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# ReNEUAL I –

# Administrative Law in the European Union

### *"Single Case Decision-Making"*

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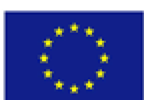
## Answers to questionnaire: Turkey



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# ACA-SEMINAR
# RENEUAL I – ADMINISTRATIVE LAW IN THE EUROPEAN UNION: SINGLE CASE DECISION-MAKING

## I- PARTIES DURING ADMINISTRATIVE PROCESS: CATEGORIES AND LEGAL POSITIONS

**1-a, b)** In Turkish Administrative Law, there is not any General Administrative Procedures Law including all general administrative procedural rules. For this reason, there is not any categorization and definition stated by a general Law for the parties in the process of administrative decision-making. However, there are some legal regulations including administrative procedural rules, such as the Law on the Collection Procedures of Assets, Right to Information Act, Customs Law, Law on Expropriation, Public Procurement Act, Law on the Protection of Competition, and Law on Customs Procedures. In these regulations, the details are arranged such as who can apply during administrational decision-making process, on the rejections to the decisions, the period to make such applications and the institutions to apply to. Besides, there are also some special regulations including the relevant administrative procedures. For example, in the Regulation on Environmental Impact Assessment (EIA) entered into force in line with the Environmental Law, it was ensured by a provision that that there shall be a Public Participation Meeting in a central location and time, where people who are expected to be affected the most from the project can easily reach, as defined by the Governor's Office, on a date defined by the Ministry with the participation of the institutions authorized by the Ministry and project owner, to inform the public about an investment and to get their opinions and views. In this regulation, the participation of the people was also foreseen together with the project owner.

In the administrative decision-making process, the parties of the administrative proceedings can be involved in the administrative decision-making process, which means those whose interests are directly affected can participate for urban planning, the protection of the environment, historical and cultural values, and the participation of associations, trade unions and non-governmental organizations on the issues of public interest or the residents of the districts or residents in the development plans.

Again, as per the Administrative Jurisdiction Procedures Law (IYUK) Article 10, relevant persons may apply to the administrative authorities for the conduct of an action or action, which may be subject to administrative proceedings. If no response is given within sixty days, the request shall be considered to be rejected. According to the subject, the concerned parties can file a lawsuit against the administrative and tax courts. According to Article 11 of the aforementioned law, the removal, withdrawal or amendment of an administrative proceedings by the concerned persons can be requested from the upper authority, or from the authority who has carried out the proceeding, within the period of administrative litigation. These provisions regulate the procedure of appeal and appeal of the authorities to the administration. These provisions regulate the procedure of appeal and objection of the authorities to the

administration. The first provision is regarding the person to request an administrative action which may be the subject of administrative proceedings. The second rule stipulates that an administrative action should be submitted to the administrative authority before it is addressed to the administrative case. In both cases, the respondent is involved in the process of administrative decision-making, imposing the obligations or benefits.

On the other hand, it might be foreseen to make certain preparations or to take the opinions of certain authorities before the administrative procedures and decisions are taken. It may be foreseen that a proposal be made by another authority before an administrative decision is taken. In this case, a ”proposal“ procedure can be mentioned. For example, in order to be appointed to the staff of the faculty member according to the Higher Education legislation, after the opinion of the dean or the related directorate boards, the appointment is made by the rector. Sometimes it may be foreseen that the consultative opinion of another authority, body or institution shall be taken before an administrative decision is taken. In this case, there is a ”consultation“ procedure.

**2- a, b)** Some of the provisions of the law specify the rules of the administrative procedure in the administrative decision-making process and clearly identify who can take part in the process and who can object to the procedure. For example, as per the Law on Conservation by Renovation and Use by Revitalization of the Deteriorated Historical and Cultural Immovable Property, it is stated that the property owners or the locals within the area of Renovation will be informed through the meetings to be held by the authorized bodies and these locals or property owner’s ideas shall be asked, and their participation shall be ensured, that if seen necessary by the authorities, meetings shall be held with the NGOs, union, universities, mukhtars and public institutions for consultation, that press announcements and meetings can be made in relation to the project, and that the third parties having public good such as protecting the historical and cultural assets may be also included in the administrative decision-making process. Again, in Administrative Jurisdiction Procedures law Article 11, it was stipulated that the administrative proceedings can be requested from an upper or relevant authority, to be withdrawn, amended or replaced by an administrative proceedings before the administrative proceedings are filed by the concerned, and with the said regulation, it was ensured that the interested party who violated his/her interest in the administrative proceeding was included in the administrative process by granting the right to object to the administrative action established by the competent authority before the case for the annulment of the administrative jurisdiction was opened. Another example, to detect the price and values for the real estate tax as per Tax Procedural Law, and its announcement and finalizing, the decisions by the valuation commission in the provinces of metropolitan municipalities, lead by the governor or appointed officer, will be given to the central commission in return of signature, where the commission also consisted of provincial treasurer or appointed officer, land registry director and members from the chambers of commerce, independent financial advisers, and craftsmen; and that central commission shall review the notified decisions in 15 days; return them back as a result of the review to the relevant valuation commission and in the event of another value is defined by the commission then these value shall be considered by the valuation commissions to re-value. With this arrangement, the participation of

representatives from different institutions in the process was ensured in the process of determining the cost of real estate tax.

