This Project is co-funded by the European Union, the Republic of Turkey and the Council of Europe.

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INTERIM PROGRESS AND ASSESSMENT REPORT

THE PROJECT ON IMPROVING THE EFFECTIVENESS OF THE ADMINISTRATIVE JUDICIARY AND STRENGTHENING THE INSTITUTIONAL CAPACITY OF THE COUNCIL OF STATE

20 CFCU years
REPUBLIC OF TÜRKİYE
MINISTRY OF TREASURY AND FINANCE
CENTRAL FINANCE & CONTRACTS UNIT

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INTERIM PROGRESS AND ASSESSMENT REPORT

Ray Burningham

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LIST OF ABBREVIATIONS

CoS	Council of State
DHRMoJ	Department of Human Rights of the Ministry of Justice
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
IAR	Initial Assessment Report and Proposals for Reform Road Map
HRAP	Human Rights Action Plan
JRS	Judicial Reform Strategy for Türkiye
RAC	Regional Administrative Courts
TCA	Turkish Court of Accounts
TCC	Turkish Constitutional Court
UTBA	Union of Turkish Bar Associations
UYAP	National Judiciary Network Project

INTRODUCTION

Activity A.1.1. In-Depth Administrative Justice System Review

1. INTERIM PROGRESS AND ASSESSMENT REPORT

This Interim Progress and Assessment Report is the second in a series of three reports that will be produced for the purposes of this project. The first report, an 'Initial Assessment Report and Proposals for Reform Road Map' (IAR) was published in July 2020 and a Final Assessment Report will be prepared at the conclusion of the project.

As stated in the IAR, the overall objective of this project is to foster public confidence in the administrative judiciary by further strengthening its independence, impartiality and effectiveness, and by increasing public awareness of it. This objective is being pursued by assisting the Turkish authorities in identifying and giving effect to practices and procedures that support the independence and impartiality of the judiciary, and that strengthen the responsiveness and efficiency of the administrative justice system.

The Project is expected to achieve the following results:

> **Expected Result 1:** Approaches to and policies for improving the effectiveness of the administrative judiciary are agreed, evidence-based and its implementation supported.
>
> **Expected Result 2:** The institutional and professional capacity of the administrative judiciary is strengthened, thereby increasing public confidence in the administrative judiciary.
>
> **Expected Result 3:** The measures to relieve the administrative justice system and courts of their heavy workload are identified and supported, the existing pre-trial resolution mechanism are strengthened, and appropriate ADR mechanisms are introduced.
>
> **Expected Result 4:** The length of appellate proceedings is reduced by more efficient and effective case management by the Regional Administrative Courts (RACs) and the Council of State (CoS), and any necessary changes to the systems and processes are introduced.

This Report provides an update on the ongoing review of the administrative justice system, on the progress of project activities and on the present position concerning the Road Map for An Improved Administrative Justice System 2020-2023 referred to in the IAR.

Ongoing In-Depth Review & Evaluation of The Administrative Justice System

Since the Initial Assessment Report was published, the in-depth review of the Turkish administrative justice system which was started at the commencement of the project has continued and the further research and discussions with stakeholders have contributed to the contents of this report. Additional stakeholders with whom discussions have taken place include:

- Turkish Court of Accounts
- Ombudsman Institution
- Human Rights and Equality Institution
- Attorneys with experience of the administrative courts
- Union of Turkish Bar Associations
- Council of State
- Legal scholars
- Officials of various public administration departments

Close co-operation has continued between the project team and the Ministry of Justice Directorate of Legal Affairs, the beneficiary Department of the project, and with the Council of State.

Additional documents translated into English additional to those listed at Annex C of the IAR which have been reviewed for the purposes of this report include:

- Inquiry Commission on the State of Emergency Measures Activity Reports 2020, 2021
- Selected Reports of the Council of State Administrative Judiciary Commission
- Human Rights Action Plan (HRAP) March 2021 & Implementation Schedule, April 2021.

This report also takes account of webinar discussions with Turkish stakeholders and various reports prepared by national and international experts commissioned concerning various aspects of the project.

2. COVID-19 PANDEMIC AND REVISED PROJECT TIMETABLE

The Covid-19 pandemic has inevitably had a substantial impact on the project and it has been necessary to make a number of adjustments. Project activities have been undertaken through desk-based activities and online discussions and the project team is grateful to all stakeholders for their flexibility and adaptability, which has enabled the project to continue to achieve progress.

The pandemic has impacted virtually all project activities, but the remainder of this report focuses solely on the substantial progress made and avoids repeated references to delays and complications.

The project that was due to conclude on 21 December 2021 during the drafting of this report was granted with an extension until 20 December 2022.

3. PILOT COURTS

The IAR included a list of proposed activities for pilot courts[1] and six pilot courts were subsequently nominated by the Ministry of Justice. The selected courts are:

- Ankara Regional Administrative Court First Administrative Litigation Chamber
- Ankara Second Administrative Court
- Istanbul Regional Administrative Court Second Tax Litigation Chamber
- Istanbul Fifteenth Tax Court
- Izmir Regional Administrative Court Third Administrative Litigation Chamber
- Gaziantep First Administrative Court

The project team is very grateful to the Presidents, judges and staff of the pilot courts for the substantial amount of work they have already carried out and their ongoing contribution to the project.

A fuller account of pilot Court activities is provided later in this report.

4. DEVELOPMENTS SINCE PUBLICATION OF THE INITIAL ASSESSMENT REPORT

Human Rights Action Plan (HRAP), March 2021

As outlined in the IAR, the activities in this Project support aspects of the third Judicial Reform Strategy for Turkey (JRS), adopted in May 2019. The JRS sets out work towards a 'Judicial Vision 2023 - A Trustworthy and Accessible Justice System' that includes:

- Improving the people-oriented service approach
- Facilitation of access to justice
- Strengthening legal security
- More effective protection and improvement of human rights and freedoms
- Building confidence in the judiciary
- Improving judicial independence and judicial impartiality

1 IAR Annex F

Supporting aims of the JRS (and related objectives) include:

- Protection and Improvement of Rights and Freedoms
- Improving Independence, Impartiality and Transparency of the Judiciary
- Increasing the Quality and Quantity of Human Resources
- Enhancement of Performance and Productivity
- Ensuring Access to Justice and Enhancing Satisfaction from Service
- Simplification and Enhancement of The Efficiency of Civil and Administrative Trials
- Spreading of Alternative Dispute Resolution Methods

In March 2021, the Turkish Government President announced published an Action Plan on Human Rights (HRAP), and the Implementation Schedule thereof was published through the Presidential Circular No. 2021/9 with the Official Gazette N0 31749, dated 30 April 2021. The four aims of the HRAP include the following, which link closely to the objectives of this project:

- **Aim 1:** A Stronger System for Protection of Human Rights
- **Aim 2:** Strengthening Judicial Independence and the Right to a Fair Trial
- **Aim 3:** Legal Foreseeability and Transparency
- **Aim 9:** High-Level Administrative and Social Awareness on Human Rights

A total of 393 activities are set out in the HRAP in support of these aims. The HRAP is supported by an Implementation Schedule and each activity is intended to be measurable and monitorable. The implementation period of the Action Plan is two years i.e. it is anticipated that Action Plan activities will be completed by 2023, within the life of the current JRS. In this respect the HRAP consolidates and supplements certain aspects of the JRS.

Monitoring and evaluation of the Action Plan will be performed by a "Monitoring and Evaluation Board" comprising delegates from the responsible Ministries and relevant committees under the coordination of the Presidency of the Republic. Secretariat services to the Board are performed by the Department of Human Rights of the Ministry of Justice (DHRMoJ). The Ministries and institutions responsible for the activities prescribed by the Action Plan each prepare implementation reports at intervals of four months and send them to the DHRMoJ. The DHRMoJ is responsible for drafting an Annual Implementation Report to the Monitoring and Evaluation Board. The Annual Implementation Report will also be assessed by the Human Rights and Equality Institution of Turkey and the Ombudsman Institution, and the outcome of the assessment will be submitted to the Presidency of the Republic and the Grand National Assembly of Turkey. The final text of the Annual Implementation Report will be published by the Presidency of the Republic.

The JRS had already identified various activities with the potential to have a significant impact on the administrative courts. These included addressing problems related to notification, improving workload measurement to enable fairer resource allocation and case distribution; increasing publication of administrative court decisions; and simplifying the fees and costs structure for administrative courts.

The HRAP provides further elaboration of some activities contained in the JRS and identifies significant new activities concerning the administrative courts i.e.:

- the introduction of specialised courts for zoning and expropriation
- the improvement of target time limits
- enabling the use of the UYAP by the Council of State in its capacity as a first instance court
- reducing the time limit afforded to public administration to reject the application through tacit rejection from 60 days to 30 days
- introducing a legislative requirement for a reasoned judgment to be given within 30 days of an administrative court decision

Revised regional structure

An additional Regional Administrative Court has been established in Bursa with effect from 1 September 2021[2] The number of the operational RACs is therefore increased to nine. An updated regional map is at **Annex A** and a table showing the jurisdiction of each RAC, a number of tax and administrative litigation chambers in each RAC, and the number of first instance courts in each city is at **Annex B**.

Council of State, RAC and administrative court workload[3]

Judicial Statistics - The Ministry of Justice General Directorate of Judicial Records and Statistics published a 'Judicial Statistics 2020' report in September 2021 and data relevant to the Council of State RACs and Administrative and Tax Courts have been extracted for the purposes of this report.

The Judicial Statistics 2020 Report introduced some changes to the presentation of data in comparison with the 2019 report. Some data have been provided in greater detail, but other previously available data are not provided for 2020, including:

- number of cases per judge in the administrative judiciary
- gender distribution of judges in the Council of State RACs and administrative courts

2 According to Council of Judges and Prosecutors decision 607, dated 7 July 2021, published in the Official Gazette no. 31535 on 8 July 2021

3 The review of workload data has been supported by analysis conducted by Bordo Research & Consulting

- average number of days for adjudication in the RACs
- the case clearance rate in the administrative courts

Council of State - According to the judicial statistics of 2020 published by the Ministry of Justice[4], the number of files submitted to the Council of State has decreased by an average of 54% between 2016 (when the reformed appellate structure was introduced) and 2020. A similar decrease is observed in the number of cases decided in the Council of State after 2016.

Table 2 Number of Files of the Chambers of the Council of State, 2016-2020[5]

Year	2016	2017	2018	2019	2020
Number of Incoming Files	464.377	352.306	305.042	273.937	213.645
Number of Files Adjudicated	200.019	146.237	140.029	134.603	79.314
Number of Files Transferred to Next Year	264.358	206.069	165.013	139.334	134.331
Average Number of Days for Adjudication	327	407	582	670	606

In the Council of State, the average number of days to reach a decision in 2018 increased to 582, and to 670 in 2019. According to the 2019 annual report of the Council of State, the reasons for this increase were the priority given to finalizing the files transferred from previous years, the adaptation process of newly elected professionals and judges newly appointed to the judgeship, and the low number of senior judges in charge.[6] According to the 2020 annual report of the Council of State, the average number of days for the cases to be decided in 2020 is 606[7] and the report states that the administrative leave and flexible working conditions applied within the scope of combating the Covid-19 pandemic impacted upon the turnover of cases.[8]

RACs, administrative and tax courts - the workload of the RACs, and first instance administrative and tax courts as set out in the Judicial Statistics 2020 is shown in the following tables.

4 Justice Statistics 2020, Ministry of Justice, General Directorate of Criminal Records and Statistics, Ankara, September 2021, p.6.

5 Justice Statistics 2020, Ministry of Justice, General Directorate of Criminal Records and Statistics, Ankara, September 2021, p.6; Republic of Turkey Presidency of State Council 2020 Administrative Activity Report, p. 132; Republic of Turkey Presidency of the Council of State 2020 Administrative Activity Report, p.116; Republic of Turkey Presidency of the Council of State 2017 Administrative Activity Report, p.102.

6 Republic of Turkey Presidency of the Council of State 2019 Administrative Activity Report, p.116.

7 although the Judicial Statistics 2020 states the figure to be 380 days

8 Republic of Turkey Presidency of the Council of State 2020 Administrative Activity Report, p.132.

Table 3 Regional Administrative Courts / Number of Files, 2016-2020[9]

Year	2016	2017	2018	2019	2020
Number of Incoming Files	17.372	53.706	40.565	44.322	58.429
Number of Files Opened	232.114	262.696	221.961	221.407	234.786
Number of Files Adjudicated	195.772	275.836	218.187	207.300	201.278
Average Number of Days for Adjudication	60	63	69	86	No Data

Table 4 Number of Files of Administrative Courts, 2016-2020[10]

Year	2016	2017	2018	2019	2020
Incoming From Last Year	108.510	114.151	97.862	119.547	147.545
Number of Files Opened	258.072	223.710	211.455	237.805	201.430
Number of Incoming Files Rejected	18.005	17.308	17.476	15.794	12.203
Number of Files Adjudicated	270.434	257.301	207.237	225.611	219.329
Average Number of Days for Adjudication	147	153	179	201	No Data

Table 5 Number of Files of Tax Courts, 2016-2020[11]

Year	2016	2017	2018	2019	2020
Incoming From Last Year	42.432	42.053	49.034	31.447	39.542
Number of Files Opened	104.410	95.749	90.973	101.804	128.063
Number of Incoming Files Rejected	5.729	5.345	7.483	7.698	5.927
Number of Files Adjudicated	110.519	94.112	116.042	101.411	117.809
Average Number of Days for Adjudication	138	168	135	121	No Data

In the light of these data, it is noteworthy that the period of adjudication of the files in the RACs and first instance administrative courts has steadily increased between 2016 and 2019, in the case of the RACs up from 60 days to 86 days and

9 Justice Statistics 2019, T.C. Ministry of Justice, General Directorate of Criminal Records and Statistics, Ankara, p. 281; Justice Statistics 2020, T.C. Ministry of Justice, General Directorate of Criminal Records and Statistics, Ankara, September 2021, p.204.

10 Justice Statistics 2019, T.R. Ministry of Justice, General Directorate of Criminal Records and Statistics, Ankara, p. 259; Justice Statistics 2020, T.R. Justice Statistics 2020, Ministry of Justice, General Directorate of Criminal Records and Statistics, Ankara, September 2021, p.209.

11 Justice Statistics 2019, T.R. Ministry of Justice, General Directorate of Criminal Records and Statistics, Ankara, p. 269; Justice Statistics 2020, T.R. Justice Statistics 2020, Ministry of Justice, General Directorate of Criminal Records and Statistics, Ankara, September 2021, p.213.

up from 147 days to 201 days in the case of the administrative courts. The data for 2020 were not provided in the Judicial Statistics Report 2020.

The report also provides historical data showing workload trends in the administrative and tax courts between 2011 and 2020. These data show a decrease in case receipts (cases transferred from the previous year, filed within the year and reverted by the Council of State) of 8.6% (584963 cases in 2011; 534710 cases in 2020) over the period, following a peak in 2016-2017. Furthermore, the project has started to work on development of a new case code system integrating the case codes of first instance courts, regional administrative courts and the Council of State. This development is considered as a key in increasing the efficiency and accountability of judicial activities through a more accurate data collection and the measurement of workload. This also is considered as a potential to ensure more sophisticated knowledge on management by the Ministry of Justice and the leaders in the field of judiciary and provision of more detailed judicial statistics to the public. The updates on this study will be included in the Final Assessment Report.

Fourth Judicial Reform Package

The amendments to time limits referred to in the HRAP i.e. reducing the time limit afforded to the public administration to reply to applications from 60 days to 30 days; and introducing a legislative requirement for a reasoned judgment to be given within 30 days of an administrative court decision were enacted in the Fourth Judicial Reform Package 'Law No. 7331 on Amendment of Civil Criminal Code and Some Laws' dated 8 July 2021.[12]

Inquiry Commission on the State of Emergency Measures

The information stated herein was obtained from the public website of the below-mentioned Commission.[13]

Inquiry Commission Activity Report - As stated in the IAR, considerable pressure had been placed on the administrative justice system arising from the State of Emergency measures which were taken following the attempted coup in Turkey in 2016. The IAR briefly referred to an Inquiry Commission on the State of Emergency Measures, an administrative body which had been established in May 2017 for an initial period of two years to review procedures which were carried out under decree laws, namely:

- Dismissal or discharge from the public service, profession or organization in which the persons took office
- Cancellation of scholarship

12 reported in Official Gazette No. 31451 dated 14 July 2021

13 For more information please visit:
Turkish: https://ohalkomisyonu.tccb.gov.tr
English: https://soe.tccb.gov.tr

- Closure of associations, foundations, trade unions, federations, confederations, private medical institutions, private schools, foundation higher education institutions, private radio and television institutions, newspaper and periodical publications, news agencies, publishing houses and distribution channels
- Annulment of ranks of retired personnel
- The procedures carried out in respect of the legal status of the real or legal entities by the decree laws issued within the scope of the state of emergency

The Inquiry Commission has published two Activity Reports in Turkish and English in December 2020 and December 2021 and published the "Announcement on the Decisions of the Inquiry Commission on the State of Emergency Measures" on 27 May 2022. The announcement states:

"The Inquiry Commission on the State of Emergency measures reviews and concludes the applications concerning the measures adopted under the state of emergency decree-laws, such as the dismissal of public officials, cancellation of scholarship, annulment of the ranks of retired personnel and the closure of some institutions. The Commission employs a total of 220 personnel, 70 of whom are rapporteurs (judges, experts, inspectors).

Application Process and Classification

- The Commission has set up a data processing infrastructure in order to receive, archive and examine applications in an electronic environment, and the information on the applications acquired from more than 20 institutions and organizations have been recorded in this system.
- Classification, registration and archiving of a total of 496,822 files, including personnel files transferred from their institutions, court files and former applications, have been completed.

Decisions of the Commission

- By the decree-laws issued within the scope of the state of emergency, a total of 131,922 measures were taken, 125,678 of which were dismissal from public service.
- The number of applications submitted to the Commission is 127,130 as of 27 May 2022. Regarding the number of the decisions delivered by the Commission (124,235), the number of pending applications is 2,895.
- The Commission started its decision-making process on 22 December 2017 and as of 27 May 2022, the Commission has delivered 124,235 (17,265 accepted, 106,970 rejected) decisions. 61 of the acceptance decisions are related to the opening of organizations that were shut down (associations, foundations, television channels).

- Accordingly, 98 percent of the applications have been decided since the date of the beginning of the Commission's decision-making process.

The decisions of the Commission are circulated to the institutions where the persons lastly took office for the purpose of being notified. The procedure of appointment of those whose applications were accepted is carried out by the institution where they lastly took office and the Council of Higher Education where relevant.

