THE INDIVIDUAL APPLICATION TO TURKEY'S CONSTITUTIONAL COURT AND ITS ROLE IN THE DEVELOPMENT OF HUMAN RIGHTS IN TURKEY

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ABSTRACT

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This master thesis looks into the role of individual application mechanism of the Constitutional Court in Turkey in the protection of human rights. Besides several significant developments in the field of human rights since the beginning of Turkey's desire to integrate with Europe, one of the most important developments in Turkey is the individual application to the Constitutional Court, effective from late 2012. In this study, the success of individual application mechanism will be examined by comparing the decisions of the Constitutional Court with the case law of the European Court of Human Rights. The discussion will probe not only into external and internal improvements of the mechanism but also into the mechanism's current problems and deficiencies. This thesis seeks to evaluate in short whether or not there is continuity between the decisions of the Constitutional Court and the European Court of Human Rights. It ends with a discussion on the effectiveness of the mechanism as a domestic solution towards improving human rights in Turkey in accordance with the European standards.

Keywords: Individual application to Constitutional Court, the European Court of Human Rights, human rights protection, Council of Europe, Turkey.

ÖZ

TÜRKİYE ANAYASA MAHKEMESİ'NE BİREYSEL BAŞVURU VE BİREYSEL BAŞVURUNUN TÜRKİYE'DE İNSAN HAKLARININ GELİŞİMİ ÜZERİNDEKİ ROLÜ

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Bu yüksek lisans tezi, Türkiye Cumhuriyeti Anayasa Mahkemesi'nin bireysel başvuru mekanizmasının, Türkiye'de insan haklarının gelişimi üzerindeki rolünü analiz etmektedir. Türkiye, Avrupa ile siyasal ve ekonomik entegrasyon hedefi ile birlikte insan hakları alanında kısmi normatif iyileştirmelerde bulunmuştur. Bu gelişmelerin muhtemelen en önemlisi, 2012 yılı sonlarında hayata geçirilen bireysel başvuru mekanizmasıdır. Bireysel başvuru, temel haklarının ve özgürlüklerinin kamu gücünün bir şekilde müdahil olduğu vakalarda ihlal edildiğini iddia eden kişiler için ihdas edilmiş bir iç hukuk yoludur. Bu çalışmada, Anayasa Mahkemesi'nin kararları Avrupa İnsan Hakları Mahkemesi içtihatlarıyla karşılaştırılarak, bireysel başvuru mekanizmasının etkinliği ele alınacaktır. Sadece mekanizmanın dışsal ve içsel gelişimi incelenmeyecek, aynı zamanda mekanizmanın güncel sorunları ve eksiklikleri de dikkate alınacaktır. Tez, kısaca, Avrupa standartları doğrultusunda, bireysel başvuru mekanizmasının, Türkiye'de insan hakları standartlarının gelişimi için etkili bir iç çözüm yolu olup olmadığını

sorgulamaktadır. Tez, Anayasa Mahkemesi kararlarının Avrupa İnsan Hakları Mahkemesi kararlarıyla tutarlı olup olmadığına dair bir tartışmayla sona ermektedir.

Anahtar Kelimeler: Anayasa Mahkemesi'ne bireysel başvuru, Avrupa İnsan Hakları Mahkemesi, insan haklarının korunması, Avrupa Konseyi, Türkiye.

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CHAPTER 1

INTRODUCTION

The individual application mechanism to the European Court of Human Rights (the European Court) is an effective best practice in the universal protection of fundamental human rights and freedoms that are regulated in the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention). From September 2012, the Constitutional Court of the Republic of Turkey (the Constitutional Court) has started to accept individual applications as a new legal remedy before an issue could be taken to the European Court. The individual application to the Constitutional Court is often the last remedy in the violation of fundamental rights and freedoms in several states of the Council of Europe.[1] This thesis aims to analyse in-depth the effectiveness of the individual application mechanism of the Constitutional Court in Turkey.

1.1 Human Rights Developments in Turkey: 2004 - 2010

To understand the outcomes of the individual application mechanism, it is crucial to scrutinize development process of Turkey in the field of human rights until 2010. Between 2004 and 2010, Turkey completed many important amendments by not being unconcerned to the international developments in the field of human rights. As Özbey points out, parallelism between international texts and the Turkish Constitution (the Constitution) had been ensured to a large extent, but those

[1] Ergin Ergül, *Anayasa Mahkemesi'ne ve Avrupa İnsan Hakları Mahkemesi'ne Bireysel Başvuru ve Uygulaması* (Ankara: Yargı, 2012), 5-6.

amendments were not sufficiently effective in the practice, because of not having an effective domestic remedy such as individual application mechanism.[2] As it will be underlined in this chapter, 2004 was a milestone year in the human rights development process of Turkey. In 2004 eight harmonization packages, which were law packages made after the acceptation of official candidate status of Turkey by the European Union (the EU), were completed successfully by Turkey. As a result of that, in the same year the decision on the starting of negotiations with Turkey was taken by the EU. 2004 was the starting point of legal amendments which opened a road to individual application mechanism in 2010.

This chapter will focus on the human rights developments that consist of constitutional amendments and introduced codes and regulations in Turkey between 2004 and 201065. It will be mainly argued that Turkey made a progress with several important human rights developments, although there was no marked improvement until the acceptance of individual application mechanism to the Constitutional Court in 2010.

1.1.1 Human Rights Developments in Turkey until 2004

Even if the underlying motive of human rights developments in Turkey mostly related to foreign policy, its consequences related more to domestic policy. The internationalization of Turkey's human rights issues started with the 1980 military coup d'état and increased with Turkey's official candidateship to EU in 1999. The volume of human rights reforms increased through numerous amendments of law on the route to the EU membership in the 2000s. Since the start of Turkey's desire for EU membership, the country faced many obligations related to human rights issues. In response to those obligations, the Turkish Constitution of 1982 underwent many amendments such as law no. 3361 in 1987, law no. 3913 in 1993, law no. 4121 in 1995, law nos. 4388 and 4446 in 1999, law nos. 4709, 4720 and 4721 in 2001, law no. 4777 in 2002, law no. 4787 (The Law on the Establishment of Family

[2] Özcan Özbey, "Anayasa Mahkemesine Bireysel Başvuru Hakkının Avrupa İnsan Hakları Mahkemesi İçtihatları Işığında Değerlendirilmesi", *TAAD* 3, no. 11 (2012): 22.

Courts and Duty and the Methods of Trial) in 2003, law no. 4954 (The Law on Academy of Justice) in 2003 and law no. 4982 (The Law on Knowledge Acquisition) in 2003.[3] Among the amendments to the Turkish Constitution, law no. 4121 in 1995 contained significant improvements in the field of human rights.[4]

Law no. 4121 consisted of several human rights developments related to political rights and freedoms concerned with the restrictions to associations, unions, and professional organizations.[5] With law no. 4121, the introductory part of the Constitution was changed as follows:

> That every Turkish citizen has an innate right and power, to lead an honourable life and to improve his/her material and spiritual well-being under the aegis of national culture, civilization, and the rule of law, through the exercise of the fundamental rights and freedoms set forth in this Constitution, in conformity with the requirements of equality and social justice.[6]

Despite several developments in the 1990s, Turkey made almost no progress in the field of human rights in practical terms because of internal tensions and political instability in the country, which created a big obstacle for progressive relations with

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[3] Ömer Faruk Altıntaş, *Avrupa Birliği'ne Aday Ülke Olarak Türkiye'de AB Uyum Yasalarının İç Uyuma Etki ve Katkısı* (Ankara: Avrupa Birliği Genel Müdürlüğü, 2008), 3, http://www.abgm.adalet.gov.tr/yayinlar/belgeler/e-kutuphane/ABUyumYasalarininIcHukukaEtkisiVeKatkisi.pdf. Hereafter: Altıntaş, *Aday Ülke Olarak Türkiye*.

[4] Bülent Yücel and İlker Gökhan Şen, *Anayasa Mahkemesi'ne Bireysel Başvuru Hakkı Sempozyumu* (Eskişehir: Anadolu Üniversitesi Hukuk Fakültesi Yayınları, 2011), 39. Hereafter: Yücel and Şen, *Sempozyum*.

[5] Tahsin Fendoğlu, "2001 Anayasa Değişikliği Bağlamında Temel Hak ve Özgürlüklerin Sınırlanması", *Anayasa Yargısı,* no. 19 (2002): 115. Hereafter: Fendoğlu, *2001 Anayasa Değişikliği*.

[6] 4121 Sayılı Kanun, *Resmi Gazete*, July 26, 1995.

the EU. Turkey's EU candidateship was officialised in December 1999 in Helsinki.[7] Thereafter, an open-ended process started on the way to EU membership, so Turkey, as an official EU candidate, announced reform programmes that included urgent human rights reforms to fulfil the commitments of the EU. According to Oran, Helsinki was a starting point for progressive human rights developments until 2004 because Turkey made many reforms to start negotiations with the EU.[8] As a consequence of this positive atmosphere on both sides between 1999 and 2004, Turkey was planning to get full EU membership by 2010 by achieving its human rights homework.[9]

Öniş remarked that the reform process, which started in the second half of the 1990s, continued during the 2000s with the Accession Partnership Document by the EU Commission and the National Program by the Turkish government.[10] They mainly include short-term and medium-term priorities that were undertaken to satisfy the Copenhagen Criteria in economic and political terms. As Şener pointed out, 2004 Progress Report by the EU stated that successful reforms can improve Turkey's effort related to EU accession by underlying the importance of successful reforms to modernize Turkey's administrative culture and enhance the public administration.[11] According to Redmond, whether or not a state meets the Copenhagen criteria depends on four conditions. First, the state must have

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[7] Baskın Oran, *Kurtuluş Savaşından Bugüne Olgular, Belgeler, Yorumlar* (Ankara: İletişim Yayınları, 2013), 337. Hereafter: Oran, *Kurtuluş Savaşından Bugüne*.

[8] Oran, *Kurtuluş Savaşından Bugüne*, 337.

[9] "2010'da Avrupalıyız", *Sabah*, 14 December 2002, http://arsiv.sabah.com.tr/2002/12/14/s0121.html.

[10] Ziya Öniş, "Domestic Politics, International Norms and Challanges to the State: Turkey–EU Relations in the Post-Helsinki Era", *Turkish Studies* 4, no. 1 (2003): 12-13.

[11] Hasan Engin Şener, *Bir Fırsat Olarak İdari Reform Macaristan ve Türkiye'nin AB'ye Uyum Süreci* (Ankara: Phoenix Publish House, 2009), 351.

institutions to preserve democratic governance and human rights.[12] Second, the state must have a well-functioning market economy; while third the state must accept and comply with the obligations of the EU in terms of economics and politics.[13]

Last, there must be a strong intent and enthusiasm for EU membership.[14] Turkey achieved several reforms to meet the Copenhagen criteria, particularly in the field of human rights, fundamental freedoms and the rule of law, despite its failures in the execution. The result of the execution was not the same as it expected in the beginning. The outcome was reflected in the *Cumhuriyet* newspaper with the headline "Erdoğan got 1 while he wanted 11".[15] The result was not satisfying primary because the Turkish government achieved these reforms to appease the EU and not because the Turkish government decided on its own to be more a democratic and respectful state to human rights.

According to Fendoğlu, there was need for constitutional amendments in 2001 for several reasons. First, many protocols added to the Convention enlarged the contents of rights and freedoms, while the rulings of the European Court became more binding.[16] As a result of changed dynamics in the European Court and the Convention, the need to conform the Turkish Constitution to those dynamics was inevitable.[17] Second, there was public pressure to improve the human rights

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[12] John Redmond, "Turkey and the EU: troubled European or European Trouble", *International Affairs*, no. 83 (2007): 310. Hereafter: Redmond, *Turkey and the EU*.

[13] Redmond, *Turkey and the EU*, 310.

[14] Redmond, *Turkey and the EU*, 310.

[15] "Erdoğan 11 istedi 1 aldı", *Cumhuriyet*, 21 December 2004.

[16] Fendoğlu, *2001 Anayasa Değişikliği*, 112-113.

[17] Fendoğlu, *2001 Anayasa Değişikliği*, 112-113.

standards, particularly in the field of freedom of speech, the right to have native language of minorities, the right to a fair trial and the abolition of the death penalty.[18] Last, according to Fendoğlu, Turkey, as an official EU candidate, had to fulfil the EU obligations relating to the supremacy of law and human rights standards by concluding that there was an urgent need to provide coherence between domestic law and international law to prevent internal and external legal conflict.[19]

As Polat emphasized, from February 2002 to July 2004, to fulfil the Copenhagen criteria Turkey completed eight legislative packages that contained several important adjustments in the field of human rights, democracy and rule of law.[20] Polat remarked that by means of several ground laws, such as the Civil Code and the Penal Code, the Turkish legal structure was harmonised with the European legal structure, but the European Commission continued to criticize Turkey in the field of human rights because of unsuccessful implementation of new institutions and regulations.[21] In the context of eight harmonization packages, there were several legal adjustments (see Table 1) in Turkish domestic law system from February 2002 to July 2004.

On the other hand, Fendoğlu argued that although the reasons and motives underlying the constitutional amendments in law no. 4709 were to achieve democratization and reconstruction of domestic law, they did not answer to those needs exactly because they were not sufficient in the context of democratization and

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[18] Fendoğlu, *2001 Anayasa Değişikliği*, 113.

[19] Fendoğlu, *2001 Anayasa Değişikliği*, 136.

[20] Necati Polat, *Regime Change in Contemporary Turkey Politics, Rights, Mimesis* (Edinburgh: Edinburgh University Press, 2016), 88. Hereafter: Polat, *Regime Change*.

[21] Polat, *Regime Change*, 88.

the enlargement of political participation.[22] In the early 2000s, besides amendments to the constitution, there were also eight harmonization packages to adapt the Turkish legal system to EU standards. As a result, in 2001 law no. 4709 came into force with several human rights improvements such as:[23]

(a) The statement of thought that is not directed to an act became not forbidden.
(b) General reasons of limitation of fundamental rights and freedoms were removed.
(c) Duration of detention was regulated in accordance with the Court's detention procedure.
(d) Right to privacy was regulated in accordance with the Court's procedure.
(e) Freedom of thought and freedom of expression were expanded by permitting local dialects and different languages in daily life.
(f) Right of association and right of assembly were regulated in accordance with the Court's procedure.
(g) A person cannot be detained from his or her freedom because of obligations arising from a contract.
(h) The right to a fair hearing arising from the Article 6 of the Convention was accepted in the Constitution.

As it can be seen in the Table 1, Turkey, whose strategic aim has been membership in the EU since the Ankara Agreement in 1963, became an official candidate in 1999 and then accelerated the reform process to start negotiations with the EU. With intense enthusiasm, Turkey focused on its compliance with the Copenhagen criteria. As a result, between February 2002 and July 2004, Turkey conducted 218 amendments in 53 codes with eight harmonization packages.[24] With the success of the harmonization packages, the negotiations between Turkey and the EU were announced in Brussels in 2004 and started in October 2005 with the Negotiation

[22] Fendoğlu, *2001 Anayasa Değişikliği*, 144.

[23] 4709 Sayılı Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinin Değiştirilmesi Hakkındaki Kanun, *Resmi Gazete*, October 3, 2001.

[24] Oran, *Kurtuluş Savaşından Bugüne*, 348.

Frame Document.[25] According to Gül, who was the Foreign Minister and Vice Prime Minister of that period, "the execution of amendments is as important as having those amendments in our legal system. The aim of harmonization period is to respond to Turkey's needs and to improve life standards of Turkish citizens to the top level."[26] Although the importance of executing the amendments was underlined, execution was not successful, as pointed out, because the starting point of reforms related more to foreign policy than to improvements of the human rights standards.

