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GUIDE TO GOOD ADMINISTRATIVE PRACTICES FOR ADMINISTRATIVE APPEALS



Improving the Effectiveness of The Administrative Judiciary
and Strengthening the Institutional Capacity of The Council of State



GUIDE TO GOOD ADMINISTRATIVE PRACTICES FOR ADMINISTRATIVE APPEALS

Mary Cooke
Assoc. Prof. Dr. Nilay Arat
Prof. Dr. Dođan Nadi Leblebici
Prof. Dr. Barış Övgün

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CONTENTS

INTRODUCTION	4
PART 1 - ADMINISTRATIVE APPEALS	6
i Sources for administrative appeals	6
International standards	6
The position in Türkiye	9
ii Consultation process undertaken for the Guide	10
iii Good administrative practices for administrative appeals	12
Glossary of terms used in Part 1	13
Competence of the appeals authority	15
Representation	15
Costs	15
Application of case law	15
Stage 1 – Making an application to appeal an administrative decision	15
Stage 2 – Processing of the appeal	17
Stage 3 – Decision of the appeals authority	18
PART 2 - PRINCIPLES OF GOOD ADMINISTRATION	19
i Important resources for good administration	20
Council of Europe handbook <i>The Administration and You</i>	20
Turkish Ombudsman Institution <i>Manual on Good Administration Principles</i>	20
ii Core principles of good administration	22
Annex I	
Recommendations for administrative authorities regarding administrative appeals	25
Annex II	
Questions and answers for individuals applying for an administrative appeal	31
REFERENCES	34

INTRODUCTION

*The preparation of this Guide to Good Administrative Practices for Administrative Appeals was one of a number of projects within an overall Joint Project entitled *Improving the Effectiveness of The Administrative Judiciary and Strengthening the Institutional Capacity of The Council of State*. That overall Joint Project has been implemented by the Council of Europe and funded by the European Union, the Republic of Türkiye and the Council of Europe.*

The availability of administrative appeals as an alternative to litigation before the courts plays a vital role in reducing the workload of the administrative courts. Also, administrative appeals can assist in the evaluation of administrative policies and procedures and have the potential to highlight those that may be flawed and require to be amended by administrative authorities.

The objective of the Administrative Appeals Project was to produce a Guide that is clear, concise, sufficiently flexible to be of broad perspective and capable of being utilised without the need for any immediate changes to Turkish law. In the Guide, laws and relevant standards specifically for administrative appeal are drawn together into one document that is intended to provide useful and coherent guidance to administrative authorities and to individuals in the area of administrative appeals.

The aim of this Guide is to strengthen the administrative appeals system in Türkiye, to encourage consistent practices and to improve the overall functioning of administrative authorities in relation to appeal of administrative decisions. A well-functioning administrative appeals system should result in the reduction the workload of the administrative courts and should also assist administrative authorities in the ongoing testing, review and amendment of any administrative policies and procedures found to be ineffective, unworkable or unfair.

Good administrative practices for administrative appeals are set out in detail in the Guide, including good practices at each stage of an administrative appeal.

In Part 1 of the Guide, the sources for administrative appeals are explained, both in terms of international standards and also the position in Türkiye, details of the consultation process undertaken

for the Guide are set out and practical guidance is set out in regard to all aspects of an administrative appeal.

Annex I of the Guide contains a number of recommendations for administrative authorities in which some elements of the Guide are elaborated upon to give practical guidance to improve the operation of administrative appeals. The overall aim for administrative authorities is to strengthen the administrative appeals system, to encourage consistent practices and to improve the overall functioning of administrative authorities in relation to appeal of administrative decisions.

Annex II of the Guide contains some practical questions and answers to guide individuals wishing to appeal an administrative decision. The overall aim for individuals is to emphasise the existence in Turkish law of the universal legal right to appeal administrative decisions and to encourage greater use of the option of optional administrative appeal before resorting to judicial review in order to resolve disputes between individuals and administrative authorities.

Part 2 of the Guide contains general information on the principles of good administration. The principles of good administration apply to all administrative decisions of administrative authorities, including decisions on administrative appeals. The information presented in this Guide is set out in general terms and the relevance to good practices for administrative appeals is highlighted.

It should be noted that administrative appeal is one of a number of extrajudicial remedies available to the individual in the Turkish system of public administration, including those remedies within the functions of the Ombudsman Institution under Law No. 6238 and the functions of the Human Rights and Equality Institution of Türkiye under Law No. 6701.

This Guide to Good Administrative Practices for Administrative Appeals is not a legal instrument.

PART 1

ADMINISTRATIVE APPEALS

In Part 1 of the Guide, the sources for administrative appeals are explained, both in terms of international standards and also the position in Türkiye, details of the consultation process undertaken for Guide are set out and practical guidance is set out in regard to all aspects of an administrative appeal.

(i)

SOURCES FOR ADMINISTRATIVE APPEALS

International Standards

The following Council of Europe and European Union sources in regard to administrative appeals are of particular relevance.

