

## Colophon

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## **Contents**

<b>COLOPHON.....</b>	<b>1</b>
<b>CONTENTS.....</b>	<b>2</b>
<b>FROM THE SECRETARY-GENERAL'S DESK.....</b>	<b>3</b>
<b>ADMINISTRATIVE JUSTICE IN TURKEY.....</b>	<b>4</b>
<b>THE USE OF INFORMATION AND COMMUNICATION TECHNOLOGIES IN TURKISH ADMINISTRATIVE JURISDICTIONS.....</b>	<b>17</b>

## From the Secretary-General's desk

Since 2006, the Turkish Council of State has been an observer within our association, which will henceforth be known by the new abbreviation "ACA-Europe". Under the association's statutes, observer status may be conferred on jurisdictions of States that are engaged in negotiations with a view to their actually joining the European Union. The Turkish Council of State is actively involved in all the association's activities. It was therefore with pleasure that ACA-Europe accepted the Turkish Council of State's invitation to hold a seminar in Turkey.

That seminar took place in Istanbul on 1 October 2009 and was chaired by Mr Mustafa Birden, President of the Turkish Council of State. It was a great success, having been attended by around 50 people, including the representatives of virtually all member jurisdictions (among them the European Court of Justice) and representatives of the European Commission, the European Council, the Network of Presidents of the Supreme Judicial Courts of the European Union and the European Network of Councils for the Judiciary.

The seminar had two main focuses: updating the Tour of Europe section of the ACA-Europe website and e-Justice.

The Tour of Europe section of the association's website ([www.juradmin.eu](http://www.juradmin.eu)) provides an overview of administrative justice in each Member State of the European Union. For each Member State, it gives up-to-date information on 78 topics related to administrative justice. At the Istanbul seminar, the representatives of member jurisdictions described the main changes that had affected administrative justice in their countries since the last colloquium on the subject in 2006 and detailed the alterations that needed to be made to the Tour of Europe section in the subsequent weeks. This updating process was also an opportunity to add information about administrative justice in Turkey. During the seminar, Mrs Özlem Erdem Karahanogullari, judge-rapporteur at the Turkish Council of State, gave a talk on administrative justice in her country. The first part of the newsletter is devoted to this subject. This very dense section is a chance to find out more about the history, structure, powers, procedures and membership of Turkey's administrative jurisdictions and in particular the Council of State, whose task is to enforce the rule of law, a principle guaranteed by Article 2 of the Turkish Constitution.

As regards e-Justice, the seminar was a continuation of the Athens seminar (15 May 2009) featured in the previous newsletter. At the Istanbul seminar, Mr Gürsel Mekik, a member of the Turkish Council of State, gave a talk on the national judiciary information system (UYAP) used for e-Justice in Turkish courts, as well as the Turkish Council of State's information system. A summary of these interesting explanations makes up the second part of this newsletter. No doubt quite a few readers will be surprised by the sophistication of Turkey's IT systems. Particularly impressive is UYAP, which covers almost all judicial bodies and enables all types of judicial and administrative actions to be processed online. To quote just two statistics: 56,000 lawyers are registered on the system, which processes 1,000,000 documents per day. Among other features, the citizen portal allows members of the public to access various pieces of information relating to their legal cases while another portal allows lawyers to consult the files for their cases, obtain copies of case files, add documents, pay legal charges online and, in future, file new cases. An SMS information system gives parties instant access to information about their case or proceedings. Similarly, the Turkish Council of State's IT system (DBS) will no doubt provide inspiration for more than one of our association's member courts.

In terms of the amount of work covered and the hospitality shown by the Turkish Council of State, the Istanbul seminar was a worthy successor to other major seminars organised by ACA-Europe in the past. These events not only allow our member jurisdictions to get to know one another better, but also – and more importantly – to enhance their performance by sharing and benefiting from each other's practical experience.

Yves Kreins  
Secretary-General

# Administrative Justice in Turkey\*

by Dr. Özlem ERDEM KARAHANOĞULLARI\*\*

## CHAPTER I INTRODUCTION

After the Turkish Republic was established on October 29, 1923 by the founder of the Republic of Turkey, Mustafa Kemal Atatürk, the legal system was totally changed. In 1924 all the religious courts were closed down; in 1926 the Civil Code, Penal Code and the Code of Obligations entered into force and the Continental Law System was adopted.

The Turkish civil law system has been modified by incorporating elements mainly of the Swiss Civil Code, the Code of Obligations and the German Commercial Code. The administrative law bears similarities with its French counterpart and the Penal Code with its Italian counterpart. In this respect, it can be considered that Turkey's law system has been wholly integrated with the Continental European Law System.

On the other hand, the principle of separation of powers exists in Turkey.

In line with this principle, judicial power is exercised by independent courts on behalf of the Turkish nation.

The basics of the judicial system in Turkey are laid out in Articles 138 to 160 of the 1982 Constitution. These are:

- independence of courts,
- security of tenure of judges and public prosecutors,
- organisation of courts,
- profession of judge and public prosecutor,
- supervision of judges and public prosecutors,
- military courts and their organisation,
- organisation, powers and functions of high courts.

According to the abovementioned Articles of the Constitution and related acts, the court system in Turkey is grouped into three categories:

- civil & penal (Courts of Justice) (ordinary courts),
- administrative justice and
- military justice.

They are further subdivided according to the subject of the conflict. These three separate orders of jurisdictions are each headed by their own supreme court: "Court of Cassation" for the ordinary courts, "Council of State" for the administrative courts and "Military Court of Cassation" and "High Military Administrative Court" for military justice.

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Any conflicts of jurisdiction between these three jurisdictions are arbitrated by a special court, called the “Court of Jurisdictional Conflict”, whose members are chosen among the members of the Court of Cassation, Council of State, Military Court of Cassation and High Military Administrative Court. The office of president of this Court is held by a member delegated by the Constitutional Court from among its own members. The Court of Jurisdictional Conflict is empowered to deliver final judgements in disputes between courts of justice, administrative courts and military courts concerning their jurisdiction and decisions. (Article 158 of the Constitution)

On the other hand there is a Constitutional Court examining the constitutionality, in respect of both form and substance, of laws, decrees having the force of law, and the Rules of Procedure of the Turkish Grand National Assembly. (Article 146 – 153 of the Constitution)

Also, there are the Court of Audit and Supreme Council of Election in Turkey. The Court of Audit is charged with auditing, on behalf of the Turkish Grand National Assembly, all accounts related to revenues, expenditures and properties of the government departments financed by general and subsidiary budgets, with taking final decisions on the acts and accounts of the responsible officials, and with exercising the functions required of it by law in matters of inquiry, auditing and judgement. (Article 160 of the Constitution)

The Supreme Council of Election executes all the functions to ensure the fair and orderly conduct of the elections from the beginning to the end of polling, carries out investigations and takes final decisions on all irregularities, complaints and objections concerning the elections during and after polling, and verifies the election returns of the members of the Turkish Grand National Assembly. No appeal can be made to any authority against the decisions of the Supreme Council of Election. (Article 79 of the Constitution)

## **CHAPTER II            ADMINISTRATIVE JUSTICE**

In 1982 three acts established the first tier of administrative courts in Turkey on a regional basis:

- Council of State Act - Dated 6 Jan.1982, No: 2575
- Act on the Constitution and Functions of the Regional Administrative Courts, Administrative Courts and Tax Courts - Dated 6 Jan.1982, No: 2576
- Procedure of Administrative Justice Act - Dated 6 Jan. 1982, No: 2577

Each judicial region comprises one or more provinces. The powers and functions of the administrative courts are specified by the Procedure of Administrative Justice Act.

The Constitution in Article 2 describes the Turkish Republic as a state of law that is a state obedient to the rule of law. The basics of the review by the courts of administrative acts and actions are stated in Article 125 of the Constitution. Recourse to judicial review is available against all actions and acts of administration and the administration is liable to compensate for damages resulting from its actions and acts. However, the same article establishes the limits of judicial review: Judicial power is limited to the verification of the conformity of the actions and acts of the administration with law. No judicial ruling can be passed which restricts the exercise of the executive function in accordance with the forms and principles prescribed by law, which has the quality of an administrative action and act, or which removes discretionary powers.

