



Internship report for the IASAJ Judge Exchange Programme:

Judge :

Name: Aygun
 First name: Abdullah
 Nationality: Turkish
 Jurisdiction: Council of State of the Republic of Turkey
 Professional Experience:
 1-The Judgeship in Kayseri, İzmir and Aydın Provinces tax courts. (14 years)
 2-The Presidency in Aydın Regional Administrative Court. (1,5 year)
 3-The Presidency in Aydın Administrative Court. (1 year)
 4-The Presidency in Antalya Administrative Court. (1 year)
 5-The Membership in the Council of State. (1 year)

Exchange :

Hosting jurisdiction: Supremo Tribunal Administrativo
 Country: Portugal
 City: Lisbon
 Dates of the exchange: 14-25 October 2019

I. Introduction – Presentation of the jurisdiction and the progress of the internship:*a. Programme of the exchange:*

I arrived at Lisbon Airport at 10:30 in 14 October 2019 (Monday). The Cabinet Member of The Administrative Supreme Court, Marta Rebelo Patricio welcomed me and helped me in transportation to the hotel. I was welcomed by the Vice-President of the Administrative Supreme Court, Judge Isabel Cristina Marques da Silva. The Vice-President made a presentation about the general jurisdiction (especially administrative and tax jurisdiction) system in Portugal. After the presentation, I visited the court building. I was given information about the departments. The Court, especially its historical architecture and authentic structure was magnificent and impressive.

In 15 October 2019 (Tuesday), I visited Lisbon administrative and tax courts and the Cabinet Member of the Administrative Supreme Court, Ana Marta Rebelo Patricio accompanied me. We were welcomed by the President Judge, Anter Pires Salvador and Judge Maria Carolina da Silva Duarte. They made a presentation about Portuguese Administrative Jurisdiction.

After the presentation, we had lunch with all the judges of administrative and tax courts. It was a warm atmosphere for me and made me feel like home. I admit that we have really common features rather than differences. Our jurisdiction systems are so similar. However, there are slight differences in details. For example, hearing the witness is a procedure of the Portuguese administrative judiciary, whereas there is no such practice in the Turkish administrative judiciary. We discussed about this distinction with the judges. They said that this procedure was useful to provide strong evidences. On the contrary, in Turkish judiciary, the hearing procedure is applied exceptionally in cases and in certain legal conditions and only the parties of the case are heard at the hearings, witnesses are not heard .

After the lunch, I attended a meeting about the management of courts related to administrative and financial affairs. I was also given information about Electronic Processing of Cases Application (SITAF). In Turkey, a similar system named as National Judiciary Informatics System (UYAP) is implemented. These systems resemble each other. In the court, there was a free space at the ground floor which was used to make studies to improve court management system. The officials stated that in this space, a consultation board, which was established with the participation of some judges, conduct studies on new visions for future to improve the judicial system.

In 16 October 2019 (Wednesday), the new president of the Administrative Supreme Court, President of the Supreme Administrative Court, Judge Dulce Manuel da Conceição Neto took office and a formal ceremony was held at the historical court building. The president of Supreme Administrative Court is elected among their members by the judges in Portugal. However, in Portugal, the president is also the head of the high council of administrative and tax courts. This high council has the administrative judiciary function of the Turkish Council of Judges and Prosecutors. For this reason, the president's position is more powerful in the administrative jurisdiction system in terms of his effect on the whole administrative judiciary compared to the President of Turkish State Council. Also, the Court operates under the chairmanship of the president, when the tax and administration functions as the general assembly.

In 17 October 2019 (Thursday), I visited the Commission for Access to Administrative Documents in company with Judge Ana Paula Soares Leite Martins Portela from the Supreme Administrative High Court. The president also made a brief presentation. The Commission is similar with the committee in Turkey regarding its structure and function. However, there are slight differences in details especially for the election process of members of the committee. In this respect, I have an impression that Turkey largely

transformed its institutions taking the European Institutions into account according to the framework of the Law of Harmonization Code of the European Union.

In 18 October 2019 (Friday), I had a meeting at the Administrative Supreme Court with the officials in the Department of Documentation and Legal Information and a brief presentation was made about the support given to the Justices of the Administrative Court in this meeting. In Portugal, the staff at this department conducts investigations about the cases in accordance with the requests of the judges and prepare joint resolution drafts, such as those of the Turkish State Council, although they are not decision makers. I was highlighted by this meeting which mostly focused on the differences in the status of staff between Portugal and Turkey (staff working in this department in Portugal and the investigation/reporter judges in Turkey). In Turkey, these judges have the same personnel rights subject to the equal seniority conditions as all the other judges. But in Portugal, the staff working in supporting justices of the Administrative Supreme Court have different careers and rights, although they have a law degree and similar working conditions.

In 21 October 2019 (Monday), I visited Sintra administrative and tax courts. Ana Paula da Fonseca Lobo from the Supreme Administrative Court, The President of the Court Judge Paulo Filipe Ferreira Carvalho and Judge Roman Wiatrowski from Poland, and I had a lunch. During the lunch, we discussed about general structure and procedure of administrative and tax jurisdiction. The President, Paulo Filipe Ferreira Carvalho gave a brief information about the development studies performed by SITAF. He also said that as a president, he was not only responsible for one court but also for some other courts and he did not participate any judicial activities.