- **Council of Europe – Article 22 of Recommendation CM/Rec (2007)7 and Part III of Recommendation Rec(2001)9**

Standards in regard to administrative appeals are expressly provided for in two Council of Europe Recommendations – *Recommendation CM/Rec (2007)7 on good administration at Article 22 entitled “Appeals”* and *Recommendation Rec(2001)9 on alternatives to litigation between administrative authorities and private parties at Part III and entitled “Internal reviews”*.

In summary, these provide that judicial review of an administrative decision should be available but an administrative appeal *prior to a judicial review*, should, in principle, be possible; in certain cases, such administrative appeals may be compulsory; administrative appeals may concern an appeal on the merits or an appeal on the legality of the administrative decision; an individual must not suffer any prejudice from a public authority for seeking to appeal an administrative decision.

In substantive terms, the combined effect of these two recommendations is that judicial review of an administrative decision should be available but that an administrative appeal prior to a judicial review, should, in principle, be possible and that in certain cases, such administrative appeals may be compulsory.

► Other Council of Europe recommendations

Also relevant are elements of the following four Council of Europe recommendations *Recommendation No. R (81) 7 on measures facilitating access to justice*, *Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts*, *Recommendation Rec (2002)2 on access to official documents* and *Recommendation Rec(2004)20 on judicial review of administrative acts*.

The relevant standards in these Recommendations relate to the pre-judicial resolution of disputes, access to information and the exhaustion of remedies prior to judicial review.

► Council of Europe Handbook The Administration and You – Principle 17

The Council of Europe handbook entitled *The Administration and You* is a comprehensive guide to the principles of administrative law concerning relations between individuals and public authorities.

Principle 17 in the handbook concerns internal review which is described as follows: “*Everyone adversely affected by an administrative decision made by a public authority shall be entitled to a request and internal review of the decision.*”

In the commentary to Principle 17, the following criteria for internal review are set out: That the principles of good administration that apply to decision-making apply also to internal review; internal reviews should be carried out by competent persons within the public authority; a request for an internal review should of itself suspend time limits for instigating an appeal to a court; it is assumed that the preferred option is that internal review precedes judicial review.

► **Council of Europe – 2007 CJ-DA-GT Report – Proposed minimum standards for administrative appeals**

In the 2007 Council of Europe CJ-DA-GT Report a range of proposed minimum standards are set out. The minimum standards are divided into three groups to describe the three main phases of the administrative appeals procedure: Lodging the appeal, the processing of the appeal and the decision of the appeals authority. A range of other guidance is also included in the Report.

The 2007 CJ-DA-GT Report is a significant and valuable source of international standards and best practices for administrative appeals. There is an associated Questionnaire in the 2007 Report with details of the responses received from 16 member states of the Council of Europe. Relevant responses from member states in regard to best practices are incorporated into the proposed minimum standards set out in the CJ-DA-GT Report.

► **European Ombudsman – Article 19 of the European Code of Good Administrative Behaviour**

Article 41 of the Charter of Fundamental Rights of the European Union provides for a right to good administration. The *European Code of Good Administrative Behaviour*, produced by the European Ombudsman and endorsed by the European Parliament, explains the meaning in practice of the right to good administration under Article 41 of the Charter and what, in concrete terms, the citizen can expect from the administration of the European Union.

Article 19 of that Code is entitled “*Indication of appeal possibilities*” and provides that a decision of the institution which may adversely affect the rights or interests of a private person shall contain an indication of the appeal possibilities available for challenging the

decision; that it shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, and the time-limits for exercising them.

For the purpose of the European Code, the right to an administrative appeal (to EU institutions) is expressed in similar terms to that in Council of Europe recommendations above.

The Position in Türkiye

The above sources relate to international standards.

It can be said that the Turkish position on administrative appeals reflects the general international position. In Türkiye there is a clearly defined legal right to judicial review of an administrative decision under the Constitution and in laws. There is also a clearly defined legal right to administrative appeal prior to a judicial review.

Under the Turkish Constitution the availability of judicial review of administrative decisions is required by Article 125 of the Constitution.

Prior to pursuing any judicial review of an administrative decision (administrative act), however, there is a general right of appeal under Article 11 of the ***Procedure of Administrative Justice Act No. 2577*** by virtue of which an individual can apply to the administrative authority superior to the authority that issued an administrative decision (administrative act), or if no superior authority to the same authority, to have that administrative decision removed, withdrawn or amended.

Article 11 of Law No. 2577 provides for a general right to administrative appeal. In certain sectoral areas of Turkish law, for example in relation to certain education, health and social security matters, there are specific laws providing for rights to appeal against initial administrative decisions. These specific legal rights to appeal supersede any general right to appeal. Nevertheless, the range of good administrative practices for administrative appeals set out in this Guide are of relevance and value in regard to the detail of the operation of any appeal in the Turkish administration.

Furthermore, Article 40 of the Constitution requires administrative authorities to outline the legal remedies (with information of the application period and the competent authority) available to individuals in the context of judicial proceedings and that includes in the context of administrative procedures and administrative

appeal. Administrative authorities are required therefore to make available the option of administrative appeal for individuals affected by administrative decisions.

