

REVIEW OF THE TERM OF LITIGATION IN TURKISH TAX PROCEEDINGS IN ACCORDANCE WITH JUDICIAL DECISIONS

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ABSTRACT

In tax proceedings under the administrative jurisdiction, in order for a taxation dispute to be resolved through a lawsuit, this dispute must be brought before the court within the term of litigation. After the deadline for filing a lawsuit, the right to claim a lawsuit in terms of the relevant dispute will expire. In doctrine and practice, it is accepted that the duration of litigation is a procedural rule related to public order, which can only be regulated by law, and which is taken into account ex officio by the court. The issues that need to be discussed about the duration of filing a lawsuit in tax proceedings are the legal nature, the basic features, the beginning, the calculation, the extension of the litigation periods, the general and special litigation periods, and whether it is possible to suspend the litigation periods. As a general rule, the duration of filing a lawsuit in the tax court is thirty days (Law No. 2577, art. 7/1). However, tax cases that fall under the jurisdiction of the Council of State as a court of first instance (Law No. 213, duplication art. 49), objection to the provisional

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attachment, objection to the provisional accrual, objection to the payment order and claims for remuneration (Law No. 6183, art. 15/1, 20, 58/1, 66/2 and 67/1), cases where it is obligatory to apply to the administration before filing a tax lawsuit (Law No. 213, art. 124/1; Law No. 2557, art. 10/2, 11/2), and in case of failure to reach reconciliation (Law No. 618, annex art. 7/4), special litigation periods are stipulated for the cases to be filed. While the period of filing a lawsuit against individual transactions in tax proceedings starts with a written notification, it is also possible to start the notification by publication, learning date and electronic notification. In terms of calculating the periods in tax jurisdiction, Article 8 of Law No. 2557 and Article 18 of Law No. 213 regulations will form the basis. Problems in practice related to litigation deadlines are often the subject of judicial decisions. Based on this general framework, in this article, the term of litigation in tax proceedings will be examined according to judicial decisions.

Keywords: Turkish tax proceedings, the term of litigation, general and special litigation periods in tax proceedings, judicial decisions.

VERGİ YARGILAMASINDA DAVA AÇMA SÜRELERİNİN YARGI KARARLARINA GÖRE İNCELENMESİ

ÖZ

İdari yargı koluna bağlı olan vergi yargılamasında, vergilendirmeye ilgili bir uyuşmazlığın dava yoluyla çözümlenebilmesi için, bu uyuşmazlığın dava açma süresi içinde mahkeme önüne taşınması gerekir. Dava açma süresi geçtikten sonra, ilgili uyuşmazlık bakımından dava talep hakkı sona erecektir. Doktrinde ve uygulamada dava açma süresinin, kamu düzenine ilişkin olan, yalnızca kanunla düzenlenebilen, mahkeme tarafından re'sen göz önüne alınan bir usul kuralı olduğu kabul edilmektedir. Vergi yargılamasında dava açma süresiyle ilgili tartışılması gereken konular, dava açma sürelerinin hukuki niteliği, temel özellikleri, başlangıcı, hesaplanması, uzaması ile birlikte genel ve özel dava açma süreleri ve dava açma sürelerinin durmasının mümkün olup olmamasıdır. Vergi mahkemesinde dava açma süresi genel bir kural olarak otuz gündür (İYUK m. 7/1). Bununla birlikte ilk derece mahkemesi olarak Danıştay'ın görev alanına giren vergi davaları (VUK mük. m. 49), AATUHK'da düzenlenen ihtiyati hacze itiraz, ihtiyati tahakkuka itiraz, ödeme emrine itiraz ve istihkak iddialarıyla ilgili açılacak davalar (AATUHK m. 15/1, 20, 58/1, 66/2 ve 67/1), vergi davası açmadan önce idareye başvurma zorunluluğu olan haller (VUK m. 124/1; İYUK m. 10/2, 11/2) ve uzlaşmanın sağlanamaması (VUK ek

m. 7/4) halinde açılacak davalar bakımından ise özel dava açma süreleri öngörölmüştür. Vergi yargılamasında bireysel işlemlere karşı dava açma süresi esas itibariyle yazılı tebliğle başlamakla birlikte sürenin ilan yoluyla bildirim, öğrenme tarihi ve elektronik ortamda tebliğ edilmesi yoluyla başlaması da mümkündür. Vergi yargısında sürelerin hesaplanması bakımından İYUK m. 8 ve VUK m. 18 düzenlemeleri esas oluşturacaktır. Dava açma süreleriyle ilgili uygulamadaki sorunlar sıklıkla yargı kararlarına da konu olmaktadır. Bu genel çerçeveden hareketle, bu çalışmada vergi yargılamasındaki dava açma süreleri yargı kararlarına göre incelenecektir.

Anahtar Kelimeler: Türk vergi yargılaması, dava açma süreleri, vergi yargılamasında genel ve özel dava açma süreleri, yargı kararları.

I. INTRODUCTION

The principle of the rule of law requires that its actions and transactions comply with the law, protect and strengthen rights and freedoms, observe equality, consider itself responsible for establishing and maintaining a just legal order, ensure legal security, and be subject to independent judicial review in all its transactions and actions. In *the Constitution of the Republic of Turkey* (Law No. 2709, dated 18.10.1982)¹, while emphasizing the democratic state of law, it is aimed that all actions and transactions of the state are subject to judicial review. Judicial review is the basic condition of the rule of law. In the rule of law, the legality of the actions and transactions of the administration and ultimately the legality of the administration are provided through annulment cases. In accordance with the principle of the rule of law, the tax jurisdiction law regulated in the administrative jurisdiction law aims to resolve the dispute between the tax administration, which is the creditor public administration, and the taxpayers who are liable to pay taxes, in taxation-related transactions. In our legal system, the exercise of the right to seek rights is limited to certain periods. In other words, in all areas of law, time limits constitute the time limit of the freedom to seek rights.

We can express the concept of duration as a certain and limited time interval. The fact that resorting to judicial remedy is limited to certain periods is a requirement of the principle of continuity, efficiency

¹ (Day/month/year). All dates in the article will be displayed this way.

and legal security in the activities of the administration. Indeed, the parties should act according to certain deadlines in order to resolve their disputes regularly and rapidly. According to the Constitution, the deadlines can only be determined by law, and the administration has to specify the deadlines for filing lawsuits in its transactions. As a matter of fact, according to Article 13/1 of the Constitution, “*Fundamental rights and freedoms can only be limited by law, without affecting their essence, only depending on the reasons specified in the relevant articles of the Constitution.*” Again, according to Article 40/2 of the Constitution, “*The State has to specify which legal remedies and authorities the relevant persons will apply to and their duration in its transactions.*”

General and special litigation periods are regulated in tax proceedings. In tax jurisdiction law, the general litigation period is regulated in the Administrative Judgment Procedure Law, and the specific litigation periods are regulated in the Tax Procedure Law, the Law on the Collection of Public Claims Procedure and other special tax laws. The period of filing a lawsuit in tax proceedings refers to the time limit that must be brought before the court in order to resolve a tax dispute through a lawsuit. If the lawsuit is not filed within the term of litigation determined by the law, the right to claim a lawsuit for that dispute will disappear.

The aim of this article, which examines *the term of litigation (the litigation period, the filing period, the duration of litigation, the period of filing a lawsuit, the duration of filing lawsuit,)* in tax proceedings, is to reveal the durations of filing lawsuits in tax proceedings and to examine the problems arising from the duration of filing a lawsuit in the legislation and the practice within the framework of judicial decisions. The article mainly consists of three chapters. In the first chapter of the article, the studies in the literature on the duration of litigation will be examined, in the second chapter the methodology of the article will be revealed, and in the third chapter, which constitutes the main part of the article, the duration of litigation in tax proceedings will be discussed in detail. In the third chapter, while examining the duration of litigation, the concept of time and the classification of the periods regulated in tax law, the legal nature of litigation periods, the general characteristics of litigation periods, general and special litigation periods, the beginning of litigation periods, the calculation of litigation periods, whether it is possible to stop the litigation periods and the prolongation of the litigation periods will be revealed. Besides, the current situation and

problems in practice related to litigation periods will be discussed within the framework of judicial decisions.

In tax law, except for the litigation periods; tax jurisdiction periods, periods related to legal remedies, taxation procedures and taxpayers' duties are also stipulated in some periods. However, since this study is limited to the duration of filing a lawsuit in tax jurisdiction, periods other than the duration of filing a lawsuit are excluded from the scope of this study.

II. LITERATURE REVIEW

We can classify the literature review on the duration of litigation in tax proceedings under five headings. The durations of filing lawsuits in tax proceedings were first discussed in detail when examining the durations in tax proceedings as a monograph. In his work in which s/he examines the periods in tax law, *Çağan* examined the terms in general under the headings of classification of periods in Turkish tax law, durations in formal tax law, durations in material tax law, durations in tax criminal law, reasons that prevent the execution of periods and calculation of durations, and specifically the duration of litigation; quality, objection period and legal remedy periods². In his work, which examines the durations in tax jurisdiction, *Karakoç* has comprehensively evaluated the duration of litigation by considering the legal nature, the start of the periods, the suspension of the deadlines, the granting of additional time and the results of the filing period³.

Secondly, monographic studies on the duration of filing lawsuits in administrative jurisdiction are included. *Demirkol and Bereket Baş* examined the duration of filing a lawsuit in practice within the scope of notification date-time to file a lawsuit in administrative jurisdiction⁴. *Ergen* examined the duration of litigation in the administrative judiciary

² Nami Çağan, *Vergi Hukukunda Süreler*, Ankara Hukuk Fakültesi Publications, No. 389, Sevinç Press, Ankara, 1975, p. 66-83.

³ Yusuf Karakoç, *Vergi Yargılaması Hukukunda Süreler*, Yetkin Publications, Ankara, 2000, p. 39-142.

⁴ Selami Demirkol and Zuhale Bereket Baş, *Teoride ve Pratikte İdari Yargıda Dava Açma ve Davaların Takip Usulü*, Beta Press Publishing Distribution, 2nd Edition, İstanbul, May 2001, p. 112-131.

within the framework of Articles 7-13 and 28 of *Administrative Jurisdiction Procedures Law* (Law No. 2577, dated 06.01.1982), together with the examples of the decision⁵. *Kaplan* examined the duration of litigation in administrative jurisdiction, the concept of litigation time, its comparison with other periods, the reasons for limiting the time, the legal nature of the litigation period, its types, calculation and results in terms of theory, practice and comparative law⁶.

Thirdly, the duration of litigation in tax judgment books has been examined. *Karakoç*, in his book on tax judgment law, discussed in detail the durations of filing lawsuits in tax proceedings under the titles of legal nature, beginning, calculation, stopping, prolongation, and termination⁷. In *Yüce*'s tax judgment law book, the duration of litigation has been examined within the scope of filing a lawsuit, and the results of filing a lawsuit⁸.

Fourthly, the periods of filing lawsuits in general and the duration of filing a lawsuit in tax proceedings are included in the administrative jurisdiction books. *Gözübüyük and Tan*, within the framework of administrative law, examined the duration of litigation in detail under the headings of general principles, the beginning of the period, the calculation of the period, the suspension of the period and additional periods, and the consequences of the expiration of the lawsuit period⁹. *Gözübüyük* examined the term of litigation in terms of the duration and its qualifications, the beginning of the period, the calculation of the period, the situations that stopped the period, the additional periods, the results of the expiry of the period¹⁰. *Tan* examined the duration of the lawsuit in terms of general principles, the beginning of the period, the

⁵ Cafer Ergen, *İdari Yargıda Dava Açma Süreleri*, Seçkin Publishing, Ankara, March 2007, p. 17 et al.

⁶ Gürsel Kaplan, *İdari Yargıda Dava Açma Süreleri*, Turhan Bookstore, 3rd Edition, Ankara, February 2011, p. 13 et al.

⁷ Yusuf Karakoç, *Vergi Yargılaması Hukuku*, Yetkin Publications, Ankara, 2017, p. 209-219.

⁸ Mehmet Yüce, *Vergi Yargılama Hukuku*, Ekin Press Publishing Distribution, 6th Edition, Bursa, September 2019, p. 184-202.

⁹ Şeref Gözübüyük and Turgut Tan, *İdare Hukuku*, Cilt II *İdari Yargılama Hukuku*, Turhan Bookstore, 5th Edition, Ankara, January 2012, p. 843-932.

¹⁰ Şeref Gözübüyük, *Yönetmelik Yargı*, Turhan Bookstore, 14th Edition Ankara, 2001, p. 397-428.

calculation of the period, the suspension of the period and additional periods, and the results of the expiration of the lawsuit period¹¹. *Kaplan* examined administrative litigation deadlines under the main heading such as general information about the duration of litigation and the processing of litigation periods in detail¹². *Akyılmaz, Sezginer, and Kaya* discussed in detail the duration of litigation, the characteristics of the litigation period, the general and special litigation periods, the calculation of the durations, and the effect of force majeure on the duration of the litigation¹³. *Günday* examined in detail the duration of administrative litigation (access to court), the nature of the litigation period, the start of the litigation period, the suspension of the litigation period, and additional periods¹⁴. *Candan* handled the duration for starting an administrative lawsuit in detail regarding the types of administrative litigation periods, the beginning of the period, and the principles to be applied in the calculation of the period¹⁵. *Ulusoy* examined the administrative litigation deadlines under headings features, suspension, and interruption of the periods, duration in ongoing violations of rights, the effect of applying to the higher authority on the duration of the case, duration in full remedy cases, duration in regulatory proceedings, calculation of durations and decisions on durations¹⁶.

Fifthly, the durations of filing a lawsuit in tax proceedings are included in tax law books. *Öncel, Kumrulu, Çağan and Göker* examined the duration of filing a lawsuit in tax jurisdiction within the scope of periods in tax law, and discussed the classification of periods, classification of periods according to their legal qualities, calculation of

¹¹ Turgut Tan, *İdare Hukuku*, Turhan Bookstore, 4th Edition, Ankara, September 2015, p. 1027-1063.

¹² Gürsel Kaplan, *İdari Yargılama Hukuku*, Ekin Press and Publication Distribution, 8th Edition, Bursa, October 2022, p. 337-394.

¹³ Bahtiyar Akyılmaz, Murat Sezginer and Cemil Kaya, *Türk İdari Yargılama Hukuku*, Savaş Publishing House, 4th Edition, Ankara, September 2020, p. 300-359.

¹⁴ Metin Günday, *İdari Yargılama Hukuku*, Turhan Bookstore, 2nd Edition, Ankara, September 2022, p. 265-339.

¹⁵ Turgut Candan, *Açıklamalı İdari Yargılama Usulü Kanunu*, Adalet Publishing House, Ankara, March 2011, p. 327-405.

¹⁶ Ali D. Ulusoy, *İdari Yargılama Hukuku*, Yetkin Publications, 3rd Edition, Ankara, 2022, p. 79, 113-147.

deadlines and extension of deadlines¹⁷. *Kızılot and Kızılot* examined the litigation period in tax jurisdiction in detail with the titles of the terms related to deadlines, general and special litigation periods, the beginning of the litigation period, the effects of force majeure and holidays on the litigation period, and periods in tax jurisdiction¹⁸. *Mutluer* examined the durations of filing lawsuits in tax proceedings under the headings of starting, stopping and prolonging the periods¹⁹. In his book on general tax law, *Karakoç* evaluated the duration of filing a lawsuit in tax proceedings, the general characteristics of the duration of litigation, its legal nature, its beginning, calculation, suspension and extension, and the consequences of its termination²⁰. *Şenyüz, Yüce and Gerçek* dealt with the duration of filing a lawsuit in tax proceedings in general and examined them under the headings of classification of deadlines, calculation of deadlines and extension of deadlines²¹. *Batı*, under the title of filing a lawsuit in tax jurisdiction; examined the general characteristics of litigation periods, general and special litigation periods, suspension or prolongation of the deadlines, and cases where the duration of litigation is not specified in administrative proceedings²². *Uysal and Eroğlu* evaluated the durations in tax jurisdiction in general under the heading durations regarding nature, calculation, and extension; and as the period of filing a lawsuit and the beginning and end of the period, especially in the filing of a tax lawsuit²³.

¹⁷ Mualla Öncel, Ahmet Kumrulu, Nami Çağan and Cenker Göker, *Vergi Hukuku*, Turhan Bookstore, 31st Edition, Ankara, October 2022, p. 124-138.

¹⁸ Şükrü Kızılot and Zuhâl Kızılot, *Vergi İtilafları ve Çözüm Yolları*, Yaklaşım Publishing, 17th Edition, Ankara, 2010, p. 357-384.

¹⁹ M. Kamil Mutluer, *Vergi Hukuku Genel ve Özel Hükümler*, Turhan Bookstore, 3rd Edition, Ankara, October 2011, p. 288-290.

²⁰ Yusuf Karakoç, *Genel Vergi Hukuku*, Yetkin Publications, 2nd Edition, Ankara, 2019, p. 672-678.

²¹ Doğan Şenyüz, Mehmet Yüce and Adnan Gerçek, *Vergi Hukuku (Genel Hükümler)*, Ekin Press Publishing Distribution, 7th Edition, Bursa, January 2016, p. 205-226, 276-278.

²² Murat Batı, *Vergi Hukuku Genel Hükümler*, Seçkin Publications, 2nd Edition, Ankara, September 2022, p. 579-584.

²³ Ali Uysal and Nurettin Eroğlu, *Açıklamalı ve İçtihatlı Vergi Usul Kanunu*, Sözkese Printing, 3rd Edition, Ankara, 2005, p. 38-52, 765-768.

Finally, the theoretical discussions within the scope of the legal nature of filing a lawsuit in administrative jurisdiction should be considered important. A final discussion regarding the duration of litigation concerns the legal nature of the litigation period. There have been discussions in the literature on the legal nature of the litigation period. The period of filing a lawsuit is *the period of prescription* according to Onar²⁴, *the period of sui generis* according to Duran²⁵ and *the period of filing a lawsuit* (the term of litigation) exclusively according to Karakoç²⁶. According to Kaplan, this situation is a *problem of terminology* and no matter how it is named, the right itself does not end with the expiration of the litigation period²⁷.

