COUNCIL OF STATE OF TURKEY

HOW TO REDUCE THE JUDGMENT PERIOD?

1- Acceleration of trials by the procedural rules period

- **Once the petition has been introduced, is there a period during which parties (plaintiff, defendant or third parties) are expected to present their observations? If so, how is this period set? What kind of penalties may a party see imposed in case of non respect of an assigned period?**

The proceedings before the Administrative Courts and The Council of State in Turkey are governed by the Administrative Judicial Procedure Act. Its section 16 reads as follows:

> "1. A copy of the petition that commences the action and its annexes shall be notified to the defendant, whereas the defence plea shall be notified to the plaintiff.
> 2. The second petition of the plaintiff shall be notified to the defendant, whereas the second defence plea of the defendant shall be notified to the plaintiff. The plaintiff cannot respond this plea. However, if it is established, at a later stage, that the second defence plea includes matters that must be answered by the plaintiff, a period shall be given to the plaintiff for response.
> 3. Parties might response to the notified petitions within thirty days from the notification. Provided that there are justified reasons, this period might be extended for once and not more than thirty days by the decision of the competent court, upon the request of one of the parties. Requests for extensions made after the end of time limit shall not be accepted.
> 4. Parties cannot claim any right depending on the defence plea and the second petition submitted after the time limit.
> …
> 6. In cases that are tried by the Council of State as the first instance court, the written opinion of the prosecutor about the facts of the case shall be notified to the parties. The parties shall communicate their opinions within ten days following the notification."

According to these statements, petitions are delivered to the parties by the court which the time limits of them are defined by the law. The only penalty is the loss of right for stake out a claim depending on the late petition. But if any documents or observations are demanded by a court order, the court defines the deadline.

Of course there are also penalties defined in the Criminal Code for violating the provisions of the law about court orders.

- **Are interventions of third parties in trial in a particular framework?**

As per the provisions of the relevant law related to intervention, "a third person whose right or liability depends on the result of an action may intervene to join one of the parties". The decision taken as a result of the trial is binding only on the original parties of a case; the court cannot issue an individual judgement about the intervening party.

- **Can the judge rule on a petition in the absence of a motion by the defence? If so, does the defendant dispose of the specific possibility of a plea?**

As stated before, Administrative Judicial Procedure Act. Its section 16/ 3. Parties might response to the notified petitions within thirty days from the notification. Provided that there are justified reasons, this period might be extended for once and not more than thirty days by the decision of the competent court, upon the request of one of the parties. Requests for extensions made after the end of time limit shall not be accepted.

Therefore, there is no obstacle for the court to rule in the absence of a motion by the defence. But this doesn't dispose of the defendant from the specific possibility of a plea. Based on the principle of research ex officio, the judge may consider all the legislation and principles of law though they are not claimed by the parties. Therefore, if the judge finds a reason that is laid down by the legislation but not claimed by the parties, s/he may decide about the faultiness of the disputed act.

- **Do practicable rules in terms of procedural period vary depending on whether parties are represented or not by a barrister?**

Except the provisions about the attorney-fee (honorarium) and notification practicable rules in terms of procedural period doesn't vary depending on whether parties are represented or not by aattorney.

- **Regarding expertise, are there specific rules?**

The relevant law requires that the Council of State, the court or the judge shall assign the experts ex officio. It is also required that the court shall consult an expert in cases settlement of which requires specific or technical knowledge while on the contrary an expert shall not be consulted in cases which can be settled based on the general and legal knowledge of the judge.

2- Speeding up of decisions in urgent cases:

- **Are there any procedures inorder to shorten preliminary inquiry periods? If so, in which cases do specific procedural rules apply? Does the judge have the possibility to consider whether these rules should be applied or not?**

The fast-track trial procedure was previously governed by specific practices laid down by some special laws; however, it has been incorporated into the Law no 2577, section 20/A as a result of the efforts taken up by the Council of State in 2014. The legislator set a deadline for the implementation of this Law. Therefore, the case-law has not been developed concerning its implementation.

