ADMINISTRATIVE JUSTICE IN TURKEY: STRUCTURAL CHALLENGES AND REFORM PROPOSALS INSPIRED BY LATIN AMERICAN EXPERIENCES

JUSTICIA ADMINISTRATIVA EN TURQUÍA: DESAFÍOS ESTRUCTURALES Y PROPUESTAS DE REFORMA INSPIRADAS EN LAS EXPERIENCIAS LATINOAMERICANAS

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Resumen: El control jurisdiccional de la administración constituye uno de los mecanismos fundamentales para la garantía del Estado de Derecho, al asegurar la legalidad de la actuación administrativa y la protección efectiva de las personas frente a los actos y omisiones ilícitos de las autoridades públicas. A pesar de contar con una estructura institucional consolidada y una amplia jurisprudencia, la jurisdicción contencioso-administrativa en Turquía continúa enfrentando desafíos estructurales y procedimentales que limitan su eficacia en la práctica. Entre estos desafíos se encuentran las restricciones probatorias, el uso limitado de la oralidad, la ejecución insuficiente de las decisiones judiciales, la fragmentación de los plazos procesales y la falta de mecanismos jurisdiccionales adecuados frente a la inactividad administrativa.

El presente artículo adopta un enfoque de derecho comparado para examinar determinados mecanismos institucionales y procesales desarrollados en el derecho administrativo latinoamericano, en particular en países como Costa Rica, Colombia, Brasil, Ecuador y El Salvador. Estos ordenamientos jurídicos, que comparten la tradición del derecho civil y presentan problemáticas institucionales similares, han incorporado herramientas jurisdiccionales innovadoras destinadas a fortalecer la justicia administrativa, tales como las acciones preventivas, las órdenes judiciales de cumplimiento, los jueces de ejecución y los mecanismos de litigio en defensa del interés público.

A partir del análisis de estas experiencias comparadas, el artículo evalúa su relevancia potencial para la reforma de la jurisdicción contencioso-administrativa turca. En lugar de proponer una trasplantación directa de instituciones jurídicas extranjeras, el estudio plantea modelos de reforma sensibles al contexto, compatibles con los principios constitucionales, y analiza en qué medida determinados mecanismos institucionales latinoamericanos pueden contribuir al fortalecimiento del control jurisdiccional de la administración en Turquía.

Palabras clave: Justicia administrativa; control judicial; jurisdicción contencioso-administrativa; derecho administrativo comparado; América Latina

Abstract: Administrative judicial review plays a central role in safeguarding the rule of law by ensuring effective control over administrative action and protecting individuals against unlawful acts and omissions of public authorities. Despite its long-established institutional structure, the Turkish administrative judiciary continues to face significant structural and procedural challenges that limit its effectiveness in practice. These challenges include evidentiary restrictions, limited oral proceedings, ineffective enforcement of judicial decisions,

fragmented procedural time limits, and insufficient judicial remedies against administrative inaction.

This article adopts a comparative law approach to examine selected institutional and procedural mechanisms in Latin American administrative law, particularly in Costa Rica, Colombia, Brazil, Ecuador, and El Salvador. These legal systems, which share a civil-law tradition and comparable institutional concerns, have introduced innovative judicial tools to strengthen administrative justice, including preventive injunctions, judicial enforcement orders, enforcement judges, and public-interest litigation mechanisms.

By analysing these comparative experiences, the article assesses their potential relevance for reforming the Turkish administrative judiciary. Rather than advocating a direct transplantation of foreign legal institutions, the study proposes context-sensitive reform models designed to address structural deficiencies within the Turkish system while remaining consistent with constitutional principles. It evaluates the extent to which selected Latin American institutional mechanisms may contribute to strengthening administrative judicial review in Turkey.

Keywords: Administrative justice; judicial review; administrative courts; comparative administrative law; Latin America.

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1. Introduction

Administrative judicial review constitutes one of the most essential mechanisms for ensuring the rule of law and protecting individuals against unlawful actions and omissions of public authorities. An effective system of administrative justice not only guarantees the legality of administrative action but also reinforces public trust in governmental institutions by providing timely, accessible, and enforceable judicial remedies. However, in many legal systems, particularly in emerging democracies, administrative judicial review continues to face persistent structural and procedural challenges that undermine its effectiveness in practice.

The Turkish administrative judiciary is no exception. Despite its long-standing institutional framework and extensive jurisprudence, the system has been subject to recurring criticisms concerning evidentiary limitations, restricted oral proceedings, ineffective enforcement of judicial decisions, fragmented procedural time limits, and the lack of adequate judicial remedies against administrative inaction. These issues have direct implications for access to justice, the right to a fair trial, and the proper protection of fundamental rights within the administrative legal order.

In addressing these challenges, comparative law offers a valuable analytical framework. Latin American legal systems, many of which share a civil law tradition and have experienced similar tensions between administrative power and judicial control, have developed innovative procedural mechanisms to strengthen administrative judicial review. Countries such as Costa Rica, Colombia, Brazil, Ecuador, and El Salvador have introduced judicial tools, including preventive injunctions, judicial enforcement orders, enforcement judges, and specialized forms of public interest litigation, to enhance the effectiveness of administrative justice.

This article adopts a comparative approach to examine selected institutional and procedural models from Latin American administrative law and assesses their potential relevance for reforming the Turkish administrative judiciary. Rather than proposing a wholesale transplantation of foreign legal institutions, the article seeks to identify adaptable mechanisms to address structural deficiencies within the Turkish system while remaining consistent with its constitutional framework. By doing so, the study aims to contribute to the broader debate on strengthening administrative judicial review in Turkey through context-sensitive and comparative reform proposals.

