Annual Report

2024

Constitutional Court Publications

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Annual Report 2024

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PREFACE BY THE PRESIDENT

Constitutional justice based on the principle of rule of law and the notion of human rights and freedoms is among the essential pillars of democratic societies. The Turkish Constitutional Court undertakes a crucial role for safeguarding and upholding individuals' fundamental rights and freedoms through its constitutional powers and duties. In delivering judgments on behalf of the "Turkish Nation", the Court takes into consideration national and international norms in light of the principles of justice and fairness.

The 2024 Annual Report provides a comprehensive overview of the Court's work throughout 2024, namely the activities performed by the Court within the year, novelties in the field of constitutional jurisdiction, as well as the outstanding decisions and judgments that foster the protection of fundamental rights and freedoms. The Court has achieved to reinforce public sense of confidence in law and to boost public trust in judicial institutions through its decisions and judgments rendered in the constitutionality review and individual application processes.

The Report includes information on its structure and working procedures, along with the events organised by the Court throughout the year at national and inter-

national level. Besides, press releases of leading decisions and judgments, which are of particular significance for the protection of fundamental rights and freedoms, serve as a guide for legal practitioners, academics, and for those interested.

The first chapter of the Report provides a succinct insight into the formation of the Plenary, Sections and Commissions of the Court.

The second chapter includes information on the duties and powers of the Plenary, Sections and Commissions.

The third chapter covers the Court's structure, functioning, methodology, press and public relations, and publications, as well as the changes, developments and innovations of 2024 within both national and international levels.

The fourth chapter features selected speeches delivered by the President of the Turkish Constitutional Court in the year 2024.

The fifth chapter presents brief summaries of the Court's notable decisions and judgments rendered in 2024 in the context of both individual application and constitutionality review, with a view to illustrating the Court's jurisprudence on a wide range of topics. This chapter is intended for presenting the Court's paradigm on fundamental rights and freedoms and serving as a guide for those interested in the Court's jurisprudence, particularly academics and legal practitioners.

The final chapter contains a year-by-year comparison of the Court's performance in 2024 by providing various statistical data along with graphical representations.

The Court continued, also in 2024, to fulfil its powers and duties based on the principles of transparency, accountability, human rights, and justice. It is my sincere hope that the 2024 Report issued by the Research Center for Constitutional Justice of the Constitutional Court would shed light on the studies in the field of law and be instrumental in promoting a better understanding of individual application mechanism across all segments of society.

I would like to extend my profound gratitude to those who have contributed to the issuance of the Report and everyone committed to a more equitable future.

Kadir ÖZKAYA

President of the Turkish Constitutional Court

YEAR

JANUARY

2 January	Start of the winter-term internship programme for undergraduates
12 January	Certificate ceremony for the first-group undergraduates participating in the winter-term internship programme
12 January	Election of Mr. Rıdvan Güleç as President of the Court of Jurisdictional Disputes and Mr. Kenan Yaşar as its Vice-President
26 January	Official Opening Ceremony of the Judicial Year of the European Court of Human Rights (ECHR)
30 January	Retirement of Member of the Turkish Constitutional Court Mr. Muammer Topal

FEBRUARY

6-7 February	Workshop on Combating Violence against Women in the light of the Constitutional Court Judgments
8 February	Swearing-in Ceremony for recently elected Member of the Constitutional Court Mr. Yılmaz Akçil
13 February	Study visit by the Delegation of the Federal Sharia Court of Pakistan to the Turkish Constitutional Court
21-24 February	Training of Trainers Programme on "The Right to a Fair Trial" for judges and prosecutors
26 February	Conference organised jointly by the Turkish Constitutional Court, Research Center for Constitutional Justice (AYAM) and Koç University
27 February	Study visit by the Algerian judicial delegation to the Turkish Constitutional Court

MAY

5-6 May	Training Programme on "Binding Power and Enforcement of Constitutional Court Judgments" under the Project on "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"
12 May	Retirement of Member of the Constitutional Court Mr. Muhammed Emin Kuz
12-14 May	J20 Summit organised by the Federal Supreme Court of Brazil
17 May	Reception of Mr. William Massolin, Head of the Council of Europe Programme Office in Ankara, and the accompanying delegation, by President Kadir Özkaya at his office
21-24 May	Attendance by President Kadir Özkaya at the XIXth Congress of the Conference of European Constitutional Courts (CECC) held in Chișinău, Moldova
23 May	Hearing held by the Constitutional Court in its capacity as the Supreme Criminal Tribunal (E.2021/1)
24 May	Visit by the Delegation consisting of the Presidents of the Bar Associations of the Member States of the Organization of Turkic States to the Turkish Constitutional Court
27-30 May	4th Research Conference organised by the Constitutional Court of Korea as part of the AACC activities
30-31 May	Training Programme on "The Right to a Fair Trial" under the Project on "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"

JUNE

3 June	Start of the summer-term internship programme for undergraduates
4 June	Sectoral Monitoring Committee Meeting of the Instrument for Pre-accession Assistance (IPA) II on Fundamental Rights, Civil Society and Judiciary (online)
4 June	Visit by the Delegation of the Ministry of Justice of Qatar to the Turkish Constitutional Court
6 June	Reception of Mr. Lee Heunggu, Justice of the Supreme Court of Korea, by President Kadir Özkaya at his office
10 June	Reception of Mr. Nikola N. Kovacevic, Chairman of the Senate of the State Audit Institution of Montenegro, by President Kadir Özkaya at his office
12 June	Visit by Co-Rapporteurs of the Commission of Audit of the Parliamentary Assembly of the Council of Europe (PACE) to the Turkish Constitutional Court
14 June	Certificate ceremony for the first-group undergraduates participating in the summer-term internship programme
26 June	Visit by the delegation of judicial officers from Moldova and Uzbekistan to the Turkish Constitutional Court
26-28 June	XII St. Petersburg International Legal Forum
28 June	Visit by the Delegation of the Judicial General Council of Mongolia to the Turkish Constitutional Court

SEPTEMBER

2 September-6 December	Secondment of 3 rapporteur-judges from the Turkish Constitutional Court to the Department for the Execution of Judgments of the European Court of Human Rights, and the European Court of Human Rights, under the Project on "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"
4 September	1st Committee Meeting of the Conference of European Constitutional Courts (CECC) (online)
5 September	Secretaries General Meetings of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) (online)
6 September	International Conference on "Law & Climate" held in Baku
10 September	Reception of Ms. Holta Zaçaj, President of the Constitutional Court of the Republic of Albania, by President Kadir Özkaya at his office
11 September	Swearing-in ceremony for recently elected Member of the Constitutional Court Assoc. Prof. Dr. Metin Kıratlı
12 September	International Conference on "The Right to an Effective Remedy within the scope of the Principle of Subsidiarity of the Individual Application" held on the occasion of the 12th Anniversary of the Individual Application Mechanism in Türkiye
13-15 September	Workshop under the Project on "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"
16 September	Judicial Year Opening Ceremony of the Supreme Court of the Turkish Republic of Northern Cyprus (TRNC)
17-21 September	6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC)
19 September	Hearing held by the Constitutional Court in its capacity as the Supreme Criminal Tribunal (E.2021/1)
27 September	Visit by the candidate judge and prosecutors from Bosnia and Herzegovina, Republic of Kosovo, Republic of North Macedonia and Romania to the Turkish Constitutional Court
30 September	12th Summer School Event organised by the Turkish Constitutional Court in its capacity as the Permanent Secretariat of the AACC

OCTOBER

4 October	Study visit by the Venice Commission delegation to the Turkish Constitutional Court
4 October	Reception of Mr. Afrim Gashi, Speaker of the Assembly of North Macedonia, by President Kadir Özkaya at his office
4-5 October	Training Programme on "The Right to a Fair Trial", for judges and prosecutors, under the Project on "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"
11-12 October	International Conference on Migration and Human Rights in the Light of the Judgments of the European Court of Human Rights and the Constitutional Court
17-18 October	Regional Conference on Human Rights and the Environment in Southeast Europe organised in Budva, Montenegro
18 October	Press Briefing within the framework of the "Communication Strategy"
23-25 October	International Conference on "Evolutions in Contemporary Constitutional Justice: The Example of the Balkan Region" organised by the Constitutional Court of the Republic of Kosovo
24-25 October	Study visit to the European Court of Human Rights (ECHR)
28 October	2nd Committee Meeting of the Conference of European Constitutional Courts (CECC) (online)
30 October – 3 November	7th Congress of the Conference of Constitutional Jurisdictions of Africa (CJCA) held in Zimbabwe

MARCH

4 March	Study visit by the Delegation of the Constitutional Court of the Republic of Moldova to the Turkish Constitutional Court
5 March	Election of Mr. Kadir Özkaya as Vice-President of the Turkish Constitutional Court
21 March	Election of Mr. Kadir Özkaya as President of the Turkish Constitutional Court
29 March	Round-table meeting under the Project on "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"

APRIL

16 April	Election of Mr. Basri Bağcı as Vice-President of the Turkish Constitutional Court
19 April	Retirement of President of the Turkish Constitutional Court Prof. Dr. Zühtü Arslan
25 April	62nd Anniversary of the Turkish Constitutional Court and Swearing-in Ceremony of recently elected Member of the Turkish Constitutional Court Prof. Dr. Ömer Çınar

JULY

5 July	Certificate ceremony for the second-group undergraduates participating in the summer-term internship programme
17 July	Reception of Mr. Fadi Hatem Abbaas Salahaldeen, President of the Palestinian Bar Association, by President Kadir Özkaya at his office
19 July	Certificate ceremony for the third-group undergraduates participating in the summer-term internship programme
23-27 July	Study visit by President Kadir ÖZKAYA and the accompanying delegation to Baku

AUGUST

8 August	Secretaries General Meetings of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) (online)
14 August	Courtesy visit by the Embassy of the Federal Republic of Germany to the Turkish Constitutional Court

NOVEMBER

6 November	Study visit by the Gambian Judicial Delegation to the Turkish Constitutional Court
6-9 November	Study visit by the Turkish Constitutional Court delegation to the French Constitutional Council, French Council of State, and the ECHR
13 November	Reception of Dr. Darko Kostadinovski, President of the Constitutional Court of North Macedonia, by President Kadir Özkaya at his office
14 November	Reception of Dr. Faiq Zidan, President of the Supreme Judicial Council and Court of Cassation of the Republic of Iraq, by President Kadir Özkaya at his office
14 November	Study visit by delegation of the International Press Institute (IPI) to the Turkish Constitutional Court
19 November	Project Steering Committee Meeting under the Project on "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"
19 November	Secretaries General Meeting of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) (online)
20 November	Study visit by AACC Affairs Division of the Constitutional Court of Korea to the Turkish Constitutional Court
26-27 November	19th Round Meeting of Subcommittee No. 8 established to monitor the developments concerning harmonisation with the EU acquis in the EU accession process

DECEMBER

4 December	Study visit by the delegation of the Kosovo Prosecutorial Council to the Turkish Constitutional Court
4 December	Sectoral Monitoring Committee Meeting of the Instrument for Pre-accession Assistance (IPA) II on Fundamental Rights, Civil Society and Judiciary (online)
4 December	Visit by Mr. Schnutz Dürr, Head of Programming Department, Directorate of Programme Co-ordination of the Council of Europe, to the Turkish Constitutional Court
6 December	Symposium on "The Role of the Constitutional Court in the Protection of Fundamental Rights and Freedoms"
9 December	"Workshop on Children's Access to Justice in the light of Constitutional Court Judgments" organised in co-operation with the Human Rights and Equality Institution of Türkiye
10 December	Study visit by the delegation of the Department for the Execution of Judgments of the ECHR
11 December	Study visit by the delegation of the candidate judges of the Republic of Azerbaijan to the Turkish Constitutional Court
13-14 December	Training programme on "The Right to a Fair Trial", for judges and public prosecutors, under the Project on "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"
19 December	Hearing held by the Constitutional Court in its capacity as the Supreme Criminal Tribunal (E.2021/1)
23 December	Symposium on "Constitutional Jurisdiction as a Guarantor of Democracy and the Rule of Law"

CHAPTER 01

FORMATION OF THE COURT


T.C.
ANAYASA MAHKEMESİ

Formation of the Court

I. OVERVIEW

The Constitutional Court is comprised of fifteen members. Two of these members shall be elected with a secret voting by the Grand National Assembly of Türkiye from among three candidates to be nominated for each vacant position by and from among the president and members of the Court of Accounts. The Grand National Assembly shall also elect one Member from among three candidates nominated by the heads of the bar associations from among self-employed lawyers. Two-thirds majority of the total number of members shall be required for the first ballot, and absolute majority of total number of members shall be required for the second ballot. If an absolute majority cannot be obtained in the second ballot, a third ballot shall be held between the two candidates who have received the greatest number of votes in the second ballot; the candidate who receives the greatest number of votes in the third ballot shall be elected.

The President of the Republic shall select three members from the Court of Cassation, two members from Council of State from among three candidates to be nominated, for each vacant position, by their respective general assemblies, from among their presidents and members. The President of the Republic shall also select three members, at least two of whom being law graduates, from among three candidates to be nominated for each vacant position by the Council of Higher Education from among members of the teaching staff who are not members of the Council, in the fields of law, economics and political sciences. Lastly, the President of the Republic shall select four members from among high level executives, self-employed lawyers, first category judges and public prosecutors or rapporteur-judges of the Constitutional Court having served as rapporteur-judge at least five years.

In the elections to be held in the respective general assemblies of the Court of Cassation, Council of State, the Court of Accounts and the Council of Higher Education for nominating candidates for membership of the Constitutional Court, three persons obtaining the greatest number of votes shall be considered to be nominated for each vacant position. In the elections to be held for the three candidates nominated by the heads of bar associations from among self-employed lawyers, three persons obtaining the greatest number of votes shall be considered to be nominated.

To be eligible as a candidate for the Constitutional Court, members of the teaching staff shall be required to possess the title of professor or associate professor; lawyers shall be required to have practiced as a lawyer for at least twenty years; high level executives shall be required to have completed higher education and to have worked for at least twenty years in public service, and first category judges and public prosecutors with at least twenty years of work experience including their period of candidacy, provided that they all shall be over the age of forty five.

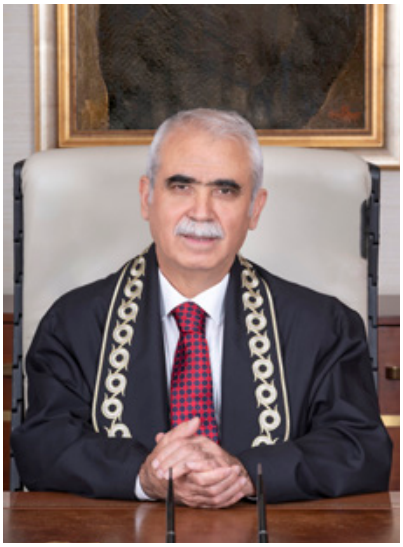
The Constitutional Court shall elect a president and two vice-presidents from among its members for a term of four years by secret ballot and by an absolute majority of the total number of its members, and those whose term of office ends may be re-elected.

According to Article 149 of the Constitution and Article 20 of Code no. 6216 on the Establishment and the Rules of Procedures of the Constitutional Court, the Constitutional Court functions in the form of the Plenary, Sections and Commissions.

II. FORMATION OF THE PLENARY

The Plenary shall comprise of fifteen members including the President and two Vice-Presidents. The Plenary shall convene with a quorum of at least ten members. The Plenary shall render a decision by an absolute majority. However, a two-thirds majority shall be sought for decisions on annulment of Constitutional amendments, dissolution of political parties or deprivation of political parties of state aid.

As of 31 December 2024, the Plenary is composed of the following members:



Kadir ÖZKAYA | President

Mr. Özkaya was born in 1963 in Tarsus. He studied at Bandırma Middle School, followed by the Land Registry and Cadastre Vocational High School. He graduated from the Faculty of Economics and Administrative Sciences, Department of Public Administration at Gazi University in 1985.

He began his professional career as a civil servant at the General Directorate of Land Registry and Cadastre and subsequently served as an inspector at the Agricultural Credit Cooperatives of Türkiye. After completing his administrative judge internship, which began on 4 February 1991, he was appointed as a rapporteur judge at the Council of State on 13 May 1993, where he served until November 2004. On 21 October 2005, he was officially appointed as a rapporteur judge at the Constitutional Court, a position he had been filling on a temporary basis since November 2004. While serving in this capacity, he was elected as a member of the Council of State by the High Council of Judges and Prosecutors in 2011, and subsequently selected by the President as a Member of the Constitutional Court on 18 December 2014, assuming his role on 22 December 2014.

In 2002, he completed the Public Administration Specialisation Programme at the Public Administration Institute for Türkiye and the Middle East, culminating in a thesis on The Loss of Organisational Characteristics by the Elected Bodies of Local Governments. He has also co-authored two books: *"Annotated and Jurisprudential Administrative Judicial Procedure Law" and "Investigation, Trial, and Removal of Mayors, Council Members, and Mukhtars"*.

He was elected twice as the Vice-President of the Constitutional Court by the Plenary of the Constitutional Court on 12 March 2020 and 5 March 2024, and served as the Presiding Judge of the Second Section between 4 April 2020 and 19 April 2024.

He was elected as the President of the Constitutional Court by the Plenary of the Court on 21 March 2024, assuming his role on 20 April 2024.

Hasan Tahsin GÖKCAN | Vice-President

Mr. Gökcan, holding offices as a judge in the districts of Fındıklı, Tuzluca and Bozüyük, and as a rapporteur judge at the Court of Cassation, was selected as a member of the Court of Cassation on 24 February 2011. He was subsequently selected as a Member of the Constitutional Court by the President of the Republic on 17 March 2014 from amongst three candidates nominated by the General Assembly of the Court of Cassation. He was elected twice as the Vice-President of the Constitutional Court by the Plenary of the Court on 26 March 2019 and 6 April 2023. He has been holding office as the Vice-President and the Presiding Judge of the First Section since 15 April 2019.

Basri BAĞCI | Vice-President

Mr. Bağcı, starting public office as a candidate judge in Ankara in 1989, served as a public prosecutor in Sivas-Gürün, Siirt-Pervari, Konya-Hüyük, respectively. He was appointed as a judicial inspector at the Inspection Board at the Ministry of Justice in 1999 and as a Chief Inspector at the Ministry of Justice in 2005. He held offices as the Deputy Director at the Directorate General for Prisons and Detention Houses and the Deputy Undersecretary at the Ministry of Justice. He received a master's degree in international law on human rights at University of Exeter in the United Kingdom. He was selected as a member of the Court of Cassation on 5 July 2017. He was selected as a Member of the Constitutional Court by the President of the Republic on 2 April 2020.

He was elected as the Vice-President of the Constitutional Court by the Plenary of the Court on 16 April 2024. Since then, he has been holding office as the Vice-President and the Presiding Judge of the Second Section.

Prof. Dr. Engin YILDIRIM | Member

Mr. Yıldırım, receiving a master's degree from Warwick University (England), Warwick Business School in 1989 and a PhD degree from Manchester University (England), Faculty of Economics and Social Studies in 1994, served as a faculty member at Sakarya University, Faculty of Economics and Administrative Sciences, from 1994 to 2010. He also held the position of dean at the same faculty from 2003 to 2010. He was selected as a Member of the Constitutional Court by the President of the Republic on 9 April 2010 from amongst three candidates nominated by the General Assembly of the Council of Higher Education. He held office as the Vice-President of the Constitutional Court from 19 October 2015 to 25 October 2019.

Rıdvan GÜLEÇ | Member

Mr. Güleç, holding office at the Ministry of Transportation between 1989 and 1991, served in 1991 as an assistant auditor at the Court of Accounts where he later served as an auditor, chief auditor and senior auditor. He was appointed as a member of the Court of Accounts by the Plenary Assembly of the Parliament on 25 June 2009. While holding this office, he was appointed as a Justice of the Constitutional Court by the General Assembly of the Parliament on 13 March 2015 from amongst three candidates nominated by the Court of Accounts.

Assoc. Prof. Dr. Recai AKYEL | Member

Mr. Akyel, starting his career as a contracted official at the Directorate General of Yem Sanayii Türk A.Ş., became a local authority at the Ministry of Interior in 1989. He held office as a district governor respectively in the districts of Pozantı, İscehisar, Camoluk, Solhan, Gölyaka, İmamoğlu, Kızıltepe and Elbistan. He sat as a governor in Tokat from 2007 to 2009. He was elected as the President of the Court of Accounts by the General Assembly of the Parliament on 26 June 2009. Upon the expiry of his presidency term, he continued to sit as a member in the Court of Accounts. He was then appointed as the Chief Advisor to the President. He was selected as a Member of the Constitutional Court by the President of the Republic on 25 August 2016 from amongst the top executives.

Prof. Dr. Yusuf Şevki HAKYEMEZ | Member

Mr. Hakyemez, holding office as a research assistant in the Karadeniz Technical University, Faculty of Economics and Administrative Sciences, Department of Public Administration in 1995, received a MA degree in law in 2005 and PhD degree in 2010. He served as the Dean of Karadeniz Technical University, Faculty of Economics and Administrative Sciences from 2010 to 2012. He then held office as the Vice-Chancellor of Karadeniz Technical University from 2012 to 2016. He sat as a member of the Right to Information Assessment Board from 2012 to 2016 and as a member of the Human Rights Institution of Türkiye from 2012 to 2015. He was selected as a Member of the Constitutional Court by the President of the Republic on 25 August 2016 from amongst three candidates nominated by the Council of Higher Education.

Yıldız SEFERİNOĞLU | Member

Mr. Seferinoğlu, a self-employed lawyer since 1993, was elected as a Member of Parliament from İstanbul in the 26th term in the general elections of 1 November 2015. He held offices as the Head of Türkiye - Turkish Republic of Northern Cyprus Inter-Parliamentary Friendship Group and a member of Committee of Justice of the Turkish Grand National Assembly of Türkiye. He held office as the Deputy Minister of Justice from 23 July 2018 to 25 January 2019. He was selected as a Member of the Constitutional Court by the President of the Republic on 25 January 2019.

Selahaddin MENTEŞ | Member

Mr. Menteş, starting public office as a candidate judge in Elazığ in 1995, served as a judge in Denizli-Buldan, Eskişehir-Han and Adıyaman-Gölbaşı. He sat as a member judge at the assize court in Diyarbakır in 2006. He then sat as the presiding judge of the 1st Chamber of the Diyarbakır Assize Court and the president of the Justice Commission for Civil and Criminal Jurisdiction from 2010 to 2012. He held offices as the Deputy Undersecretary at the Ministry of Justice from 2014 to 2017 and as the Undersecretary at the Ministry of Justice from 18 October 2017 to 1 July 2018. He was then appointed as the Deputy Minister of Justice on 21 July 2018. He was selected as a Member of the Constitutional Court by the President of the Republic on 6 July 2019.

İrfan FİDAN | Member

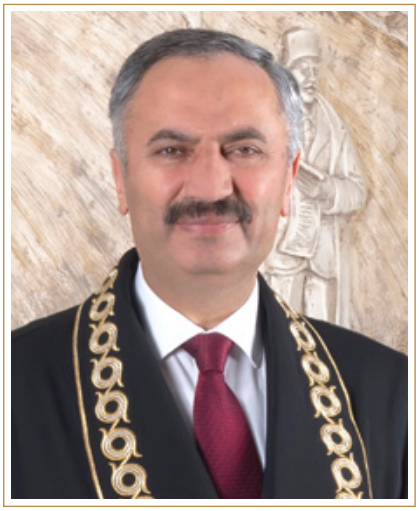
Mr. Fidan, starting public office as a candidate judge in Ankara in 1997, served as a public prosecutor in Kayseri- Akkışla, Erzurum-Aşkale, Zonguldak-Çaycuma, Hatay- Dörtyol, İstanbul-Şişli ve İstanbul respectively on successfully completing the internship period. He was appointed as the public prosecutor authorised by Article 10 of the Anti-Terror Law in 2012. He held offices as the İstanbul deputy chief public prosecutor between 16 January 2015 and 26 July 2016. He then served as the İstanbul chief public prosecutor until 27 November 2020. He was selected as a member of the Court of Cassation on 27 November 2020. He was selected as a Member of the Constitutional Court by the President of the Republic, on 23 January 2021, from amongst three candidates nominated by the General Assembly of the Court of Cassation.

Kenan YAŞAR | Member

Mr. Yaşar, serving as a self-employed lawyer in Çorum since 1996, was elected twice as the Chair of the Çorum Bar Association in October 2018 and April 2021 after holding executive positions at various levels in Çorum Bar Association. He served as the Deputy Head of the Çorum City Council between 2004 and 2009. He held office as the Head of the Human Rights and Democracy Association between 2007 and 2015. On 15 January 2022, he was ranked 1st, with the votes of the Bar presidents, among the three names to be submitted to the Parliament for the vacant self-employed lawyer position at the Constitutional Court. On 19 January 2022, he was elected as a Member of the Constitutional Court by the General Assembly of the Parliament.

Muhterem İNCE | Member

Mr. İnce served as district governor of Sulakyurt, Samsat, Narman and Eceabat districts, since 1997. Between 2009 and 2016, he served as a Director at the Ministry of Interior Department of Training, Head of the Directorate General of Personnel, Deputy General Director of Personnel, and General Director of Personnel at the Ministry of Interior. In 2016, he was appointed as the governor of Artvin. He held office as Undersecretary of the Ministry of Interior between 2016-2018 and was appointed as Deputy Minister of the Ministry of Interior in 2018. He was elected as a member of the Court of Accounts by the General Assembly of the Parliament on 29 June 2022. While serving as member of the Court of Accounts, he was elected as a Member of the Constitutional Court by the General Assembly of the Parliament on 5 October 2022.



Yılmaz AKÇİL | Member

He received his master's degree from the Department of Public Administration of the Institute of Social Sciences of Cumhuriyet University by submitting his thesis titled "Türk İdari Yargısında Yürütmenin Durdurulması (Stay of Execution in Turkish Administration Jurisdiction)." He served as a member at Sivas and Mersin Tax Courts, a member at the Erzurum Administrative Court, and the presiding judge at the Erzurum Administrative Court and Erzurum Regional Administrative Court. On 25 February 2011, he was appointed as a member of the Council of State. He presided over the Justice Academy of Türkiye between 27 February 2014 and 9 July 2018. He was then elected as the Head of the 10th Chamber of the Council of State on 17 December 2018. Subsequently, on 30 January 2024, Mr. Akçil was selected as a Member of the Constitutional Court by the President of the Republic from amongst three candidates nominated by the General Assembly of the Council of State.

Prof. Dr. Ömer ÇINAR | Member

After completing his internship as a lawyer in 2001, he was registered with the İstanbul Bar. He earned his master's degree in law from Marmara University's Institute of Social Sciences, Department of Private Law in 2002, and his PhD in 2009 from the same. In 2014, he was awarded the title of associate professor in civil law. After working as a self-employed lawyer until 2008, Mr. Çınar served as a research assistant and assistant professor at the Faculty of Law, İstanbul Ticaret University, from 2008 to 2011. He was as an academic member at İstanbul Şehir University's Faculty of Law, Department of Civil Law from 2011 to 2017, and at İbn Haldun University's Faculty of Law, Department of Civil Law from 2017 to 2024. Since 2021, he has served as the Dean of the Faculty of Law at İbn Haldun University. He has also been active in various non-governmental organisations as a member. On 20 April 2024, Mr. Çınar was selected as a Member of the Constitutional Court by the President from amongst three candidates nominated by the Council of Higher Education.

Assoc. Prof. Dr. Metin KIRATLI | Member

Mr. Kıratlı earned his master's degree from the Department of Private Law, Institute of Social Sciences, Istanbul Commerce University and completed his doctorate at Kırıkkale University, Department of Private Law. On 23 February 2024, he was awarded the title of associate professor in commercial law. Appointed as a member of the Council of Higher Education on 23 November 2018, Mr. Kıratlı served until 23 November 2022. He served as a judge in the districts of Ulaş, Çaldıran, Yalvaç and Manavgat respectively. In 2004, he was appointed to Directorate General for Criminal Affairs of the Ministry of Justice where he worked as a rapporteur judge, Head of Department, Deputy Director-General and Director General. In 2014, he was appointed as the Deputy Secretary General of the Presidency. On 3 August 2018, he was appointed as the first Head of the Directorate of Presidential Administrative Affairs of the Presidential government system, serving until 18 July 2024. Mr. Kıratlı was selected as a Member of the Constitutional Court by President on 18 July 2024.

III. FORMATION OF THE SECTIONS

There shall be two Sections of the Court in order to examine individual applications, and these Sections shall be composed of the members except for the President of the Court. Each Section shall consist of six members and a vice-president. These sections shall be named “the First Section” and “the Second Section”.

The members of the Section, except for the Vice-Presidents, shall be designated by the President of the Constitutional Court, in consideration of their professional background to the Court and a balanced distribution among the Sections. The formation of any Section may be changed by the President upon such request by any of its members or proposal by one of the Vice-Presidents.

Each Section convenes with four members under the chair of a vice-president. In absence of the Vice-President, the most senior member shall chair the meeting of the Section. In order to determine the formation of the Section, all members in that Section except for the Vice-President shall be listed according to their seniority. The first month’s meetings shall be attended by the Vice-President and four members of highest seniority. In the following months, it shall be ensured that each member who has not participated in the meetings serves in rotation according to their seniority ranking starting with the most senior member. The Presiding Judge of the Section shall prepare a list demonstrating the schedule for this rotation at the beginning of each year. If a new member joins the Section, the Presiding Judge of the Section shall make the necessary arrangement accordingly. The lists shall be announced to the members.

If a Section fails to achieve the quorum for meeting, the Presiding Judge of the Section shall assign the members from within the Section who do not participate in the meetings to participate in the meeting according to seniority ranking. If this is not possible, then the President of the Court shall assign members from the other Section upon the proposal of the Presiding Judge of the Section.

As of 31 December 2024, pursuant to Article 29 of the Internal Regulations of the Constitutional Court, the list of the members alternately attending the meetings of the Sections is as follows:

FIRST SECTION

Hasan Tahsin GÖKCAN	Presiding Judge
Recai AKYEL	Member
Yusuf Şevki HAKYEMEZ	Member
Selahaddin MENTEŞ	Member
İrfan FİDAN	Member
Muhterem İNCE	Member
Yılmaz AKÇİL	Member

SECOND SECTION

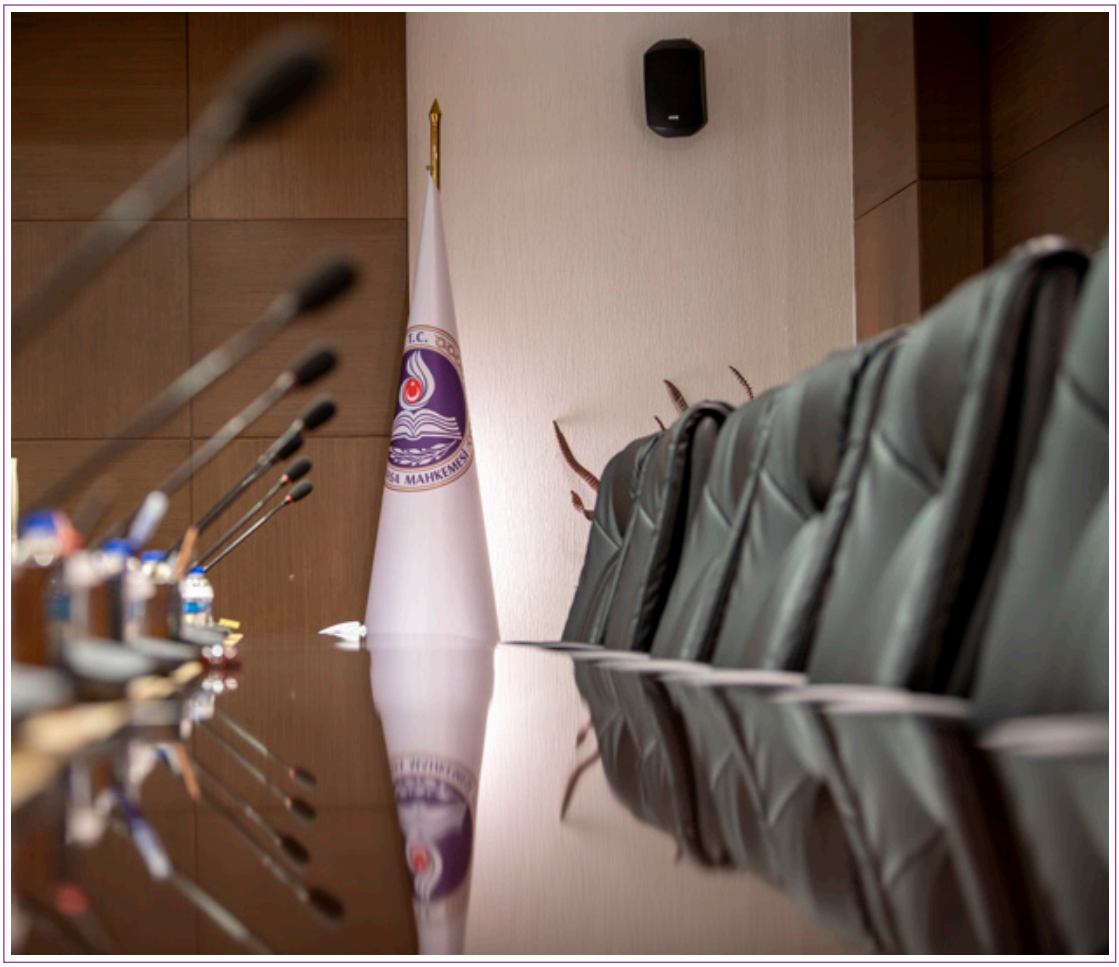
Basri BAĞCI	Presiding Judge
Engin YILDIRIM	Member
Rıdvan GÜLEÇ	Member
Yıldız SEFERİNOĞLU	Member
Kenan YAŞAR	Member
Ömer ÇINAR	Member
Metin KIRATLI	Member

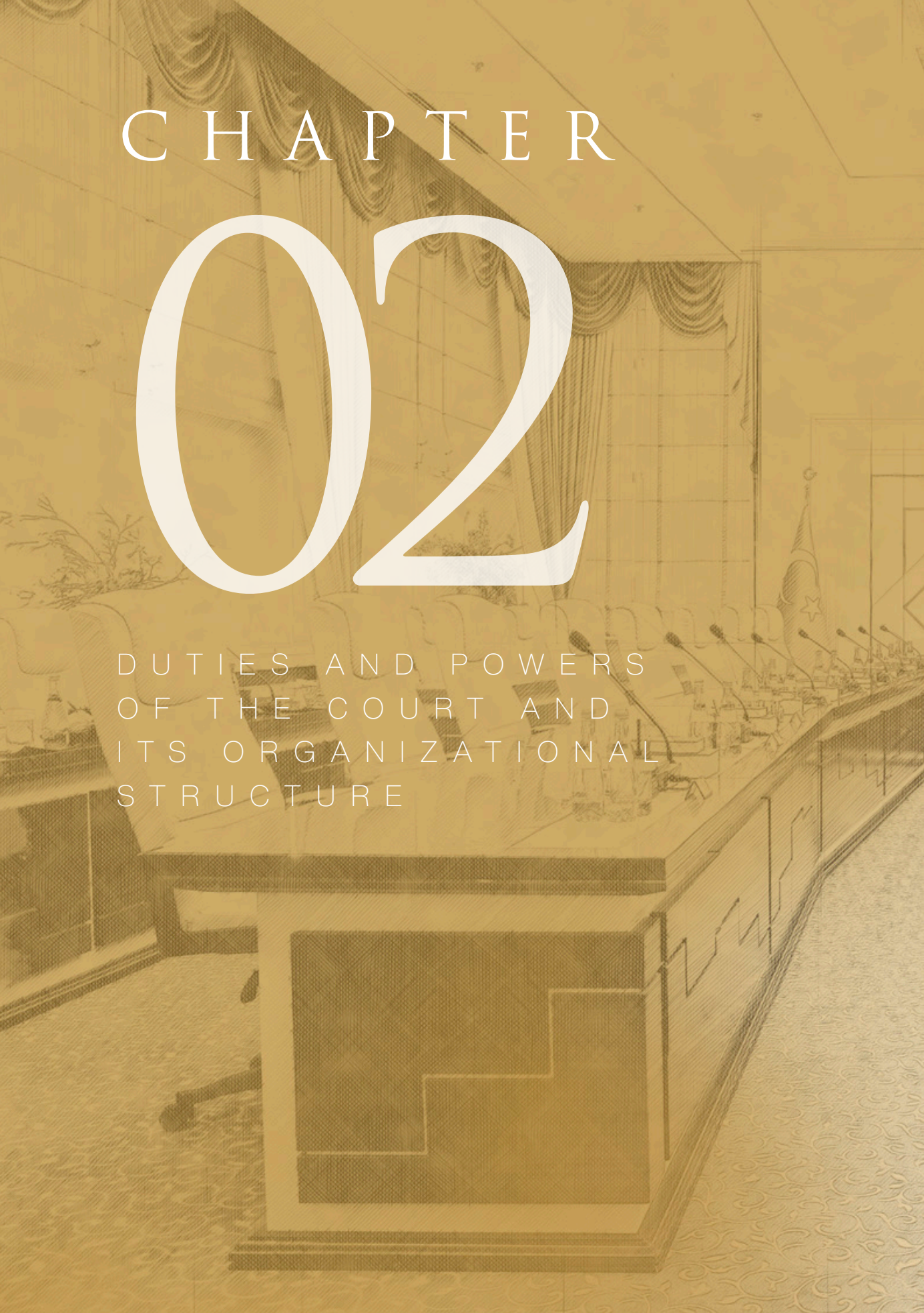
IV. FORMATION OF THE COMMISSIONS

Commissions consisting of two members under each Section have been set up to examine the admissibility of individual applications. Commissions have been assigned a number and named together with the number of the Section they are affiliated to. The Presiding Judge of the Section shall not take part in the Commissions, which shall be chaired by the senior member.

For the purpose of forming the Commissions, the members of a Section, except for the Vice President, shall be listed according to their seniority. The least senior member shall not participate in the first month's meetings of the Commissions. In the following months, it shall be ensured that each member who has not participated in the meetings serves in rotation according to their seniority starting with the most senior member. The Presiding Judge of the Section shall prepare the list demonstrating the schedule for this rotation at the beginning of each year. If a new member joins the Section, the Presiding Judge of the Section shall make the necessary arrangement accordingly. The lists shall be announced to the members.

The Plenary may change the Commissions affiliated to the Sections or alter the number of members composing the Commissions. In this case, the Commissions shall be re-formed in line with the procedure stipulated in the above paragraphs.





CHAPTER 02

DUTIES AND POWERS OF THE COURT AND ITS ORGANIZATIONAL STRUCTURE

Duties and Powers of the Court and Its Organizational Structure

I. DUTIES AND POWERS

A. OVERVIEW

a) to make constitutionality review of laws, the Presidential decree-laws and the Rules of Procedure of the Grand National Assembly of Türkiye both in form and in substance;

b) to examine and review the constitutional amendments only in form;

c) to conclude contested matters brought before the Constitutional Court by courts through concrete review pursuant to Article 152 of the Constitution;

d) to conclude individual applications filed, pursuant to Article 148 of the Constitution;

e) to try, in its capacity as the Supreme Criminal Court, the President of the Republic, the Speaker of the Grand National Assembly of Türkiye, members of the Council of Ministers; the presidents and members of the Constitutional Court; the presidents, members and chief public prosecutors and deputy chief public prosecutor the Court of Cassation and the Council of State; the presidents and members of the Council of Judges and Prosecutors and the Court of Accounts, the Chief of General Staff, the Chiefs of Land, Naval and Air Forces due to offenses relating to their duties;

f) to conclude cases and notices concerning dissolution and deprivation of political parties of state aid and demands for determination of the status of dissolution;

g) to review or have reviewed lawfulness of property acquisitions by the political parties and their revenues and expenditures;

h) In case where the Grand National Assembly of Türkiye resolves to remove parliamentary immunity or revoke membership of the parliamentary deputies or remove the immunity of the non-deputy ministers, to conclude the request for annulment by the concerned or any other deputies due to alleged incompatibility with the provisions of the Constitution, law or the Rules of Procedure of the Grand National Assembly of Türkiye;

i) to elect the President and Vice-Presidents of the Constitutional Court and the President and Vice-President of the Court of Jurisdictional Disputes amongst members of the Court; and

j) to carry out other duties set forth in the Constitution.

The Court shall carry out these duties through the Plenary, two Sections and the Commissions operating under each Section.

B. DUTIES AND POWERS OF THE PLENARY

a) to deal with the cases filed for the alleged unlawfulness of any norm and hear the proceedings in its capacity as the Supreme Criminal Court;

b) to conduct financial audits on political parties and conclude cases and applications related to political parties;

c) to adopt or amend the Court's Internal Regulations;

d) to elect the President and Vice-Presidents as well as the President and the Deputy President of the Court of Jurisdictional Disputes;

e) to resolve the conflicts between the decisions and judgments of the Sections in dealing with the individual applications and to decide on the matters referred to the Plenary by the Sections;

f) to ensure the distribution of work between the Sections;

g) to resolve, by request of the President, the disputes arising from the distribution of work among Sections definitively;

h) to assign the other Section in case the workload of a Section increases within the year to an extent that the Section is unable to cope with in the normal course of operation, there arises an imbalance of workload among the Sections or if a Section is unable to deal with a task in its competence due to a factual or legal impossibility;

i) to decide on whether to institute disciplinary and criminal investigations against members, examination and prosecution measures and, when necessary, on disciplinary punishments to be pronounced or termination of membership;

j) to examine objections; and

k) to carry out duties assigned to the Plenary by the Law and the Court's Internal Regulations.

The Plenary shall render its decisions by an absolute majority of those attending the meeting. In case of equal division of votes, the decision shall be made in line with the side which the President has opted for. A two-thirds majority is sought for decisions on annulment of Constitutional amendments, dissolution of political parties or deprivation of political parties of state aid.

C. DUTIES AND POWERS OF THE SECTIONS

a) to carry out the examination on merits of the applications declared admissible by the Commissions; and

b) If deemed necessary by the chair of the Section, to carry out the joint examination both on admissibility and on merits of the applications in respect of which the Commissions could not render a decision as to the admissibility.

The Sections may declare an application inadmissible at any stage of the examination if they determine an obstacle to admissibility or such circumstances arise later on.

If the decision to be made by one of the Sections regarding a pending application is likely to conflict with a decision previously made by the Court or if the nature of the subject matter requires it to be resolved by the Plenary, then the relevant Section may relinquish from deciding that application. The Presiding Judge of the Section shall bring this matter to the attention of the President of the Court to refer the application to the Plenary.

The Sections shall render its decisions by an absolute majority of those attending the meeting.

Following the examination on the merits of the case, the question whether the applicant's right has been violated shall be decided by the Section. In case of a judgment finding a violation, the Court shall indicate the steps to be taken in order to redress the violation and its consequences.

In this case, the following options are available for the Court:

i) If it is determined that the violation arouse from a court judgment, the file shall be sent to the concerned court for a retrial so as to ensure redress of the violation and its consequences. The relevant court shall carry out a retrial in such a way to redress the violation and its consequences as indicated by the Section's judgment finding a violation and render a speedy decision over the case-file if possible.

ii) In cases where the Section has found a violation but there is no legal interest in conduction of a retrial, the applicant may be awarded a reasonable compensation.

iii) In the event that the determination of the compensation amount requires a more detailed examination, the Section may, without making any such determination, require the applicant to bring an action before ordinary courts.

D. DUTIES AND POWERS OF THE COMMISSIONS

The examination on admissibility of applications shall be conducted by the Commissions.

An individual application to be declared admissible shall meet the requirements stipulated under Articles 45 and 47 of Code no. 6216. The examination on admissibility of applications shall be conducted by the Commissions.

The decisions by the Commissions on admissibility or inadmissibility of an application shall be taken unanimously. If unanimity cannot be obtained, the application shall be referred to the Section to conduct the admissibility examination.

Inadmissibility decisions are final and are notified to the parties concerned.

II. ORGANIZATIONAL STRUCTURE

A. JUDICIAL UNITS

1. Overview

Rapporteur-judges serving in judicial units perform duties assigned by the President in accordance with the Code no. 6216 and the Internal Regulations of the Constitutional Court. The President determines their assignment to the Plenary, Sections, Commissions, Research and Case-Law Unit, or other units based on their seniority and experience. Furthermore, to enhance professional expertise and ensure productivity, rapporteur-judges are periodically reassigned across different units. This arrangement enables rapporteur-judges to improve their knowledge and skills in various areas and positively contributes to the Court's overall functioning.

2. Plenary Rapporteur-Judges

Rapporteur-judges serving in the Plenary of the Constitutional Court actively take part in all tasks and operations assigned to the Plenary under the Code no. 6216 and the Internal Regulations of the Constitutional Court. They thoroughly evaluate case files referred to them by the President of the Court and prepare preliminary and substantive assessment reports, draft judgments, and other necessary documents. To ensure the effective and efficient discharge of their duties, a Chief Rapporteur-Judge and an adequate number of coordinating rapporteur-judges are appointed. The Chief Rapporteur-Judge ensures the orderly execution of the rapporteurs' work.

3. Rapporteur-Judges Handling Individual Applications

Rapporteur-judges handling individual applications are divided into two groups as Commissions rapporteur-judges and Section rapporteur-judges. They carry out the relevant works enlisted under the Code no. 6216 and the Internal Regulations.

Rapporteur-judges responsible for individual applications also conduct correspondence with relevant institutions and bodies to obtain information or documents deemed necessary for inclusion in case files. They are responsible for issuing and monitoring the execution of necessary notifications.

Upon the approval of the President of the Court, the Presiding Judges of Sections assign specific tasks to individual application rapporteur-judges, such as hearing witnesses or obtaining expert opinions, provided that the scope and nature of the assignment are clearly defined.

A) Commission Rapporteur-Judges

Commission rapporteur-judges issue draft decisions on the admissibility of the individual applications and participate in meetings to assess these applications. To ensure the effective and efficient performance of their duties, a Chief Rapporteur-Judge is assigned to oversee them.

B) Section Rapporteur-Judges

Section rapporteur-judges issue draft decisions on the merits of individual applications and participate in meetings to assess these applications. To ensure the effective and efficient discharge of their duties, a chief rapporteur-judge is appointed to oversee their work.

Rapporteur-judges handling individual application operates under the supervision of the Chief Rapporteur-Judge. To enhance efficiency in drafting decisions, the President, in consultation with

the Vice-Presidents, may decide to assign rapporteur-judges to specialised groups based on their area of expertise or to form working groups.

4. Research and Case-Law Unit

Research and Case-Law Unit is tasked with monitoring the Court's decisions and improving and raising awareness of its case-law, recommending measures to prevent discrepancies in jurisprudence, and preparing statistical data and research reports for these purposes.

The Unit, composed of a sufficient number of rapporteur-judges under the supervision of a chief rapporteur-judge, carries out the following duties:

a) To review the draft reports and decisions for their compatibility with and contribution to the development of the case law, as well as for their accuracy in legal terminology and writing style prior to their discussion in the Plenary and Sections. Additionally, if deemed necessary, to prepare an advisory opinion to be submitted to the Plenary or Section to accompany the relevant draft report or decision, within one week of their delivery to the Unit.

b) To identify any discrepancies in case-law arising from decisions rendered by the Commissions or Sections and to bring such matters to the attention of the Presiding Judge of the relevant Section and the President through a report.

c) Upon the request of the President or Vice-Presidents, to prepare research reports to support the drafting of reports and decisions and to disseminate these reports to all members, rapporteur-judges, and assistant rapporteur-judges.

d) To monitor and analyse the decisions of the Plenary, Sections, and Commissions which are significant for the development of case-law, to prepare relevant documentation to ensure that personnel within the Court's units are adequately informed of such matters.

e) To monitor the jurisprudence of the European Court of Human Rights, other international judicial bodies, and supreme courts, and to prepare information notes on matters deemed critical for the Court's case-law.

f) To identify, for annual publication, precedent-setting and significant rulings issued by the Plenary, Sections, or Commissions.

B. SECRETARIAT GENERAL

The Secretariat General operates under the Presidency of the Court. The rules of procedures of units under the Secretariat General are prescribed by a regulation.

Secretary General shall be designated by the President among rapporteur-judges. In the absence of the Secretary General, the Deputy Secretary General designated by the Secretary General shall act in the latter's capacity.

Secretary General, under the supervision and oversight of the President, are authorised in the following matters:

a) Registration and referral of applications,
b) Administrative organisation of the Plenary and Section meetings,
c) Automation and archiving of judgments and reports,
d) Conducting correspondences of the Court,
e) Supervision of the execution of the judgments of the Court and reporting to the Plenary accordingly,
f) Management of the Court's budget and reporting to the President on budgetary matters,

g) Overseeing the Court's institutional, academic, administrative, financial and technical affairs,
h) Managing protocol affairs,
i) Deployment and management of staff,
j) Performing other tasks assigned by the President within the scope of the Law, the Internal Regulations of the Court, and relevant regulations.