- An annulment action may be brought before the Ankara Administrative Courts determined by the Council of Judges and Prosecutors against the decisions of the Commission and the institution or organization where the relevant person lastly took office, within a period of sixty days as from the date of notification of the decision.

State of Applications

- The applicants are able to acquire information on the stage of the applications filed with the Commission and the outcome of the decision ("acceptance" or "rejection") through the app of "The Inquiry Commission on State of Emergency Measures- Application Follow-up System" on the Commission's website.

Activity Report

- The activity report of the Commission was published on the Commission's website and can be accessed at https://soe.tccb.gov.tr

As an effective remedy, the Commission delivers individualized and reasoned decisions as a result of speedy and extensive examination. The Commission conducts the examination in terms of membership, affiliation, connection or contact with terrorist organizations or structures/entities or groups established by the National Security Council as engaging in activities against the national security of the State. In addition, decisions taken by the judicial authorities are monitored through the UYAP system."[14]

5. ROAD MAP FOR AN IMPROVED ADMINISTRATIVE JUSTICE SYSTEM

An important element of the project has been to produce a Road Map for an Improved Administrative Justice System in order to provide a framework for the implementation of solutions identified through the in-depth review of the system. As set out in the project Description of Action it was intended that project stakeholders and beneficiaries should be fully involved in developing and applying the

14 The CJP has nominated the 19th, 20th, 21st, 22nd, 23rd, 24th, 25th (and since 20 July 2020, 26th 27th and 28th administrative courts in Ankara) to hear appeals from Commission decisions. Onward appeals from the first instance courts are heard by the Ankara RAC 7th and 13th litigation chambers (and 14th litigation chamber since 25 January 2021).

Road Map, and that the Road Map would be a living document, altered as assessments identify different issues and priorities.

Work on the Road Map has been taking place since the IAR was published and the document was finalised after consultation with key stakeholders in the project: the Ministry of Justice, Council of State, Court of Accounts, Human Rights and Equality Institution, Ombudsman Institution and Council of Judges and Prosecutors.

The Road Map was published in March 2022.

The Road Map takes account of the strategic plans of the stakeholder organisations but in particular reflects the interrelationship between project activities and the JRS for Turkey and the HRAP.

As the introduction to the Road Map explains, the JRS and HRAP contain a number of activities aimed at the court system more generally and will impact on the administrative courts along with the civil and criminal courts. Some of these activities are beyond the scope of this project and do not therefore feature in the Road Map. In other cases, some reforms impacting on the courts generally may require tailored planning for implementation in the administrative courts to accommodate differences or special circumstances. The administrative judiciary have some unique characteristics, including the relatively small number of judges, the geographical distribution of the workload, and the participation of at least one administrative authority in all cases. All reforms relevant to the administrative courts, either directly or indirectly, are referred to in the Road Map for ease of reference and to highlight the interrelationship between project objectives and reform priorities.

INTERIM ASSESSMENT AND ROAD MAP PROGRESS

I. STRUCTURE OF THE INTERIM PROGRESS & ASSESSMENT REPORT

The structure of this Interim Progress and Assessment Report reflects the structure of the Road Map, which has the following main headings:

- Reducing the workload of the courts in the administrative judiciary:
  I. Good public administration decision making and internal review
  II. Promoting alternative dispute resolution
  III. Simplification and enhancing the efficiency of administrative trial procedure
- Human resources: improving professional capacity
- Enhancement of quality, performance and productivity
- Ensuring access to justice and enhancing satisfaction from service
- Simplification and enhancing the efficiency of administrative trial procedure
- Strengthening the institutional capacity of the Council of State & promoting unity of case law

Under each of these heading the aims and supporting activities of the Road Map are listed, and commentary is provided about progress made and related issues.

II. REDUCING THE WORKLOAD OF THE ADMINISTRATIVE COURTS

1. Good Public Administration Decision Making and Internal Review

The overall experience of citizens with an administrative dispute will be affected by the decision making and internal review mechanisms of public authorities in addition to their experience of the administrative courts, and the Road Map therefore reflects this. There is also a need to reduce the volume of cases reaching the administrative courts to prevent overload, and improved decision-making and early dispute resolution by public authorities play a key part in this.

The Road Map lists the following activities:

1. Raise awareness within Turkish public authorities of basic principles of human rights and equality in the Turkish Constitution, international conventions and legislation

2. European standards concerning good administration and Turkish good practice guidance
3. Raise awareness of European standards on 'internal review' by the public administration ("review by senior authority" Law 2577, Art.11)
4. Promote greater awareness by citizens of their right to review by senior authority following an adverse administrative decision
4. Consultation with Court of Accounts on understanding of 'public loss' practices by public authorities in relation to dispute resolution and opportunities to reduce unnecessary workload in the courts

Internal review of administrative decisions

In the IAR it was noted that:

> "There is legal provision for internal review of administrative decisions, but internal review is not effectively used in practice. Article 11 of Law 2577 states, inter alia, that:
>
> > "Before filing an administrative action, the concerned persons may request from the senior authority, or in the absence of the senior authority, from the authority which has performed the procedure within the time limit for filing an administrative action, abolishment, withdrawal, amendment of the administrative procedure, or the performance of a new procedure. This application shall suspend the time limit for filing an administrative action that has started."

However, interlocutors have stated that individuals are not made aware of this request a review and that there were no such guidance for the staff. It was also noted that administrative review processes very rarely lead to administrative authorities changing their initial decisions. It is possible thereby that there would be no pre litigation dispute resolution and thus would contribute to a high workload. Since Article 11 prolongs the examination period and the limit for rejection, it seems to affect the right of individuals to access efficient legal remedies in a timely manner and a just judgment. The activity on consultation meetings for internal review with public authorities have started within the project to create a good practices guideline. The updates related to this activity will be included in the Final Assessment Report.

The Road Map aims to provide greater awareness among public authorities of European standards concerning internal review of administrative decisions and to promote improved information for citizens about their right to review by senior authority following an adverse administrative decision.

Improved internal review processes can be expected to reduce the workload of the administrative courts by avoiding unnecessary appeals. It is also likely to con-

tribute to the improvement of administrative decision-making through the organisational learning of public authorities based on the experience of internal review procedures.

According to a court user survey carried out as part of the project (further details of which may be found later in this report) nearly 42% of respondents had not used the "review by senior authority" procedure before issuing a petition, and this represents a significant proportion of cases that could potentially have been diverted from the courts (if the internal review procedure worked well). A substantial proportion of court users also said that they found it difficult to find out about their rights.

As part of the ongoing in-depth review, discussions have been held with the Human Rights and Equality Institution (HREI) and the Turkish Court of Accounts, stakeholder institutions which share an interest in public administration performance.

Human Rights and Equality Institution (HREI)

The HREI was established by Law no. 6701 on the Human Rights and Equality Institution of Turkey, published on 20 April 2016. It is an Institution established in accordance with the international legislation of which Turkey is a party in the field of human rights. It has administrative and financial autonomy, has a public legal personality and is associated with the Ministry of Justice. The HREI has three main duties:

- To act as the National Human Rights Authority. Minimum standards that national human rights institutions should have; It is determined by the document "National Institutions for the Development and Protection of Human Rights" ("Paris Principles") adopted by the United Nations Human Rights Commission no. 1992/54 and the United Nations General Assembly resolution 48/134.
- To act as the National Prevention Mechanism expresses the system created to make regular visits to places where individuals are deprived of their freedom under the provisions of the United Nations Convention on "Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- To act as the equality[15] institution within the scope of the fight against discrimination.

15 Article 10 of the Turkish Constitution defines equality as "Everyone is equal before the law without discrimination for reasons such as language, race, color, gender, political thought, philosophical belief, religion, sect and so on. Men and women have equal rights. The state is obliged to ensure that this equality is implemented. No person, family, group or class can be granted a privilege. State bodies and administrative authorities must act in accordance with the principle of equality before the law in all their transactions."

The HREI has the authority to examine allegations of violation of the right to equal treatment, discrimination or torture and ill-treatment on the basis of an application. In the case of claims of other human rights violations where the applicant is not able to make an application, the HREI may conduct an *ex officio* investigation of the relevant case. Applications to the Institution may be filed via provincial and sub-provincial governors' offices. Persons deprived of their liberty or taken under protection may also apply to the Institution. No fee is charged for applications. Before applying to the Institution, those concerned must demand that the relevant party remedy the practise that they allege is contrary to the law. In cases where such demands are refused, or do not receive a response thirty days, the applicant may apply to the HREI. However, where it is deemed likely that damage arises which is irremediable or difficult to remedy, the Institution may accept applications without seeking such condition.

Under Goal 1.2 of the HRAP "Improving the Effectiveness of Human Rights Institutions" a number of further reforms impacting upon the HREI are currently underway.

Representatives of the HREI have expressed willingness on behalf of the Institution to contribute to the Road Map activities, particularly in relation to raising awareness of human rights and equality issues in Turkish public authorities and the Turkish general public. The HREI will continue to be a valuable stakeholder and contributor to the project and implementation of the Road Map.

Turkish Court of Accounts (TCA)

Discussions have also taken place with representatives of the TCA. An issue which has frequently arisen during the in-depth review in relation to issues such as the exercise of administrative discretion, the willingness of the public administration review and overturn past actions and decisions, to accept recommendations of the Ombudsman Institution, participate in the informal settlement of disputes or accept Council of State decisions as binding for comparable cases is the issue of "public loss" as applied in the work of the TCA.

The TCA is a constitutional institution tasked with overseeing all income and expenses and property of public administrations and social security institutions within the scope of the central administration budget on behalf of the Grand National Assembly of Turkey and to examine, audit and give a final decision and the accounts and transactions of those responsible to the final decision and to carry out the examination, audit and render final judgment. According to Article 160 of the Constitution, administrative legal remedies cannot be sought against the finalised decisions of the TCA.

"Public loss" is a mechanism concerning the process of recovering public losses and taking action against officials deemed to be responsible. The mechanism is

regulated in the Public Financial Management and Control Act no. 5018 and in its secondary legislation. Article 71 of the Law no. 5018 defies public loss as "preventing an increase or causing a decrease in the public resource as a result of a decision, transaction or action that violates the legislation and that stems from their intention, fault or negligence." Article 71 goes on to list actions which should be considered when determining a public loss: making payments in excess of the amount determined as the price of works, goods or services; making payments without receiving the goods or without having the work done or service provided, purchasing goods, works or services for a price higher than their market price; and make payments not envisaged in the relevant legislation.

The impact of the mechanism is therefore wide-ranging covering fraudulent activity (such as issuing false documents where, for example, any money, goods or services which have not been received appear to have been received - which may also lead to criminal proceedings) but also "negligence" and "imprudence," which may act as a chilling factor in the informal resolution of disputes. Article 12 of the Civil Servants Act states; *"If the loss has been created as a result of the civil servant's intent, defect, negligence or imprudence, it is essential that this damage is paid by the relevant officer at the market value."* The responsible public servant may potentially recover these payments by proceeding in the civil courts against those who have been 'unjustly enriched' by the unlawful payment/overpayment.

A public loss may be determined through the internal control mechanisms of the public administration, through audit or through a TCA judgment or trial. The determination of public loss by the TCA results from a judicial process in which the public official concerned has certain rights and protections, including the right to submit a defence. The public loss becomes repayable by the public official only after the TCA has considered all the facts and given a judgment. In practice, however, the process does typically not work this way, and if a query is raised by auditors the public administration usually conducts its own review and makes its own determination on whether a public loss has occurred. If necessary, it also begins taking steps to recover the loss.

In the consultation with the TCA it was accepted that the concept of "public loss" can be misunderstood or misinterpreted by public administrations from time to time but this was not perceived to be a significant factor. In many cases observed by the TCA the cause was the straightforward, direct misapplication of the relevant financial legislation by the official concerned. The law gives public officials a degree of discretion and while it is always possible to use this discretion unlawfully, the legality of discretion constitutes a presumption that must be proved otherwise.

Defensive behaviour by public administration officials may therefore arise from perceptions about the operation of the system with the public administration or by decision-making within the public administration rather than formal TCA

procedures themselves. In this respect the involvement of the Ombudsman Institution can promote greater exercise of administrative discretion as a recommendation by the OI on file can provide an audit trail to demonstrate why certain approach was taken in a particular case.

Council of Europe Handbook "The Administration and You"

A key project achievement since the IAR was published is that the Council of Europe Handbook "The Administration and You", published in October 2018, has been translated into Turkish. This sets out a number of key principles, organised into:

- Substantive Principles (lawfulness and conformity with statutory purpose, equality of treatment, objectivity and impartiality, proportionality, legal certainty, transparency, privacy and the protection of personal data)
- Procedural Principles (access, participation, right to be heard, representation and assistance, time limits form and notification of administrative decisions, execution of administrative decisions, administrative sanctions)
- Principles concerning liability of public authorities and redress
- Principles concerning reviews and appeals (non-judicial review, right to appeal, interim or provisional protection, execution of court decisions)

The Handbook also cited 27 relevant Recommendations and Resolutions of the Committee of Ministers, 22 of which have been translated for the first time into Turkish within the scope of the project. The newly translated materials are listed in **Annex C** and these have been published on the website of the Committee of Ministers.

The Initial Assessment Report also referred to another very helpful publication, the Manual on Good Administration Principles, published in November 2019 by the Ombudsman Institution (OI). In its plans for future work, the OI intends to keep the Manual updated, to prepare a version for citizens and to translating it into foreign languages.

Future plans: Handbook for Public Authorities on European Standards of Internal Review

An important project activity to be started shortly concerns the drafting of a guide to good administrative practices on internal review. It is intended that this will provide guidance on good administrative practice regarding decisions made by public authorities, including the exercise of discretion, the system of internal review and mechanisms for resolving any systemic issues identified by the internal review processes.

The guide will be developed through a series of consultation meetings with representatives of the Ministry of Justice, the administrative courts, public admin-

istration bodies and other stakeholders to consider steps that could be taken to remedy specific areas of concern e.g.

- measures that could be adopted to improve the application of case law in decisions by public authorities
- how best to empower administrative decision-makers to exercise discretion
- good administrative practices for the internal review of administrative decisions
- potential methodologies to remedy systemic deficiencies which generate unnecessary disputes
- platforms for the exchange of information between administrative authorities

2. Promoting Alternative Dispute Resolution

The Road Map sets out two main project activities to promote alternative dispute resolution in the Turkish administrative justice system:

1. To raise the profile of the Ombudsman Institution as a potential mechanism for dispute resolution
2. To assess the value of pre-litigation resolution mechanisms and ADR procedures in the context of administrative disputes

These activities are taking place against the background of several initiatives introduced by the Turkish authorities to create new dispute resolution mechanisms, with which the project is not directly involved. These initiatives are described below.

Ombudsman Institution

The Road Map sets out aims to achieve greater awareness of the role and work of the Ombudsman Institution among project stakeholders and to achieve greater awareness within the Ombudsman Institution and among other stakeholders of international examples of the contribution of ombudsmen to reducing the work of the administrative courts.

Since the Initial Assessment Report was published the Ombudsman Institution has published a further Annual Report, for 2020.[16] It received 90,209 complaints in 2020, an increase of 330.22% on the previous year.[17] This increase was directly related to the implementation of an 'Economic Stability and Progress Package' announced by the government on 18 March 2020 to mitigate the economic impact

16 The review of workload data has been supported by analysis conducted by Bordo Research & Consulting

17 T.R. Ombudsman Institution 2020 Annual Report, p.47-48.

of the COVID-19 pandemic. A basic needs support package was introduced for implementation by the public banks for those whose level of income is below a certain threshold providing basic support credits and easy terms of repayment. Of the 90.209 complaints received by the OI in 2020, 70.440 related to rejections or partial acceptance of basic support credit applications by the public banks.

Table 7 Number of complaints to the Ombudsman Institution by years[18]

Year	2013	2014	2015	2016	2017	2018	2019	2020
Total Number of Complaints	7.638	5.639	6.055	5.519	17.131	17.585	20.968	90.209

The rate of compliance with the recommendations for 2020 was 76.38%[19], continuing the pattern to steadily increasing compliance year-on year as the Institution becomes more established. Of the 90.209 applications received in 2020, 16,718 were women applicants and 72.586 were men. The remainder of the applications were made by children or applicants who did not state their gender in their applications.

Table 8 Rates of Compliance with Recommendations by Years[20]

Years	2013	2014	2015	2016	2017	2018	2019	2020
Rate of Compliance	%20	%39	%37	%42	%65	%70	%75	%76,38

A team of international consultants has been working closely with representatives of the Ombudsman Institution in support of these aims set out in the Road Map. A series of consultation meetings were held, and these included the valuable participation of both the Chief Ombudsman and the Secretary General of the ombudsman Institution.

A report by the international consultants: 'A Comparative Review on Ombuds: Recommendations of Action for the Turkish Ombudsman and Guidelines for the Ombudsman and Public Authorities' was published in October 2021. The comparative review considered aspects of the work of ombuds institutions in 20 jurisdictions and of the work of the European Ombudsman. It set out the two main principles which guide the institution of the ombuds, the 'Paris Principles' and the 'Venice Principles'.

18 T.R. Ombudsman Institution 2020 Annual Report, p.47.

19 T.R. Ombudsman Institution 2020 Annual Report, p.43.

20 T.R. Ombudsman Institution 2020 Annual Report, p.43.

The Paris principles[21] set out a framework to set up national institutions to protect human rights (including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities) and promote human rights (through education, outreach, the media, publications, training and capacity building, as well as advising and assisting the Government). An Ombud is one example of a national institution that provided the right to good administration stated in Article 41 of the Charter of Fundamental Rights of the European Union. This formally sets up the close connection between ombuds and human rights.

In 2019 the Venice principles[22] were published to protect the ombuds institution. They set out, for the first time, 25 basic international principles for the operation of ombuds. They are equivalent to the Paris principles mentioned above, setting out the standard for national human rights institutions. The Venice principles are an international reference text listing the legal principles essential to their establishment and functioning in a democratic society. Their aim is to empower the ombuds in their role to strengthen democracy, the rule of law, good governance and the promotion of human rights and fundamental freedoms. The Council of Europe's steering committee for human rights played an active role in the process.

The report presents specific themes and address the issues arising from the comparative review, provides specific recommendations in relation to four thematic areas and provides guidelines on what further work needs to be done.