2. Enforcement of Judicial Decisions

2.1. Enforcement Judges as a Remedy Against Non-Compliance with Judicial Decisions

The effective enforcement of judicial decisions constitutes a core element of the rule of law and a prerequisite for meaningful administrative judicial review. A judicial system in which final court decisions remain unenforced risks undermining public confidence in the judiciary and rendering legal remedies ineffective in practice. Despite formal legal obligations requiring administrative authorities to comply with judicial rulings, the persistent problem of non-enforcement continues to represent a structural weakness within the Turkish administrative judiciary.

Under Article 28 of the Turkish Administrative Judicial Procedure Law (İYUK), administrative authorities are required to implement judicial decisions within thirty days. The same provision allows individuals to seek material and moral compensation for non-compliance. However, this remedial framework places an excessive burden on claimants, who are forced to initiate additional proceedings, incur procedural costs, and prove damages arising from the administration's failure to execute court decisions. As a result, the existing mechanism often transforms the enforcement of judicial decisions into a secondary and protracted litigation process rather than ensuring prompt and automatic compliance[2].

Turkish administrative jurisprudence has consistently emphasized that the administration's execution of judicial decisions is an essential requirement of the rule of law[3]. The deliberate or negligent failure to comply with court rulings—except in cases of factual or legal impossibility—has been characterized as a severe form of administrative fault. Nevertheless, despite this doctrinal clarity, the problem of non-enforcement persists as an unresolved, systemic issue in Turkish administrative law. In a legal system governed by the rule of law, the enforcement of judicial decisions should not constitute a matter of debate or doctrinal controversy[4].

In this context, the Costa Rican model of *enforcement judges (jueces de ejecución)* offers a particularly instructive comparative example. Under the Costa Rican Administrative

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[2] Hasan Nuri Yaşar, *İdari Yargı Kararlarının Etkinleştirilmesi Arayışında: İdari Yargıç ve Yargısal Emir* (İstanbul: On İki Levha Publishing House, 2024), 194.
[3] Cemil Kaya, *İdari Yargı Kararlarının Uygulanması Konusunda Danıştay'ın Yaklaşımı (İYUK Madde 28 Üzerinden Bir İnceleme)* (İstanbul: Legal Yayıncılık, 2013), 43.
[4] Bahtiyar Akyılmaz, "Yargı Kararlarının Yerine Getirilmemesinden Doğan Sorumluluk," *Gazi University Faculty of Law Journal* 11, no. 1–2 (2007): 450.

Jurisdiction Act No. 8508 of 2008, enforcement judges are vested with broad powers to ensure the effective and efficient execution of judicial decisions. Drawing inspiration from this model, the introduction of enforcement judges into Turkish administrative law may provide a more effective institutional response to the chronic problem of non-compliance.

It is proposed that enforcement judges should act ex officio upon the expiration of the thirty days prescribed under Article 28 of the İYUK, with the mandate to verify whether judicial decisions have been duly enforced. These judges should be empowered to request information and documents from administrative authorities, issue formal warnings for non-compliance, and initiate disciplinary proceedings against responsible public officials. Where appropriate, they should also be authorized to refer cases involving abuse of office to public prosecutors and to impose financial sanctions on administrative bodies that persistently fail to execute judicial decisions.

Furthermore, enforcement judges should be granted the authority to annul administrative acts adopted with the intention of circumventing or formally simulating compliance with judicial rulings, without requiring the initiation of a separate annulment action. In situations where enforcement is rendered impossible due to factual or legal obstacles, enforcement judges should formally record these circumstances and notify the competent judicial authority.

From an institutional perspective, while the creation of specialized judicial positions dedicated to enforcement would be preferable, alternative arrangements may be warranted given existing workload constraints. In the absence of separate appointments, these functions could be assigned to designated judges within administrative courts, regional administrative courts, or the Council of State. Nevertheless, the establishment of dedicated enforcement judges would represent a more effective and sustainable solution.

Should such a mechanism be introduced through legislative reform, the repeal of Article 28(3) of the İYUK—which currently limits enforcement remedies to compensation claims—would be appropriate. Compared with ex post compensation actions, enforcement judges provide a proactive, preventive mechanism that helps ensure timely compliance with judicial decisions and reinforces the authority of administrative courts.

2.2. Judicial Orders as an Enforcement and Interim Protection Mechanism

In addition to enforcement judges, judicial orders constitute another essential instrument for strengthening the enforcement of judicial decisions within administrative justice systems. Comparative analysis reveals that several Latin American jurisdictions—including Argentina,

Colombia, Costa Rica, El Salvador, Uruguay, Mexico, and Peru—recognize the courts' power to issue binding judicial orders directed at administrative authorities. In some jurisdictions, such orders may also include coercive fines intended to ensure compliance[5].

By contrast, Turkish administrative law has traditionally been reluctant to recognize judicial orders because courts should not issue directives to the administration. While this view has been reflected in certain judicial decisions, Turkish courts have, in practice, occasionally included specific instructions within the operative parts of their judgments. From a constitutional perspective, judicial orders do not entail substituting judicial decision-making for administrative discretion. Instead, they serve to concretize judicial rulings and guide administrative authorities within the boundaries of legality[6].

Although some doctrinal views argue that judicial orders fall within the inherent scope of judicial power and therefore require no legislative basis, such an approach appears overly optimistic in the Turkish context[7], where non-compliance with judicial decisions remains a persistent problem. For this reason, the formal recognition of judicial orders through legislative amendment is necessary to ensure their practical application.

Accordingly, it is proposed that the Administrative Judicial Procedure Law be amended to explicitly authorize courts to issue judicial orders specifying the measures required to ensure compliance with their decisions. In cases of continued non-compliance beyond the statutory thirty-day period, courts should be empowered to impose daily coercive fines on administrative authorities. Such an approach would represent a more effective enforcement mechanism than post hoc compensation claims.