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

According to the Council of State it is illegal to establish any administrative act, even by authority derived from the law, if it curbs any right or freedom to the extent of making it impossible to exercise.

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

The Council of State is, in its judicial capacity, the highest administrative court, mainly with appellate jurisdiction. It reviews administrative cases as a court of first instance, however, when it is required to do so by law.

The Courts founded at the regions are: administrative courts and tax courts, both of which are courts of first instance with general jurisdiction; and the regional administrative courts. The administrative courts review all administrative cases which are not within the jurisdiction of the Council of State as a court of first instance. The same principle applies to tax courts which review only tax cases.

Judgements rendered by single-judge court are only reviewed by the regional administrative courts. These courts also function as courts of conflicts at the regional level and solve problems of competence, venue and matters of conjunction.

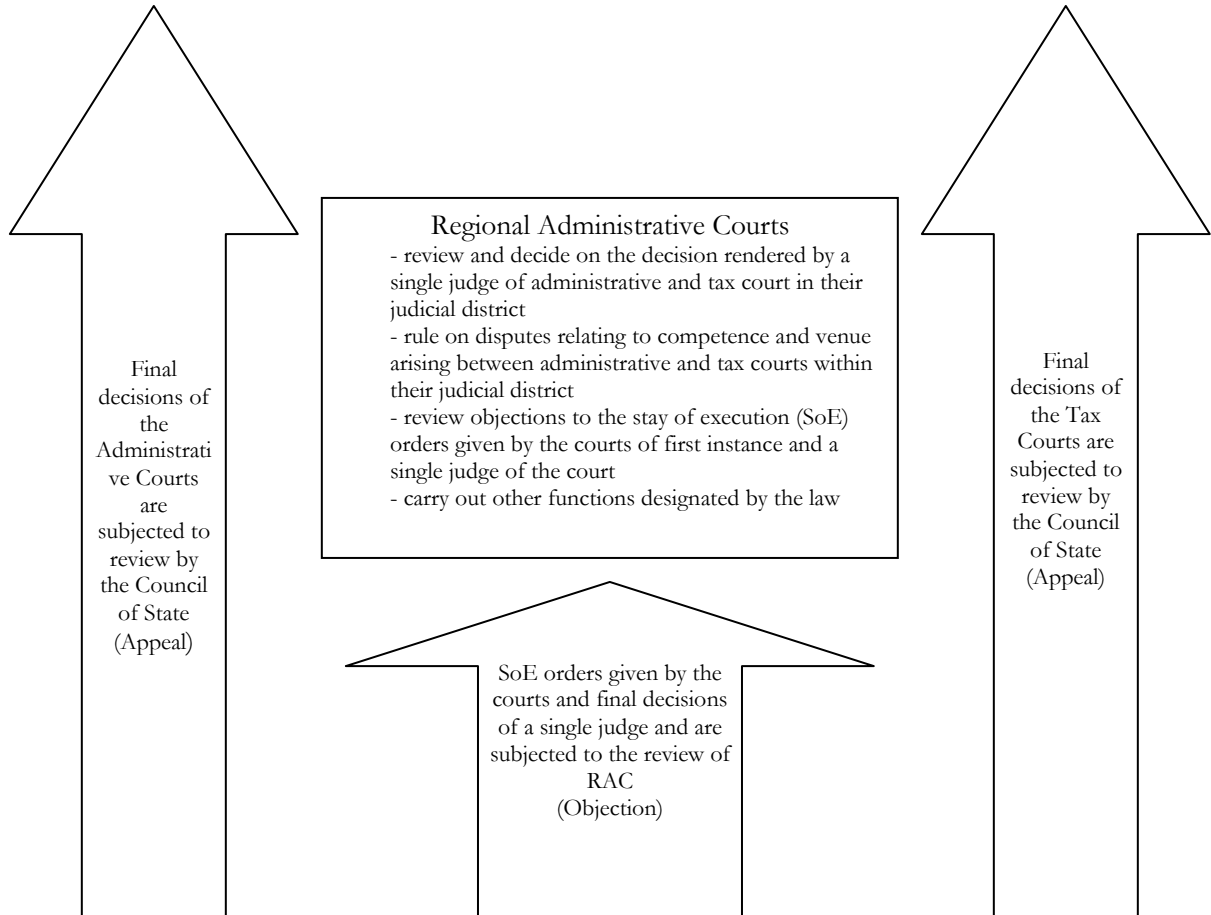
The Procedure of Administrative Justice Act states that “Even if there is a provision contrary to the present section in other acts, an appeal might be brought to the Council of State against the judgements of the judicial divisions of the Council of State and administrative and tax courts”. As a result of appellate review, the Council of State sets aside the decision examined because of the following reasons:

- the court lacked jurisdiction,
- the decision is against the law,
- procedural provisions were not complied with.

The Regional administrative courts, on the other hand, can give judgements on the merit if they conclude that the information obtained about the facts is sufficient or if the appeal concerns merely points of law or if the errors in fact can be rectified.

### Council of State

- reviews the appeals brought against the judgements given by administrative or tax courts
- decides on administrative cases which are deemed important by the law, as a court first of instance
- presents its opinion on the draft legislation, examines draft regulations of the Council of Ministers; presents its opinion on the conditions and the contracts concerning public services under which concessions are granted
- presents its opinion on the matters submitted by the Presidency of the Republic and the Prime Ministry



<p style="text-align: center;"><b>Administrative Courts</b></p> <ul style="list-style-type: none"> <li>- resolve administrative actions, except the ones falling within the subject-matter jurisdiction of the tax courts and actions that will be reviewed by the Council of State as a first instance court.</li> </ul>	<p style="text-align: center;"><b>Tax Courts</b></p> <ul style="list-style-type: none"> <li>- resolve actions relating to the general budget; to the taxes, fees, duties and other similar financial obligations that belong to the provinces, municipalities and villages; to the increases and penalties concerning these obligations as well as actions relating to tariffs and some actions relating to the application of the Act on the Procedure of Public Claims' Collection</li> </ul>
<p style="text-align: center;"><b>Administrative Court</b></p> <ul style="list-style-type: none"> <li>- actions brought against administrative acts whose subject contain a certain amount of money</li> <li>- full remedy actions whose subject is less than a certain amount of money</li> <li>- Certain administrative actions specified by the law</li> </ul>	<p style="text-align: center;"><b>Actions Resolved by a Single Judge of a Tax Court</b></p> <ul style="list-style-type: none"> <li>- tax actions whose subject is less than a certain amount of money</li> </ul>

## **A. REGIONAL ADMINISTRATIVE COURTS**

Regional Administrative Courts are composed of one presiding judge and two members and decide by majority. Appointments to these posts are made by the High Council for Judges and Prosecutors. The total number of regional administrative courts is 28.

Regional Administrative Courts examine all of the decisions delivered by one judge at the tax courts upon an appeal raised by one of the parties. Decisions of the Regional Administrative Court in this procedure are final.

They also examine all of the decisions delivered by one judge and specified decisions delivered by a panel of judges at the administrative courts upon an appeal raised by one of the parties. Decisions of the Regional Administrative Court in this procedure are also final.

They solve disputes on competence and jurisdiction among administrative and tax courts in their jurisdictional territory. This means that these courts also function as courts of conflicts at the regional level and solve problems of competence, venue and matters of conjunction.

## **B. ADMINISTRATIVE COURTS AND TAX COURTS**

Both administrative and tax courts are composed of one presiding judge and a sufficient number of members. Court panels are composed of one presiding judge and two members and decide by majority.

There are 44 administrative and 33 tax courts in Turkey. In some judicial districts there is more than one administrative and one tax court. For example in Ankara, there are 16 Administrative and 5 Tax Courts. In Istanbul 10 Administrative and 11 Tax Courts exist.