It was a very interesting situation for a president to serve as both the First-Instance Court President and a Member of the Supreme Administrative Court. Because, in Turkey according to our legislation, although it is theoretically possible that the members of the Council of State can be the president of the Court of Appeal in a few big provinces, the execution of the presidential duty is never practiced, and it requires leaving the membership.

In 22 October 2019 (Tuesday), we visited the Centre for Judiciaries Studies in company with Judge Ana Paula da Fonseca Lobo from Supreme Court. According to the information that I received from the Coordinator Judge, Mr. Fernando Duarte; The Centre for Judicial Studies is the institution which is responsible for the training of judges and public prosecutors, both for judicial courts and administrative and tax courts. It has autonomous administration and it is under the responsibility of the Ministry of Justice. There are separate recruitment procedures regarding the training of future judges and prosecutors for judicial courts and for future judges for administrative and tax law courts. The admission is based on one of the following requirements: 1 - Academic qualifications (education), 2- Professional experience. The Centre for Judicial Studies has the duty of recruitment. Others are as follows: admission process before initial training, initial training, ongoing training of judges and public prosecutors, lawyers, trainee lawyers, legal agents and other legal professionals, researching activities regarding judicial matters, the

European Judicial Training Network (EJTN) activities, cooperation with judicial authorities and partner institutions of other Portuguese Language Countries and territories.

Preparing a draft of the decision of the administrative and tax court or criminal and civil court is a procedure which is applied according to the preference of the candidate in the admissions exams of applicants due to their professional experience. A psychological test is applied to all candidates. In my opinion, these two techniques might be useful for Turkey. I think that choosing the judge candidates with tests measuring their ability of writing decision of a court and psychological adequacy has great importance. A judge candidate takes one-year theoretical course, one-year practical course and one-year traineeship.

In the afternoon, we visited the Administrative South Court of Appeal in company with Judge Ana Paula da Fonseca Lobo from Supreme Court. This Appeal Court includes two sections. One is the Chamber of Administrative Matters, the other one is the Chamber of Tax Matters. According to the information given in the Chamber of Administrative Matters, in 2019, the number of cases brought before the Court is 954, the number of cases finished is 731, the number of pending cases is 2285. Again in 2019 in the tax chamber, the number of cases brought before the Court is 833, the number of cases finished is 634 and the number of pending cases is 2753. The President Judge President, Rui Fernando Belfo Pereira expressed that the pending cases are increasing. When we discussed about the reason for this increment, we decided that the reason of increasing pending cases is that it takes too long for the court decisions to be concluded and it takes a lot of time for judges to come to conclusion. Because, the court decisions are composed of minimum 20 pages. Generally, a decision of 30 pages is regarded as a routine and normal procedural document. But decisions include a lot of information about first instance court and its phases that are previously known by the parties of the cases. Therefore, judges in court are expected to finish about only 15 or 16 cases on a monthly basis. The number of the cases that are concluded is very limited when compared to Turkey. Because, in Turkey, at least 30-40 cases are expected to be finished by a judge at the same period.

In the same day, we had a short visit to the Portuguese Constitutional Court in Lisbon. The Constitutional Court has the authority of review of constitutionality. The President of Portugal may ask the Constitutional Court to evaluate the constitutionality of any norm contained in a law or decree issued for its entry into force and an international agreement for ratification.

The Deputies may also ask the Constitutional Court to undertake a preliminary assessment of the constitutionality of any norm contained in a regional legislative decision sent to them for signature.

The Constitutional Court has an authority over the entire Portuguese judicial system. The Constitutional Court has a concrete norm control in order to ensure compliance with the Constitutionality within the system. An appeal may be lodged against the decisions of courts before the Constitutional Court. This may be the case when an unconstitutional

norm is applied during the trial or in cases of rejection of the application of any norm on the grounds that it is unconstitutional.

Besides, the Constitutional Court has an abstract norm control on constitutionality and legality. Upon the application made by the authorities enumerated in the Law, the Court may make a general binding decision by determining whether any norm is contrary to the Constitution or a superior legal force. If the Constitutional Court has already ruled in three concrete cases that a norm is unconstitutional or unlawful, the Court can take a binding decision on the unconstitutionality of that norm.

The Constitutional Court may also determine the violation of the Constitution by omissions and inform the legislature to correct this situation.

The Constitutional Court may decide that there is a problem with the constitutionality, because of the fact that the necessary legislative measures are not taken in order to make the constitutional norms applicable with the application of certain authorities. If the Constitutional Court determines the existence of such a violation by negligence, it informs the competent legislative entity.

On 23 October 2019 (Wednesday), we attended a plenary session in the tax section of the Supreme Administrative Court. The President of the Supreme Administrative Court, Judge Dulce Manuel da Conceição Neto chaired the session. Judge Ana Paula da Fonseca Lobo from Supreme Court translated the speeches from Portuguese to English. The session was about the standardization of case law on the claim that opposing decisions were made on the same legal issues.

On 23 October 2019 (Thursday), we attended a plenary session in the administrative section. The appeals against the decision of the administrative section of the Supreme Administrative Court were discussed and settled at the plenary session in the absence of first instance decision makers.

We left Lisbon on Friday, October 24, 2019 and my internship ended.

b. Presentation of the hosting jurisdiction:

The Vice-President of the Supreme Administrative Court, Judge Isabel Cristina Marques da Silva made a presentation about the general jurisdiction system, especially the administrative and tax jurisdiction system in Portugal. She expressed that in Portugal, the administrative and tax courts are independent and are subject only to law. She also counted the jurisdiction instances in Portugal. She stated that the Supreme Administrative Court is at the top of the system and in the second level, there are two Administrative Courts of Appeal and there are seventeen administrative and tax courts of first instance.