Judicial orders may also serve as an interim protection mechanism in cases involving administrative actions rather than formal administrative acts. In situations where individuals suffer immediate harm as a result of administrative conduct—such as unauthorized construction or interference with property rights—the absence of an identifiable administrative act may preclude recourse to annulment or suspension of execution. Granting courts the authority to

[5] Ünal Yıldız, *Latin Amerika Ülkelerinde İdarenin Yargısal Denetimi* (Ankara: Adalet Publishing House, 2025), 525-526.

[6] "*…to grant an additional examination right in lieu of the examination not taken due to a legitimate excuse, and to annul the administrative act to the contrary*." and "*…to grant two additional examination rights in lieu of the two examinations not taken due to an excuse, and to annul the administrative act to the contrary."* see other examples Serkan Seyhan, "Yargı Kararlarının İdarece Uygulanmaması Durumuna Fransız Hukukunda Getirilen Çözüm: Yargısal Emir," *Istanbul Kültür University Faculty of Law Journal* 15, no. 2 (2016): 577-578.

[7] Yaşar, *İdari Yargı Kararlarının Etkinleştirilmesi Arayışında: İdari Yargıç ve Yargısal Emir,* 190.

issue interim judicial orders directing the administration to cease or refrain from specific actions would provide a more effective remedy[8].

The coexistence of enforcement judges and judicial orders should not be viewed as redundant. As demonstrated by the Costa Rican experience, these mechanisms may function in complementary ways. Together, they offer a comprehensive enforcement framework that shifts the execution of judicial decisions away from the goodwill of administrative authorities and toward a legally structured system of accountability. Strengthening enforcement mechanisms in this manner is essential not only for protecting individual rights but also for restoring public confidence in administrative justice[9].

3. Strengthening Evidentiary and Procedural Guarantees

3.1. Balancing Written and Oral Proceedings in Administrative Justice

The predominance of written proceedings traditionally characterizes the Turkish administrative judiciary. While the principle of written procedure serves essential functions—such as preserving the evidentiary record and facilitating procedural efficiency—its rigid and exclusive application may give rise to significant shortcomings. In particular, the limited use of oral proceedings restricts the parties' ability to present their arguments directly to the judge and may undermine confidence in judicial decisions, particularly for the losing party.

Comparative administrative law demonstrates that contemporary procedural systems rarely rely solely on either written or oral proceedings. Instead, modern models tend to adopt a hybrid structure in which written and oral elements perform complementary functions at different stages of adjudication. In Costa Rica, for example, administrative procedure explicitly incorporates the principle of orality alongside written proceedings, requiring parties to present their claims and defenses orally during hearings. Similarly, in Mexico, both annulment actions and full jurisdiction actions may be conducted through online hearings, reflecting a flexible and adaptive procedural framework[10].

The exclusive reliance on written proceedings entails risks that extend beyond perceptions of procedural fairness. Important factual or legal issues raised in written submissions may escape judicial attention, particularly in complex disputes. Although hearings cannot eliminate such

[8] İsmail Uçar, *İdari Yargılama Hukukunda İvedi Yargılama Usulü: Fransa ve Türkiye Örneği* (Ankara: Seçkin Publishing House, 2024), 600-601.
[9] Yıldız, *Latin Amerika Ülkelerinde İdarenin Yargısal Denetimi*, 527-528.
[10] Yıldız, ibid, 519-520.

risks, they provide an effective mechanism for clarifying contested issues, addressing ambiguities, and enabling judges to engage with the parties' arguments directly. From this perspective, oral proceedings contribute not only to procedural legitimacy but also to the accuracy and quality of judicial decision-making[11].

A balanced procedural framework that integrates written and oral elements offers distinct advantages. Written procedures facilitate the identification and preservation of the case file and may accelerate proceedings, whereas oral hearings play a crucial role in establishing the material truth of the dispute. As the primary instrument of the principle of orality, hearings are closely aligned with the right to a fair trial and with the principle of procedural economy. They also serve an essential function in shaping the judge's inner conviction by enabling the direct assessment of factual circumstances and legal arguments[12].

In disputes arising from administrative actions rather than formal administrative acts, oral hearings may be particularly valuable for elucidating the factual background and the reasoning underlying administrative conduct. Moreover, provided that the prohibition on extending claims and defenses is respected, hearings may allow parties to raise issues that could not be adequately articulated in written submissions. For these reasons, administrative courts should adopt a more active and systematic use of oral proceedings alongside written procedures.

Accordingly, it is proposed that parties be afforded the opportunity to be heard at least once—either in person or online—without being subject to monetary thresholds or restrictive discretionary criteria. Following the completion of the preliminary examination phase, a mandatory hearing allowing parties to present their claims and defenses orally would constitute a more effective instrument for realizing the principle of ex officio investigation and strengthening procedural guarantees within administrative justice.

3.2. The Admissibility of Witness Evidence in Administrative Proceedings

Evidentiary rules play a decisive role in determining the effectiveness of administrative judicial review and the extent to which courts are able to establish the material truth of a dispute. In the Turkish administrative judiciary, the evidentiary framework remains largely confined to written evidence, with direct witness testimony traditionally excluded from administrative proceedings.

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[11] Gürsel Kaplan, "İdari Yargılama Hukukunda Sözlülük Usulü ve Tanık Dinlenebilmesi Hakkında Kısa Bir Değerlendirme," *Istanbul Kültür University Faculty of Law Journal* 13, no. 1 (2014): 40.
[12] Kamile Türkoğlu Üstün, *İdari Yargılama Usulüne Hakim Olan İlkeler* (Ankara: Seçkin Publishing House, 2019), 326.

This limitation is closely linked to the strict application of the principle of written procedure and has been consistently reinforced by judicial practice[13].

In contrast, comparative experience indicates that the admission of witness evidence in administrative proceedings does not necessarily undermine procedural efficiency. In jurisdictions such as El Salvador, witness testimony constitutes an accepted evidentiary tool in administrative disputes and contributes to a more comprehensive clarification of contested facts. Allowing administrative courts to hear witnesses directly may reduce the need for ancillary evidentiary procedures and prevent delays arising from fragmented fact-finding mechanisms[14].