Ombudsman Institution: Reform Recommendations

The report proposes four strategic aims for the OI:

- To facilitate enhanced democratic participation of natural and legal persons, including civil society organisations and those marginalised for any reason
- To enable enhanced democratic public administration: the key priority is improved recognition of the OI, respect for and understanding of the OI's function, and familiarity with the OI's expectations, reports and recommendations
- To establish effective regulatory networks: the key priority is enhanced co-operation and co-ordination between the OI and other regulatory agencies
- To enlarge the OI's technique and mandate: the key priority is extension of the OI's reach, independence and impact

21 United Nations Human Rights Office of the High Commissioner, The Paris Principles (1993) available at: https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx.

22 PRINCIPLESON THE PROTECTION AND PROMOTION OF THE OMBUDSMAN INSTITUTION ("THE VENICE PRINCIPLES") 2019 available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e

A series of recommendations are also made in this report prepared by international consultants in support of these four strategic aims:

Recommendations for the OI, Persons and Democratic Participation

1. The OI should establish an annual public awareness survey, and compile annual data that provides more detail than at present on the profiles (e.g. by gender, race, age) of those who are currently referring complaints to the OI.
2. The OI should develop a coherent and ambitious communication strategy that builds upon the existing deployment of national, local and social media (including, for example, by the use of Twitter) and of increasingly ambitious outreach work, especially outside of Ankara and other urban centres and through the deployment of regional offices (see below)
3. The OI should develop a policy of reasonable adjustment that extends beyond disability to cover the needs of everyone who wishes to have access to the OI. In particular, such a policy should modify any perceived expectation that complaints should ordinarily be made in writing and enable the presentation of complaints in person, including through regional offices (see below). The OI should also publicise effectively the support available in the event of complaints not being made in writing.
4. The OI should target and make dedicated provision for meeting the needs of women in particular in all its work (including through the use of ex officio investigation powers, in the event of such powers being granted to it) to improve access and visibility of the OI
5. The OI should target aspects of the training and support of public authorities at those aspects most likely to facilitate improved access to the OI for women.
6. The OI should, in co-operation with government, supplement existing advice and information services for the public by facilitating the development of local and regional advice networks, including by financial grant from dedicated resources to be made available to it for this purpose.
7. The OI should facilitate the further development and engagement of civil society organisations to promote its work
8. The OI should take steps to ensure that its workforce is sufficiently diverse to reflect the diversity of the population as a whole and to ensure a sufficiently broad range of skill and experience among those employed at all levels; and to ensure through pay structures and other means that the status of the OI has parity with that of the senior judiciary.
9. The OI should review its current policy with a view to establishing an effective and well-resourced network of regional offices
10. The legislation governing the OI should ensure that the OI's independence is protected from interference by the use of the budgetary process and that the OI has the ability to make its own budget propos-

als as part of the annual national budget process without fear of any reduction in overall budget that is disproportionate to budgetary reductions incurred more generally by the Parliament or Government.

Recommendations for the OI, Persons and Democratic Participation

11. The OI should produce a range of materials and deliver (or facilitate the delivery by others of) a suite of training opportunities that help embed in public authorities' best practice not just on good administration but on human rights, including social rights entitlement
12. The OI should be relieved of responsibility for responding to employment disputes in public authorities, or, as an alternative, the OI should establish a separately funded unit for such work

Recommendations for the OI As Part of a 'Regulatory Network'

13. The OI should enter into formal memoranda of understanding with a targeted range of other regulatory bodies, including the administrative courts, so that sharing of intelligence, ways of working and reciprocal arrangements for the transfer of cases can be shared on a strategic basis
14. The OI should take the initiative in establishing more formal networks of co-operation and co-ordination with other regulatory agencies for the sharing of intelligence, strategic planning, and best practice, and for the mutual benefit of reciprocal referrals in appropriate cases.

Recommendations for the Refinement of the OI's 'Technique'

15. The OI should establish a dedicated resource for the development and practice of rights-based mediation as a way of enriching its available suite of informal resolution options.
16. The OI should acquire a new power, and the necessary resources, to conduct ex officio investigations and, if necessary, special thematic reports that disclose patterns of bad practice
17. The OI should acquire explicit power at its own initiative to seek to intervene as amicus curiae in court proceedings, subject to the normal procedural safeguards observed by the domestic courts, and to bring legal proceedings before the courts, including the Constitutional Court
18. The OI should resist calls for powers to enforce decisions or make legally binding findings.
19. The OI should regularly highlight any instances of lack of co-operation from public authorities in its conduct of investigations and draw attention to such unwarranted behaviour in the Annual Report and in such other ways as the OI judges appropriate.
20. The OI's credibility should be enhanced by steps explicitly to link the Chief Ombudsman's status to that of the senior judiciary, with all consequential adjustments to the status of all other staff in the Ombudsman's office according to their respective roles.

21. The OI should, in co-operation with the legislature, take steps to ensure that there is ample opportunity for the legislature not only to receive and debate the OI's Annual Report, but also through means of a dedicated legislative committee to develop a close relationship with the OI and so enhance dialogue between the OI and the legislature as a whole.
22. The OI should have an explicit entitlement to comment on any proposed amendments to primary and secondary legislation affecting its establishment or operation, and to prepare the draft of any such amendments.

At the final consultation meeting held on 21 June 2021 the OI presented its latest action plan on the implementation of proposed recommendations and guidelines. Work will continue on the action plan and ongoing work will be reflected in its next Strategic Plan for the years 2022-2026. The OI will be assisted in its work by provisions in the HRAP aimed at 'Increasing the Effectiveness of Human Rights Institutions' (Goal 1.2) which, among other provisions, introduced a new requirement that the OI should be included as recipients of periodic reports prepared by the Correctional Institutions and Detention Centres Monitoring Boards.

Aspects under active consideration for incorporation into plans as a direct result of the project include:

- Preparing preventative reports and taking on an educational role to contribute to the improvement of public services, by further development of annual reports, by preparing special reports on a range of issues, conducting periodic visits to institutions, updating and increasing the range of publications and the provision of training to public administration personnel and internal training for OI staff
- Strengthening the mediator/conciliatory role between administrations and applicants and improving compliance with decisions, to develop the mediator/conciliatory role of the OI, and to undertake a range of activities to promote compliance with recommendations
- Incorporation of new mechanisms into corporate functioning in order to increase the effectiveness of the institution including taking a range of initiatives to increase the legal powers of the OI and to rebalance the status and remuneration of the ombudsman to align more closely with the senior judiciary; to increase co-operation with other Turkish human rights institutions
- Recognition of the OI by all segments of society for the effective use of the right to apply to the institution by organising events at a national and international level on issues of public interest; continuing programme of regional meetings; strengthening engagement with national and local media organisations and increased use of social media; continuing to develop the OI website; adjusting awareness and promotion activities with a greater focus on disadvantaged groups; building on the results of an external stakeholder survey conducted in March/April 2021

Pre-litigation resolution mechanisms and Alternative Dispute Resolution (ADR) procedures

The Road Map aims to support work by Turkish authorities to explore and implement ADR mechanisms to promote early dispute resolution and reduce the workload of the administrative courts. The Council of Europe's "Recommendation Rec(2001)9 of the Committee of Ministers to Member States on Alternatives to Litigation between Administrative Authorities and Private Parties" provide some guidance on this issue and recommends that the governments of member states promote the use of alternative means for resolving disputes between administrative authorities and private parties by following, in their legislation and their practice certain principles of good practice. The recommendation focuses in particular on internal reviews, conciliation, mediation, negotiated settlement and arbitration.

The project has sought to support work by the Turkish authorities by providing forums for discussion and exploration of practice in European member states.

A webinar was held in December 2020 bringing together experts from France in Turkey to discuss practices and developments on ADR in administrative justice in both jurisdictions. It provided a platform for Turkish stakeholders to exchange views on the applicability of ADR methods in the Turkish administrative justice system and new approaches to ADR mechanisms. A joint report of the webinar, prepared by French and Turkish experts was completed in February 2021.

ADR in administrative justice: developments in France

At the webinar and in the joint report French experts presented the evolution and the current state of play of ADR in resolving administrative disputes in France. They outlined the two existing forms of ADR method: 'institutional mediation' which can be used at a very early stage of a citizens/administration dispute; and 'judicial/conventional ADR', which is used at a later stage, including when a case is lodged before an administrative court;

The creation, in 1973, of the 'Mediateur de la République' (the 'Défenseur des droit' since 2011) is considered as a turning point in the development of the so-called institutional mediation in France. An individual can introduce a request before the administration concerned to ask for an amicable resolution of a dispute (e.g. regarding the functioning of public services). A diversity of institutional mediation mechanisms has evolved as a result and efforts are being made to rationalise these and to give consistency (through codes of ethics i.e. 'chartes déontologiques'; coordination mechanism between the Ombudsperson 'Défenseur des droits' and individual mediators).

Law no 86-14 of 6 January 1986 gave the administrative judge of first instance tribunals a conciliation mission, and this was extended to the administrative courts'

judges in 2011 *(Décret n° 2010-164 of 22 February 2010 Relatif Aux Compétences Et Au Fonctionnement Des Juridictions Administratives)*.

The 1993 Conseil d'Etat's report *"Régler autrement les conflits : conciliation, transaction, arbitrage en matière administrative"* (ADR: conciliation, transaction and arbitration in administrative law) and later the law n°2016-1547 of 18 November 2016 "De Modernisation De La Justice Du Xxie Siècle" (Modernisation of Justice of the 21st Century) were turning points in the development and generalisation of ADR methods. The latter generalised mediation, which was merged with the so-called conciliation procedure. Mediation can be chosen by the parties or ordered by the judge, if the parties agree, in any administrative law case (Article L. 213-12 of the Administrative Justice Code: mediation can be initiated by the parties even before a case is lodged or, after the case is lodged, they can ask the judge to designate a mediator; Article L. 213-7, if the parties agree, the judge may order a mediation). Mediation procedure (choice of a mediator, fees etc.) is regulated by the Administrative Justice Code.

Webinar Joint Report recommendations

Following the webinar, the team of experts made the following recommendations in their joint report:

1. Consider establishing a clear and uniform legal framework on conventional and judicial mediation procedure together with the establishment of a full Administrative Procedural law. The 'codification' of administrative procedure has improved the transparency and accessibility to administrative procedure in France, creating a level playing field and providing more clarity to the decision-making process.

   According to the survey performed after the webinar, all participants to the webinar support legislative changes for effective functioning of ADR methods. A major part of the participants thinks that an Administrative Procedural Law is absolutely necessary. Furthermore, all participants agreed is the necessity of legislative amendments in Law on Administrative Litigation Procedure (2577) and other existing laws.

2. Consider to perform a pilot project on judicial and conventional mediation in a particular area. This project could be performed in selected administrative courts to identify the main features of the system and make sure that the future designed solutions are fully adapted to current administrative justice and public administration challenges. We would recommend an incremental process and to concentrate on one or two areas (e.g. France has chosen social affairs cases to experiment innovative ADR methods).

Participants to the webinar have considered that ADR methods would be best suited for selected disputes such as cases related to civil servants, pecuniary disputes, indemnification claims, social security, some zoning cases (to be identified), some municipality cases.

3. To foster conventional and judicial mediation, consider establishing and publishing a list of mediators specialised in administrative justice, sorted by field of specialisation. Such a step would ease the mediation process and ensure that mediators are highly qualified in administrative law and specialized in the field of the case.

4. To support the high quality of mediation, consider setting criteria to be fulfilled by mediators in order to be included on the list and build a training curricula based on the required competences (ensure a training in mediation techniques and in relation to administrative law issues).

6. Consider the conclusion of conventions between national or local bar association and the Council of State and individual tribunals. Such a convention could also be concluded with association of mediators as deemed appropriate by the Turkish authorities. Such convention will raise awareness of both mediators, lawyers and judges on mediation.

7. Consider conducting an in-depth study, together with the Ombudsperson, of areas where both citizens and public administration would benefit from institutional mediation. Identify the main features and include the necessary guarantees of independence, impartiality, effectiveness of institutional mediation. France has chosen a system of specialized mediation and as close as possible from the general public with a strong local presence in public services and with the development of online tools (information, applications).

ADR in administrative justice: developments in Germany

A report has also been commissioned for the purposes of the project concerning judicial mediation in the field of administrative jurisdiction in Bavaria. This will be made available to Turkish stakeholders when complete and a short account of the German system will be given the Final Assessment Report.

Recent Turkish ADR reform initiatives

The project activities are taking place against the background of several initiatives introduced by the Turkish authorities to create new dispute resolution mechanisms, with which the project is not directly involved.

Peace Commissions - the Judicial Reform Strategy (Objective 9.4) states that new regulations will be introduced concerning "peace commissions". Under this procedure the administration could invite the opposing party to make peace in the event that they learned that an action or enforcement procedure will be brought against them. Anyone who claimed that their right was violated due to administrative actions could also apply to the administration and request compensation of the damage incurred. It is envisaged that this initiative would reduce the workload of the courts while ensuring more effective protection of citizens' rights.

Human Rights Action Plan - HRAP Activity 3.5 "Improving the Effectiveness and Expanding the Use of Alternative Dispute Resolution" sets out a series of measures to expand the use of ADR across the justice system. In relation to administrative justice there are two particularly relevant activities:

- Activity 3.5.a an administrative settlement procedure will be introduced in order to settle disputes between natural persons or legal entities and the State in the fastest and most cost-effective manner thereby introducing yet another method of alternative dispute resolution to justice services (to be implemented by the Ministry of Justice within one year i.e. by April 2022)
- Activity 3.5.b in order to eliminate the disputes between the administration and investors a new institutional structure will be established to examine impartially and independently the disputes within the framework of basic principles and take speedy decisions in this connection, a new legislative regulation will be elected for the protection of private sector investments (to be implemented by the Directorate of Strategy and Budgets of the Presidency-within two years i.e. by April 2023)

HRAP Aim 7 "A More Effective Protection of the Right to Property"is supported by a series of goals and activities related to the State's obligation to protect and implement the right to property. The HRAP describes[23] how "in recent years important novelties have been put into practice." It cites two examples:

- the amendments made to the Expropriation Act (Law Number 2942) led to the adoption of the principle of "equitable redress" through the compensation of "real value" in order to protect citizens from incurring damages due to the non-payment or late payment of the expropriation price.
- the introduction of Damage Assessment Commissions established with a view to offering reparation for damages suffered by individuals due to terrorism and counterterrorism activities without a need to seek relief through the administrative courts.

In support of Aim 7, Goal 7.1 "Preventing Violations of the Right to Property Caused by Expropriation Practices" lists a series of new activities to improve the availability of redress. Under Activity 7.1.a.' the Ministry of Environment and Ur-

23 p.86

banisation will by April 2022 have conducted a review of the Expropriation Act and other relevant legislation, including the provisions related to the urgent expropriation procedure. According to Activity 7.1.d. it will also introduce an administrative remedy to enable citizens to make applications under the auspices of governor's offices concerning interferences with the right to property by the public administration, such as acts of *de facto* expropriation, which will include powers to impose sanctions on public officials who are found at fault.

Certain activities are also focused on improving the infrastructure for ADR:

- Activity 3.5.d states that the institutional structure within the Ministry of Justice will be strengthened with regard to alternative dispute resolution methods (within one year i.e. by April 2022
- Activity 3.5.h states that the legal status of mediation centres will be codified and standards will be laid down with regard to the establishment and supervision of such centres (within one year i.e. by April 2022)

These are potentially significant initiatives and further developments and progress will be described in the project Final Assessment Report.

3. Simplification and Enhancing The Efficiency of Administrative Trial Procedure

Road Map activities to promote simplification and enhanced efficiency of the administrative trial procedure include:

- Introducing a pilot case procedure for group actions concerning administrative disputes
- exploring the potential for reform of the procedure of administrative justice (as set out in Laws 2575, 2576 and 2577) in consultation with relevant stakeholders to clarify and simplify procedures
- Promoting dialogue between judiciary and public administration legal advisers to promote improvements in the 'end to end' experience of citizens in the administrative justice system; the early resolution of disputes; and the efficiency and effectiveness of the administrative procedure

The Road Map also refers to two potential initiatives referred to in Objective 8.7 of the JRS: to extend range of disputes which may be decided by a single judge and to introduce the possibility of hearing witnesses in some administrative disputes. No further announcements have been made by the Turkish authorities with regard to these initiatives and they do not appear in the HRAP, but the project will provide a forum to discuss these issues if required during future meetings and workshops.

Pilot case procedure

The HRAP states[24] that "One of the reformative changes to be made in the system is going to be introducing a 'pilot case' procedure in disputes of the same nature to which a public administration is party, thereby ensuring that the ruling delivered therein will be binding in respect of other disputes concerning the same matter." The HRAP Implementation Schedule sets a 1-Year (i.e. by April 2022) term for implementation of this activity, for which The Ministry of Justice General Directorate of Legislative Affairs has lead responsibility.

The project Description of Action envisages that the support activities to be carried out will include a review of the pilot judgment procedure which was developed by the ECtHR[25] as a means of dealing with large groups of identical cases that result from the same underlying issue. Past examples in Turkey have included the cancellation of some banks' license to engage in banking activities and assignment of their management and supervision to the Savings Deposit Insurance Fund, encouragement of employees to make savings and utilization of such savings, retirement grant paid to those to whom old age pension is given from social security institutions other than the Pension Fund through unification of services, allowance payments, failure to be appointed teacher in a public school, unemployment insurance premium deducted from the wages of out-of-scope personnel, and tax deductions from flight compensations. A short case study[26] of one example in Turkey, concerning the Law on Retirement Pension Fund, is at **Annex D**.

In May 2021 a consultation meeting for Turkish stakeholders was held to explore the ECtHR pilot judgment procedure and its potential relevance for Turkey. The meeting also provided an opportunity to explore relevant practices in the French administrative justice system: the *avis contentieux* ("judicial opinion") procedure introduced in France in 1987, which enables first and second instance administrative courts to refer matters to the Council of State if they have any hesitations

24 Goal 7.2, (Activity h.)

25 Since 2004 the European Court of Human Rights has developed a 'pilot judgment' procedure as a means of dealing with large groups of identical cases that derive from the same underlying problem, referred to as 'repetitive cases'. When the Court receives a significant number of applications deriving from the same root cause, it may decide to select one or more of them for priority treatment. In dealing with the selected case or cases, it will seek to achieve a solution that extends beyond the particular case or cases so as to cover all similar cases raising the same issue. The resulting judgment will be a pilot judgment. In this judgment the Court will aim to determine whether there has been a violation of the Convention in the particular case; to identify the dysfunction under national law that is at the root of the violation; to give clear indications to the Government as to how it can eliminate this dysfunction; to bring about the creation of a domestic remedy capable of dealing with similar cases (including those already pending before the Court awaiting the pilot judgment), or at least to bring about the settlement of all such cases pending before the Court. The pilot judgment is therefore intended to help the national authorities to eliminate the systemic or structural problem. An important feature of the procedure is the possibility of adjourning or "freezing" the examination of all other related cases for a certain period of time to enable the respondent State to act on the conclusions of the judgment.