The President shall appoint three Deputy Secretaries General from among the rapporteur-judges.

C. SERVICE UNITS

Service units of the Court include

a) Department of Registry,
b) Department of Administrative and Financial Affairs,
c) Department of Personnel,
d) Department of Publications and Public Relations,
e) Department of International Relations,
f) Department of Strategy Development,
g) Department of Technical Services,
h) Office of the Private Secretary,
i) The Counsellor's Office of Press,
j) Department of Individual Application,
k) Department of Information Technology,
l) Health Center,
m) Department of Civil Defence,
n) Research Center for Constitutional Justice (AYAM),
o) Department of Judgments.

These service units operate under the supervision of their respective directors, supported by an adequate number of deputy directors and staff, functioning under the authority of the Secretary General and the supervision of the relevant Deputy Secretary General.

The Office of the Private Secretary, The Counsellor's Office of Press, and AYAM function directly under the supervision of the President.

CHAPTER 03

THE COURT IN 2024

The Court in 2024

I. DEVELOPMENTS AT THE COURT

A. OVERVIEW

In 2024, the Constitutional Court distinguished itself not only through its judicial activities but also by strengthening international relations and intensifying academic engagements. In particular, many scientific and academic activities have been carried out in collaboration with international organisations, as well as universities and various institutions at the national level. These activities have significantly contributed to the protection of the rule of law, fundamental rights and freedoms, as well as the enhancement of judicial systems. Moreover, they further reinforced the prestige of the Constitutional Court both nationally and internationally.

In 2024, the Constitutional Court reaffirmed its commitment to safeguarding and advancing fundamental rights and freedoms. It adopted an approach towards extending the protective scope of the fundamental rights and freedoms and enhancing the respective standards. The decisions rendered during this period reflected the Court's objective of establishing an effective judicial protection mechanism that ensures the right to legal remedies.

With 12 years of experience in the individual application mechanism, the Constitutional Court fostered public trust towards itself by ensuring consistency and predictability in its jurisprudence. The Court sought to strike a balance in its decisions rendered through the

individual application mechanism, adhering to human rights standards in national and international boundaries. Thereby, the decisions of the Court played a pivotal role in preventing violations of fundamental rights and freedoms. Furthermore, the assignment of rapporteur-judges to the Sections and Commissions on a rotating basis was maintained to contribute to the formulation of more qualified decisions and judgments in accordance with the Court's jurisprudence. This approach introduced an interdisciplinary perspective into the decision-writing process, thereby increasing the quality of the reasoning in judgments. Additionally, to facilitate a more effective review of individual applications, seven core fundamental rights categories have been established, enabling rapporteur-judges to develop expertise in specific areas. All these efforts reaffirm the Constitutional Court's commitment to its mission of safeguarding the fundamental rights of individuals and improving the efficiency of judicial processes.

The Constitutional Court's active role in the individual application mechanism is of paramount importance for safeguarding human rights and preventing violations. However, one of the most significant challenges encountered in this process has been the the ever-increasing workload, which remained a pressing issue in 2024.

In 2024, the Court received a total number of 70,699 applications. The Court adjudicated 66,798 applications, including cases that were pending from the previous year, which achieved an adjudication rate of approximately 94%. The total number of violation judgments rendered in 2024 is 5,551.

As regards the constitutionality review mechanism, 36 actions for annulment and 204 requests for the contention of unconstitutionality were filed. Including cases pending from the prior year, the Court adjudicated a total of 237 cases, comprising 40 actions for annulment and 197 requests for the contention of unconstitutionality. The adjudication rate in the constitutionality review mechanism reached 99%.

As reflected in the statistical data, the Court has successfully completed 2024 in both individual applications and constitutionality review.

In 2024, a total of 103 applications were filed for the financial audit of the political parties. The Court adjudicated 118 case files including those pending from the last year. The Court accelerated its examination procedures in terms of the proceedings conducted by the Court in its capacity as the Supreme Criminal Tribunal, as well as actions for the financial audit and dissolution of the political parties.

Although the substantial workload of the Constitutional Court can be perceived as an indication of the public trust in the individual application mechanism, it also presents structural and practical challenges that place strain on the Court's existing capacity. A significant proportion of individual applications concerns grievances related to fundamental rights and freedoms, including but not limited to, the right to a fair trial, the right to property and the freedom of expression.

In response to the mounting workload, the Court has continued to implement various measures to ensure the prompt and effective adjudication of applications. In this regard, the Court prioritised the integration of technological advancement into judicial processes, the potential applications of artificial intelligence, digitalization of the application filing systems and the effective processing of the individual applications to expedite the assessments of the individual applications and ensure the rendering of decisions in compatible with the established case-law.

In 2024, the Court not only managed its substantial workload, but also consistently improved its case-law, thereby aiming to further enhance the effectiveness of the individual application mechanism in the protection of human rights. In the pursuit of this objective, the Court undertook extensive efforts to strenghten the individual application mechanism by focusing on cooperative initiatives and academic engagements at both national and international levels.

Having started to operate on 25 April 1962, the Constitutional Court marked its 62nd anniversary with an academic symposium. On 25 April 2024, an official opening ceremony was held in the Grand Tribunal Hall, followed by a symposium on "Horizontal Effect in the Protection of Fundamental Rights and Freedoms". In two sessions, distinguished jurists from various Turkish universities discussed the horizontal effect in both international and Turkish law from multiple perspectives.

On the occasion of the 12th anniversary of the introduction of the individual application mechanism, an international symposium on "Right to an Effective Remedy within the scope of the Principle of Subsidiarity of the Individual Application" was held on 12 September 2024 at the Grand Tribunal Hall of the Constitutional Court under the coordination of the Department of the International Relations. Jointly organised in collaboration with the Research Center for Constitutional Justice (AYAM), in-depth discussions revolved around the role of the individual application

mechanism in the protection of fundamental rights and its effects and experiences regarding the implementations in various countries were also exchanged.

AYAM organised several academic programmes in cooperation with various institutions. Within this scope:

On 6-7 February 2024, the Council of Europe and the Human Rights and Equality Institution of Türkiye (TİHEK) organised "Workshop on Combating Violence Against Women in the Light of Constitutional Court Judgments" in Ankara, as part of the Project jointly undertaken by the European Union and the Council of Europe. It brought together representatives from public intuitions and organizations, members of bar associations, academics and students.

On 26 February 2024, AYAM organised, in cooperation with Koç University Faculty of Law, a conference on "The Future of Interpretation of the Constitution: New Perspectives on Individual Application and Constitutionality Review."

On 6 December 2024, a symposium on "The Role of the Constitutional Court in the Protection of Fundamental Rights and Freedoms" was organised in collaboration with İstanbul Sabahattin Zaim University (İZÜ) Faculty of Law.

As part of the joint programme between the Constitutional Court and the Council of Europe, a workshop on "Children's Access to Justice in the Light of Constitutional Court Judgments" took place in Ankara on 9 December 2024.

On 23 December 2024, a symposium titled "Constitutional Justice as a Safeguard of the Democaracy and the rule of Law" was held through the joint initiatives of the İstanbul Medipol University Faculty of Law

These events aimed to raise awareness concerning the pivotal role of the Constitutional Court in safeguarding rights and freedoms and contribute to the academic discourse on constitutional justice.

The Department of International Relations, through its in-house translators and interpreters, facilitates the translation and interpretation of various documents and texts, including correspondence, official letters, articles, and statements, as necessary for maintaining relations with the constitutional and supreme courts of foreign countries and international organizations. At the request of other departments of the Court, all other relevant documents have been translated from English into Turkish and vice versa. The "Annual Report 2023", "Selected Judgments 2023" and the Book of the 11th Summer School of the AACC named "Constitutional Justice in Asia" were published and circulated by the International Relations Department. Additionally, all news articles published on the Court's official website in 2024, press releases of 66 individual applications and 13 constitutionality reviews, the speeches delivered by President Kadir Özkaya during several events throughout the year, and statistical reports were translated into English and officially published.

Furthermore, the in-house interpreters provided simultaneous and consecutive interpretation during various events organized by the Court, including the Summer School, conferences, and interviews. The summary decisions and case-law updates provided by the Superior Courts Network (SCN), a unit operating under the European Court of Human Rights ("ECHR") so as to ensure exchange of information on the case-law of the European Convention on Human Rights ("Convention") and the other related issues for the implementation and enhancement of the Convention, were translated, as in the previous years, into Turkish and circulated on a weekly basis to the rapporteur-judges for information. Besides, for enabling the jurists at the foreign supreme courts and the ECHR to be informed of the Turkish Constitutional Court's case-law, the summary of the relevant decisions and judgments of the Court were circulated to the addressees on a biweekly basis. These summaries are also available in English on the Court's official website under the section titled "Case-Law Summary".

On 30-31 May 2024, "Training Programme on the Right to a Fair Trial" was conducted within the scope of the Project on "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights", which is jointly undertaken by the Constitutional Court and the Council of Europe, titled. The opening remarks of the programme, funded by the European Union and the Council of Europe, were delivered by President of the Turkish Constitutional Court Mr. Kadir Özkaya, Minister of Justice Mr. Yılmaz Tunç, President of the Justice Academy of Türkiye Mr. Muhittin Özdemir, Head of the Civil Society, Fundamental Rights, Judiciary and Home Affairs Section of the European Union Delegation to Türkiye Mr. Alexander Fricke, and Head of the Council of Europe Programme Office in Ankara Mr. William Massolin.

The 12th International Summer School of the Association of the Asian Constitutional Courts and Equivalent Institutions (AACC) organised annually by the Constitutional Court of the Republic of Türkiye, was held on 30 September-3 October 2024 under the theme "The Use of Information Technologies and Artificial Intelligence in the Higher Judiciary". The event brought together 53 representatives from 27 different courts and institutions.

Furthermore, the Constitutional Court continued to contribute regularly to the CODICES database set up by the Venice Commission by sharing its jurisprudence.

On the occasion of the 12th anniversary of the introduction of the individual application mechanism, an international symposium titled "Right to an Effective Remedy within the scope of the Principle of Subsidiarity of the Individual Application" was held on 12 September 2024 at the Grand Tribunal Hall of the Court.

On 13-15 September 2024, a workshop was organised in Sapanca, as part of the Project on "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights". The event brought together rapporteur-judges of the Turkish Constitutional Court and the jurists of the ECHR. During the workshop with deliberations over the Court's jurisprudence, President of the Constitutional Court Mr. Kadir Özkaya addressed to the participants.

On 11-12 October 2024, the "International Conference on Migration and Human Rights in the Light of the Judgments of the European Court of Human Rights and the Constitutional Court" was organised in collaboration with the Presidency of Migration Management of the Ministry of Interior.

As part of the Project on "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights", a study visit to the ECHR was carried out on 24-25 October 2024.

To build up knowledge and professional experience within the scope of this project, three rapporteur-judges from theCourt were assigned between 2 September and 6 December 2024, respectively one to the European Court of Human Rights and the other two to the Council of Europe Department for the Execution of Judgments of the ECHR.

On 6-9 November 2024, President Kadir Özkaya and the accompanying delegation paid a study visit to France to strengthen bilateral relations in the international arena.

In 2024, introductory brochures in Turkish, English and French were drafted and published to increase visibility of the Court

News and articles concerning the Court, which had been published in the national press and online news platforms, were summarised and compiled daily in the "Constitutional Court's Press Bulletin". In addition, special bulletins were prepared on the basis of the news in the visual and written media as well as social media concerning the Court's decisions/judgments and affairs, which had garnered wide public attention. The Görünüm Journal, a bulletin whereby news and information on the Court and its decisions/judgments as well as statistical information are provided, was published digitally on the Court's internal portal and distributed in print.

Among the decisions/judgments of the Constitutional Court, those deemed of public interest were

summarised and published as press releases. Posts on important events of the Court and decisions/ judgments were shared on the Court's official Twitter (currently X), YouTube, and Whatsapp channels. To facilitate live broadcasts by television channels and media representatives, a dedicated area was designated within the Court's premises.

Through the strengthened software infrastructure, the scope of the system of the Decisions/ Judgments Database was expanded so as to make the Court's decisions/judgments more accessible. Several infrastructural improvements were implemented on the Court's official website, including upgrades in software, hardware, and video conferencing systems. Outdated equipment that had reached the end of its economic lifespan was replaced, thereby reinforcing the Court's technical infrastructure. In particular, necessary software updates were carried out to expedite the adjudication of individual applications.

Meetings and training sessions were conducted efficiently through the video conferencing system infrastructure, while efforts to restructure and institutionalise the Court's archival system continued. In addition, routine technical inspections were carried out as part of occupational safety protocols, and necessary measures were implemented to maintain safety standards.

The Court published and distributed, at national and international level, the 60th issue of the "*Anayasa Mahkemesi Kararlar Dergisi* (Journal of Constitutional Court Decisions/Judgments)" in 6 volumes, "*Bireysel Başvuru Seçme Kararlar 2023*" (Selected Judgments on Individual Applications 2023)" in 2 volumes, "*Anayasa Yargısı*" (Journal of Constitutional Justice) (Peer-reviewed Journal) nos. 41/1 and 41/2, "*Yıllık Rapor 2023* (Annual Report 2023)", "*Norm Denetimi Seçme Kararlar 2023* (Selected Judgments on Constitutionality Review 2023)," "Commemorative Book for Prof. Dr. Zühtü Arslan" and "Selected Judgments 2023", "Constitutional Justice in Asia (Summer School 11)." In 2024, a total of 910 books, 620 printed and 290 electronic books, were added to our library.

B. ELECTIONS OF PRESIDENT, VICE-PRESIDENTS AND MEMBERS

In 2024, three new members were elected to the Constitutional Court, and elections were held for the President and Vice-Presidents of the Constitutional Court and the President and Vice-President of the Court of Jurisdictional Disputes.

On 16 January 2024, pursuant to Article 12 of Code no. 6216 the Establishment and the Rules of Procedures of the Constitutional Court and Article 4 of the Code no. 2247 on the Establishment and Functioning of the Court of Jurisdictional Disputes, Mr. Rıdvan Güleç, Member of the Constitutional Court, was elected as the President of the Court of Jurisdictional Disputes, and Mr. Kenan Yaşar, Member of the Constitutional Court, was elected as the Vice-President of the Court of Jurisdictional Disputes.

Mr. Yılmaz Akçil, President of the Tenth Chamber of the Council of State, was selected as a Member of the Constitutional Court on 30 January 2024 by the President of the Republic among three candidates nominated by the General Assembly of the Council of State. He assumed office on the same day. On 8 February 2024, the swearing-in ceremony of Mr. Yılmaz Akçil was held in the Grand Tribunal Hall of the Constitutional Court.

Pursuant to Article 12 of the Code no. 6216 on the Establishment and the Rules of Procedures of the Constitutional Court, Mr. Kadir Özkaya was elected as the Vice-President of the Constitutional Court on 5 March 2024.

On 21 March 2024, Mr. Kadir Özkaya was elected as the President of the Constitutional Court. He assumed the presidency on 20 April 2024, succeeding Prof. Dr. Zühtü Arslan, whose term of office as a member of the Constitutional Court expired. Following the formal handover ceremony, a farewell ceremony was held in the Grand Tribunal Hall to honour the former President.

Pursuant to Article 12 of the Code no. 6216 on the Establishment and the Rules of Procedures of the Constitutional Court, Mr. Basri Bağcı was elected as the Vice-President of the Constitutional Court on 16 April 2024.

On 20 April 2024, Mr. Ömer Çınar was selected as a Member of the Constitutional Court by the President of the Republic from amongst three candidates nominated by the Council of Higher Education and took office on 22 April 2024. On 25 April 2024, the swearing-in ceremony of Prof. Dr. Ömer Çınar was held in the Grand Tribunal Hall of the Constitutional Court.

On 18 July 2024, Assoc. Prof. Dr. Metin Kıratlı was selected as a Member of the Constitutional Court by the President of the Republic. On 12 September 2024, the swearing-in ceremony of Mr. Kıratlı was held in the Grand Tribunal Hall of the Constitutional Court.

II. RESEARCH CENTER FOR CONSTITUTIONAL JUSTICE (AYAM)

OVERVIEW

Research Center for Constitutional Justice (AYAM) was founded in 2018 so as to conduct research activities in the field of constitutional jurisdiction, perform comparative law studies on the relevant issues, compile the outstanding principal decisions/judgments of the Court, issue annual reports pertaining to the Court's activities, and issue periodicals and non-periodicals in the field of constitutional jurisdiction. It organises summer and winter internship programmes for law students, during which it provides introductory activities tailored for the interns. It also holds national and international congresses, symposia, workshops, round-table meetings, and similar scientific events. Acting as a bridge between theory and practice, AYAM aims at facilitating contribution by and between these two fields.

Pursuant to the *Regulation on the Training of Assistant Judges, Prosecutors and Trainee Lawyers at the Constitutional Court*, which took effect in 2024 upon being published in the Official Gazette, all processes and procedures from the application stage to training phase will be carried out under the coordination of AYAM. The Regulation enables assistant judges and prosecutors to undergo training at the Constitutional Court for up to four months, while trainee lawyers may complete a 15-day internship during the first six months of their legal training. The Training Unit to operate under AYAM will engage in receiving and concluding applications.

One of the most prominent works published by AYAM is the journal "Constitutional Justice (*Anayasa Yargısı*)". This journal, which was first published in 1984, originally served as a platform for the papers presented during the symposium held annually in celebration of the Constitutional Court's anniversary. Since 2019, it has become a scientific peer-reviewed academic journal, published semi-annually, following its issue no. 36(1). As part of this new format, one issue of the journal consists exclusively of peer-reviewed articles, while the other issue includes both such articles and the presentations delivered at the annual symposium. The Journal features theoretical and comparative studies, case-law and practices on the constitutional law and human rights law, along with scholarly works from related branches of law. The issues no. 41(1) and 41(2) of the Journal were published in 2024.

AYAM compiles the Court's leading decisions/judgments on individual application in a book titled "*Selected Judgments*". Published in two volumes annually, this book includes decisions and judgments addressing matters of public concern that are of paramount importance for the development of case-law and serve as precedents. For making the Court's case-law more accessible and comprehensible, AYAM publishes the press releases of the Court's judgments on individual applications by classifying them according to their subject-matters. It is intended for providing those concerned with the opportunity to have faster and easier access to the Court's individual application jurisprudence. Additionally, the "*Constitutional Court's Annual Report*" issued by AYAM embodies the press releases of outstanding decisions/judgments on constitutionality review and individual application, as well as statistical information on the Court's affairs and its national and international activities.

Along with such kind of publishing activities, AYAM has also organised scientific meetings on the constitutional jurisdiction and human rights. In 2024, several events were organised in cooperation with faculties of law, human rights centres of the universities and public institutions. Additionally, various symposia and conferences were held under the auspices of the Turkish Constitutional Court.

The Turkish Constitutional Court provided full-time internship opportunities for undergraduate students interested in gaining experience in the field of constitutional jurisdiction. A total of 603 students participated in the programme, which was conducted in six separate groups between 2 January and 23 February 2024, and 3 June and 19 July 2024.

Between the period of 23 October - 30 December 2024, AYAM engaged in the promotion of the Court's duties and powers, structure, history, and functioning, which covered the attendance by a total of 1570 students in twenty-eight different groups.

Certificate ceremony held for students participating in the internship programme

Students paying a visit to the Turkish Constitutional Court

Lawyers of the Aksaray Bar Association paying a visit to the Turkish Constitutional Court

The online and face-to-face meetings and events held within 2024 are listed below chronologically:

A. Workshop on Combating Violence against Women in the light of the Constitutional Court Judgments

Workshop on Combating Violence against Women in the light of the Constitutional Court Judgments

Within the scope of the European Union-Council of Europe Joint Project on "*Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"*, the Workshop on "Combating Violence against Women in the light of the Constitutional Court Judgments" was organised, under joint initiatives of the Council of Europe and the Human Rights and Equality Institution of Türkiye, in Ankara on 6-7 February 2024. The Workshop was attended by representatives of various public institutions and organisations, members of the bar associations, academics, and students.

The event was inaugurated by Deputy Head of the Council of Europe Programme Office in Ankara Ms. Pınar Başpınar, Head of the Human Rights and Equality Institution of Türkiye Prof. Dr. Muharrem Kılıç, Vice-President of the Court of Jurisdictional Disputes and Member of the Constitutional Court Mr. Kenan Yaşar, and Vice-Chairperson of the Committee on Equal Opportunity for Women and Men of the Turkish Grand National Assembly Ms. Tuba Vural Çokal.

Mr. Kenan Yaşar, Vice-President of the Court of Jurisdictional Disputes and Member of the Constitutional Court, highlighted that violence was a multidimensional phenomenon rooted in complex factors such as sociology, culture, economy, politics, religion, and psychology. Mr. Yaşar further stated that violence had been one of the most significant issues in human history and continued to persist as a challenge in modern society. He also underlined that violence against women required not only individual but also social responsibility, adding that the first step in combating violence against women was to raise awareness.

Opening remarks by Mr. Kenan Yaşar, Vice-President of the Court of Jurisdictional Disputes and Member of the Constitutional Court

The opening remarks were followed by a total of three sessions. The first session was moderated by Dean of Atılım University Faculty of Law Prof. Dr. Esra Gül Dardağan Kibar, whereas the second and third sessions were chaired by Rapporteur-Judge of the Constitutional Court Ms. Ayşe Didem Özdemir Akca and Member of the Human Rights and Equality Institution of Türkiye Atty. Zennure Ber, respectively.

The first session on "Violence against Women as a Human Rights Violation" covered presentations on "Violence against Women as a Violation of Women's Human Rights" by Prof. Dr. Gülriz Uygur, Lecturer at Ankara University Faculty of Law; "Securing Women's Right to Access to Justice in Combating Violence" by Assoc. Prof. Dr. Gamze Turan Başara, Lecturer at Çankaya University Faculty of Law; and "Effects of Domestic Violence against Women on Women's Mental Health" by Expert Dr. Ümit Atman, Manisa Founding Provincial Representative of the Women and Democracy Association / Deputy Head of Manisa Provincial Health Directorate Public Health Services.

The second session on "Problems Encountered in Practice in Combating Violence against Women and Suggestions for Solutions", covered the presentations on "Parliamentary Oversight in Combating Violence against Women" by Mr. Gökalp İzmir, Legislative Expert at the Committee on Equal Opportunity for Women and Men of the Turkish Grand National Assembly; "Combating Violence against Women within the scope of the Constitutional Court's Judgments" by Rapporteur-Judge of the Constitutional Court Ms. Kübra Kaya; and "Activities of the Directorate General on the Status of Women with respect to Combating Violence against Women" by Ms. Hatice Karakuş, Expert at the Ministry of Family and Social Services, Directorate General on the Status of Women.

Session on “Problems Encountered in Practice in Combating Violence against Women and Suggestions for Solutions”

The third session on “Holistic Approach in Combating Violence against Women” held on the second day of the Workshop covered presentations on “Positive Obligations of the State in Combating Violence against Women and Perception of Impunity” by Prof. Dr. Güneş Okuyucu Ergün, Lecturer at the Ankara University Faculty of Law; “Holism in Combating Violence against Women: Legislation and Policy Documents” by Assoc. Prof. Dr. Nadire Özdemir, Lecturer at Ankara University Faculty of Law and Atty. Betül Bodur serving at the UN Women; and “Overview of Law no. 6284 on the Protection of the Family and Prevention of Violence against Women in the light of the Constitutional Court Jurisprudence and Certain Suggestions in the context of Human Rights” by Asst. Prof. Dr. Burcu Değirmencioğlu, Lecturer at Samsun University Faculty of Political Sciences. Participants also engaged in workshop activities led by Assoc. Prof. Dr. Nadire Özdemir.

B. Conference on “The Future of Constitutional Interpretation: New Perspectives for Individual Application and Constitutionality Review”

Conference on “The Future of Constitutional Interpretation: New Perspectives for Individual Application and Constitutionality Review”

AYAM organised the conference on “The Future of Constitutional Interpretation: New Perspectives for Individual Application and Constitutionality Review” on 26 February 2024, in cooperation with Koç University Faculty of Law.

The conference was inaugurated with the opening remarks by Coordinator Rapporteur-Judge of AYAM Assoc. Prof. Dr. Ömer Gedik, Dean of Koç University Faculty of Law Prof. Dr. Bertil Emrah Oder, Rector of Koç University Prof. Dr. Metin Sitti, and the then President of the Constitutional Court Prof. Dr. Zühtü Arslan. The event was also broadcast live on the Court’s YouTube channel.

In his opening remarks on “Dynamics of Constitutional Interpretation and the Constitutional Court”, Prof. Dr. Zühtü Arslan expressed his opinions on the current state of constitutional interpretation in Türkiye, drawing on Turkish Constitution and the practice of the constitutional jurisdiction. The first session on “The Transformation of Constitutional Interpretation”, moderated by Member of the Constitutional Court Mr. Basri Bağcı, involved presentations on “Judicial Strategies and New Trajectories of Constitutional Interpretation: Comparative Observations” by Prof. Dr. Bertil Emrah Oder; and “As to the Meaning of Constitutionality Review” by Assoc. Prof. Dr. Oya Boyar, Lecturer at Marmara University Faculty of Law; and “Constitutionalism and Interpretation: The Transformation of the Constitutional Paradigm and its Impact on Hermeneutics” by Asst. Prof. Dr. Murat Erdoğan, Lecturer at Ankara Hacı Bayram Veli University Faculty of Law.

First Session on “The Transformation of Constitutional Interpretation”

Member of the Constitutional Court Mr. Selahaddin Menteş moderated the second session on “The Future of Constitutional Interpretation and Individual Application”. During this session, Prof. Dr. Serdar Gülener, Lecturer at Bursa Uludağ University Faculty of Economics and Administrative Sciences, delivered a presentation on “The Individual Application as a Phenomenon: What Lawyer Experience Tells Us?”; Assoc. Prof. Dr. Nihan Yancı Özalp, Lecturer at Altınbaş University Faculty of Law, discussed “The Constitutional Court’s Interpretation of Environmental Rights”; and Dr. Abdullah Çelik, Chief Rapporteur-Judge of the Research and Case-Law Department of the Constitutional Court, presented on “Constitutionalisation of the Law and Individual Application.”

Second Session on "The Future of Constitutional Interpretation and Individual Application"

The sessions were followed by the Q & A session, the award of plaques to the presenters, and the closing remarks.

C. Symposium on "Horizontal Effect on the Protection of Fundamental Rights and Freedoms"

Official ceremony held on the occasion of the 62nd Anniversary of the Constitutional Court

On 25 April 2024, the Court hosted a ceremony at the Grand Tribunal Hall on the occasion of the 62nd Anniversary of the Constitutional Court and a swearing-in ceremony for the recently elected Member of the Constitutional Court Prof. Dr. Ömer Çınar. The programme was inaugurated with opening remarks delivered by President of the Constitutional Court Mr. Kadir Özkaya.

Opening remarks by President Kadir Özkaya

The swearing-in ceremony was proceeded with the symposium on "Horizontal Effect in the Protection of Fundamental Rights and Freedoms". The first session on "Horizontal Effect in International Law" was moderated by Chief Prosecutor of the Council of State Mr. Nevzat Özgür. The session involved the presentations on "Horizontal Effect of Fundamental Rights in German Constitutional Law Doctrine and Practice" by Prof. Dr. Osman Korkut Kanadoğlu, Lecturer at İstanbul Gedik University Faculty of Law; "Interplay between Conflict of Rights and Horizontal Effect of Rights" by Assoc. Prof. Dr. İsmail Köksarı, Lecturer at Erzincan Binali Yıldırım University Faculty of Law"; and "Evaluation of the Concept of Horizontal Impact in the context of the European Convention on Human Rights System" by Asst. Prof. Dr. Zeynep Hazar, Lecturer at the Ankara Hacı Bayram Veli University Faculty of Law.

The second session on "Horizontal Effect in Turkish Law" was moderated by Dean of TOBB Economy and Technology University Prof. Dr. Çiğdem Kırca. The presentations delivered during the second session are "The Place and Function of Fundamental Rights in the Methodology of Constitutional Jurisdiction (in the light of 12 Methodological Principles)" by Prof. Dr. Osman Gökhan Antalya, Lecturer at Marmara University Faculty of Law; "Positive Obligations of the State in the Conflict of Constitutional Rights: Constitutional Court's Perspective" by Asst. Prof. Dr. Sibel Yılmaz Coşkun, Lecturer at Bursa Uludağ University Faculty of Law; and "Horizontal Effect in Constitutional Court's Judgments" by Rapporteur-Judge of the Constitutional Court Mr. Ayhan Kılıç.

The Symposium ended with the award of plaques to the presenters, and the closing remarks by Vice-President of the Constitutional Court Mr. Hasan Tahsin Gökcan.

The presentations delivered during the Symposium were compiled in the Journal of Constitutional Justice ("*Anayasa Yargısı*") no. 41/1.

Swearing-in Ceremony of Assoc. Prof. Dr. Metin Kıratlı, recently elected Member of the Constitutional Court, and the Conference on "The Right to an Effective Remedy within the framework of the Principle of Subsidiarity of the Individual Application"

D. Conference on "The Right to an Effective Remedy within the framework of the Principle of Subsidiarity of the Individual Application"

On 12 September 2024, the Constitutional Court hosted, at the Grand Tribunal Hall, a swearing-in ceremony for the recently elected Member of the Constitutional Court Assoc. Prof. Dr. Metin Kıratlı and a Symposium on the occasion of 12th Anniversary of the Individual Application Mechanism, within the scope of the Project on "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights", which is undertaken through joint initiatives of the Turkish Constitutional Court and the Council of Europe. The programme, organised by AYAM in cooperation with the Department of International Relations, was inaugurated by President of the Turkish Constitutional Court Mr. Kadir Özkaya.

Opening remarks by President Kadir Özkaya

Symposium on “The Right to an Effective Remedy against the Acts and Actions of Penitentiary Institutions”

The swearing-in ceremony was proceeded with the conference on “The Right to an Effective Remedy within the framework of the Principle of Subsidiarity of the Individual Application”, comprised of three sessions. The first session on “The Right to an Effective Remedy Against the Acts and Actions of Penitentiary Institutions” was moderated by Turkish Judge to the European Court of Human Rights Prof. Dr. Saadet Yüksel. Magistrate Judge of the Ankara Batı Courthouse (former execution judge) Mr. Muhammed Kerem Çömez, Asst. Prof. Dr. Ömer Emrullah Egeliği, Lecturer at the Turkish-German University Faculty of Law, and Rapporteur-Judge of the Constitutional Court Mr. Hüseyin Kaya contributed to the session with their presentations.

First Session on “The Right to an Effective Remedy against the Acts and Actions of Penitentiary Institutions”

The second session on “The Right to an Effective Remedy in terms of Preventive Measures (An Evaluation under Article 141 of the Code of Criminal Procedure)”, moderated by Head of the 12th Criminal Chamber of the Court of Cassation Mr. Ahmet Er, involved the presentations by Judge of the Court of Cassation Mr. Samet Nazlıoğlu, Jurist at the European Court of Human Rights Mr. Sönmez Öztürk, and Rapporteur-Judge of the Constitutional Court Assoc. Prof. Dr. Hüseyin Turan.

Second Session on “The Right to an Effective Remedy in terms of Preventive Measures (An Evaluation under Article 141 of the Code of Criminal Procedure)”

The third session on “The Right to an Effective Remedy in Matters related to Removal Centres” was moderated by Head of the 11th Chamber of the Council of State Mr. İbrahim Topuz. During the session, Member of the 10th Administrative Chamber of the Ankara Regional Administrative Court Mr. Cemil Hulusi Parlak, Lecturer at İstanbul University Faculty of Law Asst. Prof. Dr. Halit Uyanık, and Rapporteur-Judge of the Constitutional Court Mr. Murat İlter Deveci provided insight into the topic.

Following the Q & A session and the award of plaques to the presenters, Vice-President of the Constitutional Court Mr. Hasan Tahsin Gökcan delivered his closing remarks.

Third session on “The Right to an Effective Remedy in Matters related to Removal Centres”

E. Symposium on "The Role of the Constitutional Court in the Protection of Fundamental Rights and Freedoms"

Symposium on "The Role of the Constitutional Court in the Protection of Fundamental Rights and Freedoms"

The Symposium on "The Role of the Constitutional Court in the Protection of Fundamental Rights and Freedoms" was organised, jointly by AYAM and İstanbul Sabahattin Zaim University Faculty of Law, on 6 December 2024.

The Turkish Constitutional Court was represented by Members of the Constitutional Court Assoc. Prof. Dr. Recai Akyel and Prof. Dr. Ömer Çınar, Chief Rapporteur-Judge of the Research and Case-Law Department of the Constitutional Court Dr. Abdullah Çelik, as well as Rapporteur-Judge of the Constitutional Court Mr. Osman Kodal, and Coordinator Rapporteur-Judge of AYAM Assoc. Prof. Dr. Ömer Gedik.

The symposium, inaugurated with opening remarks by Assoc. Prof. Dr. Recai Akyel and Rector of İstanbul Sabahattin Zaim University Prof. Dr. Ahmet Cevat Acar, consisted of two sessions.

Opening remarks by Member of the Constitutional Court, Assoc. Prof. Dr. Recai Akyel

Moderated by Dean of İstanbul Sabahattin Zaim University Faculty of Law Prof. Dr. Mustafa Ateş, the first session on "The Rights-Based Interpretation by the Constitutional Court in its Constitutionality Review Decisions" involved presentations on "The Effect of Constitutionality Review on the Protection of Fundamental Rights and Freedoms" by Chief Rapporteur-Judge of the Research and Case-Law Department of the Constitutional Court Dr. Abdullah Çelik; "A Critical Perspective on the Prohibition of Substantive Review of Laws Amending the Constitution from the perspective of Protection of Fundamental Rights and Freedoms" by Asst. Prof. Dr. Halit Serhan Ercivelek, Lecturer at İstanbul Sabahattin Zaim University Faculty of Law; and "The Problem of Harmonisation among the Constitution, the Law on Constitutional Court, and the Internal Regulations of the Constitutional Court in the context of the Functions of the Constitutional Court" by Lecturer at Marmara University Faculty of Law Prof. Dr. Abdullah Sezer.

First Session on "The Rights-Based Interpretation by the Constitutional Court in its Constitutionality Review Decisions"

The second session on "The Transformative Role of the Individual Application Mechanism in Turkish Law", moderated by Prof. Dr. Ömer Çınar, covered the presentations on "The Transformative Role of Individual Application in Criminal Law" by Chief Rapporteur-Judge (Sections) Assoc. Prof. Dr. Akif Yıldırım; "The Transformative Effect of Individual Application within the scope of the Right to a Fair Trial (Civil Rights and Obligations)" by Rapporteur-Judge of the Constitutional Court Mr. Osman Kodal; and "An Evaluation on the *Erga Omnes* Effect of the Individual Application Judgments and the Legislative Body's Stance in the context of the Constitutional Court's Annulment Decisions with Deferred Enforceability" by Lecturer at İstanbul Medeniyet University Faculty of Law Assoc. Prof. Dr. Sezen Kama Işık.

Second Session on "The Transformative Role of the Individual Application Mechanism in Turkish Law"

F. Workshop on “Children’s Access to Justice in the light of Constitutional Court Judgments”

Workshop on “Children’s Access to Justice in the light of Constitutional Court Judgments”

As part of the Project on “Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights”, a Workshop on “Children’s Access to Justice in the light of Constitutional Court Judgments” was organised on 9 December 2024 in Ankara.

The workshop organised by AYAM and the Human Rights and Equality Institution of Türkiye was inaugurated with the opening remarks by Vice-President of the Constitutional Court Mr. Basri Bağcı, Head of the Human Rights and Equality Institution of Türkiye Prof. Dr. Muharrem Kılıç, and Head of the Council of Europe Programme Office in Ankara Mr. William Massolin.

In his remarks, Vice-President Basri Bağcı noted that the right to access to justice for children -in need of special protection as the most vulnerable members of society- constituted a fundamental part of international human rights standards. He further emphasised that the Constitutional Court was acting in line with its responsibility inherent in this right.

Opening remarks by Vice-President of the Constitutional Court, Mr. Basri Bağcı

The opening remarks were proceeded with the first session on “The Best Interest of the Child in the context of the Judgments of the Constitutional Court and the European Court of Human Rights”, which was moderated by Head of the Ministry of Justice, Judicial Assistance and Victim Services Department Ms. Meral Gökkaya. The session featured presentations on “The Best Interest of the Child in the context of the ECHR Judgments” by Lecturer at Başkent University Faculty of Law Asst. Prof. Dr. Derya Doğru; “The Best Interest of the Child in the context of the Constitutional Court’s Judgments” by Rapporteur-Judge of the Constitutional Court Mr. Fatih Alkan; and “Considerations as to the Judiciary’s Approach to the Principle of the Best Interest of the Child” by Lecturer at İstanbul University Faculty of Law Asst. Prof. Dr. Memduh Cemil Şirin.

First Session on “The Best Interest of the Child in the context of the Judgments of the Constitutional Court and the European Court of Human Rights”

The workshop was proceeded with the second session on “Problems Faced by Children in Access to Justice”, which was moderated by Lecturer at Medipol University Faculty of Law Prof. Dr. Nesibe Kurt Konca. This session involved presentations on “Juvenile Justice System and Judicial Process in the Offence of Child Abuse” by Head of the Department of Child Services, Judicial Assistance and Victim Services Department Mr. Emre Özcan; “Challenges Children Face in Access to Justice within the framework of Fundamental Rights and Freedoms” by Rapporteur-Judge of the Constitutional Court Ms. Elif Çelikdemir Ankıtcı; and “Working Method of Turkish Parliament as to the Challenges Encountered in Children’s Access to Justice” by Legislative Expert at the Turkish Parliament Human Rights Investigation Committee Ms. Zeynep Doğru Oruç.

The workshop was concluded with the Q & A session and the award of plaques to the presenters, which were followed by the closing remarks.

Second Session on “Problems Faced by Children in Access to Justice”

G. Symposium on “Constitutional Jurisdiction as a Guarantor of Democracy and the Rule of Law”

Symposium on “Constitutional Jurisdiction as a Guarantor of Democracy and the Rule of Law”

AYAM and İstanbul Medipol University Faculty of Law jointly organised a symposium on “Constitutional Jurisdiction as a Guarantor of Democracy and the Rule of Law” on 23 December 2024.

Vice-President of the Constitutional Court Mr. Basri Bağcı and Members of the Constitutional Court Prof. Dr. Yusuf Şevki Hakyemez and Mr. Yılmaz Akçil, as well as Rapporteur-Judges of the Constitutional Court Mr. Hüseyin Kaya, Mr. Abdullah Atay, and Coordinator Rapporteur-Judge of AYAM Assoc. Prof. Dr. Ömer Gedik attended the symposium on behalf of the Constitutional Court.

The opening remarks were delivered by Vice-President Mr. Bağrı Bağcı, Rector of İstanbul Medipol University Prof. Dr. Ömer Ceran, and Dean of İstanbul Medipol University Faculty of Law Prof. Dr. Ayşe Nuhoğlu.

Recalling the pivotal role of constitutional courts in preserving the law as a living order, Vice-President Basri Bağcı pointed to the significant contributions by the constitutional jurisdiction to strengthening the rule of law and protecting democratic values in Türkiye.

Opening remarks by Vice-President of the Constitutional Court, Mr. Basri Bağcı

The symposium was then proceeded with the first session on “The Role of Constitutionality Review Decisions in the Protection of the Rule of Law”, moderated by Prof. Dr. Halit Eyüp Özdemir, Lecturer at İstanbul Medipol University Faculty of Law, and the second session on “The Role of Individual Application Judgments in the Protection of the Rule of Law”, moderated by Member of the Constitutional Court Mr. Yılmaz Akçil.

Prof. Dr. Yusuf Şevki Hakyemez, Member of the Constitutional Court, Prof. Dr. Ahmet Ulvi Türkbağ, Lecturer at İstanbul Medipol University Faculty of Law, and Asst. Prof. Dr. Yakup Levent Korkut, Lecturer at İstanbul Medipol University Faculty of Law delivered their presentations during the first session.

First Session on “The Role of Constitutionality Review Decisions in the Protection of the Rule of Law”

During the second session, Asst. Prof. Dr. Serhan Ercivelek, Lecturer at İstanbul Sabahattin Zaim University Faculty of Law, Rapporteur-Judges of the Constitutional Court Mr. Hüseyin Kaya and Mr. Abdullah Atay delivered their presentations.

The symposium was concluded with Q & A session and closing remarks by General Coordinator of the Symposium Prof. Dr. Ahmet Ulvi Türkbağ.

Second Session on “The Role of Individual Application Judgments in the Protection of the Rule of Law”

III- INTERNATIONAL ACTIVITIES OF THE COURT

1-OVERVIEW

The Constitutional Court of the Republic of Türkiye, as one of the world's oldest institutions of constitutional justice, has increasingly drawn the attention of global constitutional justice community in the recent years thanks to its outstanding decisions and judgments through the interpretation of human rights and the Constitution.

Given Türkiye's deep-rooted cultural and historical ties with many countries, the Turkish Constitutional Court is among the early members of both the Conference of the European Constitutional Courts (CECC) and the Association of Asian Constitutional Courts and Equivalent Institutions (AACC). It is also a founding member of the World Conference on Constitutional Justice (WCCJ), which serves as an umbrella organization for all the constitutional justice bodies and institutions across the world. The Court is also a founding member of the Balkan Constitutional Courts Forum and an observer member of the Conference on Constitutional Jurisdiction in Africa (CCJA).

The Constitutional Court attaches utmost importance to fostering cooperation with foreign constitutional courts, as well as with international courts and institutions. In this regard, the Conference of Constitutional Jurisdictions of the Turkic World (TÜRK-AY) and the Conference of Constitutional Jurisdictions of the Islamic World (CCJ-I) were officially established under the auspices of the Court's initiatives.

The Constitutional Court hosts presidents, judges, and academics from both national and international spheres at the symposia it organises annually as part of its traditional foundation anniversary activities.

Likewise, the Constitutional Court actively participates in international symposia and engages in various academic studies, publishing and publication processes, bilateral cooperation activities, and other initiatives to introduce and promote itself and the Turkish judiciary to the world.

2. COOPERATION WITH INTERNATIONAL ORGANIZATIONS

The Constitutional Court of the Republic of Türkiye is a member of the following international organizations in the field of constitutional justice. In relation to the individual application mechanism, the Court also maintains close cooperation with the European Court of Human Rights (ECHR).

A. World Conference on Constitutional Justice (WCCJ)

The World Conference on Constitutional Justice unites 120 Constitutional Courts/Councils and Supreme Courts from five continents (Africa, the Americas, Asia, Australia/Oceania and Europe). It promotes constitutional justice –encompassing constitutional review including human rights adjudication– as a cornerstone of democracy, the protection of human rights, and the rule of law. The WCCJ realises its objectives through organizing regular congresses, attending regional conferences and seminars, fostering the exchange of experience and case-law, as well as providing good services to its members upon request.

The Turkish Constitutional Court became a member of the WCCJ in 2013. At the 3rd Congress in Seoul, the Court was elected to the Bureau of the Conference and served in this capacity until the 4th Congress held in Vilnius (2015–2017).

The 5th Congress of the WCCJ on "Constitutional Justice and Peace" was held by the Constitutional Court of Indonesia in Bali, Indonesia on 4-7 October 2022. During the General Assembly voting, the Turkish Constitutional Court, representing the Asian and Oceanian continents, was elected as a member of the Bureau for a three-year term.

The Bureau Meeting of the World Conference on Constitutional Justice held in Brussels, Belgium on 16 March 2024 was attended by the then President of the Constitutional Court Mr. Zühtü Arslan and the then Deputy Secretary General Mr. Yücel Arslan.

B. Association of Asian Constitutional Courts and Equivalent Institutions (AACC)

The Association of Asian Constitutional Courts and Equivalent Institutions (AACC) is an Asian regional forum for constitutional justice with 21 members, which was established in July 2010 to promote democracy and rule of law, as well as to ensure the protection of fundamental rights in Asia through the enhanced exchange of information and experience in the field of constitutional justice and increased cooperation and dialogue among institutions exercising constitutional jurisdiction.

The Turkish Constitutional Court assumed the term presidency of the AACC for the period between 2012 and 2014. Since 2013, the Court has organised Summer School programmes on an annual basis for jurists from the AACC member institutions. Furthermore, guest participants from Africa, Europe, and the Balkans are also invited to the summer school programmes. During these programmes, academics and experts, along with the representatives of the participating institutions, deliver presentations on thematic issues related to human rights. These programmes serve to facilitate the exchange of information and experience in the fields of constitutional jurisdiction and human rights.

The 3rd Congress of the AACC, organised in Indonesia's Bali Island in 2016, marked the establishment of the Permanent Secretariat of the AACC, as well as the foundation and operation in Türkiye of the Center for Training and Human Resources Development, one of the three pillars of the Permanent Secretariat (CTHRD). As part of the activities of this Center, the Turkish Constitutional Court has so far hosted the 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th Summer School programmes.

Vice-President of the Constitutional Court, Mr. Basri Bağcı, attended the 4th Research Conference on "Constitutional Rights and Environment", held by the Constitutional Court of Korea in its capacity as the AACC Secretariat for Research and Development, in Seoul on 27-30 May 2024.

4th Research Conference of the AACC SRD

The section, devoted to the Turkish Constitutional Court, in the Book "Constitutional Rights and Environment" published in 2024 by the Constitutional Court of Korea in its capacity as the AACC Secretariat for Research and Development was drawn up in English.

Two online meetings were held on 8 August and 19 November 2024, with the participation of the Liaison Officers from the three Permanent Secretariats and representatives of the respective Court undertaking the term presidency of the AACC, to evaluate the activities carried out by the Permanent Secretariats. Deputy Director of the Department of International Relations Mr. Korhan Pekcan and Translator-Interpreter Ms. Gizem Tezyürek participated in the meetings.

The Secretaries General Meeting of the AACC was held via video conference on 5 September 2024, with opening remarks delivered by Mr. Nakharin Mektrairat, Term President of the AACC and President of the Constitutional Court of the Kingdom of Thailand. The meeting was attended by 15 representatives from the member countries, with the Turkish Constitutional Court represented by Secretary General Mr. Murat Azaklı and Deputy Secretary General Dr. Mücahit Aydın. The online meeting covered the discussions concerning the reports and plans of the Secretariat hosting the AACC, the reports and plans of the Permanent Secretariats, the activities performed by the AACC, as well as the prospective steps to be taken for its improvement and reinforcement.

Secretaries General Meeting of the AACC (online)

The 6th Congress of the AACC was hosted by the Constitutional Court of the Kingdom of Thailand in Bangkok on 17-21 September 2024. President of the Constitutional Court Mr. Kadir Özkaya, Member Mr. İrfan Fidan, Secretary General Mr. Murat Azaklı, and Deputy Secretary General Dr. Mücahit Aydın attended the Congress as representatives of the Turkish Constitutional Court. The Members attending the Congress unanimously agreed that the Constitutional Court of the Republic of Uzbekistan would hold the term presidency for the years 2025-2027, followed by the Supreme Court of the Philippines for the years 2027-2029.The "Bangkok Declaration", which marked the conclusion of the negotiations, was announced on 19 September 2024. President Özkaya, taking the floor during the discussions for the adoption of the Declaration, noted that the tragedy taking place in territories of Palestine, a member of the AACC, cannot be overlooked. President Özkaya pointed to the violations of the right to life, the most fundamental right, and other basic rights, as well as to the ongoing acts of violence causing death of many innocent people, particularly women and children. In this regard, President Özkaya explained the necessity for the immediate cessation of these violations that had reached the level of massacre. Through support and initiatives of the Turkish Constitutional Court, the Declaration laid emphasis on the grave violations of human rights and voiced the common commitment of the signatories to act in unity and solidarity for the purposes of maintaining sustainable justice, peace, and security across the world and removing obstacles to the rights and freedoms of individuals, especially the right to life.

6th Congress of the AACC

The 12th International Summer School event, organised by the Turkish Constitutional Court as part of the activities of the AACC Permanent Secretariat, commenced with the opening ceremony held at the Court's premises on 30 September 2024. A total of 53 representatives comprising of justices, rapporteur-judges, researchers, jurists and advisers from 27 different courts and institutions participated in the Summer School event on *"The Use of Information Technologies and Artificial Intelligence in the Higher Judiciary"*. The programme was inaugurated by Vice-President of the Turkish Constitutional Court Mr. Basri Bağcı. It proceeded with three sessions moderated by Rapporteur-Judge Ms. Gizem Ceren Demir Koşar. President of the Turkish Constitutional Court Mr. Kadir Özkaya addressed to the participants on the second day of the event. The closing remarks were delivered by Member of the Turkish Constitutional Court Assoc. Prof. Dr. Recai Akyel. The event concluded with a visit to Cappadocia, Nevşehir as part of the social programme.

12th International Summer School hosted by the Turkish Constitutional Court in its capacity as the AACC-CTHRD

Study visit to the Court by the Deputy Directors of the AACC Affairs Division of the Constitutional Court of Korea

As part of the AACC activities, Mr. Fabian Duessel and Mr. Byungkwan Choi, Deputy Directors of the AACC Affairs Division of the Constitutional Court of Korea, paid a study visit to the Constitutional Court on 20 November 2024.

