

## Efficiency Of Court Decisions On Environmental Cases A Comparative Analysis between the Netherlands and Turkiye

Zerrin Savaşan\*

**Abstract:** This study built upon an investigation on the efficiency of the court decisions on ‘environmental issues’ with a comparative analysis in between the Netherlands and Turkiye. In this regard, first of all, it provides an overview on European Commission for the Efficiency of Justice (CEPEJ)’s methodology and data referring to its evaluation reports. Secondly, it examines two judicial systems and their relative potential features regarding environmental litigation to understand on which basis a comparative analysis can be made on environmental litigation between Netherlands vs. Turkiye. Finally, based on its findings, two countries’ environmental cases are collected on the basis of a strict period, with a certain environmental case definition and pre-determined instance stage, and, it makes a comparative analysis in between its two case studies.

**Keywords:** CEPEJ; environmental litigation; judicial systems; Netherlands.

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\* Is currently working as an Assoc. Prof. (Public International Law) in the Department of International Relations, Sub-department of International Law, Faculty of Economic and Administrative Sciences, Selçuk University in Konya, Turkiye. She also works as Erasmus/Farabi Institutional Coordinator of Selcuk University.

She obtained her PhD degree from the Department of International Relations, Middle East Technical University (METU); her master’s degree from the Department of European Studies, METU; and her bachelor’s degree is from Law Faculty, Ankara University.

Her PhD research was conducted on “Compliance Mechanisms under Multilateral Environmental Agreements”, supported by scholarships provided by The Council of Higher Education (YOK) of Turkey at the Max Planck Comparative Public Law and International Law Institute, Heidelberg University, Germany; and by the Academic Staff Training Programme (OYP) of Turkiye in the Center for Environmental Studies, Vrije University, Amsterdam, The Netherlands.

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## Introduction

This study has been designed as a part of a Short-Term Scientific Mission (STSM) research and supported in the context of the COST Action CA20131-Efficient Justice for All Improving Court Efficiency through EU Benchmarking. The main aim of that Action is to create a European network to investigate the causes of, and possible cures for judicial inefficiency by bringing together a strong team of experts in benchmarking with a strong focus on how to handle the heterogeneity of the legal systems and the congestion arising from the increasing number of court cases, and inabilities of legal systems to produce high-quality, timely court decisions.

In parallel to this aim, the study was built upon an investigation on the efficiency of the court decisions on a specific topic, namely, ‘environmental issues’ with a comparative analysis in between the Netherlands’s and Turkiye’s judicial systems.

Efficiency, in the scope of the study, was understood as ‘the delivery of quality decisions within a reasonable time following fair consideration of the issues’ (Council of Europe, 2010, para.31) in line with Council of Europe perspective (Aubyn, 2008).

It involved an interdisciplinary comparative case study/research benefited from the literatures of environmental law and environmental justice and litigation. Given the success of the Court decisions reflected and popularized particularly through Urgenda Case that was won against the Government in the NL, it is assumed that the NL can be a sample model or can provide good lessons for TR as a result. So, it was chosen as a case study for the study.

Data required for the analysis was collected and compiled through various sources, including dozens of books; a variety of journals/environmental law reviews and official documents/annual reports on environmental case-law; internet databases of two countries’ on case-law; discussions/interviews made by those relevant researchers/scholars/staff--involved in/working for different relevant

institutions/organizations- and their practical experiences and recommendations on the research.

Methodology to pursue for this intensive research was firstly thought to be fundamentally based on CEPEJ methodology (taking CEPEJ as key resource and reference), considering that CEPEJ Evaluation Scheme, including the indicators used by the CEPEJ (i.e., Clearance Rate and Disposition Time defined by CEPEJ with other 7 efficiency categories), can work at best for the goals of the research. However, in the further steps of the research, its limitations were realized for that kind of analysis, and then a new alternative approach proper to current conditions of two systems were applied for the last step, i.e., court efficiency on environmental litigation between the Netherlands vs. Turkiye.

Overall, within the context of the research, three types of comparative analysis were prepared:

- On judicial systems of the Netherlands and Turkiye on the basis of CEPEJ evaluation.
- On judicial systems of the Netherlands and Turkiye in general.
- On court efficiency of environmental litigation between Netherlands vs. Turkiye.

In this regard, first of all, to find out whether the CEPEJ's data and methodology can be used for a comparative analysis about court efficiency on environmental litigation between Netherlands vs. Turkiye, the analysis will provide an overview on both its methodology and data, relying on its evaluation reports. Secondly, to understand on which basis a comparative analysis can be made on environmental litigation between Netherlands vs. Turkiye, it will investigate specificities of two judicial systems specifically with regard to environmental litigation. Finally, based on the findings, two countries' environmental cases will be collected on the basis of a strict period, with a certain environmental case definition and pre-determined instance stage, and a comparative analysis will be provided.

## 2. CEPEJ Evaluation on Judicial Systems: Netherlands vs. Turkiye

The European Commission for the Efficiency of Justice (CEPEJ), set up by the Committee of Ministers of the Council of Europe, has conducted a biennial self-reporting process on the judicial systems of the members of Council of Europe and some observer states since 2004. Through this process, it provides an overview on European judicial systems, practical measures, and a detailed tool for a better understanding of the functioning of justice and to improve its efficiency and its quality throughout Europe. Its data and comments provided by the national correspondents are collected by CEPEJ Secretariat based on CEPEJ methodology. This methodology is based on specific key documents (Evaluation Scheme and Explanatory Note -to facilitate a common understanding, to ensure the data's uniformity and comparability), actors (national correspondents assigned by the members to collect the relevant data), Working Group on the evaluation of judicial systems (CEPEJ Working Group GT-EVAL7), and CEPEJ Secretariat), and processes (online data collection for each cycle, verification/validation of data by CEPEJ).<sup>1</sup>

However, it is not possible to talk about the full reliability of that data. As it almost exclusively relies on self-reporting of states, their governmental data provided by the national correspondents, and even though the sources to the answers are asked by the evaluation scheme, sources shown by the respondents are generally just the names of the relevant organizations, such as Ministry of Justice, Council of Judges & Prosecutors, Constitutional Court, Council of State, Central Bureau of Statistics etc. So, there is no specific mention/full reference to the document including that information. The CEPEJ already acknowledges that there are some methodological problems in this reporting system and the differences in between the states according

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<sup>1</sup>The CEPEJ uses the following indicators when reading the results of the analyses: average, the standard deviation, and the median, the minimum and maximum. For dynamic internet database involving all data since 2010 and dashboards providing an overview of selected indicators. See at: CEPEJ-STAT (-).

to the characteristics of their legal systems (e.g., civil law and common law entities; countries in transition, countries with relatively new or newly reformed judicial systems or with old judicial traditions), geographical criteria (size, population) or economic criteria (e.g., within or outside the Eurozone, level of wealth, GDP and the average gross annual salary) make it quite hard to lead to the identification of common trends. Therefore, it underlines that, it does not intend to be an academic or scientific study, or to include an exhaustive indicators list (CEPEJ, 2021); thereby, a rigorous reading is required in the light of the methodological notes (explanatory notes) and comments by correspondents to understand the evaluations fully and accurately, and to draw analyses and conclusions on them.

In line with CEPEJ objectives, this analysis also does not aim to rank the best judicial system in between the Netherlands and Turkiye, it just aims to provide an overview on both judicial systems on the basis of CEPEJ evaluation reports (CEPEJ, 2020a); and thus, to discover if its data and methodology can be used for a comparative analysis on court efficiency on environmental litigation between the Netherlands vs. Turkiye.

### **CEPEJ Performance Indicators on Court Efficiency**

CEPEJ's approach on court efficiency is inspired by the fundamental principle enshrined in Article 6 of the European Convention on Human Rights (ECHR), as the right to a public hearing before an independent and impartial tribunal within reasonable time as endowed with rights of fair trial, such as right to silence, access to legal representation etc. In parallel to its approach, it has developed two performance indicators to assess court efficiency: Clearance Rate (CR) and Disposition Time (DT).

Clearance Rate (CR) is the ratio obtained by dividing the number of resolved cases by the number of incoming cases in a particular period.  $CR > 100\%$  means, court / judicial system is able to resolve more cases than it received- backlog is decreasing.  $CR < 100\%$  means, court / judicial system is able to resolve fewer cases than it

received- backlog is increasing (CoE, 2018).

Disposition Time (DT) is the theoretical time necessary for a pending case to be resolved, so provides a crucial information on the estimated length of the proceedings. It is found by dividing the number of pending cases at the end of a given period by the number of resolved cases within that period, multiplied by 365. More pending than resolved cases lead to a DT higher than 365 days (CoE, 2018).

