THE IMPORTANCE OF THE RIGHT TO A REASONED JUDGEMENT IN TERMS OF FAIR TRIAL AND TURKISH ADMINISTRATIVE JURISDICTION IN THE LIGHT OF ECtHR DECISIONS

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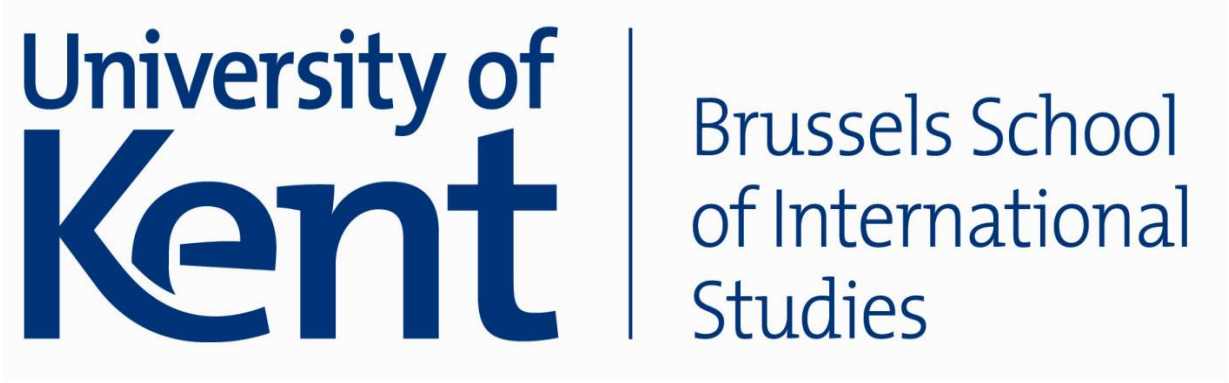
2023



The Importance of the Right to a Reasoned Judgement in Terms of Fair Trial and Turkish Administrative Jurisdiction in the Light of ECtHR Decisions

Dissertation for Partial Fulfilment of the Requirements for the Award of the Degree of Master of Human Rights Law with International Migration

Abdulkadir TUTAR

15 August 2023

Word Count: 15.015

Annex 1: Scholar and Programme Information Form

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Contract No.	TR2020/DG/03/A1-01/0782
Sector as of the Application Date (Public-University-Private)	Public
Institution as of the Application Date	Ministry of Justice
Title as of the Application Date	Rapporteur Judge
Field of Study (i.e. EU Acquis Chapter)	Chapter 23: Judiciary and Fundamental Rights
Country of Host Institution	Belgium
City of Host Institution	Brussels
Language of the Programme	English
Host Institution	University of Kent
Faculty (If Applicable)	Kent Law School
Department (If Applicable)	Brussels School of International Studies
Name of the Programme	LLM on Human Rights Law
Start/End Dates of the Programme (as in the PDS)	17/09/2022 – 16/09/2023
Duration of the Programme (months)	12 Months
Title of the Dissertation/ Research Study	The Importance of the Right to a Reasoned Judgement in Terms of Fair Trial and Turkish Administrative Jurisdiction in the Light of ECtHR Decisions
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THESIS/RESEARCH REPORT APPROVAL PAGE

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"The Importance of the Right to a Reasoned Judgement in Terms of Fair Trial and Turkish Administrative Jurisdiction in the Light of ECtHR Decisions"

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07/11/2023

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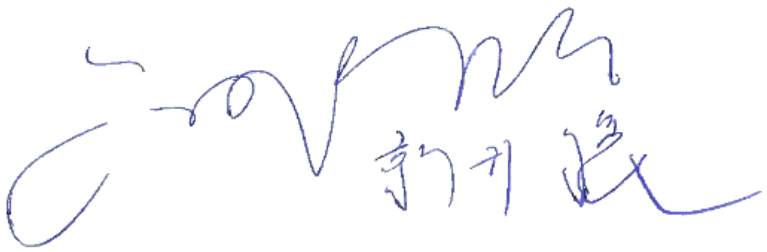

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ÖZET

AİHS'in 6. maddesi ile garanti altına alınan adil yargılanma hakkı, konvansiyona taraf devletlerce en fazla ihlal edilen haklardan biridir. Adil yargılanma hakkının unsurlarından biri olan gerekçeli karar hakkı kapsamında mahkeme kararlarının dayandığı nedenlerin taraflara açık ve anlaşılabilir bir gerekçeyle açıklanması gerekir. Çünkü yargılama sürecinde sunulan delillerin ve öne sürülen iddiaların neden kabul edilip edilmediğini bilmek tarafların en doğal hakkıdır. İdari uyuşmazlıklar kapsamında verilen idari yargı kararları açısından gerekçe daha çok önem kazanır. İdarenin işlem ve eylemlerinin hukuki denetimini sağlayan idari yargı kararlarının gerekçeleri, hem söz konusu kararların nasıl uygulanacağı hem de takip eden eylem ve işlemlerde hukuka aykırılığın giderilmesi açısından idare için yol gösterici niteliktedir. Türk idari yargı sistemi son yıllarda kararların gerekçelerinin güçlendirilmesi de dahil olmak üzere önemli reformlara konu olmuştur. Bu kapsamda, bu çalışmada gerekçeli karar hakkının adil yargılanma hakkı açısından önemi ve Türk idari yargısının mevzuat ve uygulama yönünden durumu ele alınacaktır. Gerekçeli karar hakkına yönelik AİHM içtihadı ve Türk idari yargısına yönelik olarak verilen AİHM kararları çalışmaya ışık tutacaktır.

ABSTRACT

The right to a fair trial guaranteed by Article 6 of the ECHR is one of the most violated rights by the party states to the convention. Within the scope of the right to a reasoned decision, which is one of the components of the right to a fair trial, the grounds on which the court decisions are based must be explained to the parties with a clear and understandable justification. Because it is the most natural right of the parties to know why the evidence and claims presented during the litigation process are accepted or not. Justification gains more importance in terms of judicial decisions made within the scope of administrative disputes. The justifications of the administrative judiciary decisions, which provide the legal supervision of the administrative actions and acts, guide the administration in terms of implementing the said decisions and eliminating unlawfulness in other precedent administrative actions and acts. The Turkish Administrative Jurisdiction system has been the subject of significant reforms in recent years, including strengthening the reasoning for decisions. In this context, in this paper, the importance of the right to a reasoned decision in terms of the right to a fair trial and the situation of the Turkish Administrative Judiciary in terms of legislation and practice will be discussed. The case law of the ECtHR regarding the right to a reasoned decision and the ECtHR decisions regarding the Turkish Administrative Jurisdiction will shed light on the study.

LIST OF ABBREVIATIONS

CJEU	The Court of Justice of the EU
CoE	Council of Europe
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
RAC	Regional Administrative Court
SMAC	Supreme Military Administrative Court
UDHR	Universal Declaration on Human Rights

ACKNOWLEDGEMENTS

I would like to express my deep gratitude to my academic supervisor, Prof. Yutaka Arai, who has shed light on my studies with his great experience, and to the esteemed officials of Brussels School of International Studies. I would also like to thank all my classmates and my friends, especially my dear friend Yusuf Tezel for his assistance throughout my life in Brussels.

I would also like to extend my sincere thanks to Mr. Hakan Öztatar, General Director of Legal Affairs of the Ministry of Justice of the Republic of Turkey, and to the Jean Monnet Scholarship Program, for enabling me to take my academic career to the next level.

Finally, I am grateful to my whole family members, especially my dear father Mustafa Tutar, who passed away just before this LLM Programme. I would like to express my special thanks to my mother İncili Tutar, my wife Tülay and my lovely children İnci and İmran for their support and sacrifices during this difficult process.

Abdulkadir Tutar

August 2023

Brussels

INTRODUCTION

There are usually various reasons behind the actions, decisions and transactions of people, institutions and organizations. Naturally, after resorting to a judicial remedy because of a dispute, there must also be a reason for the decision reached at the end of the trial process carried out by the court. In this regard, the parties can understand the grounds on which the judicial decision is based from the reasoning of the decision.[1]

"Justification" is a concept that reflects the human desire to know and its roots go back to ancient times.[2] As a matter of fact, the person who takes legal action wants to know the reasons on which the decision is based at the end of the trial process. Likewise, it is the most natural right of a person convicted of a crime because of a criminal case to know the reasons for the decision in question. Accordingly, judges usually strive to write clear, well-reasoned judgments.[3] Because a well-justified decision allows the disputing parties to learn why the decision is in this direction and to evaluate whether to resort to appeal mechanisms.

The right to a reasoned decision is an essential part of the right to a fair trial. Both the right to a fair trial and the right to a reasoned decision are guaranteed by the constitutions of many states as well as by international conventions. The right to a fair trial, which is also guaranteed by the European Convention on Human Rights (ECHR)[4], brings the judiciary to the fore in the execution of justice within the framework of the rule of law.[5]

Regarding the right to a fair trial, it is necessary to establish a mechanism in the judicial system which ensures that the proceedings are carried out effectively and fairly in any

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[1] Dr. M. Nedim Bekri, 'Gerekçeli Karar Hakkı', Ankara Barosu Dergisi 3 (2014), 204-228, 207. <https://dergipark.org.tr/tr/pub/abd/issue/33818/374498> accessed on 10 July 2023.
[2] Çetin Aşçıoğlu, 'Yargıda Gerekçe Sorunu', Türkiye Barolar Birliği Dergisi 48 (2003), 109-116, 109. <http://tbbdergisi.barobirlik.org.tr/m2003-48-763> accessed on 10 July 2023.
[3] S. I. Strong, 'Writing Reasoned Decisions and Opinions: A Guide for Novice, Experienced, and Foreign Judges', Journal of Dispute Resolution 1 (2015), 93-128, 93. <https://scholarship.law.missouri.edu/jdr/vol2015/iss1/7/> accessed on 10 July 2023.
[4] Council of Europe, 'European Convention on Human Rights (ECHR)' (1950) Rome. <https://www.echr.coe.int/documents/d/echr/convention_eng> accessed on 10 July 2023.
[5] Dovydas Vitkauskas, 'Protecting the right to a fair trial under the European Convention on Human Rights', 2nd Edition Council of Europe (2017) Strasbourg, 11. <https://rm.coe.int/protecting-the-right-to-a-fair-trial-under-the-european-convention-on-/168075a4dd> accessed on 10 July 2023.

litigation process. The right to a fair trial enshrined in Article 6 of the ECHR implicitly includes the right to a reasoned decision.[6] In line with the case law of the European Court of Human Rights (ECtHR), justifications should also be presented in the decisions of the courts within the scope of the right to a fair trial.[7]

On the other hand, the importance of the right to a reasoned decision in the administrative judiciary is more prominent. Because the administration has the power to take actions and acts that can deeply affect the civil rights and obligations of individuals and even their daily lives.[8] Therefore, effective handling of appeals against administrative actions and acts requires an administrative jurisdiction system that provides fair trial guarantees and well-justified decisions.[9] Well-reasoned administrative judiciary decisions are important for the case at hand and other precedent administrative actions and acts. Because the administration, which understands why the administrative action or act is not lawful by examining the reason, will be able to avoid this unlawfulness in other precedent administrative actions and acts.[10]

The Turkish administrative jurisdiction system, which has a long history since the establishment of the Council of State in 1868, also gives due importance to providing fair trial guarantees and well-reasoned decisions. Because this is an obligation stemming from the constitution and administrative jurisdiction legislation as well as Turkey's being a party to the ECHR. Turkish administrative jurisdiction system has undergone important reforms such as the establishment of second-instance courts in recent years. Reforms have also been carried out to strengthen the justifications of decisions.[11] However, violations

[6] Burcu Turan, 'AİHS Çerçevesinde İdari Yargıda Gerekçeli Karar Hakkı', Akdeniz Üniversitesi Hukuk Fakültesi Dergisi 12 (2022), 177-202, 179.
< https://dergipark.org.tr/tr/pub/akdhfd/issue/70331/1068789> accessed on 10 July 2023.
[7] Bekri (n 1) 208.
[8] Arman Zrvandyan, 'Casebook on European fair trial standards in administrative justice', Council of Europe – Folke Bernadotte Academy, December (2016) Strasbourg, 5.
<https://rm.coe.int/16807001c6> accessed on 10 July 2023.
[9] Ibid.
[10] Turan (n 6) 189.
[11] Council of Europe, 'Road Map for an Improved Administrative Justice System 2020–2023' (2022) Ankara, 5.
<https://rm.coe.int/en-road-map-web-2754-8104-2438-1/1680a609fe> accessed on 10 July 2023.

of the right to a reasoned decision can still be encountered in the administrative judiciary, as in all branches of the judiciary.

This dissertation aims to reveal the importance of the right to a reasoned decision and to evaluate the current situation of the Turkish administrative jurisdiction system in light of ECtHR decisions. In this context, in the first part, after giving brief information about the ECHR, the importance and components of the right to a fair trial will be discussed.

In the second part, the right to a reasoned decision, which is the main subject of the study, will be explained primarily in terms of conceptual and historical background. Afterward, the importance of the right to a reasoned decision and the characteristics of a well-justified decision will be emphasized based on the case law of the ECtHR.

In the third part, firstly, an overview of the Turkish administrative judiciary system will be reflected. In this section, the historical background of the Turkish administrative judiciary and the reforms carried out in the administrative judiciary in recent years will also be briefly explained. Afterward, the legislation of the administrative judiciary regarding the right to a reasoned decision will be reflected.

In the last part, the situation of the Turkish administrative jurisdiction system in terms of the right to a reasoned decision will be reflected. In this context, the decisions of the ECtHR on the subject will also shed light on this part. Finally, the Turkish administrative jurisdiction system will be evaluated in terms of the right to a reasoned decision.