She also gave information about the foundation and history of the Supreme Administrative Court. It was founded in 3 May 1845 in the 19th Century as a Council d'État, adopted from French Model.

She also stated that since the adoption of the democratic constitution of 1976, it was transformed into a court and as a highest court, it has been functioning in cases regarding administrative and tax relations at the same level with the Supreme Court of Justice (civil and criminal law courts, the highest court in the hierarchy of the judicial courts).

In Portugal, the current status of the Administrative and Tax Courts (ETAF) was approved in 2002 and came into force in 2004. Under the current status, the administrative and tax courts are composed of 17 first instance tax and administrative courts, 2 Central Administrative Courts of Appeal (North and South) (which decide applications against the decisions of the administrative and tax courts as second instance) and the Supreme Administrative Court in Lisbon, which covers the whole jurisdiction. The Supreme Court operates under the direction of a president judge assisted by two vice-presidents, each one for each specialized section of the Supreme Administrative Court; the first section for administrative disputes and the second section for tax disputes.

The court usually functions by sections (decisions of 3 judges) or in plenary of the section (decisions of all judges of the section).

The Plenary of the Supreme Administrative Court is competent for conflicts of jurisdiction between administrative and tax courts. However, the number of judges in each section are the same (twelve). The administrative section has ten judges and the tax section has six judges.

COMPETENCE OF ADMINISTRATIVE AND TAX SECTIONS

1- Actions or omissions of the following entities;

- i)** The President of the Republic
- ii)** The Assembly of the Republic and the President of the Assembly of the Republic;
- iii)** The Council of Ministers;
- iv)** The Prime Minister;
- v)** The Constitutional Court and the President of the Constitutional Court, the President of the Supreme Administrative Court, the Court of Auditors and the President of the Court of Auditors and the President of the Supreme Military Court;
- vi)** The Superior Council of Administrative and Fiscal Court and the President of the Superior Council of Administrative and Fiscal Court;
- vii)** The Attorney General of the Republic;
- ix)** The Superior Council of the Public Ministry;

2- Liability for damages arising from the execution of the activities of the units specified; Applications against the decisions of the judges of the Supreme Administrative Court and of the central administrative courts and of the public prosecutor's office or equivalent

persons carrying out their activities in these courts; In the first phase of the proceedings, applications arising out of the decisions rendered by the central administrative courts;

Appeals from judgements that are to be given to the central administrative courts in the first instance of jurisdiction;

3- Conflicts of jurisdiction between the administrative courts;

4- It is also incumbent to hear appeals of review on matters of law filed by judgements of the central administrative courts and administrative court (first instance) decisions.

TAX SECTION MUST KNOW (Article 26, ETAF):

1- Appeals against decisions of the tax courts with exclusive basis in the matters of law;

2- Resources of administrative acts of the Council of Ministers regarding fiscal matters;

3- The requests for the adoption of precautionary measures regarding processes within its competence;

4- Implementation of its decisions.

THE PLENARY OF EACH SECTION DEALS WITH:

1- Appeals against the judgements delivered by the section of first instance;

2- Appeals to standardize the case-law,

3- Reference for a preliminary ruling by a court of first instance on a new point of law that causes difficulties and that could manifest in other disputes.

JURISDICTIONAL APPEALS

The Supreme Administrative Court, with discretion, has a major role as a regulator of the system.

-Reviews Appeals of Central Administrative court decision pronounced at second instance;

-Examines the appeals of first instance administrative courts only in legal matters.

The Supreme Administrative Court has also a very important role concerning the standardization of case law when contrary decisions are handed down on the same questions of law either by the Central Administrative Courts or by a Section of the Supreme Administrative Court.

The Supreme Court decisions concerning the standardization of case law are taken into account by the Plenary of each section.

ACCESS TO THE SUPREME ADMINISTRATIVE COURT

The access to the Supreme Administrative Court depends on the result of a public tender, opened to judges, General Prosecutors (ten years of experience; five years in administrative jurisdiction) And Jurists with at least 10 years of proven professional experience in public law.

The majority of our judges in the supreme administrative courts come from the Administrative Central Court.

All career judges and non-career judges enter through public tenders.

The High Council of Administrative and Fiscal Courts (HCATC) is responsible for the public tender.

THE HIGH COUNCIL OF ADMINISTRATIVE AND FISCAL COURTS

The High Council is an independent disciplinary body with power on judges of administrative and tax courts and includes judges and representatives of the Parliament and the President of the Republic (Article 74 of ETAF) The Council is presided over by the President of the Supreme Administrative Court and is composed of 10 members (Article 75 of ETAF)

In 2017, the deliberations of the High Council for the Administrative and Tax Courts regarding the carry out of functions by the judges of the administrative and tax courts, including deliberations on appointments, promotions, authorization for judges for other functions, accumulation of functions, special licenses constitute a very important share (in fact, 32,6 %) in the activities of these courts.

ELECTRONIC PROCESSING OF CASES APPLICATION (SITAF)

Since September 2018, the Supreme Administrative Court has an Electronic Processing of Cases Application (SITAF) that provides the dematerialization of processes. It is an innovation in the Supreme Court, well-received by the judges, but which still needs time to adapt the new procedure.

2- The Presentation of Lisbon Administrative Court

Two judges from Lisbon Court made a presentation about Portuguese Administrative Jurisdiction.