Incoming cases in the reference year are all new environmental cases submitted to the Court for the first time. Pending cases are unresolved environmental cases at the end of the reference year (31st December). Pending cases older than two years are pending environmental cases (on 31st December of the reference year) that had first arrived at the court more than 2 years ago (i.e., before 1st January of reference year).

In CEPEJ published reports, based on two years cycles, like 2018-2020, 2020-2022, for each country, the CR and DT and the efficiency categories for different type of cases at different courts are available. To this, it is possible to see which efficiency category is valid for which cases at which courts (see Table 1 below) (CEPEJ-STAT). To illustrate, for the cycle 2018-2020, for administrative cases at Supreme Courts, while efficiency category is determined as ‘Creating Backlog’ for the NL; it is ‘Fighting Backlog’ for TR (CEPEJ, 2020b; 2020c).

<b>Table 1. Efficiency Categories</b>	<b>Disposition Time</b>	<b>Clearance Rate</b>
<b>Very High DT</b>	$DT \geq 4xMedian$	all values
<b>Very High CR</b>	all values	$CR > 200\%$
<b>Warning</b>	$4xMedian > DT > 2xMedian$	$CR < 100\%$
<b>Fighting Backlog</b>	$4xMedian > DT > 2xMedian$	$CR \geq 100\%$
<b>Creating Backlog</b>	$DT < 2xMedian$	$CR < 95\%$
<b>Standard</b>	$DT < 2xMedian$	$CR \geq 95\%$
<b>NA</b>	NA	NA

Nevertheless, the problem here is that, this data does not provide information

on environmental cases as a separate specific field, and so it does not seem possible to go through this CEPEJ's data for the current research.

### **3. Judicial Systems and Environmental Litigation: Netherlands and Turkiye in General**

As it was found out that, CEPEJ data does not provide information on environmental cases as a separate field in the previous part, this part of the research aims to render a preliminary assessment intending to assist the overall research in identifying issues and themes to be investigated further on the case studies of the research, i.e., the Netherlands and Turkiye (see at Table 2). Indeed, it is here intended to be guided by a detailed comparative analysis to understand relative potential strengths/deficiencies of two systems, and on which basis a comparative analysis about court efficiency on environmental litigation between the Netherlands vs. Turkiye can be made. So, it focused on the specificities of two judicial systems particularly regarding environmental litigation, e.g., organisational aspects, a particular way of functioning, different procedures, and legal traditions etc.

#### **3.1 Legal & Judicial Systems in General: Main Findings**

On the basis of the Table 2, it becomes clear that, both countries have many similarities, but slight differences in many aspects regarding legal and judicial system characteristics. This is most probably because they are both based on civil law legal system; but the NL is a decentralized unitary state in which provinces and municipalities have extensive powers to their internal affairs unlike TR in which the administration is a whole with its formation and functions based on the principles of centralization and decentralization. When factors such as geographical size and population are taken into consideration, the number of courts in TR case is naturally quite higher in TR case than that of NL case. Another remarkable output of this part

is that there is no environmental specialized court with special procedures and principles in both cases. Actually, in Europe, just Sweden has specialized environmental courts named as Land and Environment Courts.<sup>2</sup> In Turkiye, there also appears an intention to create environmental (specialized) courts under the Justice Reform Strategy prepared by the MoJ, but for now, in both countries, environmental issues are dealt with existing court systems (Ministry of Justice, 2019, 53 (target 4.3)).

<b>2. Judicial Systems and Environmental Litigation: Netherlands and Turkiye in General</b>		
	<b>NETHERLANDS</b>	<b>TURKIYE</b>
<b>LEGAL SYSTEMS IN GENERAL</b>		
<b>Type of state</b>	Constitutional Monarchy Decentralised Unitary state (Art.123-133, Dutch Constitution)	Constitutional Republic Unitary state (Art.123, TR Constitution)
<b>Governmental System</b>	Parliamentary system (Chapter 2-3, Dutch Constitution; Act of Parliament)	Presidential system (by Constitutional amendments on April 16, 2017 (Act No.6771)
<b>System of Law</b>	Civil(continental European) law system	Civil(continental European) law system
<b>Source of Law</b>	1. Statutory law <sup>3</sup> 2. Direct effect/Supremacy of EU law (ECJ 1964; Supreme Court, 2004) 3. Effect of International Law <sup>4</sup>	1. Statutory law 2. Indirect effect of EU Law (Savaşan, 2020a) 3. Effect of International Law <sup>5</sup>
<b>JUDICIAL SYSTEMS IN GENERAL</b>		
<b>District Courts</b>	11 district courts made up of a max. of 5 sectors (Administrative law including tax law, civil law, criminal law, sub-cantonal sector,	18 District Courts of Appeals (271 criminal chambers; 301 civil chambers) 9 District Administrative Courts (68 administrative case chambers; 40 tax case

<sup>2</sup> See at: <https://www.domstol.se/hitta-domstol/mark--och-miljodomstolar/>.

<sup>3</sup> Including formal legislation (legislation by government and parliament), regulation by decentralized bodies (provinces, municipalities) and delegated legislation at the level of the central government (ministerial ordinances) (same for TR case as well).

<sup>4</sup> According to Articles 93 and 94, Dutch Constitution, if treaties and of resolutions of international organizations are binding on all persons by virtue of their contents, and the judge rules that such a provision has direct effect, a citizen can invoke the provision in his case and the provision will then prevail over conflicting Dutch law.

<sup>5</sup> To Article 90/5, Turkish Constitution, international agreements duly put into effect have the force of law. In the case of a conflict between international human rights agreements and the laws, the provisions of international agreements should prevail.



	family/juvenile law) <sup>6</sup>	chambers (MoJ, 2023, 70-72)
<b>Courts of Appeal</b>	4 areas of jurisdiction: Den Haag (The Hague) and Amsterdam in the west, Arnhem-Leeuwarden in the east and north-Hertogenbosch in the south	2 different types of jurisdictional fields: civilian ordinary judiciary, civilian administrative judiciary - The Court of Cassation- the final decision maker in civilian ordinary judiciary, - The Council of State -in civilian administrative judiciary,
<b>Supreme Court</b>	-Highest court in the fields of civil, criminal and tax law	-Court of Jurisdictional Disputes /established to resolve the disputes between these courts. -Constitutional Court
<b>Special Courts</b>	<ul style="list-style-type: none"> <li>• Central Appeals Tribunal-social security and the civil service.</li> <li>• Trade and Industry Appeals Tribunal - social-economic administrative law- Competition Act, Telecommunications Act</li> <li>• Administrative Jurisdiction Division of the Council of State -highest general administrative court</li> </ul> <p><b>**No Special Environmental Courts</b></p>	<p><b>Specialized Criminal Courts:</b> Juvenile High Criminal Courts, Juvenile Courts, Criminal Courts of Enforcement, Criminal Courts of Intellectual and Industrial Property Rights, Judgeship of Criminal Execution</p> <p><b>Specialized Civil Courts:</b> Commercial Courts of First Instance, Civil Courts of Enforcement, Cadastral Courts, Labor Courts, Consumer Courts, Civil Courts of Intellectual and Industrial Property Rights, Family Courts</p> <p><b>**No Special Environmental Courts</b></p>
<b>Commercial Court</b>	Court for dispute resolution of civil or commercial matters with an international aspect. It is a sector of the Amsterdam first instance court. It is not specialized. But its only specific characteristic is that litigation takes place in Eng.	Specialized courts which are responsible of commercial cases and non-contentious judicial matters of commercial character, regardless of the value or amount of subject matter. Litigation neither in this nor in any other court takes place in

<sup>6</sup> See at: [District courts | Dutch judiciary \(rechtspraak.nl\): https://www.government.nl/topics/administration-of-justice-and-dispute-settlement/the-dutch-court-system.](https://www.government.nl/topics/administration-of-justice-and-dispute-settlement/the-dutch-court-system)