Administrative courts deal with cases which are brought against the administrative organs because of the implementation of the administrative legislation. Tax courts deal with tax disputes.

According to Section 5 of the Act on the Constitution and Functions of the Regional Administrative Courts, Administrative Courts and Tax Courts, the functions of the administrative courts are as follows:

1. The administrative courts shall resolve the following actions, except the ones falling within the subject-matter jurisdiction of the tax courts and actions that will be reviewed by the Council of State as a first instance court:
  - annulment actions,
  - full remedy actions,
  - actions relating to disputes arising from administrative contracts signed to carry out public services except disputes arising from conditions and contracts under which concessions are granted and for which arbitration has been suggested,
  - functions allocated by the law.
2. The administrative courts shall also review actions that are stated to be in the jurisdiction of the Council of State pursuant to specific Acts which have been allocated to the administrative court by the Procedure of Administrative Justice Act.

According to Section 6 of the Act on the Constitution and Functions of the Regional Administrative Courts, Administrative Courts and Tax Courts, tax courts shall resolve

- actions relating to the general budget; to the taxes, fees, duties and other similar financial obligations that belong to the provinces, municipalities and villages; to the increases and penalties concerning these obligations as well as actions relating to tariffs,
- actions relating to the application of the Act on the Procedure of Public Claims' Collection to the subjects stated in paragraph (a),
- other matters designated by the law.

## C. COUNCIL OF STATE

### C.1. THE COUNCIL OF STATE DURING THE OTTOMAN EMPIRE

The Sublime Porte (Bâbîâli) is the central office of the Ottoman government. The name is a French translation of the Turkish Bâbîâli (“High Gate,” or “Gate of the Eminent”) which was the official name of the gate giving access to the block of buildings in Istanbul that housed the principal state departments.

Early in the history of the Ottoman Empire, the grand viziers became powerful, but only in the 17<sup>th</sup> century did they acquire the official residence, Bâbîâli, which became the real centre of government. There, too, were the offices of the Foreign Ministry and the Council of State; hence the application of the term to the government as a whole. In the late 20<sup>th</sup> century, the buildings were the seat of a provincial governorate.

As a result of the reform process started by Sultan Mahmud II, the Supreme Council for Judicial Regulations was set up in 1837.

The Noble Edict of the Rose Garden of 1839 laid down that this body was to exercise a supervisory and quasi-legislative function.

In April 1868, the Supreme Council was reorganized, and two new bodies created from it, a Board of Judicial Regulations and a Council of State.

The former was a revised version of the earlier Council, with quasi-legislative and some judicial functions.

The latter, modelled on the French *Conseil d'Etat*, was in effect a high court of appeal in administrative cases and an advisory and examining body.

All the judgements of the Council of State were subjected to the approval of the Sultan and only after his approval could they be implemented (*justice retenue*).

#### 1. Jurisdiction

The Council of State during the Ottoman Empire was authorised to:

- Draft and report all kinds of acts and regulations;
- Decide within the scope of its competence on all kinds of territorial affairs;
- Designate a body having jurisdiction in disputes between judicial and territorial authorities;
- Reply to correspondence from government institutions on the existing laws and regulations by expressing its opinions;
- Give authorisation to initiate proceedings for criminal offences allegedly committed by civil servants upon an order of the Sultan or in line with the laws of the state;
- Express opinions on all matters referred to it by the Sultan or the ministers.

The Council also had the competence to review and approve the official reports of the provincial assemblies on the implementation of the reforms. Another Council composed of presidents of division and a member from each division was set up to convene in a special annual session in order to review the income and expenditure items of the general budget. Such issues were to be brought to the Council of State by the Office of the Grand Vizier and the reports pertaining to the decisions of the Council of State to be presented duly back to the Office of the Grand Vizier.

## 2. Structure

The Council of State was headed by the First President; the Secretary General was responsible for helping the President in administrative affairs. Every division had separate presidents. Each division was composed of five to ten members. The President of the Council of State, the presidents of divisions and the Secretary General were all appointed by an order of the Sultan.<sup>1</sup> Decisions were taken by secret vote in both the Plenary Assembly and the division meetings.

The Council was divided into five divisions which were in charge of carrying out the various works referred to them according to their scope of competence.

- The Division of Territorial and Military Affairs established and reviewed the principles of application of those acts and regulations prepared by the institutions on territorial affairs and military (land, sea and police force) issues.
- The Division of Treasury and Foundations examined all issues regarding tax collection and state revenues and dealt with matters related to general management of foundations.
- The Division of Act drafted the Civil Code, Commercial Act and the Penal Code, as well as the regulations for the courts with regard to the application of acts. This division also reconciled the disputes between the territorial and judicial authorities.
- The Division of Reconstruction, Commerce and Agriculture discussed the issues related to these services and duly reviewed any contracts and conditions under which concessions were granted.
- The Division of Education reviewed issues related to the educational institutions of the state.

A modification was made to the structure of the Council of State on 6 May 1869. According to this the Division of Territorial and Military Affairs and the Division of Education were merged in one called the Division of Territory and Education. In addition, a new division was established as the Division of Judgements to be the body for all judgements pertaining to the Council of State administratively. With a Decree published on 15 February 1872, the number of divisions in the Council of State was decreased to three: The Division of Judgements, the Division of Reforms and the Division of Internal Affairs.

### **C.2. THE COUNCIL OF STATE DURING THE REPUBLIC**

The Council of State which had developed into, to a large extent, an advisory and examining body during the Ottoman Empire, was duly abolished like all other organisations of that era on 4 October 1922.

During the Independence War and following the first years of independence the duties undertaken by the Council of State under various laws were carried out by a special committee within the Grand National Assembly. Eventually, the need for a Council of State became pressing and following the proclamation of the republic on 29th October 1923, Article 51 of the 1924 Constitution ordered the establishment of the Council of State once again.

The Council of State was re-established by Act No.699 enacted on 23 October 1925. The President and the members of the Council of State were not elected until 23 June 1927, which meant that the Council of State could not actually start working until 6 July 1927.

At this time the Council of State was composed of four divisions, one being a judicial division and the other three being administrative divisions (the Division of Reforms, the Division of Territorial Affairs and the Division of Finance and Public Affairs).

*Justice retenue* was abolished, although the category of *acte de gouvernement* continued to be excluded from judicial review until the Constitution of 1961. The Constitution of 1961 enshrined the principle that all acts and actions of the administration are subject to judicial review, a principle that is preserved by the Constitution of 1982, now in force, as well.

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<sup>1</sup> The first president assigned to the Council of State was Mithat Pasha. He was honest, straightforward and free-minded. He was sincerely devoted to the idea of reforms.

A total of 41 members were assigned to the Council of State in one year as of its establishment. Out of the total, 28 were Muslims, while 13 belonged to other religions or sects – e.g. 4 Greeks, 1 Bulgarian and 8 Armenians – from various communities.

The Council of State is the last instance court for reviewing decisions and judgements given by administrative courts and which are not referred by law to other administrative courts.

It is also the first and last instance court for dealing with specific cases prescribed by law.

The Council of State is not only a supreme administrative court but also an advisory body. The Council of State is entrusted to give opinions on draft legislation submitted by the Prime Minister or the Council of Ministers and to give opinions on the conditions and the contracts under which concessions are granted.

## **1. Duties of the Council of State**

The judicial and administrative duties of the Council of State are specified in Act No. 2575.

### *a) Administrative Duties*

According to section 23 of Act No. 2575, the Council of State as a counselling body is entrusted with the duties indicated below:

1. To give opinions on draft acts submitted by the Prime Ministry or the Council of Ministers;
2. To examine draft regulations and give opinions on the contracts and conditions under which concessions are granted;
3. To give opinions on matters submitted by the Presidency of the Republic and the Prime Ministry;
4. To discharge the other duties as prescribed by the Council of State Act and by various acts.

The Government, for its part, is obliged to present all draft regulations to the Council of State in order to get its opinions. However, the same obligation is not valid for proposals and draft acts.