There is also secondary legislation relevant to administrative appeals. In the *Regulation on Procedures and Principles to be followed in the Delivery of Public Services* there is reference in Article 12(3) of that Regulation requiring appeal details to be notified where an application for public services is negative. Also relevant to administrative appeals is Article 6 of the *Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution* which will be referred to further in regard to good administration principles generally in Part 2 of the Guide.

It is also useful to consider the Turkish Ombudsman Institution *Manual on Good Administration Principles* in the Section on Principle 15 (*Indication of Appeals Possibilities*) which has been taken into account in this Guide.

(ii)

CONSULTATION PROCESS UNDERTAKEN FOR THE GUIDE

As part of the preparation of the Guide a detailed consultation process took place in Ankara in June 2022.

The Turkish Ombudsman's Institution and three chosen administrative authorities – the Ministry of Health, the Ministry of National Education and the Social Security Institution – were consulted. Also, a number of focus group meetings took place with officials, citizens and the judiciary.

These consultations were centred on a series of twelve sets of questions in regard to the system of administrative appeals in Türkiye. The questions were grouped under three headings as follows: Availability – The mechanics of internal review, Accessibility – The individual and internal review, and Awareness – Internal review and systemic issues.

These questions are set out below.

► Availability – The mechanics of internal review

Internal review processes in your organisation – A range of issues arise for discussion including the following: How do

internal review systems operate in your organisation? Are there different rules and systems for different areas of work? Are there time limits within which the internal review must be applied for and completed?

Statistical data – Do you have statistical data relating to internal reviews showing the number of applications for internal review made and what those applications relate to? Certain administrative decisions of your organisation are appealed to the courts; do you know what proportion of these appeals were subject to an internal review before the appeal to court?

Personnel who carry out internal reviews – When an individual applies for internal review of an administrative decision who carries out the internal review? Is it the same official or a senior official or a separate body?

Good practices to suggest – Are there areas regarding internal review of administrative decisions that work particularly well in your organisation and that could be reflected in a good practice guide for all Turkish public authorities?

Improvements – Are there are areas where improvements could be made in internal review procedures that would be useful for us to know?

► **Accessibility – The individual and internal review**

How do individuals obtain information regarding internal review? If an individual wishes to apply for an internal review of an administrative decision, what information is available to him or her to explain the process? When an individual is notified of an adverse administrative decision are they informed that they may apply for an internal review of that decision?

Good practices to suggest- Are there areas where procedures and interaction with the individual relating to internal reviews of administrative decisions work particularly well in your organisation and that could be reflected in a good practice guide for all Turkish public authorities?

Improvements – Are there areas where improvements could be made in internal review procedures and interaction with the individual that would be useful for us to know?

► Awareness – Internal review and systemic issues

Application of case law – Are judgments provided by the courts relevant to your organisation clear and easily understood and applied? If case law highlights systemic difficulties how are these addressed in your organisation? Does relevant case law ultimately reduce the number of internal reviews sought of administrative decisions?

Principles applied to internal review – Are there standard principles applied when carrying out internal review of administrative decisions in your organisation?

Good practices to suggest – Are there areas regarding internal review of administrative decisions and systemic issues that work particularly well in your organisation and that could be reflected in a good practice guide for all Turkish public authorities?

Improvements – Are there areas where improvements could be made in internal review procedures? Are there systemic difficulties relating to internal reviews that would be useful for us to know about?

There was a high level of engagement in the consultation process and the responses to the twelve sets of questions provided valuable insights into the operation of the system of administrative appeals in Türkiye.

These various insights are taken into account in the best practices for administrative appeals outlined in this Guide.

(iii)

GOOD ADMINISTRATIVE PRACTICES FOR ADMINISTRATIVE APPEALS

What does “good administrative practices for administrative appeals” actually mean?

The starting point is the general right to optional administrative appeal under Turkish law that is provided for in Article 11 of the *Procedure of Administrative Justice Act No. 2577*. As already indicated above, Article 11 gives the legal right to individuals to apply to an administrative authority to have an administrative decision removed, withdrawn or amended. Also, in certain sectoral areas,

such as for certain education, health and social security matters, there are specific laws providing for rights to appeal against initial administrative decisions.

In addition, there are a number of legal requirements and good practices for carrying out administrative appeals which are set out in the international and Turkish sources outlined above.

Also, the principles of good administration applicable generally to the manner in which administrative authorities carry out their functions, apply to administrative appeals. (There is additional general information on the principles of good administration set out in Part 2 of this Guide.)

Finally, the consultation process undertaken for the preparation of this Guide served to highlight a number of areas where certain practices in the context of administrative appeals work particularly well and are suitable for adoption across the Turkish administration. Also, a number of areas of weakness were identified which would benefit from clear guidance.

All of these strands are brought together to provide practical and coherent guidance to administrative authorities and to individuals for good practices in the area of administrative appeals.

A glossary of terms that will be used in the guidance is set out below..



Glossary of Terms Used In This Part DICTIONARY

Administrative decision (Administrative act) –Non-regulatory decision taken by administrative authorities in relation to individual measures that concern one or more individuals.