III. METHODOLOGY

Tax jurisdiction mainly depends on the administrative jurisdiction. From this point of view, the duration of litigation in tax jurisdiction will be explained with a narrative method from general to specific, from administrative jurisdiction law to tax jurisdiction law. The study methodologically includes three stages. First of all, the legal regulations of the period of filing a lawsuit in tax proceedings will be revealed within the framework of the provisions of *the Constitution*, Law No. 2577, *Tax Procedure Law* (Law No. 213, dated 04.01.1961), and *Law on Collection Procedure of Public Receivables* (Law No. 6183, dated 21.07.1953). Secondly, the theoretical discussions in the doctrine about the duration of litigation in administrative jurisdiction and especially the duration of litigation in tax jurisdiction will be included. In this respect, the general principles regarding the duration of litigation, its legal nature, general and special litigation periods and litigation periods will be examined. Finally, the situation and problems of the current judicial decisions regarding the duration of litigation in tax proceedings will be discussed.

²⁴ Sıddık Sami Onar, *İdare Hukukunun Umumi Esasları*, Vol. I, II and III, İsmail Akgün Printing House, 3rd Edition, Istanbul, 1966, p. 1961.

²⁵ Lütfi Duran, “İdari Kazada Dava Açma Müddeti (İdari Müruru Müddet)”, *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası*, Vol: 11, No: 1-2, pp. 238-263, 1945, p. 261.

²⁶ Karakoç, *Vergi Yargılaması Hukukunda Süreler*, p. 48.

²⁷ Kaplan, *İdari Yargıda Dava Açma Süreleri*, p. 83.

IV. RESULTS AND DISCUSSION

In this section, the position of the term of litigation in tax proceedings in legislation and doctrine and the problems in practice will be examined. For this purpose, the concept of duration, the place of the litigation period in the classification systematic, its legal nature, general characteristics, general and special litigation periods, the beginning of the litigation period, the calculation of the periods, the effect of force majeure and the prolongation of the period will be discussed. The debates in the legislation and doctrine will be handled together with the judicial decisions.

A. The Concept of Duration and the Place of the Term of Litigation in the Duration Classification in Tax Law

The term *duration* (time period, grace period, time limit, maturity) literally means “*the part of time between the beginning and the end of an event, time interval, time part*”²⁸ or “*a certain part in the flowing time*”²⁹. In this respect, time refers to a specific and limited time period. The exercise of a right or power is defined and limited by time limits in all areas of law. As a matter of fact, in the words of the Council of State; “*It refers to a concrete part of time, which is an abstract concept. Specifically limited or predetermined time segments. Laws are valid from a certain moment or only until a certain moment.*”³⁰ In that case, in law, time periods are bounded to a result of *gaining or losing* a certain right³¹. With *Kaplan’s* definition, the term of litigation also means

²⁸ TDK, Güncel Türkçe Sözlük, <https://sozluk.gov.tr/>, Access Date: 22.06.2022.

²⁹ Ali Püsküllüoğlu, Türkçe Sözlük, Doğan Kitap Publications, İstanbul, 1999, p. 1403.

³⁰ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 19.01.1990 and numbered *E.* (Docket Number, Turkish: *Esas No.*, in short *E.*) 1989/154, *K.* (Decision Number, Turkish: *Karar No.*, in short *K.*) 1990/10 (The decisions in this article will be shown in such abbreviation. And all the decisions used in this article were accessed from Kazancı Hukuk, Kazancı İçtihat Bilgi Bankası, <https://www.kazanci.com.tr>).

³¹ Kaplan, İdari Yargılama Hukuku, p. 337.

the time limitation of bringing a right before the courts, in this way, the duration, which is an abstract concept, takes the form of filing a lawsuit when it is desired to set a limit on the claim of a right before the courts³².

In tax law, when a certain period of time expires, sometimes a right ends, sometimes a duty or obligation arises³³. Some deadlines are stipulated for the taxation procedures and the entire judicial process in tax law³⁴. These periods are regulated by laws to bind the parties in taxation. The tax administration and taxpayers must fulfill their authorizations, responsibilities, duties, and rights according to the determined periods. In this respect, the deadlines aim to provide *legal security*, *administrative order*, and *stability* in the fulfillment of tax duties, collection of tax claims, and resolution of tax disputes³⁵.

In law, terms can be *classified* in various ways in terms of their legal qualifications, branches of law to which they are affiliated, persons to which they are directed, and the legal consequences they create³⁶. In the doctrine, the periods can be classified as “*legal (final) periods*”, “*administrative periods*” and “*judicial (accidental) periods*” according to the body in which the durations are determined³⁷. *Legal (final) periods*

³² Kaplan, İdari Yargıda Dava Açma Süreleri, p. 18.

³³ Çağan, p. 5.

³⁴ Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 23.

³⁵ See, the decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 17.06.2015 and numbered E. 2015/408, K. 2015/323.

³⁶ For detailed information, see Çağan, p. 16-40; Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 23-27.,

³⁷ For detailed information, see Çağan, p. 16-22; Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 23-27; Karakoç, Genel Vergi Hukuku, p. 266-270; Öncel, Kumrulu, Çağan and Göker, p. 124-130; Şenyüz, Yüce and Gerçek, p. 206-216; S. Ateş Oktar, Vergi Hukuku, Türkmen Bookstore, 13th Edition, Istanbul, 2018, p. 105-108; Batı, s. 74-75; Sadık Kırbaş, Vergi Hukuku Temel Kavramlar, İlkeler ve Kurumlar, Siyasal Publishing House, 20th Edition, Ankara, February 2015, p. 144-145. Regarding the time periods in civil procedural law and the classification of these periods, see Baki Kuru and Burak Aydın, İstinaf sistemine Göre Yazılmış Medeni Usul Hukuku Ders Kitabı, Yetkin Publishing, Istanbul, January 2021, p. 612-614; Hakan Pekcanitez, Oğuz Atalay and Muhammet Özkes, Medeni Usul Hukuku Ders Kitabı, On İki Levha Publications, 9th Edition, Istanbul, September, 2021, p. 128-128; Ramazan Arslan, Ejder Yılmaz, Sema

are the periods determined by laws. According to Article 73/3 of the Constitution “*Taxes, duties, fees, and similar financial obligations are imposed, changed or removed by law.*” Again, according to Article 14/1 of Law No. 213, “*Terms in tax transactions are determined by tax laws.*” In this respect, due to the principle of legality of the tax, the periods are determined by law, otherwise, it is not possible to determine the periods by contracts or agreements between the parties. Legal deadlines are final, may cause deprivation from rights, and are investigated ex officio by the judicial organs. *Administrative periods* are the periods determined by the administration in which the determination of the duration by the legislator is left to the administration. In order for the administrative periods to be valid in tax law, a clear authority must be given to the administration that these periods will be regulated by the administration in tax laws. As a matter of fact, according to Article 14/2 of Law No. 213, “*In cases not expressly written in the law, the administration that will make the notification determines this period, provided that it is not less than 15 days and notifies the relevant person.*” *Judicial (accidental) periods* are the periods determined by the organs in the tax jurisdiction. Similar to the administrative periods, in order for the judicial periods to be essentially valid in tax proceedings, a clear authority must be given to the judicial organs in this regard in the tax laws. For example, according to Article 16/2 of Law No. 2577, “*...if it is understood during the trial that there are issues that require the plaintiff to answer in the second defense of the defendant, the plaintiff is given a period of time to respond.*” Again, according to Article 274/1 of *Code of Civil Procedure* (Law No. 6100, dated 12.01.2011), to which Article 31 of Law No. 2577 refers: “*The time to be given for the preparation of the expert report cannot exceed three months. Upon the request of the expert, the court that appointed him may extend the period in a manner not to exceed three months, by showing its justification.*”

Taşpınar Ayvaz and Emel Hanağası, *Medeni Usul Hukuku*, Yetkin Publications, 7th Edition, Ankara, September, 2021, p. 174-176; Ali Cem Budak and Varol Karaaslan, *Medeni Usul Hukuku*, Filiz Bookstore, 5th Edition, Istanbul, September, 2021, p. 144-146; Murat Atalı, İbrahim Ermenek ve Ersin Erdoğan, *Medeni Usul Hukuku*, Yetkin Publications, 4th Edition, Ankara, 2021, p. 288-291; L. Şanal Görgün, Levent Börü and Mehmet Kodakoğlu, *Medeni Usul Hukuku*, Yetkin Publications, 10th Edition, Ankara 2021, p. 200-202.

In this classification of periods in tax law, the period of filing a lawsuit in tax jurisdiction is within the scope of *legal periods*. Because the term of litigations are the periods determined by law and precisely. Changes to litigation deadlines can only be made by law.

B. The Problem of Determining the Legal Nature of the Term of Litigation

As mentioned in the literature review section, four different views in the doctrine regarding the legal nature of the duration of litigation will be discussed. The first of these is the view that the period of filing a lawsuit is *a period of prescription* in terms of its legal nature³⁸. According to *Onar*, if the right to sue is exercised only during that period, the condition will be fulfilled and the right will be completed, and if time has passed, the right and authority will be deemed incomplete³⁹. Because the court, like the other conditions and elements of the right, searches by itself, *ex officio*, whether the right is used within the time limit, and the defendant may claim at every stage of the case that the right did not materialize because it was not used within the time limit and that the litigation authority does not exist⁴⁰. For this reason, the case that is not filed within the period determined by the law will be dropped and there will be no opportunity to file a lawsuit on this issue anymore⁴¹.

According to the second opinion, the duration of filing a lawsuit is *sui generis* in terms of its legal nature⁴². According to *Duran*, after the deadline for filing a lawsuit has passed, many state institutions can remove or change the savings and compensate for unjustly inflicted damage⁴³. The litigation period can be processed, and it can start again, but it cannot be suspended in any way⁴⁴. While special interests are valid in the period of limitation, the duration of litigation depends on the

³⁸ Onar, p. 1961.

³⁹ Onar, p. 1961.

⁴⁰ Onar, p. 1961.

⁴¹ Onar, p. 1961.

⁴² Duran, p. 254.

⁴³ Duran, p. 259.

⁴⁴ Duran, p. 260.

general interests, and therefore the period of filing a lawsuit is different from the period of limitation of rights or the statute of limitations⁴⁵.

Although the Council of State has specified the duration of litigation as “*the period of prescription peculiar to itself*”⁴⁶ in some of its decisions, as a dominant opinion, it has evaluated the duration of filing a lawsuit as “*the period of prescription*”⁴⁷.

The third opinion in the doctrine regarding the legal nature of the litigation period is the view that the litigation period itself is in the nature of the *litigation period (the term of litigation)*⁴⁸. According to *Karakoç*, the period of filing a lawsuit is not a period of deprivation in the sense of private law, because it is possible to stop the litigation periods or to give additional time⁴⁹. The nomenclature of sui generis is also not appropriate

⁴⁵ Duran, p. 260.

⁴⁶ See, the decision of the 3rd Chamber of the Council of State, dated 23.02.2009 and numbered E. 2007/3182, K. 2009/461; the decision of the 3rd Chamber of the Council of State, dated 30.9.2009 and numbered E. 2009/4122, K. 2009/2814.

⁴⁷ “*The term of litigation in the administrative judiciary aims to stabilize administrative proceedings and decisions as soon as possible and to save them from being a matter of discord for a long time. In this way, the legislator wanted to ensure that the public service can be carried out quickly and effectively, by foreseeing that the administrative proceedings can be the subject of the lawsuit by the relevant persons and in a certain period of time in order to prevent the threat of litigation continuously. For this reason, the period of filing a lawsuit, which is considered to be related to public order in the administrative judiciary, is also in the nature of “period of prescription” which researched ex officio according to the case-law of the Council of State.*” (The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 17.06.2015 and numbered E. 2015/408, K. 2015/323). See, The decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 07.04.2011 and numbered E. 2007/1221, K. 2011/215; the decision of the 6th Chamber of the Council of State, dated 20.10.1987 and numbered E. 1987/33, K. 1987/942; the decision of the 7th Chamber of the Council of State, dated 14.09.1998 and numbered E. 1996/1383, K. 1998/2797; the decision of the 13th Chamber of the Council of State, dated 13.11.2019 and numbered E. 2019/3939, K. 2019/3587.

⁴⁸ Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 48.

⁴⁹ Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 48.

to explain the meaning since it will not be possible to explain an institution with concepts and idioms and it is not sufficient to tell about the related demand⁵⁰. The nature of filing a lawsuit requires to have the features that it will not cause the loss of any subjective right with the expiration of the litigation period, that the process can be ensured to be in compliance with the law by applying to the administration after the time has elapsed, and that the deadlines will be taken into account ex officio⁵¹.

In the doctrine, the fourth opinion regarding the legal nature of the litigation period is the view that the views on legal nature of the litigation period stem from the *terminology problem*⁵². According to *Kaplan*, both the statute of limitations and sui generis opinions converge at the point that the expiration of the litigation period does not terminate the right itself⁵³. Both opinions agree that the duration is due to public order and is one of the prerequisites for the case to be heard and that it should be taken into account ex officio by the judge⁵⁴. Therefore, without prejudice to the need to establish a conceptual unity, in all opinions, the right itself does not end with the expiration of the litigation period, and despite the difference in nomenclature and expression, there is a consensus in doctrine and practice⁵⁵.

We agree with *Kaplan's* view. Because, although there are discussions about the naming of the legal nature of the duration of litigation in the doctrine, there is a consensus on the basic features of the litigation period. As a matter of fact, all of the nomenclatures of prescription, sui generis, or time to file a lawsuit accept that the right itself will not waive with the expiration of the litigation period and that the periods will be determined ex officio by the judge or the expiration of the period can be claimed by the parties. With the expiration of the period to file a lawsuit, not the right itself, but the right to claim a lawsuit ends. In other words, the right itself does not end when the person spends the time to file a lawsuit. The judge will observe ex officio whether the deadlines for filing a lawsuit are complied with, and the parties may

⁵⁰ Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 48.

⁵¹ Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 48-49.

⁵² Kaplan, İdari Yargıda Dava Açma Süreleri, p. 72.

⁵³ Kaplan, İdari Yargıda Dava Açma Süreleri, p. 74.

⁵⁴ Kaplan, İdari Yargıda Dava Açma Süreleri, p. 74.

⁵⁵ Kaplan, İdari Yargıda Dava Açma Süreleri, p. 83.

claim that the period to file a lawsuit has passed during the lawsuit. Therefore, without prejudice to the necessity of ensuring the unity of concepts, it would be appropriate to reveal the basic features of the duration of litigation rather than giving a nomenclature regarding the legal nature of the period of filing a lawsuit in administrative jurisdiction.

C. General Characteristics of the Term of Litigation in Tax Proceedings

The basic features of filing a lawsuit are regulated in the Constitution. According to Article 11 of the Constitution, the provisions of the Constitution bind the legislative, executive and judicial organs, administrative authorities, other institutions and individuals, and laws cannot be unconstitutional (the Constitution art. 11/1, 2). According to Article 36 of the Constitution, everyone has the right to a fair trial by claiming and defending as plaintiff or defendant before the judicial authorities by making use of legitimate means and ways (the Constitution art. 36/1). According to Article 40 of the Constitution, the state must specify which legal remedies the relevant persons will apply and the deadlines (the Constitution art. 40/2). According to a decision of the Council of State, *“In this state, due to the fact that the period of application for legal action in accordance with the regulation in Article 40 of the Constitution was not indicated in the content of the action, which should be the subject of a lawsuit within seven days from the date of notification, pursuant to the regulation in its special law, it has been understood that the case under investigation has been opened within sixty days, and it should be accepted that the case is within the time limits.”*⁵⁶

According to article 125 of the Constitution, judicial remedy is open against all kinds of actions and cases of the administration, and the time limit for lawsuits to be filed against administrative actions starts from the date of written notification (the Constitution art. 125/1, 3). In this context, the periods can be regulated in a way that binds everyone and can only be regulated by law, the administration has to specify the deadlines in all its transactions. In that case, the right to file a lawsuit regarding tax disputes should be considered within the framework of the

⁵⁶ The decision of the 8th Chamber of the Council of State, dated 17.03.2022 and numbered E. 2018/3648, K. 2022/1807.

principles of freedom of claim and supervision of the actions and transactions of the administration.

Also, according to the Council of State, “*It is a constitutional obligation to indicate the place of jurisdiction or administrative authorities to be applied against in all transactions established through the institutions of the state, as well as to specify the application period in question, and in the face of the binding nature of the Constitution, the legislative, executive and judicial organs, administrative authorities and other public institutions and organizations must comply with this obligation. and it is required to establish conforming actions and decisions; thereby, the administrative authority to be applied and the written notification of which the duration is not indicated will not start the objection period.*”⁵⁷ By that of, it is a *constitutional obligation* to indicate the place of jurisdiction or administrative authorities to be applied against in all kinds of transactions established through the institutions of the state, and to specify this application period.

According to *Gözübüyük and Tan*, there are two reasons why the period of filing a lawsuit in the administrative judiciary is *tied to a certain period*: The first of these is to give the relevant parties the opportunity to consider and examine whether the administrative decision given about them is in compliance with the law and whether it is necessary to file a case and to ensure stability in the actions of the other administration⁵⁸. According to *Kaplan*, limiting the right to sue to a certain period of time is inevitable, but must be fair and reasonable⁵⁹. According to *Akyılmaz, Sezginer and Kaya*, the term of litigation in the administrative judiciary has been introduced to ensure the principles of legal security and administrative stability⁶⁰.

