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# REFLECTIONS ON THE ORDINARY LEGAL REMEDIES IN TURKISH TAX PROCEEDINGS WITHIN THE FRAMEWORK OF JUDICIAL DECISIONS

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## *Abstract*

The ordinary legal remedies in tax jurisdiction, which are dependent on administrative jurisdiction, are first degree appeal and appeal. In this respect, it is possible to make a first degree appeal or an appeal against the decisions made by the tax court regarding tax disputes, in accordance with the procedures and principles between Article 45 and 50 of Law No. 2577. The most obvious difference between a first degree appeal and an appeal is the characteristics of the review. In the first degree appeal, the judge of the regional administrative court evaluates the present case both in terms of material and legality, and may re-examine the case and, if he deems it necessary, give a decision on the merits. Regarding the start of the application period to ordinary legal remedies, the legislator deviated from the general rule regarding the periods and regulated that the application period would start from the notification of the decision (Law No. 2577, art. 45/1, 46/1), not from the day following the notification of the decision (Law No. 2577, art. 8/1). In order to be compatible with other articles in terms of the legal systematic, it would be appropriate to change the regulation regarding the application period to ordinary legal remedies starting from the day following the notification of the decisions. The first degree appeal is regulated in only one article (Law No. 2577, art. 45) and in a limited manner in Law No. 2577. For example, the grounds or examination principles of first degree appeal are not included in this article. In the Law No. 6100, the first degree appeal is regulated in detail between articles 341-360. Similarly, it would be appropriate to expand the regulation regarding the first degree appeal in IYUK. The legislator stipulated that the subject of the case must exceed certain monetary limits in order to apply to ordinary legal remedies, but it did not specify at what date the monetary limits would be taken into account for the application to the appeal. In a recent decision of the Plenary Session of the Tax Law Chambers of the Council of State, it was decided that the date of the first degree appeal decision should be taken as a basis in calculating the monetary limits required to apply for the appeal.

**Keywords**: Tax disputes, ordinary legal remedies in administrative jurisdiction, first degree appeal, appeal.

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# VERGİ YARGILAMASINDA OLAĞAN KANUN YOLLARININ YARGI KARARLARI ÇERÇEVESİNDE DEĞERLENDİRİLMESİ


## *Öz*

İdari yargılama yoluna bağlı olan vergi yargılamasında olağan kanun yolları istinaf ve temyizdir. Bu yönüyle vergi uyuşmazlıklarıyla ilgili olarak vergi mahkemesi tarafından verilmiş kararlara karşı, İYUK m. 45-50 arasındaki usul ve esaslara göre, istinaf veya temyize kanun yoluna başvurulabilir. İstinaf ve temyiz kanun yolları arasındaki en belirgin farklılık, yapılan incelemenin özellikleridir. İstinafta bölge idare mahkemesi hakimi, somut olayı hem maddi ve hem de hukuki bakımdan değerlendirir ve dava dosyasını yeniden inceleyerek gerekli gördüğü takdirde esas hakkında yeniden bir karar verebilir. Olağan kanun yollarına başvuru sürenin başlanmasıyla ilgili kanun koyucu, sürelerle ilgili genel kuralın dışına çıkarak, başvuru süresinin kararın tebliğini izleyen günden değil (İYUK m. 8/1), kararın tebliğinden itibaren başlayacağı şeklinde düzenlemiştir (İYUK m. 45/1, 46/1). Kanun sistematiği bakımından diğer maddelerle uyumlu olması için olağan kanun yollarına başvuru süresiyle ilgili düzenlemenin de kararların tebliğini izleyen günden itibaren başlayacak şekilde değiştirilmesi yerinde olacaktır. İstinaf kanun yolu İYUK'ta yalnızca tek bir maddede (İYUK m. 45) ve sınırlı bir biçimde düzenlenmiştir. Örneğin, bu maddede istinaf sebepleri ve inceleme esaslarına yer verilmemiştir. HMK'da istinaf 341-360 maddeleri arasında ayrıntılı bir biçimde düzenlenmiştir. Benzer şekilde İYUK'taki istinaf kanun yoluyla ilgili düzenlemenin de genişletilmesi yerinde olacaktır. Kanunkoyucu olağan kanun yollarına başvurabilmek için dava konusunun belirli parasal sınırları aşması gerektiğini öngörmüş ve fakat temyiz kanun yoluna başvuru için hangi tarihteki parasal sınırların dikkate alınacağını belirtmemiştir. Danıştay Vergi Dava Daireleri yakın tarihli bir kararında temyiz kanun yoluna başvurabilmek için gereken parasal sınırların hesaplanmasında istinaf kararı tarihinin esas alınması gerektiği yönünde karar vermiştir.


**Anahtar Kelimeler:** Vergi uyuşmazlıkları, idari yargıda olağan kanun yolları, istinaf, temyiz.

## 1. INTRODUCTION

In this study, aiming to examine the ordinary legal remedies in tax jurisdiction, which are subject to the administrative jurisdiction branch, the remedies of *first degree appeal* (Turkish: *İstinaf*) and *appeal* (Turkish: *Temyiz*) will be examined. Tax proceedings are regulated in the *Administrative Jurisdiction Procedures Law* (Law No. 2577, dated 06.01.1982,[2] Turkish: *İdari Yargılama Usulü Kanunu*). Therefore, the scope of the study is limited to first degree appeal and appeals, which are the usual remedies in administrative law. However, when the subject necessitates, especially the regulations regarding first degree appeal and appeal in civil procedure law and the relevant legislation will be utilized. Court decisions will be taken advantage of for exemplifying various problems and solution methods in practice. As a method, first of all, the first degree appeal and appeal arrangements in the Law No. 2577 will be put forward in general, and then the issues related to tax judgment will be highlighted.

[2] (*Day/month/year*). All dates in the study will be displayed this way.

Against the decisions made by the tax court, which is the first instance court as a rule, the parties to the case; depending on the conditions and procedure in Article 45 of the Law No. 2577, may apply to first degree appeal legal remedy, and depending on the conditions and procedure in Articles 46-50 of the Law No. 2577 may apply to appeal as a legal remedy. From this point of view, answers will be sought to four basic questions regarding ordinary legal remedies and their results. First of all, against which decisions of the tax court can the parties to the case appeal? Secondly, what are the application period and application procedures for legal remedies? Thirdly, after taking legal action, what kind of scrutiny will these decisions be subjected to? And finally, what will be the consequences of the decisions to be made as a result of the legal remedies review?

The study will consist of three sections. In the first section, general features of ordinary legal remedies in administrative jurisdiction will be presented. In the second section, the first degree appeal legal remedy will be examined. The legal nature, application, review, and the decisions made as a result of the first degree appeal legal remedy will be evaluated. In the third section, the appeal legal remedy will be examined. Similar to the method in the first degree appeal legal remedy examination, the legal nature of the appeal remedy, the appeal application, the appeal examination, and the decisions made as a result of the appeal examination will be evaluated. It is thought that the study will contribute to the literature in terms of examining the ordinary legal remedies in tax jurisdiction, especially the practical procedures and principles as a whole.

## 2. LITERATURE REVIEW

Tax jurisdiction depends on administrative jurisdiction. What is meant by ordinary legal remedies in tax proceedings mainly consists of ordinary legal remedies in administrative jurisdiction. Based on this framework, in the doctrine, the studies on ordinary legal remedies can be classified under three headings.

The first of these are the books on tax jurisdiction, which exclusively examine the ordinary legal remedies in tax jurisdiction. *Karakoç*, in the title of ordinary legal remedies, examines the first degree appeal within the framework of its general characteristics, qualifications, decisions that can be appealed, the first degree appeal request, the first degree appeal period, the evolution of the file, the effect of the application on the execution of the decision, the decision of the request, on the other hand, he examined the appeal law in terms of its general

characteristics, its authority, the decisions that can/cannot be appealed, the persons who can request an appeal, the duration of the appeal, the petition/processes to be taken, the procedural examination of the application, the reasons for the appeal/reversal, the effects of the application on the execution of the decision, the decisions/actions to be taken as a result of the appeal and the withdrawal of the appeal.[3] *Yüce*, under the title of ordinary legal remedies, dealt with the first degree appeal legal remedy according to its definition and the functioning process of the first degree appeal remedy, on the other hand, he examined the appeal remedy within the framework of its definition, the decisions to be appealed, the process of appeal procedure and the decisions to be made.[4]

In the doctrine, secondly, the ordinary legal remedies are examined in administrative procedure law books. *Candan,* under the title of remedies against decisions, examines the articles of law related to legal remedies and reviewed the legal remedies within the framework of the decisions subject to the application, persons who can apply, arrangement of petitions, fee/post fee, deadlines, stay of execution, hearing, cases requiring reversal of the decision, decision making, decisions that can be made upon the decision to reverse and the result.[5] *Gözübüyük and Tan* evaluated the appeal in terms of the concept of appeal, places of appeal, decisions that can be appealed, final decisions of the administrative court, reasons for appeal, appeal procedure, appeal period, appeal request and appeal petition, the effect of appealing on the execution of the decision, reversal decision, actions to be taken on the decision, under the title of ordinary legal remedies.[6] *Odyakmaz, Kaymak and Ercan* examined the appeal through ordinary legal remedies according to appeal authority, appeal request, decisions that can/cannot be appealed, appeal period, appeal method/examination of the petition, appeal review, grounds for appeal, decisions to be made in appeal review, waiver of appeal and request for stay of execution in legal remedies under the title of legal remedies in administrative jurisdiction (recourses against decisions).[7] In the title of legal remedies in the administrative proceedings, *Çağlayan* examined the first degree appeal within the framework of its general meaning, decisions subject to first degree appeal, procedure for first degree appeal, examination of first degree appeal, certainty of decisions rendered, still he examined

[3] Yusuf Karakoç, Vergi Yargılaması Hukuku, Yetkin Publications, 4th Edition, Ankara, 2017, p. 308-348.
[4] Mehmet Yüce, Vergi Yargılama Hukuku, Ekin Publishing, 6th Edition, Bursa, September 2019, p. 234-247.
[5] Turgut Candan, Açıklamalı İdari Yargılama Usulü Kanunu, Adalet Publishing House, 4th Edition, Ankara, 2011, p. 917-984.
[6] A. Şeref Gözübüyük ve Turgut Tan, İdare Hukuku Cilt 2 İdari Yargılama Hukuku, Turhan Bookstore, 5th Edition, Ankara, 2012, p. 1028-1066.
[7] Zehra Odyakmaz, Ümit Kaymak and İsmail Ercan, İdari Yargı, On İki Levha Publications, 9th Edition, Istanbul, August 2013, p. 278-288.

the appeal in terms of the decisions that can be appealed, procedure of appeal, grounds for appeal, review of appeal, manner of the trial court and stay of execution.[8] *Kaplan*, under the title of legal remedies (recourses against decisions), evaluated the first degree appeal according to the nature of the first degree appeal, decisions that are not suitable for application, first degree appeal authority, application period, application form/procedure, first (preliminary) examination, examination on the merits and decisions that can be made, moreover he examined the appeal in terms of the quality of appeal, decisions that can be appealed, appeal authority, the duration of the reasons, the form/procedure of the appeal request, preliminary examination, the decisions that can be made, the urgent trial and appeal on the decisions of the ministry of national education and Student Selection and Placement Center, and appeal in the decisions made by the Council of State as the court of first instance.[9] *Akyılmaz, Sezginer and Kaya* reviewed the first degree appeal in terms of court decisions subject to first degree appeal and procedure of first degree appeal, scope and results of the first degree appeal examination, again they evaluated the appeal according to court decisions subject to appeal, procedure of appeal, scope and results of appeal examination, and they made evaluations on fisrt degree appeal and appeal legal remedies and stay of execution in the title of ordinary legal remedies.[10] Under the title of ordinary legal remedies, *Günday* discussed the first degree appeal with general characteristics, decisions to be the subject of the first degree appeal application, examination and decision of the first degree appeal application, on the other hand he evaluated the appeal in terms of general characteristics, decisions subject to appeal, and the examination and decision of appeal.[11] *Ulusoy* examined the first degree appeal within the general characteristics of its, furthermore he evaluated the appeal according to the decision-making procedure, proceedings on decisions on appeal, "compliance" and "resistance" (insistence) to the decision of the appeal authority, nature/scope of the appeal and stay of execution under the title of legal remedies.[12] *Atay* examined the first degree appeal in terms of general characteristics, differences from appeals, decisions that cannot be appealed, reasons for appeal, duration/form of application, the effect of the application on the execution

[8] Ramazan Çağlayan, İdari Yargılama Hukuku, Seçkin Publishing, 12th Edition, Ankara, September 2020, p. 766-837.
[9] Gürsel Kaplan, İdari Yargılama Hukuku, Ekin Publishing, 8th Edition, Bursa, October 2022, p. 535-562.
[10] Bahtiyar Akyılmaz, Murat Sezginer and Cemil Kaya, Türk İdari Yargılama Hukuku, Savaş Publishing House, 4th Edition, Ankara, September 2020, p. 735-766.
[11] Metin Günday, İdari Yargılama Hukuku, Turhan Bookstore, 2nd Edition, Ankara, September 2022, p. 497-524.
[12] Ali D. Ulusoy, İdari Yargılama Hukuku, Yetkin Publications, 3rd Edition, Ankara, 2022, p. 206-227.

of the decisions and the decisions that can be made, also he evaluated the appeal according to decisions that cannot be appealed, cases that can be appealed, application periods, form of application, decisions that can be made under the title of ordinary legal remedies.[13]

Finally, in the doctrine, the ordinary legal remedies in tax jurisdiction have also been examined in tax law books. *Kaneti* examined the appeal according to the general characteristics, decisions that can be appealed, duration of appeal, procedure of appeal, reasons for reversals in appeal, and the decisions to be made under the title of remedies against decisions.[14] *Öncel, Kumrulu, Çağan and Göker* reviewed the first degree appeal and appeal in terms of general features, application conditions, persons who can apply, application period, decisions that can be made by the regional administrative court and the Council of State, procedure of application and examination in the title of legal remedies.[15] Under the title of ordinary legal remedies *Mutluer* evaluated the first degree and appeal in terms of general characteristics, request for appeal, persons to appeal, procedure for appealing, review of appeal, decisions and results of appeal.[16] *Bilici* examined the first degree appeal in terms of general characteristics, application conditions, duration, structure of the regional administrative court and decisions to be made under the title of the applying to the court of appeal (regional administrative court) against the tax court decision, and he examined the appeal according to the general features, duration, people who can apply, decisions that can be appealed, the decisions to be made and the reasons for the reversal of Council of State under the title of appeal to the Council of State.[17] *Öner*, under the title of regional administrative courts and examination of first degree appeal, examined the first degree appeal with the subjects of establishment and duties of regional administrative courts, application to appeal, examination of appeal, also he examined the appeal in terms of establishment and duties of the Council of State, appeal of decisions of first degree appeal, preliminary examination, examination and decision making of appeal, results of the decision and payment of attorney and litigation expenses.[18] Under the title of ordinary legal remedies, *Şenyüz, Yüce and Gerçek* reviewed the first degree appeal in terms of general characteristics, persons who can first degree appeal, procedure of first degree appeal, the decisions be made, also they examined the

[13] Ender Ethem Atay, İdari Yargılama Hukuku, Seçkin Publications, Ankara, October 2021, p. 439-458.
[14] Selim Kaneti, Vergi Hukuku, İstanbul Üniversitesi Yayın No. 3434, Hukuk Fakültesi Yayın No. 698, Özdem Kardeşler Printing House, Istanbul, 1986/1987, p. 256-259.
[15] Mualla Öncel, Ahmet Kumrulu, Nami Çağan and Cenker Göker, Vergi Hukuku, Turhan Bookstore, 31st Edition, Ankara, October 2022, p. 219-220.
[16] M. Kamil Mutluer, Vergi Hukuku, Turhan Bookstore, 3rd Edition, Ankara, 2011, p. 303-306.
[17] Nurettin Bilici, Vergi Hukuku, Savaş Publishing House, 50th Edition, Ankara, September 2020, p. 209-213.
[18] Erdoğan Öner, Vergi Hukuku, Seçkin Publishing, 11th Edition, Ankara, September 2019, p. 264-270.

appeal according to the application conditions, application procedure, appeal review and decisions to be made.[19] *Batı*, evaluated the first degree appeal according to the general features, application conditions, examination procedure and the decisions to be made in the title of the first degree appeal legal remedy in tax jurisdiction, additionally he general characteristics, decisions subject to appeal, persons who can appeal and the decisions to be made in the title of appeal legal remedy in tax jurisdiction.[20].