C. The Conference of European Constitutional Courts (CECC)

The Conference of European Constitutional Courts was established in Dubrovnik, Croatia in 1972 in order to bring together the European constitutional courts or equivalent institutions engaging in constitutional review. The Turkish Constitutional Court, joining the CECC in 1987, is among the early members of the Conference. During the meeting of the VIIth European Constitutional Courts Conference held in Lisbon on 26-30 April 1987, the Turkish Constitutional Court was granted membership, and a resolution was adopted to hold the next Congress in Türkiye in 1990. The preparatory meeting for the VIIIth Congress was held in İstanbul on 14 -17 November 1988. The Congress on "Hierarchy of Constitutional Norms and its Function in the Protection of Fundamental Rights" was held on 7-10 May 1990 in Ankara with the participation of 102 representatives and delegates from various countries and institutions.

President of the Turkish Constitutional Court Mr. Kadir Özkaya participated in the XIXth Congress of the CECC, held in Chișinău, the capital of Moldova, on 21-24 May 2023. The Congress was attended by 35 member constitutional courts/supreme courts, along with representatives from the Venice Commission, the European Court of Human Rights, the Court of Justice of the European Union, the World Conference on Constitutional Justice, the Conference of Constitutional Jurisdictions of Africa, and various other associations/conferences of constitutional courts. President Özkaya, attending the Congress upon the invitation of the term-chair of the Conference, the Constitutional Court of the Republic of Moldova, was accompanied by Deputy Secretary General Dr. Mücahit Aydın. At the meeting, the chairmanship of the Conference was handed over to the Constitutional Court of the Republic of Albania, which was also supported by the Turkish Constitutional Court. The Constitutional Court of the Czech Republic was also authorised to establish a permanent office in order to handle the information processing and archival services of the Conference. A special committee, also comprising the Turkish Constitutional Court, was formed to draft a report on the membership application submitted by the Constitutional Court of Kosovo.

XIX[th] Congress of the CECC

The 1[st] Committee Meeting on the examination of the CECC membership application of the Constitutional Court of the Republic of Kosovo, which was organised by the Constitutional Court of the Republic of Albania in its capacity as the term-president of the CECC, was held online on 4 September 2024. Vice-President of the Turkish Constitutional Court Mr. Basri Bağcı and Deputy Secretary General Dr. Mücahit Aydın attended the meeting, where the participating members deliberated over the membership application of the Constitutional Court of the Republic of Kosovo.

1[st] Committee Meeting of the CECC (online)

2nd Committee Meeting of the CECC (online)

The 2nd Committee Meeting on the examination of the CECC membership application of the Constitutional Court of the Republic of Kosovo, which was organised by the Constitutional Court of the Republic of Albania in its capacity as the term-president of the CECC, was held online on 28 October 2024. Vice President of the Constitutional Court Mr. Basri Bağcı and Deputy Secretary General Dr. Mücahit Aydın attended the meeting. As in the first meeting, deliberations focused on the issues related to the membership application of the Constitutional Court of the Republic of Kosovo.

D. Conference of Constitutional Jurisdictions of the Islamic World (CCJ-I)

The 1st Judicial Conference of the Constitutional/Supreme Courts/Councils of the Organization of Islamic Cooperation (OIC) Member/Observer States, hosted by the Turkish Constitutional Court, was held in İstanbul on 14-15 December 2018. At the end of the Conference, it was decided that the 2nd Judicial Conference be held in Indonesia in 2020 under the auspices of the Indonesian Constitutional Court. However, due to the Covid-19 pandemic, the second Conference had to be postponed until 2021. During the International Conference held in Bandung, Indonesia on 15-17 September 2021, it was agreed to establish a new platform.

Inaugural Congress of the Conference of Constitutional Jurisdictions of the Islamic World was held on 23 December 2022 at the Dolmabahçe Palace, İstanbul. The draft Statute prepared by the Working Committee comprising Algeria, Gambia, Indonesia, Pakistan, and Türkiye was adopted upon deliberations, thereby officially establishing the Conference of Constitutional Jurisdictions of the Islamic World. Following the signing ceremony of the Statute, the İstanbul Declaration proclaiming the official establishment of the CCJ-I was read out. Accordingly, the process initiated by the Turkish Constitutional Court with the İstanbul Declaration at the Dolmabahçe Palace on 15 December 2018 was accomplished with the establishment of the "The Conference of Constitutional Jurisdictions of the Islamic World (CCJ-I)". In line with the decision taken at the Conference, the Constitutional Court of the Republic of Türkiye was designated as the first term-president of the CCJ-I.

The Secretaries General Meeting of the CCJ-I, the term-presidency of which is undertaken by the Turkish Constitutional Court, was held online on 17 January 2024. The meeting inaugurated by the then Secretary General of the Turkish Constitutional Court Dr. Murat Şen focused on the activities carried out in 2023, as well as the considerations and suggestions regarding the application intended to be submitted to the World Conference on Constitutional Justice (WCCJ), on behalf of the CCJ-I, for its inclusion into the regional and linguistic groups of constitutional courts, which are a member of WCCJ's Bureau.

E. The Conference of Constitutional Jurisdictions of the Turkic World (TÜRK-AY)

Within the scope of the events held on 24-28 April 2022 on the occasion of the 60th Anniversary of the Turkish Constitutional Court, a meeting was held at the Dolmabahçe Palace, with the participation of the Chairmen and Vice-Chairmen of the Constitutional Courts/Councils of the Member States of the Organisation of the Turkic States, for the purposes of protecting and promoting the rule of law and human rights within the member states of the Organisation of Turkic States, exchanging views and experiences on issues of mutual interest, and enhancing cooperation and dialogue among the member states. Following the meeting, Constitutional Courts/Councils of the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Republic of Uzbekistan, and the Republic of Türkiye agreed on the establishment of the Conference of Constitutional Jurisdictions of the Turkic World (TÜRK-AY). The Statute of the TÜRK-AY was adopted and signed in İstanbul on 24 December 2022.

The Secretaries General Meeting of the TÜRK-AY, the term-presidency of which is undertaken by the Turkish Constitutional Court, was held online on 22 February 2024. The meeting inaugurated by the then Secretary General of the Turkish Constitutional Court Dr. Murat Şen focused on the activities carried out in 2023, which contributed to the reinforcement of the platform and its increased efficiency. It marked the prospective formation of a group of TÜRK-AY Liaison Officers, which would comprise of the foreign relations officials of each member courts, so as to facilitate and enhance communication. The participants also dwelled on the considerations and suggestions regarding the application intended to be submitted to the World Conference on Constitutional Justice (WCCJ), on behalf of TÜRK-AY, for its inclusion into the regional and linguistic groups of constitutional courts, which are a member of WCCJ's Bureau.

President of the Constitutional Court, Mr. Kadir Özkaya and the accompanying delegation paid a study visit to Baku, the capital of Azerbaijan, on 23-27 July 2024. The delegation of the Turkish Constitutional Court, consisting of President Özkaya, Vice-President Mr. Hasan Tahsin Gökcan, Members Mr. Selahaddin Menteş, Mr. Yılmaz Akçil and Prof. Dr. Ömer Çınar, and Secretary General Mr. Murat Azaklı, held meetings with the Chairman and Judges of the Constitutional Court of the Republic of Azerbaijan. In the course of these meetings, the delegations of the Turkish and Azerbaijani Constitutional Courts deliberated over the venue and date of the 1st Congress of TÜRK-AY and the transfer of the term presidency currently undertaken by the Turkish Constitutional Court. The discussion further addressed avenues to strengthen collaboration and cooperation in the field of constitutional justice. The parties reached an agreement to revise the currently-in-force memorandum of cooperation between these two Courts for the exchange of knowledge and experience in the field of individual application, thereby promoting and safeguarding fundamental rights and freedoms. President Özkaya and the accompanying delegation also held meetings with the Chief Justice and Justices of the Supreme Court of the Republic Azerbaijan, the Commissioner for Human Rights (Ombudsman), the Prosecutor General of the Republic of Azerbaijan, and the Prime Minister of the Republic of Azerbaijan. During these meetings, a mutual commitment was made to sustain and further strengthen bilateral relations.

Study visit by the delegation of the Turkish Constitutional Court to the Constitutional Court of the Republic of Azerbaijan

F. Balkan Constitutional Courts Forum (BFFC)

On 27 October 2023, the Memorandum of Understanding on the Establishment of the Balkan Constitutional Courts Forum (BFFC) was signed in Sofia, Bulgaria. Upon the signing of the Memorandum of Understanding, the Constitutional Courts of Albania, Bulgaria, Kosovo, Montenegro, North Macedonia and the Republic of Türkiye became the founding members of the Forum.

The primary objective of the Balkan Forum is to provide a platform for the regular exchange of best practices, to facilitate discussions on current issues in the realm of constitutional jurisdiction, and to promote cooperation among the constitutional judicial institutions of the Balkan countries.

President of the Constitutional Court Mr. Kadir Özkaya participated in the International Conference held in Pristina, the capital of Kosovo, on 23-25 October 2024. At the Conference on "Evolutions in Contemporary Constitutional Justice: The Example of the Balkan Region", President Özkaya was accompanied by Member of the Constitutional Court Mr. Muhterem İnce and Chief Rapporteur-Judge Dr. Volkan Has. The delegation of the Turkish Constitutional Court also attended the "Annual Conference of the Balkan Constitutional Courts Forum" during their contacts in Pristina. Following the Annual Conference, President Özkaya held a bilateral meeting with Ms. Gresa Caka-Nimani, President of the Constitutional Court of the Republic of Kosovo. During the bilateral meeting, the Presidents touched upon the dialogue and cooperation between these two Constitutional Courts and expressed their sincere wishes for the further continuation of the good relations between the parties. The meeting held on the second day marked the commitment that the Balkan Forum be transformed into an Association after the adoption of its Statute.

International Conference on "Evolutions in Contemporary Constitutional Justice: "The Example of the Balkan Region", organised by the Constitutional Court of the Republic of Kosovo"

G. The Conference of Constitutional Jurisdictions of Africa (CCJA)

On 7-8 May 2011, the Constitutional Courts/Councils and equivalent institutions in Africa held "the Constitutive Congress of the African Area of Constitutional Justice" in Algiers, Algeria. During the Constitutive Congress, the participants adopted "the Statute of the Conference of Constitutional Jurisdictions of Africa" and proceeded to the election of the first Executive Bureau and the Secretary General. The Conference of Constitutional Jurisdictions of Africa (CCJA) was thereby established, and the headquarters of the general secretariat was set up in Algiers. The Turkish Constitutional Court acquired the status of observer to the CCJA on 5 October 2017.

The CCJA holds a Congress every two years. Since its establishment, seven Congresses have been held respectively in Algiers/Algeria (2011), Cotonou/Benin (2013), Libreville/Gabon (2015), Cape Town/South Africa (2017) and Rabat/Morocco (2022), and Victoria Falls/Zimbabwe (2024).

The 7th Congress of the Conference of Constitutional Jurisdictions of Africa (CJCA) on "Human Dignity as a Fundamental Value and Principle: A Source of Constitutional Interpretation, Protection of Fundamental Human Rights and Application" was held in Victoria Falls, Zimbabwe on 30 October - 3 November 2024. Representing the Turkish Constitutional Court, which holds observer status to the CCJA, President Mr. Kadir Özkaya participated in the Congress, accompanied by Deputy Secretary General Dr. Mücahit Aydın. Holding bilateral meetings with Mr. Aboud Daud Imani, President of the African Court on Human and Peoples' Rights, as well as with the presidents and members of constitutional courts from various African countries, President Özkaya exchanged information and ideas with his counterparts.

7th Congress of CJCA held in Zimbabwe

H. Council of Europe

Within the scope of the Project on "*Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"*, which is undertaken through joint initiatives of the Turkish Constitutional Court and the Council of Europe, the Workshop on "Combating Violence against Women in the light of the Constitutional Court Judgments" was held in Ankara on 6-7 February 2024.

Workshop on "Combating Violence against Women in the light of the Constitutional Court Judgments"

A training of trainers, for judges and prosecutors, on the right to a fair trial took place in Antalya on 21-24 February 2024, as part of the Project on "*Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights*".

Antalya training programme

A round-table meeting was convened on 29 March 2024 in Ankara under the Project on *"Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"*, which is undertaken through joint initiatives of the Turkish Constitutional Court and the Council of Europe. The meeting featured presentations on key topics such as the right to liberty and security, the right to life / the prohibition of torture, the right to property and filtering methods. The meeting concluded with evaluations on the findings of the working groups.

Round-table meeting held within the scope of the Project on "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"

The Training Programme on "Binding Power and Enforcement of Constitutional Court Judgments" was organised in Ankara on 5-6 May 2024 within the scope of the Project on *"Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"*.

President of the Constitutional Court Mr. Kadir Özkaya received Mr. William Massolin, Head of the Council of Europe Programme Office in Ankara, and the accompanying delegation at his office on 17 May 2024.

Visit by the Council of Europe Programme Office in Ankara

President of the Constitutional Court Mr. Kadir Özkaya participated in the ceremony organised, on 27 May 2024, on the occasion of the 75th Anniversary of the Council of Europe and the 20th Anniversary of the cooperation between the Council of Europe and Türkiye.

75th Anniversary of the Council of Europe and the 20th Anniversary of the Cooperation between the Council of Europe and Türkiye

The "Training Programme on the Right to a Fair Trial" was organised in Ankara on 30-31 May 2024 within the scope of the Project on *"Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"*, which is jointly undertaken by the Constitutional Court and the Council of Europe. The opening remarks of the programme, funded by the European Union and the Council of Europe, were delivered by President of the Turkish Constitutional Court Mr. Kadir Özkaya, Minister of Justice Mr. Yılmaz Tunç, President of the Justice Academy of Türkiye Mr. Muhittin Özdemir, Head of the Civil Society, Fundamental Rights, Judiciary and Home Affairs Section of the European Union delegation to Türkiye Mr. Alexander Fricke, and Head of the Council of Europe Programme Office in Ankara Mr. William Massolin. The programme, which included training on criminal and civil proceedings, was attended by the Vice-President and Members of the Constitutional Court, the President of the Court of Cassation, the Minister of Justice, the Deputy Ministers of Justice, the Chief Public Prosecutor of the Council of State, as well as several judges and public prosecutors.

Training Programme on the Right to a Fair Trial

The Sectoral Monitoring Committee Meeting of the Instrument for Pre-accession Assistance (IPA) II on Fundamental Rights, Civil Society and Judiciary was held online on 4 June 2024. The meeting was attended by Deputy Director of the Department of International Relations Mr. Korhan Pekcan and Translator-Interpreter Ms. Gökçen Sena Kumcu.

Within the scope of the Project, a total of 3 secondments was granted to the Department for the Execution of Judgments of the European Court of Human Rights, for the period of 2 September - 6 December 2024, for enhancing knowledge and professional experience at the European Court of Human Rights and the Council of Europe.

On the occasion of the 12th Anniversary of the Individual Application Mechanism, the International Conference on the "Right to an Effective Remedy within the scope of the Principle of Subsidiarity of the Individual Application" was held on 12 September 2024 at the Grand Tribunal Hall of the Constitutional Court. The first session of the Conference, consisting of three sessions in total, on the "Right to an Effective Remedy against the Acts and Actions of Penitentiary Institutions" was moderated by Prof. Dr. Saadet Yüksel, Turkish Judge to the ECHR. The second session on the "Right to an Effective Remedy in terms of Protection Measures" was moderated by Mr. Ahmet Er, President of the 12th Criminal Chamber of the Court of Cassation, and the final session on the "Right to an Effective Remedy in Matters Related to Removal Centres" was moderated by Mr. İbrahim Topuz, President of the 10th Chamber of the Council of State. The Conference, organised under the European Union-Council of Europe Joint Programme on *"Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"*, was attended by a wide range of judges, public prosecutors, and academics.

International Conference on the 12th Anniversary of the Individual Application Mechanism in Türkiye

The workshop, which was organised in Sapanca on 13-15 September 2024 as part of the Project on *"Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"*, brought together rapporteur-judges of the Turkish Constitutional Court and the jurists of the ECHR. During the programme, inaugurated with the opening remarks by Secretary General of the Constitutional Court Mr. Murat Azaklı, Chief Rapporteur-Judges Dr. Abdullah Çelik, Mr. Mehmet Sadık Yamlı, Assoc. Prof. Dr. Akif Yıldırım and Dr. Volkan Has delivered presentations on their respective works and activities. Following the presentations, President of the Constitutional Court Mr. Kadir Özkaya addressed the participants and provided detailed information on the current and prospective steps to be taken regarding the judicial and administrative functioning of the Court, after pointing to the Court's heavy workload. President Özkaya, who also met with the jurists of the European Court of Human Rights (ECHR), stated that the Turkish Constitutional Court rendered its decisions and judgments in accordance with the provisions of the Turkish Constitution and the European Convention on Human Rights, and that it relied on the ECHR's case-law in its assessments.

Workshop in Sapanca

A training programme for judges and public prosecutors on the right to a fair trial was held in Samsun on 4-5 October 2024 as part of the Project on *"Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"*.

In representation of the Turkish Constitutional Court, four rapporteur-judges attended the Regional Conference on "Human Rights and the Environment in Southeast Europe", held within the scope of the Project, on 17-18 October 2024 in Budva, Montenegro.

A press briefing took place on 18 October 2024 in Ankara, within the framework of the "Communication Strategy" developed as a part of the Project on *"Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"*, a joint initiative by the Constitutional Court and the Council of Europe. The President of the Turkish Constitutional Court Mr. Kadir Özkaya, Vice-Presidents Mr. Hasan Tahsin Gökcan and Mr. Basri Bağcı participated in the event which attracted considerable media attention. The briefing was inaugurated with the opening remarks of President Özkaya, who expressed his sincere belief that the meeting would flourish the communicative cooperation between the Constitutional Court and the press.

Press briefing within the framework of the "Communication Strategy"

Within the scope of the Project on *"Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"*, a study visit of 27 participants from the Turkish Constitutional Court was paid to the European Court of Human Rights in Strasbourg, France on 24-25 October 2024.

Study visit to the European Court of Human Rights (ECHR)

On 19 November 2024, Secretary General of the Constitutional Court Mr. Murat Azaklı and Deputy Secretary General Dr. Mücahit Aydın attended the Project Steering Committee Meeting, where deliberations and evaluations took place, as part of the Project on *"Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"*.

The 19th Round Meeting of Subcommittee No. 8, established to monitor the developments concerning harmonisation with the EU acquis in the EU accession process, was held in Brussels, Belgium on 26-27 November 2024, with the participation of Chief Rapporteur-Judge of the Constitutional Court Mr. Mehmet Sadık Yamlı.

19th Round Meeting of Subcommittee No. 8

Secretary General of the Court Mr. Murat Azaklı received, on 4 December 2024, Head of Programming Department, Directorate of Programme Co-ordination of the Council of Europe Mr. Schnutz Dürr, Head of the Council of Europe Programme Office in Ankara Mr. William Massolin, and Project Manager Mr. Çağlar Kıran. During the meeting, the parties engaged in the exchange of information and ideas within the scope of the Project, undertaken through joint initiatives of the Turkish Constitutional Court and the Council of Europe.

Visit to the Constitutional Court by Mr. Schnutz Dürr, Head of Programming Department, Directorate of Programme Co-ordination of the Council of Europe

The Sectoral Monitoring Committee Meeting of the Instrument for Pre-accession Assistance (IPA) II on Fundamental Rights, Civil Society and Judiciary was held online on 4 December 2024. Deputy Director of the Department of International Relations Mr. Korhan Pekcan and Translator-Interpreter Ms. Gökçen Sena Kumcu participated in the meeting.

As part of the Project on *"Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"*, a Workshop on Children's Access to Justice in the light of Constitutional Court Judgments was organised, in co-operation with the Human Rights and Equality Institution of Türkiye, on 9 December 2024 in Ankara.

Workshop on Children's Access to Justice in the light of Constitutional Court Judgments

A training programme for judges and public prosecutors on the Right to a Fair Trial was held in İzmir on 13-14 December 2024 as part of the Project on *"Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"*.

I. European Court of Human Rights (ECHR)

On the occasion of the official opening of the judicial year of the European Court of Human Rights (ECHR), a judicial seminar on "Revisiting the Principle of Subsidiarity in the Age of Shared Responsibility" was held in Strasbourg on 26 January 2024. Vice-President of the Turkish Constitutional Court Mr. Hasan Tahsin Gökcan was accompanied by Rapporteur-Judges of the Constitutional Court Dr. Şermin Birtane and Mr. Özgür Duman. During the seminar, the following topics were discussed: "The impact of Protocol No. 15 on subsidiarity", "Constitutional review and exhaustion of domestic remedies", "The age of subsidiarity and process-based review" and "Subsidiarity: the view from the national judiciary". Following the programme, the delegation of the Constitutional Court held meetings with the Turkish Judge to the ECHR Prof. Dr. Saadet Yüksel, the Registrar of the Second Section of the ECHR Mr. Hasan Bakırcı, and the Permanent Representative of Türkiye to the Council of Europe, Ambassador Ms. Nurdan Bayraktar Golder.

Study visit by the Turkish Constitutional Court's Delegation to the ECHR

The delegation headed by President of the Constitutional Court Mr. Kadir Özkaya paid a study visit to France on 6-9 November 2024 for reinforcing bilateral relations in the international arena. During their visit, the Constitutional Court's delegation engaged in high-level discussions with their counterparts from the French Constitutional Council (*Conseil Constitutionnel*) and French Council of State (*Conseil d'*État) in Paris. After their contacts in Paris, the delegation headed to Strasbourg for attending the meeting to be held at the ECHR. Following the bilateral discussions between President Özkaya and President of the ECHR Mr. Marko Bošnjak, the meeting started with opening remarks by the Presidents of both Courts. As part of their visit to Strasbourg, President Özkaya and the Members of the Constitutional Court also met with the Permanent Representative of Türkiye to the Council of Europe, Ambassador Ms. Nurdan Bayraktar Golder.

Visit by the Constitutional Court's Delegation to the French Constitutional Council and Council of State, as well as the ECHR

A delegation of the Department for the Execution of Judgments of the ECHR, comprised of Council of Europe Director of Human Rights Ms. Clave Ovey, Head of Department for the Implementation of Human Rights, Justice and Legal Co-operation Standards Mr. Frédéric Dolt, Head of the Türkiye Department Ms. Işık Batmaz, paid a study visit to the Constitutional Court on 10 December 2024.

Visit to the Constitutional Court by the Delegation of the Department for the Execution of Judgments of the ECHR

3. COOPERATION WITH CONSTITUTIONAL COURTS WORLDWIDE

The Turkish Constitutional Court has signed memoranda of understanding with the constitutional and supreme courts, as well as relevant institutions of 29 countries in order to enhance its bilateral cooperation. In this sense, the Turkish Constitutional Court welcomes the guest delegations, members, researchers and staff from foreign constitutional courts and institutions with Turkish hospitality and cordiality. These memoranda of understanding enable the exchange of experience and knowledge between the courts and institutions concerned.

The Turkish Constitutional Court has signed a memorandum of understanding with the following constitutional courts or equivalent institutions:

Indonesia	
The Constitutional Court of Indonesia	24 April 2007
North Macedonia	
Constitutional Court of North Macedonia	26 April 2007
Azerbaijan	
Constitutional Court of Azerbaijan	10 May 2007
Chile	
Constitutional Court of Chile	07 June 2007
Korea	
Constitutional Court of the Republic of Korea	24 April 2009
Ukraine	
Constitutional Court of Ukraine	24 April 2009
Pakistan	
Federal Supreme Court of Pakistan	24 April 2009
Bosnia and Herzegovina	
Constitutional Court of Bosnia and Herzegovina	24 April 2009

Bulgaria	
Constitutional Court of Bulgaria	07 April 2011 (It was renewed on 2 June 2022)
Tajikistan	
Constitutional Court of Tajikistan	26 April 2012
Montenegro	
Constitutional Court of Montenegro	28 April 2012
Afghanistan	
Independent Commission for Overseeing the Implementation of Constitution of the Islamic Republic of Afghanistan	25 April 2013
Albania	
Constitutional Court of Albania	10 June 2013
Thailand	
The Constitutional Court of the Kingdom of Thailand	29 April 2014
Kyrgyzstan	
The Constitutional Chamber of the Supreme Court of the Kyrgyz Republic[1]	28 September 2014
Romania	
Constitutional Court of Romania	17 October 2014
Algeria	
Constitutional Council of People's Democratic Republic of Algeria[2]	26 February 2015
Turkish Republic of Northern Cyprus	
Supreme Court of Northern Cyprus	29 June 2015
Kosovo	
Constitutional Court of Kosovo	27 April 2016
Iraq	
Federal Supreme Court of Iraq	25 April 2017
Kazakhstan	
Constitutional Council of the Republic of Kazakhstan[3]	25 April 2017
Mongolia	
Constitutional Court of Mongolia	25 April 2017
Georgia	
Constitutional Court of Georgia	28 April 2017
Russia	
Constitutional Court of the Russian Federation	30 March 2018
Bolivarian Republic of Venezuela	
The Supreme Tribunal of Justice of the Bolivarian Republic of Venezuela	10 May 2018
Somalia	
Supreme Court of Somalia	19 December 2018
Djibouti	
Constitutional Council of Djibouti	17 June 2019
Uzbekistan	
Constitutional Court of the Republic of Uzbekistan	26 April 2022
Palestine	
Supreme Constitutional Court of Palestine	19 January 2023

1 By the amendment of 2021, its name has been changed as the Constitutional Court of the Kyrgyz Republic.
2 By the amendment of 2021, its name has been changed as the Constitutional Court of Algeria.
3 By the amendment of 2023, its name has been changed as the Constitutional Court of the Republic of Kazakhstan.

4. INTERNATIONAL ACTIVITIES OF THE COURT IN 2024

The Turkish Constitutional Court maintained its mutual contacts with both the supreme courts of the foreign countries and international tribunals and institutions throughout 2024.

On 13 February 2024, the delegation of the Federal Sharia Court of Pakistan, visiting Türkiye under the programme for the introduction of the Turkish judicial system organised by the Justice Academy of Türkiye, conducted a study visit to the Turkish Constitutional Court.

Study visit to the Turkish Constitutional Court by the Delegation of the Federal Sharia Court of Pakistan

The Algerian judicial delegation, visiting Türkiye as part of the training and cooperation activities between the Justice Academy of Türkiye and the Algerian Justice Training Center, paid a study visit to the Turkish Constitutional Court on 27 February 2024.

Study visit to the Turkish Constitutional Court by the Algerian judicial delegation

On 4 March 2024, the Constitutional Court of the Republic of Moldova paid a study visit to the Turkish Constitutional Court within the scope of the Project on *"Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"*. During the visit, the Department of Information Technologies and the Department of Judgments provided information on the acts and activities performed by the Constitutional Court.

Study visit to the Turkish Constitutional Court by the Constitutional Court of the Republic of Moldova

The then-President of the Constitutional Court Mr. Zühtü Arslan and the accompanying delegation participated in the ceremony and international conference held, in Skopje on 15 March 2024, on the occasion of the 60th Anniversary of the Constitutional Court of North Macedonia.

Upon the invitation of the Federal Supreme Court of Brazil, Members of the Constitutional Court Prof. Dr. Engin Yıldırım and Mr. Muhterem İnce, along with Chief Rapporteur-Judge Mr. Mehmet Sadık Yamlı, attended the J20 Summit of Heads of Supreme Courts and Constitutional Courts of G20 members, held in Rio de Janeiro, Brazil on 12-14 May 2024.

J20 Summit organised by the Federal Supreme Court of Brazil

A delegation consisting of the presidents of the bar associations of the member states of the Organization of Turkic States, being in Türkiye upon the invitation of the Union of Turkish Bar Associations, paid a study visit to the Turkish Constitutional Court on 24 May 2024.

Study visit to the Turkish Constitutional Court by the Delegation comprising the presidents of the bar associations of the member states of the Organization of Turkic States

The delegation of the Ministry of Justice of Qatar, visiting Türkiye as part of the training and cooperation activities between the Justice Academy of Türkiye and the Ministry of Justice of Qatar, paid a study visit to the Turkish Constitutional Court on 4 June 2024.

Study visit to the Turkish Constitutional Court by the Delegation of the Ministry of Justice of Qatar

President of the Constitutional Court Mr. Kadir Özkaya received Justice of the Supreme Court of Korea Mr. Lee Heunggu and the accompanying delegation at his office on 6 June 2024.

President Kadir Özkaya, receiving Justice of the Supreme Court of Korea and the accompanying delegation at his office

President of the Constitutional Court Mr. Kadir Özkaya received Mr. Nikola N. Kovacevic, Chairman of the Senate of the State Audit Institution of Montenegro, at his office on 10 June 2024.

President Kadir Özkaya, receiving the Chairman of the Senate of the State Audit Institution of Montenegro at his office

Ms. Jill Mortimer and Mr. Stefan Schennah, Co-Rapporteurs of the Commission of Audit of the Parliamentary Assembly of the Council of Europe (PACE), paid a study visit to the Turkish Constitutional Court on 12 June 2024.

Study visit to the Turkish Constitutional Court by the Co-Rapporteurs of the Commission of Audit of the Parliamentary Assembly of the Council of Europe (PACE)

Member of the Turkish Constitutional Court Mr. İrfan Fidan and Rapporteur-Judge Mr. Murat İlter Deveci participated in the XII St. Petersburg International Legal Forum held in St. Petersburg, Russia on 26-28 June 2024.

St. Petersburg International Legal Forum

A delegation of judicial officers from Moldova and Uzbekistan, visiting Türkiye as part of the International Training Programme on Combating Cybercrime organised by the Justice Academy of Türkiye, paid a visit to the Constitutional Court on 26 June 2024.

A delegation of the Judicial General Council of Mongolia, visiting Türkiye within the scope of training and cooperation activities between the Justice Academy of Türkiye and the Judicial General Council of Mongolia, paid a study visit to the Constitutional Court on 28 June 2024.

Study visit to the Turkish Constitutional Court by the Delegation of the Judicial General Council of Mongolia

President of the Palestinian Bar Association Mr. Fadi Hatem Abbaas Salahaldeen and the accompanying delegation were received by the President of the Turkish Constitutional Court Mr. Kadir Özkaya at his office on 17 July 2024. During the meeting, President Özkaya emphasised Türkiye's support for immediate cessation of human rights violations in Palestine. President of the Palestinian Bar Association Mr. Salahaldeen expressed his gratitude to President Özkaya for his sincere considerations and support.

President Kadir Özkaya, receiving the President of the Palestinian Bar Association

Head of the Legal and Visa Department of the Embassy of the Federal Republic of Germany in Ankara, Mr. Jens Janik, was received by Secretary General of the Constitutional Court Mr. Murat Azaklı on 14 August 2024.

Courtesy visit to the Turkish Constitutional Court by the Embassy of the Federal Republic of Germany in Ankara

President of the Turkish Constitutional Court Mr. Kadir Özkaya received President of the Supreme Court of the Turkish Republic of Northern Cyprus (TRNC) Mr. Bertan Özerdağ at his office on 4 September 2024.

President Kadir Özkaya, receiving President of the Supreme Court of the TRNC, Mr. Bertan Özerdağ

Vice-President of the Constitutional Court, Mr. Basri Bağcı, participated in the International Conference on “Law and Climate” organised by the Azerbaijan Union of Judges in Baku on 6 September 2024.

International Conference on “Law and Climate” held in Baku

President of the Constitutional Court Mr. Kadir Özkaya received President of the Constitutional Court of the Republic of Albania Ms. Holta Zaçaj and the accompanying delegation at his office on 10 September 2024.

President Kadir Özkaya, receiving President of the Constitutional Court of the Republic of Albania, Ms. Holta Zaçaj, at his office

President of the Constitutional Court Mr. Kadir Özkaya participated in the judicial year opening ceremony of the Supreme Court of the Turkish Republic of Northern Cyprus (TRNC) on 16 September 2024. President Özkaya paid a courtesy visit to the President of TRNC Mr. Ersin Tatar following the judicial year opening ceremony.

Judicial year opening ceremony of the Supreme Court of TRNC

Judge-prosecutor candidates, visiting Türkiye within the scope of the Judge-Prosecutor Exchange Programme between the Justice Academy of Türkiye and Bosnia and Herzegovina, Republic of Kosovo, Republic of North Macedonia and Romania, paid a visit to the Constitutional Court on 27 September 2024.

Visit to the Turkish Constitutional Court by the judge-prosecutor candidates from Bosnia and Herzegovina, Republic of Kosovo, Republic of North Macedonia, and Romania

The Venice Commission delegation paid a study visit to the Constitutional Court on 4 October 2024.

The Speaker of the Assembly of North Macedonia Mr. Afrim Gashi and the accompanying delegation were received by President of the Constitutional Court Mr. Kadir Özkaya at his office on 4 October 2024.

President Kadir Özkaya, receiving Speaker of the Assembly of North Macedonia, Mr. Afrim Gashi, at his office

The "International Conference on Migration and Human Rights in the Light of the Judgments of the European Court of Human Rights and the Constitutional Court" was organised through the joint initiatives of the Turkish Constitutional Court and the Presidency of Migration Management under the Ministry of Interior, in İstanbul on 11-12 October 2024. The Conference was attended by President of the Turkish Constitutional Court Mr. Kadir Özkaya, Vice-President Mr. Basri Bağcı, as well as Members of the Constitutional Court Prof. Dr. Engin Yıldırım, Mr. Rıdvan Güleç, Assoc. Prof. Dr. Recai Akyel, Prof. Dr. Yusuf Şevki Hakyemez, Mr. Selahaddin Menteş, Mr. İrfan Fidan, Mr. Muhterem İnce, Mr. Yılmaz Akçil, Prof. Dr. Ömer Çınar, and Assoc. Prof. Dr. Metin Kıratlı. The Conference gathered a wide participation of Minister of Interior Mr. Ali Yerlikaya, Turkish Judge to the European Court of Human Rights Prof. Dr. Saadet Yüksel and foreign judges, President of the Court of Cassation Mr. Ömer Kerkez, President of the Court of Accounts Mr. Metin Yener, Chairman of the Constitutional Court of Azerbaijan Mr. Farhad Abdullayev, Chairman of the Justice Commission of the Turkish Parliament Prof. Dr. Cüneyt Yüksel.

International Conference on Migration and Human Rights in the light of the Judgments of the European Court of Human Rights and the Constitutional Court

The Gambian Judicial Delegation, visiting Türkiye within the scope of the international training programme organised by the Justice Academy of Türkiye for the judges of the Republic of the Gambia, paid a study visit to the Turkish Constitutional Court on 6 November 2024.

Study visit to the Turkish Constitutional Court by the Gambian Judicial Delegation

President of the Turkish Constitutional Court Mr. Kadir Özkaya received President of the Constitutional Court of North Macedonia Dr. Darko Kostadinovski and the accompanying delegation at his office on 13 November 2024.

President Kadir Özkaya, receiving President of the Constitutional Court of North Macedonia, Dr. Darko Kostadinovski, at his office

President of the Turkish Constitutional Court Mr. Kadir Özkaya received President of the Supreme Judicial Council and Court of Cassation of the Republic of Iraq Dr. Faiq Zidan and the accompanying delegation at his office on 14 November 2024.

President Kadir Özkaya, receiving President of the Supreme Judicial Council and Court of Cassation of the Republic of Iraq, Dr. Faiq Zidan, at his office

The delegation of the International Press Institute (IPI) paid a study visit to the Turkish Constitutional Court on 14 November 2024 as part of their meetings with institutions and organisations involved in freedom of the press.

The Kosovo Delegation, participating in the "Human Rights Law" training programme organised by the Justice Academy of Türkiye for the Kosovo Prosecutorial Council, paid a study visit to the Turkish Constitutional Court on 4 December 2024.

Study visit to the Turkish Constitutional Court by the Delegation of the Kosovo Prosecutorial Council

The Azerbaijani delegation, participating in the "Training Programme on Administration of Justice and Specialised Courts" organised by the Justice Academy of Türkiye for the candidate judges of the Republic of Azerbaijan, paid a study visit to the Constitutional Court on 11 December 2024.

Study visit to the Turkish Constitutional Court by the Azerbaijani Delegation of candidate judges

CHAPTER 04

PRESIDENT'S SPEECHES


VE ERDEMİDİR

25 April 2024 Opening Remarks, 62nd Anniversary of the Constitutional Court of Türkiye and Swearing-in Ceremony of Member of the Constitutional Court, Prof. Dr. Ömer Çınar

His Excellency Mr. President,

Esteemed Guests,

I would like to welcome you to our ceremony held on the occasion of the 62nd foundation anniversary of the Constitutional Court and the swearing-in ceremony. I would also like to extend my most sincere and respectful greetings to you all.

I seize this opportunity to congratulate Prof. Dr. Ömer Çınar on his appointment as a Member of the Constitutional Court from amongst three candidates nominated by the Council of Higher Education. I wish his tenure to be prosperous for himself, his family, the Turkish Constitutional Court, and the nation.

I firmly believe that the recently-appointed Member of the Constitutional Court, which is comprised of competent professionals with different backgrounds and expertise in pursuit of the most fair and accurate outcomes will make the greatest contribution as envisaged.

On this occasion, I would like to take this opportunity to express my will and commitment that we, as the esteemed members of the Court, will continue to carry this flag entrusted to us further in a way that upholds the proper administration of justice, the rule of law, the protection of human rights and freedoms as expected from us by the honourable Turkish nation in my duty as President, which I have assumed with the appreciation of the Plenary.

In my speech, I would like to dwell upon the notion of justice, followed by the persons and institutions that engage in the administration of justice, and subsequently the activities of the Constitutional Court.

In the Qur'an, our holy book, a provision regarding justice reads as follows:

"And the heaven
He has raised high and set up a balance
That you may not transgress the balance
So weigh all things in justice and fall not short of the balance
And the earth he laid out for all creatures."

His Excellency Mr. President,

As human beings, we are constantly witnessing how the heavens and the earth, whose grandeur and splendour constantly manifest in their material and spiritual realms, are set up in a great order, how each creature in this order is taking up space and positioned according to its own right and law, and how such an astounding balance and just order exists between them, and that the order and regularity in question would never be attained without such a balance and

justice, and that the earth, which is created for the creatures to live on it, has been endowed with humility and rendered humble, and that it serves the creatures on it with such devotion even though it is trampled underfoot and trampled on.

Accordingly, it wouldn't be wrong to say that the continued existence of the heaven and the earth may only be assured by the enduring maintenance of balance and justice between them.

Therefore, bearing in mind the saying "*Justice is the foundation of the state*", it is essential to note that peace, tranquillity and prosperity in societies can only be ensured by the very existence of justice.

Justice has been one of the most widely discussed and debated topics in every era, in every society, in every belief and understanding. It is a notion with implications in law, philosophy, sociology, psychology and almost every field of social sciences; it is a moral virtue. Justice is the *sine qua non* of social life and the foundation of the state, the organised form of society. It is not only a matter of words and discourse, but also of conduct and action. To do something properly is a matter of placing things in their proper place in the most convenient manner. To be fair and to act justly is a characteristic that attributes value to people and societies at the highest level.

World order will perish and chaos will ensue if people and societies do not adhere to justice and rights, and if they attempt to abuse rights (justice) to serve their own arbitrary desires. Everyone starts to consider themselves as the rightful party in the absence of the actual right and rightful. Oppression prevails. This is why the scales of justice should always be weighted in favour of what is right and fair, rather than arbitrary interests. We must also have in mind that none of us is eternal. There will come a day when everyone is weighted by the scales of justice.

Additionally, it should be recognised that the whole universe benefits from righteous people, righteous societies, righteous minds and righteous consciences. Therefore, no reason should ever be an obstacle to the upholding of fairness by individuals and societies, nor

should it lead them to do injustice.

Inequity and injustice are the root causes of most of the fights, quarrels, conflicts and deaths on earth. Every fight, quarrel, conflict and death involve injustice, as those who are well aware of and observe the justice do not give rise to any injustice.

His Excellency Mr. President,

The underlying purpose of all judicial endeavours is to secure justice. Justice is, in essence, an expression of balance. Justice does not refer to absolute equality; it is a matter of being treated in accordance with one's merits. Justice is the supreme ideal, the foundation upon which the universe and life itself are built.

In addition, the ultimate responsibility for upholding the law and ensuring justice rests with judges. Every judge's scales must be equal, non-discriminatory and accurate. Judges must always side with what is right and just. They should be as broad and humble as the earth, with reason and science as their benchmark, while preserving the dignity of the profession. They should be of exemplary morality and never tarnish their personality or conscience. Therefore, no reason should ever be an obstacle to the upholding of truth by individuals and societies, nor should it lead them to do injustice. They should be able to decide freely and impartially, without hesitation or fear, and without being exposed to any external influence, including their inner feelings and thoughts.

It should be noted that the existence of an independent and impartial judiciary, which is the main guarantor of the principles and values constituting our constitutional identity, is only ensured by the very existence of independent and impartial judges. Consequently, members of the judiciary should be free in their ideas, free in their conscience and free in their wisdom. After all, the ultimate aim of the law is to secure justice.

At this point, I would also like to point out that, in regard to this responsibility, all supreme courts should be even more delicate than other courts as to the administration of justice, given the jurisprudential nature of their decisions and their legal consequences.

His Excellency Mr. President,

As is well known, constitutions, deemed to be social contracts, regulate the exercise of sovereign power by safeguarding fundamental rights and freedoms. Constitutional courts are institutions which, through constitutional review, serve the common purpose of democratic societies to ensure that individuals and the state act lawfully.

The protection of human rights and freedoms is of fundamental importance in democratic societies governed by the rule of law. Rights and freedoms are fundamental to democracy and can only be protected by independent and impartial courts and adequate legislation and safeguards in place.

The Turkish Constitutional Court, is vested by the Constitution with the powers, *inter alia*, to review the constitutionality of certain norms and to adjudicate on individual applications.

The individual application mechanism, which is among the greatest reforms in the Turkish judicial history, is one of the most remarkable achievements of our judicial system in the century-long history of the Republic. The purpose of introducing this mechanism is, in the words of the constitution-maker, *"to provide better protection for the fundamental rights and freedoms of individuals and to reduce the number of applications before the European Court of Human Rights (the ECHR) against Türkiye by addressing the grievances at the national level".*

The Constitutional Court has so far rendered hundreds of thousands of decisions on individual applications concerning rights and freedoms, including but not limited to right to life, freedom of expression, right to property, freedom of association.

In 12 years of the Court's adjudication on individual applications, there has been a considerable decrease in the number of applications filed against Türkiye before the ECHR.

As of 23rd September 2012, a total of 601,726 individual applications have been lodged with the Court, 499,737 of which, amounting to 83%, have been concluded. In 2023, the ratio of the case-files concluded to the case-files received is 101%. However, 101,983 individual applications are currently pending.

In 16,646 of approximately 355,000 applications adjudicated since 23 September 2012, the Court has found violations of at least one of the fundamental rights and freedoms, with the exclusion of the right to a trial within a reasonable time,

Considering that a significant proportion of violations found in 16,646 applications stemmed from the violations of procedural safeguards, the rate of substantive violations is around 3-3.5%.

In sum, through its judgments, the Constitutional Court contributes to the realisation of values including justice, the rule of law, fundamental rights and freedoms. We are convinced that these judgments strengthen the confidence of individuals in the state and the law by satisfying their sense of justice.

In this regard, I would also like to point out that among the judgments of the Constitutional Court, touching upon every aspect of life in terms of safeguarding rights and freedoms, only very few have been the subject of public debate. In fact, in some countries that have adopted the individual application mechanism, it is observed that debates take place, certain issues arise from time to time and certain measures are taken to prevent or eliminate problems that have occurred or may possibly occur. Therefore, certain regulations may be envisaged for specific situations that are considered problematic in our country.

Furthermore, a common opinion has been formed in our society on the absolute necessity of the individual application mechanism, which, also owing to Your Excellency's major

contribution, has been introduced into our legal system in its present form. As a requirement of this common opinion, we consider that the continued functioning of mechanism should be ensured without compromising its current functionality in any constitutional or legal regulations that may be adopted. After all, the individual application mechanism with almost 12- year past, has been institutionalised as a means for the Republic, as a democratic state governed by the rule of law and based on human rights, to resonate with society and address the grievances concerning fundamental rights by offering redress to the victims.

In this sense, it should also be noted that the Turkish Constitutional Court remains fully committed to fulfilling all the functions conferred upon it by the Constitution, including individual application mechanism, in accordance with the Constitution and the law.

His Excellency Mr. President,

The moments like this when the former president of the Court hands over his seat to the newly-elected president reminds us of the temporary nature of this office. Undoubtedly, the proverb in our ancient culture "*The court is not a property of the judge*" is one of the cautionary sayings that nails this notion into our consciousness.

I would like to emphasise that we, as the members of the Constitutional Court, strive for exercising our duties in line with the law and the Constitution, with a full sense of responsibility by acknowledging the true meaning of trust, justice, freedom and the unity and solidarity of the nation, also bearing in mind that our offices are just temporary.

At this juncture, we should also recall the fact that the power we exercise as judges is merely exercised in the name of the Turkish nation before which we have taken an oath. The 23rd April National Sovereignty and Children's Day celebrated two days ago reminds us once again, as it does every year, that sovereignty, which is exercised through competent authorities under the rules prescribed by the Constitution, indeed lies at the hands of the Turkish nation.

The "separation" in the principle of the separation of powers, one of the core constitutional principles, does not actually imply a complete separation, but rather refers to the division of functions between constitutional bodies -which are, however, expected to operate in full harmony and cooperation- for the better fulfilment of the duties imposed on the state, notably the realisation of fundamental rights and freedoms. The principle of separation of powers requires state organs to exercise their duty in cooperation with each other without overstepping their own constitutional limits.

The Preamble of the Constitution defines the separation of powers as *"civilised cooperation and division of functions*". Therefore, it is observed that the constitution-maker envisaged constitutional organs to act in "*civilised cooperation*" and in an "*orderly and harmonious*" manner while fulfilling their duties.

The Constitution indicates no order of precedence among the legislative, executive, and judicial bodies of the state, nor any hierarchical relationship between the higher judicial bodies. Each supreme court is obliged to fulfil the duties entrusted to it by the Constitution and the law. Duties, powers and functioning of each supreme court, as well as the nature of its judgments are explicitly laid down in the Constitution and the law. In fulfilling their duties. each court is bound by the jurisdiction and procedures established by the Constitution and the laws.

Additionally, in order to ensure cooperation, order and harmony between the constitutional bodies (the Constitutional Court and other judicial bodies, the legislature and the executive), they are required to act in accordance with the Constitution and the laws, and to maintain sound communication among them at all times, since these bodies consist of people, which may bring along different approaches, different ideas and conflicts.

I also strongly believe that the solutions to be developed in light of this approach will increase our nation's confidence in the state and in each of its constitutional organs.

In this context, I would like to indicate in particular that we should always refrain from separatism, discrimination and injustice as underlined by many of our statesmen, philosophers and opinion leaders, especially the founder of our Republic, the Great Leader Mustafa Kemal Atatürk. We, as a nation, must act and work in harmony by finding a common ground for each of us, uniting and embracing each other as one for the sake of our common interests and future.

The Turkish nation is noble and endowed with the strength and competence to achieve anything it sets its mind to. To this end, it must not waste its strength and energy and use it appropriately. There should be no room for those who attempt to interrupt our unity and solidarity. This is a matter of vital importance to have a voice in ensuring the proper administration of justice all around the world. One must not forget that justice without power is dysfunctional, and power without justice is tantamount to cruelty.

His Excellency Mr. President,

I strongly believe that power and authority are bestowed upon certain individuals to ensure that people and societies can enjoy a happier, more prosperous and fulfilling life in peace and stability, and if this power and authority are harnessed for the sake of humanity, the people and states wielding this power and authority shall endure. Otherwise, the abuse of the power and authority will eventually result in the disqualification of those who harness it, and if they have used this power and authority to commit cruelty, the cruelty will find its way to the inflictors. I believe that this also applies to people who consider themselves the heirs of the Prophet Solomon but fail to act in line with his teachings and sense of justice.

On this occasion, I consider it my responsibility to express the voice of the collective conscience that we will not bow to the double standards and hypocrisy displayed in the face of the atrocities around the world, notably in Gaza.

I must also underline that although justice is a universal common value of humanity, humanity sinks into despair when states and institutions with economic and military power, which lecture about justice, fairness, human rights and freedoms, and democracy, and which develop many discourses, organise numerous events, print and publish several books to glorify these concepts, open universities and offer education on these matters, unfortunately overlook the inhuman treatment, cruelty, injustice and disproportionate harm inflicted upon victims and oppressed people in many parts of the world.

Furthermore, let me further add that moral values and justice and the restoration of justice on earth are the mere prerequisites for the common future of humanity and for everlasting peace.

His Excellency Mr. President,

As a tradition, our court organises symposiums on various legal topics on the occasion of its foundation anniversaries. The theme of this year's symposium is "The Horizontal Effect in the Protection of Fundamental Rights and Freedoms". I would like to take this opportunity to express my best wishes for a successful and fruitful symposium, and I would like to extend my gratitude to the moderators, speakers, participants and all those involved in the organisation of the symposium for their contributions.