Administrative authority –A body established by public law, whether at national, regional or local level, for the purpose of providing a public service or acting in the public interest, as well as any private law body vested with such powers.

Administrative appeal–The non-judicial appeal of an administrative decision.

Appeals authority – The person or body authorised to determine the administrative appeal application.

Individuals: Natural or legal persons (that is, bodies created by law) who have received an administrative decision.

Appellant: An individual who seeks an administrative appeal.

Public official: Any member of staff, whether statutory or contractual, employed by an administrative authority. For the purposes of this Guide, the term may include staff employed by a private law body which discharges public or quasi-public functions.

Effective administrative appeals system requires that initial administrative decision (administrative act) is clear and reasoned.

As a preliminary point, it is emphasised that for an effective administrative appeals system, it is of importance that *initial* administrative decision (administrative act) is clear and reasoned.

If the decisions of the administrative authority that may adversely affect the rights or interests of members of the public reflect the grounds on which it is based and the relevant facts and the legal basis of the decision, then the administrative appeal process will be more effective, both for the individual seeking to change initial decisions and for the administrative authority seeking to justify the initial decisions being appealed.

This will enable a system of administrative appeals to operate more clearly and more effectively.

There should be clear information and communication throughout all stages of the appeals process.

Effective and clear information and communication at all stages of an administrative appeal is vital. Clear and accurate information should be provided to individuals about the availability of administrative appeal, the details of the appeals process and in language that is not overly complex or legalistic. Individuals must be informed of the competent appeals authority that will hear the appeal and any applicable time limits. The grounds of any appeal decision should be indicated and the decision must be appropriate and relevant to the application made. When an individual is notified of the appeal decision, the options that are available to them, including judicial remedies, should be explained.

The importance of the availability of clear information and communications will be repeated and elaborated on below in regard to each stage of the administrative appeals process: Stage 1 – Making an application to appeal and administrative decision; Stage 2 – Processing the appeal and Stage 3 – The decision of the appeals authority.

Appeals authority should be objective and impartial

The appeals authority should be objective and impartial when dealing with administrative appeals. Ideally, they should not have had any prior involvement in the decision that is being appealed.

Appellant should not suffer any prejudice

An individual should not suffer any prejudice from the administrative authority for seeking to appeal an administrative decision.

Competence of the appeals authority

The appeals authority should be competent to carry out the appeal. They should be fully aware of the processes and procedures governing administrative appeals and have the necessary experience and expertise.

Representation

The appellant should be allowed to be represented by a lawyer.

Costs

If administrative costs are payable by the appellant in administrative appeals they should be fair and reasonable.

Application of case law

Regard should be had to case law that may be relevant to the administrative decision being appealed.

Stage 1 – Making an application to appeal an administrative decision

- *Appellants should be provided with full information about appeals possibility*

Individuals affected by administrative decisions should be informed as appropriate of the possibility of an administrative appeal, the identity of the appeals authority to hear the appeal and the time limits that apply. It is particularly important where the relevant legislation

is complex that the time limits that may apply are made very clear to individuals.

- *Appellant should be informed of appropriate channel of communication for appeal application*

This is related to the points immediately above. In Türkiye, there are a number of ways in which the individual can communicate with an administrative authority (for example, via CIMER etc.) and not all of such communications concern administrative appeals. The potential appellant should have available appropriate and clear information regarding how best an administrative appeal can be made. Applications for an administrative appeal once received and via whatever channel must be handled objectively and with impartiality.

- *Where application for appeal is made to the incorrect administrative authority*

In the event of an administrative appeal being made to the incorrect administrative authority, the authority in question must submit the objection to the correct authority in accordance with the principle of “integrity of the administration” under the Constitution. Also, the appellant should be notified of this immediately.

- *If administrative appeal is a compulsory step before judicial review*

It is particularly important where an administrative appeal is a compulsory step before seeking judicial review, that full information is provided to the individual on receipt of the initial administrative decision. The individual must be notified that the administrative appeal must be exhausted as a precondition for any further judicial remedy and it must be clearly expressed that if the time limit for compulsory administrative appeal is exceeded that the possibility for the remedy of judicial review may not exist any further.

- *Rules of procedure for appeal*

The administrative authority should give information to the appellant regarding the rules of procedure and practice in order to lodge an appeal.

- *Where appeal affects third parties*

The appeal should be communicated or notified to affected third parties to allow them participate in the appeal procedure.

► *Appellant should be permitted access to the case-file*

The appellant should in principle have access to the case-file and any other document necessary to ground the appeal.

► *Purpose and grounds of appeal*

For their part, the appellant must state clearly the purpose and grounds of the appeal.

Stage 2 – Processing of the appeal

► *Powers of the appeals authority*

The appeals authority should be able to review any violation of the law. It should also be possible, in principle, to review the appropriateness of the decision.

► *Suspension of impugned administrative decision*

A request can be made to the administrative authority to suspend the initial decision until the administrative appeal is completed. There is no general rule, however, that the initial decision is suspended until the administrative appeal is completed.