## 3. IN GENERAL

Legal remedies are the legal remedies available to the parties of the case in order to ensure that the final decision given by a court is re-examined, audited and, if necessary, corrected by a higher judicial authority.[21] In this way, it is aimed to re-examine the decisions that are claimed to be wrong, to check the legality of the decisions, and to eliminate the deficiencies and errors, if any.[22] The reason for the existence of legal remedies is to eliminate the negativities that may arise from the possibility of making mistakes, to conclude the proceedings quickly, to ensure consistency in the interpretation of the decisions, to realize the unity of jurisprudence and law, and to prevent injustice.[23] In the words of the Constitutional Court; "*A legal remedy is a legal remedy that ensures that a decision made by one jurisdiction and claimed to be unlawful is reviewed by another jurisdiction as a rule. The aim of the legal remedy is to provide a more secure judicial service by allowing the decisions taken by the courts to be audited by another jurisdiction as a rule*."[24]

Right to take legal action; has been accepted within the scope of the right to a fair trial and the right to seek justice[25]. Applying to legal remedies is a continuation of the proceedings[26] and

[19] Doğan Şenyüz, Mehmet Yüce and Adnan Gerçek, Vergi Hukuku (Genel Hükümler), Ekin Publishing, 7th Edition, Bursa, January 2016, s. 281-285.
[20] Murat Batı, Vergi Hukuku (Genel Hükümler), Seçkin Publishing, 2nd Edition, Ankara, September 2022, s. 623-628.
[21] Kaplan, İdari Yargılama Hukuku, p. 523.
[22] The decision of the 14th Chamber of the Council of State, dated 07.02.2013 and numbered *E*. (Docket Number, Turkish: *Esas No*., in short *E*.) 2012/4889, *K*. (Decision Number, Turkish: *Karar No*., in short *K*.) 2013/706 (The decisions in this article will be shown in such abbreviation. And all the decisions used in this article were accessed from *Kazancı Hukuk*, https://www.kazanci.com.tr).
[23] Atay, p. 435.
[24] The decision of the Constitutional Court, dated 03.07.2014 and numbered E. 2014/47, K. 2014/123.
[25] According to the Constitutional Court, the right to take legal remedy is within the scope of the right to seek justice and fair trial, which are guaranteed by Article 36 of the Constitution (The decision of the Constitutional Court, dated 19.03.2015 and numbered E. 2014/146, K. 2015/31). For similar examples, see the decision of the Constitutional Court, dated 5.10.1995 and numbered E. 1995/15, K. 1995/55; the decision of the Constitutional Court, dated 18.10.2012 and numbered E. 2012/40, K. 2012/158; the decision of the Constitutional Court, dated

therefore the procedure of applying to legal remedies is within the scope of the judicial procedure.[27] Thus, according to a decision of the Constitutional Court, "*Article 142 of the Constitution stipulates that "trial procedures" will be regulated by law. The legal remedy procedure is also within the scope of the judicial procedure. Accordingly, the issue of determining the legal remedy procedure and authority is left to the discretion of the legislator. However, the legislator should act in accordance with the general principles of law and the rules in the Constitution, especially the principle of the rule of law and the right to a fair trial, while exercising this discretionary power. In order to effectively ensure the right to apply to a legal remedy, which is protected under Article 36 of the Constitution, the legal authority should also have the authority to change the decision under review*"

In tax law, the judicial procedure is subject to the administrative procedure and is regulated in the Law No. 2577. According to the Law No. 2577, legal remedies (recourses against decisions) in administrative law are divided into two as "*ordinary remedies*" and "*extraordinary remedies*". Ordinary legal remedies are the remedies that can be filed against decisions that are not yet final and that can be made to a higher judicial authority as a rule. Extraordinary remedies are the remedies that can be applied against finalized decisions. Ordinary remedies are constituted by *first degree appeal* and *appeal*; extraordinary remedies consist of *retrial* and *appeal in favor of the law*.

The final decisions taken by the administrative and tax courts, which are the first instance courts as a rule, become final upon the exhaustion of the ordinary legal remedies or the expiration of the deadlines stipulated in the law for these remedies.[28] In that case, the ordinary legal remedy can be defined as the legal remedy that can be applied to the higher judicial authorities against the final decisions of the courts, which delays the finalization of the decision and ultimately ensures the finalization of the decision.[29]

Tax proceedings are regulated in the Law No. 2577, subject to administrative procedure. Consequently, what is meant by ordinary legal remedies in tax jurisdiction law is first degree appeal and appeal legal remedies that can be applied against the final decisions given by tax

16.03.2016 and numbered E. 2016/19, K. 2016/17; The decision of the Constitutional Court dated 14.06.2017 and numbered E. 2017/49, K. 2017/113.

[26] The decision of the Constitutional Court, dated 01.11.2021 and numbered E. 2011/64, K. 2012/168.

[27] The decision of the Constitutional Court, dated 14.01.2015 and numbered E. 2014/164, K. 2015/12. For a similar decision, see the decision of the Constitutional Court, dated 04.12.2014 and numbered E. 2014/142, K. 2014/182.

[28] Halil Kalabalık, İdari Yargılama Usulü Hukuku, Seçkin Publishing, 14th Edition, Ankara, January 2020, p. 409-410.

[29] Akyılmaz, Sezginer and Kaya, p. 734.

courts. The ordinary legal remedies in the Law No. 2577 are regulated under the heading of "*Remedies Against Decisions*" and in Articles 45-52.

There are a number of general rules in order to apply to ordinary legal remedies in administrative law.[30] In order to be able to apply to legal remedies, first of all, there must be a court decision that will form the basis for the review of the legal remedy and that the application of the remedy has not been closed by any legal regulation.[31] Secondly, this decision must be a final decision, either on the merits or on the procedural basis. It does not matter whether the decision is substantive or procedural, but it must be a final decision. For example, no legal action can be taken regarding interim decisions. Thirdly, in the final decision, the authority to apply to the legal remedy and its duration must be specified. As a matter of fact, according to the Council of State, "*Due to the fact that the second paragraph of Article 40 of the Constitution, which stipulates that the state is obliged to specify which legal remedies and authorities individuals will apply to in its proceedings, and its duration, is directly applicable and does not require the existence of a separate legal regulation; legislative, executive and judicial organs, administrative authorities and other public institutions and organizations must specify the administrative or judicial authorities and legal remedies to be applied against these proceedings and their duration.*"[32] Fourthly, only the parties to the case can take legal action. According to the Council of State, "*The legal remedy is granted to the parties of the case. In this way, it is aimed to re-examine the decisions that are claimed to be wrong, to check the legality of the decisions and to eliminate the deficiencies and failures, if any*"[33] Fifth, the parties to the case must have legal benefits in order to be able to take legal action. Indeed, according to a decision of the Council of State, "*As in procedural law, there must be a legal interest in taking legal remedy as well*."[34] If we

[30] For detailed information, see Kaplan, İdari Yargılama Hukuku, p. 526-533; Akyılmaz, Sezginer and Kaya, p. 728-730. For the regulations regarding the remedies against the decisions in the French administrative law, see Gürsel Kaplan, Fransız İdari Yargılama Hukukunda Kararlara Karşı Başvuru Yolları, Ekin Publishing, Bursa, July 2016.

[31] For example, see the decision of the 2nd Chamber of the Council of State, dated 05.12.2019 and numbered E. 2019/62, K. 2019/6951; the decision of the 2nd Chamber of the Council of State, dated 21.11.2019 and numbered E. 2019/828, K. 2019/6515.

[32] The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 25.01.2012 and numbered E. 2009/173, K. 2012/19. "*The state, in its proceedings, must specify which legal remedies and authorities the relevant persons will apply to, and their durations*." (the Constitution, art. 40/2).

[33] The decision of the 14th Chamber of the Council of State, dated 28.11.2013 and numbered E. 2013/8527, K. 2013/8595.

[34] The decision of the 12th Chamber of the Council of State, dated 05.02.2018 and numbered E. 2017/3116, K. 2018/446. "…*it is one of the basic principles of procedural law that the party applying to the legal remedy should have a legally protectable interest in taking this action*." (The decision of the 8th Chamber of the Council

evaluate it in terms of tax jurisdiction, both the taxpayer and the tax administration have the right to take legal action as the parties to the lawsuit, provided that they have legal benefits. Sixth, the parties may waive their legal remedies, since recourse to remedies is regulated as a right for the parties. According to a decision of the Council of State, "*Since the case will be finalized by not appealing the court decision or exhausting the legal remedies, there is no obstacle to the plaintiff's waiver of the case, upon the appeal of the other party's decision, after the plaintiff wins the case in the tax court*"[35] Except for public interest cases, it is possible for the parties to waive the lawsuit within the period until the decision given by the relevant authority after applying to the legal remedy is finalized. Except for public interest cases, it is possible for the parties to waive the lawsuit within the period until the decision given by the relevant authority after applying to the legal remedy is finalized.[36] Finally, the right to resort to legal remedies is limited to the period determined by law. Thusly, according to a decision of the Council of State, "… *the stipulation of certain periods for filing a lawsuit or applying to legal remedies is a requirement of the principle of legal certainty and does not constitute a violation of the right of access to the court, unless these periods are so short that it is impossible to bring a lawsuit. However, it is necessary to accept that the right of access to court has been violated if the individuals have not been able to exercise their right to file a lawsuit or take legal remedy due to the clearly unlawful application or miscalculation of the stipulated time conditions*." [37] According to Articles 45/1 and 46 of the Law No. 2577, this period for first degree appeal and appeal is thirty days as a rule. This period is the period of disqualification and as a rule, it is not possible to stop or interrupt the period by no means. So and so, according to a decision of the Council of State, "*On the other hand, considering that the time periods are related to public order and procedural law; Since it is obligatory to investigate ex officio whether the deadlines have been exceeded by the administrative courts, it is clear that the case when the time for application to legal remedy is shown to be correct*

of State, dated 18.06.2004 and numbered E. 2003/5163, K. 2004/2921). "…*the party applying for legal remedy must have a legal interest worthy of protection in order to reverse the decision against which he applied for legal remedy and in the reversal of the decision*." (The decision of the 7th Chamber of the Council of State, dated 07.03.1996 and numbered E. 1994/5890, K. 1996/820).

[35] The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 21.10.1994 and numbered E. 1994/347, K. 1994/373.

[36] For example, see the decision of the 4th Chamber of the Council of State, dated 10.10.2019 and numbered E. 2015/1008, K. 2019/6055; the decision of the 12th Chamber of the Council of State, dated 11.09.2019 and numbered E. 2017/3189, K. 2019/5813; the decision of the 3rd Chamber of the Council of State, dated 01.04.2019 and numbered E. 2019/1464, K. 2019/2201.

[37] The decision of the 11th Chamber of the Council of State, dated 05.04.2018 and numbered E. 2018/518, K. 2018/1847. Similarly, see the decision of the 13th Chamber of the Council of State, dated 28.01.2020 and numbered E. 2019/3131, K. 2020/215.

*but the legal remedy is incorrect by the administrative judicial authorities will not constitute an obstacle in terms of starting the application period for legal remedy*."[38]

Another issue that can be considered important in the application of ordinary legal remedies is the effect of resorting to these legal remedies on the execution (fulfillment) of the said decision. As a rule, first degree appeal and appeal applications do not prevent the execution of the said decision (the Law No. 2577, art. 27/1, 52).[39] In other words, filing an appeal will not stop the execution of the tax court decision.[40] However, if the relevant party requests the suspension of execution at the stage of legal remedies and the court considers that the conditions for the suspension of execution stipulated in the law in the concrete case are met, the suspension of execution may be decided.[41] The authority that will decide on the suspension of execution is the authority that conducts the examination of the legal remedy.

In order to suspend the execution in first degree appeal and appeal, it is necessary to request the suspension of execution first with a petition of first degree appeal or appeal or with a separate petition in the next process. In order to accept this request, the legislator has determined different principles according to the acceptance of the case and the rejection of the case. If the plaintiff has requested the suspension of execution in the legal way he has applied against the court decision regarding the rejection of the case, the acceptance of this request will depend on the fulfillment of the conditions stipulated in Article 27 of the Law No. 2577 (the Law No. 2577, art. 52/1). According to Article 27/2 of the Law No. 2577, "*If the administrative action is clearly unlawful; and if situations that are difficult to remedy or irreparable are likely to arise when the decision is implemented, Council of State* (Turkish: *Danıştay*) *or administrative courts may decide the suspension of the execution by giving a justification after the defense of the defendant administration has been received or the defense period has expired*." Accordingly, in the concrete case, in order to decide on the suspension of execution in this situation; two conditions must be met together, the first of which is the occurrence of irreparable or irremediable damages in the event of an administrative action,

[38] The decision of the 13th Chamber of the Council of State, dated 09.05.2017 and numbered E. 2017/985, K. 2017/1443.
[39] To applied the first degree appeal or appeal does not stop the execution of the decisions of the judge, the court or the Council of State (the Law No. 2577, art. 52/1). To file a lawsuit in the Council of State or administrative courts does not suspend the execution of the sued administrative act (the Law No. 2577, art. 27/1).
[40] Batı, p. 627.
[41] Günday, p. 517.

and the second that the administrative action is clearly unlawful.[42] However, although this decision is stipulated to be given in return for security (the Law No. 2577, art. 52/1), no collateral is received in annulment cases (the Law No. 2577, art. 52/2) and from the administration and those who benefit from legal aid (the Law No. 2577, art. 52/3). In the event that the case is accepted, that is, the cancellation of the transaction or the compensation of the damage, the administration is the party that has to fulfill the requirements of the decision without delay -within thirty days starting from the notification of the decision to the administration (the Law No. 2577, art. 28); and in this case, the administration will request the relevant legal authority to suspend the execution of the court decision. In this case, the relevant legal authority will decide on this request of the administration by examining according to the concrete case, regardless of the conditions stipulated in Article 27/2 of the Law No. 2577.

During the first degree appeal and appeal examination, the decisions regarding the requests for suspension of execution are final (the Law No. 2577, art. 52/4).[43] In case the decision is reversed, the execution of the decision automatically stops (the Law No. 2577, art. 52/5).

A general description of the usual remedies process in tax proceedings can be made. In administrative law, a case can go through three stages of proceedings. As a rule, against a decision made by the administrative and tax courts, which are the first instance courts, a first degree appeal can be made in the regional administrative court, which is the second instance court, and in the Council of State, which is the third instance court.[44] The legislator has decreed some conditions and procedures for the parties of the case to first degree appeal and appeal against a decision made by the tax court (the Law No. 2577, art. 45-50).

[42] For an example, see the decision of the 5th Chamber of the Council of State, dated 14.09.2015 and numbered E. 2015/4671.

[43] The decisions regarding the stay of execution are not given a decision number, a copy of this decision is signed by the chairman and members of the authority that made the decision, and kept in the relevant case file, and a copy approved by the chairman is notified to the parties (Sabri Coşkun and Müjgan Karyağdı, İdari Yargılama Usulü Örnek İçtihatlar-Yorumlar, Seçkin Publishing, Ankara, October 2001, p. 530).

[44] However, there are exceptions to this rule. Legal remedy is closed against some decisions of administrative and tax courts (the Law No. 2577, art. 45/1). Of the decisions rendered at the end of the appeal review, only the limited number of decisions listed in Article 46 of the Law No. 2577 can be appealed. Regarding the decisions made by the administrative courts within the scope of the urgent proceedings (the Law No. 2577 art 20/A) and the proceedings regarding the central and joint examinations (the Law No. 2577, art. 20/B) can be made only appeal. And against the decisions of the Council of State as a court of first instance can also be made only appeal (Law no. 2575, art. 24).

Decisions rendered by the tax court that do not exceed a certain amount (₺9.000 (*Turkish lira, TRY*), for the year 2022), which are the subject of the lawsuit, are final and therefore no first degree appeal or appeal can be made regarding these decisions (the Law No. 2577, art. 45/1).

In other words, for the decisions of the tax court that are the subject of the lawsuit exceeding ₺9.000, the parties of the case can apply to the legal remedy of the first degree appeal. Decisions to be made by the regional administrative court for tax cases that have not exceeded a certain amount (₺261.000 for the year 2022) in the appeals legal action are final and therefore no appeal can be submitted for these decisions (the Law No. 2577, art. 46/b).

In other words, for the tax decisions of the regional administrative courts, the subject of which exceeds ₺261.000, an appeal can be made. As a rule, the Council of State can make a decision to approve, change or annul while implementing the appeal law (the Law No. 2577, art. 49). The decisions of the Council of State to approve and to approve by amending are final. Upon decisions in this direction, the ordinary tax proceedings are completed.

