LAUNCHING CONFERENCE OF "JOINT PROJECT ON SUPPORTING THE INDIVIDUAL APPLICATION TO THE CONSTITUTIONAL COURT IN TURKEY"

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Esteemed guests,

I greet you all with my deepest respect. It is a pleasure for me to address this respected audience on the occasion of the opening conference of the joint project on "Supporting the Individual Application to the Constitutional Court in Turkey".

As it is known, we are a founding member of the Council of Europe and three basic pillars of the Council are democracy, rule of law and human rights. Accordingly, the political model adopted by the member states of the Council may be formulated as "democratic state of law based on human rights".

One hundred fifty years of constitutionalism experience in Turkey is oriented towards the adoption and consolidation of this model. As a matter of fact, Article 2 of our Constitution cites human rights, democracy and rule of law among the irrevocable characteristics of the Republic of Turkey

Based on the judgments of the Constitutional Court, a democratic state of law may be defined as a state where people are the actor of government, the political power is restricted to protect fundamental rights and freedoms and those in power, as well as the governed, are bound by the rules of law.

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Democratic rule of state thrives on the basis of a series of values such as justice, equality, tolerance and plurality. The form of political structure shaped by such series of values may vary from one country to another. However, the very essence of these values is universal.

In other words, all civilizations have contributed to development and deepening of these values. Therefore, for instance, the concept of justice is not in the monopoly of any culture or geography. These are common values contributed in one way or another by the thoughts and experiences that developed in the course of history both East and West.

You may find the roots of these values all in "*Antigone*" of Sophocles, as well as "*Masnawi*" of Mawlana or "*Ethica*" of Spinoza or "*Ahlak-ı Ala'i*" of Kınalızade Ali Efendi.

1. The "other"'s Rights

The main objective of democratic rule of law based on human rights is to facilitate co-existence of differences. And the prerequisite of such co-existence is to establish and maintain a healthy relation with those who have different thoughts and beliefs from those of us, namely "the others". The basic problem in European political and social culture is failure to establish and maintain its ontological relation with the "other" on a healthy ground.

It is beyond any doubt that the universal nature of human rights requires to recognize the applicability of human rights to not only to ourselves but to those who are different from us. However, it is not so easy to realize this at all times. It cannot be argued that Europe has given a good account of itself in defending the "others"' rights especially at times of extraordinary conditions caused by wars and terrorist

attacks.

The famous philosopher Kant mentions of "right to hospitality" in his article "Perpetual Peace" that he wrote in 1795. Accordingly, hospitality means the right of a stranger not to be treated as an enemy when he arrives in the land of another. Therefore, we have the responsibility not to treat the foreigners as an enemy when they somehow cross our borders and such responsibility is not a mere issue of philanthropy but a requirement of respect to their rights.

Kant's "right to hospitality" applies especially to the refugees today. Turkey made an invaluable contribution to protection of "others"' "right to hospitality" by opening its doors and heart to approximately three million refugees.

On the other hand, in many European countries the refugees are treated, unfortunately, like "viruses" which shall not be allowed to cross the borders. The assets of these refugees are confiscated in some countries while some others attach a wristband for controlling them and some of the countries accept only the members of a certain religion. And what is worse, there are those who even argue that the refugees shall be shot if they attempt to cross the borders.

Meanwhile, the refugees' "journey to hope" towards the West turns into tragedies. The dead bodies of children are washed back to the shores. Indeed, those are "dead bodies" of humanity which reflect on the faces of the "other". These dead bodies that are washed ashore and engraved in our minds are the images of "an age completely stripped off its heart". This is an absolute "eclipse of conscience".

All these facts and images are the result of a squint look towards the foreigner, i.e. those who are different from us. A mentality which is afraid of those who are different or which perceives them as a treat to be kept off the borders cannot be the engine of a pluralist and human-based civilization.

Such philosophers as Yunus Emre, Mawlana and Hadji Bektash Wali, who shaped the roots of this land's soul, made unmatched contributions to cultural coexistence through their messages which takes the human into focus and efforts to spread the love and peace to the society.

The Ottoman social and political experience that we have inherited also provides good examples of living together and the means to facilitate such coexistence. Moreover, the mechanism of individual application, which is the main subject of the project that we launch today, has its roots not only in many European countries such as Germany and Spain but in the practices of individual "*arz-ı hal*"(right to petition) implemented for many centuries in Ottoman State as well.

In the light of the information on Ottoman State provided by our revered historian Halil Inalcık, those who suffered a damage due to erroneous acts of the administration, non-execution of a court judgment, non-payment of a debt or, in general terms, unlawful acts and actions could file a complaint to the Head of the State. The real persons, associations or foundations who suffered a damage could file an "*arz*" or "*arz-ı hal*"(petition) to demand a redress for their losses. The rulings of the sultan to redress such claims of damages were recorded in *"Şikâyât defterleri*"(Complaint Records) and notified to the applicants.