26 prepared by Simin Yalcintas-Deli, CoE Turkey Programme Office, Ankara

about the meaning of legal rules to be applied to the particular dispute; and the *jonction d'affaires* (joining cases) procedure. Participants in the meeting included representatives of the Turkish Constitutional Court, Turkish Council of State, ECtHR Registry, and *Conseil d'etat*.

Turkish commentators have advocated the introduction of a pilot case procedure (sometimes referred to as a "class action" procedure) for some time and it is a welcome development that a concrete implementation timetable is now set out in the HRAP. The procedure can contribute both to improving the consistency of administrative court decision making and reducing the workload of the administrative courts. Procedural issues to be clarified in the implementation process are likely to include the following:

- Any requirement concerning the number of case files which may trigger a pilot action
- the nature of the matter in dispute i.e. cases should be based on the same material facts and the cause of action should be capable of setting a precedent in other cases
- the method of designating which case(s) should be nominated as the pilot action (i.e. other cases would be suspended or stayed while the pilot case is heard)
- the procedure for hearing the pilot case(s) e.g. whether ordinary procedural rules shall apply; whether the first instance decision should be made by a panel of judges notwithstanding any monetary limit that would enable the case to be decided by a single judge
- other procedural expects concerning the pilot case e.g. procedure in the event of the withdrawal of the case; costs; and potential availability of "appeal for the sake of the Law" provisions which exist elsewhere in Turkish Law
- identifying the judicial authority that will perform the appellate review
- arrangements for communication of the final decision in the pilot case to parties with an interest in the wider, associated issues
- handling of other cases suspended pending the final decision in the pilot case e.g. Whether all such cases should be transferred to a single location/court.

An update on the implementation of the pilot case procedure will be included in the project Final Assessment Report.

Reform of Procedure of Administrative Justice

In May 2021 the project team presented the Ministry of Justice with a report by a national team of experts entitled "Proposals for Amendments on Law No 2577 on Administrative Adjudication Procedure; Law No 2576 On Establishment and

Duties Of Regional Administrative Courts, Administrative Courts And Tax Courts; Law No 2575 On The Council of State."[27] The report makes a number of recommendations concerning a range of issues which include the following:

- the introduction of provisions into Law 2577 to accommodate pilot/group cases
- amendments to reflect the use of modern technology for the filing of cases and electronic notification
- the removal of uncertainties concerning the court in which the petition may be filed which may violate rights of access to justice
- the removal of ambiguities concerning the operation of article 11 of Law 2577, concerning requests for a review by a senior authority of a decision or action of the public administration
- the recording of submissions by the parties in minutes of court hearings and for the re-hearing of cases where a hearing had been conducted by an are not authorised or non-competent court
- clarification of requirements for the content of a judgment to clarify the position concerning costs and notification
- amendments of provisions concerning a change in the personality or status of parties e.g. the death of one of the parties
- introduction of a requirement for reasons to be given upon the refusal of an application for a stay of execution to enable appeals to be properly formulated
- the introduction of the provision to enable a full remedy action against a public authority to be filed without further notice in the event that an earlier court decision had not been fulfilled or implemented by the public authority (with the intended effect that this will emphasise the responsibility of the administration to comply with court orders)
- the introduction of provisions in the administrative procedure (rather than the reliance on civil procedure as at present) concerning the competence of individuals or bodies to be parties to administrative proceedings and concerning evidence in administrative proceedings
- improvement of provisions concerning notification to avoid the risk of loss of citizens' rights in certain circumstances
- clarification of the circumstances in which the RAC may remit a case back to the first instance court

However, it should be noted that these proposals are made as interim, maintenance measures for laws which are now out of date and create risks for access to justice, fair trial and the efficient, timely administration of justice. The introduction to the paper states that:

27 https://rm.coe.int/v2-report-on-proposals-for-amendments-on-law-no-2577-2576-2575-eng/native/1680a475a9

"While the basic laws of the administrative judiciary enacted in 1982 and numbered 2575, 2576 and 2577 were reformative regulations under the circumstances of the time, at the end of the 40 years that have been completed they have become insufficient to respond the needs of today. Within these 40 years, many provisions of the stated laws have been annulled by the Constitutional Court, and re-regulations have been made in accordance with these decisions or current requirements. This process has led to incoherence and vagueness in the structure and content of the laws. These issues may lead to problems in terms of rights to access to court and fair trial and creates challenges in adjudication activities to be conducted within certain standards and reasonable time. At this point, the main requirement is to re-regulate these three basic laws as a whole and the issues to be regulated until a study is conducted have been presented below. Undoubtedly, some of these require immediate regulations, while the rest are less urgent."

Since that report was completed, some significant amendments have already been made to Law 2577 in the Fourth Judicial Reform Package announced in July 2021[28]: These mainly concerned time limits:

- the time allowed for the public administration to respond to certain applications by citizens under Articles 11 and 13 of Law 2577 was reduced from 60 days to thirty days. This had the practical effect of reducing the delay for citizens in the event of a failure by the public administration to respond to the application ("administrative silence"), enabling them to proceed to issue a petition in the administrative courts more quickly
- a new 30-day time limit was been introduced for judges to write and sign a judgment after the decision has been made

A Fifth Judicial Reform Package is expected before the end of 2021 and, as stated previously, new provisions concerning pilot cases are expected by April 2022. An account of all the further amendments will be given in the Final Assessment Report.

Dialogue between judicial institutions and public administration

It is planned as part of the project to promote dialogue between the judiciary and public administration legal advisers to promote improvements in the "end to end" experience of citizens in the administrative justice system; the early resolution of disputes; and the efficiency and effectiveness of the administrative procedure.

Representatives of public authorities have already played a valuable part in a consultation forum concerning the role of the Ombudsman Institution and further opportunities for dialogue will be taken as the project proceeds, for example in relation to work on a guide to good administrative practices in relation to internal review.

28 Official Gazette No. 31451 dated 14/07/2021 announced Law No. 7331 on Amendment of Civil Criminal Code and Some Laws dated 8/7/2021

III. HUMAN RESOURCES: IMPROVING PROFESSIONAL CAPACITY

The Road Map contains the following activities aimed at improving the professional capacity of both the administrative courts judiciary and administrative court staff:

1. Introduce compulsory continuous professional development model for administrative judiciary linked to performance assessment and promotion system
2. Raise awareness and sensitivity for human rights in the administrative judiciary and apply ECHR and ECtHR / Turkish Constitutional Court case law more consistently in administrative justice cases
3. Provide tailored judicial training on new practices, and to support any measures to introduce greater specialisation within the administrative judiciary
4. Strengthen training activities for administrative court and Council of State staff
5. Continue to promote the principle of gender equality in administrative court personnel policy and practice
6. Identify opportunities for greater specialisation of the administrative judiciary in first instance courts and RAC's/ ongoing review/ adjustment of RAC Chamber structures
7. Increase availability of procedural guidance materials for court staff
8. Clarify job descriptions of registry and front office staff; consider opportunities for greater delegation of responsibilities to registrars and front office staff
9. Provide public relations and communication skills training for court staff

Training & guidance

The Judicial Reform Strategy states that:[29]

> "Today, continuous education is a success factor recognized globally. For this reason, it is important to improve the quality of not only legal education but also pre-service and in-service training in the judiciary. Thus, recommendations of the Commit tee of Ministers of the Council of Europe regarding the independence, impartiality and roles of judges clearly express to the Member States that judges should receive training according to the need be fore and after being appointed. Within this scope, pre-service and in-service training should be deep ened with a strategic approach."

It describes a series of activities to support an objective to improve the quality of pre-service and in-service training in the judiciary. These include the adoption

29 p.40

of a continuous and compulsory education model for the judiciary; ensuring that human rights law will be part of pre-service and in-service training programmes; and that legal methodology and legal argument modules are included within the programmes.

The project has a particular focus on support for in-service training for judges and court staff.

Training Needs Analysis - a Training Needs Analysis (TNA) to identify the current in-service training needs of administrative judges and court staff. Based on the TNA, a series of training modules are currently being developed, and these will form the basis of a major face-to-face training programme to be implemented in 2022.

The TNA was conducted between December 2019 and March 2020 and the methodology comprised a literature review, an online survey and two workshops for stakeholders. Two online questionnaires were formulated: one for administrative judges and one for court staff. 2000 questionnaires were sent to each group and response rates were relatively high for an exercise of this kind: 643 replies from judges and 1164 replies from court staff. The high turnover since 2016 and relative lack of experience in the target groups was apparent from the survey: 86% of judges and 49% of court staff has less than five years' experience.

Following the analysis, a Training Needs Assessment Report was published in September 2020 and this recommended the development of four 2-day in-service training modules as follows:

- Module 1 (for judges): Legal Reasoning and Judgment Drafting
- Module 2 (for judges): ECtHR and TCC case law
- Module 3 (for judges): Fair Trial and Reasonable Time in Administrative Justice
- Module 4 (for court staff): Case and Time Management

Work on the development of the modules and associated materials was started in June 2021 and is expected to be complete in the latter part of 2021. The following materials are in the process of being developed:

- Methodology Handbook for Adult Training and Techniques
- Training Agenda/Programme for trainer training
- Trainer's Book/Manual
- Training Agenda /Programme for the cascade training
- Trainee's book (participant guidebook)
- Cascade Training Power Point Presentations.

The materials are being developed by national trainers to secure ownership and sustainability of the project outcomes. A gender equality perspective was included in the assessment process and a gender consultant has contributed to the development of the curriculum.

It is intended that over 1000 people will be trained in 41 training events, including trainer training. The target for the piloting of materials is November 2021 and trainer-training events will be conducted in November 2021-January 2022 with a view to commencement of the programme of training during 2022. As agreed with the MoJ, for the longer term it is intended to increase the capacity of the RACs so that these courses could be delivered at a regional level after completion of the project. It is also envisaged that the modules will be adapted into an online or hybrid format after completion of the preparation of the materials for a face-to-face format. An existing online module on the Right to Property which has been adapted into Turkish by the Project on 'Strengthening the Capacity of Bar Associations and Lawyers on European Human Rights Standards in Turkey' will also be available for the administrative judges.

Awareness and sensitivity for human rights - Several Road Map activities are underway in support of the JRS Objective[30] to raise awareness of and sensitivity of human rights in the judiciary, focusing on the application of the jurisprudence of the European Court of Human Rights and Turkish Constitutional Court more consistently in administrative justice cases and greater conformity with the guidance of the CCJE and other CoE bodies.

In addition to the planned training module on ECtHR and TCC case law , the "Casebook on European Fair Trial Standards in Administrative Justice", originally published by the CoE and the Folke Bernadotte Academy (Sweden), was translated into Turkish in September 2020.

A second Casebook is also currently being drafted. It is specifically focused on Turkish context, containing judgments from the ECtHR, Turkish Constitutional Court and Council of State, and addressing such issues as: an independent and impartial court founded by law; the right to a tribunal / access to justice; right to a fair trial; principle of publicity; reasoned judgment; presumption of innocence; and reasonable time.

The first two of a series of round table meetings for administrative court judges on the case-law of the ECtHR and the application of the ECHR have also been held with participation from senior academics and representatives of the ECHR Editorial Directorate, Ministry of Justice, Council of State and Turkish Constitutional Court. Suggested methods of raising awareness of human rights issues that emerged from discussions included:

30 JRS Objective1.3

- more translation of selected decisions into Turkish
- more regular peer to peer practitioner discussions on human rights and related issues
- improved accessibility of precedent decisions for judges
- the creation and regular updating of thematic information notes/fact sheets
- the continuation of work to achieve greater consistency in Turkish administrative court decision making

The value of the existing Human Rights Commission, which operates within the Council of State was also recognised by delegates. The Commission was established in accordance with the "Directive on the Establishment and Duties of the Council of State Human Rights Commission", which came into force with the Presidency Approval no. 7556 dated 28/11/2013. Its purpose is to raise awareness and internalize the provisions of the ECHR, the decisions of the ECtHR and the decisions made by the Turkish Constitutional Court. Its working procedure is regulated by article 34/B of the Bylaw amended with the Official Gazette dated 06/03/2020, numbered 31060. It is convened under the Chairmanship of the Council of State; and consists of at least six council members to be appointed for a one-year period. Professional members, prosecutors and rapporteur judges may also be appointed. Since its founding the Commission has held regular meetings and scientific activities to raise awareness of human rights in the Council of State and administrative judiciary, to promote awareness of the case law of the Constitutional Court and the ECtHR, and to promote justice in general, and faster and more effective decisions.

As the Commission already periodically organises case law meetings, prepares reports and makes them available to administrative judges and it was suggested by round table delegates that the Commission could take a lead on creating an infrastructure for human rights information sharing network. The involvement of the Commission in this way was seen as likely to encourage the participation of administrative judges.

Specialisation of the administrative judiciary

Greater specialisation of the administrative judiciary has been under discussion in Turkey for some years and specialisation occurs at appellate levels in the chamber structure of the RACs and Council of State. The impact of specialisation is likely to be highest in Ankara, Istanbul and Izmir. These three cities deal with a high proportion of the Turkish administrative and tax court workload and have a number of administrative and tax courts all sharing the same building. The RAC chamber structures illustrate the range of the work handled by the administrative

courts: it has been estimated that the first instance courts in Ankara deal with to 229 distinct different types of case ranging from citizenship and migration issues, university and student affairs to zoning plans, property demolition and mining. It is not possible for an administrative judge to acquire expertise across the full range of subject matter. The potential benefits of further specialisation include:

- improved speed of case handling and consistency of decision-making
- improved court hearings and written judgments
- reduce pressure on appellate courts through raised standard of first instance decision making and reduced number of conflicting judgments on the same topic.

A significant development since the IAR was published was the announcement in the HRAP[31], inter alia, that specialised courts will be designated in respect of certain dispute types including zoning and expropriation. When further announcements are made concerning these new courts the project will seek to identify opportunities to support their implementation through, for example, arranging specialist seminars and events.

The HRAP also stated (Activity 3.4.b.) that the Council of Judges and Prosecutors will take steps to ensure that administrative and tax court judges will (along with civil and criminal judges) maintain and specialise in their functions rather than be transferred to a different area of law.

An issue that will require further attention as administrative and tax courts become more specialised is that of workload measurement or "case scoring". During project activities some courts have reported that they are heavily overloaded but, as the IAR noted:

> "Evidence about the pressures of the workload is anecdotal because there is no accurate scoring system to inform the distribution of work between courts and between judges. Currently cases are distributed between courts automatically using the UYAP system in order according to the matter in dispute. It does not reflect the amount of work in a case, taking into account such matters as investigation by experts or the work associated with an application for a stay of execution.
>
> An absence of accurate workload measurement and norms for judges and staff also magnifies the risk of crises occurring in particular courts due to an absence of early warning of emerging backlogs, due to sudden rises in workload or a sudden loss of judges and staff."

31 Goal 3.4 'Strengthening Specialist Courts'

The UYAP system is currently to set up to achieve the even distribution of the different case types between the courts in the larger cities. It also evenly distributes cases where the front office was not able to allocate a case code as the staff were not able to identify the case type. Through this method a roughly equal distribution of the workload between the courts although it does not take account of all the factors affecting the amount of work in the case, such as whether a stay of execution is sought in addition to the claim in the petition. However, in circumstances where only certain courts have the authority to hear certain types of dispute (for example in the case of State of Emergency Commission cases), the UYAP system is capable of allocating those cases only to courts with authority.

As specialised courts are introduced, a more sophisticated method of workload measurement is likely to be required to reflect the volume of work and complexity of different case types to ensure that these courts are not under-loaded or over loaded.

Gender Equality in Council of State, Rac and Administrative Court Personnel

The project aims to support of the Judicial Reform Strategy Activity 3.7 b) which states that "the principle of gender equality will continue to be observed in the recruitment of judges." The Road Map also states that "the principle of gender equality in administrative court personnel policy and practice will be promoted".

In an effort to assess the present position concerning gender balance within the administrative courts and Council of State, a gender expert has analysed the data contained in Council of State and selected RAC activity reports. The overall gender ratio of judges and prosecutors in the CoS, RACs, and Administrative Courts (administrative and tax courts combined) was shown in the Judicial Statistics for 2019 published by the Ministry of Justice but this information did not appear in the 2020 Judicial Statistics.

Council of State - In common with the administrative and tax courts, appointments of judges and prosecutors to the Council of State are made by the CJP. In accordance with Article 155 of the Constitution of the Republic of Turkey, (as amended on April 16, 2017; Act No. 6771) "three-fourths of the members of the Council of State shall be appointed by the Council of Judges and Prosecutors from among the first category administrative judges and public prosecutors, or those considered to be of this profession; and the remaining quarter by the President of the Republic from among officials meeting the requirements designated by law." A table the gender distribution of Council of State members, prosecutors and rapporteur judges 2018-2021 is at **Annex E**.

There is a slightly larger proportion of male rapporteur judges (women 218; men 236), a change from an equal distribution in 2019 (women 224; men 224). There is a relatively small number of prosecutors, of which the larger proportion are women (women 24; men 19 in 2021). However, there is a substantial gender imbalance in more senior roles: in 2021 there were 97 Council of State members and of these 21 were women and 76 men. This imbalance has been relatively consistent in each of the years shown in the table (2018 31/82; 2019 29/81; 2020 25/76).

Administrative and tax courts - The annual activity reports in the four RAC regions where the six pilot courts are located i.e. Ankara, Izmir, Istanbul and Gaziantep have also been examined. The level of detail on gender distribution in activity reports varies according to region. It has not been possible to isolate the data concerning the six individual pilot courts and RAC litigation chambers, so the data have been reviewed at the regional level.

Ankara RAC very helpfully publishes disaggregated data about the RAC, the first instance courts in Ankara and the courts other cities in the Ankara region: in Bolu, Eskişehir, Kastamonu, Kayseri, Kırıkkale, Sivas, Yozgat, Zonguldak. The other selected regions only provide data for the RAC and aggregated data for all the first instance courts in the region. In all cases the activity reports from 2016-2020 contain data for the current year but do not report year on year trends. Data are published concerning both judges and court staff but there is no analysis of those in more senior positions e.g. the gender balance at Court President and Chief Clerk levels.