		English
<b>Council for the Judiciary</b>	<ul style="list-style-type: none"> <li>• supports the courts in executing their tasks in the areas, like allocation of budgets, supervision of financial management, personnel policy, and housing,</li> <li>• promotes quality within the judiciary system and advises on new legislation on administration of justice,</li> <li>• acts as a spokesperson for the judiciary on both national and international levels,<sup>7</sup></li> </ul>	As a similar body, there is a Council of Judges and Prosecutors (CoJP) as an independent supreme board to make decisions on appointments, promotions and assignments of judges and prosecutors; on proposals of the MoJ concerning the abolition of a court, or changes in the territorial jurisdiction of a court; and to supervise whether the judges and public prosecutors perform their duties in accordance with laws (Art.159, TR Constitution).
<b>ENVIRONMENTAL LITIGATION</b>		
<b>Legal Basis</b>	Authorities assigned with the duty to care for the protection and improvement of the environment (Art. 21, Dutch Constitution)	Not just the authorities, but also the citizens assigned with that duty (Art.56.2, TR Constitution)
<b>Environmental Legislation</b>	<ul style="list-style-type: none"> <li>-Environmental Management Act (EMA)</li> <li>-Climate Act (No. 253 of 2019)</li> <li>-General Adm. Law Act (GALA)</li> <li>-General Act on Environmental Permitting</li> <li>-Spatial Planning Act</li> <li>-Sectoral Acts, such as the Soil Protection Act, the Air Pollution Act, the Nuclear Energy Act, the Pesticides Act, the Nature Conservation Act, and the Flora and Fauna Act etc.</li> </ul>	<ul style="list-style-type: none"> <li>-Environment Act</li> <li>-Climate Act (in progress) (CSB, 2020)</li> <li>- Sectoral acts such as, Soil Protection and Land Use Act and the Zoning Act, Act on the Emergency Response and Compensation of Damages in Pollution of the Marine Environment with Oil and Other Harmful Substances</li> <li>-Mostly, though with secondary legislation, such as, <ul style="list-style-type: none"> <li>- By-law on Environmental Impact Assessment (EIA); By-law on Strategic Environmental Assessment (SEA); By-law on Environmental Inspection; By-law on Environmental Management Services; By-law on Environmental Permit and License; By-law on Qualification of Environmental Measurement and Analysis Laboratories</li> </ul> </li> </ul>

<sup>7</sup> See at: [The Council for the Judiciary | Dutch judiciary \(rechtspraak.nl\)](https://www.rechtspraak.nl).

<p><b>Environmental Administration</b></p>	<p>-Ministry of Infrastructure and Water Management (including Environment)          -Ministry of Agriculture, Nature, and Food Quality (including Nature and Nitrogen Policy)          -Ministry of Economic Affairs and Climate Policy (including Climate and Energy Policy)<sup>8</sup>          +          - Independent Administrative and Advisory Bodies (Chapter 2, EMA) like Dutch Emission Authority</p>	<p>- Ministry of Environment, Urbanization and Climate Change<sup>9</sup>          -Ministry of Agriculture and Forestry<sup>10</sup>          - Ministry of Energy and Natural Resources<sup>11</sup>          +          -Affiliated bodies like General Directorate for Environmental Management, for Environmental Impact Assessment, Permit and Inspection, General Directorate of Combating with Desertification and Erosion etc.          -Provincial Directorates          -Higher Board for Environment&amp;Local Environmental Committees (Art.5 (b, c), By-law)          -Climate Change Presidency<sup>12</sup>          -Sectoral bodies (like the Commissions established for examining Environmental Impact Assessment reports)          -Advisory bodies (like the Environment and Urbanization Council (Art. 27, Decree Law No.644)          -Local administrations</p>
<p><b>Judicial Procedures</b></p>	<p><b>1. BEFORE ADMINISTRATIVE COURTS</b></p>	<p><b>1. BEFORE ADMINISTRATIVE</b></p>

<sup>8</sup> See at: <https://www.government.nl/ministries>.

<sup>9</sup> With the latest regulations on the Presidency Organization, the Ministry of Agriculture and Forestry was established as a result of the abolition of the regulations regarding the organization and duties of the Ministry of Food, Agriculture and Livestock and the Ministry of Forestry and Water Affairs

<sup>10</sup> With the latest regulations on the Presidency Organization, the organizational structure, duties and authorities of the Ministry of Environment and Urbanization were also reorganized, it was renamed the Ministry of Environment, Urbanization and Climate Change in 2021. It was amended by Presidential Decree No. 85 published in the Official Gazette (dated 29 October 2021 and numbered 31643). Through this decree, the General Directorate of Combating Desertification and Erosion was included among the central units of the Ministry, the General Directorate of Meteorology was included among the affiliated organizations, and the Climate Change Presidency was established as an affiliated institution of the Ministry.

<sup>11</sup> See at: <https://www.tccb.gov.tr/kabine/>.

<sup>12</sup> Climate Change Presidency was established as an affiliated institution of the Ministry of Environment, Urbanization and Climate Change with the Presidential Decree No. 85 dated October 29, 2021. See at: <https://iklim.gov.tr/>.

		<b>COURTS</b>
	<p>-Abolishment of the <i>actio popularis</i> (2005) (from ‘anyone’ to ‘interested parties’ (Verschuuren,-)</p> <p>- Both general <b>objection</b> and appeal rules are possible shown under GALA (Art. 13.3 EMA, Art. 20.1 EMA ; Art. 3:15 GALA)</p> <p>-No appeal is possible in some cases: like orders in council, ministerial orders, and also national environmental policy plans</p>	<p>- Environmental cases should be evaluated as <i>action popularis on the basis of legislation</i>, but in practice it operates differently<sup>13</sup></p> <p>- Both general <b>objection</b> and appeal rules are possible shown under PAJA (except decisions taken as a result of the EIA) (Art. 20A (1e), PAJA).</p> <p>objection is possible in some cases: e.g., Art.45.1, 45.8, PAJA</p>
	<b>2. BEFORE CIVIL COURTS</b>	<b>2. BEFORE CIVIL COURTS</b>
	<p>-General law of torts</p> <p>-Any individual/legal person who claims to be the victim of a wrongful act has access to justice</p> <p>- There are not only instances of faulty liability, but also absolute (objective) liability in civil law, like Art. 6:175 Civil Code)</p>	<p>-General law of torts</p> <p>-Any individual/legal person who claims to be the victim of a wrongful act has access to justice</p> <p>-There are not only instances of faulty liability, but also absolute (objective) liability, like Environment Act (No.2872) (article 28); Civil Code (No.4721) (article 730); Biosafety Act No.5977 (article 14 regarding the liability on the genetically modified organism), Turkish Petrol Act No.6491 (Article 22(4) related to the liability of the owner of the petrol rights stemming from the damages occurred on the related land due to his/her operations)</p>
	<b>3.BEFORE CRIMINAL COURTS</b>	<b>3.BEFORE CRIMINAL COURTS</b>

<sup>13</sup> When the provisions of the Procedure of Administrative Justice Act and the Environment Act (Art.30(1)) are addressed together, it can be argued that environmental cases should be evaluated as *action popularis*. However, under case-law, while it is dominantly accepted that there is no need for seeking for the violation of interest in actions for annulment regarding environmental issues; in full remedy actions, the violation of individual rights still arises as the condition for taking action before the court. For more details on the related debate, see (Güneş, 2015).

	<ul style="list-style-type: none"> <li>- Act on Economic Offences-Criminal Code and Code on Criminal Procedure</li> <li>- There is no special procedure for the environmental cases. General rules are applied here.</li> </ul>	<ul style="list-style-type: none"> <li>- Criminal Code (No.5237) and Misdemeanor Act (No.5326), Environment Act (No.2872)</li> <li>- There is no special procedure for the environmental cases. General rules are applied here.</li> </ul>
<b>Extraordinary Procedures</b>	<ul style="list-style-type: none"> <li>-During the objection procedure and during all administrative law procedures for judicial review, the applicant may ask for provisional or interim measures (Articles 8.72; 8.80b; 8.81, GALA )</li> <li>-Foundation for advising Administrative Courts<sup>14</sup></li> </ul>	<ul style="list-style-type: none"> <li>-There is no special procedure for environmental decisions except decisions taken as a result of the EIA, i.e., fast track trial procedure. No objection to the decisions of stay of execution is possible in line with fast-track procedure (Art.20A(1-2e), PAJA)</li> <li>-No that sort of foundation.</li> </ul>
<b>Non-Judicial Procedures</b>	<ul style="list-style-type: none"> <li>-Right to petition (Art. 9:1, GALA)</li> <li>-National Ombudsman (Art. 9:17, GALA)</li> <li>-Mediation-Reporting</li> </ul>	<ul style="list-style-type: none"> <li>-Right to petition (Art. 74, TR Const; Act on the Use of the Right to Petition (No.3071); Art.121, Criminal Code)</li> <li>-National Ombudsman (<b>Act on the Ombudsman Institution (No.6328)</b>)</li> <li>-Peaceful dispute settlement ways, like mediation or arbitration, are used for exceptional cases in Turkiye,</li> </ul>
<b>Enforcement</b>	<b>ADMINISTRATIVE ENFORCEMENT</b>	<b>ADMINISTRATIVE ENFORCEMENT</b>
	<ul style="list-style-type: none"> <li>-Administrative bodies (Chapter 5, GALA)</li> <li>-Administrative Sanctions (Chapter 18, GALA)</li> </ul>	<ul style="list-style-type: none"> <li>-Administrative bodies (key authority is the MoEUCC, but in line with Article 12 of the Environment Act, other institutions granted the authority to conduct inspections can also use the same power as the Ministry and for instance the Directorate Generals(DG) in the central organization of the Ministry, e.g., EIA Monitoring and Inspection DG; and by Provincial Directorates in the local organization (Art.15, 24, Turkish Environment Act)</li> <li>-Administrative Sanctions</li> </ul>
	<b>CRIMINAL ENFORCEMENT</b>	<b>CRIMINAL ENFORCEMENT</b>

