SUPREME COURT
REPUBLIC OF ESTONIA

ACA EUROPE

Seminar organized by

the Supreme Court of Estonia and ACA-Europe

"Due process"

Tallinn, 18-19 October 2018

Answers to questionnaire: Turkey

Seminar co-funded by the «Justice » program of the European Union

GENERAL INFORMATION ON THE TRIAL PROCEDURES OF TURKISH ADMINISTRATIVE JUSTICE

The Turkish Administrative Justice system has a three-instance and three-authority structure. Accordingly, in principle, the Administrative and Tax Courts perform as the first instance, the Regional Administrative Courts perform as the second (tribunal) instance, and the Council of State performs as the third (appeal) instance judicial duty. The Council of State also adjudicate as the first and the final instance court on the lawsuits being limited with those listed in the Law of Establishment.

2577 Procedure of Administrative Justice Act regulates the trial procedures to be applied in all courts listed above, by issuing common provisions, and **"written trial procedure"** is applicable in the Turkish administrative justice in principle. In other words, the parties present their petitions and defenses to the court in writing, and the court examines and decides on the case through the documents.

According to the mentioned Act, a hearing is held upon request of one of the parties for: the annulment cases filed at the Council of State and the administrative and tax courts, full remedy actions that exceed 32,000 Turkish Liras, and the tax cases in which the sum of tax and similar fiscal liabilities and their interests and penalties exceed 32,000 Turkish Liras; having a hearing for appeal and the tribunal instance depends on the parties' request and the decision of the Council of State or the Regional Administrative Court; furthermore, regardless of these conditions, the Council of State, the court and the judge may decide on having a hearing at their discretion.

The time-limit for filing a lawsuit for the cases, in which a written trial procedure is applied in the Turkish administrative justice, is 60 days at the Council of State and the Administrative courts and 30 days at the tax courts in principle.[1] In these lawsuits, the time to respond petitions and defenses is 30 days, the file is considered matured when the answer (the petition of defense) in response to the second petition of claim is submitted to the court or the 30 days period of submission to the court expires; and the files are required to be ruled in 6 months after the date the files become mature. With respect to these lawsuits, as a rule, first an application is filed for appeal to the tribunal (to the Regional Administrative Courts) in 30 days, the rulings of this authority, which can be appealed, may be brought to the Council of State for appeal, again within 30 days.

Apart from the general trial procedure briefly summarized above, the Act 2577 also foresees the exceptional and accelerated procedures of **"urgent trial procedure" and "the trial procedure for central and nationwide exams"**. Accordingly, in the cases with urgency, wherein the mentioned trial procedures apply, the term can be shortened compared to the general trial procedure; applying to the tribunal for the annulment of the decision is not allowed (but can be appealed directly) to conclude the cases quickly in accordance with their nature.

[1] In full remedy actions caused by an action, the term for filing a lawsuit is 1 year from the date of being informed of the action, and it is 5 years from the date of the action in any case.

SECTION A
Effectiveness of Court Procedures

1- Simplified Trial Procedure

Yes. Two different simplified (accelerated) trial procedures are foreseen in the 2577 Procedure of Administrative Justice Act, which regulates the trial procedures to be applied by the Turkish administrative justice authorities. These are:

a) Urgent trial procedure
b) Trial procedure for central and nationwide exams.

2- Prerequisites of the Simplified Trial Procedure

2.1.a. Yes. The two special trial procedures mentioned above can only be applied as limited with the disputes which are listed in the related articles of the Act 2577. These disputes are:

- Tender procedures other than preclusion from participating in tenders,
- Urgent expropriation processes,
- Decisions of the High Council of Privatization,
- Selling, allocation and leasing processes performed as per the Law 2634 for the Encouragement of Tourism dated 12 March 1982,
- Decisions taken as a result of environmental impact assessment as per the Environment Law 2872 dated 09 August 1983, except administrative sanction decisions
- Decisions taken by the Council of Ministers as per the Law 6306 on the Transformation of the Areas Under Disaster Risk dated 16 May 2012,
- Central and nationwide exams carried out by the Ministry of National Education, Center for Evaluation, Selection and Placement, the actions and procedures related with those exams and their results

.

