the parties, or erga omnes. Indicate if the solution given is limited to the present case or if it can be used in other cases, where similar legal issues arise.*

**As stated by the Procedure of Administrative Justice Act, the administration must establish a procedure or take an action, without delay, as required by the judgments and stay of execution decisions of the Council of State, regional administrative courts and administrative and tax courts. Burden of execution is imposed on the administrative body, which enacted the contested act. This period may not exceed thirty days starting from the notification of the decision to the administration under any circumstance. Decisions of annulment related to regulatory acts and decisions on the**

**unification of conflicting judgments of the Council of State both have *erga omnes* character. Decisions on individual acts produce effects for the parties ; settled case-law is applied as *stare decisis* by the judiciary and can be relied upon by the parties.**

52. Can the court limit the effects of the judgment in time ? [5 lines]

*If so, indicate the extent of such a limitation: as regards the future, and as regards the past. Specify whether this possibility derives from national law, or from the case-law of the Court of Justice of the European Communities or the European Court of Human Rights.*

**Neither the Council of State nor the administrative courts can limit the effects of the judgment in time.**

53. Is the right to the execution of judicial decision guaranteed in your country ? Specify if it is informally guaranteed, or through a specific judicial procedure. Indicate if there is a distinction between implementation of the judgment by administrative authorities and implementation of the judgment by private persons. Specify if the court has the power of injunction, possibly completed by coercive fine, in order to secure compliance with the judicial decision. [10 lines max.]

*The recommendation of the Council of Europe distinguishes the execution of judicial decisions by private persons and administrative authorities. As regards private persons, Recommendation R (2003) 16 on the execution of judicial and administrative decisions in the field of administrative law, indicates that it is possible where necessary to have recourse to measures to enforce the decision, provided that a certain number of rights are guaranteed and specific conditions are respected. For the implementation of decision by administrative authorities, member states should ensure that administrative authorities implement judicial decisions within a reasonable period of time. In order to give full effect to these decisions, they should take all necessary measures in accordance with the law. Thus, in cases of non-implementation by an administrative authority of a judicial decision, an appropriate procedure should be provided to seek execution of that decision, in particular through an injunction or a coercive fine. Administrative authorities should be held liable where they refuse or neglect to implement court decisions. Public officials in charge of the implementation of judicial decisions may also be held individually liable in disciplinary, civil or criminal proceedings if they fail to implement them. Specify if these various hypotheses exist in your country.*

**In compliance with the article 138 of the Constitution, legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution. Pursuant to the Act No.2577, the administration must establish a procedure or take an action, without delay, as required by the judgments and stay of execution decisions of the Council of State, regional administrative courts and administrative and tax courts. This period may not exceed thirty days starting from the notification of the decision to the administration under any circumstance. In cases where no procedure is established or no action is taken in accordance with the decisions of the Council of State, regional administrative courts and administrative and tax courts, an action for pecuniary and non-pecuniary compensation can be filed in the Council of State and at the relevant administrative court against the administration. If the judgments of the court are not fulfilled by the public officials within the given period of time, an action for compensation can be filed only against the relevant administration.**

54. Is there a policy in your country to reduce the length of time needed for the proper disposal of cases before the courts ? If so, how is that policy implemented ? [10 lines]

*In all cases, specify if recent case law or legislative reforms have been made or are envisaged that cases are dealt with within a reasonable time. Indicate if these reforms permit*

*compensation to be awarded for loss caused by excessive delays in handing down judgements, and/or to end the unreasonable time of a trial.*