I would also like to congratulate Mr. Rıdvan Güleç, who was recently elected as the President of the Court of Jurisdictional Disputes, Mr. Basri Bağcı, who was recently elected as the Vice-President of the Constitutional Court, and Mr. Kenan Yaşar, who was elected as the Vice-President of the Court of Jurisdictional Disputes, and extend my best wishes for their new term of office.

I also would like to express my gratitude to Mr. Zühtü Arslan and Mr. Muammer Topal, who have retired from office after 12 years of service. I wish them a healthy, peaceful and prosperous lives ahead.

I would like to extend my sincere appreciation to the former presidents, vice-presidents, members, rapporteur-judges and administrative staff who have retired or concluded their terms of office for their dedicated service to the Court, as well as to the vice-presidents, members, rapporteur-judges and all staff who have been still working devotedly. I express my best wishes for health, peace and prosperity to those who are still among us and Allah's mercy upon those who lost their lives.

Once again, I extend my heartfelt congratulations to our nation and our children on the occasion of the 23rd April National Sovereignty and Children's Day.

With these feelings and considerations, let me also express my thanks to you all for your participation in our ceremony and wish you all a healthy and prosperous life.

30 May 2024 Opening Remarks, Training Programme for Judges and Prosecutors under the Project on Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights

Distinguished Participants,

I would like to extend you all my most sincere and respectful greetings.

The event we are inaugurating today coincides with the 75th anniversary of the Council of Europe and the 20th anniversary of its Ankara Office. I would like to extend my congratulations on these significant milestones.

Our country is a founding member of the Council of Europe and remains an integral part thereof. The Council of Europe's Ankara Office, in cooperation with various public institutions and organisations in our country, has implemented numerous successful projects. One notable example among these is the joint initiative —carried out in partnership with the European Union, the Council of Europe, and our Court—aimed at ensuring the effective implementation of the Constitutional Court's judgments in the field of fundamental rights. We have convened today to commence an important phase of that project and to initiate the first set of activities, which will be coordinated by the Justice Academy of Türkiye.

As you are aware, the individual application mechanism,

introduced in 2012, stands as one of the most significant reforms in our country in the fields of law and human rights. This mechanism has fostered a strong awareness within the Turkish legal framework, while also functioning as a transformative institution of considerable influence. During the period that has elapsed, the Constitutional Court has handed down numerous landmark judgments in the sphere of human rights adjudication. In rendering these judgments, a process takes place within multiple layers of scrutiny established by our Court, encompassing the preparatory and decision-making phases. During these phases, universal principles and standards recognised at the international level-and in particular by the European Court of Human Rights- are taken into account. Likewise, the jurisprudential insights of our nation's high courts, the accumulated institutional experience of our Court, and the extensive expertise of our members form an integral part of the deliberations. In this sense, both quantitatively and qualitatively, the individual application mechanism has followed a successful trajectory within the context of the Court's decisions. It has also been acknowledged by the European Court of Human Rights as an effective domestic remedy. It is important to emphasise that the Court assumes a significant responsibility in this regard, namely the incorporation of international universal principles and standards into Turkish law. Furthermore, it is worth noting that one of the primary objectives behind introducing the individual application mechanism into our legal system has, to a considerable extent, been achieved. This objective was to reduce the number of applications before the European Court of Human Rights and the resulting violation judgments against our country. I would also like to reiterate that the Turkish Constitutional Court will continue its efforts to strengthen the individual application and to safeguard human rights with unwavering determination.

At this juncture, it is of paramount importance that we maintain close collaboration and dialogue with all judicial institutions. A sound dialogue with you, namely judicial bodies, in particular, is of great significance. Whether in shaping the jurisprudence of our Court or in ensuring that the principles and tenets articulated within that jurisprudence are effectively integrated into Turkish law, we aspire to establish robust channels of communication with both the higher judiciary, the regional courts, and the courts of first instance. Indeed, we perceive this not merely as a matter of aspiration but as a necessity.

In the current project, a significant portion of the activities is devoted to informing judges, public prosecutors, public officials, and lawyers about the Constitutional Court's judgments and ensuring these judgments are effectively implemented.

In line with this objective, we have partnered with valuable stakeholders, including the Justice Academy of Türkiye. Within the scope of the project, we have held coordination meetings with the Court of Cassation, the Council of State, the Council of Judges and Prosecutors, the Justice Academy of Türkiye, and other relevant public institutions. We have also organised conferences and roundtable discussions in five different provinces for the regional courts of appeal, and the regional administrative courts. During these roundtable meetings, which were attended by rapporteur-judges from the Constitutional Court, participants received an overview of the individual application mechanism and constitutionality review, and presentations were delivered on fundamental rights and freedoms.

One of the principal objectives of the activities conducted within this project is to ensure that the subjective (*inter partes*) and objective (*erga omnes*) effects of violation judgments in individual applications are properly understood and implemented. As is well known, enforcing a judgment finding a violation in an individual application primarily necessitates such proceedings as retrial, reopening of investigations, or the award of pecuniary and non-pecuniary damages to offer redress to the specific parties involved. This aspect-what we refer to as the *inter partes* effect of judgments- is an inherent consequence of the Turkish Constitution and the provisions laid down in Code no. 6216 on the Establishment and the Rules of Procedure of the Constitutional Court.

In this regard, I would like to underline that, despite being a relatively new legal mechanism, it is gratifying to see our judiciary and other public institutions approaching individual application with due diligence and complying with violation judgments in specific cases. The Court also monitors whether these judgments are duly enforced. According to the Court's statistics, since 2013, 99.2% of violation judgments have been implemented, with only a very limited number of technical or case-specific issues arising.

The program we are inaugurating today, along with the subsequent initiatives, will greatly contribute to clarifying and resolving such matters. We believe that through collaborative efforts with all our judicial institutions during this process, we can eliminate or at least minimise these problems.

Another, perhaps even more significant, aspect of individual application is the *erga omnes* effect of judgments. The main challenge in implementing decisions pertaining to fundamental rights lies in preventing similar violations and breaches of the Constitution. Achieving this is equally crucial in reducing the excessive workload of the Constitutional Court. Compared with its global counterpart institutions, the number of individual applications filed with the Turkish Constitutional Court is extraordinarily high. In concrete terms, as of today there are 106,000 individual applications pending, and in the year 2024 alone, 32,000 new applications have been lodged. Consequently, we are faced with an average of over 100,000 applications each year.

This situation hinders the examination of individual applications in a timely manner, thereby impeding the prompt restoration of violations of fundamental rights and freedoms.

In this regard, the *erga omnes* effect of the Constitutional Court's judgments emerges as a key consideration. In this regard, all actors in the judiciary have an important role. In examining individual applications, the Court undertakes a dual task. Firstly, it determines whether fundamental rights have been violated in a given case. Secondly, it interprets the provisions of the Constitution regarding fundamental rights and freedoms. In addition, it establishes the principles and guidelines for the implementation of these rights. It is at

this stage that the subsidiary nature of the individual application should be recalled. The protection of fundamental rights and freedoms is primarily the responsibility of the public authorities and the judiciary.

Consequently, for human rights to be effectively safeguarded, it is essential that judicial bodies embrace the Constitutional Court's rulings in the field of fundamental rights. By their very nature, these judgments concern society as a whole and have an impact that extends beyond the parties to the case. They embody an approach in which human rights are placed at the centre of every area of law. Preserving the strength and continuity of this *erga omnes* effect depends on paying close attention to and adhering to the principles and interpretations set out in the Constitutional Court's decisions, insofar as they apply to future cases.

Effective implementation of Constitutional Court judgments is not merely a technical matter that can be achieved through normative regulations alone. It requires coordinated efforts among judicial institutions and the cultivation of a judicial culture rooted in the primacy of fundamental rights. In this respect, there can be no doubt as to the importance of establishing and maintaining robust dialogue among the Constitutional Court, the Court of Cassation, the Council of State, regional courts, and courts of first instance. The Venice Commission of the Council of Europe, along with other international organisations, likewise underscores the significance of fostering judicial dialogue in the enforcement of constitutional court decisions. It is also incumbent upon the organs of the state- each sharing a common responsibility to uphold the Constitution- to work together in safeguarding fundamental rights and freedoms and thereby administering justice, a requirement inherent to the society and state in which we live.

As the Constitutional Court, I would like to reiterate our sincere intention to establish and maintain a robust dialogue with other judicial institutions. Naturally, "dialogue" implies a reciprocal exchange. By dialogue, we do not merely mean explaining our own decisions;

rather, we also aim to listen to colleagues at every level of the judiciary so that we can tackle the challenges before us with an approach grounded in the Constitution and human rights. This envisions a perspective in which other judicial institutions actively participate, adopt, and apply our shared understanding in practice.

In this regard, I wish to emphasise the importance I attach to the activities that will take place under today's programme, particularly in terms of enhancing communication and information-sharing among judicial bodies. The project activities in general, and today's training programme in particular, will make a significant contribution to the judicial dialogue we aspire to foster.

Within the scope of this programme, our Court's rapporteur-judges will join the attendee judges and public prosecutors in sharing experiences and insights regarding the right to a fair trial in both criminal and civil proceedings. Participants will also exchange views, offer suggestions, and discuss the difficulties they encounter. Any noteworthy points arising from these discussions will be duly taken into account in our future endeavours.

I would like to express my sincere gratitude to the judges and public prosecutors participating in this programme, as well as to our rapporteur-judges, the Council of Europe officials who organised the programme, in particular the officials and staff of the Council of Europe Programme Office in Ankara, the Justice Academy of Türkiye, and all who contributed. I wish to reiterate that, as the Constitutional Court, we will always engage wholeheartedly in such efforts and continue our collaboration with other stakeholders.

I would also like to extend special thanks once again to those judges and public prosecutors who, despite their heavy workload, have made the time to attend this program.

As I conclude my remarks, I would like to extend my best regards and my heartfelt wishes to you all.

11 September 2024 Opening Remarks, Swearing-in Ceremony of Member of the Constitutional Court, Assoc. Prof. Dr. Metin Kıratlı, and 12th Anniversary of Individual Application Mechanism in Türkiye

His Excellency Mr. President,

Esteemed Guests,

I would like to welcome you all to the conference held on the occasion of the 12th anniversary of the introduction of the individual application mechanism, as well as to the swearing-in ceremony. I would also like to extend you all my most sincere and respectful greetings.

Taking this opportunity, let me congratulate Assoc. Prof. Dr. Metin Kıratlı on his appointment as a Member of the Constitutional Court among the senior executives by the President of the Republic, who will soon assume his tenure as a Member upon taking oath. I wish him a fruitful and successful tenure, one that brings prosperity to himself, his family, our Court, and our nation.

Let me also wish success, on the new judicial year that started on 2 September 2024, to the presidents and members of higher judicial bodies, as well as to judges and prosecutors of the criminal/civil and administrative judiciary and all staff serving within the judicial organisation. I am confident that they will make every effort in upholding and fulfilling the country's demand for justice throughout this judicial year as well.

The Turkish Constitutional Court does not officially observe a judicial recess, but its personnel usually take their annual leave in August. Therefore, the commencement of the judicial year also marks the beginning of a new working period for the Court. Let me thus wish that our new working period that started on 2 September 2024 will be conducive to the proper administration of justice,

to the highest level, for the country and the Court. I hope the Vice-Presidents, members, rapporteur-judges, and all of our staff have a productive, healthy and successful term ahead.

Justice, also defined as the act of behaving in the proper manner, arranging everything in the best possible way, and dealing with everyone in the way they deserve, has always manifested itself as a moral virtue. It is an undisputable consensus that justice is a condition *sine qua non* for ensuring welfare, domestic peace, prosperity and safety of the society. It is also pointed out that the State's survival is contingent upon justice, which has been the underlying foundation of life since time immemorial.

As articulated by the Great Leader Atatürk, independence, future, freedom, all things can only exist under justice. His profound understanding of justice has also underpinned our legal system and our society's quest for justice.

His Excellency Mr. President,

With your kind permission, I would like to furnish my colleagues with a number of thoughts and advices.

As is well known, the aim of all judicial endeavours is to ensure the proper administration of justice. Therefore, judges and prosecutors, as the main actors of judicial activities, must always remain conscious of their fundamental responsibility to uphold rights and deliver justice. They are also expected to adjudicate freely and impartially without any hesitation and concern, albeit within the framework set by the positive law, as well as in the absence of any external pressure also including their subjective feelings and thoughts. They must always attach utmost importance to reason (mind) and science.

The most important guarantee of the principles and values underpinning our constitutional identity lies in the existence of an independent and impartial judiciary, which can only be ensured with independent and impartial judges.

My esteemed colleagues, honourable judges and prosecutors, you cannot indeed deal with the affairs of your very close relatives, pursuant to positive law, which is a widely recognised procedure. Nevertheless, I would like to remind the followings for recalling the general principle. When you are in a position of authority, when you are granted a voice, you must administer justice impartially, even if the person before you is a close relative. You should always pursue justice, even if it comes at the expense of your own parent or other next-of-kin. You should refrain from administering justice in accordance with your own arbitrary desires. You should always seek the truth and judge fairly. The justice you are entrusted to uphold should first and foremost manifest in your own character and conduct. Bear in mind that human lives, manifested through time and space, are steered merely by truth. Those who stray from the path of truth cannot escape the grip of injustice. Do not let your grudge against, or antipathy towards, a community induce you to unfairness. You should be the epitome in pursuit of justice. No circumstance should ever deter you from upholding the truth or compel you to act unjustly.

Rule with justice so as to cause no chaos. That is because in places where justice does not prevail, there will be chaos, order will be undermined, and everyone will start to feel justified. Therefore, always wield the scales of justice in pursuit of what is right and the just. Do not lend support to those who provoke a quarrel as if they were right when they are indeed wrong and who wish to apply the law for their own interests. You should follow and uphold justice.

In this sense, in our Holy Book, the Holy Qur'an, the verse regarding the advice of Lokman Hekim to his son reads as follows: *"O my dear son! even it be the weight of a grain of mustard seed, and even it be in a rock, or in the heavens, or in the earth, Allah will surely*

bring it forth; verily Allah is the Knower of all subtleties, All-Aware." Another verse therein also indicates *"We shall set up accurate scales of justice for the Day of Resurrection so that no soul will be wronged in the slightest. And even if it were the weight of a grain of mustard seed (a simple thing, good or bad, amounting to the weight of a mustard grain), We would bring it forth. And sufficient are We as reckoners."*

Dear colleagues, as judges we are delivering justice, and we are in position of questioning everything and everyone. But let's bear in mind that we are all transient, and we, too, will be questioned one day. We should always recall that one day we would each be accountable on the Day of Resurrection, with our fates determined by the good and evil of our earthly lives. We should avoid mistakes and appreciate the present time before that final reckoning arrives. One day, our turn will surely come.

Dear judges and prosecutors, Allah has bestowed upon human beings a dignity even greater than that given to the angels, for humanity holds immense value. All creation has been placed at the service of humankind, each within its own divinely ordained rules. This profound truth must never be forgotten. We must act with this awareness, ensuring that no cruelty or injustice is allowed to exist on earth.

Besides, knowledge that is not put into practice is of no avail. Therefore, let us not be among those who knowingly act contrary to, and thus betray, what we know. We should make our discourse, actions and lives, deeds and actions be compatible with the knowledge we possess. We should refrain from being wise in discourse, but cruel in practice and a wrongdoer in the realm of the heart. In other words, let us not be among those whose deeds run contrary to their knowledge, or whose knowledge fails to inform their deeds.

We should not betray our duty, which provides the means for our livelihood, and should not be inactive and indolent. We should duly and completely fulfil our responsibilities and duties towards our state, nation and homeland.

His Excellency Mr. President,

As stated in Article 3 of the Turkish Constitution, *"The State of Türkiye, with its territory and nation, is an indivisible entity"*. However, there are many who wish for our nation, our country, and the Great Turkish State to fall apart. Nevertheless, no one has the power to

break up and divide the noble Turkish Nation and the Great Turkish State, provided that we act wisely as a society. We should not turn against each other and leave the field open for external enemies. We are all fellow-beings. We should stand up for each other more than ever and use our minds well. Mind is a treasure. We should not allow the mind to be overweighed by sedition and ensure the predominance of the mind over sedition. We should do so in order to avoid disorder.

Let us not mislead ourselves by dismissing this mortal world as insignificant, temporary and idle. This mortal world, which we regard as void, is the key to the treasure of both realms, namely the mortal world and the divine world. Being prosperous in both worlds depends on our deeds in this mortal world. We should derive benefit from this world by use of wisdom, understanding, and science. Each breath we take is a precious gift for our future, making each moment of immense importance. For this reason, we should make use of every moment. We should leave no room for sedition and mischief. We ourselves should not cause our future to a reach an impasse.

His Excellency Mr. President,

Both individuals and states have to think about their future.

Between 1 September 1939 and 2 September 1945, the humanity experienced the bloodiest, most fatal and most destructive war in the history. The war, which spanned a vast geographical area and reached dimensions that no one -including the parties involved- could have imagined at the very beginning, brought about inexpressible suffering and heavy destruction not only for the parties involved but also for the whole world. The sufferings and grievances inflicted by wars and the experiences gained therefrom should be known and borne in mind also by today's generations.

The oppression around the world, especially in Gaza, the violations of human rights and freedoms, and the inhumane treatment against oppressed and victimised people, especially children and women, must not be ignored by turning a blind eye or hardening our hearts. There must be immediate response to these injustices with courage and fairness, without any distinction based on race, religion, language, or colour. This is a fundamental moral duty and an inevitable result of being a human.

Besides, those who overlook the oppression inflicted, those who support the oppressors, those who insist on acting in way that disregards justice by wielding the power they have, and those who oppress babies, children, and women should not think that they will get away with the oppression they have inflicted.

The Holy Qur'an also indicates, *"Think not that Allah is unaware of what the wrongdoers do! He only gives them respite till the day on which the eyes will fixedly stare (they stand frozen in fear)."* We believe *"The one who prospers through oppression will have a disastrous end."*.

In this sense, let me emphasise that the common future of humanity and enduring peace can only be achieved by embracing moral values and justice, that is to say, by ensuring the prevalence of justice on earth.

His Excellency Mr. President,

Rights and freedoms constitute the cornerstone of democracy. Therefore, the protection of human rights and freedoms holds paramount importance in democratic societies governed by the rule of law. Such protection may be afforded only through the existence of an independent and impartial judiciary, as well as of adequate legal framework and effective safeguards.

In this sense, constitutional courts, through constitutionality review, contribute to the

achievement of the common purpose of upholding justice for both individuals and the State in democratic societies. The Turkish Constitutional Court, which was established to that end, is currently empowered with, *inter alia*, conducting constitutionality review of particular norms and adjudicating individual applications.

Under the constitutional review process, the Court engages in two types of review, concrete and abstract. In 2024, the Court has so far reviewed and ruled on the constitutionality of 422 contested provisions within the scope of 148 requests involving claims of unconstitutionality. As of 1 September 2024, the number of pending requests for abstract and concrete review, is 125 and 594, respectively.

His Excellency Mr. President,

Another task entrusted to the Court, as I have just mentioned, is to adjudicate individual applications lodged with the Court. The introduction of individual application mechanism serves two main purposes, both principal and practical. The former purpose may be manifested as "to ensure the raising of the standard of fundamental rights in the country", and the latter purpose may be defined as "to ensure the addressing of alleged violations at national level without bringing them before the international judicial bodies".

Through individual application mechanism, the Court has been entrusted with the mission to protect and promote rights and freedoms within the context of principal purpose. To that end, the Court has accomplished vital tasks and duties for protecting and improving standards of rights and freedoms, undertaken serious responsibilities, and rendered thousands of judgments on fundamental rights, including but not limited to the right to life, freedom of expression, right to property, and freedom of association.

Besides, following the introduction of the individual application mechanism, the number of applications lodged against Türkiye before the European Court of Human Rights ("ECHR") and the number of violation judgments issued by the ECHR against Türkiye decreased significantly.

The Court has received a total of 629,821 individual applications since 23 September 2012. Out of the received applications, 522,054 corresponding to 83% have been concluded. As of today, the number of individual applications pending before the Court stands at 108,220.

Since that date, the Court has found a violation of at least one right in a total of 18,341 cases, excluding the right to a trial within a reasonable time.

In the order of examining the requests through constitutional review process, the Court has exercised due diligence to the conclusion of the requests received through concrete review procedure within five months following their submission to the Court, pursuant to the principle *"First come, first served"*.

Individual applications are adjudicated in the order of their submission to the Court, in accordance with Article 68 of the Internal Regulations of the Court, titled *"Order of examining the applications"*. However, the Constitutional Court is entitled to arrange a different order of examining the applications, given the significant and urgent nature of the subject-matters, within the scope of the criteria it has set. As a matter of fact, the prioritisation criteria have been established by the decision of the Plenary of the Court no. 2015/7, dated 10 July 2015. The Court carries out the examinations in accordance with these criteria. While adhering to these principles, the Court observes the principle *"First come, first served"* to a great extent.

Due care and considerable efforts are exerted to ensure that the decisions rendered by the Committees, Sections, and the Plenary of the Court, along with their reasoning, are promptly notified to the relevant parties or published in the Official Gazette in the shortest time possible.

In conclusion, it can be stated that the Constitutional Court strives to contribute to the values such as justice, the rule of law, and fundamental rights and freedoms, with the aim of satisfying the sense of justice for both individuals and institutions, while fostering their confidence in the state and the law.

His Excellency Mr. President,

We consider that the individual application procedure, introduced into our legal system also with the great contribution of your Excellency, should be preserved in its current efficiency as a prerequisite for maintaining the societal consensus on its absolute necessity.

Indeed, over its 12-year existence, the individual application procedure has been

institutionalised as a means for our people to resolve the problems and challenges they encounter in exercising their fundamental rights and freedoms.

His Excellency Mr. President,

As I mentioned earlier in my previous remarks, each high court is obliged to fulfil the tasks and duties entrusted to it by the Constitution and laws. The duties and powers of each of these courts, their functioning, and the nature of their decisions are clearly indicated in the Constitution and laws. Accordingly, each of them shall certainly perform their duties in accordance with these legal instruments and within the scope of the powers granted to them therein.

Besides, the legislative, executive and judiciary are composed of persons, which may inevitably bring along varying approaches, different ideas, and also conflicts. For this reason, ensuring and maintaining cooperation, order and harmony among constitutional bodies entails not only compliance with the Constitution and laws, but also a culture of good communication among them at all times.

His Excellency Mr. President,

We traditionally organise symposiums on various legal issues every year on 23 September, marking the anniversary of the commencement of the individual application mechanism. However, this year, we have decided to hold the symposium on 12 September, given the date of the swearing-in ceremony. The symposium to proceed tomorrow is on the theme *"Right to an Effective Remedy within the scope of the Principle of Subsidiarity of the Individual Application"*.

On this occasion, wishing for a successful and fruitful symposium, I would like to express my sincere gratitude to the session moderators, all speakers, participants, and everyone who contributed to the organisation of the symposium for their invaluable contribution.

Let me also express my gratitude, for their outstanding contribution, to the presidents, members, rapporteur-judges, and administrative staff who no longer hold office in the Court for being retired or upon the expiry of their tenure.

I extend my wishes for health, peace and prosperity to those who are still with us, and pray for Allah's grace and mercy upon those who passed away.

I thank our Vice-presidents, Members, Rapporteur-judges, and all our staff who have worked devotedly.

Ending my speech, I would like to extend my gratitude for your participation in our ceremony and extend my heartfelt wishes of health and prosperity to you all.

19 September 2024 Remarks, 6th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions Bangkok, Thailand

"The Role of Constitutional Justice within the context of Sustainable Society"

Honourable President of the Constitutional Court of the Kingdom of Thailand,

Distinguished Presidents/Chief Justices and Members of the Asian Constitutional Courts and Equivalent Institutions,

Esteemed Guests,

Ladies and Gentlemen,

It is my distinct honour and privilege to extend my warmest greetings to you all. It is a great pleasure to be here and address such eminent participants.

I am fully confident that this academic program organised on the occasion of the 6th Congress of the Asian Association of Constitutional Courts and Equivalent Institutions (AACC) will prove very beneficial and fruitful for each and every one of us. Taking this opportunity, I would like to extend my sincere gratitude to Mr. Nakharin Mektrairat, President of the Constitutional Court of the Kingdom of Thailand, as well as the justices of the Court and all those who contributed to this organisation. I also would like to congratulate Mr. President on his successful tenure as the Term-President of the

AACC.

In my remarks today, I will dwell on the role of the judiciary in fostering a sustainable society through examples from the jurisprudence of the Constitutional Court of the Republic of Türkiye ("the Court").

While the concept of sustainable society is broad and multifaceted, I will focus on three key aspects: the right to live in a healthy environment, the principle of social state, the freedoms of association and peaceful assembly.

Distinguished Participants,

One of the critical aspects of a sustainable society is the right to live in a healthy environment. The notion of *sustainability* was first introduced at the 1972 Conference on "the Human Environment" in Stockholm. In 2002, the United Nations Environment Programme (UNEP), in collaboration with the Constitutional Court of South Africa, organised a Global Judges Symposium on Sustainable Development and the Role of Law (*Global Judges Symposium*). Following the Global Judges Symposium, attended by 70 judges from around the world, the "*Johannesburg Principles on the Role of Law and Sustainable Development*" were adopted. The Symposium emphasised the essential role of an independent judiciary and judicial process in the implementation, development, and enforcement of environmental law.

Today, the pressing challenges posed by global warming and climate change serve as reminders of the crucial importance of the environment. Environmental degradation has emerged as a widespread issue affecting not only just one or several countries, but also the entire world.

Undoubtedly, addressing large-scale problems such as climate change requires international cooperation to exert political will. However, the matter also entails constitutional and legal aspect. Today, the right to environment is recognised and protected under many constitutions around the world. In addition, numerous national laws and regulations envisage provisions as to the protection of the environment. Therefore, the protection of environment is closely linked to the judiciary, particularly the constitutional jurisdiction.

Article 56 of the Turkish Constitution enshrines the right to live in a healthy environment and indicates that the protection of environment is within the joint responsibility of both the State and its citizens. Under this article, the State has a positive obligation to take necessary measures for environmental protection, as well as to ensure and monitor the effective implementation of these measures. In a constitutionality review decision, the Court has pointed to the obligations incumbent on the State by stating that "*it is among the fundamental duties of the State to take all necessary measures to improve the environment, protect environmental health, prevent environmental pollution, and preserve historical, cultural and natural assets and values*"[1].

Distinguished Participants,

The Turkish Constitutional Court does not provide a precise definition of the environment in its judgments, but rather specifies the nature or elements of a healthy and sustainable environment. In this sense, the Court has indicated that mining activities, natural beauties, urban transformation, hunting and wild animals and their natural habitats, zoning plans, water, coasts and coastlines, and noise

1 See the Court's decision, no. E.2011/106, K.2012/192, 29 November 2012.

pollution fall within the scope of the concept of environment.

The Court has examined the alleged unconstitutionality of a legal provision, which legitimized various unauthorised buildings in the Bosphorus region of İstanbul. The Court has stated that the legislature is vested with discretionary power to make the regulations it deems necessary; however, in doing so, the legislature must take into account the conflicting public interests and strike a fair balance between them. Considering that there are many outstanding cultural and natural assets in the Bosphorus region, *which form a part of the common heritage of humanity*, the Court has concluded that there is a significant public interest in the preservation and development of the natural beauty of, as well as cultural and historical assets in, the Bosphorus coastline and coastal area. Therefore, the Court has annulled the impugned provisions on the grounds that they upset the fair balance to be struck between the conflicting interests.[2]

Besides the cases of constitutionality review, the Court has also rendered decisions on the right to environment through individual application mechanism. As is known, the right to environment is not set forth in the European Convention on Human Rights ("the Convention"). However, the European Court of Human Rights considers the protection of environment within the scope of the right to respect for private life. The Court has adopted the same approach (as required by the common protection clause) and dealt with the environmental issues within the scope of the right to respect for private life.

In this regard, the Court examines, within the scope of individual applications, whether the public authorities have taken the necessary measures to ensure the effective protection of the environment. At this point, let me mention a judgment of the Court regarding a mining project in our country where a tragic mining accident occurred. Before the mining accident in question, the Court had found a violation in an individual application regarding the project. The Court identified discrepancies between the environmental report issued by the public authorities for the project and the relevant expert report, and noted that the inferior courts failed to address and resolve these discrepancies. Hence, the Court found a violation of the right to respect for private life on account of the superficial assessments by public agencies regarding the environmental impact of the mining project.[3]

The Court also considers the right to environment in terms of the citizens' right to participate in decision-making processes on environmental issues.[4] In accordance with the applicable legal procedures, it is strictly monitored whether citizens are informed of the environmental impact assessment processes and whether they are provided with the opportunity to effectively participate in these processes. In cases where the authorities have failed to fulfil these requirements, the Court finds a violation.

Distinguished Participants,

Another aspect of a sustainable society is the principle of social state. Article 2 of the Turkish Constitution clearly indicates that the Republic of Türkiye is a social state governed by the rule of law. Article 5 thereof also points to the fundamental aims and duties of the State, which are, *inter alia*, *"to ensure the welfare, peace and happiness of individuals and the society; to strive for the removal of political, economic, and social obstacles which restrict the fundamental rights and*

2 See the Court's decision, no. E.2019/21, K.2020/51, 24 September 2020.
3 See *Eşref Demir*, no. 2020/12802, 1 November 2023.
4 See *Fevzi Kayacan (2)*, no. 2013/2513, 21 April 2016, §§ 56-58.

freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by rule of law; and to provide the conditions required for the development of the individual's corporeal and spiritual existence". The right to social security, a concrete manifestation of the principle of social state, is enshrined in Article 60 of the Constitution. The subsequent provision lays down that the State shall take the necessary measures to protect the relatives of martyrs, veterans, the disabled, the elderly, and the children in need.

The right to labour is also among the rights safeguarded by the Turkish Constitution. However, it does not indeed fall the joint protection of the Constitution and the Convention. However, the Court has examined, to the extent possible, the cases relating to the professional life of individuals under the right to respect for private life.

In its several judgments, the Court has found a violation of the right to respect for private life within the context of professional life. These judgments particularly point out that public authorities cannot act arbitrarily in matters such as appointments, promotions or dismissals from public office, that such procedures must be subject to review by administrative courts, and that the applicant's allegations must be addressed by a concrete, sufficient and relevant justification.

The Court also strictly monitors the impact of professional life on family life. There are many violation judgments rendered by the Court in this regard. Among such cases, the Court has examined the relocation of public officers to other regions without considering the impact of such process on their family life. In its assessment, the Court has stressed that a reasonable balance must be struck between the public interest in the appointment or relocation of public officers and the individual's interest in the enjoyment of the right to respect for family life. It should not be overlooked that the absence of such balance would undermine the right at stake. In exercising the discretionary power to order the relocation of public officers, the authorities must also observe the positive obligations imposed on the State under the right to respect for family life, which is safeguarded by Article 20 of the Constitution. In such cases, the Court found a violation in the case of relocations ordered without taking into consideration that the person has family members in need of care.[5]

Distinguished Participants,

For a sustainable society, the significance of the right to freedom of association and freedom of peaceful assembly is also beyond dispute. According to the Court, "*the right to freedom of association enables individuals to realise their political, cultural, social and economic goals in community with others*."[6] It also indicates that "*in democracies, the existence of associations where citizens can freely interact and organise among themselves to pursue common goals is integral to a healthy and well-functioning society, and such an 'association' enjoys fundamental rights which must be respected and protected by the State*."[7]

In one of its judgments on the right to form associations, the Court has stated that *"the freedom of association and its sub-element, the right to form associations, are regarded as an essential component of democratic life under the Constitution"*, and that "*the limitations to this right are subject to strict scrutiny as to whether they*

5 See *Nurbani Fikri*, no. 2014/2502, 11 October 2018.
6 See *Tayfun Cengiz*, no. 2013/8463, 18 September 2014, § 30.
7 See *Eğitim ve Bilim Emekçileri Sendikası and Others*, no. 2014/920, 25 May 2017, § 75.

are necessary in a democratic society".[8] Additionally, the Court has considered that the freedom of association also encompasses the right to form trade unions, stating that this right "*assures that employees shall be subject to no sanction for their trade-union membership*".[9]

The Court has also ruled on the right to hold meetings and demonstration marches in a number of judgments. According to the Court, this right is "*one of the most fundamental principles of a democratic society and is intended to ensure that individuals are able to associate with one another in order to defend collectively their common ideas and to disseminate them to others*"[10]. In its judgments, the Court has emphasised that the Constitution safeguards the right to hold peaceful demonstration marches without prior permission. In this regard, the Court strictly examines interventions to non-violent peaceful demonstrations and finds a violation if the public authorities fail to provide a concrete basis substantiating the intervention to public demonstrations. In a similar vein, the imposition of administrative or criminal penalties on individuals participating in peaceful demonstration marches constitutes a violation of the relevant principles.

Finally, I would like to refer to a norm review decision on the freedom of peaceful assembly. In this decision, the Court found unconstitutional and thus annulled the contested provision in the Law on Meetings and Demonstration Marches, which stipulates that "*demonstration marches cannot be organised on intercity highways*".[11]

The relevant provision restricts the right to hold meetings and demonstration marches on highways in order to prevent the obstruction of traffic and safeguard the freedom of movement of others. In its examination, the Court has concluded that the provision imposes a categorical ban for highways and grants absolute advantage to the prevention of disruption of traffic, and that the balance to be

8 See *Hint Aseel Hayvanları Koruma ve Geliştirme Derneği and Hikmet Neğuç*, no. 2014/4711, 22 February 2017, § 41.
9 See *Anıl Pınar and Ömer Bilge*, no. 2014/15627, 5 October 2017, § 35.
10 See *Yasin Agin and Others* [Plenary], no. 2017/32534, 21 January 2021.
11 See the Court's decision, no. E.2020/12, K.2020/46, 10 September 2020.

struck between the right to hold meetings and demonstration marches and the public order, along with the rights and freedoms of others, is disproportionately upset to the detriment of the former right. As stated in other judgments of the Court, it is inevitable that meetings and demonstration marches may cause some inconvenience to the daily lives of others and this must be tolerated in a democratic society.

If the disruption of traffic due to the organisation of a demonstration march in a particular place makes daily life *extremely and unbearably* difficult, it is possible to restrict the relevant right, provided that constitutional principles and rules are complied with. The provision, however, categorically bans the organisation of demonstration marches on intercity highways, without specifying the extent of the restriction. In this regard, the Court has found that the restriction imposed on the right to hold meetings and demonstration marches does not meet a pressing social need, and nor does it comply with the requirements of the democratic society. For these reasons, the Court found unconstitutional and annulled the relevant provision.

Distinguished Participants,

I have sought to present the concept of a sustainable society in the context of fundamental rights and freedoms in three main aspects through the case-law of the Turkish Constitutional Court. I sincerely hope that you have found useful the information and jurisprudence I have provided in a very brief manner due to the limited time available.

Thank you for your attention.

11 October 2024 Opening Remarks, International Conference on Migration and Human Rights in the Light of the Judgments of the European Court of Human Rights and the Constitutional Court

"Migration and Human Rights"

Distinguished Participants,

Ladies and Gentlemen,

I would like extend you all my most sincere and respectful greetings.

It is great pleasure to be with you in İstanbul, one of the most fascinating cities of the world.

We have gathered on the occasion of the "*International Conference on Migration and Human Rights in the Light of the Judgments of the European Court of Human Rights and the Constitutional Court*" which has been organised jointly by the Constitutional Court and the Directorate of Migration Management.

The necessity of addressing migration issues from a multifaceted perspective has paved the way for the organisation of this important event.

This cooperation between the Constitutional Court and the Directorate of Migration Management holds a critical significance in the formulation and implementation of migration policies in accordance with the rule of law and human rights. In addition, migration, which has emerged as a pressing security concern in recent years, stands out as a far-reaching phenomenon influencing the administrative, economic, and social structures of states.

As one of the most urgent global challenges of our

time, migration profoundly affects the lives of every nation. Wars, internal conflicts, severe economic conditions, occupations, and political turmoil force people to suddenly abandon their homes, pushing them towards international borders in masses. In recent years, there has been a substantial increase in population movements and migration waves in Asia, Africa, and Europe, with new migration flows occurring daily.

In this sense, significant responsibilities fall upon states and international organisations. Their collaborative efforts in this regard are vital to halt the root causes of migration, such as war, massacres, and ill-treatment, and to raise the level of welfare in underdeveloped societies.

Distinguished Participants,

In the absence of the right to life, the most fundamental of all rights, it is beside the point to discuss any other rights. Unfortunately, we continue to witness widespread violations of the right to life, acts in breach of the prohibition of ill-treatment, and practices that strip individuals of their dignity in various parts of the world.

In particular, grave human rights violations in Palestine and the dire situation in Gaza, which has been turned into an open-air prison, compel us to question certain universal values.

Today, Palestine is facing grave human rights violations. Gaza endures a systematic blockade in complete disregard of international law. Tens of thousands of innocent people, including babies, children and women, are being punished, killed, and starved to death with a disproportionate violence that no objective conscience can justify. They are forced to survive under conditions far worse than any acceptable standard.

International humanitarian law, along with the Universal Declaration of Human Rights, the Charter of the United Nations, and the Geneva Conventions, are disregarded.

Harsh realities of oppression and violence unfolding in Palestine and Gaza as well as in other regions of the world, coupled with the economic hardships endured by millions,

have compelled millions of people to flee their homes. Inadequate international response to this violence and the insufficiency of humanitarian aid have brought to the forefront the urgent need to discuss a new concept, the "*right to migrate*".

Undoubtedly, this is an area where striking a balance between the sovereign rights of states and fundamental human rights is rather challenging. As a matter of fact, sudden and uncontrolled population movements trigger multifaceted legal, social, economic, cultural and political challenges in the source, transit and destination countries of migration.

However, the European Court of Human Rights ("the ECHR") and the Turkish Constitutional Court have developed significant advancements in their case-law concerning the protection of the rights of migrants, and they have contributed to strengthening the rule of law by addressing the migration phenomenon from a human rights perspective, through their judgments.

The safeguarding of the right to an effective remedy against violations of migrants' fundamental rights and freedoms has emerged as one of the key concerns for both the ECHR and the Turkish Constitutional Court. In particular, deportation orders as well as decisions on administrative detention and protection of migrant children hold a significant place in our legal system.

As the Constitutional Court, we remain committed to advancing our case-law regarding the protection of fundamental rights and freedoms of migrants in line with national and international standards.

We emphasize the imperative to ensure and protect the fundamental rights and freedoms of migrants, especially the right to life, and to prevent discrimination based on ethnicity, religion, or colour, as well as to eliminate all forms of hate speech.

The Court issued an interlocutory injunction for the first time in 2013 in a case regarding the deportation of a foreigner relying on the severity of the alleged risk to his life and corporeal and spiritual existence.

The Court, interpreting Articles 5, 16 and 17 of the Constitution in conjunction with international law, in particular the relevant provisions of the Geneva Convention to which Türkiye is a party, has recognised that ensuring the protection of foreigners, who may be subjected to ill-treatment in the receiving country (under the state's sovereignty), from risks to their corporeal and spiritual existence falls within the state's positive obligations. Within the scope of these positive obligations, it has also been emphasised that in order to provide an individual to be deported with real protection against the risks she/he may encounter in his country of origin, she/he must be granted an effective opportunity to challenge the impugned deportation order. Otherwise, the individual concerned will not be afforded genuine protection. In other words, a foreigner against whom a deportation order has been issued must also be afforded procedural safeguards enabling her/him to "have her/his claims duly examined" and "have the deportation order subjected to a fair judicial review".

According the Court, deportation of a foreigner to a country where she/he may face the risk of being sentenced to death penalty as a result of the judicial proceedings against her/him or may be subjected to an act or punishment prohibited under Article 17 § 3 of the Constitution will be in breach of the right to life and the prohibition of ill-treatment. For this reason, where there is an arguable claim (which may be investigated, examined or discussed, or raises a reasonable suspicion) –with a certain level of seriousness and supported by relevant information and documents– that deportation would allegedly result in violations of the right to life and the prohibition of ill-treatment given the situation in the receiving country, judicial authorities should conduct a thorough examination to determine whether there is a real risk of violation in the said country (see *A.A. and A.A.* [Plenary], no. 2015/3941, 1 March 2017, §§ 54-72). In addition, the lack of a legal safeguard available to a foreigner, capable of eliminating the risk of deportation pending the outcome of the proceedings she/he had brought before the administrative court

seeking the revocation of the deportation order, renders ineffective the right to an effective remedy (*Y.T.* [Plenary], no. 2016/22418, 30 May 2019, § 61).

In its judgment in the case of *A.A. and A.A.* (2015), the Court concluded that the state had a positive obligation to protect the corporeal and spiritual existence of foreigners who face a risk of being killed and subjected to ill-treatment in their country of origin.

In the aforementioned judgment, the Court also emphasised that, as part of the said positive obligations, an individual whose deportation has been ordered must be provided with an effective remedy to challenge the deportation order to ensure a genuine protection against the risks she/he may face in her/his country of origin.

The Court's first judgment issued under the pilot judgment procedure also pertained to this issue. In its judgment of Y.T. rendered in 2019, the Court found a violation of the right to an effective remedy due to the lack of an effective legal remedy in place to challenge the deportation order. Since the violation stemmed from a structural problem, the Court invoked the pilot judgment procedure. Following the relevant judgment, the legislative body enacted legislative amendments in a relatively short timeframe, thus establishing an effective remedy.

Today, we aim to examine the relationship between migration and human rights from a judicial perspective and explore solutions to the challenges faced by migrants. I would like to express my sincere belief that the discussions to be made in the light of the case-law of the ECHR and the Constitutional Court will significantly contribute to carving out migration policies in a more just and human rights-oriented manner.

Distinguished Colleagues,

Benjamin Zephaniah, a British Jamaican poet, addresses us as follows in his poem "*We Refugees*":

"We can all be refugees
Nobody is safe,
We can be hated by someone
For being someone.
Sometimes it only takes a day,
Nobody's here without a struggle,
We all came here from somewhere."

Zephaniah reminds us that no one can, regardless of their nationality, race, or class escape from being compelled to flee their homeland.

Distinguished Participants,

I would like to conclude my remarks by inviting you to reflect once again on the reality that at one point, everyone may have to leave their home.

On this occasion, I sincerely hope that human rights violations that force people to migrate will come to an end as soon as possible. I would like to express my gratitude to the esteemed Minister of Interior, the President of the Directorate of Migration Management, and everyone who have contributed to the organisation of this important Conference. I would also like to extend my thanks to the judges of the ECHR, particularly Ms. Saadet Yüksel, as well as to the Chairman and member of the Constitutional Court of the Republic of Azerbaijan, and members of the Constitutional Courts of Romania and Moldova for their participation. I hope that the presentations delivered during the conference and the subsequent discussions will be fruitful for all participants. I would like to once again extend my respectful greetings to everyone.

24 October 2024 Remarks, 2nd Annual Conference of the Balkan Constitutional Courts Forum Prishtina, Kosovo

"The Turkish Constitutional Court's Role in Upholding Democratic Values within the Framework of Separation of Powers"

Distinguished Colleagues,

Ladies and Gentlemen,

It is a great pleasure to be here today among such distinguished participants and to have the privilege of addressing this esteemed group of colleagues.

I would like to express my gratitude to the Constitutional Court of Kosovo and its esteemed President, Mrs. Gresa Caka-Nimani, for the kind invitation and heartfelt hospitality within the scope of this organisation.

"The Turkish Constitutional Court's Role in Upholding Democratic Values within the Framework of the Separation of Powers" is the topic I will strive to cover in the allocated time of fifteen minutes for presentations.

As I commence my remarks, I would like to share a proverb that is deeply rooted in Turkish culture.

Justice that is not predicated on power is incapable, and power in the absence of justice is tyrannical.

Distinguished Participants,

As is widely recognised, the separation of powers presupposes that the State organs, namely the legislature, the executive and the judiciary, be constrained by one another in order to effectively administer justice. In other words, it entails the delegation of legislative, executive and judicial responsibilities within a State to organs that are independent of one another, elected through separate processes,

and governed by a system of 'checks and balances' amongst them. According to this principle, the bodies that enact the law, implement it, and resolve disputes arising from its implementation should be distinct within the organisation of the State.[1]

My esteemed fellow colleagues, elections represent the primary element in advanced democracies. Election results determine the formation of governments. In elections, having the majority is crucial. However, historical facts have shown that democracy is not solely confined to reflecting the will of citizens through elections, but it also encompasses upholding of the rule of law and the protection of human rights and freedoms. For this reason, in democracies, mechanisms to limit the power of the majority, such as subjecting them to rule of law, are envisaged, for the purpose of protecting rights and freedoms. This is because the universal, shared values grounded in human rights and the rule of law are indispensable components inherent in democracy. Therefore, in democracies, these values must be necessarily afforded protection by way of establishing independent courts and furnishing adequate legal framework and safeguards.

Following the World War II, in contemporary states, the constitutional courts have assumed an important role as the guardian of democratic principles, with a significant responsibility in upholding these values and maintaining the democratic social order.

The *raison d'être* of constitutional courts, which are primarily tasked with reviewing the constitutionality of the legislative and executive acts, is to safeguard and uphold fundamental values, principles, procedures, and provisions enshrined in constitutions. The constitutional courts were instituted for contributing to the overarching goal of ensuring justice, both for individuals and for the State.

In this sense, it can be stated that the main task of constitutional courts is to ensure the functionality of constitutions, which are called social contracts formulated to determine the exercise of sovereign power within the framework of democratic principles, by securing fundamental rights and freedoms.

On the other hand, despite various constitutional and statutory provisions regarding the protection and upholding of fundamental rights and freedoms, the role of the constitutional courts as the constitutional review body cannot be overlooked in this regard.

Nowadays, the majority of democratic nations have established constitutional courts tasked with reviewing the constitutionality of legal norms. Besides, the constitutional complaint or individual application, a mechanism which enables individual access to the constitutional courts on an alleged violation of any constitutional rights, has become increasingly widespread, thus becoming an integral component of constitutional justice.

The Preamble of the Turkish Constitution, underlining the absolute supremacy of the will of the nation, states that sovereignty is vested fully and unconditionally in the Turkish Nation, and that no individual or body empowered to exercise this sovereignty in the name of the nation shall deviate from the principles of liberal democracy enshrined in the Constitution and the legal system instituted according to the requirements thereof. It also underscores the principle of the separation of powers. Additionally, Article 2 of the Constitution lays down that the Republic of

1 Erdoğan Teziç, Anayasa Hukuku (*Constitutional Law*), Beta Yayınları, İstanbul, 2003, p. 393.

Türkiye is a democratic, secular and social state governed by rule of law.

Accordingly, the Turkish Constitution manifests itself as a basic law that is underpinned by constitutional democracy, in consideration of the principles and concepts referred to therein, namely 'democratic, secular and social state governed by rule of law', 'the binding nature and supremacy of the Constitution', 'human rights and freedoms', 'separation of powers', and 'judicial review'.

As set forth in the currently-in-force Constitution, the legislative power is vested in the Grand National Assembly of Türkiye, whereas the executive power and function shall be exercised and carried out by the President of the Republic, and the judicial power shall be exercised by independent and impartial courts, all of which shall be exercised on behalf of the Turkish nation.

In this regard, it should be noted that in the constitutionality review of legislation, the 'European Model', which is called 'centralised system of constitutional review' or 'special court system', is being employed in Türkiye. The Turkish Constitutional Court, established by the 1961 Constitution, commenced its operations in 1962.

The history of constitutional courts demonstrates that the Turkish Constitutional Court is among the oldest tribunals with a vast amount of experience in the world. It ranks as the fourth constitutional court globally to have operated uninterruptedly. In this respect, having been active since 1962, it stands as one of the most experienced constitutional courts worldwide. The Court, which celebrated its 62nd foundation anniversary this year, has assumed an important role in ensuring the rule of law and conducting the constitutionality review of norms. It keeps up the implementation of the universal principles of constitutional jurisdiction by protecting the citizens' rights and freedoms through the individual application mechanism that was introduced in 2010.

Two important amendments, the 2010 and 2017 amendments, to our current Constitution have profoundly reshaped the course of constitutional jurisdiction in Türkiye. Thereby, the scope of the review conducted by the Turkish Constitutional Court was broadened, and the Court has been vested with new powers, thus undergoing a restructuring process.

Following the 2010 amendment on the introduction of the individual application mechanism, there has been a significant shift in constitutionality review decisions

towards the democratic state of law and human rights, in parallel to the examination of individual application cases. That is because the constitutional amendment in question both enabled the Turkish Constitutional Court to undertake a pivotal role in the protection of individual rights and freedoms, and reinforced its institutional structure by furthering its democratic legitimacy. These amendments have turned the Court a more independent and effective review body in pursuit of human rights and democratic stated governed by the rule of law.