► *Suspension of related litigation*

Also, it should be noted that in some cases where an administrative appeal is sought that related litigation may not be suspended; for example where the urgent trial procedure is being used.

► *Time limits for processing the appeal*

The appeals authority should decide an appeal within the time limit prescribed by law. If the administrative authority does not decide within this time limit, it the appellant may appeal to the court.

► *Right to participate and procedural fairness*

Each party to the appeal proceedings should have the right to hear and respond to any additional arguments presented by the administrative authority that took the impugned decision or by the other parties involved in the appeal.

Stage 3 – The decision of the appeals authority

► *Reasons should be given for the appeal decision*

Appropriate reasons should be given for the decision taken on an administrative appeal and, at least in cases where they directly affect individual rights or interests, the appeals authority should state the legal and factual grounds on which the decision was taken.

► *Where third parties are affected*

The appeals authority should not amend the original decision to the detriment of third parties unless those third parties have been notified in advance and have had the opportunity to put any arguments forward.

► *Notification of appeal decision*

The appeals authority should notify its decision to all the parties involved in the appeal, including the administrative authority that took the original decision. The appeal decision should be reasoned and should be appropriate and relevant to the application made.

► *The appellant should be informed about other options that may be available to them*

An individual affected by an appeal decision should be informed of other options that may be available to them, including judicial remedies and the time limits applicable.

In Annex I a series of recommendations for administrative authorities are set out which give practical guidance designed to improve the operation of administrative appeals.

This concludes Part 1 of the Guide

In Part 2 of this Guide general information is provided in regard to the principles of good administration.

PART 2

PRINCIPLES OF GOOD ADMINISTRATION

The principles of good administration apply generally to administrative authorities in the carrying out of their functions, and that includes in regard to administrative appeals.

It will be noted from the information set out in this Part that the principles of good administration represent important features of the guidance in regard to administrative appeals in Part 1 of this Guide and also in the list of recommendations to improve the operation of administrative appeals set out in Annex I of this Guide.

The aim of Part 2 the Guide is to provide general information on the principles of good administration. Information is provided on the international and Turkish sources of good administration principles. Some common core principles are identified.

Good administration is a large and important subject and the information outlined in this Part is just in summary form. It is recommended that two valuable comprehensive resources on good administration principles should be consulted for further more detailed information and assistance, the Council of Europe handbook *The Administration and You* and Turkish Ombudsman Institution *Manual on Good Administration Principles*.

(i)

IMPORTANT RESOURCES FOR GOOD ADMINISTRATION

As indicated above, there are two important resources for good administration which it is recommended users of this Guide should consult further, and they are the Council of Europe handbook *The Administration and You* and Turkish Ombudsman Institution *Manual on Good Administration Principles*.

Council of Europe handbook *The Administration and You*

Council of Europe Resolutions and Recommendations in the field of administrative law are standard setting in nature and demonstrate international standards of best practice. In particular, Council of Europe *Recommendation CM/Rec (2007)7 on good administration* is of central relevance to the principles of good administration to be achieved by all member states, including by Türkiye.

The Council of Europe handbook entitled *The Administration and You* is a comprehensive guide to the principles of administrative law concerning relations between individuals and public authorities in accordance with conventions and recommendations of the Council of Europe and relevant caselaw of the European Court of Human Rights.

A Turkish translation of this handbook was published in September 2020 under the auspices of the Joint Project entitled *Improving the Effectiveness of The Administrative Judiciary and Strengthening the Institutional Capacity of The Council of State* which is mentioned in the Introduction to this Guide. Also, Turkish subtitles have been added to the original promotional Council of Europe video.

Turkish Ombudsman Institution Manual on Good Administration Principles

The various elements of good administration are reflected in the Turkish system of administration, in provisions of the Turkish Constitution and in a range of primary laws and secondary laws.

A comprehensive summary of good governance principles that should be applied by the Turkish administration is contained in Article 6 of the *Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution* (Official Paper dated 28/03/2013 and numbered 28601).

These good governance principles listed in Article 6 are as follows:

Compliance with laws,
Prevention of discrimination,
Proportionality,
Abuse of power,
Equality,
Impartiality,
Honesty,
Courtesy,
Transparency,
Accountability,
Compliance with the fair expectation,
Protection of vested rights,
Right to be heard,
Right to defence,
Right to be informed,
Taking decision in a reasonable period,
Taking reasoned decisions,
Indicating remedies against decisions,
Notifying the decision without delay and
Protection of personal data.

In the Turkish Ombudsman Institution Manual on Good Administration Principles a detailed explanation is included for each of the good governance principles listed in Article 6 of Regulation No. 28601, using the following headings:

Meaning,
Legal basis,
Relevant case studies and
Recommendations to the administration.

The Manual on Good Administration Principles is a comprehensive and valuable resource which explains good administration principles from a Turkish perspective and it complements the Council of Europe handbook *The Administration and You*.

(ii)

CORE PRINCIPLES OF GOOD ADMINISTRATION

There exist a wide range of generally recognised principles of good administration but there are a number of core principles that are common themes in the international and the Turkish sources of principles of good administration.

