Internship Report for the IASAJ Judge Exchange Program

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Selected by the International Association of Supreme Administrative Jurisdiction, I participated in the judge exchange program from November 18 to November 29 in 2024 at the Council of State of Turkey . The exchange study of the court is now reported as follows:

During the exchange study of the Council of State of Turkey, I visited the Tenth Chamber, the Eighth Chamber ,Tax Law Chamber ,the Case-law, Reporting and Statistics Unit and Information and Technologies Center of the Council of State of Turkey. In addition, I visited the Anıtkabir, Atatürk and War of Independence Museum and the Nation’s Library and learned some materials about judicial system and administrative trials of Turkey, compared with each other, there are both differences and similarities between the two countries. through mutual study,it is helpful to further strengthen the exchange of judicial work of the two countries.

1. Overview of Turkey’s judicial system

1.1 The Constitutional Court

According the provision of the Constitution of the Republic of Turkey, the Constitutional Court shall be composed of fifteen members. To qualify for appointments as members of the Constitutional Court, members of the teaching staff shall be required to possess the title of professor or associate professor; lawyers shall be required to have practiced as a lawyer for at least twenty years; high level executives shall be required to have completed higher education and to have worked for at least twenty years in public service, and first category judges and public prosecutors with at least twenty years of work experience including their period of candidacy, provided that they all shall be over the age of forty five.The Constitutional Court shall elect a president and two deputy presidents from among its members for a term of four years by secret ballot and by an absolute majority of the total number of its members. Those whose term of office ends may be re-elected. The members of the Constitutional Court shall not assume other official and private duties, apart from their fundamental duties. Membership in the Constitutional Court shall terminate automatically if a member is convincted of an offence requiring his/her dismissal from the judicial profession, and by a decision of an absolute majority of the total number of members of the Constitutional Court if it is definitely established that he/she is unable to perform his/her duties on account of ill-health.

1.1.1 Main function of the Constitutional Court

The Constitutional Court shall examine the constitutionality, in respect of both form and substance,of laws,presidential decrees and the Rules of Procedure of the Grand National Assembly of Turkey, and decide on individual applications. Constitutional amendments shall be examined and verified only with regard to their form. However, presidential decrees issued during a state of emergency or in time of war shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance. Everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities. In order to make an application, ordinary legal remedies must be exhausted.

The Constitutional Court in its capacity as the Supreme Criminal Tribunal shall try, for offences relating to their functions, the President of the Republic, the Speaker of the Grand National Assembly of Turkey, the deputies of the President of the Republic, the ministers, the presidents and members of the Constitutional Court, High Court of Appeals and Council of State, the chief public prosecutors of High Court of Appeals and Council of State, the Deputy Chief Public Prosecutor, the president and members of Council of Judges and Prosecutors and Court of Accounts.

1.1.2 the component of the Constitutional Court and the procedure of functioning and trial

The Constitutional Court consists of two sections and the General Assembly. The sections convene under the chairpersonship of the deputy president with the participation of four members. The General Assembly shall convene with the participation of at least ten members under the chairpersonship of the President of the Constitutional Court or a deputy president designated by the President. The sections and the General Assembly shall take decisions by absolute majority. Committees may be established to examine the admissbility of the individual applications. The General Assembly shall hear the cases and applications concerning political parties, actions for annulment and objection,and tirals where the Constitutional Court acts as the Supreme Criminal Tribunal;the sections shall take the decision on individual applications. Annulment of constitutional amendments, dissolution of political parties, or their deprivation from state aid, shall be decided with a two-thirds majority of members attending the meeting.

The Constitutional Court shall examine cases without holding a hearing,except where it acts as the Supreme Criminal Tribunal.Nonetheless,it may be decided to hold a hearing for individual applications. When it deems necessary,the Court may also call on those concerned and those having knowledge relevant to the case,to hear their oral explanations,and in lawsuits on dissolution of a political party, the Court shall hear the defence of the chairperson of the political party or of a proxy appointed by the chairperson,after hearing the Chief Public Prosecutor of the High Court of Appeals.