From the perspective of the right to a fair trial, the categorical exclusion of witness evidence appears increasingly difficult to justify. In practice, Turkish administrative courts occasionally take into account witness statements obtained in other judicial proceedings by treating them as documentary evidence. This indirect and fragmented approach, however, falls short of providing an effective evidentiary framework. Direct examination of witnesses by administrative courts would enhance procedural economy by enabling disputes to be resolved more efficiently and at lower cost, while also contributing to the accurate establishment of material facts.

It is therefore argued that administrative courts should be empowered to admit and assess witness testimony in a manner consistent with the procedural logic and institutional culture of administrative law. While drawing inspiration from the general principles governing witness evidence in civil and criminal proceedings, such an approach should remain sensitive to the distinctive features of administrative adjudication[15]. Provided that the prohibition on extending claims and defenses is respected, witness evidence would allow parties to effectively substantiate allegations that cannot be conclusively proven through documents alone.

The admission of witness testimony would also directly contribute to the formation of the judge's inner conviction and strengthen the evidentiary dimension of administrative justice. By enhancing the court's ability to assess disputed facts and evaluate the credibility of competing claims, witness evidence would reinforce both the right to proof and the quality of judicial

[13] Bahtiyar Akyılmaz, Murat Sezginer, and Cemil Kaya, *Türk İdari Yargılama Hukuku* (Ankara: Seçkin Publishing House, 2024). 72.
[14] Yıldız, *Latin Amerika Ülkelerinde İdarenin Yargısal Denetimi,* 517.
[15] Adem Güvez, "İdari Yargılama Hukukunda Tanık Delili," *Selçuk University Faculty of Law Journal* 29, no. 3 (2021): 2122.

decision-making[16]. For these reasons, opening the administrative judicial process to witness testimony constitutes a necessary step toward strengthening evidentiary and procedural guarantees within the Turkish administrative judiciary.

4. Judicial Remedies Against Administrative Inaction

4.1. Preventive Injunctions as a Remedy Against Regulatory Omission

The absence or insufficiency of regulatory action may result in serious interferences with the effective enjoyment of fundamental rights[17]. Comparative administrative law demonstrates that judicial mechanisms aimed at addressing regulatory omissions constitute an essential component of effective judicial protection. In Brazil, for example, preventive injunction actions may be brought where the lack of necessary regulatory measures prevents the exercise of constitutionally guaranteed rights[18].

A similar mechanism could be introduced into Turkish administrative law. Importantly, the scope of such a remedy should not be limited to situations involving the complete absence of regulatory action, but should also extend to cases of incomplete or deficient regulation. In Turkish practice, incomplete regulatory acts are currently subject to judicial review primarily through annulment actions[19]. However, incomplete regulations frequently arise from failures to ensure equality, to provide transitional provisions protecting legitimate expectations, or to adapt public services to changing circumstances.

A significant difficulty arises from the fact that the missing component of an incomplete regulation often lacks the characteristics of a final and enforceable administrative act. For this reason, such omissions may fall outside the traditional scope of annulment actions. Although Turkish judicial practice—particularly that of the Council of State—has sought to overcome this difficulty by reviewing incomplete regulations through annulment proceedings, this approach remains structurally limited. Even where annulment decisions are rendered, the absence of a binding obligation on the administration to adopt a new or complete regulation creates the risk of regulatory vacuums[20].

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[16] Sezin Öztoprak, "Yargı Kararları Işığında İdari Yargılama Usulünde Tanık," *Dokuz Eylül University Journal of Law Faculty* 23, no. 2 (2021): 1396–1397.
[17] Enes Yalçın, *Eksik Kapsamlı Düzenlemelerin Yargısal Denetimi* (İstanbul: On İki Levha Publishing House, 2022), 117.
[18] Yıldız, *Latin Amerika Ülkelerinde İdarenin Yargısal Denetimi,* 520.
[19] Özge Didem Boulanger, "Eksik Düzenlemeler Aleyhine İptal Davası Açma Yöntemi Üzerine Bir İnceleme," *Yıldırım Beyazıt Law Journal* 6, no. 1 (2021): 73-74
[20] Boulanger, ibid, 78.

Preventive injunction actions offer a more suitable judicial instrument for addressing this structural deficiency. Unlike annulment actions, which are ill-suited to compel positive regulatory conduct, preventive injunctions may be designed to require the administration to adopt a specific regulatory measure or to complete an existing one. Such actions should be available in cases involving both the absence and the insufficiency of regulatory acts concerning fundamental rights and freedoms.

With respect to standing, a broad conception of legal interest should be adopted, reflecting the public nature of regulatory acts. Prior administrative application should be mandatory, requiring the administration to be afforded an opportunity to adopt or amend the regulation in question. Jurisdiction may be determined according to the territorial scope of the regulatory act, with nationwide regulations falling within the competence of the Council of State and local regulations within that of administrative courts. Upon finding a violation, courts should be empowered to issue judicial orders directing the administration to enact or complete the relevant regulatory measure.

4.2. Compliance Actions and the Duty of the Administration to Act

Compliance actions constitute another judicial mechanism aimed at addressing administrative inaction. In several Latin American jurisdictions—including Colombia, Peru, Bolivia, and Venezuela—compliance actions enable courts to issue binding judicial orders requiring administrative authorities to fulfill obligations arising from statutes or administrative acts. Where successful, such actions result in judicial directives compelling the administration to act in accordance with its legal duties[21].

Turkish administrative law does not currently recognize compliance actions as a distinct procedural remedy. Instead, the Ombudsman Institution may issue recommendations encouraging administrative action. However, non-binding recommendations lack the coercive force necessary to ensure effective compliance. Judicial decisions, by contrast, possess significantly greater normative and practical authority. For this reason, the introduction of compliance actions into Turkish administrative law merits serious consideration.