**3-** The administrative process in the Turkish Administrative Law starts with the written application (optional or mandatory) of the person concerned or the administrative authority's use of its legal duties and authorities. In either case, according to the nature of the claim or legal obligation, it may be an obligation to initiate the procedure for the administration, or it may be in the discretion of the administration. Regarding the way in which the persons who are not regulated as a party by the law will take part, the administrative authorities in Turkish Administrative Law are obliged to establish transactions according to the legal regulations. There is no clear legal basis for the administrative authorities to include ex-officio in the administrative process, unless it is expressly indicated in the law as an relevant party. If the party not involved in the legal arrangement may apply to the competent authority spontaneously and be a party, a decision may be made by evaluating it within the limits of the authority and duty of the administration according to its discretion.

**4-a,b)** Since there is no Law on General Administrative Procedures in our country, there is no general legal regulation regarding the legal consequences of the administrative authorities' determination of the parties in the administrative process and the participation of the parties in the administrative process. However, there are some relevant provisions in some relevant legal regulations. As explained in the 1st question above, for example in the EIA Regulation, the participation of the public and interested parties during the evaluation of the project within the EIA process is regulated. Accordingly, to inform the public about the investment, to get the views and suggestions about the project; it has been stated that the Public Participation Meeting shall be held at a central location and time determined by the Governor's Office, which is expected to be the most affected by the project. Again in the relevant provisions of the legislation, it is regulated that starting from the application period of a project subject to EIA process, before and after EIA report is prepared, during the review and evaluation processes of the report, in commission review, finalizing and decision-making phase, the ideas of the public shall be taken into consideration and finally, the decision taken regarding the project in Annex-I and Annex-II lists shall be announced to the public, by considering the different phases of the public to the decision-making process.

**c)** Objections to administrative proceedings by related parties may be as “mandatory or discretionary application” with special arrangements in some laws. For example, the Public Procurement Law states that the complaints filed to the competent Public Procurement Authority due to the actions and proceedings in the procurement process and the complaints and the appealing complaints are mandatory administrative remedies before the case is filed. Which means, with a legal regulation, making an administrative process a subject of an administrative proceeding is bound with the precondition of application to an administrative body. Therefore, in the event that an appeal against an administrative action is compulsory by the concerned persons and the case is filed without exhaustion, the administrative jurisdiction places the decision of the administrative authority with the decision of the administrative jurisdiction. If there is a discretionary remedy, the person can sue directly in the administrative jurisdiction without exercising the right of appeal.

**5-a,b,c)** Regarding the fact that individuals / institutions / other public institutions can file a lawsuit against a decision not to be accepted as a party to objections to the administration: Since there is no Law on General Administrative Procedure in our country, there is no general regulation on this issue. On the other hand, T.R. Article 125 of the Constitution titled "Judicial Remedy" stipulates that the judiciary is open to all acts and actions of the administration. In this context, it is possible for the concerned parties to file a lawsuit against the decision not to be considered as a party to the administration. In addition, a judicial decision can be given by giving an example on the subject. In the incident, the plaintiff joint-stock company filed a complaint to the Public Procurement Authority by requesting the exclusion of a joint venture participating in the tender for the construction of a ferry terminal, which was carried out by open tender procedure, and rejected by the defendant authority in terms of the qualification of the plaintiff. On the refusal of the lawsuit filed by the plaintiff in the Administrative Court against this transaction, the Council of State appealed to the Council of State for appeal of the decision. In the evaluation made, in line with the relevant legislation, it is stated that the plaintiff company became applicant by participating the tender subject to conflict, it may apply to compliant regarding the administrative processes for the offers, evaluation of the offers and the finalization processes of the tender, that even if a joint company was left outside after they participated to the tender, they can apply to legal proceedings for compliant and that since there can be any legal status change in the plaintiff company, the decision by the Administrative Court on the dismissal of the case will be reversed since there was no legal compatibility, and the cancellation of the proceeding subject to the case. In the decision, in line with the legislation provisions, it was stated that the defendant may apply for complaint for the matter in dispute. In the process of appeal to the defendant administration, it was decided that the plaintiff who was given a decision to refuse a license is qualified by the judicial decision. In this context, interested parties have the right to file a lawsuit.