<sup>14</sup> See at: [STAB – Gerechtelijke Omgevingsdeskundigen.](#)

	<p><b>Supervisory Authorities</b> (affiliated to related Ministries)</p> <ul style="list-style-type: none"> <li>- Human Environment and Transport Inspectorate</li> <li>- Netherlands Food and Consumer Product Safety Authority</li> <li>- Social Affairs and Employment Inspectorate</li> <li>- the Tax and Customs Administration</li> </ul> <p style="text-align: center;">+</p> <p>municipalities, police and justice system</p> <ul style="list-style-type: none"> <li>* <b>Strategic Environmental Chamber</b></li> <li>* National Office for Serious Fraud, Environmental Crime and Asset Confiscation<sup>15</sup></li> </ul>	<p>- There is no special enforcement procedure for the environmental cases. General rules are applied here.</p>
<p><b>Costs</b></p>	<p>The costs of filing a lawsuit vary depending on the type of lawsuit filed before different types of courts and some of the judicial elements requested in lawsuit petition (Articles 8:41, 8:75 etc., GALA)</p>	<p>The costs of filing a lawsuit vary depending on the type of lawsuit filed before different types of courts and some of the judicial elements requested in lawsuit petition.<sup>16,17</sup></p>
<p><b>Legal Aid Service</b></p>	<ol style="list-style-type: none"> <li>1. Online self-help, information, and support<sup>18</sup></li> <li>2. The Legal Services Counters</li> <li>3. Private lawyers assigned by Legal Aid Board</li> </ol> <ul style="list-style-type: none"> <li>- No specialized legal clinics dealing with environmental cases that are available to the public.</li> <li>- The legal aid system is primarily for natural persons on the basis of eligibility rules. Legal persons often have insurance for legal services., but this is not provided by government.</li> </ul>	<ol style="list-style-type: none"> <li>1. Online self-help, information, and support<sup>19</sup></li> <li>2. Legal Aid Offices</li> <li>3. Private lawyers assigned by Legal Aid Offices</li> </ol> <ul style="list-style-type: none"> <li>- No specialized legal clinics dealing with environmental cases that are available to the public.</li> <li>- The legal aid system is primarily for natural persons on the basis of eligibility rules (Art.334, Code of Civil Procedure; Code of Lawyers; Bylaw of legal aid) Public-</li> </ul>

<sup>15</sup> See at:

<https://www.prosecutionservice.nl/organisation/national-office-for-serious-fraud-environmental-crime-and-asset-confiscation>.

<sup>16</sup> By accessing the UYAP Citizen Portal, [vatandas.uyap.gov.tr](http://vatandas.uyap.gov.tr), it is possible to file a lawsuit online and pay the costs of filing a lawsuit online with a credit card.

<sup>17</sup> A campaign was launched for environmental actions to be considered as public actions, and for the expenses of jurisdictions to be covered from the treasury; but no result was obtained. See at: <https://www.change.org/p/t-c-cumhur-ba%C5%9Fkanl%C4%B1%C4%9F%C4%B1-%C3%A7evre-davalari-kamu-davasi-sayilmali-yargilama-giderleri-hazineden-kar%C5%9Filanmalidir?fbclid=IwAR0iAL-LRuMVJI1fs1bmxsUJp5dkyT64I-FYWjSFgNET6CP-Ob6Qf9O3st4>.

<sup>18</sup> See at: [www.rechtwijzer.nl](http://www.rechtwijzer.nl) ; <http://www.juridischloket.nl/>.

<sup>19</sup> See at: <https://magdurbilgi.adalet.gov.tr/282/Adli-Yardim>; <https://adliyordim.adalet.gov.tr/>.

		benefit associations and foundations can also benefit from legal aid service.
<b>Access to Information</b> on access to justice	<p>-All Dutch legislation is available at: <a href="https://www.wetten.nl">https://www.wetten.nl</a>; <a href="https://www.rijksoverheid.nl/wetten-en-regelingen">https://www.rijksoverheid.nl/wetten-en-regelingen</a></p> <p>-There is not one policy or strategy that binds all the organizations active in the justice field (or country wide), but projects involving various partners.</p> <p>-Case law: <a href="http://www.rechtspraak.nl">www.rechtspraak.nl</a> or <a href="https://jure.nl/">https://jure.nl/</a> De Raad van State, Council of State, Home-Council of State (<a href="http://raadvanstate.nl">raadvanstate.nl</a>)</p>	<p>-All TR legislation is available at: <a href="http://www.mevzuat.gov.tr">www.mevzuat.gov.tr</a>; <a href="http://www.resmigazete.gov.tr">www.resmigazete.gov.tr</a>.</p> <p>-Defined and coordinated at national level by one institution for civil law cases (UYAP system conducted by IT Department of MoJ): <a href="http://www.uyap.gov.tr">www.uyap.gov.tr</a> Case-law: <a href="http://Danistay.Baskanligi.Karar.Arama.danistay.gov.tr">Danistay Başkanlığı Karar Arama (danistay.gov.tr)</a> <a href="https://karararama.yargitay.gov.tr/YargitayBilgiBankasiIstemciWeb/">https://karararama.yargitay.gov.tr/YargitayBilgiBankasiIstemciWeb/</a> <a href="http://Kararlar.Bilgi.Bankasi.Anayasa.Mahkemesi">Kararlar Bilgi Bankası   Anayasa Mahkemesi</a></p>
<b>Access to Environmental Information</b>	<p>-Party to the Aarhus Convention,(1998)</p> <p>-Environmental information can be requested on the basis of the Act Open Government</p> <p>-Chapter 19, EMA implements specific legal regime for environmental information.</p> <p>- See online platform at: <a href="http://Knowledge.Centre.InfoMil">Knowledge Centre InfoMil</a></p>	<p>-Not party to the Aarhus Convention</p> <p>- Environmental information can be requested on the basis of the Act on the Right of Access to Information</p> <p>- Art. 30, Environment Act has specific provisions for environmental information.</p> <p>- See online platforms at: <a href="http://ecbs.cevre.gov.tr">http://ecbs.cevre.gov.tr</a>; <a href="http://sim.csb.gov.tr/">http://sim.csb.gov.tr/</a></p>
<b>Time Disposition</b>	<p>-The principle of due process is applied.</p> <p>-Chapter 8, GALA implements special provisions on the procedure for bringing proceedings before the administrative courts</p>	<p>-The principle of due process is applied.</p> <p>-Fast track trial procedure for EIAs, for others, general rules are applied.</p>

### 3.2 Environmental Litigation: Main Findings

Both countries have a relevant article on environmental protection in its Constitution. Yet, while under Art. 21, Dutch Constitution, authorities are assigned with the duty to care for the protection and improvement of the environment; under Art. 56.2, TR Constitution, both the State and the citizens are assigned with that duty.

Regarding legislation, both countries have relevant/related basic law for environmental protection. Although there are lacking parts in Türkiye's case, like the Framework Water Act, Climate Change Act, it seems legislative alignment is still advanced in that case as well. The EU accession process's role is important here. This is because, although after 2005 general EU-Turkey relations have been stagnated, through learning and persuasion processes, the EU-style of policymaking is still partly implemented in practice (Savaşan, 2020a, 2020b, 2021). As a result, most of the necessary regulations are transposed into national legislation. The issues lacking mostly concern implementation and enforcement. However, the proliferation of legislation through the harmonization process within the EU accession negotiation framework makes the scope of the legislation more extensive and complicated to implement and enforce in practice effectively (Savaşan, 2020a, 2020b, 2021, -). Environmental administration is mostly based on Ministries, and many other relevant/related institutions in both countries. So, it seems there are not that much difference in both countries, at least on paper. This is again most probably the impact of the EU harmonization process, and the regulations made in that process (Savaşan, 2020a, 2020b, 2021, -). On judicial procedures, because there is no specific environmental court, there is need to look for administrative, civil, and criminal courts' procedures for both countries. As displayed in the Table 2, there seems no obvious difference between two countries' courts procedures. There is no special procedure for environmental decisions in both countries; so, in general, similar general rules are applied for them. However, there is an extraordinary procedure in some cases for administrative judicial proceedings. Indeed, under TR system, There is a special 'fast track trial procedure' under Art.20A(1e-2e), PAJA to which decisions taken as a result of the EIA -except for administrative sanctions- are subjected. No objection to the decisions of stay of execution is possible in line with fast-track procedure.

