

Seminar organised by the Hellenic Council of State and ACA-Europe

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New elements in the organisation and functioning of the Public Administration and Administrative Justice

Questionnaire

Responses from the Council of State of Türkiye

I. New models of organisation and functioning in the Public Administration

The aim and scope of Part I of this questionnaire is:

(A) To examine collaboration with private individuals (who are not public servants) in the unilateral action taken by the Administration, and more specifically to study the delegation to private individuals of tasks traditionally performed by public servants during the procedure of issuing an administrative act. Participation, in general, of citizens/interested parties in administrative proceedings (e.g. preliminary hearings, participation and all forms of consultation), collaboration with private individuals in the Administration's contractual activity (works, supply and service contracts, concession contracts, public-private partnerships, etc.), privatisation of public-sector bodies and creation of legal entities governed by private law are not covered by this questionnaire. (B) To study the integration of private-sector organisational models into the tools and operating methods of the Public Administration.

A. Delegation of administrative tasks to private individuals

1. General provisions

Does your legal system recognise the following forms of collaboration between private individuals and the Public Administration?

Tasks assigned to private individuals during the procedure of issuing [adopting] an administrative act

Recruitment of private individuals who are not civil servants within the Administration's structure, e.g. executive managers, senior managers



2. Regarding the involvement of private individuals in administrative proceedings

i. If the involvement of private individuals in administrative proceedings (as indicated above) is provided for in your legislation, please mention specific provisions.

- Constitutional provision
- General provision of a legislative nature
- Specific legislation

Pursuant to Article 128 of the Constitution of the Republic of Türkiye, the principal and permanent duties required by public services which the State, State Economic Enterprises and other public legal entities are obliged to carry out in accordance with the principles of general administration shall be performed by civil servants and other public officials. The said provision constitutes a restrictive regulation stipulating that principal and permanent public services may be carried out solely by public officials. However, with regard to public services falling outside this scope, there are statutory regulations allowing certain acts and operations such as inspection, supervision, certification, analysis, consultancy, reporting and the granting of conformity approvals to be carried out by private persons under special laws.

For example, pursuant to **Law No. 4708 on Building Inspection**, private **Building Inspection Organisations** inspect compliance of construction works with the relevant legislation and carry out reporting activities.

In accordance with **Law No. 2872 on the Environment** and the regulation issued pursuant thereto, exhaust emission inspections of vehicles are conducted by authorised private service providers.

Likewise, under **Law No. 4646 on the Natural Gas Market**, the processes of preparation and approval of natural gas internal installation projects may be delegated to private persons through a certification procedure.

Under **Law No. 5627 on Energy Efficiency**, energy performance certificates required for buildings are prepared by private persons, and licensing is carried out by the administrations taking such certificates into consideration.

Another example is **Law No. 5188 on Private Security Services**. Under this Law, the provision of security in certain areas may be entrusted to specially authorised private security companies.

Under **Law No. 1380 on Fisheries**, the authority to carry out inspections relating to fish passages, fish lifts and other structures on rivers is also delegated to private firms. In addition, **in fields such as product and food safety**, laboratories belonging to private persons are authorised in order to serve as a basis for the exercise of inspection powers.

On the other hand, in terms of tax practice, pursuant to **Law No. 3568 on Certified Public Accountancy and Sworn-in Certified Public Accountancy**, the control and certification activities carried out by private professionals such as Sworn-in Certified Public Accountants and Certified Public Accountants constitute a significant example of participation in administrative processes in the field of taxation.

Furthermore, under **Decree Law No. 660 on the Organisation and Duties of the Public Oversight, Accounting and Control Standards Authority**, independent control activities defined, for certain companies, as the examination and evaluation, through the application of the necessary independent control techniques prescribed in control standards, of books, records and documents, and the reporting thereof, with a view to obtaining sufficient and appropriate independent control evidence to provide reasonable assurance as to the compliance and accuracy of financial statements and other financial information with financial reporting standards—are carried out by private persons authorised by the administration.

Likewise, pursuant to **the Enforcement and Bankruptcy Law**, the determination of over-indebtedness in concordat proceedings may be performed by the aforementioned independent auditors.

ii. Does national case-law or legislation define criteria pursuant to which the delegation of administrative tasks to private individuals is authorised?