Although the administration is bound to comply with some of the opinions expressed by the Council of State, others are not legally binding on the Government.

### *b) Judicial Functions*

The same section of Act No.2575 also specifies the judicial duties of the Council of State. According to section 23, the Council of State as a judicial organ is charged with the following duties:

1. To review and take decisions on appeals against the judgements of administrative courts and tax courts and those judgements rendered by the divisions of Council of State acting as first degree courts. The judgements of the administrative courts and tax courts that can be appealed before the Council of State are only those judgements which are passed by a committee of three judges in these courts.
2. To decide as a court of first and last instance on the administrative cases listed in the Act of the Council of State.

The cases that the Council of State is responsible for as a first degree court are specified in section 24 of Act No. 2575. These are the administrative cases on privilege contracts and concessions, actions for annulment and full remedy actions against:

1. Decisions of the Council of Ministers;
2. Joint Decrees relating to removal from office of undersecretaries of the Prime Ministry, ministries and other public entities;
3. Regulatory acts of the Ministries and of public institutions or other professional organisations of a public nature;
4. Acts and actions implemented upon the opinions of the administrative division or Board of Administrative Affairs of the Council of State;
5. Acts, appeal against which falls within the jurisdiction of more than one administrative court or tax court;

6. Decisions of the High Board of Discipline of the Council of State and acts of the Presidency of the Council of State relating to the field of operation of the High Board.

Aside from these cases, the Council of State also reviews and passes judgements on the loss of status of elected organs of the local administrations.

As a first instance court, the Council of State deals with three different types of administrative cases. These are:

- actions for annulment brought against administrative acts, regulations and by-acts by complainants whose interests have, allegedly, been violated by the contested act;
- full remedy actions brought by the complainants who allege that their rights have been infringed in the implementation of administrative acts or actions;
- administrative cases arising from concession agreements.

As a court of appeal, the Council of State either affirms or quashes and refers the case back to the lower court.

## **2. Organisational Structure**

### *a) Members*

According to Section 3 of Act No. 2575, the professional members of the Council of State are as follows:

- President;
- Chief Advocate – General;
- Vice-presidents (two in all);
- Presidents of Division;
- Members.

The Council of State has a total of 95 members, 17 of them being the President, the Chief Advocate - General, the vice-presidents and the presidents of division.

The President, the Chief Advocate – General, the vice – presidents and the presidents of division are elected by the Plenary Assembly of the Council of State for a renewable term of four years from among those members who have worked in the profession for a certain number of years.

One fourth of the members are selected and appointed by the President of the Republic from among high-level government employees, university professors and lawyers (like ministers, undersecretaries to ministers, governors, ambassadors, etc.) who fulfil certain criteria set out by law regarding service and seniority.

The other members are appointed by the Supreme Council of Judges and Public Prosecutors from among administrative and tax court judges, judges-rapporteur and advocates-general of high rank in the profession.

The professional members of the Council all have the legal status of high judges.

In addition to the professional members, there are 51 advocates-general, 16 senior judges - rapporteur and an adequate number of other judges-rapporteur (currently 232) who are assigned to work in the Council of State.

## *b) Organs*

The Council of State now consists of thirteen divisions, one of them being the administrative division. One plenary session of the members of the divisions is held for administrative cases, another one is held for tax cases and the Assembly meets to resolve conflicting judgements.

### **Administrative Division and Boards**

The Administrative Division, the Board of Administrative Affairs and the Plenary Assembly can be classified within this group.

1. Administrative Division: There is one administrative division having competence within the scope of its expertise. The division convenes with one president, and at least four members. It has an adequate number of judges-rapporteur to prepare and report files. This division reaches opinions by majority vote.

2. Board of Administrative Affairs: This Board is composed of the president and members of the Administrative Division and twelve other members elected from among the presidents and members of the judicial divisions by the Plenary Assembly every year. Additionally, an adequate number of judges-rapporteur are assigned to work in the Board of Administrative Affairs. The President of the Council of State or one of the vice-presidents presides over the meetings. This Board decides on appeals of decisions given by the Administrative Division on the authorisation to initiate criminal proceedings about civil servants, and fulfils other duties as required by law.

3. Plenary Assembly: The Plenary Assembly is composed of the President, the Chief Advocate - General, the vice-presidents, the presidents of divisions, the members and the Secretary General. It is the duty of the Plenary Assembly to carry out the duties referred to it by the Council of State Act and other related acts.

### **Judicial Divisions and Sessions**

The Judicial Divisions and Sessions are the judicial organs of the Council of State. They are composed of the judicial divisions, Plenary Sessions and the Assembly on the Unification of Conflicting Judgements.

1. Judicial Divisions: The structure of these divisions is the same as the administrative division. The judicial branch of the Council of State now consists of twelve divisions. The distribution of works among the divisions is based on the subject matters of the cases. These are clearly specified in the related sections of Act No. 2575.

2. Plenary Sessions of the Law Divisions: Prior to the reform of 1982, there was only one session for judicial divisions. Presently, however, there are two different sessions along with the judicial divisions.

(i) Plenary Session of the Administrative Law Divisions: This Plenary Session is composed of the presidents and elected members of those judicial divisions which are not responsible for tax cases. Members of the Assembly are elected for a fixed term of two years by each division from among its members. Every member of a division takes on the duty in rotation. The Assembly is presided over by the President of the Council of State or one of the vice-presidents. Traditionally, however, it is almost always a vice-president who heads the Assembly. In case of their absence the most senior section president takes the chair.

(ii) Plenary Session of the Tax Law Divisions: This Session is composed of the presidents and elected members of the judicial divisions competent to deal with tax disputes. The rules on the presidency and the election of members are the same as the Plenary Session of the Administrative Law Divisions.

Both of the plenary sessions have only appellate jurisdiction. Judgements of the judicial divisions acting as the courts of first instance may be appealed against before these sessions. The sessions also review cases in which the lower level court has insisted on its previous judgement after initial reversal by a division. Judgements rendered by the sessions are final.

3. Assembly on the Unification of Conflicting Judgements: It is the duty of this Assembly to eliminate conflict between the judgements of the judicial divisions and to unify the case-law. Previously combined case-law may also be amended, if need be. This Assembly is composed of the President, the Chief Advocate-General, the vice-presidents, the presidents and members of the judicial divisions.

Each division, session and assembly has an adequate number of judges-rapporteur working for them.

## Administrative Organs

The Administrative Organs of the Council of State have only administrative functions. They are responsible for taking decisions on internal matters of the Council of State. These organs are composed of the Committee of Presidents, the High Board of Discipline and the Board of Discipline.

1. Committee of Presidents: This Committee is chaired by the President of the Council of State and composed of the Chief Advocate-General, the vice-presidents and the presidents of divisions. The Committee has important functions: Assignments of members to particular divisions; making changes, in case of absolute necessity, in the divisions to which presidents and members are elected or assigned; distribution of works among divisions; elimination of disputes on competence, venue and conjunction between divisions and between lower level courts.

2. High Board of Discipline: This Board is chaired by the President of the Council of State and composed of one member from each division and three presidents of division, one of whom being the president of the Administrative Division. The members of the Board are selected by the Plenary Assembly at the beginning of each year. The Chief Advocate-General is the ex-officio member of this board. This Board is authorised to take decisions on disciplinary matters related to the President, the Chief Advocate-General, the vice-presidents, the presidents and members of the divisions.<sup>2</sup>

3. Board of Discipline: This Board is composed of one president of division, one member, one judge-rapporteur of higher rank, one advocate-general and the Secretary General of the Council of State. The members of this Board are selected by the Plenary Assembly at the beginning of each year. The Secretary General is the ex-officio member. The Board of Discipline decides on disciplinary matters related to the administrative staff of the Council of State.