According to *Karakoç*, the purpose of tax procedure law is to ensure the compliance of the actions and transactions of the tax office with the law and to protect fundamental rights and freedoms in this way⁶¹. In order to use the right to file a lawsuit in tax proceedings, it is

⁵⁷ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 12.10.2011 and numbered E. 2011/40, K. 2011/594.

⁵⁸ Gözübüyük and Tan, p. 843.

⁵⁹ Kaplan, İdari Yargıda Dava Açma Süreleri, p. 38.

⁶⁰ Akyılmaz, Sezginer and Kaya, p. 301.

⁶¹ Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 42.

necessary to comply with certain periods specified in the law⁶². As a matter of fact, according to the Council of State, “*Although judicial remedy is open against all kinds of actions and cases of the administration, an application period determined by law has been set in the administrative courts in order to ensure stability in administrative proceedings and to ensure the regular and efficient functioning of the public service. In this sense, the period of filing an administrative lawsuit is an institution that protects the administration from the constant threat of judicial remedies and ensures that the legal consequences of administrative actions are clarified, and protects the public order.*”⁶³ In other words, “*...the duration of litigation, which is considered to be “defeating (depriving from rights)” in the administrative court, is an institutionalized procedural rule for the purpose of ensuring the stability of administrative actions and transactions and for the public interest, and it is considered among the elements that can be taken into account and examined ex officio by the courts within the concept of “public order, the extension of the litigation period or its re-start is limited by the conditions listed in the law...*”⁶⁴ Starting from the general acceptance in practice and doctrine, we can determine the main features of the litigation period in administrative jurisdiction and therefore in tax jurisdiction as follows:

The period of filing a lawsuit is related to public order⁶⁵. The period of filing a lawsuit can only be regulated by law⁶⁶. As a matter of

⁶² According to Öncel, Kumrulu, Çağan and Göker, the most important issue in terms of tax cases is to comply with the time period stipulated in the law (Öncel, Kumrulu, Çağan and Göker, p. 215).

⁶³ The decision of the 8th Chamber of the Council of State, dated 25.12.1997 and numbered E. 1997/1117, K. 1997/4215.

⁶⁴ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 14.11.1986 and numbered E. 1986/18, K. 1986/20.

⁶⁵ See, the decision of the 5th Chamber of the Council of State, dated 18.9.1991 and numbered E. 1990/2812, K. 1991/1539; the decision of the 5th Chamber of the Council of State, dated 26.06.1995 and numbered E. 1992/1623, K. 1995/2335; the decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 3.03.1998 and numbered E. 1996/244, K. 1998/45; the decision of the 8th Chamber of the Council of State, dated 30.03.2000 and numbered E. 1999/3912, K. 2000/2438.

⁶⁶ The terms regarding the period do not apply to *the void transactions* (Ender Ethem Atay, İdari Yargılama Hukuku, Seçkin Publishing, Ankara, 2021, p.

fact, according to Article 13/1 of the Constitution, “*Fundamental rights and freedoms can only be limited by law, without infringing on their essence, depending on the reasons specified in the relevant articles of the Constitution.*” The duration of filing a lawsuit within the scope of fundamental rights and freedoms can only be prescribed by law. Since it is a limitation on the freedom to seek rights, the duration of litigation and the related regulations will be the subject of the law⁶⁷. The period for filing a lawsuit cannot be regulated except by law, for example, can not be regulated by *interpretation*⁶⁸ or by *the Regulation*⁶⁹. Again, the term of

409; Kaplan, İdari Yargıda Dava Açma Süreleri, p. 121; Kaplan, İdari Yargılama Hukuku, p. 345; Gözübüyük and Tan, p. 846; Zehra Odyakmaz, Ümit Kaymak and İsmail Ercan, İdari Yargı, On İki Levha Publishing, 9th Edition, İstanbul, August 2013, p. 221; Gözübüyük, p. 400; Tan, p. 1028-1029).

⁶⁷ Günday, p. 266; Kaplan, İdari Yargıda Dava Açma Süreleri, p. 87. The use of rights and freedoms cannot disrupt public order (İbrahim Ö. Kaboğlu, Anayasa Hukuku Dersleri (Genel Esaslar), Legal Publishing, 8th Edition, İstanbul, October 2012, p. 260). The rule of law describes the emergence of the state’s actions and actions in accordance with the rules of law and the sanctioning of its violation (Ömer Anayurt, Anayasa Hukuku Genel Kısım, Seçkin Publications, Ankara, September 2018, p. 448). One of the main features of the rule of law is that actions and transactions are subject to judicial review (Erdoğan Teziç, Anayasa Hukuku, Beta Publishing, 21st Edition, İstanbul, September 2017, p. 162). The special requirements of the rule of law are the conditions of the administration’s adherence to the law (Kemal Gözler, Türk Anayasa Hukuku Dersleri, Ekin Publishing and Distribution, 25th Edition, Bursa, June 2020, p. 84). The mechanism that will ensure adherence to the rules of law is that the actions and transactions of the state are under judicial control (Ergun Özbudun, Türk Anayasa Hukuku, Yetkin Publications, 18th Edition, Ankara, 2018, p. 124).

⁶⁸ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 23.09.2005 and numbered E. 2005/122, K. 2005/199.

⁶⁹ The decision of the 10th Chamber of the Council of State, dated 30.12.2016 and numbered E. 2016/5455 K. 2016/3937; the decision of the 10th Chamber of the Council of State, dated 15.12.2014 and numbered E. 2010/5658, K. 2014/7723; the decision of the 10th Chamber of the Council of State, dated 10.04.2007 and numbered E. 2005/9100, K. 2007/1765; the decision of the 2nd Chamber of the Council of State, dated 17.12.2004 and numbered E. 2004/2513, K. 2004/1601.

litigation cannot be changed by contract, unilateral action or court decision⁷⁰.

As discussed above, the term of litigation is considered to be a *period of prescription*⁷¹. According to Çağan, it is necessary to evaluate nature of the period of prescription of the term of litigation in tax jurisdiction law and administrative jurisdiction within the framework of public law principles, on the contrary, it is not correct to draw some conclusions from their similarities by comparing these periods with the period of prescription in private law⁷². Because, unlike private law, it has been accepted in tax jurisdiction law that the durations may stop in some cases⁷³. Again, the provisions of the Law No. 213 and *Council of State Act* (Law No. 2575, dated 06/01/1982) and the case law of the Council of State complete the gaps in the regulation in accordance with the principles of public law⁷⁴. In this respect, there will be no interruption for the periods, if it is foreseen in the law, there may be a state of stopping⁷⁵. If the period for disqualification of rights is found to have passed, the right of action will be terminated⁷⁶. It should also be noted that, after the

⁷⁰ Demirkol and Bereket Baş, p. 111.

⁷¹ See, Onar, p. 1961; Akyılmaz, Sezginer and Kaya, p. 301; Ergen, p. 19; Zehreddin Aslan (Ed.), *Açıklamalı ve İçtihatlı İdari Yargılama Usulü Kanunu*, Seçkin Publishing, 2nd Edition, Ankara, November 2020, p. 129; Ulusoy, p. 79; Nurettin Bilici, *Vergi Hukuku*, Savaş Publishing House, 50th Edition, Ankara, September 2020, p. 204; Erdoğan Öner, *Vergi Hukuku*, Seçkin Publishing, 11th Edition, Ankara, September 2019, p. 257; Nihal Saban, *Vergi Hukuku*, Beta Publishing and Distribution, 9th Edition, Istanbul, November 2019, p. 515. For the sui generis view, see Duran, p. 249; Gunday, p. 273. For the opinion on the term of litigation, see Karakoç, *Vergi Yargılaması Hukukunda Süreler*, p. 48; Karakoç, *Vergi Yargılaması Hukuku*, p. 211; Karakoç, *Genel Vergi Hukuku*, p. 673.

⁷² Çağan, p. 68.

⁷³ Çağan, p. 68.

⁷⁴ Çağan, p. 68-69.

⁷⁵ Aslan (Ed.), p. 129.

⁷⁶ For exemplary judicial decisions, see the decision of the 7th Chamber of the Council of State, dated 14.09.1998 and numbered E. 1996/1383, K. 1998/2797; the decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 13.03.1998 and numbered E. 1996/244, K. 1998/45; the decision of the 4th Chamber of the Council of State, dated 04.03.2002 and numbered E. 2001/1561, K. 2002/801; the decision of the

deadline for filing a lawsuit, administrative decisions do not constitute a final judgment like a judicial decision, they cannot only be the subject of a lawsuit⁷⁷. To the extent required by the public service, the administration may withdraw, abolish or change the decisions it has given, provided that it complies with the vested rights⁷⁸. In other words, the expiry of the period of filing a lawsuit will eliminate the possibility of filing a lawsuit, prevent the examination of the case, and the judicial remedy will be closed⁷⁹. In this respect, if the deadlines for filing a lawsuit in tax jurisdiction law have passed, it is no longer possible to apply to the judicial bodies against tax office transactions⁸⁰.

As noted, term of litigation is related to public order⁸¹, so it is taken into account by the court *ex officio*⁸². As a matter of fact, “*time lapse*” according to Article 14 of Law No. 2577 is examined by the judge at the first examination stage (Law No. 2577, art. 14/3-e) on the case petitions and at every stage of the case (Law No. 2577, art. 14/6) if it is detected after the first examination. The period of filing a lawsuit is examined strictly and uncompromisingly by the judicial authorities, and if the period of filing a lawsuit has passed, the case is rejected at the

10th Chamber of the Council of State dated 14.11.2002 and numbered E. 2000/260, K. 2002/4360; the decision of the 11th Chamber of the Council of State, dated 16.2.2007 and numbered E. 2006/6610, K. 2007/1246.

⁷⁷ Gözübüyük and Tan, p. 931; Kaplan, İdari Yargıda Dava Açma Süreleri, p. 157.

⁷⁸ Gözübüyük and Tan, p. 931.

⁷⁹ Gözübüyük and Tan, p. 843; Candan, p. 328; Kızılot and Kızılot, p. 380; Ergen, p. 19; Demirkol and Bereket Baş, p. 111.

⁸⁰ Çağan, p. 68; Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 41.

⁸¹ Gözübüyük and Tan, p. 844-845, 931; Gözübüyük, p. 398; Tan, p. 1028; Akyılmaz, Sezginer and Kaya, p. 300; Atay, p. 408; Candan, p. 328; Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 141; Karakoç, Genel Vergi Hukuku, p. 677; Karakoç, Vergi Yargılaması Hukuku, p. 218; Ergen, p. 18; Mutluer, p. 288; Ulusoy, p. 113; Öncel, Kumrulu, Çağan and Göker, p. 127; Mehmet Arslan, Vergi Hukuku, Dora Printing-Publishing Distribution, 9th Edition, Bursa, January 2016, p. 373; Kızılot and Kızılot, p. 380.

⁸² Gözübüyük and Tan, p. 844; Çağan, p. 69; Candan, p. 328.

*initial (preliminary) examination stage*⁸³. Again, if it is determined that the period of filing a lawsuit has passed at every stage of the proceedings, the case is rejected in terms of *time-out*⁸⁴. Even at the stage of *appeal*, this issue can be examined by *the appellate authority*⁸⁵. The deadlines for filing lawsuits in administrative jurisdiction, independent of substantive law, relate to *procedural law*⁸⁶. According to *Ergen*, after the deadline for filing a lawsuit, the duration of litigation is a very important procedural issue, since it will no longer be possible to obtain that right through the judiciary, even if the case is right on the merits of the case⁸⁷.

With the expiration of the filing period, the right to sue ends and the plaintiff can no longer *change, increase or expand its claims and requests*⁸⁸. As a matter of fact, according to Article 16/4 of Law No. 2577, “*Parties cannot claim rights based on their defenses or second petitions after the expiration of the time limit.*” As a rule, taxation transactions cannot be made the subject of a lawsuit after the deadline for filing a lawsuit, but the administration can always withdraw or change these transactions, ex officio or upon the application of the relevant person, in accordance with the vested rights, to the extent of public services⁸⁹.

⁸³ Ulusoy, p. 79; Atay, p. 409; Gözübüyük and Tan, p. 844; Gözübüyük, p. 399; Tan, p. 1028; Çağan, p. 69; Kızılot and Kızılot, p. 358, 362; Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 141-142.

⁸⁴ Odyakmaz, Kaymak and Ercan, p. 221; Gözübüyük and Tan, p. 844; Akyılmaz, Sezginer and Kaya, p. 301; Çağan, p. 69; Candan, p. 328; Öncel, Kumrulu, Çağan and Göker, p. 127; Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 142; Kızılot and Kızılot, p. 357; Demirkol and Bereket Baş, p. 111.

⁸⁵ Ergen, p. 18.

⁸⁶ Kaplan, İdari Yargılama Hukuku, p. 339; Kaplan, İdari Yargıda Dava Açma Süreleri, p. 18; Akyılmaz, Sezginer and Kaya, p. 302; Atay, p. 408-409; Ergen, p. 18; Günday, p. 273.

⁸⁷ Ergen, p. 19.

⁸⁸ Kaplan, İdari Yargıda Dava Açma Süreleri, p. 157; Kaplan, İdari Yargılama Hukuku, p. 394; Gözübüyük and Tan, p. 931; Karakoç, Vergi Yargılaması Hukuku, p. 218; Karakoç, Genel Vergi Hukuku, p. 678; Arslan, p. 373; Osman Pehlivan, Vergi Hukuku Genel İlkeler ve Türk Vergi Sistemi, Celepler Printing, Trabzon, February 2016, p. 132; Saban, p. 515.

⁸⁹ Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 142; Karakoç, Vergi Yargılaması Hukuku, p. 218

According to *Akyılmaz, Sezginer and Kaya*, the term of litigation should not be interpreted narrowly so as to abolish the “*right of access to a court*”⁹⁰. The right of access to the court is a right enumerated within the scope of Article 6 of the European Convention on Human Rights titled “*right to a fair trial*” and embedded in the case law of the Council of State⁹¹. According to this, “*Everyone has the right to have his case heard in public and within a reasonable time by an independent and impartial court established by law, which will decide on the merits of any disputes regarding his civil rights and obligations or the criminal charges against him.*” (Article 6/1 of the ECHR). According to the Council of State, “*...the statute of limitations preventing the right to file a lawsuit should be clear and specific that every citizen can easily understand. Otherwise, people’s right to a fair trial will be taken away. In addition, the rules of law on fundamental rights and freedoms should be interpreted in a way that expands the use of the right, not narrowing it. As a matter of fact, the ECHR has stated that if the procedural conditions of filing a lawsuit, such as the time limit, may cause more than one interpretation, one of those interpretations within the scope of the right of access to court should not be used in a strict manner to prevent people who want to file a lawsuit, or the conditions in question should not be subject to a strict application. (Beles v. Czech Republic App. No: 42273/99, 12.11.2002, § 51).*”⁹² Therefore, it should be accepted that the

⁹⁰ Akyılmaz, Sezginer and Kaya, p. 301.

⁹¹ The prerequisite for judicial review in the rule of law is the recognition of the right to access to the judiciary and a fair trial (Abdurrahman Eren, *Anayasa Hukuku Dersleri*, Seçkin Publishing, 3rd Edition, Ankara, September 2021, p. 409).

⁹² The decision of the 5th Chamber of the Council of State, dated 04.03.2015 and numbered E. 2013/9315, K. 2015/1859. For similar exemplary judicial decisions, see the decision of the 6th Chamber of the Council of State, dated 27.9.2012 and numbered E. 2012/4525, K. 2012/4622; the decision of the 6th Chamber of the Council of State, dated 27.9.2012 and numbered E. 2012/4525, K. 2012/4622; the decision of the 3rd Chamber of the Council of State, dated 21.1.2015 and numbered E. 2013/5292, K. 2015/42; the decision of the 17th Chamber of the Council of State, dated 24.03.2015 and numbered E. 2015/9249, K. 2015/841.

duration of litigation should not be subject to a *strict application* in view of the right of access to court⁹³.

D. Review of the Decision of the Constitutional Court on Article 102 of the Tax Procedure Law, dated 22.9.2021 and numbered E. 2021/37, K. 2021/63 213 (OJ No: 31676, Date: 01 December 2021)

The decision of the Constitutional Court dated 22.9.2021 and numbered E. 2021/37, K. 2021/63 is about the annulment of Law No. 213 art. 102/5-3, 4, 5 on the grounds that it is in violation of the Constitution 2, 13 and 35.

According to the legal assessment made by the Constitutional Court; *“With the notification of the administrative authorities to the relevant parties, the period of application to the administration against the transaction subject to the notification and the period of filing a lawsuit, which is of a disqualifying nature, starts to run, and after these periods have passed, the right to file a lawsuit before the judicial authorities is lost. In this case, if the taxpayer cannot be notified twice to the address of the settlement in the address registration system, a note containing the annotation that it can be received from the administration where the notification document is sent is affixed to the door, this situation is annotated and signed by the post office officer upon receipt of the notification, and the notification document is returned to the administration sending the notification, and if the notification document is received by the addressee in fifteen days as of the day the note is put on the door; it is deemed to have been notified on the date of receipt and if the note is not received within this term it is deemed that the notification has been served on the fifteenth day, this situation is subject to objections and thereby having started the duration for filing a lawsuit, it is clear that it sets obstacles before access to the court. ...Documentation and information constitute the two elements of the notification process. In this context, in addition to documenting the notification process, necessary*

⁹³ However, the Law No. 213 has foreseen the opportunity for taxpayers to request *error correction* after the deadline for filing a lawsuit, and those whose requests for corrections are rejected can apply to the Ministry of Finance through a complaint (Law No. 213, art. 124).

measures should be taken in order to notify the addressee of the transactions subject to the notification, in other words, to fulfill the informative element of the notification and thus to enable individuals to exercise their freedom of claim. ...In case of existence of one of the force majeure situations, it can also be applied in terms of legal periods regarding the notifications to be made to the settlement address in the address registration system. ...Although a limitation has been imposed on the right of access to the court, it is understood that the necessary safeguards are envisaged in the Law so that this does not impose an unreasonable burden on individuals, and within this framework, a reasonable balance that must be struck between the public interest related to the aim sought to be achieved by the rules and the personal benefit of the right to access the court is observed. In this respect, it has been concluded that the rules do not cause a disproportionate limitation and therefore do not impose a disproportionate limitation on the right of access to the court.”⁹⁴

Article 2 of the Constitution is about the rule of law, Article 13 the Constitution is about the reason and proportionality of the restrictions on fundamental rights and freedoms, Article 36 the Constitution is about the right to a fair trial and Article 73 the Constitution is about the tax duty. All transactions related to taxation must comply with these basic principles stipulated in the constitution. The notification regarding taxation functions as documentation and information. In the notification to be made for the second time according to Law No. 213 art. 102/5, if the notification is received by the addressee within fifteen days from the date of affixing the notification document, it is deemed to have been served on the day it was received; but if the notification is not received within this period, the notification shall be deemed to have been served on the fifteenth day. According to the decision, although there was a restriction on the right of access to a court in this case, it did not impose an unreasonable burden on them and it was therefore constitutional. In this case, a limitation on taxation must strike a reasonable balance between the public interest and the right of access to court. Access to the court shall not be deemed to be denied unless the rules result in a disproportionate limitation.