The 2010 constitutional amendment made a substantial contribution to the constitutional jurisdiction and the legal system by enabling the adoption of the individual application mechanism in Türkiye. The competence to adjudicate individual applications has tasked the Court with the mission to protect and uphold fundamental rights and freedoms in cases of complaints resulting from acts and actions performed by those wielding public power. The Constitutional Court has been successfully fulfilling this mission in recent years. Through its decisions, the Court raises the sense of freedom in the Turkish law to universal standards. This novel remedy, which enables individuals to bring their alleged violations by directly applying to the Constitutional Court, has facilitated the examination of whether the constitutional rights have been infringed and has thus ensured the realisation of theoretical constitutional safeguards also in practice. Thereby, the interplay between individuals and constitution is manifested concretely, and the Constitutional Court has gained the opportunity to directly address alleged violations through the applications filed by individuals.

Through the judgments delivered by our Court in individual applications, significant contributions have been made towards the protection of fundamental rights and freedoms. Furthermore, it must be noted that the individual application mechanism has facilitated the accelerated implementation of universal human rights standards at the national level, thereby triggering the more effective enforcement of international human rights norms within domestic law. Additionally, following the introduction of the individual application mechanism, the number of cases filed before the European Court of Human Rights (ECHR) against Türkiye has noticeably decreased, and so have the violation judgments rendered by the ECHR against the latter. The individual application system in our country, which has been recognised by the ECHR as an effective remedy, is often cited as an example of good practice.

Distinguished Presidents,

Esteemed Members,

Honourable Participants,

The constitutional amendment of 2017 in Türkiye constituted a profound transformation of the government system. Throughout the transition to the presidential system, the Turkish Constitutional Court has handed down a series of landmark judgments that have played an instrumental role in safeguarding the principle of the separation of powers. The relevant constitutional amendment vested the Presidency with the authority to issue presidential decrees. In this regard, Article 148 of the Constitution conferred upon the Constitutional Court the authority to conduct constitutionality review of the presidential decrees both in form and in substance. Since that time, the Turkish Constitutional Court has articulated the guiding principles and essential criteria for the review of presidential decrees. The Court employs a two-tiered process in its constitutionality review of these presidential decrees. The **first stage**, referred to as the 'competence *ratione materiae'*, entails an examination of whether the presidential decree was duly issued in accordance with Article 104 of the Constitution. The **second stage** is the '*review as to content'*. The objective of this review is to ascertain whether a presidential decree issued within the

limits of jurisdiction is in accordance with the Constitution in terms of its content.

The Constitutional Court's review of presidential decrees holds paramount importance in upholding the principle of separation of powers between the legislature and the executive within the Presidential government system. The Court has consistently underscored that, in exercising his regulatory powers, the President must not infringe upon the legislative competence of the Grand National Assembly of Türkiye and must strictly adhere to the boundaries of executive power. In its decisions concerning the review of Presidential Decrees, the Constitutional Court has established key principles that define the legal framework of the Presidential government system.

In its decisions, the Turkish Constitutional Court also emphasises the importance of judicial independence, underscoring the impartial stance of the judiciary as regards the legislature and the executive. According to the Court, judicial independence must be upheld not only in relation to all institutions and bodies within the state structure but also at the level of individual actors. Accordingly, the notion of judicial independence entails "*the judge's ability to decide freely, without fear or hesitation, or in the absence of an external influence other than the requirements of the law*" (The Court's decision no. E.2021/83, K.2022/168, 29 December 2022, § 11). As reiterated in the decisions of the Turkish Constitutional Court, judicial independence is the primary and most effective safeguard of all other fundamental rights and freedoms, as well as the right to a fair trial (The Court's decision no., E.2022/72, K.2023/3, 05 January 2023, § 24).

In its jurisprudence, the Turkish Constitutional Court endeavours to strike a balance among the legislative, executive, and judicial organs, in line with the principle of separation of powers. In its constitutionality review of laws, the Court acts to prevent the executive from exerting undue influence over the legislative authority, while simultaneously aiming to secure the independence of the judiciary. Notably, in the aftermath of the 2017 constitutional amendments, the review of presidential decrees has become a pivotal safeguard in upholding the separation of powers. Through this review process, the Court seeks to maintain the democratic balance by preventing any undue intervention of the executive into the legislative sphere.

A review of the statistics on the decisions of the Turkish Constitutional Court in the context of its role in safeguarding democratic values within the framework of the separation of powers reveals the following key findings.

Decisions Rendered in Constitutionality Review Process

Over the past five years, the Constitutional Court has examined 3,913 provisions within the scope of constitutionality review, and 1,572 of these provisions have been annulled. The majority of the annulment decisions were based on the grounds that the annulled provision constituted an unlawful interference with a right or freedom safeguarded under the relevant articles of the Constitution.

Decisions Rendered in Individual Application Process

The Court have so far received a total of 635,860 individual applications, and 530,907 of these applications have been adjudicated. As of today, there are 104,953 pending applications before the Court. Out of the 530,907 finalised applications, in 56,443 cases the Court held that the proceedings had not been concluded within a reasonable time and awarded compensation to the applicants accordingly. In 18,838 applications (with a total of 19,993 violations), it was found that at least one right or freedom enshrined in the Constitution had been subject to an unconstitutional restriction by public authorities. In these judgments, the Court ordered a retrial, compensation, or both, as a redress for the established violations.

Right to a fair trial	5,511
Right to property	4,608
Freedom of expression	4,370
Right to respect for private and family life	1,612
Right to hold meetings and demonstration marches	1,436
Prohibition of ill-treatment	817
Right to personal liberty and security	420
Right to an effective remedy	344
Right to life	254
Prohibition of discrimination	140
Right to protect the corporeal and spiritual existence	136
Right to trade-union freedom	131
Freedom of association	88
Nulla poena sine lege principle	49
Right to education	43
Right to vote, to stand for election, to engage in political activities	18
Freedom of religion and conscience	12
Right to individual application	3
Right to seek judicial review of the judgment	1
TOTAL	19,993

Distinguished Participants,

As I conclude my remarks, I would like to reiterate one final point. As of today, approximately four and a half million refugees are sheltered in Türkiye. This issue presents a number of challenges, particularly in terms of national security. However, in the cases brought before the Court concerning this matter, no distinction is made between citizens and non-citizens. Refugees are afforded the same consideration, and their rights and freedoms are subject to the same evaluation as those of our citizens.

Esteemed Colleagues,

On behalf of myself and the members of the Constitution Court of the Republic of Türkiye, I would like to extend my warmest regards to you all and express my sincerest hope for a renewed commitment to moral values and justice, for the benefit of humanity as a whole and for the establishment of a fair and lasting peace that prevails in every corner of the world. I would also like to extend my heartfelt wishes for a healthy and prosperous life, in the company of your loved ones.

Thank you for your attention.

31 October 2024 Remarks, 7th Congress Conference of Constitutional Jurisdictions of Africa (CCJA) Victoria Falls, Zimbabwe

"The Role and Importance of Human Dignity in Human Rights Adjudication"

A man wishing to live long must act fairly.
This is the case also for the States.
Being fair contributes to a longer life.

Distinguished Colleagues,

Esteemed Participants,

Ladies and Gentlemen,

Let me extend you all my most sincere and respectful greetings.

I would like to extend my heartfelt thanks to Mr. Luke MALABA, Chief Justice of the Constitutional Court and Supreme Court of Zimbabwe, which holds the term presidency of the Conference of Constitutional Jurisdictions of Africa (CJCA).

It is a great pleasure to express my sincere congratulation to Mr. MALABA, the esteemed members of the Court, and all those who have contributed to this successful and marvellous organisation. I would also like to express my sincere gratitude to Mr. Musa LARABA, Permanent Secretary General of the CJCA.

I am fully convinced that the 7th Congress of the CJCA would yield outstanding and beneficial outcomes not only for the sake of cooperation, but also in the academic sense.

I would like to express my gratitude, once again, for the

opportunity given to us to represent the Turkish Constitutional Court in this eminent organisation.

Today, we gather here at this paramount session to address human dignity, a fundamental human right, from both constitutional and legal perspectives. Human dignity is not only one of the most significant elements of law, but also an essential aspect of human existence. Laying at the heart of common values of our civilisations, human dignity has been enshrined and promoted in all constitutional regulations and judicial decisions as the underlying basis of fundamental rights and freedoms. In other words, human dignity is the core foundation of constitutionality. Therefore, constitutional jurisdiction undertakes a vital responsibility in protecting and reinforcing human dignity.

As such, to comprehend and discuss how human dignity, as the underpinning value of fundamental rights and freedoms, is articulated in judicial interpretations, notably in constitutional jurisdiction will provide a significant opportunity to strengthen the rule of law. In fact, all legal texts, notably constitutions, must be subject to evolutionary interpretation for being a living instrument. I therefore consider that the presentations and discussions here would make paramount contributions in this regard.

In my opinion, **human dignity** means that each human being, as the possessor of the highest rational and moral values, has an intrinsic value that cannot be infringed and waived, or deprived of.

When we use the term of human dignity, we refer to *in abstracto* simply the dignity of being human. We infer therefrom the dignity and honour inherent in merely being a human without any distinction based on race, colour, sex, ethnic origin, or any other ground whatsoever. We are speaking of a value that every human being equally possesses and that cannot be denied or ignored under any circumstances.

The concept of human dignity remains at the heart of modern understanding of human rights. Dignity refers to the individual's right to equal respect and consideration,

and this right is afforded protection through legal sanctions. Human dignity is a moral imperative that shapes the law. Through reason and freedom of will, people can create their own values and way of life. This freedom constitutes the essence of human dignity.

Human dignity is recognised globally as an ethical and legal principle that ensures respect for all human beings. This concept is rooted in the profound belief that everyone has an inalienable value intrinsic to "*humanity*". Being a key element of international human rights law, human dignity is enshrined also in many conventions and declarations. Dignity is a core value of individuals that must be protected and is an integral element of human rights. The need to protect and promote it in times of both peace and war is also emphasised in international instruments.

Human dignity, above all, rejects oppression, racism, exploitation, isolation, discrimination, hate speech, othering and excessiveness. In this sense, unfortunately, it is regrettably evident that we have not yet fully overcome these issues or succeeded in fully safeguarding human dignity.

Unfortunately, persecution, outrageous practices, hatred and othering continue to proliferate in different parts of the world, calling into question all the humanitarian values we have embraced so far. A blatant example of this situation is the treatment faced by asylum seekers and refugees forced to flee their countries due to wars, conflicts or socio-economic reasons.

Dear Participants,

The Preamble of the Turkish Constitution lays down that ***"Every Turkish citizen has an innate right and power, to lead an honourable life and to improve his/her material and spiritual wellbeing"***.

In Article 5 of the Constitution, ***"to provide the conditions required for the improvement of the individual's material and spiritual existence"*** is enumerated among the fundamental aims and duties of the State. The State is expected to prevent social exclusion of individuals and communities and to strive for ensuring a dignified life standard for everyone, and to overcome the obstacles to this end. It is a mandatory positive obligation stipulated in our Constitution for the State to provide a legal environment in pursuit of human dignity.

In this regard, I will strive to provide you with an insight into how the Turkish Constitutional Court addresses human dignity and interprets this concept in its judgments. In the sublime hall of the Turkish Constitutional Court, just behind the stage and directly facing the audience, the following statement appears "***Rights and freedoms are the honour and virtue inherent in humanity***".

In connection with the principle of the rule of law, the Turkish Constitutional Court emphasises the material and spiritual existence of the individual, as well as the protection and realisation thereof. It thereby points to the necessity to respect human dignity through a rights-based approach (the Court's decision no. E.2014/122, K.2015/123, § 55).

The Court regards the respect for human dignity as the recognition of the inherent value of every individual simply for being human (the Court's decision, no. E.

2014/122, K. 2015/123, 30 December 2015, § 55). This respect requires the protection of the individual under all circumstances. According to the Court, treatments infringing human dignity are the actions or treatments that deprive an individual of their humanity. "*This represents a standard of conduct whereby any action falling below this threshold gives rise to the dehumanisation of the affected individual*" (the Court's decision, no. E. 1963/132, K. 1966/29, 28 June 1966). This principle affirms that the legal protection of human dignity applies not only against external threats but also implies that an individual's dignity cannot be compromised, even with their own consent. Therefore, human dignity is recognised by the Turkish Constitutional Court as an absolute value that must be upheld under all circumstances.

The Court's definition of a social state provides an essential framework for the protection and promotion of human dignity. The Republic of Türkiye is a state that places human dignity at the core of fundamental rights and steers its obligations around this concept. In defining the social state, the Court lays emphasis on human dignity and accordingly notes that the State's obligations are designed to ensure that individuals can lead dignified lives across all spheres of life.

Distinguished Participants,

With the 2010 constitutional amendment, the Turkish Constitutional Court has been entrusted with the task and power to examine and adjudicate on individual applications, along with engaging in constitutionality review.

The power to examine individual applications has entrusted the Court with identifying and redressing violations of fundamental rights and freedoms resulting from public acts, actions, and negligence. The Turkish Constitutional Court has embraced and successfully fulfilled this mission, particularly in recent years.

Article 17 of the Turkish Constitution states that everyone has the right to protect and improve his/her corporeal and spiritual existence. Therefore, it prohibits penalties or treatment incompatible with human dignity. This provision serves as a clear guarantee of human dignity. The Court has rendered many decisions on individual applications under this provision that is directly related to human dignity. Another provision in the Constitution further safeguards the integrity of one's physical and spiritual being, affording protection even during times of war, mobilization, or states of emergency.

In the Court's view, these constitutional provisions mandate that the State not only refrains from acts that infringe upon human dignity but also imposes an active duty to investigate such acts thoroughly and punish those responsible in case of an alleged violation. This provision entails strict scrutiny of interferences with dignity and rights of individuals under the State's control, in particular to protect such persons against abuses.

Distinguished Colleagues,

The Court has delivered numerous decisions under Article 17, addressing a wide range of issues. We have issued several judgments finding a violation of rights in cases of violence against women, as well as the State's positive obligations in this regard. The question of whether a woman can keep her maiden name after marriage has been assessed within the scope of the right to protect and improve one's physical and spiritual existence. Consequently, requiring a woman to adopt her husband's surname after marriage was found to constitute a violation. Furthermore, the Court has issued numerous decisions concerning the disabled individuals under the prohibition of discrimination. For instance, a visually impaired individual applied for a loan at a bank but was unable to sign a statement affirming, "I have read and understood the documents" due to his disability. Instead of accommodating this individual's needs, the bank officials kept him waiting for an extended period before ultimately turning him away. The Court found a violation also in this case. While many more violation judgments deserve attention, our limited time today prevents us from exploring them all.

In brief, the Turkish Constitutional Court considers that human dignity constitutes the very essence of the rights and justice-centred constitutional interpretation. Human dignity encompasses the basic requirement that individuals lead their lives as free and autonomous beings (the Court's decision, no. E. 2020/13, K. 2020/68, 12 November 2020). This necessitates the realisation of human dignity within a legal framework founded on rights and justice.

Esteemed Colleagues,

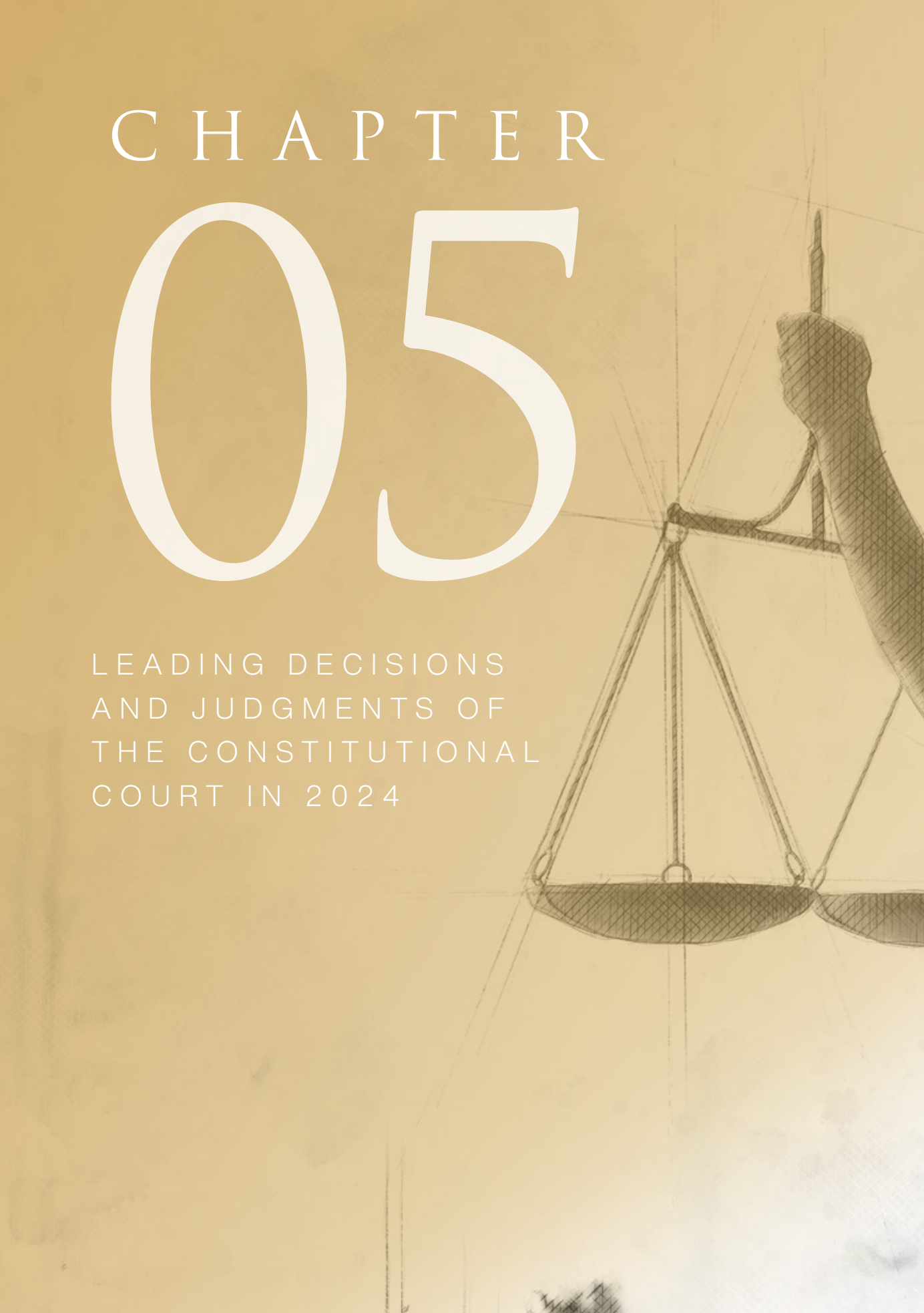
For the common future of humanity, it is necessary to establish a just and ever-lasting peace in every corner of the world. This endeavour calls for a swift return to our moral values and justice and ensuring justice to prevail globally.

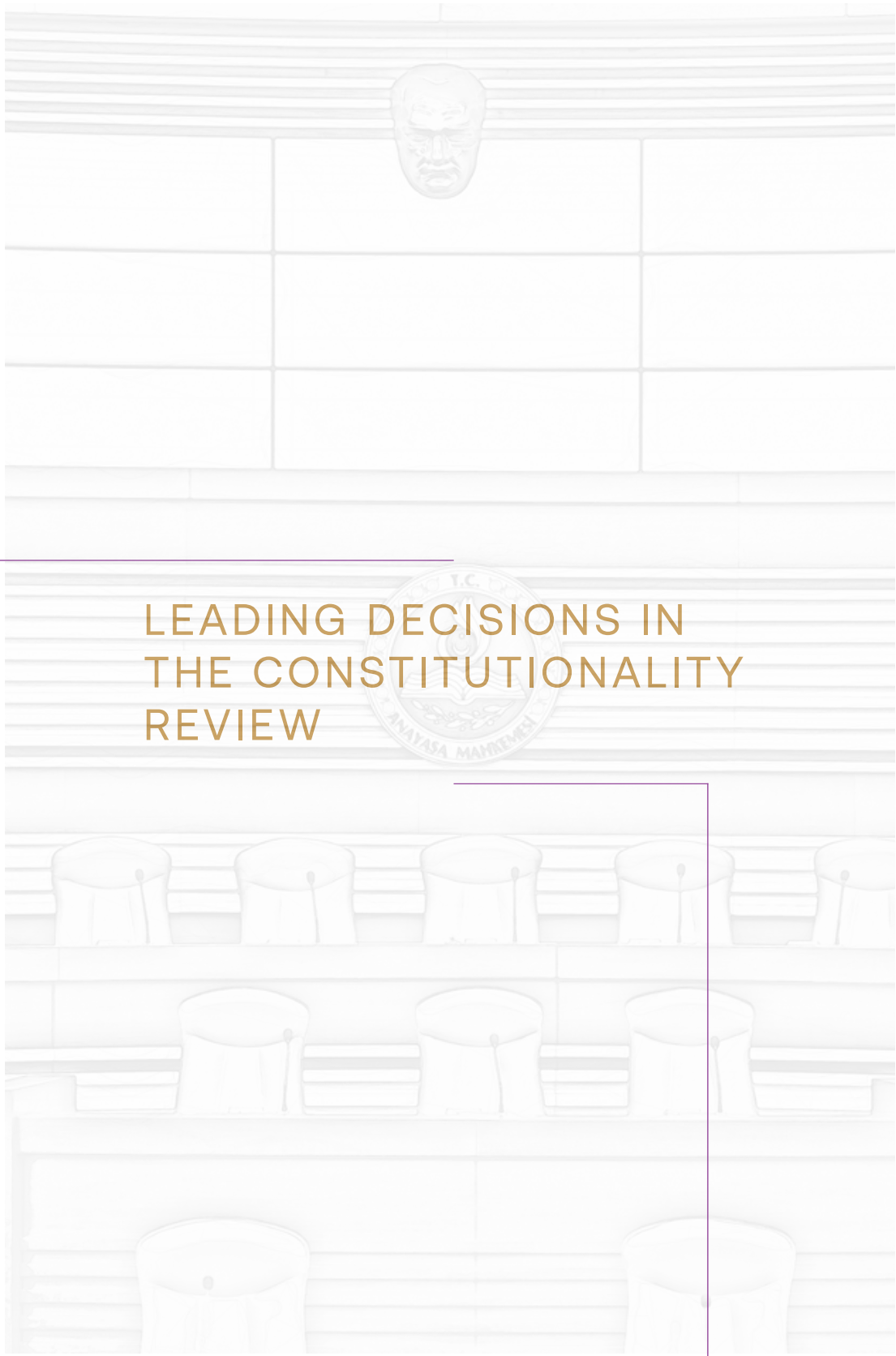
Concluding my remarks, I sincerely hope for the cessation of all actions that infringe upon human dignity in our world. On behalf of myself and the esteemed members of the Turkish Constitutional Court, I extend my warmest greetings to each of you, wishing you a long, healthy and peaceful life with all your loved ones.

Thank you for your attention.

CHAPTER 05

LEADING DECISIONS AND JUDGMENTS OF THE CONSTITUTIONAL COURT IN 2024





LEADING DECISIONS IN THE CONSTITUTIONALITY REVIEW

Press releases of the leading decisions in the constitutionality review are available at:

https://www.anayasa.gov.tr/en/news/constitutionality-review/

DECISION ANNULLING CERTAIN PROVISIONS AMENDING THE LAW ON THE REGULATION OF INTERNET BROADCASTS AND THE PREVENTION OF OFFENCES COMMITTED THROUGH SUCH BROADCASTS

E.2020/76, K.2023/172, 11 October 2023

A. Review of the Amendment to Certain Phrases in Article 8 of Law no. 5651 by Article 4 of Law no. 7253

The contested provisions envisage the replacement of the phrase *"... blocking of access..."* laid down in the first sentence of Article 8 § 4 of Law no. 5651 as *"...removal of the disputed content and/or blocking of access thereto..."*, and the phrase *"...access provider..."* laid down in the first sentence of Article 11 of the same Law as *"...the relevant content, service, and access provider, ..."*.

Article 38 of the Constitution does not impose an absolute prohibition on the taking of various measures in relation to a person suspected of committing a criminal offence. There is no constitutional impediment to the implementing of certain judicial and administrative measures against such people. However, the applied measure must be of a temporary nature, which is to be imposed by virtue of an ongoing criminal proceeding. Measures of a definitive nature, which are completely detached from criminal proceedings, undermine the presumption of innocence for giving rise to being regarded as guilty in the absence of a criminal court's decision.

It appears that the measure envisaged in the contested provisions is of a final nature, which is applied independently of criminal proceedings in case of finding of an offence by the Head of the Information Technologies and Communications Authority ("the Head"). It is also evident that the impugned measure could not be subject to a judicial review during the criminal proceedings initiated in connection with the alleged offence forming the basis of the administrative measure imposed by the Head. In addition, although the proceedings do not result in a conviction, the measure continues to remain in effect. Under these circumstances, the Court has concluded that the impugned process has rendered dysfunctional the safeguard prescribing that no one shall be treated as guilty of a crime in the absence of a final court decision.

The Court has accordingly considered that the order envisaging the removal of a disputed content, which constitutes a measure of final nature, on the basis of an alleged offence found by an administrative authority in the absence of a final court decision -whereby it is found established that the acts qualified as an offence under criminal codes have been committed-, and the imposition of an administrative fine if removal order is not enforced, are in breach of the presumption of innocence.

Consequently, the contested provision has been found unconstitutional and therefore annulled.

B. Review of the Amendment to Article 9 of Law no. 5651 by Article 5 of Law no. 7253

The contested provisions envisages the amendment of the phrase *"....blocking of access..."* in Article 9 § 5 of Law no. 5651 as *"... removal of the disputed content and/or blocking of access ..."*; the phrase *"...blocking of access..."* in the first sentence of the amended Article 8 § 9 as *""... removal of the disputed content and/or blocking of access..."*, and the phrase *"...individual responsible..."* in subparagraph 11 of paragraph 10 added subsequent to paragraph 9 as *"...those responsible for relevant content, service, and access providers..."*.

Since the contested provisions allow for the removal of the disputed content of internet broadcasts and/or *blocking* of access thereto, they impose restrictions on the freedom of expression, as well as on the freedom of the press in cases when the given broadcast may be a content falling into the scope of online journalism. Article 13 of the Constitution entails that such a restriction must be prescribed by law and must be compatible with the grounds for restriction enumerated in the Constitution, the requirement of a democratic society, as well as with the principle of proportionality.

The Court has established a large volume of jurisprudence on the alleged interferences with the freedoms of expression and the press arising from Article 9 of Law no. 5651, which were brought before it through individual application mechanism. In its judgment *Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others* ([Plenary], no. 2018/14884, 27 October 2021), the Court has assessed the procedure introduced through the contested provisions. It has underlined that, as to the application of Article 9, the magistrate judges adjudicated the cases without carrying out adversarial proceedings and demonstrating the need for a pressing and immediate response to eliminate the impugned act. According to the Court, the magistrate judges failed to strike a fair balance between the competing rights; and the reasoned decisions contain general statements without paying regard to the particular circumstances of the given case. The Court has further observed that the relevant authorities failed to sufficiently demonstrate why the impugned broadcasts blatantly infringed the personal rights. The Court has indicated that it is also the same case for the decisions rendered upon appeals against the magistrate judges' decisions. It has accordingly concluded that the uncertain nature of the scope and extent of Article 9 has granted a wide margin of appreciation to the judicial authorities, and that given the present cases in the individual applications before the Court, the challenges against decisions issued under Article 9 would hardly provide a prospect of success.

Besides, it appears that the contested provisions do not provide for gradual restriction of access to any online content in response to infringements on personal rights. The restriction imposed under the contested provisions indefinitely denies access as of the date of the decision to a certain online content by preventing access thereto within the borders of a certain country. Therefore, the contested provisions constitute a severe interference with the freedoms of expression and the press. The procedure introduced through the provisions must not be employed in cases where there are other alternative methods to combat harmful online content. In this sense, the Court has held that the contested provisions failed to offer procedural safeguards capable of precluding arbitrary acts and actions by means of narrowing the margin of appreciation enjoyed by the State authorities. The Court has also concluded that the provisions do not contain safeguards to ensure the delivery of a proportionate decision which is compatible with the requirements of a democratic society.

Consequently, the contested provisions have been found unconstitutional and therefore annulled.

DECISION DISMISSING THE REQUEST FOR ANNULMENT OF THE PROVISION STIPULATING THE IMPRISONMENT OF THOSE WHO DISSEMINATE FALSE INFORMATION THAT POTENTIALLY DISRUPTS THE PUBLIC PEACE

E.2022/129, K.2023/189, 8 November 2023

CONTESTED PROVISION

The contested provision stipulates that those who disseminate false information concerning the internal and external security of the country, public order and public health, with the sole purpose of creating panic, fear or anxiety among the people, which potentially disrupts the public peace, shall be sentenced to imprisonment.

GROUND FOR THE REQUEST FOR ANNULMENT

It was maintained in brief that the contested provision amounted to a severe interference with the freedom of expression; that the notion "false information" was vague and might lead to unforeseeable consequences in terms of the interpretation and application of the provision; that the Turkish legal system already provided other means capable of combatting misinformation likely to disrupt the public order, such as blocking of internet access and application of criminal provisions; and that the sanction prescribed for the impugned offence allowed for detention, which could create a chilling effect. The contested provision was therefore claimed to be unconstitutional.

THE COURT'S ASSESSMENT

The Court has observed that the contested provision has been formulated in a sufficiently clear and precise manner, specifying -beyond any doubt- the objective and subjective elements of the offence, the nature and severity of the offence, and the aggravated forms of the offence, which therefore complied with the principle of legality.

Freedom of expression constitutes one of the fundamental pillars of a democratic society, serving as an essential precondition for societal and individual development. A democratic society thrives on the existence of free and original thoughts, which can only be achieved by ensuring a healthy flow of information. Driven by technological developments, the speed of information dissemination has significantly increased. While this development brings numerous positive aspects, the fact that false information replaces the truth adversely affects the individuals' ability to form authentic opinions. In this respect, it is apparent that imprisonment of individuals who disseminate false information concerning the internal and external security of the country, public order and public health, with the sole purpose of creating panic, fear or anxiety among the people, which potentially disrupts the public peace, contributes to preserving public peace and thus preventing the disruption of public order. Therefore, it is evident that the provision serves the legitimate aim of maintaining and ensuring public order and security.

In addition, the dissemination of false information that potentially disrupts the public peace may jeopardise significant public interests related to the internal and external security of the country, public order and public health. Moreover, false information offers no reasonable contribution to public debates. It has therefore been considered that the contested provision corresponds to a pressing social need.

However, imposition of punishment for disseminating false information concerning the internal and external security of the country, public order and public health, with the sole purpose of creating panic, fear or anxiety among the people, which potentially disrupts the public peace will create a chilling effect on the disruption of public order and security. Accordingly, the contested provision cannot be said to be unsuitable for achieving the legitimate aim of maintaining and ensuring public order and security. Furthermore, given the nature of the impugned regulation, it is evident that the imposition of punishment for the imputed act is based on objective and reasonable grounds, which renders the contested provision necessary in terms of achieving the legitimate aim pursued.

In criminal law, the objective and subjective elements of an offence must coexist for an individual to be held criminally liable. In this regard, it is stipulated by the contested provision that the existence of information known by the perpetrator to be false is a prerequisite for the application of the provision. Additionally, such information must pertain to the country's internal and external security, public order, or public health. It is also stipulated by the contested provision that for the imputed act to constitute an offence, the said information, which pertains to the country's internal and external security, public order or public health, and is known by the perpetrator to be false, must also be publicly disseminated, potentially disrupting the public peace. The requirement that the false information be capable of disrupting the public peace is considered as one of the objective elements of the offence. In this regard, when evaluating whether an act constitutes an offence within the scope of the relevant provision, judicial authorities must substantiate its potential to disrupt public peace through evidence and/or facts. Lastly, the imputed act will constitute an offence, if it is committed by disseminating the information known by the perpetrator to be false, with the sole purpose of creating panic, fear or anxiety among the people. Accordingly, it is clear that the act defined in the relevant provision will not constitute an offence, if any of the aforementioned conditions are not met.

Furthermore, considering the nature and severity of the punishment prescribed for the basic form of the impugned offence, the aggravating factors based on the severity of danger, and the availability of appellate remedies, it has been concluded that the restriction imposed by the provision does not contradict the principle of proportionality. Therefore, the provision is compatible with the principle of proportionality.

Consequently, the contested provision has been found constitutional, and therefore, the request for its annulment has been dismissed.

DECISION REGARDING THE PROFESSIONAL LIABILITY BOARD AUTHORISED TO DECIDE ON THE RECOURSE OF COMPENSATIONS ARISING FROM MEDICAL PROCEDURES AND PRACTICES TO HEALTH PERSONNEL

E.2022/90, K.2023/201, 30 November 2023

CONTESTED PROVISION

The contested provision stipulates that the Personal Liability Board ("the Board") shall be authorised to decide, within one year, whether to recourse to the relevant person for the compensation already paid by the administration due to the medical procedures and practices related to the examination, diagnosis and treatment performed by physicians, dentists and other healthcare professionals serving in *public institutions and organisations* and *state universities*, as well as the amount of recourse, taking into account whether the relevant person engaged in malpractice and the nature of the fault.

GROUND FOR THE REQUEST FOR ANNULMENT

It was maintained in brief that the Board cannot be impartial, given the appointment procedure and its composition, which was in breach of the right to a fair trial and right to an effective remedy of physicians and other healthcare professionals as well as aggrieved parties. The contested provision was therefore claimed to be unconstitutional.

THE COURT'S ASSESSMENT

A. As regards the phrase "*Public institutions and organisations...*"

The Constitution does not designate the authority to decide on recourse in terms of compensation liability on account of the negligent and wrongful acts on the part of public officials in the performance of their duties. However, it is laid down in Article 40 of the Constitution that the authority to decide on recourse shall be conferred upon the State. Thus, there is no constitutional barrier to authorise another authority established by law, in the public interest, to decide on recourse, other than public institutions and organisations, administrative and financial autonomy of which is safeguarded by the Constitution.

In addition, it is obvious that the decisions of the Board are subject to judicial review, and therefore, the Board members will be held liable in monetary and administrative terms, if it is determined by a final court decision that they have acted in breach of their duties. Furthermore, the procedure of recourse is not directly related to the person who has sustained damage as a result of a given act, and the lack of a recourse decision does not bear any negative consequences in terms of the aggrieved party's right to compensation.

Consequently, the contested provision has been found constitutional, and therefore, the request for its annulment has been dismissed.

B. As regards the phrase "*...state universities...*"

Scientific, administrative and financial autonomy of universities are *sine qua non* for their independence, and any interference with either of these elements will affect other aspects as well. Thus, the authority to decide on recourse to the relevant public official in the matters specified in the contested provision should be considered within the scope of the administrative and financial autonomy of universities.

As specified in Article 130 of the Constitution, the administrative autonomy in constitutional terms does not grant unlimited administrative authority to universities. It is explicitly specified therein that the central administration is authorised to supervise and inspect universities. It is also laid down in Article 130 § 8 that the budget of universities shall be prepared by the universities themselves, and thus, the authority to make decisions on financial matters within constitutional boundaries rests with the universities. In the same vein, the state universities themselves are undoubtedly authorised to decide on the recourse of the compensation paid out of their own budget.

However, administrative tutelage is not of a general but an exceptional nature, and it must be exercised within the limits set by the law. The authorities exercising administrative tutelage may cancel, approve, postpone, grant permission for, request reconsideration of, and rectify the acts of decentralised institutions. They may also bring an administrative action against the bodies of the latter. Nevertheless, administrative tutelage does not, in principle, authorise the central administration to make executive decisions, substituting itself for decentralised institutions.

Accordingly, the establishment of a Board, in substitution for the universities, which is authorised to make decisions that may directly have a bearing on the budget preparation authority of the universities with administrative and financial autonomy is incompatible with the limits of the tutelage of the central administration. It has therefore been concluded that the contested provision does not serve the public interest.

Consequently, the contested provision has been found unconstitutional and therefore annulled.

DECISION ANNULLING THE PROVISIONS REGULATING THE MANNER AND DATE OF EXPIRY OF THE COMPULSORY LIABILITY INSURANCE FOR VEHICLES IN CASE OF THEIR TRANSFER

E.2023/130, K.2024/17, 23 January 2024

CONTESTED PROVISION

The contested provisions stipulate that the insurer may terminate the liability insurance contract within fifteen days as of the notification by the former owner of the vehicle of its transfer and that the contract will be valid for further fifteen days after the termination date.

GROUND FOR THE REQUEST FOR ANNULMENT

It was maintained in brief that although the owner's right to property over the vehicle ceased once the vehicle was sold, the liability arising from the insurance contract would persist under the contested provisions and therefore, the individual might be held liable for paying compensation even though she/he had no negligence. In this respect, it was further argued that holding someone accountable for an act or negligence he/she had not committed violated the right to property. In addition, it was asserted that the insurance contract was a consumer transaction and that the lack of clarity about the termination of the contract and leaving the discretion in this regard to the insurer contradicted the state's obligation to safeguard consumer rights. The contested provisions were therefore claimed to be unconstitutional.

THE COURT'S ASSESSMENT

The contested provisions regulate how and when the contract between the insurance company and the former owner of the insured vehicle will be terminated in the event of transfer of the ownership of the said vehicle. These provisions confer discretionary authority upon the insurer to terminate the contract following the owner's notification, to the insurer, of the said transfer and stipulate that the contract shall remain legally effective and bear legal consequences for a certain period of time, even after the mutual declaration of intent by the parties to terminate it. Hence, the provisions restrict the freedom of contract safeguarded under Article 48 of the Constitution.

Once the vehicle is sold, the former owner's physical and legal control and responsibility over the vehicle ceases. In addition, the former owner neither bears any supervisory obligation towards the new owner nor possesses the authority or power to control or means to direct the new owner's actions. Holding the former owner liable for the actions of the new owner that might result in harm to third parties and fall entirely outside the former owner's control, constitutes a severe interference. Imposing such a severe burden on the former owner can only be justified if no more lenient alternative measures are available. In this respect, the Court has assessed whether the continuation of the legal obligations of the former owner and the insurance company, as the contracting parties, for a certain period of time pursuant to the contested provisions

constitutes a measure of last resort and whether a less restrictive measure on the freedom of contract could be implemented. The Court has observed that no constitutional impediment exists preventing the legislator from enacting a regulation requiring the new owner to obtain compulsory liability insurance in the registration of the vehicle or completion of the necessary documentation process following its sale or transfer. The Court has further concluded that it is not necessary to hold an individual liable for the actions of persons over whom they cannot exercise legal or physical control.

In this regard, the Court has determined that the contested provisions allowing the insured party, who has relinquished all control and supervisory authority over the vehicle upon its transfer, to be held liable for damages caused to third parties by the new owner during the term of the contract or even for fifteen days after the termination of the contract are not necessary. In light of these considerations, the Court has found that the pursued aim could be reached with less restrictive measures. Thus, the Court has concluded that the contested provisions infringed upon the principle of proportionality.

Consequently, the contested provisions have been found unconstitutional and therefore annulled.

DECISION ANNULLING THE PROVISION CONCERNING CONDITIONS TO FILE AN ACTION FOR RENUNCIATION OF PATERNITY BY THE ALLEGED BIOLOGICAL FATHER

E.2023/135, K.2024/18, 23 January 2024

CONTESTED PROVISION

The contested provision stipulates that a person claiming to be the biological father may file an action for renunciation of paternity prior to the expiration of the statutory period only in cases where the legal husband passes away, is declared missing, or permanently loses mental competence and within one year from the date the claimant become aware of the birth of the child, the husband's death, his permanent loss of mental competence, or him being missing.

GROUND FOR THE REQUEST FOR ANNULMENT

It was maintained in brief that restricting the right of the alleged biological father to file an action for renunciation of paternity based on particular conditions and imposing time constraints in this sense contradicts the state's fundamental aims and obligations; infringes upon the principle of the rule of law; and is incompatible with the principle of equality and the right to a fair trial. The contested provision was therefore claimed to be unconstitutional.

THE COURT'S ASSESSMENT

The contested provision conditions the initiation of an action for the renunciation of paternity by the alleged biological father on certain circumstances beyond their control. Accordingly, for a person claiming to be the father to file an action for the renunciation of paternity, the husband must have passed away, been declared legally missing, or permanently lost his mental capacity before the expiration of the statutory period. In the absence of these conditions, the person claiming to be the father is precluded from initiating an action for the renunciation of paternity. In this respect, the Court has concluded that this situation prevents the alleged biological father from effectively seeking his right, thereby undermining his right to an effective remedy.

In addition, the Court has assessed that in the absence of conditions required for the challenge of paternity by the alleged biological father, the possibility of initiation of such case by the legal guardian of the child or by the child himself/herself after reaching lawful age does not offer any safeguards for the alleged biological father within the scope of the right to an effective remedy. As a matter of fact, the right to an effective remedy entails the ability of the person claiming to be a father to raise his claims of alleged violations of the right to respect for private life before judicial authorities in his capacity as a plaintiff.

In brief, the Court has concluded that the provision conditioning the ability of the alleged biological father to raise his allegations as to the disestablishment of the presumption of paternity on particular circumstances outside of his control infringes upon the right to an effective remedy within the scope of the right to respect for private life.

Consequently, the contested provision has been found unconstitutional and therefore annulled.

DECISION ANNULLING THE PROVISION ENVISAGING THE TRANSFER OF A CERTAIN AMOUNT OF REVENUES OF THE LOCAL ADMINISTRATIONS, WITHOUT RECIPROCATION, TO THE CENTRAL AUTHORITY

E.2023/100, K.2024/32, 1 February 2024

CONTESTED PROVISION

The contested provision envisages that the entities operating the facilities, the substantial repair of which shall be undertaken by the Ministry of Transport and Infrastructure ("Ministry"), shall be obliged to deposit an amount equal to 10% of their annual gross revenue to the State Treasury for the costs of substantial repairs following the transfer of the facilities that have been already, and will be, transferred.

GROUND FOR THE REQUEST FOR ANNULMENT

It was maintained in brief that the contested provision restricted the right to property by means of imposing obligations on the public administrations, that the concepts *"substantial repair"* and *"gross revenue"* used in the provision were ambiguous, and that it lacks clarity regarding the calculation of the amounts to be paid to the State Treasury. The contested provision was therefore claimed to be unconstitutional.

THE COURT'S ASSESSMENT

The contested provision, suitable for attaining the aim of ensuring the sustainability of the facilities transferred to local administrations, imposes an obligation to make an annual payment of an amount equal to 10% of the gross revenue to the central administration so as to secure the payment for the costs of the substantial repair works to be undertaken by the central administration to prevent any setbacks in the activities of these facilities. It thus appears that the contested provision allows for the transfer of a certain amount of the revenues of the local administrations, without receiving any corresponding service, to central administration in disregard of the probability that there may be no need for substantial repair on an annual basis and that the actual cost of substantial repair may be lower than the indicated ratio. Therefore, it is evident that the actual cost of the substantial repair works to be performed by the Ministry is not taken into consideration in determining the amount to be paid to the State Treasury. Nor are there any mechanisms for offsetting in cases where the cost of substantial repairs to be performed following the payment to the State Treasury is less than 10% of the gross revenue. Therefore, the Court has concluded that the contested provision does not meet the criterion of being necessary to achieve the pursued aim.

The Court has accordingly concluded that the provision -envisaging the annual transfer, on a regular basis, to the State Treasury of a certain part of the revenues of the local administrations in return for substantial repair works of the ports and other facilities transferred to the local authorities and municipalities, which will be performed by the Ministry, in disregard of the actual costs of such repairs- constitutes a disproportionate interference with the financial autonomy of the local administrations and falls foul of Article 127 of the Constitution.

Consequently, the contested provision has been found unconstitutional and therefore annulled.

DECISION ANNULLING THE PROVISION CONDITIONING DIVORCE DUE TO THE NON-RECONCILIATION OF SPOUSES UPON THE FULFILMENT OF CERTAIN CRITERIA

E.2023/116, K.2024/56, 22 February 2024

CONTESTED PROVISION

The contested provision prescribes that in the event of the dismissal of a divorce proceeding on any ground, and should a period of three years elapse from the date on which the dismissal decision becomes final without the re-establishment of marital cohabitation for any reason, the marital union shall be deemed to have suffered irreparable harm. Consequently, a decree of divorce shall be issued upon the petition of either spouse.

GROUND FOR THE REQUEST FOR ANNULMENT

It was maintained in brief that the contested provision was unconstitutional on the grounds that the prescribed temporal requirement imposed an unjust restriction by subjecting individuals to prolonged delays in obtaining a divorce, thereby undermining the constitutional safeguard of inalienable and inviolable fundamental rights and freedoms. Furthermore, it was claimed that the provision incentivised individuals to engage in extramarital relationships due to the extended timeframe, thereby infringing upon the constitutional right to protect and improve one's corporeal and spiritual existence and contravening the state's constitutional duty to safeguard the institution of family.

THE COURT'S ASSESSMENT

The Court has observed that the provision, prescribing a three-year period subsequent to the finalisation of a decision dismissing a divorce proceeding before the marital union could be deemed to have irretrievably broken down, aimed to uphold and protect the family institution, recognised as the cornerstone of Turkish society.

The law-maker, in the exercise of its regulatory discretion, possesses the authority to establish procedural and substantive provisions governing divorce, including the criteria for determining the irretrievable breakdown of marital unions. However, this discretionary power must not be exercised in a manner that unreasonably impedes the ability of individuals to obtain a divorce or compels them to endure the continuation of a marital relationship against their will for disproportionately lengthy durations.

The contested provision stipulates that the issuance of a divorce decree is contingent upon the prior dismissal of an earlier divorce proceeding. Considering that written trial procedures are applied in divorce cases, it is evident that the dismissal of such cases cannot be concluded within a short period. Furthermore, under the provision, the marital union can be deemed irretrievably broken due to the absence of reconciliation only if the dismissal decision has become final. Given that the parties may seek legal remedies against the dismissal decision, it is evident that the process of finalisation of the decision may also require a considerable amount of time. Additionally, the provision requires that three years elapse following the finalisation of

the dismissal decision for the marital union to be deemed irretrievably broken due to the absence of reconciliation. When the process prescribed by the provision is assessed as a whole, it is apparent that, in cases where reconciliation cannot be re-established, the parties are deprived of the opportunity to obtain a divorce decree for an unreasonable length of time. Accordingly, the provision imposes an excessive burden on those who are unable to dissolve their marital union despite the absence of reconciliation over an extended period.

In light of these considerations, it has been concluded that the contested provision, which fails to strike a reasonable balance between the right to respect for private and family life and the aim of protecting the institution of family, falls contrary to the *commensurateness* sub-principle within the scope of the principle of *proportionality*.

Consequently, the contested provision has been found unconstitutional and therefore annulled.

DECISION ANNULLING THE PROVISION DEEMING ADEQUATE THE EXERCISE OF THE ACCUSED'S RIGHTS BY THE DEFENCE COUNSEL IN CASE OF A RECLASSIFICATION OF THE OFFENCE

E.2023/163, K.2024/57, 22 February 2024

CONTESTED PROVISION

The contested provision, Article 226 § 4 of the Code of Criminal Procedure no. 5271, regulates the procedures to be followed in case of a reclassification of the offence during the course of the proceedings. It is provided therein that, where appropriate, written notification shall be given to the defence counsel, who shall also enjoy the rights granted to the accused.

GROUND FOR THE REQUEST FOR ANNULMENT

It was maintained in brief that the contested provision mentions written notifications but the paragraph it refers to lacks any mention of notification. In addition, while the provision refers to the rights granted to the accused, it fails to clarify the scope of the relevant rights. The lack of specificity regarding the rights to be exercised by the defence counsel was alleged to contravene the principle of legal certainty. It was further claimed that the provision substitutes the legal assistance of the defence counsel for the defence of the accused, thereby rendering the provision unconstitutional.

THE COURT'S ASSESSMENT

In certain cases, the legal assessment of the offence by the public prosecutor may not align with the assessment of the trial court. Additionally, the public prosecutor may alter its own legal characterisation of the offence during the proceedings. In such cases, the offence may be requalified. When the offence is reclassified during the proceedings, the accused must be notified of this requalification to modify their defence accordingly and present it to the court. Such notification is a prerequisite of the right to be informed of the accusation and is integral to ensuring a fair trial in accordance with the principles of equality of arms and adversarial proceedings. Therefore, in instances where the offence is reclassified, the accused must be afforded the right to be informed of the requalification, as well as the associated rights to be present at the hearing and to defend themselves. However, under the contested provision, it is possible for the defence counsel to be notified of the requalification, without any notification being made to the accused. In other words, the accused may remain unaware about the reclassification of the act for which they are being held liable or the sentence that may be imposed, while the proceedings may be finalised based on the defence submitted by the defence counsel, leading to any judicial decision, including a conviction.