The law lays down limited number of disputes for which the abovementioned procedure can be applied. The procedure of implementation has been regulated in the law as follows:

"2. In fast-track trial procedure;

a) The time limit for filing an action shall be thirty days.

b) Article 11 of this Law shall not be applied.

c) The preliminary examination shall be performed within seven days and the petition shall be notified along with its annexes.

d) The time limit for response shall be fifteen days following the notification of the petition.This period might be extended for once and not more than fifteen days. The file shall become ready for decisiononce the parties respond or the time limit for response is exceeded.

e) The decisions concerning stay of execution shall not be appealed.

f) The decision for these files shall be taken within maximum one month after they become ready for decision. The proceedings such as interlocutory decision, inspection, expert examination or holding a hearing shall be finalized immediately.

g) The final decisions may be appealed within fifteen days subsequent to their notification.

h) The petition of appeal shall be examined within three days and the notification shall be sent. The provisions stipulated inArticle 48 of this Law which do not contradict this article shall be comparatively applied.

ı) The time limit for response to the petition of appeal shall be fifteen days.

i) If the Council of State, as a result of the examination made on the basis of file, concludes that the information obtained about the facts is sufficient or if the objection concerns merely points of law or if the errors in fact can be rectified, a decision on the merits shall be rendered. Otherwise, it shall render a new decision on the merits after carrying out the necessary examination and investigation.

However, if the objections made against the decisions given as a result of preliminary examination are accepted,it shall dismiss the decision and send the case file back to the court.

j) The application for an appeal shall be decided within maximum two months. The decision shall be notified within maximum one month."

As indicated above, there is a limited number of circumstances under which the relevant procedure can be applied. The judge's power of discretion shall be restricted to whether the subject-matter of the case is within the abovementioned scope.

- **Is the judgement in certain litigation submitted to specific periods? If so, what is the type of litigation and the periods set? In cases of non-respect of these periods by the judge, whatare the consequences for the outcome of the judgement?**

Case files in the Council of State, regional administrative, administrative and tax courts shall be examined in sequence of receipt and shall be decided in the order in which they become ready for decision, taking account of cases of priority and urgency prescribed in this and other acts as well as of priority matters promulgated in the Official Gazette. Files other than the above-mentioned ones shall be concluded in the order in which they become ready for decision and within maximum six months from the date that they become ready for decision.

Non-respect of this period by the judge does not have any consequences for the outcome of the judgement. However, such an incident shall be considered as a matter of criticism against the judge during the inspection procedure.

Furthermore, there are special periods laid down for preliminary examination, hearing and stay of execution.

- **Can a case be judged by one judge, without a public hearing, without intervention of the consultant judge orthe public prosecutor and/or without a prior contradictory procedure? If so, how is the use of these techniques assessed? Is this choice questionable through the introduction of an appeal, a cassation or any other procedural option?**

As indicated in response to some of the previous questions, a case can be judged by one judge, without a public hearing, without consulting an expert and/or without defence plea. The determining factor is the attitude of the parties to the case as well as whether the subject-matter of the case can be settled through the general and legal knowledge of whichthe judges are required to be in command rather than the judge herself/himself. However, as required by the principle of research ex officio, these options can be applied during the appeal or cassation.

3- Acceleration of the definitive ruling on the litigation

- **Are the possibilities of a plea against jurisdictional decisions uniform or variable according to the kind of dispute or to its importance? What are the reasons justifying that a dispute cannot benefit from the possibilities of a plea as others?**

The final decisions taken in relation to the limited number of disputes laid down by Article 45 of the Law no 2577 and the final decisions taken by a single judge may be challenged at the regional administrative court with the relevant jurisdiction even if there is a provision contrary to the present section in other acts.

The procedure of appeal is defined in the abovementioned law as follows:

"…

2. Time-limit for the objections made against the decisions of administrative and tax courts pursuant to the paragraph above shall be thirty days from the day following the notification date

3. Objection shall be subjected to the procedure and form of appeal.

4. If the regional administrative court, as a result of the examination made on the basis of file, concludes that the information obtained about the facts is sufficient or if the objection concerns merely points of law or if the errors in fact can be rectified, a decision on the merits shall be rendered. Otherwise, it shall render a new decision on the merits after carrying out the necessary examination and investigation. However, if the objections made against the decisions given as a result of preliminary examination are accepted or if the case was reviewed by a judge who has no jurisdiction over the case, the regional administrative court shall dismiss the decision and send the case file back to the court. Decisions of the regional administrative courts on these matters are final.