⁹⁴ The decision of the Constitutional Court, dated 22.09.2021 and numbered E. 2021/37, K. 2021/63.

E. Review of the Decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 27.1.2021 and numbered E. 2020/11, K. 2021/1

The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 27.1.2021 and numbered E. 2020/11, K. 2021/1 has been deemed worthy of examination in this section in terms of the obligation to indicate which law remedies and authorities the individuals will application and their timelines during the process of the state and the opening the case on time.

According to the legal assessment made by the Board; *“In the second paragraph of article 40 in the Constitution that sets forth that it is obligatory to specify for the individuals which legal remedies and authorities to apply and their deadlines in state proceedings; and it does not require the existence of a separate legal regulation and is directly applicable, and therefore legislative, executive and judicial organs, administrative authorities and other public institutions should compulsorily specify the administrative or judicial authorities and legal remedies to be applied against these proceedings and their duration. The existence of a contrary situation will clearly constitute a violation of Article 40 of the Constitution, which regulates the protection of fundamental rights and freedoms. For the explained reason, which legal remedies established by the administrative authorities and which authorities will be applied; and in the proceedings for which the application deadlines are not specified, the period for filing a lawsuit with the notification will not begin, and since it cannot be said that the lawsuit is not filed within the time limit in the lawsuits to be filed against the proceedings established in this way, it cannot be said that the violation is not filed within the time limit if the legal remedies and authorities to be applied in the disputed proceedings and the application periods are not specified and the merits of the matter must be examined.”*⁹⁵

According to Article 40 of the Constitution, it is obligatory to specify which legal remedies and authorities individuals will apply to, and their deadlines in state proceedings. For this reason, administrative or

⁹⁵ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 27.01.2021 and numbered E. 2020/11, K. 2021/1.

judicial authorities and legal remedies to be applied against administrative actions and their duration should be specified. Therefore, the failure to indicate the duration of filing a lawsuit in the communiqués sent by the administrative authorities regarding taxation would clearly be contrary to Article 40 of the Constitution, which regulates the protection of fundamental rights and freedoms.

F. General and Special Litigation Periods in Tax Proceedings

The duration of litigation in tax proceedings are regulated as *general litigation periods* in Law No. 2577 and as *special litigation periods* in tax laws.

The general litigation periods in administrative jurisdiction are regulated in Article 7 of Law No. 2577 and are regulated as the periods stipulated for the cases that do not show a separate time period in their special laws. In this respect, *the general duration of filing a lawsuit* is 60 days in the Council of State and administrative courts, and 30 days in tax courts⁹⁶ (Law No. 2577, art. 7/1). The legislator did not make a time allocation for the administrative litigation chambers and tax litigation chambers (3, 4, 7 and 9) of the Council of State and determined the general duration of filing a lawsuit for all the litigation chambers of the Council of State as 60 days. In other words, the general period of filing a lawsuit in *tax proceedings* is 30 days⁹⁷ in the tax court and 60 days in the Council of State. In this respect, taxes whose accrual is subject to collection, taxes levied by the administration or ex officio, taxes subject to registration (Law No. 2577, art. 7/2-b), transactions made on declarations submitted with reservation (Law No. 2577, art. 27/4),

⁹⁶ It should be reminded that, with the filing of a lawsuit in the tax court regarding tax disputes, the collection procedures regarding the levied taxes, duties and charges and similar financial liabilities and their increments and fines, which are the subject of the lawsuit, will suspend. (Abdurrahman Akdoğan, Vergi Hukuku ve Türk Vergi Sistemi, Gazi Publishing House, 14th Edition, Ankara, 2019, p. 197).

⁹⁷ “Taxpayers and those who have been fined themselves can file a lawsuit in the tax court against the taxes levied and the fines imposed. The tax office can file a lawsuit in the tax court against the estimates and defines by the amendment and valuation commissions.” (Law No. 213, art. 377/1, 2). Also see Law No. 213, art. 378/1, 2.

regarding those mentioned herein this sentence the duration of filing a lawsuit in the tax courts against ex officio assessments made through correction (Law No. 213, art. 121) or tax penalties (Law No. 2577, art. 7/2-b) is 30 days; the duration of litigation in cases to be brought before the Council of State⁹⁸ as a court of the first instance against general regulations regarding taxation is 60 days. According to the Council of State, “In lawsuits filed against the transactions of the Ministry of Finance; the sixty-day period in Article 7 of the Administrative Procedure Law shall apply.”⁹⁹

The special litigation periods (periods for filing a special lawsuit, specific deadlines for filing a lawsuit) in the administrative jurisdiction are the periods that will be valid in cases where separate periods are indicated in the special laws. According to *Kaplan*, in order for some disputes to be resolved as soon as possible, the legislator has envisaged special litigation periods that are shorter than the general litigation times¹⁰⁰. The term “*special litigation period*” mentioned in the article of the law refers to the litigation period indicated in the law in which the dispute arose¹⁰¹. Again, the phrase “*in cases where a separate period is not specified in special laws*” in the law regulation shows that there may be special provisions in terms of the duration of litigation in some laws¹⁰². The specific deadlines for filing a lawsuit in tax proceedings are as follows:

⁹⁸ “*Since the regulatory proceedings contain general and abstract rules, there is no hesitation that the annulment provisions given as a result of the lawsuits filed against these actions will have consequences not only for the party of that action, but also for the third parties who have not filed a lawsuit. Therefore, upon the cancellation of the regulatory act, the third parties who do not file a lawsuit against this regulation will be able to apply to the defendant administration in accordance with Article 10 of the Law No. 2577.*” (The decision of the 10th Chamber of the Council of State, dated 23.09.2008 and numbered E. 2006/6650, K. 2008/6283).

⁹⁹ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 11.12.1992 and numbered E. 1992/248, K. 1992/466.

¹⁰⁰ Kaplan, *İdari Yargılama Hukuku*, p. 339.

¹⁰¹ Kızılot and Kızılot, p. 360.

¹⁰² Gözübüyük and Tan, p. 849-850

In terms of tax cases that fall under the jurisdiction of the Council of State as a court of first instance, the duration of filing a special lawsuit is permissible under the duplication Article 49 of Law No. 213. According to this, “*Ministry of Finance, Public Works and Settlement shall jointly determine and announce in the Official Gazette the normal construction cost values per square meter of building, four months before the year in which it will be applied, in accordance with the provisions of the 29th article of the Real Estate Tax Law No. 1319 and the provisions of the regulation prepared in accordance with the 31st article of the same Law. The Union of Chambers of Commerce, Industry, Maritime and Commodity Exchanges Chambers of Turkey may file a lawsuit against these costs at the Council of State within fifteen days following its announcement in the Official Gazette.*” (Law No. 213, dup. art. 49/a).

On the other hand, *the special litigation periods* in tax proceedings are included in Law No. 213 and Law No. 6183¹⁰³. According to this, the special litigation periods applied in cases falling under the jurisdiction of tax courts can be listed as follows:

According to Article 15 of Law No. 6183 titled “*Objection to Precautionary Seizure*”, “*Those who are subject to precautionary lien can object to the reason for precautionary lien before the tax objection commission, which deals with the objection works of the creditor collection office, within 15 days following the application of the lien and the notification of the lien in case of lien in absentia.*” (Law No. 6183, art. 15/1).

According to Article 20 of Law No. 6183 titled “*Objection to precautionary accrual*”, “*Those who are subject to precautionary lien upon precautionary accrual may object to the reasons and amount of precautionary accrual in accordance with Article 15.*” (Law No. 6183, art. 20).

According to Article 58 of Law No. 6183 titled “*Objection to the payment order*”, “*The person to whom a payment order has been notified, claiming that s/he does not have such debt or has partially paid or expired, within 15 days from the date of notification, can appeal before the commission which deals with the objection works of the creditor collection office.*” (Law No. 6183, art. 58/1). According to the Council of

¹⁰³ Kızılot and Kızılot, p. 360; Ergen, p. 57.

State, in order for the notification regarding payment orders to be considered valid, the address to which the notification was made must be the address that was last notified to the administration or duly determined by the administration and is suitable for notification¹⁰⁴. Again, according to the Council of State, “*It is determined that the judicial authority or administrative authority to be applied against this transaction and the application period are not indicated in the payment order. Written notification regarding the application authority and the payment order for which the duration is not indicated will not initiate the period; consequently, it cannot be said that the case has not been filed within the due term.*”¹⁰⁵ Hereof, the written notification regarding the application authority and the payment order for which the duration is not indicated will not initiate the filing period, and in this case, it cannot be said that the case was not filed within the time limit.

According to another decision of the Council of State, “*Application to the tax administration upon notification of the payment order will not affect ... valid for filing a lawsuit against the payment order... since it is written in the payment order that a lawsuit can be filed in the tax court; the lawsuit filed by requesting the cancellation of the payment order after the deadline for filing a lawsuit shall not be examined as a lawsuit filed against the implicit rejection of the application made to the tax administration.*”¹⁰⁶ Accordingly, applying to the tax administration on the notification of the payment order will not affect the litigation against the payment order. Again, according to the

¹⁰⁴ “*In order for the notification regarding payment orders to be accepted as valid, the address to which the notification was made must be the address that was last notified to the administration or that has been duly determined by the administration and it is required to be suitable for serving a notification. Despite the absence of any evidence, there is no lawfulness in the insistence on the dismissal of the case due to time lapse, which was given with the approach that the plaintiff was divorced and residing at the residence address of her/his ex-spouse.*” (The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 06.11.1998 and numbered E. 1997/209, K. 1998/319).

¹⁰⁵ 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.

¹⁰⁶ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 20.06.2008 and numbered E. 2008/124, K. 2008/372.

Council of State, *“In the case that can be brought against the regulatory action in the Council of State within sixty days, the payment order with a duration of seven days or the assessment process with a duration of thirty days to file a lawsuit can also be the subject of a lawsuit in the same petition, and that such a situation cannot be permitted because of its consequences leading to infringement of the principle of “legal judge”, which makes the duty rule related to public order obligatory.”*¹⁰⁷

It is also within the scope of filing a special lawsuit pursuant to Article 66 titled “Remuneration claims against property seized in the hands of the debtor” and Article 67 titled “Remuneration claims against property confiscated in the hands of third parties” issued by Law No. 6183 regarding remuneration claims. According to Article 66/2 of Law No. 6183, against the claims of the third party against the confiscated goods in the hands of the debtor, *“If the collection office does not reject the claim within 7 days from the date of receipt of the seizure, it is deemed to have accepted the claim for remuneration. If the third party does not object within 7 days from the date of notification, the claim for remuneration will not be heard.”* According to Article 67/1 of Law No. 6183 regarding the claims of restitution against the property seized in the hands of the third party, *“If the seized property is not in the hands of the debtor; If it is in the hands of a third party claiming ownership or pledge on the property, the situation is put in the lien by the sequestering officer. The collection office, which claims that the goods belong to the debtor, notifies the creditor public administration of the situation. If the creditor does not file a lawsuit within 15 days from the date of notification of the public administration, the claim for remuneration is deemed to have been accepted.”*

Interested parties can apply to administrative authorities for a transaction or action that will be the subject of a tax lawsuit against them¹⁰⁸. According to Öner, *the obligation to apply to the administration*

¹⁰⁷ See, the decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 02.10.2019 and numbered E. 2019/433, K. 2019/667; the decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 12.06.2019 and numbered E. 2019/527, K. 2019/358.

¹⁰⁸ Z. Sacit Önen, Genel Vergi Hukuku, Detay Publishing, Ankara, February 2017, p. 321.

before filing a lawsuit in tax proceedings is basically regulated in two cases¹⁰⁹, only for tax errors in Law No. 213 (Law No. 213, art. 124) and in the *Customs Law* (Law No. 4458, dated 27/10/1999) for disputes related to the taxes levied by the customs administrations (Law No. 4458, art. 242)¹¹⁰. According to the article 124/1 of Law No. 213, “*Those whose correction requests are rejected after the deadline to file a lawsuit at the tax court can apply to the Ministry of Finance through a complaint.*” With the application for correction, the period of filing a lawsuit stops¹¹¹. If the complaint regarding the rejection of error correction requests made after the deadline for filing a lawsuit has elapsed, the Ministry explicitly or implicitly rejects the taxpayer’s refusal letter from the Ministry, or if no response is given by the Ministry within 30 days, starting from this date; within the general litigation period (30 days), they can file a lawsuit in the tax court (Law No. 2577, art. 10/2, 11/2). If the same complaint is filed this time within the period of filing a lawsuit, in case the Ministry explicitly or implicitly rejects this complaint, the period of filing a lawsuit shall be equal to the period of filing a lawsuit after deducting the number of days passed for the request for correction. As a matter of fact, in a decision of the Council of State, in the lawsuit filed by the plaintiff, whose application for rectification was rejected within the time limit to file a lawsuit against tax and penalty notices, the petition and its annexes should have been submitted to the authority, but the rejection of the lawsuit was not found correct basing on the statute of limitations¹¹². Again, according to Article 242/1 of Law No. 4458, “*Obligated persons may object to the customs duties, penalties and administrative decisions communicated to them with a petition to a higher authority, if there is no higher authority to the same authority, within fifteen days from the date*

¹⁰⁹ Apart from these, in practice, the aforementioned Article 10 of Law No. 2577 provisions are also applied for the refund of the taxes claimed to be collected unfairly and unjustly, the abolition of tax liability and the refund-offset practices (Serdar Çevik, *Daha Önce Vergi Davası Açmamış Avukatlar İçin Vergi Davaları ve Yargılama Usulü*, Seçkin Publishing, 3rd Edition, Ankara, February 2020, p. 95).

¹¹⁰ Öner, p. 260.

¹¹¹ Selim Kaneti, *Vergi Hukuku*, İstanbul Üniversitesi Publication No: 3434, Hukuk Fakültesi Publication No: 698, Özdem Kardeşler Printing House, İstanbul, 1986/1987, p. 248.

¹¹² The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 27.02.2004 and numbered E. 2003/254, K. 2004/28.

of notification.” In this case, the 30-day period to file a lawsuit in the tax court will start from the notification of the last decision of the administration regarding the rejection of the objection¹¹³. As a result, in order to file a lawsuit against the administration in these two cases, an application must be made to the administration and the application request must be *rejected* or *deemed rejected*¹¹⁴.

According to the Council of State, “*The taxpayers are required to file a lawsuit before the finalization of the minimum square meter unit values determined by the appraisal commissions every four years with the request for the cancellation of the subject transaction within the general lawsuit filing duration that is 30 days from the date this became known by them or as of the response to the application that was made before the finalization of such values; there is no possibility of filing a lawsuit after the aforementioned values are finalized.*”¹¹⁵ Hereunder, taxpayers will be required to file a lawsuit for the cancellation of this transaction within the thirty-day general filing period as of the date on which the application is made to the administration before the finalization of the land and the minimum square meter unit values determined by the valuation commissions every four years. Similarly, in this case, when the tax office and related institutions file a lawsuit, the beginning of the litigation period is the date on which the decision of the relevant authority or commission is given to the tax office or the relevant organization¹¹⁶.

According to Annex Article 7 of Law No. 213, “*In the absence of reconciliation, the taxpayer or the addressee of the penalty; may file a lawsuit against the tax levied or the fine imposed, in accordance with the general provisions and before the authorized tax court, as of the notification of the report stating that the settlement has not occurred. In this case, if the deadline for filing a lawsuit is exhausted or less than 15 days remain, this period is extended to 15 days from the date of*

¹¹³ Kaneti, p. 247.

¹¹⁴ Öner, p. 260.

¹¹⁵ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 23.12.2015 and numbered E. 2015/897, K. 2015/1002.

¹¹⁶ Kaneti, p. 245.

notification of the report.” (Law No. 213, annex art. 7/4)¹¹⁷. Applying for reconciliation in tax law does not stop the litigation period. In this respect, if the taxpayer has applied for reconciliation and the reconciliation has not been realized, if the deadline for filing a lawsuit has expired or less than 15 days remain on the date of notification of the reconciliation report; In this case, the period of filing a lawsuit is extended by 15 days from the date of notification of the report¹¹⁸. According to the Council of State, *“In the lawsuit filed about the rejection of the reconciliation request where the reconciliation request is not covered under the reconciliation because the tax loss penalty has been imposed as per article 344, paragraph 3, of Tax Procedures Law No. 213, and thereby the reconciliation is rejected before considering the merits of the case; it is not possible to benefit from the additional lawsuit filing term provided in additional article 7 of Law No. 213.”*¹¹⁹ According to an another decision of the Council of State, *“The lawsuit is related to the request for the removal of the lien placed in the registry of the vehicle owned by the company for the purpose of collecting its tax debt and because it is a partner. It is necessary to establish a provision considering that a lawsuit can be filed at any time, by qualifying the case in line with the claimant’s request, and requesting the removal of the lien, which has an effect as long as it is in the vehicle’s record.”*¹²⁰ Nonetheless, according to the Council of State, despite the absence of a duly written notification, there is no obstacle to the examination of the

¹¹⁷ According to *Aslan (Ed.)*, the wording of the law in the aforementioned article as *“15 days will be extended”* causes hesitation and should therefore be regulated more clearly, for example, an arrangement like *“...In this case, if the litigation period is over or less than 15 days are left, a lawsuit can be filed within 15 days from the date of notification of the report.”* would be more understandable (*Aslan (Ed.)*, p. 141). We also agree with this view, considering that such a regulation would be more appropriate in terms of the literal interpretation of the law.