To remain consistent with constitutional principles governing the separation of powers, compliance actions should be limited to situations in which the administration exercises its bound powers. Where the administration fails to perform an act or action required by law under conditions of bound competence, such inaction may result in serious and irreversible harm to

[21] Yıldız, *Latin Amerika Ülkelerinde İdarenin Yargısal Denetimi*, 528.

individual rights. In such cases, compliance actions would serve as an effective means of safeguarding the rule of law and reinforcing administrative accountability.

Standing should be limited to individuals whose rights or legal interests are directly affected by the administrative omission. As in comparative systems, prior application to the administration should constitute a prerequisite, with judicial proceedings becoming available upon rejection or failure to respond within the prescribed period. Considering that the administration is bound by mandatory authority with regard to the execution of judicial decisions[22], compliance actions may also function as an alternative to compensation claims under Article 28 of the Administrative Judicial Procedure Law, offering a more direct and effective mechanism for ensuring the execution of judicial decisions

Moreover, compliance actions may complement preventive injunctions by addressing failures to adopt regulatory measures where the administration is legally obligated to do so. Together, these remedies provide a coherent framework for addressing administrative inaction across a wide range of contexts.

4.3. Declaratory Actions in Administrative Law

Declaratory actions serve an important function in resolving legal uncertainty and preventing future disputes. In Costa Rica, administrative disputes may assume the form of declaratory actions aimed at clarifying the existence or scope of legal relationships. By contrast, Turkish administrative law does not currently recognize declaratory actions as an independent category of administrative litigation.

The absence of declaratory actions creates a significant gap in judicial protection. While evidentiary determination procedures address factual matters, they do not provide a mechanism for clarifying legal situations[23]. Declaratory actions may serve a variety of purposes, including alleviating legal uncertainty, preventing unlawful administrative conduct, and protecting individuals against the potential implementation of legally non-existent administrative acts.

Declaratory actions may also serve the interests of administrative authorities by clarifying the scope of their powers or resolving jurisdictional disputes between public bodies. Moreover, obtaining a declaratory judgment against another administrative authority may

[22] Yakup Çokkaş, "İdari Yargı Kararlarının Uygulanması Aşamasında Ortaya Çıkan İmkânsızlık," *Ankara University Faculty of Law Journal* 70, no. 4 (2021), 1324.
[23] Onur Kaplan and Gül Fiş Üstün, "Tespit Edici İşlemlerle Bağlantılı Olarak İdari Yargılama Hukukunda Tespit Davalarının Uygulama Alanı ve Gerekliliği Üzerine Bir Değerlendirme," *Marmara University Faculty of Law Journal of Legal Studies* 26, no. 1 (2020). 143.

encourage the lawful exercise of powers that the administration has hesitated to employ due to legal uncertainty.

Although some doctrinal views suggest that declaratory actions could be developed through judicial interpretation, such an approach appears incompatible with the principle of legality governing administrative jurisdiction[24]. The Council of State has consistently held that declaratory actions are not provided for under Article 2 of the Administrative Judicial Procedure Law and therefore cannot be applied in practice[25]. Accordingly, declaratory actions must be explicitly regulated by statute.

It is proposed that Article 2 of the Administrative Judicial Procedure Law be amended to include declaratory actions defined as actions brought by individuals with a legal interest in determining the existence, absence, or scope of an administrative act or legal relationship, provided that annulment or full remedy actions are not available[26]. The recognition of declaratory actions would expand access to justice, reduce unnecessary litigation, and contribute to the effective protection of rights within administrative law

5. Access to Justice and Procedural Time Limits

5.1. Harmonisation of Procedural Time Limits in Administrative Litigation

Procedural time limits play a decisive role in ensuring effective access to justice within administrative law. Comparative analysis reveals that in several Latin American jurisdictions—including El Salvador, Guatemala, Honduras, Costa Rica, Nicaragua, Paraguay, and Venezuela—time limits for bringing administrative actions are regulated in a uniform manner within administrative procedure or administrative jurisdiction statutes. In these systems, general time limits apply across different types of administrative disputes, and special or fragmented time regimes are largely avoided[27].

By contrast, Turkish administrative law is characterized by a highly fragmented structure of procedural time limits. In addition to the general time limit of sixty days established under the Administrative Judicial Procedure Law (İYUK), nearly thirty special statutes introduce shorter and varying time limits, often ranging from seven to thirty days. These special time limits,

[24] Hasan Dursun, "İdari Yargıda Tespit Davasına Yer Verilmesi Bir Zorunluluktur," *Terazi Law Journal* 3, no. 24 (2008): 135.
[25] Ayşe Almila Tanrıverdi, *İdari Yargılama Hukuku Açısından Tespit Davasının Uygulanabilirliği* (İstanbul: On İki Levha Publishing House, 2020), 289.
[26] Tanrıverdi, *ibid*, 295.
[27] Yıldız, *Latin Amerika Ülkelerinde İdarenin Yargısal Denetimi*, 522.

typically designed as exceptions to the general rule, significantly complicate the procedural framework and create uncertainty for individuals seeking judicial protection[28].

The proliferation of shortened and dispersed time limits has raised concerns regarding the right of access to a court. Although the Constitutional Court has held that short time limits do not necessarily constitute a disproportionate interference with this right, the practical consequences of such a system remain problematic[29]. Individuals may lose their right to judicial review due to the expiration of narrowly defined and often insufficiently foreseeable deadlines.

From the perspective of legal certainty and effective judicial protection, legislative reform appears more appropriate. It is therefore proposed that special time limits for administrative litigation be repealed and that the general sixty-day time limit established under the İYUK be applied uniformly across administrative disputes, with limited and clearly justified exceptions. Harmonising procedural time limits would reduce the risk of forfeiting rights due to procedural technicalities and would enhance the effectiveness of judicial review by enabling courts to examine administrative action on the merits rather than dismissing claims on procedural grounds.