According to Türkmen, the issue of human rights cannot be a tool of foreign policy as an objective of self-interest like the aim of joining the EU.[27] In other words, whatever the consequences of negotiations related to Turkey's membership in the EU, the primary objectives of improvements should be aimed at improving the life standards of Turkish citizens.[28] The only way to implement new adjustments successfully in practical terms for Turkey depends on whether or not Turkey can approach human rights issues as a moral commitment and an irrespective requirement of international relations, rather than a dictation from the EU or the Court.[29]

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[25] Oran, *Kurtuluş Savaşından Bugüne*, 354.

[26] T.C Başbakanlık Avrupa Birliği Genel Sekreterliği, *Avrupa Birliği Uyum Yasa Paketleri*, (Ankara, 2007), 2.

[27] Füsun Türkmen, "Turkey's Participation in Global and Regional Human Rights Regimes" in *Human Rights in Turkey,* ed. Zehra F. Kabasakal Arat (Philadelphia: University of Pennsylvania Press, 2007), 260-61. Hereafter: Türkmen, *Turkey's Participation*.

[28] Türkmen, *Turkey's Participation*, 260-61.

[29] Türkmen, *Turkey's Participation*, 260-261.

Türkmen reminds that 'Human rights will be on solid ground in Turkey, when the Copenhagen criteria will be turned into the Ankara criteria' in reference to Recep Tayyip Erdoğan's words.[30]

Table 1: Harmonization Packages

Harmonization Packages	Period	Content
1	February, 2002	• The Law no. 4744 • Amendments in the Penalty Code and the Anti-Terror in the fields of freedom of thought and custody procedures.
2	September, 2002	• Amendments in the Law no. 4748 in the fields of freedom of speech, freedom of association and freedom of assembly.
3	August, 2002	• Amendments in the Law no. 4771 in the fields of retrial after the European Court's judgements, the abolishment of death penalty and abolishment of restrictions of speaking another language and local dialects.
4	January, 2003	• Amendments in the Law no. 4778 in the fields of the abolishment of torture and ill treatment and the closing procedure of political parties. • In the context of UN Convention, children rights were expanded.
5	February, 2003	• With the Law no. 4793, return of trial was arranged in accordance with the European Court's judgements.
6	July, 2003	• With the Law no. 4928, death penalty was abolished in the exception of war conditions. • Punishment for honour killings and murder of children became aggravated. • In the definition of "terrorism", the use of power and violence were grounded. • Broadcast and telecast in the native languages and dialects were legally accepted. • The procedure of retrial in the context of administrative judgements of the European Court was accepted.
7	August, 2003	• Amendments in the Law no. 4963 in the fields of the right of expression, the right of association, children's rights, the freedom of religion, cultural rights and the Penalty Code.
8	July, 2004	• With law no. 5218, instead of death penalty, heavy life sentence was accepted.

Resource: Altıntaş, *Aday Ülke Olarak Türkiye*, 6-10.

[30] Türkmen, *Turkey's Participation*, 260-261.

1.1.2 Human Rights Developments in Turkey: 2004-2010

The year 2004 is a milestone in Turkey in the context of human rights and freedoms because of several important legal improvements related to the human rights issues. Furthermore, 2004 is also a starting point for Turkey's continuation of improvements in the next years. After achieving important steps along the EU candidateship process, since 1999 Turkey has expedited the volume of human rights developments with intense enthusiasm. In 2004, Turkey's efforts on human rights issues went well received by the EU despite of some deficiencies.

In December 2004 in Brussels, Turkey and the EU decided to start negotiations. In the eyes of the Turkish public, these negotiations were perceived as a great success along the way to achieving EU membership.[31] According to Oran, during the history of Turkish modernization, developments in the field of human rights and democracy have always interconnected with external factors that are generally referred to the EU.[32] Oran argued that during the process, which started with Helsinki in 1999 and continued to Brussels in 2004, the issue of human rights was perceived as 'voluntary homework' for Turkey.[33]

In other words, the issue of human rights was seen as a tool of foreign policy that Turkey should complete successfully to be a member of the EU. The 2004 Regular Report on Turkey's Progress towards Accession by the Commission of the European Communities stated that Turkey achieved several human rights developments by means of constitutional amendments in 2004, Penalty Code, Press Code, Law on Associations and Law on Compensation of Losses Resulted from

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[31] "Başardık", *Hürriyet*, December 18, 2004.

[32] Oran, *Kurtuluş Savaşından Bugüne*, 709-710.

[33] Oran, *Kurtuluş Savaşından Bugüne*, 710.

Terrorist Acts.[34] Turkey achieved several human rights developments, including removing the death penalty, strengthening gender equality, broadening the freedom of press, adopting a judiciary in accordance with the EU standards and accepting the supremacy of international human rights agreements over domestic law.[35] The Report also approved Turkish signature of Protocol 6, Protocol 13, UN Convention on the Elimination of All Forms of Racial Discrimination, the European Convention of Exercise of Children's Rights, and the Optional Protocol to the UN Convention on the Elimination of All Forms of Discrimination against Women.[36]

Besides legal improvements, the Commission Report underlined that Turkey had achieved a progress since 1999 in the execution of the European Court's judgments, particularly in the fields of preventing torture and ill-treatment, freedom of expression, freedom of the press and broadcasting, freedom of association, freedom of religion, gender equality, rights of disabled people, children's rights and cultural rights.[37] However, the report also pointed out that despite several legal and executional improvements, Turkey still had many deficiencies in the implementation.[38] According to the European Court's statistics (see Table 2), between March 1995 and December 2004, there were 826 European Court judgements with Turkey as a respondent, of which 683 concluded as violations. The result is helpful for us to understand the human rights situation in Turkey by seeing the reasons and motives of Turkey's efforts for human rights reforms. Since 2004,

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[34] The Commission of the European Communities, *2004 Regular Report on Turkey's Progress towards Accession* (Brussel: COM, 2004), 174-177. Hereafter: The Commission, *2004 Regular Report*.

[35] The Commission, *2004 Regular Report*, 29.

[36] The Commission, *2004 Regular Report*, 29.

[37] The Commission, *2004 Regular Report*, 29-32.

[38] The Commission, *2004 Regular Report*, 53.

Turkey as an official candidate to the EU, enhanced its progressive reforms by introducing laws, such as the Law on Constitutional Amendments with law no. 5170 in 2004, Penalty Code with law no. 5237 in 2004, Press Code with law no. 5187 in 2004, Law on the Compensation of Losses Resulting from Terrorist Acts with law no. 5233 in 2004, Associations Code with law no. 5253 in 2004, Law on Penalty and Execution of Security Measures with law no. 5275 in 2004, Law of Misdemeanour with law no. 5326 in 2005, Law Amendment with law no. 5370 in 2005, Law Amendment with law no. 5428 in 2005, Law Amendment with no. 5678 in 2007 and Law on the International Legal Aspect of Kidnapping with law no. 5717 in 2007.[39] Among the reforms that were made by Turkish authorities to make domestic law more coherence with the international law, one of the most important reform is the Law on Constitutional Amendments with law no. 5170 in 2004 because of its several fateful contributions in the fields of government's responsibility for providing gender equality, removing death penalty from the content of the Constitution, freedom of printing houses and press organ in the case of offensive weapon accusations, deportation conditions of citizens. [40]

Furthermore, Article 90 provided that provisions of international agreements must be taken as a basis in the incompatibilities in the same subject between domestic law and international agreements in the field of fundamental rights and freedoms. Law no. 5170 regulated the Article 90 of the Constitution as follows:

> In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in the provisions on same matter, the provisions of international agreements shall prevail.[41]

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[39] Altıntaş, *Aday Ülke Olarak Türkiye*, 3-13.

[40] 5170 Sayılı Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinin Değiştirilmesi Hakkındaki Kanun, *Resmi Gazete*, 7 May 2004.

[41] Constitution of the Republic of Turkey, Article 90, https://global.tbmm.gov.tr/docs/constitution_en.pdf. Hereafter: The Constitution.

Table 2: The ECHR's Judgements Against Turkey: 1995-2004

Nature of Violation / Convention Article	Total Number of Judgements	Number of Adverse Judgements	%
The Protection of Property / Article 1	216	211	98
Right to A Fair Trial / Article 6	203	194	96
The Prohibition on Torture / Article 3	76	51	67
Right to An Effective Remedy / Article 13	64	58	91
Freedom of Expression / Article 10	56	50	89
Right to Liberty and Security / Article 5	56	44	79
Right to Life / Article 2	54	44	81
The Prohibition of Discrimination / Article 14	34	1	3
Respect for Family and Private life / Article 8	27	18	67
The Abuse of Legitimate Limitations on The Rights / Article 18	19	0	-
Freedom of Assembly and Association / Article 11	9	7	80
No Punishment without The Law / Article 7	6	3	50
Freedom of Thought, Conscience and Religion / Article 9	5	1	20
Right to Free Elections / Article 3	1	1	100
Total Number	**826**	**638**	**83**

Resources: Thomas W. Smith, "Leveraging Norms: The ECHR and Turkey's Human Rights Reforms", in *Human Rights in Turkey*, ed. Zehra F. Kabasakal Arat (Pennsylvania: University of Pennsylvania Press, 2007), 268. Hereafter: Smith, *Human Rights*.

Article 90 states the supremacy of international agreements above domestic laws in the hierarchy of law.[42] Turkey internalized judgments of the European Court by placing them above domestic law on the way of monism of Turkey's legal system with the international law. According to Belgin, the addition of the last provision to Article 90 of the Constitution demonstrates progress in the supremacy of international agreements above domestic law.[43] However, Belgin also pointed out

[42] Yücel and Şener, *Sempozyum*, 40.

[43] Derya Belgin, "Anayasa'nın 90. Maddesinde (7 Mayıs 2004) Yapılan Değişikliğin Getirdiği Sorunlar ve Çözüm Önerileri", *Ankara Barosu Dergisi* 4, no. 66 (2008): 113. Hereafter: Belgin, *Anayasa'nın 90. Maddesi*.

two problems. First, which international agreements containing fundamental rights and freedoms should be taken as a basis.[44] Second, what should be done in the case of varied interpretations and judgements between the Turkish Constitution and international agreements on the same issue in the field of fundamental rights and freedom became controversial.[45]

Among the many views about the interpretation of Article 90 of the Constitution, Bilir stated that the predominating view was that international agreements were at the same level as domestic law in the hierarchy of norms.[46] According to Soysal, who had views similar to Bilir, international agreements, which have the same qualification as laws, have privilege (*Ayrıcalık*) rather than supremacy (*Üstünlük).*[47] However, international agreements in the field of fundamental rights and freedoms are different than other international agreements because they have supremacy above domestic law.[48] Among many constitutional amendments and legislative reforms, another important adjustment was to the Penalty Code with law no. 5237 in 2004. In this law, crimes against humanity are regulated with priority, while the concepts of a person's life, physical integrity, sexual immunity, freedom of communication, freedom of thought, freedom of conscience and freedom of expression are primarily protected.[49]

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[44] Belgin, *Anayasa'nın 90.* Maddesi, 111.

[45] Belgin, *Anayasa'nın 90. Maddesi*, 112.

[46] Faruk Bilir, "2004 Anayasa Değişiklikleri Üzerinde Bir Değerlendirme", *Gazi Üniversitesi Hukuk Fakültesi Dergisi* 1, no. 2 (2004): 240. Hereafter: Bilir, *2004 Anayasa Değişiklikleri*.

[47] Mümtaz Soysal, "Uluslararası Anlaşmalar Konusunda Anayasa Yargısı", *Anayasa Yargısı*, no. 14 (1997): 172.

[48] Bilir, *2004 Anayasa Değişiklikleri*, 240-41.

[49] 5237 Sayılı Türk Ceza Kanunu, *Resmi Gazete*, 12 October 2004.

Turkey took some other considerable steps in the field of human rights and freedoms between the years 2004 and 2010, such as the Penalty Code amendments in 2008, the ratification of an additional protocol of the UN Convention Against Torture in 2005, the ratification of the 13th Protocol of the Convention in 2006 and the Law on Counter Terrorism amendments in 2010.[50] On the other hand, there was a decrease in the volume of human rights developments after 2004.

According to Oran, there were two reasons for the slowdown in the relations with the EU. First, there was high public pressure and decreased enthusiasm against EU membership in Turkey.[51] Oran gave examples: 70 per cent of the Turkish public in 2004 supported EU membership, while the number decreased to 49 per cent in 2007 according to a Eurobarometer report.[52] Second, the statements of some European leaders and politicians reflected their belief that Turkey was not part of the EU, and notions such as 'open-ended negotiations' and 'preference share', caused a decrease in the reliance among the Turkish public and politicians.[53] Besides the protracted development process of Turkey in the field of human rights, one of the most significant improvements was the Law on Constitutional Amendments with Law no. 5982, which was a determinant step in the individual application mechanism.

The Turkish Assembly accepted law no. 5982 on 7 May 2010 and published it in the Official Gazette on 13 May 2010.[54] Law no. 5982 was submitted to referendum on 12 September 2010 by President Abdullah Gül. The Turkish public accepted law

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[50] "İnsan Hakları: Hedefler ve Gelişmeler", Turkish Foreign Ministry, accessed 19 September 2017, http://www.mfa.gov.tr/insan-haklari_-hedefler-ve-gelismeler.tr.mfa.

[51] Oran, *Kurtuluş Savaşından Bugüne*, 382-383.

[52] Oran, *Kurtuluş Savaşından Bugüne,* 382-383.

[53] Oran, *Kurtuluş Savaşından Bugüne*, 398-399.

[54] 5982 Sayılı Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinin Değiştirilmesi Hakkındaki Kanun, *Resmi Gazete,* 13 May 2010. Hereafter: Resmî Gazete, *5982 Sayılı Kanun*.

no. 5982, which included 26 constitutional amendments, with approximately 58 per cent of 'Yes' votes and 42 per cent of 'No' votes.[55] Law no. 5982 has several significant amendments related to the High Council of Judges and Prosecutors and the Constitutional Court.

According to Oran, in the referendum in September 2010, the left view was split into two sides: one side voted 'No' and other side voted 'Yes but not enough'.[56] He also pointed out that the main objection to the constitutional amendments concerned that different issues were put altogether in the same referendum package because voters believed that the referendum package provided an opening not only for a civil and democratic constitution but also for losing actual functions of higher judicial bodies.[57]

With Article 148 of the Constitution, the most important step has been taken since the start of human rights developments in Turkey. Besides the individual application mechanism opening a new chapter in the human rights issues of Turkey, the mechanism also provided a fresh start in the relations between Turkey and the European Court.

Aside from the inclusion of all amendments in law no. 5982, in the context of amendments in the field of human rights and freedoms, it can be said that law no. 5982 included crucial and essential reforms. For example;[58]

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[55] "Türkiye'nin Tercihi 'Evet' Oldu", *Milliyet*, 12 September 2010, http://www.milliyet.com.tr/turkiye-nin-tercihi-evet-olldu-/referandum/sondakika/12.09.2010/1288148/default.htm.

[56] Oran, *Kurtuluş Savaşından Bugüne*, 713-714.

[57] Oran, *Kurtuluş Savaşından Bugüne*, 713-714.

[58] Resmi Gazete, *5982 Sayılı Kanun*, Articles 1, 2, 3, 4, 6, 8, 13 and 18.

a) Article 1 includes that precautions taken for children, elders, handicapped people, widowers and orphans of martyrs are not taken into account as a contradiction to the principle of equality.
b) Article 2 remarks that everyone has right to demand the protection of his or her personal data.
c) According to Article 3, citizen's freedom of going abroad can be restricted on just the cases of criminal investigation and prosecution depending on a judicial decision.
d) Article 4 says that every child has a right to take advantage of protection, nurseling and having/keeping relationship with his or her parents unless there is no contradictory case against his or her behalf. Government takes protective precautions for children against violence and abuse.
e) Article 6 states that civil servants and other public officials have right to labour contract. In the case of contradiction in the labour contract, they can apply to Arbitration Commission of Civil Servants (*Kamu Görevlileri Hakem Kurulu*).
f) Article 8 underlines that everyone has right to knowledge acquisition and application to ombudsman.
g) Article 13 emphasized that disciplinary decisions cannot be out of judicial control.
h) As one of the most important amendments, Article 18 states that everyone can apply to the Constitutional Court with the claim of public force's violation of his or her rights and freedoms which are under the common guarantee area of the Turkish Constitution and the Convention.