The concepts and institutions certainly evolves into different forms in the course of time and from one place to another. Modern nation state does not have a very long history. Nevertheless, in our age, such values as justice, freedom, human rights, rule of law, plurality and tolerance are our common values that we defend all. And, it is our shared responsibility to protect these values and to sustain them into future through intellectual and practical contributions.

2. Current Status of Indıvıdual Application

Distinguished guests,

In this context, introduction of individual application mechanism in Turkey is a very significant step towards the development of democratic rule of law based on human rights and enhancing the standards of fundamental rights. In the first place, I would like to express that the constitutional amendments in 2010 are follow-up to a series of amendments broadening the protection area of fundamental rights and improving the instruments to protect them. In this context, the constitutional amendments in 2001 and 2004 deserve a special mention. The amendments in 2001 brought essential changes to constitutional provisions on fundamental rights and freedoms in the light of the case-law of the European Court of Human Rights.

The constitutional amendment in 2004 took a radical step by adding a sentence to Article 90 of the Constitution which prescribes, in the case of a conflict between international agreements concerning fundamental rights and freedoms and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail. Thus, the supremacy of the human rights law was recognized.

A new paragraph added to Article 148 of the Constitution in the constitutional amendments in 2010 provided "everyone with the right to apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities."

Total number of applications filed to our Court since the beginning of the individual

application practice (23 September 2012) is 56.194. We have decided 33.521 applications so far and 22.673 are in pending status.

It is a pleasure for me to announce that year 2015 was very productive and successful in individual application. The number of applications decided in 2015 increased 50% when compared to the previous year. Indeed, out of 33.521 applications decided since the beginning of individual application practice, 15.753 were decided in 2015 which equals to 47% of all applications decided so far. Considering the number of applications decided in 2015, the Court's potential to meet the applications received is 77%. It must also be noted that this ratio was 50% in 2013 and 53% in 2014.

As of today, the Court has ruled for violation of rights in its 1042 judgments. 757 (72.6%) of these judgments are on the right to a fair trial, 77 (7.4%) of them on the right to personal liberty and security, 38 (3.6%) on the right to property, 31 (3%) on freedom of expression, 30 (2.9%) on the right to union, 24 (2.3%) on the right to life and 23 (2.2%) on the prohibition of torture and ill-treatment.

In parallel to increase in the number of application decided, there has been a significant increase in the number and diversity of violation judgments. Out of 1042 judgments on violation that the Court issued so far, 543 were issued in 2015. The number of violation judgments was 27 in 2013 and this figure increased to 377 in 2014 and to 543 in 2015. Besides, in 2015, the Court delivered for the first time a judgment on violation with regards to freedom of communication, freedom of assembly and association and the right to organize meetings and demonstration marches.

What lies behind this increase in our performance is such structural changes as "division of labor among the rapporteur judges on the basis of fundamental rights",

transfer of all works by units of individual application procedure to the UYAP (National Judiciary Project) electronic medium, preparation of guidelines and the launch of filtrating department. Of course, devoted efforts of our judges, rapporteur judges and assistant rapporteur judges played a key role in achieving such a success. Taking this opportunity, I would like to extend my thanks to each and every one of them as well as the administrative staff of our Court.

Individual application has been the most influential instrument of the paradigm shift in the Constitutional Court. The Court has adopted a rights-based paradigm and, thereby, became the most important guarantee for individual rights and freedoms.

Such paradigm shift and the success of the individual application practice have made significant contributions to increasing the standards of human rights in Turkey. As it is specified in the legislative intent of the constitutional amendment adopted through a referendum in 12 September 2010, one of the most important *raison d'etre* for introducing the individual application into Turkish legal system is to resolve the disputes within our domestic law without requiring to apply to the European Court of Human Rights. The figures verify that we have achieved this goal to a considerable extent. The number of applications filed against Turkey to the European Court of Human Rights was 8.986 in 2012, 3.505 in 2013, 1.584 in 2014 and 2.208 in 2015.

As we can see, the number of applications to the European Court of Human Rights has decreased considerably after the introduction of individual application. On the other hand, considering that we have decided 33.521 applications so far, only a very limited number of these applications were further brought before the European Court of Human Rights.

3. Nature of Individual Application Judgments

Esteemed guests,

There has been certain misunderstandings since the very beginning of the individual application practice. Indeed, being a relatively new institution in Turkey, individual application will be better understood and implemented in time. To that end, I would like to address certain basic issues on the characteristics of individual application.

