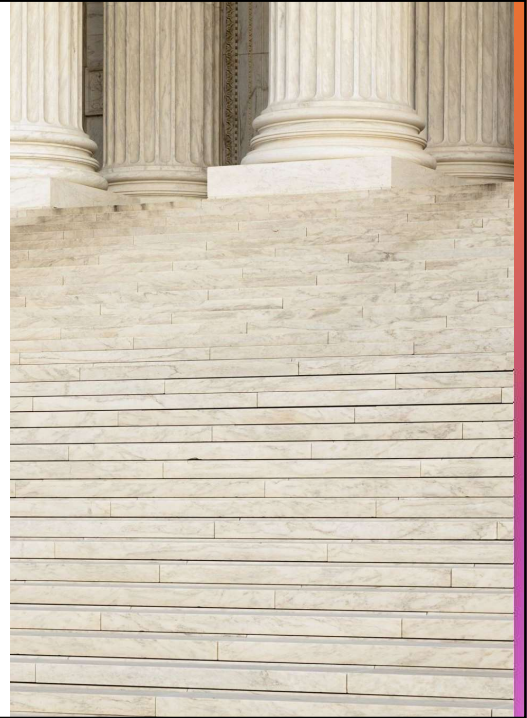


## AMDMINISTRATIVE LAW

- **UNIT 1:** Concept of Administration
- **UNIT 2:** The Birth of Administrative & Law in France and Turkey
- **UNIT 3:** Constitutional Principles of Turkish Administrative Structure



1

## PURPOSE OF THIS CHAPTER

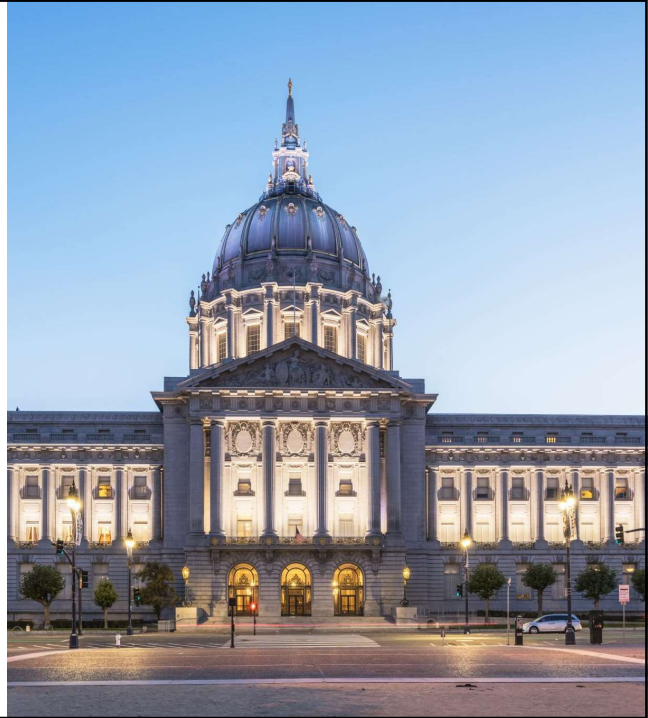
- What is administration?
- What are the differences between public and private administration?
- How was administrative law born?
- How has administrative law developed in France and Turkey?
- In this chapter, you will be able to identify, explain and apply the principles of administrative law, in particular with regard to the administrative organization.



2

## Selected Terms

- Administration - İdare
- Centralization – Merkezi İdare
- Decentralization – Yerinden Yönetim
- Municipality – Belediye
- Administrative Tutelage - İdari Vesayet



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## INTRODUCTION

- Administrative Law, or the Law of Administration, is a branch of public law that governs the structure, powers, and duties of administrative authorities, as well as the rights and duties of individuals in their dealings with these authorities. It plays a crucial role in regulating the activities of the government and ensuring accountability and fairness in administrative actions. This unit explores the principles, sources, and key concepts of Administrative Law, providing students with a foundational understanding of this important area of law.