2.1.b. In our Procedure of Administrative Justice Act, the simplified trial procedure is foreseen not for the cases which are "unimportant"; but to the contrary for those which are "important and urgent", thus require a solution swiftly; the condition of "being a violation without critical importance" is not required for conducting the simplified (accelerated) trial procedure in Turkish administrative justice; and the only condition required is a dispute with the above-listed qualities.

2.1.c. With the justification indicated in the foregoing article, the condition of having a "clear and transparent solution to the case" is not required in order to conduct the simplified (accelerated) trial procedure in the Turkish administrative justice.

2.1.d. No. A dispute with the attributes listed in Article 2.1.a is required as the only condition.

2.2. For a dispute listed in Article 2.1.a, conducting the simplified (accelerated) trial procedure is the governing law; and the jurisdiction bodies are not provided with any discretionary powers in this respect.

2.3. Since the court has connected power with regard to the disputes listed in Article 2.1.a., the court must conduct simplified (accelerated) trial procedure regardless of the acceptance of the parties.

2.4. The parties to the lawsuit may appeal with regard to the merits of the verdict, while they can also appeal to the verdict at the Council of State, claiming that the simplified (accelerated) trial procedure for the dispute is against the law.

2.5. Since there is not a clear provision in the Act in this respect, we can say that this is generally at the courts' discretion. The disputes subject to the simplified (accelerated) trial procedure are determined restrictively and their subjection to a special/exceptional trial procedure is due to the urgency of the matter; however, addressing the disputes together when they are subject to two different trial procedures does not have any benefits for the parties and the public, and then it shall be appropriate that such lawsuits would not be executed together.

As a matter of fact, in practice, the courts define such lawsuits as those which cannot be filed together due to being subject to different procedures, thus rule on filing lawsuits with separate petitions, and apply the simplified (accelerated) trial procedure for the disputes listed in Article 2.1.a, while applying the general trial procedure for other disputes.

3- Characteristics of the simplified trial procedure

3.1. According to the procedure of Turkish administrative justice; fundamental justice and the principle of equality of arms have been accepted within the framework of "right to a fair trial" in accordance with Turkish Constitution, international conventions and the fundamental principles of law. Therefore, the stages required further to these principles must be completed for the disputes subject to the "urgent trial procedure" which is considered as a simplified trial procedure, and the "trial procedure on central and nationwide exams". For example, although the simplified trial procedures do not include the replication and rejoinder stages contrary to the general trial procedure, they have the phase of the exchange of petitions. Furthermore, as mentioned above, these procedures consist of an accelerated version of the written trial procedure, the trial is held again on the file and the principle of ex officio examination is also applicable for these disputes. Again in these trial procedures, a hearing is held upon request; and the provisions of the mentioned Act on the appeal, which are not contrary to these trial procedures, apply pro rata during the stage of appeal.

3.2. General rules of the administrative trial procedure apply for both of the foregoing special trial procedures. However, their exceptions are listed in Articles 20/A and 20/B of the Act 2577.

Article 20/A titled **"Urgent Trial Procedure"** of the mentioned Act stipulates that:

"1. The urgent trial procedure applies on the disputes which arise from the following actions:

a) Tender procedures other than preclusion from participating in tenders.

b) Urgent expropriation processes.

c) Decisions of the High Council of Privatization.

d) Selling, allocation and leasing processes performed as per the Law 2634 for the Encouragement of Tourism dated 12 March 1982.

e) Decisions taken as a result of environmental impact assessment as per the Environment Law 2872 dated 09 August 1983, except administrative sanction decisions.

f) Decisions taken by the Council of Ministers as per the Law 6306 on the Transformation of the Areas Under Disaster Risk dated 16 May 2012.

2. In the urgent trial procedure:

a) The term for filing a lawsuit is thirty days.

b) The provisions of article 11 of this Act shall not apply.

c) The first examination is held in seven days, and the lawsuit petition and its annexes are notified.

d) The defense term is fifteen days from the date of notification of the lawsuit petition, and this term may be extended for maximum fifteen days and for only once. The file is considered as matured after the defense is submitted or the time for submitting the defense expires.

e) Decisions on requests for the suspension of execution cannot be objected.
f) Such cases are ruled in maximum one month after the maturation of the file. The actions such as giving an interim decision, exploration, expert examination or hearing are concluded urgently.

g) The given final verdicts may be appealed in fifteen days from the date of the notification.

h) The petitions of appeal are examined in three days and notified. The provisions of article 48 of this Act, which are not contrary to the article herein shall apply pro rata.