Under the NL system, there are no specific rules relating to standing and access



to justice in relation to EIA. The general procedural rules provided by Dutch General Administrative Law Act (GALA) are applicable. So, there is no general legally binding time to deliver judgment, just in case of Article 8:66 GALA (six weeks after hearing the case, can be extended for another six weeks). In some specific environmental cases, however, the legislation specifies that the judgment must be delivered in six months<sup>20</sup> There are no sanctions against courts delivering late judgments; but case law provides that damages can be compensated if a case remains undecided unreasonably long (Art. 8.88c, GALA.). However, GALA also provides for extraordinary ways of lodging an appeal against decisions that concern the environment (e.g., no obligatory objection procedure when the decision has been prepared by following the uniform extensive public preparation procedure (Chapter 3.4, GALA); and for extraordinary procedures (e.g., the applicant may ask for provisional or interim measures in accordance with the general provisions on injunctive relief during all administrative judicial review procedures, if there is sufficient reason and a sufficiently urgent interest (Articles 8:81-8:86 GALA; Art. 254 Code of Civil Procedure). If the interim measures requested are allowed, in most cases, it means the decision is suspended, or the suspensive effect of a decision taken by the administrative authority is removed. There is no appeal opportunity against an injunction by the administrative court. As different from TR system, there is also an independent and impartial foundation, having a specific expertise in environmental matters, for advising administrative courts in environmental and zoning cases.<sup>21</sup> This is quiet important to have that kind of organization, as it provides having experts looking impartially and objectively at the facts and circumstances involved in an environmental case and reporting on them to the court.

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<sup>20</sup>

See

at:

[https://ejustice.europa.eu/300/EN/access\\_to\\_justice\\_in\\_environmental\\_matters?NETHERLANDS&member=1](https://ejustice.europa.eu/300/EN/access_to_justice_in_environmental_matters?NETHERLANDS&member=1).

<sup>21</sup> See at: [STAB-Gerechtelijke Omgevingsdeskundigen](#).

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In the phase of enforcement, particularly regarding criminal enforcement, there seems a completely different perspective. Indeed, under NL system, there are supervisory authorities affiliated to related ministries which have their own investigative services. In addition, the environmental teams of the 10 Regional Units and the Central Unit of the National Police of the Netherlands, certain police officers within the basic teams of the National Police deal with environmental crime. All criminal investigations are conducted under the direction of the Public Prosecution Service and, in case of environmental crime, by National Office for Serious Fraud, Environmental Crime and Asset Confiscation (HETI, -). Due to many bodies involved in that field, a coordinating body has also been set up, called as the Strategic Environmental Chamber to determine policy and priorities for tackling environmental crime (HETI, -). In TR system, Turkish Criminal Code incorporates the protection of the environment among its objectives (Art.1, Turkish Criminal Code). Moreover, there is a specific category for environmental crimes on environmental and noise pollution and specific provisions/sanctions on environmental issues (Arts.181-184, Turkish Criminal Code; Articles 36(1),41(1-6), 42, 44, Misdemeanor Act). It is also possible to find two crimes set out in Article 26, Environment Act as well; 1. On providing wrong and misleading information contrary to the provisions of Article 12(3-4), Environment Act on inspection and the obligation of notification and providing information, 2. About arranging and using wrong and misleading documents referring to the related provisions of the Criminal Code (Art. 204, Art. 207, Turkish Criminal Code). Nonetheless, there is no special enforcement procedure or special chambers /prosecution bodies for the environmental crimes as different from the NL system. So, general rules are applied for environmental crimes. This situation also makes it hard to make a comparative analysis in between two systems taking the criminal law as basis.

In conclusion, the analysis shows that, like CEPEJ data can not be used as it does not provide information on environmental cases as a separate field as found in

the previous part, there is not that much possibility to go through civil and criminal judicial procedures for making a comparative analysis about court efficiency on environmental litigation between the Netherlands vs. Turkiye. This is because, environmental law is predominantly regulated under public law, and significantly by administrative law, providing a very large field of interaction to administrative and environmental law. So, referring to civil law on environmental matters is possible in rare cases like rules on legal liability. Criminal judicial procedures, on the other hand, are quite distinct in between two countries as mentioned above, and this situation makes it difficult to keeping on with data/research on them. Accordingly, it was decided to focus on environmental litigation under administrative judicial procedures in the next part.

#### **4. Court Efficiency on Environmental Litigation between Netherlands and Turkiye**

Regarding the strengthening of legislation, till to date, with the impact of international environmental law but particularly the EU accession process, Turkiye has adopted a great number of legal arrangements on environmental issues. These arrangements, on the basis of its Constitution, have been adopted at different levels (international-regional-national) and different types (agreements, acts, by-laws, circulars, communiques, strategy documents, plans, and so on). And, still, it has many other legal documents pending to be adopted due to being in the process of preparation/or assessment or being subject to accession and ratification. All these arrangements aim to protect the environment and to advance its quality determining necessary rules and standards in order to prevent environmental pollution and degradation, and thus, to enable the human being to live in a healthy, clean environment. And they all have the potential to play an important role in taking serious steps for pursuing the necessities of this aim and also the development of environmental legislation in Turkiye. However, there is also need to look for case law

to go beyond ‘paper work’ and to see the phases of implementation. In the literature, there are many works on that legislation issue; but not that much on the case law. For this purpose, intending to trigger studies on environmental case law in particularly Türkiye, this part of the analysis, based on its findings in the previous parts, was prepared keeping up the following steps:

As there is no special court/procedure for environmental litigation in both countries, sorting out environment related/relevant cases in the judicial system was troublesome. So, a conceptualization was made of what ‘environmental case’ means for this research considering the limitations on searching for civil-criminal environment related cases through present facilities, just administrative cases were decided to be included into the analysis. Additionally, due to the difficulties on searching administrative cases under first instance courts, and second instance courts, it restricted its scope with Council of State (CoS) decisions with the reference year 2022.

### **Environmental Case:**

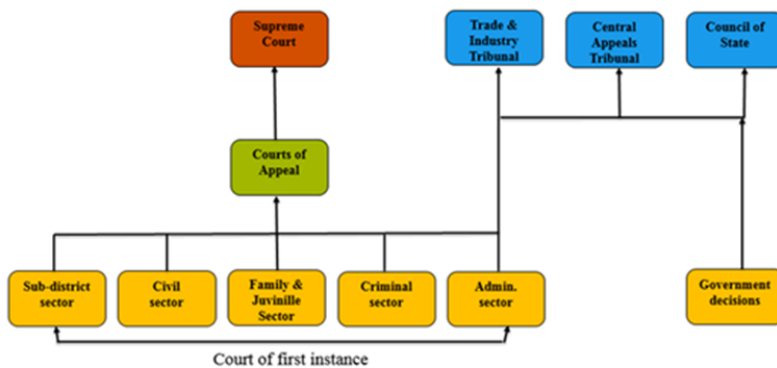
Environmental case was defined as ‘administrative cases on (relevant/related) Environmental Impact Assessment (EIA) submitted to Supreme Court, to be judged on it within its competences (i.e., jurisdiction) in between January 1st 2022-December 31st 2022’ in this study. The following analysis was made on the basis of this definition.

There is no specific data on environmental litigation under CEPEJ’s data as seen in the previous part and also in countries’ systems. Under TR system, there are some statics on the cases of CoS, but not specifically on environmental cases. In these statics, it is possible to find out information on the number of files in departments of the CoS, and also number of files of the departments of the CoS according to judgement type. Indeed, number of files at the administrative courts according to case type (type of case - files from last year -filed within the year -reversal by the Supreme Court -files judged -postponed to next year); number of files at the administrative

courts according to case type and judgement type (rejection-annulment-partial annulment /partial rejection-consigning to appropriate authority upon the first examination of petition-designation of authority/ relation); and also number of files of the departments of the CoS with request of stay of execution are available. Cases of appeal for the year 2022 were shown as for 6<sup>th</sup> chamber: 1758 cases; for 13<sup>th</sup> chamber: 1238; for Plenary Session of the Chambers for Adm.Cases (PSofCAC): 111 cases (MoJ, 2022, 50, 105, 108-109). Under the title of environmental affairs, number of file at tax courts 2022 under the title of sanitation tax [çevre temizlik vergisi] are also available. However, there is no relevant/related information on environmental cases specifically (MoJ, 2022, 116). Therefore, two countries' environmental cases were gathered based on the research's own identification for the reference year 2022 (See Table 2 and 3).