1. THE ECHR AND RIGHT TO A FAIR TRIAL

1.1. Overview of the ECHR

In the classical sense, human rights and freedoms were obtained as a result of the struggle of the bourgeoisie against feudalism.[12] The rights included in human rights, which are considered as a set of moral values, have varied periodically.[13] The efforts to prevent the re-emergence of the violence and destruction caused by the Second World War have revealed that human rights should be recognized and protected in the international arena as well as in the national arena.[14]

The United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR)[15] in 1948, based on the idea that human rights should be addressed not only under the guidance of states but also on common ground. The UDHR, which guided many regulations regarding human rights after 1945, also formed the basis for many global and regional agreements in this field.[16] The UDHR, which is an era-opening document in this respect, has been the driving force in the acceleration of human rights in the following period.[17]

However, the very limited legally binding nature of UDHR and the fact that it does not impose any sanctions in case of violation of human rights prevented the principles in the declaration from being fully implemented at the universal level.[18] In order to protect human rights and fundamental freedoms more effectively, the ECHR was signed in Rome

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[12] Ezgi Çırak, 'Avrupa İnsan Hakları Sözleşmesi Çerçevesinde Adil Yargılanma Hakkının Uygulama Alanı', Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi 2 (2019), 997-1028, 1000. <https://hukuk.deu.edu.tr/wp-content/uploads/2019/09/EZGI-CIRAK.pdf> accessed on 10 July 2023.

[13] Ibid.

[14] Volkan Akyüz, 'Avrupa İnsan Hakları Mahkemesi Kararlarının İdari Yargı Kararlarına Etkisi', İstanbul Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Bölümü, Postgraduate Thesis (2010) İstanbul, 1. < http://nek.istanbul.edu.tr:4444/ekos/TEZ/46984.pdf> accessed on 10 July 2023.

[15] United Nations General Assembly, 'Universal Declaration of Human Rights (UDHR)' Vol 3381 (1949) Department of State United States of America. <https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf> accessed on 10 July 2023.

[16] Hurst Hannum, 'The UDHR in National and International Law', Health and Human Rights 2 (1998), 144-158, 145. <https://www.jstor.org/stable/4065305> accessed on 10 July 2023.

[17] M. Fatih Çınar, 'Avrupa İnsan Hakları Sözleşmesi'nde Düzenlenen Haklar ve "Özel ve Aile Hayatına Saygı Hakkı", Uluslararası Hukuk ve Sosyal Bilimler Araştırmaları Dergisi 1 (2022), 103-123, 104. < https://dergipark.org.tr/tr/pub/uhusbad/issue/68293/1036382> accessed on 10 July 2023.

[18] Akyüz (n 14) 8.

on 4 November 1950 by 12 member states of the Council of Europe (CoE), including Turkey, and entered into force on 3 September 1953.[19] Currently, 46 member states of the CoE are also parties to the ECHR. Russia, which withdrew from the CoE membership, has not been a party to ECHR since 16 September 2022.[20]

All 27 European Union (EU) member states are also parties to the ECHR. The accession of the EU to the ECHR has also been on the agenda for a long time. Even with the entry into force of the Lisbon Agreement in 2009, it has become an obligation[21] for the EU to access the ECHR.[22] For this reason, as a result of long negotiations, a draft accession agreement was adopted in 2013 between the EU and the CoE.[23] However, the Court of Justice of the EU (CJEU) evaluated that the draft agreement in question was not in line with the EU law in its opinion dated 18 December 2014[24]. In that opinion, the CJEU did not oppose the EU's accession to the ECHR, but emphasized the unique characteristics of EU law and accordingly concluded that the draft agreement was inappropriate.[25] Nevertheless, accession to the ECHR remains on the EU agenda and is subject to negotiations with the CoE.

The ECHR, inspired by the UDHR, is a legal document with deeper and more comprehensive content for every right it regulates, although it is narrower than the UDHR in terms of the types of rights it recognizes.[26] Indeed, a general framework regarding fundamental human rights was drawn in the ECHR, whose purpose is to protect human

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[19] Ibid.
[20] European Court of Human Rights, 'The Russian Federation ceases to be a Party to the European Convention on Human Rights' Press Release, ECHR 286 (2022). <https://hudoc.echr.coe.int/eng-press#{%22itemid%22:[%22003-7435446-10180882%22]}> accessed on 10 July 2023.
[21] Article 6.2. of the Treaty on European Union reads as follows: *"The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties."*
[22] Christina Eckes, 'EU Accession to the ECHR: Between Autonomy and Adaptation', The Modern Law Review 2 (2013), 254-285, 255. < https://ael.eui.eu/wp-content/uploads/sites/18/2015/04/Eckes-08-Eckes.pdf> accessed on 10 July 2023.
[23] Servet Alyanak, 'Avrupa Birliği'nin Avrupa İnsan Hakları Sözleşmesi'ne Katılımı: Saatler İleriye mi Yoksa Geriye mi İşliyor?', Ombudsman Akademik 2 (2015), 72-88, 73. <https://dergipark.org.tr/tr/pub/ombudsmanakademik/issue/17163/439078> accessed on 10 July 2023.
[24] Court of Justice of the EU (CJEU), Opinion 2/13 (18 December 2014). < https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62013CV0002> accessed on 10 July 2023.
[25] Alyanak (n 23) 86.
[26] Çınar (n 17) 106.

rights and fundamental rights and freedoms, similar to the UDHR, and these rights are listed in the first section of the ECHR.[27]

The rights and freedoms guaranteed by the ECHR cover a wide range from the right to life to the freedom of expression, from the right to a fair trial to the freedom of assembly and association.[28] Moreover, these rights and freedoms did not remain as they first emerged.[29] The articles within the scope of the convention were expanded by the ECtHR by interpreting in favour of freedoms.[30] Because the basic tenet of ECtHR case law has been the notion that the ECHR is a living document that must be construed in light of current circumstances.[31]

Nevertheless, new areas of rights and freedoms were created with the additional protocols to the ECHR. As a matter of fact, there are currently 16 additional protocols to the convention. In this context, with the Additional Protocol No. 1, the protection of property, the right to education and the right to free elections were introduced.[32] The prohibition of imprisonment for debt, the freedom of movement, the prohibition of expulsion of nationals and the prohibition of collective expulsion of aliens were introduced with the Additional Protocol No. 4.[33] With Additional Protocol No. 6, the death penalty was abolished[34], and with Additional Protocol No. 13, it was aimed to completely abolish the death penalty.[35]

The most fundamental purpose of the ECHR is to protect human rights in a supranational collective manner in a democratic society.[36] In this regard, the main difference that

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[27] Brendan D. Kelly, 'Human Rights in Psychiatric Practice: an Overview for Clinicians', BJPsych Advances 21 (2015), 54–62, 55. <https://www.cambridge.org/core/journals/bjpsych-advances/article/human-rights-in-psychiatric-practice-an-overview-for-clinicians/C1D99C0DC9793200E9949D348BAD60C1> accessed on 10 July 2023.
[28] Ibid.
[29] Çınar (n 17) 105.
[30] Ibid.
[31] George Letsas, 'The ECHR as a Living Instrument: Its Meaning and Legitimacy' in Andreas Føllesdal, Birgit Peters and Geir Ulfstein (eds), 'Constituting Europe: The European Court of Human Rights in a National, European and Global Context', Cambridge University Press (June 2013), 106-141, 108. <https://www.cambridge.org/core/books/constituting-europe/echr-as-a-living-instrument-its-meaning-and-legitimacy/ED7EA3F99CC8DB88BF2691FF9B44C25B> accessed on 11 July 2023.
[32] Council of Europe, 'Additional Protocol No. 1 to the ECHR' (1952) Paris, Article 1, 2 and 3.
[33] Council of Europe, 'Additional Protocol No. 4 to the ECHR' (1963) Strasbourg, Article 1, 2, 3 and 4.
[34] Council of Europe, 'Additional Protocol No. 6 to the ECHR' (1983) Strasbourg, Article 1.
[35] Council of Europe, 'Additional Protocol No. 13 to the ECHR' (2002) Vilnius, Article 1.
[36] Akyüz (n 14), 2010, p. 9.

distinguishes ECHR from UDHR is that it is legally binding on the party states. In this regard, Article 1 of the ECHR reads as follows:

> *"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."*[37]

On the other hand, the ECtHR supervises whether the obligations arising from the convention are fulfilled by the party states. Until 1998, the organs of the said control mechanism were the European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers of the CoE.[38] Following the entry into force of Additional Protocol No. 11[39] to the Convention in 1998, the supervisory authority is exercised only by the ECtHR.[40] The previous jurisdiction of the Committee of Ministers was terminated with the 11th protocol.[41]

People and non-governmental organizations claiming that a right arising from the convention has been violated can file an application against the party-state before the ECtHR.[42] Moreover, the persons and institutions in question can file an application not only against their own state but also against another state party to the convention. States parties are obliged to comply with the decisions given by the ECtHR.[43] Furthermore, the Committee of Ministers monitors whether the violation decisions given by the ECtHR are complied with[44], and in case of non-compliance, sanctions may be imposed on the relevant states.[45]

In summary, ECHR, as a living document, has been serving the protection and development of human rights in 46 state parties under the guardianship of the ECtHR for more than 70 years. Unlike other international conventions, the ECHR, which makes the

[37] ECHR (n 4), 1950, Article 1.
[38] Çınar (n 17) 109.
[39] Council of Europe, 'Additional Protocol No. 11 to the ECHR' (1994) Strasbourg. <https://70.coe.int/pdf/library_collection_p11_ets155e_eng.pdf> accessed on 11 July 2023.
[40] ECHR (n 4) Article 19.
[41] Akyüz (n 14) 16.
[42] ECHR (n 4), 1950, Article 34.
[43] Ibid., Article 46.1.
[44] Ibid., Article 46.4.
[45] Akyüz (n 14) 12.

individual a subject of rights in international law, compels the state parties to operate in accordance with human rights with the supervision mechanism it has established.

1.2. Right to a Fair Trial within the Context of the ECHR

The right to a fair trial is guaranteed by Article 6 of the ECHR. Article 6.1 of the ECHR reads as follows:

> *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*[46]

If the aforementioned provision is examined, it is understood that Article 6 can be applied in cases that affect the civil rights and obligations of a person and in cases where the person is exposed to a criminal charge.[47] Since the expression *"civil rights and obligations"* has an autonomous meaning, it is not proper to focus only on the domestic law of the party-state in order to interpret whether the relevant right or obligation is of a civil nature.[48] For the civil component of Article 6.1 "*a genuine and serious dispute"* over a right acknowledged by domestic law must exist and the outcome of the proceedings must be decisive for the right.[49]

At this point, since the subject of the study is partially related to the administrative jurisdiction, it is necessary to examine whether the disputes arising from the administrative jurisdiction are included in Article 6.1. In a non-criminal dispute within the scope of domestic administrative jurisdiction, it should also be evaluated whether the dispute arises from a civil right or obligation.[50]

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[46] ECHR (n 4) Article 6.1.
[47] Zrvandyan (n 8) 13.
[48] European Court of Human Rights, 'Guide on Article 6 of the European Convention on Human Rights' (2022) Strasbourg, para. 1.
<https://www.echr.coe.int/documents/d/echr/guide_Art_6_ENg> accessed on 11 July 2023.
[49] Case of Grzeda v. Poland, Application No. 43572/18, (ECtHR, 15 March 2022), para. 257.
<https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-216400%22]}> accessed on 11 July 2023.
[50] Zrvandyan (n 8) 13.

In Ringeisen v Austria[51], the ECtHR made important conclusions regarding the determination of civil rights and obligations. Accordingly, there is no obligation for all parties to the dispute to be private persons.[52] Therefore, even if one party to the dispute is the administration, if the rights and obligations of the person are affected due to the proceedings, the dispute is within the scope of Article 6.1. As a matter of fact, the ECtHR has reached the following conclusion:

> *"The wording of Article 6.1 covers all proceedings the result of which is decisive for private rights and obligations."*[53]

On the other hand, disputes arising from public law but not within the scope of civil rights and obligations may also fall into the criminal dimension of Article 6.1.[54] Regardless of whether it is classified as criminal in domestic law, if the penalty for an offence is punitive and deterrent, it is considered to be a criminal charge and Article 6.1 applies.[55]

Within the framework of the right to a fair trial, necessary mechanisms should be established by the state for the trial processes to take place in a fair manner. However, since the judicial systems of the countries are different from each other, Article 6 also provides a wide range of autonomy to the party states.[56]

Last but not least, more than 70 years have passed since the signing of the ECHR and many economic, political, social and cultural situations have changed dramatically. Because of that the right to a fair trial should also be addressed in line with the current conditions.[57] As a matter of fact, the ECtHR prefers to interpret Article 6 in this way within the scope of the cases before it. After this general evaluation, this part of the study will focus on the meaning and importance of a fair trial and the components of the right to a fair trial.

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[51] Case of Ringeisen v. Austria, Application No. 2614/65, (ECtHR, 16 July 1971). <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57565%22]}> accessed on 11 July 2023.
[52] Ibid., para. 94.
[53] Ibid.
[54] Zrvandyan (n 8) 19.
[55] Ibid., 20.
[56] Vitkauskas (n 5) 12.
[57] Ibid., 13.