The President of the Republic,the two political party groups having the largest number of members in the Grand National Assembly of Turkey ,and at least one-fifth of the total number of members of the Grand National Assembly of Turkey shall have the right to apply for annulment action directly to the Constitutional Court,based on the assertion of the unconstitutionality,in form and in substance,of laws,of presidential decrees,of Rules of Procedure of the Grand National Assembly of Turkey or certain articles or provisions thereof.

If a court hearing a case finds that the law or the presidential decree to be applied is unconstitutional,or if convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties,it shall postpone the consideration of the case until the Constitutional Court decides on the issue.

The Constitutional Court shall decide on the matter and declare its judgment within five monthes of receiving the contention.If no decision is reached within this period,the trial court shall conclude the case under legal provisions in force.However,if the trial court receives the decision of the Constitutional Court until the judgement on the merits of the case is final,the trial court is obliged to comply with it.

1.1.3 The effect of decisions of the Constitutional Court

No claim of unconstitutionality shall be made with regard to the same legal provision until ten years elapse after publication in the Official Gazette of the decision of the Constitutional Court dismissing the application on its merits. Laws, presidential decrees,or the Rules of Procedure of the Grand National Assembly of Turkey or provisions thereof,shall cease to have effect from the date of publication in the Official Gazette of the annulment decision.Where necessary,the Constitutional Court may also decide on the date on which the annulment decision shall come into effect.That duration shall not be more than one year from the date of publication of the decision in the Official Gazette.Annulment decisions cannot be applied retroactively.In the event of the postponement of the date on which an annulment decision is to come into effect,the Grand National Assembly of Turkey shall debate and decide with priority on the bill,designed to fill the legal void arising from the annulment decision.Decisions of the Constitutional Court shall be published immediately in the Official Gazette,and shall be binding on the legislative,executive,and judicial organ,on the administrative authorities,and on persons and corporate bodies.

1.2 Ordinary court

Ordinary courts are responsible for handling criminal and civil cases,The ordinary courts in Turkey are divided into three levels, namely the primary court, the regional appellate court and the Supreme Court of Appeal, which is responsible for hearing civil and criminal final disputes. Civil primary courts include civil first instance courts, commercial courts, family courts, labor courts, intellectual property courts, maritime courts, etc. The criminal first instance court includes criminal first instance court, intellectual property criminal court, serious crime court, juvenile criminal court, public security court, etc.

1.3 Administrative Court

The Administrative Courts are consisted of administrative courts and the regional administrative courts.

1.3.1. The Administrative Courts

The administrative courts shall resolve the following cases,except for the cases which are within the scope of duty of the tax courts and those which will be resolved at the Council of State at the first instance :a) actions of nullity. b) full remedy actions. c) actions regarding disputes arising between the parties due to the administrative contracts made for the performance of a public service,except for those arising from the concessing agreements and contracts for which arbitration is stipulated. d) works assigned by the other laws.

The administrative courts shall resolved the cases that are specified by the Special Laws to be under the duty of the Council of State and the cases to which administrative courts are assigned under the Procedure of Administrative Justice Act.

Cases to be resolved with one judge of the administrative court: a) actions of nullity filed against administrative procedures that involve a specific amount of money,and b) full remedy actions. in which the amount subject to the dispute does not exceed twenty five thousand Turkish Liras shall be resolved by one of the judge of the administrative court.