There are numerous judicial decisions concerning the assessment, in terms of concrete regulations, of the criteria set out within the framework of Article 128 of the Constitution. For instance, in **its decision dated 12/11/2020 and numbered 2020/10, 2020/67, the Constitutional Court** held that public services which are not required to be carried out in accordance with the principles of general administration may be performed by private persons under the supervision and oversight of the State and in accordance with certain statutory procedures. In this context, it ruled that the procedures for the approval and acceptance of projects relating to fish passages, fish lifts and other structures on rivers could not be carried out by private persons. However, inspection and control services, which are of a preparatory nature with respect to such structures, could be entrusted to private persons.

With regard to the practice of building inspection, the Constitutional Court, **by its decision dated 26/06/2002 and numbered 2001/377, 2002/59**, stated as follows: “Zoning enforcement has been accepted as falling within the duties and powers of local administrations under Law No. 3194 on Zoning and has been regulated in the form of a special administrative law enforcement activity. (...) By the contested provisions, ‘building inspection organisations’ possessing legal personality are substituted for the technical supervisor institution provided for under Law No. 3194 on Zoning. These organisations shall operate on the basis of an authorisation certificate obtained from the central administration, and their activities shall be supervised by the central administration. With this regulation, enacted for the purposes of public safety and public interest, building inspection organisations have not been granted

the authority to replace local administrations or to take decisions; rather, technical support has been provided for the satisfaction of local common needs, and the building inspection powers existing under Law No. 3194 on Zoning have not been abolished. (...) Within the scope of zoning enforcement activities, the powers to grant or refuse building permits, or to suspend or demolish buildings, fall within the authority of local administrations, and by the contested regulation, building inspection organisations have not been granted the authority to carry out administrative acts. In other words, building inspection organisations have been tasked with carrying out technical examinations without exercising public power and with submitting reports, opinions and information to the relevant authorities in this regard. Accordingly, the services provided by building inspection organisations **do not fall within the principal and permanent duties which the State is obliged to carry out in accordance with the principles of general administration.**" On these grounds, the Court held that the contested provisions were not contrary to Articles 127 and 128 of the Constitution and rejected the request for annulment.

In its decision dated 13/01/2011 and numbered 2007/2, 2011/13, the said Court characterised the granting of permits for the production, import and export of seed, seed certification, authorisation of activities relating to seed production and the supervision thereof, as well as the inspection of the compliance of seeds placed on the market with standards and the accuracy of label and packaging information, as a type of public service, and concluded that the delegation of such inspection to private law persons was contrary to the Constitution.

By its decision dated 26/06/2019 and numbered 2019/27, 2019/56, the Constitutional Court ruled that fire-fighting services, which constitute a principal and permanent duty required to be carried out in accordance with the principles of general administration, must, pursuant to Article 128 of the Constitution, be performed by public officials. Therefore, it is not possible to enact regulations that would allow the State, in the performance of this duty, to have such public services carried out by persons who are not public officials; on these grounds, it decided to annul the relevant provision of Law No. 5393 on Municipalities.

The provision stipulating that the examination and inspection, within the scope of licences, of electricity generation facilities and other facilities producing electricity could be delegated to private companies was likewise annulled by the Constitutional Court, **by its decision dated 05/07/2012 and numbered 2011/27, 2012/101**, on similar grounds.

In one of its decisions, **the 13th Chamber of the Council of State** ordered the stay of execution of the provision concerning the authorisation of private persons for the supervision of commitments given by undertakings before the Competition Authority. According to the Chamber, although administrations have the authority, in the performance of public services and law enforcement activities, to procure goods and services from third parties for ancillary tasks that are not of a principal nature, they are, as a rule, required to perform their principal tasks through their own personnel. The exception to this rule arises where an explicit authorisation is granted by law. In the specific case, as no such explicit authorisation was provided for in the Law, a decision was rendered to stay the execution of the regulation. (Case No.: 2023/3641) (a decision on the merits has not yet been rendered).