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## The Concept of Administration

- Administration can be defined as the organization and coordination of the activities of an entity in accordance with certain policies, procedures, and laws. In the context of Administrative Law, administration refers to the activities of public authorities as they carry out governmental functions. Understanding the concept of administration is fundamental to grasping the scope and nature of Administrative Law.

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## Constitution of Turkey Dated 1982

- ARTICLE 126- In terms of central administrative structure, Turkey is divided into provinces on the basis of geographical situation, economic conditions and public service requirements; provinces are further divided into lower levels of administrative districts.




6

A wooden gavel with a brass head and a dark wood handle is positioned vertically in the center. It rests on an antique, sepia-toned map of the world. The map shows continents like Africa and Asia, with various geographical labels and a grid of latitude and longitude lines. The gavel's head is at the top, and the handle extends downwards, ending in a small circular base that touches the map.

Organization (Structure)

- ARTICLE 125- Recourse to judicial review shall be available against all actions and acts of administration.

7

A golden scale of justice is centered in the image. It features a central vertical pillar with a decorative top, from which two horizontal arms extend outwards. Each arm holds a shallow, golden weighing pan. The entire scale is set against a light green and white gradient background.

Management

- ARTICLE 123- The administration forms a whole, with regard to its constitution and functions and shall be regulated by law.

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## 1.1 Division of Public-Private Administration

- This topic explores the distinction between public and private administration. Public administration relates to the management of public affairs and is primarily concerned with the implementation of public policies and the provision of public services. Private administration, on the other hand, pertains to the management of private organizations and businesses. Understanding this division is essential for delineating the scope of Administrative Law and its application to different types of entities.

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- 1.1.1 -The Way of Establishment
- 1.1.2 -The Purpose of Establishment/Activity
- 1.1.3 -The Determination of Activity Areas
- 1.1.4 -The Exercise of Public Power
- 1.1.5 -The Principle of Equality
- 1.1.6 -The Principle of Legality
- 1.1.7 -The Way of Termination

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## The Birth of Administrative Law in France and Turkey

- This topic examines the historical development of Administrative Law in France and Turkey. In France, Administrative Law emerged in the 19th century as a response to the growing power of the administrative state. In Turkey, the roots of Administrative Law can be traced back to the Ottoman Empire, with significant developments occurring during the Republican era. Understanding the historical context of Administrative Law is crucial for appreciating its evolution and principles in both countries.



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## The Birth of Administrative Law in France

- Administrative Law in France has its roots in the concept of the "Rule of Law" (État de Droit), which emerged during the French Revolution. One key figure in its development was Léon Duguit, who argued for distinguishing the state's functions as a sovereign entity and as an administrative body, laying the foundation for the principle of the separation of powers. The creation of the Council of State in 1799 also played a crucial role, serving as a legal advisory and judicial body for administrative disputes. Overall, the emergence of Administrative Law in France responded to the need for legal controls over state actions and citizen rights protection, influencing the development of modern Administrative Law worldwide.



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## The Birth of Administrative Law in Turkey

- Administrative Law in Turkey has its roots in the Ottoman Empire's legal system. Significant developments occurred during the Republican era, including the establishment of the Council of State in 1922 and the adoption of the 1961 Constitution, which emphasized the Rule of Law and the separation of powers. Administrative Law in Turkey aims to modernize the legal system and establish safeguards against arbitrary state actions, shaping the relationship between the state and its citizens.