**By the initiation of “Target Time in Judiciary”, an internal time management was kicked-off in judiciary and maximum periods were determined in accordance with each type of action in order to follow up the reasons of delays and bottlenecks in the system to increase the efficiency of the courts and to ensure that the parties can anticipate the time when their actions will be finalized. The number of judges and the number of first instance courts were increased in order to strengthen the right to be tried within a reasonable time. An increase in the number of auxiliary personnel working in justice services was also enabled. Regional Administrative Courts were put into operation as appeal courts in administrative justice . The numbers of files received by the Council of State has decreased considerably following the Regional Administrative Courts’ appeal examination introduced. Human Rights Compensation Commission was established. Individual applications pending in the Constitutional Court and applications before the ECHR, concerning the trials that could not be finalized within a reasonable time included in the jurisdiction of the Commission. An individual application before the Constitutional Court is also possible.**

**As the EU negotiation process continues in order to ensure harmonisation of the EU acquis, the new Judicial Reform Strategy was unveiled on May 30, 2019, which aims to strengthen the independent, transparent, objective and accountable features of the judiciary. In the document, ‘observing the right to trial within a reasonable time’ is listed among the principles of Judicial Vision 2023. Besides, ‘effective implementation of the institution of peace in disputes concerning public law’ is targeted through the aims of spreading of alternative dispute resolution methods.**

## **E – REMEDIES**

55. How are various functions or/and competencies shared out between the lower courts and the supreme courts ? [15-20 lines]

*Specify if the first instance and appeal courts have the same functions, or if functions change with the level, in particular if many functions are allotted to lower jurisdictions, and others reserved to highest jurisdictions (for example, control of the respect of law, judicial review of decisions taken by the head of State, the head of government, ministries, and the disputes relating to elections).*

**The Council of State is the highest court for reviewing decisions and judgments given by administrative and tax courts not referred by law to other administrative courts. It is also the first and last instance court for dealing with specific cases prescribed by law and an advisory authority to specific topics. The regional administrative courts are in charge of reviewing and deciding on appeals against decisions made by administrative courts and tax courts and resolving the jurisdictional conflicts between the administrative and tax courts. Administrative courts are the general courts dealing with cases, other than those to be settled in the Council of State in the first instance and the cases that fall under the duties of the tax courts. In general, the tax courts are responsible for resolving cases concerning the application of the Law No. 6183 on the Collection of Public Receivables on cases related to taxes, duties and charges and similar financial obligations and their increases and penalties and tariffs.**

56. Are there remedies to challenge a judgment before a higher court ? Describe these remedies and their functioning. [10 lines, a chart is possible]

*This issue concerns the existence of a system of appeal. The Recommendation of 2004 considers it by indicating « the decision of the tribunal that reviews an administrative act should, at least in important cases, be subject to appeal to a higher tribunal, unless the case is directly referred to a higher tribunal in accordance with the national legislation ».*

*In this case, specify if the higher court can hear the whole litigation, and review the findings of fact and of law, or if it can only review points of law?*

**In accordance with the Procedure of Administrative Justice Act, an appellate request can be made within thirty days as of the notification of the decision to the regional administrative court within the judicial locality where the court is located against decisions of administrative and tax courts even if a different legal remedy is stipulated in other laws. However, the decisions taken by administrative and tax courts about tax actions, full remedy actions and the actions of annulment filed against administrative procedures that does not exceed a certain amount of Turkish Liras shall be final and no appellate request can be made against these decisions. The final decisions of the law chambers of the Council of State and the decisions taken by the regional administrative courts about the actions listed in the Act can be appealed within thirty days as of the date of notification of the decision in the Council of State, even if otherwise provided for in other law**

**At the end of the appeal examination, the Council of State shall reverse the examined decision for the following reasons; a)the court lacked competence or jurisdiction over the case, b) the decision was taken against the law, c) there are errors and shortcomings that might affect the decision in the implementation of the procedural provisions. The appellate in Regional administrative courts is subject to the form and procedures of the appeal. If the regional administrative court considers, at the end of its examination, that the decision of the court of first instance is in compliance with the law, it shall decide to dismiss the appellate request. If it is possible to correct the material mistakes in the decision, it shall take the same decision by making necessary corrections.**