With the reversal decision of the Council of State, a decision contrary to the decision of the regional administrative court will be rendered. The decision of reversal is sent to the regional administrative court for a decision again. Against the reversal decision that comes before it, the regional administrative court may decide to abide by the reversal decision or refuse to comply with the reversal decision and may insist on the decision it has given before regarding the case in question (the Law No. 2577, art. 50/3). If the regional administrative court agrees to the reversal decision of the Council of State and decides to comply, the tax case in question will be finalized. If the regional administrative court does not agree with the reversal decision of the Council of State and insists on the previous decision regarding the tax case in question, then the file is sent to the *Plenary Session of the Tax Law Chambers* (Turkish: *Vergi Dava Daireleri Kurulu*) of Council of State for a final decision (the Law No. 2577, art. 50/5). The Board makes its final decision to approve or annul it. According to the final decision of the Board, the ordinary tax proceedings will come to an end.[45]

[45] The administration is obliged to implement or take action on the decisions, which is given by Council of State, regional administrative courts and administrative and tax courts on the merits and the stay of execution, within thirty days, starting from the notification of the decision to the administration (the Law No. 2577, art. 28/1). Therefore, after the notification of the court decisions regarding tax disputes to the administration, the administration notifies the taxpayers of the amount of taxes, duties, fees and similar financial obligations, raises and penalties according to these decisions (the Law No. 2577, art. 28/5). If this lawsuit is concluded in favor of the administration (tax administration) after the litigation process is finalized, then the taxpayer must pay the amounts subject to the lawsuit, attorney's fee and litigation expenses within thirty days at the latest from the date

Another important issue that should be brought to the forefront regarding our subject is the institution of "*giving up the legal remedy*", which is a special regulation only related to the ordinary legal remedy and tax jurisdiction. The institution of abandoning the legal remedy has been rearranged in the Article 27 of the Law on Making Amendments to the Digital Service Tax No. 7194 and Some Laws and Decree Law No. 375 (Law No. 7194, dated 07.12.2019) in the Article 379 of the *Tax Procedure Law* (Law No. 213, dated 04.01.1961, Turkish: *Vergi Usul Kanunu*). In addition to this, the General Communiqué of Tax Procedure Law (Comminiqué No. 517, dated 20.02.2020, Turkish: *Tebliğ*) was published regarding the institution of abandoning the legal remedy. The institution of renunciation of legal remedies; in case taxpayers refuse to apply for legal remedies in accordance with the conditions set forth in Article 379 of the Law No. 213, regarding the lawsuits filed against tax debt and/or tax penalty notice; is a regulation that allows the tax liability and/or tax penalty to be reduced to a certain extent. As per the expression of the Communiqué, the purpose of the institution of abandoning the legal remedy is; "*the termination of the disputes between the administration and the taxpayers regarding taxes and penalties, depending on the preferences of the taxpayers at the judicial stage, reducing the workload of the judicial authorities, and ensuring the accrual and collection of the taxes and penalties that are the subject of the dispute within the scope of the institution*." (Comminiqué No. 517, art. 1). With the Article 379 of the Law No. 213 and the Communiqué No. 517 for the institution of abandoning the legal remedy; a number of principles and procedures have been set forth regarding the decisions within this scope, the conditions of benefit, the tax debt, and/or tax penalties to be accrued and the reductions to be made due to payment. For a final decision to be within the scope of the waiver of legal action; the said decision must be the result of the lawsuit filed against the tax/penalty notice in due time (the Law No. 213, art. 379/1) and the first degree appeal against the decision made by the tax court or appeal to the decision of the regional administrative court must be available for (the Law No. 213, art. 379/1).[46] This institution cannot be used for the decisions taken upon the decision of the Council of State to reverse it. In order to benefit from the institution of abandoning the legal remedy; upon the notification of the judicial

of this notification (the Law No. 2577, art. 28/1, 2). If the payment is not made within this period, it is executed and executed within the framework of the general provisions according to the principles and procedures of the Law No. 6100 (the Law No. 2577, art. 28/2).

[46] "*In this respect, for example; Given that the case is rejected on the grounds of time-out due to not filing a lawsuit against the tax/penalty notice, given in the form of refusal of the case in terms of competence, given in the direction of rejection of the case on the grounds that there is no definite and required action to be the subject of an administrative lawsuit, given by the tax court and not open to first degree appeal. ... decisions and similar decisions are not within the scope of waiving the legal remedy*" (Communiqué No. 517, art. 3).

decision within the scope of this institution to the taxpayer, within the first degree appeal or appeal application period valid for the taxpayer, the petition stating that the legal remedy has been waived, is submitted to the tax office that issued the tax/penalty notification that is the subject of the lawsuit, the copy of the decision given together with the petition must be attached to this petition and it must be declared that the legal remedy has been waived for all tax debts and/or tax penalties subject to the lawsuit (Communiqué No. 517, art. 4).

In case of renunciation of the legal remedy, according to the decision on which the first degree appeal or appeal is abandoned; a) In cases where only tax is the subject, 60% of the tax will be accrued if this tax is abolished, the remaining 40% of the tax will be canceled, and if this tax is approved, the entire tax will be accrued; b) In the event that the tax and the related tax loss penalty are abolished, 60% of the tax will accrue, the remaining 40% of the tax land the entire tax loss penalty will be canceled, c) In the event that the tax and the related tax loss penalty are approved, the entire tax and 75% of the tax loss penalty will accrue, and the remaining 25% of the tax loss penalty will be canceled. d) In the event that the tax loss penalties, irregularity and special irregularity penalties are abolished, the tax base to which the tax base is not subject to lawsuit or due to participation in the acts written in Article 359 of the Law No. 213, 25% of these penalties will be accrued and the remaining 75% will be cancelled; If the penalties within this scope are approved, 75% of the penalties will be accrued and the remaining 25% will be cancelled (Communiqué No. 517, art. 5). Accrued amounts within the scope of waiving legal action must be paid within one month from the date of accrual (the Law No. 213, art. 379/5); If the payment is not made in full, this institution will not be utilized. Provided that 80% of the taxes and penalties accrued within the scope of waiving the legal remedy are fully paid within one month, together with the default interest to be calculated, a 20% reduction is made from the tax and penalty amount (the Law No. 213, art. 379/5); Again, if the said payment is not made in full, this institution will not be utilized. However, this deduction is not made in the amount of tax accrued after being approved by the court decision (the Law No. 213, art. 379/5). Therefore, the tax reduction in question can only be made from the amount accrued on the part of the tax that is partially or completely abolished in the decision within the scope of waiving the legal remedy (Communiqué No. 517, art. 5).

## 4. THE FIRST DEGREE APPEAL

In tax jurisdiction law, the parties to the case, as a rule, can file a first degree appeal against all decisions of the tax courts, within thirty days from the notification of the decision, to the regional administrative court in the jurisdiction where the court that made the relevant decision is located. With the relevant provision, the legislator limited the first degree appeal application according to the monetary amounts constituting the subject of the case in question. That is, the decisions of the tax court regarding the tax decisions that do not exceed a certain amount (₺9.000 for the year 2022), which is the subject of the lawsuit, are final and no first degree appeal can be made against them (the Law No. 2577, art. 45/1). Based on this general framework, in this section, the legal nature, application, review, and the results of the decisions made as a result of the first degree appeal legak remedy review will be examined.

### 4.1. Main Features of the First Degree Appeal

First degree appeal, as a word of Arabic origin, means "*restart, beginning of speech*",[47] "*beginning of the word*",[48] "*begin, start*"[49] and legally "*applying for a re-examination of the case by the court of appeal by not accepting the decision of the court of first degree appeal*",[50] "*not accepting the decision of the court and taking it to a higher court*",[51] Against the decision of the court of first instance, it is defined as "*courts between the courts of second instance applied before the highest court*".[52] In the words of the Council of State, "*'Appealing' as a word means "restarting", but as a legal term, it is defined as "not accepting the decision of the court and taking it to a higher court". Appeal is a legal remedy brought in order to eliminate illegality by auditing the final decisions of the courts of first instance, which are not yet final, from both material and legal aspects. First degree appeal as a remedy; a second judge or court, replacing the first, re-examining the same case with all its dimensions and confirming or changing the decision of the first judge or court*."[53] The legal remedy of appeal is regulated in order to eliminate the unlawfulness of the final decisions of

[47] Mehmet Kanar, Kanar Osmanlı Türkçesi Sözlüğü, Vol. 1, Say Publications, Istanbul, 2009, p. 1622.
[48] Ferit Devellioğlu, Osmanlıca-Türkçe Ansiklopedik Lugat, Aydın Publishing House, 34th Edition, Ankara, 2020, p. 529.
[49] James W. Redhouse, Müntahabat-ı Lügat-i Osmaniyye, Türk Dil Kurumu Yayınları, Ankara, 2016, s. 190.
[50] İlhan Ayverdi, Misalli Büyük Türkçe Sözlük, Kubbealtı Publications, Istanbul, 2009, p. 580.
[51] Turkish Dictionary, Turkish Language Institution Publications, 11th Edition, Ankara, 2011, p. 1217.
[52] Ejder Yılmaz, Hukuk Sözlüğü, Yetkin Publications, 5th Edition, Ankara, 1996, p. 408.
[53] The decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 06.06.2016 and numbered E. 2016/1611, K. 2016/2387; the decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 07.12.2016 and numbered E. 2016/4343, K. 2016/3305.

the first instance administrative and tax courts, by auditing them in terms of material and legal aspects.[54] In the examination of the appeal, the decision of the court of first instance is checked at the regional level, both on the material fact and on the legality.[55] In other words, in the first degree appeal, the dispute is not only checked in terms of legality, but also the subject of the dispute is reevaluated.[56] In the Law No. 2577, the first degree appeal is regulated exclusively in a single provision, Article 45.[57]

Decisions that are subject to first degree appeal review in administrative justice are determined indirectly as decisions that are finalized without being subject to first degree appeal review, decisions that can be appealed directly, and decisions that can be appealed after first degree appeal review, instead of being determined by counting, this shows that the first degree appeal is accepted as a general legal remedy.[58] The rule in the examination of first degree appeal is that the material or legal deficiencies determined in the decision of the court of the first instance are completed by the first degree appeal authority, and the final decision is given by the first degree appeal authority.[59] The deficiencies or inaccuracies in the first

[54] The decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 06.06.2016 and numbered E. 2016/1611, K. 2016/2387; the decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 07.12.2016 and numbered E. 2016/4343, K. 2016/3305; the decision of the 10th Chamber of the Council of State, dated 03.04.2019 and numbered E. 2018/4641, K. 2019/2538.
[55] Ulusoy, p. 206; Şenyüz, Yüce and Gerçek, p. 281.
[56] Batı, p. 625-626.
[57] In the Law No. 6100, the first degree appeal is regulated in more detail compared to the Law No. 2577. Articles 341-360 of the Law No. 6100 deal exclusively with the first degree appeal. These articles and their titles are as follows: "Decisions on which first degree appeal can be made" (the Law No. 6100, art. 341), "Petition of first degree appeal" (the Law No. 6100, art. 342), "Giving a petition of first degree appeal" (the Law No. 6100, art. 343), "Payment of fees and expenses" (the Law No. 6100, art. 344), "Application period" (the Law No. 6100, art. 345), "Rejection of the petition of first degree appeal" (the Law No. 6100, art. 346), "Answer to the petition of first degree appeal" (the Law No. 6100, art. 347), "Application by joining" (the Law No. 6100, art. 348), "Waiver of the right to apply" (the Law No. 6100, art. 349), "Effect of the application on execution" (the Law No. 6100, art. 350), "Application to first degree appeal with bad faith" (the Law No. 6100, art. 351), "Preliminary examination" (the Law No. 6100, art. 352), "Decisions to be made without a hearing" (the Law No. 6100, art. 353), "Examination" (the Law No. 6100, art. 354), "Scope of examination" (the Law No. 6100, art. 355), "Hearing and decision making" (the Law No. 6100, art. 356), "Transactions that cannot be made" (the Law No. 6100, art. 357), "Failure to attend the hearing and non-payment of expenses" (the Law No. 6100, art. 358), "Decision and notification" (the Law No. 6100, art. 359) and "Other provisions to be applied" (the Law No. 6100, art. 360).
[58] Zehreddin Aslan (Ed.), Açıklamalı ve İçtihatlı İdari Yargılama Usulü Kanunu, Seçkin Publishing, 2nd Edition, Ankara, November 2020, p. 401.
[59] The decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 06.06.2016 and numbered E. 2016/1611, K. 2016/2387; the decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 07.12.2016 and numbered E. 2016/4343, K. 2016/3305; the decision of the 13th Chamber of the Council of State, dated 05.12.2018 and numbered E. 2018/3650, K. 2018/3675; the decision of the 10th Chamber of the Council of State, dated 03.04.2019 and numbered E. 2018/4641, K. 2019/2538; the decision of the 4th Chamber of the Council of State, dated 07.07.2020 and numbered E. 2020/1506, K. 2020/2626.

instance court's assessment of the facts, evidence, and legal grounds regarding the decisions appealed to may be grounds for reversal by the first degree appeal authority.[60] From this point of view, the first degree appeal can be said that it has two main functions, the first is to examine and supervise the decisions made by the first instance court, both on material and legal basis,[61] and the second is to make the final decisions on the dispute subject to the first instance court decisions.[62]

If the first degree appeal authority finds the decision of the court of the first instance to be lawful, it decides to reject the appeal application, otherwise, it decides to cancel the decision.[63] In cases where the first degree appeal authority decides to annul the decision of the first instance court, as a rule, the final decision is made by completing the material or legal deficiencies identified in the court decision; in this respect, it has the authority to decide on the merits of the issue.[64] So and so according to a decision of the Council of State, in cases where the regional administrative court decides to annul the decision of the first instance court, as a rule, it makes a decision again on the merits of the matter, and exceptionally, it is clear that he will send the file to the relevant court in cases where the case has been tried by a non-jurisdictional or unauthorized court or a rejected or banned judge.[65]

Another point that needs to be brought forward for the appeal is that the "*prohibition of reversals*", which is one of the important principles of the appeal stage, and therefore the "*procedural vested right*", is not valid at the appeal stage.[66] Because, unlike the appeal, the

[60] The decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 06.06.2016 and numbered E. 2016/1611, K. 2016/2387; the decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 07.12.2016 and numbered E. 2016/4343, K. 2016/3305.

[61] See, Öner, p. 266; Nihal Saban, Vergi Hukuku, Beta Press Publishing and Distribution, 9th Edition, Istanbul, November 2019, p. 522; Bilici, p. 210; Yüce, p. 235.

[62] Kaplan, İdari Yargılama Hukuku, p. 536.

[63] The decision of the 10th Chamber of the Council of State, dated 03.04.2019 and numbered E. 2018/4641, K. 2019/2538.

[64] Karakoç, Vergi Yargılaması Hukuku, p. 310; Sıddık Sami Onar, Vergi Yargılaması Hukuku, Vol. III, İsmail Akgün Printing House, 3rd Edition, Istanbul, 1952, p. 1991-1992.

[65] The decision of the 10th Chamber of the Council of State, dated 03.04.2019 and numbered E. 2018/4641, K. 2019/2538.

[66] For detailed information, see Baki Kuru and Burak Aydın, İstinaf sistemine Göre Yazılmış Medeni Usul Hukuku Ders Kitabı, Yetkin Publishing, Istanbul, January 2021, p. 539-545; Hakan Pekcanıtez, Oğuz Atalay and Muhammet Özekes, Medeni Usul Hukuku Ders Kitabı, On İki Levha Publications, 9th Edition, Istanbul, September, 2021, p. 507-511; Ramazan Arslan, Ejder Yılmaz, Sema Taşpınar Ayvaz and Emel Hanağası, Medeni Usul Hukuku, Yetkin Publications, 7th Edition, Ankara, September, 2021, p. 658-661; Ali Cem Budak and Varol Karaaslan, Medeni Usul Hukuku, Filiz Bookstore, 5th Edition, Istanbul, September, 2021, p. 456-458; Murat Atalı, İbrahim Ermenek ve Ersin Erdoğan, Medeni Usul Hukuku, Yetkin Publications, 4th Edition, Ankara, 2021, p. 637, 661.

trial can be reopened when necessary, and for this reason, it is not possible to apply the principles of the prohibition of reversals and procedural vested rights.[67]

### 4.2. First Degree Appeal Application

Decisions that can be appealed, will be examined as per the first degree appeal authority, the persons who can apply to the first degree appeal, the first degree appeal application period, and the form and procedure of the first degree appeal.