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## The Features of Administrative Law

**Specialized Legal System:** Governs administrative agencies' activities and ensures legal compliance.

**Public Nature:** Focuses on government actions in the public sphere.

**State-Citizen Relationship:** Regulates rights and obligations between the state and individuals.

**Procedural Emphasis:** Ensures fairness in administrative decision-making processes.

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## The Features of Administrative Law

**Judicial Review:** Allows courts to review administrative decisions for legality.

**Flexibility:** Adaptable to societal changes for efficient administration.

**Remedies:** Provides avenues for aggrieved parties, like judicial review.

**Substantive Principles:** Guided by principles such as Rule of Law and separation of powers.

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## Constitutional Principles of Turkish Administrative Structure

- Two principles dominate the Turkish administrative structure:
- 1- Centralization
- 2- Decentralization

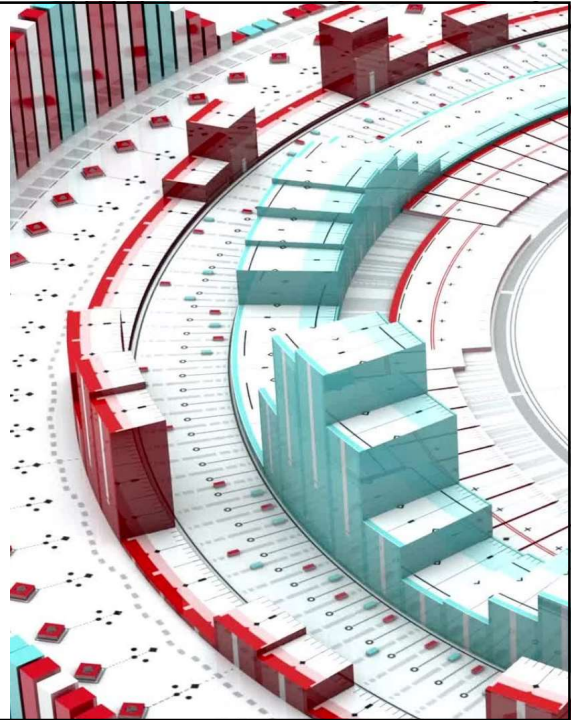


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## 1- Centralization

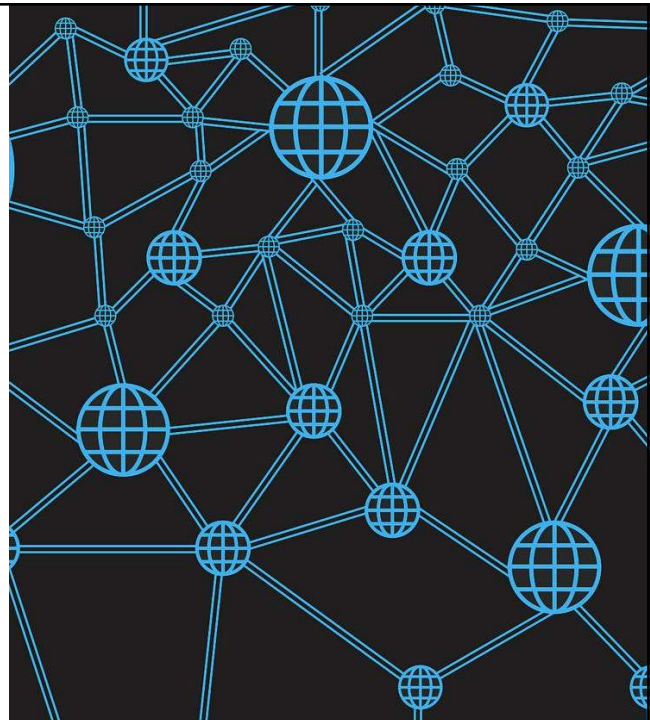
- Centralization in Turkish Administrative Law refers to the concentration of administrative power at the central government level, contrasting with decentralization to lower-level bodies. Initially prominent, it aimed to modernize governance. While centralization emphasizes central government decision-making, recent trends show a shift towards decentralization, granting more autonomy to local governments. Centralization has shaped the relationship between the central government, local authorities, and citizens, but decentralization is increasingly seen as necessary for effective governance and local responsiveness.