## **F. EMERGENCY PROCEEDINGS AND SUMMARY JURISDICTION / APPLICATIONS FOR INTERIM RELIEF**

57. Are there emergency and summary jurisdiction proceedings? [10 lines max.]

*Such a procedure could enable the court to pronounce a decision quickly, to preserve claimant from a particularly unpleasant situation and loss that may be difficult to compensate but without settling the litigation on the merits. Specify if the judge hearing an application for interim relief is the same as the judge hearing the main proceedings?], if a single judge or a restricted collegiate formation is competent. Indicate if there is a difference between lower and highest courts.*

**Pursuant to the article 20/A of Procedure of Administrative Justice Act, summary procedure shall be applied to the disputes arising from the proceedings listed and to the article 20/B of the Act, there exists a jurisdiction procedure for central and common exams. These are exceptional and accelerated procedures and aimed to shorten the periods according to the general judicial procedure in cases of urgency. There are also special arrangements for these procedures, especially in terms of shortening the periods during the appeal stage.**

**The Council of State or administrative courts may also decide to stay the execution of the act, if the implementation of the contested administrative act shall result in damages that are difficult or impossible to compensate for, and if the act is manifestly**

**unlawful. Decisions on the stay of execution are taken by the Council of State, the court or the judges hearing the main proceedings.**

58. What types of requests can be made to the emergency and summary jurisdictions? Ascertainment of a situation? The obligation for administrative authorities to communicate a document? The suspension of the execution of an administrative act? The payment of a provision? [10 lines]

*Specify if the judge's intervention is only conservatory, for example to safeguard evidences or a particular situation, or if he can also protect a threatened freedom, or decide on an element of the claim, which is not seriously contested?*

**Pursuant to article 20/A of Procedure of Administrative Justice Act, summary procedure shall be applied to the disputes arising from i) Procurement proceedings except for the decisions for prohibition from procurement, ii) Urgent expropriation proceedings, iii) Decisions of the High Council for Privatisation, iv) Sale, allocation and lease of transactions carried out pursuant to the Tourism Incentive Law no. 2634, v) Decisions taken as a result of the environmental impact assessment pursuant to the Environmental Law no. 2872, except for the administrative sanction decisions, vi) Decisions of the President of the Republic taken pursuant to the Law no. 6306 on Transformation of the Areas Under Disaster Risk.**

**A procedure is also stated in the article 20/B of the Act, which shall be applied to the actions filed about the central and common exams held by the Ministry of National Education and the Centre for Assessment, Selection and Placement , the proceedings and acts regarding these exams and the exam result.**

**In the procedures set out above-mentioned articles, the time limit for filing an action, the period for initial examination, the conclusion period of the actions as of the completion of the file, the time limit for an appeal request shall be shorter than usual. No objection can be made against the decisions to be taken with respect to the request for the stay of execution.**

**Stay orders are protective and precautionary decisions that suspend the enforceability of the contested act, nevertheless without prejudicing its legal existence. As regards the context of their effects, on the other hand, stay of execution decisions are similar to decisions of annulment: Stay orders provide the situation as it was prior to the execution of the act just like the annulment decisions. Administrative authorities are obliged to submit all documents which might be asked by courts.**

59. Are there different kinds of summary jurisdiction ? General or specific to certain litigants? [5-10 lines]

*Specify if all summary jurisdiction proceedings are identical or if they are different depending on whether they concern litigation between a private person and administrative authorities, between central and local authorities, or according to the field of public action (such as defence, environment, liberties, asylum, foreigners, for example)?*

**The proceedings for a decision to stay of execution are the same for all cases.**

### **III – CAN ADMINISTRATIVE DISPUTES BE SETTLED BY NON-JUDICIAL BODIES?**

60. Can disputes be settled by administrative authorities themselves? How? [5-10 lines max.]  
*This question completes questions 5 and 22.*