In the criminal procedural law, it should be noted that although right to fair trial safeguards of the right to be personally present at the hearing and to submit one's own defence can be waived by the accused, this is not possible in terms of the *initial defence stage*. However, without consideration of this point, it is deemed sufficient at the latter stage for the defence counsel alone to conduct the *additional defence*, without any examination of wheth-

er the accused has waived this right. However, it would be rather difficult to suggest that the interests safeguarded by the right to defence against a reclassified offence during the proceedings are of lesser significance than those associated with the defence against the initial offence. In fact, in circumstances where the penalty is aggravated or a conviction may be ordered for a more serious offence, much more interests safeguarded by the additional right to defence may be at stake.

Failure to inform the accused of a reclassification of the offence, and thus preventing him from participating in the proceedings, effectively deprives the person who has the best knowledge of the facts of the case of any opportunity to influence the court's decision. Moreover, it appears that the contested provision, which allows the proceedings to be concluded without hearing the accused's defence on the requalified offence, provides no safeguard for the accused to request a review by claiming that they have not waived these rights.

In this regard, it has been found that the provision deprives the accused of any opportunity to influence the court's decision, and therefore imposes a disproportionate restriction on the right to a fair trial in terms of pursuing a legitimate aim.

Consequently, the contested provision has been found unconstitutional and therefore annulled.

DECISION DISMISSING THE REQUEST FOR ANNULMENT OF THE PROVISION MAKING CONSENSUAL DIVORCE CONTINGENT UPON THE ELAPSE OF A CERTAIN PERIOD

E.2023/109, K.2024/113, 30 May 2024

CONTESTED PROVISION

The contested provision stipulates that in cases where the spouses jointly apply to the court seeking the dissolution of their marriage, or either of them consents to the action for divorce filed by the other, the divorce may be granted on grounds of irretrievable breakdown of marriage only when a period of one-year elapses from the date of the marriage.

GROUND FOR THE REQUEST FOR ANNULMENT

It was maintained in brief that the contested provision set aside the free will of the spouses and made it excessively difficult to exercise fundamental rights and freedoms and to realise the equality principle, that the provision led to the *de jure* continuation of the marriage that had been *de facto* terminated by the parties, and in cases where the one-year period has not yet elapsed, it compelled the spouses to resort to different procedures for instituting divorce proceedings and to undergo lengthy proceedings. It was thus claimed to be unconstitutional.

THE COURT'S ASSESSMENT

It is evident that the provision - which conditions the spouses' ability to dissolve the marriage by mutual agreement upon the elapse of one-year period following the marriage- is intended to preserve the family institution, which is foundation of the Turkish society. In this regard, the contested provision has a legitimate aim in the constitutional sense.

It appears that the one-year time-limit required for granting divorce on mutual consent of spouses will contribute to the preservation of family institution. Therefore, the Court has considered that the condition requiring the elapse of at least one year, which is laid down in the contested provision, is suitable for achieving, to the extent possible, the legitimate aim of preserving family.

Given the constitutional significance of the family institution, the legislator enjoys a wide margin of appreciation with regard to regulating the principles and procedures as to divorce. In areas where the legislator exercises wide margin of appreciation, it is insufficient to merely demonstrate the existence of less lenient alternative means so as to challenge the necessity of the employed means that restrict constitutional or legal rights or place burdens on individuals. It must also be established that the given means impose an explicitly excessive burden on individuals. Accordingly, the Court has concluded that making the acceptance of the presumption that the marriage has irretrievably broken-down conditional upon the elapse of one year falls within the legislator's margin of appreciation and meets the criterion of being necessary.

The irretrievable breakdown of marriage is enumerated as one of the

grounds for divorce in Article 166 of the Turkish Civil Code no. 4721, which stipulates that spouses may divorce on this ground in case of their mutual consent to the dissolution of their marriage. However, it has been considered that the legislator intends to preclude spouses from filing an action for divorce without the elapse of a certain period of time upon their marriage. Such a suspensive effect will apparently encourage the spouses to ponder their decision to divorce. Along with this procedure whereby the spouses may get divorced on condition that they have been married for a period of at least one year, they may also file an action on any other grounds for divorce specified in the Code no. 4721.

In this sense, the Court has concluded that the impugned restriction imposed on the spouses' right to respect for their private and family life does not place a disproportionate burden on them.

Consequently, the Court has found the contested provision constitutional and accordingly dismissed the request for its annulment.

DECISION ANNULLING THE PROVISION STIPULATING THAT THE RESPONSIBILITY FOR THE EARTHQUAKE RESISTANCE OF A BUILDING ISSUED WITH A REGISTRATION CERTIFICATE RESTS WITH THE OWNER

E.2023/74, K.2024/141, 23 July 2024

CONTESTED PROVISION

The contested provision stipulates that the responsibility for the earthquake resistance of a building issued with a registration certificate rests with the owner.

GROUND FOR THE REQUEST FOR ANNULMENT

It was maintained in brief that the State had a positive obligation to create a healthy and balanced environment, and there was no legal regulation prescribing inspections as to whether a building issued with a registration certificate met certain standards ensuring the safety of life and property. It was further argued that despite the lack of such a regulation, the contested provision placed the responsibility for the earthquake resistance of the building on the owner, which was incompatible with the State's positive obligations. The contested provision was therefore claimed to be unconstitutional.

THE COURT'S ASSESSMENT

Given that a building registration certificate is issued by the incumbent administration upon declaration by the owner without any inspection, it is not determined, in practice, whether any building issued with a registration certificate complies with the applicable legislation regarding construction. In other words, the buildings that do not comply with the relevant legislation may also be issued with a registration certificate. Even though the incumbent administration may not have inspected whether the building is earthquake resistant while issuing the certificate, the responsibility of inspection, as a positive obligation imposed on the State, arising from the duty to protect the right to life, cannot be said to be set aside completely. Thus, the administration's obligation in this sense also remains to be in place even after the building registration certificate has been issued. Article 40 of the Constitution, in conjunction with Article 17 thereof, entails that the potential damages to life and physical integrity arising from the violation of the aforementioned obligation should be redressed.

It is stipulated in the contested provision that the responsibility for the earthquake resistance of buildings constructed in breach of the applicable legislation lies with the property owner, and the State will not be held liable for damages arising from the failure to perform the required inspection. Pursuant to this provision, in the event of any damage to life or physical integrity caused by a potential earthquake in buildings issued with registration certificate, the administration will not be held li-

able. Hence, a full remedy action to be brought by the parties against the administration, seeking compensation for the damages incurred, would have no prospect of success.

Exempting the administration from liabilities arising from the failure to inspect whether buildings issued with a registration certificate pose a risk to human life or are earthquake-resistant amounts to relieving the administration, by law, of its constitutional obligations. However, it is not legally permissible to eliminate the administration's constitutional obligations and the associated pecuniary responsibilities through statutory provisions.

The Court has concluded that the contested provision assigns the responsibility for ensuring the earthquake resistance of a building, which might be constructed in violation of the applicable legislation, to its owner. Thus, shielding the administration from compensation claims in a matter where its supervision and inspection are obligatory is incompatible with the requirements of the right to an effective remedy safeguarded by Article 40 of the Constitution. As a result, the aforementioned provision is in breach of the right to an effective remedy, in conjunction with the right to life safeguarded by Article 17 of the Constitution.

Consequently, the contested provision has been found unconstitutional and therefore annulled.

DECISION ANNULLING THE PROVISION CATEGORICALLY DEPRIVING PRIVATE LEGAL PERSONS OF LEGAL AID

E.2024/78, K.2024/164, 24 September 2024

CONTESTED PROVISION

The contested provision stipulates that associations and foundations in the public interest may be afforded legal aid only if their allegations or defences are justified and they are unable to partially or fully cover the necessary expenses without experiencing financial hardship. Thus, other legal persons are categorically excluded from the possibility of obtaining legal aid.

GROUND FOR THE REQUEST FOR ANNULMENT

It was maintained in brief that certain private legal persons' inability to benefit from legal aid pursued no legitimate aim and that such a restriction severely hinders, and in some cases even renders impossible, access to the court, thereby imposing a disproportionate restriction on the right of access to a court within the scope of the right to a fair trial. The contested provision was therefore claimed to be unconstitutional.

THE COURT'S ASSESSMENT

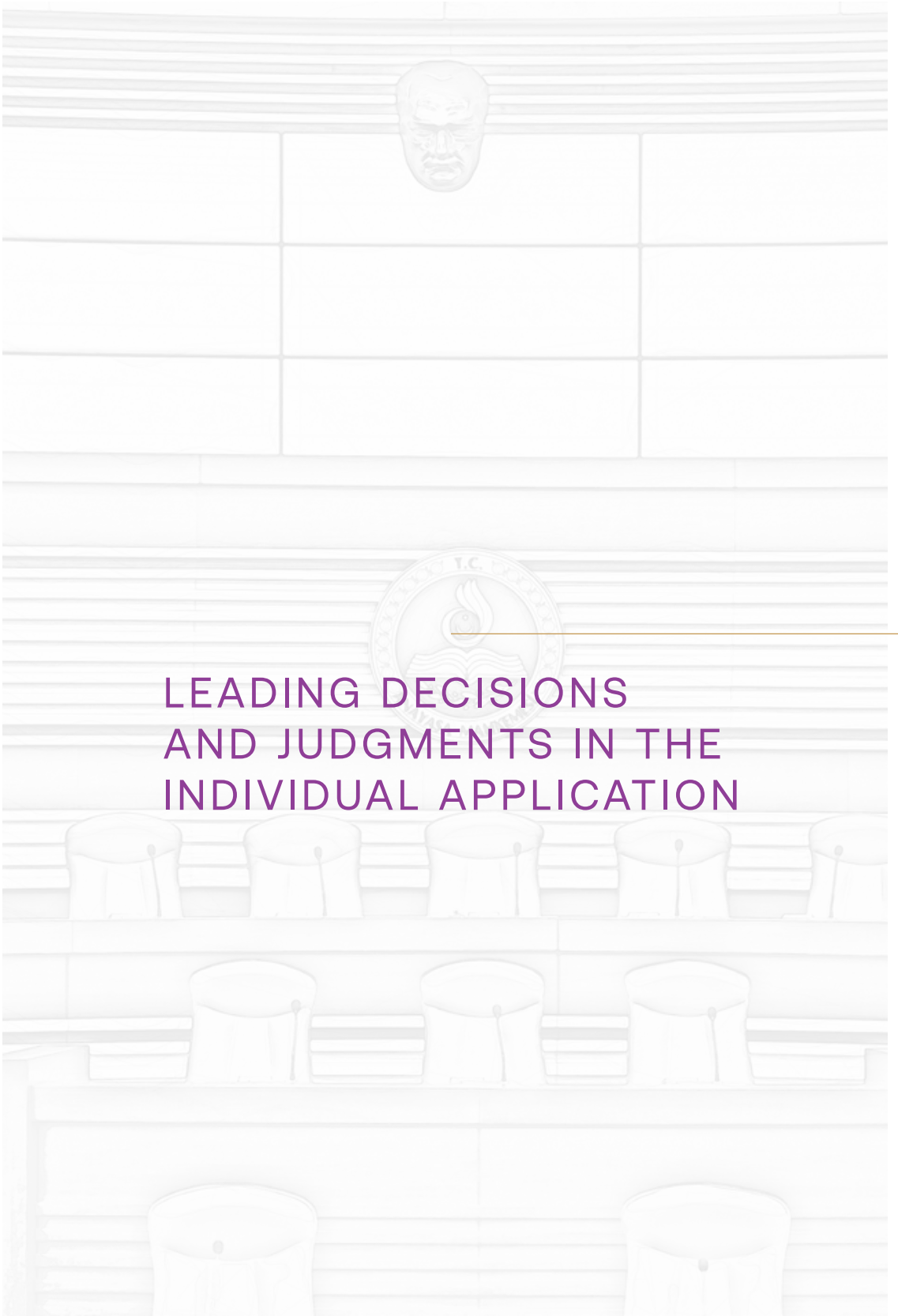
The contested provision limits the application of the legal aid mechanism, which is afforded to natural persons, solely to legal entities classified as associations and foundations serving the public interest, thereby excluding private legal persons from its scope of application. Depriving legal persons other than foundations and associations in the public interest of legal aid, which facilitates financially disadvantaged entities to raise their claims, submit their defence, initiate enforcement proceedings or request temporary legal protection, restricts their right of access to a court.

The Court examined, within the scope of the right of access to a court, an individual application filed by a private legal person –a corporation– upon rejection of its request for legal aid in an action for compensation (*Kemtaş Tekstil İnşaat Sanayi ve Ticaret A.Ş.* [Plenary], no. 2020/22192, 17 May 2023). In the relevant judgment, it is stated that private legal persons with legal capacity are imposed obligations and liabilities under the legal system and are enabled to submit their claims before the judicial authorities, exercising their active and passive capacity to sue. It is also specified therein that this situation may render it difficult, even impossible, for private legal persons that are unable to afford high litigation costs to institute proceedings. In addition, it is noted that there is no alternative regulation or judicial practice, other than the legal aid mechanism, capable of facilitating the bringing of an action by legal persons suffering financial constraints.

In the aforementioned judgment, the Court has stated that the exemption of private legal persons, who possess rights and obligations like natural persons under the legal system but unable to afford litigation costs, from such expenses is necessary to ensure a fair balance between benefits and burdens. Accordingly, the Court has found that the categorical prohibition arising from the law did not pursue a legitimate aim and concluded that the impugned interference with the applicant's right of access to a court was disproportionate.

With reference to its assessments in the aforementioned judgment, the Court has concluded that denial of legal aid to private legal persons other than foundations and associations in the public interest, despite meeting the legal requirements, solely on the grounds of their status as legal persons, does not pursue a legitimate aim, and that the restriction on the right of access to a court by the impugned provision is disproportionate.

Consequently, the contested provision has been found unconstitutional and therefore annulled.



LEADING DECISIONS AND JUDGMENTS IN THE INDIVIDUAL APPLICATION

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A. RIGHT TO PROTECT AND IMPROVE ONE'S CORPOREAL AND SPIRITUAL EXISTENCE

JUDGMENT FINDING A VIOLATION OF THE RIGHT TO PROTECT AND IMPROVE ONE'S CORPOREAL AND SPIRITUAL EXISTENCE DUE TO DISMISSAL OF THE REQUEST FOR A PREVENTIVE MEASURE

Nuriye Ayhan Altıner (no. 2020/1327), 4 October 2023

THE FACTS

The applicant complained that while she was serving as a neighbourhood representative during the organisation of a political party congress, she had been threatened in absentia by M.K. and R.T., members of the same political party. Upon the request of the Chief Public Prosecutor's Office for the adoption of a preventive measure pursuant to Law no. 6284 on Protecting Family and Preventing Violence against Women, the family court ruled for the implementation of a measure ordering M.K. and R.T. to refrain from threatening the applicant with violence, from engaging in insulting, humiliating or degrading language or behaviour towards the applicant, and from approaching to the applicant's residence, school or workplace. The decision further underlined that the measure would be in effect for three months and that non-compliance with the measure would result in preventive imprisonment. M.K. and R.T. expressed that they had not threatened the applicant and claimed that the conditions for ordering an interim measure had not been constituted. Having examined the appeal, the Family Court (appeal authority) held that the court's decision be quashed with final effect.

THE APPLICANT'S ALLEGATIONS

The applicant maintained that her right to protect and improve one's corporeal and spiritual existence had been violated due to dismissal of her request for a preventive measure on the grounds of alleged threat against her.

THE COURT'S ASSESSMENT

In the individual application form, the applicant stated that the threats directed against her had been merely based on the very fact that she was a woman, that the threats had constituted violence against women and that almost all of the statements such as "If you don't do it, this will be a bloodbath" were uttered by men. In addition, upon the applicant's complaint, an indictment was served against the persons involved, accusing them of having committed the offence of threat.

Law no. 6284 and the relevant international law explicitly acknowledge that violence against women consists of all forms of gender-based violence. Nevertheless, the family court held that the interim measure be lifted on the grounds that the application had not been related to *domestic violence* or *stalking*, but failed to provide any concrete explanation, assessment or grounds as to whether the threats made by the male persons against the applicant, who is a woman, were due to her sex and whether the act constituted a violence against women. In this regard, it is evident that the approach of the family court, which leads to the conclusion that circumstances other than domestic violence and

stalking, or all acts of violence against women committed in the non-domestic context, should be excluded from the scope of Law no. 6284, is in breach of constitutional safeguards.

Accordingly, the Court has concluded that the final decision failed to provide relevant and sufficient grounds as regards the applicant's right to the protection of her corporeal and spiritual existence. Although the applicant stated that she was threatened due to her sex, it has been concluded that the incumbent court had not acted in accordance with its positive obligations to adopt certain measures to protect the applicant as a victim of violence.

Consequently, the Court has found a violation of the right to protect and improve one's corporeal and spiritual existence.

B. RIGHT TO PERSONAL LIBERTY AND SECURITY

JUDGMENT FINDING A VIOLATION OF THE RIGHT TO PERSONAL LIBERTY AND SECURITY DUE TO THE JUDICIAL REVIEW OF DETENTION WITHOUT A HEARING

M.S. (no. 2020/15221), 5 October 2023

THE FACTS

The assize court (court) reviewed the applicant's detention on remand, within the scope the proceedings in which he was detained on remand for several offences enumerated in the Anti-Terror Law no. 3713, first over the case file on two different dates and then by holding a hearing on 6 March 2020, at the end of which it ordered the continuation of the applicant's detention on remand. Following the aforementioned hearing, the court, without waiting for the date of the next hearing, held a hearing *ex officio* where it adjourned the future hearings for an indefinite period of time within the scope of the measures taken against the pandemic. At the end of the hearing, which was held in the absence of the applicant and his defence counsel, the court once again ordered the continuation of the applicant's detention on remand. During the subsequent proceedings, the court reviewed the applicant's detention over the case file on different dates in accordance with its previous decision on which it insisted.

The applicant lodged an individual application on 14 May 2020. The court held a hearing on 2 June 2020 for the review of the applicant's detention. While the applicant's defence counsel attended the hearing in person, the applicant attended it via the Audio-Visual Information System ("the SEGBIS"). At the end of the hearing, the court again ordered the continuation of the applicant's detention on remand. The case has been still pending before the court of first instance on the date of examination of the applicant's individual application.

THE APPLICANT'S ALLEGATIONS

The applicant claimed that his right to personal liberty and security had been violated due to the review of his detention without being brought before a judge/court.

THE COURT'S ASSESSMENT

The regulations regarding the measures taken due to the pandemic included no amendment to the periods defined for the review of detention on remand. Thus, the review of the applicant's detention on remand must be carried out by holding a hearing every 90 days at the latest in accordance with the provisional Article 19 of Law no. 3713, which was added by Article 13 of Law no. 7145.

In the present case, the applicant appeared before a judge 2 months and 26 days after 6 March 2020 that was the date of the last hearing. Thus, it is obvious that the applicant's detention on remand was reviewed through a hearing held within the statutory period of 90 days, which is not explicitly in breach of the law. However, in the examination of the complaints regarding the duration of protection measures, the Court should not only take into consideration the periods specified by

law, but it should also make a constitutional assessment as to whether the periods specified by law or the period in a given case is reasonable. As a matter of fact, in its many judgments, the Court has made an assessment on the reasonability of the periods elapsed in given cases in their particular circumstances. On the other hand, in the constitutionality review of the provision relied on for the alleged interference in the present case, the Court concluded that the contested provision was incompatible with the safeguard envisaging that the claims and defences regarding detention on remand should be raised before a court within a reasonable time, thus annulling the provision finding it unconstitutional.

Although holding a hearing where parties attend in person may be inconvenient for the attendants and in terms of public health, holding hearings via SEGBİS cannot be said to be equally inconvenient. As a matter of fact, the applicable regulations stipulated no restriction on the holding of hearings via SEGBİS regarding detainees. It has also been observed that the applicant did not raise any objection against the holding of hearings via SEGBİS.

In conclusion, during the impugned period, the applicant could not verbally raise, before the judge/court, his objections to challenge his detention on remand, his claims regarding the content or characterization of the evidence adduced against him, his statements against the opinions and assessments in favour of or against him, as well as his requests for release. Therefore, it has been concluded that the review of the applicant's detention on remand for more than 2 months (2 months and 26 days) without holding a hearing did not comply with the principles of equality of arms and adversarial proceedings in the ordinary period.

Consequently, the Court has found a violation of the right to personal liberty and security.

JUDGMENT FINDING A VIOLATION OF THE RIGHT TO PERSONAL LIBERTY AND SECURITY DUE TO DISCIPLINARY DETENTION FOR DENYING TO TESTIFY

Yakup Güneş (no. 2019/15907), 19 March 2024

THE FACTS

The applicant, who was a guardian at a penitentiary institution, was indicted for membership of an armed terrorist organisation. The incumbent assize court sentenced the applicant to imprisonment and ordered the continuation of his detention on remand. The Adıyaman Chief Public Prosecutor's Office launched an investigation against M.Ş., who worked at the same penitentiary institution between 2009 and 2015, on the charge of membership of an armed terrorist organization. In his statement to the police, M.Ş. indicated that the applicant had also participated in the religious talks (*sohbet*) organised by H.K., who worked as a teacher at a private teaching institution, and identified the applicant and Mu.Ş. from photographs as the ones who had participated in the said talks. The applicant's subsequent appeal was rejected on the merits by the regional court of appeal that ordered the continuation of the applicant's detention on remand.

The Şanlıurfa Chief Public Prosecutor's Office ("the prosecutor's office"), conducting an investigation against Mu.Ş. for alleged membership of an armed terrorist organization, requested to hear the applicant as witness in the case of Mu.Ş. and H.K., via the Audio-Visual Information System ("SEGBİS") in line with M.Ş.'s statements and identifications. Although the applicant took an oath as a witness, he refused to testify. The prosecutor's office requested the 3rd Magistrate Judge to place the applicant in disciplinary detention on the grounds that he refused to testify despite his not being among the parties who could refrain from testifying. Upon the request of the prosecutor's office, the 3rd Magistrate Court took the applicant's statement via SEGBİS. Denying the content of the report issued by the prosecutor's office, the applicant stated that he exercised his legal right to refrain from testifying, since otherwise it might have consequences against him. The 3rd Magistrate Judge ordered the applicant's disciplinary detention for thirty days on the grounds that he had refrained from testifying in the absence of a legal ground, and it also ordered his immediate release if he testified. The 4th Magistrate Judge dismissed the applicant's appeal to the said decision. The applicant's subsequent appeal was also dismissed by the Court of Cassation, and his conviction became final.

THE APPLICANT'S ALLEGATIONS

The applicant claimed that his right to personal liberty and security had been violated, arguing that he had been subjected to disciplinary detention for being compelled to testify.

THE COURT'S ASSESSMENT

The right to remain silent and not to incriminate oneself is enshrined in Article 38 § 5 of the Constitution, entitled "*Principles relating to offences and penalties*" which provides "*No one shall be compelled to make a statement that would incriminate himself/herself or his/her legal next of kin, or to present such incriminating evidence*". This right is also one of the guarantees of the right to a fair trial laid down

in Article 36 of the Constitution. The legislative intent of Article 38 § 5 of the Constitution is to prohibit inhuman treatment and to leave no room for any form of treatment likely to constitute torture.

The prohibition laid down in the aforementioned provision also prevents those who are not yet under a criminal charge - for the risk of facing a criminal charge - or those who are already under a criminal charge -for the risk of facing a new criminal charge or supplementing existing charges- from making self-incriminating statements or adducing self-incriminating evidence. Therefore, pursuant to Article 38 § 5 of the Constitution, anyone, even if he/she is a witness, should not be compelled to give a statement in cases where his/her statement may constitute/result in criminal charges against him/her, or may add new charges to the existing ones, or may be used to prove them.

In the present case, on the date when the applicant was requested to be heard as a witness, his conviction had not been finalised yet. Considering that one of the grounds underlying the applicant's conviction was that he had invited the members of the organisation to the organisational meetings made under the guise of religious talks and collected money from them under the name of donation etc., that the applicant denied the accusations against him during the proceedings, and that the incident for which the applicant was requested to testify was related to the meetings the applicant had allegedly participated in, it is obvious that his statement as a witness might be used against him in the course of the ongoing proceedings. Moreover, the said statement may be relied on for a new criminal charge against the applicant. As a matter of fact, there is no legal arrangement in the Turkish legal system granting judicial immunity to the witness, thereby preventing the use of his/her statement during the ongoing criminal proceedings or the bringing of new charges against him/her.

Thus, it is incompatible with the requirements of the right to remain silent and not to make self-incriminating statements that a witness is compelled to testify despite ongoing charges or trials against him/her or facing disciplinary detention. Accordingly, in the present case, there was no legal obligation likely to be imposed on the applicant to testify as a witness before the prosecutor's office. Therefore, it has been concluded that the impugned interference with the applicant's right to personal liberty and security was devoid of a legal basis.

Consequently, the Court has found a violation of the right to personal liberty and security.

JUDGMENT FINDING NO VIOLATION OF THE RIGHT TO PERSONAL LIBERTY AND SECURITY DUE TO NON-DEDUCTION OF THE ENTIRE PERIOD OF CONDITIONAL BAIL FROM THE PRISON SENTENCE

Burhan Yaz (3) (no. 2021/7919), 29 May 2024

THE FACTS

The incumbent assize court ordered the applicant not to leave his residence (house arrest) within the scope of the ongoing proceedings, which remained in effect until the final hearing. Ultimately, the applicant was sentenced to imprisonment, and the sentence was upheld on appeal. The applicant requested that the period spent under house arrest be deducted from the prison sentence. The incumbent judge dismissed the applicant's request and his appeal was also dismissed. Thereupon, the applicant filed an individual application.

Following the individual application, the applicant re-submitted a petition to the incumbent judge, and half of the time the applicant was held under house arrest (45 days) was deducted from his imprisonment time.

THE APPLICANT'S ALLEGATIONS

The applicant claimed that his right to personal liberty and security had been violated, arguing that his request for deduction of the full period spent under house arrest from his prison sentence had been dismissed.

THE COURT'S ASSESSMENT

With the amendment made to Article 109 of the Code of Criminal Procedure no. 5271 by Law no. 7331, it is stipulated that every two days spent under house arrest shall be counted as one day when deducting from a prison sentence. In the present case, in accordance with the relevant amendment, 45 days —half of the 90 days spent by the applicant under house arrest— were deducted from his sentence. However, the applicant argued that the entire period spent under the house arrest should have been deducted therefrom.

In one of its judgments (*Esra Özkan Özakça* [Plenary], no. 2017/32052, 8 October 2020), the Court concluded that having regard to the nature and characteristics of the obligation not to leave residence, it falls within the ambit of the right to personal liberty and security rather than the freedom of movement. With reference to the aforementioned judgment, it has been considered that the period spent under the impugned measure restricting the right to personal liberty and security should be deducted from the prison sentence. It should be noted, however, that this requirement does not entail the deduction of the entire period spent under such a measure. Considering the effects and nature of the measure on the individual, different deduction ratio may be determined.

It should be acknowledged that house arrest has a less severe impact on fundamental rights and freedoms than detention (remand in custody) in that while individuals are required to stay at home, there are no restrictions on maintaining their social life with other residents or visitors, nor on using all kinds of individual or mass communication tools. Additionally, in certain circumstances, they may be allowed to leave their residence with permission.

Given that house arrest has a less severe impact on fundamental rights and freedoms than detention, as explained above, it has been concluded that counting two days spent under the impugned measure as one day for deduction purposes constitutes a proportionate approach.

Consequently, the Court has found no violation of the right to personal liberty and security.

C. FREEDOM OF EXPRESSION

JUDGMENT FINDING A VIOLATION OF THE FREEDOM OF EXPRESSION DUE TO DENIAL TO DELIVER THE BOOKS POSTED TO CERTAIN PERSONS IN PENITENTIARY INSTITUTIONS

Serdar Güzelçay and Others (no. 2022/66987), 21 December 2023

THE FACTS

Certain books sent via post to the applicants, who were detainees or convicts in different penitentiary institutions, were not delivered to them due to the decisions rendered by the education boards of the penitentiary institutions. No allegation has been made that, as of the date of the application, a court order was issued for the prohibition of sale, confiscation or seizure of various books which had not been delivered to the applicants. Subsequently, the applicants brought an action before the inferior courts, which upheld the decision denying the delivery of the books to the applicants.

THE APPLICANTS' ALLEGATIONS

The applicants claimed that their freedom of expression had been violated due to denial to deliver the books posted to them while detained or convicted in penitentiary institutions.

THE COURT'S ASSESSMENT

Having assessed the impugned administrative decisions and the decisions of the inferior courts as a whole, the Court has observed that the relevant decisions failed to include relevant and sufficient grounds. It has been understood in the present case that there had been lack of mechanisms capable of preventing any arbitrariness in the provision of non-periodicals to the detainees and convicts in the penitentiary institutions; of ensuring the application of the same procedures to those who experience similar judicial circumstances; and of guaranteeing clear, guiding and consistent administrative acts. Accordingly, the practice of preventing the delivery of non-periodical publications in prisons under the current system constitutes a structural problem. In this respect, there is a need for the establishment of a mechanism that can ensure the effective assessment of the non-periodicals in question and prevent the emergence of different practices imposed on the prisoners.

Within this context, it has been found that there are efforts to establish a certain procedure in line with the above-mentioned criteria and mechanisms preventing arbitrariness with regard to prisoners' access to the foreign-language periodicals. The law-maker amended Article 62 of the Law no. 5275 on the Execution of Penalties and Security Measures on 14 April 2020 and regulated the assessment of whether the admission of the periodicals in question by the penitentiary institution will cause any inconvenience shall be incumbent upon the Ministry of Justice due to the difficulties encountered by the local authorities in carrying out such an assessment.

Undoubtedly, the prisoners are not entitled to an unlimited right of access to non-periodicals. The obligations arising from the mere fact of being imprisoned and the facilities of the relevant penitentiary institution entail certain natural restrictions on the access to non-periodicals by the prisoners. Furthermore, the prisoners have access to other non-periodicals as defined by the law in addition to their right to access to the libraries of the penitentiary institutions and public libraries. In this respect, there is no doubt that restrictions may be imposed through the implementa-

tion of a policy that is prescribed by law, foreseeable and ensures the application of uniform practice, concerning the non-periodicals which were brought by relatives of the prisoners or sent as a gift via shipping or post, to the penitentiary institution and the sender of which cannot be verified. In this regard, it is clear that the new system to be implemented will be subjected to a review by the Constitutional Court as the last resort through the use of the individual application mechanism.

Accordingly, it is essential to take administrative and legal measures in respect of the delivery of the non-periodicals to the prisoners and to establish effective procedures in order to ensure that the non-periodicals are provided to the prisoners through the use of uniform and fair mechanisms in compliance with the criteria set out by the Constitutional Court. Otherwise, the impugned structural problem will persist and it will fall contrary to the requirements of the democratic social order and amount to a continuous or recurring violation of the freedom of expression safeguarded under Article 26 of the Constitution.

Consequently, the Court has found a violation of the freedom of expression.

D. RIGHT TO RESPECT FOR PRIVATE LIFE

JUDGMENT FINDING A VIOLATION OF THE RIGHT TO RESPECT FOR PRIVATE LIFE DUE TO THE REQUIREMENT TO REFRAIN FROM ANY INCOME-GENERATING PROFESSIONAL ACTIVITIES FOR FIVE YEARS TO QUALIFY FOR PROMOTION TO PROFESSOR

Fatih Özaltın and İbrahim Esinler (no. 2019/17374), 29 November 2023

THE FACTS

Following their appointments as associate professors of medicine at Hacettepe University ("the University"), the applicants set up private medical clinics to pursue their professional activities outside university hours. Law no. 2547 on Higher Education was amended to include a provisional article requiring medical academics engaged in private practice to cease such activities within three months from the introduction of this article. The Constitutional Court ("the Court") found this provision to be inconsistent with Article 2 of the Constitution and subsequently annulled it (see the Court's decision no. E.2014/61, K.2014/166, 7 November 2014). Following the annulment, the applicants continued their functions as associate professors at the University and maintained their private practices. However, their applications for promotion to professor were not processed due to their failure to fulfil an additional requirement. They individually sought the annulment of this requirement before the administrative courts, which found the additional requirement to be unlawful and annulled it. Following these decisions, both applicants were appointed as professors by the University. Nevertheless, the University's appeal against the annulment decisions was successful, resulting in the quashing of these decisions and the dismissal of the actions with final effect.

THE APPLICANTS' ALLEGATIONS

The applicants maintained that their right to respect for private life had been violated by the requirement to refrain from any income-generating professional activities for five years as a condition for their promotion and appointment as professors.

THE COURT'S ASSESSMENT

Article 26 of Law no. 2547 stipulates that to be promoted to professor, after having obtained the title of associate professor, a person must have worked for at least five years in the academic field related to the vacant professorial position and must have produced original publications or studies in that field. In addition, it allows universities, with the approval of the Council of Higher Education, to introduce objective and verifiable additional requirements aimed solely at enhancing academic quality, taking into account the differences between academic disciplines.

In the present case, the University issued a call for applications for the position of lecturer and imposed an additional requirement on the basis of the aforementioned Article 26. This additional condition requires that candidates are not currently engaged in any income-generating

professional activity and that they undertake to refrain from such activities for a period of five years.

Article 26(a) of Law no. 2547 grants universities very limited discretion, stating that any additional requirements for professorial appointments must be "exclusively aimed at enhancing academic quality, taking into account the differences between academic disciplines, and must be objective and verifiable." In this regard, the additional conditions for professorial appointments should focus on enhancing academic quality through scientific and scholarly publications, research, or other academic endeavours. Given the limited discretion allowed by the law, the requirement to refrain from income-generating professional activities has not been found to sufficiently and appropriately enhance academic quality. Consequently, the interpretation that this additional requirement is consistent with the limited scope and purpose defined by the law is considered to be overly broad and unpredictable.

As a result, it has been concluded that there is no legal basis for the additional condition requiring the cessation of independent professional activities and abstention from such activities for five years as a prerequisite for a professorial appointment. Moreover, following the Court's annulment of Provisional Article 64 of Law no. 2547, which mandated medical academics to cease their private professional activities, no subsequent legal provision has been enacted to regulate the cessation of such activities.

In order for any interference with the right to respect for private life to be considered valid under the constitutional guarantees, the first and essential criterion is that the interference must have a legal basis. In the present case, the administrative act included as an additional requirement in the vacancy notice imposes a restriction on the private professional activities of the applicants. In the absence of a specific legislative provision on the matter, it has been concluded that an administrative act constitutes an interference with the applicants' private lives.

Consequently, the Court has found a violation of the right to respect for private life.

JUDGMENT FINDING A VIOLATION OF THE RIGHT TO RESPECT FOR PRIVATE LIFE DUE TO FAILURE OF PUBLIC AUTHORITIES TO FULFIL THEIR POSITIVE OBLIGATIONS

Ahmet Kardam and Others (no. 2019/29604), 13 December 2023

THE FACTS

The 2nd Chamber of the Administrative Court annulled the environmental impact assessment (EIA) decision in favour of the power plant project to be built by a private company. Subsequently, an appeal was filed against this decision. During the appellate proceedings, another EIA decision in favour of the project was rendered and the applicants brought an action for annulment against the latest EIA decision before the 5th Chamber of Administrative Court ("the trial court"). As the action for annulment had been ongoing, the relevant annulment decision against the first EIA decision was upheld by the Council of State. Therewith, the trial court ruled an additional report be drafted for the re-assessment of the EIA decision in favour of the project in light of the matters indicated in the reasoning of the upholding judgment of the Council of State. Accordingly, an additional expert report was prepared. Having assessed the expert reports and the upholding judgment of the Council of State as a whole, the trial court annulled the EIA decision. While the appellate proceedings were pending, a third EIA decision in favour of the project was issued. The municipality and the applicants brought separate actions for annulment against the latest EIA decision in favour of the project. As the proceedings in question had been ongoing, the trial court's decision of annulment was quashed and the request for action was dismissed with final effect by the Council of State. Thereon, the trial court dismissed the applicants' action for annulment against the EIA decision in favour of the project in consideration of the expert report issued in the action brought by the municipality concerning the same dispute and the impugned decision of Council of State. The Council of State upheld the trial court's decision of dismissal with no prospects of rectification.

THE APPLICANTS' ALLEGATIONS

The applicants maintained that their right to respect for private life had been violated due to the dismissal of their action for annulment against the EIA decision in favour of a power plant project.

THE COURT'S ASSESSMENT

It should be noted at the outset that a part of the present application was declared inadmissible for being *incompatible ratione personae* in so far as it relates to certain applicants who lacked victim status for not being directly affected by the EIA decision in favour of the project, and to certain applicants whose legal personalities were not directly affected nor the rights in relation to the legal personality status were not violated.

Having assessed the judicial proceedings in the present case as a

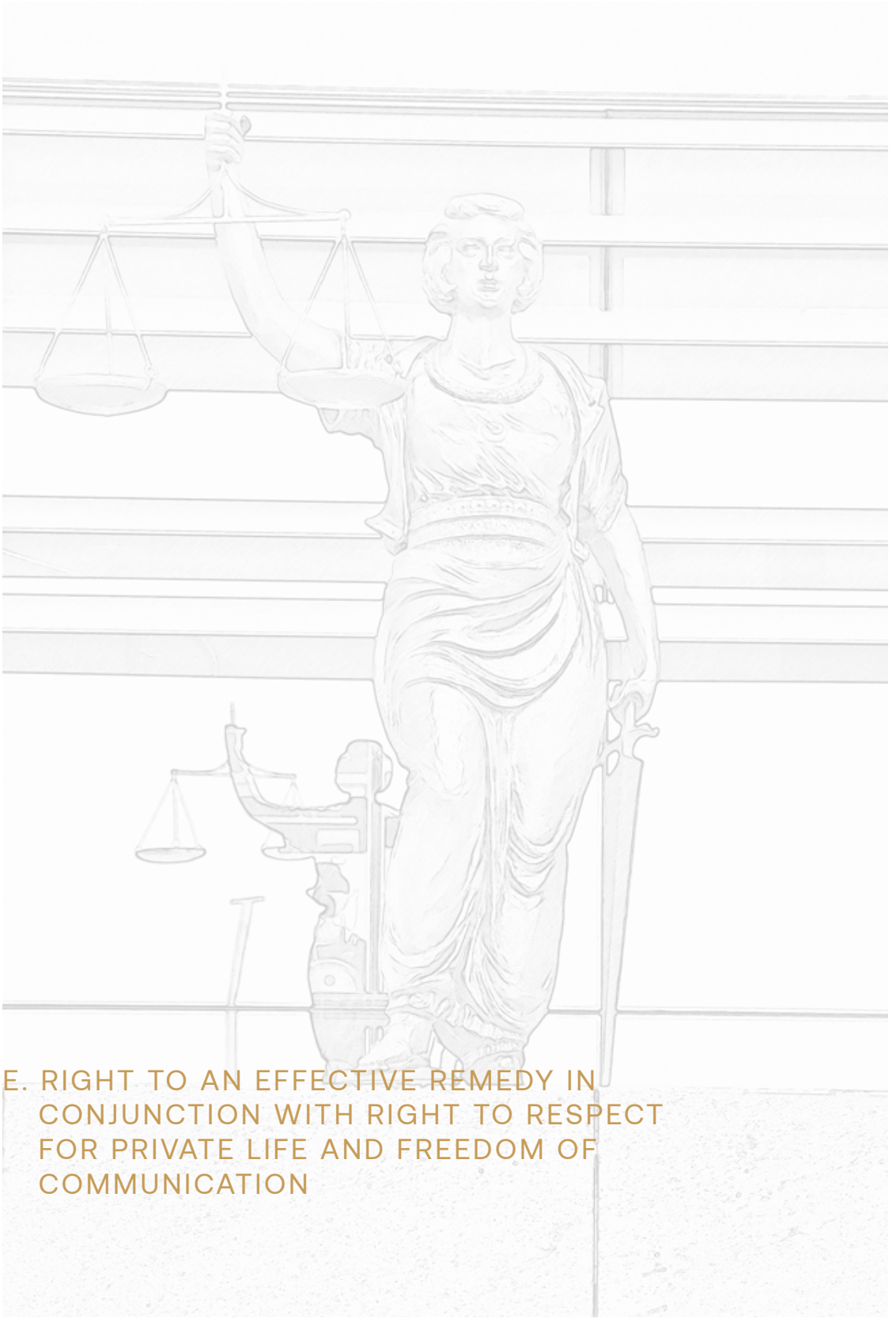
whole, the Court observed that the subject matter of the dispute was related to the waste landfill area of the power plant and the surrounding olive grove. Despite the dismissal decision against the EIA report in favour of the project due to waste landfill area, the Court has found that the case file did not include any information or documentation on whether a new plan for the location and boundaries of a waste landfill area had been formulated or whether any other area had been allocated for this purpose. Additionally, in the final decision dismissing the action, the Council of State confined itself with indicating that the contract had provided for the sale of the existing waste to be reprocessed in the market place and the storage of the unsold waste. Nevertheless, no assessment was included in this decision as to whether there was a need for a new waste landfill area for storage purposes. Although it was found that the plant had not utilised the waste landfill area during its operation, the decision did not put forward any assessment whether the plant delivered a solution for the existing waste that was intended to be stored, nor whether such a solution was examined by the EIA decision in favour of the project.

Furthermore, the inferior courts merely found that the waste landfill area of the power plant had not been used and that the contracts had been concluded for the sale or the storage of the existing waste, but did not inquire into alternative ways of re-purposing waste and the environmental impact of manners of waste storage and whether measures and obligations had been regulated in this regard. There has been no assessment of whether the above-mentioned matters were examined in the said EIA report and, if so, whether these matters were addressed in line with the relevant regulations. Therefore, the decisions dismissing the applicant's requests for annulment on the grounds that the favourable EIA decisions were lawful lacked relevant and sufficient reasoning.

In addition, the earlier decision of the trial court established that olive groves were found less than three kilometres from the centre of the existing waste landfill area of the plant. However, the trial court indicated in its subsequent decision that there were no areas in and around the power plant which could be qualified as olive groves of economic value under Law no. 3573 on Olive Improvement and Grafting of Wild Species. The trial court failed to present explanations as to why its considerations contradicted the conclusion set out in its previous decision, nor did it provide any grounds to eliminate this contradiction.

Accordingly, the Court concluded that the incumbent public authorities failed to act with due diligence, to assess public and individual interests as required and to fulfil their positive obligations under the right to respect for private life.

Consequently, the Court has found a violation of the right to respect for private life.



E. RIGHT TO AN EFFECTIVE REMEDY IN CONJUNCTION WITH RIGHT TO RESPECT FOR PRIVATE LIFE AND FREEDOM OF COMMUNICATION

JUDGMENT FINDING VIOLATIONS OF THE RIGHT TO PERSONAL LIBERTY AND SECURITY AS WELL AS THE RIGHT TO AN EFFECTIVE REMEDY

Siyami Hıdıroğlu (no. 2018/11489), 11 January 2024

THE FACTS

The applicant, who served as a deputy project manager and a member of the tender commission at a company, was indicted for collusive tendering. The arrest warrant issued against the applicant could not be implemented since his residential address was unknown. Therefore, the applicant was contacted by telephone through another suspect, who had previously been arrested as part of the same investigation and was acquainted with the applicant. During the telephone conversation, the applicant, informed about the arrest warrant issued against him, was asked to surrender voluntarily. The applicant subsequently surrendered himself to the authorities and was held in custody for three days. In the course of the investigation, the applicant's computers, two mobile phones, and the SIM cards contained therein were seized pursuant to a search and seizure warrant issued by the incumbent magistrate judge.

At the end of the proceedings, the applicant was acquitted of the offence of collusive tendering on behalf of an organisation established for the purpose of criminal activity, without being a member of it. Upon the finalisation of the acquittal decision, he lodged an action for pecuniary and non-pecuniary compensation. The assize court examining the compensation claim awarded the applicant 448.83 Turkish liras (TRY) in pecuniary compensation for the unlawful custody and seizure, as well as TRY 1,000 in non-pecuniary compensation for the unlawful custody. The applicant's appellate request, arguing that the amount awarded could not suffice to redress the grievances he had suffered during the process, was dismissed.

THE APPLICANT'S ALLEGATIONS

The applicant maintained that his right to personal liberty and security was violated due to the insufficiency of the compensation awarded in the action brought against the protective measures of unlawful arrest and custody. The applicant further claimed that the right to an effective remedy, taken in conjunction with the right to respect for private life and the freedom of communication, had been violated due to the failure to examine his compensation claim regarding the unlawful seizure warrant.

THE COURT'S ASSESSMENT

A. As Regards the Alleged Violation of the Right to Personal Liberty and Security

While the inferior courts enjoy a margin of appreciation in determining compensation based on the particular circumstances of each case, an award of relatively insignificant amount that is disproportionate to the severity of the violation would constitute a violation of Article 19 of the Constitution. In this regard, the amount of compensation should not fall significantly below the amounts awarded by the Court in precedent cases of a similar nature. However, it should be noted that such a determination does not per se constitute a violation of Article 19 of the Constitution. A comprehensive evaluation of the particular circumstances of the case is therefore required.

In determining the adequacy of non-pecuniary compensation, a comparative analysis must be conducted with reference to the awards that the Court has made or is expected to make in similar applications. In adjudicating claims for non-pecuniary damages arising from unlawful arrest, custody, or detention, the Court takes into account multiple elements, including but not limited to, the applicant's social and economic status, his professional and societal standing, the nature of the alleged offence, the procedural and substantive circumstances underlying the imposition of the protective measure, the psychological and material impact of the measure on the applicant, the duration for which the measure was imposed, and the severity of the infringement occasioned by the measure.

In light of the above criteria, it has been observed that the applicant was awarded TRY 1,000 as non-pecuniary compensation under Article 141 of the Code of Criminal Procedure no. 5271, for his being placed in unlawful custody, following his acquittal. In consideration of the specific circumstances of the case and the aforementioned criteria for determining non-pecuniary compensation, the disputed amount can, as of the date of the decision, be considered sufficient in comparison to the amounts that the Court might reasonably award in similar cases.

On the other hand, the adequacy of the pecuniary compensation also warrants scrutiny. The applicant's claim for reimbursement of the attorney's fee incurred during the criminal proceedings resulting in his acquittal was dismissed. In reaching this conclusion, the relevant inferior court merely pointed out that the receipt and the professional fee invoice had been issued after the date of the decision. However, the court did not conduct any further inquiry into whether the attorney's fee had indeed been covered by the applicant, whether the attorney had received the fee in question, or whether the receipt and invoice in question were fraudulent or improperly issued.

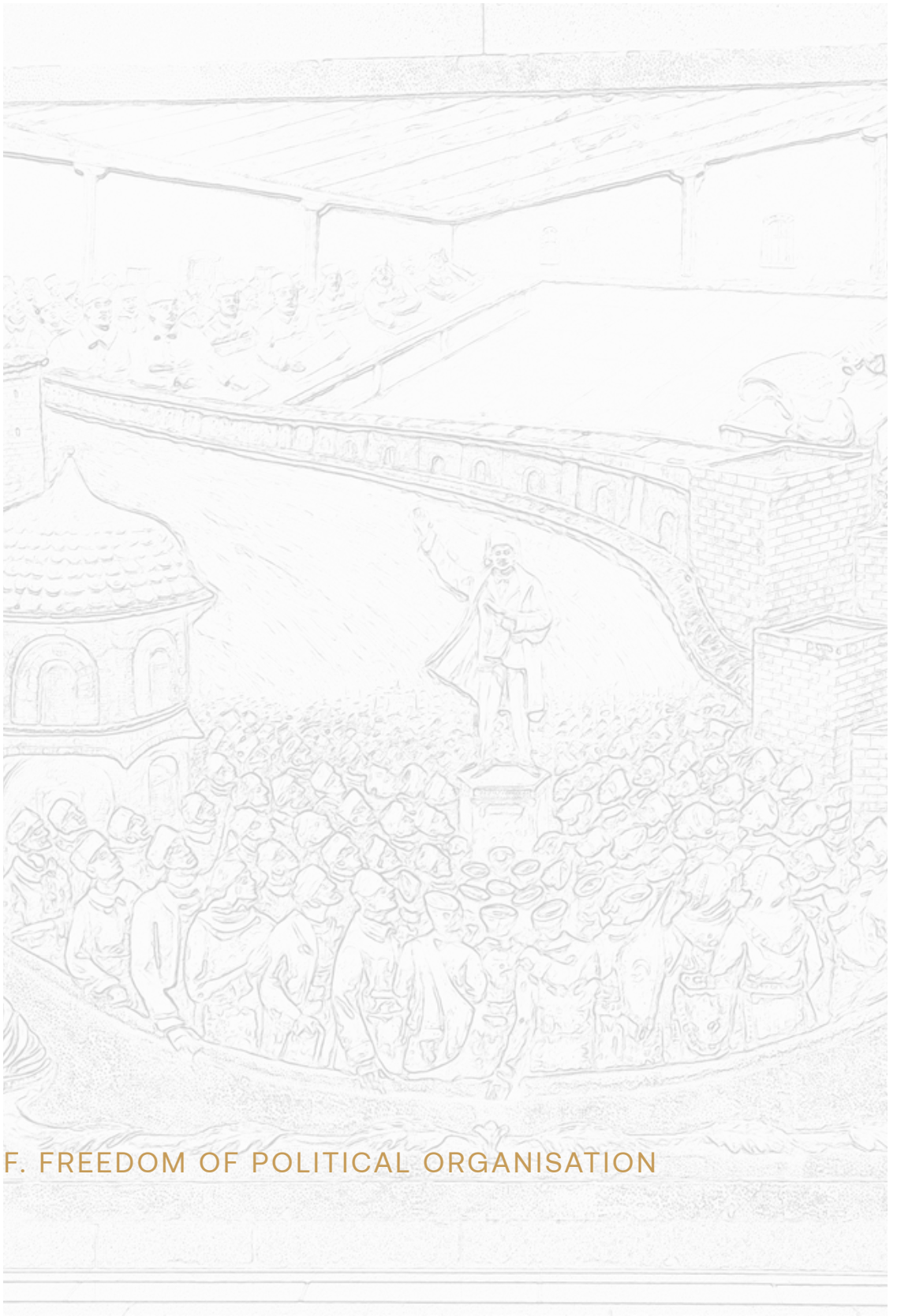
The court further based its reasoning on the fact that a fixed attorney's fee had been awarded in favour of the applicant in the acquittal decision. However, as the attorney's fee, unless otherwise agreed in the retainer agreement between the client and the attorney, is legally regarded as belonging to the attorney, the award of a fixed attorney's fee in the applicant's favour cannot, in itself, be deemed sufficient to establish that the applicant's pecuniary damage has been remedied. In this context, the inferior court ought to have examined whether the applicant and his attorney had included the fixed attorney's fee as part of the agreed remuneration in his retainer agreement. Moreover, even if it is presumed that the fixed attorney's fee was indeed paid to the applicant, the court failed to provide a reasoned assessment as to why the portion exceeding this fixed fee was not regarded as pecuniary damage. Additionally, the court failed to assess whether there was a causal link between the claimed amount and the unlawful custody measure, and if such a link existed, whether the claimed amount was both necessary and reasonable in the present case.

