



ANAYASA MAHKEMESİNE BİREYSEL BAŞVURU SİSTEMİNİN DESTEKLENMESİ ORTAK PROJESİ
JOINT PROJECT ON SUPPORTING THE INDIVIDUAL APPLICATION TO THE CONSTITUTIONAL COURT IN TURKEY

ROUND TABLE MEETING on the *“Right to Liberty and Security”*

PROGRAMME

Istanbul, Hilton Bosphorus Hotel

4-5 June 2016

4 June 2016

Saturday

- 09:00 **Registration**
- 09:30 **Opening Speech**
Prof Zühtü Arslan, President of the Constitutional Court of Turkey
- 09:40 **Speech on behalf of Council of Europe**
Yücel Erduran, Project Manager, Ankara Programme Office of the Council of Europe
- 09:50 **First Session: Interferences with the right to liberty and security**
"Is the right to a person's liberty and security infringed in the following cases: i) an arrest warrant to take testimony or for the detention of a person (during the period when the decision is not executed) and ii) keeping a person at the police station or at the scene or in the courthouse for testimony without following the custody procedures?"
Chair: Prof Engin Yıldırım, Vice President of the Constitutional Court of Turkey
- 09:55 **Presentation of related case law of the Constitutional Court**
Dr Abdullah Çelik, Chief Rapporteur of Sections, Constitutional Court
- 10:05 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Prof Stephen Thaman, Saint Louis University, USA
- 10:20 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Prof Adem Sözüer, İstanbul University, Faculty of Law
- 10:35 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Prof Ersan Şen, İstanbul University, Faculty of Political Sciences
- 10:50 **Question – Answer /Discussions**
- 11:15 *Break*
- 11:35 **Second Session: Lawfulness of detention**
"While reviewing the lawfulness of detention (e.g. reasonable grounds that an offence has been committed, reasons for detention, proportionality) i) should the reasoning of the detention decision or all conditions of a concrete event be assessed?; ii) should the reasonable grounds that an offence has been committed which is presented subsequently (such as presentation of reasonable grounds in the indictment) be taken into account?"
Chair: Prof Cumhur Şahin, Gazi University, Faculty of Law
- 11:40 **Presentation of related case law of the Constitutional Court**
M. İlhan Koç, Chief Rapporteur of Research and Case-Law Unit, Constitutional Court
- 11:50 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Assistant Prof Vincent Sizaire, University of Paris Ouest Nanterre, France
- 12:05 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Prof Nur Centel, Koç University, Faculty of Law
- 12:10 **Evaluation of the case law of the Constitutional Court**
Prof Veli Özer Özbek, Dokuz Eylül University, Faculty of Law
- 12:35 **Question – Answer /Discussions**
- 12:55 *Lunch*

4 June 2016

Saturday

- 14:30 **Third Session: Relevant and sufficient reasoning in decisions for the continuation of detention**
"i) Should the presence of relevant and sufficient reasoning in decisions for the continuation of detention, be defined merely according to the reasoning of the court; ii) Should all conditions of a concrete event (such as information and documents in the file which are not clearly reflected in the reasoning) be taken into consideration in the evaluation of an individual application; iii) what principles are the minimum requirements based on for an individual decision to extend a person's detention period in offences with more than one offender"
Chair: Hasan Tahsin Gökcan, Member of the Constitutional Court
- 14:35 **Presentation of related case law of the Constitutional Court**

Dr Hüseyin Turan, Rapporteur, Constitutional Court

- 14:45 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Assistant Prof Zsolt Tamas Szomora, University of Szeged, Hungary
- 15:00 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Prof Feridun Yenisey, Bahçeşehir University, Faculty of Law
- 15:15 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Prof Ayşe Nuhoğlu, Bahçeşehir University, Faculty of Law
- 15:30 **Question – Answer /Discussions**
- 15:50 *Break*
- 16:10 **Fourth Session: Public authorities’ obligation to show special diligence**
“The standard which public authorities, including prosecution and trial authorities, must uphold in the conduct of prosecution and trial procedures when a measure of detention is applied (intervals of hearings, diligence in collection of evidence, timely submission of requested information and documents by public authorities other than investigation and prosecution authorities)”
Chair: Prof Feridun Yenisey, Bahçeşehir University, Faculty of Law
- 16:15 **Presentation of related case law of the Constitutional Court**
Dr Serhat Altinkök, Rapporteur, Constitutional Court
- 16:25 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Gökçe Türkyılmaz, Senior Lawyer, European Court of Human Rights
- 16:40 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Prof Fatih Selami Mahmutoğlu, Türkisch- Deutsche Universitat, Faculty of Law
- 16:55 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Prof Caner Yenidünya, Marmara University, Faculty of Law
- 17:10 **Question – Answer /Discussions**
- 17:30 *End of the first day*