#### *4.2.1. The Decisions that can be Submitted for First Degree Appeal*

As a rule, an appeal can be made against all decisions made by the administrative and tax courts (the Law No. 2577, art. 45/1).[68] However, the legislator generally ruled that it is not possible to appeal against some decisions.[69] According to this; According to this; the decisions rendered by the administrative and tax courts regarding tax cases, full remedy cases and cancellation cases filed against administrative actions, the subject of which does not exceed ₺9.000 (for the year 2022), is final and no appeal can be made against them (the Law No. 2577, art. 45/1). Appeals cannot be made in cases subject to the prompt trial procedure (the Law No. 2577, art. 45/8, 20/A). No appeal can be made against the final decisions made against the lawsuits to be filed regarding the central and joint examinations made by the Ministry of National Education and the Student Selection and Placement Centre (the Law No. 2577, art. 20/B). Decisions that are final immediately at the time they are given in certain special laws cannot be appealed.[70]

In addition to these, the decisions regarding the rejection of the case brought to the court which is not authorized or competent in matters in which the administrative judiciary is in charge, in terms of duty and authority (the Law No. 2577, art. 15/4) the first review Decisions regarding the rejection of the petition given due to the violation of Articles 3 and 5 of the Law No. 2577 (the Law No. 2577, art. 15/4); the decisions given due to the requests for the retrial (the Law No. 2577, art. 53/2) can not be submitted for first degree appeal. In this framework,

[67] Ulusoy, p. 208.
[68] "*Even if a different legal remedy is foreseen in other laws, against the decisions of the administrative and tax courts, a first degree appeal can be made to the regional administrative court in the jurisdiction where the court is located, within thirty days from the notification of the decision*." (the Law No. 2577, art. 45/1).
[69] As stated, applying for legal remedy does not prevent the implementation of the relevant decision. In other words, applying to first degree appeal does not remove the obligation to implement the decision of the court of first instance (Aslan, p. 409).
[70] For example, see Article 80/1-d of Foreigners and International Protection Law (Law No. 6458, dated 04.04.2013); Article 6 of Police Duties and Powers Law (Law No. 2559, dated 04.07.1934); Article 12/6 of Seed Law (Law No. 5553, dated 31.10.2006).

in tax jurisdiction law, as a rule, all decisions made by tax courts can be appealed against. However, according to the Article 45/1 of the Law No. 2577, the decisions of the tax court regarding the tax whose subject does not exceed ₺9.000 are final and no appeal can be made against them (the Law No. 2577, art. 45/1).[71]

An important point to be noted here is that since the monetary limits in the appeal application are updated every year, it is not possible to appeal the amount below the limit. Thus, Since the monetary limits are renewed every year, if the disputes that are open to first degree appeal at the date of the lawsuit are brought below the monetary limit re-determined at the date of the decision, no first degree appeal can be made for the same dispute.[72] This is the same in the appeal.[73] According to *Batı*, it would be appropriate to include a statement in the law that the monetary limits determined to be able to apply for legal action are determined according to the amount on the date of the lawsuit, in order to ensure the freedom to seek justice.[74] I agree with this view. Because the application to legal remedies should be considered as a continuation of the same dispute. The prolongation of the trial process is not at the disposal of the parties, and therefore, failure to apply to a legal remedy will hinder the freedom of seeking justice and the right to a fair trial.

Another important point to be noted here is that in the Law No. 2577, a distinction is made according to the monetary amount of the case in order to apply for appeal. As stated, the legislator has ruled that no appeal can be made for tax cases, full remedy cases and annulment cases filed against administrative actions, the subject of which does not exceed ₺9.000. Similarly, in the *Code of Civil Procedure* (Law No. 6100, dated 12.01.2011, Turkish: *Hukuk Muhakemeleri Kanunu*), there is a limit regarding the non-appealment of decisions regarding property cases whose amount or value does not exceed ₺8.000 (for the year 2022) (the Law No. 6100, art. 341/2).[75] However, this limit in the Law No. 6100 is applied by taking into account the unacceptable part of the finalized claim in the case of indefinite receivables.[76] Accordingly, the party whose part of the original request that is not accepted does not exceed ₺8.000, cannot apply to appeal (the Law No. 6100, art. 341/4). That is, the CPC makes a

[71] According to *Günday,* the failure to apply for appeal in cases whose subject does not exceed a certain monetary amount is incompatible with *the right to a fair trial* (Günday, p. 504).
[72] Batı, p. 624.
[73] Batı, p. 624.
[74] Batı, p. 624-625.
[75] For detailed information on the review of first degree appeal in Law No. 6100, see Kuru ve Aydın, p. 488-511; Pekcanıtez, Atalay and Özekes, p. 482-499; Arslan et al., p. 629-647; Budak and Karaaslan, p. 401-438; Atalı, Ermenek and Erdoğan, p. 608-637.
[76] Pekcanıtez, Atalay and Özekes, p. 483.

distinction between the accepted part of the original request and the part that is not accepted, and applies the limit of appeal condition on the part of the original request that is not accepted. However, the Law No. 2577 does not consider whether the case will be accepted or not for the application limit requirement and applies this limit over the total amount subject to the lawsuit. For example, in a tax case of ₺20.000, in a case where the tax court rejects the ₺3.000 part of the original claim, an appeal can be made because the subject of the lawsuit exceeds ₺9.000 according to the the Law No. 2577, regardless of the rejected part. On the other hand, for example, in a case of indefinite debt amounting to ₺20.000, in a case where the *Civil Court of First Instance* rejects ₺3.000 of the original claim, the appeal cannot be filed since the rejected portion of the original claim does not exceed ₺8.000, according to the Law No. 6100. For this reason, similar to the regulation in the Law No. 6100, an arrangement should be made in the the Law No. 2577 that the limit of appeal should be determined over the part of the original request that is not accepted in the administrative or tax court. In the decision given by the administrative or tax court, the party whose original claim does not exceed ₺9.000 should not be able to appeal. In this way, in accordance with the purpose of the law, the workload of the appeal will decrease and the trial process will become appropriate for the procedural economy as expected.[77]

### *4.2.2. Persons who can Apply for First Degree Appeal*

Only the parties of the case can apply to the first degree appeal legal remedy.[78] However, as stated, the parties to the case must have a legal benefit in applying for legal action. For example, in a case where an administrative action is annulled, there is no legal benefit for the plaintiff or, if the case is dismissed, for the defendant administration to take legal action.[79] Thus according to a decision of the Council of State, "…*Since there is no legal benefit in establishing a provision that will change the outcome of the decision that is the subject of the first degree appeal, there is no need to make a decision on the first degree appeal and the merits of the case*."[80]

[77] See, Kaplan, İdari Yargılama Hukuku, p. 537.
[78] Çağlayan, p. 767.
[79] Akyılmaz, Sezginer and Kaya, p. 729.
[80] The decision of the 6th Tax Law Chamber of the Istanbul Regional Administrative Court, dated 17.06.2020 and numbered E. 2019/2836, K. 2020/839.

The parties can apply to appeal against the decisions made by the administrative or tax court themselves, or they can apply through their legal representatives or proxies.[81] The parties must have the title as a party to *the case and litigation capacity* (*the capacity to sue* and *the standing to sue*), which is one of the conditions of the case, during the legal remedy application[82]. According to a decision of the Council of State, in administrative jurisdiction, the 'ability' is only related to the plaintiff; the ability to sue was sought not only when the case was filed, but until the case was decided.[83] According to another decision of the Council of State, the legal entity of the plaintiff company, whose existence in the legal realm has ceased even though its registry has been cancelled, has also ceased to be able to benefit from and exercise civil rights; therefore, after this stage, the dissolved legal entity, which does not have the capacity to be a party at any stage of the proceedings, including the appeal, cannot be represented both the judicial authorities and other official authorities.[84] Legal remedies cannot be applied with the same petition against more than one administrative and tax court decision concerning the same plaintiff.[85] The intervenors participating in the case alongside the parties to the case cannot apply to legal remedies on their own. In a decision given by the Council of State, it was stated that the intervenor party could not request the implementation of the judgment alone, and it would not be possible to apply to legal remedies such as appeal, rectification and retrial.[86] In the words of the Council of State, "*There is no legal possibility for the intervening party, who is not a party to the case, for whom no judgment has been made as a result of the case, and who can only assist the party with which he is involved, to resort to legal remedies on his own if the party with whom he joins the case does not resort to legal remedies*."[87]

If one of the parties resorts to legal remedies, the said decision cannot be overturned to the detriment of the party applying for legal remedies;[88] this situation, which is essentially

[81] Yüce, p. 235.
[82] Günday, p. 497.
[83] The decision of the 4th Chamber of the Council of State, dated 10.03.2020 and numbered E. 2016/10985, K. 2020/1400.
[84] The decision of the 7th Chamber of the Council of State, dated 06.12.2018 and numbered E. 2016/1541, K. 2018/5609
[85] Candan, p. 938.
[86] The decision of the 2nd Chamber of the Council of State, dated 21.03.2008 and numbered E. 2006/470, K. 2008/1391. On the contrary, see the decision of the 6th Chamber of the Council of State, dated 12.04.2017 and numbered E. 2017/915, K. 2017/2524.
[87] The decision of the 15th Chamber of the Council of State, dated 05.06.2013 and numbered E. 2013/8464, K. 2013/4081.
[88] For example, see the decision of the 12th Chamber of the Council of State, dated 18.12.2019 and numbered E. 2017/1989, K. 2019/10346.

determined by case law in civil procedure law,[89] is called "*prohibition of reversing* (*reformation in peinus*)" in the doctrine.[90] In terms of the way of appeal, this can be called "*prohibition of making judgments against*".[91] In the words of the Council of State, the prohibition of adjudicating against is the "*principle of the jurisprudence law that prohibits the decision to be made in a way that would result in a more severe violation of the interests of the plaintiff than the legal situation specified in the action subject to the case*".[92] In addition, according to the Council of State, since the prohibition of adjudicating against is a practice aimed at ensuring that those concerned can file a lawsuit without any concern in order to protect their rights that they think have been violated, it also has an aspect that ensures the freedom of seeking rights as stated in Article 36 of the Constitution.[93] Therefore, in accordance with the principle of prohibition of adjudicating against, if only one of the parties appeals and there is no violation of public order, the decision of appeal cannot be overturned against the party applying to the appeal.

The parties may waive their legal applications until the decision is made by the relevant authority. According to Article 31/1 of the Law No. 2577, the provisions of the Law No. 6100 are applied regarding the waiver in administrative cases.[94] However, according to the *Plenary Session of Administrative Law Chambers of the Council of State*, "*It is clear that the aforementioned referral provision can be applied to the extent that it is compatible with the types of administrative cases and taking into account the qualities of the administrative cases*."[95] *Waiver of the lawsuit* is the plaintiff's partial or complete renunciation of the result of the request (the Law No. 6100, art. 307) and is not dependent on the consent of the other party and the court (the Law No. 6100, art. 309/2). Waiver can be made at any time until the

[89] There is no clear regulation in the Law No. 6100 regarding the prohibition of reversing, this prohibition is based on the "principle of adherence to the request" (the Law No. 6100, art. 26). (Kuru and Aydın, p. 539). According to Article 26 of the Law No. 6100, the judge is bound by the results of the parties' request; he cannot decide more than that or anything else; depending on the situation, he may decide for less than the request.
[90] See, Kuru ve Aydın, p. 539; Pekcanıtez, Atalay and Özekes, p. 526; Arslan et al., p. 658; Budak and Karaaslan, p. 458; Atalı, Ermenek and Erdoğan, p. 661.
[91] Kaplan, İdari Yargılama Hukuku, p. 531.
[92] The decision of the 12th Chamber of the Council of State, dated 16.03.2016 and numbered E. 2014/518, K. 2016/1407.
[93] The decision of the 12th Chamber of the Council of State, dated 23.03.2016 and numbered E. 2016/704, K. 2016/1587.
[94] Waiver means the plaintiff's partial or complete renunciation of the result of the request (the Law No. 6100, art. 307). For the regulations in the Law No. 6100 with waiver, see Articles 309-312 of the Law No. 6100.
[95] The decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 03.10.2019 and numbered E. 2018/4645, K. 2019/4016.

verdict is finalized (the Law No. 6100, art. 310). In this context, the parties to the case may waive their appeal until the decision becomes final.

### *4.2.3. Application Period for First Degree Appeal*

The period for filing an appeal in administrative and tax cases is thirty days from the notification of the decision (the Law No. 2577, art. 45/1).[96] According to the general regulation in Article 8/1 of the Law No. 2577, in which the relevant principles are regulated in administrative law, "*Terms begin to run from the day following the date of notification, publication or announcement*." The point to be noted here is that the application period for appeal begins "*from the notification of the decision*",[97] and that the general rule has been violated.[98] In one of its decisions, the Council of State rejected the appeal application made on 07.03.2019 against the decision notified on 04.02.2019, on the grounds that the thirty days appeal period has passed since the application must be filed by 06.03.2019 at the latest.[99]

If the notification of the decision of the court of the first instance has been made illegally and if the party has not received this notification, the application period for appeal does not start to run.[100] However, despite the improper notification, if the party has learned about this notification, then the notification is considered valid and the date declared by the party is accepted as the notification date.[101] In this case, the application period for appeal starts from the date the party declares that it has learned about the notification.

According to Article 40 of the *Constitution of the Republic of Turkey* (Law No. 2709, dated 18.10.1982), titled "*Protection of fundamental rights and freedoms*", the appeal period should

[96] According to Article 8/2, 3 of the Law No. 2577, the holidays are included in the duration. In so far, if the last day of the period coincides with a holiday, the period extends until the end of the working day following the holiday (the Law No. 2577, art. 8/2). If the expiry of the periods written in this Law coincides with the time for a break from working, these periods are deemed to be extended by seven days from the date following the end of the break (the Law No. 2577, art. 8/3).

[97] In the Law No. 6100, the deadline for first degree appeal starts to run with the notification of the decision to each of the parties (the Law No. 6100, art. 345/1).

[98] According to *Kaplan*, this is probably the result of simple carelessness (Kaplan, İdari Yargılama Hukuku, p. 541).

[99] The decision of the 6th Chamber of the Council of State, dated 10.07.2019 and numbered E. 2019/14882, K. 2019/6921.

[100] All kinds of notification works pertaining to the Council of State and regional administrative, administrative and tax courts are carried out in accordance with the provisions of the *Notification Law* (Law No. 7201, dated 11.02.1959) (the Law No. 2577, art. 60).

[101] Even if the notification is made in violation of the procedure, it is considered valid if the addressee has obtained information from the notification; the date declared by the addressee shall be deemed to be the date of notification (the Law No. 7201, art. 32).

be indicated in all decisions that are open to appeal.[102] As a matter of fact, in a decision of the Council of State, where the decision of the appeal authority and the application period was not written; was found contrary to the principles of "*freedom to seek rights*" (the Constitution art. 36)[103] and "*protection of fundamental rights and freedoms*" (the Constitution art. 40). So and so, in one of its decisions, since the application authority and its duration were not clearly indicated in the proceedings, the Council of State stated that this is contrary to Articles 36 and 40 of the Constitution.[104]

However, based on Articles 45/2 and 48/3 of the Law No. 2577 for the appeal, the appeal by way of participation regulated for the appeal will also be valid for the first degree appeal.[105] Accordingly, the party who has passed the appeal period may apply for first degree appeal by joining, by responding within thirty days to the appeal filed by the other party within the time limit (the Law No. 2577, art. 48/3).

### *4.2.4. Procedure of First Degree Appeal Application*

The appeal authority against the decisions of the administrative and tax courts is the regional administrative courts (the Law No. 2577, art. 45). The appeal application for tax cases is made to the appeal office of the regional administrative court, which is responsible for dealing with tax cases. The regional administrative court here is the regional administrative court in the jurisdiction where the tax court that made the decision subject to the appeal is located (the Law No. 2577, art. 45/1). The relevant appeal applications are sent to the regional administrative court regardless of the addressing and request in the petitions (the Law No. 2577, art. 45/2).

The regulations regarding the establishment and duties of the Regional Administrative Courts[106] are determined by the Law No. 2576 dated 06.01.1982 on the *Establishment and Duties of the Regional Administrative Courts, Administrative Courts and Tax Courts*. Accordingly, regional administrative courts are independent courts with general jurisdiction,

[102] The state, in its proceedings, must specify which legal remedies and authorities the relevant persons will apply to, and their duration (the Constitution, art. 40).
[103] Everyone has the right to a fair trial and claim and defence as plaintiff or defendant; no court can abstain from executing the case within its mandate and jurisdiction (the Constitution, art 36).
[104] The decision of the 7th Chamber of the Council of State, dated 05.11.2020 and numbered E. 2017/1397, K. 2020/4436.
[105] Çağlayan, p. 768.
[106] Regional Administrative Courts are established by considering the geographical situation and workload of the regions (Kaneti, p. 238).

established to "*a) examine and decide on appeal applications, b) finalize disputes regarding duties and jurisdiction between the administrative and tax courts in the jurisdiction, and c) perform duties assigned by other laws*" (Law No. 2576, art. 3/A).

The regional administrative courts consist of the presidency, the council of presidents, chambers, the justice commission of the regional administrative court and directorates (Law No. 2576 art. 3/1). The chairman and members of the regional administrative court are appointed by the High Council of Judges and Prosecutors (Law No. 2576, art. 3/4). Regional administrative courts have at least two offices, one for administration and the other for taxation (Law No. 2576 art. 3/2). When necessary, the number of chambers may be increased or decreased by the High Council of Judges and Prosecutors upon the proposal of the Ministry of Justice (Law No. 2576, art. 3/2). There is a chairman and enough members in the chambers (Law No. 2576, art. 3/3). Each chamber convenes with the participation of a chairman and two members; negotiations are held confidentially and decisions are made as per the majority (Law No. 2576, art. 3F/1).

The first degree appeall application is subject to the form and procedures of the appeal (the Law No. 2577, art. 45/2). For this reason, the first degree appeal application is subject to the form and principles in Article 48 of the Law No. 2577 in relation to the appeal petition. In addition, it is necessary to examine the regulations in the *Regulation on the Procedures and Principles of the Administration of Administrative Affairs and Registry Services of the Regional Administrative Courts, Administrative Courts and Tax Courts* (OG No. 29413, dated 11.07.2015, In short: *the Regulation on Procedures and Principles*), which is regulated on the procedures and principles of the administrative affairs of the regional administrative courts and the execution of the editorial affairs.