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## 2- Decentralization

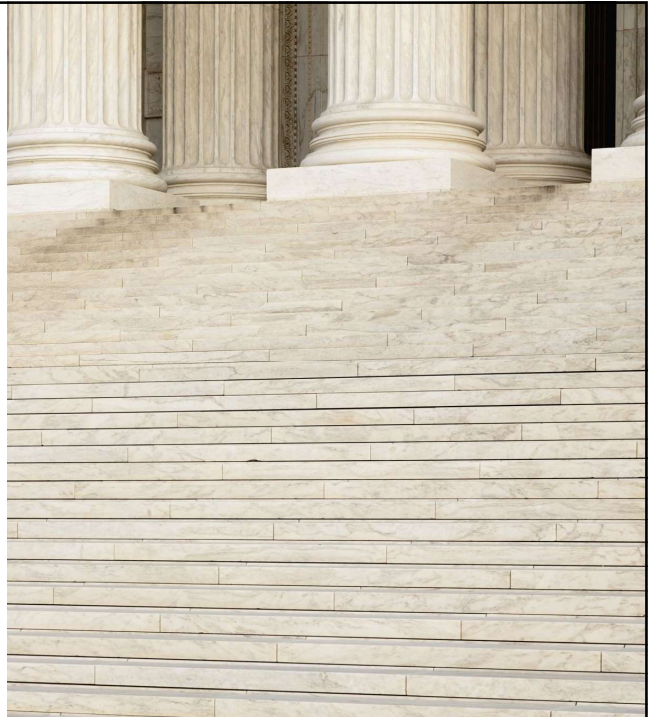
- Decentralization in Turkish Administrative Law involves transferring administrative authority from the central government to local bodies. It aims to enhance governance by enabling local decision-making and responsiveness. Recent years have seen significant decentralization efforts, granting more autonomy to local governments and empowering them to address local needs. This shift has led to greater local initiative in areas like urban planning, education, and healthcare. Decentralization also promotes democratic governance by ensuring decisions are made closer to affected communities, enhancing accountability and transparency. Overall, decentralization in Turkish Administrative Law has improved efficiency, responsiveness, and democratization.



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## The Integrity of the Administration

- The integrity of the administration in Turkish Administrative Law refers to the ethical standards and legal compliance expected from administrative officials and agencies. This principle, essential for maintaining public trust, is upheld through transparency, accountability, impartiality, efficiency, ethical conduct, and legal compliance.



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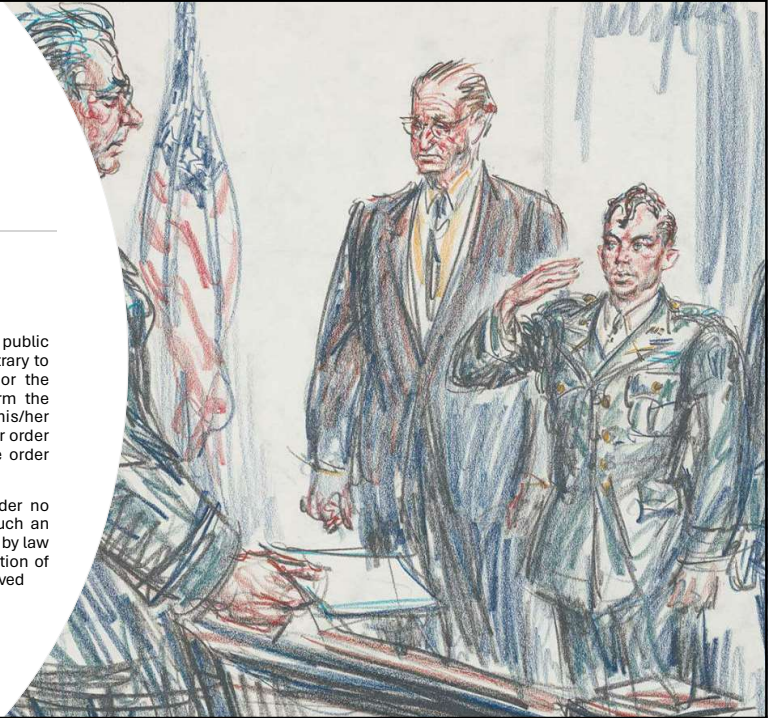
## Hierarchy