**Before bringing an action, abolishment, withdrawal, alteration of the administrative acts or the implementation of an act may be requested from the superior authority, if there is no superior authority, from the authority that implements the act. After the application, the administrative authority can abolish, withdraw, alternate the act or implement a new act. On the other hand, all administrative authorities are under an obligation to receive the applications and respect the right to petition.**

61. Can administrative disputes be settled by independent bodies (offices, agencies, ombudsman, mediators, and regulation authorities)? [5-10 lines]

*Recommendation R (2001) 9 considers alternatives means of dispute resolution between administrative authorities and private persons. Recommendation R (81) 7 on measures facilitating access to justice calls in its appendix for measures to encourage the use of conciliation and mediation; Recommendation R (86) 12 concerning measures to prevent and reduce the excessive workload of the courts, calls for encouraging, in appropriate cases, the settlement of disputes, either outside the judicial system altogether, or before or during legal proceedings. These recommendations lay down a certain number of principles, in particular that these alternatives must not preclude recourse to the courts, and that the body in charge of hearing the dispute must provide guarantees of independence, impartiality and competence. Indicate procedures corresponding to these objectives in your country.*

**Regulatory and Supervisory Public Authorities (independent administrative authorities authorized to make executive decisions in the name of the State with respect to regulation and supervision duties relating to sensitive areas of public life such as Capital market, competition, energy, tenders, radio and television broadcasting and banking Services, eg. Radio and Television Supreme Council, Capital Market Board etc.) are authorized to settle the disputes arising with respect to their area of activity through administrative decision without such disputed being referred to law courts. The decisions made by such authorities are not judicial decisions but rather administrative decisions and are subject to judicial review.**

**Ombudsman Institution has been established with the Act no. 6328. The Ombudsman Institution which is attached to the Turkish Grand National Assembly, has legal personality and a separate budget. The purpose of the Institution is to establish an independent and efficient complaint mechanism regarding the delivery of public services and investigate, research and make recommendations about the conformity of all kinds of actions, acts, attitudes and behaviours of the administration with law and fairness under the respect for human rights. The Human Rights and Equality Institution of Turkey, affiliated to the Ministry of Justice, with public legal entity status and administrative and financial autonomy, established by law No. 6701. It has the right to examine the allegations of violation of the right to equal treatment, discrimination or torture and ill-treatment on the basis of the application.**

**However, these agencies do not provide an alternative solution to administrative justice.**

62. Can administrative disputes be resolved by means other than recourse to the courts? [10 lines]

*Specify if access to these alternatives (arbitration, for example) is subject or not to conditions in administrative affairs. Specify the various kinds of alternatives to litigations (negotiated settlement, conciliation, mediation, etc.).*

**Amendments made to the Articles 47, 125 and 155 of the Constitution provides for applications to arbitration with respect to disputes arising from concession agreements. Accordingly, concession contracts and agreements relating to public Services may provide for the resolution of disputes arising from those at national or international arbitration and only disputes containing a foreign element may be referred to international arbitration.**

**The Statutory Decree No 659 On Performance of Legal Services at Public Administrations Under General Budget and Administrations Under Private Budget published in the Official Gazette dated 02.11.2011 provides for resolution of administrative disputes through non-judicial procedures. Non-judiciary settlement is provided for administrations under general and private budgets. Those who claim that their rights are violated by an administrative action/act may apply to the administration for the compensation of the damage in an amicable way within the time limit for filing an action. The report signed upon amicable settlement constitutes a court writ. No judicial action may be filed with respect to the subject matter and amount of the settlement.**

**In general, alternative procedures constitute certain administrative remedies provided for in separate laws (Customs Law No.4458, Expropriation Law No.2942, Procedural Tax Law No.213 etc.) associable with alternative dispute resolution procedures, rather than conventional procedures (such as mediation, reconciliation, etc.).**

#### **IV – ADMINISTRATION OF JUSTICE AND STATISTIC DATA**

*Concerning statistic data, could you provide general trends by decades, for the last thirty years?*

*If that is not possible, could you take 2003 and 2004 as reference years ?*

*A presentation in charts, distinguishing between first instance and the different levels of appeal, is desirable.*

##### **A. Financial resources made available for the review of administrative acts?**

63. On average, what proportion of the State budget is allocated to the administration of justice? Specify for administrative justice when it exists and is distinguished from ordinary justice. [5 lines max.]