Council of Europe sources for good administration are referred to above but also of note in terms of international standards of best practice for good administration is Article 41 of the Charter of Fundamental Rights of the European Union. Article 41 provides for a right to good administration. The *European Code of Good Administrative Behaviour*, referred to already above in the specific context of administrative appeals, explains the meaning in practice of the right to good administration under Article 41 of the Charter and what, in concrete terms, the citizen can expect from the European administration.

There are a number of principles of good administration that feature in all sources, that is Turkish, Council of Europe and European Union. These core principles of good administration are set out below and are explained in brief terms.

Lawfulness

The duties and powers of administrative authorities should be exercised in compliance with all laws, the rules of Constitution, international law, Presidential decrees and regulatory procedures.

Equality

In taking decisions the administrative authority should ensure that the principle of equality of treatment is respected, that public services are

offered equally to those whose legal status is the same and that any difference in treatment is objectively justified.

Impartiality

Administrative authorities should ensure that duties and powers are carried out in an impartial manner, irrespective of personal beliefs and interests.

Proportionality

Administrative authorities are required to be consistent in administrative behaviour and action and to respect the legitimate and reasonable expectations of individuals unless there are legitimate grounds for departing from those practices in individual cases.

Legal Certainty

Administrative authorities are required to be consistent in administrative behaviour and action and to respect the legitimate and reasonable expectations of individuals unless there are legitimate grounds for departing from those practices in individual cases.

Taking Action Within A Reasonable Time Limit

Applications to administrative authorities by individuals should be handled within a reasonably short time, taking account of the characteristics of the application and subject to any specific timeframes that may already apply.

Participation

Administrative authorities should provide individuals with the opportunity through appropriate means to participate in the preparation and implementation of administrative decisions that affect their rights or interests.

Respect For Privacy

Administrative authorities should provide individuals with the opportunity through appropriate means to participate in the

preparation and implementation of administrative decisions that affect their rights or interests.

Transparency

Administrative authorities should ensure that information is provided to individuals in a systematic, prompt and accessible manner.

Also highlighted here as an important principle in the Turkish administration system is **Accountability** in regard to financial matters.

The principles of good administration are relevant generally to the carrying out of all administrative functions. It will be noted that the principles of good administration feature clearly throughout the guidance for administrative appeals above in Part 1 of this Guide. Also, the principles of good administration feature throughout the list of additional recommendations to improve administrative appeals set out in Annex I of this Guide. The core principles of good administration will be recognised throughout this Guide, along with various others such as **Courtesy, Prevention of discrimination, Right to be informed** etc.

In conclusion, it is emphasized that this Part of the Guide constitutes a general overview of the principles of good administration that should apply to the manner in which all functions are carried out by administrative authorities.

As mentioned before it is recommended that further information and guidance be sought in the Ombudsman Institution Manual on Good Administration Principles and the Council of Europe handbook *The Administration and You*.

Annex I

Recommendations To Improve The Operation Of Administrative Appeals

Good administrative practices for administrative appeals are set out in Part 1(iii) of this Guide. They are based upon Turkish legal and constitutional requirements, international good practice standards for administrative appeals, the principles of good administration and also good practices in the Turkish system of public administration.

Turkish law requires administrative authorities to make available a system of administrative appeal. The guidance outlined in Part 1(iii) concerning the practices of good administration should be followed in the operation of administrative appeals.

The recommendations listed in this Annex represent an expansion of some elements of the Guide in order to provide further practical guidance, taking account of the system of public administration that exists in Türkiye. These recommendations are designed to improve the operation of administrative appeals by administrative authorities. The recommendations are grouped into six themes, and it will be noted that many of the issues are interrelated.

1 Recommendations In Regard To Information Issues

The importance of the availability of effective and clear information throughout the administrative appeals process is emphasised – that is, before, during and at the conclusion of the administrative appeal.

To summarise the main points from the guidance in Part 1, from the start, clear and accurate information should be provided to individuals about the availability of administrative appeal, the details of the appeals process, the identity of the competent appeals authority, time limits and the procedures that will be applied during the appeals process, including the right to participate in the appeal, and at the conclusion, reasons should be given for the appeal decision and, at least in cases where they directly affect individual rights or interests, the legal and factual grounds on which the decision was taken should be explained, along with an explanation of any further options that may be available, including judicial remedies.

During the consultation process, there were suggestions that individuals could access information in regard to administrative appeals by way of a request under the Information Act. It is considered not to be sufficient compliance with the obligation to provide information if administrative authorities only make such information available on receipt of a request under the *Law on the Right to Information No. 4982*.

Another aspect that administrative authorities should be aware of is whether the manner in which they provide information about administrative appeals sufficiently takes account of disability, equality and access issues. This aspect will be referred to further below in the context of the recommendations in regard to statistics and systems.

2 Recommendations In Regard To Communications Issues

Issues relating to communications clearly are connected to the provision of information. There is a particular communications issue, however, that merits separate recommendations in the context of administrative appeals.