Aside from the inclusion of all amendments in the law no 5982, in the context of amendments in the field of human rights and freedoms, it can be said that law no. 5982 included crucial and essential reforms. The Article 18 of law no. 5982 that was added into Article 148 of the Turkish Constitution was regulated as follows:

> Everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities. In order to make an application, ordinary legal remedies must be exhausted. In the individual application, judicial review shall not be made on matters required to be taken into account during the process of legal remedies. Procedures and principals concerning the individual application shall be regulated by law.[59]

[59] The Constitution, Article 148.

Before analysing the effectiveness of the individual application mechanism of Constitutional Court in the coming chapters, it is important to remark on the statistical situation related to the individual applications to the European Court against Turkey until 2010.

As Salihpaşaoğlu underlined the European Court finalised 12,198 decisions between 1959 and 2009, while 2,295 (19 per cent) belonged to Turkey.[60] In 2,295 decisions against Turkey, 2,017 (88 per cent) was found at least one violation of the Convention, while one of three of violation judgments was about a fair hearing of Article 6 of the Convention.[61] According to the '50 Years of Activity Report' of the European Court in 2009, between 1958 and 2009 the number of individual applications to the European Court increased on a regular basis especially after 1990s.[62]

For example, between the years 1958 and 1998 the total number of applications was approximately 45,000, while the number was approximately 57,100 in only one year 2009.[63] According to the report, until December 2009 the total number of applications from all party states to the European Court was 389,197, while the third country with the most applications was Turkey with 31,873 applications (8 per cent), after Russia with 70,561 applications (17 per cent) and Poland with 39,103 applications (10 per cent).[64]

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[60] Yaşar Salihpaşaoğlu, "Avrupa İnsan Hakları Mahkemesi ve Türkiye: Bazı rakamlar ve Gerçekler", *Gazi Üniversitesi Hukuk Fakültesi Dergisi*, no. 13 (2009): 253. Hereafter: Salihpaşaoğlu, *Bazı Rakamlar ve Gerçekler*.

[61] Salihpaşaoğlu, *Bazı rakamlar ve Gerçekler*, 253.

[62] "50 Years of Activity ECHR: Some Facts and Figures", The European Court of Human Rights, accessed 13 April 2018, https://www.echr.coe.int/Documents/Facts_Figures_1959_2009_ENG.pdf. Hereafter: The ECHR, *50 Years Activity*.

[63] The ECHR, *50 Years of Activity*.

[64] The ECHR, *50 Years of Activity*.

On the other hand, 90 per cent of all cases against Turkey belonged to the years between 1999 and 2009, while the remaining 10 per cent belonged to the 40 years between 1959 and 1999.[65] By interpreting the details of 2,295 judgments against Turkey until 2009 (see Table 3), several important findings can be made.

First of all, beside the human rights developments of Turkey including constitutional amendments, new codes and harmonization packages between 2004 and 2009, by looking to the number of violations it can be said that Turkey still had serious human rights issues at a considerable level. Despite many important legal improvements in the field of human rights, the results showed that Turkey needed more developments and more improvements in the execution side.

Second, the fact that 88 per cent of judgements against Turkey were finalized as Turkey's violation at least in one article of the Convention indicates that the solution mechanism of human rights problems was not effective. Developments and improvements in the field of human rights were insufficient and weak with a considerable number of violation judgements of the European Court against Turkey.

Third, from the perspective of the European Court, Turkey, which had 8 per cent of the applications, created an important and excessive burden to the European Court. Even if the European Court provided a recent solution of that single judge rules a case instead of three,[66] there is an excessive case burden. Fourth, in total 2,295 judgments against Turkey, there were 3,017 violation decisions, while 34 per cent of those violation decisions related to fair hearing.

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[65] The ECHR, *50 Years of Activity*.

[66] David Pimentel, "Dünyada Anayasa Şikayeti Uygulamaları", in *Bireysel Başvuru "Anayasa Şikayeti"*, ed. Musa Sağlam (Ankara: HUKAB, 2011), 72.

Table 3: The ECHR's Judgements Against Turkey: 1959-2009

Right	Article of The Convention	Number of Violations*
Fair Hearing	6	1,014
Property Right	P1-1	544
Right of Freedom and Security	5	436
The Prohibition of Torture	3	273
Right of Effective Application	13	209
Right to Live	2	205
Freedom of Expression	10	182
The Reputation to Privacy and Family Life	8	69
Freedom of Association and Freedom of Assembly	11	39
Other Articles of Convention	-	29
Right of Free Election	P1-3	5
The Principle of No Punishment without Law	7	4
Right to Education	P1-2	4
Prohibition of Discrimination	14	3
Freedom of Thought, Religion and Conscience	9	1
Prohibition of Slavery and Forced Labour	4	-
Right to Marry	12	-
Non Bis in Idem	P7-4	-
Total		**3,017**

*For 2,295 judgments, there are 3,107 violations because some cases have more than one violation.
Resources: Salihpaşaoğlu, *Bazı Rakamlar ve Gerçekler*, 272.

It can be understood that almost every case against Turkey were concluded as there was at least one violation, mostly violation of the right of fair hearing. In reference to Salihpaşaoğlu, the growing number of applications, increasing workload and limited supply of personnel created serious problems to the European Court, particularly in rendering judgement within a reasonable time.[67] Salihpaşaoğlu exemplified that the European Court finalised a judgement related to Turkey in 5-8 years.[68] Therefore, at least 5 years' judgement period for a case indicates that the European Court had issues with long judgement process. As a solution to the European Court's problem related rendering judgement in reasonable time, Protocol

[67] Salihpaşaoğlu, *Bazı Rakamlar ve Gerçekler*, 260-61.

[68] Salihpaşaoğlu, *Bazı Rakamlar ve Gerçekler*, 261.

14 was opened for signature in 2004 and entered into force in 2010. With the Protocol 14, intended to decrease the workload of the European Court, there were several new arrangements, such as the enlargement of the term of office of judges, the constitution of a single judge order and the use of an effective filter method to simplify judgment procedures.[69] Oran underlined that the human rights statement of the 2000s in Turkey had a contradictory outlook because there were several legal improvements and critics from the foreign authorities.[70]

For example, Turkey was criticized for the long detention periods of Kurdish politicians and academicians, prescriptions in critical cases, such as the Sivas massacre, conscientious refusal related to military service, and negative statements of politicians related to LGBT rights (such as Aliye Kavaf's statements of 'I believe that homosexuality is biological disorder and a disease which should be cured.').[71]

1.2 An Overview on the Relations between Turkey and the ECHR

International law has two basic sources for its substantive norms: intergovernmental agreements (treaties) and state practice accepted as law (custom). Although a section under general international law, international human rights law effectively has one formal source only, namely treaties, as customary norms are both vague and usually take time to form; more important still, the scant and mostly imprecise customary norms are not really needed in the presence of clear and comprehensive treaties of rights widely embraced by states, even if no more than lip service in most cases. The Convention is arguably the most significant of such treaties in force, regulating human rights and freedoms in Europe since 1953.

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[69] Greer, *The European Convention*, 139-148.

[70] Oran, *Kurtuluş Savaşından Bugüne*, 780.

[71] Oran, *Kurtuluş Savaşından Bugüne*, 782.

Over time, several additional treaties called protocols have been integrated to the Convention. Some of protocols have revised the system at work and some have contributed new rights. The part-time Court created in 1959,[72] as the next possible step after the work of a European Commission of Human Rights receiving applications, became a full court in 1998,[73] and the Commission was abrogated. The European Court, now the sole body for assessments of complaints under the Convention and the protocols, receives applications from states parties and individuals. State application is both rare and not subject to exhaustion of the legal remedies offered in the state about which the complaint is made, before the complaint is filed with the European Court. More typical and incomparably more significant is the individual application, which comprises applications by private persons, groups of private persons, and legal persons of domestic legal character.

Individual applications within the system took start from 1955, although the whole period until the mid-1980s was one of "dormancy", as Greer puts it.[74] After this, states and individuals gradually realized the importance and effectiveness of the individual application mechanism. There was a dramatic increase in the number of cases between 1984 and 2004.[75] Greer divides these years into two periods: the "activation" period between the late 1980s and the late 1990s, and the "case overload" period between the late 1990s and mid-2000s.[76] According to Greer,

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[72] The European Court of Human Rights, *The Conscience of Europe: 50 Years of the European Court of Human Rights*, (London, 2010), https://www.echr.coe.int/Documents/Anni_Book_content_ENG.pdf.

[73] The Council of Europe, *Protocol No. 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms: Restructuring the Control Machinery Established Thereby*, (Strasbourg, 1994), https://www.echr.coe.int/Documents/Library_Collection_P11_ETS155E_ENG.pdf.

[74] Steven Greer, *The European Convention on Human Rights: Achievements, Problems and Prospects*, (Cambridge: Cambridge University Press, 2006), 33. Hereafter: Greer, *European Convention*.

[75] Greer, *European Convention*, 33.

[76] Greer, *European Convention*, 33.

overloads caused serious problems, chiefly the rising waiting time before a decision could be made about the admissibility of an individual application, so a new period of what Greer calls "constitutionalism" had to follow.[77] The rising number of applications created problems, yet also brought about improvements to the system. Moreover, the nature of complaints had changes over time.

According to Greer, for instance, among the applications alleging rights violations by Turkey, the more critical and systematic abuses of human rights, such as the dissolution of political parties, which had not been raised before, came to the force.[78] Finally, the European Court reconditioned itself in the institutionalization period by taking into account the challenge of the past half a century.[79] On the other hand, according to Greer, improvements could not deliver all required solutions, because dealing with specific cases as a result of changed nature of complaints to the European Court, became more difficult to solve problems so that it required more time and more specialities.[80] As a result, extension of time became fateful for reaching a verdict. During the institutionalization period, the European Court searched for a solution by repositioning itself in the consequences of challenges of past half century.[81] Protocol 14 which was entered into force in 2010 provided required solutions in the line with the changing structure of the European Court in the human rights system. It delivered successful solutions to the European Court's excessive workload problems arising from the excessive number of individual applications after the enlargement of the European Court towards eastern Europe since 1990s. With Protocol 14, it was aimed to abolish all formalities that restrain

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[77] Greer, *European Convention*, 33-38.

[78] Greer, *European Convention*, 40-41.

[79] Greer, *European Convention*, 2.

[80] Greer, *European Convention*, 316-321.

[81] Greer, *European Convention*, 33-38.

the applications of all individuals who claim the violation of their rights and freedoms under the protection of the Convention.[82] As Bilir states, Protocol 14 includes several changes in the European Court such as extended term of office judges, the establishment of chief clerk and judicial clerks, the constitution of single judge, admissibility review by single judge and admissibility criteria.[83] With those changes in the structure of human rights system of the European Court, it was aimed to decrease the pending caseload and to conclude cases in shorter time.

In the context of relations between Turkey and the European Court, Turkey was among the original group of states to sign the Convention in 1950 and ratified it 1954, one year after the Convention entered into force in 1953. Yet Turkey waited until the second half of the 1980 to enable individual applications within the Convention system. Before this, the Republic of Cyprus had already made a state complaint about Turkey in 1974, alleging the violation of a number of rights during and after the respondent state's military operation in Cyprus in the same year.[84] With various setbacks, this case would last until 2001, when the Court would rule against Turkey.[85] From the late 1990s, the European Court rulings would have a crucial role in transforming the Turkish legal system.[86] This said, for years Turkey would remain as the state with the worst record of violations within the system. The violations were particularly grave, involving such issues as killings in custody, torture by security forces, houses set on fire by the security forces, barely

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[82] Mehmet Emin Çağıran, "14 no'lu Protokol Çerçevesinde Avrupa İnsan Hakları Sözleşmesi Denetim Sisteminde İyileştime Çalışmaları", *SÜ İİBF Sosyal ve Ekonomik Araştırmalar Dergisi,* no.1 (2007): 8.

[83] Faruk Bilir, "Avrupa İnsan Hakları Mahkemesi'nin Yapısı ve 14 No'lu Protokol", *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, no.55 (2006):155.

[84] *Cyprus vs*. *Turkey*, The European Court of Human Rights, no: 6780/74 (1975).

[85] *Cyprus vs*. *Turkey*, The European Court of Human Rights, no: 25781/94 (2014).

[86] Smith, *Human Rights*, 262.

independent courts, sentenced journalists and writers, dissolved political parties, and so on. Since the beginning of the relations between the European Court and Turkey, the European Court, as the most effective and advanced human rights regime in the world, would promote human rights developments of Turkey which are based upon the principles and norms of the Convention. According to Smith, Turkey contributed to the European Court's progress of the case law especially from the perspective of "positive homework" which means the liability of government to secure its citizens' rights from the violations of third parties.[87] Those reciprocal relations would take forward Turkey's human rights standards.

On the other hand, since 1990s, the European Court would criticize Turkey because of its disregard for the obligations of the Convention especially in the fields of execution of judgments, right to fair trial and the restoration of civil and political rights of criminal convicts after the excessive applications and violation judgments related to Turkey. In the Smith's view, the reason of why Turkey carried out the improvements in the field of human rights reluctantly and slowly is related to foreign policy.[88] Because human rights developments were seen as a tool of foreign policy, all attempts to improve human rights standards were perceived as compulsory and imposed steps.[89]

It is also related to the general reason of why the individual application systems are more successful. Because a decision of individual application by the Constitutional Court is not imposed as a foreign dictation, they are more effective in practical terms by being as outcomes of state's own domestic rule of law.

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[87] Smith, *Human Rights*, 342-343.

[88] Smith, *Human Rights*, 339.

[89] Smith, *Human Rights*, 339.

In Smith's view, Turkey's acceptance of the individual application mechanism 33 years later from approving the Convention and Turkey's recognition of the jurisdiction of the European Court 36 years later from approving the Convention are the best examples of Turkey's reluctance in the field of human rights developments.[90] According to Smith, the criticisms about Turkey's lacks and problems in the field of human rights were mostly outcomes of the fact that Turkey saw human rights reforms as homework dictated by the European Court.[91]

In 2000s, Turkey's failures in the practice of human rights issues continued to play an important role in the context of the relations between Turkey and the European Court. According to Polat, when the regime change that was conducted by the Justice and Development Party was complete between 2007 and 2011, there were results in the human rights aspects for Turkey such as heavy sentences for hundreds of military officials, massive intimidation and harassment of intellectuals.[92] Turkey was criticized by the European Court in numerous cases in the field of the right to a fair trial, impartiality, the principle of the equality of arms, pre-government media and unusual long periods of detention.[93] Although in the numerous trials the European Court found numerous violations, Turkey continued to have problems in the implementation in those issues. One of the problematic and criticized issues of Turkey in the field of human rights was the demands of Alevi people. Polat summarized the demands of Alevi people in two general titles: the ending compulsory religious teachings in schools and official status for Alevi temples '*Cemevi'*.[94]

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[90] Smith, *Human Rights*, 340.

[91] Smith, *Human Rights*, 340.

[92] Polat, *Regime Change*, 48.

[93] Polat, *Regime Change*, 48.

[94] Polat, *Regime Change*, 263-64.

Although in the number of cases the European Court found the violation of Alevi people's fundamental rights and freedoms such as Hasan and Eylem Zengin vs. Turkey in the field of discriminatory treatment of Cemevis and Mansur Yalçın and Others vs. Turkey in the field of compulsory religious teaching, Turkish government did not take required steps towards to Alevi people's demands.[95] Because issues related to the Alevi people's demands were not covered by the Turkish government, the violation of Alevi people's rights and the Europen Court's critics on those violations continued by being one of the most important issues between Turkey and the European Court.