### 3. Statistics of the Judicial Divisions of the Council of State (1999 – 2009)

Years	Recorded files	Rendered decisions	Left
1999	59.817	59.805	63.861
2000	63.878	56.973	70.766
2001	57.499	56.984	71.281
2002	59.952	57.785	73.448
2003	52.512	58.118	67.842
2004	66.405	59.039	75.231
2005	74.243	67.940	81.534
2006	84.706	71.786	94.454
2007	110.535	85.835	118.286
2008	128.676	95.435	149.144
2009 (till October)	91.620	70.918	169.840

<sup>2</sup> For the judges-rapporteur and advocates-general there is no discipline system in the Council of State.

## CHAPTER III ADMINISTRATIVE ACTIONS

Pursuant to the Procedure of Administrative Justice Act, there are three types of administrative actions: Annulment actions, full remedy actions and actions relating to disputes arising from administrative contracts to carry out public services.

Annulment actions ensure annulment of illegal individual or regulatory acts by administrative justice. These suits can be filed by those whose interests have been violated due to any legal error in one of the elements of competence, form, reason, subject and aim of individual or regulatory administrative acts. Courts can adjudicate on complete or partial annulment of the contested act. However, they can neither impose their own evaluation of a policy over that of the administration nor give a verdict on the character of an administrative act nor can they give a verdict that will restrict the exercise of administrative function.

Full remedy actions are brought by those whose rights have been violated by administrative acts or actions, for restitution or compensation. Full remedy actions can be filed directly, along with an annulment action or after a decision is rendered on annulment action. Compensation can be awarded under the principles of fault based liability, objective liability or social risk.

Annulment or full remedy actions relating to the disputes arising from administrative contracts to carry out public services are dealt with by the administrative judiciary, with the exception of disputes for which arbitration is envisaged.

## CHAPTER IV JUDICIAL REMEDY

As a rule, judicial remedy is possible against all types of administrative actions. However, according to Section 2/3 of the Procedure of Administrative Justice Act, the acts implemented by the President of the Republic in his/her own motion are outside the scope of judicial review. Decisions of the Supreme Military Council and the Supreme Council of Judges and Public Prosecutors are also not subject to judicial control.

It is stated in Section 2/2 of the Procedure of Administrative Justice Act that the power of administrative justice is limited to verification of the conformity of administrative acts with law; courts cannot review the appropriateness of an act and action. It is generally recognised that an administrative authority cannot be compelled to exercise a power which is purely discretionary and judicial control of administrative acts involving the exercise of discretionary powers is inevitably less stringent than in the case of those acts involving measures which are obligatory for the administrative authorities. Nevertheless, judicial control over the exercise of discretionary power ensures that, when an administrative authority exercises a discretionary power, it does so within the limits and purposes for which, under the law, it enjoys discretion. The courts, therefore, try to find solutions more favourable to citizens' rights.

Review by lower level courts is no different from review by the Council, in this respect.

The Procedure of Administrative Justice Act states that hearings shall be open to the public; in cases where public morality or public security requires, all or part of the hearings are held in closed sessions, by the decision of the court. The representatives of the defendant administration and the plaintiffs themselves or their legal representatives can take part in the hearing. Each of the parties is given two chances to present their oral arguments. Written presentation is also possible.

The presence of the Advocate General in the hearings held at the Council of State is compulsory.<sup>3</sup> After this presentation, the last words of the parties are requested. The decision is handed down within fifteen days of the hearing. The right to *inter partes* proceedings, the rights of defence and the balance of written and oral elements in the proceedings are respected.

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<sup>3</sup> The advocates-general examine case files on behalf of the Chief Advocate General and give their written and reasoned opinions. The advocates-general may request the relevant authorities to submit any kind of information and ask administrative organs to provide files related to the case. If it is deemed necessary by the sections or plenary sessions, the advocates-general also present their opinions orally.

## CHAPTER V            EFFECTS OF DECISIONS AND EXECUTION OF JUDGEMENT

The burden of execution is imposed on the administrative body which enacted the contested act. Decisions of annulment related to regulatory acts and judgements of unification of the Council both have *erga omnes* character. Decisions on individual acts produce effects for the parties; settled case-law is applied as *stare decisis* by the judiciary and can be relied upon by the parties. Annulment decisions are *res judicata*.

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

Under the Constitution and law, the legislative, executive and administrative organs shall comply with court decisions; these organs shall neither amend them nor delay their execution. The implementation period cannot exceed thirty days. An action for compensation can be brought for pecuniary and non-pecuniary damages caused by the failure of the administration to implement acts and to take actions required by the decisions. If public officials deliberately fail to fulfil the requirements of the decisions, a compensation action can also be brought against them; they may be held liable in disciplinary and criminal proceedings, as well. There is no procedure for execution by private persons, but decisions rendered in full remedy actions are executed and enforced pursuant to the general provisions. Administrative courts have no power of injunction.

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# The Use of Information and Communication Technologies in Turkish Administrative Jurisdictions\*

by Gürsel MEKİK\*\*

Two separate systems are in use in Turkish administrative jurisdictions:

- In first-degree Courts  
NATIONAL JUDICIARY INFORMATICS SYSTEM (UYAP)
- In the Council of State  
COUNCIL OF STATE INFORMATICS SYSTEM (DBS)

## CHAPTER I NATIONAL JUDICIARY INFORMATICS SYSTEM (UYAP)

The National Judiciary Informatics System (UYAP) is an IT system that constitutes the e-justice component of e-Government, developed within the scope of the e-Transformation process, which has built internal automation, including hardware and software, as well as the information automation systems of the central and district organisations, associated and related institutions of the Ministry of Justice, and all civil and administrative judiciary organs (e.g. Chief public prosecutors' offices, courts, execution and bankruptcy offices, prisons and correction facilities, forensics departments, and probation bureaus) and which has provided the inter-institutional integration with public institutions and organisations.

The Data Processing Department was established in the Ministry of Justice in 1999. The department started an automation project in 2000 and continued working on other projects concerning courts until completion of commissioning of the central automation system in 2002. During this period all judicial organs were gradually integrated into the UYAP system. As of today, UYAP incorporates almost all judicial organs in Turkey and the system allows online processing of all sorts of judicial and administrative actions.

The objectives of UYAP are to ensure "judicial services" are being rendered in the shortest time, at the lowest cost, and in the easiest way and to ensure that "justice" is served in a transparent, effective, fast, reliable, impartial, and controllable fashion.

To this end, first of all a central information system was set up and all central and district organisations of the Ministry of Justice were electronically connected to all judicial institutions in Turkey over a nation-wide network.

Although the chief public prosecutors' offices, civil and penal courts, the Court of Cassation, district administrative courts, administrative and tax courts, execution offices, prisons, and the forensics department have been integrated into the system, the Council of State has not been connected to the system yet. The reason for this will be explained in the discussion of the Council of State's Informatics System.

In the following phases, the information systems of external institutions with which UYAP and judicial institutions frequently exchange information were integrated into UYAP to allow the judicial institutions to have fast access to information they need.

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The information which can be inquired about and obtained within this scope, listed by relevant information, is as follows: Turkish citizen ID, identity information, address, and particulars of death of a person from the Directorate General of Vital Records and Citizenship Affairs; Address for service from the Directorate General of PTT; Payment of legal charges and expenses from banks; Information related to title deeds from the Directorate General of Land Registry and Cadastre; Criminal records from the Directorate General of Litigation Records and Statistics; Information on detention and arrests from the Department of Smuggling and Intelligence Operation and Information Activities; and Driver Licence records and garnishments issued against vehicles from the Directorate General of Police Forces.

The UYAP system developed is compatible with the electronic signature (e-signature) infrastructure. The information and documentation of judicial and administrative institutions incorporated in UYAP are stored electronically in an accurate and consistent, inalterable and secure manner and unauthorized access to such information and documentation is not permitted thanks to this infrastructure.

UYAP has two sub-systems, namely the Citizen Information System and Lawyers' Information System. The UYAP Citizen Portal and Lawyer Portal are accessible via a link from the Ministry of Justice's website. Both portals are available in English as well.