As a rule, the appeal request is made with a petition addressed to the chairman of the regional administrative court (the Law No. 2577, art. 48/1). According to the Article 45/2 of the Law No. 2577, "*The files are sent to the regional administrative court, regardless of the address and request in the petitions, in the legal remedies made against the decisions that will be the subject of the first degree appeal application*"; therefore, petitions addressed to other presidencies of courts, as well as petitions that are subject to first degree appeal and that are

erroneously appealed, will be examined and sent to the regional administrative court in charge.[107]

The petition must be prepared in accordance with the principles set forth in Article 3 of the Law No. 2577 (the Law No. 2577, art. 48/2). Accordingly, in the petitions, the names and surnames or titles and addresses of the parties and their proxies or representatives, and the Republic of Turkey identification number belonging to real persons (the Law No. 2577, art. 3/2-a); the subject and reasons of the case and the evidences on which it is based (the Law No. 2577, art. 3/2-b); the date of written notification of the administrative act subject to the lawsuit (the Law No. 2577, art. 3/2-c); tax, duty, fee, similar financial obligations and the amount in dispute in lawsuits related to their increase and penalty and in full remedy actions (the Law No. 2577, art. 3/2-d) and the type and year of the tax or tax penalty to which the case is related; the date and the number of the notification and the taxpayer account number, if any, (the Law No. 2577, art. 3/2-e) are shown. The originals or copies of the decision and documents subject to the lawsuit are attached to the petition (the Law No. 2577, art. 3/3). The copies of the petitions and the documents attached to them must be one more than the number of the other parties (the Law No. 2577, art. 3/3).

The petition for first degree appeal is delivered to the personnel in charge of the front office or the editorial office (Regulation on Procedures and Principles, art. 95/1). If the application petition is not subject to a fee it is registered immediately, if a fee is in question it is registered immediately after the fee is paid, and the applicant is given a free receipt (Regulation on Procedures and Principles, art. 95/2). The receipt includes the name of the court, the base and decision number of the file, the date of the decision, the names and surnames of the parties and their attorneys, if any, and the intervenors, the subject of the case, the appealed legal authority, the date and time of the application (Regulation on Procedures and Principles art. 95/3).

An application for first degree appeal is deemed to have been made on the date the petition for appeal is registered (Regulation on Procedures and Principles, art. 95/4). The above provisions are also applied in the petitions of first degree appeal submitted to the court of another place, in this case, the clerk of the other place or the staff in charge transfers the petition and its annexes to the electronic medium, and sends the physical documents to the

[107] Çağlayan, p. 770-771.

relevant court without delay (Regulation on Procedures and Principles art. 95/5). In the physical environment, the application for legal remedy is made during working hours (Regulation on Procedures and Principles, art. 95/7).

The petition for appeal can also be sent over the *National Judiciary Informatics System* (*NJIS*, Turkish: *Ulusal Yargı Ağı Bilişim Sistemi*, *UYAP*) Citizen Information System for real persons, and over the NJIS Institution Information System for legal entity representatives (Regulation on Procedures and Principles, art. 95/8). For this, applicants must have a secure electronic signature (Regulation on Procedures and Principles art. 95/8). An application for appeal can be made by the party's attorneys over NJIS by means of a secure electronic signature (Regulation on Procedures and Principles, art. 95/9). A handwritten and signed document is not required for these works (Regulation on Procedures and Principles art. 95/9). Fees for appeals are transferred electronically by the lawyer to the account of the court cashier, and these transactions can be made by means of payment instruments such as *Barocard* or credit card (Regulation on Procedures and Principles, art. 95/9). As a result of the process, a receipt document that the applicant can access electronically is created (Regulation on Procedures and Principles art. 95/7). An application for legal remedy can be made in electronic environment until 00:00 (Regulation on Procedures and Principles, art. 95/10). In this way, the appeal application is deemed to have been made on the date that the petition appears on the court screens via NJIS (Regulation on Procedures and Principles, art. 95/9). In the cases or works in which the appeal is applied, after the fees and postal expenses are paid and the petition of appeal notified to the other party is answered or after a certain period of time, the responsible office is determined correctly, the appeal form and the serial ballot are prepared through NJIS and sent to the relevant authority (Regulation on Procedures and Principles, art. 95/11).

### 4.3. Examination of First Degree Appeal

Since the first degree appeal application is subject to the form and procedures of the appeal application (the Law No. 2577, art. 45/2), a preliminary (first) examination is made on the appeal application petition, and then the application is examined on the merits and decided thereto (the Law No. 2577, art. 45/2).

#### *4.3.1. Preliminary Examination of the First Appeal Application*

Based on Article 45/2 of the Law No. 2577, the application for appeal is subject to a first review by the administrative or tax court that made the decision that is the subject of the

appeal, and then by the regional administrative court, in terms of whether the conditions for the application to appeal are appropriate.

The petition for appeal is submitted to the administrative or tax court that made the decision that is the subject of the appeal.[108] The administrative or regional administrative court, which made the decision on the appeal, examines the petition according to whether the application for appeal can be accepted or not. Essentially, the examination is based on the preparation of the petitions in accordance with the principles in Article 3 of the Law No. 2577 (the Law No. 2577, art. 48/2), the payment of the necessary fees and expenses (the Law No. 2577, art. 48/6), if the application is made on time (the Law No. 2577, art. 48/6) and if the subject decision is available to apply for first degree appeal remedies. (the Law No. 2577, art. 48/6).

If the administrative or tax court, which made the decision that is the subject of the appeal, determines that the petition for appeal is not prepared in accordance with the principles in Article 3 of the Law No. 2577, it notifies the party concerned that the deficiencies should be completed within fifteen days (the Law No. 2577, art. 48/2). If these deficiencies are not completed in due time, the court decides that no appeal has been made (the Law No. 2577, art. 48/2).

If the relevant administrative or tax court determines that all of the required fees and expenses have not been paid while making the appeal, the relevant person is notified in writing that they must be completed within seven days, otherwise the appeal will be deemed waived (the Law No. 2577, art. 48/6). If the fees and expenses are not completed within the given time, the court decides that the decision is not appealed (the Law No. 2577, art. 48/6).

If the relevant administrative or tax court determines that the application for appeal is made after the legal deadline has passed or that the decision subject to the application is a final decision that is closed to the appeal law, it decides to reject the appeal request (the Law No. 2577, art. 48/6).

Against the decisions made by the relevant parties, administrative or tax court regarding the decision not to apply for appeal, an appeal can be made within seven days from the day following the notification date (the Law No. 2577, art. 48/6).

[108] Kaplan, İdari Yargılama Hukuku, p. 542.

As stated, after the appeal application is first reviewed by the administrative or tax court that made the decision that is the subject of the appeal, the appeal application is examined again by the regional administrative court. The regional administrative court re-examines the examination made by the relevant administrative or tax court in accordance with the above-mentioned procedures and principles. In addition, it examines whether the application for appeal falls within the jurisdiction of its office.[109] The decisions of the regional administrative court as a result of this first examination on the appeal application are final (the Law No. 2577, art. 48/7).

### *4.3.2. Substantive Examination of the First Degree Appeal Application*

There is no exclusive and clear regulation in the Law No. 2577 regarding how the first degree appeal application will be examined on the merits and what the reasons for the first degree appeal will be. However, starting from the provision of "*first degree appeal is subject to the form and principles of first degree appeal*" in Article 45/2 of the Law No. 2577, Article 49/2 of the Law No. 2577, in which the reasons for first degree appeal are clearly regulated, will also be accepted as grounds of first degree appeal. The trial procedure regarding how the first degree appeal examination will be carried out in the Law No. 6100 is regulated exclusively and in detail between Articles 354-360 of the Law No. 6100.[110] The absence of exclusive and clear regulations on how to conduct the examination of the first degree appeal in the Law No. 2577 and the general regulation that only the first degree appeal will be subject to the forms and principles of the first degree appeal is not conforming to the nature and functions of the first degree appeal.

If the regional administrative court does not see any deficiencies in the matters subject to the first examination or if the deficiencies detected are corrected by the relevant party, it first decides on the request for suspension of execution, if any,[111] and then makes an first degree appeal on the merits of the file.[112]

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[109] Kaplan, İdari Yargılama Hukuku, p. 544-545.

[110] "Examination" (the Law No. 6100, art. 354), "Scope of the examination" (the Law No. 6100, art. 355), "Deciding to hold a hearing" (the Law No. 6100, art. 356), "Procedures that cannot be done" (the Law No. 6100, art. 357), "Failure to attend the hearing and expenses incurred non-payment" (the Law No. 6100, art. 358), "Decision and notification" (the Law No. 6100, art. 359) and "Other provisions to be applied" (the Law No. 6100, art. 360).

[111] As stated, the execution does not stop on its own by resorting to legal remedies. Accordingly, even when the appeal is resorted to, the process regarding the tax debt and tax penalties accrued by the decision of the tax court continues to operate; in such cases, a stay of execution should be requested from the regional administrative court in order to stop the provisions of the payment order issued according to the relevant decision (Şenyüz, Yüce and Gerçek, p. 282; Yüce, p. 236). The regional administrative court will evaluate this request in

Reasons for examination in Article 49/2 of the Law No. 2577 are: "*a) handling a job outside of the frame of duty and authority, b) To make an unlawful decision, c) To have errors or deficiencies in the implementation of the procedural provisions that may affect the decision*". Based on this framework, the regional administrative court will examine the reasons listed in Article 49/2 of the Law No. 2577 and will reverse the file in case of existence of these situations (the Law No. 2577, art. 49/2).

There is also no regulation on whether the regional administrative court will consider these reasons automatically or on the condition that they are requested in the first degree appeal petition.[113] However, in my opinion, in accordance with the *ex officio* investigation principle, which states that "*The Council of State, regional administrative courts, administrative and tax courts automatically conduct all kinds of examinations regarding the cases they are dealing with*" in Article 20 of the Law No. 2577, the regional administrative court should examine these reasons by itself. When the court deems it necessary, it may request information or documents from the parties or third parties or institutions with an interim decision.[114]

The judge who made the decision that was the subject of the first degree appeal application or participated in the decision cannot have the same case examined by the regional administrative court by way of first degree appeal (the Law No. 2577, art. 45/7). If needed during the examination, the court or another administrative or tax court that made the decision can be appealed against (the Law No. 2577, art. 45/4). The appealed court has to carry out the necessary procedures primarily and urgently (the Law No. 2577, art. 45/4).

Holding a hearing at the stage of first degree appeal depends on the parties' request and/or the decision of the regional administrative court (the Law No. 2577, art. 17/2). With the Article 17/1 of the Law No. 2577, the legislator has set a limit according to the amount of case subject to the parties' demand to hold a hearing; accordingly, a hearing may be held at the request of one of the parties for cancellation cases, full remedy cases and tax cases that are the subject of the lawsuit exceeding ₺77.000 (for the year 2022). However, the court may decide

accordance with the procedures and principles set forth in the law, and will give its final decision regarding the stay of execution.

[112] Serdar Çevik, Daha Önce Vergi Davası Açmamış Avukatlar İçin Vergi Davaları ve Yargılama Usulü, Seçkin Publishing, 3rd Edition, Ankara, February 2020, p. 185.

[113] On the other hand, in the Law No. 6100, the examination of the first degree appeal is made limited to the reasons stated in the petition of first degree appeal, excluding the case of violation of public order (the Law No. 6100, art. 355/1).

[114] Çevik, p. 185.

to hold a hearing on its own, regardless of this monetary condition and the parties' request (the Law No. 2577, art. 17/4).

### *4.3.3. Decisions of First Degree Appeal*

As a result of the first degree appeal review, the regional administrative court; if the first instance administrative or tax court finds its decision to be lawful, decides to reject the appeal application (the Law No. 2577, art. 45/3). If it is possible to correct the material mistakes in the decision, makes the necessary correction, and makes the same decision (the Law No. 2577, art. 45/3).[115] If the first instance administrative or tax court does not find the decision in conformance with the law, decides to annul the decision of the first instance court upon the acceptance of the first degree appeal application (the Law No. 2577, art. 45/4). In this case, the regional administrative court makes a decision on the merits of the case again (the Law No. 2577, art. 45/4). In cases where the application for first degree appeal against the decisions made upon the first examination is justified, and the case has been tried by a non-jurisdictional or unauthorized court or by a judge that has been rejected or banned, upon acceptance of the first degree appeal decides to reverse the decision of the first instance court and submits the file to the related court. Decisions of the regional administrative court in accordance with this paragraph are final (the Law No. 2577, art. 45/5).[116]

However, the regional administrative court may also decide that the decision is partly lawful and partly unlawful.[117] In this case, the court decides to reject the application as far as it deems lawful considering the unlawful part.[118] Regarding the unlawful part of the decision, the first instance administrative or tax court decides to cancel the decision and makes a decision on the merits.[119]

On the other hand, the regional administrative court was not given the authority to decide by changing the reasoning of the decision.[120] However, in the appeal, it is possible to change the reason for the decision and give the approval decision. According to the Council of State, as a

[115] Although it is not clear what is meant by mistake of fact in the Law No. 2577, information about the parties, erroneous calculation of litigation expenses, failure to award attorney's fees or incomplete judgment may be accepted in this context (Aslan, p. 405).
[116] See, the decision of the 4th Chamber of the Council of State, dated 04.04.2022 and numbered E. 2022/1146, K. 2022/2155.
[117] Kaplan, İdari Yargılama Hukuku, p. 547.
[118] Kaplan, İdari Yargılama Hukuku, p. 547.
[119] See, the decision of the 6th Tax Law Chamber of the Istanbul Regional Administrative Court, dated 17.07.2020 and numbered E. 2020/316, K. 2020/1174.
[120] See, the decision of the 3rd Chamber of the Council of State, dated 27.02.2020 and numbered E. 2019/1866, K. 2020/1103.

result of the appeal examination; if it is understood that the reason for the decision is not correct or incomplete, but the result of this decision is in justifiable, it is possible to change the reason for the case and approve it.[121] Likewise, as a result of the first degree appeal examination in the Law No. 6100; although there is no defect in the proceedings, if there is a mistake in the application of the law to the event and if thereby there is no need for a retrial, or if there is a mistake in the reasoning of the decision, it can be decided on the merits by correcting it (the Law No. 6100, art. 353/1-b-2). There is no concrete reason why this authority has not been given to the regional administrative court in administrative jurisdiction.[122]

### *4.3.4. Review of the Decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 10.02.2021 and numbered E. 2021/25, K. 2021/124*

The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 10.02.2021 and numbered E. 2021/25, K. 2021/124 It is considered worthy of examination in terms of the fact that the regional administrative court does not find the decision of the first-instance court lawful, that the file is sent to the first-instance court by the regional administrative court, that the first-instance court gives an incomplete decision, and that it is related to the removal of the penalized definition.

According to the legal assessment made by the Plenary Session, "*If the regional administrative court does not find the decision of the first instance court lawful, as a rule, it accepts the first degree appeal application and annuls the decision of the first instance court, and then completes the material and/or legal deficiencies in the decision of the first instance court and makes a decision again on the merits of the matter. Exceptions to this rule are included in the 5th paragraph of Article 45 of the Law No. 2577. According to the this article, According to the aforementioned provision, in cases where the regional administrative court finds the first degree appeal made against the decisions made upon the first examination justified and the case has been tried by an incompetent or unauthorized court or by a rejected or prohibited judge, it shall accept the first degree appeal application and annul the decision of the first instance court. And then it has to decide to send the file to the relevant court of first instance without making a decision again. In the examined file, the court of first instance*

[121] The decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 24.06.2020 and numbered E. 2018/3180, K. 2020/1153.
[122] According to *Kaplan*, the fact that the same authority was not given to the appellate authority is probably the result of the carelessness of the legislator (Kaplan, İdari Yargılama Hukuku, p. 548).

*decided to abolish the penalized definition after examining whether the penalized definition subject to the case was in compliance with the law. In the dispute, in the absence of any of the cases listed as exceptional in paragraph 5 of Article 45 of the Law No. 2577, the material and/or legal deficiency determined in the decision of the court of first instance is to be completed by the regional administrative court and then it has to make a decision again in accordance with paragraph 4 of Article 45 of the Law No. 2577. For this reason, it has been concluded that this decision, which is the subject of appeal, given by the regional administrative court to send the file to the first instance court for a new decision after the decision of the first-instance court is annulled, is contrary to the rules of procedure*."[123]

The exceptional cases in which the regional administrative court may decide to send the file to the relevant court of first instance without making a decision again after the decision of first instance court is overturned, are listed as limited in paragraph 5 of Article 45 of the Law No. 2577. In the absence of any of the exceptional cases listed in this article in the dispute, which is the subject of the case, the material and/or legal deficiency identified in the decision of the first instance court must be completed by the regional administrative court and a decision must be rendered again. Therefore, for example, if there is a defect in removing the penalized definition, as in the present case, the regional administrative court completes the material and legal deficiencies on its own and makes a decision again.