¹¹⁸ See, the decision of the Constitutional Court dated 24.03.2022 and numbered E. 2021/129, K. 2022/33.

¹¹⁹ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 25.01.2008 and numbered E. 2007/199, K. 2008/7.

¹²⁰ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 21.03.2012 and numbered E. 2010/310, K. 2012/98.

case brought upon learning of the existence of the said transaction, tax, or penalty during the pre-assessment settlement meeting¹²¹.

G. Review of the Decision of the Board of the Unification of Case Law of the Council of State, dated 15.3.2022 and numbered E. 2021/2, K. 2022/1

Review of the Decision Board of the Unification of Case Law of the Council of State, dated 15.3.2022 and numbered E. 2021/2, K. 2022/1 was deemed worthy of examination in terms of eliminating the difference in practice by deciding that the general litigation period should be applied in cases where the duration of litigation is not specified in the administrative proceedings subject to the specific or general litigation period notified in writing.

According to the legal assessment made by the Board; *“When we look at the decisions of the Council of State, it is seen that there are three acceptances regarding time. 1- Even though the jurisprudence in this direction has been revoked, even if the means of application and the duration of an administrative action subject to the period of filing a special lawsuit are not shown or it is shown incorrectly, the lawsuit that is not filed within the period of filing a special lawsuit should be rejected in terms of time. 2- In administrative proceedings, which are subject to the general or special litigation period, but for which the litigation period is not specified, the general litigation period is used to determine whether the case has been filed within the time limit. It can be said that in the aforementioned approach, the balance between freedom of claim and administrative stability is observed. 3- Regardless of whether it is subject to a special or general litigation period, the application form and the written notification of the administrative act of which the duration is not shown will not start the litigation period, so the case is within the time*

¹²¹ *“Since the purpose of the written notification is to inform the persons concerned about the transaction and to enable them to exercise their rights of action, although there is no duly written notification, there is no obstacle to the examination of the lawsuit filed upon learning of the existence of the transaction, the tax to be released and the penalty to be imposed, in the settlement meeting before the reconciliation.”* (The decision of the 4th Chamber of the Council of State, dated 19.04.1993 and numbered E. 1991/104, K. 1993/1682).

limit regardless of the date it is filed. On the basis of this view, there is the idea that imposing on the individual the burden of showing the remedies, which is a directly applicable constitutional obligation and which is not fulfilled by the administration, is a situation that in a way restricts the freedom of seeking rights and it is an approach that contradicts with the principle of the rule of law state. ...As a result, due to the lack of recourse if a lawsuit is filed after the expiry of this period, which is subject to the special litigation period; and considering that the approach to determine whether the case is filed within the time limit by operating the general litigation period that also fits the balance between the freedom to seek justice and administrative stability, the difference in case-law regarding the duration of litigation as accepted by the majority of the Council of State Administrative Litigation Chambers and other administrative litigation chambers, "If the dispute is subject to the general litigation period, 30/60-day periods, which will be known to everyone, are to be applied; and when it is subject to private filing time duration; and if this situation is not explained in the administrative transaction and if the addressee is misled thereby; it is thought that it should be decided to combine it in line with the case law stating that "the 60 or 30-day general litigation period should be applied, not the duration of the private litigation."¹²²

As it is seen, the Board decided to combine the case-law in line with the necessity of applying the general period of filing a lawsuit in cases where the duration of litigation is not specified in the administrative proceedings subject to the specific or general litigation period notified in writing. In this respect, in an administrative transaction subject to a special litigation period, if the litigation period has not been indicated, a thirty-day general litigation period must be applied in tax courts. Moreover, in an administrative transaction that is subject to the general period of filing a lawsuit related to taxation, the thirty-day general period of filing a lawsuit will have to be applied, even if the period of filing a lawsuit has not been indicated. Thus, the difference in practice is eliminated by the Board.

¹²² The decision of the Board of the Unification of Case Law of the Council of State, dated 15.03.2022 and numbered E. 2021/2, K. 2022/1.

H. When Does the Term of Litigation Start?

The beginning of the period of filing a lawsuit in administrative justice is regulated in different ways. The legislator has stipulated different litigation periods for individual actions, regulatory actions, administrative contracts and administrative actions.

In order for the term of litigation to begin, there must first be an *administrative action* that is final and must be carried out, this action must be *communicated, announced or known*, and the *interlocutor* (addressee) must be informed of the action¹²³. The beginning of the term of litigation against individual transactions is arranged with *written notification, notification by announcement, date of learning (offer) and notification/access in electronic environment*¹²⁴. As a rule, the period of filing a lawsuit against individual actions (individual transaction) begins with a *written notification*¹²⁵. The purpose of the written notification is to announce the administrative act to the concerned parties in a clear and understandable manner by the administration in terms of exercising the right to claim rights¹²⁶. According to the Constitution and Law No. 2577, the beginning of the period for filing a lawsuit in administrative disputes is based on a written notification made in accordance with the procedure and principles. As a matter of fact, according to Article 125/3 of the Constitution article, “*The period for lawsuits to be filed against administrative proceedings starts from the date of written notification*” and according to Article 7/1 of Law No. 2577, “*...periods; a) In administrative disputes; starts from the day following the date of written notification...*” According to the Council of State, “*The purpose of the written notification is to inform the persons concerned about the*

¹²³ Ergen, p. 106; Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 50-51.

¹²⁴ For detailed information, see Kaplan, İdari Yargılama Hukuku, p. 349-357; Günday, p. 275-298; Ergen, p. 62-106; Akyılmaz, Sezginer and Kaya, p. 305-318. According to Karakoç, it would be appropriate to use the concept of “*notification*” in order to create a conceptual unity (Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 50).

¹²⁵ Gözübüyük and Tan, p. 851; Gözübüyük, p. 402; Tan, p. 1031; Candan, p. 337; Odyakmaz, Kaymak and Ercan, p. 225.

¹²⁶ Ergen, p. 63.

transaction and to enable them to exercise their right to litigation.”¹²⁷ For this reason, as a rule, written notification rule will be valid in all administrative disputes, including tax disputes, and the period of filing a lawsuit will not begin unless the result of the completed administrative proceedings is notified in writing to the person concerned¹²⁸. In order for the term of litigation to begin, this notification must be made in *full and suitable*, in accordance with the format and method, and this must be *documented*¹²⁹. *Publication* will not replace notification in individual actions¹³⁰. Again, if the administrative action directly concerns more than one person, the written notification must be made separately *for each person*¹³¹. However, this rule only applies to persons who have a written notification requirement, that is, directly related to the administrative act. As a matter of fact, according to the Council of State, “...*despite the absence of a duly written notification, there is no obstacle to the examination of the lawsuit filed upon external learning of the existence of the transaction.*”¹³² The principle of *notification via announcement* is the regulation stipulated for cases where the written notification required for the commencement of the litigation period cannot be made. According to the Article 7/3 of Law No. 2577, “*In cases where notification is made to those whose addresses are not known by means of announcements in accordance with the provisions of their special laws, the period starts to run fifteen days after the last announcement date, unless there is a contrary provision in the special law.*”

It is possible to apply to the administration in order to carry out a transaction or action that may be the subject of an administrative lawsuit (Law No. 2577, art. 10/1). This also applies to tax disputes¹³³. In the event of such an application duly filed in conformance with the base to

¹²⁷ The decision of the 4th Chamber of the Council of State, dated 23.12.1996 and numbered E. 1996/1587, K. 1996/5746.

¹²⁸ Kaplan, *İdari Yargılama Hukuku*, p. 349.

¹²⁹ Gözübüyük and Tan, p. 853, 854; Karakoç, *Vergi Yargılaması Hukukunda Süreler*, p. 58.

¹³⁰ Gözübüyük and Tan, p. 857.

¹³¹ Gözübüyük and Tan, p. 851.

¹³² The decision of the 4th Chamber of the Council of State, dated 07.11.1990 and numbered E. 1990/1088, K. 1990/3054.

¹³³ Kırbaş, p. 215; Özhan Uluatam and Yaşar Methibay, *Vergi Hukuku*, İmaj Publishing House, 5th Edition, Ankara, October 2001, p. 247.

the administration, the period of filing a lawsuit begins after the administration's express or implied rejection decision. When the administration rejects the said transaction or action by giving a clear answer, the period of filing a lawsuit starts based on the date of the open response. Failure of the administration to respond within a certain period of time that is within 60 days, is an implied rejection decision. Accordingly, "*If no response is given within ...the request will be deemed to have been rejected. The persons concerned may file a lawsuit with the Council of State, administrative and tax courts, depending on the subject, within the period of filing a lawsuit as of the end of the ... days. If the answer given by the administration is not final within theperiod, the relevant answer can be considered as the rejection of the request, or the concerned can file a lawsuit or wait for a definitive answer. In this case, the filing period will not run. However, the waiting period cannot exceed four months from the date of application. In cases where a lawsuit is not filed or the case is rejected due to the deadline, if the competent administrative authorities respond after the expiry of the ...period, they can file a lawsuit within sixty days from the notification of the answer.*" (Law No. 2577, art. 10/1). The application made to the administration for the second time does not stop the term of litigation that has started to process again, this way can only be applied *once*¹³⁴.

According to another decision of the Council of State, "*As in the case of a restructuring request within the application period stipulated in the law; if the administration is notified in writing that the restructuring request has been waived, a lawsuit may be filed against the previously restructured debt within the period of filing a lawsuit.*"¹³⁵ Hereunder, pursuant to Law No. 7143 (Dated 11/5/2018), if the administration is notified in writing that the restructuring request has been waived, as in the case of a restructuring request, within the stipulated application period, a lawsuit can be filed against the previously restructured debt within the period of filing a lawsuit, otherwise the case will not be examined on the merits.

In lawsuits to be filed against regulatory actions that need to be announced, the period starts from *the day following the announcement*

¹³⁴ Gözübüyük and Tan, p. 912.

¹³⁵ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 03.11.2021 and numbered E. 2021/5, K. 2021/7.

date (Law No. 2577, art. 7/4)¹³⁶. Upon the implementation of these procedures, the relevant parties may file a lawsuit against the regulatory action, the action applied or both, and the fact that the regulatory action has not been canceled does not prevent the cancellation of this regulatory action (Law No. 2577, art. 7/4). In a decision of the Council of State, “Regarding the lawsuit filed on 28.3.2016 for cancellation of the process dated 11.3.2016... as it is understood that this lawsuit was filed on 28.4.2017 after the 60-day period for filing a lawsuit for the cancellation of the disputed regulation with the claim that it constitutes the basis for the aforementioned transaction... In the decision, there has not been found any non-conformances to the law as it has been decided to reject the case regarding time limitations by basing on the date when the notification was published on the Official Gazette.”¹³⁷ With reference to, the lawsuit that can be filed within 60 days for the annulment of the regulation will be calculated on the basis of the date of publication of the notification in the Official Gazette.

The beginning of the litigation period in *tax proceedings* also shows unique differences. These differences arise from the *nature, functions and purposes* of taxation transactions. As a rule, the duration of filing a lawsuit in tax proceedings is also based on a *written notification* made in accordance with the procedure and principles. The *notification, collection, payment and registration* dates stipulated by the legislator for the beginning of the litigation period are within the scope of written notification. As stated above, this written notice must also show the filing period, otherwise the litigation period will not begin. As a matter of fact, “In all kinds of transactions established by the institutions of the state;

¹³⁶ For exemplary judicial decisions, see the decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 26.01.2022 and numbered E. 2020/2908, K. 2022/141; the decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 17.02.2021 and numbered E. 2019/2547, K. 2021/312; the decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 15.09.2022 and numbered E. 2022/2107, K. 2022/2517; the decision of the Plenary Session of the Administrative Law Chambers of the Council of State, dated 22.2.2021 and numbered E. 2020/2122, K. 2021/337.

¹³⁷ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 21.03.2018 and numbered E. 2018/84, K. 2018/124.

indication of the place of jurisdiction or administrative authorities to be resorted to against these proceedings; in addition, since it is a constitutional obligation to specify the application period in question and as the legislative, executive and judicial organs, administrative authorities and other public institutions and organizations must take action and decision in accordance with this requirement, in the face of the bindingness of the Constitution, where the administrative authority to be applied and the duration are not specified in the written notification, this will not initiate the objection period.”¹³⁸

However, for the taxpayers whose *address is not known*, the notification made through the *announcement* is taken as the basis for the beginning of the filing period (Law No. 2577, art. 7/3). In this case, the filing period starts to run 15 days after the day following the last announcement date (Law No. 2577, art. 7/3). The Council of State in a decision, “*No misjudgment is observed regarding the decision that no legal limits are introduced for the notification to be served among the people residing in the same residence, whereby the case is rejected due to time-lapse and giving the aforementioned as a justification for a taxpayer whose liabilities were canceled ex officio as s/he could not be found at her/his address and for the company that does not have a business address, it is justified that there are no contradictions regarding the legislation for serving the notice of assessment to the subject’s spouse at the residence address of her/his representative.*”¹³⁹

Again, in practice, there are some decisions based on *the learning date* for the beginning of the litigation period. As a matter of fact, certain and enforceable transactions such as the establishment of liability in tax proceedings, admission to special principles, and attachment documents are not notified to the person concerned, in these cases learning dates are based upon, from the point of filing a lawsuit¹⁴⁰. For example, according to *Plenary Session of the Tax Law Chambers*; In cases where taxpayers must make a notification pursuant to Article 33/1-7 of the Property Tax

¹³⁸ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 12.10.2011 and numbered E. 2011/40, K. 2011/594.

¹³⁹ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 13.12.2017 and numbered E. 2017/536, K. 2017/629.

¹⁴⁰ Çevik, p. 98.

Law, if the municipality has not notified the taxpayer of the filing period in writing, in this case, the date the property tax was paid by the taxpayer is accepted as the date of learning the assessment made, the period must start from the date of payment¹⁴¹. According to the Council of State, “While a lawsuit should be filed within thirty days as of 01/01/2015 against the property tax, which is deemed to have been accrued on behalf of the plaintiff on 01/01/2015 and which does not need to be notified to the plaintiff, the lawsuit filed after this period must be rejected due to the statute of limitations.”¹⁴² According to another Council of State decision, “It should be accepted that s/he was informed about the “Environmental Impact Assessment Positive” decision, which is the subject of the case, with the application petition that s/he first wrote to the District Governor on 22/09/2019 and entered the records of the District Governor’s Office on 30/09/2019; While a lawsuit must be filed within 30 days from the day following this date; there is a statute of limitations in the lawsuit filed on 25/12/2019 after this period has expired.”¹⁴³ Accordingly, in the place that will be affected or likely to be affected by the project planned to be realized, since no information/announcement has been made regarding the transaction subject to the lawsuit, the lawsuit filed after being informed of the decision will be deemed to be in time.

In accordance with the legislation, some administrative transactions are notified *electronically* to the *electronic notification addresses* of those concerned¹⁴⁴. According to Article 7/a-4 of the Notification Law No. 7201, “The electronic notification shall be deemed to have been made at the end of the fifth day following the date on which the addressee reaches the electronic address.” According to Article 107/A-1, 2 of Law No. 213, which is regulated in line with this, “The

¹⁴¹ See, the decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 08.03.2017 and numbered E. 2017/113, K. 2017/135.

¹⁴² The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 13.11.2019 and numbered E. 2019/262, K. 2019/917.

¹⁴³ The decision of the 6th Chamber of the Council of State, dated 22.09.2022 and numbered E. 2022/2679, K. 2022/8038; The decision of the 6th Chamber of the Council of State, dated 20.04.2022 and numbered E. 2022/2454, K. 2022/5056.

¹⁴⁴ Akyılmaz, Sezginer and Kaya, p. 317.

persons to whom notification will be made pursuant to the provisions of this Law may be notified electronically via an electronic address suitable for notification, without being bound by the procedures listed in Article 93. The electronic notification shall be deemed to have been made at the end of the fifth day following the date on which the addressee reaches the electronic address.”

According to the Council of State, “*Since the notification provision requested to be annulled is implemented with the transaction announced to the plaintiff, the period of filing a lawsuit starts from the date of the announcement; the second transaction, which is on the same subject as the first transaction, does not give rise to the right to file a new lawsuit.*”¹⁴⁵

The beginning of certain litigation periods in tax proceedings has been specifically determined by Article 7/2-b of Law No. 2577. Accordingly, the duration of litigation in disputes arising from taxes, duties and fees and similar financial obligations and their increase and penalty, collection of taxes, the accrual of which depends on collection; notification in cases where notification is made or in transactions replacing notification; to pay the taxpayers in the taxes collected through withholding; the registration is made in the taxes related to the registration, and in matters where the administration should file a lawsuit, the decision of the relevant authority or commission has come to the administration; starts from the day following the date of the occurrence of the above specified (Law No. 2577, art. 7/2-b). Accordingly, for taxes whose accrual is subject to collection, the period of filing a lawsuit will begin on the date the *collection* is made, in other words, the *payment* is made¹⁴⁶. Yet, in such cases, such as *stamp duty* and *fees*, before the payment of the tax, it will not be possible to carry out the assessment and accrual procedures and notify the taxpayer of this¹⁴⁷. The time period for the *tax office* to file a lawsuit against the bases determined by the *valuation commissions* starts on the date the decision is given to the tax

¹⁴⁵ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 26.01.1996 and numbered E. 1994/330, K. 1996/42.