1.2.1. The Meaning and the Importance of the "Right to a Fair Trial"

One of the most important tenets of every democratic society is the right to a fair trial, which is protected by Article 6 of the ECHR and interpreted by the case law of the ECtHR.[58] In an ideal judicial system, both civil cases involving individuals and institutions, and criminal charges against individuals are concluded with the decisions of independent and impartial courts. Undoubtedly, the trial process should be conducted in a fair manner. In this respect, due to its importance for judicial systems the right to a fair trial is guaranteed not only in constitutions and many national acts but also in international legal documents. Because it is the basic element that aims to ensure the rule of law in a state of law and gives assurance to individuals.[59]

The UDHR, which is a milestone accelerating the development of human rights and is generally accepted all over the world, has guaranteed the right to a fair trial.[60] Article 10 of the UDHR has also largely guided Article 6 of the ECHR. The EU, which aims to promote the rule of law and democracy both inside and outside the union, has also included the right to a fair trial in the EU Charter of Fundamental Rights.[61]

Even though the right to a fair trial is given such importance in international conventions, no definition of fair trial has been made in the said documents. Article 6 of the ECHR also regulates the components of the right to a fair trial but does not make a definition regarding the fair trial. A fair trial can be defined as a trial conducted by independent and impartial courts, which allows for equal and mutual presentation of claims and defenses without any discrimination between the disputing parties.[62]

In this respect, the right to a fair trial, which is a procedural right, is directly related to other fundamental rights and freedoms guaranteed by the ECHR. Because no matter what

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[58] Zrvandyan (n 8) 13.
[59] Esra Bahar, 'Türkiye Anayasa Mahkemesi Kararları Işığında "Adil Yargılanma Hakkı"', Adalet Dergisi 68 (2022), 253-283, 254.
<https://dergipark.org.tr/tr/pub/adaletdergisi/issue/70479/1135233> accessed on 11 July 2023.
[60] UDHR (n 15) Article 10.
[61] Charter of Fundamental Rights of the European Union, Official Journal of the European Communities, 18 December 2000 C 364/01 (2000), Article 47.
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT> accessed on 11 July 2023.
[62] Çırak (n 12), 2019, 1002.

specific right a case is based on and regardless of its subject, the primary expectation of the parties to the dispute is that the trial be conducted in a fair manner. The right to a fair trial is also strongly linked to democracy and the rule of law.[63] Because a state's judicial system will only serve democracy and the rule of law if it can protect the right to a fair trial and operate in line with this right.

On the other hand, the right to a fair trial is one of the most violated rights of the ECHR. For instance, 25,674 violation decisions were made by the ECtHR between 1959 and 2022 and 5,703 of them were related to the right to a fair trial.[64] In 2021, the violation decisions given within the scope of the right to a fair trial correspond to 20 percent of the total number of violation decisions.[65] In 2022, 223 violation decisions regarding the right to a fair trial were given and the rate was still around 20 percent.[66] This is not surprising since the right to a fair trial is broad in scope and closely linked to other rights guaranteed by the convention.[67]

In summary, the right to a fair trial is critical for the entire judicial system in a democratic society. Designing the judicial system in line with the requirements of this right may reduce the number of violations of both Article 6 and other relevant articles.

1.2.2. The Components of Fair Trial

It has been stated before that Article 6 of the ECHR is one of the most comprehensive articles and has many sub-components. While the first paragraph of Article 6 regulates the sub-components of the right to a fair trial in general, the second paragraph regulates the presumption of innocence and the third paragraph regulates the rights of the person

[63] Bahar (n 59), 2022, 258.
[64] Council of Europe, 'Violations by Article and by State 1959-2022', 2022, Strasbourg. <https://www.echr.coe.int/Documents/Stats_violation_1959_2022_ENG.pdf> accessed on 11 July 2023.
[65] European Court of Human Rights, 'The ECHR in Fact and Figures 2021', February (2022) Strasbourg, 7. <https://www.echr.coe.int/documents/d/echr/Facts_Figures_2021_ENG> accessed on 11 July 2023.
[66] Council of Europe, 'Violations by Article and by State 2022', 2022, Strasbourg. <https://www.echr.coe.int/Documents/Stats_violation_2022_ENG.pdf> accessed on 11 July 2023.
[67] Çırak (n 12) 1004.

under suspicion of crime.[68] Since the subject of the study is related to administrative jurisdiction, article 6.1 will be discussed in terms of components in this section.

In Article 6.1, the principles of an independent and impartial court established by law, reasonable time, fairness and publicity are listed as the components of the right to a fair trial. However, the ECtHR accepts some other principles and rights such as the right to apply to a court, equality of arms, the right to a reasoned decision, and the principle of legal certainty as implicit elements of the right to a fair trial, although they are not explicitly stated in Article 6.1.[69] In this section, the sub-components of the right to a fair trial will be briefly explained, but the right to a reasoned decision which is the main subject of the study will be discussed in detail in the next section.

Independent and Impartial Tribunal Established by Law

In a democratic society, the first important element for people to be able to defend their rights effectively is access to court. For this reason, firstly, the right of access to the court will be emphasized. Everyone has the right to apply to the court regarding their civil rights and obligations.[70] However, it should not be considered as an unqualified right. Because the legal systems of countries may differ and there may be some restrictions.[71]

For instance, in countries such as Italy and Turkey, mediation is a prerequisite for litigation in certain types of disputes. Therefore, the disputing parties will not be able to file a lawsuit without completing the mediation process. This should not be considered contrary to the right of access to a court. However, according to the ECtHR, restrictions on access to court should not be such that the person's access is completely removed or the essence of the right is affected.[72]

[68] Sibel İnceoğlu, 'Adil Yargılanma Hakkı – Anayasa Mahkemesi'ne Bireysel Başvuru El Kitapları Serisi-4, Ankara (2018), 3. <https://www.anayasa.gov.tr/media/3547/04_adil_yargilanma_hakki_son.pdf> accessed on 11 July 2023.
[69] Ibid.
[70] Guide on Article 6 of the ECHR (n 48), 2022, para. 107.
[71] Ibid., para. 108.
[72] Case of Stanev v. Bulgaria, Application No 36760/06, (ECtHR, 17 January 2012), para. 230. <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-108690%22]}> accessed on 11 July 2023.

Within the scope of the component of an independent and impartial tribunal, it is examined whether the authority or body that decides on the dispute is in the nature of a court even if they are not called as a "court" or "tribunal" in the domestic legal system.[73] The requirement that the court be established by law is actually the only requirement that Article 6 clearly and unequivocally expects from domestic law.[74] The ECtHR pointed out that the establishment of courts by law is related to the rule of law, that the legitimacy of courts to resolve disputes in a democratic society can be ensured in this way and that the principle of establishment by law covers not only the establishment of the court but also the functioning of the court and the composition of the appointed judges.[75]

On the other hand, a fair trial primarily requires that the court examining the dispute be independent and impartial.[76] While "independence" requires providing legal and institutional safeguards which prevent interference of other branches of power in the judicial matter, "impartiality" requires the court and the judges to approach the parties without any discrimination.[77] Indeed, in order for a court to operate the judicial process fairly and give a fair decision, it must be both independent of external factors and impartial towards the disputing parties.

Fairness

Fairness is one of the most crucial components of Article 6, as it is the component that directly gives the article its name. In order to understand whether the trial is fair or not, it is necessary to evaluate the processes of the trial as a whole.[78] Because a situation that is contrary to fairness at one stage of the proceedings can be resolved at another stage, at the court of second instance or in the appeal process. [79]

[73] Vitkauskas (n 5) 45-46.
[74] Ibid., 46.
[75] Case of Guðmundur Andri Ástráðsson v.Iceland, Application No 26374/18, (ECtHR, 1 December 2020), para. 211-213.
<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-206582%22]}> accessed on 11 July 2023.
[76] Guide on Article 6 of the ECHR (n 48), 2022, para. 254.
[77] Vitkauskas (n 5) 52.
[78] Guide on Article 6 of the ECHR (n 48) para. 332.
[79] Ibid., para 333.

The concept of “fairness” is not also dependent on the way in which the domestic procedure interprets the violation of the relevant rules.[80] For instance, it is not the duty of the ECtHR to assess whether unlawful evidence is admissible or not. [81] However, the ECtHR examines whether the trial process was entirely fair, including the obtainment of evidence.[82]

Article 6 deals with whether the parties are given the opportunity to express themselves and defend themselves, to present evidence, to object to evidence that is thought to be untrue, rather than whether the domestic courts give the right decision or not.[83] In any case, the ECtHR is not a fourth-instance court where the final decisions of the domestic courts are appealed.

Undoubtedly, one of the most important principles for a trial to be considered fair is the principle of "equality of arms". The purpose of this principle is to ensure a fair balance between the parties throughout the trial process.[84] In order to ensure the principle of “equality of arms”, the trial process must be organized in such a way that each side of the case is given the opportunity to present their case without being in a position at a significant disadvantage compared to the other side.[85] At the same time, there may be some procedural rules regarding the collection and presentation of evidence during the trial process, but these rules should not make it impossible to use effectively the rights provided under Article 6 for the defence.[86]

Reasonable Time

One of the most important elements of the right to a fair trial is the conclusion of the trial process within a reasonable time. This principle also imposes a positive obligation on states to establish a judicial system that will conclude proceedings within a reasonable

[80] Vitkauskas (n 5) 59.
[81] Case of Gäfgen v. Germany, Application No 22978/05, (ECtHR, 1 June 2010), para. 163. <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-99015%22]}> accessed on 11 July 2023.
[82] Ibid.
[83] Vitkauskas (n 5) 13.
[84] Bahar (n 59) 268.
[85] Case of Kress v. France, Application No 39594/98, (ECtHR, 7 June 2001), para. 72. <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59511%22]}> accessed on 11 July 2023.
[86] Vitkauskas (n 5) 64.

time.[87] If the trial process is completed in a reasonable time, the victimization due to loss of rights will not increase and the decision given by the court will gain more meaning.[88]

In general, the litigation process, which starts from the date of application to a court, ends as of the finalization date of the decision, including the completion of other stages in the judicial system such as the court of second instance and appeal mechanism.[89] In fact, the time taken for the execution of the decision should be included in this period, because the right obtained as a result of the lawsuit becomes possible only with the execution of the decision.[90]

Unlike the general approach of domestic judicial systems, the ECtHR does not determine a standard time period according to the types of proceedings and evaluates the cases in terms of reasonable time, taking into account their own special circumstances.[91] While the shortest trial in which the ECtHR found a violation lasted 2 years and 4 months at two instances, the longest trial in which there was no violation took 8 years at two instances.[92] As the ECtHR has repeatedly underlined in different cases, the following criteria should be considered while evaluating the reasonable time:

> *"the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute."*[93]

Publicity

Conducting hearings with the participation of the parties during the trial process is a part of the right to be heard. However, it is not always possible to conduct hearings at all stages of the proceedings. While holding a hearing in the first instance court is generally seen

[87] Guide on Article 6 of the ECHR (n 48) para. 483.
[88] Bahar (n 59) 266.
[89] Guide on Article 6 of the ECHR (n 48) para. 475 - 478.
[90] Case of Martins Moreira v.Portugal, Application No 11371/85, (ECtHR, 26 October 1988), para. 44. <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57535%22]}> accessed on 11 July 2023.
[91] Vitkauskas (n 5) 107.
[92] Ibid., 108.
[93] Case of Frydlender v. France, Application No 30979/96, (ECtHR, 27 June 2000), para. 43. <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58762%22]}> accessed on 11 July 2023.

as a requirement, it may be justified not to hold a hearing at the second instance courts or appeal stage if a hearing is held at the first instance.[94]

On the other hand, the principle of publicity is important in terms of protecting the disputing parties from the secret execution of judicial proceedings and increasing public confidence regarding the judiciary.[95] This principle also forms the basis for the media to perform its duty as a public watchdog, which is one of its main functions.[96]

Nevertheless, the principle of publicity, which means that the hearing is held publicly and the decision is publicly announced, cannot be considered unlimited.[97] Article 6.1 already provides that some restrictions can be made for situations such as the interests of the juveniles, interests of morals and protection of private life etc.[98]

[94] Guide on Article 6 of the ECHR (n 48) para. 440 – 441.
[95] Ibid., para. 457.
[96] Vitkauskas (n 5) 76.
[97] Bahar (n 59) 267.
[98] ECHR (n 4) Article 6.1.

2. THE RIGHT TO A REASONED DECISION WITHIN THE CONTEXT OF THE ECHR

2.1. The Historical and Conceptual Background of Reasoned Decision

2.1.1. The Meaning and Importance of "Justification"

Generally, not only judicial decisions, but also the decisions made in daily life, the views defended, and the actions taken generally have a justification in the background.[99] In this regard; cause refers to facts, events, actions, considerations and thoughts that form the basis of the result, regardless of whether the result is true or false, legal or unlawful, defensible or untenable.[100] On the other hand, justification is the logical explanation of the reason that leads to the result.[101]

Historically, various definitions of legal justification have been made. For instance, according to Fabreguettes:

> *"Justification is the spirit of judgment."*[102]

The justification, which reflects the logical basis of the court's decision, is characterized as an outcome of the judge's mental effort. In this regard, justification can also be defined as the statement reflecting the method followed by the judge for the determination and interpretation of the law and rule to be applied within the scope of a dispute and its application to the concrete case.[103]

The justification that enables the decision maker to act more carefully is a preventive element to make an unlawful decision.[104] At the same time, it eliminates the arbitrariness of the judicial organs by enabling the auditing of the decisions and also serves for the

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[99] Hilal Albal Ulaş, 'Yargı Kararlarının Gerekçeli Olması Üzerine Bir Değerlendirme', Hacettepe Hukuk Fakültesi Dergisi 11 (2021), 1243-1283, 1247.
<https://dergipark.org.tr/tr/download/article-file/1846957> accessed on 11 July 2023.
[100] Council of Europe, 'Module on Legal Reasoning and Judgment Drafting', (2022) Ankara, 44.
<https://rm.coe.int/modul-1-hukuki-gerekcelendirme-ve-karar-yaz-m-kat-l-mc-kitab-2788-6455/1680a7fdc0> accessed on 11 July 2023.
[101] Ibid.
[102] Ibid.
[103] Muharrem Kılıç, 'Gerekçeli Karar Hakkı: Yargısal Kararların Rasyonalitesi', Türkiye Adalet Akademisi Dergisi 47 (2021), 1-46, 5.
<https://dergipark.org.tr/en/download/article-file/1884534> accessed on 11 July 2023.
[104] Bekri (n 1) 208.

adoption of the judicial decisions by the parties and the public.[105] Therefore, the consistent and clear justification of the decisions produced by the judges constitutes the basis for the proper maintenance of the judicial services.[106] Moreover, presenting a satisfactory justification at the end of the trial process also contributes to the improvement of the quality of the judgment itself.[107]

The right to a reasoned decision is also closely related to the right to be heard. Because, from a well-justified decision, the parties have the opportunity to understand whether the claims, defences and evidence they presented during the trial were taken into account, as well as the reasons on which the judgment is based.[108] In addition, it contributes to the parties' better evaluation of whether to use the appeal mechanisms and to the effective use of their right to take legal action.[109] Furthermore; since the foreign courts can understand that the decision has been reached reasonably and legally from a well-justified judgment, the enforcement of a well-justified decision can be facilitated in the international arena.[110]

In terms of administrative law, the justification of administrative actions and acts enables the legal subjects affected by the action or decision to understand the basis of the actions and use their right of defence effectively, especially if there is an administrative sanction.[111] In this respect, administrative actions and acts, whose purpose is to realize the public interest, should be properly justified and far from arbitrariness, even if they are not subject to administrative jurisdiction.