As we often emphasize in our judgments, individual application practice requires in principle that public authorities respect the fundamental rights and freedoms and, in case of a violation of right, reparation of such violation through ordinary administrative and/or legal remedies. Individual application to the Constitutional Court is a remedy of subsidiarity nature to be applied to only if the alleged violation of right is not redressed through ordinary legal remedies.

Individual application is not a legal remedy which reviews every aspect of the judgments and decisions issued by other judicial authorities and it does not provide for elimination of all kinds of individual sufferings.

It must be understood by all that individual application does not serve a means of "super" appellate procedure after exhausting other remedies. The subsidiarity of individual application requires that violation of rights are redressed primarily by the court of instance.

The Constitutional Court, in its review on individual applications, determines whether there is a violation of right or not. If the Court finds a violation of right, then the judgment prescribes how that violation of right can be redressed. However, as

we have emphasized repeatedly, the Constitutional Court does not serve as an appellate body in individual application practice. The Constitutional Court does not quash or uphold the judgments of instance courts or issue a judgment by substituting them.

For instance, when the Constitutional Court concludes that a court judgment on detention of an individual violates certain constitutional rights of the applicant, it does not imply that the Court decided on whether the applicant committed the crimes charged against him. As a matter of fact, it is not a duty of the Constitutional Court but the courts of instance to decide on whether the applicant's acts constitute a crime or not.

On the other hand, there are public discussions on the order of priority in reviewing the individual applications. Our Constitutional Court, like all other courts implementing individual application, applies a prioritization policy. Such policy has been adopted by the Plenary of the Constitutional Court in the form of a series of principles taking into account the practices of the European Court of Human Rights and other courts. Accordingly, we review the application in the order of their submission to the Court and currently we are about to finish the applications filed in 2013. Besides, we review certain applications in priority if they concern rights and freedoms related to such issues as detention.

One of the major factors rendering the individual application practice effective and successful in Turkey is that the judgments are executed without delay. Principally, the judgments issued by the Constitutional Court on the basis of the powers vested in the Constitution and other laws shall be binding upon all persons and institutions. As a matter of fact Article 153 of the Constitution clearly states that "Decisions of the Constitutional Court … shall be binding on the legislative, executive, and judicial organs, on the administrative authorities, and on persons and corporate bodies"

Esteemed guests,

Irrespective of the recent discussions, I would like to recall, at principle level, certain issues related to reactions to the Constitutional Court's judgments.

It was approximately two hundred years ago that Alexis de Tocqueville said "*There is hardly a political question in the United States which does not sooner or later turn into a judicial one*." A similar observation applies to Turkey as well after the introduction of individual application. Almost every political question discussed in Turkey also turns eventually into a judicial one and comes before the Constitutional Court through an individual application.

Some of these judgments cause intense controversies. It must be noted on the onset that the judges are not divine beings and, therefore, court judgments can be criticized. In fact, they must be criticized. Otherwise, the law would freeze. We respect all kinds of criticism to our Court's judgments. However, I strongly deny and condemn the slandering and defamations in the form of news and comments targeted against me and all the judges of our Court by fabricating fictitious dialogues as they exceed well beyond the limits of criticism.

Our judgments, as a matter of course and similar to the rest of the world, are appreciated by some while being disapproved by some others. Moreover, those who applaud our judgments today may condemn them the other day. Even the very same persons appreciating some of our judgments may, just day later, define some of the judgments issued by the same judges as "scandalous".

In brief, those who recall our presence in Ankara may vary depending on the judgments. I will suffice it to say that, although our presence is recalled by different

persons depending on the judgments we issue, we have always been here and will remain so…

It must be known that neither the condemnations nor the compliments effect the Constitutional Court. Neither the compliments and praises nor the defamations through false and fabricated news shall alter the commitment of our judges to act on the basis of the Constitution, the laws and their conscience.

We do our job. We review the individual applications irrespective of the applicants' identities. Being an independent and impartial judicial authority, we do not stand by or against anyone. We stand by the law and justice while standing against injustice and unlawfulness. Our motto is "law and justice for all".

Esteemed guests,

Finally, I would like to state that individual application practice serves a very important function in protecting constitutional rights and freedoms and increasing their standards. Such success of the individual application is not dependent on the Constitutional Court alone, but it also belongs to all our judicial bodies who contributed to establishment and spread of the case-law created through individual application judgments, to the legislative body which introduced the individual application to our legal system and, finally, to our nation who is the source of sovereignty. Therefore, we must put joint effort to protect the individual application institution.

Taking this opportunity, I would like to reiterate my appreciation on behalf of our Court to each person and institution who contributed to the success of individual application. I firmly believe that this project will contribute to development of individual application in Turkey and I extend my thanks in advance to all persons,

institutions and corporations, stakeholders, experts and colleagues contributing to the preparation, supporting and implementation of such project.

Thanking for your interest, I greet you all with my deepest respect.