The Ankara RAC data show an approximately equal gender balance between judges in Ankara itself although this fluctuates from year to year some extent, and women are in the majority among court staff in all courts. However, in some of the smaller cities in the Ankara region, a much smaller proportion of judges are women. In Eskişehir there is an approximately even balance – (2020: 10 female/12 male judges) whereas in others, female representation among judges is very low or non-existent (Kırıkkale 2020: 1 female, 7 male judges; Kastamonu 2020: 0 women, 7 male judges).

In Istanbul RAC there is a substantial gender imbalance with the number of female judges being approximately half that of male judges in 2020, up from around 35% in 2016. The data for Istanbul regional courts is not disaggregated by city but aggregate figures show the pattern is similar to the RAC: the number of female judges is around half the number of male judges across the region, but female court staff are in the majority.

In both the RAC and first instance courts in Izmir the gender balance is broadly similar to Istanbul (2020 data: RAC 91 male judges, 39 female judges; provincial courts 64 male judges, 44 female judges.) There is an approximately equal representation of men and women among court staff.

In Gaziantep RAC there was approximate parity among male and female judges in 2019 but markedly fewer women judges in 2020. In contrast to the regions in the west of Turkey, in both the RAC and the first instance courts a majority of court staff are male.

Charts illustrating the RAC gender ratio data are at **Annex F**.

After reviewing these data, the gender consultant advising the project is recommended that:

- all RAC regions should follow the Ankara RAC example and include disaggregated data for all courts within the region; activity reports should show year on year trend data in addition to the data for the current year; activity reports, including those of the Council of State, should show data concerning personnel in more senior positions e.g. court presidents, chamber presidents and chief clerks
- Measures to promote gender balance -The information obtained from the tables in annex reveals that women encounter problems in assignment or being candidate for high level positions, even if they exist in the administrative justice system. Such a structure does not comply with an understanding of a merit-based, efficient and accountable legal system. Under these circumstances, it becomes important to take measures that would ensure gender balanced representation at senior levels

IV. ENHANCEMENT OF QUALITY, PERFORMANCE AND PRODUCTIVITY

The Road Map contains the following activities aimed at improving the quality, performance and productivity of the administrative courts:

1. Promote greater international collaboration on administrative justice issues; explore international standards and alternative policy approaches to commonly experienced administrative justice challenges
2. Introduce greater standardisation of workflow in administrative court registries and front offices
3. Introduce guiding templates administrative court petitions
4. Promote good practices in judicial decision making, consistent with the recommendation of CCJE and other relevant European/ CoE bodies
5. Enhance the method of decision writing and strengthening the justifications for decisions
6. Improve accuracy of administrative court statistics to e.g. avoid multiple counting of transferred files; identify multiple cases all concerning identical issue; improve data collection concerning stages of administrative trial process
7. Review, refine and increase monitoring of interlocutory trial process target times in administrative courts

8. Introduce measures to ensure that institutions and organisations from which information and documents are requested during administrative court proceedings fulfil the requests as soon as possible
9. Improve the efficiency and effectiveness of court experts system in the administrative courts

International collaboration and international standards

As set out in the Road Map, the project aims to raise awareness within Turkish authorities of international standards and alternative policy approaches to commonly experienced administrative justice challenges through greater international collaboration, greater awareness of international standards and discussion with experts from other CoE member states. Although the pandemic has restricted opportunities for the exchange of international experience through study visits, conferences and face-to-face roundtables since the initial assessment was carried out, it has nevertheless been possible to continue international collaboration and benchmarking via other means. Examples include:

- translation of documents providing guidance on good practice into Turkish e.g. Council of Europe Handbook "the Administration and You"; Casebook on European Fair Trial Standards in Administrative Justice; Consultative Council of European Judges (CCJE) Opinion (2012) No. 15 on Specialisation of Judges
- The comparative review considering aspects of the work of ombuds institutions in 20 jurisdictions and the European Ombudsman and the main sources of guidance concerning the institution of the ombuds: the 'Paris Principles' and the 'Venice Principles'
- webinars for practitioners on e.g. human rights, ADR mechanisms and international approaches to the use of a pilot judgment/ group case procedure

If time and conditions allow an international symposium for up to 250 delegates will be held to discuss and share experiences in the reform of administrative courts and the member states of the Council of Europe. It is intended that the symposium will be planned and conducted in close collaboration with the Council of State, RACs and MoJ.

Supporting Administrative Court staff & Standardisation of Workflow

As the training needs analysis survey identified, around half of administrative court staff have less than five years' experience and the availability of training over that period has been limited. Law 2577, which sets out the administrative court procedure, has been described as "vague and incoherent,"[32] and is therefore

32 p. 32

of limited value as a guide for new staff and creates the potential for practice to vary from court to court.

In addition to the 'Case and Time Management' training course for court staff that is currently in preparation, work has been taking place on guidance materials for court staff.

Draft materials were originally developed by two pilot courts: Gaziantep First Administrative Court and Izmir Regional Administrative Court Third Administrative Litigation Chamber, to provide guidance for the first and second instances respectively. The guides contain job descriptions for the various court staff roles, an overview of the various stages of the procedure including references to use of the UYAP ICT system used in the courts and charts to illustrate the procedure. The guides have been supplemented by a series of 'job cards' providing a quick reference overview of all the steps in the procedure of first and second instance courts.

All the draft materials have been reviewed by a working group comprising judges and court staff and by a wider group of stakeholders. On the basis of the feedback received, the materials have been further developed for final approval by the CJP inspectors and by the Ministry of Justice.

It is anticipated that the materials will be available to support the training programme for court staff that will start in early 2022 and available both in hard copy and on the intranet as reference source in courthouses.

Workload measurement, Interlocutory target times and Statistics

The Road Map includes an activity 'to improve accuracy of administrative court statistics' and the project aims to support work by the Turkish authorities towards this end. The Initial Assessment Report stated the following:

> "The MoJ and CJP Inspectorate have both also identified that shortcomings in statistical information mean that it is not clear how well case time frames are being managed. The present system of numbering cases leads to some cases being counted multiple times and does not accurately identify multiple cases all concerned with an identical issue and which therefore take less time. There is also not enough published statistical data on the trial process. Statistics not currently available include:
>
> - The average completion time of the files
> - The average period before a case is allocated to a judge
> - The average period of handling after being referred to the judge
> - The period of fulfilment of interim decisions
> - The proportion of files with multiple interim decisions

- The average completion time of operations, such as investigation and expert examination
- Number of files with a hearing
- Average decision writing times.[33]"

Ministry of Justice Statistics - The Human Rights Action Plan states (Activity 2.4.a.) that "New steps will be taken towards further improving the practice of "Targeted Time-limits in the Judiciary" according to the results of detailed courthouse- and case-based analyses in a way that will ensure the completion of trials within a reasonable time." The Ministry of Justice is actively working on improvements, with the support of an EU project 'Technical Assistance for Increasing the Capacity and Quality of Judicial Statistics.'

RAC annual activity reports - Data concerning workload and various other aspects of the work of the administrative courts is also contained in RAC annual activity reports. As described later in this report[34] a selection of these reports has been reviewed by a media and communications consultant and recommendations have been made regarding the presentation of data in the reports themselves and the accessibility of these reports on the RAC websites.

Council of State statistics - A significant development took place in March 2020, when the Council of State introduced a new Case Law, Reporting and Statistics Unit, which has functions set out in internal regulations, *inter alia*, to:

- Prepare the annual activity report including statistical data on the decisions made by the litigation chambers and boards in the previous year,
- Monitor decisions to determine the decisions of a 'principal nature[35] and to carry out the necessary studies to inform the relevant people about the determined decisions, to prepare reports and documents,
- Determine and report on the contradictions of the case law between the decisions of the lawsuits or administrative and tax lawsuits boards
- Report on contradictions of case law between the decisions of the Council of State and Regional Administrative Courts,

33 The new (introduced in July 2021) 30-day statutory time limit for the writing of judgments after a decision is made will no doubt have an impact on average decision writing times.

34 s. 49-51

35 Principal decisions are decisions that have one or more of the following characteristics:

- Not only does it solve the concrete event, it contains analyses that can help resolve the disputes that will come out later on that subject, and it determines the basic criteria for the subject
- To have a case law characteristic in which a provision of the law in need of interpretation is interpreted beyond the implementation of the provision of the open law, therefore the judge has a subjective contribution.
- To guide the chambers or courts that rule for similar disputes
- Determination of principles on administrative law that will shed light on the practices of the administration
- To clarify issues that are not clear about the administrative procedure, that are in need of interpretation, and therefore to direct the litigation procedure

- Ensure that regular evaluation meetings are held between departments and boards and Regional Administrative Courts in order to prevent violations of case law,
- To follow the jurisprudence of national and international judicial authorities, to translate those deemed necessary, to prepare information notes on decisions deemed important for administrative justice,
- Obtain statistical data on the judicial activities of the Council of State and to ensure that these data are published regularly,
- Evaluate the quality of decisions to be published for their compliance with the "Council of State decision writing standards
- Identify and report on current developments in administrative law, tax law and administrative jurisdiction law, as well as the developments in other branches of law related to the field of duty of the Council of State.

The Unit became operational in October 2020. As its responsibilities are wide-ranging the work of the unit is important for several Road Map activities, and these will be referred to elsewhere in this report.

In relation to the Unit's work on statistics, during the course of 2021 it produced its first CoS Annual Activity Report, for 2020, containing both statistical data and the decisions made during the course of that year which have been designated as 'principal decisions. The Annual Activity Report was sent to all regional administrative courts and administrative and tax courts, and sections of the Report on principal decisions and statistics were published on the website.

Collaboration between Council of State and MoJ – The Council of State also agreed a protocol with the Ministry of Justice General Directorate of Criminal Records on 17 July 2020 within the scope of the "Increasing the Capacity of Forensic Statistics" project concerning the regular sharing of statistics with the public. Within the scope of this project, plans are underway to develop and agree a unified and integrated case code system between the Council of State and the RACs. At present CoS and RAC case codes are not compatible, and this has an impact on the accuracy and consistency of data collection. An effective system of decision codes is also crucial to enable accurate case and decision categorisation in a case law database.

Decision writing/ justification for decisions

Council of State Advisory Decision Writing Guide - Valuable progress has been made by the CoS in relation to good practice in decision writing since the start of the project. The Council of State implemented an Advisory Decision Writing Guide in all its litigation departments and boards with effect in January 2019 and published the guide in 2020. It comprises guidance on the style and format of written judgments and on good drafting practice, and it provides a variety of examples for

different categories of case. The aim of the Guide is to establish a common standard of decision writing and to increase the quality of the decisions. It is intended to be a living document, to be revised from time to time as necessary.

The new Case Law, Reporting and Statistics Unit has among its functions "to evaluate the decisions to be published on the Internet in terms of compliance with the "Council of State Decision Writing Guide". In this context, the unit has been anonymized seeing and publishing decisions made by departments and boards, and at the same time evaluating the compliance of the decisions with the Guide. Problems observed were reported and submitted to the Presidency. As a result, it has been observed that the Guidance is largely complied with and that systematic, correctly titled and more satisfactory decisions are now being written with the influence of the Guide, especially in cases where the CoS is the first instance court.

Decision writing: first instance courts and RACs - No equivalent guide is as yet being planned for use in the first instance administrative courts or RACs but, as stated previously, a new training module for judges 'Legal Reasoning and Judgment Drafting' is now close to completion. This will contain general guidance on aspects of drafting in addition to detailed discussion of legal reasoning issues. The UYAP system in the administrative courts has the functionality to enable users to create templates for the drafting of judgments and the potential benefits of this functionality will be further explored as the project proceeds.

The experience of the CoS suggests that a comparable guide would be a valuable innovation for the first instance courts and RACs.

Other relevant measures

The Road Map refers to certain measures contained in the Judicial Reform Strategy with which the project is not directly engaged but which nevertheless have the potential to have an important impact on the quality performance and productivity of the administrative courts.

JRS Activity 4.2.d) states that 'Measures will be developed in order to ensure that institutions and organizations from which information and documents are requested during the legal proceedings fulfil the requests as soon as possible. This is a particularly valuable activity for users of the administrative justice system, who are all engaged in disputes with public administration institutions and organisation. An important related development was introduced in the Fourth Judicial Reform Package in July 2021 when the time limit for public authorities to respond to a request for review by senior authority was reduced from 60 days to 30 days. This will hopefully ensure that public authorities respond to such requests more promptly and enable citizens to issue a petition in the administrative courts more

quickly in the event that the public authority does not respond, reducing the period of delay.

Further work will be carried out as part of the project on public administration internal review procedures and further information about this will be contained in the Final Assessment Report.

The reform plans of the Turkish authorities have now been further elaborated in the HRAP. Goal 3.6 of the plan "Improving the Quality of the Experts System and Ensuring Foreseeability" sets out a series of activities for comprehensive reform of the experts system by March 2022. Plans include improved regulation of experts, improved basic training, improved contracting arrangements and better-defined contractual requirements; performance evaluation; a more equitable system of allocation of casework; and the introduction of targeted time-limits for the Forensic Medicine Institute procedures.

These comprehensive reforms are welcome and will take place during the life of the project. The latest position will be reported in the Final Assessment Report. The project will provide a forum to discuss relevant issues to support these reforms if required.

V. ENSURING ACCESS TO JUSTICE AND ENHANCING SATISFACTION FROM SERVICE

The Road Map contains the following activities aimed at ensuring access to justice and enhancing satisfaction from service in the administrative courts:

1. Introduce a court user satisfaction survey tailored for use by administrative courts and arrange for surveys to be conducted at regular intervals. Objective 6.8
2. Raise public awareness on the work of administrative courts through proactive media relations activity (6.9) development of administrative court websites, proactive media engagement and community outreach e.g. courthouse visits for students
3. Promote greater citizen awareness of UYAP Citizen Portal and SMS e-notification service
4. Provide explanatory brochures concerning administrative court processes and make these available online JRS 6.10
5. Improve practices related to women's rights in the administrative justice system

Substantial progress has been made on actions concerning access to justice since the IAR was published. Research concerning media relations, communication and citizen awareness of the administrative courts was carried out in April and May

2021 and a court user survey was conducted in August/September 2021. Evaluation of the reports generated by these activities and discussion of the results with Turkish authorities is still underway. Working groups have been planning a series of explanatory brochures for citizens, including brochures to promote awareness and increase usage of the UYAP citizen portal and SMS e-notification service. This series of brochures is expected to be published before the conclusion of the project.

Media, public relations and community outreach

The Road Map aims to support Aim 6 of the JRS ("Ensuring Access to Justice and Enhancing Satisfaction from Service") in relation to the administrative courts. The introduction to Aim 6 states that:

> "Organizing programmes in the courthouses for citi zens, especially for students, is a method applied in many countries. Application of this method in our country is essential ... The development of judicial media relations in an institutional structure will help the society to get correct information. As a matter of fact, there is a strong link between the rule of law and the right of public information. It is important to establish effe ctive communication over media with the commu nity directly affected by judicial activities ... In the forthcoming period, personnel who are graduates of communica tion schools will be employed in media communica tion offices and the use of communication channels in a fast and intensive manner will be provided."

This approach is reflected in international standards. The CEPEJ "Guide on communication with the media and the public for courts and prosecution authorities"[36] published in 2018 stated that:

> "Among the executive, legislative and judicial powers, the last one is the least visible to citizens, essentially because it involves itself less in the public debate. As a result, justice is often poorly known and understood, while public confidence in justice depends on public understanding of the judicial activity ... Justice cannot avoid the media coverage of an increasing share of its activity and judicial institutions, nolens volens, must face communication challenges, taking into account the ever-growing requirements of transparency in state activities ... Journalists should be seen as partners, and not adversaries

36 "Guide on communication with the media and the public for courts and prosecution authorities" as adopted at the 31st plenary meeting of the CEPEJ Strasbourg, 3 and 4 December 2018 CEPEJ(2018)15

> of judicial institutions. These can implement a framework and establish conditions for their interactions with the media … Judicial communication should be part of a general strategy that should define the messages the judiciary wants to convey to the public, relate to information about the whole judicial activity, consider the use of all available means of communication and define the target audience for each type of communication."

The CEPEJ guide describes the purposes of judicial communication as including[37]:

- to inform about concrete activities of the justice system, in particular cases;
- to assert the role of justice in the society;
- to affirm the independence of judicial institutions, in particular when it is called into question;
- to promote respect for judicial institutions and their representatives;
- to reinforce or restore citizens' trust in judicial institutions;
- to take public positions on matters of interest to justice and society, if circumstances justify it;
- to improve the understanding of laws by the public;
- more generally, to strengthen the image of justice.

In order to produce recommendations concerning media, public relations and community outreach in the administrative courts the project appointed as specialist consultant to carry out an analysis and develop a draft action plan. A series of online and face-to-face meetings were held in April and May 2021 with the presidents of Ankara, Istanbul and Izmir RACs, the president of Ankara RAC 1st Administrative Litigation Chamber, the president of Ankara 2nd Administrative Court, the president of Izmir RAC 3rd Administrative Litigation Chamber, the president of Gaziantep 1st Administrative Court; relevant court staff; and members of Istanbul Bar Association (IBA) Administration and Tax Law Commission. During the meetings, the communication needs of citizens in the current system were explored, information on available services was collected and opinions were exchanged to improve public awareness of the work of the administrative courts. According to interlocutors, the administrative judiciary are not very well known by the general public, by the media, or even many lawyers in comparison with their knowledge of the criminal and civil court systems in Turkey. The work of the administrative courts is also not typically very newsworthy.

Practical problems reported by interlocutors concerning their engagement with court users were:

- Court users are generally ignorant about the procedures of the courts
- Many citizens come to the courts without having written their petitions and asking for help from front office staff.

37 Para. 234

- Many citizens try to get information about their proceedings by phone.
- A high illiteracy rate of court users is a significant problem encountered in rural areas.

In RACs, front office staff provide a face-to-face counter service for court abilities dealing with enquiries, the filing of documents and the payment of fees. Front office work can be stressful and repetitive, and a high turnover of front office staff was reported in Istanbul in particular. One of the most common problems at the courts is procedural errors in the petitions. Almost all courts proposed to have petition templates as a preventive tool to reduce their workload. The most common mistakes encountered in petitions were:

- Not indicating the date and number of the relevant administrative acts on the petitions.
- Missing attachments (especially those related to administrative acts)
- Incoherence between the introduction and conclusion of the petitions.
- Failure to express requests clearly and accurately.

According to pilot court staff, most questions of court users are about the duration of proceedings and the situation of their cases. For instance, in Ankara RAC, they receive around 100 calls per day from court users who want to follow up their cases. Although a good, online information system has been established (the UYAP Citizen Portal), public trust in the reliability of the information it contains is not yet fully established.