**6- a, b**) As stated above, since Turkish Administrative Law does not have any law on General Administrative Procedure, all parties in the administrative decision-making process are not given the right to be heard as a general procedural right during the establishment of the administrative transaction. This right, in the context of the right to defense in administrative law, is particularly confronted with disciplinary law and is subject to judicial jurisprudence. Article 129 of the Constitution of the Republic of Turkey stipulates that civil servants and other public officials, as well as members of the professional organizations and their supreme organizations, which are public institutions, cannot be given disciplinary penalties unless they are given the right to defense. In the related article regulating the right of defense of the Civil Servants Law, a parallel arrangement is included. Again in the Law on the Protection of Competition No. 4054, it is foreseen that the Competition Board shall take the defense of the concerned person before the decision of an administrative sanction is taken.

Apart from this, in relation to the right of access to informative documents, as closely related to the right to be heard and which ensures the effective use of this right, in accordance with the Right to Information Act, entered into force in Turkey in 2003, everyone has the right to information. Pursuant to the aforementioned law, public institutions and organizations are obliged to submit all kinds of information and documents except the exceptions included in

this Law to the beneficiaries' benefit and to take necessary administrative and technical measures in order to conclude the applications for obtaining information effectively, swiftly and accurately. Again, Paragraph 2 of Article 40 of the Constitution stipulates that in the state transactions, the relevant persons have to specify the legal remedies and the time-limits to which they apply. Pursuant to this regulation, it is obligatory to indicate to the administrations a constitutional obligation, administrative and / or judicial remedies, authorities and durations, if any, in the transaction text. However, within the scope of the aforementioned law, restrictions have been imposed on the access of some information and documents. They are closed to judicial review, information and documents related to state secret, information and documents related to administrative investigation, information and documents related to judicial investigation and prosecution, privacy of private life, confidentiality of communication, trade secret, ideas and works of art, internal regulations, advice and considerations of opinion. Therefore, whether or not the reasons for the restriction brought under the law has been fulfilled, the competent administrative authority in this regard is evaluated by the Board of Information and Evaluation Board, and it is put forward by the jurisprudence of the judiciary.

Regarding the right to call witnesses during the administrative decision-making process, the regulation in the Tax Procedure Law can be given as an example. In Article 3/B of the aforementioned Act, it is stated: “Evidence: actual nature of the taxation and the actual nature of the treatment are essential. The actual nature of the tax incidents and the treatment of this event can be proven by any evidence except the oath. As a matter of fact, the witness expression, which has nothing to do with the incident that gives rise to the tax, cannot be used as a means of proof. In the case of claiming a situation which is not in conformity with economic, commercial and technical requirements or is normal and not according to the nature of the incident, the burden of proof belongs to the claiming party.” Pursuant to this regulation, the person concerned may be used as a means of proving the witness expression, which is relevant and open to the incident that produced the tax.

In respect of the rights of all categories of parties involved in the administrative decision-making process, in the case of administrative proceedings, in accordance with Article 2 of the Administrative Procedure Code, the followings are listed as the case types; the interests, reasons, issues and purposes of the administrative proceedings cancellation cases by persons, full jurisdictional proceedings by persons who have a personal right directly due to administrative actions, lawsuits concerning disputes between the parties due to any administrative contracts for the execution of one of the public service, except for disputes arising from the concession conditions and contracts. In this context, the concerned persons have the right to sue in the administrative jurisdiction as from the date on which the transaction was notified or informed of the transaction.

The adjectives and conditions such as citizenship, fellow citizenship, being neighborhood members, being village members, do not give the right to file a direct action for annulment. On the other hand, the Council of State with the case law, urban planning, the environment, historical and cultural values, such as the protection of issues of public interest in associations, trade unions and non-governmental organizations or zoning plans in the district

or the residents of the municipality is interpreted in a wide range of cases. The unions established under the Law No. 4688 on the Civil Servants Trade Unions and their supreme organizations, as well as the proceedings that cause the violation of interests which are common to their members, shall also be prosecuted against the individual (subjective) administrative acts against their personal interests and has the right to be a party in the case.

**7.** Law on General Administrative Procedures, which is also subject to a large number of academic studies in Turkey, was submitted to the Prime Ministry by the Ministry of Justice on 15.09.2008. In the relevant article regulating the right to participate and informing the obligation of participation of the local public, the public is informed that the public information and participation is essential before the transactions which directly affect the cultural assets of public works, zoning practices, ownership and environmental rights, the administrative procedures for the benefit of; to hold meetings with representatives from relevant public institutions and organizations, from universities and from professional organizations in the nature of the relevant public institutions, to which representatives of non-governmental organizations can participate; from the relevant public institutions and organizations, from the Higher Education Institution; it is stipulated that representatives of the unions and federations of the relevant professional associations shall be called and that the general meeting will be held in which the representatives of non-governmental organizations can participate.