In the research, both countries have internet database publicly available on court cases. In NL, there is not one policy or strategy that binds all organizations active in the justice field (or country wide) on the usage of information technologies in courts, but projects involving various partners. But, through two internet web sites, it is possible to search for judgements.<sup>22</sup>

**Table 3: Dutch Court System**

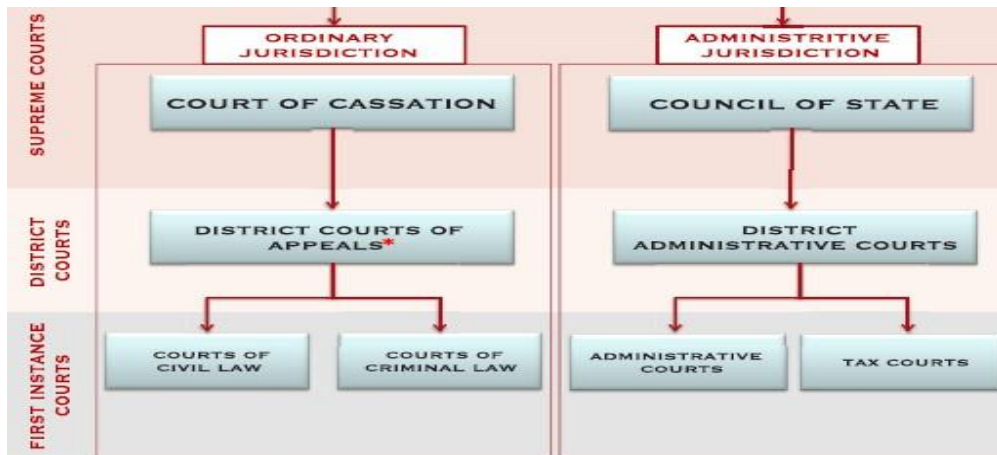


Source: [District courts | Dutch judiciary \(rechtspraak.nl\)](https://www.rechtspraak.nl).

<sup>22</sup> See at: Dutch case law: [www.rechtspraak.nl](https://www.rechtspraak.nl)(in Dutch); De Raad van State, Council of State, Home-Council of State [raadvanstate.nl](https://raadvanstate.nl) or <https://jure.nl/>.

In TR, internet database on case-law is defined and coordinated at national level by one institution, i.e., UYAP system conducted by IT Department of MoJ.<sup>23</sup> As a state-based resource, for administrative law cases under the CoS; for searching on judgements, there is need to apply to the CoS databases.<sup>24</sup>

**Table 4: Turkish Court System**



Source: (Aksel, 2013, 10)

For a comparative analysis in between two countries' environmental cases (as defined under the research), the need arose to look for a new common ground in which a new performance indicator(s) can be created. In this regard, firstly, it was thought taking the environmental cases of which the ruling date of the judgements is the reference year 2018; the total number of cases would be determined and then the duration process of each case would be identified. The ratio obtained by dividing the total number of cases by the average duration would be the performance indicator of each country for that reference year. However, in that case, for the NL, 58 cases were

<sup>23</sup> See at: UYAP Bilişim Sistemi). There also some other additional private resources, like lexpera, hukukturk etc.

<sup>24</sup> See at: <https://karararama.danistay.gov.tr/>;  
[http://vatandas.uyap.gov.tr/danistay/portal\\_baslangic.uyap?param=user](http://vatandas.uyap.gov.tr/danistay/portal_baslangic.uyap?param=user).

found out; but, for TR just two cases were detected. Therefore, secondly, on the basis of the key words including EIA (milieueffectrapportage) under the CoS of two countries, a search was made in both databases. For the NL, from 1999-2023, 1514 cases were detected; for TR, from 1997-2022, 866 cases were detected. In order to draw the borders of the research in a more meaningful and same manner for two cases, environmental cases under the CoS of two countries from 1999 to 2022 were applied for (for TR-860 cases; for the NL-1478 cases). However, in that case either, as total number was so high, it would not be easy to determine the average duration for a reasonable processing time of judicial proceedings. Finally, with the ruling date 2022, for the NL, 58 cases; for TR, 51 cases were found out. As that case was seen as the most reasonable option, it was decided to base on it. To this, after identifying the duration process of each case, the ratio obtained by dividing the total number of cases by the average duration would be the performance indicator of each country for that reference year.<sup>25</sup>

#### 4.1 The Netherlands' Case

It is hard to derive the date the application was submitted; as, in general, this is not mentioned in the internet database on case-law. On the other hand, the decision of the governmental body, against which the procedure (complaint or appeal or 'higher appeal') is directed, is always mentioned, usually including the date the decision was taken. Since the term for complaints and (higher) appeals is always six weeks (Article 6:7, GALA), it is possible to make a good estimate of when the procedure started. So, e.g., if the initial decision of the governmental body was taken on 7 July 2021 as shown in the first row in the list; the appeal must have been lodged within maximum six weeks after that date. However, the judgement is given on an

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<sup>25</sup> Key performance indicators in the Turkish Justice Ministry's Strategic plan also involves similar indicators, like decrease in the average duration of investigations, lawsuits and other judicial acts and proceedings; and decrease in the number of files reviewed by judges annually. See at: (MoJ, 2019).

application for a preliminary ruling. Such an application may be lodged together with the appeal itself or in a separate application. Yet, in the texts provided by the internet database, there is no information when this application for a preliminary ruling was submitted. The other complication is that these applications have to fulfil certain requirements, like identifying the applicant. If any of these requirements have not been met, the court has to notify the applicant and give the applicant the possibility to rectify it within a certain period to be set by the court (6:5, 6:6, GALA.). So, there is also possibility of an additional period to determine when the application was so complete that the court could start processing it. In short, the only dates for sure derived from the database are: hearing date and judgement date. Therefore, here, for finding out the average time, time process passing through in between date of hearing and date of judgement was taken into account. To this, 8327 total days for 57 cases were determined. While the maximum length is 787 days; the minimum length is 8 days as processing time for getting through the case. Accordingly, the average time for the work of the CoS for each case was found as 146.08 days (Table 5). Nevertheless, the complications mentioned above should also be taken into account when thinking over the efficiency of the court regarding its speediness:

- Non-existence of an application date (there is date of governmental decision and the term for complaints is always six weeks)
- The possibility of an additional period for the completion of the application that the court could start processing

<b>Table 5. THE NETHERLANDS Council of State Reference year 2022</b>					
	<b>Case number</b>	<b>Date of decision appealed against</b>	<b>Date of hearing</b>	<b>Date of judgement</b>	<b>Processing Time</b>
<b>1</b>	202105599/1/R4	7 July 2021	17 Dec. 2021	January 19, 2022	34 days
<b>2</b>	202101930/2/R4	20 January 2021	20 January 2022	February 2, 2022	14 days
<b>3</b>	202001882/1/R3	16 January 2020	2 Dec.2021	February 9, 2022	69 days
<b>4</b>	202002119/1/R4	11 Feb. 2020	25 October	February 9, 2022	107 days