In conclusion, Turkey, as a state having deep-rooted relations with the West from far in the past, has been an old party of the Convention and the European Court since the beginning. From 1990s, after the Turkish acceptation of individual application mechanism of the European Court, the European Court had criticized Turkey by being reluctance to meet the requirements of the Convention by underlying the human rights deficiencies in Turkey. Since the beginning of Turkey's desire to be a member of the Western world, human rights developments have been seen as tools to reach the foreign policy achievements by Turkish government. Since the late 1990s, Turkey has been criticized for its reluctance to improve the standards. Turkey remained as a state with the worst records of violations in the system performed by European Court.

However, particularly in the beginning of the 2000s, the Turkish authorities achieved several legal improvements to become a member of the EU by seeing the human rights developments as a tool for achieving it. As an outcome of this policy, Turkey concluded several constitutional amendments and codes until 2004, while in 1999 and in 2004 it achieved progressive steps along the EU membership process. Even though the volume of human rights developments slowed down after 2004, due to the decreased enthusiasm of the Turkish government and public, the most significant step was taken in 2010 with the constitutional amendments, which

[95] Polat, *Regime Change*, 264.

included amendment of Article 148. With Article 148 of the Turkish Constitution, individual application of the Constitutional Court became a part of the Turkish legal system, while a new chapter was opened in the history of Turkish human rights developments.

This thesis consists of four chapters, including the introduction and the conclusion. In Chapter 1, human rights developments in Turkey until 2010 are briefly summarized to contextualize the movement towards the individual application. The importance of 2004 is emphasized as a milestone year with several significant legal developments. This chapter aims to provide background to understand the implementation of the individual application mechanism.

In Chapter 2, the content and framework of individual application of the Constitutional Court are presented. The definition and aim of mechanism, scope of rights and freedoms, features of applicants, admissibility criteria and decision-making procedures are explained to understand what the mechanism is in depth. Furthermore, a successful example of the individual application mechanism of the German Constitutional Court is presented. Chapter 3 scrutinizes the decisions of Constitutional Court from 2012 to 2018 by showing the similarities in proceedings between the Constitutional Court and the European Court. To be able to determine the effectiveness of the Constitutional Court's individual application process, it is important to analyse in-depth Constitutional Court's decisions within the context of the case law of the European Court. Then, it is discussed whether or not the individual application is an effective domestic remedy to solve for Turkey's human rights problems internally and to decrease the number of applications against Turkey to the European Court by improving Turkey's international relations in the framework of human rights and freedoms as a democratic and respectful state to human rights and rule of law.

CHAPTER 2

THE INDIVIDUAL APPLICATION MECHANISM IN TURKEY

2.1 The Definition and Aim of the Individual Application Mechanism

The term of individual application is considered a constitutional complaint and originates from German word *Verfassungsbeschverde*, meaning individual application in the general discipline of law.[96] According to Kılınç, because the word 'complaint' has more negative meaning and the term of 'application' is more impartial and inclusive, the more common description of the mechanism is 'individual application'.[97]

According to Aydın, individual application is a secondary and subsidiary type of case for the people whose fundamental rights and freedoms are violated by public authorities.[98] Furthermore, she also pointed out that individual application is an extraordinary legal remedy that is not last instance or apart of regular ways for remedy.[99] Therefore, it can be said that mechanism draws its strength from its

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[96] Bahadır Kılınç, "Karşılaştırmalı Anayasa Yargısında Bireysel Başvuru (Anayasa Şikayeti) Kurumu ve Türkiye Açısından Uygulanabilirliği", *Anayasa Mahkemesi Yayınları*, no. 25 (2008): 21-22. Hereafter: Kılınç, *Karşılaştırmalı Anayasa Yargısı*.

[97] Kılınç, *Karşılaştırmalı Anayasa Yargısı*, 22.

[98] Öykü Didem Aydın, "Türk Anayasa Yargısında Yeni Bir Mekanizma: Anayasa Mahkemesi'ne Bireysel Başvuru", *Gazi Üniversitesi Hukuk Fakültesi Dergisi* 15, no. 4 (2011): 125. Hereafter: Aydın, *Yeni Bir Mekanizma*.

[99] Aydın, *Yeni Bir Mekanizma*, 125.

exceptional characteristics. According to Sabuncu, the aim of the individual application is to ensure the protection of fundamental rights and freedoms of individuals when ordinary legal remedies failed to protect them.[100] In the view of Özbey, many states that apply European model approve individual application mechanism to protect fundamental rights and freedoms against public force by the Constitutional Court.[101]

On the other hand, Sağlam argued that although the founder of the European model, Hans Kelsen did not foresee the function of the protection of human rights of the constitutional jurisdiction that function became a distinctive feature of the Constitutional Courts.[102] The individual application mechanism has exceptional, extraordinary, private and secondary characteristics because the mechanism is not a general way to have legal remedy and not a replacement.[103]

According to Yücel and Şen, an exceptional characteristic provides two substantial consequences to the individual application mechanism.[104] The first and main consequence is the requirement of exhausting all ordinary ways of claiming rights.[105] In other words, the individual application is an application way to the Constitutional Court, after exhausting all domestic remedies.

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[100] M. Yavuz Sabuncu and Selin Esen Arnwine, "Türkiye İçin Anayasa Şikayeti Modeli: Türkiye'de Bireysel Başvuru Yolu", *Anaysa Yargısı*, no.21 (2013): 230.

[101] Özcan Özbey, "Anayasa Mahkemesine Bireysel Başvuru Hakkının Avrupa İnsan Hakları Mahkemesi İçtihatları Işığında Değerlendirilmesi", *TAAD* 3, no. 11 (2012): 22.

[102] Musa Sağlam, "Önsöz", in *Bireysel Başvuru "Anayasa Şikayeti"*, ed. Musa Sağlam (Ankara: HUKAB, 2011), 1.

[103] Bülent Yücel and İlker Gökhan Şen, *Anayasa Mahkemesi'ne Bireysel Başvuru Hakkı Sempozyumu*, (Eskişehir: Anadolu Üniversitesi Hukuk Fakültesi Yayınları, 2011), 50. Hereafter: Yücel and Şen, *Sempozyum*.

[104] Yücel and Şen, *Sempozyum*, 50-53.

[105] Yücel and Şen, *Sempozyum*, 50.

After a person applied to all ways of ordinary legal jurisdiction by claiming his or her constitutional rights and freedoms were violated by public forces, if he or she still claims that there is continuing violation, under these circumstances individual application mechanism can be brought to agenda as an effective exceptional solution. The essential of exhaustion of all domestic remedies also keep the Constitutional Court from the burden of excessive applications.[106]

Another essential consequence of the exceptional characteristic of individual application is that the complainant must get a significant amount of suffer because of the violation.[107] Furthermore, the harm should be personal and still-continuing because the applicant must be directly and personally affected by the violation.[108] In this context, the degree of suffering and the continuation of the violation must be essential.

In the context of individual application, the Constitutional Court is not a cassation, because it is an exceptional judicial remedy. The main difference between individual application and cassation is that in the individual application, the possibility of violation is examined after final judgement, whereas in cassation accuracy of the execution of law or proceedings is examined.[109] In other words, the Constitutional Court does not examine whether the practice or law is right; rather, it conducts its examination targeted on the fundamental rights and freedoms.

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[106] Yücel and Şen, *Sempozyum*, 51.

[107] Yücel and Şen, *Sempozyum*, 52.

[108] Yücel and Şen, *Sempozyum*, 52.

[109] Hüseyin Ekinci and Musa Sağlam, *66 Soruda Bireysel Başvuru* (Ankara: Anayasa Mahkemesi Yayınları, 2015), 28. Hereafter: Ekinci and Sağlam, *66 Soruda*.

2.2 The Constitutional Court in Turkey

The mission and structure of the Turkish Constitutional Court, which was established with the Turkish Constitution in 1961, was rearranged with the 2010 constitutional amendments and Law on the Establishment and Proceedings of Constitutional Court with Law no. 6216 in 2011.[110]

With Article 3 of law no. 6216, concluding individual applications was added into the missions and authorities of the Constitutional Court.[111] In the fourth part of the law of 6216, several issues related to the individual application mechanism are represented in detail such as the rights and freedoms that can be issued in the individual application mechanism, persons who have right for individual application, the method of application, admissibility criteria and examination and decision-making procedures.[112]

The Constitutional Court consists of plenary, two Sections, six Commissions and General Secretariat. Plenary, which consists of 17 members, convoke with the participation of at least twelve members by taking decisions with absolute majority of participants.[113] Each section consists of 7 members and a vice president, while sections take decisions with simple majority.[114] Each Commission consists of 2

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[110] "Short History", The Constitutional Court of the Republic of Turkey, accessed 18 October 2017, http://www.constitutionalcourt.gov.tr/inlinepages/constitutionalcourt/shorthistory.html.

[111] 6216 sayılı Anayasa Mahkemesinin Kuruluşu ve Yargılama Usulleri Hakkında Kanun, *Resmi Gazete*, 3 March 2011. http://www.resmigazete.gov.tr/eskiler/2011/04/20110403-1.htm. Hereafter: Resmi Gazete, *6216 Sayılı Kanun*.

[112] Resmî Gazete, *6216 Sayılı Kanun*.

[113] Ekinci and Sağlam, *66 Soruda*, 9-10.

[114] Ekinci and Sağlam, *66 Soruda*, 10.

members, while Commissions decide unanimously.[115] Commissions are responsible for admissibility review, while Sections examine and adjudicate on the merits of individual applications.[116] Plenary makes a decision about the ruling case differences of Sections on the individual application mechanism and concludes the subjects dispatched to the Plenary.[117] In the general view of the individual application mechanism, Commissions reach verdicts of admissible and inadmissible, while Sections reach verdicts of violation and no violation.[118] If the verdict is a violation, then the Constitutional Court can decide whether to retry if there is a legal interest or compensation issue.[119] In addition, verdict of admissible and verdict of substantive jurisdiction are absolute.[120] It is not possible to object to the absolute decisions of the Constitutional Court when there is only an exception of 7 days for refusal.[121]

2.3 The Process of Individual Application Mechanism

The process of individual application can be analysed with five stages. First stage is the scope of rights and freedoms which can be issued in the framework of mechanism. It tells us the object of the individual application mechanism. Second stage is the applicants of individual application mechanism who the subject of mechanism is.

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[115] Ekinci and Sağlam, *66 Soruda*, 10.

[116] Ekinci and Sağlam, *66 Soruda*, 10.

[117] Ekinci and Sağlam, *66 Soruda*, 10-11.

[118] Resmi Gazete, *6216 Sayılı Kanun*, Article 48-52.

[119] Ekinci and Sağlam, *66 Soruda*, 35.

[120] Ekinci and Sağlam, *66 Soruda*, 36.

[121] Ekinci and Sağlam, *66 Soruda*, 36.

Third stage is the issue of admissibility that contains deadlines, conditions and terms of admissibility. Fourth stage is decision procedure that is how the Constitutional Court reaches a verdict. Last stage is whether or not the mechanism is a final way.

2.3.1 The Scope of Rights and Freedoms

The object of the individual application mechanism is fundamental human rights and freedoms in the common protection area of the Constitution and the Convention. The Article 45 of Law no. 6216 states that 'all rights and freedoms secured in the Constitution, Convention and its protocols can be heard with the claim of violation carried by public authorities.'[122] In other words, in the context of individual application mechanism, a right or a freedom must be firstly guaranteed in the Constitution, besides it must be one of the rights and freedoms subjected in the Convention and its protocols.

Rights and freedoms in the common protection area of the Convention and the Constitution are right to life (Article 2 of the Convention, Article 17 of the Constitution), the prohibition of torture (Article 3 of the Convention, Article 17 of the Constitution), the prohibition of slavery and forced labour (Article 4 of the Convention, Article 18 of the Constitution), right to liberty and security (Article 5 of the Convention and Article 19 of the Constitution), right to fair trial (Article 6 of the Convention, Articles 36, 37, 38, 39, 125, 138, 139, 141, 142 and 148 of the Constitution), no punishment without law (Article 7 of Convention, Articles 37 and 137 of the Constitution), right to respect for private and family life (Article 8 of the Convention, Articles 20, 21, 22, 41, 56 and 13 of the Constitution), freedom of thought, conscience and religion (Article 9 of the Convention, Articles 24, 25, 81, 136, 174 of the Constitution), freedom of expression (Article 10 of the Convention and Articles 26, 27, 28, 30, 31, 32, 39, 83, 130 and 133 of the Constitution),

[122] Resmî Gazete, *6216 Sayılı Kanun*, Article 45.

freedom of assembly and association (Article 11 of the Convention and Articles 33, 34, 51, 53, 54, 68, 69 and 13 of the Constitution), right to have effective remedy (Article 13 of the Convention and Articles 40, 74 and 148 of the Constitution) and the prohibition of discrimination (Article 14 of the Convention, Article 10 of the Constitution).[123] Furthermore, Turkey signed and put into force 9 (1, 2, 3, 5, 6, 8, 11, 13 and 14) of 14 protocols of the Convention.[124]

Through the protocols, several rights and freedoms such as right to property (Article 1 of Protocol 1, Articles 35, 38, 43 and 44 of Constitution), right to education (Article 2 of Protocol 1, Articles 42, 24 and 130 of Constitution) and right to free election (Article 3 of Protocol 1, Articles 67, 76, 77, 79 and 127 of Constitution) were incorporated into the individual application mechanism.[125] However, the prohibition of restrictions on freedom due to contractual rights and obligations (Protocol 4), freedom of travel and housing (Protocol 4), the prohibition of citizen's deportation (Protocol 4), equality among partners (Protocol 7), the prohibition of foreigner's deportation (Protocol 4 and 7), right to file an appeal (Protocol 7), right to compensation by persons accused falsely (Protocol 7) and non bis in idem (Protocol 4) are not in the common protection area of Constitution and the Convention because they are in the protocols 4, 7 and 12 that Turkey is not a party to.[126]

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[123] Ergin Ergül, *Anayasa Mahkemesi'ne ve Avrupa İnsan Hakları Mahkemesi'ne Bireysel Başvuru ve Uygulaması* (Ankara: Yargı, 2012), 145-362. Hereafter: Ergül, *Bireysel Başvuru ve Uygulaması*.

[124] Ergül, *Bireysel Başvuru ve Uygulaması*, 14-15.

[125] Ergül, *Bireysel Başvuru ve Uygulaması*, 363-75.

[126] Cem Duran Uzun, "Anaysa Mahkemesine Bireysel Başvuru Yolu (Anayasa Şikayeti) Beklentiler ve Riskler", *SETA Analiz Dergisi*, no.50 (2012): 20. Hereafter: Uzun, *Beklentiler ve Riskler*.

According to Aydın, protocols that did not come into force for Turkey are an unclear question.[127] Protocols 4, 7 and 12 came under question whether or not they are in the scope of individual application mechanism.[128] Although those protocols did not come into force, Turkey is a party of them.[129] In the view of Aydın, Article 45 of law no. 6216 can be interpreted as a response to this unclear question because Article states that all the rights and freedoms in the protocols, in which Turkey is party to, can be issued in the mechanism.[130]

Acu underlined that all rights and freedoms subjected in the Convention and its protocols can be issued in the context of individual application if they are also subjected in the Constitution.[131] In the case of a conflict in the interpretations of the rights between the Convention and the Constitution, Article 90 of the Constitution provides a solution by underlining that if international agreements related to fundamental rights and freedoms, which came into force in due form, have different judgements in the same subject with domestic law, the provisions of international agreements will be grounded on.[132] In this context, Article 90 can be interpreted as a legal base of guiding characteristic of case law of the European Court in the individual application mechanism.

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[127] Aydın, *Yeni Bir Mekanizma*, 131.

[128] Protocol 9 was repealed after the Protocol 11. Protocol 10 was accepted in 1992, but it did not enter into force because all state parties did not accept it. Turkey signed protocols 4, 7 and 12, but they did not enter into force.

[129] Ergül, *Bireysel Başvuru ve Uygulaması*, 14-15.

[130] Aydın, *Yeni Bir Mekanizma*, 131.