**8.** By the Chamber of Architects of Turkey, in their review of the Environmental Impact Assessment Regulation that regarding the review, evaluation and decision-making of project, of 8$^{th}$ Article, 5 paragraph about regarding the process of removing the publication of the EIA application file, the public has seen the project that restricts the right of access to information, of paragraph 3 of Article 11 of the EIA report it is seen that the announcements regarding the public opinion are not made in the most effective way and with the appropriate means, Article 14, paragraphs 1 and 3, the final form of the EIA report and the decision made to public announce the results of the decisions taken as a result of the EIA, the announcement of the announcement of the announcement of the announcement of the suspension only through the suspension and internet were found to be made; therefore, it was seen that these decisions made it difficult for the public to be aware, restricting the right to bring a lawsuit, and there was a lack of regulation in the office of the mukhtars. It was observed that the public participation meeting of Article 17, paragraph 2, of the public participation meeting was done before the determination of the scope and the specific format and the measures to be taken and the measures to be taken for the project were not determined. All these allegations were canceled and a lawsuit was filed against the Ministry of Environment and Urbanization. In the decision of the Council of State dated 05.04.2017, in order to ensure the effective participation of the people and to think that the decision on the project at the end of the process is not in accordance with the law, It is stated that the people concerned should be made in such a way that they can be easily informed.

In the Regulation subject to the case, there was put an obligation to ensure the participation of the public to EIA Process and to announce the results of the EIA process to the public, however, there was no definition for “announcement” or “PENDING ANNOUNCEMENT”

and there was no regulation about the place of the announcement or PENDING ANNOUNCEMENT, the conditions to do or not to do them, and regarding making such announcements in a way that the public can easily see. So, this paragraphs were cancelled because they are not compatible with the Article 56 of the Constitution and Article 3 of the Environmental Law.

## II- DETERMINING THE FACTS AND DISCRETION

**1-a,b)** As stated earlier, there is no General Administrative Procedure Law regulating the administrative procedure in Turkish Administrative Law collectively. In several laws, provisions governing the execution of the administrative action on the subject matter / execution of the action, the appeal, the appeal, the period of time for which these applications are to be filed and the administrative procedures such as the office are scattered. For this reason, although the administrative authorities are generally obliged to carefully examine the facts before the execution of the administrative act or the execution of the administrative action, the obligation to submit the facts and the evidence may be uploaded to the parties and in particular to the applicant in different laws. For example, in the Customs Code, it is stipulated that all those requesting the customs authorities to make a decision on the implementation of the customs legislation must submit all the necessary information and documents to the concerned administrations. In the Environmental Impact Assessment (EIA) Regulation, natural or legal persons who are planning to carry out a project under the Regulation; They are obliged to prepare the EIA Application File, EIA Report for the projects subject to Environmental Impact Assessment, and the Project Introductory File for the projects that will implement the Selection Qualification Criteria, and to ensure that the institutions/organizations qualified for the Ministry are provided and submitted to the relevant authority. However, the information and documents submitted are subject to the supervision of the relevant Ministries and commissions and it is not possible to enter into force before the approval of the EIA report by the administrative authority. Likewise, in accordance with the Tax Procedural Code, the tax administration, all the information and documents on the basis of the tax assessment by examining (tax returns and declaration if not declared tax return), if the taxation and the accrual of taxation, the tax amount is determined by re-checking the amount collected to the taxpayer is obliged to.

In addition, if persons are harmed by an unlawful act or act of the administration, an administrative investigation and / or investigation is initiated with the information of the administration (ex-officio or upon application) and the facts are gathered by gathering all the information and evidence that can be obtained. For example, according to the Decree Law No. 659, those who claim that their rights have been violated due to administrative procedures may apply to the administration within the period of filing a lawsuit in order to settle the damages they have suffered through peace. Due to the administrative actions, the same demand can be made in accordance with the principles of the Administrative Procedure Code No. 2577. In both cases, except for those who do not have a specific matter and a concrete request, the proceedings shall be submitted to the Legal Dispute Resolution Commission,

which consists of at least three members of the head of the legal unit and a legal supervisor established by the senior management within the administration. All the necessary investigations are carried out by the Commission, including the examination of experts, and the persons who have information about the incident can be listened to.

Likewise, the Republic of Turkey State Railways (TCDD) Research, in accordance with Review and Reporting Guidelines, in a collision with a rail vehicle trains operated by TCDD, collisions with obstacles in the gabarite, the derailment of the train level crossing accident, which exposed the rail vehicle due to people on the move In order to determine the causes of accidents and other accidents in the railway vehicle and to prevent the repetition of the accident, an ex-officio accident investigation report is prepared within three days from the accident and the investigators who carry out the research and inspection task are fair on the basis of the principles of openness and transparency. it is obliged to perform impartially, without prejudice and in the right way. Otherwise, disciplinary precautions and sanctions may be taken.

Again, upon the allegations that public officials have violated the discipline provisions they are subject to, the necessary investigation / investigation is initiated.

On the other hand, both T.C. Article 10 of the Constitution (State bodies and administrative authorities must act in accordance with the principle of equality before the law in all their proceedings), as well as the basic law regulating the duties, powers and status of civil servants in the Turkish administration Article 7 of the Law on Civil Servants (they cannot discriminate on the basis of language, race, gender, political opinion, philosophical belief, religion and denomination; they cannot and cannot participate in any political and ideological intentions) require the administrative authorities to be impartial in all proceedings and actions. In fact, this obligation must be applied without any exception to the Turkish administrative authorities as a requirement of the principle of good governance.