The first part of the presentation was about the history and structure of the administrative jurisdiction in Portugal.

The second part was about Administrative Court Procedures.

The third part was about the administrative judges and courts (a snapshot of the jurisdiction).

The hosting Court, in their presentation, gave an initial information about the history and structure of the administrative jurisdiction in Portugal.

The subject of the presentation was planned in three stages:

The first stage (1832-1924) was defined as the administrative model (justice retenue). At this stage, at the local level; administrative litigation was decided by independent administrative entities, appointed by the executive; at the central level, hierarchical appeal, with a consultative intervention of the State Council (after 1845, the Supreme Administrative Court) is subject to governmental approval.

The second stage (1930-1976) was defined as the pre-judiciary model. At the local level: administrative litigation was a competence of the administrative audits situated in Lisbon, Oporto and Coimbra; at the central level, there is the Supreme Administrative Court. Both are formed by administrative judges, appointed by the Government;

Decisions of the Superior Council are subjected to governmental approval;

The enforceability of the court decisions were limited. Limited executive enforcement of the court decisions.

The third stage (1976) is defined as (judiciary model). Judicial organization in Portugal is explained. The Judiciary Article 209 (Categories of court).

There are four main courts in the State. The first one is Constitutional Court (Tribunal Constitucional). The court with the specific competence to administer justice in matters of constitutional law nature, to assess the conformity of any legal or administrative provision with the constitution or reinforced laws. The other one is Courts of Law (Civil and Criminal). At the top of these courts, there is the Supreme Court of Justice. At the second instance, Courts of Appeal, and at the first instance, District Courts. Administrative and tax courts. Tribunal Administrative have the similar structure with the previous courts. At the top level, Supreme Administrative Court (nationwide jurisdiction), at the second instance, Central Administrative Courts (North and South), and at the first instance, Administrative and Tax Courts. There is common jurisdiction in matters of administrative and tax legal relations.

Mainly ruled by the Status of the Administrative and Tax Courts (ETAF) and the Procedure Code for Administrative Courts (CPTA).

There is also Court of Auditors in Portugal.

SECOND PART

Administrative court procedures

Evolution of the modern administrative law

The 1933 Portuguese Constitution

Administrative court procedures: Administrative courts were established according to the Portuguese Constitution in 1933. The courts were open to interventions by the government. The judges were appointed by the government. Enforcement measures were limited.

The 1976 Portuguese Constitution: New and significant laws in administrative jurisdiction were enacted according to 1976 Portuguese Constitution (1984-1985). Appeal was brought against administrative actions. Administrative courts became mandatory (1989).

Administrative Laws (2002-2004): Approval of CPTA:

- Empowerment of the citizen rights.
- Empowerment of administrative courts.

To sum up, the modern Portuguese administrative procedure law is *Código de Processo nos Tribunais Administrativos (CPTA)*.

Administrative judicial system in Portugal intends to be the common system for all administrative litigation.

According to CPTA, there was a dual system before the changes made in 2015. One was the Special Administrative Procedure (SPA) based on powers of authority. The other one was the Common Administrative Procedure (CAP). There were other (non-urgent) situations at the SPA.

There were also urgent situations in CPTA before the changes made in 2015:

- Electoral disputes
- Precontractual disputes
- Demand for the protection of constitutional right.
- Demand for the issuance of certified documents, to access information or for document consultation.

There are provisional measures (which requires a non-urgent procedure) to ensure that the judicial decision in the non-urgent procedure is still useful.

- Applications for international protection (refugees)

These are urgent issues subject to special administrative procedures.

Following the 2015 amendments to the Portuguese Code of Administrative Procedure, the procedural steps in administrative cases have been transformed into the following form:

In CPTA (after the changes made in 2015), Administrative Procedure Phases:

- Claimant brings an action (counter-interested)
- 30 days for the response (with administrative documents)
- Possibility to reply and rejoinder is limited
- Preliminary hearing
- Final hearing (witnesses)
- Judgement
- Appeal

In the third stage of the presentation in Lisbon Court, the requirements to be a judge in Portuguese judiciary were listed after presenting the legal arrangements and procedural issues in the administrative judiciary.

THIRD PART

How to become a judge in Portugal (administrative or tax judges and other judges - civil or criminal):

Administrative or tax judges and judges of other civil and criminal courts must have a 5-year law degree or master's degree in law.

Entrance examination is required for admission to the judicial studies centre. There is a dual path to the recruitment process. The first is academic qualifications and the other is professional experience. In the judicial studies centre, there is 1-year training and then 1-year training in court and 1-year additional court training.

II. Differences and similarities between the legal systems of the country of origin and the host country:

a. Concerning the organization of the legal system:

According to Article 209 of the Portuguese Constitution,

1- In addition to the Constitutional Court, the following categories of courts are available:

- a) The Supreme Court of Justice (Court of Cassation) and first and second instance judicial courts,

- b) Supreme Administrative Court and other administrative and tax courts,
- c) The Court of Auditors

2- There may also be maritime courts, arbitration commissions and justices of peace.

In administrative judiciary, there are central administrative courts which operate as intermediate courts of appeal as in the judicial judiciary. In the first instance, there are administrative and tax courts. At the top of the administrative judiciary organization is the Supreme Administrative Court, the jurisdiction of which covers the whole country. In Article 212/1 of Portuguese Constitution, this is indicated as, “Without prejudice to the specific competence of the Constitutional Court, the Supreme Administrative Court is the senior organ in the hierarchy of administrative and tax courts.”