Such a reform would also contribute to strengthening the principles of the rule of law and the right to a fair trial. By simplifying the procedural framework and enhancing its predictability, harmonised time limits would facilitate access to justice and promote a more effective and coherent system of administrative adjudication.

5.2. Expedited Proceedings as a Tool for the Protection of Fundamental Rights

Timely judicial protection constitutes a fundamental component of effective access to justice, particularly in cases involving fundamental rights and freedoms. Comparative administrative law demonstrates that procedural mechanisms allowing for expedited adjudication play a crucial role in preventing irreversible harm. In Costa Rica, Article 60 of the Administrative Jurisdiction Act No. 8508 of 2008 authorizes courts to apply expedited procedures where a dispute is urgent, mandatory, or of significant public interest. Under this framework, the judge conducting the preliminary examination may, either *ex officio* or upon request, refer the case to the competent court for expedited consideration.

[28] Akyılmaz et al., *Türk İdari Yargılama Hukuku*, 348–350
[29] Metin Günday, *İdari Yargılama Hukuku* (Ankara: Turhan Publishing House, 2024), 293-294.

Turkish administrative law, however, adopts a considerably narrower approach. Expedited procedures are limited to specific categories of disputes—primarily of an economic nature—and are generally confined to annulment actions. Moreover, the procedural framework established under Article 20/A of the İYUK applies exclusively to administrative acts, excluding disputes arising from administrative actions or omissions[30]. This restrictive model significantly limits the capacity of administrative courts to respond effectively to urgent violations of fundamental rights.

It is therefore proposed that Turkish administrative law recognize expedited proceedings as a procedural option available upon the claimant's request, in a manner analogous to applications for the suspension of execution. Claimants should be entitled to request expedited adjudication, and such requests should be assessed during the preliminary examination phase. Criteria such as urgency, necessity, and overriding public interest—drawn directly from comparative experience—may be incorporated into positive law, with their interpretation shaped through judicial practice.

Where the judge forms a sufficient conviction regarding the urgency of the dispute, the request should be referred to the competent court for final determination. If granted, the procedural rules governing expedited proceedings under Article 20/A of the İYUK should apply. Importantly, this mechanism should extend to all forms of administrative litigation, including full remedy actions arising from administrative actions, not merely annulment actions.

The practical significance of such a reform becomes particularly evident in cases where delayed judicial review would render legal protection meaningless. For example, in disputes concerning educational rights, social benefits, or time-sensitive administrative decisions, the ordinary pace of litigation may result in the irreversible loss of rights. Expedited proceedings would provide an effective judicial response in such situations.

An example may be given of the need for the prompt protection of fundamental rights and freedoms. For instance, under the Regulation on Graduate Education and Training, a graduate student is entitled to request an extension of time from higher education institutions due to the pandemic; however, the relevant institution may reject such a request despite the student's application. If it is assumed that the student is in the final semester of their graduate studies, the expiration of the study period during the pendency of an annulment action would render the

[30] **Akyılmaz et al.**, *Türk İdari Yargılama Hukuku*, 655.

action meaningless, thereby preventing the student from benefiting from the right to an extension[31].

The introduction of a broader and more flexible expedited procedure would thus represent a turning point for the protection of fundamental rights within Turkish administrative justice. By shortening adjudication times and enhancing procedural responsiveness, such a reform would strengthen both the right to seek legal remedies and the right to a fair trial, while simultaneously serving the interests of the rule of law and the public good.

6. Public Interest Litigation and Administrative Accountability

6.1. Recourse Actions Against Public Officials in Administrative Jurisdiction

Comparative analysis reveals that in several Latin American jurisdictions, including Ecuador and Colombia, recourse actions (*acciones de repetición*) against public officials are adjudicated within the administrative judiciary[32]. By contrast, under Turkish law, recourse actions against public officials are currently heard before civil courts under the general provisions of the Turkish Code of Obligations. This approach has been subject to well-founded criticism in legal doctrine[33].

One of the primary objections concerns the implicit characterization of public officials' personal fault as a form of tortious liability under private law. Treating personal fault as equivalent to a civil wrong creates the misleading impression that such liability is detached from the administrative context in which the damage occurred. However, a personal fault committed by a public official in the course of exercising public authority constitutes a specific form of administrative fault. It should be assessed within the framework of public law[34].

So long as the legal relationship between the administration and public officials is not regarded as a private law relationship, assigning jurisdiction over recourse actions to civil courts appears conceptually problematic. The assessment of whether damage caused by a public official stems from service fault, personal fault, or a combination of both requires a nuanced evaluation of administrative functions, institutional responsibilities, and public power. Administrative courts,

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[31] Ünal Yıldız, "İdari Rejimi Benimsemiş Beş Latin Amerika Ülkesinde Amparo Davası ve Türkiye'de Uygulanabilirliği," *Periodicum Iuris* 1, no. 1 (2023): 84.
[32] Yıldız, *Latin Amerika Ülkelerinde İdarenin Yargısal Denetimi,* 521.
[33] Mehmet Güneş and Mustafa Gündüz, "Kamu Görevlisine Rücu Edilmesinde Hukuki Sorunlar ve İdari Yargı Kararları Işığında Güncel Bir Değerlendirme," *Uludağ University Journal of Social Sciences Institute* 4, no. 7 (2015):12.
[34] Bahtiyar Akyılmaz, "İdarenin Kusurlu Personeline Rücu Sorunu," *Sorumluluk ve Tazminat Hukuku Sempozyumu* (Ankara, 2009), 541.

by virtue of their specialization, are better equipped to determine the nature and degree of fault attributable to both the administration and the individual official.

Moreover, damage caused by a public official is rarely isolated from the functioning of the administrative organization. In most cases, personal fault is intertwined with deficiencies attributable to the administration itself. The authority to evaluate service faults, personal faults, and their respective weight within the administrative structure is inherent to the administrative judiciary. Assigning such disputes to civil courts risks disregarding the expertise and functional role of administrative courts as specialized adjudicatory bodies.