### 4.4. Consequences of the Decision of First Degree Appeal

Decisions of regional administrative courts that are not open to appeal according to Article 46 of the Law No. 2577 are final (the Law No. 2577, art. 45/6).[124] These decisions, which are not open to appeal, are sent to the first instance administrative or tax court, together with the file, and notified to the parties within seven days by these courts (the Law No. 2577, art. 45/6). The rules regulated in the Law No. 2577 regarding the execution of the decisions of the first instance court are also applicable for the regional administrative court and the Council of State.[125] Accordingly, the administration (tax office) receiving the notification is obliged to take action or take action according to the decision of the regional administrative court on the merits, within thirty days at the latest (the Law No. 2577, art. 28/1). In cases where no action is taken or action is not taken according to the decision of the regional administrative court, a

[123] The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 10.02.2021 and numbered E. 2021/25, K. 2021/124.
[124] For example, see the decision of the 15th Chamber of the Council of State, dated 01.11.2017 and numbered E. 2017/2693, K. 2017/6232.
[125] Öncel et al., p. 220.

lawsuit for pecuniary and non-pecuniary damages can be filed against the administration (tax office) (the Law No. 2577, art. 28/3). If the decision of first degree appeal is not fulfilled by the public officials (tax office officials) within the time limit, this compensation case will be filed against the relevant administration (the Law No. 2577, art. 28/4).

After the first degree appeal decision regarding tax disputes is notified to the administration (tax office), the tax office notifies the taxpayer of the amount of taxes, duties, fees and similar financial obligations, raises and penalties to be determined according to these decisions (the Law No. 2577, art. 28/5). In tax cases, the administration pays the interest to be calculated at the rate of deferred interest determined in accordance with Article 48 of the *Law on Collection Procedure of Public Receivables* (Law No. 6183, dated 21.07.1953, Turkish: *Amme Alacaklarının Tahsil Usulü Hakkında Kanun*), for the period between the notification date of the court decision and the payment date; however, no interest will accrue for the period between the notification of the court decision to the plaintiff and the date when the bank account number is notified to the administration. (the Law No. 2577, art. 28/6).

As a rule, the decisions made as a result of the first degree appeal examination are final. However, according to Article 46 of the Law No. 2577, the decisions of the regional administrative courts on the cases listed in this article can be submitted for appellate even if there is a contrary provision in other laws. Accordingly, even if there is a contrary provision in other laws regarding these decisions, they can be submitted to the Council of State within thirty days from the notification of the decision (the Law No. 2577, art. 46). These decisions, which are open to appeal, are as follows: a) Actions for annulment filed against regulatory actions, b) Lawsuits filed for tax lawsuits, full remedy lawsuits and administrative proceedings, the subject of which exceeds ₺261.000 (for the year 2022), c) Actions for annulment filed against transactions that result in dismissal from a certain profession, public service or student status, d) Cancellation lawsuits filed against transactions that prevent the execution of a certain commercial activity indefinitely or for thirty days or longer, e) Actions for annulment filed against the appointment, transfer and dismissal of the head of department and higher-level public officials, as well as the appointment, transfer and dismissal of the head of the department, made by a joint decree, f) Lawsuits arising from zoning plans, subdivision transactions, g) The decisions taken by the Central Commission for the Protection of Natural Heritage and the High Council for the Protection of Cultural Heritage, and the lawsuits arising from the implementation of the Bosphorus Law No. 2960 dated 18.11.1983,

h) Lawsuits filed against the implementation of the legislation related to mines, quarries, forests, geothermal resources and natural mineral waters, i) Lawsuits arising from the implementation of the legislation regarding the granting of operation permits to coastal facilities such as ports, cruise ports, marinas, piers, docks, fuel oil, and liquefied petroleum gas pipelines, j) From the implementation of the Law No. 3996 dated 08.06.1994 on the Making of Certain Investments and Services within the Framework of the Build-Operate-Transfer Model and the Establishment and Operation of Electrical Energy Production Facilities and the Energy Production with the Build-Operate Model as per law dated 16.07.1997 and numbered 4283. Lawsuits arising from the implementation of the Law on Regulation of Sales, k) Lawsuits arising from the implementation of the Free Zones Law No. 3218 dated 06.06.1985, l) Lawsuits arising from the implementation of the Law No. 5403 and dated 03.07.2005 on Soil Conservation and Land Use, and; m) Lawsuits brought against the decisions taken by the regulatory and supervisory boards regarding the market or sector they are in charge of (the Law No. 2577, art. 46).

Based on this framework, the parties can file an appeal to the Council of State within thirty days from the notification of the decision, against the decisions of the regional administrative court regarding tax cases of which the subject exceeds ₺261.000 (for the year 2022).

Here the point to pay attention to is the procedure of the decision of the regional administrative court if the decision made by the administrative or tax court does not comply with the law. As a result of the appeal review, if the regional administrative court does not find the decision of the first instance court to be conforming to the law, it decides to accept the appeal application and annul the decision of the first instance court.[126] In this case, the regional administrative court does not send its decision to the court of first instance, which gave the first decision in the file in question, and makes a new decision on the merits of the case.[127] However, if, as a result of the appeal review, the decision of the regional administrative court that is the subject of the appeal is not found to be conforming to the law, then the decision is reversed and the decision is sent to the regional administrative court that made the said decision for a new decision.

[126] For example, see the decision of the 3rd Tax Law Chamber of the Ankara Regional Administrative Court, dated 10.03.2020 and numbered E. 2020/88, K. 2020/201.
[127] Akyılmaz, Sezginer and Kaya, p. 740, 742; Osman Pehlivan, Vergi Hukuku Genel İlkeler ve Türk Vergi Sistemi, Celepler Printing, Trabzon, February 2016, p. 138.

## 5. THE APPEAL

In tax jurisdiction, the parties to the case, for the final decisions of the litigation chambers of the Council of State and the decisions of the regional administrative courts regarding tax cases whose subject exceeds monetary limit; within thirty days from the notification of the decision; even if there is a contrary provision in other laws, can appeal to the Council of State (the Law No. 2577, art. 46/b). However, similar to the first degree appeal, the legislator limited the appeal to the monetary amount. Accordingly, the regional administrative court can apply to the Council of State only for tax cases in which the subject exceeds ₺261.000 (for the year 2022). Similar to our examination method in the first degree appeal cases, in this section; the legal nature of the appeal remedy, the appeal, the appeal examination, and the results of the decisions made as a result of the appeal examination will be examined.

### 5.1. Main Features of the Appeal

Appeal, as a word of Arabic origin, means "*to separate, separating, choosing, being chosen*",[128] "*separating good from bad*",[129] "*recognizing, being noticed*"[130] and legally "*legal way that allows the court decision to be examined in terms of law and procedure*",[131] "*with this provision it the legal remedy that provides the opportunity to be examined once again in the high court, in legal terms*",[132] "*means that in cases such as the court of first instance gives an unlawful decision, by not having jurisdiction, or renders a decision contrary to the trial method, then it is the high court for the annulment of the decision meaning referral to as applying to a higher court*".[133] The appeal is the examination and inspection of the compliance with the substantive and procedural law of the decisions enumerated in Article 46 of the Law No. 2577 given by the regional administrative courts, which are the courts of appeal as a rule. In the words of the Council of State, "*The Council of State, in its capacity as an appeal authority, audits whether the legal solution reached is appropriate by making a legal assessment on the material situation determined by the first instance jurisdiction*."[134] The purpose of the appeal review is to establish a unity of jurisprudence by means of a

[128] Devellioglu, p. 1253.
[129] Mehmet Kanar, Kanar Osmanlı Türkçesi Sözlüğü, Vol. 2, Say Publications, Istanbul, 2009, p. 3450.
[130] Muallim Naci, Lügat-i Naci, Turkish Language Institution Publications, Ankara, December 2009, p. 695.
[131] Turkish Dictionary, p. 2320.
[132] Hüseyin Özcan, Ansiklopedik Hukuk Sözlüğü, Olgaç Printing House, 5th Edition, Ankara, 1980, p. 713.
[133] Yılmaz, p. 809.
[134] The decision of the 4th Chamber of the Council of State, dated 18.02.1997 and numbered E. 1996/786, K. 1997/471.

uniform interpretation and application of the rules constituting the legal order throughout the country.[135] Unlike the first degree appeal examination, in the appeal examination, the material aspect of the dispute is not dealt with, only the correct determination of the legal rules to be applied to the dispute in question is examined and inspected. In a decision, the Council of State states that an appeal is a high-level review by the appellate authority for the judgments of the first-instance court against the appellant; and in this respect, it states that upon the decision of reversal, the courts of first instance can only re-examine and adjudicate on the corrupted parts of the case.[136] In other words, in the appeal, the court decision is examined, not the material events that are the subject of the case as in the first degree appeal.[137] That is, in the examination of the appeal, the factual and legal characterization of the facts subject to the appeal is accepted as correct, and no factual examination and evidence evaluation are made; only the legal rules to be applied in the concrete case and whether there is a *legal error* in the result to be reached are examined and inspected.[138] When the decision is not found to be in accordance with the law in the appeal review, a new trial is not made, only a decision to reverse the decision is given and this decision is sent back to the relevant court.[139] Appeal in the Law No. 2577 is exclusively regulated between Articles 46-52.[140]

### 5.2. Appeal Application

Appeal application; decisions that can be appealed, the appeal authority, the persons who may appeal, the duration of the appeal, and the form and procedure of the appeal will be examined.

#### *5.2.1. Decisions that can be Submitted for Appeal*

Decisions that can be appealed in general are limited in number in the Law No. 2577 and various special laws. In other words, the appeal can be made in cases stipulated in a limited manner by the law.[141] These decisions that can be appealed are as follows: a) Decisions given

[135] Aslan, p. 411.
[136] The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 05.06.1998 and numbered E. 1996/297, K. 1998/116.
[137] Batı, p. 626.
[138] See, Kaplan, İdari Yargılama Hukuku, p. 550-551; Akyılmaz, Sezginer and Kaya, p. 740; Turgut Tan, İdare Hukuku, Turhan Bookstore, 4th Edition, Ankara, September 2015, p. 1112, Çaglayan, p. 786; Gözübüyük ve Tan, p. 1028; Mutluer, s. 303; S. Ateş Oktar, Vergi Hukuku, Turkmen Bookstore, 13th Edition, Istanbul, 2018, p. 462; Yusuf Karakoç, Genel Vergi Hukuku, Yetkin Publications, 2nd Edition, Ankara, 2019, p. 735; Bilici, p. 212; Yüce, p. 240; Selman Sacit Boz (Ed.), Türk İdari Yargılama Hukukunda Temyiz, Adalet Publishing House, Ankara, 2021, p. 47-48; Onar, p. 1992-1993.
[139] Kalabalık, p. 412; Öner, p. 269.
[140] In civil procedure law, the appeal is regulated in 361-373 of Law No. 6100. For detailed information on this, see Kuru ve Aydın, p. 511-547; Pekcanıtez, Atalay and Özekes, p. 499-513; Arslan et al., p. 648-662; Budak and Karaaslan, p. 438-458; Atalı, Ermenek and Erdoğan, p. 637-661.
[141] Atay, p. 441.

as a result of the appeal examination, which are listed in 14 subparagraphs in Article 46 of the Law No. 2577,[142] b) Final decisions rendered by the litigation chambers of the Council of State as the court of first instance and given in the cases listed in 6 clauses[143] in Article 24/1 of the Law No. 2575 of the Council of State,[144] c) Final decisions regarding the disputes subject to the prompt trial procedure,[145] d) Central and joint examinations held by the Ministry of National Education and Student Selection and Placement Centre, the works and procedures related to these examinations, and the final decisions in lawsuits brought about the results of the examinations.[146]

No appeal can be made against decisions[147] other than those listed.[148] Based on this framework, the final decisions regarding taxation, which were rendered as a result of the appeal examination and exceeding a certain amount (₺261.000 for the year 2022), may be appealed.

### *5.2.2. Review of the Decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 23.03.2022 and numbered E. 2022/242, K. 2022/304*

The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 23.03.2022 and numbered E. 2022/242, K. 2022/304 was deemed worthy of examination since it is related that the monetary limits stipulated in the law for filing an appeal will be determined according to the decision date of the regional administrative court.

According to the legal assessment made by the Plenary Session, "*It is concluded that the decisions, which made by the regional administrative courts upon the first degree appeal*

[142] For detailed information, see Article 46 of the Law No. 2577.
[143] For detailed information, see Law No. 2575, art. 24/1.
[144] See, Duplicate Article 49/a of the Law No. 213; Article 33/5 of the *Law on Council of Judges and Prosecutors* (Law No. 6087, dated 11/12/2010); Article 20/2 of the *Turkish Petroleum Law* (Law No. 6491, dated 30.05.2013); Article 23/3 of the *Turkish Radio and Television Law* (Law No. 2954, dated 11.11.1983); Article 7 of the *Law on the Establishment and Broadcasting Services of Radio and Television* (Law No. 6112, dated 15.02.2011); Article 27/a of the *Law on Privatization Practices* (Law No. 4046, dated 24.11.1994); Article 6/2 of the *Law on Monitoring and Supervision of State Aids* (Law No. 6015, dated 13.10.2010); Article 28/3 of the Law No. 2577, Article 24/1 of Law No. 2575.
[145] An appeal can be made against the final decisions made within fifteen days from the date of notification (the Law No. 2577, art. 20/A-g).
[146] An appeal can be made against the final decisions made within fifteen days from the date of notification (the Law No. 2577, art. 20/B-f).
[147] According to *Ulusoy*, it is a serious shortcoming that the decisions that are open to appeal review are limited only to the cases listed in the law and that no discretion has been given to the appellate authority, which is the highest judicial authority, apart from these cases (Ulusoy, p. 213-214).
[148] For example, it is not possible to appeal against the decisions in the Articles 15/4, 43/3, 44/3, 48/7, 53/2 of the Law No. 2577. For some examples of decisions are rendered by the Regional Administrative Court and which are not within the scope of the Law No. 2577, art. 46, see Boz, p. 140-144.

*made against the decisions given by the tax courts about the cases not exceeding the monetary amount specified in Article 46/b of the Law No. 2577 and the lawsuits filed against the transactions whose subject does not include a certain amount of money, are final, and these decisions cannot be subject to appeal. In this case, considering that the dispute, which is the subject of the lawsuit, is below the appeal limit of ... TL, which is valid as of the date of the first decision of the Tax Law Chamber (of the Regional Administrative Court), it is not possible to examine the appeal against the insistence decision of the Seventh Chamber of the Council of State*."[149]

In Article 45/6 of Law No. 2577, it is stated that the decisions of regional administrative courts that are not suitable for appeal according to Article 45 of Law No. 2577 are final. According to Article 46/b of Law No. 2577, an appeal can be made against the decisions of the regional administrative court in terms of tax cases whose subject exceeds a certain monetary amount. However, in cases where the subject matter of the case does not exceed these monetary amounts, It can not be make an appeal against the decisions given by the regional administrative court. Whether the monetary amounts required for the appeal are sufficient should be determined according to the date of the decision given by the regional administrative court. In other words, in order to be able to make an appeal, as of the date of the decision given by the regional administrative court, the subject of the action required for the appeal must exceed the monetary limits, otherwise it can not be make an appeal.

### *5.2.3. Persons who can Apply for Appeal*

As with the first degree appeal, only the parties to the case have the right to appeal.[150] Similarly, the party must have a legal interest in filing an appeal. For example, there is no legal benefit for the winning party to appeal the decision or judgment clause in favor of it.[151] Thus, according to the Council of State, since there is no provision against the plaintiff in the decision requested to be appealed, it is not possible to examine the merits of the appeal of the plaintiff, who does not have a legal interest to be protected.[152] In the words of the Council of State: "*As accepted in scientific and judicial jurisprudence; provided that each party has a legal interest in the annulment or amendment of the judgment of the court of judgment; may*

[149] The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 23.03.2022 and numbered E. 2022/242, K. 2022/304.
[150] Gözübüyük ve Tan, p. 1051; Tan, p. 1118; Odyakmaz, Kaymak and Ercan, p. 279; Mutluer, p. 304.
[151] Candan, p. 931.
[152] The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 21.10.2020 and numbered E. 2019/1027, K. 2020/1050.