ı) The term for responding to a petition of appeal is fifteen days.

i) The Council of State rules on the merits of the case when the end of the examination considers that the information obtained on material facts is sufficient or if the appeal merely points on Law or if the errors in fact can be rectified in the appealed decision. Otherwise, the Council of State conducts the required examination and investigation and re-adjudicates on

the merits. However, in the event the Council of State considers that the appeal against the previous rulings during their first examination, the Council of State both reverses the ruling and sends the case back. The rulings on appeal are final.

j) A ruling is made on the appeal in maximum two months. "The ruling is notified in maximum one month", and Article 20/B titled**"The trial procedure on central and nationwide exams"** stipulates that:

1. In the trial procedure filed on the central and nationwide exams by the Ministry of National Education, Center for Measuring, Selection and Placement, the actions and procedures related with those exams and their results:

a) The time-limit for filing a lawsuit is ten days.

b) The provisions of article 11 of this Act shall not apply.

c) The first inspection is held in seven days, and the lawsuit petition and its annexes are submitted.

d) The defense period is three days from the date of submission of the complaint, and this period may be extended for maximum three days and for only once. The file is considered as matured after the defense is submitted or the time for submitting the defense expires.

e) The rulings to be made regarding the suspension of execution cannot be contested.

f) These lawsuits are concluded in maximum fifteen days after the maturation of the case. The actions such as giving an interim decision, exploration, expert examination or hearing are concluded urgently.

g) The given final verdicts may be appealed in five days from the date of the submission of the counter statement.

h) The petitions of appeal are examined in three days and submitted. The provisions of article 48 of this Act, which are not contrary to the article herein shall apply pro rata.

i) The term for responding to a petition of appeal is fifteen days.

j) The Council of State rules on the merits of the case if the Council of State considers the information obtained on material facts sufficient as a result of their examination of the documents, or if the appeal is related with the legal aspects only, or correcting the material errors in the appealed verdict is possible. Otherwise, the Council of State conducts the required inspection and investigation and re-adjudicates on the merits. However, in the event the Council of State considers the appeal against the previous rulings during their first examination, the Council of State both reverses the ruling and sends the case back. The rulings on appeal are final.

k) A ruling is made on the appeal in maximum fifteen days. The ruling is submitted in maximum seven days.

2. The suspension of execution and cancellation rulings in the lawsuits filed regarding the central and nationwide exams of the Ministry of National Education; Center for Measuring, Selection and Placement, the actions and procedures related with these exams and the results of the exams shall apply in such a manner that they create a conclusion in favor of the participants of the exam in question."

The judge is not authorized to make a decision on not complying with the general rules regarding limitations listed in the mentioned articles, while the law stipulates the liability of applying the provisions foreseen for this special trial procedure as are.

Accordingly, the "**urgent trial procedure"** does not apply the rule of referring to the higher bodies in Article 11 of the Act 2577, and stopping the period of filing a lawsuit for this application. The time to complete the initial examination is not fifteen days, but seven days. The defense period is fifteen days from the date of submission of the lawsuit petition, contrary to the general rule of thirty days. The file is considered matured when the defense is submitted or the defense submission deadline expires, and the lawsuits are ruled in maximum one month. In this respect, the replication and rejoinder stages are not available. Furthermore, the ruling for the suspension of execution in this procedure cannot be contested and tribunal appeal of the ruling on the merits as per the law of appeal cannot be claimed. Against the given final verdicts may be appealed in fifteen days from the date of the notification, contrary to the general rule of thirty days. The petitions of appeal are examined in three days and submitted. The term for responding to a petition of appeal is fifteen days. In this procedure, the Council of State rules on the merits of the case if the Council of State considers that the information obtained on material facts is sufficient as a result of their examination of the documents, or if the appeal is related with the legal aspects only, or correcting the material errors in the appealed verdict is possible. Otherwise, the Council of State conducts the required inspection and investigation and re-adjudicates on the merits. However, in the event the Council of State considers the appeal against the previous rulings during their first examination, the Council of State both reverses the ruling and sends the case back. A ruling is made on the appeal in maximum two months. The ruling is submitted in maximum one month. The ruling of the Council of State regarding the appeal is final; the courts do not have the right to insist.