Media Communication Offices (MCOs) affiliated to RACs, were established pursuant to a Circular of the Ministry of Justice Directorate General of Criminal Affairs dated 22 December 2015. MCOs are composed of a spokesperson and officers. The Presidents of RACs are assigned as spokesperson, but at the time of the assessment only the President of Istanbul RAC had been called upon to make any statement. The number of officers varies in each RAC and are generally assigned to MCOs on a part time basis. Gaziantep and Istanbul RAC were awaiting functional, physical offices at the time the fact-finding exercise took place. The RACs currently rarely issue press releases about current issues or to correct any inaccurate reports in the media. Some of the courts receive interview requests from journalists from time to time. These are conveyed to RAC Presidents of the RACs and efforts are made to respond positively to these requests where possible.

Current format of RAC websites was developed by the Ministry of Justice Directorate General of Information Technologies (DG IT) in October 2020 and shared with RACs IT Units to ensure that all courts use the same visual corporate identity. RACs use the standard layout but they can insert information by creating new sections when necessary, so there is some variation in website content. The RAC IT Units of the administrative courts are responsible for the maintenance, and sometimes the content, of the RAC websites. The Some officers in these units are responsible for media relations as well. Each Unit also has one UYAP 'expert user'.

Each year, the Ministry of Justice sends information brochures and posters to the courts to make available to court visitors. Views expressed on the value of brochures generally varied in different RACs depending on their past experience. with court users, but the pilot courts are working with the project team to identify the contents of brochures likely to be most useful to citizens. These materials include information about legal aid, for which a central website is also available.

UYAP Citizen Portal - the UYAP Citizen Portal provides a valuable source of information about cases for litigants but often they will call or visit courts in the expectation that further information not available online may be obtained. One factor in this may be a lack of understanding of the various stages of the procedure and it is hoped that this problem can be mitigated by the additional guidance materials that are currently being developed. New materials can also promote awareness of the availability of the UYAP to further increase the proportion of court users who are taking advantage of it.

e-notification - interlocutors emphasised the value of the SMS e-notification system that is available to court users as it is a faster and more reliable service than notification by post. Pursuant to Article 7/a of the Notification Law No. 7201 titled "Electronic Notification"[38], which came into force in January 2019, lawyers registered with a bar association and most public authorities are among those to whom the notification must be served electronically. However in order to participate in the system, users must register and activate an e-notification address on the system in order to receive notifications and not all lawyers have done so. Judges have advocated the wider use of the service by practitioners in view of the efficiency gains that are achieved. The system is also available to unrepresented citizens in, you must also register for the service. Providing further information to court users emphasising the benefits of the service can potentially assist with this.

Community Outreach Activities - pilot courts have positive past experience of community outreach activities although the pandemic has inevitably curtailed these for a period. Ankara and Istanbul RAC's have both hosted student visits from universities and high schools in the past and all RACs are planning internship programs for students of law faculties.

The report of the analysis and a draft action plan are currently under discussion with the MoJ and a fuller account of the agreed plans will be set out in the Final Assessment Report. A number of recommendations have been made in support of two strategic aims:

38 By Article 48 of "Law No. 7101 on the Amendment of the Execution and Bankruptcy Law and Some Laws" published in the Official Gazette No. 30361 on 15.03.2018 amendment made to Notification Law No. 7201, Article 7/a titled "Electronic Notification", which made electronic notifications to lawyers registered with the bar association mandatory. This amendment came into force on 01.01.2019. https://www.resmigazete.gov.tr/eskiler/2018/03/20180315-28.htm

- To facilitate access to justice and to raise awareness of and trust of the public in the administrative judiciary system
- To enhance the quality of reporting on administrative judiciary and of the relations between the media and the administrative judiciary.

Recommendations presently under discussion include the following:

- increased availability of guides, brochures and templates both in hard copy and online with alternative formats for those with special needs (e.g. special versions for people with visual impairments and in different languages for migrants/refugees)
- increased publicity e.g. posters and front offices to promote the benefits of online services such as the UYAP Citizen Portal and SMS e-notification service
- possible use of 2D animated movies with infographics and short videos available online or on digital screens available in courthouses
- reorganisation of RAC websites with a view to providing more information and generally achieving a more court-user oriented approach. Options include more guidance materials for court users, virtual tours of courthouses, and easier access to the series of annual activity reports
- outreach activities for sections of the community e.g. students and young lawyers
- additional resources for legal journalists to improve frequency and accuracy of coverage of the administrative courts and the media
- further professional development for communications teams
- training for RAC Presidents as media spokespersons

Court user satisfaction survey

The Road Map includes activity an Introduce a court user satisfaction survey tailored for use by the administrative courts, reflecting a JRS (Objective 6.8) objective to introduce regular surveys in all courts. In a significant achievement for the project since the IAR was published, a court user survey has been carried out in the pilot courts in Ankara, Istanbul, Izmir and Gaziantep as part of the programme of pilot court activities and the final results are presently being analysed.

Survey methodology - The survey was planned and implemented by international consultants in collaboration with a national research and consulting company[39]. The survey format and methodology were informed by the CEPEJ 'Handbook for Conducting Satisfaction Surveys Aimed at Court Users in The Council of Europe's Member States'[40]. The Handbook provides an adjustable 'kit' with a standard model that

39 BORDO Research & Consulting

40 CEPEJ-CoE (2016) Handbook For Conducting Satisfaction Surveys Aimed At Court Users In The Council Of Europe's Member States - CEPEJ Studies No. 25 https://rm.coe.int/168074816f

users can adapt according to their needs, resources and priorities. The kit includes two basic questionnaires: one aimed at lay court users and another aimed at lawyers. These template questionnaires were adapted for the purposes of the project taking account of the particular Turkish administrative court context. Factors which were considered included:

- the citizen v. public administration nature of administrative court disputes;
- the Turkish administrative and tax courts usually make decisions on the papers and court hearings take place in less than 10% of cases
- administrative and tax courts usually sit in panels of three judges although single judges may deal with cases below a certain monetary threshold;
- 60% of the entire administrative court caseload is heard in Ankara
- administrative court users have certain online resources available to them e.g. the UYAP Citizen Portal and SMS e-notification service
- citizens who issue petitions in the administrative courts have usually already had experience of an adverse decision/ act taken by the public administration

The questionnaires were used as the basis for the quantitative element of the survey. The questionnaire format was tested during a pilot exercise on 29-30 June 2021 in the Ankara administrative and tax courts, when 41 participants (25 lawyers and 16 citizens) were interviewed. Following the pilot, adjustments were made to the questionnaire format and experience of the interviews was used to inform training for the field staff who were to take part in the full implementation of the survey.

Full implementation took place between 5-14 July 2021 when face-to-face interviews were conducted with a total of 614 lawyers and 390 citizens attending courthouses in Ankara, Gaziantep, Istanbul and Izmir.

The quantitative survey was supplemented by a qualitative survey comprising a series of structured interviews conducted in August 2021 with participants selected for their knowledge and experience of administrative and tax courts, and of administrative law; and by a focus group discussion with a selected group including lawyers, academics, citizens with administrative litigation experience, retired administrative judges and representatives of civil society organisations operating in the field of law.

Practices related to women's rights in the administrative justice system

The JRS states that "arrangements for measures in favour of women in access to justice are of great importance."[41] Objective 6.4 of the Strategy states that "Practices related to women's rights in the justice system will be improved" and this

41 Judicial Reform Strategy p.67

objective is reflected in the Road Map. Against this background it is hoped that the court user satisfaction survey will provide insights into the particular needs of women from the administrative justice system. Survey results are still subject to ongoing analysis, but early indications are that the data do disclose some differences between the experiences of men and women which may help to inform future policy development.

A total of 117 women, representing 30% of the total, were interviewed for the court user survey. The survey data indicated that women were more likely than men to have involvement in certain categories of case e.g. public official: employment/personnel cases (m28.5%/ f32.2%); education/student affairs cases: (m2.6%/8.7%); monetary rights/annulment or renewal of the contract (m4.4%/ f8.7%); pensions (m 3.0%/ f6.1%) and full remedy actions (m2.6%/ f4.3%.) Men were more likely than women to have cases concerning zoning/property, tax/duties and traffic transport cases.

Women were substantially more likely than men to have attempted to exercise their rights to internal review by the public authority ('review by a senior officer') before issuing a petition (m54.9%/ f65.8%). They were also more likely to say that they did not find it easy to pursue a case in the administrative courts both in relation to their own case (m29.9%/ f41.7% found it difficult or very difficult) or in general (m30.2%/ f41.1% found it difficult or very difficult).

Women were much more likely to consider the possibility of finding out both about their rights difficult or very difficult (m53.9/ f73.5%) and finding out about procedure (m49.2%/ f64.6%).

Nevertheless, more women than men had found information about their problems and rights before going to the courthouse (m61.3%/ f70.1%). They were more likely than men to have obtained information or help from a variety of sources: lawyer (m65.9%/ f69%); a relative or acquaintance (m8.8%/ f23.8%), internet resources (m33.5%/ f50%) court staff (m5.3%/ f11.9%, and books (m2.9%/ f1.5%). More women than men had used the UYAP Citizen Portal (m66.4%/ f75.7%) and court websites (m4.5%/ f7.8%). although court websites were not heavily used as a source of information by either sex. Of those interviewees who had not used the UYAP Citizen Portal, women were more likely to state they did not know about it (m24.2%/ f34.6%). Many more women than men said that they would prefer more front office staff (m42.4%/ f65.8%) and more booklets/ brochures (m34.8%/ f39.5%).

Subject to further analysis of the data, it would appear likely that some aspects of the Road Map activities will be particularly helpful to women e.g.

- work to promote best practice in the operation of internal review procedures by public authorities
- the provision of more information and templates both in front offices and online about administrative court procedures
- efforts to promote awareness of the UYAP Citizen Portal

Consideration can also be given to other possible measures likely to be particularly beneficial to women and promote gender equality e.g.

- more data collection by the courts and review of caseload data collected by the Ombudsman Institution to compile additional data about categories of case more likely to affect women's rights
- review of staffing levels in front offices
- providing further tailored information in the categories of case more likely to involve women

Guidance materials for citizens

The need for improved information and guidance materials for citizens and for administrative and tax petition templates was identified in the in-depth review at the start of the project and referred to in the IAR. The subsequent analysis for the draft media and communications strategy and of the court user survey satisfaction results have reinforced the need for additional materials.

Examples of guidance materials for citizens presently in use in the administrative courts in France and in England and Wales were translated into Turkish to provide a comparison with international practice.

A series of detailed guides on aspect of administrative court and tax court procedure have been drafted by teams from the pilot courts in Ankara and Istanbul and the pilot courts have been supported by two working groups, one focused on administrative procedure and the other on tax procedure. RACs and the Ministry of Justice have been consulted on the draft materials and the final text will be subjected to wider consultation with stakeholders. These detailed guides will be of particular value to attorneys and professional users of the system.

The media and communications analysis is also generated a concrete list of shorter guides and brochures the general public, and arrangements are in hand for this material to be drafted. These materials will be made available in hardcopy in front offices and online. Discussions are also under way concerning the merits of supplementing these materials with short animations with infographics to be made available on screens in front offices, online videos and special versions alternative formats for those with special needs.

It is anticipated that these materials will improve access to administrative justice for citizens, but also achieve efficiency gains for the courts by:

- reducing the time spent by court staff providing repetitive information
- providing citizens with a clearer overview of the stages of the procedure, potentially reducing the number of follow-up enquiries to the courts
- promoting the advantages to citizens of using online services (UYAP Citizen Portal and SMS E-Notification Service) to increase the number of users;
- reducing the number of errors encountered by the courts resulting in petitions being rejected

It is hoped that these new guidance materials will be ready for implementation in pilot courts in early 2022. In order to observe the impact of the new materials on the number petitions which are rejected after preliminary examination of the case by a judge, pilot courts have conducted two data collection exercises to establish a baseline i.e. to identify the proportion of petitions that are typically rejected after preliminary examination before improved guidance materials are introduced. If time allows in the project, further data will be collected after the introduction of the brochures, guides and templates in pilot regions to observe any impact on rejection rates.

VI. COUNCIL OF STATE: INSTITUTIONAL CAPACITY & UNITY OF CASE LAW

The Road Map contains the following activities aimed at strengthening the institutional capacity of the Council of State and ensuring the unity of case law. These reflect objectives and targets that the Council of State has set itself in its Strategic Plan 2019-2023:

1. Ensuring the unity of case law (Strategic Plan Objective 1, Target 2)
2. Raising awareness of public administrations on the advisory and review functions of the CoS (Strategic Plan CoS Objective 2, Target 1)
3. Strengthening CoS institutional communication and collaboration with national judicial institutions and universities; strengthening communication and co-operation with international and foreign judicial institutions (Strategic Plan CoS Objective 4)

Unity of Case Law

Caselaw plays an important part in the administrative justice system in Turkey, but inconsistent judicial decision-making case law have risked damaging public trust in the administrative judiciary and have undermined legal certainty i.e. the expectation that decisions delivered by the administrative courts are consistent with decisions concerning other disputes with similar characteristics. Following the in-depth review at the start of the project the IAR noted that:

> "Promoting greater legal certainty through the expectation of similar decisions in similar cases, has been emphasised as a reform priority by interlocutors. At present inconsistent decisions are being made by different chambers within the Council of State and by different courts in the same location.... There is also perceived to be a communication problem within and between the courts themselves concerning new case law in in drawing attention to significant new decisions, and this is said to increase the number of conflicting decisions. Many attorneys and public administration lawyers use specialist software to search for

jurisprudence relevant to particular cases but find difficulty if search results identify conflicting decisions."

The existing, long-standing mechanism to resolve conflicts between the decisions of Council of State 'Assembly on the Unification of Conflicting Judgments' chambers was briefly described in the IAR. The appropriateness and adequacy of this mechanism have been the subject of long-standing debate in Turkey but the restructuring of the administrative court system and the creation of the RACs represented a major change in the appeal structure in 2016 and meant that new approaches to ensure case law unity were essential. Decisions made by RAC litigation chambers on appeals from first instance courts are final in most cases, subject to certain exceptions where a third instance appeal to the Council of State is available. There is now therefore the potential for conflicts to emerge between the final decisions of different litigation chambers of the RACs and between regions. Conflicts may also emerge between RAC and Council of State decisions.

RAC Presidents chair a Regional Administrative Board of Presidents whose functions include a duty to address conflicts or issues by submitting them to the Council of State, adding its own opinion where appropriate. Further clarification of this procedure was provided by a further amendment to the law on 17/10/2019 which provided that such requests to the Council of State should be submitted to the Boards of the Administrative or Tax Litigation Chambers, depending on the subject and that a decision should be made by the relevant Board within three months.

Mechanisms to resolve case law conflicts or issues which are identified are clearly essential, but there is a great deal of potential in improving efficiency and reducing the caseload through work to prevent or reduce the emergence of discrepancies in the first place. Much can be achieved through changes in practice and procedure, with a particular emphasis on improved communication and collaborative working.

As stated elsewhere in this report, international practices have been explored, such as the Functioning of Avis Contentieux (Judicial opinion) and Jonction d'affaires (joining cases) procedures introduced in the French system, and the "pilot judgment procedure" applied by the European Court of Human Rights (ECtHR). The HRAP has set out reforms which are also expected to have an impact including a concrete timetable for the introduction of a pilot case/ group case procedure in Turkey and increased specialisation of first instance administrative courts.

Case Law Reporting and Statistics Unit - perhaps the most significant development in ensuring the unity of case law since this project was commenced is the creation of the new Unit, which became effectively operational on 1 October 2020. The unit is relatively small: it comprises 1 senior rapporteur judge and 2 rapporteur

judges (out of a total of around 500 rapporteur judges appointed to the Council of State). However, a liaison judge has also been appointed in each of the 12 Council of State chambers to collaborate with the unit. The wide-ranging functions of the unit are described earlier in this report, when its activities concerning statistics are discussed. It has already been able to achieve a great deal despite the constraints placed by the pandemic.

The Unit produced the Annual Report of the Council of State for 2020 containing, in addition to statistics, the decisions of a principal nature given by the Council of State departments and boards in the most commonly encountered cases, identified through collaboration with liaison judges within each Council of State chamber. As a first report of its kind, it contained both 2020 decisions and others from previous years which were considered to be particularly useful to include. A hard copy of the report was distributed to all RACs in first instance administrative and tax courts and other stakeholders, and the principal decisions have also been made available on the Council of State website.

It has also begun work on the systematic preparation of Decision Bulletins, focusing on the case law in particular specialist areas of administrative law. The Bulletins replace a previous system in which decisions were published in a Journal and draw together the jurisprudence in a particular area of the law. It is anticipated that these will be a useful source for judges, public authorities and legal professionals. The first of these focused on Customs Duties and the second focused on all the decisions related to unification of case law by the Case Law Unification Board between the years 1965-2021. Planning for future Bulletins in the series is underway. These are published on the Council of State website.

The unit also works on increasing the availability of Council of State decisions on its website for the benefit of the public. In accordance with an internal Council of State "Directive on the Publication of Council Decisions" published on 25 December 2020, decisions made by the Council of State litigation departments and boards must be published regularly on the website. A total of 23,444 decisions had previously been published before December 2020 and by in 2021 a total of 60,000 decisions were added.

It also has a duty to "identify and report on case law violations between the decisions made by the Litigation Departments or the administrative and tax litigation departments boards." At a meeting held between the representatives of the departments and the board in February 2021, outlier decisions were identified and reported to the unit, and as a result of discussions violations were identified concerning 14 topics. Four of these were immediately referred to the General Assembly on the Unification of the Judgments of Council of State by the President of the Council of State. On each of these topics a decision was delivered during the meeting of Case Law Unification Board on 15/03/2021.

There is no prescribed procedure at present for liaison between RACs and the Council of State on case law issues, but the Unit also has a function "To ensure regular evaluation meetings between the departments and boards and the Regional Administrative Courts in order to prevent violations of jurisprudence". The Unit has arranged for the first of these meetings, taking place at Istanbul RAC, to focus on zoning and customs tax disputes. The meetings build on previous practice of periodic visits by representatives of the Council of State to RAC regions and introduce a more thematic and focused agenda. It is intended that the meetings will explore case law discrepancies and particular challenges in a particular subject area and minutes of the discussions will be produced and shared with interested parties. The meetings provided a forum to address and consult on case law discrepancies and particular challenges related to the particular topic. The "Reports of Conclusions" of the discussions prepared at the end of the meetings were printed and shared with all participants.