#### **CITIZEN PORTAL** <https://vatandas.uyap.gov.tr>

In this portal, citizens are allowed to start a session with their Turkish citizen ID to access certain summary information (e.g. trial dates, whether case file has been returned from the Court of Cassation, etc.) regarding their cases being tried in civil or administrative judicial organs incorporated into the UYAP system.

#### **LAWYER PORTAL** <https://avukat.uyap.gov.tr>

In this portal, lawyers are allowed to review – based on authorization granted to them – files of only those cases to which they have been appointed and which are stored in the UYAP system (for other case files access may be granted only by the relevant judge(s)), get a copy of such files, add documents into case files stored in the system upon authentication by means of e-signature, and pay legal charges on-line. In addition, lawyers may also be able to file a new case through the system, though this functionality is not yet available.

The “UYAP SMS Information System” has been developed and introduced to GSM phone users to enable all parties of a case or execution proceedings to have instant access to information relevant to their cases or proceedings, and be instantly notified of any change in the progress of their litigation or proceedings.

In this system, parties of a case shall be automatically notified, through SMS (small message service), by GSM operators of any judgement rendered by the relevant court or any party of a case may send a text message to a GSM operator to receive information on the progress of their case. These text messages are for information only, and do not constitute official notices.

The system works in two different ways: these are the Information SMS and the SMS for Inquiry.

- **Information SMS** is sending a text message containing information on the relevant case to the GSM phone of a registered subscriber with his/her Turkish citizen ID.
- With **SMS for Inquiry**, a party to a case may inquire for information related to his/her case by sending a text message containing his/her Turkish citizen ID and docket no to the UYAP system.

## **A. USING THE UYAP APPLICATIONS**

In order to be able to use UYAP applications a user must enter his/her username and password to start a session on the UYAP PORTAL homepage. An authenticated user may start using the applications that she/he has the authority to use.

The “File Delivery” window is used to file a new case. Firstly particulars of plaintiff (claimant) are entered. It is sufficient to enter only the Turkish citizen ID; the rest of the identification information about the individual will be retrieved online from MERNIS, the Information System of the Directorate General of Vital Records and Citizenship Affairs. Then legal charges and expenses are collected and the system will automatically distribute the case file.

Case files automatically delivered by the system are included in the job list of the court clerk. A user can access particulars of actions to be taken in relation to the case file in the column “Description”.

The court clerk scans into the system the request and its attachments which are received online. She/he checks information on litigation charges and make an entry in the relevant list if the required charges have not yet been paid. The court clerk sends the case file to the president of the court so that the latter conducts or commissions a preliminary review if all charges are paid.

The president of the court displays the case file for which a preliminary review is to be conducted in a list. The president may either conduct a preliminary review on his/her own or refer it to a judge.

The president of the court may send case files individually or in a batch by using any type of referral available.

A case file referred by the president of the court to a judge is received in a window called “Judge’s Repository”, which consists of 4 sections:

- 1- Agenda of Panel of Judges
- 2- Judgements for which a statement of justification is to be written
- 3- Case files referred to court
- 4- Case files for which an interlocutory judgement has been received.

All actions to be taken by the judge are grouped into sections in this window.

The judge selects a case file referred to him/her to review documents attached to the file and inserts the file in the “Agenda of Panel of Judges” in the Judge Repository window to present the file to the Panel of court Judges.

When the judge selects the case file that she/he has already added to the “Agenda of Panel of Judges” and attempts to enter the judgement of the Panel of Judges, the “Smart Alert System” activates to perform the necessary checks with respect to the case, to prevent a procedural mistake being made. For instance, a pop-up message stating “Are you sure you wish to enter a judgement without trying the case in question first?” displays if an attempt is made to enter a judgement for a case which has not been tried yet.

The judgement rendered by the panel of judges is selected from the list of rulings stored in the system and recorded.

An automatic judgement number immediately available in the system is assigned to the judgement once it is recorded in the system and a record of the judges’ deliberations is automatically drawn up by the system.

The record of judges’ deliberations includes the following information: Docket No., Judgement No., Plaintiff, Defendant, Subject of Case, Judgement, Date of judgement, Dissenting Judge, if any, and names of judges in the panel.

When a judgement is rendered for a case, the case file is then sent to the “Judgements for which a statement of justification is to be written” section of the Judge Repository. In this section, the Judgement Entry window opens when the relevant case file is selected and the judgement button is clicked. It is possible to enter the judgement in an empty template or in a sample template with relevant fields already completed prior to judgement depending on the type of case being tried.

Court clerks carry out the formalities for posting notices related to a case file for which a judgement has been rendered by a court, and the system automatically prints out a Notification Envelope.

Any error made in the UYAP system can be corrected only in the correction window accessible from the main menu for the Presidents of court (e.g. under General Actions/Delete-Correct Erroneous Records). In this window, it is possible to update the referral of a case file and of the judgement rendered in the case as well as to delete any document which has been erroneously added to the case file in question.

## **B. UYAP IN FIGURES**

### **Use of UYAP:**

134 High Criminal Court Centres,  
 587 Court Houses,  
 26 District Administrative Courts,  
 134 Probation Offices,  
 65 Forensics Units,  
 439 Penitentiary and Detention Houses  
 Rate of commissioning in Turkey: 100%

### **Number of UYAP Users:**

Number of Personnel	:	40.000
Number of Lawyers Registered for the System	:	56.000

### **Number of Documents Processed by UYAP:**

Per day	:	1.000.000
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### **Lawyer Portal:**

Number of Lawyers having access with e-signature	:	8.100
Number of lawyers having access with a certificate	:	<u>3.300</u>
Total number of Lawyer Portal users	:	11.400

### **E-Signature:**

Number of personnel granted an e-signature	:	35.690
Number of cases filed in Civil Courts via e-signature	:	500

### **Equipment Sizes:** Of UYAP System Centre

Number of Personnel that it can serve	:	100.000
Number of PCs	:	30.000
Number of Laptops	:	10.000
Number of Printers	:	5.000
Number of Scanners	:	3.000

## **CHAPTER II            COUNCIL OF STATE’S INFORMATION SYSTEM (DBS)**

The Council of State was the first judiciary institution in Turkey to start using data processing technologies.

The “Council of State’s Information System”, developed to store Council of State judgements electronically and to perform queries for judgements, was launched in 1984.

In 1993, the computerized system was revised to incorporate the judgement entry system and typewriting of judgements ceased to be performed.

The general documentation system was introduced in 1995.

In 1999, an electronic archive system complete with hardware and software was purchased to transfer the judgement archives into the electronic domain.

Internet infrastructure was set up in the Council of State Library in 2000.

In the same period, all software was reprogrammed and the Council of State’s “Databank Judgements Access System” was developed as the applications running on the current system at the time were out-of-date and not compatible with the new system to be procured.

All computer hardware and software was replaced under a contract for procurement of goods awarded in 2002 and the old system was discarded as of the end of 2002.

In 2005, an online case file and judgement search system and a library system application were commissioned and put into service and related web pages were designed.

The firewall hardware and software were replaced in 2006 and a network attack prevention system replaced the attack detection system. The system’s data storage capacity was increased. In addition, the RAMs of PCs were upgraded.

Work to develop software and transfer the archives of the Council of State into the electronic domain has been ongoing.

The system that I have tried to give a brief history of above has become widely used over time and today members, advocates-general, and judges-rapporteur of the Council of State are able to do the following with PCs allocated to them:

- Enter a judgement;
- Access judgements already entered;
- Search for literature and legislation in the Council of State library;
- Search for precedents recorded in the Council of State Databank; and
- Access the Internet.

Administrative staff have been provided with computers enabling them to carry out their respective duties.

All administrative and technical duties concerning the implementation of the DBS system are carried out by the Classification and Publications Bureau, which consists of an advocate-general and three judges-rapporteur and reports directly to the Secretariat General of the Council of State, and the IT Department, a unit of the Classification and Publications Bureau consisting of technical staff, including computer and electronic engineers.