¹⁴⁶ Çağan, p. 73; Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 61; Candan, p. 369; Kaneti, p. 243; Mutluer, p. 289; Bilici, p. 204; Ergen, p. 318.

¹⁴⁷ Kaneti, p. 243.

office¹⁴⁸. The period of filing a lawsuit in the lawsuit to be filed against the tax or penalty, when the tax is *levied, supplemented or imposed* by the administration or penalty will start from the notification of this *tax or penalty notice*¹⁴⁹. However, a notification that *does not meet the conditions* stipulated in the law will not be able to initiate the period of filing a lawsuit¹⁵⁰. In taxes collected through *deduction at source*, the period of filing a lawsuit is calculated from the date of payment¹⁵¹. It is possible for the taxpayers to file a lawsuit in the taxes levied and accrued according to *their own declarations*, and in the declarations *made with reservations*, in this case, the period to file a lawsuit starts from the day following the date of issuance of *the accrual slip*¹⁵². Upon the refusal of the tax office against the requests regarding *the correction of tax errors* made during the filing period, a lawsuit can be filed directly at the tax court within the period remaining after the 30-day litigation period is deducted from the notification date to the date of application to the tax office¹⁵³. In cases related to *registration*, such as *motor vehicle tax*, the period for filing a lawsuit starts from the day following the registration¹⁵⁴. The period of filing a lawsuit against *the payment order* will start from the notification of the payment order¹⁵⁵. The period of filing a lawsuit against *the attachment* will start from the date of attachment¹⁵⁶. In terms of *tax-like financial liabilities*, the general principle is to notify the taxpayer in writing and to file the case within 30 days starting from the day following this notification, provided that the exceptions are reserved¹⁵⁷. In case of *erroneous payment*, absence, obvious error, false statement or fraud of the officer, the administration can always withdraw the erroneously paid amount regardless of the time period, in cases other

¹⁴⁸ Kaneti, p. 244; Mutluer, p. 289; Yüce, p. 184; Bilici, p. 204; Ergen, p. 319.

¹⁴⁹ Kaneti, p. 243; Çağan, p. 72; Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 63; Kızılot and Kızılot, p. 366.

¹⁵⁰ Ergen, p. 67.

¹⁵¹ Çağan, p. 73; Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 65; Candan, p. 372; Kızılot and Kızılot, p. 370; Ergen, p. 319.

¹⁵² Kızılot and Kızılot, p. 364; Candan, p. 374-375; Yüce, p. 184.

¹⁵³ Kızılot and Kızılot, p. 371.

¹⁵⁴ Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 66-67; Candan, p. 373; Ergen, p. 319.

¹⁵⁵ Yüce, p. 184.

¹⁵⁶ Yüce, p. 184.

¹⁵⁷ Kızılot and Kızılot, p. 374.

than this, the request for the erroneous payment back can be requested within the period of filing a lawsuit starting from the date of the erroneous payment¹⁵⁸.

Again, the period for filing a lawsuit for tax-related regulatory actions that need to be announced starts from *the day following the announcement date* (Law No. 2577, art. 7/4)¹⁵⁹. For example, according to the Council of State, *“The lawsuit has been filed with the request of the abolition of value-added taxes and tax loss penalties, which are a multiple of the taxes, and for the annulment of the decisions of the appraisal commission. Together with the annotation that the notifications regarding the assessments made on behalf of the plaintiff were served to the person concerned by deducting the phrase “company employee”, that the notification was made at the company address, and that this person as a company employee and with T.R. identity number accepted the notification without any objections thereto; considering the aforementioned, it is understood that the notification made is in accordance with the procedure. In this case, since the notifications regarding the assessments made on behalf of the plaintiff company are duly served, a lawsuit should be filed within 30 days from the date of notification; while the lawsuit filed long after this date should be rejected due to the statute of limitations, the court decision, which was given after examining the merits of the case, was not found to be in conformity with the law.”*¹⁶⁰ Accordingly, if the notifications regarding the assessments made on behalf of the *company* have been duly notified, the thirty-day litigation period will start from the notification date. According to another decision of the Council of State, *“Even though the court has decided that the tax assessments are unlawful because of the fact that the plaintiff’s right to defense was restricted because the tax technique report was not attached to the notice and not notified to the plaintiff; it has been seen*

¹⁵⁸ Ergen, p. 26; Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 84.

¹⁵⁹ *“However, in full remedy action, the amount specified in the petition may be increased for once, by paying the fee, until the final decision is made, regardless of the time period or other procedural rules and the petition regarding the increase of the amount is notified to the other party to be answered within thirty days.”* (Law No. 2577, art. 16/4).

¹⁶⁰ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 10.03.2021 and numbered E. 2020/795, K. 2021/272.

that the plaintiff has filed a lawsuit against the taxation process in the Tax Court within the period of filing a lawsuit as of the notification of the notices regarding the penalty tax subject to the lawsuit, and the dispute has been brought to the judicial authority, and it has been observed that the opportunity to object to all the claims and transactions of the administration has been obtained, therefore, there is no legal accuracy in the said justification.”¹⁶¹

I. Review of the Decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 22.09.2021 and numbered E. 2021/2, K. 2021/4

The Decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 22.09.2021 and numbered E. 2021/2, K. 2021/4 is important in that it is related to the e-notification and litigation period.

According to the legal assessment made by the Board; “...while a lawsuit should be filed until 16/01/2020, the last day of the filing period, for the removal of the fee and penalty, which was duly notified with the notice duly served on 17/12/2019 to electronic notification address specified duly, in this case filed on 05/03/2020 there is no time lapse as it was filed after the final lawsuit filing date. In the regulation added to the second paragraph of Article 107/A of the aforementioned Law, stating that the notification made in the electronic environment will be deemed to have been made at the end of the fifth day following the date of reaching the electronic address of the addressee, the date of notification by SMS and/or e-mail is not the beginning of the five-day period; the date on which the document subject to the notification reaches the electronic address of the addressee is taken as a basis, and a five-day period is foreseen from the date it reaches the electronic address for the notification to be deemed to have been made. ...Therefore, pursuant to Article 107/A of the Tax Procedure Law, if no notification message is sent to the telephone number and/or e-mail address notified during the application to the electronic notification system or later regarding the notification made to the e-notification address registered in the electronic

¹⁶¹ The decision of the 4th Chamber of the Council of State, dated 15.06.2022 and numbered E. 2018/8461, K. 2022/4098.

notification system of the addressee, this will not have an impact on the duration of the notification and its validity.”¹⁶²

The notification provisions regarding taxation are regulated in the Tax Procedure Law. In cases where there is no clear provision regarding notification in the Tax Procedure Law, the provisions of the Notification Law must be applied in accordance with Article 51 of the Notification Law. With the Article 107/A of Law No. 213, regulations have been made to allow notifications to be made in electronic environment. E-notification was put into operation by establishing an Electronic Notification System by the Revenue Administration in accordance with the General Communiqué of the Tax Procedure Law No. 456. Electronic notification is the process of sending e-signed documents related to taxation to the electronic notification address of payers by the Revenue Administration. According to Article 107/A/2 of Law No. 213, the notification document is deemed to have been notified at the end of the fifth day following the date it reaches the electronic address of payers. As stated in the decision, pursuant to Article 107/A of Law No. 213, no notification message is sent to the telephone number and/or e-mail address notified during the application to the electronic notification system or later, regarding the notification made to the e-notification address of payers registered in the electronic notification system, shall not affect the duration and validity of the notification.

J. Review of the Decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 09.02.2022 and numbered E. 2020/1158, K. 2022/29

The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 09.02.2022 and numbered E. 2020/1158, K. 2022/29 has been deemed worthy to be examined in this section, as it is related to the issues of accounting of the tax on the dated if notice is given and duration.

According to the legal assessment made by the Board; “*In Article 11 of the Property Tax Law, it is regulated that if a notification is given, the tax will be accrued on the date it is levied and the taxpayer will be*

¹⁶² The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 22.09.2021 and numbered E. 2021/2, K. 2021/4.

notified in writing. In Article 32 of the Law, it is stipulated that the tax will be levied by the administration if the notification is not given. These rules require that the assessment made by the administration in cases where no notification is given, should be considered accrued on the date of assessment, when evaluated together with the fact that the tax assessment is not based on a statement, since there is no information on the tax base in the notifications envisaged to be given by the taxpayers. Moreover, in the years following the assessment and accrual made by the municipalities every four years, the property tax, which is calculated over the tax value determined according to the 29th article, and which is considered to have been accrued for that year as of the beginning of each budget year may be made the subject of a lawsuit during the thirty (30) days of lawsuit period that starts to run as of the starting date of the budget year, in addition, there is no obstacle for taxpayers to make it a subject of a lawsuit upon notification of the tax levied and accrued in this way in writing.”¹⁶³

In Article 11 of the *Property Tax Law*, it is regulated that if a notification is given, the tax will be accrued on the date it is levied and the taxpayer will be notified in writing. In Article 32 of the Law, it is stipulated that the tax will be levied by the administration if the notification is not given. The period for filing a lawsuit regarding the *real estate tax* that is deemed to have accrued is thirty days. This period will start to run from the beginning of the *budget year* in which the property tax is considered accrued.

K. Principles on The Calculation of the Term of Litigation in Tax Proceedings

Calculation of durations (periods, times) in tax proceedings is regulated generally in Article 8 of Law No. 2577 titled “*General principles regarding durations*” and specifically in Article 18 of Law No. 213 titled “*Calculation of durations*”. According to Çağan, it is not appropriate in terms of legal policy that there are differences in the rules

¹⁶³ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 09.02.2022 and numbered E. 2020/1158, K. 2022/29.

regarding the calculation of durations in terms of various branches of law¹⁶⁴.

According to Article 8 of Law No. 2577, the durations start to run from the day following the date of notification, publication or announcement; *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; if the expiry of the periods written in this Law coincides with *judicial recess* (the time for a break from working), these periods are deemed to be extended by 7 days from the date following the end of the break.

As a rule, the periods start from the “*day following the date of notification, publication or announcement*”, but if there is a special provision in special laws that the period will start differently, for example, from the “*date (day) of the notification*”, it should be acted upon accordingly¹⁶⁵. For example, the application period for appeal starts from the day the decision is served, not the day following the notification of the decision¹⁶⁶.

In a decision of the Council of State, “...*since it was announced that if the time period was specified as days, the starting date would not be taken into account, it was understood that the registration procedures were carried out on 23.12.2005 within a fifteen-day period according to the invoices dated 8.12.2005, and it was decided to abolish the irregularity penalties on the grounds that the fines were not found to comply with the law.*”¹⁶⁷ Accordingly, if the period is set as days, *the first day will not be taken into account*. According to the Council of State, “*It is concluded that in the calculation of the statute of limitations, the date on which the correction application made by registered mail should be taken as a basis, not the date on which it is received by the*

¹⁶⁴ Çağan, p. 163-164.

¹⁶⁵ According to *Karakoç*, it is necessary to understand and apply the word “*from* (beginning from)”, which expresses the beginning of the periods in the law, as the day of the publication of the notification or the announcement should not be taken into account in the calculation of the period (*Karakoç*, *Vergi Yargılaması Hukukunda Süreler*, p. 29).

¹⁶⁶ Kaplan, *İdari Yargılama Hukuku*, p. 541.

¹⁶⁷ The decision of the 4th Chamber of the Council of State, dated 03.06.2008 and numbered E. 2007/1849, K. 2008/2159.

administration.”¹⁶⁸ By that of, in the calculation of the statute of limitations, the date on which the correction application will be mailed shall be taken as a basis.

According to Article 18 of Law No. 213; if the duration is specified as days, the day it starts is not taken into account and ends at the *holiday time* of the last day; if the duration is determined as a week or a month, it ends at the holiday time of the day corresponding to the day in the last week or month; if there is no day in the month in which the period ends, which corresponds to the day it started, the period ends at the holiday time of the last day of that month; for periods determined by a certain day, the period ends at the holiday time of that day; *legal holidays* (public holidays, official holidays, bank holidays) are included in the period; in so far, if the last day of the period coincides with a legal holiday, it ends at the holiday hour of the first business day following the holiday. According to a decision of the Council of State, “*Since the value added tax accrued on the declaration can be paid until the holiday time on the 25th day of the month following the taxation period, the above principles should be taken into account in the calculation of the late fee to be applied to the public receivables that are not paid within this period. Since 25.2.1996, the last day of the third month following the due date of the value added tax subject to the payment order, is a public holiday and it is undisputed that the payment is made on the first business day following the holiday, there is no illegality in the insistence on the partial cancellation of the payment order in terms of the late fee calculated for the fourth month.*”¹⁶⁹

Legal holidays are *official* and *religious holidays*, New Year’s Day, 1 May and 15 July (Law No. 2429 on National Holidays and General Holidays Art. 2)¹⁷⁰ and Saturdays and Sundays (Law No. 657

¹⁶⁸ The decision of the 7th Chamber of the Council of State, dated 07.03.2019 and numbered E. 2014/1554, K. 2019/1226.

¹⁶⁹ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 24.03.2000 and numbered E. 1999/364, K. 2000/111.

¹⁷⁰ “*The following legal holiday and religious feast holidays, New Year’s Day, 1 May and 15 July are general holidays. A) Legal holidays are as follows: 1. (Amended: 20/4/1983 - art. 2818/1) 23 April is the National Sovereignty and Children’s Day. 2. 19 May is the Commemoration of Atatürk and Youth and Sports Day. 3. August 30 is Victory Day. B) Religious feast days are as*

Civil Servants Art. 99/2). Similarly, in another decision, according to the Council of State, “As it is undisputed that 31.7.1994, the last day of the fourth month following the due date of the first installment of the income tax accrued on the declaration of the plaintiff, is a public holiday and the payment is made on the first business day following the holiday; there is no illegality in the insistence on the partial cancellation of the payment order in terms of the late fee calculated for the fifth month.”¹⁷¹

For transactions made in *electronic environment*, the time expires at the end of the day (Law No. 2577, art. 31/1, Law No. 6100, art. 445/4). According to Article 5/9 of the *Regulation on the Procedures and Principles for the Administration of Administrative Affairs and Clerical Services of Regional Administrative Courts, Administrative Courts and Tax Courts*, which entered into force after being published in the Official Gazette dated 11/07/2015 and numbered 29413, “It must be done until 00:00 in order to prevent their extension to the following date.”¹⁷²

follows: 1. Ramadan Feast is 3.5 days starting from 13.00 on the day of Eve. 2. Feast of Sacrifice is 4.5 days starting from 13.00 on the day of Eve. C) (Amendment: 25/10/2016 - art.6752/2) New Year's Eve on 1 January, Labor and Solidarity Day on 1 May, and Democracy and National Unity Day on 15 July are holidays. C) (Amendment: 25/10/2016 - art. 6752/2) In New Year's Eve on 1 January, Labor and Solidarity Day on 1 May, and Democracy and National Unity Day on 15 July, government office and institutions are are suspended. When the National Holiday and general holidays specified in this Law end on Friday evening, the whole following Saturday is a holiday. The provisions of the special laws of the organizations that are required to work continuously due to their nature are reserved. Private businesses are required to close on 29 October.” (Law No. 2429, art. 2).

¹⁷¹ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 08.01.1999 and numbered E. 1997/487, K. 1999/30.

¹⁷² For an example, see the decision of the 4th Chamber of the Council of State, dated 12.12.2016 and numbered E. 2016/17163, K. 2016/4117.

L. Do the Circumstances Causing the Suspension of the Tax Obligation Periods Cause the Suspension of the Litigation Period?

As a rule, administrative periods in tax proceedings stop in case of *application to the higher authority*, the existence of certain issues that are foreseen to be stopped during the *financial holiday*, when the *lawyer withdraws from the case*, and *force majeure*¹⁷³. Again, the case of applying to the *ombudsman* is another case that stops the litigation period¹⁷⁴. In case of *stopping*, time until the stopping reason occurs, continues to run again from the moment the stopping reason disappears¹⁷⁵.

According to Article 11 of Law No. 2577, before filing a lawsuit, the relevant parties may apply to the higher authorities for the removal, withdrawal, change or a new action of the administrative action; If no response is received within 30 days, the request is deemed to have been rejected (Law No. 2577, art. 11/1, 2). This application, made in accordance with its procedures and principles, stops the tax filing period that has started to process. In case the request is rejected or deemed rejected, the period of filing a lawsuit starts again and the time passed until the application date is also taken into account (Law No. 2577, art. 11/3). However, it should be noted that if a certain period of time is stipulated in special laws regarding the objection to the higher authority, the application must be made within this period in order to stop the litigation period. The situation in Article 242 of Law No. 4458 can be given as an example to this situation. According to this, “*The obliged parties can object to the customs taxes, penalties and administrative decisions notified to them, with a petition to a higher authority within fifteen days from the date of notification, or to the same authority if there is no higher authority. 2. Objections submitted to the administration shall be decided within thirty days and notified to the relevant person. 3. If the objection petitions are submitted to the wrong authority within the time limit, the objection shall be deemed to have been made within the time*

¹⁷³ Yüce, p. 263-269.

¹⁷⁴ Ergen, p. 362.

¹⁷⁵ Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 100; Karakoç, Vergi Yargılaması Hukuku, p. 216; Mutluer, p. 290; Ulusoy, p. 115; Demirkol and Bereket Baş, p. 116.

limit and shall be delivered to the competent authority by the administration. 4. Against the decisions of rejection of the objection, an application can be made to the administrative judicial authorities in the place where the action was taken.” (Law No. 4458, art. 242/1, 2, 3, 4).