5. Decisions of the regional administrative court are final, appeal cannot be brought against its decisions.

…"

Article 46 of the same law regulates the procedure of appeal as follows:

" 1. 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 judgments of the judicial divisions of the Council of State and administrative and tax courts.

2. Provided that a special time-limit is not prescribed in specific acts, an appeal might be brought to the Council of State against the judgments of the judicial divisions of the Council of State and administrative and tax courts within thirty days from the notification date."

Article 47 of the Law lays down the decisions against which appeal cannot be brought. Accordingly, appeal cannot be brought against the decisions of the administrative and tax courts about which the remedy of objection is available.

- **In case of annulment of the contested jurisdictional decision, does the judge of appeal or of cassation have the possibilityor the obligation to solve the content of the dispute? In order to do this, does he/she have the possibility of ordering further measures of inquiry?**

Article 49 of the Law no 2577 stipulates that

"1. As a result of appellate review, the Council of State shall set aside the decision examined because of the following reasons:

a) The court lack the jurisdiction,

b) The decision is against the law,

c) Procedural provisions were not complied with,

2. If it is possible to rectify the errors concerning the facts, the decision shall be upheld with the correction of the errors.

3.If case of reversal, the file shall be sent by the Council of State to the court that rendered the decision. The court shall give priority to the examination of this case, complete the investigation if required and renew its decision.

4. The court may not obey the reversal decision and insist on its previous judgement. If the person concerned brings an appeal against the decision of persistence, the case shall be reviewed at the Plenary Session of the Administrative Law Divisions or the Tax Law Divisions according to the subject of the case. If the decision of the relevant division of the Council of State is approved, the judgement of the court is overruled; otherwise the judgement shall be upheld. Decisions of the Plenary Session of the Administrative Law Divisions or the Tax Law Divisions of the Council of State are binding.

5. If the judgements are partly upheld and partly overruled, the part that becomes final shall be declared in the decision of the Council of State."

During the decision process, inquiries other than those for the original case file can be conducted. It is already stated in Article 20/1 entitled "examination of the files" as follows:

"The Council of State, administrative and tax courts shall carry out all examinations about the actions before them, of their own motion."

4- Mechanisms for compensating the effects of the incompressible duration of jurisdictional procedures

- **Are there any procedures allowing one judgeor a college of judges to take the measures esteemed necessary in order tosafeguard the interests of the parties pending the judgement on the content? Dothese rules apply uniformly in the event of appeal or cassation?**

The "stay of execution" regulated in the Administrative Justice System of Turkey allows one judge or a college of judges to take the measures esteemed necessary in order to safeguard the interests of the parties pending the judgement. Accordingly, a case being filed before the Council of State or the administrative courts does not require the stay of execution regarding the administrative act tried while filing of an action at the tax courts concerning tax disputes shall require the stay of collection of the disputed part of the taxes, duties and levies or similar financial obligations as well as associated increase and penaltiesimposed. However, if the implementation of an administrative act should result in damages which are difficult or impossible to compensate for, and if this act is clearly unlawful, the Council of State or administrative court may decide to stay the execution of the act, stating the reasonsthereof after taking the defence plea and after the time limit for defence plea expires. There are also supporting provisions which may accelerate the stay of execution.

- **Do procedural rules allow one judge or a college of judges to pronounce judgment in a case, provisionally and rapidly, without this requiring a procedure for pronouncement on the content?**

In the Administrative Justice System of Turkey, the procedural laws do not allow judges to pronounce judgment without pronouncing on the content (merits). Article 24 of Law no 2577 lays down the requirements applicable for all judgements;

> "The judgements shall contain the following:
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> …
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> b) A summary of events as submitted by plaintiff and the legal bass of the claim, final submission of the plaintiff and the summary of defence,
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> …
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> e) The legal basis of the judgement, statement of justification and conclusion; and the amount of compensation awarded in compensation actions,
>
> …."