Likewise, in a decision of the Plenary Session of the Administrative Law Chambers of the Council of State, a stay of execution was ordered in respect of the contested Regulation, which regulated the performance of pilotage and towage services—being services of a public service nature—by private entrepreneurs, in a manner exceeding the duties and powers conferred upon the defendant Ministry by a Presidential Decree, in the absence of any statutory provision allowing such services to be carried out by or delegated to natural or legal persons. (Objection of Stay of Execution No. 2020/476)

iii. How are administrative tasks delegated to private individuals? Please provide specific examples.

- Directly by law** - Law No. 3568 on Certified Public Accountancy and Sworn-in Certified Public Accountancy
- By an administrative act** - Through regulatory acts
- By contract**
- Other**

iv. Which administrative tasks can be entrusted to private individuals [content of the tasks]? Please provide specific examples from legislation and case-law.

- Preparation of the administrative act**
- Issuance [adoption] of the administrative act**
- Implementation of the administrative act** - Implementation of Certified Public Accountancy and Sworn-in Certified Public Accountancy
- Other** - control, reporting, compliance.

v. What is the extent [range] of administrative tasks that can be entrusted to private individuals? Please provide specific examples from legislation and case-law.

- Advisory tasks**
- Decision-making tasks**
- Control and verification tasks:**
- Establishment of the facts**
- Legal qualification of the facts**
- Other** - Certified Public Accountants and Sworn-in Certified Public Accountants have the control and verification tasks

vi. Are there any cases where the involvement of private individuals in administrative proceedings is prohibited?

- No**
- Yes** (in the areas of essential public services that must be carried out according to general administrative principles)

If yes, which legal instrument provides for the corresponding prohibitions?

- Constitution
- Legislation
- Other

Please indicate any relevant case-law.

It is set out in detail in Section 2/ii.

3. Qualifications and selection procedure for private individuals

i. What is the procedure provided for in the legislation for the certification of private individuals? Please mention specific examples.

- Participation in examinations such as, Certified Public Accountants and Sworn-in Certified Public Accountants
- Selection based on criteria such as the appointment of the members of the Valuation Commission
- Other

ii. How are selected the private individuals who will be entrusted with a specific administrative task? Please give examples.

- Random selection from a list/register
- Selection from a list/register based on criteria
- Absolute discretionary power of the Administration
- Selection by the citizen [upon a declaration] - Certified Public Accountants and Sworn-in Certified Public Accountants
- Other - Exams and the external members of the Valuation Commissions are selected and appointed in accordance with their respective legislation

iii. Is there a legal provision and/or other instrument governing the actions of private individuals when performing administrative tasks? Please indicate specific provisions.

- No
- If yes,
- General normative act - (e.g. Code of Administrative Procedure)
- Specific normative acts
- Codes of Conduct, good practices (soft law)
- Other

iv. How are the impartiality and integrity of private individuals guaranteed under the law? Please indicate specific provisions.



- Incompatibilities
- Impediments
- Criminal or disciplinary liability
- Other

v. What are the legal consequences in the event of an error, offence or failure on the part of the private individual?

- Withdrawal of the certification
- Disbarment from the professional association
- Imposition of a fine or other penalty
- Personal liability of the private individual (civil, criminal, disciplinary)
- Revocation of the administrative act in the issuance of which the private individual collaborated
- Civil liability of the State
- Other

4. Administrative checks [controls]

i. Does the Administration carry out checks on private individuals when they perform administrative tasks?

- Yes
- No

ii. If yes, at what stage are the checks carried out?

- A priori
- A posteriori
- At any time

iii. How are checks activated?

- Following a complaint/administrative appeal
- Ex officio

iv. How extensive are the checks?

- Checks based on sampling
- Mandatory checks for all actions

v. What is the nature of the checks?

- Of legality
- Of the substance, of appropriateness

vi. What is the type of checks?

- On persons



On actions

vii. Are the conclusions of private individuals binding on the Administration?

Yes (not in all cases)

No

5. Judicial review

i. Can the actions of private individuals be subject to judicial review? Please indicate specific provisions or the relevant case-law.

No

Yes

If yes, what is the scope of the judicial review?