Within the Turkish system of public administration, there are a myriad of ways in which the individual can communicate with an administrative authority, via CİMER etc.

Not all of the communications received by administrative authorities via the various channels may relate to administrative appeals. Some may just be requests for information. Communications that do relate to administrative appeals may be received via multiple channels and on multiple occasions. Whilst the availability of these various channels of communication provide opportunities for the individual there is also potential for unnecessary burdens to be placed upon the administrative authority in having to assess these multiple communications in regard to the same issue.

Applications for an administrative appeal once received and via whatever channel must be handled objectively and with impartiality. It could of value, however, that the communications channel by which individuals should best seek an administrative appeal is made clear by the administrative authority. The potential appellant should have available appropriate and clear information regarding how precisely an administrative appeal can be made.

In addition, it was noted during the consultation process that some administrative authorities, in any event, have good systems in place for assessing all communications promptly when received, acknowledging them appropriately and sending on to the relevant section. This represents good practice that could be adapted by all administrative authorities.

3 Recommendations In Regard To Systems And The Value Of Statistics

Taking account of the detailed guidance in Part 1 of the Guide, the application of the principles of good administration generally and also some useful information that was gathered in the consultation process, it is recommended that administrative authorities should view the subject of administrative appeals in terms of a holistic system, rather than one where appeals are handled only on a case by case basis.

There are certain core elements that should be incorporated into an administrative appeals system – such as high quality relevant general information about administrative appeals made available routinely to the public, clarity in regard particularly to how individuals should communicate about appeals matters, the identity of the appeals authority etc. Are any template responses sufficiently detailed and fit for purpose? Are there standard procedures used in the handling of administrative appeals? Are these procedures available in written form, for the benefit of the appeals authority and the appellant? Does the administrative appeals system sufficiently take account of disability, equality and access issues that may arise? These and other questions can be asked.

A robust administrative appeals system is not one necessarily that allows the individual to get a different decision or necessarily that allows the administrative authority to successfully justify the initial decision; rather it is one that enables independent and objective scrutiny of the initial decision which will then, as relevant, be changed or upheld by the appeals authority.

A transparent and clearly organised administrative appeals system should have the consequence of generating trust and confidence in that system on the part of individuals, even including where the administrative appeal has failed.

Feedback from the consultation process indicated that there is considerable value in maintaining detailed statistical data relating to administrative appeals. Such data can assist in identifying areas where improvements could be made in policies and procedures of the administrative authority and also in regard to the procedures for administrative appeals.

4 Recommendations In Regard To Training And Development Of Expertise

Public officials should be knowledgeable about the legislation and policies relevant to their role. This is particularly important when the public official is acting in the role of the appeals authority.

Public officials acting in the role of appeals authority should be competent to carry out that role, be familiar with legislation and policies relevant to the impugned administrative decision and be familiar with the processes and procedures governing administrative appeals.

The opportunity for ongoing training for public officials should be available as a matter of routine within administrative authorities.

The importance of ongoing and appropriate training in regard to all aspects of good administration is also emphasised. The principles of good administration are essential in regard to the carrying out of administrative functions generally and the making of decisions, which may on occasion be the subject of an administrative appeal.

For example, in regard to initial decisions, as highlighted in the guidance in Part 1, these should be clear and reasoned and, where adversely affecting the rights or interests of individuals, they should reflect clearly the grounds on which it is based and the relevant facts and the legal basis of the decision. These are aspects that can be highlighted in appropriate training of public officials. This will enable a system of administrative appeals to operate more clearly and more effectively, both for the individual seeking to change initial decisions and for the administrative authority seeking to justify the initial decisions being appealed.

For example, in the context of administrative appeals, the demonstration of courtesy and respect towards appellants, and being aware to avoid

any difference in treatment amongst appellants, will enhance trust and confidence in the administrative appeals system. Customer service training could highlight these elements of good administration.

5 Recommendations In Regard To Legal Advice

It was noted in the consultation process that certain administrative authorities, or sections of administrative authorities, have developed successful legal units, which has resulted in efficiencies in the handling of administrative appeals. The availability of legal advice can assist appeals authorities in the assessment of whether certain appeals should either be defended or compromised in favour of the appellant.

It is recommended, subject to resource issues, that legal advice should be made available in administrative authorities in the context of administrative appeals.

The availability of legal advice, however, should not replace the requirement for familiarity with legislation and policies relevant to the impugned administrative decision and familiarity with the processes and procedures governing administrative appeals.

The availability of legal advice can be of particular value in the assessment of whether there is any relevant case law that should be taken into account in the administrative decisions being appealed.

6 Recommendations In Regard To Structure Of The Appeals Body

Article 11(1) of Law 2577 provides as follows:

“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 administration, 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.”

An appeals authority can take the form of a “senior authority” or “the authority which has performed the procedure”.

In the consultation process it emerged that some administrative authorities have commissions or boards, or other special bodies dedicated to dealing with administrative appeals, established either under special legislation or voluntarily.

An appeals authority must be objective and impartial when dealing with administrative appeals and public officials should not have had any prior involvement in the decision that is being appealed. The establishment of a separate appeals body would assist on these issues. If it is feasible, it is recommended that administrative authorities should create a separate section or separate body for administrative appeals.