Proper justification of administrative actions or acts allows the addressees to understand the reasons on which the decision or action is based, and to evaluate whether they should apply to court against the administrative decision or action. In this respect, it appears as

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[105] Ibid.
[106] Strong (n 3) 94.
[107] Chad M. Oldfather, 'Writing, Cognition, and the Nature of the Judicial Function', Georgetown Law Journal 1283 (2008), 1283 – 1345, 1287.
< https://scholarship.law.marquette.edu/facpub/92/> accessed on 11 July 2023.
[108] Ulaş (n 99) 1253.
[109] Bekri (n 1) 210.
[110] Strong (n 3) 104.
[111] Prof. Dr. Ender Ethem Atay, 'Yargı Kararlarının Gerekçelendirilmesi ve İdari Yargıdaki Uygulaması', Danıştay Dergisi 147 (2018), 7 – 32, 18.
<https://cdn.bartin.edu.tr/personel/ecf292227efb77dbdc4ccb91b19d8031/147.pdf> accessed on 11 July 2023.

a requirement of the *"good governance"* principle, which has been a popular concept in recent years.[112] In the modern era, the principle of good governance is binding not only on national administrations but also on supranational organizations and institutions. As a matter of fact, Article 41.1 of the EU Charter of Fundamental Rights reads as follows:

> *"Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union."*[113]

One of the obligations covered by this right is as follows:

> *"the obligation of the administration to give reasons for its decisions."*[114]

On the other hand, the right to a reasoned decision gains more importance in terms of the decisions of the administrative courts where the lawsuits against administrative actions and acts are taken. Because one of the parties of administrative disputes is the administration that has the ability to make executive decisions and is equipped with public power. Protecting individuals and institutions that are in a weaker position compared to the administration can only be possible through the judicial review of the administration.[115]

In this regard, the administrative courts reveal why administrative actions or acts are unlawful, with the justification of their decisions.[116] The administration, on the other hand, can implement the court decision, taking into account the justification.[117] Beyond that, if the administrative courts provide a satisfactory justification, it will be possible for the administration to abandon its unlawful attitude in the following precedent actions and acts, and this will lighten the workload of the administrative courts.

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[112] Ibid.
[113] Charter of Fundamental Rights of the EU (n 61) Article 41. 1.
[114] Ibid., Article 41.2.
[115] Turan (n 6) 189.
[116] Yıldırım Uler, 'İdari Yargıda İptal Kararlarının Sonuçları', Ankara Üniversitesi Hukuk Fakültesi Yayınları No. 281, Sevinç Matbaası (1970) Ankara, 70.
<https://dspace.ankara.edu.tr/xmlui/handle/20.500.12575/10363> accessed on 11 July 2023.
[117] Ibid.

2.1.2. The Historical Background of Reasoned Decision

The first traces of the search for justification, which emerged in the periods when people began to question both themselves and their surroundings with an existential impulse, appear in the clay tablets of the Sumerian Priest State.[118] Clay tablets presented to humanity by the Sumerian State testify that the justification, which is the mainstay of judicial ethics, is as old as Sumer.[119] Accordingly, the first reasoned decision in the records took place in a trial called the *"silent wife case".*[120] The decision is also ahead of its time in terms of the right to remain silent, the admissibility of evidence and the technique of grounding the judgment.[121]

In the 1850s, a woman in Sumer, whose husband was killed by three people, did not report the murder to the authorities, although she learned about it.[122] In the case, which was handled in an assembly that functions as a court, the majority of the members of the assembly thought that the woman who concealed the crime should be punished, supposing that she might be an accomplice.[123] However, the other two members undertook the defence of the woman and thought that the woman should not be punished because she did not participate in the murder.[124] Afterward, the members agreed with the defence and concluded that the woman was right to remain silent because her husband had not met her needs while he was alive.[125]

The silent wife case is proof that the judges have been trying to justify their judgments for 4000 years since the Sumerian State. However, the emergence of the justification as a mass political demand found a place in the petition of Draguignan Tiers Etats dated 1788 in France.[126] With the Law dated 16-24 August 1790, which was enacted in the period

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[118] Kılıç (n 103) 5.
[119] Hilmi Şeker, "İbralaşmayı Yoksayan Etik İlişki/Yozlaşan Gerekçe", Türkiye Barolar Birliği Dergisi, 108 (2013), 291 – 348, 294.
<https://hukukbook.com/ibralasmayi-yoksayan-etik-iliski-yozlasan-gerekce/> accessed on 11 July 2023.
[120] Ibid.
[121] Şeker (n 119) 295.
[122] Samuel Noah Kramer, 'History Begins at Sumer', University of Pennsylvania Press (1981) Philadelphia, p. 56.
<https://www.academia.edu/37432566/History_Begins_at_Sumer_Thirty_Nine_Firsts_in_Recorded_History> accessed on 11 July 2023.
[123] Ibid.
[124] Ibid.
[125] Ibid.
[126] Kılıç (n 103) 6.

after the French Revolution, regulations regarding the judicial organization were made.[127] In Article 15 of Title V of the said Law, it has become obligatory for all courts' decisions to be reasoned.[128]

The process in question reveals that the idea that judicial decisions should be justified has made significant progress over time. Before the French Revolution, judicial decisions were made only in line with the conscience of the judge, but after the revolution, it became obligatory to make a reasoned decision based on objectivity.[129] This perspective also lays the groundwork for the development of the rule of law in democratic societies.

2.2. The Importance and Features of Reasoned Decision in the Light of ECtHR Case Law

As mentioned before, although the right to a reasoned decision is not directly included in Article 6.1 of ECHR, it is one of the most fundamental features of the right to a fair trial.[130] Although this right is occasionally considered in terms of the "fairness" principle, it also relates to the right to a court and the right to be heard.[131] The parties will be more likely to accept the judgment since a reasoned decision demonstrates that their arguments have been considered fairly.[132] Regarding the right to a reasoned decision the domestic courts have a margin of appreciation in choosing the arguments and accepting evidence supporting the parties' claims, but they can only legitimize their activities by justifying their decisions.[133]

In this regard, a proper justification must first have a legal basis.[134] In other words, the legislation that guides the justification should be accessible and predictable by the people concerned. The decision must also sufficiently respond to the fundamental claims of the

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[127] Ibid.
[128] Zühal Aysun Sunay, 'Gerekçeli Karar Hakkı ve Temel İlkeleri', Danıştay Dergisi 143 (2016), 7 – 54, 7. <https://www.danistay.gov.tr/assets/pdf/yayinlar/dergi/29_12_2017_032521.pdf> accessed on 11 July 2023.
[129] Yasemin Işıktaç, Sevtap Metin, 'Hukuk Metodolojisi', Filiz Kitapevi (2010) İstanbul, 169.
[130] Zrvandyan (n 8) 115.
[131] Vitkauskas (n 5) 100.
[132] Guide on Article 6 of the ECHR (n 48) para. 126.
[133] Case of Suominen v. Finland, Application No 37801/97, (ECtHR, 1 July 2003), para. 36. <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-61178%22]}> accessed on 11 July 2023.
[134] Case of De Moor v. Belgium, Application No 16997/90, (ECtHR, 23 June 1994), para. 55. <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57877%22]}> accessed on 11 July 2023.

parties.[135] Justifications that include general and ambiguous statements or justifications that are repetitive of the provisions of the legislation are examples of insufficient justification.[136] On the other hand, it is not necessary to cover all the claims of the parties in detail separately and which claims will be responded to depends on the conditions of the case and the type of decision.[137] However, if the parties present a decisive argument for the outcome of the judicial proceedings, a more careful review is required.[138] In this regard, it is of utmost importance to examine the special, relevant and crucial claims of the parties.[139]

Furthermore, court decisions should not cause any confusion and the reasons for the court's opinion should be clear enough to be clearly understood by the parties.[140] In this way, the parties, who clearly understand the reason for the decision, can evaluate whether to appeal against the decision. The justification of the decision of the first instance court is also an element that facilitates the appellate review of the higher court.[141] Unlike the courts of first instance, the appellate court may not always include a detailed justification in its decisions.[142] In particular, in the case of rejection of the appeal, only the approval of the lower court's decision is usually sufficient.[143] At the same time, the inadequacy of the justifications for the lower court decisions can be remedied by the higher courts.

In summary, according to the ECtHR, the quality of the justifications is more important than their length. In terms of the right to a reasoned decision, the justification should be legal, sufficient and reasonable. Well-justified decisions in line with the case law of the ECtHR are of utmost importance not only in terms of fairness and the right to be heard but also in terms of the parties' satisfaction with the decision and the effective use of appeal mechanisms.

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[135] Case of Hirvisaari v. Finland, Application No 49684/99, (ECtHR, 25 December 2001), para. 30. <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59682%22]}> accessed on 11 July 2023.
[136] Module on Legal Reasoning and Judgment Drafting (n 100), 2022, p. 61.
[137] Case of Ruiz Torija v. Spain, Application No 18390/91, (ECtHR, 9 December 1994), para. 29. <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57909%22]}> accessed on 11 July 2023.
[138] Guide on Article 6 of the ECHR (n 48) para. 431.
[139] Ibid., para. 432.
[140] Vitkauskas (n 5) 100.
[141] Module on Legal Reasoning and Judgment Drafting (n 100) 65.
[142] Case of Hirvisaari (n 135) para. 30.
[143] Ibid.

3. REASONED DECISION IN TURKISH DOMESTIC LAW

3.1. Overview of the Turkish Administrative Jurisdiction System

In the first part of this section, the developments in the field of administrative judiciary will be explained from the beginning of the reform movements in the Ottoman Empire until 1982, when the current constitution came into force. In the second part, the developments that have taken place after the 1982 Constitution came into force will be discussed.

3.1.1. Historical Background of Administrative Judiciary

Administrative law, which aims to preserve individuals from unlawful administrative actions and acts, has made progress in many European countries, especially France, since the beginning of the 19th century.[144] Indeed, political reasons, rather than legal ones, were influential in the emergence of the administrative jurisdiction system in France. With the Law dated 16-24 August 1790, the principle of separation of administrative and judicial authorities was introduced. Moreover, with the said law, judicial courts are prohibited from hearing cases in which the administration and public officials are parties.[145] This led to the fact that objections against administrative actions and acts could only be made to the administrative authority that made the decision or to a higher administrative authority. In other words, it did not leave any judicial remedy to apply against the actions and acts of the administration.[146]

In order to eliminate this situation which is against the spirit of the French Revolution and to meet this specific judicial need for the supervision of the administration, Conseil d'Etat was established on 13 December 1799.[147] The Conseil d'Etat, whose members were

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[144] René David and John E.C. Brierly, 'Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law', 2nd Edition Free Press (1978) Newyork, 15.
< https://www.jstor.org/stable/43951188> accessed on 11 July 2023.
[145] Nihat Kayar, 'İdari Yargı Kuruluş ve İşleyiş', Ekin Basım Yayın (2013) Bursa, 42.
[146] Zafer Aydın, 'İdari Yargının Görev Alanı', İstanbul Medipol Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Ana Bilim Dalı, Postgraduate Thesis, (2015) İstanbul, 21.
<https://acikerisim.medipol.edu.tr/xmlui/bitstream/handle/20.500.12511/6793/Aydin-Zafer-2015.pdf?sequence=1> accessed on 11 July 2023.
[147] Hayrettin Yıldız, 'İdare Hukukunun Kısa Tarihçesi', Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi 22 (2019), 197-223, 212.
<https://dergipark.org.tr/tr/pub/ahbvuhfd/issue/44348/548129> accessed on 11 July 2023.

not judges at first, also did not have the authority to decide on disputes between the citizens and the administration.[148] The Conseil d'Etat only had the power to draft a resolution regarding the dispute and present it to the head of state.[149] According to this system, the authority to make the final decision on the dispute rests with the head of state.[150]

On the other hand, with the Law enacted on 24 May 1872, the authority to make a final decision on administrative disputes was given to the Conseil d'Etat.[151] The gap that emerged after the courts were forbidden to decide on administrative disputes was gradually filled by the Conseil d'Etat, which led to the emergence and development of administrative law.[152]

One of the countries affected by the French administrative law is undoubtedly Turkey. During the Ottoman Empire period, until the reform movements in the 19. century, there was a mechanism to deal with administrative complaints.[153] However, these complaints, which were not subject to any judicial process, were still handled and resolved by the administration.[154] During the reform movements, an assembly established on 8 December 1839 was given the authority to produce ideas on issues concerning the state administration and to decide on complaints about the administration.[155] However, the authority to approve these decisions belonged to the Sultan.[156] Some of the duties of the assembly in question were transferred to the Council of State, which was established in 1868.