In Turkey, the judicial organization is similar in structure. The Supreme Administrative Court corresponds to the Council of State. There are relatively smaller number of chambers in the Supreme Court, appellate courts and first instance courts and judges in Portugal compared to Turkey. An important reason for this difference is the difference between the populations of the two countries.

In the administrative jurisdiction of Portugal, the prosecution organization is organized in all units of the administrative judiciary and participates in the judicial activity so that this organization gives opinions in issues regarding public interest and law. In Turkey, there is only a prosecutor's office in the Council of State, but not in all administrative judicial units.

In Portugal, the High Council of Administrative and Tax Courts have only an authority over the administrative judiciary. But in Turkey, the authority of the Council of Judges and Prosecutors includes all judicial and administrative judiciary. In Portugal, the President of the Supreme Administrative Court is also the Chairman of High Council, while in Turkey, the President of Council of State does not participate in the Council.

b. Concerning the competence of administrative jurisdictions:

In Portugal, the competence of administrative jurisdictions is initially based on the Constitution. Article 209/1-b of the Constitution regulates that there are the Supreme Administrative Court and the remaining administrative and tax courts. According to Article 212/3; **“The administrative and tax courts have the competence to try contested actions and appeals whose object is to settle disputes arising from administrative and fiscal legal relations.”** The administrative courts have their own establishment and procedural law. The Status of the Administrative and Tax Courts (ETAF) and The Code of Administrative Litigation (CPTA) ensure the power and duties of the administrative courts.

In Turkey, in the Article 155 of the Constitution, it is ensured that “The Council of State is the last instance for reviewing decisions and judgments given by administrative courts and not referred by law to other administrative courts. It is also the first and last instance for dealing with specific cases prescribed by law.” As in Portugal, the administrative judiciary is based on the Constitution and has its own establishment and procedural laws.

In both countries, the courts are independent from the administration, ensure the jurisdictional control of the administration's acts and action legality. Besides, as stated in Article 203 of Portuguese Constitution, the courts are the entities that have sovereignty with the competence to administer justice in the name of the public. This issue is regulated in Article 9 of the Constitution of the Republic of Turkey as "IX. Judicial Power ARTICLE 9- (As amended on April 16, 2017; Act No. 6771) Judicial power is exercised by independent and impartial courts on behalf of the Turkish Nation."

According to Article 3 in the Code of Procedure in Administrative Courts, "With respect for the principle of separation and interdependence of powers, the administrative courts judge compliance with the administration of rules and legal principles that bind it and not the convenience or opportunity of its action".

There is a similar legal regulation in Turkey. According to Article 2/2 of Law No: 2577, the Procedure of Administrative Justice Act; "The power of administrative justice is limited to the verification of the conformity of the actions and acts of the administration with law. The administrative courts cannot review the appropriateness of an act and action."

In both countries, in accordance with the regulations laid down in the administrative judiciary, it is not allowed to review expediency.

The administrative division of the Supreme Administrative Court of Portugal has to deal with cases relating to the administrative acts or adverse actions of the units referred to in the law and the liability for damages arising from the performance of the activities of these authorities. These authorities are mentioned in the Code of Administrative Litigation (CPTA) and are listed in the following order: the President, the Assembly and the President of the Republic, the Council of Ministers, the Prime Minister, the Constitutional Court and the President of the Constitutional Court, the President of the Supreme Administrative Court, the Court of Auditors and the President of the Court of Auditors, the President of the Supreme Military Court, the High Council and the Chairman of the High Council, the Chief Public Prosecutor, the High Council of the Ministry of Public Affairs.

In Turkey, the decisions of the President of the Republic of Turkey, the decisions of the Supreme Disciplinary Council of the Council of State and the Presidency of the Council of State and the decisions of the Council of Judges and Prosecutors regarding the expulsion of judges or prosecutors differ because of the nature of the authority that makes decisions, administrative acts and the lawsuits filed against these decisions have been regulated as the cases that the Council of State hears in the first instance. But as a rule, all administrative actions and actions of other authorities are handled by the administrative courts in the first instance.

The administrative section of the Portuguese Supreme Administrative Court is incumbent upon to hear appeals from judgements that are given by central administrative courts in first instance of jurisdiction, to settle conflicts of jurisdiction between administrative courts. It is also incumbent to hear appeals of review on matters of law filed by judgements of the central administrative courts and administrative court (first instance) decisions.

In Turkey, the jurisdictional disputes are resolved by the regional administrative court if the administrative courts are within the jurisdiction of the same regional administrative court. But if the courts are in different regional administrative court jurisdictions, the relevant chamber of Turkish Council of State resolves the jurisdictional disputes.

The General Assembly of the Supreme Administrative Court is authorized for disputes between the administrative and tax courts regarding the jurisdiction. In Turkey, the Council of Presidents of the Council of State (which consists of the presidents of all chambers) fulfils this duty.

In the Turkish Council of State, judicial review is limited with the disputes related to questions of legal matters as in Portugal, except for urgent cases which sometimes require material facts investigation.

Tax department of the Supreme Administrative Court of Portugal deals with the following issues: Applications against tax court decisions exclusively on the basis of legal matters; the underlying administrative arrangements of the Council of Ministers on financial events; applications for the adoption of precautionary measures related to the process within the jurisdiction; applications about the request for the implementation of the Court's decisions. Regarding the mentioned issues, there is no difference between Portugal and Turkey.