The review directly targets the action of the private individual (per se)

The review indirectly targets the action of the private individual (appeal lodged against the final act of the Administration, whether explicit or implicit, e.g. appeal lodged against the tacit acceptance of the actions of private individuals by the Administration)

ii. What types of disputes arise when challenging the actions of private individuals?

administrative disputes

private disputes

iii. Please mention typical cases from national case-law concerning the delegation of administrative tasks to private individuals.

With regard to disputes that may arise across a wide range of fields and through different methods, the fundamental criterion is that the acts and actions of private law persons are, in most cases, preparatory and declaratory in nature; that disputes arising between the private person and the beneficiary may generally be brought before the judicial courts. However, in areas involving a digital approval process; such as exhaust emission control and energy performance certificates, the action assumes an administrative character; and that, in both cases, it may be asserted that a compensation case may be brought against the administration for breach of its duty of supervision and oversight with respect to the private entity selected by the administration. In the field of administrative jurisdiction, cases are predominantly brought in relation to disputes arising from sanctions imposed on private persons, or from the revocation of authority or certificates, as a result of supervision carried out by the authorising administrations. On the other hand, cases may also be brought before the administrative courts by the addressees of the act against administrative measures established by the administrations on the basis of preparatory acts such as control and reporting.

Moreover, it may also arise in cases relating to disputes arising from the joint and several liability of Certified Public Accountants and Sworn-in Certified Public Accountants.

B. Integration of private-sector methods and organisational models into the functioning of the Administration

1. Recruitment of senior managers outside the hierarchy of the civil service

i. What are the objectives of recruiting private individuals as senior managers within the Administration?

The transfer of private sector experience to the public sphere aims to enhance effectiveness, quality, and efficiency in the public sector by transforming the bureaucratic and rigid management approach into a more flexible and pragmatic structure in dynamically evolving areas of public services, while also ensuring the implementation of a democratic governance approach within public administration.

ii. In which sectors of the Public Administration is it permissible to recruit senior managers who do not belong to the hierarchy of the civil service, and in which sectors is it prohibited?

Appointments independent of hierarchy are particularly applicable in public enterprises operating in the economic field and public institutions with company status. Apart from this, where persons from the private sector who do not hold the status of public officials are appointed to public authorities, they are generally subject to hierarchical control and are regarded as public officials in the broad sense.

iii. What criteria does the Administration use to select external senior managers?

The principles of competence and merit are adhered to within the framework of the fundamental criteria set forth in the relevant laws.

iv. What is the nature of the duties of external senior managers?

- | | |
|-----------------|-------------------------------------|
| Decision-making | <input checked="" type="checkbox"/> |
| Advisory | <input checked="" type="checkbox"/> |
| Other | <input type="checkbox"/> |

v. Does error on the part of a senior manager give rise to:

- | | |
|---|--------------------------|
| Civil liability of the State | <input type="checkbox"/> |
| Personal liability of the manager (civil, criminal, disciplinary) | <input type="checkbox"/> |

2. Organisational models



i. Does your country use New Public Management, Public Value Management, Digital Era Governance, or New Public Governance policies in the organisation of its Public Administration, for example, to digitise procedures, achieve objectives, ensure accountability, evaluate efficiency, promote the rational use and distribution of resources, control expenditure and ensure compliance with budget restrictions, codify legislation, promote career progression, train staff, etc.? Please provide specific examples.

Pursuant to Presidential Decree No. 177, the **Cyber Security Directorate** has been established, and among its principal duties are to establish the digital government institutional architecture; within this scope,

- to determine the principles, procedures and standards regarding the administrative, financial and technical characteristics of information technology products, services and systems to be procured or developed by public institutions and organizations;
- to develop and operate the e-Government Gateway and common digital government products, services and systems;
- to determine the principles, procedures and standards concerning the integration of the information systems of public institutions and organizations with these infrastructures and the provision of services;
- to carry out legislative work on artificial intelligence applications in the public sector; to contribute to the preparation of national policies, strategies and action plans in the field of artificial intelligence and to efforts aimed at harmonizing national legislation with international regulations; to participate in ecosystem development activities;
- to determine the principles, procedures and standards relating to data governance covering the management of data used in digital government and public-sector artificial intelligence technologies throughout its lifecycle, from creation to destruction;
- and to take the lead in artificial intelligence applications in the public sector, including identifying requirements in cooperation with relevant institutions, implementing a shared data space infrastructure, determining quality criteria and standards for data to be used in applications, and certifying compliance therewith.