*Take an overall approach stating where possible, average costs in terms of staff, operation and equipment. Reference years : 2003-2004.*

**In 2018 and 2019 respectively 14.479.813.000,00 Turkish Liras (1.71 % of the State Budget) and 18.960.710.000 Turkish Liras (1,84 % of the State Budget) were allocated to the administration of justice of Turkey (including the Constitutional Court, the Court of Cassation, the Council of State, the Ministry of Justice, the Council of Judges and Prosecutors and the Justice Academy of Turkey). It is not possible to state the amount of the budget for administrative justice within the general budget, but the budget of Council of State is 148.972.000 Turkish Liras for 2018 and 182.320.000 Turkish Liras for 2019.**

64. Specify the total number of magistrates and judges working within the legal system concerned. [5 lines max.]

Reference Years	Member of the CoS	Public Prosecutor of CoS	Judge Rapporteur of the CoS	Judge of the Regional Ad. C., Ad. and Tax Courts	Total
2018	113	22	474	1.703	2.312
2019	110	28	448	1.702	2.288

65. What percentage of judges is assigned to the review of administrative authorities? [5 lines max.]

**The percentage of judges who are assigned to the review of administrative authorities (corps of the administrative judiciary including members of the Council of State) was 16.7% in 2018 and 15.8% in 2019.**

66. Apart from registry staff, are judges helped by assistants in their research and decisions? Specify the number of assistants (overall and per judge) and their professional training (university, the Bar, etc.). [5-10 lines]

**In the Judicial Reform Strategy of May 2019, creating cadres for assistant judge and public prosecutor is also adopted as a strategic approach. Graduates of law schools who pass the entrance exam for legal professions and those who have exercised attorneyship for a certain period will be able to apply for the exam to qualify as an assisting judge and public prosecutor. It is stipulated for the assistant judges to conduct the following duties: to examine the submitted file and document and present it to the judge, to be helpful to the judge during the trial and survey and after the trial, to check the document prepared by the private secretary before its submission to the judge, to prepare the drafts for the grounded decision in accordance with the view of the judge, to make researches on doctrine and case-laws, to implement the duties prescribed in the legislation and to conduct similar duties vested to him/her by the judge.**

67. Do you have a library, and what kind of works and documentary resources can be found there? [5-10 lines]

**The Library of the Council of State was established in 1927. It houses only books and periodicals. It is a specialised library on administrative law, however it also includes books and journals on different branches of both Turkish and foreign law. The Library attempts to acquire and retain for the permanent collections the following types of important legal publications: Official gazettes, Minutes of the Parliament, Codes, Administrative rules and regulations, Commentaries and indexes to laws, rules and regulations, decisions and reports of the other Supreme Courts. Collection also includes the legal sources and important publishing of the Ottoman Period. The library open to all researchers, but only staff working at the Council of State can borrow materials. All documents in the Library are listed books and journals are listed on-line catalogue.**

68. Do you have access to information technology? In which proportion? And for which kind of task (file management, databases, computer assistance for writing decisions?) [10 lines]

The Council of State has an Information System (IT) since 1994. Initially, the use of computers and the main database was very limited, and the system was used only for writing and storing decisions. Later, the use of the Council of State Information System was expanded. Currently all judicial personnel, including members, prosecutors and judges-rapporteurs and all employees in editorial and administrative duties, have been given PCs for decision writing and access to court decisions. All judicial personnel have internet access. All files are recorded electronically. The lawsuits can be followed by the concerned parties from the website of Council of State ([www.danistay.gov.tr](http://www.danistay.gov.tr))

69. Do competent bodies and courts have a website to publicise themselves and to communicate with the public? [5-10 lines max.]