- A hierarchy (from the Greek *hierarchia*, "rule of a high priest") is an arrangement of items (objects, names, values, categories, etc.) in which the items are represented as being "above," "below," or "at the same level" as one another. In every large-scale organization, there are a few who command and there are others who are commanded. Concretely, in administration a hierarchy means a graded organization of several successive steps or levels, in which each one of the lower levels is immediately subordinate to the next higher one and through it, to the other higher steps right up to the top. Through this principle the efforts of many different individuals are geared together.

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## Hierarchy - Unlawful Order ARTICLE 137

- If a person employed in any position or status in public services finds an order given by his/her superior to be contrary to the provisions of by- laws, presidential decrees, laws, or the Constitution, s/he shall not carry it out and shall inform the person giving the order of this inconsistency. However, if his/her superior insists on the order and renews it in writing, his/her order shall be executed; in this case the person executing the order shall not be held responsible.
- An order which in itself constitutes an offence shall under no circumstances be executed; the person who executes such an order shall not evade responsibility Exceptions designated by law relating to the execution of military duties and the protection of public order or public security in urgent situations are reserved



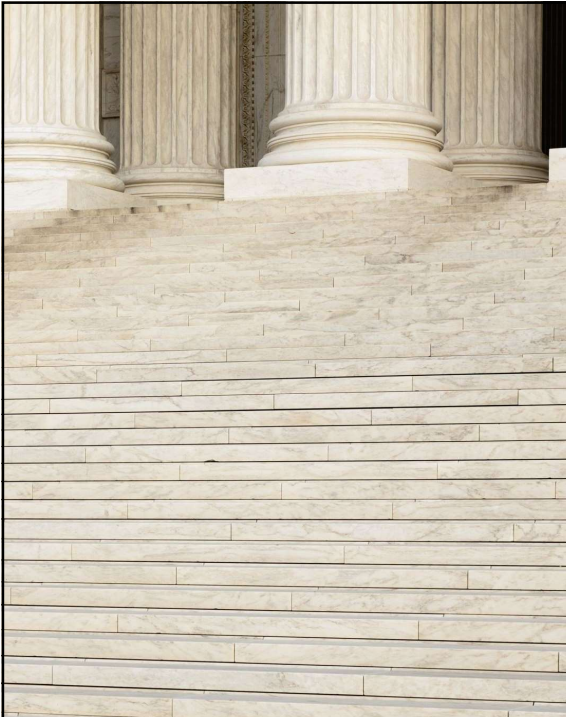
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## Administrative Tutelage

- Administrative tutelage is the supervision and control exercised by higher administrative authorities over lower administrative bodies. It ensures compliance with laws and policies, aiming to coordinate decentralized entities like local governments. This oversight prevents abuse of power and promotes coherence in actions.

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## Devolution of Powers

- Devolution of powers refers to the transfer of authority and responsibilities from a central government to regional or local governments. It is aimed at decentralizing governance and giving more autonomy to local authorities to make decisions that affect their communities.
- In Turkish Administrative Law, devolution of powers is known as "yetkilerin devri." It is a process that involves delegating certain powers and functions from the central government to local governments or other lower-level administrative bodies. This transfer of authority is typically accompanied by the necessary resources and decision-making capabilities to ensure that local governments can effectively exercise their new responsibilities.

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## Devolution of Powers

- Devolution of powers is often seen as a way to promote local democracy, improve governance efficiency, and address regional disparities. It allows for decisions to be made closer to the people they affect, increasing accountability and responsiveness in governance.
- Overall, devolution of powers is an important aspect of Turkish Administrative Law, reflecting the country's commitment to decentralization and local governance.



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