[131] Melek Acu, "Bireysel Başvuruya Konu Edilebilecek Haklar", *TBB*, no. 110 (2014): 403-404.

[132] Constitution of the Republic of Turkey, Article 90, https://global.tbmm.gov.tr/docs/constitution_en.pdf. Hereafter: The Constitution.

2.3.2 Applicants of Individual Application Mechanism

The subject of individual application mechanism is everyone who claims that his or her right and freedom under the protection of the Constitution and the Convention are violated by public forces.[133] The Article 46 of law no. 6216 states that persons whose current and personal right or freedom are directly affected from operation, action or negligence that causes the violation can apply to the Constitutional Court.[134] Law no. 6216 remarks that public legal entities cannot apply to individual application mechanism, but private legal entities can only apply by claiming the violation of their vested rights.[135]

Sub-article of Article 46 remarks that foreigners cannot apply for the rights and freedoms vested only for Turkish citizens.[136] Ekinci and Sağlam underlined four important points which applicant can and cannot do in the context of individual application. First, they stated that applicants can claim his or her right or freedom was violated by public force such as legislation, execution, jurisdiction and other authorities bounded to these institutions and regional institutions.[137] In other words, applicants cannot claim his or her right or freedom was violated by private persons within the individual application mechanism but only in the case of that there was transference of liabilities of public forces to private entities, because of positive liabilities of public authorities, private persons can be responsible.[138] Second, Ekinci and Sağlam pointed that applicants cannot directly apply against legislative

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[133] The Constitution, Article 148.

[134] Resmi Gazete, *6216 Sayılı Kanun*, Article 46/I.

[135] Resmi Gazete, *6216 Sayılı Kanun*, Article 46/II.

[136] Resmi Gazete, *6216 Sayılı Kanun*, Article 46/III.

[137] Ekinci and Sağlam, *66 Soruda*, 6.

[138] Ekinci and Sağlam, *66 Soruda*, 6.

acts such as law, bylaw and administrative acts.[139] To be a subject of an individual application, there is a need of violation of right or freedom because of legislative acts so that applicants can indirectly apply against them. Third, individual application cannot be carried out against some acts outside the judicial control of Constitutional Court.[140] For example, applicants cannot apply to the Constitutional Court against solitary acts by President of the Republic, promotion and retirement acts of Supreme Military Council and dismissal decisions of High Council of Judges and Prosecutors.[141]

Furthermore, applicants cannot apply to the Constitutional Court by claiming the violation of rights and freedoms by a foreign state's public force.[142] Fourth, applicants can apply to the Constitutional Court by claiming the violation of rights and freedoms for only vested interests to him or her.[143]

2.3.3 The Issue of Admissibility and Decision-Making Procedure

Ekinci and Sağlam underlined that Commissions execute the admissibility of individual applications with unanimity, while Sections examine the substantial examination.[144] After the registration of an individual application by the Individual Application Office of the Constitutional Court, firstly Commissions examine the

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[139] Ekinci and Sağlam, *66 Soruda*, 7.

[140] Ekinci and Sağlam, *66 Soruda*, 7.

[141] Ekinci and Sağlam, *66 Soruda*, 7.

[142] Ekinci and Sağlam, *66 Soruda*, 9.

[143] Ekinci and Sağlam, *66 Soruda*, 8-9.

[144] Ekinci and Sağlam, *66 Soruda*, 33.

application whether or not it meets the requirements as to form.[145] If the Commissions decide that application is admissible, afterward the application is examined by the Sections in all material respects.[146] Because the admissible and inadmissible decisions of Commissions are definitive, except 7 days for refusal, applicants cannot reapply to the Constitutional Court after an inadmissible decision.[147]

The most important condition related to the requirements as to form is application periods and deadlines. First of all, applicants can appeal individual application against the decisions which became definite after 23 September 2012.[148] Second, applicants can appeal individual application within 30 days from the exhaustion date of last domestic remedy if remedy is predicted in the law.[149] If not, applicants can appeal within 30 days later from knowing the violation.[150] Third, in the case of an excuse arising from a force major or an illness, applicants can appeal individual application within 15 days after the ending of excuse exceptionally.[151] After achieving application timely, another requirement as to form is 'Individual Application Form'[152] or a petition that has similar content with the form. Form or petition must be filled and signed by the applicant by including all essence

[145] Ergül, *Bireysel Başvuru ve Uygulaması*, 31-32.

[146] Ergül, *Bireysel Başvuru ve Uygulaması*, 32.

[147] Ergül, *Bireysel Başvuru ve Uygulaması*, 32.

[148] Resmi Gazete, *6216 Sayılı Kanun*, Article 74/8.

[149] Resmi Gazete, *6216 Sayılı Kanun*, Article 47/5.

[150] Resmi Gazete, *6216 Sayılı Kanun*, Article 47/5.

[151] Resmi Gazete, *6216 Sayılı Kanun*, Article 47/5.

[152] "Bireysel Başvuru Formu", The Constitutional Court of the Republic of Turkey, accessed 18 October 2017, http://anayasa.gov.tr/files/bireyselbasvuru/b_b.pdf.

information and not exceeding 10 pages.[153] In addition, documents[154] or their certified samples must be attached to the application documents if it is necessary.[155] Furthermore, individual application has a fee[156] as a requirement as to form. However, in the case of applicant does not have a financial ability to pay the fee, he or she can demand judicial assistance.[157]

Last, applicants can apply to the Constitution Court directly, by means of other courts or representatives in foreign countries.[158] As another important point of admissibility, twice applications already examined by the Constitutional Court are inadmissible, but applications to the European Court or other international authorities do not cause the inadmissible decision exceptionally.[159] In the case of that an application is deprive of a clear foundation, without any examination on the material conditions, Commission decide that application is inadmissible.[160] Döner

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[153] Ekinci and Sağlam, *66 Soruda*, 11-12.

[154] (a) Warrant of application in the applications which are carried with the lawyers or legal representatives. (b) Documents showing payment of the fee. (c) Sample of ID. (d) Representation warrant of legal entities. (e) Sertificate of service of final judgment. (f) Relevant documents of claim. (g) If there is compansation demand, documents related to the demand. (h) If there is an excuse, documents related to causes of excuse.

[155] 28351 Sayılı Anayasa Mahkemesi İçtüzüğü, *Resmî Gazete*, 12 July 2012. http://www.anayasa.gov.tr/files/pdf/ictuzuk.pdf. Hereafter: Resmî Gazete, *28351 Sayılı İçtüzük*.

[156] Application fee is 294 Turkish Liras according to the Act of Fees with no. 492 in 2018.

[157] Ekinci and Sağlam, *66 Soruda*, 16.

[158] Ergül, *Bireysel Başvuru ve Uygulaması*, 31.

[159] Hüseyin Ekinci, "Anayasa Mahkemesine Bireysel Başvuruda Kabul Edilebilirlik Kriterleri ve İnceleme Yöntemi", *Anayasa Yargısı,* no. 30 (2013): 178-79. Hereafter: Ekinci, *Kabul Edilebilirlik Kriterleri*.

[160] Ayhan Döner and Yeşim Çelik, "Anayasa Mahkemesinin Bireysel Başvuruyu İnceleme Aşamaları, Ortaya Çıkan Sorunlar ve Sonuçları", *Erzincan Üniversitesi Sosyal Bilimler Enstitüsü Dergisi* 4, no. 1 (2016): 279. Hereafter: Döner and Çelik, *Bireysel Başvuru İnceleme Aşamaları*.

and Çelik stated that there are four conditions to determine the deprivation of clear foundation according to the case law of the European Court. First of all, there is a deprivation of clear foundation if there is no clear and visible violation called as 'being manifestly ill founded'.[161]

Second, if the case is complex in a non-apparent way and objectively impossible, it can be said that application is deprive of a clear foundation.[162] Third, if there is no evidence related to the claim of violation, it means deprivation of a clear foundation.[163] Last, the examination of domestic court during proceedings cannot be a subject of the individual application mechanism, because if the complaint is about the examination of appeal, it means that deprivation of a clear foundation.[164]

The misuse of individual application is another cause of inadmissibility. According to the law no. 6216, there is pecuniary punishment up to 2,000 Turkish Liras against the applicants who abuse the right of individual application.[165] This implementation can be understood as a precaution against misconduct of the mechanism. Admissibility issue is important to distinguish irrelevant cases so that the Constitutional Court can direct its attention to the admissible cases. In other words, admissibility review is significant to decrease case burden of the Constitutional Court. Ekinci underlines that the most part of case burden is composed of irrelevant and unfounded inadmissible applications.[166] According to the Constitutional Court's

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[161] Döner and Çelik, *Bireysel Başvuru İnceleme Aşamaları*, 280.

[162] Döner and Çelik, *Bireysel Başvuru İnceleme Aşamaları*, 280-81.

[163] Döner and Çelik, *Bireysel Başvuru İnceleme Aşamaları*, 281.

[164] Döner and Çelik, *Bireysel Başvuru İnceleme Aşamaları*, 281.

[165] Resmî Gazete, *6216 Sayılı Kanun*, Article 51.

[166] Ekinci, *Kabul Edilebilirlik Kriterleri*, 162.

statistics, between September 2012 and December 2017, 82 per cent of 173,479 applications were found inadmissible, while 16 per cent of them were concluded with the decision of joinder and administrative denial.[167] Remaining applications were concluded with the decision of closing a file, the decision of dismissal, the dismissal of application and the decisions of no violation and violation.[168]

Individual applications to the Constitutional Court are examined in three stages; the stage of preliminary by Individual Application Office with the decisions of acceptance or executive denial, the stage of admissibility by Commissions with the decisions of admissible or inadmissible, and the stage of basis by the Sections with the decisions violation or no violation.[169] If an application is accepted admissible by the Commissions because of meeting all requirements as to form, second phase is executed by the Sections.

After the admissibility decision, an example of the application is sent to the Ministry of Justice.[170] In the second phase, Sections examine whether or not the application meets all material conditions. In the end of the examination, Sections basically make a final decision of violation or no violation. An individual application must meet several material conditions. First, applicant must be directly affected by the violation of his or her current and personal right.[171] In other words, applicant must be directly and personally exposed to the violation of his or her

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[167] "22 Eylül 2012 - 31 Aralık 2017 Tarihleri Arası Bireysel Başvuru İstatistikleri", The Constitutional Court of the Republic of Turkey, accessed 14 June 2018, http://www.anayasa.gov.tr/icsayfalar/istatistikler/pdf/31122017_istatistik_tr.pdf.

[168] The Constitutional Court, *Bireysel Başvuru İstatistikleri*.

[169] Döner and Çelik, *Bireysel Başvuru İnceleme Aşamaları*, 276.

[170] Döner and Çelik, *Bireysel Başvuru İnceleme Aşamaları*, 284.

[171] Ekinci and Sağlam, *66 Soruda*, 17-18.

current right by claiming that he or she is a victim. Second, domestic remedies must be exhausted. In other words, after the notification of the exhaustion of last domestic remedy to the applicant, he or she can apply to the Constitutional Court.[172] After deciding that an admissible application meets all material conditions, the Constitutional Court reaches a verdict of violation or no violation with simple majority. The Constitutional Court decides whether or not there is a violation of a right or a freedom.

However, the Constitutional Court cannot practice supervision for appropriateness and cannot decide administrative action and operation.[173] In other words, Constitutional Court examines actions caused a violation by public forces, it shall not be made on matters required to be taken into account in the individual application mechanism.[174] Ekinci and Sağlam pointed that constitutional importance is a result of the Constitutional Court's huge burden of applications, while other states that have similar problems, such as Germany and Spain, resolved their problems with the same solution mechanism.[175]

Göztepe underlined that exhaustion of all domestic remedies is an effective and strict control of gradually complicating individual application mechanism.[176] Third, application must have importance in terms of constitution.[177] According to Ekinci and Sağlam, an application has constitutional importance if;

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[172] Ekinci and Sağlam, *66 Soruda*, 18-19.

[173] Seda Duysak Fidan, "Anayasa Yargısında Bireysel Başvuru Yolu ve Türkiye'de Gelişimi", (Master's Thesis, University of Atılım, 2013), 95.

[174] Resmî Gazete, *6216 Sayılı Kanun*, Article 49/6.

[175] Ekinci and Sağlam, *66 Soruda*, 21-22.

[176] Ece Göztepe, *Anayasa Şikayeti*, (Ankara: Ankara Üniveristesi Hukuk Fakültesi Yayınları, 1998), 71-72. Hereafter: Göztepe, *Anayasa Şikayeti*.

[177] Ekinci and Sağlam, *66 Soruda*, 21-22.

> (1) The Constitutional Court does not have a pre-given judgment in the same subject with the application.[178]
> (2) There are changed conditions that require re-examining, although the Constitutional Court has a pre-given judgment in the same subject with the application.[179]
> (3) Other judicial authorities ignore systematically case law of the Constitutional Court, although there is rooted case law of the Constitutional Court related to the subject of the application.[180]
> (4) Applicant is exposed to serious and significant damages.[181]

In the case that Constitutional Court decides that there is a violation and a necessity for a new trial, they send the case to the authorized court for retrial.[182] On the other hand, in the case of that there is no benefit for retrial, the Constitutional Court can decide to compensation on behalf of applicant, otherwise it can decide to a new case by domestic courts so that the compensation details can be examined.[183]

2.3.4 Individual Application Mechanism: Is It a Final Way or Not?

According to Ekinci and Sağlam, individual application to the Constitutional Court is not an obstacle for the application to the European Court.[184] There is no restrains for the people who want to apply to both of them. However, as it was seen in the

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[178] Ekinci and Sağlam, *66 Soruda*, 21-22.

[179] Ekinci and Sağlam, *66 Soruda*, 22.

[180] Ekinci and Sağlam, *66 Soruda*, 22.

[181] Ekinci and Sağlam, *66 Soruda*, 22.

[182] Resmî Gazete, *6216 Sayılı Kanun*, Article 50/2.

[183] Resmi Gazete, *28351 Sayılı İçtüzük*, Article 79/1-c.

[184] Ekinci and Sağlam, *66 Soruda*, 37.

case of Hasan Uzun vs. Turkey,[185] because the European Court recognized the individual application mechanism of Constitutional Court as a part of domestic remedies, without an individual application to the Constitutional Court, the case will be found inadmissible. According to Karakaş, Uzun case shows us that the focus point of analysing the effectiveness of individual application is the results of Constitutional Court's judgements.[186] According to Article 66 of law no. 6216, judgements of the Constitutional Court are absolute.[187] On the other hand, absoluteness of the Constitutional Court's judgements does not mean that applicants cannot apply to the European Court. In the case of that applicants believe that the judgement of the Constitutional Court did not end the violation, they can apply to the European Court afterward the proceedings of the Constitutional Court.

2.4 An Example on the Individual Application Mechanism: *Germany*

After expressing what individual application mechanism of Constitutional Court is in Turkey, the way to determine its main objectives lies behind the analyses of successful individual application examples of other states. Among those states such as Austria, Portuguese, Hungary, Russia, Czech Republic, Slovenia, Slovakia, Macedonia, Spain, Poland, Switzerland, Belgium, Mexico, Brazil, Argentina, Croatia, South Korea, and so on,[188] one of the most successful examples is Germany that recognized individual application system at the earliest. With more than 50 years' experiences, German individual application system that includes a wide range of rights and freedoms is a kind of mechanism that everyone can apply

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[185] *Hasan Uzun vs. Turkey*, The European Court of Human Rights, no: 10755/13 (2013). https://hudoc.echr.coe.int/tur#{"fulltext":["10755/13"],"itemid":["002-7546"]}.

[186] Işıl Karakaş, "Bireysel Başvuru Kararlarının Etkileri", *Anayasa Yargısı*, no. 33 (2016): 13.

[187] Resmi Gazete, *6216 Sayılı Kanun*, Article 66/1.