Likewise, the **Strategy and Budget Directorate**, established by Presidential Decree No. 13, is a central institution operating in areas such as efficiency, planning, strategic management, productivity, investment, and expenditure analysis.

ii. Is there a specific provision for the organisation of the Administration based on the above-mentioned models (Constitution, legal provision, etc.)?

These fields have been regulated by Presidential Decrees, and for these purposes, institutions, offices, and policy councils have been established directly under the Presidency.

iii. In which public services and agencies is this type of organisation used?

- | | |
|----------------------------------|-------------------------------------|
| The Administration stricto sensu | <input checked="" type="checkbox"/> |
| Public enterprises | <input checked="" type="checkbox"/> |
| Other public entities | <input checked="" type="checkbox"/> |

iv. Are the policies for achieving the objectives designed:

- | | |
|---|-------------------------------------|
| At national level | <input checked="" type="checkbox"/> |
| At regional level | <input checked="" type="checkbox"/> |
| By subject-matter | <input checked="" type="checkbox"/> |
| By taking into account specific public entities | <input type="checkbox"/> |
| Other | <input type="checkbox"/> |

v. Have specific objectives been set out for the action of the Administration? Please provide examples.

Objectives such as digitalization, efficiency and productivity, savings, reduction of bureaucracy, and speed and effectiveness in public services have been envisaged.

If yes, is their accomplishment:

- | | |
|---|-------------------------------------|
| Optional (depending on the nature of the objective) | <input checked="" type="checkbox"/> |
| Mandatory | <input checked="" type="checkbox"/> |

Does failure to meet these objectives lead to:

- | | |
|--|-------------------------------------|
| Personal consequences for the senior managers | <input checked="" type="checkbox"/> |
| Legal consequences for the assessed organisation | <input type="checkbox"/> |
| Financial consequences for the assessed organisation | <input type="checkbox"/> |

Are incentives of any kind provided for civil servants (e.g. remuneration) or public entities to ensure that these objectives are achieved?

vi. Are there any indicators for evaluating the action of the Administration in relation to the following factors:

- | | |
|--|-------------------------------------|
| Compliance with the regulatory framework | <input checked="" type="checkbox"/> |
| Effectiveness | <input checked="" type="checkbox"/> |
| Efficiency | <input checked="" type="checkbox"/> |
| Economy | <input checked="" type="checkbox"/> |
| Achievement of strategic objectives | <input checked="" type="checkbox"/> |



Other

II. Alternative methods for resolving administrative disputes

1. General provisions

i. Does your legislation provide for alternative dispute resolution (ADR) in cases involving public law/administrative law?

Arbitration

Mediation

Other - Settlement in full remedy (compensation) cases; settlement in certain tax disputes; mandatory administrative application remedies prescribed for certain acts; and the Ombudsman Institution.

ii. Are there categories of administrative disputes that are excluded from ADR by law or according to case-law?

** Please elaborate on your answer, citing any relevant legislation and/or case-law*

No alternative dispute resolution methods have been provided for disputes other than those mentioned above.

2. Settlement and Mediation

** Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is it permissible for the Administration and private individuals/legal entities to sign a settlement agreement or other similar document (without prior mediation)?

Yes

No

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Article 1 of the Additional Article 1 of Law No. 213 on the Tax Procedure provides that the administration may reach a settlement with taxpayers within the framework of the provisions set out in this section.

Additional Article 11 of the same Law also provides that the Ministry of Finance may permit pre-assessment settlement in respect of provisions set out in this section.

In actions for full remedy, the institution of amicable settlement is regulated by Decree Law No. 659. Accordingly, before the dispute is brought before the judiciary, an amicable settlement protocol is drawn up between the administration and the applicant. This procedure is not applicable to actions for annulment.

Does this option only apply to the settlement of administrative disputes that are already under way, or can it also be used to prevent administrative disputes from arising in the first place?