The Council of State, which has a deep-rooted history, is the first institution of the Turkish administrative jurisdiction system. In the first years of its establishment, the Council of State had duties such as preparing draft laws and regulations, resolving disputes between the executive and the judiciary, advising the ministers for the implementation of the

[148] Aydın (n 146) 21.
[149] Ramazan Çağlayan, 'İdari Yargılama Hukuku', Seçkin Yayıncılık (2014) Ankara, 45.
[150] Ibid.
[151] Aydın (n 146) 22.
[152] Kemal Gözler, 'İdare Hukuku', Ekin Kitabevi (2009) Bursa, 55.
[153] Yıldız (n 147) 213.
[154] Ibid.
[155] Onur Karahanoğulları, 'Türkiye'de İdari Yargı Tarihi', Turhan Kitabevi (2005) Ankara, 125.
[156] Aydın (n 146) 23.

current laws, and prosecuting state officials for crimes related to their duties, and deciding on disputes between individuals and the government.[157] However, the decisions of the Council of State had the ability to be implemented with the will of the Sultan.[158] This system, which is similar to the method applied in France in the same period, is an indicator of the influence of French administrative law during the Ottoman Empire period.[159]

In 1876, the Ottoman basic law came into force and the Council of State gained constitutional guarantee.[160] In the period of the Republic of Turkey, the Council of State was established with the Article 51 of the 1924 Constitution[161], which was the first constitution of the Republic of Turkey. The Law of Council of State was enacted on 23 November 1925 and with Article 48 of the said law, the authority to make a final decision on administrative disputes was given to the Council of State[162]. Since the Council of State was included in the 1924 Constitution as a judicial authority and the administrative activity of the Republic was suitable for the development of administrative law, the Council of State attained its real function in the Republican period.[163]

While the aim of the development of the administrative judiciary in France was to save the administration from the intervention of the judiciary, it was aimed to save the judiciary from the intervention of the administration in Turkey.[164] Nevertheless, although the aims are different, it can be concluded that the development process of the administrative judiciary in Turkey is very similar to the development of the French system.

The Council of State, which started its duty on 6 July 1927, served as the only institution in the administrative jurisdiction until 1971.[165] Nevertheless, with Article 140 of the 1961 Constitution, the Council of State was given the role of first instance and high court in

[157] Karahanoğulları (n 155) 147.
[158] Çağlayan (n 149) 48.
[159] Yıldız (n 147) 217.
[160] Ibid., 215
[161] Republic of Turkey, 'Constitution' (1924) Ankara, Article 51.
<https://www.anayasa.gov.tr/tr/mevzuat/onceki-anayasalar/1924-anayasasi/> accessed on 11 July 2023.
[162] Aydın (n 146) 24.
[163] Yıldız (n 147) 218.
[164] Karahanoğulları (n 155) 126.
[165] Süheyla Şenlen,.'Türkiye'de İdari Yargının Doğuşu ve Tarihi Gelişimi', Ankara Üniversitesi SBF Dergisi (49) 1994, 401 – 413, 407.
<https://dergipark.org.tr/en/download/article-file/36501> accessed on 12 July 2023.

administrative disputes.[166] Until 1971, the judicial review of actions and acts related to military personnel was also carried out by the Council of State.

The Supreme Military Administrative Court (SMAC) was established to carry out the judicial review of military actions and acts with the amendment made in the Constitution in 1971.[167] SMAC operated as the first and last instance court in the military administrative jurisdiction system until the Constitutional referendum held on 16 April 2017.[168] The Council of State and the SMAC were the main institutions of the administrative jurisdiction until 1982.

3.1.2. Current Situation of Administrative Judiciary in Turkey

In 1982, important changes were made in the administrative jurisdiction system. The following provision is included in the first paragraph of Article 125 of the current Constitution:

> *"Recourse to judicial review shall be available against all actions and acts of administration."*[169]

At the same time, the last paragraph of the same article contains the following provision regarding the responsibility of the administration regarding its actions and acts:

> *"The administration shall be liable to compensate for damages resulting from its actions and acts."*[170]

On the other hand, the first paragraph of Article 155 of the Constitution, which regulates the Council of State, is as follows:

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[166] Republic of Turkey, 'Constitution' (1961) Ankara, Article 140. <https://www.anayasa.gov.tr/tr/mevzuat/onceki-anayasalar/1961-anayasasi/> accessed on 12 July 2023.
[167] Şenlen (n 165) 409.
[168] Cem Duran Uzun, '6771 Sayılı Kanunla Anayasada Yargıyla İlgili Yapılan Düzenlemeler', Uyuşmazlık Mahkemesi Dergisi (11) 2018, 409-433, 412. <https://dergipark.org.tr/en/download/article-file/494875> accessed on 12 July 2023.
[169] Republic of Turkey, 'Constitution' (1982) Ankara, Article 125. <https://cdn.tbmm.gov.tr/TbmmWeb/Yayinlar/Dosya/ea266075-d26a-4bad-8007-efa2b7b773a8.pdf> accessed on 12 July 2023.
[170] Ibid.

> *"The Council of State is the last instance for reviewing decisions and judgments given by administrative courts and not referred by law to other administrative courts. It shall also be the first and last instance for dealing with specific cases prescribed by law."*[171]

As can be understood from the aforementioned provision, other courts that examine administrative disputes were established in 1982 apart from the Council of State. In this regard in 1982, three basic laws were enacted that reorganized the administrative judiciary. These are the Law of Council of State[172], the Law on Administrative Jurisdiction Procedure[173] and the Law on the Establishment and Duties of the Regional Administrative Courts (RACs), Administrative Courts and Tax Courts.[174]

According to Article 1 of the Law of Council of State; the Council of State functions not only as the Supreme Administrative Court but also as a consultation and review body.[175] Cases are examined by different chambers of the Council of State, which are specialized according to the types of administrative disputes.

In administrative jurisdiction, lawsuits can be filed in the courts of the first instance with the request for the annulment of the administrative act, or if there is a claim that material or moral damage has been incurred from any administrative act or action, with a request for compensation for this damage.[176] Disputes regarding money below a certain amount are resolved by a single judge, while all other disputes are resolved by a court board consisting of a chief judge and two judges.[177]

Although RACs were established in addition to the first instance courts with the regulations made in 1982, the administrative jurisdiction system operated in two degrees

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[171] Ibid., Article 155.
[172] Republic of Turkey, 'The Law of Council of State', Law No. 2575 (1982) Ankara. <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.2575.pdf> accessed on 12 July 2023.
[173] Republic of Turkey, 'The Law on Administrative Jurisdiction Procedure', Law No. 2577 (1982) Ankara. <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.2577.pdf> accessed on 12 July 2023.
[174] Republic of Turkey, 'The Law on the Establishment and Duties of the Regional Administrative Courts, Administrative Courts and Tax Courts', Law No. 2576 (1982) Ankara. <https://mevzuat.gov.tr/MevzuatMetin/1.5.2576.pdf> accessed on 12 July 2023.
[175] Law No. 2575 (n 172) Article 1.
[176] Law No. 2576 (n 174) Article 5.
[177] Ibid., Article 7.

until 2016. In this system, some of the first-instance court decisions in terms of type and amount could be appealed to the RACs, while appeals could be made to the Council of State against other decisions. Thereupon, the decisions made by both the RACs and the Council of State were final. In other words, it was not possible to appeal to the Council of State against the decisions of the RACs.[178]

In 2014, Article 45 of the Law on Administrative Jurisdiction Procedure was amended and a three-level judicial system was introduced in the administrative judiciary. Thus, the RACs, which turned into a kind of appeal court, started to function as of 20 July 2016.[179] Accordingly, it is possible to appeal to the RACs against the decisions of the first-instance courts, except for the decisions that are finalized in the first-instance courts in line with their amount.[180] If the first instance court decisions are found to be lawful, the RACs dismiss the appeal.[181] Otherwise, the RAC revokes the first-instance court decision and gives a new decision on the dispute.[182]

While the decisions of RACs are final for certain types and amounts of disputes, appeals to the Council of State can be made for other decisions of RACs. It is expected that the accuracy of the decisions will be increased with the appeal system, which allows the examination of disputes by two separate judicial bodies, one of which is a higher court.[183] In this way, most of the decisions become final in RACs, but still, an appeal can be made to the Council of State for important disputes in terms of subject and amount. In this regard, it is considered that the system in question will contribute to the reduction of the workload of the Council of State and its functioning as a case law court.[184]

In addition to the new appeal system introduced to the Turkish Administrative Judiciary in 2016, important reforms have been carried out in the Turkish judicial system in recent years, which also affect the administrative judiciary. One of the most important of these

[178] Zeynep Nihal Aydınoğlu, 'İstinaf Kanun Yolunun İdari Yargılama Usulüne Başlıca Etkileri', Türkiye Adalet Akademisi Dergisi (34) 2018, 387-423, 395.
<https://dergipark.org.tr/en/download/article-file/980845> accessed on 13 July 2023.
[179] Ibid., 387.
[180] Law No. 2577 (n 173), 1982, Article 45.1.
[181] Ibid., Article 45.3.
[182] Ibid., Article 45.4.
[183] Aydınoğlu (n 178) 390.
[184] Ibid., 391.

reforms is the individual application mechanism to the constitutional court, which was introduced to the Turkish judicial system with the constitutional amendments adopted on 12 September 2011.[185] This mechanism, which aims to improve the protection of fundamental rights and freedoms, is an important development for the judicial system of Turkey.

The individual application mechanism is a secondary and extraordinary legal remedy that can be applied by individuals whose fundamental rights and freedoms have been violated by public power.[186] This mechanism allows making an application to the Constitutional Court against the final decisions of the Turkish judicial system. It was also aimed to decrease the number of violation decisions against Turkey before the ECtHR by paving the way for a final examination by the Constitutional Court before an application is made to the ECtHR regarding the final decisions of the Turkish judiciary.

Moreover, the Ombudsman Institution, which was established in 2012, is a very important step towards the rule of law and democracy.[187] The Ombudsman institution examines the complaints of citizens regarding administrative disputes. At the end of this review, advisory decisions are made for public institutions. In this way, disputes between the administration and the citizens are resolved without resorting to administrative jurisdiction.

The abolition of the military judiciary, including the SMAC, as a result of the Constitutional referendum held on 16 April 2017 is another important development for the Turkish judicial system. According to Article 142 of the Constitution, military courts can only be established in case of war and for the prosecution of military personnel for crimes committed in connection with their duties.[188] With the abolition of SMAC, military administrative disputes have been resolved in civil administrative jurisdiction

[185] Öykü Didem Aydın, 'Türk Anayasa Yargısında Yeni Bir Mekanizma: Anayasa Mahkemesi'ne Bireysel Başvuru', Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi (15) 2011, 121-170, 122. <https://dergipark.org.tr/en/download/article-file/789417> accessed on 14 July 2023.
[186] Ibid., 125.
[187] Hasibe Usta, 'Türkiye'de Ombudsman (Kamu Denetçiliği) Kurumu', Denetişim (14) 2014, 59-64, 64. <https://dergipark.org.tr/tr/download/article-file/208753> accessed on 16 July 2023.
[188] Turkish Constitution (n 169) Article 142.

since 2017. Thus, the administrative jurisdiction system was modernized by uniformizing the examination of civil and military administrative disputes.

In summary, the administrative jurisdiction, which emerged during the reform movements in the Ottoman Empire, has been subjected to important reforms throughout the history of the Republic. In the administrative jurisdiction consisting of the first instance courts, the RACs and the Council of State, the Constitutional Court examines the final decisions before the ECtHR in terms of better protection of fundamental rights and freedoms.

3.2. Right to a reasoned decision in Turkish Administrative Law

In Turkish law, both the right to a fair trial and the right to a reasoned decision, which is an element of the right to a fair trial, are protected at the constitutional level.[189] Article 36 of the Constitution, which regulates the right to a fair trial, is as follows:

> *"Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures."*[190]

This provision also includes the right to a reasoned decision. For instance, the Constitutional Court concluded that the right to a fair trial, which is guaranteed by Article 36, also constitutes the basis for the necessary protection of other fundamental rights and freedoms, including the right to a reasoned decision.[191]

In fact, the Constitution provides a significant advantage in terms of rights regulated under the ECHR, including the right to a fair trial and the right to a reasoned decision. Because the last paragraph of Article 90 of the Constitution contains the following provision:

> *"In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in*

[189] Bekri (n 1) 212.
[190] Turkish Constitution (n 169) Article 36.1.
[191] Case of Vedat Benli, Application No 2013/307, (Constitutional Court, 16 May 2013), para. 30. <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/307> accessed on 17 July 2023.

provisions on the same matter, the provisions of international agreements shall prevail."[192]

Nevertheless, in Turkish law, special importance is attached to the reasoning of court decisions. The reasoning of the court decisions first became compulsory for all courts with the Article 135 of the 1961 constitution.[193] The fact that the decisions of a number of judicial bodies were unjustified or did not contain sufficient justification, laid the groundwork for the inclusion of the aforementioned provision in the 1961 Constitution.[194] The provision in question is included in Article 141 of the current Constitution and is as follows:

"The decisions of all courts shall be written with a justification."[195]

The scope of the right to a reasoned decision, which is constitutionally guaranteed in Turkish law, is determined by the jurisprudence of the Constitutional Court. The Constitutional Court underlined that the courts should justify the proof of the facts of the case, the interpretation of the rules of law, and the reasons for the conclusion reached regarding the dispute.[196] Emphasizing the importance of formulating the justifications in a non-arbitrary and reasonable manner, the Constitutional Court concluded that the reason for the judgment should be clearly and consistently stated.[197] However, it is not necessary to cover all the claims made by the parties, it is sufficient to put forward the grounds that form the basis of the judgment.[198]

On the other hand, provisions regarding the requirement for court decisions to be justified are included in the regulations in the field of administrative jurisdiction as well as in the Constitution. As a matter of fact, it is regulated in Article 51 of the Law of Council of State that justification should be included in the decisions.[199] Also, it is regulated in the

[192] Turkish Constitution (n 169) Article 90.4.
[193] 1961 Constitution (n 166) Article 135.3.
[194] Turan (n 6), 187.
[195] Turkish Constitution (n 169) Article 141.3.
[196] Case of İbrahim Ataş, Application No 2013/1235, (Constitutional Court, 13 June 2013), para. 23. <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/1235> accessed on 17 July 2023.
[197] Ibid., para. 24.
[198] Ibid., para. 25.
[199] Law No. 2575 (n 172) Article 51.