1.3.2. The Regional Administrative Courts

The duties of the regional administrative court are as follows: a) to examine and conclude the requests of appeal made against the final decisions taken by the courts of first instance and which can be appealed. b)to examine and conclude the objections made against the decisions taken by the court of first instance about the requests for stay of execution. c)to resolve the disputes of duty and authorization among the courts of first instance within the jurisdiction. d)in cases where any actual or legal obstacle prevents the competent court of first instance within the jurisdiction from hearing a case or where hesitation arises with respect to the jurisdictional boundaries of two courts or where both courts decide that they are authorised to hear the same case,to decide on the referral of that case to another court within the jurisdiction of the regional administratice court or the assignment of the competent court. e)to perform other duties assigned by law.

1.3.3 The Council of State of Turkey

The Council of State of Turkey reviews the appeals brought against the judgments rendered by Regional Administrative Courts and Tax Courts.(it is explained in detail below)

1.3.4 Tax Courts

Tax courts shall resolve the following cases: a) actions regarding the general budget,the taxes,duties and charges of the provincial special administrations,municipalities and villages and other financial liabilities,the increases and penalties thereof,as well as tariffs. b) actions regarding the implementation of Law no.6183 on the Collection Procedure of Assets on the issues set forth in sub-paragraph. c) works assigned by the other laws.

The actions which arise from the disputes specified in the sub-paragraphs and the total value of which does not exceed twenty five thousand Turkish Liras shall be resolved by one of the judges of the tax court.

1.4 Court of Jurisdictional Disputes

The Court of Jurisdictional Disputes shall be empowered to deliver final judgments in disputes between civil and administrative courts concerning their jurisdiction and judgments.The organization of the Court of Jurisdictional Disputes,the qualifications and electoral procedure of its members,and its functioning shall be regulated by law,The office of president of this Court shall be held by a member delegated by the Constitutional Court from among its own members.

1. The Council of State of Turkey

2.1 Main function of the Council of State of Turkey

The Council of State which is authorized by the Constitution as a supreme,consultative and appellative court.its duties involve:reviews the judgments held by Administrative Courts about the cases subject to serial proceedings;reviews the appeals brought against the judgments rendered by Regional Administrative Courts;deals with specific cases prescribed by law as the first and the last instance court(such as decisions of the President of the Republic and regulations that apply in the entire country etc.);functions as a consultative body pursuant to presenting its opinion on concession treaties and contracts related to public services.

2.2 the Main Structure

The Council of State fullfills its appellate function through the judicial divisions. There are thirteen chambers, Assembly on the Unification of Conflicting Judgements,Board Presidents and Plenary Assembly.