[188] Ergül, *Bireysel Başvuru ve Uygulaması*, 7-8.

without strict conditions and obligations.[189] A German citizen can apply to *Karlsruhe* (German Federal Constitutional Court) by claiming his or her rights and freedoms are violated by any types of public forces including all branches of legislative, executive and jurisdiction.[190] Individual application is an essential part of active protection of fundamental rights and freedoms.

As Kunig states, 97 per cent of all applications to German Constitutional Court are individual applications.[191] The works related to the duty of compliance audit of the Constitutional Court have secondary importance in Germany. Kılınç stated that in the example of Germany, an individual application to be accepted admissible must meet some crucial conditions. First of all, the action that caused a violation must be conducted by public force.[192] Second, applicant must have legal interest by applying to the Constitutional Court, while he or she also has to proof his or her legal interest.[193] Third, ordinary domestic legal remedies must be exhausted.[194] Last, application has a deadline that changes in the range of a month to a year.[195] Applicants have to make application in a month after the hearing of violation, however Germany citizens can also make individual applications against laws in a

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[189] Bahadır Kılınç, "Federal Almanya'da Bireysel Başvuru (Anayasa Şikayeti) Yolu", *Anadolu Üniversitesi Hukuk Fakültesi Yayınları*, no. 10 (2011): 88. Hereafter: Kılınç, *Federal Almanya*.

[190] Kılınç, *Federal Almanya*, 92.

[191] Philip Kunig, "Türkiye İçin Bir Örnek: Federal Almanya'da Bireysel Başvuru", in *Bireysel Başvuru "Anayasa Şikâyeti*", ed. Musa Sağlam (Ankara: HUKAB, 2011), 46. Hereafter: Kunig, *Türkiye İçin Bir Örnek*.

[192] Kılınç, *Federal Almanya*, 92.

[193] Kılınç, *Federal Almanya*, 92.

[194] Kılınç, *Federal Almanya*, 92.

[195] Kılınç, *Federal Almanya*, 92-93.

year after the law came into force.[196] The individual application in Germany comprises the phases of application, preliminary examination, admissibility, substantial examination and decision-making.[197] Having more than 50 year experiences provides an extensive case law for Germany. As a conclusion, the phase of admissibility does not take a long time. If the Court delivered a judgement in a same way in every case, the Council finishes the process in the phase of admissibility.[198] By decreasing the number of applications thanks to its extensive case law, the German Constitutional Court has more time and more effort to deal with more complicated cases.

German individual application system has some differences from the individual application system of Turkey. First of all, in Germany individual application mechanism is more accessible for all citizens, such as no application fee.[199] However, in Turkey there is an application fee, otherwise application would be inadmissible. Second, German individual application system is inclusive for all real persons. As a rule, public legal entities do not have standing.[200] On the other hand, because universities, faculties, art and occupational high schools, churches and media have some autonomous features, they have right to individual application for some rights and freedoms exceptionally.[201] Kunig remarked that everyone including public legal entities has right to the individual application in Germany, but

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[196] Kılınç, *Federal Almanya*, 92-93.

[197] Kılınç, *Federal Almanya*, 93.

[198] Kılınç, *Federal Almanya*, 94.

[199] Göztepe, *Anayasa Şikayeti*, 97.

[200] Göztepe, *Anayasa Şikayeti*, 53.

[201] Göztepe, *Anayasa Şikayeti*, 53-54.

individual application system in Turkey does not cover the public legal entities.[202] Third, Gerçeker stated that the scope of rights and freedoms subjected to the individual application mechanism contains all fundamental rights and freedoms guaranteed in the constitution in Germany, but the scope of rights and freedoms is limited into intersecting rights and freedoms both in the Constitution and the Convention in Turkey.[203]

Fourth, Uzun argued that the subject of the German individual application system is violations conducted by public forces covering all branches of legislation, execution and jurisdiction.[204] Göztepe stated that if there is a legal remedy against a law or legislation, there can be an individual application against law or legislation in Germany.[205] However, in Turkish mechanism there are some acts excluded from the individual application system, such as legislation acts and administrative acts by execution.[206] Therefore, it can be interpreted that German individual application system is more inclusive and more extensive than Turkey's mechanism. According to the European Court's statistics, the number of violation judgements differs from the situation of states whether or not they have individual application mechanism. For example, between 1999 and 2008, Germany had only 66 violation judgements, while France had 494 violation judgments.[207] It can be concluded that Germany that is a state with the rooted individual application mechanism, is more successful than

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[202] Kunig, *Türkiye İçin Bir Örnek*, 47.

[203] Hasan Gerçeker, "Anayasa Mahkemesine Bireysel Başvuru (Anayasa Şikayeti) Konulu Uluslararası Sempozyum Açılış Konuşması", in *Bireysel Başvuru "Anayasa Şikayeti"*, ed. Musa Sağlam, (Ankara: HUKAB, 2011), 33.

[204] Uzun, *Beklentiler ve Riskler*, 7.

[205] Göztepe, *Anayasa Şikayeti*, 83.

[206] Ekinci and Sağlam, *66 Soruda*, 7.

[207] Yücel and Şen, *Sempozyum*, 42.

France that does not have individual application mechanism in the comparison of providing domestic solutions to the human rights problems. On the other hand, if we include Turkey with the 1,652 violation judgements into the comparison for the same period,[208] the idea of that the individual application mechanism can provide an effective solution for Turkey to decrease the number of applications and violation judgements can be easily deduced.

In conclusion of Chapter 2, individual application mechanism of Constitutional Court is a domestic remedy for the protection of fundamental human rights and freedoms for people who claim their rights and freedoms under the common protection area of the Constitution and the Convention were violated by public forces.

In this chapter, the scope of rights and freedoms in the mechanism, features of applicants, deadlines, procedures and conditions of application, admissibility criteria and procedures of substantial examination were in-depth analysed. Furthermore, one of most successful examples of individual application mechanism, German Federal Constitutional Court, was compared with the Turkish individual application mechanism.

To sum up, after the preliminary stage by Individual Application Office with the decision of acceptance, individual application is sent to the Commissions that conduct an admissibility examination by analysing whether or not the application meets all the requirements as to form, such as deadlines, periods, form requirements and clear foundation.

After the Commissions give an admissible verdict by unanimity, application is sent to the Sections that conducts a substantial examination. During the material examination, Sections investigate whether or not the action or negligence directly and personally causes a violation of current right or all domestic remedies are

[208] Yücel and Şen, *Sempozyum*, 42.

exhausted, or there is importance in terms of Constitution. In the end of examination, Sections basically decide violation or no violation judgements by simple majority. The Constitutional Court can rule for retrial if there is a necessity, or can rule the compensation directly.

CHAPTER 3

THE EFFECTIVENESS OF INDIVIDUAL APPLICATION MECHANISM

After making an overview on the human rights developments in Turkey and summarizing the context of the individual application mechanism, in this chapter it will be argued whether or not the individual application mechanism of the Constitutional Court is effective in Turkey. Individual application's internal and external effectiveness will be analysed with its progressing construction. In the comparison of judgements rendered by the Constitutional Court and the European Court, there is a significant parallelism between the case law of the European Court and judgements by the Constitutional Court. It can be said that individual application mechanism has a crucial role in the progress of human rights developments in Turkey. On the other hand, apart from its effectiveness, individual application system in Turkey has also several ongoing deficiencies and problems. As Özbey points out, the effectiveness of individual application mechanism depends on the appropriateness of the Constitutional Court's decisions with the Court's case law.[209] In this chapter, it will be mainly focused on not only the effectiveness and achievements but also deficiencies and problems of individual application system. The judgements of the Constitutional Court will be examined, besides literature review. In the evaluation of the mechanism's effectiveness, the European Court's previous similar decisions will be grounded on. After evaluating and comparing examples of milestone cases and providing statistical information about the mechanism, all arguments will be concluded at the academic bases.

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[209] Özcan Özbey, "Anayasa Mahkemesine Bireysel Başvuru Hakkının Avrupa İnsan Hakları Mahkemesi İçtihatları Işığında Değerlendirilmesi", *TAAD* 3, no. 11 (2012): 44. Hereafter: Özbey, *İçtihatlar Işığında Değerlendirme*.

3.1 Transition Period of Individual Application in Turkey: 2010-2012

According to Polat, since 2003 Turkish government has accelerated human rights developments by adding a new key function to the Constitutional Court that will be implemented from late 2012.[210] In the 2000s, under the Justice and Development Party (AKP) rule, there were several breaks that caused human rights violations in the implementation aspects, particularly in the issues of the murders of non-Muslim people, Ergenekon cases, Kurdish initiative, women rights, honour killings, children rights, LGBT people rights, conscientious refusal, head-scarf ban, Alevi people's demands, and so on.

Turkey's human rights statement in 2000s had a contradictory outlook because on the one hand Turkey achieved several legal amendments in the field of human rights. On the other hand, in the implementation side Turkey had serious problems in several issues. As the most important step in the field of the implementation of human rights developments, the issue of individual application mechanism began be discussed in Turkey in the 2000s as a new legal remedy in the field of human rights. However, gaining legal base for the mechanism took place in 2010. In 7 May 2010, Grand National Assembly of Turkey accepted constitutional amendments that include individual application mechanism with the law no. 5983 through the referendum.[211] Afterwards, the law no. 5892 was published in the official gazette in 13 May 2010.[212] Referendum was held for the constitutional amendments with the law no. 5982 in 12 September 2010. After the acceptation of the law no. 5982 through referendum, the individual application mechanism gained a legal base and a

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[210] Necati Polat, *Regime Change in Contemporary Turkey Politics, Rights, Mimesis*, (Edinburgh: Edinburgh University Press, 2016), 163. Hereafter: Polat, *Regime Change*.

[211] 522 Sayılı Yüksek Seçim Kurulu Kararı, *Resmî Gazete*, 7 May 2010, http://www.resmigazete.gov.tr/eskiler/2010/08/20100802M1-1.htm.

[212] 5982 Sayılı Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinde Değişiklik Yapılması Hakkında Kanun, *Resmî Gazete*, 13 May 2010, http://www.resmigazete.gov.tr/eskiler/2010/05/20100513-1.htm. Hereafter: Resmi Gazete, *5982 Sayılı Kanun.*

constitutional guarantee in 23 September 2010.[213] 2010 constitutional amendments include several important developments in the field of human rights, such as positive discrimination, the protection of personal data, children rights, right to organization, right to travel, right to acquisition of knowledge, the institution of ombudsman, right to elect and be elected and individual application to the Constitutional Court.[214]

Through the law no. 5982, the individual application mechanism entered into the Turkish law system.[215] After the constitutional amendments came into force, Articles 148 and 149 of the Constitution changed by including that everyone can apply to the Constitutional Court with the claim of violation of their fundamental rights and freedoms by public authorities.[216] In other meaning, people who suffer from the violation of fundamental rights and freedoms due to the acts by public forces gained a right to apply to the Constitutional Court.

After the transition of individual application mechanism into Turkish law system with Articles 148 and 149 of the Constitution, Articles between 45 and 51 of Law on the Establishment and Procedures of the Constitutional Court no. 6216 materialized the mechanism.[217] Furthermore, Internal Regulations of Constitutional Court no. 28351 in 2012 provided many specific details on the individual

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[213] 846 Sayılı Yüksek Seçim Kurulu Kararı, *Resmî Gazete*, 23 September 2010, http://www.resmigazete.gov.tr/eskiler/2010/09/20100923-10.htm.

[214] "Human Rights", Turkish Foreign Ministry, accessed 5 October 2017, http://www.mfa.gov.tr/insan-haklari_.tr.mfa.

[215] Resmi Gazete, *5982 Sayılı Kanun*, Article 148 and 149.

[216] Constitution of the Republic of Turkey. Article 148/3. https://global.tbmm.gov.tr/docs/constitution_en.pdf.

[217] 6216 Sayılı Anayasa Mahkemesinin Kuruluşu ve Yargılama Usulleri Hakkında Kanun, *Resmî Gazete*, 30 March 2011, http://www.mevzuat.gov.tr/MevzuatMetin/1.5.6216.pdf. Hereafter: Resmî Gazete, *6216 Sayılı Kanun*.

application mechanism in practical terms.[218] In 2014, with several necessary arrangements, individual application mechanism took its final form. The individual application mechanism was put into practice in 23 September 2012.[219] In other words, the Constitutional Court started to examine acts and decisions finalized after 23 September 2012 as a time limit for application.[220]

3.2 An Overview on the Decisions of Constitutional Court since 2012

The Constitutional Court of Turkey reached its first individual application verdict in 25 December 2012 in the case of Türkan Altun.[221] Altun who claimed that her proprietary right was violated because of unsuitable expropriation applied to the Constitutional Court.[222] Because the last domestic remedy was exhausted before 23 September, the Constitutional Court decided that the case was inadmissible.[223] As regards to Ekinci, the effectiveness of the Constitutional Court's individual application mechanism depends on whether or not the mechanism is accessible, effective and sufficient.[224] Therefore, Constitutional Court's decisions have vital

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[218] 28351 Sayılı Anayasa Mahkemesi İçtüzüğü, *Resmî Gazete*, 12 July 2012. http://www.anayasa.gov.tr/files/pdf/ictuzuk.pdf.

[219] "Individual Application", The Constitutional Court of the Republic of Turkey, accessed 11 March 2018, http://www.constitutionalcourt.gov.tr/inlinepages/proceedings/IndividualApplication.html.

[220] Resmî Gazete, *6216 Sayılı Kanun*, Article 74/8.

[221] *Türkan Altun*, The Constitutional Court of the Republic of Turkey, no: 2012/388 (25 December 2012). https://kararlarbilgibankasi.anayasa.gov.tr/BB/2012/388. Hereafter: The Constitutional Court, *Türkan Altun*.

[222] The Constitutional Court, *Türkan Altun*.

[223] The Constitutional Court, *Türkan Altun*.

[224] Hüseyin Ekinci, "Anayasa Mahkemesi Kanunu Çerçevesinde Bireysel Başvuruların İncelenmesi Usulü", in *Bireysel Başvuru "Anayasa Şikâyeti"*, ed. Musa Sağlam, (Ankara: HUKAB, 2011), 159. Hereafter: Ekinci, *Bireysel Başvuruların İncelenmesi Usulü.*

importance in the analysis of effectiveness of mechanism. In this Chapter of thesis, it will be mainly focused on the Constitutional Court's decisions in several milestone cases from 2012 to 2017 by comparing the Constitutional Court's decisions with the European Court's decisions in previous similar cases. The aim is to demonstrate that whether or not there is a progressing coherence in the proceedings of both courts.

3.2.1 The Constitutional Court Decisions: 2012-2013

Following the implementation of individual application in September 2012, there was public demand including 1,342 applications until the end of the year, while the number of applications rapidly increased to 9,897 (637 per cent) in 2013.[225] The period from September 2012 to July 2013 is regarded as a first period of individual application mechanism in which the Constitutional Court mostly concentrated on the issue of admissibility criteria.[226]

In this period, the Constitutional Court worked on the determination of that under which conditions an application can be regarded as admissible. After clarifying the admissibility criteria, in the second period from July 2013 to December 2013, the Constitutional Court started to give decisions in all material aspects.[227] This period includes important contributions for the Constitutional Court's case law in regarding to individual application mechanism. In the end of the examination on the cases during the first period, it can be concluded that the Constitutional Court determined the inadmissible conditions by emphasizing four important issues. First

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[225] "23 Eylül 2012-31 Aralık 2017 Tarihleri Arası Bireysel Başvuru İstatistikleri", The Constitutional Court of the Republic of Turkey, accessed 20 March 2018, http://www.anayasa.gov.tr/icsayfalar/istatistikler/pdf/31122017_istatistik_tr.pdf. Hereafter: The Constitutional Court, *23 Eylül 2012-31 Aralık 2017 İstatistikleri*.

[226] Anayasa Mahkemesi Yayınları, *Bireysel Başvuru Seçme Kararlar 2012-2013* (Ankara: 2013), III. Hereafter: Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*.