			2021		
5	202102933/1/R3	9 March 2021	17 January 2022	Feb. 16, 2022	31 days
6	202102771/1/R1	16 March 2021	9 February 2022	March 30, 2022	50 days
7	202003999/1/R4	10 June 2020	29 Nov. 2021	March 30, 2022	122 days
8	202101297/1/R2	16 Dec. 2020	9 February 2022	March 30, 2022	50 days
9	202105470/1/R4	14 July 2021	14 Feb. 2022	April 6, 2022	52 days
10	202105520/1/R4	7 July 2021	1 March 2022	April 20, 2022	52 days
11	202201787/2/R1	27 January 2022	April 19, 2022	April 26, 2022	8 days
12	202103305/1/R1 202103307/1/R1	29 March 2021- 16 Feb. 2021	28 Feb. 2022	May 11, 2022	73 days
13	202100031/1/R1	17 Nov. 2020	31 January 2022	May 18, 2022	108 days
14	202005901/1/R4	22 Sept.2020	8 Dec.2021	May 25, 2022	156 days
15	202105299/1/R3	30 June 2021	28 Feb. 2022	May 25, 2022	87 days
16	202107569/1/R1	12 October 2021	19 April 2022	June 1, 2022	44 days
17	202004264/1/R4	No information as withdrawn by the relevant authority		June 8, 2022	NA
18	202102809/1/R1	18 March 2021	21 Dec.2021	June 15, 2022	177 days
19	202100868/1/R3	15 Dec.2020	20 Dec.2021	July 6, 2022	197 days
20	202004372/1/R3	26 May 2020	3 March 2022	July 6, 2022	126 days
21	202101307/1/R3	28 January 2021	31 March 2022	July 13, 2022	105 days
22	202003296/1/R3	21 April 2020	21 January 2022	July 20, 2022	181 days
23	202100544/2/R2	17 Dec.2020	7 July 2022	July 25, 2022	19 days
24	202105797/1/R1	8 July 2021	18 January 2022	July 27, 2022	191 days
25	202101930/1/R4	20 January 2021	31 May 2022	July 27, 2022	58 days
26	202100186/1/R3 202100187/1/R3	18 August 2020	22 Feb. 2022	July 27, 2022	156 days
27	202004926/1/R4	24 July 2020	14 Dec. 2021	July 27, 2022	226 days
28	202107494/1/R4	21 Sept. 2021	1 July 2022	August 3, 2022	34 days
29	202100119/1/R2	24 Nov.2020	4 March 2022	August 17, 2022	167 days
30	202101640/1/R3	21 January 2021	7 March 2022	August 24, 2022	171 days
31	202105040/1/A3	11 May 2020	13 June 2022	August 31, 2022	80 days
32	202103030/1/R3	30 March 2021	23 May 2022	August 31, 2022	101 days
33	202004713/1/R2	3 July 2020	5 Oct.2021	Sept. 7, 2022	338 days
34	202104730/1/R4	3 June 2021	26 July 2022	Sept. 7, 2022	44 days
35	202204088/2/R3	25 May 2022	30 August 2022	Sept. 7, 2022	9 days
36	202104143/1/R1	22 April 2021	13 April 2022	Sept. 14, 2022	158 days
37	202201174/1/R4	13 January 2022	8 August 2022	Sept. 21, 2022	45 days
38	201901972/1/R4	29 Nov.2018	27 July 2020 7 Dec.2021	Sept. 21, 2022	787 days
39	202204542/2/R3	17 May 2022	11 October 2022	Oct. 18, 2022	8 days
40	202103609/1/R1	16 March 2021	October 4, 2022	Oct. 26, 2022	23 days
41	202103894/1/R3	13 April 2021	22 Sept.2022	October 26, 2022	35 days
42	202105613/1/R3	8 July 2021	28 April 2022	Nov. 2, 2022	189 days
43	202100072/1/R3	23-25 Sept.2020	21 April 2022	Nov. 9, 2022	202 days

44	202205197/2/R4	21 July 2022	27 Oct.2022	Nov. 15, 2022	20 days
45	202107157/1/R1	22 Sept.2021	18 July 2022	Nov.16, 2022	122 days
46	202105081/1/R2	22-23 June 2021	4 April 2022	Nov. 16, 2022	227 days
47	202006426/1/R2	17 Sept. 2020	11 April 2022	Nov. 23,2022	227 days
48	202104986/1/R2	22 June 2021	4 April 2022	Nov. 30, 2022	241 days
49	202002836/1/R2	25 July 2018	7 Feb. 2022	Nov. 30, 2022	297 days
50	202201932/1/R4	9 Feb. 2022	24 Oct. 2022	Nov. 30, 2022	38 days
51	202102073/1/R1 202102078/1/R1	17,19 Feb. 2021	7 June 2022	Nov. 30, 2022	177 days
52	202102300/1/R4	25 Feb. 2021	20 April 2022	Dec. 14, 2022	249 days
53	202102291/1/R4	25 Feb.2021	20 April 2022	Dec. 14, 2022	249 days
54	201909073/1/R3	15 October 2019	6 January 2022	Dec. 14, 2022	343 days
55	202100544/1/R2, 202100545/1/R2 202100547/1/R2	17 Dec. 2020	28 Sept. 2022	Dec. 21, 2022	85 days
56	202102940/1/R3	16 March 2021	5 August 2022	Dec.21, 2022	139 days
57	202003472/1/R2 202004196/1/R2	2 July 2020	19-20-21Apr. 2022	Dec.21, 2022	247 days
58	202003707/1/R3	14 May 2020	24-25 March 2022	December 21, 2022	273 days
<b>Total time</b>					<b>8327 days</b>
<b>Total case number</b>					<b>57 cases</b>
<b>Average time</b>					<b>146.08 days</b>

## 4.2 Turkiye's Case

In Turkiye's case, as different from the Netherlands' case, while information on date of decision appealed against is unavailable; application date is provided in the case-law database. Yet, there is no mention about the date of hearing. This is because, on the basis of the PAJA (Art. 1(2); Art.20, PAJA), for administrative cases, in principle, the written trial procedure is applied, and the examination is made on the documents in principle. Hearing is just applied in some exceptional situations displayed in the Act (Art.17, PAJA).

Therefore, for finding out the average time, time process passing through in between date of application and date of judgement was taken into account in this case. To this, 15005 total days for 51 cases were determined. While the maximum length is 2224 days; the minimum length is 11 days as processing time for getting through the

case. There is one other case taking more than 2000 days and three cases taking more than 1000 days. Accordingly, the average time for the work of the CoS for each case was found as 294.02 days (Table 6).

It is worth to explain that, for environmental cases, there is a special procedure under Art. 20A(1e), PAJA adopted in 2014 (Art. 18, Act No. 6545). To this, decisions taken as a result of the EIA -except for administrative sanctions- are subjected to the 'fast track trial procedure.' As can be understood from its name, this procedure aims to make the things faster in the court proceedings, in line with basic environmental principles (prevention, precautionary measures, etc.) and also the principle of fair trial. Based on this purpose, in this procedure (Art.20A (2), a-d, f), PAJA), the period of filing a lawsuit is set as **30 days**. The court must subject the case to the first examination within **7 days** and defense duration is **15 days** from the notification of the petition which can be extended just for once and for a maximum of **15 days**. After the completion of the file, these cases should be decided within **1 month** at the latest. There is no objection [istinaf] opportunity (not appeal) for those cases subjected to this fact-track procedure, which is provided for applications against some decisions of administrative and tax courts at the first instance level (Art.48(8), PAJA). Decisions to be taken regarding the request for stay of execution also cannot be objected (Art.20A.2e, PAJA.). As known, stay of execution provides a temporary remedy which has binding and restoring effect until the final decision is rendered. The case files for which the stay of execution decision is given are firstly examined and decided; decisions regarding the stay of execution shall be written and signed within **15 days** (Art.27.8, 9, PAJA.). So, it is very crucial in dealing with environmental issues.

In this analysis, as the CoS's decisions are taken into account, there is also need to look for the appeal procedure as well. The CoS is the final review authority for the decisions given by the administrative courts that the law does not leave to another administrative jurisdiction. In addition, it considers certain cases as a court of first and

last instance (Art.155, Turkish Constitution; Art. 23 (a, b), Art.25, Council of State Act).

According to the fact-track rules, an appeal against the final decisions given can be made within **15 days** from the date of notification. Petitions of appeal should be examined and published within **3 days**. Response time to appeal petitions is **15 days**. More remarkably, the appeal request should be finalized within **2 months**, the decision should be published within **1 month** at the latest (Art.20A (2), g-j), PAJA).

The duty of the CoS as an appellate authority, in principle, is limited to auditing the unlawfulness in the form of non-application or misapplication of a rule of law (Art. 23 (a), Council of State Act). Nonetheless, under the fast-track procedure, if the CoS deems the information obtained about the material facts sufficient at the end of its examination on the document, or if the appeal is only on legal points or if it is possible to correct the material errors in the appealed decision, it decides on the merits of the matter. Otherwise, it makes the necessary examination and investigation and decides on the merits again. However, in cases where it finds the appeal made against the decisions made upon the first examination justified, it reverses the decision and sends the file back (Art.20A (2), i), PAJA).