the First Chamber of the Council of State considers and decides on and gives opinion on concession agreements and contracts related to public services, requests for opinions that are written in the laws that will be received from the Council of State, disputes arising from the application of the thirtieth article of the Expropriation Law, in accordance with the Law on the Special Provincial Administration, the work assigned to the Council of State directly or by appeal, works that have been submitted to the Council of State by the Municipal Code and are not the subject of administrative proceedings.The Second Chamber of the Council of State is tasked with resolving the following cases and appeals，arising from the following disputes:appointment, transfer (including consent procedures), discipline, registration, performance, achievement, outstanding achievement evaluation and rewards, and termination of office due to the loss of civil service qualifications for being appointed as civil servant during public service for public official working in the Ministry of Internal Affairs and its affiliated, related and associated organisations,as well as disputes related to rank and promotion procedures for members of the police,gendarmarie and coast guard service.actions related to all kinds of education and training given in educational institutions and organizations that train personnel for the Turkish Armed Forces and the General Directorate of Security, General Command of Gendarmerie,Coast Guard Commands under the Ministry of Interior,regardless of their status,( including admission and registration, dismissal, disciplinary procedures and penalties,excluding actions related to the curriculum and academic staff working subject to higher education legislation).the legislation on family medicine.the Third Chamber is tasked with resolving:the cases brought against the decisions of the President of the Republic,the Council of Ministers,and other regulatory acts,regarding income corporate and value-added taxes. appeals against decisions made by the tax law chambers of the Istanbul Regional Administrative Court in relation to income,corporate and value added tax(excluding value-added taxes on imports). the Fourth Chamber is tasked with resolving the cases and appeals arising from the following disputes:claims for compensation for damages caused by earthquakes,landslides and other natural disasters based on public service failure or strict liability arising from the implementation of Zoning law. the actions regarding the request for compensation for unlawful occupation of a property without permission and eviction,in accordance with the Public Procurement Law. procedures regarding workplace opening and operating licenses established under the Law on the Approval and Amendent to the Decree-Law No.3572 on Workplace Opening and Operating Licenses(including action related to workplaces under the Regulation on Workplace Opening and Operating Licenses,as well as actions taken under the Law No.1608 amending certain articles of the Law No.486),the administrative fines imposed on workplaces, actions related to the inspection of workplaces, their evacuation, suspension from operation,or closure either temporarily or permanently. the Fifth Chamber is tasked with resolving the cases and appeals,arising from the following disputes:actions based on the Law No.2802 on judges and procecutors and the Law No.6087 on the Council of judges and prosecutors ( written competition exam and iterview,actions related to candidacy status and process;including admission procedures and disciplinary procedures).actions based on the decree-laws regarding measures taken within the context of the state of emergency issued in relation to the state of emergency declared by the decision of the Council of Ministers;and based on the laws on the adoption of these decree-laws in their entirety or with amendmention as well as actions established within the scope of interim Article 35 of Decree-law No.375. the Sixth Chamber is tasked with resolving the cases and appeals,arising from the following disputes:the requests for preparation and implementation of plans of all types and sizes in accordance with the Zoning Law and other laws and relevant legislation,arrangement of land and field plots,division and unification works, zoning status,from transactions established together with the plan separately against licensing and expropriation transactions. sealing, suspension, demolition decisions from the collection of fines and penalties in relation to the processes established in accordance with the zoning code and other laws and related legislation. the Seventh Chamber is tasked with resolving cases and appeals related to customs and import duties, excise duty, expenditure taxes, motor vehicle taxes inheritance and estate transfer taxes. The Eighth Chamber is tasked with resolving the cases and appeals,arising from the following disputes: legislation related to village, municipal and private administrations. mining,quarries,forestry and olive cultivation legislation(including works related to geothermal resources and natual mineral waters, as well as groundwater). higher education legislation(including dismissal,discipline and personal affairs of academic staff). the Ninth Chamber is tasked with resolving the following cases and appeals:appeals before the tax law chambers,against decisions rendered by Regional Administrative Courts of Adana, Ankara, Bursa, Erzurum, Gaziantep, Izmir, Konya and Samsun, regarding income, corporate and value-added taxes (excluding value-added taxes on import). The Tenth Chamber is tasked with resolving the cases and appeals , arising from the following:Border and land acquisition legislation,(including acquisition of immovable property and limited of real rights by companies with foreign capital). compensation disputes related to health services. consumer protection legislation(including administrative fines and other administrative sanctions).the Twelfth Chamber is tasked with resolving the cases and appeals ,arising from the following:actions related to appointment, transfer (including consent procedures), registration, performance, achievement, superior achievement evaluation and rewarding procedures for public officials working in the Presidency and the Ministry of Justice and their affiliated,related and relevant organizations. acttions related to the recruitment of public officials,(including terminiation of office due to the subsequent understanding that there are no conditions for obtaining public office).promotion ( advancement of rank or degree ), length of service, educational status and other adjustment works,as well as monetary rights.the working hours ,holidays and social rights and benefits of public officials.the Primary School Teacher’Health and Social Welfare Fund legislation.the Thirteenth Chamber is tasked with resolving cases and appeals, arising from the following disputes (which are outside the jurisdiction of other Law Chambers of the Council of State): Law on the Protection of Competition.Law on Privatization Practices. Law on the Assignment of Organizations other the Turkish Electricity Authority, Transmission,Distribution and Trade of Electricity. Law on Establishment and Operation of Electricity Generation Facilities with Build-Operate Model and Regulation of Energy Sales.