In addition, the General Assembly of each section resolves the following matters:

- 1- Applications against the decisions made by the department in the first instance,
- 2- Applications related to the standardization of jurisprudence law,
- 3- Applications of the first-instance court's first decision on a new legal matter which may lead to difficulties and other disputes. Although the matters mentioned in the first two Articles are under the authority of the relevant administrative or tax plenary session of the chambers in Turkey, there is no legal regulation related to the subject mentioned in Article 3.

In Portugal, the administrative and tax courts have the competence to address and finalize applications and legal proceedings aimed at resolving disputes arising from financial and administrative legal relations.

Administrative courts have the general authority in ruling of the administrative disputes. Other courts are competent to deal with such cases only under certain special regulations and conditions. In Portugal, there may be courts of first instance that have specific competences or are specialised in the trial of certain matters. In Turkey, there is no difference in implementation in these matters.

c. *Concerning the functioning of administrative jurisdictions:*

The Portuguese Supreme Administrative Court has started to use SITAF since September 2018, which allows the electronic follow-up of cases and the dematerialization of physical processes. It appears that a certain process is still needed to adopt this procedure. In the Turkish Council of State, a similar system, National Judiciary Informatics System (UYAP) is implemented. It has been in use for a long time, now fully adopted, it can be said that all proceedings have been followed through UYAP. Even in some offices, the information and documents of the case file on UYAP are reflected on a big screen during the interview. During the meeting, all members are allowed to examine the case file visually. In addition, the system used for remote audio and video transmission (SEGBIS), which was previously used in civil and criminal jurisdiction, is now in use for administrative jurisdiction.

In Portugal, using the electronic SITAF system in first instance and appeal courts is more common and well established. It can be stated that it is same for Turkey in terms of the mentioned courts. Again, as mentioned above, the electronic system is actively used in both countries in terms of filing lawsuits and presenting and reviewing documents without requiring coming to the court. Also, these electronic systems are still developing in both countries.

As of 2015, the number of incoming, finalized and remaining pending files of the high courts of both countries are as follows;

Portuguese Supreme Administrative Court:

Years	Incoming Cases	Resulting Cases	Pending Cases
2015	1793	1653	1027
2016	1641	1608	1060
2017	1579	1693	946
2018	1349	1276	1019

Turkish Council of State:

Years	Incoming Cases	Resulting Cases	Pending Cases
2015	189.402	161.429	194.095
2016	272.211	135.741	264.863
2017	85.693	145.092	206.059
2018	99.758	135.368	165.114

When the data in both countries are evaluated, it is seen that in general, more files are concluded than the number of cases brought before the jurisdiction. In Portugal, the number of pending files remains stable at the same level. In the Council of State, the number of lawsuits received decreases over the years and the reason for this is the transition to the appeal system in 2016. Indeed, a significant number of cases are finalized after the appeal review.

Regarding the number of files received in 2016 in Turkey, the number of the resulting files is very low. This is due to the negative consequences of the FETÖ terrorist organization, which was organized in the judiciary system and which attempted a military coup that year.

In our visit to the Southern Court of Appeal in Portugal, as of 2019, it is reported that the number of court cases before the Court was 954, the number of cases finalized was 731, the number of pending cases was 2285, in the tax litigation department, the number of cases brought to the Court in the same year was 833, the number of finalized cases was 634, the number of pending cases was 2753. According to these data, the number of cases in the Appeal Courts is higher than the Supreme Court even on a single appeal court basis. Although the year has not yet ended, the pending file appears to be around five times for 2019. In this respect, the number of files is decreasing with a declining course in Turkey with the transition to the appeal system in 2016. As a result, it is expected to become a case-law court for the Turkish Council of State, as in the Supreme Administrative Court of Portugal.

Disputes in the Council of State are settled by a committee composed of four members and one chairman. When the Supreme Administrative Court works in chambers, an examination is made by the board which consists of three judges.

The Supreme Administrative Court operates under a president (Presiding Judge), assisted by two vice-presidents. Depending on the subject-matter, the court functions as a full bench, as a full bench for each section or by sections. Only the full bench or bench for each section examines points of law. At the Turkish Council of State, the heads of the tax litigation board and the administrative litigation board are the vice presidents who support the president of the Council of State. The Council of State acts as a general assembly when the full bench is convened as a board of the unification of case laws. The plenary session of the tax lawsuit chambers is composed of members in the tax trial chambers similar to the system in Portugal. However, the plenary session of the administrative lawsuit chambers functions as a permanent board. Although the members of this committee are originally selected from each trial chamber, their affiliation with the chamber is suspended during their term of office. In the Turkish Council of State, judicial review is limited to the disputes related to questions of legal matters as in Portugal, except for urgent cases which sometimes require material facts investigation.

Central administrative courts' main function is to rule of appeals against decisions by district administrative courts and tax courts.

The central administrative courts operate under a president (Presiding Judge), assisted by vice-presidents. The central administrative courts examine the applications for appeal both in terms of material facts and legal aspects. In Turkey, the regional administrative courts

correspond to the central administrative courts in Portugal and do not show any difference in terms of functioning.

District administrative courts and tax courts are courts of first instance, the main function of which is to rule on disputes on administrative and tax matters. They may function autonomously under the title of district administrative court and tax court, or they may function jointly under the title of administrative and tax court. In Turkey, administrative and tax courts are the courts that operate as first instance courts and resolve the disputes arising from administrative and tax matters. The administrative and tax courts are located within the jurisdiction of the same regional administrative court (appeal court) and work with this court in terms of administrative and judicial aspects. Apart from that, these courts are separate and independent courts.