It is suggested that the existence of a separate appeals section or body may be of particular benefit where the the appellant in the administrative appeal is a public official in conflict with his or her own administrative authority.

Annex II

Questions And Answers For Individuals Applying For An Administrative Appeal

Under Turkish law, administrative authorities must make available a system of administrative appeal. Good administrative practices for administrative appeals are set out in detail above in Part 1(iii) of this Guide. Part 1(iii) of this Guide is also designed to assist individuals wishing to apply for an administrative appeal and constitutes the primary source of guidance for individuals.

Some frequently asked questions are answered below

What is an administrative appeal?

When an administrative authority (such as the Ministry of Health or the Ministry of National Education or the Social Security Institution) makes a decision in relation to you, that decision can be appealed internally by you to the administrative authority to seek to have it cancelled or withdrawn or amended or replaced by a different decision.

Who can seek an administrative appeal?

If you consider that you are negatively affected by an administrative decision (administrative act), and wish to have it cancelled or withdrawn or amended or replaced by a different decision, you can do so by applying to the administrative authority for an administrative appeal.

Who will hear the administrative appeal?

There is no universal practice regarding the identity of the appeals authority. An administrative appeal is made either to a senior authority or to the same administrative authority that made the administrative decision. Either way, it is standard practice that the public officials handling the appeal will not have had any prior involvement in the decision that is being appealed.

Do I have to pay for an administrative appeal?

Frequently there is no fee for an administrative appeal. Where any administrative costs are payable in administrative appeals, they should be fair and reasonable..

Do I need to be represented by a lawyer?

It is not necessary to have legal representation for an administrative appeal. If you prefer, however, you should be allowed to be represented by a lawyer.

What are time limits for seeking an administrative appeal?

As a general rule the time limit for applying for an administrative appeal is the litigation period (sixty days for administrative acts as a general rule) from notification of the original decision, unless there is any special rule that may apply and it is essential that you check this detail with the administrative authority.

What are the steps in an administrative appeal?

The first stage is making the application to appeal the administrative decision. In principle, you should have access to the case-file and any other document necessary to ground your appeal.

The second stage is the processing of the appeal. You have right to hear and respond to any additional arguments presented by the administrative authority.

The third stage is the appeal decision. Appropriate reasons should be given for the appeal decision and, at least in cases where the decision directly affects rights or interests, the legal and factual grounds on which the decision was taken should be stated. You should be informed of other options that may be available, including judicial remedies and the time limits applicable.

What is my role during an administrative appeal?

When making the appeal you must state clearly the purpose and grounds of the appeal. You must respond to any request for additional

information promptly, accurately and fully as possible. You have the right to participate in the appeal process, and as indicated above, you have right to hear and respond to any additional arguments presented by the administrative authority.

What are my options if I lose the administrative appeal?

The appeal decision should contain appropriate reasons for the decision. If the appeal decision is not in your favour, you may decide either (i) to accept that appeal decision or (ii) to pursue the matter further.

When you are notified of the appeal decision, you should also receive details of other options that may be available to you, such as seeking judicial review and the time limits applicable. Other options that are available may include application to the Ombudsman Institution for example.

Even though these details should be supplied to you by the administrative authority, it is recommended that you are proactive in seeking necessary details in regard to all further options, such as the relevant time limits and whether the appeal decision remains suspended pending any further action taken by you.

REFERENCES

Recommendation CM/Rec (2007)7 on good administration

Recommendation Rec(2001)9 on alternatives to litigation between administrative authorities and private parties

Recommendation No. R (81) 7 on measures facilitating access to justice

Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts

Recommendation Rec (2002)2 on access to official documents

Recommendation Rec(2004)20 on judicial review of administrative acts.

Council of Europe handbook The Administration and You

2007 CJ-DA-GT Report – Proposed minimum standards for recommendation on administrative appeals

European Ombudsman – European Code of Good Administrative Behaviour

Constitution of the Republic of Türkiye

Procedure of Administrative Justice Act No. 2577

Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution dated 28/03/2013 and numbered 28601.

Turkish Ombudsman Institution Manual on Good Administration Principles

Law on the Right to Information No. 4982.



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Having a well-functioning administrative appeal system plays a very important role in reducing the workload of administrative courts. Administrative appeal applications also have the potential to reveal issues that may be incomplete and therefore need to be amended by administrative authorities by providing an evaluation of administrative policies and procedures.

The aim of the **Guide to Good Administrative Practices for Administrative Appeals** is to bring together relevant national and international standards in a single document with a comprehensive perspective with clear, concise and sufficiently flexible approaches by promoting consistent practices in administrative appeals and to guide the people and administrative authorities in the field of administrative appeals in a useful and consistent way.

Good governance is a broad and important issue. If more detailed information about the topics covered in this Guide and the principles of good administration is requested, it is recommended to refer to two important sources: the Council of Europe's "Administration and You" Handbook and the Ombudsman Institution's "Good Governance Guidelines".

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