Another opportunity for collaboration, and greater integration between the Council of State and RACs, concerns case codes. The Council of State has its own case code system, which is not compatible with the existing case codes of the incoming files from first and second instance administrative and tax courts. Unification of the case codes of the CoS in an integrated case-code system is key to increasing the efficiency and accountability of judicial services with more accurate data collection and workload measurement. A common system is also crucial to the establishment of an effective case law database, which is a priority for the Council of State to ensure that up to date and accurate information is available to the public. Plans for development are the database are in hand in collaboration with UYAP and an update on the progress of work will be given in the project Final Assessment Report.

CONCLUSION

Although the Covid-19 pandemic has inevitably impacted on the project since the Initial Assessment Report in July 2019, it has nevertheless been possible to make substantial progress on a number of project activities. Progress has been made possible with the support and flexibility of stakeholders as it became necessary to adjust to online working. The expertise of national experts in various fields has also been valuable over this period. Particular thanks must be paid to the judges and staff of pilot courts and to working group members who have produced much work in difficult circumstances and without whom a number of important project outputs would not have been possible.

Project achievements so far include the following

- A Road Map for an improved Administrative Justice System 2020-2023 has been finalised and agreed after consultation with all relevant stakeholders. This draws together activities contained in the Judicial Reform Strategy, Human Rights Action Plan and Project Description of Action to provide strategic overview of reform activities focused solely on the administrative justice system
- A tailored court user survey methodology based on CEPEJ guidance and tailored for the Turkish administrative courts has been developed and quantitative survey has been conducted through face-to-face interviews with court users in Ankara, Istanbul, Izmir and Gaziantep, structured interviews and focus group discussion.
- A comprehensive review of Laws 2575, 2576 and 2577 (which set out the institutional framework and procedure of the administrative courts) have been completed and published on the project website.
- A Training Needs Analysis concerning the in-service training needs of administrative court judges and staff has been completed and the programme of training modules identified
- A Comparative Review on Ombuds: Recommendations of Action for the Turkish Ombudsman and Guidelines for the Ombudsman and Public Authorities' was published in June 2021 and these recommendations are informing the drafting of the Ombudsman Institutions Next Strategic Plan

- in circumstances where planned face-to-face meetings and seminars were not possible due to health considerations, stakeholders and experts adapted to online working on a range of issues including alternative dispute resolution, comparison of international approaches to workload management in administrative courts and raising awareness of human rights jurisprudence.
- Translation into Turkish of best practice guidance on administrative justice issues and relevant recommendations and resolutions of the Committee of Ministers

A great deal of work is in progress part completed and has been referred to briefly in this report but will achieve fruition in the latter phase of the project. Further information will be available in additional publications and in the project Final Assessment Report. Work in progress includes:

- Finalisation of the analysis of the results of the court user survey and discussion of the findings with the Ministry of Justice.
- Finalisation of the training materials for the four new training modules have been developed, ready for a national training programme for over 1000 Judges and staff
- The introduction of a new series of guides concerning administrative court and tax court procedure and a series of petition templates to assist court users
- The introduction of a new series of quick reference brochures and other materials to assist citizens and to support efforts to increase usage of the (already successful) online services: the UYAP Citizen Portal and SMS E notification service
- A Caselaw handbook tailored for Turkish needs, focusing on ECtHR, Turkish Constitutional Court and Council of State Case Law
- Finalisation of a media and communications action plan for the administrative courts, agreed with the Ministry of Justice
- Ongoing work on gender equality, building on expert advice and data from the court user survey and analysis for the media and communications action plan

Other project activities have yet to be started. For example, project activities in support of the Road Map include the drafting of a Handbook for public authorities on European standards on internal review adapted to Turkish system, informed by a series of consultation meetings with public administration stakeholders.

The project is also taking place during an active period of reform of the administrative justice system. Important development occurred which will promote the unity of case law. The legal amendments introduced in October 2019[42] clarified and introduced a timetable for the procedure by which RAC Boards of Presidents may submit case law issues for guidance to the Administrative or Tax Litigation Chambers of the Council of State. The establishment by the Council of State, in March 2020, of the new Case Law, Reporting and Statistics Unit, is already producing valuable results which have been described in this report.

The Fourth judicial reform package enacted in July 2021 reduced time limits for public authorities to reject by keeping silent (tacit rejection) the applications by citizens and introduced a 30-day time limit for drafting reasoned judgments after a judicial decision is made. These are helpful reforms to expedite procedures from the perspective of citizens.

The Human Rights Action Plan published in April 2021 and its supporting Implementation Schedule sets a timetable for new specialised courts for zoning and expropriation, and further announcements are expected shortly concerning plans referred to in the JRS to introduce or reform 'peace commissions' as an alternative dispute resolution method to seek to resolve disputes between the public administration and citizens.

The Road Map for an improved Administrative Justice System 2020-23 is intended to be a living document and will be updated to take account of these various developments and any new announcements.

The Final Assessment Report will describe the latest position on all aspects of the Road Map activities and look beyond the present 2020-2023 timeframe or making recommendations for the following strategic planning period based on the output from current and future project activities.

42 Law No. 7188 (published in Official Gazette dated 24 October 2019, No. 30928) made amendments to Article 3/C of Law No.2576 (Act on The Establishment and Duties of Regional Administrative Courts, Administrative Courts, and Tax Courts).

ANNEXES

Annex A Administrative Courts Map

Annex B List of Regional Administrative Courts

REGIONAL ADMINISTRATIVE COURTS		JURISDICTION[43]	
Adana	3 Administrative Law Chambers	Adana	3 Administrative Courts (covering Osmaniye)
			2 Tax Courts (covering Osmaniye)
		Mersin	2 Administrative Courts
			2 Tax Courts
	2 Tax Law Chambers	Hatay	2 Administrative Courts
			1 Tax Courts
Ankara		Ankara	28 Administrative Courts
			7 Tax Courts (covering Bolu)
		Bolu 1 Administrative Courts (covering Düzce)	
		Kayseri	2 Administrative Courts (covering Nevşehir)
			1 Tax Courts (covering Nevşehir, Yozgat, Kırşehir)
		1 Yozgat Administrative Courts (covering Kırşehir)	
		Kırıkkale	1 Administrative Courts
			1 Tax Courts
		Sivas	1 Administrative Courts
			1 Tax Courts
		Zonguldak	1 Administrative Courts (covering Bartın)
			1 Tax Courts (covering Kastamonu, Bartın, Çankırı, Karabük, Düzce)
		Kastamonu Administrative Courts	
Bursa	3 Administrative Law Chambers	Bursa	3 Administrative Courts (covering Yalova)
			2 Tax Courts (covering Yalova)
	2 Tax Law Chambers	Balıkesir	2 Administrative Courts
			1 Tax Courts (covering Çanakkale)
		Çanakkale 1 Administrative Courts	
		Eskişehir	2 Administrative Courts
			1 Tax Courts (covering Kütahya)
		1 Kütahya Administrative Courts	
		Sakarya	2 Administrative Courts (covering Bilecik)
			1 Tax Courts (covering Bilecik)
Erzurum	3 Administrative Law Chambers	3 Erzurum Administrative Courts (covering Ağrı, Kars, Iğdır, Ardahan, Bingöl, Bayburt)	
		2 Erzurum Tax Courts (covering Ağrı, Kars, Iğdır, Ardahan, Bingöl, Tunceli, Erzincan, Gümüşhane, Bayburt)	
		1 Erzincan Administrative Courts (covering Gümüşhane, Tunceli)	
	1 Tax Law Chambers	4 Van Administrative Courts (covering Bitlis, Hakkari, Muş)	
		1 Van Tax Courts (covering Bitlis, Hakkari, Muş)	

43 The number of the First Instance Courts is based on the 2020 Activity Reports of the RAC's.

REGIONAL ADMINISTRATIVE COURTS		JURISDICTION[43]	
Gaziantep	5 Administrative Law Chambers	Gaziantep	3 Administrative Courts (covering Kilis)
			2 Tax Courts (covering Kilis)
		Diyarbakır	3 Administrative Courts
			1 Tax Courts
		Batman	1 Administrative Courts
			1 Tax Courts Siirt)
		Mardin	3 Administrative Courts (covering Şırnak)
			1 Tax Courts (covering Şırnak)
		1 Siirt Administrative Courts	
		1 Adıyaman Administrative Courts	
		Kahramanmaraş	1 Administrative Courts
			1 Tax Courts
	2 Tax Law Chambers	Şanlıurfa	2 Administrative Courts
			1 Tax Courts
		Malatya	2 Administrative Courts
			1 Tax Courts
		1 Elazığ Administrative Courts	
İstanbul	10 Administrative Law Chambers	İstanbul	14 Administrative Courts
			15 Tax Courts
	6 Tax Law Chambers	Edirne	1 Administrative Courts (covering Kırklareli)
			1 Tax Courts (covering Kırklareli)
		Kocaeli	2 Administrative Courts
			2 Tax Courts
		Tekirdağ	2 Administrative Courts
			1 Tax Courts
İzmir	7 Administrative Law Chambers	İzmir	6 Administrative Courts
			4 Tax Courts
		1 Uşak Administrative Courts	
	3 Tax Law Chambers	Aydın	2 Administrative Courts
			1 Tax Courts
		Denizli	1 Administrative Courts
			1 Tax Courts
		Manisa	2 Administrative Courts
			1 Tax Courts (covering Uşak, Kütahya)
		Muğla	3 Administrative Courts
			1 Tax Courts
Konya	5 Administrative Law Chambers	Konya	3 Administrative Courts (covering Karaman)
			2 Tax Courts (covering Niğde, Aksaray, Karaman, Afyonkarahisar)
	2 Tax Law Chambers	Antalya	5 Administrative Courts
			2 Tax Courts (covering Burdur, Isparta)
		2 Isparta Administrative Courts	
		1 Afyonkarahisar Administrative Courts	
		1 Aksaray Administrative Courts (covering Niğde)	

REGIONAL ADMINISTRATIVE COURTS		JURISDICTION[43]	
Samsun	4 Administrative Law Chambers	Rize	1 Administrative Courts (covering Artvin)
		Samsun	3 Administrative Courts (covering Amasya, Sinop)
			1 Tax Courts (covering Amasya, Sinop, Tokat)
		Çorum	1 Administrative Courts
			1 Tax Courts
	2 Tax Law Chambers	Ordu	2 Administrative Courts (covering Giresun)
			1 Tax Courts (covering Giresun)
		Tokat	1 Administrative Courts
		Trabzon	1 Administrative Courts
			1 Tax Courts (covering Artvin, Rize)

Annex C List of Translated Materials

	Links to Translated Recommendations of the Council of Europe Committee of Ministers stated in the Council of Europe Handbook "Administration and You"
1	Recommendation CM/Rec(2015)5 on the processing of personal data in the context of employment https://rm.coe.int/istihdam-uygulamalar-kapsam-nda-kisisel-verilerin-isleme-tabi-tutulmas/1680a4397b
2	Recommendation CM/Rec(2010)13 on the protection of individuals with regard to automatic processing of personal data in the context of profiling https://rm.coe.int/profilleme-uygulamalar-kapsam-nda-kisisel-verilerin-otomatik-isleme/1680a4396d
3	Recommendation CM/Rec(2007)4 on local and regional public services https://rm.coe.int/yerel-ve-bolgesel-kamu-hizmetleri-hakk-nda-uye-devletlere-yonelik-cm/1680a4396b
4	Recommendation Rec(2004)20 on judicial review of administrative acts https://rm.coe.int/idari-islemlerin-yarg-denetimine-iliskin-olarak-uye-devletlere-yonelik/1680a43969
5	Recommendation R(2000)6 on the status of public officials in Europe https://rm.coe.int/avrupa-da-kamu-gorevlilerinin-statusune-iliskin-olarak-uye-devletlere/1680a43967
6	Recommendation R(97)8 concerning the protection of personal data collected and processed for statistical purposes https://rm.coe.int/istatistiksel-amaclarla-toplanan-ve-islenen-kisisel-verilerin-korunmas/1680a43966
7	Recommendation R(97)7 on local public services and the rights of their users https://rm.coe.int/yerel-kamu-hizmetleri-ve-kullanicilarin-haklarina-iliskin-uye-devletlere/1680a43964
8	Recommendation R(97)5 on the protection of medical data https://rm.coe.int/tibbi-verilerin-korunmasi-hakkinda-uye-devletlere-yonelik-bakanlar/1680a43952
9	Recommendation R(95)4 on the protection of personal data in the area of telecommunication services, with particular reference to telephone services https://rm.coe.int/r-95-4-sayili-tavsiye-karari-ozellikle-telefon-hizmetlerine/1680a4170d
10	Recommendation R(91)10 on the communication to third parties of personal data held by public bodies https://rm.coe.int/r-91-10-say-I-tavsiye-karari-kamu-kuruluslarinin-elindeki-kisisel/1680a4394f
11	Recommendation R(91)1 on administrative sanctions https://rm.coe.int/idari-yaptirimlar-hakkinda-uye-devletlere-yonelik-bakanlar-komitesi/1680a4394d
12	Recommendation R(89)8 on provisional court protection in administrative matters https://rm.coe.int/idari-konularda-gecici-mahkeme-korumasina-iliskin-uye-devletlere/1680a4394c
13	Recommendation R(87)16 on administrative procedures affecting a large number of persons https://rm.coe.int/cok-sayida-kisiyi-etkileyen-idari-usuller-hakkinda-uye-devletlere/1680a43934
14	Recommendation R(87)15 regulating the use of personal data in the police sector https://rm.coe.int/r-87-15-sayili-tavsiye-karari-polis-sektorunde-kisisel-verilerin/1680a43933

	Links to Translated Recommendations of the Council of Europe Committee of Ministers stated in the Council of Europe Handbook "Administration and You"
15	Recommendation R(86)1 on the protection of personal data used for social security purposes https://rm.coe.int/tavsiye-karari-no-r-86-1-sosyal-guvenlik-amaciyla-kullanilan-kisisel/1680a43932
16	Recommendation R(85)13 on the institution of ombudsman https://rm.coe.int/tavsiye-karari-no-r-85-13-ombudsman-kamu-denetciligi-muessesesi/1680a43931
17	Recommendation R(84)15 on the public liability https://rm.coe.int/r-84-15-sayili-tavsiye-karari-kamu-sorumlulugu-ile-ilgili-uye/1680a43930
18	Recommendation R(80)2 concerning the exercise of discretionary powers by administrative authorities https://rm.coe.int/tavsiye-karari-no-r-80-2-idari-makamlarca-takdir-yetkisi-kullanmasi/1680a43919
19	Resolution (85)8 on co-operation between the ombudsmen of member States and between them and the Council of Europe https://rm.coe.int/85-8-sayili-karar-uye-devletlerin-ombudsmanlarinin-kendi-aralarinda/1680a4398e
20	Resolution (78)8 on legal aid and advice https://rm.coe.int/adli-yardim-ve-danismanlik-hakkinda-karar-78-8/1680a43980
21	Resolution (77)31 on the protection of individual in relation to the acts of administrative authorities https://rm.coe.int/idarenin-islemleri-karsisinda-bireyin-korunmasi-hakkinda-77-31-sayili/1680a4397f
22	Resolution (76)5 on legal aid in civil, commercial and administrative matters https://rm.coe.int/76-5-sayili-karar-medeni-ticari-ve-idari-konularda-adli-yardima-ilisk/1680a4397c

Annex D Case Study

A Short Study on TCC Judgment on Cancellation of a Legal Provision in the Law on Retirement Pension Fund and Public Administration's Rejection of Applications

It is a common phenomenon in Turkey that the administrative authorities refrain to act in accordance with the precedent court orders and refer the individuals to resort to legal remedies despite the established case-laws in disadvantage of the institution. In an example that involves rejection by the Social Security Institution of payment of retirement bonuses for the civil services over 30 years as per the Law on the Retirement Pension Fund, despite the cancellation of the respective provision by the Turkish Constitutional Court in 2015. The Social Security Institution kept rejecting the applicant retirees although the Council of State rendered a precedent decision in favour of the retirees requesting payment of the retirement bonuses for the services exceeding 30 years and the Ombudsman recommended in the same manner, until an amendment was made in the Law on Retirement Pension Fund clearly stipulating that the payments shall be enforced by the Social Security Institution. It was claimed that Social Security Institution's such practice resulted with some 5 thousand cases in the administrative courts.

1. Turkish Constitutional Court's Cancellation Decision

It started with Ankara 10th Administrative Court's application to the Turkish Constitutional Court in 2013 alleging that first sentence of the fourth paragraph of Art 89 of the Pension Fund Act which reads as "periods of more than 30 actual service years are not taken into account in the calculation of the retirement bonus to be given" is contrary to Articles 2 and 10 of the Constitution, and requesting for a cancellation decision.[44]

In the lawsuit subject to the application to the TCC, the plaintiff, who has retired from public service, was paid a retirement bonus for 30 years of actual service and his request for the remaining 6 years was rejected by the Social Security Institution. Therefore, the applying court found that the respective expression in Art 89 is contrary to the Constitution's Art 2 and Art 10, which specifies the rule of law and principle of equality before the law, respectively. The TCC considered that Art 60 of the Constitution pertaining to right to social security is also relevant.

In the application, the court mentioned that those who are subject to pension fund of civil servants are paid up to 30 years in accordance with the objected clause of the Pension Fund Law, while private workers are paid severance pay in the amount of 30 days for each full year from the date of employment. The court

44 TCC, 2013/111 E., 2014/195 K., 25.12.2014 T., 7.1.2015-29229 RG https://normkararlarbilgibankasi.anayasa.gov.tr/Dosyalar/Kararlar/KararWord/2014-195-nrm.docx (Accessed on 7/12/2020)

further argued the fourth paragraph of Art 89 of the Pension Fund Law foresees a limitation period that is not applicable in the severance pay of private workers, eventually being incompatible with the rule of law and the principle of equality of the Constitution (Articles 2 and 10 of the Constitution).

The fourth paragraph of Art 89 regulates those that will not be taken into account in the calculation of the retirement bonus to be given according to the first three paragraphs of the same article. Accordingly, periods of more than 30 actual service years will not be taken into account in the calculation of the retirement bonus to be awarded according to the first three paragraphs. Therefore, no matter how long a civil servant works, the actual service periods of more than 30 years are of no importance in the calculation of the retirement bonus.

The TCC summarises the principle of social state as a concept that has to establish a legal order based on justice and equality in society and work life. In accordance with Articles 2 and 60 of the Constitution, the state is entitled to create an environment which serves *"justice and fairness"* for all participants within the same social security agency whose statuses are close to each other. It is also a requirement of the principle of equality expressed in Article 10 of the Constitution that persons in the same situation benefit from the rights stipulated by the law according to the same principles.