Consequently, the Court has found a violation of the right to personal liberty and security.

B. As Regards the Alleged Violation of the Right to an Effective Remedy in Conjunction with the Right to Respect for Private Life and the Freedom of Communication

In the present case, the applicant brought an action for compensation pursuant to Article 141 of the Code of Criminal Procedure no. 5271, alleging that the seizure measure had been implemented unlawfully, without adherence to the conditions prescribed by law. However, an examination of the judicial decisions rendered during the proceedings reveals that the applicant's claim was not substantively addressed. While the inferior court awarded pecuniary compensation to the applicant for the depreciation in value of the seized mobile phones, it failed to assess whether the seizure of the applicant's mobile phones and computers was conducted in compliance with the legal requirements. It failed to adjudicate this well-founded claim of the applicant. The lack of an assessment regarding the applicant's allegation that the seizure measure was unlawful and the absence of a ruling on this matter precluded the examination of the applicant's claims and deprived him of an opportunity for adequate redress. Accordingly, the judicial process did not allow for an effective examination of the complaint concerning the alleged violation of fundamental rights and freedoms. In light of the specific circumstances of the case, it was concluded that the applicant had not been afforded an effective legal remedy capable of providing minimum safeguards for the redress of the damage sustained in the context of his right to respect for private life and freedom of communication.

Consequently, the Court has found a violation of the right to an effective remedy.



F. FREEDOM OF POLITICAL ORGANISATION

JUDGMENT FINDING A VIOLATION OF THE FREEDOM OF POLITICAL ORGANISATION DUE TO THE DECISION FINDING IPSO FACTO DISSOLUTION OF POLITICAL PARTY ORGANISATIONS

Halkın Kurtuluş Partisi (3) (no. 2019/30833), 27 September 2023

THE FACTS

Upon the letter of the Chief Public Prosecutor's Office at the Court of Cassation, the relevant district governorships and provincial governorships brought an action before magistrate's courts (in civil matters) requesting for the determination of the ipso facto dissolution of the organisations of the applicant party on the grounds that the different provincial and district organisations had failed to hold their congresses twice in a row within the prescribed period. Having accepted the actions, the incumbent magistrate's courts (in civil matters) ruled that the relevant provincial or district organisations of the political party in question had been ipso facto dissolved. The applicant's appeal requests against the impugned judgments were dismissed by the regional courts of appeal with final effect.

THE APPLICANT'S ALLEGATIONS

The applicant, a political party, claimed that its freedom of political organisation had been violated due to the decision ruling that the relevant organisations of the party had been ipso facto dissolved due to their failure to hold provincial and district congresses within the prescribed period.

THE COURT'S ASSESSMENT

The Constitutional Court has previously examined a request for the determination of the ipso facto dissolution of a political party and for the consequent termination of its legal existence. In this decision, the Constitutional Court indicated that Code no. 6216 on the Establishment and Rules of Procedure of the Constitutional Court had vested the Constitution Court with the jurisdiction to rule on the requests for the determination of the dissolution status of political parties and that the parties concerned are required to lodge an application to the Constitutional Court for the execution of this request. Article 87 of the Turkish Civil Code no. 4721 stipulates that the relevant parties referred to in the text are the legal representatives of political parties bearing legal and financial responsibility and the Chief Public Prosecutor's Office at the Court of Cassation, which has the authority to initiate proceedings for the dissolution of political parties and maintaining their registration files (see the Court's judgment no. E.2015/2 (Miscellaneous), K.2016/4, §10).

Additionally, having assessed the applications filed by certain district governorships with the Constitutional Court requesting the determination of the ipso facto dissolution of provincial and district organisations of political parties, the Constitutional Court held in these applications that district governorates had not been granted authorisation to request the determination of the dissolution of the provincial and district organisations of political parties and, accordingly, the termination of their legal existence.

In summary, the relevant parties referred to in Article 87 of Law no. 4721 are the legal representatives of political parties with legal and financial responsibility and the Chief Public Prosecutor's Office at the Court of Cassation. The Constitutional

Court is exclusively entrusted with the authority to determine the dissolution of the entire legal entity of a political party upon the requests of these parties.

In the present application, it has been observed that upon the letter of the Chief Public Prosecutor's Office at the Court of Cassation, the district governorships and provincial governorships applied to the magistrate's courts (in civil matters) to determine ipso facto dissolution of the provincial and district organisations of the applicant party and that accordingly the incumbent magistrate's courts (in civil matters) adjudicated on these requests. It has been understood that the public authorities delivered a judgment without taking into account of Article 3 of Law no. 2820, which stipulates that the legal entities of political parties shall be considered as a whole together with their organisations, and the phrase "any concerned person" in Article 87 of Law no. 4721, which does not include district governorships and governorships. In this respect, it has been concluded that the aforementioned provisions were interpreted in a broad and unforeseeable manner, exceeding their purpose. In the light of these considerations, it has been concluded that the decisions on the determination the ipso facto dissolution in the present application failed to meet the criteria of lawfulness.

Consequently, the Court has found a violation of the freedom of political organisation.

G. RIGHT TO TRADE-UNION FREEDOM

JUDGMENT FINDING A VIOLATION OF THE RIGHT TO TRADE-UNION FREEDOM DUE TO PENDING OF THE CASE DESPITE LEGISLATIVE REQUIREMENT FOR EXPEDITIOUS RESOLUTION

Türkiye Devrimci Kara, Hava ve Demiryolu Taşımacılığı İşçileri Sendikası (no. 2020/34550), 15 February 2024

THE FACTS

The applicant, *Türkiye Devrimci Kara, Hava ve Demiryolu Taşımacılığı İşçileri Sendikası (Türkiye Revolutionist Land, Air, Railway Workers' Union ("Transport-Business/Union"))*, requested a determination of competence from the Ministry of Labour and Social Security, asserting that it had attained the requisite number to negotiate a collective labour agreement (CLA). The Ministry ruled negatively on this request (negative determination of competence), stating that the Union did not meet the necessary threshold in terms of number in its sector and thus, communicated this decision to the Union. The applicant challenged the negative ruling for competence before the İstanbul Labour Court ("the Labour Court"). Thereupon, pursuant to Article 43 of the Law no. 6356 on Unions and Collective Labour Agreements, the drafting of collective labour agreements was halted until the conclusion of the appeal case against the negative determination of competence.

The Labour Court dismissed the case as well as the subsequent appeal on its merits. Upon further appeal, the Court of Cassation noted that the Union had contested the latest published statistics related to the sectoral threshold, which had been reviewed before another labour court, thereby the matter should be deemed as a preliminary issue for the present case. As a result, the Court of Cassation quashed the decision. While the appeal against the quashing decision was pending, the applicant Union filed an individual application with the Constitutional Court. In the meantime, the court of first-instance accepted the case. The court assessed that the statistics which were not subject to objection and became final upon the suspension of the negative determination of competence with interim injunction by the Ministry of Labour and Social Security ("the Ministry") should be applied. Thus, it determined that the Union was competent. Following an appeal by the Ministry, the Court of Cassation reiterated its previous decision and quashed the impugned decision once again. As of the review date, the proceedings have been still pending.

THE APPLICANT'S ALLEGATIONS

The applicant maintained that his right to trade-union freedom had been violated due to the failure to conclude the appeal case against the negative determination of competence within a reasonable time.

THE COURT'S ASSESSMENT

In its decision in the case of *Türkiye Gıda ve Şeker Sanayi İşçileri Sendikası ve Türkiye Petrol, Kimya ve Lastik Sanayii İşçileri Sendikası* (no. 2016/13531, 15 December 2020), the Constitutional

Court assessed the alleged violations of the right to trade-union freedom due to the failure to conclude the appeal case against the negative determination of competence within a reasonable time. It also examined whether the state had fulfilled its positive obligations, given the statutory periods stipulated in the legislation for the expeditious resolution of cases. In this decision, the Court found that the legal uncertainty concerning the applicants' unionisation in the claimant workplace, caused by the prolonged proceedings, could not be remedied due to the failure to conduct an expeditious judicial process. Therefore, it assessed that the judicial authorities' failure to resolve the matter promptly had deprived the applicants and other employees of the opportunity to engage in union activities and access union rights granted by a collective labour agreement (CLA) during the ongoing proceedings. Consequently, the Court established that the applicant's right to trade-union freedom had been violated, therefore awarding compensation to the applicants accordingly. In these applications, the Court also underlined that the statutory periods envisaged for appeals and proceedings in Law no. 6356 were designated to ensure the effective and timely exercise of the said right.

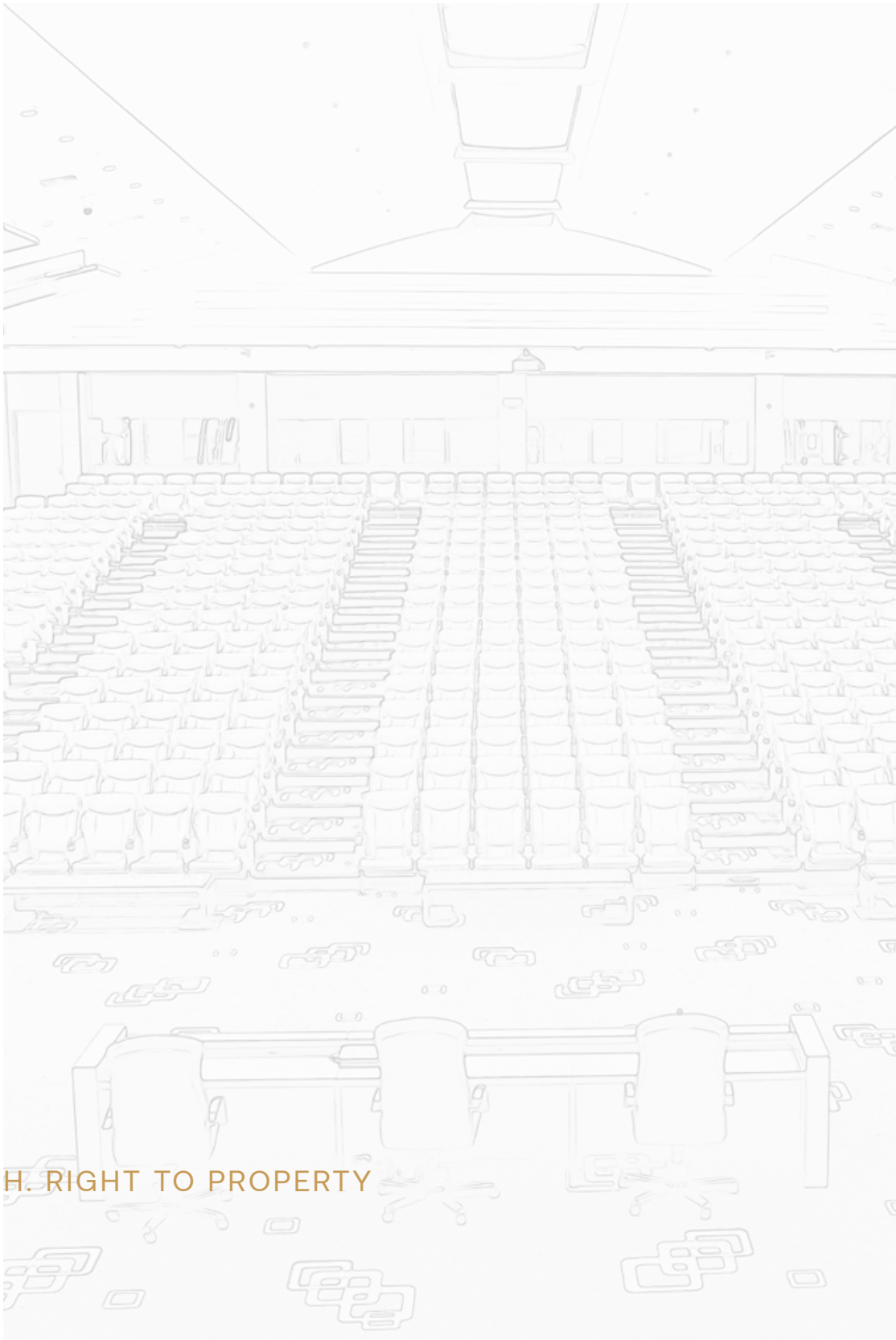
Furthermore, the Court of Cassation underscored that contrary to the former legal framework, the legislator had abolished the distinction between appeals against negative and positive determinations of competence. Accordingly, the legislator aimed to ensure the protection of the unions that received a negative determination decision and to accurately identify the competent union prior to negotiating a collective labour agreement (CLA). Nevertheless, this legislative purpose can only be realized if the judiciary conducts expeditious and effective assessments of disputes before them within the prescribed statutory periods.

In the present case, it has been established that since 2016 (around eight years) when the request for determination of competence was made, the applicant has been deprived of certain rights such as representing workers, acting as a liaison between workers and employers, persuading the employer when necessary, and strengthening social and financial resources by increasing the number of workers. It has also been observed that the applicant could not benefit from the union rights during the ongoing proceedings and in this context the authorities failed to act with due diligence and expedition in safeguarding these rights. In this context, the Court has considered that the proceedings were not concluded in a reasonable period. Thus, the legal uncertainty concerning unionization in the applicant's workplace could not be remedied due to the judicial authorities' failure to conduct expeditious proceedings regarding the determination of competence.

In the light of aforementioned assessments, the Court has concluded that the proceedings has been pending despite the statutory requirement for its expedient conclusion; and that this stance of the judicial authorities deprived the applicant and other employees in the workplaces of the opportunity to engage in union activities within the scope of CLA and of the union rights afforded by an agreement throughout the proceedings.

Additionally, the Court has recognized that the failure to resolve such cases within a reasonable time has become systematic, thereby constituting a structural problem. Addressing this systematic issue, the Constitutional Court has assessed that systematic reforms must be introduced to prevent future violations arising from prolonged adjudication of appeals against the determination of competence before the courts of instance.

Consequently, the Court has found a violation of the right to trade-union freedom.



H. RIGHT TO PROPERTY

JUDGMENT FINDING A VIOLATION OF THE RIGHT TO PROPERTY DUE TO THE INEFFECTIVENESS OF THE DECISION ANNULLING URGENT EXPROPRIATION PROCEDURE

Ali Kömürcü and Others (no: 2019/2890), 25 October 2023

THE FACTS

The Energy Market Regulatory Authority ("EMRA") rendered a decision, on public-interest grounds, as to the expropriation of the immovable properties of the applicants. Accordingly, the Ministry of Finance decided to expropriate the determined immovable properties, and the Council of Ministers also decided on the application of the urgent expropriation procedure.

In the judicial proceedings initiated by the State Treasury (the Treasury), the impugned immovable properties were decided to be seized. The applicants filed an administrative action requesting the annulment of the decision on public-interest grounds, the decision on expropriation and the urgent expropriation decision taken to register the immovable properties under the name of the Treasury for the construction of a wind power plant. During the proceedings, the applicants' request for a stay of execution was dismissed. Pending the administrative proceedings, the applicants requested, in the action for determination of the expropriation price and registration filed by the Treasury against the applicants, that the administrative action for annulment should be considered as a preliminary issue. Nevertheless, this request was dismissed on the grounds that the decision on the stay of execution had not been submitted. Following the acceptance of the action for determination of the expropriation price and registration, the Plenary Assembly of Administrative Chambers of the Council of State ("Plenary Assembly") found unlawful the urgent expropriation procedure and annulled the said procedure. However, the Plenary Assembly upheld the Chamber's decision insofar as it concerned the decision on public-interest grounds and the expropriation decision.

THE APPLICANT'S ALLEGATIONS

The applicants alleged that their right to property had been violated due to the refusal to annul the decision on public-interest grounds and the expropriation decision, as well as to the registration of the immovable properties under the name of the administration despite the annulment of the Council of Ministers' decision as to the application of the urgent expropriation procedure.

THE COURT'S ASSESSMENT

The annulment actions against the ordinary and urgent expropriation procedures fall within the sphere of administrative jurisdiction, while the actions for determination of the expropriation price and registration are carried out before judicial courts. The action for determination of the expropriation price and registration may be sometimes concluded prior to the adjudication of the annulment actions before the administrative courts, despite being heard at around the same time. As the decision rendered in the action for determination of the expropriation price and registration have a final effect, the immovable properties are registered under the name of the

administrations, and therefore the administrative courts' decisions to be given in favour of the owners following the registration lead to the various legal questions. In addition to being subjected to severe interference such as expropriation, the owners are also saddled with the task of filing a separate action to re-register the immovable under their own name.

Moreover, the judicial courts assess that especially the decisions on the stay of execution rendered by the administrative courts against the urgent expropriation decisions should not be considered as a preliminary issue. Therefore, the decision on the stay of execution cannot yield any tangible effect on the action for determination of the expropriation price and registration. In light of this information, it has been observed that the legal regulations on the stay of the execution aiming to prevent discrepancies between the decisions rendered as a result of judicial and administrative proceedings do not have the prospect of providing effective redress and that there is a structural problem as to the urgent expropriation procedure. In this respect, it has been assessed that the institution of stay of execution enshrined in Law no. 2942 was interpreted strictly by the judicial courts in practice and that the said institution thus failed to offer sufficient protection. In addition, it has been concluded that the current jurisprudence of the Plenary Assembly, according to which the stages of the expropriation proceedings should be considered independently of one another, has negative impacts on the prospect of the actions to be brought by the property owners based on the allegations of unlawful registration.

In the present case, the judicial courts ordered the application of urgent expropriation procedure regarding the impugned immovable properties, which began to be *de facto* used by the administration immediately thereafter. The applicants were deprived of the protection offered by the right to property due to the non-conclusion of the examination of lawfulness for over two years starting from the date when the administration began to *de facto* use the immovable properties and until the date when the annulment decision was rendered by the administrative court. Furthermore, although the urgent expropriation procedure applied in the applicants' case was found unlawful by a decision of the administrative court, the immovable properties were registered under the name of the administration. It has been concluded that as a result of the prolongation of the administrative proceedings, the annulment decision rendered in favour of the applicants became ineffective, and that the court decision did not lead to a tangible outcome and yield a prospect of success as an effective legal remedy. Consequently, the Court has concluded that the interference with the right to property by way of the urgent expropriation procedure, which resulted in the deprivation of the property, did not meet the lawfulness criteria.

Consequently, the Court has found a violation of the right to property.

DECISION FINDING INADMISSIBLE THE ALLEGED VIOLATIONS OF RIGHT TO PROPERTY AND RIGHT TO ACCESS TO A COURT

Şeyhmus Yılma (no. 2018/37995), 11 January 2024

THE FACTS

The applicant, holding office as a member judge in the tax court, was dismissed from his office by the Plenary of the High Council of Judges and Prosecutors (HCJP) (as it was formerly known) under Decree-Law no. 667. The applicant's challenge against this decision for re-examination and the action for annulment of his dismissal were rejected.

The applicant brought an action against the Ministry of Justice, requesting the payment of half of his salary accrued during his suspension from office between October and November 2016, along with the legal interest, pursuant to Article 74 of Law no. 2802 on Judges and Prosecutors. The Administrative Court dismissed his claim, which the applicant subsequently appealed. The appeal was also rejected by the regional administrative court.

THE APPLICANT'S ALLEGATIONS

The applicant maintained that his right to property had been violated due to the refusal to grant him the salary which had accrued during the period between his dismissal from office and the rejection of his request for re-examination. The applicant further claimed that his right to access to a court had also been violated due to the award of litigation costs and counsel's fees against him.

THE COURT'S ASSESSMENT

1. Alleged Violation of the Right to Property

Although the Plenary of HCJP's decision to dismiss the applicant allowed for a request for re-examination within ten days of dismissal, Decree-Law no. 667 lacks a specific regulation regarding the exact finalisation date of the decision or the effective date of the provisions and consequences thereof. In the present case, dismissal from office, laid down in Article 3 of Decree-Law no. 667, differs from sanctions for criminal or disciplinary offences. The impugned dismissal from office is considered to be an extraordinary measure of a permanent nature, with definitive consequences, aimed at eliminating the presence of other structures deemed as a terrorist organisation and structures engaging in foreign intelligence activities against national security in public institutions and organisations. The case-law of the Council of State and the administrative regional court is consistent on this matter. Accordingly, judges and prosecutors dismissed pursuant to Decree-Law no. 685 and Article 3 of Decree-Law no. 667 may seek judicial remedies under Article 11 of Decree-Law no. 685 against the decisions of dismissals. In this regard, it has been clarified that the sanction of dismissal from office, which is subject to appeal under Article 33 of the Law no. 6087, and the measure of dismissal from office under the Decree-Law no. 667 differ from each other. The Constitutional Court has found inadmissible the applications concerning the alleged violation of constitutional rights due to the dis-

missal of judges and prosecutors on the grounds that the applicants failed to exhaust the remedy of the Council of State pursuant to Article 11 of the Decree-Law no. 685. It has accordingly been concluded that there was no explicit or manifest error of appreciation in the trial courts' assessment that the finalisation of the proceeding in question in the nature of an extraordinary measure was not sought for the consequences thereof to be effective.

In the present case, the applicant's dismissal was part of an extraordinary measure prescribed by Decree-Law no. 667. It has been understood that the impugned decision bore immediate legal consequences contrary to the sanctions imposed for the commission of a criminal or disciplinary offence. In this respect, it has been concluded that the applicant had no legitimate expectation, based on legal grounds, of acquiring a property or a property safeguarded under Article 35 of the Constitution concerning the salary allegedly accrued during the period between his dismissal and the rejection of his request for re-examination.

Consequently, the Court has declared inadmissible this part of the application for being *incompatible ratione materiae*.

2. Alleged Violation of the Right to Access to a Court

Certain obligations may be imposed on the applicants to mitigate the influx of unwarranted cases and ensure the timely resolution of disputes by the courts without placing an unnecessary burden on them; it is within the margin of appreciation of the public authorities to determine the scope of these obligations. Such obligations do not infringe upon the right to access to a court unless they make it impracticable to initiate legal proceedings or render the process unduly burdensome. Accordingly, the requirement for applicants to bear litigation costs and counsel's fees if a decision to their detriment is delivered, must be evaluated within this framework.

Nevertheless, the possible obligation for the plaintiff party to pay the other party's litigation costs or counsel's fees calculated based on the referred amount in the case of a decision detrimental to the plaintiff party could, under certain circumstances, deter individuals from pursuing legal action or render the remedy ineffective. It is therefore essential that the assessment of fees takes into account the fact that the reasonability and proportionality of the fees constitute the minimum threshold for the right to access to a court. In the present case, the applicant claimed that the total awarded amount of TRY 1,250, including the litigation costs and counsel's fees, had imposed an excessive burden on him. However, it has been assessed that the contested amount did not prevent him from bringing an action or render the legal remedy ineffective.

Consequently, the Court has declared inadmissible this part of the application for being *manifestly ill-founded*.

JUDGMENT FINDING A VIOLATION OF THE RIGHT TO PROPERTY DUE TO AN ADMINISTRATIVE FINE IMPOSED FOR TRANSPORTING GOLD COINS OVERSEAS WITHOUT SATISFYING THE NOTIFICATION REQUIREMENT

Mohammad Atamleh (no. 2020/9691), 29 February 2024

THE FACTS

The applicant, who is a foreign national, engages in gold trading. In the cash declaration forms submitted to the Customs Directorate, the applicant declared USD 90,000 upon arrival in the country. He then purchased various amounts of gold coins from the persons and organisations that he had declared in the cash declaration form. Gold coins weighing 3,100 grams were found in the applicant's carry-on luggage when he was at the airport to leave the country. He submitted the waybills and stated that he came to İstanbul once a month for gold trading, that he had passed through by presenting the waybills during his previous visits, and that he was unaware of the procedure necessitating the submission of respective invoices to customs at the time of departure.

The incumbent chief public prosecutor's office imposed an administrative fine of 338,243.50 Turkish liras (equal to the value of 50 percent of the confiscated gold coins) and ordered the return of the gold coins to the applicant. The applicant's challenge to the administrative fine was dismissed by the 1st Magistrate Judge. On appeal by the applicant, the 2nd Magistrate Judge dismissed the appeal request, with final effect, finding that the decision complied with the procedure and the law.

THE APPLICANT'S ALLEGATIONS

The applicant maintained that his right to property had been violated on account of the administrative fine imposed for his transporting gold coins overseas without fulfilling the notification and authorisation requirements.

THE COURT'S ASSESSMENT

In the present case, the applicant was not charged with any accusation by the public authorities. Nor did he face any allegation that the gold coins in his carry-on luggage had been used in money laundering, financing of terrorism, drug trafficking or in any other criminal activities, or had been originated from any criminal act. The applicant declared the amount of foreign currency in dollars that he brought into the country at the time of his arrival in the country, and he stated that he would use this foreign currency to purchase gold coins from the persons and organisations, which are issuers of the invoices presented by the applicant. The applicant is legally able to transport the gold coins overseas, provided that the notification procedure stipulated in the Law no. 1567 on the Protection of the Value of Turkish Currency is duly complied with. As a matter of fact, the gold coins were returned to him. In this sense, the legal interest sought to be protected by the imposition of an administrative fine is to ensure compliance with the notification and authorisation requirements.

Law no. 1567 envisages that in case of unauthorised personal export or import of precious metals and precious stones, as well as of all kinds of goods and assets made up of such materials, an administrative fine shall be imposed equal to the fair market value of the exported or imported goods and assets, and in case of such an attempt to do so, an administrative fine equal to half of this value shall be imposed. As such, the provision in Law no. 1567 does not enable courts to conduct a judicial review in consideration of the particular circumstances of the given case. Nor does it allow the courts to assess whether the means employed to achieve the legitimate aim sought to be attained is tenable for the persons concerned, whether there is a lack of proportionality between the severity of the interference and the consequence thereof, and whether the consequence is fair.

Therefore, the provision in Law no. 1567 leaves no room for the authorities to assess the degree of fault attributable to the person committing the misdemeanour, the source of the money declared, and the extent to which the legitimate aim sought to be protected by the provision has been impaired. In this respect, the provision, which does not allow for an individualised assessment in terms of the persons committing the misdemeanour, also hampers the reaching of different outcomes capable of rendering the impugned interference proportionate in the particular circumstances of the given case. As a matter of fact, in the present case, there is no proof that the gold coins in question were used in the commission of any offence or that their source was uncertain, and it appears that the legal interest protected by the criminalisation of the relevant act, which is subject to an administrative sanction, is merely to monitor the transportation of precious metals across the country. Nevertheless, as the statutory provision stipulates a fixed rate, the applicant was sentenced to an administrative fine amounting to 50 percent of the confiscated gold coins.

The Court has therefore found that the impugned interference with the right to property by imposing an administrative fine on the applicant for taking gold coins out of the country without complying with the notification requirement placed an excessive burden on the individual *vis-à-vis* the respective public-interest purpose. It has accordingly been concluded that the fair balance that has to be struck between the legitimate aim sought to be protected by the impugned interference and the right to property was upset to the detriment of the applicant.

Consequently, the Court has found a violation of the right to property.

JUDGMENT FINDING A VIOLATION OF THE RIGHT TO PROPERTY DUE TO FAILURE TO PROVIDE RELEVANT AND SUFFICIENT REASONING IN DISMISSING THE ALLEGATIONS CAPABLE OF AFFECTING THE OUTCOME OF THE CASE

Ayyıldız Maden Mermer İnşaat ve İnşaat Malzemeleri Sanayi Ticaret Ltd. Şti (no. 2020/35644), 28 March 2024

THE FACTS

The immovable property bought by the applicant were registered as Treasury property for being a fictious transaction. Subsequently, the applicant successfully filed an action before the civil court for annulment of the registration in the name of the Treasury. The defendant administration appealed the decision on points of fact and law. The regional court of appeal quashed the first-instance decision and delivered a fresh judgment. On appeal, the Court of Cassation upheld the judgment of the regional court of appeal.

THE APPLICANT'S ALLEGATIONS

The applicant maintained that his right to property had been violated due to the transfer of his immovable property to the State Treasury on the ground that the sale was a fictious transaction.

THE COURT'S ASSESSMENT

In the present case, the civil court found that the sale of immovable property was realised based on the real value. Contrary to the finding of the lower court, the regional court of appeal concluded that the sale transaction cannot be conducted on an instalment basis as to prevailing commercial custom.

The regional court of appeal noted that it was neither challenged nor demonstrated that the possession of the immovable property classified as a plot of land, as well as the sports hall, had been passed over to the applicant by the seller through handover of the keys or any other means. However, no such claim or challenge was raised by the defendant Treasury during the proceedings. Accordingly, the applicant became aware, only after the decision of the regional court of appeal, that the burden of proof in this regard rested on him. Under these circumstances, the applicant was unable to provide an explanation regarding the manner in which he acquired the possession of the immovable property. Nor could he have the opportunity to demonstrate whether such a handing-over procedure was necessary to prove that the impugned sale had not been based on a fictitious transaction.

The regional court of appeal failed to address the applicant's claims during the proceedings that the liquidated company had performed no activities on the immovable property that could be construed as fictitious transaction; that the decisions of non-prosecution had been issued regarding the company partners; and that the process of purchasing the immovable property and the location of the payment, as well as instalment sale, were consistent with the requirements of business customs. Furthermore, the applicant asserted that the payments had been made after consulting with the relevant administrative authorities, which had also expressed the view that the sale of the disputed immovable property constituted a real transaction, free of collusion. However, the regional court of appeal failed to assess this claim either. Additionally, despite the first-instance court's inspection and expert reports concluding that the sale had been conducted based on the real value, the regional court of appeal determined that the sale of immovable property on an instalment basis had not complied with the standards of commercial customs. It however failed to demonstrate, in its reasoned decision, how these commercial customs were ascertained.

Consequently, the Court has found a violation of the right to property.

I. RIGHT TO A FAIR TRIAL

JUDGMENT FINDING A VIOLATION OF THE RIGHT TO ACCESS TO A COURT DUE TO THE FAILURE TO NOTIFY THOSE WITH LEGAL INTEREST OF THE CASE

Ayşe Durucan Saygı and Others (no. 2020/17478), 29 November 2023

THE FACTS

The applicants passed the written examination held by the Ministry of National Defence ("the Administration") for internal recruitment to the position of national defence expert and were qualified to take the oral examination; they were then appointed as national defence experts upon successfully passing the oral examination. The administrative court dismissed the action brought by the Trade Union of Office Civil Servants ("the Union") for the annulment of the entire oral examination. Upon the Union's request for an appeal against the impugned dismissal, the regional administrative court quashed the decision and ruled with final effect that the examination in question be annulled. The Council of State dismissed the defendant administration's appellate request without conducting an examination on the grounds that the decision of the regional administrative court was final.

Following the annulment of the oral examination by the regional administrative court, the administration terminated the contracts of all personnel appointed as national defence experts. The applicants stated that they were informed of the final decision in question when they received the letter of dismissal -on the day when the letter was written-.

THE APPLICANTS' ALLEGATIONS

The applicants maintained that their right to access to a court had been violated due to the fact that they had not been notified of the action for annulment concerning the entire oral examination in which they had passed successfully.

THE COURT'S ASSESSMENT

In the present case, the applicants could not participate in the proceedings relating to the oral examination which they had passed, as they had not been notified of the case; consequently, they were deprived of the possibility of presenting their arguments on the merits of the dispute, on the matters which they considered to be capable of affecting the outcome of the case, and of submitting evidence to substantiate their claims.

Additionally, it has been found that the individual interest of the applicants in being informed of the proceedings in question, which has a direct impact on their rights, outweighs the public interest in ensuring procedural economy. In this regard, it has been considered that the failure to notify the proceedings has substantially prejudiced the delicate balance between the public interest and the individual interest to the detriment of the applicants, and it has been found that depriving the applicants of the opportunity to present their claims and evidence before the trial court has imposed an excessive and disproportionate burden on the applicants.

Furthermore, considering that the subject matter of the present case pertains to the annulment of an examination in which a large number of people participated, it has been established that the burden of the failure to resolve the matters which can be remedied by legal provisions on the implementation of the notification procedure is entirely placed on the applicants. In the light of these considerations, the impugned interference with the applicants' right to access to a court has been found disproportionate.

Consequently, the Court has found a violation of the right of access to a court within the scope of the right to a fair trial.

JUDGMENTS FINDING A VIOLATION OF THE RIGHT OF ACCESS TO A COURT DUE TO THE FAILURE TO RELY ON THE HIGHER COMPENSATION AND TO COVER ACTUAL DAMAGES

Ahmet Özgan and Şule Özgan (no. 2020/21347) and İsmail Tuncel (no. 2019/8609), 21 December 2023

THE FACTS

The Applicants Ahmet Özgan and Şule Özgan

Following the death of their relative S.Ö. in a traffic accident involving vehicle she/he had been in, which had been driven by the defendant M.S.K., the applicants instituted an action for compensation against the insurance company and the owner of the vehicle. The first expert report issued upon the court's order, initially calculated the amount of compensation for deprivation of support in respect of the applicants respectively. Upon the defendant's objection, the court ordered an additional report which was again contested and after which another additional report was prepared. The applicants brought a new action regarding the damages as calculated in the third expert report which exceeded the amount of compensation they had claimed in the case file no. E.2010/470 before the civil court. Partially accepting the case, the court awarded pecuniary compensation based on the amounts calculated in the first expert report and dismissed the applicants' claim for the excess amount. It was stated in the reasoning of the decision that since the amount calculated in the first expert report, which was not contested by the plaintiffs, constituted a procedurally vested right in favour of the defendant. The court added that the compensation to be awarded should be based on the first expert report and that a procedurally vested right, theoretically, invalidates any amount excessing the damage calculated in the first expert report for not being contested by the plaintiffs. Therefore, the court concluded that bringing an additional action to claim excess amount could not revoke the aforementioned right vested in favour of the other party. Subsequent to the appellate proceedings, the court's decision become final.

The Applicant İsmail Tuncel

The applicant, injured in a mining accident when he was working, suffered from a ruptured tendon in his left foot and an incision in his right hand. The report issued by the Social Security Institution (SSI) Ankara Provincial Directorate of Social Security Institution, Kocatepe Social Security Health Centre (SSI Health Centre) determined the applicant's vocational inability/disability rate (degree of permanent incapacity for work) as 14%. The report also stated that a follow-up examination was needed. While the proceedings initiated by the applicant before the civil court was pending, the report issued after the applicant's follow-up examination by the SSI Health Centre also reaffirmed the applicant's vocational inability as 14%. However, the defendant employer objected to the rate determined by the SSI Health Centre. Thereupon, the civil court sent the case file to the 3rd Specialization Board of the Forensic Medicine Institute (specialisation board) and ordered that a report be issued in the presence of the concerned, if necessary. In the report issued by

the latter, the applicant's disability rate was determined as 19%. In his petition to the Court, the applicant stated that since the rate of his vocational inability was determined as 19% in the report issued by the specialisation board, this rate should be based on in the calculation of compensation; or alternatively, a report should be issued by the General Board of the Forensic Medicine Institute (general board). The court, on the other hand, considering that the applicant failed to object to the 14% rate, and that the said rate only increased when the case file was sent to the specialisation board upon the defendant's objection, concluded that the defendant party was procedurally vested with a right in their favour. Therefore, the court dismissed the applicant's request to send the case file to the general board, and instead, it sent the file to an expert to establish the fault rates.

THE APPLICANTS' ALLEGATIONS

The applicants claimed that their right of access to a court had been violated due to the authorities' failure to rely on the additional expert reports which calculated higher amounts of damages as well as the authorities' failure to compensate the applicants' actual damages in the respective proceedings in relation to traffic and work accidents.

THE COURT'S ASSESSMENT

1. As regards the Applicants Ahmet Özgan and Şule Özgan

In the present case, the court ordered an expert examination to calculate the amount of pecuniary compensation to be awarded to the applicants for being deprived of the support of their deceased relative. The court considered that in the first expert report the calculation had been based on certain assumptions, and therefore it requested an additional expert report, also taking into consideration the defendant's objections. Despite the higher amount of the loss of financial support calculated in the additional report and the applicant's claims for the excess amounts through an additional action, the court refused to rely on the additional report and dismissed the compensation claims in this regard, considering that the applicants' failure to contest the first expert report constituted a procedurally vested right in favour of the other party in terms of the compensation amount.

In this respect, although the pecuniary damages suffered by the applicants had been factually determined by the court through an expert examination carried out for the resolution of the dispute, the failure to compensate these damages on solely procedural grounds resulted in the deprivation, by a judicial decision, of the applicants' rights afforded to them under the substantive law, thus depriving them of the opportunity to fully claim

their rights. Accordingly, it has been considered that this procedural practice rendered ineffective the action brought by the applicants to avail themselves of the said right, thereby imposing a heavy and disproportionate burden on them. It has therefore been concluded that the interference with the right of access to a court was disproportionate.

Consequently, the Court has found a violation of the right of access to a court.

2. As regards the Applicant İsmail Tuncel

In the present case, a higher rate of disability on the part of the applicant was factually determined in an expert examination requested by the court for the resolution of the dispute. However, the failure to take into consideration this finding in the determination of the damage on solely procedural grounds and the applicant's being forced to bring a new action to claim the aforementioned excess amount deprived him of the opportunity to fully claim his right that he could have actually enjoyed in accordance with the substantive law within the scope of the same proceedings. Accordingly, it has been considered that this procedural practice rendered ineffective the action brought by the applicant to avail himself of the said right, thereby imposing a heavy and disproportionate burden on him. It has therefore been concluded that the interference with the right of access to a court was disproportionate.

Besides, as in the present case, the determination of the rate of disability on the part of the persons in cases whereby compensation is sought for the damages arising from the loss of capacity for work due to work accidents is a technical issue requiring expertise. As a matter of fact, in practice, the courts resort to expert examination *ex officio* or upon the request of the parties for the determination of the rate of disability in cases of uncertainty. Therefore, in such a technical issue, it is incompatible with the nature of the work and of the dispute to expect the individuals to precisely foresee their actual disability rates while bringing an action and to formulate/limit his claims accordingly.

Consequently, the Court has found a violation of the right of access to a court.

JUDGMENT FINDING A VIOLATION OF THE PRESUMPTION OF INNOCENCE DUE TO THE STATEMENTS IMPOSING CRIMINAL LIABILITY IN THE REASONED DECISION DESPITE THE ABSENCE OF A FINAL CONVICTION

Mehmethan Kamburoğlu (no. 2019/27554), 31 January 2024

THE FACTS

The applicant successfully passed the gendarmerie specialist sergeant recruitment examination and commenced service as a specialist sergeant trainee. Nevertheless, the applicant's contract was terminated following the findings of the security clearance investigation to his detriment. The applicant lodged an administrative appeal seeking the annulment of the act of termination. The trial court ordered the annulment of the impugned act. The decision stated that in the actions brought against the applicant for the offences of threat and intentional injury, a decision on the suspension of the pronouncement of the judgment (HAGB) had been rendered and that a penalty had been imposed for the offence of property damage. In the decision, it was further observed that the applicant's file contained a negative note indicating he had been tried for the impugned offences and *convicted as a result of the acts being established*, and that *a decision had been rendered on the suspension of the pronouncement of the judgment (HAGB)*. Consequently, the security clearance investigation had been concluded negatively. The trial court established that the impugned offences were not among the catalogue offences listed in Article 6 of the Regulation on Specialised Sergeants in force at the time of the incidents. Having regard to the occurrence and nature of the disputed acts, the trial court asserted that the applicant could not be characterized as having a criminal personality or to be a repeating offender. The trial court concluded that the acts complained of were not unlawful, since the applicant, who had not received any negative feedback during the recruitment procedure and who had successfully completed his training, had a legitimate expectation to continue in his post. Following an appeal by the Gendarmerie General Command, the Regional Administrative Court upheld the appeal and held that the judgment be quashed and the action be dismissed. The applicant's appellate request was dismissed with final effect.

THE APPLICANT'S ALLEGATIONS

The applicant maintained that his presumption of innocence had been violated in the action for annulment of the administrative act brought by the applicant on the grounds that the administrative court's reasoned decision contained statements insinuating his culpability by referring to criminal proceedings that had not resulted in a final conviction.

THE COURT'S ASSESSMENT

In the present case, in the proceedings against the applicant for the offences of threat and intentional injury, it was determined that Article 231 of the Code of Criminal Procedure No. 5271 was applicable to the imputed offences, and a decision on the suspension of the pronouncement of the judgment (HAGB) was rendered. Therefore, if the period of judicial supervision expires without any further offence being committed, the criminal action against the applicant may be discontinued. Undoubtedly, the applicant's culpability was not established and his innocence was maintained throughout the period of supervision.

In the reasoning of the decision of the regional administrative court, it was stated that '*...the decision on the suspension of the pronouncement of the judgment was rendered and pursuant to the relevant article, if the pronouncement of the judgment shall entail no legal consequences for the applicant, in other words, no conviction decision shall be issued against the applicant...*'. Notwithstanding this clause, the subsequent part of the reasoning indicated "*...the nature, gravity and multiplicity of the offences committed by the applicant, which led to his conviction, as well as the importance of the public duty at stake and the qualifications associated therewith...*" Accordingly, the administrative court considered that the applicant committed the impugned offences and was convicted despite the issuance of the HAGB decision, basing its assessment on the nature and gravity of the criminal offences. In doing so, the applicant was deemed guilty even though the criminal proceedings against him had not resulted in a final conviction and the grounds for terminating the applicant's contract were not substantiated facts and circumstances in line with the law.

In its reasoning, the regional administrative court relied, on the one hand, on decisions in criminal proceedings that had not resulted in a final conviction and, on the other hand, used statements insinuating that the applicant had committed the imputed offences. It has been observed that the facts and circumstances subject to criminal proceedings were not examined in the reasoning part of the administrative court's decision. It has therefore been considered that the language employed in the reasoning, including statements attributing criminal liability on the applicant without a final conviction, undermined the applicant's innocence. This rendered the HAGB decisions devoid of meaning and cast doubts as to the applicant's innocence.

In conclusion, given the articulated statements and the direct references to the judgments of the criminal court, which resulted within the HAGB, in the reasoning of the regional administrative court's decision, it has been established that the administrative court's decision conveyed the belief that the applicant had committed the acts subject to the criminal proceedings and was guilty.

Consequently, the Court has found a violation of the presumption of innocence.

JUDGMENT FINDING VIOLATIONS OF THE RIGHT TO RESPECT FOR PRIVATE LIFE AND RIGHT TO A FAIR TRIAL DUE TO MONITORING OF THE MEETING WITH THE LAWYER AND DISMISSAL OF THE APPEAL AGAINST THE DISCIPLINARY ACTION RESPECTIVELY

Fadime Kolutek and Others (no. 2017/25008), 31 January 2024

THE FACTS

Upon the death of the applicant Celaleddin Kolutek, his wife Fadime Kolutek continued the application in his stead as well as on behalf of their children. An investigation had been launched against the deceased applicant for his alleged membership of the Fetullahist Terrorist Organization/Parallel State Structure ("FETÖ/PDY") during which he was detained on remand. Meanwhile, the Administration and Monitoring Board of the Penitentiary Institution ("the Board") issued a decision allowing for the monitoring of the meetings of detainees, who were held in the penitentiary institution on charges of membership of the FETÖ/PDY, with their lawyers in accordance with the Decree Law no. 667 on the Measures Taken within the Scope of the State of Emergency ("Decree Law no. 667"). The applicant's meeting with his lawyer was monitored by an officer in charge at the penitentiary institution in accordance with the said decision. Afterwards, a disciplinary investigation was launched by the Disciplinary Board of the Penitentiary Institution due to the statements allegedly made by the applicant during the monitored meeting. At the end of the investigation, the applicant was placed in solitary confinement for five days pursuant to the Law no. 5275 on the Execution of Sentences and Security Measures for allegedly insulting and threatening the officer in charge. The applicant appealed the decision before the execution judge, requesting its revocation for its alleged unlawfulness. However, the former dismissed the applicant's appeal. The applicant's subsequent appeal was also dismissed by the assize court with no right of appeal.

THE APPLICANTS' ALLEGATIONS

The applicants claimed that the right to respect for private life as well as the right to a fair trial had been violated on respective grounds that the meeting with the lawyer had been monitored by the officers and that the appeal against the disciplinary punishment, which had been imposed relying on the report issued after the said meeting, had been dismissed.

THE COURT'S ASSESSMENT

1. Alleged Violation of the Right to Respect for Private Life

In the present case, the said measure was taken against the applicant during a period when a state of emergency was declared nationwide. It has been observed that the impugned measure was aimed at preventing potential threats to the security of the society and the penitentiary institution, management of terrorist organisations or other criminal organisations, communication of orders and instructions to them, or transmission of covert, overt or encrypted messages through expressions, and at eliminating the risks posed by the state of emergency. Thus, the alleged violation of the applicant's right to respect for private life has been examined within the scope of Article 15 of the Constitution.

Considering the circumstances of the state of emergency, it may be reasonable to impose additional measures on the persons concerned, in accordance with the legitimate purposes, provided that there are objective and convincing grounds. Pur-

suant to Decree Law no. 667, which was in force at the material time, the prisoner's right to meet his lawyer in private was protected and the confidentiality of the said meeting was acknowledged as a rule. According to the relevant regulation, if there is certain information, findings or documents indicating the involvement of the prisoners of given offences in endangering the security of the society and the penitentiary institution, managing terrorist organisations or other criminal organisations, communicating orders and instructions to them, or transmitting covert, overt or encrypted messages through expressions, then the public prosecutor may restrict the prisoner's right to meet his lawyer by a decision. However, it has been observed that the relevant decree law did not limit the right to meet a lawyer for a definite period of time and did not establish a specific inspection mechanism as to the ongoing necessity of the impugned measure.

Besides, it has been established that the monitoring decision was not issued by the public prosecutor, but the Board, and that it was of a general nature and lacked any specific reasoning as regards the deceased Celaleddin Kolutek. As a result, when considered from the standpoint of Article 15 of the Constitution, which allows for the suspension and limitation of the exercise of fundamental rights and freedoms during the state of emergency, it has been evaluated that the impugned measure was not proportionate to the extent required by the exigencies of the situation.

Consequently, the Court has found a violation of the right to respect for private life.

2. Alleged Violation of the Right to a Fair Trial

In the present case, the applicant was imposed a disciplinary punishment based on the minutes kept by the officers at the penitentiary institution as well as their statements. In view of the conclusion reached as regards the monitoring of the applicant's meetings with his lawyer, it has been concluded that the use of the said minutes and the statements of the officials as decisive evidence in the disciplinary proceedings undermined the overall fairness of proceedings.

Consequently, the Court has found a violation of the right to a fair trial.

JUDGMENT FINDING A VIOLATION OF THE RIGHT TO A FAIR HEARING

Erdal Sonduk (no. 2020/23093), 15 February 2024

THE FACTS

The applicant was convicted of the offence of usury, and the incumbent regional court of appeal dismissed his appeal on the merits. Consequently, his conviction became final.

THE APPLICANT'S ALLEGATIONS

The applicant maintained that his right to a fair hearing was infringed, as the witnesses on whose statements his conviction was based had not actually been heard by the court panel that delivered the judgment, yet the panel made assessments as if they had themselves heard the witnesses.

THE COURT'S ASSESSMENT

The principle of immediacy is recognised as a specific aspect of the right to a fair hearing. This principle entails that the judge has direct access to evidence suggested to shed light on the case and has full knowledge of the evidence without any intermediary. This assessment is particularly applicable to witness evidence. This is because the court's observations on the conduct and credibility of a witness during his/her testimony are crucial for establishing the material truth.