5 June 2016
Sunday

- 09:30 **Fifth Session: Principle of equality of arms and adversarial trial within the context of the right to remedy against the deprivation from freedom, and the right to be informed of the reasons for detention and the charged offence**
“i) Impacts of restriction of access to the file/evidence on the principle of equality of arms and adversarial trial - in relation with the right to remedy against the deprivation from freedom, and the right to be informed on the charged offence –; ii) criteria in defining whether or not such a restriction violates the related right and principle; iii) how to evaluate conditions for restricting access to information and documents which are classified as a state secret”
Chair: Prof İzzet Özgenç, Gazi University, Faculty of Law
- 09:35 **Presentation of related case law of the Constitutional Court**
Akif Yıldırım, Rapporteur, Constitutional Court
- 09:45 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Prof Manuel Cancio, Autonomous University of Madrid, Spain
- 10:00 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Associate Prof Pınar Ölçer, University of Leiden, the Netherlands

- 10:15 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Assistant Prof Selman Dursun, İstanbul University, Faculty of Law
- 10:30 **Question – Answer /Discussions**
- 10:55 *Break*
- 11:15 **Sixth Session: Impact of the developments subsequent to the individual application, on the review of the application**
“Should the developments following an individual application (such as subsequent exhaustion of remedies, exceeding reasonable – maximum time period of detention after the application, return to detainee status as a result of a quashed conviction decision) be taken into account while reviewing the application?”
Chair: Prof Bahri Öztürk, İstanbul Kültür University, Faculty of Law
- 11:20 **Presentation of related case law of the Constitutional Court**
Aydın Şimşek, Rapporteur, Constitutional Court
- 11:30 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Jesús María González, Legal Counsellor of the Constitutional Court of Spain
- 11:45 **Evaluation of the case law of the TCC**
Prof Çetin Arslan, Hacettepe University, Faculty of Law
- 12:00 **Evaluation of the case law of the TCC**
Associate Prof Ece Göztepe Çelebi, Bilkent University, Faculty of Law
- 12:15 **Question – Answer /Discussions**
- 12:40 *Lunch*

5 June 2016

Sunday

- 14:00 **Seventh Session: Impacts of arrest, custody and detention measures on the rights and freedoms other than the right to liberty and security of persons**
“i) When should the impacts of arrest, custody and detention measures on fundamental rights and freedoms other than the right to liberty and security (right to organize meetings and demonstration marches, freedom of expression, right to vote and elections, right to respect for private and family life, right to education) be reviewed as a separate intervention?; ii) what is the method for reviewing cases separately?”
Chair: Prof Adem Sözüer, İstanbul University, Faculty of Law
- 14:05 **Presentation of related case law of the Constitutional Court**
Murat Azaklı, Chief Rapporteur, Constitutional Court
- 14:15 **Evaluation of the consistency between the case law of the TCC and the ECtHR or practices in other countries**
Gökçe Türkyılmaz, Senior Lawyer, European Court of Human Rights
- 14:30 **Evaluation of the case law of the TCC**
Prof Sibel İnceoğlu, Bilgi University, Faculty of Law
- 14:45 **Question – Answer /Discussions**
- 15:10 **Closing Speeches**
Suranga Soysa, Project Coordinator, Council of Europe
Burhan Üstün, Vice President, Constitutional Court
- 15:20 **End of Programme**

Summaries of judgments to be discussed in sessions

First session

Fetih Ahmet Özer (Application No. 2013/6179, 20/3/2014)

Right to liberty and security is violated when the probation measure is revoked and an arrest warrant is issued on the basis of a legal provision that is against the Constitution.

Turgut Kaya et al (Application No. 2013/5859, 19/11/2015)

Alleged unlawful issue of arrest warrant for detention purposes together with the conviction

Deniz Yazıcı (Application No. 2013/6359, 10/12/2014)

Alleged arbitrary detention in a police center.