At present, there is no direct connection between the Council of State’s network system and UYAP.

The main reason for this is that the IT system of the Council of State was built in 1984 and fully replaced prior to the introduction of UYAP in 2002.

Talks with the IT Department of the Ministry of Justice have been ongoing and it should be possible to connect the Council of State's network system to UYAP once it is technically possible.

**The Council of State's Information System comprises the following sub-systems:**

- General Documentation System
- Judgement Writing System
- Council of State's Databank Judgement Access System
- Administrative Support Information Systems
  - Personnel Information System
  - Payroll Information System
  - Health Unit Actions
  - Moveable Property Control System
  - Car Park
  - Library Information System
  - Electronic Archive System

The system runs on a central database and concurrently serves all Council of State staff.

The system has a standard toolbar for data entry and screen printing to enable system users to get the same layout of menu elements in different windows.

The design and coding of many data fields such as divisions, types of judgements, results of judgements, phases, claims, institutions, etc. are such that these fields can be further definable to allow consistent statistical output and fast retrieval of search results.

The fields coded are displayed in a drop-down list which is activated with a click of the list button available in relevant windows to enable system users to enter the correct code.

## **A. GENERAL DOCUMENTATION SYSTEM**

Actions in the General Documentation System are carried out under the following categories:

1. Document Receipt Actions
2. Statistics
3. Queries
4. Maintenance Actions

### **1. Document Receipt Actions**

Actions carried out under Document Receipt Actions are grouped into the following categories: Recording the Document Received; referral of document to the relevant Division or Plenary Session; Phases of Case, and processing of results of judgements rendered.

In the "General Documentation" window, the first thing to determine is whether the document received by the Council of State is related to a case filed with the Council of State as a first-degree court, or to an appeal or revision of judgement application requested by an administrative court or tax court. Once this distinction has been made, the necessary fields are completed accordingly to record the document received.

A document received in relation to a file for which a docket number has already been assigned is recorded accordingly and forwarded to the relevant Division or Plenary Session.

Judges-rapporteur in the Classification Department examine petitions and files received before processing them in this window to determine to which Division or Plenary Session they are to be forwarded.

Following this, a clerk in the General Document Bureau completes the relevant fields of the section "Information of the Institution Submitting the Document" (this section only applies to files filed for an appeal or revision of judgement), such as the division to be referred to, type of case, subject of case, and particulars of plaintiff and defendant. Once the clerk has finished entering the data, she/he clicks the "Save" button and the system automatically assigns a general document number.

The file is sent to the relevant division together with a job list (*zimmat listesi*).

A docket number is assigned to the document, with a general document number assigned once the registry of division has finished entering the particulars of the claim.

The case file so created is sent to a senior judge-rapporteur appointed by the president of the relevant division in accordance with the Council of State Act. The senior judge-rapporteur designates a judge-rapporteur who will be responsible for the case and then the file is referred to the judge-rapporteur for preliminary review or referral by the judge-rapporteur to the panel of judges of the relevant division for stay of execution or review of the basis of the case.

All actions taken and all judgements made by the judge-rapporteur and relevant division with respect to the case are entered by the division registry in this window.

The "Phases of Case" window serves to track the entire progress of a case file that the division registry has already received.

All actions carried out on the file within the division and the dates of actions are recorded in the Phases of Case window.

The file for which the relevant division or plenary session has made a judgement is sent to the division clerk, who enters the particulars of the file results/judgement.

The division registry enters the results of the file and clicks "Save". The system automatically assigns a judgement number to the file.

In the case of multiple plaintiffs, the system allows the entry of different results for each plaintiff.

## **2. Statistics**

The second sub-category of the General Documentation System is "Statistics".

The "Statistics" sub-category includes an inventory of documents processed, daily and monthly statistics, parametric reports, and other statistics submitted to the Turkish Statistical Institute, which keeps detailed statistics related to Turkish jurisdictions.

This sub-category incorporates more than 150 reports and statistics. System users are allowed to access some of these reports and statistics depending on their level of authorization.

The "Docket – Judgement Register" window allows the division registry to track the docket and judgement register online.

This window not only makes it possible to obtain a breakdown of dockets but also to search in and list case files.

All attributes of a case can be used as query and reporting criteria.

The “General Document Numbers” window is the window where senior judges-rapporteur of divisions track the case files. This window lists the files referred to the division by year and status of judgement, whether they include a claim for stay of execution, and the number of case files with docket no. and of decided case files.

The “Monthly Statistics by Judge” window makes it possible to check the phase of the file at a specified period and whether the file is still being reviewed by the judge-rapporteur or not. This enables the status of case files referred to a particular judge-rapporteur to be tracked.

The “Council of State Statistics” window displays the statistics for all cases filed with the Council of State either by the “number of decided cases” or by “average time of closure” of selected division(s) based on specified reporting parameters, namely year and first-degree court or appellate court.

### **3. Queries**

The third sub-category of the General Documentation System is “Queries”.

Sub-windows of the “Query” screen are used to perform a search in documents and files stored in the system.

A query can be performed based on all or some of the attributes of a case file.

This section comprises the following fields: Query by General Document No.; Full Query by Docket Year and No.; Query by Council of State Judgement Year and No.; Search for Plaintiff and Defendants by Name and Surname; Query by Institution Referring the File; Judgement Query.

### **4. Maintenance Actions**

The fourth sub-category of the “General Documentation System” is “Maintenance Actions”.

The “Maintenance Actions” window is used by the IT Department staff and incorporates all the necessary system management functions such as deleting a document record and changing a docket no. and division.

## **B. JUDGEMENT WRITING SYSTEM**

Actions performed in the Judgement Writing System are carried out under the following categories:

1. Judgement Entry
2. Query for Judgements by Words
3. Judgement Maintenance Actions
4. Judgement Query
5. System Management
6. Etc.

## 1. Judgement Entry

The Judgement Entry window is used by judges-rapporteur working in a division or plenary session and data operators to type the text of a judgement. In this window a judge-rapporteur or data operator enters their respective judgement ID to start a session to enter a judgement or to open an existing judgement for editing purposes. Users are allowed to view only those entries related to their division but not those related to other divisions. Entries of all divisions can be accessed only by those users (i.e. IT Department staff) who have the special authority to do this.

Actions such as writing, reading, updating, printing judgements, inserting other judgements, and deleting a judgement are logged and tracked by the system by name of user and date of action. This prevents unauthorized alteration of judgements and makes it possible to identify individuals who have attempted to access a judgement without valid authorization.

The “Judgement Entry” window has similar toolbar buttons to the most popular word processors: Font type; Font size; Bold, Italic, Underlined; Align to the left; Align to the right; Centre the text; Justify; Cut; Copy; Paste; Find; Insert a File; Previous/Next Page; Insert Automatic Page Numbers; etc. The other toolbar buttons in this window and their functions are as follows:

- **Import:** enables a user to import a document;
- **Export:** enables a user to export a document;
- **Spell Check:** This feature spell checks the entire text of a judgement based on a stored dictionary. A user uses this functionality to spell check a judgement before printing it. The incorrect words are highlighted to alert the user when the spell check completes checking.
- **Original Font:** When a judgement is imported to the system, the font type and size, line spacing, right and left margins are replaced with those stored in the Judgement Writing System. In other words all the physical properties of a text of judgement are made to have a standard look.
- **Insert a Judgement:** Any judgement already entered in the system can be inserted into another judgement to help a system user. This is usually helpful for “precedents” or “similar” files. It means, for instance, that it is possible to copy part of a judgement into a new judgement if the former has been based on the same grounds as the current judgement or if it is based on the same legislation.

## 2. Query for Judgements by Word(s)

This window is for the use of members, advocates-general, and judges-rapporteur of the Council of State.

This window provides a search capability with three search options enabling users to search for any keyword in more than 1,280,000 judgements entered in the Council of State’s database:

- **All These Words** searches for all of the words in any order in judgements and highlights the search terms in the list of results.
- **This Exact Wording** searches for all of the words in the exact order in judgements and highlights the search terms in the list of results.
- **Any of These Words** searches for any of the words entered in the search box in judgements and highlights the search terms in the list of results.