For these reasons, it is argued that recourse actions against public officials should be transferred to the jurisdiction of administrative courts, as is the case in Ecuador and Colombia. Admittedly, this proposal raises a procedural challenge, given that Turkish administrative procedural law generally does not permit the naming of real persons as defendants. To overcome this obstacle, it is proposed that the Administrative Judicial Procedure Law be amended to explicitly permit recourse actions against public officials before administrative courts, following the comparative models observed in Latin America. Such a reform would strengthen administrative accountability while preserving the coherence of public law adjudication.

6.2. Public Interest Annulment Actions (Acción de Lesividad)

Several Latin American legal systems recognize a judicial mechanism that enables administrative authorities to initiate proceedings to annul their own administrative acts on the ground that such acts are contrary to the public interest. This mechanism, commonly referred to as an acción de lesividad, exists as an independent action in jurisdictions such as Ecuador and is integrated into annulment or administrative dispute proceedings in countries including El Salvador, Guatemala, Honduras, Mexico, Colombia, Panama, Paraguay, and Venezuela[35].

Turkish administrative law does not recognize a comparable action. Instead, the withdrawal of administrative acts has been shaped primarily through judicial case law. In its landmark unification decision of 1973, the Council of State held that administrative acts may be withdrawn indefinitely in cases of nullity, fraud, misrepresentation by the civil servant, or "manifest error." However, the concept of manifest error remains inherently vague and lacks clearly defined boundaries. Both doctrine and judicial practice reveal significant uncertainty regarding its scope, with similar cases yielding divergent outcomes.

[35] Yıldız, *Latin Amerika Ülkelerinde İdarenin Yargısal Denetimi*, 532.

The broad and indeterminate use of the notion of manifest error poses a serious threat to the principles of legal certainty and legal security. If interpreted expansively, it may enable the administration to withdraw administrative acts in an unpredictable and potentially arbitrary manner, even where such acts have given rise to acquired rights. In situations where an administrative act—whether lawful or unlawful—has generated acquired rights, a fundamental conflict emerges between the public interest and the protection of individual interests[36].

Resolving this conflict should not fall within the unilateral discretion of the administration that issued the act in question. Instead, the assessment of whether the withdrawal or annulment of an administrative act is justified on grounds of public interest should be entrusted to an independent judicial authority. In this respect, the Latin American model of the acción de lesividad offers a compelling solution by subjecting such decisions to judicial scrutiny and thereby reconciling legality with legal certainty.

It is therefore proposed that Turkish administrative law adopt a public interest annulment action modeled on the acción de lesividad. Under this framework, administrative authorities would be prohibited from unilaterally withdrawing administrative acts that have given rise to acquired rights after a specified period. Instead, where an act is deemed contrary to the public interest, the administration would be required to initiate judicial proceedings seeking its annulment. Drawing inspiration from Ecuadorian law, a limitation period—such as three years—may be introduced for initiating such actions[37].

For this mechanism to function effectively, the public interest annulment action should be explicitly regulated under Article 2 of the Administrative Judicial Procedure Law. Furthermore, individuals and private legal entities benefiting from the administrative act in question should be designated as defendants, thereby ensuring equality of arms and strengthening procedural fairness. Given the absence of a general administrative procedure code in Turkish law, such a judicial mechanism would also compensate for the lack of participatory safeguards in administrative withdrawal processes.

The introduction of a public interest annulment action would enhance legal certainty, reinforce the protection of acquired rights, and promote a more balanced relationship between administrative discretion and judicial oversight. Ultimately, it would strengthen the rule of law

[36] Bahtiyar Akyılmaz, Murat Sezginer, and Cemil Kaya, *Türk İdare Hukuku* (Ankara: Seçkin Publishing House, 2024), 493–499.
[37] Lorena Vicuña Domínguez, *El Nuevo Procedimiento Contencioso Administrativo* (PhD diss., unpublished, Universidad San Francisco de Quito, 2015), 52-53.

by ensuring that conflicts between the public interest and individual rights are resolved through transparent and independent judicial processes rather than through unilateral administrative action.

7. Conclusion

This article has examined the structural and procedural challenges facing the Turkish administrative judiciary through a comparative analysis of selected Latin American administrative law mechanisms. The analysis demonstrates that the effectiveness of administrative judicial review depends not only on the existence of formal legal remedies but also on the availability of institutional and procedural tools capable of ensuring their practical operation. Persistent problems such as the non-enforcement of judicial decisions, limited evidentiary mechanisms, restricted access to oral proceedings, fragmented procedural time limits, and insufficient remedies against administrative inaction continue to undermine the protective function of administrative justice in Turkey.

The comparative experiences of Latin American legal systems—particularly those of Costa Rica, Colombia, Brazil, Ecuador, and El Salvador—illustrate that these challenges are neither unique nor insurmountable. On the contrary, these systems have developed a range of judicial mechanisms to strengthen administrative accountability and enhance access to justice, including enforcement judges, judicial orders, preventive injunctions, compliance actions, expedited procedures, and public-interest–oriented forms of litigation. These mechanisms reveal a shared concern with ensuring that administrative judicial review functions as an effective guarantee of legality rather than merely as a formal control mechanism.

Rather than advocating the direct transplantation of foreign legal institutions, this study has sought to identify reform models that are adaptable to the constitutional and institutional framework of Turkish administrative law. The proposals advanced in this article emphasize preventive and proactive judicial tools that shift the focus of administrative justice from ex post compensation toward timely and effective protection of rights. In this respect, mechanisms such as enforcement judges and judicial orders address the long-standing problem of non-compliance with judicial decisions, while reforms concerning evidentiary rules, oral proceedings, and expedited adjudication enhance procedural fairness and judicial effectiveness.