Although this situation can be seen as a positive change when considering the irreversibility of environmental damage and basic environmental principles (prevention, precautionary measures, etc.), it may also be viewed as inducing protentional negative consequences when viewed in the context of the problems in the current judicial system and the necessity of conducting the process in a way that protects the environment and those who may be victims within the scope of the fair trial principle. Because, according to Article 20A/2, it is expected that the court must subject the case before it to the first examination within 7 days and to render a decision within one month at the latest after the completion of the file. Unfortunately, it seems doubtful that accurate results can be obtained in such a short time, since there are no courts and personnel specialized in the field of environment; though there is an

intention to create environmental (specialized) courts under the Justice Reform Strategy prepared by the MoJ (MoJ, 2019). The period of filing a lawsuit is set at 30 days. If this period is missed, the case will be rejected, and no provision has been made to address this issue.<sup>26</sup>

<b>Table 6. TURKIYE Council of State Reference year 2022</b>						
	<b>Chamber/ Council</b>	<b>Docket no</b>	<b>Decree no</b>	<b>Date of Appl.</b>	<b>Date of judgement</b>	<b>Processing Time</b>
<b>1</b>	6th Chamber	2021/9701	2022/322	14.10.2021	18.01.2022	97 days
<b>2</b>	6th Chamber	2021/9699	2022/483	14.10.2021	20.01.2022	99 days
<b>3</b>	6th Chamber	2021/6184	2022/785	16.06.2021	25.01.2022	224 days
<b>4</b>	6th Chamber	2021/10791	2022/950	14.12.2021	01.02.2022	50 days
<b>5</b>	6th Chamber	2022/481	2022/1219	21.01.2022	08.02.2022	19 days
<b>6</b>	6th Chamber	2019/1296	2022/1522	19.02.2019	14.02.2022	<b>1091 days</b>
<b>7</b>	6th Chamber	2019/1332	2022/1520	20.02.2019	14.02.2022	<b>1090 days</b>
<b>8</b>	6th Chamber	2019/1284	2022/1521	19.02.2019	14.02.2022	<b>1091 days</b>
<b>9</b>	6th Chamber	2022/823	2022/1773	07.02.2022	17.02.2022	<b>11 days</b>
<b>10</b>	6th Chamber	2021/10383	2022/1902	23.11.2021	21.02.2022	61 days
<b>11</b>	6th Chamber	2022/582	2022/1998	27.01.2022	22.02.2022	27 days
<b>12</b>	6th Chamber	2022/570	2022/2002	27.01.2022	22.02.2022	27 days
<b>13</b>	6th Chamber	2022/567	2022/1996	27.01.2022	22.02.2022	27 days
<b>14</b>	6th Chamber	2022/561	2022/2046	27.01.2022	22.02.2022	27 days
<b>15</b>	6th Chamber	2021/9747	2022/1988	19.10.2021	22.02.2022	127 days
<b>16</b>	6th Chamber	2020/3256	2022/646	17.03.2020	23.02.2022	708 days
<b>17</b>	6th Chamber	2020/2994	2022/645	10.03.2020	23.02.2022	715 days
<b>18</b>	6th Chamber	2021/10525	2022/2516	02.02.2021	02.03.2022	394 days
<b>19</b>	6th Chamber	2021/10679	2022/2424	02.02.2021	02.03.2022	394 days
<b>20</b>	6th Chamber	2021/10120	2022/2877	02.02.2021	09.03.2022	401 days
<b>21</b>	6th Chamber	2020/9970	2022/2878	21.10.2020	09.03.2022	505 days
<b>22</b>	6th Chamber	2021/10129	2022/2876	09.11.2021	09.03.2022	121 days
<b>23</b>	6th Chamber	2021/10786	2022/2879	14.12.2021	09.03.2022	86 days
<b>24</b>	13 <sup>th</sup> Chamber	2016/1699	2022/983	20.04.2016	16.03.2022	<b>2188 days</b>

<sup>26</sup> For details on the fast-track trial procedure in EIA cases and other procedural issues pertaining to administrative jurisdiction, see also (Gökalp Alıca, 2019, 262-290).

25	PSofCAC	2020/1104	2022/855	01.06.2020	17.03.2022	654 days
26	PSofCAC	2020/1054	2022/864	29.04.2020	17.03.2022	687 days
27	6th Chamber	2022/1025	2022/3391	14.02.2022	22.03.2022	37 days
28	6th Chamber	2022/537	2022/3658	25.01.2022	24.03.2022	59 days
29	6th Chamber	2021/9792	2022/3826	21.10.2021	29.03.2022	160 days
30	6th Chamber	2021/10309	2022/3876	16.11.2021	30.03.2022	135 days
31	13th Chamber	2021/4909	2022/1369	29.11.2021	31.03.2022	123 days
32	6th Chamber	2021/10980	2022/4114	23.12.2022	31.03.2022	99 days
33	PSofCAC	2022/461	2022/1339	10.02.2022	07.04.2022	57 days
34	6th Chamber	2022/171	2022/4676	21.01.2022	13.04.2022	83 days
35	6th Chamber	2022/694	2022/4925	01.02.2022	19.04.2022	78 days
36	6th Chamber	2022/1883	2022/4982	14.03.2022	20.04.2022	38 days
37	6th Chamber	2021/11117	2022/5121	29.12.2021	21.04.2022	114 days
38	6th Chamber	2022/587	2022/5113	27.01.2022	21.04.2022	85 days
39	6th Chamber	2021/10905	2022/5190	20.12.2021	26.04.2022	128 days
40	6th Chamber	2022/983	2022/5988	11.02.2022	18.05.2022	97 days
41	6th Chamber	2022/3232	2022/6135	29.04.2022	25.05.2022	27 days
42	6th Chamber	2022/3227	2022/6122	29.04.2022	25.05.2022	27 days
43	6th Chamber	2022/3230	2022/6124	29.04.2022	25.05.2022	27 days
44	6th Chamber	2022/3235	2022/6123	29.04.2022	25.05.2022	27 days
45	6th Chamber	2022/3231	2022/6126	29.04.2022	25.05.2022	27 days
46	6th Chamber	2022/3166	2022/6478	28.04.2022	31.05.2022	34 days
47	6th Chamber	2022/3171	2022/6638	29.04.2022	02.06.2022	35 days
48	6th Chamber	2022/1798	2022/699	09.03.2022	14.06.2022	98 days
49	6th Chamber	2022/1388	2022/7119	25.02.2022	16.06.2022	112 days
50	6th Chamber	2022/584	2022/7537	27.01.2022	28.06.2022	153 days
51	13th Chamber	2016/4052	2022/3982	03.10.2016	03.11.2022	2224 days
<b>Total time</b>						<b>15005 days</b>
<b>Total case number</b>						<b>51 cases</b>
<b>Average time</b>						<b>294.2 days</b>

## Conclusion

This research basically aimed to make a research on court efficiency concerning environmental litigation, its key aspects; its alignment with legal provisions and best practice, and its likelihood of successfully achieving its broad legal/judicial objectives. For this purpose, with a view to making practicable recommendations for

improvement of court efficiency regarding environmental litigation, it sought for how efficiently environmental issues are handled under case law with a comparative analysis between the Netherlands and Turkiye. As it is a very complicated issue to cope with; it restricted its scope with an environmental case definition specifically made for this study, so with CoS decisions with the reference year 2022.

On the basis of the sources and data that could be reached within the context of the research, for finding out the average duration for the work of the CoS for each case, i.e., its speediness as the performance indicator for that reference year:

**For the NL case:** Time process passing through in between hearing and judgement dates was taken into account (application date is not available). To this, 8327 total days for 57 cases were determined. While the maximum length is 787 days; the minimum length is 8 days. Accordingly, the average time was found as 146.08 days (Table 5).

**For TR case:** Time process passing through in between application and judgement dates was taken into account. To this, 15005 total days for 51 cases were determined. While the maximum length is 2224 days; the minimum length is 11 days as processing time for getting through the case. There is one other case taking more than 2000 days and three cases taking more than 1000 days. Accordingly, the average time for the work of the CoS for each case was found as 294.02 days (Table 6).

As a conclusion, at first sight, it seems that the average duration is longer in TR case than the NL case. However, given the need to know the duration in between the application and hearing dates in the NL case, to have more tangible, meaningful and measurable comparative outcomes in between two cases, it actually becomes questionable to claim it. This is because, in the NL case, there is also need to consider maximum six weeks complaint time after the governmental decision, and also an additional period for the completion of the application that to determine the application date, and so to find the duration in between the application and judgement dates in line with TR case analysis. In fact, just in case when the analysis is made

with same variables for both cases, it would be possible to lead to certain quantitative results. However, even in this case, there may be still some pitfalls and weaknesses to avoid while thinking about the *efficiency* which is identified as ‘the delivery of [quality] decisions’ (CoE, 2010). It not only requires certain quantitative results but also qualitative ones which are not easy to measure, that should include fair proceedings within a reasonable time by an independent and impartial court established by law in line with art 6, ECHR. Indeed, it requires a multidimensional approach involving ‘quantity, quality, complexity and certainty’ (Garoupa, 2022). As there is no separate court system for environmental issues in both countries; it is not even simple in both cases to reach at necessary relevant/related data on environmental litigation; so it becomes harder to focus on qualitative factors affecting the efficiency. Furthermore, post-decision process is also so essential to understand how efficient the court case law on environmental litigation is, since the efficient management of cases in the enforcement phase is also among the responsibilities of the judges (CoE, 2010).

This research just aimed to be a initiator to go further on environmental litigation and its efficiency; so they are beyond the scope of this research. But they still deserve to be taken into account for making more holistic conclusions on the subject.

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