**c)** There is generally no difference in the rules concerning the detection of the facts, the fact that these were submitted by the administrative authorities and submitted by the parties. However, changes may be made depending on the subject and special arrangement. For example, if the taxpayers' tax returns in the declaration based on the Tax Procedure Law have been submitted by the tax administration prior to the commencement of the tax examination after the legal expiry of the tax administration, ex-officio is made on the basis of the tax base they have shown in this declaration and these statements are not sent to the commissions of appreciation for their discretion. However, in case of initiation of tax inspection, the tax administration shall carry out tax inspection and reimbursement, and this may be against the taxpayer.

**d)** No. All facts and evidences are investigated or demanded, regardless of the fact and the evidence, for the benefit or loss of the person concerned, since the opposite would be contrary to neutrality.

**e)** Yes. As mentioned above, natural or legal entities planning to carry out a project according to the Environmental Impact Assessment (EIA) Regulation have to apply to the relevant

Ministry by preparing the EIA report and tax administration in accordance with the Tax Procedural Law, return to the taxpayer.

**2-a,b)** Since there is no General Administrative Procedure Law in our country, questions regarding the obligation of the parties to cooperate with the administrative authorities shall be answered on the individual examples. Accordingly, as per the Tax Procedures Law, in the event that the taxpayers pay their tax declarations on time and according to procedures, the tax office shall impose and actualized by taking these declarations as a basis. However, if the tax return is submitted within the legal or additional periods and the taxpayment does not show any information about the tax base, the taxpayer will be invited by the tax appraisal committee not to be given less than 15 days to give the tax base information and to present the legal books. If the taxpayer submits the required information on the invitation and submits the legal books, the books and documents shall be appreciated according to the requirement, and the tax base shall not be more than the amount to be determined according to the book and document records. The tax return shall be made to the ex-officio which is required by the amount shown in this declaration. These declarations are not referred to the commendation commission for ex-officio appreciation. However, this provision shall not apply for declarations made spontaneously after the commencement of tax examination or referral to the commissions.

**c)** Although it differs according to the specific regulations, the obligation to cooperate in general is the subject of the proceeding or the event and its parties.

For example, according to the Law on the Right to Access Information, institutions and organizations are obliged to submit all kinds of information or documents other than the exceptions contained in this Law to the beneficiaries and to take the necessary administrative and technical measures in order to conclude the applications for obtaining information effectively, swiftly and accurately. The applicant, whose request to obtain information has been refused, may appeal to the Information and Evaluation Board before applying to the judiciary. In such cases, institutions and organizations are obliged to provide any information or document requested by the Board within fifteen working days.

**3- a, b)** Accordingly, in cases where there is no explicit provision, the Turkish administration has discretion to evaluate the facts and evidence. However, the margin of discretion is determined by the judicial decisions, as “public interest” and “service requirements”. Unless these two criteria are observed, it is decided to cancel the transaction or compensate the loss due to the action on the grounds that the discretion is not used in accordance with the law. On the other hand, in the presence of special provisions, the Turkish administration has binding authority in the determination of facts and evidence. For example, according to the EIA Regulation, the Ministry is only authorized and authorized to accept the EIA Report prepared by the institutions/organizations with sufficient qualifications.

**c)** In our legal system, it is possible for different administrative bodies to cooperate or administrative units within the administrative process may carry out joint work of different units/persons. For example, according to the Decree Law No. 659, which provides for some limited alternative dispute resolution methods in the Turkish administrative procedure, those

who claim that their rights have been violated due to the administrative procedures may apply to the administration within the period of filing a lawsuit in order to settle the damages they have suffered by peace. Due to the administrative actions, the same demand can be made in accordance with the principles of the Administrative Procedure Code No. 2577. In both cases, except for those who do not have a specific matter and a concrete request, the proceedings shall be forwarded to the Legal Dispute Review Commission, which consists of at least three members of the unit responsible for the legal unit and the legal supervisor established by the top administration within that body. It investigates. In the event that the proceeding/action that causes violation of infringement is related to more than one administration, joint legal dispute assessment commission can be established in which participation is obtained from each of these administrations.