Similar exceptions are also included in the **"Trial procedure on central and nationwide exams"**. In this procedure, the period of filing a lawsuit is ten days; and again, the provisions of Article 11 of the Act do not apply. The first inspection is held in seven days, and the lawsuit petition and its annexes are notified. The defense period is three days from the date of notification of the case petition. The file is considered as matured after the defense is submitted or the time for submitting the defense expires. The ruling for the suspension of execution cannot be contested and tribunal appeal of the ruling on the merits as per the law of appeal cannot be claimed. These lawsuits are concluded in maximum fifteen days after the maturation of the case. The actions such as giving an interim decision, exploration, expert examination or hearing are concluded urgently. Against the given final verdicts may be appealed in five days from the date of the notification. The petitions of appeal are examined in three days and notified. The time-limit for responding to a petition of appeal is five days. In this procedure, the Council of State, which is the appeal authority, rules on the merits of the

case if the Council of State considers the information obtained on material facts sufficient as a result of their examination of the documents, or if the appeal is related with the legal aspects only, or correcting the material errors in the appealed verdict is possible. Otherwise, the Council of State conducts the required inspection and investigation and re-adjudicates on the merits. However, in the event the Council of State considers the appeal against the previous rulings during their first examination, the Council of State both reverses the ruling and sends the case back. A ruling is made on the appeal in maximum fifteen days. The ruling is notified in maximum seven days. The ruling of the Council of State regarding the appeal is final; the courts do not have the right to insist.

The most important trial procedure exception for these two procedures is that the rulings made in these procedures are not subject to appeal in the tribunal instance but can be appealed directly.

3.3. The rules and exemptions related with the foregoing simplified procedures are common provisions for courts at each level. The duties and powers of the first and last instance courts regarding this procedure are limited with the foregoing legal framework. Therefore, the execution of the mentioned procedures differently by the courts at different instances is not in question.

3.4. The law of appeal cannot be resorted in the conflicts subject to the "urgent trial procedure" and the "trial procedure on central and nationwide exams", unlike the general trial procedure. With regard to both special trial procedures, the rulings of the first instance court may directly be appealed at the highest instance authority, which is the Council of State. However, as answered in Article 3.2, there are special regulations on these procedures also during the stage of appeal.

3.5. No, the Courts cannot issue rulings without justification even in these trial procedures. Because Paragraph 3 of the Article 141 titled "Hearings shall be open and decisions shall be written with justification" of Law No. 2709 of the Constitution of the Republic of Turkey stipulates that "All types of rulings of all courts are written with justification," and any contrary regulation is impossible.

4- Simplified trial procedure in the court's practice

4.1. According to the data of December 2017 of the Council of State, 9296 out of 269564 files in 2016, and 1747 out of 77778 files in 2017 submitted to the Council of State were subject to the urgent trial procedure. Accordingly, the percentage of files subject to urgent trial procedure in 2016 is approximately 4% and that the percentage of those in 2017 is approximately 3%.

4.2. The following two examples may be given to the problems identified regarding this matter.

4.2.1. In the cases filed against the Environmental Impact Assessment reports subject to urgent trial procedure with regard to the Fourteenth Chamber of the Council of State, the decisions of the Chamber against appeals are final according to article 20/A of the Act 2577, which stipulates that: *"The Council of State rules on the merits of the*

case if the Council of State considers that the information obtained on material facts is sufficient at the end of their examination of the documents, or if the appeal merely points on Law, if the errors in fact can be rectified in the appealed decision. Otherwise, the Council of State conducts the required inspection and investigation and re-adjudicates on the merits." . Also according to this provision, the Chamber is required to examine the file if they find an incompleteness in the ruling, and make a decision after that. However, we understand that for the lawsuits filed against the Environmental Impact Assessment Reports, the Chamber believes that they would require to re-explore and have another expert examination most of the time if the Chamber considers the exploration and expert examination in the preliminary ruling as insufficient; in which case, the Chamber would have to travel all over the country for the explorations and that would actually be impossible due to the existing workload; wherefore, the Chamber reverses the ruling if they conclude that the exploration and expert examination are inadequate, and return the file to the first instance court for new ruling.