Ministry of Justice, the Council of State and other High Courts have their own websites. Some subordinate courts have also created their own web sites and share information on their work with the public. Council of State's databank, which consists of approximately 23.400 precedent judgements are open to public on the website. Information on the Council of State (its history, organization and functions; texts of the main laws concerning administrative judiciary) can also be found on the website in two different languages: Turkish and English. Besides every important judgement of the Court which may require public attention is also published on the web.

**B. Other statistics and figures**

*Could you take 2003 and 2004 as reference years?*

*Distinguish between lower and highest courts, and between emergency proceedings and normal proceedings.*

*A presentation in charts is desirable.*

70. How many new applications are registered every year with the court registry or the authority in charge of registering them? [5 lines]

71. How many cases are heard every year by the court or other competent bodies? [5 lines]

72. Could you provide figures concerning cases currently lodged with courts or competent bodies, which have not yet been disposed of? [5 lines]

73. What is the average time taken between the lodging of a claim and judgement?

*Specify for each level of court, and indicate if it is a theoretical or real time, and the way it is calculated.*

To answer these four questions, you can use the following chart.

Reference year	Cases lodged	Cases disposed of	Cases pending	Average time to judgment
2003				
2004				

**Council of State (Judicial Chambers of the CoS)**

Reference year	Cases lodged	Cases disposed of	Cases pending	Average time to judgment
2018	96.346	137.430	164.946	571 days
2019	106.804	132.447	139.323	458 days

**Council of State (Administrative Chamber of the CoS)**

Reference year	Cases lodged	Cases disposed of	Cases pending	Average time to judgment
2018	2.586	2.599	67	10 days
2019	2.100	2.156	11	7 days

**Regional Administrative Courts (Cases lodged includes cases from last year and new cases)**

Reference year	Cases lodged	Cases disposed of	Cases pending	Average time to judgment
2018	221.961	218.187	44.339	69 days
2019	221.407	207.300	58.429	86 days

**Administrative Courts of First Instance**

Reference year	Cases lodged	Cases disposed of	Cases pending	Average time to judgment
2018	211.455	207.237	119.556	179 days
2019	237.805	225.611	147.535	201 days

**Tax Courts of First Instance**

Reference year	Cases lodged	Cases disposed of	Cases pending	Average time to judgment
2018	90.973	116.042	31.448	135 days
2019	101.804	101.411	39.538	121 days

74. Indicate the percentage and rate of the annulment of administrative acts decisions against administrative authorities by the lower courts. [5 lines]

**Administrative Courts of First Instance**

Reference Year	Total Cases	Annulment	Partial Annulment Partial Dismissal
2018	326.793	55.328	7.786
2019	373.146	58.737	6.687

**Tax Courts of First Instance**

Reference Year	Total Cases	Annulment	Partial Annulment Partial Dismissal
2018	147.490	50.717	7.145
2019	140.949	50.126	6.563

75. Could you indicate the volume of litigation per field (asylum, foreigners, tax, urban planning, etc.)? [5-10 lines max.]

#### **Administrative Courts of First Instance**

Reference Year	Legislation concerning Civil Servants	Villages, Municipalities and Special Administrations	Students and Education	Urban Planning	Full Remedy Action	Others
2006	51,2%	4,4%	2,1%	6,7%	14,6%	21%
2007	40,2%	5%	3,1%	9,4%	14%	28,3%

#### **C. The economics of administrative justice**

76. Do studies by researchers or work produced by practitioners demonstrate particular concerns by the courts, for example about orders for damages; do they deal with the influence of heavy awards against administrative authorities on public budgets? Do they consider the implications of their decisions in terms of costs for public finance?

**No study regarding these questions is available.**