For settlement in full remedy actions, it is required that damage has occurred and/or is alleged to have occurred to the applicant as a result of an administrative act or action. In this sense, a technical dispute has essentially arisen.

Pursuant to Additional Article 11 of Law No. 213 on the Tax Procedure, pre-assessment settlement constitutes a preventive remedy applied before any dispute arises.

Do the law or case-law distinguish between application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)?

Law No. 2577 prohibits, in cases for annulment, the taking of decisions of an administrative nature and the conduct of expediency (merits) review. In this sense, there is no full judicial review in the Turkish administrative judicial system. However, full remedy actions resemble compensation and restitution actions in private law.

Is there a special procedure for initiating and conducting this alternative dispute resolution method, or are all matters left to the discretion of the parties involved?

The procedures and principles governing settlement in full remedy actions are regulated in detail under the relevant legislation. Moreover, the procedures for the initiation and implementation of the reconciliation mechanism aimed at preventing tax disputes are set forth in Law No. 213 and the relevant regulations.

After signing a settlement agreement (or other similar document), is ratification by a court required?

Yes
No

If yes, by which court?

If no, can the legality of the settlement agreement (or other similar document) be examined by the judge on an incidental basis? Under what circumstances could the settlement be considered null and void and without legal effect?

In full remedy disputes, no legal action may be brought in respect of the matter or amount that has been settled. However, although recourse to judicial remedies may be possible in cases based on defects of consent, this issue remains controversial.

In tax disputes, where reconciliation is reached, it is sufficient for the situation to be recorded in minutes, and no court approval is required. However, where an error exists in the reconciliation (in the cases set out in Articles 116 to 124 of the Tax Procedure Law), it may be reviewed in connection with the principal dispute and declared null and void.

After being signed and/or validated, as applicable, does the settlement agreement have the force of res judicata? Can the enforcement of this document be pursued?

In full remedy actions, the settlement record has the force of a judgment. The settled amount is paid from the administrative budget. For claims not subject to a maturity date, the record may not be enforced before the expiry of two months from the date of its signing; for claims subject to a maturity date, it may not be enforced before the expiry of such maturity. In tax disputes as well, the settlement gives rise to the effect of res judicata and may be subject to enforcement.

Which court has jurisdiction over disputes concerning such enforcement?

Judicial courts and enforcement offices are competent and vested with jurisdiction.

ib. If the signing of a settlement agreement or other similar document between the Administration and private individuals/legal entities is not permitted in your country, this prohibition results from:

a legislative provision

a general principle of law

ii. Does your country provide for a mediation procedure between the Administration and private individuals/legal entities for administrative disputes?

** The term 'mediation' is used here to refer to a procedure conducted by an independent and impartial third party, and not to administrative appeal procedures addressed to the Administration or to a body that is hierarchically dependent on the Administration.*

Yes

No

ii.a. If yes,

Is it expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Is it mandatory or optional?

If it is optional, does it require:

The mutual agreement of the parties

Only the intention of the Administration

Only the intention of the private individual/legal entity

Specifically with regard to the State as a party to the dispute, is mediation initiated:

After approval by a special committee

By the administrative authority involved in the dispute

Other

At what stage can a case be referred for mediation?

Necessarily before the introduction of legal proceedings

At any stage of the litigation proceedings

Is there a specific piece of legislation governing the mediation process?

Yes

No

If yes, please specify:

Which principles of trial apply to the mediation process (hearing of the parties, adversarial principle, equality of arms, publicity, representation by a lawyer?)

How is the impartiality of the mediator ensured?



Is there any interim relief (stay of execution, etc.) during the mediation process? If yes, who is competent to hear the case?

At the end of the mediation process,

If an agreement is concluded:

A document is drawn up

Other possibility (please specify)

If an agreement is not concluded:

Is a time limit set for bringing the matter before the competent court?

Are the litigation proceedings already under way (if applicable) continued?

In the event that a document is drawn up following mediation, do the rules concerning the settlement procedure (see above) apply, or are there differences? If yes, please specify.

iib. If no mediation process is provided for, is this exclusion provided for in:

a legislative provision

a general principle of law

The general rule is that all acts and actions of the administration are subject to judicial review (Article 125 of the Constitution of the Republic of Türkiye), and alternative dispute resolution methods must be expressly provided for by law.