Tahir Gökatalay (3) (Application No. 2013/5605, 30/3/2016)

Alleged arbitrary detention in a police center.

Hidayet Karaca (Application No. 2015/144, 14/7/2015)

Alleged unlawful detention during the period between the expiry of legal custody period and transfer to interrogation, and the period between the interrogation and announcement of a decision delivered consequent to the interrogation.

Second session

Hikmet Kopar et al [GC] (Application No. 2014/14061, 8/4/2015)

In the judicial examination related with the first detention, the examination is limited to whether or not there is probable cause that an offence may be committed by the person whilst lawfully depriving the individual's right to liberty in this context.

Günay Dağ et al [GC] (Application No. 2013/1631, 17/12/2015)

In relation with the initial detention, if the offence is among the catalogue of crimes stipulated by law – provided that there are reasonable grounds for an offence- this can be considered as a reason for detention.

Erdem Gül and Can Dündar [GC] (Application No. 2015/18567, 22/2/2016)

The Constitutional Court is entitled to review the compliance with the principle of proportionality. This is among the criteria for the restriction of fundamental rights and freedoms given in Article 13 of the Constitution in referring to the measure of detention, and this review should be based on the process related with detention and the reasoning for detention.

Third session

Ramazan Aras (Application No. 2012/239, 2/7/2013)

When deciding to uphold detention, the courts must provide reasons as to why the person's right to freedom has been deprived, despite the presumption of innocence and the existence of a public interest in this detention. Instance courts are primarily responsible to ensure that the detention does not exceed a certain period of time in a lawsuit. However, whether or not the detention exceeds reasonable time is reviewed by the Constitutional Court based on the criteria related with the reasoning of instance courts, and whether or not the obligation to show special diligence has been met.

Mehmet Haberal (Application No. 2012/849, 4/12/2013)

While deciding for the continuation of detention, the special situation of the person requesting the release, must be taken into consideration besides the general status of the lawsuit. Writing individual decisions for each person with the reasons of detention is a necessity. The reasons of why judicial control would be insufficient, should be explained in the decisions given for the continuation of detention.

Levent Ersöz (Application No. 2013/5274, 16/7/2014)

The medical status of the applicant should be taken into account, while reviewing a complaint about a detention that exceeds reasonable time.

Fourth session

Salih Şahin (Application No. 2013/7040, 11/12/2014)

Diligence should be shown in procedures followed in detention during trial for the rapid conclusion of the lawsuit.

Serkan Akbaş (Application No. 2013/2342, 21/1/2016)

Delays arising from the attitude of the applicant cannot be considered as an infringement of the obligation to show special diligence.

Emrah Oğuz, (Application No. 2013/1755, 25/3/2015)

Failure in ex officio review of detention in intervals of thirty days each against the law and failure of issuing a decision for the applicant's request for release, violates the right to liberty and security.

Mehmet İlker Başbuğ (Application No. 2014/912, 6/3/2014)

Failure in issuing a reasoned decision for a long period of time after the conviction, breaches a person's enjoyment of this right.

Ulaş Kaya and Adnan Ataman (Application No. 2013/4128, 18/11/2015)

A decision should be given "in a short period of time" for the release request of a person whose liberty is restricted, and this time period starts upon application to the competent authority and ends with a notification of the decision given for the application.

Fifth session

Firas Aslan and Hebat Aslan (Application No. 2012/1158, 21/11/2013)

A person whose liberty is restricted has to right to file an application to a competent judicial authority in order to ensure that a decision is given for the person and the person is immediately released if this restriction is against the law; some of the guarantees related with the right to a fair trial does not fall under the right to liberty and security in cases where detention is *ex officio* reviewed; listening to the applicant in every appeal against decisions given by courts is not obligatory in reviewing the objection against detention while the detainee has the right to request to be heard with reasonable intervals; the opinion of prosecutor's office should be notified to the detainee or his/her lawyer.

Günay Dağ et al [GC] (Application No. 2013/1631, 17/12/2015)

Reasons for arrest or detention and the related claims should be immediately communicated to the persons arrested or detained; the obligation to communicate does not cover all information related with the accusations; the decision for restriction does not violate the principle of equality of arms on its own, if it is clear that the applicant does not have sufficient information on the accusation; the restriction does not cover some of the documents and minutes according to the law.