*appeal against this decision. In this context; if there is a difference between the judgment of the court and the demand of the party in favor of whom the judgment is made; as it is accepted that that party has a legal interest in appealing the judgment; it is possible for the party in whose favor the judgment is established to appeal against the justification that is bound to the clause of the judgment and therefore constitutes a final judgment*."[153] Accordingly, the party against whom a decision has been made by regional administrative courts regarding the decisions listed in Article 46 of the Law No. 2577, the final decisions given by the Council of State as a court of the first instance, the final decisions in disputes subject to urgent proceedings,[154] and the final decisions made in disputes related to the central joint exams made by the *Ministry of National Education* and *Student Selection and Placement Centre*, may appeal against the decision in question, provided that it has a legal interest. In cases where there is more than one plaintiff, the plaintiffs in question may appeal against the decision together, or they may appeal separately.[155] As a rule, the presence of the power of attorney of the attorney who follows the case in the case file is considered natural, therefore, it is not required to attach a power of attorney for the attorney's appeal.[156] Otherwise, for example, plaintiffs who waived the lawsuit, those who participated in the lawsuit, those who participated in the trial,[157] those in whose favor a decision is made, or the administration that accepted the lawsuit cannot appeal.[158] In addition according to the Council of State, the general rule in administrative proceedings is that the annulment decisions made by the administrative courts are appealed by the defendant administration; however, it is legally

[153] The decision of the 5th Chamber of the Council of State, dated 16.03.1999 and numbered E. 1998/4303, K. 1999/705. Similarly, the decision of the 2nd Chamber of the Council of State, dated 08.07.2009 and numbered E. 2008/53, K. 2009/2932.
[154] See, the decision of the 13rd Chamber of the Council of State, dated 30.09.2021 and numbered E. 2021/4276, K. 2021/3108.
[155] İbrahim Topuz and Kadir Özkaya, Açıklamalı-İçtihatlı İdari Yargılama Usulü Kanunu, Local Administrations Association Publication, Ankara, 2002, p. 866; Tan, p. 1118-1119.
[156] Coşkun and Karyağdı, p. 523.
[157] Odyakmaz, Kaymak and Ercan, p. 279. The request to participate in the case can be made at the first instance stage as well as at the legal remedies stage. The relevant court decides on this request, but the participants (intervenors) cannot take procedural actions that will affect the outcome of the case on their own (Coşkun and Karyağdı, p. 503). In other words, the person participating in the case cannot apply to the appeal, but can act together with the party to which he/she participates in the case (Şeref Gözübüyük, Yönetsel Yargı, Turhan Bookstore, Ankara, 2001, p. 507; Gözübüyük ve Tan, p. 1051).
[158] Topuz and Özkaya, p. 866; Celal Karavelioğlu, Değişiklik-Açıklama ve En Son İçtihatlarla İdari Yargılama Usulü Kanunu, Vol. II, 5th Edition, 2001, p. 1574.

possible to appeal the annulment decisions in terms of justification or litigation expenses by the plaintiffs in whose favor a judgment has been established.[159]

As stated, the parties must have the capacity to be a party to the case and to follow the case during the legal remedies phase and must be protected. If the party, who loses this competency during the proceedings before the appeal, applies for an appeal, the appeal is dismissed without examination.[160]

As stated, when only one of the parties resorts to legal remedies and there is no issue contrary to public order, then the prohibition of reversing (prohibition of adjudicating against) is valid for the party applying to the relevant legal remedy. Accordingly, provided that the condition of being on the contrary to public order is reserved, a decision appealed by only one of the parties cannot be reversed to the detriment of the appellant.[161] Otherwise, if the first degree appeal authority reverses the appealed decision against the appellant, the decision will be rendered in favor of the other party who has not appealed the decision, which would be contrary to the principle that the judge is bound by the results of the request and cannot decide more than the demand (the Law No. 6100, art. 26).[162]

Similar to an first degree appeal, the parties have the right to waive their appeal. At the appeal stage, the parties may waive their appeal until the decision rendered by the appeals authority after filing an appeal is final.[163] As stated in Article 31/1 of the Law No. 2577 and according to the Plenary Session of Administrative Law Chambers of the Council of State, the provisions of the Law No. 6100 will be applied to the extent that it is compatible with the types of administrative cases and taking into account the characteristics of the administrative cases. The waiver request of appeal[164] shall be made by petition to be filed by the party

[159] The decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 17.04.2013 and numbered E. 2009/1410, K. 2013/1469.
[160] Yahya Kazım Zabunoğlu, İdare Hukuku, Vol. 2, Yetkin Publications, Ankara, 2012, p. 691; Yüce, p. 241.
[161] Kuru, p. 539.
[162] Kuru, p. 540. If only one of the parties has appealed the decision, the prohibition of reversing is also valid for the decision of the appellate court that complies with the reversal decision given by the appeal authority (See, Kuru, p. 540).
[163] Topuz and Özkaya, p. 934; Karakoç, Genel Vergi Hukuku, p. 747; Karakoç, Vergi Yargılaması Hukuku, p. 340.
[164] According to the Council of State, the authority to represent department heads and legal advisors in administrative lawsuits brought against the administrations does not include the power to "withdraw the appeal." (The decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 22.02.2007 and numbered E. 2006/2824, K. 2007/115).

concerned with the appeal authority.[165] The waiver has legal consequences like a final judgment (the Law No. 6100, art. 311), therefore, along with the waiver of the appeal, the case will end with all its consequences.[166]

It is necessary to obtain the consent of the relevant authorities in order for the tax administrations to appeal against the decisions taken in the cases brought against the taxes, duties and fees, and related increases and penalties, which are within the scope of the tax procedure law.[167] As a matter of fact, according to Article 377/4-5 of the Law No. 213, "*Tax offices presidencies and tax offices cannot appeal against tax court decisions without the consent of the Revenue Administration* (Turkish: *Gelir İdaresi Başkanlığı*) *(Special provincial administrations, municipalities, governors) in cases exceeding the amounts determined by the Revenue Administration of Ministry of Finance. Revenue Administration; provided that it is limited to the limits it will determine; may delegate the authority to give consent to the tax office presidencies and/or bookkeeping offices for cases in which the tax office directorates are a party*."[168] Therefore, in order for tax administrations to file an appeal as a party to the case, they must obtain a consent (approval) from the Revenue Administration of *the Ministry of Treasury and Finance* and attach these consents to the appeal petitions.[169] This authority of the Revenue Administration; provided that it is limited to the limits it will determine; if the tax office directorates are transferred to the tax office presidencies and/or bookkeeping offices for the cases in which the tax office directorates are a party; within these limits, they will be able to appeal directly to tax office presidencies and revenue offices (bookkeeping offices). Although this regulation has been prepared for appeal, the provision in question should be applied for the first degree appeal application with the same procedures and principles, based

[165] For the example decisions, see the decision of the 13th Chamber of the Council of State, dated 21.04.2017 and numbered E. 2017/734, K. 2017/1123; the decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 22.10.2009 and numbered E. 2008/1242, K. 2009/1891.
[166] In a decision of the Council of State, it was decided that there was no need to decide on the appeal that had no subject due to the waiver (The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 29.05.2013 and numbered E. 2011/18, K. 2013/199).
[167] Candan, p. 933; Öner, p. 267; Yüce, p. 242.
[168] According to Article 31/2 of the Law No. 2577, the relevant provisions of the Law No. 213 are applied in the resolution of tax disputes, excluding the provisions regulated in the Law No. 2577 and the cases referred to in the Law No. 6100 (the Law No. 2577, art. 31/2). However, according to the Plenary Session of the Tax Law Chambers of the Council of State, although the relevant provisions of the Law No. 213 are reserved in the resolution of tax disputes in Article of 31/2 of the Law No. 2577, the rules referred to in this rule are in the Articles 377, 378 and Duplicate Article 378 of the Law No. 213 (The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 25.10.1991 and numbered E. 1991/51, K. 1991/76).
[169] Candan, p. 933-934; Batı, p. 627; Öncel et al., p. 219.

on the purposive interpretation method.[170] In case of the death of the party applying for the appeal, the death is documented with official records and it is decided to remove the file from the process until an application is submitted by the person to whom the right to follow up the case is transferred.[171]

### *5.2.4. Application Period for Appeal*

As a rule, the appeal duration is thirty days (the Law No. 2577, art. 46).[172] As in the first degree appeal, the start of the application period in the appeal is not from the day following the notification of the decision, which is the general rule in Article 8 of the Law No. 2577, but from the date of notification of the decision (the Law No. 2577, art. 46). The appeal made by one of the parties is notified to the other party by the Council of State and the other party may reply within thirty days following the notification date (the Law No. 2577, art. 48/3). Even if the responding party has not appealed against the decision in due time, it may request an appeal in this petition, which will be drawn up by appealing through participation, in this case, these petitions will replace the appeal petition (the Law No. 2577, art. 48/3).[173] In this case, the responding party gains additional time to appeal.[174]

However, Duplicate Article 49 of the Law No. 213 provides for a special appeal period.[175] Accordingly, in the determination of the price and value of the property tax and in the cases related to the determination of the minimum unit value of the land, the appeal period is fifteen days (the Law No. 213, dup. art. 49/b).

As in the filing periods, if the notification is made in a manner legally undue and the party has not learned this notification, the appeal period does not start to run. However, despite the undue notification, if the party has learned about this notification, then the notification is considered valid and the date declared by the party is accepted as the notification date (Law

[170] Kaplan, İdari Yargılama Hukuku, p. 528.
[171] Coşkun and Karyağdı, p. 530.
[172] For other specified application periods, see Articles of 20/A-g, 20/B-f and 48/6 of the Law No. 2577.
[173] In this case, what is meant by the reply petition replacing the appeal petition is that the petition is prepared and processed like an appeal petition. Accordingly, the responding party will pay the necessary appeal fee, and the court will notify this petition to the other party who filed the first appeal, and this other party will be able to respond to the petition within thirty days (Kazım Yenice and Yüksel Esin, Açıklamalı-İçtihatlı-Notlu İdari Yargılama Usulü, Arısan Printing, Ankara, 1983, p. 726).
[174] Karakoç, Genel Vergi Hukuku, p. 738; Karakoç, Vergi Yargılaması Hukuku, p. 326.
[175] Gözübüyük, p. 508; Nihat Kayar, Yönetsel Yargı Kuruluş ve İşleyis, Ekin Publishing, Bursa, August 2010, p. 412; Sadık Kırbaş, Vergi Hukuku Temel Kavramlar, İlkeler ve Kurumlar, Siyasal Publishing House, 20th Edition, Ankara, February 2015, p. 224.

No. 7201 art. 32). In this case, the appeal period starts from the date on which the party declares that he has learned of the notification.[176]

Again, as in the filing periods, the holidays are included in the deadlines and if the last day of the period coincides with the holiday, the period extends until the end of the working day following the holiday (the Law No. 2577, art. 8/2). Likewise, the end of the appeal period, the time for suspending work (*judicial recess*) are deemed to have been extended by seven days from the date following the end of the break (the Law No. 2577, art. 8/3). Otherwise, the parties do not have the right to request an extension of the appeal period by stating an apology, in other words, their requests for additional appeal time will be rejected by the relevant authority.[177]

Against the appeals made after the appeal period has elapsed, the court that made the decision rejects the appeal in terms of time.[178] Against the decision to reject the appeal in terms of time, an appeal can be made within seven days from the day following the notification date (the Law No. 2577, art. 48/6).

### *5.2.5. Procedure of Appeal Application*

In administrative cases, the appeal authority is the Council of State. According to Article 155 of the Constitution, "*The Council of State is the last authority for review of decisions and provisions rendered by administrative courts and which the law does not leave to another administrative jurisdiction*." Likewise, according to Article 46 of the Law No. 2577, "*The final decisions of the litigation chambers of the Council of State and the decisions of the regional administrative courts regarding the cases listed below can be appealed to the Council of State… even if there is a contrary provision in other laws*." Similarly, according to Article 23/a of Law No. 2575, the Council of State "*examines and decides on appeals against decisions made by Administrative Courts and tax courts, and cases heard at the Council of State as a court of first instance*"; and according to Article 25 of the same Law, "*Final decisions rendered by administrative and tax courts and final decisions regarding the cases heard at the Council of State as a court of first instance are examined and resolved through appeal at the Council of State*."

[176] See, the decision of the 7th Chamber of the Council of State, dated 22.10.2018 and numbered E. 2015/4916, K. 2018/4601.
[177] Coşkun ve Karyağdı, p. 504.
[178] For an example, see the decision of the 4th Chamber of the Council of State, dated 15.06.2015 and numbered E. 2014/7359, K. 2015/3338.

In the Council of State, the cases are examined and decided by the boards of the second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth chambers and administrative and tax law chambers (Law No. 2575, art. 26). The third, fourth, seventh and ninth chambers are the tax law chambers; other chambers serve as administrative law chambers (Law No. 2575, art. 27). Likewise, the decisions rendered by the administrative law chambers of the Council of State as the court of first instance are examined by the *Plenary Session of the Administrative Law Chambers*, and the decisions rendered by the tax law chambers of the Council of State as the first instance court are examined by the *Plenary Session of the Tax Law Chambers* (Law No. 2575, art. 38). To which department and how the files in the assigned office will be transferred; considering the division of duties regarding tax and administrative disputes; and which department duties will be assigned to the assigned department within the assigned area; are determined by the decision of the *Board of President of the Council of State* (Law No. 2575, art. 26). Administrative law chambers and tax law chambers work on the basis of division of duties among themselves (Law No. 2575, art. 27). In cases related to taxes, duties, fees and similar financial obligations, the legislation from which the conflict is arising is taken as a basis in determining the division of duties between tax law chambers (Law No. 2575, art. 27/3).

The appeal application is made with the petitions addressed to the Council of State (the Law No. 2577, art. 48/1).[179] As a rule, the appeal petitions are given to the regional administrative court that made the decision (the Law No. 2577, art. 48/3). However, all kinds of documents related to appeal petitions and defenses can also be submitted to the places specified in Article 4 of the Law No. 2577 to be sent to the Council of State (the Law No. 2577, art. 4).[180] Petitions are prepared as one more than the number of counterparties.[181]

Petitions of appeal should be prepared according to the principles specified in Article 3 of the Law No. 2577 stipulated for lawsuit petitions (the Law No. 2577, art. 48/2). Accordingly, in the petitions; a) Names and surnames or titles and addresses of the parties and their proxies or representatives, if any, and the Republic of Turkey identification number of real persons,[182] b)

[179] For examples of petitions at the appeal stage, see. Selami Demirkol and Zuhal Bereket Baş, Teori ve Pratikte İdari Yargıda Dava Açma ve Davaların Takip Usulü, Beta Press Publishing Distribution, 7th Edition, Istanbul, June 2007, p. 309-316; Mehmet Arslan, Vergi Hukuku, Dora Press Publishing and Distribution, 9th Edition, Bursa, January 2016, p. 385.
[180] For detailed information, see Article 4 of the Law No. 2577.
[181] Karavelioğlu, p. 1584.
[182] For an example, see the decision of the 8th Chamber of the Council of State, dated 27.01.2020 and numbered E. 2019/5062, K. 2020/228.

The subject and reasons of the case and the evidence on which it is based, c) Written notification date of the administrative act subject to the lawsuit, d) The amount and value of dispute in cases regarding taxes, duties, fees, similar financial obligations, and their increase and penalty, and in full remedy lawsuits the amount of the dispute, and e) In tax cases, the type and year of the tax or tax penalty to which the case is related, the date and number of the notification, and the taxpayer account number, if any, are indicated (the Law No. 2577, art. 3/2). On the other hand, in the petition, it is not obligatory to show the reasons for the appeal concretely and to base the request on a specific ground of appeal.[183] It is not possible to appeal against more than one court decision with a single petition, an application must be made against each decision with separate petitions.[184]

Regarding the procedures and principles of the appeal application, the provisions of the Regulation on Procedures and Principles, which regulate the procedures for applying to legal remedy in general, should be followed, as in the case of first degree appeal. As with the first degree appeal, the petition for appeal is delivered to the personnel in charge of the front office or the editorial office (Regulation on Procedures and Principles, art. 95/1). If the application petition is not subject to a fee it is registered immediately; if subject to a fee it is registered after the fee is paid, and the applicant is given a free receipt (Regulation on Procedures and Principles, art. 95/1). The appeal application is deemed to have been made on the date of recording the appeal petition (Regulation on Procedures and Principles, art. 95/4). The above provisions are also applied in the petitions for legal action submitted to the court of another place, and the registrar or the staff in charge of the other place transfers the petition and its annexes to the electronic medium and sends the physical documents to the relevant court without delay (Regulation on Procedures and Principles, art. 95/5). Appeal application; in the physical environment, is done during working hours (Regulation on Procedures and Principles art. 95/7), and can be filed until 00:00 in electronic media (Regulation on Procedures and Principles, art. 95/10).

Real persons must have a secure electronic signature in order to send appeal petitions through the NJIS Citizen Information System, and legal entity representatives to make submissions over the NJIS Institution Information System (Regulation on Procedures and Principles, art. 95/8). The appeal application is deemed to have been made on the date that the petition

[183] Karakoç, Genel Vergi Hukuku, p. 741.
[184] Akyılmaz, Sezginer and Kaya, p. 746.

appears on the court screens via NJIS, and as a result of the process, a receipt document that the applicant can access electronically is created (Regulation on Procedures and Principles art. 95/8). Similarly, lawyers must have a secure electronic signature in order to send an appeal petition over the NJIS Lawyer Information System (Regulation on Procedures and Principles, art. 95/9). Again, for them, the appeal application is deemed to have been made on the date the petition appears on the court screens via NJIS, and as a result of the process, a receipt document that the applicant can access electronically is created (Regulation on Procedures and Principles art. 95/9).