4.2.2. In the lawsuits caused by "tender procedures other than preclusion from participating in tenders" subject to the urgent trial procedure with regard to the Thirteenth Chamber of the Council of State, the Chamber has undersigned an opinion which restricts what is to be understood from tender procedures, arising from the workload and the characteristics of the work. Considering the legal definitions and the legal opinions that have gained stability on the basis of this opinion, we understand that the actions performed by the administration during the process which began with the tender announcement and ended with the signing of the contract are tender processes subject to urgent trial procedure; the justification of the Act that foresees urgent trial procedure specifies, "*In administrative justice, all lawsuits are concluded by following the same procedure. However some administrative lawsuits are different than the others as to their characteristics. Such lawsuits are required to be concluded without delay. In this respect, the limited number of lawsuit types which have hard to bear or unbearable consequences for both the administration and the plaintiffs are required to be concluded more urgently than those others. Failure to complete the legal process swiftly results in the occurrence of a legal ambiguity in the event certain lawsuits caused by tender, privatization, and urgent expropriation disputes which are particularly and critically required to be completed swiftly cannot be concluded as quickly as required. This article provides the administrative justice with an urgent trial procedure similar to those examples in Europe,*" as also described in the justification of the Act, a limited number of lawsuit types are subject to urgent trial procedure; as a matter of fact, the justification highlights that not all tender-related procedures but the tender disputes for which the swift conclusion of the judicial process is critical are subject to this trial procedure; in this sense, the applications for appeal claiming that the tender procedures other than the tender process itself are not subject to urgent trial procedure were dismissed with regard to the duty to handle the mentioned appeals, and the case was sent to the related Regional Administrative Court to be inspected for any tribunal appeal.

SECTION B

Right to a Public Hearing

1- No. Written trial procedure applies as a rule in the Turkish administrative justice. In the Turkish administrative justice system, in the event of the existence of the foregoing conditions, verbal trial shall apply partially in the written trial procedure; however, the legislation does not allow for the application of verbal trial procedure (hearing) without applying the general trial procedure. There are not any disputes which are not allowed in the written trial procedure as the simplified trial procedure introduced by law is also an accelerated type of the written trial procedure. Therefore, our legislation does not have the types of lawsuits or courts which allow for verbal hearings and but not written trial procedure.

2- Written trial procedure applies as a rule in the Turkish administrative justice. Therefore, application of the written trial procedure in lawsuits is not dependent to any conditions, all disputes are subject to the written trial procedure and they are concluded through the examination of the documents over the case.

3- No. In the Turkish judicial system which adopts separation of justice, the verbal trial procedure can also be realized by means of video conference by the judicial authorities[2], while hearing via video conference by administrative judicial authorities is not possible. As a matter of fact, there are not any legal regulations which allow that.

It is caused by both not having a "defendant" status similar to that for penal trials in which certain barriers or delays may be experienced in the presence or bringing to the court and due to not accepting "witness statement" as an evidence in our administrative trial procedure. In our procedure of administrative justice, it has been brought to provide the parties with the opportunity to also verbally express before the judicial authority their statements made in the lawsuit and defense petitions. Furthermore, the parties may present any information and document about the conflict during the hearing. However, they are not allowed to call witnesses. Nevertheless, the mentioned evidential restriction does not mean that certain points of the dispute remain obscure. As a matter of fact, according to *the ex officio* examination principle stipulated in the Act 2577, the courts conduct any examinations required for the lawsuits they are required to handle by themselves, and conclude the dispute by requesting from the related organizations and individuals any information and documents which could not be or were not presented by the parties.

The parties may either attend the hearing by themselves or they may be represented by their attorneys and the hearing is exceptionally held when the legal conditions arise after the maturation of the case, and only once for each lawsuit.

---

[2] SEGBIS (Audio-Visual Information System) started to be implemented with the Regulations on the Use of Audio-Visual Information System in Criminal Procedure published on the Official Gazette dated 20 September 2011. This system enables video conferencing and recording of statements of those who are outside the jurisdiction region or who are not present at the court.

Due to the mentioned reasons, hearing by means of video conference is not needed in the Turkish administrative justice system.

4- It is not possible as the legislation in force does not stipulate holding a hearing outside of the court. If there is a party who cannot attend the hearing, then that party may request postponement of the hearing from the jurisdiction body who handles the lawsuit. The hearing may be postponed if this request is delivered to the jurisdiction body before the hearing time and the indicated reason is considered fair. The circumstances such as sickness which obligatorily requires resting and the obstacles in transportation are regarded as fair reasons to postpone the hearing. Furthermore, holding a hearing outside the court hall was not required as the parties could be represented by their attorneys.