The Board Presidents consists of the President of Council of State,Chief Prosecutor, Vice-Presidents and presidents of the chambers. It determindes about the task conflicts between the chambers. The duties of the Board Presidents are as follows:a) to determine the places of duty of the members in consideration of the work status and needs of the chambers. b) to change the chambers of the chamber presidents and members in necessary cases. c) to determine the chambers and boards where the investigation judges of the Council of State will work and the works which they will carry out and to replace them when necessary. d) to determine the division of labour among the chambers. e) to determine the management works for which the place of the competent authority has not been specified or to carry out such works. f) to fulfill all other duties assigned by the laws.

The Plenary Assembly consists of the President of Council of State, Chief Prosecutor, Vice-Presidents , Presidents of the Chambers,Justices and Secretary General.It is the highest decision-making body of Council of State that determines affairs of elections and adopt the internal regulations.

2.3 Members of the Profession,Prosecutors and Rapporteur Judges

Members of the profession is composed of President of Council of State, Chief Prosecutor,Vice-Presidents and Presidents of the Chambers and Justices,Three-fourth of the members of the Council of State are elected by the Council of Judges and Prosecutors among the administrative judges and prosecutors.The remaining one-fourth of members is appointed by the President of the Republic among the officials prescribed by law. The President, Chief Prosecutor,Vice-Presidents and presidents of the chambers are elected by the Plenary Assembly of the Council of State amongst its own members, by an absolute majority of the total number of justices.To be elected as the President of Council of State or Chief Prosecutor it is required to be a member of the profession at least for six years.The required period is three years to be elected as Vice-President or President of a Chamber.The term of office of the President,Chief Advocate General,vice presidents of the Council of State and presidents of the Chambers is four years.Those whose term of office has expired can be re-elected.Those who cannot be re-elected,do not stand for the re-election or resign from office before the expiration of their term of office continue to serve as members of the Council of State.

If the behaviors and acts of the President,the Chief Advocate General,the vice presidents of the Council of State and the chamber presidents and members are seen or reported to be incompatible with the dignity and honour of a supreme judge or cause the service to delay,disciplinary proceedings are initiated against them pursuant to the provisions of this Act.the transfer of the issue to the Higher Board of Discipline shall be assessed and decided by the Board of the Presidency. the Higher Board of Discipline decides whether it is necessary to initiate disciplinary proceedings according to the nature of the act and behavior as well as the available information and evidence. if the Higher Board of Discipline decides to initiate disciplinary proceedings,it assigns three people from among the chamber presidents and the members outside the Board to conduct an investigation.If those against whom complaints are made are members of he Higher Board of Discipline,they may not participate in the meetings of the Board on this matter.Their places are filled in accordance with the procedure set forth in Article 20.

If it is understood at the end of an examination,investigation or prosecution that the notifications and complaints about the Council of State members are not substantive and have been made based on animosity or with the intention to insult or have the nature of a false complaint,the President of the Council of State requests from the Office of the Public Prosecutor to initiate a public prosecution against those who have made the complaints.

1. The General Information of exchange of the Council of State of Turkey

During my internship, I visited the Tenth Chamber,the Eighth Chamber and Tax Chamber of the Council of State of Turkey.I introduced the four courts levels of the People’s Republic of China and the basic informations about function of the Supreme People’s Court.the presidents of the Eighth,Tenth Chamber of the Council of State of Turkey also produced the types of cases,number of judges etc.We talked about land expropriation case and judge selection system. In Turkey, judge selection system and lawyer qualification system are different. In the Council of State of Turkey,to be a judge,there are many conditions that need to be met, meanwhile,the Turkish courts also provide a lot of helpful support to judges, such as the Turkish courts can provide financial support for studying abroad for judges. We also talked about the administrative cases. The president and judge of the Tax Chamber of the Council of State of Turkey mentioned that if the court thinks the supervisory behavior of administrative agency is illegal, it shall revocate the supervisory behavior.