They operate under a president, appointed by the Superior Council of Tax and Administrative Courts for a five-year term. In Turkey, the president is appointed by the Council of Judges and Prosecutors. But the appointment does not include a certain period.

In Portugal, as a rule, cases in the first instance courts are handled and concluded by a single judge but in certain cases, legislation provides these courts to settle in a different formation. In Turkey, if the quantity of the subject matter is under the limit which determined by legal regulation, disputes are resolved by a single judge, otherwise, the cases are managed and concluded by three judges consisting of a president and two members.

d. Concerning applicable procedures and rules of law:

In Portugal, the Constitutional Court may conduct an appeal review in administrative cases if certain circumstances exist. The Constitutional Court examines the dispute in the above-mentioned way, if the parties or prosecutors raise and appeal against the constitutional problems of a legal arrangement due to the execution of an administrative act or action. But the constitutional problems in Turkey are resolved by appealing to the Constitutional Court by the Court during the case through contention unconstitutionality (contention of unconstitutionality can be initiated by administrative courts and any party involved in a case is under scrutiny before a court) or by individual application made by the parties after the final decision.

There is an exceptional judicial review procedure applied in the Supreme Administrative Court. The Vice-President Judge Isabel Cristina Marques da Silva expressed that this procedure became an unexceptional procedure in practice. If the decisions handed down by the administrative courts of appeal is evaluated as having a fundamental importance from a legal or social point of view, or when such a review is required for a better application of the law by the Supreme Court, it can be reviewed by the Supreme Court. In Turkey, there is no such procedure. In the Council of State, the appealable matters are regulated in the law and are written item by item.

In Portuguese administrative jurisdiction, there is a prejudicial reference mechanism. When an administrative court is referred to with a new question of law having a difficulty and

likely to arise in other disputes, the chairman of the administrative court may proceed with the prejudicial reference before the Supreme Administrative Court. But in Turkey, there is no such a mechanism.

In both countries, plaintiff and advocates can submit their legal demands to any administrative jurisdiction unit by using electronic technologies. All proceedings can be conducted via electronic techniques. The required documents and information can be provided from the parties and the other institutions by using the electronic system.

In both countries, bringing actions to the Council of State or Supreme Administrative Court or administrative courts does not prevent the execution of the administrative act, which is a general rule. However, in Portugal, in the pre-contractual cases about the matters such as the creation of public work contracts, the provision of public services, the purchase of portable goods, renting, procurement of services, subject to be brought an action against the effects of the objected action or performance of the contract automatically is suspended. In Turkey, there is no automatic suspension process for the above-mentioned issues. However, a similar regulation for lawsuits filed against tax assessment is implemented. In this context, bringing actions arising from tax assessment disputes suspends the collection of the disputed part of the imposed taxes, fees, duties and other similar financial obligations and penalties concerning these obligations. But there is no such a regulation and practice in Portuguese tax jurisdiction.

After the amendments to the Portuguese Code of Administrative Procedure in 2015, the dualist procedure was abandoned and the procedural steps in administrative cases were transformed as follows:

The plaintiff brings an action (counter-interested). The counterparty has thirty days to respond with administrative documents. The possibility to reply and to rejoiner is limited. The pre-trial and final hearing (witnesses can be heard) are held respectively and then are followed by the judgment phase. In Turkey, as a rule, the procedure applied in administrative cases is the same as in Portugal for the first two stages. The defendant has a thirty-day response period against the petition. Subsequently, each party has the right to submit petition once more. Claimant can reply to plea of defence and defendant can rejoiner. In Turkey, the hearing is not carried out in every case, but in cases where the parties request it or if the judge decides that the hearing is necessary, the hearing can be conducted. In addition, there is no procedure for hearing witnesses in Turkey unlike in Portugal.

When a new legal problem arises in Portugal, which creates difficulties and may lead to other conflicts, the presidents of the courts have a meeting with the participation of all judges to discuss the matter within a grand panel. While in Portugal this practice is subject to legal regulation, in Turkey it is practically implemented in all administrative jurisdictions, but not based on any legal regulations.

e. Other aspects:

In the Portuguese Supreme Administrative Court, judges generally come to the Court to participate in the negotiations one day a week, while on the other days they work at their homes or in the offices close to the place of residence. Most judges reside outside the city of Lisbon where the Supreme Court is located. The court is very secluded, except for the negotiation days. In Turkey, members of the Council of State usually participate in deliberations four days a week in their chambers and work full-time. The fifth day is devoted to reading the decisions of the department. There is no doubt that having all judges together in the same place at the same time will be more efficient in terms of face-to-face discussions of the cases, consultation in writing decisions, and meeting of all judges when necessary. Moreover, considering the workload, it can be that the practice of our country is obligatory under current conditions.

III. Aspects on which the host country's legal system can be a source of inspiration for the country of origin (« good practice »):

In Portugal, at the admission tests for applicants who aim to be judge candidate and enter the tests with professional experience, drafting of a court decision in criminal or civil law or administrative and tax law, according to the candidates' choice, is a valid procedure. Besides, a psychological testing is performed for all candidates. The last mentioned two techniques might be useful for Turkey. In my opinion, measuring the candidates' competence in these fields is a good practice for the selection of a competent judge in terms of the ability to write court decisions and psychological adequacy.