Law on Administrative Jurisdiction Procedure that the legal grounds on which the decision is based and its justification should be included in the court decision.[200]

Increasing the competence of judges through guidance, supervision and training activities is another important factor for the dissemination of well-reasoned decisions. In this regard, the Decision Writing Guide[201] prepared by the Council of State was put into practice at the beginning of 2019. The guide which provides guidance for judges on how ideal decisions should be in form and content, also emphasizes the importance of justification. Accordingly, clear and sufficient justifications should be included in the decisions by using understandable wording.[202] Also, it is recommended to refer to the doctrine as well as the jurisprudence of the ECtHR, the Constitutional Court and the Council of State to strengthen the justifications of the decisions.[203]

Moreover, the new appeal system in the administrative judiciary has paved the way for well-justified decisions, as it allows the audit of material facts as well as legal review by RACs. Also, a significant number of judges received training within the scope of the training module on *"Legal Reasoning and Judgment Drafting"*[204] prepared for administrative judges.

In summary, both the Constitution and the legislation of the administrative judiciary give due importance to the reasoning of court decisions. In order to strengthen the justifications of the court decisions, judges are also supported with necessary guidance and training activities, especially in the field of administrative judiciary.

[200] Law No. 2577 (n 173) Article 24.
[201] Council of State of the Republic of Turkey, 'Decision Writing Guide', Edition No: 110 (2020), Ankara. <https://www.danistay.gov.tr/assets/pdf/yayinlar/karar-yazim-rehberi.pdf> accessed on 17 July 2023.
[202] Ibid., 5.
[203] Ibid., 6.
[204] Module on Legal Reasoning and Judgment Drafting (n 100).

4. EVALUATION OF TURKISH ADMINISTRATIVE JURISDICTION IN THE LIGHT OF ECtHR JUDGEMENTS

Turkey signed the ECHR in 1950 and after 4 years Law No. 6366 on the ratification of the ECHR was adopted on 10 March 1954.[205] Turkey recognized the individual application with the decision of the Council of Ministers dated 28 January 1987, and the jurisdiction of the ECtHR with the decision of the Council of Ministers dated 25 September 1989.[206]

In this context, a total of 3,900 judgments were held against Turkey by the ECtHR until 2022, and at least one violation was found in 3,458 cases.[207] The highest number of violation decisions, with a number of 991, was given within the scope of the right to a fair trial, which also includes the right to a reasoned decision.[208] In 2022, 80 trials were held against Turkey and it was decided that the right to a fair trial was violated within the scope of 16 cases.[209]

Within the scope of the individual application system implemented in Turkey since 2012, 320,253 applications were concluded by the Constitutional Court between 2012 and 2022.[210] Violation decisions were given for 29,196 of these cases and 2.908 of them were related to the violation of the right to a fair trial.[211] The right to trial within a reasonable time, with 17,681 violations, is the most violated right in the said period.[212]

When the decisions of both the Constitutional Court and the ECtHR are examined, one of the most violated rights is the right to a fair trial. As stated earlier, this is not surprising since the right to a fair trial is a comprehensive right encompassing many rights and is

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[205] Republic of Turkey, 'The Law on the Ratification of ECHR', Law No. 6366 (1954) Ankara. < https://www.resmigazete.gov.tr/arsiv/8662.pdf> accessed on 18 July 2023.
[206] Sami Selçuk, 'Avrupa İnsan Hakları Sözleşmesi ve Türk Uygulaması', Yargıtay Dergisi (3) 1999, 399-428, 400. <http://www.yargitaydergisi.gov.tr/journalContent/75> accessed on 18 July 2023.
[207] Violations by Article and by State 1959-2022 (n 64).
[208] Ibid.
[209] Violations by Article and by State 2022 (n 66).
[210] Constitutional Court of The Republic of Turkey, 'Bireysel Başvuru İstatistikleri (23 September 2012 – 30 June 2022)', (2022) Ankara, 1. <https://www.anayasa.gov.tr/media/8113/bb_2022_2_tr.pdf> accessed on 19 July 2023.
[211] Ibid., 14.
[212] Ibid.

linked to other rights guaranteed by the ECHR. However, there is no statistical data on the right to a reasoned decision and administrative jurisdiction in the database of the ECtHR. For this reason, in this part of the study, some of the ECtHR judgments regarding the Turkish administrative judiciary namely the cases of Cihangir Yıldız v. Turkey, Urat v. Turkey and Hülya Ebru Demirel v. Turkey will be discussed in detail within the scope of the right to a reasoned decision.

4.1. Cihangir Yıldız v. Turkey[213]

This case concerned the applicant's house in Ankara, which he had owned since 1983 but did not have a building permit.[214] Law no. 2805, also known as the "Zoning Amnesty Law", was in force during the years when the applicant built the house.[215] But it was abolished by Law No. 2981, which took effect on 24 February 1984.[216] On 20 May 1999, the Municipality gave a demolition decision for the house in question with the allegation that no application for a title deed allocation document was made for the house in question pursuant to Law No. 2981.[217]

The applicant brought an action before the Ankara Administrative Court for the annulment of the demolition decision.[218] After the court rejected the case, the house was demolished on 11 April 2000.[219] On 27 May 1999, before his house was demolished, the applicant requested the Municipality to allocate real estate for his house.[220] Upon the municipality's refusal, the applicant again filed a lawsuit in the administrative court.[221] He claimed that he had applied for zoning amnesty while Law No. 2805 was in force.[222] The Administrative Court dismissed the case on the ground that the applicant did not have

[213] Case of Cihangir Yıldız v. Turkey, Application No 39407/03, (ECtHR, 17 April 2018). <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-187634%22]}> accessed on 19 July 2023.
[214] Ibid., para 6.
[215] Ibid., para. 9.
[216] Ibid.
[217] Ibid., para. 8.
[218] Ibid., para. 9.
[219] Ibid., para. 10-12.
[220] Ibid., para. 13.
[221] Ibid., para. 15.
[222] Ibid., para. 17.

any document proving that certain requirements were met, such as a petition to the Municipality and a document showing that the required amount was paid.[223]

The applicant lodged an appeal with the Council of State and submitted the temporary title deed application form dated 6 April 1983 and numbered 63527 as an appendix to the application and the receipt of the payment of the required amount.[224] The Council of State rejected the appeal and did not make any explanation in the decision regarding the documents submitted by the application at the appeal stage.[225]

In this case, it must be determined whether the applicant applied for a zoning amnesty while the Law No. 2805 was in force. Although the applicant was unable to provide the documents proving this at the first instance court, he did present these documents at the appeal stage. The ECtHR underlined that the reasons should be stated in such a way as to ensure that public scrutiny is possible in the administration of justice, and that courts, which have a certain margin of appreciation in the selection of arguments and the admission of evidence, should justify their decisions by giving reasons.[226] The ECtHR also noted the need for a specific and clear response to the arguments that were decisive for the outcome of the proceedings.[227]

Regarding the claim that the Supreme Court is not obliged to examine the documents submitted at the appeal stage; the ECtHR underlined that a judicial system, that stipulates the inadmissibility of the evidence presented at the appeal stage for the first time, is not automatically contrary to the Convention.[228] However, the ECtHR pointed out that the Council of State did not present a justification in this regard for this case.[229] Noting that the documents submitted by the applicant could have materially affected the outcome of the case, the ECtHR concluded that the right to a reasoned decision had been violated due

[223] Ibid., para. 21-22.
[224] Ibid., para. 24.
[225] Ibid., para. 25.
[226] Ibid., para. 39-40.
[227] Ibid., para. 42.
[228] Ibid., para. 47.
[229] Ibid., para. 48

to the decision rendered without a specific and clear justification regarding these documents.[230]

4.2. Urat v. Turkey[231]

This case is about the applications of two brothers who were dismissed from the civil service due to their membership in a terrorist organization. While both applicants claimed that the presumption of innocence guaranteed by Article 6.2 of the ECHR had been violated, only the first applicant claimed that Article 6.1 had been violated. Therefore, this judgment will only be examined in terms of the first applicant's alleged violation of Article 6.1 in line with the subject of the study.

In this regard, the applicant was a civil servant by profession of teaching and his CV was found in the safe house of an illegal organization in January 2000.[232] In the judicial investigation, the applicant refused to accept the allegations of being a member of a terrorist organization.[233] At the end of the trial proceedings, on 13 September 2004 Diyarbakır Assize Court ruled that the applicant had not committed the crime of membership of a terrorist organization, but the crime of aiding and abetting.[234] In the justification of the decision, it was stated that the applicant was involved with the illegal organization only by giving a CV and attending its meetings.[235] However, the criminal proceedings were suspended in accordance with Law No. 4616 and after the 5-year prosecution period, the case was discontinued.[236]

During the judicial proceedings, the applicant was suspended from his duty as there was a prosecution against him for being a member of an illegal terrorist organization.[237] During the disciplinary investigation, teachers working at the same school stated that they were aware that the applicant was a member of a terrorist organization.[238] As a result of

[230] Ibid., para. 50-51.
[231] Case of Urat v. Turkey, Application No 53561/09 and 13952/11, (ECtHR, 27 November 2018). <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-187904%22]}> accessed on 20 July 2023.
[232] Ibid., para. 7-8.
[233] Ibid., para. 8.
[234] Ibid., para. 12.
[235] Ibid.
[236] Ibid.
[237] Ibid., para 14.
[238] Ibid.

the investigation, it was recommended that the applicant be dismissed from the civil service in accordance with Article 125 of the Law on Civil Servants (Law no. 657).[239] In line with the investigation report, on 18 April 2001 the Supreme Disciplinary Council of the Ministry of Education decided to dismiss the applicant from the civil service.[240]

The applicant applied to the Diyarbakır Administrative Court against the dismissal decision.[241] The Administrative Court, which adjourned the case until the conclusion of the criminal proceedings, rejected the request of the applicant on 14 April 2005 upon the conclusion of the criminal case.[242] In the reasoning of the decision, it was underlined that the postponement of the criminal proceedings against the applicant did not constitute an obstacle to imposing a disciplinary penalty. The court held that the dismissal of the applicant, who submitted his CV to the illegal organization and attended its meetings, was not unlawful.[243] The applicant's appeal was dismissed by the Council of State on 13 February 2008.[244]

The applicant alleged that his right to a fair trial had been violated because the administrative court had not provided sufficient reasons for its decision.[245] The applicant specifically claimed that the administrative court had relied directly on the unfavourable evidence in the criminal case against him, without providing its own reasoning.[246]

The ECtHR underlined in the first place that it did not qualify as a fourth-instance court and that, pursuant to Article 6. 1 of the Convention, it would not question the manner of the domestic courts regarding the evaluation of evidence unless its findings were *arbitrary or manifestly unreasonable*.[247] Noting that the courts are obliged to give sufficient reasons, the ECtHR underlined that the extent of fulfillment of this obligation might vary according to the *circumstances of the case and the nature of the decision.*[248]

[239] Ibid., para. 15.
[240] Ibid., para. 18.
[241] Ibid., para. 19.
[242] Ibid., para. 23-24.
[243] Ibid., para. 24.
[244] Ibid., para. 28.
[245] Ibid., para. 60-61.
[246] Ibid., para. 63.
[247] Ibid., para. 66.
[248] Ibid., para. 67.

Another important evaluation made by the ECtHR is the determination that a court decision can only be characterized as arbitrary to the extent that it jeopardizes the fairness of the proceedings if it does not provide any justification or if the justification is based on *manifest factual or legal error*.[249] Addressing the applicant's claim from this aspect, the ECtHR emphasized that the court's decision contained a justification, even if it was brief, and examined this justification in terms of whether it was based on a manifest factual or legal error.[250]

The ECtHR pointed out that in line with the principle of balance of probabilities, the first instance court had to determine whether the substantive allegation supporting the claim is more likely or not based on the evidence of the parties.[251] In this regard, the CV found in the safe house is the most critical evidence of the dispute and led to the start of the criminal proceedings.[252] The evidence in question also formed the basis for the determination of whether this situation necessitates dismissal from civil service in terms of the case before the administrative jurisdiction.[253] The applicant only claimed that the CV was not given to the organization by him. Although he had the opportunity, he could not present any other evidence.

It was underlined that the applicant had not been placed at any disadvantage in terms of the standard of proof and that there was no question of the court giving weight to only one piece of evidence rather than other evidence.[254] The ECtHR concluded that there was no violation of Article 6.1 with the following justification:

> *"the Court considers that the domestic court's reasoning in the first applicant's case did not reach the threshold of arbitrariness or manifest unreasonableness…"*[255]

[249] Ibid., para. 68.
[250] Ibid., para. 70.
[251] Ibid.
[252] Ibid.
[253] Ibid.
[254] Ibid.
[255] Ibid., para. 71.