According to Article 1 of Law No. 5604 on the Creation of Financial Holidays, “*Fiscal holidays are applied from the first to the twentieth (including the twenty-first) of July every year. If the last day of June is a holiday, the financial holiday starts from the day following the first working day of July.*” (Law No. 5604, art. 1/1). During the financial holiday, the legislator has decreed that some periods will be suspended and some periods will be extended. Accordingly, the accounting registration periods, notification periods and filing periods regarding tax-related transactions, which are required to be made in certain periods according to the provisions of Law No. 213, do not run during the fiscal holiday, the specified periods start to run again after the end of the fiscal holiday (Law No. 5604, art. 1/3). However, according to the Council of State, while the periods to be extended during the financial holiday are specified, the application periods for legal remedies cannot be extended due to the financial holiday, since the application periods for legal remedies are not explicitly included¹⁷⁶. Nonetheless, *in the assessment based on the declaration*, by the completion of the submission period of the declarations that must be submitted within the legal period, in the assessment made ex officio or by the administration, reconciliation against the taxes levied and/or the penalties imposed, the taxes, duties and fees, tax penalties and delay interests due to coincide with the financial holiday. If the last day of the deadlines regarding the applications to be made in order to benefit from the provisions of the request or reduction in the penalty and the deadlines for providing the information that must be provided within the scope of the provisions of continuous information, coincides with the financial holiday; the said periods are deemed to be extended by 7 days from the date following the last day of the financial holiday (Law No. 5604, art. 1/2). Again, during the financial holiday; except for tax and penalty notices and deduction requests; Requests for information requests are not notified to taxpayers, tax and penalty

¹⁷⁶ The decision of the 3rd Chamber of the Council of State, dated 30.9.2009 and numbered E. 2009/4122, K. 2009/2814; the decision of the 3rd Chamber of the Council of State, dated 23.02.2009 and numbered E. 2007/3182, K. 2009/461.

responsible persons, but in the notifications made during the holiday period, the period starts to run from the last day of the financial holiday (Law No. 5604, art. 1/5). Fiscal holidays are not applicable for *special consumption tax, banking, and insurance transactions tax, special communication tax, games of chance tax, and taxes, duties and charges levied and/or collected by customs administrations, special provincial administrations, and municipalities* (Law No. 5604, art. 1/7).

The another situation regarding the suspension of the durations is the case of the lawyer's withdrawal from the case. According to Article 171/1 of *Attorneyship Law* (Law No. 1136, dated 19/3/1969), "A lawyer follows up the work s/he undertakes in accordance with the provisions of the law and even if there is no written contract." However, in some cases, it may be the case that the attorney given power of attorney cannot continue the case. In these cases, the trial period stops for up to 3 months. As a matter of fact, "In the event of the death of a lawyer, his dismissal from the profession, his being banned from work, or his temporary incapacity to work, the head of the bar association to which the lawyer is registered, upon the written request of the relevant persons or on the condition of obtaining the written consent of the business owners, shall employ a lawyer registered in his own bar to follow up and carry out the business temporarily and transfers and delivers the files to him. (Additional sentence: 2/5/2001 - Article 4667/28.) In addition, s/he notifies the courts and other places s/he deems necessary... The legal deadlines for the works written in the above paragraph do not run until the transfer and delivery of the file, yet this period cannot exceed three months." (Law No. 1136, art. 42).

In case of an application to the *ombudsman institution*, the period of filing a lawsuit stops. According to Article 17/7 of *Law on the Ombudsman Institution* (Law No. 6328, dated 14/06/2012), In case the response given by the administration is notified or the administration does not respond within 60 days, an application can be made to the institution within 6 months from the end of the period. The application made during the filing period will stop the litigation period that has started to process (Law No. 6328, art. 17/8). In case the application is rejected by the institution, the suspended litigation period starts to run from the point where it was left off after the notification of the rejection decision. (Law No. 6328, art. 21/1). If the application is accepted by the Institution, and if the relevant authority does not take action within 30 days upon the proposal of the Institution, the suspended litigation period

begins to run from where it was left off (Law No. 6328, art. 21/2). If the institution cannot conclude the application within 6 months, the suspended litigation period starts to run from where it was left (Law No. 6328, art. 21/3).

The last situation regarding the suspension of the periods is the *force majeure* situations. Force majeure is an event that cannot be foreseen or prevented even if it is foreseen, outside the will of the taxpayer¹⁷⁷. In other words, force majeure is an event or situation that occurs outside the will of the taxpayer, which cannot be controlled and prevented, and which essentially prevents the fulfillment of tax obligations¹⁷⁸. While force majeure is defined in a *narrow sense* as external events that occur outside the will of the person, in a *broad sense*, it is any event that prevents the acquisition of a right, the fulfillment of a debt or duty, and which is impossible to foresee or prevent¹⁷⁹. The basic elements of force majeure are *unpredictability*, *unavoidability*, and *externality*¹⁸⁰. According to the Council of State, “*in order for an event to be qualified as force majeure in terms of tax law, it must be unavoidable and unpredictable, and there must also be no negligence or intent by the taxpayer in its realization.*”¹⁸¹ Essentially, force majeure cases are regulated in Article 13 of Law No. 213 for the periods related to tax duties¹⁸². Accordingly, force majeure situations are “*1. Serious accident, serious illness, and detention that prevents the fulfillment of any of the tax duties; 2. Disasters such as fire, ground shaking, and flooding that will prevent the fulfillment of tax duties; 3. Compulsory absences that occur against the will of the person; 4. Cases such as the fact that his books and documents have been lost due to reasons beyond the will of the owner.*” (Law No. 213, art. 13). In this way, for the periods related to tax duties, in case of any written force majeure, the periods do not run until this reason

¹⁷⁷ Yüce, p. 267; Uysal and Eroğlu, p. 42.

¹⁷⁸ Oktar, p. 108.

¹⁷⁹ Candan, p. 400.

¹⁸⁰ Akyılmaz, Sezginer and Kaya, p. 357.

¹⁸¹ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 03.07.2009 and numbered E. 2009/17, K. 2009/364.

¹⁸² According to *Batı*, force majeure in the law should not have any effect on the term of litigation, since it only includes cases of non-fulfillment of tax obligations (*Batı*, p. 92, 584).

disappears (Law No. 213, art. 15/1)¹⁸³. If the force majeure is known by *everyone*, there is *no need to prove* it separately by the taxpayer, but in cases that have occurred in the taxpayer *himself* and can only be known by the taxpayer, it must be *proven* and *documented* against the tax office or judicial organs¹⁸⁴. In jurisdictions, it is necessary to evaluate the force majeure situations *separately for each dispute* and make a decision thereby¹⁸⁵. *The Ministry of Finance* is authorized to declare force majeure for those who are exposed to disasters in regions, provinces and districts due to force majeure and to determine those who cannot fulfill their tax duties during this period (Law No. 213, art. 15/3).

Does the force majeure suspend (stop) the term of litigation? There are debates in practice and doctrine as to whether force majeure will suspend the term of the litigation. While the Council of State has a *firm opinion* that force majeure will not stop the period of filing a lawsuit in its previous decisions¹⁸⁶, it tends to *soften* this stance in its recent decisions¹⁸⁷. As a matter of fact, in a recent decision of the Council of State, “*The reasons stopping the periods of filing a lawsuit and applying to legal remedy are listed in the relevant articles of the Law on Administrative Trial Procedure: however, the state of illness is not listed among them. With this; it is necessary for the nature and importance of*

¹⁸³ See, the decision of the Board of the Unification of Case Law of the Council of State, dated 08.02.2019 and numbered E. 2013/3, K. 2019/1.

¹⁸⁴ Şenyüz, Yüce and Gerçek, p. 219; Çağan, p. 146; Uysal and Eroğlu, p. 46.

¹⁸⁵ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 13.12.2017 and numbered E. 2017/428, K. 2017/636.

¹⁸⁶ “*In the absence of a provision in the Administrative Procedure Law that prolongs the term of litigation due to force majeure, this allegation is also rejected on the grounds that it is not considered appropriate...*” (The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 15.05.2009 and numbered E. 2008/786, K. 2009/216); “*...it was rejected on the grounds that there is no reference to the articles of the Tax Procedure Law regarding force majeure, both in the 31st article of the aforementioned Law and in other articles, regarding the suspension of the appeal period due to force majeure.*” (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).

¹⁸⁷ See, the decision of the 7th Chamber of the Council of State, dated 10.12.2019 and numbered E. 2016/56, K. 2019/6537.

the right to claim rights, that the said periods do not operate in the presence of force majeure situations. In terms of exercising the right to claim rights, disasters that occur outside the will of the person, states of war and similar situations, and very serious illnesses that make it impossible to exercise this right, can be considered as force majeure.”¹⁸⁸

The Council of State, as a common view, does not accept the suspension of the period of filing a lawsuit in cases of force majeure. Likewise, in many of its decisions, the Council of State has stated that in Article 8 of Law No. 2577, which regulates the duration of litigation, there is no provision stating that the period of filing a lawsuit will not run in the presence of force majeure conditions and that the force majeure conditions specified in Article 13 of Law No. 213 will only suspend the periods related to tax transactions. In fact, it would not be wrong to say that this situation arises from the definition of the period of filing a lawsuit as a *period of prescription*. For example, according to the Council of State, “*In the 15th article of the Tax Procedure Law No. 213, if there are reasons written in the 13th article of the same Law, it is foreseen that the periods will not run until this reason disappears, in the (1) paragraph of Article 13, severe illness that prevents the fulfillment of any of the tax duties is counted as a compelling reason. This rule of the law can be applied in terms of delays in the fulfillment of tax-related duties. In cases such as resorting to legal remedies in the interest of tax disputes or against the decisions taken by the jurisdictions on disputes, it cannot be considered that the application period stops due to the aforementioned rule.*”¹⁸⁹ Yet another decision, according to the Council of State “*Severe accident and serious illness that may prevent the fulfillment of one of the tax duties must be accepted as force majeure. Since force majeure will cut the deadlines for the fulfillment of tax obligations, the lawsuit filed by tax and penalty addressees against the taxes and penalties imposed on their names does not cut the period of filing a lawsuit, and filing a lawsuit will not be considered one of the duties of the taxpayer, so the period of filing a lawsuit does not stop in case of illness or other force majeure. The plaintiff, who cannot file his case personally due to his illness, can always file his case in time through a representative s/he will*

¹⁸⁸ The decision of the 7th Chamber of the Council of State, dated 24.03.1999 and numbered E. 1999/653, K. 1999/1305.

¹⁸⁹ 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.

*appoint.*¹⁹⁰ However, in another decision, the Council of State, “*In Article 8 of the Law No. 2577, there is no provision stating that the period of filing a lawsuit will not run in the presence of force majeure and it has been stated in Article 13 of the Law No. 213 that only the periods related to tax transactions will cease in case of force majeure...The court decision that rejected the case on the grounds that the report regarding the 20-day bed rest received by the plaintiff from the Health Center would not stop the filing period was not found to be inaccurate.*”¹⁹¹ In another decision, the Council of State, “*Force majeure situations, which are foreseen to cut the deadlines related to the fulfillment of tax obligations by the tax procedure law, do not affect the duration of filing a lawsuit in the tax court...The aforementioned rules of the Tax Procedure Law do not contain a regulation regarding the duration of filing a lawsuit, the beginning, suspension, extension or termination of this period, and compelling reasons are accepted only from the situations that prevent the fulfillment of tax duties on time and stop the periods related to these duties in the Tax Procedure Law.*”¹⁹² According to the Council of State in yet another decision, “*The circumstances counted as force majeure are regulated exclusively for failure to fulfill tax obligations. Filing a lawsuit, which is not a tax liability, is a right for the taxpayer. The state of detention does not prevent the taxpayer from filing a lawsuit.*”¹⁹³

However, as regulated in Article 13 of Law No. 213, it cannot be said that it is possible for a person to use his right to file a lawsuit in cases which serious accident, serious illness, detention, natural disasters such as fire, earthquake, and his books or documents have been lost due to obligatory absences and reasons beyond his will. Moreover, changing or overcoming these states does not depend on one’s own will. In our opinion, ignoring force majeure in terms of the duration of litigation will

¹⁹⁰ The decision of the 9th Chamber of the Council of State, dated 20.05.2008 and numbered E. 2007/906, K. 2008/2530.

¹⁹¹ The decision of the 11th Chamber of the Council of State, dated 01.07.1999 and numbered E. 1998/4152, K. 1999/2772.

¹⁹² The decision of the 3rd Chamber of the Council of State, dated 05.10.2006 and numbered E. 2006/1488, K. 2006/2447.

¹⁹³ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 13.10.2021 and numbered E. 2020/123, K. 2021/1255.

constitute a violation of the basic principles of law and especially constitutional principles. Forasmuch as, this situation constitutes a violation of the principle of the rule of law, the reason and proportionality of the restrictions on fundamental rights and freedoms, the right to a fair trial, the freedom to seek justice and the principles of taxation. in some of its decisions, the Council of State, based on the *general principles of law*, has also taken into account the force majeure conditions in the calculation of the duration of filing a lawsuit¹⁹⁴. For example, the Council of State has found it appropriate to suspend the period of filing a lawsuit due to earthquake, which is one of the force majeure situations¹⁹⁵. In another decision, the Council of State stated, “*In order to prevent loss of rights in the jurisdiction due to the Covid-19 epidemic, all periods regarding the birth, exercise or termination of a right will cease until 15/06/2020 (including this date), it will start to operate from the day following the day when the suspension period ends...*”¹⁹⁶ and decided to suspend the period of filing a lawsuit in the *Covid-19 epidemic disease*.

In civil procedural law, as a rule, if no action is taken within the definite period determined by the law or the judge, the right to take the action is forfeited (Law No. 6100, art. 94/3). However, if the failure to

¹⁹⁴ Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 128; Kaplan, İdari Yargıda Dava Açma Süreleri, p. 148; Günday, p. 337.

¹⁹⁵ “*It is known that there was an earthquake with a magnitude of 5.9 on the Richter scale at 17.57 on 1.10.1995, where the plaintiff resides, and that the tremors started about 15 days before this date and continued for a while after the earthquake. It can be seen from the news in the press that many buildings that the earthquake caused death and injuries were destroyed, the rest became uninhabitable, and the people had to live in tents for a long time. It is understood that after the earthquake, almost all of the people living in the region fell into pain and struggled for their lives, and they were in an environment where they could not do any of the jobs they could do in normal times. Under these circumstances, it was not appropriate to reject the lawsuit filed 7 days after the normal time due to the statute of limitations, instead of examining its merits and concluding, considering that the case was applied to the court within a reasonable time after the force majeure disappeared.*” (The decision of the 4th Chamber of the Council of State, dated 20.06.1996 and numbered E. 1995/6183, K. 1996/2698).

¹⁹⁶ The decision of the 2nd Chamber of the Council of State, dated 22.10.2020 and numbered E. 2020/1895, K. 2020/3099.

carry out the transaction within the specified time is due to reasons beyond the control of the person concerned, in this case, the Law provides the opportunity for the person concerned to perform the transaction that he has not done in due time, by “*restitution* (reinstatement)”¹⁹⁷ (Law No. 6100, art. 95/1)¹⁹⁸. The reasons for restitution are considered to be serious illness, accident, natural disasters such as earthquake, flood or a long travel that the party of the case cannot learn about the notification made to him/her¹⁹⁹. The judge will determine these reasons and the decision on whether to apply the restitution of these reasons²⁰⁰. In the Law No. 2557, there is no regulation similar to this restitution institution regulated in the civil procedure law.

The fact that force majeure cases are not regulated in the Law No. 2557 to suspend the term of litigation has also been criticized in the doctrine. According to *Çağan*, in the event of force majeure, it should be accepted that the durations of objection, appeal and tolerance, which are the period of prescription, should be suspended together with tax duties, because tax jurisdiction law is regulated together with other procedural aspects of tax law²⁰¹. According to *Karakoç*, it should be accepted that the period of filing a lawsuit, which is regulated in special laws, should also be stopped due to a force majeure occurring during the period of filing a lawsuit, because the effect of force majeure to suspend-extend the periods is one of the general principles of law, for this reason, even if there is no regulation on this matter, it should be accepted that a lawsuit can be filed by using the remaining time in case the time is expired due to

¹⁹⁷ For detailed information on the restitution, see Pekcanitez, Atalay and Özekes, p. 132-135; Kuru ve Aydın, p. 616-620; Arslan, Yılmaz, Taşpınar Ayvaz and Hanağası, p. 181-185; Budak and Karaaslan, p. 146-148; Görgün, Börü and Kodakoğlu, p. 208-213.

¹⁹⁸ Pekcanitez, Atalay and Özekes, p. 132-133; Kuru ve Aydın, p. 616-617; Arslan, Yılmaz, Taşpınar Ayvaz and Hanağası, p. 181-182; Budak and Karaaslan, p. 146; Görgün, Börü and Kodakoğlu, p. 208.

¹⁹⁹ Pekcanitez, Atalay and Özekes, p. 133; Kuru ve Aydın, p. 617-618; Arslan, Yılmaz, Taşpınar Ayvaz and Hanağası, p. 182; Budak and Karaaslan, p. 146-147; Görgün, Börü and Kodakoğlu, p. 208.

²⁰⁰ Pekcanitez, Atalay and Özekes, p. 133; Görgün, Börü and Kodakoğlu, p. 209; Arslan, Yılmaz, Taşpınar Ayvaz and Hanağası, p. 185; Budak and Karaaslan, p. 148.

²⁰¹ Çağan, p. 149.

the occurrence of force majeure²⁰². According to *Kaplan*, it is possible that a person cannot exercise his rights in on time due to natural disasters, a mental illness or physical illness, this situation occurs out of the desire and will of the people, so ignoring such situations will not be in accordance with equity and justice²⁰³. According to *Akyılmaz, Sezginer and Kaya*, the approach to force majeure in terms of the duration of litigation includes many problems in terms of the right to access court and the right to a fair trial; the ambiguity of the concept of force majeure, its ability to change over time, and a different evaluation according to each concrete case may render all periods meaningless, including the duration of litigation in the law²⁰⁴. According to *Candan*, although it was not foreseen in the Law No. 2577, the Council of State, in some of its decisions, concludes that in cases where it is impossible to change or prevent, such as natural disasters, it is not justified to accept the continuation of the litigation period by not taking into account the force majeure²⁰⁵. According to *Kızılot and Kızılot*, there can be no logical reason for accepting that the period of filing a lawsuit is running by not taking into account the force majeure situation, especially in cases such as natural disasters that people cannot change or foresee with their will²⁰⁶.