**4-a,b,c)** There is no general rule, there are different applications in special regulations. As a matter of fact, the claimant can prove his claim (if the law does not foresee the obligation to prove it with a certain evidence) by any legally proven evidence and the administration can establish a proceeding/action based on the evidence obtained within the same criterion. Apart from that, in the case of which the person concerned/respondent presents incomplete information/evidence, it is included in the specific arrangements for which application will be subject. (See 2-a, b)

**d)** Requirement to deliver material facts and the principle of circumstantial evidence

**e)** Article 38 of the Constitution of Turkey states as provision that the evidence obtained in violation of the law, cannot be accepted as evidence. Three criteria are used for the unlawful adoption of evidence: irregularity in respect of the subject, the protection of human rights and the method of acquisition. In this connection, in particular in respect of criminal proceedings, violations of the accused's obligation to clarify the offense, use of forbidden interrogation and expression methods by methods such as deception, algebra, threats, listening of the communication (without permission or judicial decision), recording of hidden images and sound, the evidence obtained by methods such as the search of the area without permission and without a judicial decision, the capture of information and documents by means of copying or annexing, shall be considered as unlawful evidence. The importance of the evidence obtained in this way in terms of administrative procedure is considered as invalid also in disciplinary law.

**5-a, b)** The procedural provisions to be applied in the Turkish administrative jurisdiction system are gathered under a single law: the Administrative Procedure Code. In some cases where there is no provision in this Law, legal regulations referred to in the Law may be applied or the legal space is filled with judicial jurisprudence. Accordingly, the plaintiff, the case and the cause of the case, and the evidence to be based on the evidence, such as the amount of disputes in full litigation cases, the subject of the request and the information on the basis of the case to provide information-documents, the case is also the subject of the decision and the documents to add to the petition. Otherwise, the petition is denied in order to be properly reorganized or omitted within thirty days. However, this rule does not apply

strictly in the light of the evidence that the plaintiff cannot provide, and in the event that the subject of the case and the claims are clear and certain, the administrative courts claims within the framework of the principle of ex-officio research, which is one of the basic principles of the administrative proceeding procedure, and the authorities decide by clarifying the information they require. In this fundamental law, it is stated that "The Council of State, the regional administrative courts and the administrative and tax courts shall carry out all kinds of investigations in their cases. The courts may require the parties to send the documents they need and provide all kinds of information from the parties and other relevant places. It is compulsory that the decisions in this regard are fulfilled within the relevant period. If one of the parties does not fulfill the requirements of the interim decision, the effect of this situation on the decision to be made shall be appreciated in advance by the court. However, if the requested information and documents relate to the security or high interests of the State or the security of the State and the foreign interests of the State, the President or the Vice-President or the Minister concerned may not provide such information and documents by notifying the reasons. The decision cannot be decided on the basis of the information and documents not provided." In this respect, it is mandatory that the information and documents requested by the court are submitted to the requested public without distinguishing whether it is a party/related or public institution. However, in the absence of information given by the plaintiff or if there is exemption as stated above, if no information is given by the President or the vice president or the minister concerned, the case may be directly affected by this situation.

**c)** Turkey judges in accordance with Article 138 of the Constitution, the Constitution, the law and they will judge according to the convictions of conscience in accordance with the law. Therefore, this is the basic principle in the evaluation of evidence. The administrative judge has the right to freely assess the evidence obtained in accordance with the law. On the other hand, the Law on Administrative Procedure referred to the Code of Civil Procedure for the determination of the evidence and the principle of freedom of evidence, unless otherwise stated in the Law, is valid. However, since the written procedure has been adopted in the administrative proceedings, it cannot be applied to the evidence of the witness, and the selection of the expert should be made ex-officio by the administrative judge.

**6-a)** There is no standard. As stated above, it is the basic criterion that the cases should be put forward in a way that is legal and without doubt. In addition, if a special obligation of proof is stipulated in the legislation, the administration should be put into effect accordingly. On the other hand, the disciplinary law, which is considered as an extension of the criminal law in administrative law, is accepted as the rule that the determination of the cases should be made within the framework of the principles of criminal law. Accordingly, disciplinary punishments given on the basis of incomplete research can be canceled on the grounds that the action has not been clarified (without the defense of the concerned person or without witness statements).

The limit of the jurisdiction in this regard is found in the Administrative Procedure Code. Accordingly, if the information and documents required by the Court concerning the case are related to the security or high interests of the State or to the security of the State and to the

foreign interests of the State, the President or the Vice-President or Minister concerned may not provide such information and documents. In this case, the Court cannot reveal the case in its entirety and it cannot make any control regarding the method of determining the case, but it does not decide according to the defense proposed based on the information and documents not provided.

On the other hand, with regard to the evaluation of the facts and the evidence, the discretion of the administration is limited. The administrative jurisdiction only carries out the statutory audit and does not have the authority to exercise due diligence. The judicial decision cannot be given to remove the discretion of the administration.

**b,c,d)** There is no general normative limitation on the control of the discretion of the administration in our legal system. The Constitution and the Law on Administrative Procedure only states that the judicial power is limited to the control of administrative actions and transactions and the law cannot be used as a means of pertinence control. The judicial decision cannot be made in a way to limit the execution of the executive duty in accordance with the principles and principles shown in the laws, or to abrogate the administrative action and transaction nature or discretionary powers. In practice, however, the limit of discretion is defined as "public interest lar and, service requirements" by judicial jurisprudence.