In Portugal, a judge candidate enters one-year theoretical courses, one-year practical courses and one-year internship training in the courts totally, three-years course is required. Although with the last amendments this period is extended to two years in Turkey, there is no doubt that the application of minimum three-years internship is more efficient in terms of professional adaptation as in Portugal.

In both Portugal and Turkey, the President of the Supreme Administrative Court is elected by the judges among the Court members. However, in Portugal, the president also chairs the High Council of Administrative and Tax Courts. Therefore, its position in the administrative judicial system is stronger than the one in Turkey in terms of its impact on the entire administrative judicial system. In Turkey, although there is one member in the Board of Judges and Prosecutors elected among the members of the Council of State by the Parliament, the Chairman of the Council of State does not participate in the Board of Judges and Prosecutors. Furthermore, a member of the Council of State who works in the Board is not actually linked with the Council of State due to his duty in the Board.

In Portugal, the President of the Supreme Court continues to pursue judicial activities in the Supreme Court, even though he is the Chairman of the Board. Regarding the judge appointments made to the Council of State from the other jurisdiction units and to other administrative judicial units from the Council of State, it would be more appropriate to ensure the participation of the President, who actually works in the Council of State, to the meetings

of the Board in terms of realizing the surveillance audit and audit mandate authorized by law and fulfilling the requirements of the institution.

The Constitutional Court has the authority to pre-review the constitutionality in Portugal. The President of Portugal may ask the Constitutional Court to evaluate the constitutionality of any norm contained in a law or decree issued for its entry into force and an international agreement for ratification.

The Deputies may also ask to the Constitutional Court to undertake a preliminary assessment of the constitutionality of any norm contained in a regional legislative decision sent to them for signature. The Constitutional Court has not an authority to pre-review the constitutionality before the legislative act in Turkey. It can be stated that the pre-audit authority of the Constitutional Court before the legal regulation that ensures the compliance with the constitution would be beneficial for Turkey.

In Portugal, there is a possibility to appeal before the constitutional court against administrative judicial decisions on the grounds that they are ruled against constitutional provisions. Although there is no such practice in Turkey, after the finalization of the decision, the above-mentioned constitutional review is provided through individual application. Therefore, this cannot be considered as a deficiency.

However, in Portugal, if the Constitutional Court has already ruled in three concrete cases that a norm is unconstitutional or unlawful, the Court can take a binding decision on the unconstitutionality of that norm. In Turkey, when the Constitutional Court determines the violation of a law in the individual application decisions, it may call the legislature to review the law that causes the violation within the framework of its own internal regulation. However, this issue is not subject to a legal regulation as in Portugal and there is no rule of law that enforces the legislature in order to review and amend the law causing violation. Therefore, I think that a new arrangement of law on this issue would help to apply a better practice.

There is an exceptional judicial review procedure applied in the Supreme Administrative Court. The Vice-President Judge Isabel Cristina Marques da Silva expressed that this procedure became unexceptional in practice. In this procedure, if the decisions handed down by the (administrative) courts of appeal are evaluated as having a fundamental importance in legal or social point of view, or when such a review is required for a better application of law by the Supreme Court, it can be reviewed by the Supreme Court. In Turkey, in terms of the Council of State, the appealable matters are regulated in the law and they are written item by item. Ensuring the function of the case-law court for the Council of State should be aimed and this aim should be taken into consideration in determining the decisions subject to appeal to the Council of State. Therefore, a more flexible procedure should be adopted. In this respect, similar to the case in Portugal, an examination of admissibility for appeal is required and the issues of constitutional importance, which result in a violation of fundamental rights and freedoms, or which are deemed necessary for a better law enforcement, should be brought under the supervision of the Council of State. In this context,


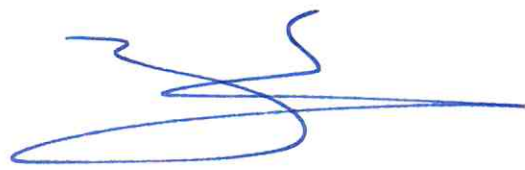
matters that are not relevant in the case-law of the case should be removed from the duties of the Council of State and these issues should be defined and regulated within the duty of appeal courts.

In Portuguese administrative jurisdiction, there is a prejudicial reference mechanism. When an administrative court encounters a new legal problem, which is likely to pose a serious challenge and is likely to lead to an increase in other disputes, its president may apply to the Supreme Administrative Court for prejudice. But no such mechanism exists in Turkey. Actually, in Turkey, the implementation of such a new procedure would undoubtedly be beneficial, as it would enable the higher judiciary to clarify the matters and prevent problems that may be caused by hundreds of cases in the beginning.

As noted above, when a new legal problem arises in Portugal, which creates difficulties and may lead to other conflicts, the presidents of the courts have a meeting with the participation of all judges to discuss the matter within a grand panel. While in Portugal this practice is subject to legal regulation, in Turkey it is practically implemented in all administrative jurisdictions, but not based on any legal regulations. It would be appropriate to make a legal regulation in order to ensure the binding of the decisions of the grand panel. During the period when the FETÖ terrorist organization was effective and powerful, judges who were members of this organization resisted in some courts not to recognise such grand panel decisions. In this respect, it can be said that a new law regulation would be necessary.

27.11.2019

Signature:

<p><i>Judge:</i></p> 	<p><i>President / Chief Justice of the jurisdiction of origine:</i></p> 
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