The analysis further highlights the importance of strengthening remedies against administrative inaction and regulatory omission, as well as introducing judicial mechanisms that promote public interest protection and administrative accountability. In particular, the

adoption of public interest annulment actions inspired by the *acción de lesividad* and the transfer of recourse actions against public officials to the administrative judiciary would contribute to reconciling legality, legal certainty, and accountability within the administrative system.

Ultimately, the findings of this study suggest that the effectiveness of administrative judicial review in Turkey can be significantly enhanced through carefully calibrated, context-sensitive reforms informed by comparative experience. Strengthening administrative justice in this manner would not only improve the protection of individual rights but also reinforce public confidence in the judiciary and contribute to the consolidation of the rule of law. By demonstrating how selected Latin American institutional mechanisms may inform such reforms, this article aims to contribute to ongoing debates on the future development of the administrative judicial system in Turkey.

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Bibliography

Akyılmaz, Bahtiyar, Murat Sezginer, and Cemil Kaya. *Türk İdare Hukuku*. Ankara: Seçkin Publishing House, 2024.

Akyılmaz, Bahtiyar, Murat Sezginer, and Cemil Kaya. *Türk İdari Yargılama Hukuku*. Ankara: Seçkin Publishing House, 2024.

Akyılmaz, Bahtiyar. "İdarenin Kusurlu Personeline Rücu Sorunu." *Sorumluluk ve Tazminat Hukuku Sempozyumu*, 537–549. Ankara, 2009.

Akyılmaz, Bahtiyar. "Yargı Kararlarının Yerine Getirilmemesinden Doğan Sorumluluk." *Gazi University Faculty of Law Journal* 11, no. 1–2 (2007): 449–470.

Boulanger, Özge Didem. "Eksik Düzenlemeler Aleyhine İptal Davası Açma Yöntemi Üzerine Bir İnceleme." *Yıldırım Beyazıt Law Journal* 6, no. 1 (2021): 55–86.

Çokkaş, Yakup. "İdari Yargı Kararlarının Uygulanması Aşamasında Ortaya Çıkan İmkânsızlık." *Ankara University Faculty of Law Journal* 70, no. 4 (2021): 1301–1345.

Domínguez, Lorena Vicuña. *El Nuevo Procedimiento Contencioso Administrativo*. PhD diss., unpublished. Universidad San Francisco de Quito, 2015.

Dursun, Hasan. "İdari Yargıda Tespit Davasına Yer Verilmesi Bir Zorunluluktur." *Terazi Law Journal* 3, no. 24 (2008): 111–135.

Günday, Metin. *İdari Yargılama Hukuku*. Ankara: Turhan Publishing House, 2024.

Güneş, Mehmet, and Mustafa Gündüz. "Kamu Görevlisine Rücu Edilmesinde Hukuki Sorunlar ve İdari Yargı Kararları Işığında Güncel Bir Değerlendirme." *Uludağ University Journal of Social Sciences Institute* 4, no. 7 (2015): 7–19.

Güvez, Adem. "İdari Yargılama Hukukunda Tanık Delili." *Selçuk University Faculty of Law Journal* 29, no. 3 (2021): 2087–2130.

Kaplan, Gürsel. "İdari Yargılama Hukukunda Sözlülük Usulü ve Tanık Dinlenebilmesi Hakkında Kısa Bir Değerlendirme." *Istanbul Kültür University Faculty of Law Journal* 13, no. 1 (2014): 33–46.

Kaplan, Onur, and Gül Fiş Üstün. "Tespit Edici İşlemlerle Bağlantılı Olarak İdari Yargılama Hukukunda Tespit Davalarının Uygulama Alanı ve Gerekliliği Üzerine Bir Değerlendirme." *Marmara University Faculty of Law Journal of Legal Studies* 26, no. 1 (2020): 131–145.

Kaya, Cemil. *İdari Yargı Kararlarının Uygulanması Konusunda Danıştay'ın Yaklaşımı (İYUK Madde 28 Üzerinden Bir İnceleme)*. İstanbul: Legal Publishing House, 2013.

Öztoprak, Sezin. "Yargı Kararları Işığında İdari Yargılama Usulünde Tanık." *Dokuz Eylül University Journal of Law Faculty* 23, no. 2 (2021): 1363–1404.

Seyhan, Serkan. "Yargı Kararlarının İdarece Uygulanmaması Durumuna Fransız Hukukunda Getirilen Çözüm: Yargısal Emir." *Istanbul Kültür University Faculty of Law Journal* 15, no. 2 (2016): 561–583.

Tanrıverdi, Ayşe Almila. *İdari Yargılama Hukuku Açısından Tespit Davasının Uygulanabilirliği*. İstanbul: On İki Levha Publishing House, 2020.

Türkoğlu Üstün, Kamile. *İdari Yargılama Usulüne Hakim Olan İlkeler*. Ankara: Seçkin Publishing House, 2019.

Uçar, İsmail. *İdari Yargılama Hukukunda İvedi Yargılama Usulü: Fransa ve Türkiye Örneği*. Ankara: Seçkin Publishing House, 2024.

Yalçın, Enes. *Eksik Kapsamlı Düzenlemelerin Yargısal Denetimi*. İstanbul: On İki Levha Publishing House, 2022.

Yaşar, Hasan Nuri. *İdari Yargı Kararlarının Etkinleştirilmesi Arayışında: İdari Yargıç ve Yargısal Emir*. İstanbul: On İki Levha Publishing House, 2024.

Yıldız, Ünal. "İdari Rejimi Benimsemiş Beş Latin Amerika Ülkesinde Amparo Davası ve Türkiye'de Uygulanabilirliği." *Periodicum Iuris* 1, no. 1 (2023): 65–91.

Yıldız, Ünal. *Latin Amerika Ülkelerinde İdarenin Yargısal Denetimi*. Ankara: Adalet Publishing House, 2025.