3. Arbitration

** Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is arbitration between the Administration and private individuals/legal entities permitted in your country?

Yes

No

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Pursuant to Article 125 of the Constitution, a national or international arbitration clause may be stipulated in concession contracts. International arbitration is possible only where a foreign element exists. Although the administrative nature of sports federations is controversial, mandatory arbitration has also been provided for in respect of the decisions they render.

Does it concern both application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)? Are there any exceptions provided for by law or established by case-law?

Disputes arising from concession contracts that contain an arbitration clause may not be brought before the administrative courts. However, unilateral acts outside the contract that occur during the process may be subject to legal action.

Is it mandatory or optional?

Optional

ib. If arbitration is not permitted, is this prohibition due to

A legislative provision

A general principle of law

ic. If arbitration is optional, does it require:

The mutual agreement of the parties

The sole intention of the Administration

The sole intention of the private individual/legal entity

On the part of the State, is arbitration initiated:

After approval by a special committee

By the administrative authority involved in the dispute

Other

ii. For disputes arising from contracts between private individuals/legal entities and the State, do the common provisions relating to commercial arbitration (domestic or international) apply, or is there a special regime?

If there is a special regime, please briefly mention the elements that differentiate it from the commercial arbitration regime.

Although a special regime has been adopted in this regard under Law No. 4501 on the Principles to be Followed in the Event of Recourse to Arbitration in Disputes Arising from Concession Agreements and Contracts Related to Public Services, reference is made to the relevant legislation governing the general regime in cases not covered by this Law. In terms of international arbitration, Law No. 4686, which regulates the general regime, also applies to concession agreements involving a foreign element. The foregoing applies to concession contracts. However, there is no such restriction with respect to private law contracts concluded by the administrations, and these are subject to the general provisions.

iii. Is arbitration provided for in contracts falling within the scope of Directives 2014/24/EU and 2014/25/EU?

If yes, have any issues been raised regarding the application of the rules governing the performance of these contracts? How have the courts addressed such issues in the relevant case-law?

Although Türkiye is not yet a member of the EU, the rules and principles of EU legislation are closely monitored within the framework of both the harmonization process and the reception of law. In this context, regarding public procurement in Türkiye including construction, goods and services procurement, and consultancy contracts amendments were made in 2017 to **the standard contracts**, providing that an international arbitration clause may be stipulated depending on whether the contract has a national or foreign element.

iv. How are the independence and impartiality of the arbitrator ensured?

By election

v. Is there any interim relief when an administrative dispute has been submitted to arbitration? If yes, which body is competent to hear the case?

In international arbitration, a request by one of the parties, either before or during the arbitral proceedings, for precautionary measures or precautionary attachment from a court, and the court's granting of such measures or attachment, shall not constitute a violation of the arbitration agreement.

Unless otherwise agreed, during arbitral proceedings, the arbitrator or arbitral tribunal may, at the request of a party, order precautionary measures or precautionary attachment. The arbitrator or arbitral tribunal may make the granting of precautionary measures or precautionary attachment conditional upon the provision of appropriate guarantee. The arbitrator or arbitral tribunal may not issue precautionary measures or precautionary attachment orders that are enforceable by coercive execution authorities or to be carried

out by other official bodies, nor may it issue precautionary measures or precautionary attachment orders binding on third parties.

In domestic arbitration, unless otherwise agreed, during the arbitral proceedings, the arbitrator or arbitral tribunal may, at the request of a party, order the taking of a precautionary measure or the recording of evidence. The arbitrator or arbitral tribunal may make the granting of a precautionary measure conditional upon the provision of appropriate guarantee. The court shall decide on the enforceability of a precautionary measure issued by the arbitrator or arbitral tribunal, at the request of a party, provided that a valid arbitration agreement exists. Where the arbitrator, arbitral tribunal, or another person appointed by the parties is unable to act in a timely or effective manner, a party may apply to the court for precautionary measures or the recording of evidence. If such circumstances do not exist, an application to the court may only be made based on the permission of the arbitrator or arbitral tribunal, or on the parties' written agreement regarding this matter. A precautionary measure ordered by the court at the request of a party, either before or during the arbitral proceedings, shall, unless otherwise decided, automatically cease to have effect upon the enforceability of the decision of the arbitrator or arbitral tribunal, or if the case is dismissed by the arbitrator or arbitral tribunal. A precautionary measure ordered by the court may be replaced or abolished by the arbitrator or arbitral tribunal.