Yavuz Pehlivan et al [GC] (Application No. 2013/2312, 4/6/2015)

Failure in accessing evidence that constitutes a basis for the accusation in detention during trial, is effective in establishing whether or not the detention exceeds the reasonable time.

Erdal Korkmaz et al (Application No. 2013/2653, 18/11/2015)

Lawyers of applicants should be allowed to be present during the hearings where their detention is being reviewed via SEGBIS (Audio-visual Communications System); holding hearings for detention via SEGBIS is in compliance with the face-to-face principle.

Sixth session

Ziver Demircan (Application No. 2014/235, 3/2/2016)

In complaints related with the right to a fair trial, merits of the application will be reviewed upon the exhaustion of remedies during the review of the individual application even if the remedies have not been exhausted yet when the individual application was filed.

Abdullah Akyüz [GC] (Application No. 2013/9352, 2/7/2015)

With regards to the provisions approved by the appeal authority during the review of the individual application, a remedy of filing a lawsuit for compensation is not effective if the time limit stipulated for the application has been exceeded in order to file a lawsuit for compensation as of the date of approval.

Serdar Ziriğ [GC] (Application No. 2013/7766, 2/7/2015)

The detention time periods that passed after the filing of an individual application are also taken into consideration in defining whether or not the detention exceeds the reasonable time and the maximum time stipulated by law.

Hidayet Karaca [GC] (Application No. 2015/144, 14/7/2015)

In reviewing the lawfulness of detention in applications filed after the first detention, reasonability of detention time that passed during the review of the individual application is not reviewed.

Seventh session

Hidayet Karaca [GC] (Application No. 2015/144, 14/7/2015)

Detention that is found to be lawful does not violate freedom of expression.

Günay Dağ et al [GC] (Application No. 2013/1631, 17/12/2015)

Detention that is found to be lawful does not violate the freedom of expressing and disseminating ideas and the freedom of association.

Erdem Gül and Can Dündar [GC] (Application No. 2015/18567, 22/2/2016)

Detention that is found to be unlawful is a disproportionate interference with the freedom of expression and media.

Mehmet Haberal (Application No. 2012/849, 4/12/2013)

Detention exceeding reasonable time violates the right to be elected.

Engin Demir [GC] (Application No. 2013/2947, 17/12/2015)

Detention exceeding reasonable time interferes with the right to be engaged in political activities.

Gülşah Öztürk et al (Application No. 2013/3936, 17/2/2016)

The applicant and other protesters were involved in a violent protest, which didn't cease despite continued warnings by the police. Their subsequent arrest and detention was deemed to be proportionate as it pursued a legitimate aim and therefore not a violation of the applicants right to freedom of assembly.

Osman Erbil (Application No. 2013/2394, 25/3/2015)

The applicants arrest during a peaceful/non-violent assembly, was deemed to be a violation of the applicants right to freedom of assembly. The courts reasoning was that even though the demonstration was illegal since no advance notice had been given, the right to freedom of assembly is a fundamental value in a democratic society, and that the restriction on the applicant was not proportionate and did not pursue a legitimate aim.