It is possible to expand or narrow the list of results by using the following additional criteria: decision year, docket year, type of judgement, and division entering the judgement.

### **3. Judgement Maintenance Actions, Judgement Query and System Management**

These menus contain only those screens which are accessible to data processing staff only in order to ensure the correct and reliable use of the Judgement Writing System.

Some of the screens under the system management menu are as follows:

- Parameters,
- Types of Judgements,
- History of Judgement,
- Judgement Statistics,
- Content Indexing,
- Etc.

The physical properties of a judgement text are defined on the “Parameters” screen. Among the definable parameters are line spacing, font type, right margin and left margin, and the stage at which the text of a judgement is locked. This makes it possible to have standard physical properties for texts of all judgements entered in the Council of State’s system and texts of judgements of every division can be locked at the same stage to prevent further editing.

- “The Types of Judgements” screen defines types of judgements for standardization and provides a list of types of judgements for selection.
- “The History of Judgement” screen allows tracking of all the actions performed on a judgement since its entry. This means it is possible to log in the system what action was performed on a judgement, the user performing the action, and when and on which computer the action was performed.
- “The Judgement Statistics” screen lists the total number of judgements either by division entering the decision, year and division, year, division, or division and type of judgement.
- “The Content Indexing” screen enables weekly indexing of all judgements entered in a week to enable accurate and fast keyword-based queries for judgements.

#### **C. COUNCIL OF STATE’S DATABANK JUDGEMENT ACCESS SYSTEM**

The Judgement Access System is a system whereby any user can access the online database of judgements of the Council of State which are defined as precedents. The information on precedents retrievable from the system is up-to-date. As of today, the number of precedents available online is about 25,000 and the number has been continuously increasing.

The database also includes a summary of all judgements about administrative jurisdiction given by the Constitutional Court and Court of Jurisdictional Conflict and information on the Turkish Official Gazette containing such judgements.

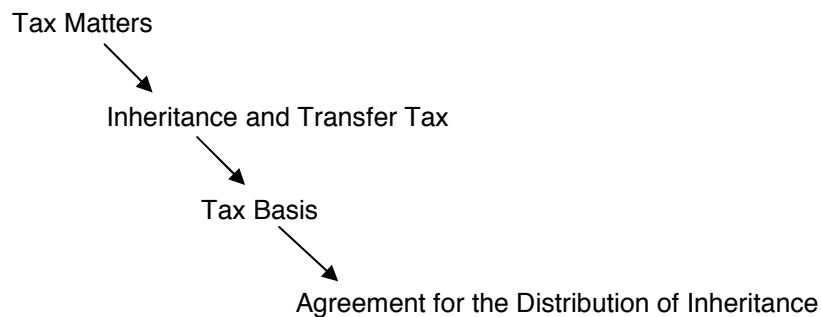
Judgements selected and summarized by various divisions and plenary sessions of the Council of State are categorized and coded by advocates-general and judges-rapporteur designated by the Classification and Publication Bureau according to subject matter, applicable legislation, and principle and concept, before being transferred to the database by operators in the IT Department.

A judgement entry is made up of the ID of the judgement, a summary of the judgement and the full text of the judgement. The ID of a judgement contains information on the name of the division entering the judgement, year and number of judgement, docket year, docket number and date of judgement.

Any entry of a judgement always contains all of the above-mentioned information. Judgements are also linked to various themes and applicable legislation depending on their contents.

Topical indexes function as a dictionary to access a judgement. Topical indexes are separately defined in the system and any judgement is linked to one or more of these indexes. Indexes have three categories, namely subject, the procedure of proceedings, and concept. The subject and procedure of proceedings categories have four sub-categories. For instance, "tax matters" is recorded as a standalone subject while entries related to "inheritance and transfer tax" are located under "tax matters". The "tax basis" linked to this entry and the "agreement for the distribution of inheritance" indexed under the keyword of tax basis are all stored in the system as a separate entry.

The figure below summarizes the abovementioned example:



It is possible to access judgements from any of the above indexes.

Concepts have a single layer.

Information available in the system concerning applicable legislation includes arrangement no., act no, article number, and whether it is abrogated or not. Each judgement can be linked to a topical index as well as a particular piece of legislation. A judgement may be linked to more than one piece of legislation.

Search criteria for judgements in the Council of State Database are as follows:

1. Docket No. search
2. Judgement No. search
3. Query by Subject, Principle-Concept, Procedure of Proceedings
4. Query by Name or Article of Legislation
5. Search by Word(s)

If the division number, docket/judgement year and no. is known, this information can be entered in the relevant boxes to retrieve relevant precedent.

If the user does not have any information on a judgement or intends to perform a general query, she/he can perform it based on any of the search options, namely subject, principle-concept and procedure of proceedings. As a result, matching indexes are listed such that the indexes to be listed can have only four sub-categories maximum. Likewise, a query for judgement can be performed based on an article of a particular piece of legislation (e.g. Arrangement no., Act no., or Article no.) or name of the legislation.

The number of judgements entered by divisions in relation to the subject selected is listed when an index is selected. It is possible to display all precedents matching the criteria given by entering the division no. and judgement period in years.

If a user wants to perform an extended search, she/he enters the word(s) that she/he wants to search for and starts the query. All precedents containing the word(s) entered are listed.

In principle, the name of the plaintiff and lawyer(s) are not included in a judgement text transferred into the databank, though the defending division's name is maintained.

## **D. LIBRARY**

The Library, which contains a collection of all Turkish Official Journal issues published, laws and regulations enacted, code of laws, minutes of the Turkish Parliament and scientific literature, serves users from inside or outside the Council of State and enables them to perform an online search for literature and legislation. It is possible track loans desk transactions online.

In the library database, one can perform searches under the main headings of literature or legislation. When searching under literature or legislation, it is not necessary to enter the full name of the author or of the legislation. It is sufficient to select the type of literature or legislation.

## **E. WEBSITE OF THE COUNCIL OF STATE <http://www.danistay.gov.tr>**

The re-designed website of the Council of State was published on April 5, 2005.

The website includes pages on the history of the Council of State, management, organization chart, duties of divisions, the list of district administrative courts, legislation of the administrative judiciary, Bulletin of the Council of State and articles, the Council of State Library where users can access the current database of judgements, the Databank for making queries, and the progress of all cases being tried in the Council of State.

On the Council of State's website, the pages on the history, organisation and duties of the Council of State and basic laws on administrative justice are also available in English and French.

It is possible to perform a search online (on the website of the Council of State) for case files. To perform a search one needs to enter either the general document number, or docket number, or docket number of the referring institution, or a judgement number.

Although it is possible to perform a search by name of party of a case, this functionality is not permitted for the use of third persons to prevent the access of any unrelated third person to case files.

The result of a query of this kind includes information on the number of the division trying the case, the progress of the case, and the status of the judgement in the case.

Any third party-user is allowed to use the Council of State Databank Judgement Access System online, just like any member of the Council of State.

## **F. TECHNICAL AND QUANTITATIVE INFORMATION ON DBS**

- There are 640 PCs and 73 laser printers being actively used in the Council of State's IT Department.
- The following elements are being used for central deployment and management of PCs and storage and security of data generated by PCs used at the Centre:
  - A database (ORACLE),
  - 2 Unix servers running the database, and
  - 12 servers with Microsoft OS to meet every demand of PCs.
- Those 640 PCs have 10Mbit Internet access.
- The staff of the IT Department is made up of 1 Director, 2 Engineers, 1 Programmer, 4 Technicians, 2 Data Operators and 2 Administrative Staff.
- All data structures have been coded to ensure the integrity and standardization of data being generated by all divisions, plenary sessions and administrative units of the Council of State.
- The word processor used in the Judgement Writing System is an OCX-based word processor.
- All of the 1,280,000 judgements stored electronically are related to the 1994-2009 period.

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