The TCC pointed out to the fact that the legal status of the participants who are subject to the objected Article are the same, the only difference being whether or not they have worked for more than 30 years and both groups should enjoy the rights stipulated by law on the same basis. It further elaborated that despite this, civil servants working for 30 years or less are allowed to benefit from the retirement bonus for the full period they worked, while those who worked for more than 30 years are not allowed to benefit from the pension bonus for their actual service periods exceeding the specified period, which is 30 years of service. The TCC finally puts forward that despite that both groups are identical in terms of their qualifications and statuses, with the phrase subject to application, a distinction is made between those who work for 30 years or less and those who work more that that, which is not based on a just cause that is understandable and relevant to the purpose or reasonable. For this reason, the Court found that this distinction violates the principle of equality before the law stipulated in Article 10 of the Constitution and hence cancelled the respective statement in paragraph four of Art 89.

The TCC also found the statement not in accordance with justice and fairness and therefore constitutes a violation of the right to social security and the rule of law in contrary to the Art 2 and 60 of the Constitution as failure to pay retirement bonuses for the periods exceeding 30 years causes loss of rights for the respective civil servants although the service continues.

2. The Council of State Decision

The respective legal amendment has been reviewed by the Council of State in a judgment dated 2016.[45] The lawsuit that was brought to the attention of the Council Of State is based on the request of annulment of the administrative decision regarding the rejection of the application made by the claimant, whose retirement pension has been paid for over 30 actual years of service within the scope of the Turkish Retirement Fund Law. The claimant requests payment of his retirement bonus exceeding 30 actual years of service together with its legal interests upon the cancellation decision by the Constitutional Court.

The dispute between the claimant and the respective public administration, the Social Security Institution, has found its basis on a rejection decision by the administration to pay a retirement bonus for periods exceeding 30 years of service on the reason that cancellation decision given by the Constitutional Court entered into effect on 7/1/2015 with its publishing in the Official Gazette and cannot have retroactive effect for the deliverables acquired before that date.

The claimant appealed against the rejection decision in Ankara 12th Administrative Court, which ruled in favour of the claimant and decided the payment of the retirement bonus exceeding the 30 years of service by the public administration together with the legal interest to be calculated from the date of application on the grounds that the claimant can claim a right that he has regained with the decision of the Constitutional Court and which he has not acquired in the past.

Social Security Institution appealed against this decision in the Council of State. The claimant also appealed against the judgment for correction of the judgment considering the legal interest, as the administrative court calculated the pension base amount in effect on the date of the pension payment instead of the pension base amount (current value) in effect at the time of payment.

In its review of the case appealed by both parties, in terms of the claimant's appeal request, 11th Chamber of the CoS rejected the claimant referring to the calculation method in Art 89 of the respective law. The Chamber also rejected the defendant administration's appeal request and asserted that the Constitutional Court's cancellation decision was entered into force on the same date it entered into force by the time it was published in the Official Gazette, as no time was given by the high court by eliminating the legal basis for non-payment of retirement bonuses for a service period of over 30 years. **The Chamber emphasised that the rule in Article 153 of the Constitution stipulating the annulment decisions given by the Constitutional Court will not be retroactive, is only pertaining to the rights which was acquired according to the annulled provisions, which was completed in accordance with the law at the time of birth and thus had personal and favourable results, and thus must be protected after the period the legislation was changed.** However, it would be contrary to the superiority of the Constitution and the rule of law, if the disputes are

45 CoS, 11th Chamber, 2016/223 E., 2016/583 K., 17/2/2016 T. http://kazanci.com.tr/gunluk/11d-2016-223.htm (accessed on 7/12/2020)

resolved taking into account the provisions that was cancelled by the TCC because of violation of the constitutional rights. **In this context, the Chamber approved the administrative court decision and favoured on the side of payment of the retirement bonus for the services exceeding 30 years of service according to the new legal situation arising from the annulment of the respective legal regulation, which prevented the payment of retirement bonus for more than 30 actual service years.**

3. Ombudsman's Recommendation Decision

In 2016, the Ombudsman released a recommendation decision due to several applications to the institution on account that the Social Security Institution did not pay retirement bonuses exceeding 30 years of public service despite that the respective statement in the Public Pensions Law is cancelled by the TCC.[46] Ombudsman reviewed the issue in several aspects as outlined below;

Ombudsman declared his views on the unjust rejection by the Social Security Institution of payment of retirement bonuses for the services of exceeding 30 years of service, which is against the principle of social state. He referred that the application of the respective legal provision by the public administration differentiated by the date of the retirement of the concerned retiree (as before and after 7/1/2015, the date the cancellation of the TCC entered into force) generates another inequal treatment between the retirees.

In terms of application of Art 153 of the Constitution stipulating that the annulment decisions given by the Constitutional Court will not be retroactive, Ombudsman pointed out to the academic views that refer to **the non-applicability of the respective rule in an absolute fashion, but rather as a rule that protects the rights of the individual who acquired a right before the cancellation of the provision in line with the principle of legal certainty.**

In reply to Social Security Institution's claim that the institution does not possess sufficient amount of budget to meet the requests of the applicants claiming payment of their retirement bonuses in full amount, without differentiating between 30 years of service, he further elaborated that the issue also considers the Ministry of Finance since the Social Security Institution is only an intermediary agency that is responsible to contact with the retirees, however the Ministry of Finance also shares some authority and disposition on the matter, resulting the necessity to a co-operation between the Social Security Institution and the Ministry of Finance in this matter.

46 Ombudsman Institution, 2015/520, 15/4/2016 T. https://www.ombudsman.gov.tr/contents/files/30%20Y%C3%84%C2%B1ldan%20Fazla%20Hizmet%20S%C3%83%C2%BCreleri%20%C3%84%C2%B0%C3%83%C2%A7in%20Emekli%20%C3%84%C2%B0kramiyesi%20%C3%83%E2%80%93denmesi%20Talepleri%20Hakk%C3%84%C2%B1nda.pdf (Accessed on 7/12/2020)

Ombudsman also reviewed the rejection decision as per the good administration principles and found it contrary to the equality, legitimate expectations and protection of acquired rights.

In conclusion, Ombudsman approved the complaints made by the applicants and recommended to the Ministry of Finance to support the Social Security Institution in allocating a resource for the payment of the full amount of retirement bonuses, and after it is allocated, recommended the Social Security Institution to form new decisions in favour of payment of the retirement bonuses for the services over 30 years.

4. The Amended Law and Social Security Institution's Amended Application

The Retirement Pension Law was amended on 18/01/2017 with the included provisional article 126 allowing payment of retirement bonuses for the services exceeding 30 years. After this legal amendment, as per a decision rendered by the Social Security Institution, the institution announced that payments for the retirement bonuses of civil servants exceeding 30 years of service shall be enforced no matter the payment request is at the court stage or not, noting that those who have not made any application should submit an application within a one-year period.[47] With this decision, the institution also announced a schedule for the payments. **Moreover, the institution announced that it shall waive any objection or appeal made before the effective date of this article and it will not resort to legal remedies against the decisions made by the courts of first instance.**

47 https://www.alomaliye.com/2017/01/30/sgk-duyurusu-30-yil-uzeri-emekli/ (Accessed on 7/12/2020).

Annex E Gender Statistics: Council of State

Year-Based Distribution of "Members of the Jurisdictions" by Gender in the Council of State

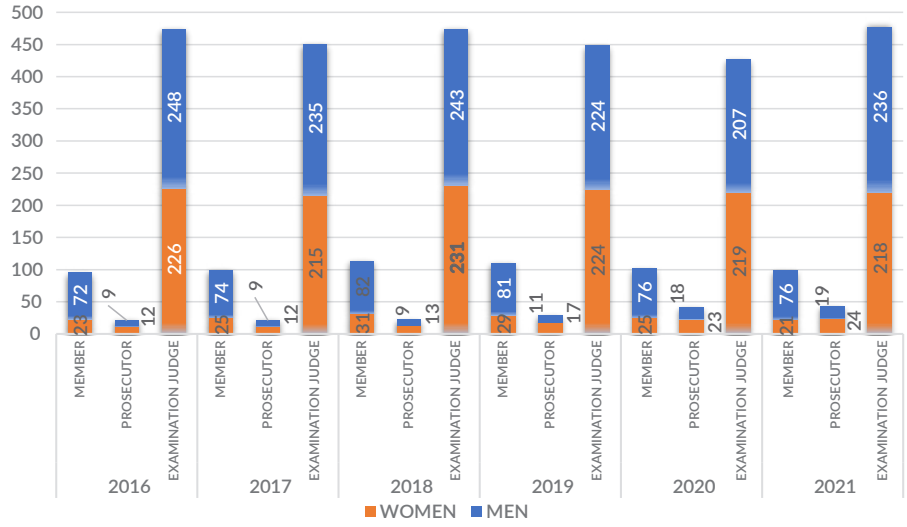

Table 2: Year-Based Distribution of Members of the Jurisdictions by Gender in the Council of State*

YEAR	TITLE	WOMEN	MEN	TOTAL
2016	Member	23	72	95
	Prosecutor	12	9	21
	Rapp. Judge	226	248	474
	TOTAL	261	329	590
2017	Member	25	74	99
	Prosecutor	12	9	21
	Rapp. Judge	215	235	450
	TOTAL	252	318	570
2018	Member	31	82	113
	Prosecutor	13	9	22
	Rapp. Judge	231	243	474
	TOTAL	275	334	609
2019	Member	29	81	110
	Prosecutor	17	11	28
	Rapp. Judge	224	224	448
	TOTAL	270	316	586
2020	Member	25	76	101
	Prosecutor	23	18	41
	Rapp. Judge	219	207	426
	TOTAL	263	301	568
2021	Member	21	76	97
	Prosecutor	24	19	43
	Rapp. Judge	218	236	454
	TOTAL	263	331	594

Source : The Council of State (*This list does not cover President, Chief Public Prosecutor, Acting Presidents and Head of the Chambers)

Annex F Gender Statistics: Selected Regional Administrative Courts

Table 1: Sex-segregated data by years for number of judges /candidate judges and other working staff in selected Regional Administrative Courts in Turkey.

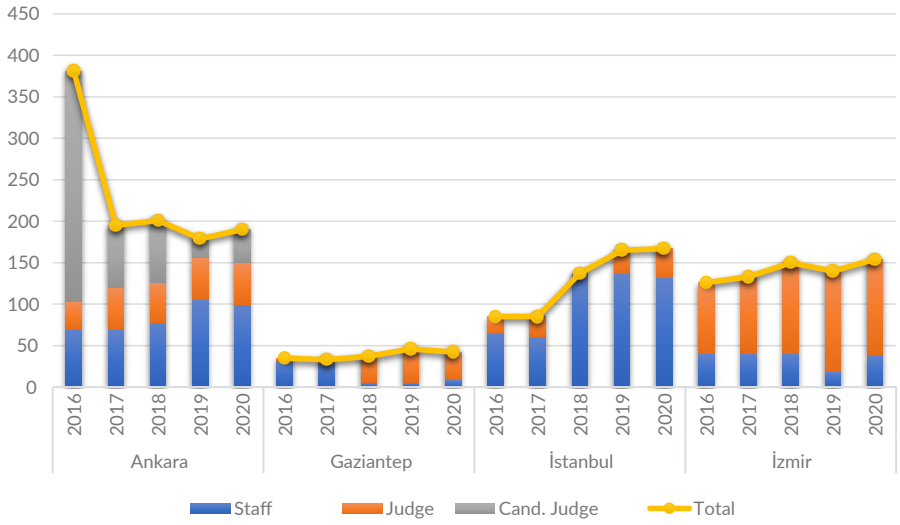

Table 2: Sex-segregated data by years in totals (including judges, candidate judges and staff) in selected Regional Administrative Courts in Turkey.

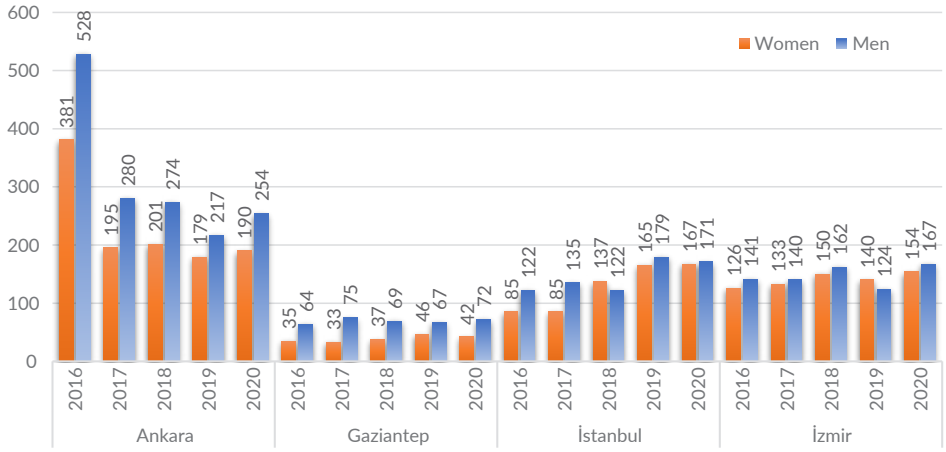

Table 3: Sex-segregated data by years for number of judges and other working staff in selected Regional Administrative Courts in Turkey.

W: Women, M: Men, T: Total

		Ankara			İstanbul			Gaziantep			İzmir		
		W	M	T	W	M	T	W	M	T	W	M	T
2016	Other staff	70	61	**131**	64	65	**129**	32	41	**73**	40	72	**112**
	Judge	33	45	**78**	21	57	**78**	3	23	**26**	85	67	**152**
	Cand. Judge	278	422	**700**	0	0	**0**	0	0	**0**	1	2	**3**
	TOTAL	381	528	**909**	85	122	**207**	35	64	**99**	126	141	**267**
2017	Other staff	69	89	**158**	61	77	**138**	29	47	**76**	41	75	**116**
	Judge	51	50	**101**	24	58	**82**	4	25	**29**	89	61	**150**
	Cand. Judge	75	141	**216**	0	0	**0**	0	3	**3**	3	4	**7**
	TOTAL	195	280	**475**	85	135	**220**	33	75	**108**	133	140	**273**
2018	Other staff	78	77	**155**	137	122	**259**	5	26	**31**	40	84	**124**
	Judge	48	56	**104**	0	0	**0**	32	40	**72**	110	78	**188**
	Cand. Judge	75	141	**216**	0	1	**1**	0	3	**3**	0	0	**0**
	TOTAL	201	274	**475**	137	122	**259**	37	69	**106**	150	162	**312**
2019	Other staff	106	92	**198**	137	122	**259**	5	22	**27**	19	43	**62**
	Judge	50	61	**111**	28	57	**85**	39	45	**84**	121	80	**201**
	Cand. Judge	23	64	**87**	0	1	**1**	2	0	**2**	0	1	**1**
	TOTAL	179	217	**396**	165	179	**344**	46	67	**113**	140	124	**264**
2020	Other staff	99	107	**206**	132	111	**243**	9	25	**34**	39	91	**130**
	Judge	51	53	**104**	35	60	**95**	31	47	**78**	115	75	**190**
	Cand. Judge	40	94	**134**	0	5	**5**	2	0	**2**	0	1	**1**
	TOTAL	190	254	**444**	167	171	**338**	42	72	**114**	154	167	**321**

Table 4: Comparative: Ankara RAC–
Affiliated Administrative and Tax Courts to Ankara RAC

		Ankara BİM		Bolu		Eskişehir		Kastamonu		Kayseri		Kırıkkale		Sivas		Yozgat		Zonguldak		TOTAL	
		W	M	W	M	W	M	W	M	W	M	W	M	W	M	W	M	W	M	W	M
2016	Judge	61	112	0	0	11	13	2	5	2	11	1	9	1	12	1	6	5	7	117	220
	Other Staff	88	92	0	0	19	18	2	6	12	28	2	23	8	17	3	4	7	14	211	263
	Cand. Judge	0	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	280	422
	TOTAL	149	204	0	0	31	31	4	11	15	39	3	32	9	29	4	10	12	21	608	905
2017	Judge	61	112	1	4	10	11	2	5	2	11	1	9	1	12	1	6	5	7	135	227
	Other Staff	101	102	2	3	17	16	2	6	12	28	2	23	8	17	3	4	7	14	223	302
	Cand. Judge	0	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	77	141
	TOTAL	162	214	3	7	28	27	4	11	15	39	3	32	9	29	4	10	12	21	435	670
2018	Judge	79	151	2	6	10	10	2	5	6	16	0	10	4	12	1	6	5	7	157	279
	Other Staff	125	143	4	4	17	16	2	5	13	21	2	16	7	16	2	7	8	12	258	317
	Cand. Judge	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	76	141
	TOTAL	204	294	6	10	27	26	4	10	20	37	2	26	11	28	3	13	13	19	491	737
2019	Judge	73	162	1	6	9	12	0	7	6	18	0	9	4	5	1	5	4	7	148	292
	Other Staff	170	166	4	4	20	14	3	7	16	19	2	15	8	16	3	7	8	13	340	353
	Cand. Judge	23	64	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	46	128
	TOTAL	266	392	5	10	29	26	3	14	22	37	2	24	12	21	4	12	12	20	534	773
2020	Judge	81	158	1	6	10	12	0	7	15	20	1	7	3	7	0	5	3	9	165	284
	Other Staff	162	162	4	6	20	15	4	6	13	22	3	15	8	14	1	8	7	11	321	366
	Cand. Judge	40	94	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	80	188
	TOTAL	283	414	5	12	30	27	4	13	28	42	4	22	11	21	1	13	10	20	566	838

(Source: Data was collected from Ankara RAC Annual Activity Reports)

(*) The total values and the totals at the provinces do not match.

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This **Interim Progress and Assessment Report** is the second in a series of three reports that are produced for the purposes of this project. Since the publication of the Initial Assessment Report, the in-depth review of the Turkish administrative justice system has continued and the valuable interviews with stakeholders and the research carried out contributed significantly to the content of this report.

The first report, an *"Initial Assessment Report and Proposal for Reform Road Map"* (IAR) was published in July 2020. This Report provides an update on the ongoing review of the administrative justice system, on the progress of project activities and on the present position concerning the Road Map for An Improved Administrative Justice System 2020-2023 referred to in the IAR.

A Final Assessment Report will be prepared at the end of the project.

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THE PROJECT ON IMPROVING THE EFFECTIVENESS OF THE ADMINISTRATIVE JUDICIARY AND STRENGTHENING THE INSTITUTIONAL CAPACITY OF THE COUNCIL OF STATE

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