In practice, in the case of Competition Law disputes that require economic analysis, the discretion of the administration may be limited in disputes relating to the state's monetary and fiscal policy and to the investment incentives, which are determined in full by the economic possibilities of the State, or in the case of disputes regarding the determination of the sectors in which the Government foresees incentives. Again, the decisions on the prioritization of the issues related to the high interests of the State, such as the National Security Policy Document, the decisions on the establishment of the Special Representative of the Counter-Terrorism, the granting of the State Order for the services of foreign nationals, and the decisions of the concerned persons on the Turkish citizenship of the State regarding the right of sovereignty. In the supervision of the administration, it is accepted that the administration has wide discretion and limited control is applied.

Although it is not possible to collect these cases under a certain category, they are generally made up of subjects that are outside the normative control area and are particularly related to the sovereignty or economic opportunities of the State.

**7-a)** As stated above, there is no general regulation in the rule of law regarding the supervision of the administration's discretionary power. However, as a rule, the administrative jurisdiction puts the obligation of proof to be clearly and explicitly laid down in the cases in which the administration relies on the discretionary power, and in the event that this situation cannot be proved, the procedure is canceled. Therefore, in cases where discretion is exercised, the burden of proof of the administration becomes more severe and therefore the standards to be observed when determining the case are increasing.

**b,c,d)** As mentioned in Article b, c, d of the sixth question, the areas in which the administrative jurisdiction implements limited supervision generally consist of matters outside

the law and in particular those relating to the sovereignty or economic opportunities of the State. The legal basis of this limited audit is contained in our Constitution and the Administrative Procedure Code. Accordingly, the jurisdiction of the administrative jurisdiction is limited to the control of the administrative actions and the lawfulness of the proceedings and the judges; In accordance with the constitution, the law and the law, they decide on the basis of conscience. Therefore, apart from legal evaluation, the discretion of the discretionary authority based on political preferences and economic opportunities is limited.

This does not result from the fact that the administrative jurisdiction location refrains from interfering with the decision-making process on the merits or chooses to focus on procedural issues, but it falls within the scope of the mandate given to it by the constitution and does not find it right to enter an illegal field.

**e)** In our legal system, the expert institution is applied to the court by determining the experts and questions related to the event according to the characteristics of the event. It is therefore the administrative jurisdiction to determine which disputes are to be referred to as experts.

Although some institutions have been foreseen as official experts in their fields of practice, they have not been accepted as a single expert to apply or the ones with superiority. For instance, the Council of Forensic Medicine, which was established to serve as an expert in justice affairs, has been entrusted with the scientific and technical opinions of the courts, judges and public prosecutors and in the fields of judicial matters sent by public institutions and organizations in areas deemed appropriate by the Institution. However, as stated in Constitutional Court decision 11.9.2014 dated and E:2013/146, K:2014/137 no., the jurisdiction places are not obliged to apply to Forensics.

**f)** No. The scope of the cases where the limited audit standard is applied in our legal system is explained in detail above. As can be seen from the examples given, the limited audit does not originate from the different institutional capacities between administrative courts and authorities, but from the differences between the jurisdictions of these institutions (such as legal-political).

**8-a)** Article 38 of our Constitution stipulates that the findings obtained unlawfully cannot be regarded as evidence. The administration is obliged to investigate the facts and evidences in accordance with this criterion.

**b)** In our constitution, there is no general provision regarding the administration of discretion. However, in some articles, the process has been linked to the ac public interest ad and the subject-specific criterion has been established. This criterion has been extended to the appreciation authority to be exercised by the case-law. For example, in accordance with Article 46 of the Constitution, expropriation can be made by State and public legal entities only on condition that the public interest is required to pay in real time, if required by the public interest.

**c)** In accordance with Article 125 of our Constitution, the judiciary is open to all kinds of actions and proceedings of the administration (exceptions listed in the Constitution). The administration is obliged to pay the damages arising from its own actions and transactions.

The jurisdiction shall be limited to the control of the administrative acts and the lawfulness of the proceedings and shall not be used in any way as a means of legitimacy. The judicial decision cannot be made in a way to limit the execution of the executive duty in accordance with the principles and principles shown in the laws, or to abrogate the administrative action and transaction nature or discretionary powers.

Again, according to the Constitution, the executive power and duty shall be exercised and carried out by the President in accordance with the Constitution and the law. Legislative and executive bodies and the administration must comply with court decisions; these bodies and the administration cannot in any way alter the court decisions and cannot delay their execution.

In addition, according to another constitutional rule, the state has to state the legal remedies and time periods of the persons concerned in their operations.

**9-** In Article 125 of the Constitution, with the amendment made in 2010, a provision was added that the administrative courts cannot do "discretionary supervision" and cannot decide to eliminate the expediency authority of the administration (Judicial power is limited to the review of the legality of administrative actions and acts, and in no case may it be used as a review of expediency. 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.) Fundamentally, the said regulation is included in the Administrative Jurisdiction Procedures Law prior to the amendment of the Constitution and it is envisaged as a constitutional principle by the amendment.