As stated, the appeal petitions, which have been duly drawn up, are notified to the other party by the regional administrative court that made the decision (the Law No. 2577, art. 48/3). The other party may reply within thirty days following the notification date (the Law No. 2577, art. 48/3).

The regional administrative court that made the decision, after the fees and postal expenses are paid and the reply petition is submitted or the response time has passed, prepares the file, depending on the serial list, via NJIS, and sends it to the Council of State or the Board (the Law No. 2577, art. 48/4; Regarding the Procedures and Principles Regulation, art. 95/11).

On the other hand petitions of appeal requesting the suspension of execution,[185] are sent to the Presidency of the Council of State by the regional administrative court, which made the decision, together with the file, without being notified to the other party (the Law No. 2577, art. 48/5). In cases that the Council of State considers as a court of first instance, it is sent to the Plenary Session of the Administrative or Tax Law Chambers, depending on the subject, by the competent chamber (the Law No. 2577, art. 48/5). After the decision is made on the request for the suspension of execution by the chamber in charge of the Council of State, the notification is made by this chamber, and the file is completed (the Law No. 2577, art. 48/5).

### 5.3. Examination of Appeal

The appeal application is first reviewed by the regional administrative court, which renders the decision on which the petition of appeal is filed. Afterwards, the file is scrutinized in the

[185] As stated, the execution of the decision does not automatically stop with the application to the legal remedy, so the appeal does not stop the execution of the decision. In order to obtain a stay of execution at the appeal stage, a request for a stay of execution must be requested by the relevant party and the Council of State must approve this request and decide on a stay of execution. For detailed information, see Gözübüyük ve Tan, p. 1059-1060.

Council of State. The Council of State also examines and inspects the conditions regarding the appeal application ex officio before proceeding with the examination of the merits.

### *5.3.1. Preliminary Examination of the Appeal Application*

The first examination of the appeal application is made at the regional administrative court, which made the decision on which the appeal was made (the Law No. 2577, art. 48/2). In this examination, the regional administrative court examines whether the petition was made in accordance with the specified rules, whether there are deficiencies in the petition and whether the relevant fees and expenses were paid (the Law No. 2577, art. 48).

The regional administrative court that made the decision notifies the appellant that if there are deficiencies in the appeal petitions, the deficiencies must be completed within fifteen days (the Law No. 2577, art. 48/2). If the deficiencies are not completed within this period, it is decided that the relevant party has not submitted and appeal application (the Law No. 2577, art. 48/2).

In the event that the appeal is made after the statutory period has elapsed or if it is about a final decision, the regional administrative court that made the decision decides to reject the appeal request (the Law No. 2577, art. 48/6). An appeal may be made within seven days from the day following the notification date against these decisions of the relevant court and the decisions regarding the dismissal of the appeal as specified in the Article 48/2 of the Law No. 2577 (the Law No. 2577, art. 48/6).

In addition to the first examination of the regional administrative court, the Council of State also subjects the appeal before it to a preliminary examination ex officio. At this stage, the investigative judge in the relevant department of the Council of State to which the file was sent makes his decision definitively in cases where it is understood that the necessary fees and expenses have not been paid while filing the appeal petition, the petition has not been prepared in accordance with the principles in Article 3 of the Law No. 2577, the appeal has not been made within the legal period or it is understood that it is about a final decision (the Law No. 2577, art. 48/7).

### *5.3.2. Substantive Examination of the Appeal Application*

The duty of the Council of State as an appeals authority is limited to auditing the illegalities that arise in the form of non-application or misapplication of a rule of law (Law No. 2575, art. 23/a). Accordingly, in the examination of the appeal, the Council of State, as a rule, does not

investigate the accuracy of the material facts on which the relevant decision is based, accepts that they are correct and examines the decision only in terms of legality.[186] Contrary to the investigation carried out by the regional administrative court in the appeal phase, as a rule the Council of State in the appeal examination conducts its examination only according to the documents in the file.[187] Ultimately, the appeal examination is a limited examination of whether a mistake has been made in the application of the rules of law to the factual event.[188]

The examination of the appeal application is made according to the reasons for appeal in the Article 49/2 of the Law No. 2577, which is regulated in terms of procedure and substance. Accordingly, in the appeal examination, the Council of State examines the said decision in terms of the following: a) Having looked at a job out of duty and authority, b) Making an unlawful decision, c) Examines the relevant decision in terms of the reasons for the existence of errors or deficiencies that may affect the decision in the implementation of the procedural provisions (the Law No. 2577, art. 49/2).[189]

As a rule, in order for appeal decisions to be made, the relevant chamber must meet with the full number of members and decide on the basis of majority.[190] The judge who makes or participates in the decision that is the subject of the appeal cannot take part in the appeal examination of the same case (the Law No. 2577, art. 49/5).

As with first instance courts and appeals proceedings, a hearing may also be held at the appeal stage. The holding of the hearing depends on the request of the parties and/or the decision of the Council of State (the Law No. 2577, art. 17/2). Pursuant to Article 17/1 of the Law No. 2577, a hearing is held at the request of one of the parties, in cancellation, full judgment and tax cases, the subject of which exceeds ₺77.000. However, the Council of State may decide to hold a hearing on its own accord, regardless of monetary conditions and the parties' request (the Law No. 2577, art. 17/4). The presence of the *State Council Prosecutor* is obligatory in these hearings under the appeal examination.[191]

[186] See, the decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 06.06.2016 and numbered E. 2016/1611, K. 2016/2387; the decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 07.12.2016 and numbered E. 2016/4343 K. 2016/3305; the decision of the 13th Chamber of the Council of State, dated 05.12.2018 and numbered E. 2018/3650 K. 2018/3675.
[187] Arslan, p. 384; Yüce, p. 243; Öner, p. 268; Kırbaş, p. 224; Odyakmaz, Kaymak and Ercan, p. 282.
[188] Kaplan, İdari Yargılama Hukuku, p. 551.
[189] For detailed reviews of the grounds of appeal, see Zabunoglu, p. 710-716; Gözübüyük, p. 497-506; Kayar, p. 414-417; Boz, p. 150-223.
[190] Gözübüyük, p. 506.
[191] Coşkun ve Karyağdı, p. 534.

The legislator has made a special arrangement regarding the hearing that can be held at the appeal stage of the tax disputes with Duplicate Article 378 of the Law No. 213. Accordingly, in the hearings to be held at the Council of State (and tax courts); in cases where the claim and defense necessitate, the basis of the assessment, which is the subject of the tax case, is also heard from the examiners who have carried out the examination, and the taxpayer's financial advisor or accountant who is present at the hearing (the Law No. 213, dup. art. 378).

### *5.3.3. Decisions of Appeal*

As a result of the appeal review, the Council of State can make one of the decisions of "*approval*", "*confirmation by modification*" and "*reversing*" (the Law No. 2577, art. 49, 50). If the Council of State finds that the decision before it is lawful, gives a decision to approve it (the Law No. 2577, art. 49/1-a). In this case, the appealed decision becomes final and the legal dispute ends. Approval decisions are sent together with the file to the court of first instance, and a copy of the decision is sent to the regional administrative court (the Law No. 2577, art. 50/1). These decisions are notified to the parties within seven days following the arrival of the file (the Law No. 2577, art. 50/1).

The Council of State can make a decision of approval by changing it in two cases. In the first case, if the Council of State finds the result of the decision before it lawful, but finds the reason given in the decision incorrect or incomplete, it will approve the decision by changing its justification (the Law No. 2577, art. 49/1-a). In the second case, if the Council of State finds material errors that do not require a retrial and any deficiencies or mistakes that can be corrected in the decision before it, it shall correct the decision and approve it (the Law No. 2577, art. 49/1-b).

The Council of State gives a decision to reverse if there is one of the reasons for appeal in the Article 49/2 of the Law No. 2577. Accordingly, the Council of State reverses the decision that comes before it due to the fact that something outside of its duty and authority has been done, an unlawful decision has been made, and there are errors or deficiencies in the implementation of procedural provisions that may affect the decision (the Law No. 2577, art. 49/2).

The Council of State may also decide to partially approve and partially reverse the decisions that are subject to appeal (the Law No. 2577, art. 49/3).[192] The tax liability for the approved amount becomes certain.[193] In these cases, the finalized part is specified in the decision of the Council of State (the Law No. 2577, art. 49/3). As stated, unlike the first degree appeal examination, no decision is made on the merits of the dispute as a result of the appeal examination; approval or annulment decisions are sent to the regional administrative court that made the decision, for a new decision.[194]

### 5.4. Consequences of the Decision of Appeal

As a rule, the decision made as a result of the appeal review is sent to the authority that made the decision together with the file (the Law No. 2577, art. 50/1). However, as stated, the decision regarding the approval is sent to the court of first instance that made the decision together with the file, and a copy of the decision is sent to the regional administrative court (the Law No. 2577, art. 50/1).[195] This decision is notified to the parties by the relevant court within seven days from the date of receipt of the file (the Law No. 2577, art. 50/1).

Upon the decision of reversal given as a result of the appeal review, the relevant regional administrative court first examines the file and, if any, completes the necessary investigations and makes a decision again (the Law No. 2577, art. 50/2). The regional administrative court may either comply with the reversal decision given by the Council of State or insist on its decision (the Law No. 2577, art. 50/3). Accordingly, the regional administrative court may decide to either comply with the reversal or insist (resistance) against the reversal decision given by the Council of State.

If the regional administrative court complies with the reversal decision of the Council of State, it re-decides in the manner and in accordance with the principles specified in the reversal decision, limited to compliance with the reversal decision (the Law No. 2577, art. 50/4). In this case, the regional administrative court will have changed the previous decision regarding the case in question at the appeal stage, in line with and to the extent of the contrary decision made by the Council of State as a result of the appeal review.

[192] For an example, see the decision of the 13th Chamber of the Council of State, dated 20.02.2020 and numbered E. 2019/3763, K. 2020/551.
[193] Öncel et al., p. 220.
[194] See, Akyılmaz, Sezginer and Kaya, p. 749.
[195] One of the signed originals of the appeal decisions given by the Council of State is kept by the Council of State, the other signed original of the decision and a copy of the decision by the number of parties are placed in the relevant file for notification (Gözübüyük, p. 515).

If the regional administrative court does not comply with the reversal decision of the Council of State, it gives a decision of persistence without any investigation.[196] In this case, the regional administrative court will not comply with the reversal decision of the Council of State, and will have rendered the decision it had previously given at the appeal stage regarding the case in question. In such a case, where the regional administrative court insists on its decision by not complying with the reversal, in case of an appeal against the insistence decision, the request is examined and decided by the Plenary Session of the Administrative or Tax Law Chambers[197] according to its subject (the Law No. 2577, art. 50/5).[198] It is obligatory to comply with this decision to be made by the Plenary Session of the Administrative or Tax Law Chambers (the Law No. 2577, art. 50/5).

If the decision of reversal given by the Council of State as a result of the appeal review is complied with by the regional administrative court or the Council of State, a new decision (decision to comply) is rendered based on the justifications in the decision of reversal (the Law No. 2577, art. 50/4).[199] This decision of the regional administrative court, whose decision was reversed, and that it complied with the reversal decision of the Council of State, creates a *procedural vested right* for the party in whose favor the decision is made.[200] The procedural vested right is mainly determined by the jurisprudence in the civil procedure law,[201] and with some exceptions,[202] it also finds an application area in the administrative jurisdiction law.[203] Accordingly, the decision of the regional administrative court to comply with the reversal decision will, as a rule, be limited to the legal principles stated by the Council of State in its reversal decision. An appeal can also be made against the decision of the regional

[196] At this stage, the court in no way can rely on a new legal reason other than the legal reason in its first and reversed decision (Zabunoğlu, p. 728).
[197] The Plenary Session of the Tax Law Chambers of the Council of State, as an appeal authority, it examines insistence decisions made by tax courts, and decisions made by tax law chambers as a court of first instance. (Law No. 2575, art. 38/2).
[198] See, the decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 23.09.2020 and numbered E. 2019/1275, K. 2020/986.
[199] According to *Yıldırım*, in practice, although it is not often, it is seen that the decisions taken in accordance with the decision of reversal are also reversed, and in order to prevent this situation, the Council of State should make a stable decision or add a provision to the law (Turan Yıldırım, İdari Yargı, Beta Press Publishing and Distribution, 2nd Edition, Istanbul, October 2010, p. 517).
[200] Candan, p. 971.
[201] See the decision of the *Board of the Unification of Case Law of the Court of Cassation*, dated 09.05.1960 and numbered E. 1960/21, K. 1960/9.
[202] See the decision of the 7th Chamber of the Council of State, dated 07.05.2007 and numbered E. 2005/3650, K. 2007/2141.
[203] See, the decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 07.05.2007 and numbered E. 2005/3650, K. 2007/2141, dissenting vote.

administrative court to comply with the decision of the Council of State; in this case, the appeal review is made within the framework of the procedural vested right,[204] limited to compliance with the annulment decision (the Law No. 2577, art. 50/4).[205]

## CONCLUSION

In tax jurisdiction, which is subject to administrative jurisdiction, the first degree appeal and the appeal are distinctly different from each other with some features, even though they are ordinary legal remedies. First of all, in the first degree appeal, the case is re-examined as a whole and the judge examines the decision of the court of first instance from both in terms of legal and substantive law perspectives. However, in the appeal, the court decision is examined, not the substantive law as in the first degree appeal, and the judge only checks the legality without going into the merits of the case. Since the case file is re-examined in the first degree appeal, a new decision may be made on the merits when deemed necessary. The regional administrative court judge re-examines the events in the case. Nevertheless, it should be emphasized that the judge of first degree appeal does not have the authority to "*change and approve*". On appeal, if the Council of State considers the decision to be unlawful in terms of procedure and principle, it reverses the decision and sends the file back to the court that made the decision, without retrial. Since the first degree appeal is a retrial, it can re-evaluate the new evidence by making an examination as the tax court does. However, since the appeal authority cannot make a retrial within the scope of the file, it does not search for new evidence, it examines the case over the existing file and concludes it.

Another issue that needs to be discussed regarding the ordinary legal remedies is the beginning of the period to apply. The durations in Law No. 2577, generally start from the day following the date of notification (the Law No. 2577, art. 8/1). However, the beginning of the first degree appeal or appeal period starts from the day of notification, not the day following the notification, in accordance with the regulation of Articles 45/1 and 46/1 of Law No. 2577. It is not appropriate in terms of the integrity of the law to set a period of time in a different procedure for first degree appeal or appeal by going beyond the general procedure. In this respect, it would be appropriate to correct the wording in the law of the duration of first

[204] In this case, in accordance with the principle of procedural vested right, the appeal authority should examine the decision in terms of whether the grounds for reversal are complied with and should not carry out any further examinations outside these limits, too (Coşkun and Karyağdı, p. 549).

[205] For an example, see the decision of the 7th Chamber of the Council of State, dated 10.11.1997 and numbered E. 1996/3254, K. 1997/3820. With regard to the procedural vested right in appeal, see Kaplan, İdari Yargılama Hukuku, p. 558-560; Akyılmaz, Sezginer and Kaya, p. 753-755.

degree appeal and appeal, and to make a regulation stating that the period of first degree appeal and appeal will start from the day following the notification of the decision.

The remedy of first degree appeal is regulated in a very limited way in only one article, Article 45, in the Law No. 2577. In Article 45/2 of Law No. 2577, with a regulation stating "*The first degree appeal is subject to the forms and procedures of the appeal*", it is pointed out that the regulations in the appeal should also be applied to the first degree appeal. The grounds and the principles of examination of the first degree appeal are not included in this article. However, this situation is contrary to the authority and importance of the fiset degree appeal. For example, in the Law No. 6100, the first degree appeal is regulated in detail between Articles 341 and 360 as the first part of legal remedies. In our opinion, the article of first degree appeal in the Law No. 2577 should be rearranged in detail in accordance with the authority and importance of the first degree appeal, including the procedures and principles of this.

The legislator stipulated that the subject of the case must exceed certain monetary limits in order to apply to ordinary legal remedies, but it did not specify at what date the monetary limits would be taken into account for the application to the appeal. In the decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 23.03.2022 and numbered E. 2022/242, K. 2022/304, it was stated that the date of the first degree appeal decision should be taken as a basis in calculating the monetary limits required to apply for the appeal. Thus, the monetary amounts required to apply for the appeal will be determined according to the date of the regional administrative court decision.

The last important issue is how the dispute will be concluded if there is a difference between the decisions of the Council of State and the regional administrative court regarding the tax dispute. If the Council of State decides to reverse as a result of the appeal review, it sends the file to the regional administrative court. Despite this decision, the regional administrative court may insist on its own decision. In this case, the file is sent to the Plenary Session of the Tax Law Chambers of the Council of State. The Plenary Session examines the file and makes its final decision on this tax dispute. The decision of the Plenary Session to approve or reverse will be final and the tax jurisdiction will be over.

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