vi. In arbitration concerning administrative disputes:

	yes / no
Is there an obligation to make publicly available the basic information and documents relating to the proceedings?	<input type="checkbox"/> <input checked="" type="checkbox"/>
Is the participation of third parties permitted?	<input checked="" type="checkbox"/> <input type="checkbox"/>
Is legal representation mandatory?	<input type="checkbox"/> <input checked="" type="checkbox"/>
If yes, is legal aid available?	<input type="checkbox"/> <input type="checkbox"/>
Is the hearing public?	<input type="checkbox"/> <input checked="" type="checkbox"/>
Is the arbitral tribunal obliged to give reasons for its award?	<input checked="" type="checkbox"/> <input type="checkbox"/>
Is the arbitral award made publicly available?	<input type="checkbox"/> <input checked="" type="checkbox"/>

vii. During the proceedings, the applicable system is:

- the adversarial system**
- the inquisitorial system**

viii. What powers does the arbitral tribunal have?

- Reviews the legality of administrative acts of a non-pecuniary nature
- Reviews the legality of an administrative act of a pecuniary nature (fine, etc.)
- Annuls/amends an administrative act of a non-pecuniary nature



- Annuls/amends an administrative act of a pecuniary nature
- Addresses only recommendations to the Administration
- Restricts itself to awarding compensation for damages

Does the arbitral award have effect:

- Erga omnes (with regard to all)
- Inter partes (between the parties)

Is it considered 'case-law' for other cases?

If the answer to the last question is yes, please explain.

Can the validity of the arbitral award be challenged in court?

- Yes
- No

If yes, is the validity of the arbitral award reviewed directly or incidentally?

Is it possible to waive the right to judicial review?

Which courts have jurisdiction?

What is the scope of the judge's review according to case-law?

(In international arbitration)

Annulment may be granted if it is established and/or proven by the court that:

- One of the parties to the arbitration agreement lacked capacity, or the arbitration agreement is invalid under the law chosen by the parties or, in the absence of such choice, under Turkish law;
- The procedure for the appointment of the arbitrator or arbitral tribunal, as specified in the parties' agreement or provided under this Law, was not followed;
- The award was not rendered within the arbitration period;
- The arbitrator or arbitral tribunal acted in a manner contrary to the law regarding their competence or lack thereof;
- The arbitrator or arbitral tribunal decided on a matter not covered by the arbitration agreement, failed to decide on the entirety of the claim, or exceeded their authority;

- f) The arbitral proceedings were not conducted in accordance with the parties' procedural agreement, or, in the absence of such agreement, in accordance with the provisions of this Law, and this procedural defect affected the merits of the award;
- g) The principle of equality of the parties was not observed.
- Additionally, annulment may be granted by the court if:
- a) The dispute subject to the arbitrator's or arbitral tribunal's decision is not capable of arbitration under Turkish law;
- b) The award is contrary to public policy.
- Similar arrangements exist in national arbitration as well.

In arbitration, is the concept of public policy different, according to case-law, in cases where the State (or a legal person governed by public law) is a party to the arbitration? If yes, what are the differences compared with the concept of public policy in arbitral proceedings between private individuals?

This application is not under our duty.

In arbitration, in addition to the rules of European competition and consumer protection law (see C-126/97, Eco Swiss China Time Ltd v Benetton International NV and C-168/05 Mostaza Claro v Centro Móvil Milenium SL, respectively), has case-law recognised other rules of EU law as rules of international public policy? If yes, please mention the relevant cases.

This application is not under our duty.

Which body has jurisdiction to hear disputes arising during the enforcement of an arbitral award? Has case-law dealt with special cases where enforcement has been contested on the grounds of the administrative nature of the dispute?

This application is not under our duty.