[227] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013,* III.

is 30 days' rule which means that an applicant has to apply to the Constitutional Court within 30 days after the exhaustion of last domestic remedy.[228] As in the case of Mehmet Ercan, application has to apply within 30 days after the date of last domestic remedy exhaustion, otherwise application would be lapse of time.[229] Second issue is the Constitutional Court's authorization including three sub conditions.

First of all, as in the case of Büğdüz Köyü Muhtarlığı, public legal entities do not have legal capacity for individual application.[230] Second, as it can be seen in the case of Nurdan Sesiz, the Constitutional Court examines the claims whose last domestic remedy finalized after 23 September 2012.[231] Third, violated right must be in the scope of the Constitution and the Convention, otherwise as in the case of Necmettin Doğru even if the right is protected by the Constitution, if it is not in the scope of the Convention, application would be inadmissible.[232] Third issue is the exhaustion of application ways. In other words, to be able to apply to the Constitutional Court, all domestic remedies must be exhausted before the application. Otherwise, as it can be seen in the case of Ayşe Zıraman and Cennet Yeşilyurt application would be inadmissible.[233] Fourth issue is the clear deficiency of foundation. In the case of clear absence of violation, the Constitutional Court decides that application is inadmissible.[234] To illustrate this, in the case of Adnan

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[228] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013,* 7.

[229] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 6-14.

[230] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 19.

[231] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 47-56.

[232] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 57-64.

[233] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 65-72.

[234] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012*-2013, 105-106.

Oktar, applicant claimed that a person named as 'A.U' insulted the applicant's personality via the social web site 'www.facebook.com'.[235] The Constitutional Court decided that application had clear deficiency of foundation because applicant could not make any statement about why he was subjected to discrimination.[236] According to the Constitutional Court, an applicant, who claims he or she was exposed to discrimination, has to prove that treatment subjected to him or her is different than other treatments to other people in a negative way otherwise, application would have clear deficiency of foundation.[237]

After the clarification of admissibility criteria, during the second period, the Constitutional Court mostly focused on the violations against fundamental rights.[238] One of the most serious violations against fundamental rights was in the field of right to life. In the case of Serpil Kerimoğlu and Others, applicants applied to the Constitutional Court with the claim of Van Governor and AFAD officer's malpractices by not forbidding a hotel entrance which was crumbled during first Van earthquake without making any estimations of damage.[239] Afterwards, applicants claimed that during the second Van earthquake their malpractices caused many deaths because of conscious negligence.[240] In the end of examination, the Constitutional Court decided that because the Van Governor's and AFAD officers did not keep their end up according to legal regulations by not forbidding the hotel entrance despite serious damages, they caused deaths by violating right to life of

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[235] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 99-100.

[236] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 105.

[237] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 105-106.

[238] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, III.

[239] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 113.

[240] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 113.

applicants.[241] Another important issue that the Constitutional Court dealt with was the right to liberty and security. In the case of Burak Döner, the Constitutional Court decided that there is a violation because of exceeding maximum period of detention.[242] In this case, the Constitutional Court also decided that applicant who was under detention unlawfully can demand compensation from public authorities by making references to the decision of Court in the case of Demir vs. Turkey.[243] Right to a fair trial was another fundamental right issued to individual application.

Right to a fair trial includes both right to be tried in a reasonable time and access to a court. In the case of Özkan Şen, the Constitutional Court decided that there was a violation of the right to a fair trial due to the applicant's inability to access to a domestic court because he had no financial capability for counsel's fee.[244] Rights related to crime and punishment were another topic dealt with by the Constitutional Court during the second period.

In the case of Ramazan Tosun, in the end of Tosun's nullity suit against obligatory retirement decision of the Military High Administrative Court, by not having any written notification about the decision from the Military Court to the applicant, applicant claimed that with this act his defence right was restricted.[245] In the decision process, the Constitutional Court made several references to the case of Miran vs. Turkey in the European Court.

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[241] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 124-138.

[242] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 153.

[243] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 146.

[244] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 214-226.

[245] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 237.

Miran, who was dismissed from the military school without any notification to the applicant related to the justifications of the dismissal decision, applied to the European Court with the claim of the right to a fair trial in 2009.[246] In the case of Miran, the European Court decided that there was a violation of applicant's right because he did not have any access to documents which show his dismissal is necessary.[247] In the end of Tosun case, the Constitutional Court reached a decision parallel with the previous the European Court's decision by concluding the case with the judgement of violation.[248]

Right to elect, to be elected and being part of political activities was another topic during the second period. In the case of Mustafa Ali Balbay, applicant claimed that without tangible evidence his period of custody exceeded reasonable time, so this situation blocked his right to be active part of political activities as an elected member of parliament despite legislative immunity.[249]

In this case, the Constitutional Court decided that applicant's claims related to the absence of tangible evidence were inadmissible because of clear deficiency of foundation.[250] However, the Constitutional Court also decided that applicant's claims related to his period of custody which was exceeded reasonable time and applicant's claims related to blocking his right to be active part of political activities as an elected member of parliament were violated.[251]

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[246] *Miran vs. Turkey*, The European Court of Human Rights, no. 43980/04 (2009), https://hudoc.echr.coe.int/tur#{"itemid":["001-124021"]}. Hereafter: Miran, *The European Court*.

[247] Miran, *The European Court,* 4-5.

[248] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012*-2013, 238-250.

[249] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 272-273.

[250] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 273-275.

[251] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2012-2013*, 275-289.

3.2.2 The Constitutional Court Decisions: 2014-2015

The number of individual applications in 2013 to the Constitutional Court (9,897) increased 108 per cent in 2014, so the number of applications reached 20,578.[252] On the other hand, in 2015 the number of applications reached 20,376 by causing a huge workload for the Constitutional Court.[253] After the Constitutional Court clarified the admissibility criteria during 2012 and 2013, the Constitutional Court found an opportunity for more concentration on the essentials of applications during 2014 and 2015.

In 2014, the Constitutional Court continued to render precedent judgements by improving the case law of individual application mechanism. In the end of analyses of the cases, 2014 can be concluded that the context of the rights and freedoms, expanded and diversified. In several milestone cases, the Constitutional Court rendered judgements in parallel with the European Court's judgements. This attitude of the Constitutional Court created support from public and external authorities. In 2014, there were several milestone cases that contributed to develop case law of Constitutional Court, particularly in the context of right to life, the prohibition of torture and torment, right to protection and development of material and nonmaterial being, right to liberty and security, right of privacy, freedom of thought and faith, freedom of commenting and spreading of a thought, right to property, right to a fair trial, right to establish trade unions, right to elect, to be elected and to be active in political activities.[254] In the context of '*right to life*', there was the case of Rahil Dink and Others. They claimed the violation of the right to life of Hrant Dink, who was an Armenian founder and chief editor of Agos

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[252] The Constitutional Court, *23 Eylül 2012-31 Aralık 2017 İstatistikleri*.

[253] The Constitutional Court, *23 Eylül 2012-31 Aralık 2017 İstatistikleri*.

[254] Anayasa Mahkemesi Yayınları, *Bireysel Başvuru Seçme Kararlar 2014* (Ankara, 2015), V-XIV. Hereafter: Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014.*

Journal and murdered in 2007 in İstanbul, because the requirements of the European Court's decisions in 2010 in the case of Hrant Dink were not met in domestic law.[255] As Polat stated, the European Court remarked that domestic court made Dink a target for extreme nationalists.[256]

According to the European Court's decision, although there was a clear threat to Hrank Dink's life, because the police gendarme forces did not take due precautions and the case against security forces was concluded with the nolle prosequi in domestic law system, state authorities violated Dink's right to life by not conducting an effective investigation with the purpose of penalizing the officers who had negligence in the murder.[257]

After the violation judgements of the European Court in 2010, the investigation against police and gendarme forces was reopened by claiming that they were members of terrorist organization and caused killing Dink intentionally.[258] However, reopened case did not produce any results because of the law no. 5271 including that the investigations can be reopen for only the finalized decisions of the European Court after April 2014.[259] Afterwards, applicants applied to the Constitutional Court with the claim of no fulfilment of the provisions of the European Court.[260] In the end of examination, the Constitutional Court ruled that decisions of the European Court were not taken into consideration and that there

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[255] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014,* 93.

[256] Polat, *Regime Change in Contemporary Turkey*, 270.

[257] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 81-82.

[258] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 83.

[259] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 84.

[260] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014,* 93.

was a violation of right to life because of the positive liability of government to protect its citizen's life.[261] In the context of the '*prohibition of torture and torment*', there was the case of Cezmi Demir and Others, with the claim of torture and torment by the police officers of Hamur district gendarmerie command, when applicants were remanded in custody because of the suspicion of robbery.[262] Applicants claimed that investigation against police officers was not effectively conducted because proceeding continued eleven years.[263]

According to the case law of the European Court in the field of the prohibition of torture and torment, courts as defenders of law, should not allow offenses threaten the life and assaults directed to person's mental and material integrity to go unpunished and to be barred by prescription under no circumstances.[264] Similarly, according to Article 17 of the Constitution, government has a duty to take inhibitory measures against torture and torment.[265] As in the case of Mahmut Kaya vs. Turkey, government must take inhibitory measures to protect citizen's life as a result of liability of government.[266] In other words, according to the European Court, governments have a liability to protect citizen's mental and material integrity against torture and torment and a duty to take precaution to restrain maltreatment.

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[261] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014,* 102-107.

[262] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014,* 188-189.

[263] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 189.

[264] *Ali and Ayşe Duran vs. Turkey*, The European Court of Human Rights, no: 42942/02 (2008). https://hudoc.echr.coe.int/tur#{"fulltext":["42942/02"],"itemid":["001-85767"]}.

[265] Constitution of the Republic of Turkey, Article 17, https://global.tbmm.gov.tr/docs/constitution_en.pdf. Hereafter: The Constitution.

[266] *Mahmut Kaya vs*. *Turkey*, The European Court of Human Rights, no: 22535/93 (2000). https://hudoc.echr.coe.int/tur#{"fulltext":["22535/93"],"itemid":["001-58523"]}.

In the case of Cezmi Demir and others, applicants also made a complaint about incorrect medical report that showed no mark related to torture, conducted by one of the police officer's wife.[267] However, according to the case law of the European Court, persons, who conduct medical workup, must be unconnected with the persons involved the case.[268] In the end of the examination, the Constitutional Court ruled that Article 17 of the Constitution was violated and ruled for 40,000 Turkish Liras compensation.[269]

In the context of the '*right to freedom and security*', there was the case of Hanefi Avcı with the claim of the violation of Articles 19 and 36 of the Constitution.[270] After applicant was arrested for being a part of terrorist organization in 2010, during the years 2010 and 2013, applicant demanded to end its continuation of detention a few times, but his demand was rejected.[271] In 2013, applicant applied to the Constitutional Court because he claimed that court decision related to the limitation of his freedom was against the law and claimed that his demand of release was rejected in terms of formula justifications.[272] Applicant alleged that without any evidence related to his offense the continuation of his imprisonment was against right to freedom and security.[273] According to the case law of the European Court, a person's period of detention cannot be extended because of

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[267] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 188-189.

[268] *Mehmet Emin Yüksel vs. Turkey*, The European Court of Human Rights, no: 40154/98 (2004). https://hudoc.echr.coe.int/tur#{"fulltext":["40154/98"],"itemid":["001-61923"]}.

[269] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 208-209.

[270] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 296-297.

[271] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 293-295.

[272] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 296.

[273] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 296-297.

unreasonable adjudication and deprived of justification.[274] In the end of the examination, Constitutional Court ruled a violation judgment because the period of detention was not reasonable without any justifications.[275] In the context of the '*right to a fair trial*', there was the case of Mesude Yaşar. Applicant claimed that her case opened against the decision of refusal of her demand in the context of law on the absorbency of losses derived from counter terrorism with the no. 5233 was not conducted fairly.[276]

Applicant claimed that she deprived from the right to property because of unreasonable period of proceeding and unfair trial.[277] As a result of blocking the entrances of the villages in south-eastern Anatolia because of security reasons, applicant applied to the Governorship of Batman for compensation for her losses.[278] In the case of Yaşar, because her village was not totally evacuated, her demand was rejected by domestic courts, although she was obliged to quit the village after she lost her son during the counter terrorism.[279] In the end of the examination, the Constitutional Court decided that her right to a fair trial was violated because whether or not her village was totally empty was not relevant in the determination of her abandon of settlement.[280] In the context of '*freedom of commenting and spreading of a thought*', there was the case of YouTube LLC Corporation Service

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[274] *Nahkmanovich vs*. *Russia*, The European Court of Human Rights, no: 55669/00 (2006). https://hudoc.echr.coe.int/tur#{"fulltext":["55669/00"],"itemid":["001-72633"]}.

[275] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 303-309.

[276] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 755-756.

[277] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 755-756.

[278] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 751.

[279] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 760-773.

[280] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 772.

Company and others. Applicants claimed that detention of the video sharing site YouTube by Telecommunications Presidency (TİB) violated the freedom of commenting and spreading of a thought.[281] According to TİB's decision, the access of fifteen YouTube accounts must be blocked, besides all broadcast access should be prevented until access barred of those accounts was ensured.[282]

According to the Constitutional Court's decision, restrictions on commenting and spreading of a thought should be examined as soon as possible and removed immediately in the case of violation, because the blocking of intensively and effectively used social sharing site has restrictive effect on the freedom of thought.[283] Similarly, according to the case law of the European Court, media serves a function in public oversight that is depended on the independency.[284] The European Court states that as YouTube, internet sites that have many users and huge capacity of broadcasting make contributions to spread the knowledge thanks to its access.[285] The Constitutional Court decided a violation of freedom of expression of applicants.[286] In 2015, the Constitutional Court enriched the case law by investigating different subjects, besides they revealed its approach concerning fundamental rights and freedoms clearer and more comprehensible.[287]

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[281] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 389.

[282] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 389-390.

[283] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 402.

[284] *Özgür Radyo-Ses Radyo Televizyon Yapım ve Tanıtım A.Ş vs. Turkey*, The European Court of Human Rights, no: 64178/00 (2006). *https://hudoc.echr.coe.int/tur#{"itemid":["001-124419"]}*.

[285] *Times Newspaper Ltd. vs United Kingdom*, The European Court of Human Rights, no: 23676/03 (2009). https://hudoc.echr.coe.int/tur#{"fulltext":["23676/03"],"itemid":["001-70942"]}.

[286] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2014*, 410.

[287] Anayasa Mahkemesi Yayınları, *Bireysel Başvuru Seçme Kararlar 2015* (Ankara, 2016), I. Hereafter: Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*.

After the Constitutional Court clarified the admissibility criteria until 2015, after this date, the Constitutional Court focused on the violations of different types of rights and freedoms, such as freedom of communication, freedom of organization and right of assembly.

As an example of '*injunction*', there was the case of R.M. Applicant, who was an Iranian citizen and got the death penalty in his or her trial in Iran, demanded the international protection when he or she came to Turkey.[288] Applicant's demand was accepted. However, after a while deportation of applicant was decided because he or she did not meet the weekly obligation of signature.[289] Applicant claimed that his or her right to life would be violated in the case of deportation to Iran by demanding the stay of execution.[290] In the end of examination, Constitutional Court decided to accept the applicant's demand of the stay of execution, besides the process of deportation was stopped until a new decision of related court.[291]

In the context of '*the right to life*', there was the case of Mehmet Kaya and others. Applicants claimed the violation of right to life, right to a fair trial and right to have effective remedy of Erkan Kaya.[292] Applicants, who are relatives of Erkan Kaya, remarked that Erkan Kaya passed away during the fire in jail because of the negligence by officers in penal institution.[293] Furthermore, applicants claimed that

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[288] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 18.

[289] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 19.

[290] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 19-20.

[291] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 20.

[292] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 54.