It can be seen that there is no regulation in the Law No. 2577 regarding the suspension of the time period for litigation in cases of force majeure. In this respect, it is not possible to benefit from the force majeure conditions regulated in Article 13 of Law No. 213. It should also be added that in such force majeure cases, it may be possible to suspend the duration of litigation with law or Presidential Decrees. Again, there are also decisions of the Council of State in which it foresees the suspension of the duration of litigation in cases of force majeure, based on the general principles of law. Although the law²⁰⁷, the Presidential

²⁰² Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 128.

²⁰³ Kaplan, İdari Yargıda Dava Açma Süreleri, p. 146.

²⁰⁴ Akyılmaz, Sezginer and Kaya, p. 359.

²⁰⁵ Candan, p. 400.

²⁰⁶ Kızılot and Kızılot, p. 376.

²⁰⁷ For example, according to the Provisional Article 1 of the Law No. 7226 on Amending Certain Laws, “*In order to prevent the loss of rights in the jurisdiction due to the Covid-19 epidemic in our country; a-) All periods regarding the birth, exercise or expiration of a right, including filing a lawsuit, initiating enforcement proceedings, application, complaint,*

Decree or the Council of State has the will to solve this problem based on the general principles of law, it is a shortcoming that force majeure conditions are not observed in terms of the term of litigation in the Law No. 2577. Moreover, the force majeure situation arises out of the will of the person and it is not possible to prevent or change this situation with the will. If the person misses the time to file a lawsuit due to force majeure that is beyond his will, s/he will lose his right to claim the lawsuit. Failure to foresee force majeure in terms of the duration of litigation will clearly violate the basic principles of law. Therefore, for all the reasons we have mentioned, in our opinion, it would be appropriate to add a regulation to the provisions regarding the duration of litigation in the Law No. 2577, stating that the duration of litigation will cease in case of force majeure.

M. Review of the Decision of the 3rd Chamber of the Council of State, dated 27.1.2022 and numbered E. 2021/3179, K. 2022/178

The decision of the 3rd Chamber of the Council of State, dated 27.1.2022 and numbered E. 2021/3179, K. 2022/178 has been deemed worthy of examination in this section as it is related to the request for the abolition of the value added tax and the special irregularity penalty, the duration of litigation and the suspension of the period.

According to the legal assessment made by the 3rd Chamber of the Council of State; *“The case is about the request for the abolition of the value added tax with one fold tax penalty and the special irregularity penalty imposed in accordance with the 1st clause of the article 353 of the Tax Procedure Law No. 213. AS it is understood that warnings related to the subject taxes and penalties of the case were notified on 14/08/2019; the time of 30 (Thirty) days starting as of mentioned date to file a lawsuit has been stopped because of the application to the tax office directorate submitted on 19/08/2019 for removal of the taxes and penalties as per article 11 of Law No. 257 7 and the time to file a lawsuit*

objection... Administrative Procedure Law No. 2577 dated 6/1/1982,... the periods determined for the parties... from 13/3/2020 (including this date) to 30/4/2020 (including this date) are suspended until the date. These periods start to run from the day following the day when the suspension period ends.”

has been started to process as of 04/11/2019 on which the claimant was notified by the letter of tax office directorate dated 30/11/20019; according to this it is understood that the lawsuit has been filed before 30/11/2019 on which the remaining days of 26 days of the case were exhausted that were remaining as of 04/11/2019; thereby the application of appellate was accepted and the decision of the Tax Cases Office that rejected the case on the grounds of time limits has been reversed.”²⁰⁸

Within the scope of article 11 of Law No. 2577, the plaintiff may directly file a lawsuit for the removal of the assessment made on his behalf, as well as request the removal, withdrawal, change or a new action from the higher authority, if there is no higher authority, from the authority that carried out the action, within the period of filing an administrative lawsuit. Accordingly, an application can be made to the administrative courts for the removal of the assessment. In this case, the period of filing a lawsuit will be stopped with an application to the administration. The suspended litigation period continues from where it left off as of the notification of the decision given by the administration²⁰⁹.

²⁰⁸ The decision of the 3rd Chamber of the State Council, dated 27.01.2022 and numbered E. 2021/3179, K. 2022/178.

²⁰⁹ In a decision of the Council of State, “...*It is not possible to apply Article 11 of the Administrative Procedure Law in calculating the duration of filing a lawsuit against tax loss penalties, since the determination of the duration of the administrative lawsuit against the tax penalty penalties is determined according to the date the notice is served, as a requirement of the regulation in the 7th article of the Administrative Procedure Law.*” (The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 30.01.2013 and numbered E. 2011/102, K. 2013/21) Hereunder, it is a requirement of the regulation in Law No. 2577, art. 7 that the duration of the administrative lawsuit to be filed against *the tax loss penalties* announced in the notice is determined according to the date the notice is served. It is not possible to apply Article 11 of Law No. 2577 in the calculation of the duration of filing a lawsuit against tax loss penalties.

N. Circumstances Requiring Extension of the Term of Litigation in Tax Proceedings

The *prolongation of the trial period* in tax proceedings is prolonged in cases of *judicial recess* (interruption of work), *applying to a non-commissioned court*, the presence of *some mistakes and deficiencies in the petition*, and the *failure of reconciliation*²¹⁰. According to a decision of the Council of State, “...the period of litigation, which is considered to be “foreclose” in the administrative jurisdiction, is an institutionalized procedural rule for the purpose of ensuring the stability of administrative actions and transactions and for the public interest, and is considered among the elements that can be taken into account and examined *ex officio* by the courts within the concept of “public order”, the prolongation or re-starting of the litigation period is limited by the conditions listed in the law...”²¹¹ Hereunder, the Council of State accepts the prolongation or re-processing of the period of filing a lawsuit, which it considers foreclose and the public order, limited to the cases listed in the law.

As stated above, during the *judicial recess*, some periods stipulated by the legislator are extended. Regional administrative, administrative and tax courts take a break from 20 July to 31 August, starting back to work as of 1 September every year (Law No. 2577, art. 61; Law No. 2575, art. 86). During the judicial recess, the time to file a lawsuit in the tax court and higher courts continues to run²¹². According to Article 8 of Law No. 2577, “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 7 days from the date following the end of the break.” (Law No. 2577, art. 8/3). The Council of State did not limit this situation to Law No. 2577, but expanded it for special laws as well.

²¹⁰ See, Yüce, p. 269-275; Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 131-141; Candan, p. 333-337. According to Karakoç, in the discussion of whether these periods were granted due to the interruption of the litigation period or due to “additional time”, it should be accepted that these periods are additional periods given to the person concerned (Karakoç, Vergi Yargılaması Hukukunda Süreler, p. 130-131).

²¹¹ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 14.11.1986 and numbered E. 1986/18, K. 1986/20.

²¹² Batı, p. 85.

According to this, “*The deadlines for filing lawsuits, which are stipulated in special laws and whose completion coincides with the time of suspending work, will also be deemed to be extended by seven days from the date following the end of the pause.*”²¹³ For example, in the continuation of the said decision, it is stated that this rule will also be applied for the 15-day period to file a lawsuit against the payment order period in Article 58 of Law No. 6183. According to the Council of State, this regulation stating that the periods ending in the period of suspension from work will be extended is a special regulation, and for this reason, the period that coincides with the time of interruption from working will also be extended in case of the period of litigation stipulated in special laws²¹⁴.

Again, according to a decision of the Council of State, “*If the plaintiff, whose litigation period has been extended until September 12, applies for rectification within this period, receives a response, and regarding the time that ran at the start; if the end of the period calculated according to Article 11 of Law No.2577 coincides on a date that was before the extended time duration; including 12th day of September, the case filed until this date should be accepted to have been filed within the due term.*”²¹⁵ Whereas, upon the application for rectification within the extended period of filing a lawsuit due to a judicial recess, the extended period shall be taken into account in the filing of a lawsuit regarding the

²¹³ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 21.04.2000 and numbered E. 1999/447, K. 2000/159.

²¹⁴ “*This regulation, which states that the periods ending in the period of suspending work will be extended, is a special regulation. For this reason, it is clear that the period whose end coincides with the time of suspending work will also be extended if there is a period of litigation stipulated in special laws. Since it was understood that a lawsuit was filed on 19.8.1997, not within seven days, but within an extended period of time, against the payment order notified on 11.8.1997, which coincided with the time to suspend work, the decision of insistence on the rejection of the case due to the statute of limitations was not found conforming to the law.*” (The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 21.04.2000 and numbered E. 1999/447, K. 2000/159).

²¹⁵ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 18.10.1990 and numbered E. 1990/29, K. 1990/58.

illegality of the penalties for the months for which the request for correction is not accepted.

Moreover, in a decision, the Council of State, “*In Article 7 of the Administrative Judgment Procedure Law No. 2577, the duration of filing a lawsuit is thirty days in tax courts, in cases where special laws do not specify a separate period. ...In the third paragraph of Article 8, it is stipulated that if the expiry of the periods written on this subject coincides with the time for a break from working, these periods will be deemed to be extended by seven days from the date following the end of the break. It is understood from the examination of these provisions that, since the request for reconciliation is dependent on the duration of the lawsuit, if the expiry of the said 30-day period coincides with the time for a break from work, this period will be extended in parallel with the duration of the lawsuit.*”²¹⁶ According to another decision, the Council of State, “*...from the lawsuit petition and the defense of the tax office, it is understood that the notices were served on 31.7.1995, and that the lawsuit to be filed with the tax court in accordance with Article 7 of the Administrative Procedure Law No. 2577 should be filed within 30 days, until 31.8.1995 at the latest, but since this date coincides with a judicial holiday, according to the article 8/3 of the same law, the period of filing a lawsuit was extended until 12.9.1995...*”²¹⁷ With reference to, if the end of the period of filing a lawsuit coincides with the time for a judicial recess, the period of filing a lawsuit will be deemed to be extended by seven days from the date of the end of the work break.

The legislator has given additional time for the lawsuits to be filed in the administrative jurisdiction upon the rejection of the lawsuit brought to the judicial court due to lack of jurisdiction²¹⁸. According to this, “*In case of refusal from the duty point of the cases brought before the judicial courts, even though the resolution of the Council of State, administrative and tax courts are within the duties of the Council of State, a lawsuit can be filed in the competent court within thirty days from the*

²¹⁶ The decision of the Plenary Session of the Tax Law Chambers of the Council of State, dated 05.02.1988 and numbered E. 1987/32, K. 1988/8.

²¹⁷ The decision of the 3rd Chamber of the State Council, dated 29.04.1998 and numbered E. 1996/6557, K. 1998/1463.

²¹⁸ For detailed information, see Günday, p. 328-333; Gözübüyük and Tan, p. 921-931; Gözübüyük, p. 423-425; Tan, p. 1057-1062.

day following the finalization of the decisions on this matter. The date of application to a non-judicial authority is considered as the date of application to the Council of State, administrative and tax courts.” (Law No. 2577, art. 9/1).

The Law No. 2577 has also ruled for additional time to eliminate the deficiencies that require the rejection of the petition. In a lawsuit filed in accordance with Article 15/1-d of Law No. 2577, if the petition is not prepared in accordance with the form in Article 3/2 of Law No. 2577, if the lawsuit is filed by a representative who is not a lawyer (Law No. 2577, art. 15/1-d), and in case a lawsuit is filed against more than one decision with a petition in an inappropriate way or in the event that a lawsuit is filed by more than one person with one petition (Law No. 2577, art. 5/1,2), the petition in question is rejected and an additional 30-day period is given to the plaintiff in order to correct the mistake and eliminate the deficiencies.

The legislator also envisaged an additional period in case of unsuccessful reconciliation negotiations. According to the Additional Article 7 of Law No. 213, *“The taxpayer or the person who has requested reconciliation within the deadline can file a lawsuit for the tax or penalty for which s/he seeks reconciliation, only if reconciliation does not occur... In the event that reconciliation does not occur, the taxpayer or the person who is penalized may file a lawsuit against the tax levied or the penalty imposed, in accordance with the general provisions and before the authorized tax court, as of the notification of the report stating that the reconciliation has not occurred. In this case, if the deadline for filing a lawsuit has expired or is less than 15 days, this period will be extended to 15 days from the date of notification of the report.”* (Law No. 213, art. 7/1, 4). In this respect, the taxpayer will be able to use his right to file a lawsuit if no reconciliation is reached²¹⁹.

V. CONCLUSION

In tax proceedings, while regulating the implementation of the principles of freedom of claim and fair trial expected from the judicial process, on the other hand, the parties are enabled to conclude their

²¹⁹ Kaplan, İdari Yargılama Hukuku, p. 388.

disputes regularly, effectively, and rapidly. In this respect, the conclusion of the judicial process in a regular and healthy manner will be possible if the judicial organs and the parties comply with the deadlines stipulated by the law for the trial process. In tax proceedings organized in administrative proceedings, the period of filing a lawsuit is a procedural rule regarding public order, which can only be regulated by law, has a detrimental nature, and is taken into account by the court *ex officio*.

1. The limitation of the right to file a lawsuit for a period of time has been discussed in doctrine and practice. According to the Council of State, a limitation on taxation must strike a reasonable balance between the public interest and the right of access to court. Access to court shall not be deemed to have been denied if the rules on litigation do not result in a disproportionate limitation.

2. In doctrine and practice, the legal nature of the term of litigation is controversial. First of all, it should be noted that; there is a general and dominant opinion in the doctrine and the applications of the Council of State that the period of filing an administrative lawsuit is a period of disqualification. Indeed, it is not possible to benefit from that right if a lawsuit is not filed within the specified timeframes in the administrative jurisdiction. However, it should be noted; upon the expiration of the filing period; there is no expiration or loss of the right. For example, if the administration has erroneously charged the taxpayer's income tax over an excessive amount, the fact that the relevant taxpayer has passed the period of filing a lawsuit determined in the law in order to bring this situation to the stage of tax proceedings does not indicate that this right has disappeared, but that s/he has not benefited from the said right. In other words, the erroneous assessment made by the administration continues to exist as a right even if no lawsuit is filed by the taxpayer. In this respect, we think that with the expiration of the period to file a lawsuit, the right to claim a lawsuit ends.

3. It is obligatory to indicate the administrative or judicial authorities and legal remedies and their duration to be applied against administrative actions. Failure to indicate the duration of filing a lawsuit in the notifications sent by the administrative authorities regarding taxation will clearly contradict Article 40 of the Constitution, which regulates the protection of fundamental rights and freedoms.

4. General litigation periods, which will be the basis for filing a lawsuit in tax proceedings, are determined by Law No. 2577. The

duration of filing a lawsuit is 60 days in the Council of State and administrative courts, and 30 days in tax courts, in cases where a separate period is not specified in special laws (Law No. 2577, art. 7). This difference in general litigation times may cause some problems in practice. As a matter of fact, in some cases, for example, in the assessment process, it may not be determined exactly whether the dispute in the concrete case will be resolved in the administrative court or the tax court. Moreover, in addition to this, some special tax laws also stipulate periods for filing a special lawsuit. For this reason, in our opinion, determining the same time for filing lawsuits in the administrative jurisdiction will eliminate potential problems in practice.

5. Administrative jurisdictions can be applied in order to remove the assessment in tax proceedings. According to the Council of State, in this case, the time to file a lawsuit stops with an application to the administration. The suspended litigation period will continue from where it left off as of the notification of the decision given by the administration.

6. As a general rule in Law No. 2577, the periods start to run from the day following the date of notification, publication or announcement (Law No. 2577, art. 8/1). However, in Article 45/1 of Law No. 2577; in Article 46/1, it is stated that the 30-day period determined for appellate and appeal, which are the ordinary legal remedies, will start from the notification of the decision that is the subject of the appellate or appeal, the correction of this situation would be appropriate in terms of unity of law.

7. It is also possible to make the notification electronically in tax proceedings. In this case, the notification document is deemed to have been served at the end of the fifth day following the date of the electronic address of acceptor (Law No. 213, art. 107/A/2). According to the Council of State, not sending an information message to the telephone number and/or e-mail address notified to the notification system during or after the application; shall not affect the duration and validity of the notification.

8. The Council of State, in a recent decision to consolidate its case-law, has eliminated the existing problems with the application of general and special litigation deadlines. Accordingly, in cases where the duration of litigation is not specified in the administrative proceedings

subject to the specific or general litigation period notified in writing, the general litigation period will have to be applied.

9. Law No. 213 has envisaged some conveniences for taxpayers who cannot arrive on time for a justified reason beyond their control, for specified deadlines for their tax liabilities. In force majeure and difficult situations, tax duties are suspended or extended under certain conditions. However, there is no regulation in the Law No. 2577 that provides for the suspension of term of litigation. Again, the Council of State strictly evaluated the duration of the lawsuit and trial and gave decisions against the plaintiff in case of time-lapse. However, it is seen that the Council of State has softened its stance in its recent decisions. As a matter of fact, the Council of State has taken into account force majeure and difficult situations during the trial in some of its recent decisions. In our opinion, the Council of State shows partial flexibility in favor of the plaintiff in the time periods determined for the trial, adhering to the spirit of the concrete case and the law; this would be more appropriate in terms of the principles of freedom to seek justice, fair trial and access to court. Moreover, especially natural disasters such as earthquakes and floods are not situations that a person can prevent and foresee with his/her own will. Again, it would be appropriate to make a regulation in the Law No. 2557 that will extend the period of filing a lawsuit in terms of situations that occur outside the will of the person or will bring an institution such as reinstatement or restitution as in the civil procedure law.

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