A change in the composition of the panel is not a *per se* violation of the right to a fair trial. A judge may not be able to conclude a trial for valid reasons, such as health issues, resignation, transfer, retirement, or assignment to another court. In such cases, it is necessary to consider whether the replacement of the judge has undermined the overall fairness of the proceedings, and whether compensatory safeguards have been afforded in this sense.

In this context, making an evaluation through reading/examination of the transcripts of the statements of the witnesses heard in the previous hearings can also be resorted to as a substitute way. However, in cases where the evidentiary value of witness statements must necessarily rely on observations and findings obtainable solely through direct hearing of the witnesses, the reasonable challenges raised by the defence in this regard must be taken into consideration and evaluated by the courts.

In the present case, the applicant was convicted by the court panel, which had not attended the hearings during which the witnesses were heard. Yet the panel relied on the statements of witnesses for the conviction by stating that "*the panel had reached the opinion that the witnesses called by the intervening party had testified impartially, and the testimonies of the defence witnesses, being contrary to the ordinary course of life and intended to disguise the truth, were deemed unreliable*". The court panel thereby expressed preference over the witnesses of intervening party and found the statements of the defence witnesses unreliable on the ground of impressions that could be only obtained through direct observation (hearing) of the statements of the witnesses. As a matter of fact, in determining the evidentiary value of the witness testimonies, the court panel referred to such impressions/conviction that could be gained through direct observation whereas that was not the case. It has been therefore concluded that in the present case, the court panel, composition of which had been changed after hearing of the witnesses, convicted the applicant on the basis of impressions obtained merely by reading the transcripts, which fell foul of the principle of immediacy.

Consequently, the Court has found a violation of the right to a fair hearing under the right to a fair trial.

JUDGMENT FINDING A VIOLATION OF THE RIGHT OF ACCESS TO A COURT DUE TO DISMISSAL OF THE ACTION AS BEING TIME-BARRED

Gemak Gemi İnşaat Sanayi ve Ticaret A.Ş. (no. 2020/11509), 29 February 2024

THE FACTS

For the immovable properties owned by the applicant company, the real-estate tax was calculated as 148,593.10 Turkish liras (TRY) for the tax year 2010, whereas the amount accrued in 2009 was TRY 18,519.72. Therefore, the applicant company filed an action against the appraisal commission decision whereby the real-estate tax-base for the tax year 2010 was determined. The incumbent court, however, dismissed the action on grounds of lack of capacity to sue as the applicant company was not, by the date of the said decision, among the parties who were entitled to bring an action against the appraisal commission decision, as laid down in the Tax Procedural Law no. 213 (Law no. 213). The applicant company also filed an action with respect to the tax-base rates for the tax years 2011, 2012 and 2013, which were determined on the basis of the real-estate tax rate of 2010. In the meantime, the Court reviewed the constitutionality of the first sentence of the third sub-paragraph of Article 49 bis § b of Law no. 213 and consequently annulled it for being unconstitutional by its decision of 31 May 2012 (no. E.2011/38, K.2012/89). In finding the applicant company to have no capacity to sue against the appraisal commission decision, the inferior court considered that the action brought in 2011 had been adjudicated before the Constitutional Court annulled the said provision. It examined the actions insofar as they related to tax years of 2012 and 2013, proceeding to the merits. However, on appeal, the Council of State dismissed all the actions as the tax-base rate had already become final, stating that the tax-base rates for the tax years of 2011, 2012 and 2013 was determined on the basis of the 2010 tax-base determination, and that the annulment of the respective provision by the Court would not have a bearing on the appraisal commission decision regarding the said year.

THE APPLICANT'S ALLEGATIONS

The applicant company maintained that the dismissal, as being time-barred, of its action against the accrual of real-estate tax and the appraisal commission decision forming a basis for the impugned accrual had infringed its right of access to a court.

THE COURT'S ASSESSMENT

As set forth in the statutory regulation that was in force at the time when the impugned appraisal commission decision was taken and the disputed tax was accrued, appraisal commission decisions may be challenged within 15 days before the incumbent tax court merely by the institutions, organisations, associations to which the impugned decision was notified, as well as by the respective neighbourhood units. However, following the Court's annulment decision of 31 May 2012 concerning

the taxpayers' capacity to sue against appraisal commission decisions, no explicit regulation has been introduced with respect to the notifications to be made and time-limits for filing an action.

In this sense, Article 49 of Law no. 213 embodies a special regulation concerning the actions to be filed with respect to unit values per square meter of lands and plots, which is intended for ascertaining -by also concluding any challenge to be raised before courts- these unit values before the beginning of the respective tax year. In this regard, the Council of State acknowledges that an action may be brought against appraisal commission decisions -whereby unit values per square meter of lands and plots are determined to form a basis for real-estate tax- within the thirty-day general time-limit for filing an action, which starts to run by the date when the imputed decision has become known, or, at the latest, until the last day of the year when the decision is issued. However, as mentioned above, there is no statutory provision concerning the announcement, or notification by signature, of unit values per square meter of lands and plots insofar as it concerns taxpayers.

In the present case, the inferior court dismissed the applicant's action brought, upon the finalisation of the taxation amount, against the appraisal commission decision on the determination of minimum unit values per square meters of lands, as being lodged out of time, emphasising that an action could be filed against appraisal commission decisions within thirty-day general time-limit for bringing an action, which is laid down in Article 7 of the Law no. 2577 on Administrative Procedure. It appears from the file that the applicant company is not among the parties to which a notification was made. On the other hand, the inferior court did not make an assessment as to the date when the applicant actually became aware of the appraisal commission decision. Within the framework of the case-law developed in accordance with subsequent legal developments, the court set a final time-limit for the filing of an action and accepted that the action should have been, in any event, filed before the end of the year, basing its interpretations on a situation which did not exist at the time of the applicant's action and which the court could not take into consideration.

In this sense, the interpretation made –as regards the time-limits for filing an action– by the inferior court on the basis of a situation which was not prevailing at the time when the applicant company filed its action and which could not be taken into consideration was unforeseeable in the particular circumstances of the present case and excessively hampered the applicant's ability to access to a court, thus placing an excessive and disproportionate burden on it. It has been accordingly concluded that the interference with the applicant's right of access to a court was disproportionate.

It has been also observed that the actions concerning the tax years of 2011, 2012 and 2013 were also dismissed on the ground that the tax-base rate of the year 2010 was ascertained. However, in the light of the above-mentioned findings and assessments indicating that the interference with the right of access to a court was found disproportionate in the action pertaining to the tax year 2010, a retrial is to be conducted so as to redress the violation in question and its consequences. Therefore, it cannot be said that the tax-base rate for the 2010 tax year has been finalised. Accordingly, the Court has concluded that the dismissal of the actions pertaining to the other three years as the 2010 tax-base rate became definite constituted a disproportionate interference with the applicant's right of access to a court.

Consequently, the Court has found a violation of the right of access to a court under the right to a fair trial.

JUDGMENT FINDING A VIOLATION OF THE RIGHT TO A REASONED DECISION UNDER THE RIGHT TO A FAIR TRIAL DUE TO THE FAILURE TO ADDRESS AN ALLEGATION THAT COULD HAVE AFFECTED THE OUTCOME OF THE PROCEEDINGS

Bayram Altın (no. 2021/32528), 29 May 2024

THE FACTS

The applicant, having successfully passed the examination for street wardenship, was not appointed because the security clearance investigation was negative. The action for annulment brought by the applicant was dismissed by the incumbent court on the grounds that his sibling had been given a suspended sentence for theft of items kept in a building and had separately been convicted of offences including sexual abuse of a child, aggravated robbery, and violation of the inviolability of domicile. The applicant's subsequent appellate requests were also dismissed.

THE APPLICANT'S ALLEGATIONS

The applicant maintained that his right to a reasoned decision had been violated in the action for annulment brought against the administrative act of not being admitted to the profession of street wardenship due to the security clearance, as the judgment failed to address an argument that could have affected the outcome of the proceedings.

THE COURT'S ASSESSMENT

In cases of appeal against the non-appointment of an individual on the grounds of a security clearance investigation yielding unfavourable results, it is of importance to provide a clear and detailed account of the reasons for the negative result and to substantiate how the information obtained through the investigation undermines the applicant's eligibility for the position in question. In this regard, judicial authorities are expected to provide a detailed account of the information obtained through security investigations in their decisions and to evaluate such findings in the context of the institution to which the applicant would be appointed and the duties they would assume. It is crucial to establish that whether the findings underlying the negative security clearance are directly attributable to the applicant or reveal a current and personal connection to him. Furthermore, in order to prevent arbitrariness, it is incumbent upon the courts to provide a reasoned justification as to how such a link is established.

Additionally, the principle that individuals cannot be held responsible for the acts of their relatives is among the universal tenets of the rule of law. In a state governed by the rule of law, holding an individual accountable for the conduct of others is unacceptable, unless there are exceptional circumstances explicitly provided by law. It is incompatible with the principle of the rule of law for public authorities to impose sanctions on individuals for the acts of another person over whom they have no legal or factual control or responsibility.

In the present case, it has been observed that the incumbent court, in dismissing the applicant's action challenging the denial of his appointment to the position of street wardenship, relied on the imprisonment sentences of the applicant's sibling. The court, however, merely referred to this information without further analysis. It appears that the court did not provide an evaluation of how the acts of the applicant's sibling would adversely impact the applicant's ability to perform the duties of a warden.

As a rule, where the relevant decisions contain sufficient reasoning on substantive issues, it is considered reasonable for the appellate courts to make an assessment by referring to such decisions. However, in cases where court decisions lack sufficient reasoning, appellate courts are obliged to address the substantive objections raised by the parties in a reasoned manner. In the present case, it has been observed that the incumbent court's decision did not contain any reasoning in this respect, nor did the appellate authorities provide any evaluation based on the court's decision. Considering the proceedings as a whole, it has been observed that the applicant's right to a reasoned decision has been violated.

Consequently, the Court has found a violation of the right to a reasoned decision under the right to a fair trial.

JUDGMENT FINDING VIOLATIONS OF THE PRINCIPLES OF EQUALITY OF ARMS AND ADVERSARIAL PROCEEDINGS DUE TO THE DISMISSAL OF THE REQUEST FOR OBTAINING EVIDENCE

Eşref Bingöl (no. 2021/10332), 18 July 2024

THE FACTS

The applicant, a bank official calling the complainant and informing him that the deductions and insurance fees related to the loan received by the latter would be refunded, was indicted for aggravated fraud for allegedly deriving profit from the complainant through his fraudulent acts. Both at the investigation and trial stage, the applicant requested the judicial authorities to obtain certain evidence to substantiate his allegation that he was not the perpetrator of the imputed act, but he was indeed a victim of fraud by F.S. At the end of the proceedings, the trial court sentenced him to imprisonment for the imputed offence. On appeal, his conviction was upheld and became final.

THE APPLICANT'S ALLEGATIONS

The applicant maintained that the principles of equality of arms and adversarial proceedings had been breached on account of the dismissal of his request for the investigation of the facts that might mitigate or even set aside the criminal sentence imposed on him.

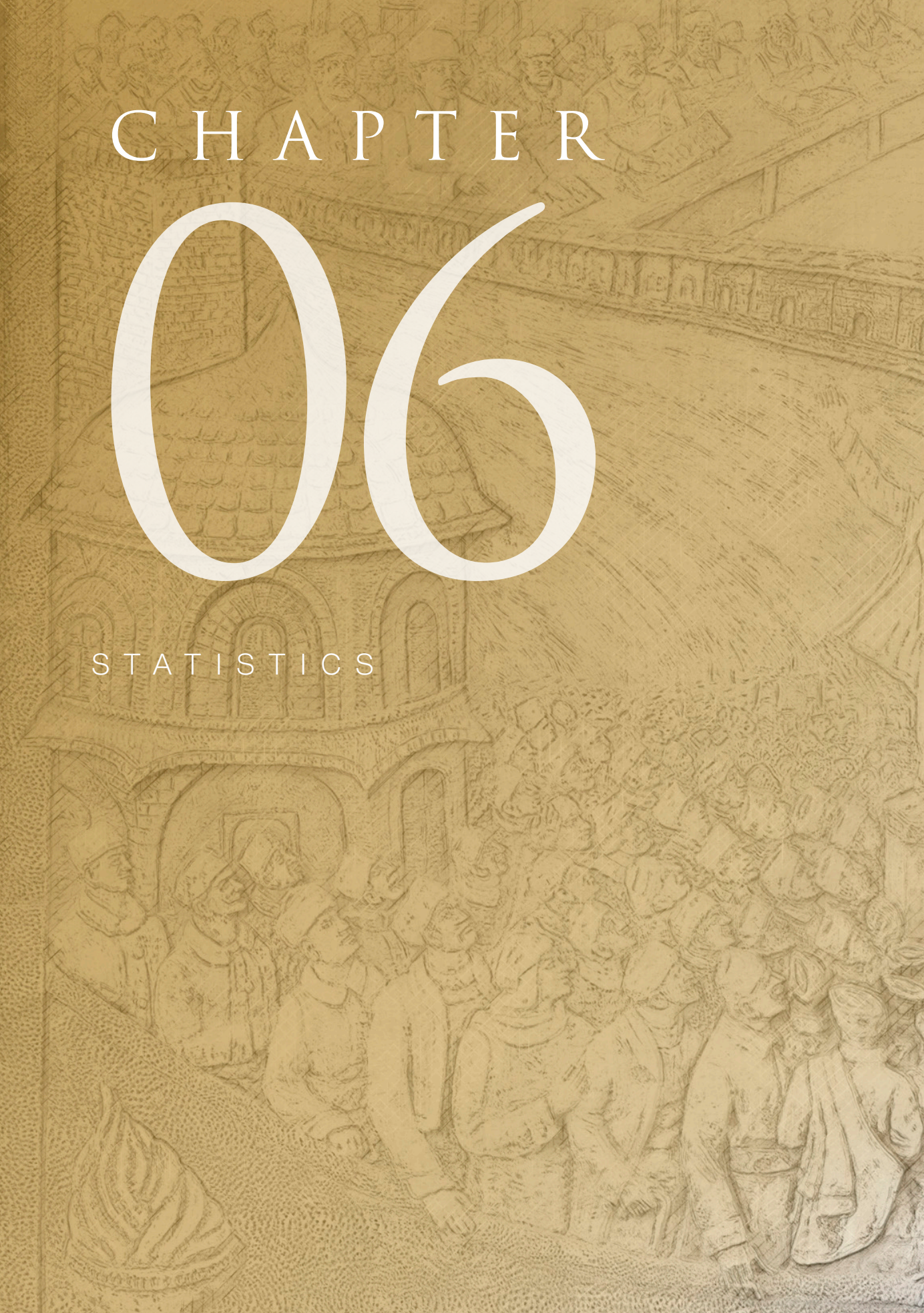
THE COURT'S ASSESSMENT

In the present case, the trial court did not rely on the applicant's defence submissions that he had shared the bank account details -into which the complainant had deposited money- with his friend F.S. The court found his defence submissions "*contrary to the ordinary course of life and intended to evade the criminal liability*" and eventually convicted him.

During the proceedings, the applicant claimed that the perpetrator of the said offence was F.S., who had also defrauded him. In support of his claim, the applicant submitted to the law enforcement officers the social media account allegedly held by F.S., as well as the latter's photos. He also requested the authorities to obtain the camera footages having a potential to shed light on the exact circumstances of the applicant's case. Moreover, the applicant provided, during the hearing, the trial court with a cell phone number allegedly belonging to F.S.

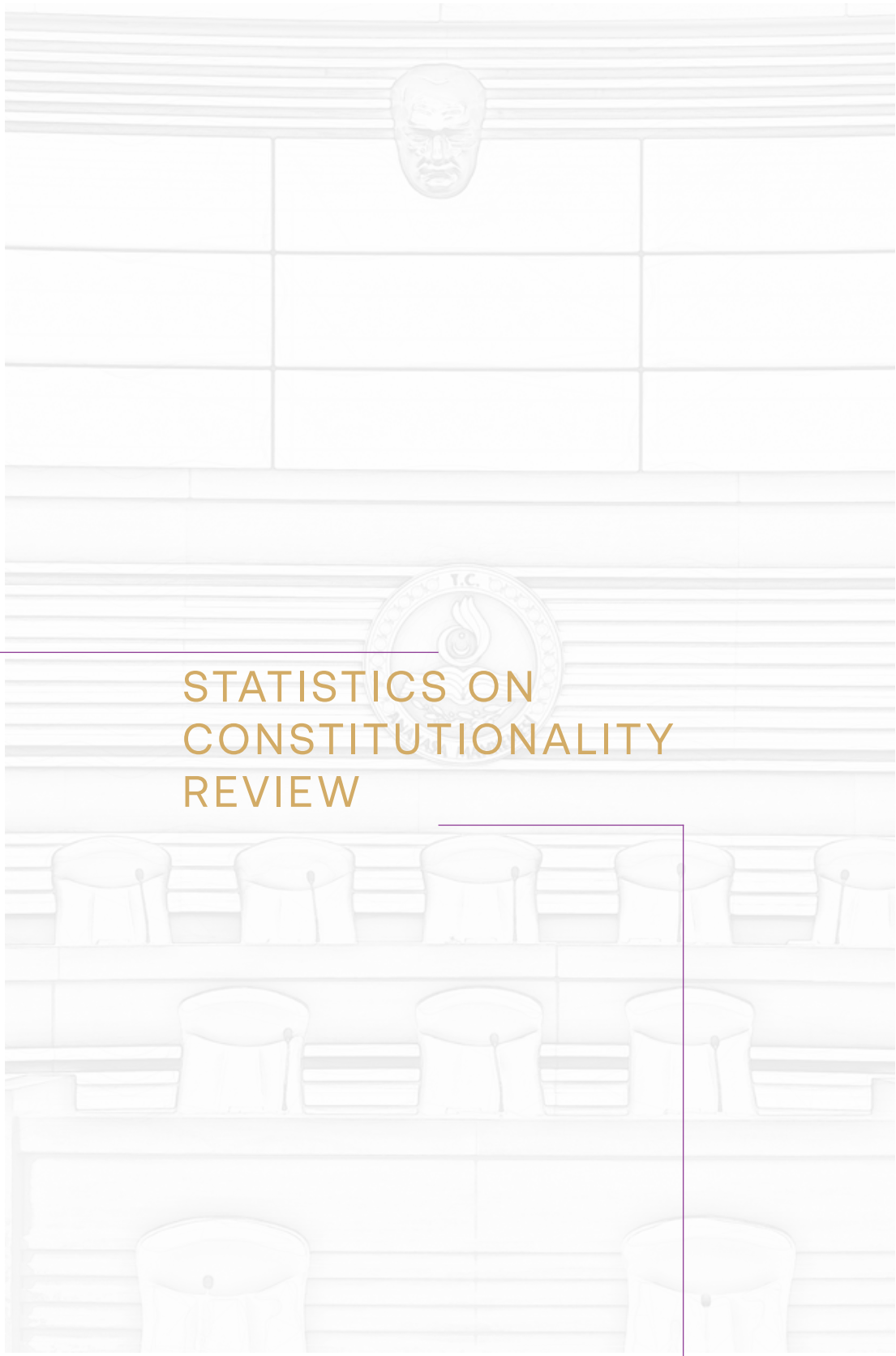
In consideration of the available evidence and requests, the incumbent chief public prosecutor's office should have conducted sufficient inquiries into the identity and address of F.S. at the investigation stage. Besides, the trial court dismissed the applicant's requests on abstract grounds, and thus the applicant was put in a disadvantageous position *vis-à-vis* the prosecution. It is thus evident that the stance taken by the trial court was contrary to the requirements of the principles of equality of arms and adversarial proceedings.

Consequently, the Court has found violations of the principles of equality of arms and adversarial proceedings.



CHAPTER 06

STATISTICS



STATISTICS ON CONSTITUTIONALITY REVIEW

Table 1

Abstract & Concrete Review Applications
Received by Years

	NUMBER OF ABSTRACT & CONCRETE REVIEW APPLICATIONS
2012	159
2013	160
2014	199
2015	111
2016	135
2017	177
2018	164
2019	116
2020	101
2021	134
2022	157
2023	202
2024	236

TOTAL
2,051

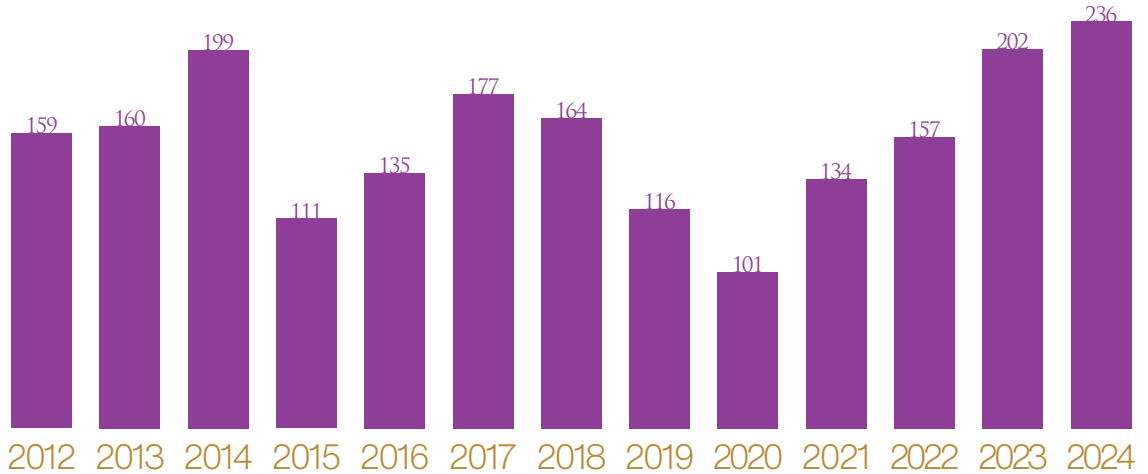


Table 2

Abstract Review and Concrete Review Applications Received and Concluded in 2024

	ABSTRACT REVIEW	CONCRETE REVIEW	TOTAL
PENDING FROM PREVIOUS YEAR	55	57	112
RECEIVED WITHIN THE YEAR	32	204	236
TOTAL RECEIVED / PENDING FROM	87	261	348
ADJUDICATED	37	196	233
PENDING FOR THE NEXT YEAR	50	65	115

Table 3

Abstract and Concrete Review Applications Received by Years

	ABSTRACT REVIEW APPLICATIONS RECEIVED	CONCRETE REVIEW APPLICATIONS RECEIVED	TOTAL
2012	20	139	159
2013	17	143	160
2014	19	180	199
2015	13	98	111
2016	21	114	135
2017	20	157	177
2018	87	77	164
2019	33	83	116
2020	45	56	101
2021	44	90	134
2022	52	105	157
2023	40	162	202
2024	32	204	236
TOTAL	443	1,608	2,051

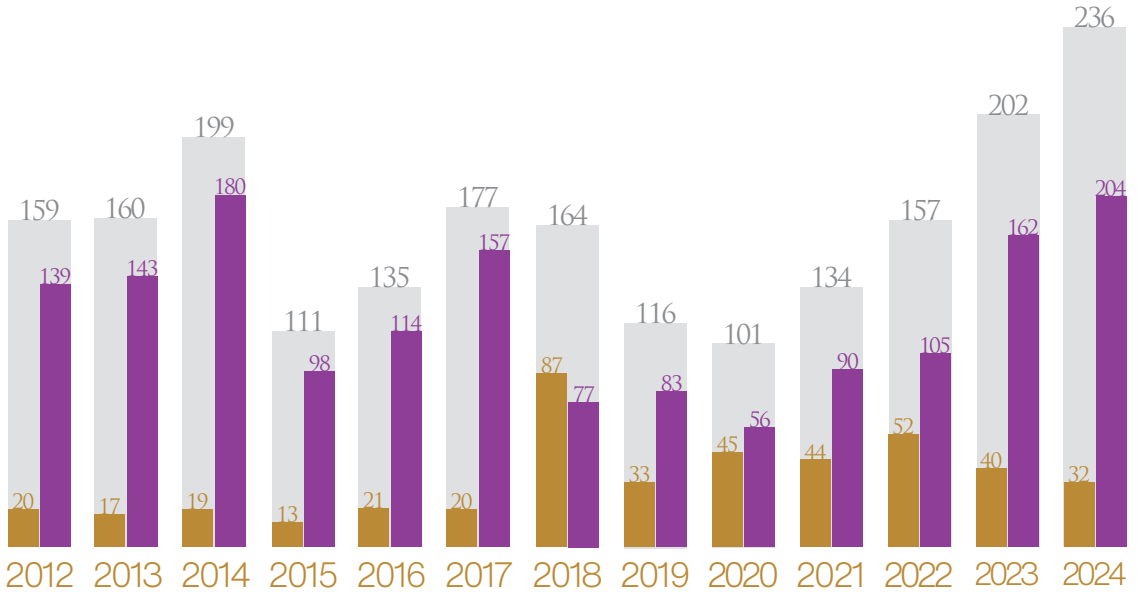


Table 4

Abstract and Concrete Review Applications Adjudicated by Years

	ABSTRACT REVIEW APPLICATIONS ADJUDICATED	CONCRETE REVIEW APPLICATIONS ADJUDICATED	TOTAL
2012	47	160	207
2013	36	133	169
2014	17	187	204
2015	16	107	123
2016	11	119	130
2017	15	161	176
2018	48	71	119
2019	17	84	101
2020	29	52	81
2021	32	74	106
2022	56	110	166
2023	88	141	229
2024*	37	196	233
TOTAL	449	1,595	2,044

*Ratio of adjudication of applications in 2024 is 99%.

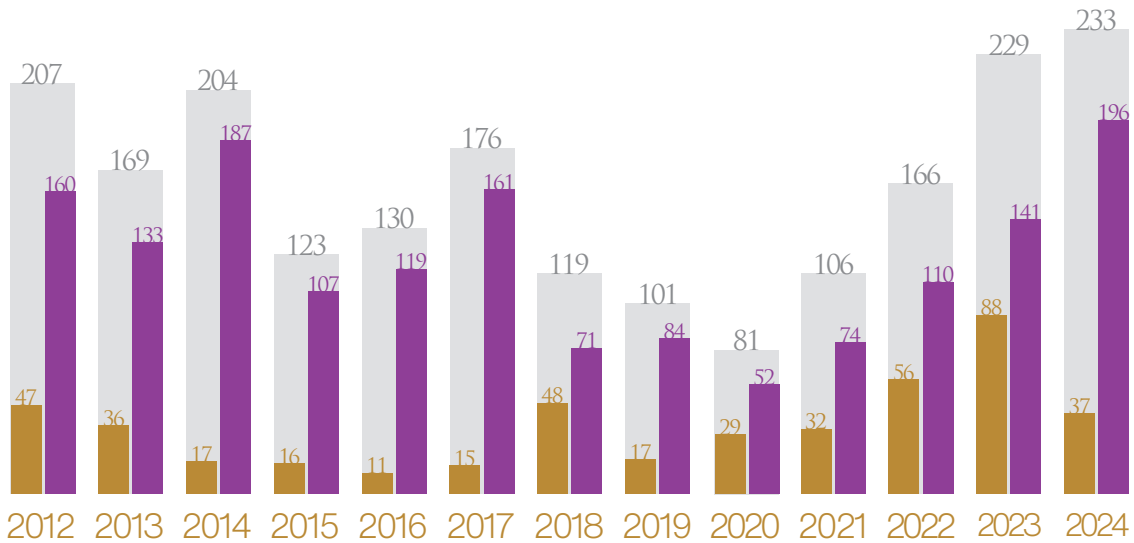


Table 5

Decisions in Abstract Review
Cases Adjudicated in 2024

	DECISIONS
ANNULMENT	34
REJECTION	3
JOINDER	-

Table 6

Decisions in Concrete Review
Cases Adjudicated in 2024

	DECISIONS
ANNULMENT	44
REJECTION	126
JOINDER	26

Table 7

Applications in 2024 by Examination Procedures and Outcomes

LAWS AND PRESIDENTIAL DECREES SUBJECT TO ABSTRACT AND CONCRETE REVIEW APPLICATIONS RECEIVED IN 2024 AND PENDING FROM THE PREVIOUS YEAR

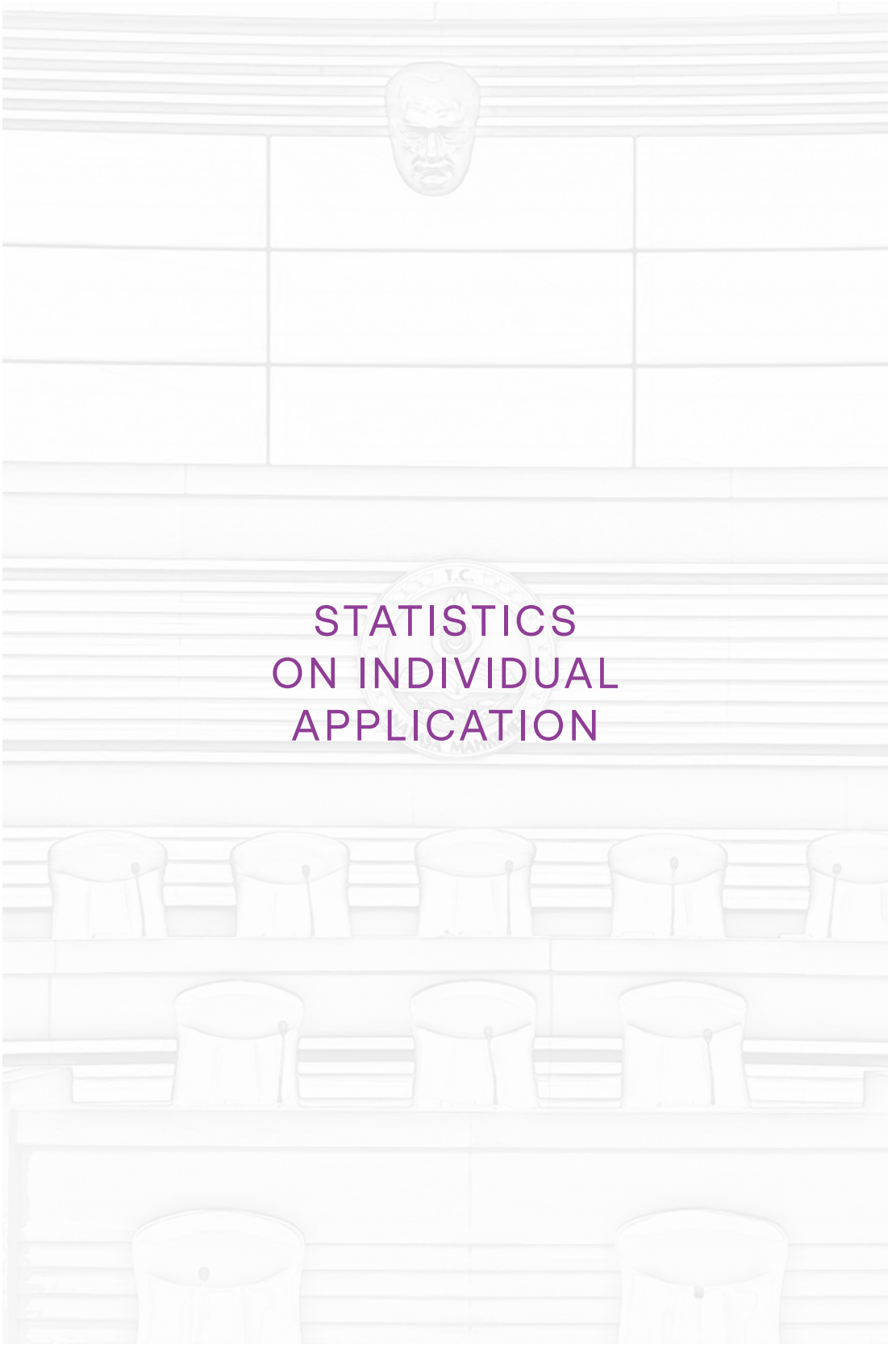
LAW	318
PRESIDENTIAL DECREE	30

DECISIONS ON PRELIMINARY EXAMINATIONS RENDERED IN 2024

EXAMINATION ON THE MERITS	127
REJECTION	76
JOINDER	28

CONTESTED PROVISIONS EXAMINED ON THE MERITS IN 2024

REJECTION	289
ANNULMENT	228
NO NEED TO DECIDE	22



STATISTICS ON INDIVIDUAL APPLICATION

I. GENERAL STATISTICS

Table 1

Individual Applications Received and Adjudicated by Years

	RECEIVED APPLICATIONS	ADJUDICATED APPLICATIONS*	RATIO OF ADJUDICATION
2012	1342 0.3% OUT OF THE TOTAL	4 0% OUT OF THE TOTAL	0%
2013	9,897 2.1% OUT OF THE TOTAL	4,924 1.3% OUT OF THE TOTAL	50%
2014	20,578 4.4% OUT OF THE TOTAL	10,926 2.9% OUT OF THE TOTAL	53%
2015	20,376 4.3% OUT OF THE TOTAL	15,368 4.4% OUT OF THE TOTAL	75%
2016	80,756 1.1% OUT OF THE TOTAL	16,089 4.3% OUT OF THE TOTAL	20%
2017	40,530 8.6% OUT OF THE TOTAL	89,651 23.9% OUT OF THE TOTAL	221%
2018	38,186 8.1% OUT OF THE TOTAL	35,356 9.4% OUT OF THE TOTAL	93%
2019	42,971 9.1% OUT OF THE TOTAL	39,376 10.5% OUT OF THE TOTAL	92%
2020	40,402 8.6% OUT OF THE TOTAL	45,414 11.1% OUT OF THE TOTAL	112%
2021	66,121 14% OUT OF THE TOTAL	45,321 12.1% OUT OF THE TOTAL	69%
2022	109,779 23.3% OUT OF THE TOTAL	73,036 19.5% OUT OF THE TOTAL	67%
2023	108,816 23.3% OUT OF THE TOTAL	109,694 19.5% OUT OF THE TOTAL	101%
2024	70,699 10.9% OUT OF THE TOTAL	66,798 19.5% OUT OF THE TOTAL	94%
TOTAL	650,453 RECEIVED APPLICATIONS	551,913 CONCLUDED APPLICATIONS	84.9% RATIO

* There may be a little change, compared to the previous statistics, in the number of the adjudicated applications as the file is closed in case of an inadmissibility decision on administrative grounds and reopened if the challenge against the inadmissibility decision is accepted.

** The ratio of adjudication of the applications filed in 2016, save for those lodged under the state of emergency, is 85%.

*** The ratio of adjudication of the applications filed in 2017, save for 72,134 applications that were declared inadmissible for non-exhaustion of available remedies due to the establishment of the Commission for the Examination of the Proceedings under the State of Emergency, is 90%.

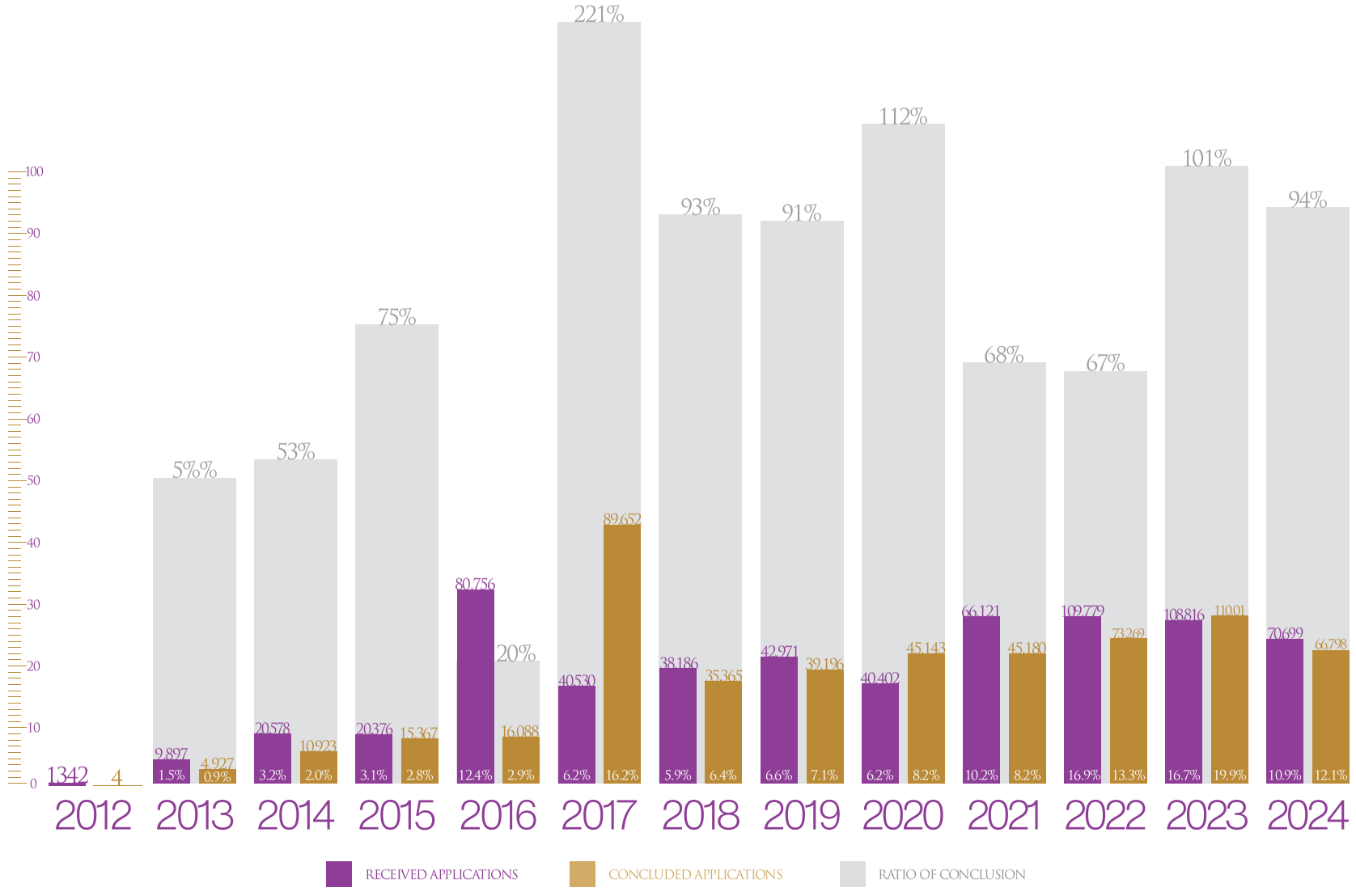

100
90
80
70
60
50
40
30
20
10
0
2012
1342
4
2013
5%%
9.897
1.5%
4.927
0.9%
2014
53%
20.578
3.2%
10.923
2.0%
2015
75%
20.376
3.1%
15.367
2.8%
2016
80.756
12.4%
20%
16.088
2.9%
2017
221%
40.530
6.2%
89.652
16.2%
2018
93%
38.186
5.9%
35.365
6.4%
2019
91%
42.971
6.6%
39.196
7.1%
2020
112%
40.402
6.2%
45.143
8.2%
2021
68%
66.121
10.2%
45.180
8.2%
2022
67%
109.779
16.9%
73.269
13.3%
2023
101%
108.816
16.7%
110.01
19.9%
2024
94%
70.699
10.9%
66.798
12.1%
RECEIVED APPLICATIONS
CONCLUDED APPLICATIONS
RATIO OF CONCLUSION

Table 2

Pending Individual Applications*

	PENDING INDIVIDUAL APPLICATIONS	RATIO TO TOTAL NUMBER OF APPLICATIONS
Year 2020 and Prior Thereto	1,102	1.1%
2021	3,343	3.4%
2022	13,081	13.3%
2023	32,406	32.9%
2024	48,608	49.3%

TOTAL
650,453
APPLICATIONS

98,540
TOTAL PENDING APPLICATIONS

15.1%
RATIO TO TOTAL NUMBER OF APPLICATIONS

* Number of individual applications pending from the previous year by 31 December 2024.

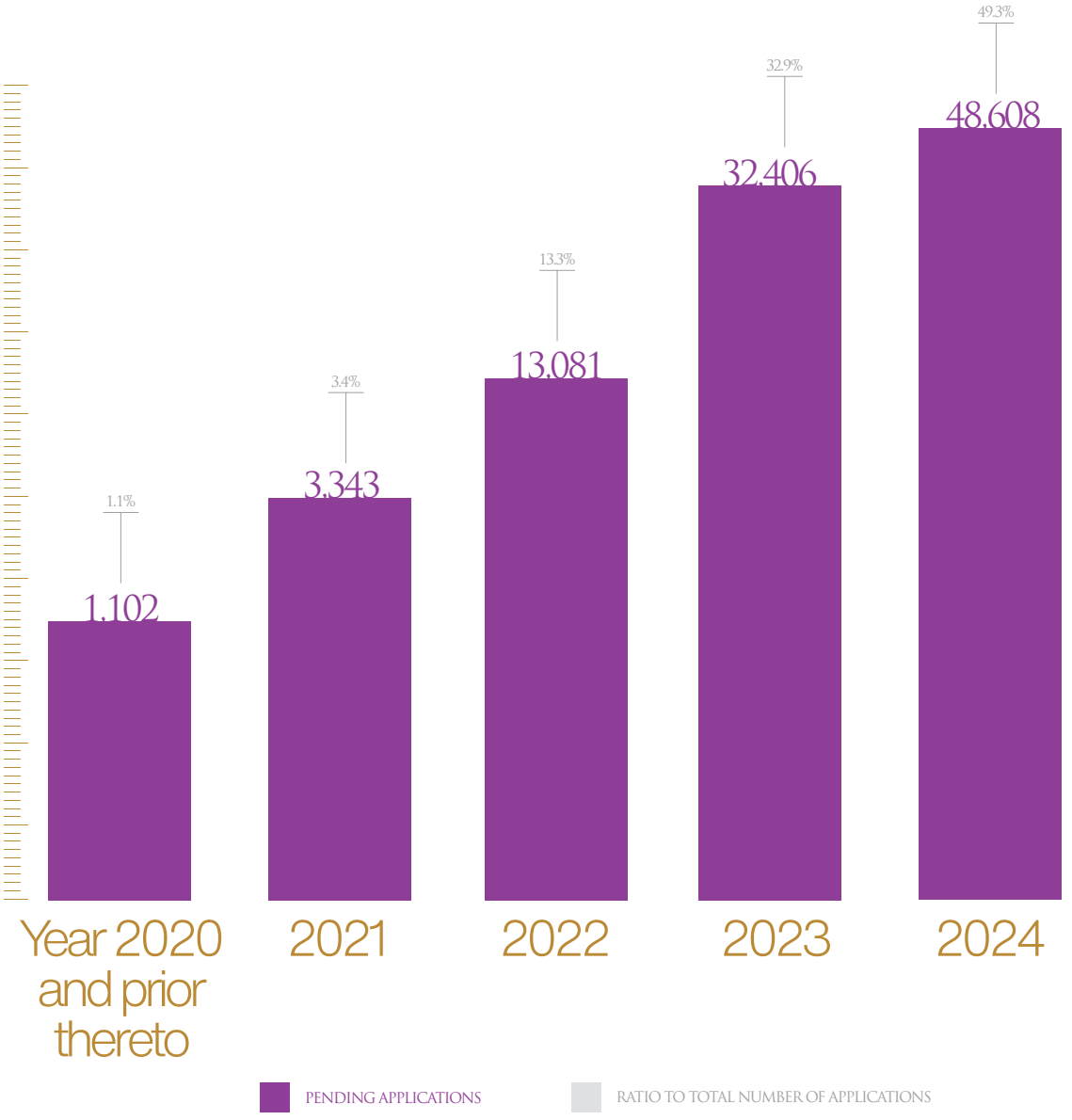

1.1%
1,102
3.4%
3,343
13.3%
13,081
32.9%
32,406
49.3%
48,608
Year 2020 and prior thereto
2021
2022
2023
2024
PENDING APPLICATIONS
RATIO TO TOTAL NUMBER OF APPLICATIONS

Table 3

Adjudicated Applications
by Judgment Types

	TOTAL	RATIO
REJECTION ON ADMINISTRATIVE GROUNDS*	13,750	2.5%
INADMISSIBILITY	456,476	82.7%
VIOLATION OF AT LEAST ONE RIGHT	78,003	14.1%
NON-VIOLATION	1,504	0.3%
OTHER**	2,180	0.4%

TOTAL
551,913
DECISION/JUDGMENT

* There may be a little change, compared to the previous statistics, in the number of the adjudicated applications as the file is closed in case of an inadmissibility decision on administrative grounds and reopened if the challenge against the inadmissibility decision is accepted.

** Strike-out, closing of applications, rejection.

II. STATISTICS ON THE MERITS

A. STATISTICS ON THE MERITS BY NUMBER OF ADJUDICATED CASES

Table 4

Ratio of Violation Judgments

ON THE BASIS OF ADJUDICATED CASES

Including cases regarding the right to a trial within a reasonable time and joined cases

	CASES DECIDED	CASES CONCLUDED*	RATIO
CASES WHERE A VIOLATION WAS FOUND	78,003	551,913	14.1%

Excluding cases regarding the right to a trial within a reasonable time, but including joined cases

	CASES DECIDED	CASES CONCLUDED	RATIO
CASES WHERE A VIOLATION WAS FOUND	21,560	495,470	4.4%

ON THE BASIS OF THE CASES EXAMINED ON THE MERITS

Including cases concerning the right to a trial within a reasonable time and joined cases

	CASES DECIDED	CASES EXAMINED ON THE MERITS	RATIO
CASES WHERE A VIOLATION WAS FOUND	78,003	79,507	98.1%

Including cases concerning the right to a trial within a reasonable time and joined cases

	CASES DECIDED	CASES EXAMINED ON THE MERITS	RATIO
CASES WHERE A VIOLATION WAS FOUND	21,560	23,064	93.5%

* Number of cases adjudicated is 8,446, and number of joined cases is 69,557.

Table 5

Individual Applications Involving a Violation of at least one Right (Including the Right to a Trial within a Reasonable Time and Joined Cases)

	TOTAL	RATIO
2013	75	0.1%
2014	768	1.0%
2015	1,827	2.3%
2016	1,282	1.6%
2017	1,025	1.3%
2018	2,167	2.8%
2019	1,225	1.6%
2020	5,658	7.3%
2021	11,830	15.2%
2022	35,407	45.4%
2023	11,296	14.5%
2024	5,443	7.0%

TOTAL
78,003

Table 6

Cases Involving a Violation of at least One Right (Excluding Cases regarding the Right to a Trial within a Reasonable Time, but including Joined Cases)

	TOTAL	RATIO
2013	23	0.1%
2014	473	2.2%
2015	1,377	6.4%
2016	538	2.5%
2017	222	1.0%
2018	1,623	7.5%
2019	1,093	5.1%
2020	1,841	8.5%
2021	1,199	5.6%
2022	3,606	16.7%
2023	4,122	19.1%
2024	5,443	25.2%

TOTAL
21,560

B. STATISTICS ON THE MERITS BY RIGHTS AND FREEDOMS

1. INCLUDING JOINED CASES

Table 7

Violations Judgments by Rights and Freedoms (Including Cases regarding the Right to a Trial within a Reasonable Time and Joined Cases)*

	TOTAL	RATIO
Right to a trial within a reasonable time	56,443	71.2%
Right to a fair trial*	6,828	8.6%
Right to property	5,623	7.1%
Freedom of expression	4,432	5.6%
Right to respect for private and family life	1,706	2.2%
Right to hold meetings and demonstration marches	1,486	1.9%
Prohibition of ill-treatment	1,103	1.4%
Right to personal liberty and security	834	1.1%
Right to life	277	0.3%
Right to protect one's corporeal and spiritual existence	153	0.2%
Right to trade-union freedom	146	0.2%
Freedom of association	89	0.1%
Principle of legality in crimes and punishment	53	0.1%
Right to property	44	0.1%
Right to elect, stand for elections and engage in political activities	18	0.0%
Freedom of religion and conscience	12	0.0%
Right to individual application	3	0.0%
Right to appellate review of a decision	1	0.0%

TOTAL
79,251

* An application may involve violations of several rights.

As the prohibition of discrimination and right to an effective remedy are addressed in conjunction with other rights and freedoms, the statistical information about the violations of the given prohibition and right in included in that of the respective rights and freedoms.

The judgment finding a violation of the presumption of innocence is included in the statistical information about the judgments involving a violation of the right to a fair trial.

Table 8

Applications Concluded in 2024 by Judgment Types

	TOTAL	RATIO
REJECTION ON ADMINISTRATIVE GROUNDS*	269	0.4%
INADMISSBILITY	60,783	91.0%
VIOLATION OF AT LEAST ONE RIGHT	5,443	8.1%
NON-VIOLATION	171	0.3%
OTHER**	132	0.2%

TOTAL
66,798

* There may be a little change, compared to the previous statistics, in the number of the adjudicated applications as the file is closed in case of an inadmissibility decision on administrative grounds and reopened if the challenge against the inadmissibility decision is accepted.

** Strike-out, closing of applications, rejection.