**10-** Concerning the denial of the request of having a Turkish citizenship due to this marriage of the plaintiff, who was a citizen of Georgia, Administrative Court Tenth Chamber of the Council of State examined the file on the appeal of the Administrative Court's decision for the cancellation. The administration has discretionary power because this is within the scope of the sovereign rights of the State. At the stage of the investigation of the applicant's application, it was understood that the application had been denied by using the discretionary power granted to the administration as the Turkish citizen's death had prevented the investigation of the seriousness of the marriage unity. Therefore, there is no violation of the law in the subject matter of the proceedings. In the opposite direction, no legal compliance was found, so it was decided to break the decision.

## III. CASE STUDY

**QUESTION 1-** How will the Administrative Court decide on the rejections by Municipality (M), Farmer (F) and Protection of the Traditions Foundation (P)?

**ANSWER:** Administrative Law no. 2577 is in force in Turkey, and in accordance with Article 2 of this Law, people whose interests are violated can open a case in administrative

jurisdiction with the request of the cancellation of administrative operations. 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 with the administrative jurisprudence. However, considering some recent decisions of the Sixth Chamber of the Council of State, in the event of evaluating the construction subject to the construction permission subject to conflict as a construction not important as to impact the majortiy of the people living in the district, it may be decided that P does not have legal, personal or current interest. Accordingly, in a case that can be opened by M, F and P for cancellation of the construction permission as per Article 7 of the Law no.2577 in 60 days following the notification of the proceeding; the essence of the situation can be evaluated for M and F and the eligibility to open a case will be considered for P's situation.

In this context, assuming that there is no contradiction to law in terms of procedures and authorization, in Turkey the decision is generally given by evaluating the expert report prepared by conducting exploration and expert examination in such cases and by taking into account the relevant judicial case laws. The zoning plans that are in effect in the subject area of the construction are the main basis of the judicial review and the court is requested to evaluate whether the construction permission is suitable for the plans. Furthermore, it is thought that the effect of construction on breeding of red kite should also be investigated. It is foreseen that there should be experts in expert committee such as architect, civil engineer, environmental engineer, city planner.

On the other hand, in our country, the authority to grant construction permissions generally belongs to the municipalities and it is clear that the lawfulness of the process will also be examined in this respect. In the case where it is stated that S is not a municipality, it is natural to examine whether S is given by the laws the authority to grant construction permissions.

**QUESTION 2-** How will the Court decide in the case opened by O (Environmental Organization)?

**ANSWER:** The issues related to the "benefits" and "time" outlined in the above answer are also valid for the answer to this question. The Court will firstly assess whether it has an interest in opening the case. It is highly probable that the case will be rejected on the grounds of lack of interest. On the other hand, if it is concluded that there is a license to file a lawsuit, it is necessary to discuss whether the permit was opened from the local newspaper and opened the case within 5 months after the authorization. In accordance with the provisions of the legislation in our country, S does not have to include O in an administrative proceeding process as in this case. (Such a process is foreseen in some exceptional processing processes, for example, for Environmental Impact Assessment.) Probably, if the plaintiff is qualified, the case will be rejected in terms of time-out. On the other hand, in relation to the breeding area of the red rookies, the dispute will be examined in the previous case in accordance with the ex-officio review power specified in the Law No. 2577.

**Answer regarding the amendment part:**

As per the Law no. 2577, it is necessary to open a case for each administrative process. The proceeding to be established upon the application by A for his/her wind farm (wind power plant as named in Turkish legislation) must be the subject of another case. Therefore, in order for this transaction to affect the previous case filed with the request of the commercial

building for the cancellation of the construction permit, the plant shall be located where the building of the commercial building will be constructed. Which means that in the event that the construction of the commercial building is not continued and there is constructed a wind plant, it shall be necessary to evaluate if the subject of the first case is still applicable and if there is another case opened for the cancellation of the permit to the wind power plant, this can be judicially evaluated and the plant shall be assessed in terms with the Environmental Law and EIA Regulation and all other relevant regulations and the decision shall be given accordingly. Again, in this case, if it is detected that there is no conflict with the law in terms of authorization and procedures, there shall be an expert review and the report by the expert shall be evaluated and decision shall be given accordingly.

**NOTE:** On the other hand, when we generally evaluate the decisions on EIA cases given by 14th Chamber of Council of State, one of duties of whom is to resolve conflicts resulting from the application of environmental legislation, if there is no contradiction to law in EIA activity in terms of procedure and authority, the conflict is resolved by evaluating the expert report to be arranged as a result of expert examination and exploration. Considering it might be related with the example case, in the files seen by the 14th Chamber of Council of State for appeal cases, it will be helpful to know that ornithologists' ideas were also asked, and it was examined whether the wind plant project whose cancellation was demanded was on the migration route of the birds, and whether there was any bird species whose breeds are on global, European or national scale in the project area.