4.3. Hülya Ebru Demirel v. Turkey[256]

This application concerns an applicant who was not initially appointed as a security guard by the administration and was later dismissed from her assignment.[257] In 1999, the applicant passed the exam to become a security guard at a *"state-run electricity company"* called TEDAŞ.[258] However, she was not appointed as a security guard because she was a woman and did not perform compulsory military service.[259] Thereupon, the applicant applied to the Gaziantep Administrative Court against this administrative decision.[260]

On 9 May 2001, the Administrative Court stayed the execution of the administrative decision in question.[261] Following the decision of the Administrative Court, on 23 July 2001 the administration signed a contract with the applicant to take up her position as a security guard.[262] At the end of the trial, on 4 October 2001, the administrative decision was annulled by the Administrative Court.[263] In the reasoning of the decision, it was stated that completing compulsory military service is a condition for male candidates and that there is no obstacle for a woman to start the duty as a security guard.[264]

Upon the appeal of TEDAŞ against the decision of the administrative court, 12th Chamber of the Council of State stayed the execution of the administrative court decision on 12 April 2002.[265] Thereupon, the applicant was dismissed from her assignment on 27 May 2002.[266] As a result of the trial held by the 12th Chamber of the Council of State, the decision of the administrative court was quashed.[267] In the reasoning of the decision, it was stated that the compulsory military service condition meant that only men could apply to become a security guard.[268] In line with the decision of the 12th Chamber of the Council

[256] Case of Hülya Ebru Demirel v. Turkey, Application No 30733/08, (ECtHR, 19 June 2018). <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-183862%22]}> accessed on 21 July 2023.
[257] Ibid., para. 3.
[258] Ibid., para. 6.
[259] Ibid., para. 7.
[260] Ibid., para. 8.
[261] Ibid., para. 9.
[262] Ibid., para. 10.
[263] Ibid., para. 11.
[264] Ibid.
[265] Ibid., para. 12–13.
[266] Ibid., para. 14.
[267] Ibid., para. 15.
[268] Ibid.

of State, the applicant's case was dismissed by the administrative court.[269] The applicant's appeal against the decision of the Administrative Court was rejected by the 12th Chamber of the Council of State on 16 November 2007 without any justification.[270] Following this decision, on 6 December 2007, regarding a similar case, the Council of State General Assembly of Administrative Proceedings drew attention to the fact that the condition of completing compulsory military service is valid for male candidates and decided in favor of the female plaintiff who was not appointed due to this condition.[271]

Citing this decision as a precedent, the applicant requested the rectification of the decision against her, but her application was dismissed by the 12th Chamber of the Council of State without giving any reason against her arguments.[272] The applicant claimed that the precedent decision and her defence had not been taken into account.[273] Incorporating some features of the right to a reasoned decision, the ECtHR underlined that a new case law emerged by the Council of State General Assembly of Administrative Proceedings following the dismissal of the applicant's appeal.[274] In fact, in this case law, a decision was rendered in favour of a female plaintiff, who applied for the same post.[275] The applicant, on the other hand, was only able to put forward this precedent decision at the stage of rectification, which was the last stage before the decision became final after the appeal was dismissed.

The ECtHR also drew attention to the fact that some of the members constituting the General Assembly were members of the 12th Chamber of the Council of State, and the recommendation of the rapporteur judge who presented the case to accept the applicant's request, taking into account the precedent decision.[276] Accordingly, it was concluded that Article 6.1. was violated on the grounds that the applicant's arguments were not taken into account at any stage in the Council of State, including the stage of rectification.[277]

[269] Ibid., para. 16.
[270] Ibid., para. 17.
[271] Ibid., para. 18.
[272] Ibid., para. 19-21.
[273] Ibid., para. 36.
[274] Ibid., para. 51.
[275] Ibid.
[276] Ibid.
[277] Ibid., para. 52.

The applications of Cihangir Yıldız, Urat and Hülya Ebru Demirel were made on the decisions given within the scope of administrative jurisdiction of Turkey and concerned the right to a reasoned decision. The first instance courts directly dismissed the Cihangir Yıldız and Urat cases. However, in the Hülya Ebru Demirel case, the first-instance court first ruled in favour of the plaintiff. Nevertheless, when the Council of State quashed the court's decision, the first-instance court dismissed the applicant's case. In fact, all applicants' appeals to the Council of State were also rejected without giving any justification. However, in terms of the right to a reasoned decision, while violation decisions were given for the applications of Cihangir Yıldız and Hülya Ebru Demirel, it was ruled that there was no violation for the Urat application. Indeed, high courts do not always need to give reasons when they uphold the decisions of the lower courts. However, it is revealed that even if the evidence or arguments directly affecting the merits of the case was first presented at the appeal stage, it was necessary to justify why the said evidence or argument was not considered.

From the perspective of the ECtHR, the justifications of administrative jurisdiction decisions that ensure the supervision of the administration are of critical importance. In this regard, the decisions given by the administrative courts must be justified and this justification must be reasonable. On the other hand, the court's obligation to provide reasons is a procedural obligation, not a consequence obligation. In this context, the ECtHR examines the extent to which the claims of the parties are considered in the reasoning, whether a sufficient justification is presented, and whether an arbitrary decision is made rather than the outcome of the first-instance court decision.

In summary, the ECtHR evaluates whether the right to a reasoned decision has been violated, taking into account the aforementioned factors. Considering the nature of the decision and the circumstances of the case within the scope of the cases that have become final in the Turkish Administrative Judiciary, the ECtHR can decide whether the right to a reasoned decision has been violated or not violated.

CONCLUSION

One of the most important expectations of the parties applying to litigation because of a legal dispute on any issue is the fair execution of the trial process and a fair decision at the end of the trial. The right to a fair trial, guaranteed by Article 6 of the ECHR, requires a judicial system that allows the trial to be conducted fairly, from the beginning to the end of any civil or criminal trial. In this respect, the right to a fair trial is a requirement of the principles of democracy and the rule of law, and it is also of great importance in terms of the effective protection of other fundamental rights and freedoms guaranteed by the ECHR. In addition, the right to a fair trial includes many components such as access to court, fairness, the right to a reasoned decision, an independent and impartial tribunal established by law, publicity, reasonable time, and equality of arms.

It is known that the right to a reasoned decision, which is one of the crucial components of the right to a fair trial, has been considered in judicial decisions since the Sumerian State. Because it is one of the most natural rights of a person to know the reason for the decision made within the scope of a dispute while even the reasons for the events, actions and decisions in daily life are questioned. Proper reflection of the grounds of the decision made at the end of the trial process in the reasoning contributes to the satisfaction of the parties with the decision and their effective use of the appeal mechanisms. It also eliminates arbitrariness by allowing the judicial bodies to make judgments more carefully. Therefore, a well-reasoned court decision is one of the most important elements of a fair trial.

Although the right to a reasoned decision is not explicitly regulated in Article 6.1 of the ECHR, it is emphasized in the case law of the ECtHR that the decisions of the judicial organs should be justified. In addition, the justification must be legal, reasonable and not arbitrary. The right to a reasoned decision is a procedural right. It is not a right directly related to the outcome of the case but to the execution process of the case. In this context, it is examined to what extent the claims put forward by the parties during the litigation process are taken into account and whether the court decision has a sufficient justification. In this respect, the right to a reasoned decision is closely related to the right to be heard. Even if not all arguments of the parties are involved in the justification, their substantial

claims must be addressed. The ECtHR deals with the allegations of violation of the right to a reasoned decision within the framework of the nature of the decision and the circumstances of the case.

The right to a reasoned decision has special importance in disputes related to administrative jurisdiction. Because one of the parties to administrative disputes is the administration, which can perform actions and acts that can affect even the daily lives of individuals dramatically. Administrative jurisdiction serves to protect individuals against unlawful actions and acts of the administration. Therefore, well-reasoned administrative jurisdiction decisions are of critical importance for the effective supervision of the administration. Furthermore, it guides the administration in the proper implementation of judicial decisions and the elimination of unlawfulness in other precedent administrative actions and acts.

Turkey, which is one of the first signatory countries of the ECHR, recognized the jurisdiction of the ECtHR in 1989. Fundamental rights and freedoms in the ECHR, including the right to a fair trial and the right to a reasoned decision, are also guaranteed by the Turkish Constitution. In addition, due importance is given to the protection of the right to a reasoned decision in the regulations regarding administrative jurisdiction. However, one of the most violated rights within the scope of applications both before the ECtHR and before the Constitutional Court is the right to a fair trial. Also, within the scope of the applications made against the decisions given by the Turkish administrative judiciary, the ECtHR decides whether the right to a reasoned decision has been violated or not violated in line with its case law.

Nevertheless, in recent years important reforms have been made in the Turkish judicial system, including the administrative judiciary. One of the most important reforms is the introduction of the individual application system to the Constitutional Court. It is aimed to protect fundamental rights and freedoms effectively and to reduce the number of violations before the ECtHR with this mechanism. On the other hand, the establishment of the ombudsman institution in 2012 contributes to the resolution of administrative disputes before they are brought to the administrative judiciary. Moreover, the new appeal system introduced in the administrative judiciary strengthens the supervision of first-

instance court decisions and contributes to the production of better-reasoned decisions. In addition to legal and institutional reforms, the guides and training programs prepared for the administrative judiciary in recent years will contribute to the increase of the competence of the judges. It is considered that these important reforms will contribute to the compliance of administrative judiciary decisions with the ECtHR case law in terms of the right to a reasoned decision.

BIBLIOGRAPHY

Primary Sources

Charter of Fundamental Rights of the European Union, Official Journal of the European Communities, 18 December 2000 C 364/01 (2000).

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT> accessed on 11 July 2023.

Council of Europe, 'Additional Protocol No. 1 to the ECHR' (1952) Paris.

Council of Europe, 'Additional Protocol No. 4 to the ECHR' (1963) Strasbourg.

Council of Europe, 'Additional Protocol No. 6 to the ECHR' (1983) Strasbourg.

Council of Europe, 'Additional Protocol No. 11 to the ECHR' (1994) Strasbourg.

<https://70.coe.int/pdf/library_collection_p11_ets155e_eng.pdf> accessed on 11 July 2023.

Council of Europe, 'Additional Protocol No. 13 to the ECHR' (2002) Vilnius.

Council of Europe, 'European Convention on Human Rights (ECHR)' (1950) Rome.

<https://www.echr.coe.int/documents/d/echr/convention_eng> accessed on 10 July 2023.

Council of State of the Republic of Turkey, 'Decision Writing Guide', Edition No: 110 (2020), Ankara.

<https://www.danistay.gov.tr/assets/pdf/yayinlar/karar-yazim-rehberi.pdf> accessed on 17 July 2023.

European Court of Human Rights, 'Guide on Article 6 of the European Convention on Human Rights' (2022) Strasbourg.

<https://www.echr.coe.int/documents/d/echr/guide_Art_6_ENg> accessed on 11 July 2023.

Republic of Turkey, 'Constitution' (1924) Ankara.

<https://www.anayasa.gov.tr/tr/mevzuat/onceki-anayasalar/1924-anayasasi/> accessed on 11 July 2023.

Republic of Turkey, 'Constitution' (1961) Ankara.

<https://www.anayasa.gov.tr/tr/mevzuat/onceki-anayasalar/1961-anayasasi/> accessed on 12 July 2023.

Republic of Turkey, 'Constitution' (1982) Ankara.

<https://cdn.tbmm.gov.tr/TbmmWeb/Yayinlar/Dosya/ea266075-d26a-4bad-8007-efa2b7b773a8.pdf> accessed on 12 July 2023.

Republic of Turkey, ‘The Law of Council of State’, Law No. 2575 (1982) Ankara.

<https://www.mevzuat.gov.tr/MevzuatMetin/1.5.2575.pdf> accessed on 12 July 2023.

Republic of Turkey, ‘The Law on Administrative Jurisdiction Procedure’, Law No. 2577 (1982) Ankara.

<https://www.mevzuat.gov.tr/mevzuatmetin/1.5.2577.pdf> accessed on 12 July 2023.

Republic of Turkey, ‘The Law on the Establishment and Duties of the Regional Administrative Courts, Administrative Courts and Tax Courts’, Law No. 2576 (1982) Ankara.

<https://mevzuat.gov.tr/MevzuatMetin/1.5.2576.pdf> accessed on 12 July 2023.

Republic of Turkey, ‘The Law on the Ratification of ECHR’, Law No. 6366 (1954) Ankara.

<https://www.resmigazete.gov.tr/arsiv/8662.pdf> accessed on 18 July 2023.

United Nations General Assembly, 'Universal Declaration of Human Rights (UDHR)' Vol 3381 (1949) Department of State United States of America.

<https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf> accessed on 10 July 2023.

Academic Sources

Akyüz, V., ‘Avrupa İnsan Hakları Mahkemesi Kararlarının İdari Yargı Kararlarına Etkisi', İstanbul Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Bölümü, Postgraduate Thesis (2010) İstanbul.

<http://nek.istanbul.edu.tr:4444/ekos/TEZ/46984.pdf> accessed on 10 July 2023.

Alyanak, S., ‘Avrupa Birliği’nin Avrupa İnsan Hakları Sözleşmesi’ne Katılımı: Saatler İleriye mi Yoksa Geriye mi İşliyor?’, Ombudsman Akademik 2 (2015), 72-88.

<https://dergipark.org.tr/tr/pub/ombudsmanakademik/issue/17163/439078> accessed on 10 July 2023.

Aşçıoğlu, Ç., ‘Yargıda Gerekçe Sorunu’, Türkiye Barolar Birliği Dergisi 48 (2003), 109-116.

<http://tbbdergisi.barobirlik.org.tr/m2003-48-763> accessed on 10 July 2023.

Atay, E. E., ‘Yargı Kararlarının Gerekçelendirilmesi ve İdari Yargıdaki Uygulaması’, Danıştay Dergisi 147 (2018), 7 – 32.

<https://cdn.bartin.edu.tr/personel/ecf292227efb77dbdc4ccb91b19d8031/147.pdf> accessed on 11 July 2023.