In addition, I visited the Case-law, Reporting and Statistics Unit and Information and Technologies Center of the Council of State of Turkey. The Case-law, Reporting and Statistics Unit edits the cases of the Council of State of Turkey every year, judges must follow the rules of these cases. I also introduced cases base system and China Judicial Documents Network etc.The staff of the Council of State of Turkey was interested in China Judicial Documents Network, The information construction of China’s courts won high praise. I also visited Information and Technologies Center of the Council of State of Turkey, they showed me about the main information and function of the Council of State of Turkey.

1. The Learning tips of exchange of the Council of State of Turkey
   1. The specialization of administrative trial system of the Council of State of Turkey

The Council of State of Turkey consists of many chambers which resolve specific cases. for example, the Twelfth Chamber resolves cases about actions related to appointment, transfer ,registration, performance,achievement procedures for public officials .The specialization system is helpful to trial efficiency. If the works of a chamber received within a year have increased at a rate that could meet an imbalance has occurred in terms of work load among the chambers,part of the works can be assigned to another chamber at the beginning of the calendar year .

* 1. The proportion of suspension of administrative acts in the trial of cases is relatively high

During my interviews with the presidents and judges of the chambers of the Council of State of Turkey, I learned that in the course of hearing administrative cases, the proportion of the parties applying for the suspension of the execution of administrative acts is relatively high, and the proportion of the court’s final decision to suspend the execution of administrative acts is also correspondingly high.To a certain extent,this way of handling by the Turkish courts is conductive to the conflict between the parties and the administrative agency,and also provides a turnaround space for the subsequent settlement of administrative disputes.

4.3 Attach importance to the information development of judicial data and the sharing of information with other administrative agencies

The entire judicial system in Turkey has been integrated into the electronic justice system to achieve information coordination between courts and relevant authorities, and all judicial proceedings and notification procedures are conducted electronically. At the same time, information can be shared between the judicial system and other administrative authorities or public services, which facilitates the formation of consensus in the same field of affairs and promotes the timely updating and rapid development of knowledge and policies.

The Information Processing Center performs duty as associated to the Presidency of the Council of State and under the management of a director, is composed of a sufficient number of chiefs, engineers, programmers, analysts, computer operators, data preparation and control operators and technicians.The duties of the Directorate of Information Processing Center are as follows:To establish the information processing system in the Presidency of the Council of State in coordination with the information system of the courts of first instance and the regional administrative courts,to operate this system, to perform or enable the performance of its maintenance and repairs,to make the necessary updates according to needs by following up the technologies and developments related to the information processing systems,to develop and update software by creating projects according to the needs of the Presidency of Council of State.When necessary,to ensure compatibility with the sofeware developed by other public institutions and organizations ,to ensure the online and offline data flow and coordination between the systems within the international scope,to fulfill the duties assigned by the Presidency of Council of State in national and international activities related to information technologies.To provide the necessary support for the decisions ,legislations,circulars,opinions, texts and documents prepared with respect to the area of activity of the Council of State and the decisions of the international courts to which Turkey is a member and to which jurisdiction in granted to be submitted to the service of the users.To ensure that the procedures and principles for the security policies in the information system of the Presidency of the Council of State are determined ,applied,updated and inspected.To prepare the principles to be issued by the Presidency of the Council of State in the use of computer and information systems,to provide the necessary trainings in consideration of the requests of the computer users who perform duty in all departments of the Council of State.To carry out similar duties assigned by the Presidency of the Council of State.

Through participating in the exchange program, I had a preliminary understanding of the administrative judicial system and the judicial system of the Republic of Turkey. At the same time,through face-to-face communication with the judges of Council of State of Turkey, I also promoted Turkey’s understanding of the judicial system of China, which is conductive to further cooperation and exchanges between the two countries in the judicial field in the future.