List of Participants

Constitutional Court	
1. Zühtü Arslan	President
2. Burhan Üstün	Vice President
3. Engin Yıldırım	Vice President
4. Recep Kömürcü	Member
5. Alparslan Altan	Member
6. Nuri Necipoğlu	Member
7. Hicabi Dursun	Member
8. Celal Mümtaz Akıncı	Member
9. Erdal Tercan	Member
10. Muammer Topal	Member
11. Hasan Tahsin Gökcan	Member
12. Kadir Özkaya	Member
13. Selim Erdem	Secretary General
14. Recep Kaplan	Deputy Secretary General
15. Abdullah Çelik	Chief Rapporteur of Sections
16. M. İlhan Koç	Chief Rapporteur of Research and Caselaw Unit
17. Murat Azaklı	Chief Rapporteur of Commissions
18. Hüseyin Turan	Rapporteur (Right to Liberty and Security)
19. Aydın Şimşek	Rapporteur (Right to Liberty and Security)
20. Musa Çataloğlu	Rapporteur (Right to Liberty and Security))
21. Yusuf Enes Kaya	Assistant Rapporteur
22. Cüneyt Durmaz	Rapporteur (Right to Life- Prohibition of Torture and Ill-treatment)
23. Recep Ünal	Rapporteur (Right to Life- Prohibition of Torture and Ill-treatment)
24. Nahit Gezin	Rapporteur (Right to Life- Prohibition of Torture and Ill-treatment)
25. M. Serhat Mahmutoglu	Rapporteur (Right to Life- Prohibition of Torture and Ill-treatment)
26. Halil İbrahim Dursun	Assistant Rapporteur
27. Gizem Ceren Demir Koşar	Assistant Rapporteur
28. Akif Yıldırım	Rapporteur (Right to a Fair Trial / Punishment)
29. Okan Taşdelen	Rapporteur (Right to a Fair Trial / Punishment)
30. Hüseyin Patıraman	Rapporteur (Right to a Fair Trial / Punishment)
31. Murat Şen	Rapporteur (Freedom of Expression, Religion and Conscience)
32. Abuzer Yazıcıoğlu	Rapporteur (Freedom of Expression, Religion and Conscience)
33. Murat Güven	Assistant Rapporteur
34. Serhat Altinkök	Rapporteur (Research and Case law)
35. Elif Çelikdemir Ankıtcı	Rapporteur (Coordinator)
36. Yılmaz Çınar	Rapporteur (Coordinator)

37. Hasan Saraç	Rapporteur (Coordinator)
38. Mustafa Eyyub Demirbaş	Rapporteur (Coordinator)
39. Bekir Çağlar	Rapporteur (Filtering)
40. Duygu Kalukçu	Assistant Rapporteur (Filtering)
41. Berrak Yılmaz	Rapporteur (Plenary)
42. Osman Kodal	Rapporteur (Plenary)
Academics (National)	
43. Prof Adem Sözüer	İstanbul University, Dean of Faculty of Law
44. Prof Ahmet Caner Yenidünya	Marmara University
45. Prof Ahmet Gökçen	Marmara University
46. Prof Ali Kemal Yıldız	İstanbul Commerce University
47. Prof Ayşe Nuhoğlu	Bahçeşehir University, Dean of Faculty of Law
48. Prof Bahri Öztürk	İstanbul Kültür University, Dean of Faculty of Law
49. Prof Cumhur Şahin	Gazi University
50. Prof Çetin Arslan	Hacettepe University
51. Prof Ersan Şen	İstanbul University
52. Prof Fatih Selami Mahmutoglu	Turkish Deutsche Universitat
53. Prof Feridun Yenisey	Bahçeşehir University
54. Prof İzzet Özgenç	Gazi University
55. Prof Mahmut Koca	İstanbul City University
56. Prof Nur Centel	Koç University
57. Prof Osman Doğru	Marmara University
58. Prof Sibel İnceoğlu	Bilgi University
59. Prof Veli Özer Özbek	Dokuz Eylül University, Dean of Faculty of Law
60. Assoc.Prof Ece Göztepe Çelebi	Bilkent University
61. Assistant Prof Selman Dursun	İstanbul University
62. Assistant Prof Serdar Talas	İstanbul University
63. Assistant Prof Levent Korkut	Medipol University
64. Assistant Prof Tolga Şirin	Marmara University
65. Assistant Prof Ulaş Karan	Bilgi University
Academics – Experts (International)	
66. Prof Manuel Cancio	Autonomous University, Spain
67. Prof Stephen Thaman	St. Louis University, USA
68. Assistant Prof Vincent Sizaire	Paris Ouest Nanterre University, France
69. Assistant Prof Zsolt Tamas Szomora	Szeged University, Hungary
70. Assoc. Prof Pınar Ölçer	University of Leiden, the Netherlands
71. Assistant Prof Gottfried Plagemann	İstanbul University
72. Jesús María González	Legal Counsellor, Spanish Constitutional Court
73. Gökçe Türkyılmaz	Senior Lawyer, European Court of Human Rights

Council of Europe	
74. Juan Antonio Hernández Corchete	Long Term Consultant, (Legal Counsellor, Spanish Constitutional Court)
75. Suranga Soysa	Project Coordinator (Strasbourg)
76. Yücel Erduran	Project Manager (Ankara)
77. Ahmet Murat Kılıç	Senior Project Officer (Ankara)
78. Deniz Bıyıklı	Linguistic Assistant (Ankara)
79. Derya Kaya	Project Assistant (Ankara)