Aydın, Ö. D., ‘Türk Anayasa Yargısında Yeni Bir Mekanizma: Anayasa Mahkemesi’ne Bireysel Başvuru’, Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi (15) 2011, 121-170.

<https://dergipark.org.tr/en/download/article-file/789417> accessed on 14 July 2023.

Aydın, Z., ‘İdari Yargının Görev Alanı', İstanbul Medipol Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Ana Bilim Dalı, Postgraduate Thesis, (2015) İstanbul.

<https://acikerisim.medipol.edu.tr/xmlui/bitstream/handle/20.500.12511/6793/Aydin-Zafer-2015.pdf?sequence=1> accessed on 11 July 2023.

Aydınoğlu, Z. N., ‘İstinaf Kanun Yolunun İdari Yargılama Usulüne Başlıca Etkileri’, Türkiye Adalet Akademisi Dergisi (34) 2018, 387-423.

<https://dergipark.org.tr/en/download/article-file/980845> accessed on 13 July 2023.

Bahar, E., ‘Türkiye Anayasa Mahkemesi Kararları Işığında “Adil Yargılanma Hakkı”’, Adalet Dergisi 68 (2022), 253-283.

<https://dergipark.org.tr/tr/pub/adaletdergisi/issue/70479/1135233> accessed on 11 July 2023.

Bekri, M. N., ‘Gerekçeli Karar Hakkı’, Ankara Barosu Dergisi 3 (2014), 204-228.

<https://dergipark.org.tr/tr/pub/abd/issue/33818/374498> accessed on 10 July 2023.

Council of Europe, ‘Road Map for an Improved Administrative Justice System 2020–2023’ (2022) Ankara.

<https://rm.coe.int/en-road-map-web-2754-8104-2438-1/1680a609fe> accessed on 10 July 2023.

Çınar, M. F., ‘Avrupa İnsan Hakları Sözleşmesi’nde Düzenlenen Haklar ve “Özel ve Aile Hayatına Saygı Hakkı”, Uluslararası Hukuk ve Sosyal Bilimler Araştırmaları Dergisi 1 (2022), 103-123.

<https://dergipark.org.tr/tr/pub/uhusbad/issue/68293/1036382> accessed on 10 July 2023.

Çırak, E., ‘Avrupa İnsan Hakları Sözleşmesi Çerçevesinde Adil Yargılanma Hakkının Uygulama Alanı’, Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi 2 (2019), 997-1028.

<https://hukuk.deu.edu.tr/wp-content/uploads/2019/09/EZGI-CIRAK.pdf> accessed on 10 July 2023.

Eckes, C., ‘EU Accession to the ECHR: Between Autonomy and Adaptation’, The Modern Law Review 2 (2013), 254-285.

<https://ael.eui.eu/wp-content/uploads/sites/18/2015/04/Eckes-08-Eckes.pdf> accessed on 10 July 2023.

Hannum, H., ‘The UDHR in National and International Law’, Health and Human Rights 2 (1998), 144-158.

<https://www.jstor.org/stable/4065305> accessed on 10 July 2023.

Kelly, B. D., ‘Human Rights in Psychiatric Practice: an Overview for Clinicians’, BJPsych Advances 21 (2015), 54–62.

<https://www.cambridge.org/core/journals/bjpsych-advances/article/human-rights-in-psychiatric-practice-an-overview-for-clinicians/C1D99C0DC9793200E9949D348BAD60C1> accessed on 10 July 2023.

Kılıç, M., ‘Gerekçeli Karar Hakkı: Yargısal Kararların Rasyonalitesi’, Türkiye Adalet Akademisi Dergisi 47 (2021), 1-46.

<https://dergipark.org.tr/en/download/article-file/1884534> accessed on 11 July 2023.

Letsas, G., ‘The ECHR as a Living Instrument: Its Meaning and Legitimacy’ in Andreas Føllesdal, Birgit Peters and Geir Ulfstein (eds), ‘Constituting Europe: The European Court of Human Rights in a National, European and Global Context’, Cambridge University Press (June 2013), 106-141.

<https://www.cambridge.org/core/books/constituting-europe/echr-as-a-living-instrument-its-meaning-and-legitimacy/ED7EA3F99CC8DB88BF2691FF9B44C25B> accessed on 11 July 2023.

Oldfather, C. M., ‘Writing, Cognition, and the Nature of the Judicial Function’, Georgetown Law Journal 1283 (2008), 1283 – 1345.

<https://scholarship.law.marquette.edu/facpub/92/> accessed on 11 July 2023.

Selçuk, S., ‘Avrupa İnsan Hakları Sözleşmesi ve Türk Uygulaması’, Yargıtay Dergisi (3) 1999, 399-428.

<http://www.yargitaydergisi.gov.tr/journalContent/75> accessed on 18 July 2023.

Strong, S. I., ‘Writing Reasoned Decisions and Opinions: A Guide for Novice, Experienced, and Foreign Judges’, Journal of Dispute Resolution 1 (2015), 93-128.

<https://scholarship.law.missouri.edu/jdr/vol2015/iss1/7/> accessed on 10 July 2023.

Sunay, Z. A., ‘Gerekçeli Karar Hakkı ve Temel İlkeleri’, Danıştay Dergisi 143 (2016), 7 – 54.

<https://www.danistay.gov.tr/assets/pdf/yayinlar/dergi/29_12_2017_032521.pdf > accessed on 11 July 2023.

Şeker, H., ‘İbralaşmayı Yoksayan Etik İlişki/Yozlaşan Gerekçe’, Türkiye Barolar Birliği Dergisi 108 (2013), 291 – 348.

<https://hukukbook.com/ibralasmayi-yoksayan-etik-iliski-yozlasan-gerekce/> accessed on 11 July 2023.

Şenlen, S., ’Türkiye'de İdari Yargının Doğuşu ve Tarihi Gelişimi’, Ankara Üniversitesi SBF Dergisi (49) 1994, 401–413.

<https://dergipark.org.tr/en/download/article-file/36501> accessed on 12 July 2023.

Turan, B., ‘AİHS Çerçevesinde İdari Yargıda Gerekçeli Karar Hakkı’, Akdeniz Üniversitesi Hukuk Fakültesi Dergisi 12 (2022), 177-202.

<https://dergipark.org.tr/tr/pub/akdhfd/issue/70331/1068789> accessed on 10 July 2023.

Ulaş, H. A. ‘Yargı Kararlarının Gerekçeli Olması Üzerine Bir Değerlendirme’, Hacettepe Hukuk Fakültesi Dergisi 11 (2021), 1243-1283.

<https://dergipark.org.tr/tr/download/article-file/1846957> accessed on 11 July 2023.

Usta, H., ‘Türkiye’de Ombudsman (Kamu Denetçiliği) Kurumu’, Denetişim (14) 2014, 59-64.

<https://dergipark.org.tr/tr/download/article-file/208753> accessed on 16 July 2023.

Uzun, C. D., ‘6771 Sayılı Kanunla Anayasada Yargıyla İlgili Yapılan Düzenlemeler’, Uyuşmazlık Mahkemesi Dergisi (11) 2018, 409-433.

<https://dergipark.org.tr/en/download/article-file/494875> accessed on 12 July 2023.

Yıldız, H., ‘İdare Hukukunun Kısa Tarihçesi’, Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi 22 (2019), 197-223.

<https://dergipark.org.tr/tr/pub/ahbvuhfd/issue/44348/548129> accessed on 11 July 2023.

Books

Council of Europe, ‘Module on Legal Reasoning and Judgment Drafting’, (2022) Ankara.

<https://rm.coe.int/modul-1-hukuki-gerekcelendirme-ve-karar-yaz-m-kat-l-mc-kitab-2788-6455/1680a7fdc0> accessed on 11 July 2023.

Çağlayan, R., ‘İdari Yargılama Hukuku’, Seçkin Yayıncılık (2014) Ankara.

David R. and Brierly, J. E. C., ‘Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law’, 2nd Edition Free Press (1978) Newyork.

<https://www.jstor.org/stable/43951188> accessed on 11 July 2023.

Gözler, K., ‘İdare Hukuku’, Ekin Kitabevi (2009) Bursa.

Işıktaç, Y. and Metin, S., ‘Hukuk Metodolojisi’, Filiz Kitapevi (2010) İstanbul.

İnceoğlu, S., ‘Adil Yargılanma Hakkı – Anayasa Mahkemesi’ne Bireysel Başvuru El Kitapları Serisi-4’ (2018) Ankara.

<https://www.anayasa.gov.tr/media/3547/04_adil_yargilanma_hakki_son.pdf> accessed on 11 July 2023.

Karahanoğulları, O., ‘Türkiye’de İdari Yargı Tarihi’, Turhan Kitabevi (2005) Ankara.

Kayar, N., ‘İdari Yargı Kuruluş ve İşleyiş’, Ekin Basım Yayın (2013) Bursa.

Kramer, S. N., ‘History Begins at Sumer’, University of Pennsylvania Press (1981) Philadelphia.

<https://www.academia.edu/37432566/History_Begins_at_Sumer_Thirty_Nine_Firsts_in_Recorded_History> accessed on 11 July 2023.

Uler, Y., ‘İdari Yargıda İptal Kararlarının Sonuçları’, Ankara Üniversitesi Hukuk Fakültesi Yayınları No. 281, Sevinç Matbaası (1970) Ankara.

<https://dspace.ankara.edu.tr/xmlui/handle/20.500.12575/10363> accessed on 11 July 2023.

Vitkauskas, D., ‘Protecting the right to a fair trial under the European Convention on Human Rights’, 2nd Edition Council of Europe (2017) Strasbourg.

<https://rm.coe.int/protecting-the-right-to-a-fair-trial-under-the-european-convention-on-/168075a4dd> accessed on 10 July 2023.

Zrvandyan, A., 'Casebook on European fair trial standards in administrative justice', Council of Europe – Folke Bernadotte Academy, December (2016) Strasbourg.

<https://rm.coe.int/16807001c6> accessed on 10 July 2023.

Case Law

Court of Justice of the EU (CJEU), Opinion 2/13 (18 December 2014).

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62013CV0002> accessed on 10 July 2023.

Case of Cihangir Yıldız v. Turkey, Application No 39407/03, (ECtHR, 17 April 2018).

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-187634%22]}> accessed on 19 July 2023.

Case of De Moor v. Belgium, Application No 16997/90, (ECtHR, 23 June 1994).

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57877%22]}> accessed on 11 July 2023.

Case of Frydlender v. France, Application No 30979/96, (ECtHR, 27 June 2000).

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58762%22]}> accessed on 11 July 2023.

Case of Gäfgen v. Germany, Application No 22978/05, (ECtHR, 1 June 2010).

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-99015%22]}> accessed on 11 July 2023.

Case of Grzeda v. Poland, Application No. 43572/18, (ECtHR, 15 March 2022).

<https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-216400%22]}> accessed on 11 July 2023.

Case of Guðmundur Andri Ástráðsson v.Iceland, Application No 26374/18, (ECtHR, 1 December 2020).

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-206582%22]}> accessed on 11 July 2023.

Case of Hirvisaari v. Finland, Application No 49684/99, (ECtHR, 25 December 2001).

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59682%22]}> accessed on 11 July 2023.

Case of Hülya Ebru Demirel v. Turkey, Application No 30733/08, (ECtHR, 19 June 2018).

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-183862%22]}> accessed on 21 July 2023.

Case of Kress v. France, Application No 39594/98, (ECtHR, 7 June 2001).

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59511%22]}> accessed on 11 July 2023.

Case of Martins Moreira v.Portugal, Application No 11371/85, (ECtHR, 26 October 1988).

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57535%22]}> accessed on 11 July 2023.

Case of Ringeisen v. Austria, Application No. 2614/65, (ECtHR, 16 July 1971).

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57565%22]}> accessed on 11 July 2023.

Case of Ruiz Torija v. Spain, Application No 18390/91, (ECtHR, 9 December 1994).

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57909%22]}> accessed on 11 July 2023.

Case of Stanev v. Bulgaria, Application No 36760/06, (ECtHR, 17 January 2012).

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-108690%22]}> accessed on 11 July 2023.

Case of Suominen v. Finland, Application No 37801/97, (ECtHR, 1 July 2003).

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-61178%22]}> accessed on 11 July 2023.

Case of Urat v. Turkey, Application No 53561/09 and 13952/11, (ECtHR, 27 November 2018).

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-187904%22]}> accessed on 20 July 2023

Case of İbrahim Ataş, Application No 2013/1235, (Constitutional Court, 13 June 2013).

<https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/1235> accessed on 17 July 2023.

Case of Vedat Benli, Application No 2013/307, (Constitutional Court, 16 May 2013).

<https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/307> accessed on 17 July 2023.

Reports

Constitutional Court of The Republic of Turkey, 'Bireysel Başvuru İstatistikleri (23 September 2012 – 30 June 2022)', (2022) Ankara.

<https://www.anayasa.gov.tr/media/8113/bb_2022_2_tr.pdf> accessed on 19 July 2023.

Council of Europe, 'Violations by Article and by State 1959-2022', 2022, Strasbourg.

<https://www.echr.coe.int/Documents/Stats_violation_1959_2022_ENG.pdf> accessed on 11 July 2023.

Council of Europe, 'Violations by Article and by State 2022', 2022, Strasbourg.

<https://www.echr.coe.int/Documents/Stats_violation_2022_ENG.pdf> accessed on 11 July 2023.

European Court of Human Rights, 'The ECHR in Fact and Figures 2021', February (2022) Strasbourg.

<https://www.echr.coe.int/documents/d/echr/Facts_Figures_2021_ENG> accessed on 11 July 2023.

European Court of Human Rights, 'The Russian Federation ceases to be a Party to the European Convention on Human Rights' Press Release, ECtHR 286 (2022).

<https://hudoc.echr.coe.int/eng-press#{%22itemid%22:[%22003-7435446-10180882%22]}> accessed on 10 July 2023.