[293] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 54.

investigation related to their relative's death was not effectively carried out.[294] Applicants asserted that although Erkan Kaya had mental illness and experienced several suicide attempts including burning his bed, officers did not take precautions to protect his life.[295]

According to the case law of the Constitutional Court, government has positive responsibilities to take precautions for the protection of a person's life against self-destructions.[296] Similarly, the European Court underlined that it is important to monitor prisoner's mental situation and to take precautions if they have suicidal behaviour.[297]According to the final provision of the Constitutional Court, there were violation of right to life and violation of right to a fair trial correspondingly the case law of the European Court.[298]

In the context of the '*freedom of communication*', there was the case of Eren Yıldız. Applicant, who was a prisoner in Edirne penal institution, claimed the violation of right to communication and violation of right to be informed about justified decision, due to the retention of his personal letter by penal institution.[299] Haydar Çelik, a friend of the applicant, sent two letters to applicant, afterward in the examination of letters by the penal institution, retention of letters was decided by claiming that letters contain statements that praise the crime and propagandize the

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[294] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 54.

[295] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 63.

[296] *Sadık Koç and Others*, The Constitutional Court of Turkey, no: 2013/841 (2014). https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/841.

[297] *Keenan vs. United Kingdom*, The European Court of Human Rights, no: 27229/95 (2001). https://hudoc.echr.coe.int/tur#{"fulltext":["27229/95"],"itemid":["001-59365"]}.

[298] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 78.

[299] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 756.

terrorism.[300] Applicant claimed that his right to communication was violated because of lack of forbidden statements in letters, besides he also claimed that his right to be informed about justified decision was violated because the reason of which statements in the letters were found inappropriate was not reported to him.[301] According to the case law of the European Court, there should be logical, objective and clear reasons in the interventions of correspondences of prisoners by penal institutions with the claim of misappropriation of right to communication.[302] After the examination of the Constitutional Court by taking the case law of the European Court as a basis, the violation of right to communication was decided because the intervention to one of those letters did not suit principle of proportionality.[303]

In the context of '*right to elect, be elected and be a part of political activities*', there was the case of Grand Unity Party (Büyük Birlik Partisi-BBP) and Felicity Party (Saadet Partisi-SP). Applicants claimed the violation of right to be elected because of the condition related to having at least 3 per cent of total votes in parlimantary elections to take grant-in-aid.[304] Applicants claimed that electoral treshold causes inequality of opportunity among political parties.[305]

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[300] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 757.

[301] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 760.

[302] *Campbell vs*. *United Kingdom*, The European Court of Human Rights, no: 13590/88 (1992). https://hudoc.echr.coe.int/tur#{"fulltext":["13590/88"],"itemid":["001-57771"]}.

[303] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 772-773.

[304] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 1294-95.

[305] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 1294-95.

In a similar case of the European Court, it was reminded that Convention does not regulate grant-in-aid to political parties.[306] Furthermore, the European Court stated that is not possible to say that there is a standard implementation among member states in the issue of grant-in-aid for political parties.[307] Likely, the Constitutional Court gave a decision of no violation related to the right to election of applicants.[308]

3.2.3 The Constitutional Court Decisions: 2016-2018

In 2016, the number of applications to the Constitutional Court dramatically increased from 20,376 in 2015 to 80,756 (296 per cent).[309] Besides the increase in the number of the applications, the content of the rights and freedoms subjected to the individual application diversified.

In the context of '*the right to protection and development of material and nonmaterial wealth*', there was the case of N.B.B, who claimed a violation of the right to protection of honour and reputation.[310] There, the applicant's demand related to banning a local newspaper report that was available in its inline archive.[311] The report concerned the applicant's prosecution case in 1998 with the

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[306] *New Horizons vs*. *South Cyprus*, The European Court of Human Rights, no: 40436/98 (1998). https://hudoc.echr.coe.int/tur#{"fulltext":["40436/98"],"itemid":["001-4418"]}.

[307] *Özgürlük ve Dayanışma Partisi vs*. *Turkey*, The European Court of Human Rights, no: 7819/03 (2012). https://hudoc.echr.coe.int/tur#{"fulltext":["7819/03"],"itemid":["001-110866"]}.

[308] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2015*, 1302.

[309] The Constitutional Court, *23 Eylül 2012-31 Aralık 2017 İstatistikleri*.

[310] Anayasa Mahkemesi Yayınları, *Bireysel Başvuru Seçme Kararlar 2016-I* (Ankara, 2017), 545. Hereafter: Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2016/I*.

[311] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2016/I*, 545.

claim that the applicant was a drug user.[312] Applicant claimed that the newspaper report caused harm to his or her honour and reputation by damaging his or her private life from of the continuation of publishing on the web.[313] The Constitutional Court referred to the Law on the Batching of Personal Data with law no. 5651 and Article 20 of the Constitution by stating that everyone has the right to demand the protection of personal data, to remain informed about his or her personal data, and to extinguish and correct personal data.[314]

According to the case law of the European Court, web archives fall into the context of the freedom of thought and freedom of expression, which are vital for every person.[315] The Constitutional Court decided that because the applicant was not a famous person, the newspaper report did not include any current public interest.[316] Therefore, in keeping with case law of the European Court, the Constitutional Court decided that there was a violation of the right to protection of honour and reputation.[317]

In the context of '*the right to liberty and security*', there was the case of Erdem Gül and Can Dündar, who claimed a violation of the right to liberty and security and a violation of the freedom of press because of their arrest.[318] Gül and Dündar were

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[312] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2016/I*, 345-346.

[313] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2016/I*, 550.

[314] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2016-I*, 554-5.

[315] *Times Newspapers Ltd vs*. *United Kingdom*, The European Court of Human Rights, no: 3002/03 and 2367/03 (2009). https://hudoc.echr.coe.int/tur#{"fulltext":["3002/03"],"itemid":["001-91706"]}.

[316] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2016/I*, 566.

[317] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2016/I*, 567-8.

[318] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2016/I*, 787.

arrested under the accusation of helping and making propaganda terrorist organization intentionally and purposely in their reports in the *Cumhuriyet* newspaper.[319] They also were accused of revealing a state secret with the intention of espionage.[320]

According to Article 19 of the Constitution, the arrest of a person depends on whether there is strong evidence regarding an offense.[321] According to the European Court, a detention measure must be necessary under the conditions of a concrete case.[322] At the end of the evaluation of the necessity of the decision of detention in the case of Gül and Dündar, the Constitutional Court stated that the detention measure caused an intervention of the freedom of press.[323] Another important case was the application of Mehmet Encu and others related to the Roboski massacre. In December 2011, in the border of Iraq a group of locals came under intense bombardment by the Turkish military air forces. 35 civil people, mostly children and young people, were died in Uludere. Afterward, in July 2014 applicants applied to the Constitutional Court by claiming that their relatives were died because of disproportionate use of force by Turkish government.[324] They also claimed that there was a violation of right to have an effective remedy.[325] According to the Constitutional Court's examination which was completed in February 2016, the

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[319] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2016/I*, 787.

[320] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2016/I*, 787.

[321] The Constitution, Article 19.

[322] *Lütfiye Zengin and others vs. Turkey,* The European Court of Human Rights, no: 36443/06 (2015). https://hudoc.echr.coe.int/tur#{"itemid":["001-156967"]}.

[323] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2016/I*, 815.

[324] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2016/I*, 123.

[325] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2016/I*, 123.

application was not accepted because applicants did not fulfill the missing application documents within 15 days after the application date.[326] According to opposing view of judge Osman Alifeyyaz Paksüt, because the missing application documents were not vital and essential, denial of the application is inacceptable.[327] On the other hand, denial of the cases that have huge results including many deaths of civils and reflected on the media, also causes the violation of right to a fair trial, because the decision of denial closes all domestic remedies without any examination on merits.

The decision of the Constitutional Court on the Roboski issue was reflected on the media as a scandal. According to *Cumhuriyet* newspaper's report, decision of denial based upon missing an application document after 20 months from the application date endangered the effectiveness of the Constitutional Court.[328] Afterwards, applicants applied to the European Court in 2016. The European Court concluded its examination on May 2018 by stating that there is no arbitrary or unreasonable result in the Constitutional Court's decision of denial.[329]

Even though the Constitutional Court reached a verdict in the line with the European Court's proceedings, because Roboski issue was not on trial on the merits, it claims its place as an example of failure in the history of the Constitutional Court's individual application mechanism. In 2017, because of administrative and procedural acts following a coup attempt on 15 July 2016, there was unusually high number of individual applications, approximately four times the

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[326] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2016/I*, 127.

[327] Anayasa Mahkemesi Yayınları, *Seçme Kararlar 2016/I*, 131.

[328] "Roboski Dosyasında AYM'den Skandal Ret", *Cumhuriyet*, 26 February 2016, http://www.cumhuriyet.com.tr/haber/turkiye/488121/Roboski_dosyasinda_AYM_den_skandal_ret.html.

[329] *Selahattin Encu and Others vs*. *Turkey*, The European Court of Human Rights, no. 49976/16 (2018), https://anayasagundemi.files.wordpress.com/2018/05/encu-ve-digcc86erleri-v-tucc88rkiye.pdf.

annual average to the Constitutional Court.[330] There were approximately 71,000 inadmissible applications related to the decisions of discharge by the Commission of State Emergency.[331] About inadmissible decisions, there was no exhaustion of domestic remedies because applicants generally did not apply to the Investigation Commission of State Emergency Acts before applying to the Constitutional Court.[332] There were 40,530 new applications to the Constitutional Court in 2017, while 85,563 applications were carried over from previous years.[333] Out of a total of 126,093 applications, 89,637 were determined in 2017, while 97 per cent of those (86,537) were found inadmissible.[334] Because 82 per cent of all inadmissible applications to the Constitutional Court in 2017 related to the decisions of discharge,[335] it is obvious that the Constitutional Court concentrated on the decisions of discharge by the Commission of State Emergency during 2017.

In the context of '*inadmissible decisions*', there was the case of Remziye Duman, who claimed a violation of her constitutional rights because she was discharged from her teaching profession in the context of measures in regard to civil servants after executive orders related to the coup attempt.[336]

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[330] The Constitutional Court of Turkey, *Yıllık Rapor 2017* (Ankara: The Constitutional Court, 2018), http://www.anayasa.gov.tr/icsayfalar/yayinlar/yillikraporlar/2017yillikrapor.pdf. Hereafter: The Constitutional Court, *Yıllık Rapor 2017*.

[331] The Constitutional Court, *Yıllık Rapor 2017.*

[332] The Constitutional Court, *Yıllık Rapor 2017.*

[333] The Constitutional Court, *Yıllık Rapor 2017.*

[334] The Constitutional Court, *Yıllık Rapor 2017.*

[335] The Constitutional Court, *Yıllık Rapor 2017.*

[336] *Remziye Duman*, The Constitutional Court of Turkey, no: 2016/25923 (2017). https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/25923. Hereafter: The Constitutional Court, *Remziye Duman*.

Because of allegations related to her relations with the terrorist organization '*Fettullahist Terrorist Organization*' (FETÖ), the discharge from her profession and her being flagged as a member of terrorist organization, Duman claimed that she and her family were exposed to civil death.[337] At the end of the Constitutional Court's examination, Duman's application was deemed inadmissible because she did not exhaust all internal authorities.[338] In the context of '*gay rights*', there was the case of Z.A, who claimed a violation of the prohibition of discrimination and the right to privacy.[339] According to the applicant's claim, Z.A., who taught religious culture and moral knowledge in an elementary school, was dismissed because of his sexual preferences.[340]

According to the dismissal decision, because teachers have peer-to-peer communication with children, they are determinants of children's future social roles, so the applicant's being a gay was found inappropriate for the teaching profession.[341]

Upon review, the Constitutional Court determined, by a majority vote, that there was no violation because the applicant's sexual preferences was not the reason of dismissal, but rather it was his previous disciplinary penalty that he had offered and persisted in a relationship to another male teacher.[342] However, according to the

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[337] The Constitutional Court, *Remziye Duman*.

[338] The Constitutional Court, *Remziye Duman*.

[339] *Z.A*, The Constitutional Court of Turkey, no: 2013/2928 (2017). Hereafter: The Constitutional Court, *Z.A*. https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/2928.

[340] The Constitutional Court, *Z.A*.

[341] The Constitutional Court, *Z.A*.

[342] The Constitutional Court, *Z.A*.

opposing view of Engin Yıldırım, a justice of the Constitutional Court, Article 8 of the Convention states that everyone has the right to the respect to privacy without any discrimination related to sexuality, nationality, religion and so on.[343] Discrimination related to the sexual preferences can be evaluated in the context of Article 8 of the Convention.[344] Yıldırım stated that the European Court put sexual identity under the protection of prohibition of discrimination by giving examples of 50 violation decisions of the European Court related to the sexual preferences in 2016.[345] Yıldırım stated that 2012 report of the United Nations Human Rights Committee remarked that legal measures related to sexual identity must be taken immediately in Turkey because there is marked violance and discrimination against lesbian, gay, bisexual and transgender (LGBT) people.[346]

In the case of Z.A, because the domestic court denied the applicant's demand to return to work on the justification that his sexual identity did not comply with the teaching profession, Yıldırım stated that it is obvious that the applicant was exposed to discrimination based on his sexual preferences.[347] As we can see in this relavant case, although Z.A is an important precedent case for the progress of gay rights in Turkey, the Constitutional Court still needs to progress in the issues related to LGBT rights and sexual preferences. In the context of '*abusement of sex workers*', there was the case of Cem Burak Karataş, who claimed a violation of the principle of legality of crime and punishment.[348]

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[343] The Constitutional Court, *Z.A*.

[344] The Constitutional Court, *Z.A*.

[345] The Constitutional Court, *Z.A*.

[346] The Constitutional Court, *Z.A*.

[347] The Constitutional Court, *Z.A*.

[348] *Cem Burak Karataş,* The Constitutional Court of Turkey, no: 2014/19152 (2017). Hereafter: The Constitutional Court, *Cem Burak Karataş*. https://kararlarbilgibankasi.anayasa.gov.tr/BB/2014/19152.

The applicant, who uses a woman name, noted his job as '*sex worker*' in the individual application form.[349] Karataş stated that when he was waiting for customers on the street with the intent of prostitution, law enforcement officers imposed an administrative fine on the applicant with the justification of that Karataş got in other people's hair.[350] He claimed that although there is no administrative fine for prostitution in the law, he was fined because of his sexual preferences.[351] In national law, prostitution is neither a crime nor a misdemeanour, while promoting prostitution, extorted prostitution of children, and women and mediating prostitution are crimes.[352]

However, those laws relating to prostitution are intended for women and children, so there is not any legal regulation against men and gays.[353] In the decision of the Parliamentary Assembly of the Council of Europe in 2007, prostitution based on consent was not banned as a crime or misdemeanour.[354] Similarly, according to the case law of the European Court, prostitution based on consent is approached in the context of personal self-rule.[355] At the end of the examination and drawing, parallels to the European standards, the Constitutional Court decided that there was

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[349] The Constitutional Court, *Cem Burak Karataş*.

[350] The Constitutional Court, *Cem Burak Karataş*.

[351] The Constitutional Court, *Cem Burak Karataş*.

[352] The Constitutional Court, *Cem Burak Karataş*.

[353] The Constitutional Court, *Cem Burak Karataş*.

[354] The Constitutional Court, *Cem Burak Karataş*.

[355] *Pretty vs*. *United Kingdom*, The European Court of Human Rights, no. 23462/02 (2002). http://bib26.pusc.it/can/p_martinagar/lrgiurisprinternaz/HUDOC/Pretty/PRETTY%20vs%20UNITED%20KINGDOMen2346-02.pdf.

a violation of the principle of legality of crime and punishment.[356] Getting in other people's hair does not comply with the act of waiting on the street with the intent of prostitution.[357] Without any legal regulations related to the prostitution of gay people, the administrative fine violated the principle of legality of crimes and punishment.[358] In another current important case, there was the application of Şahin Alpay, who was arrested in the context of media structuring of Fetullahist Terrorist Organization/Parallel State Structure (FETÖ/PYD).[359]

The applicant claimed that his right to liberty and security was violated because there was no hard evidence and vital reason for arrest.[360] In addition, he claimed that the freedom of press was violated because he was arrested for his journalist activities.[361] According to the case law of the European Court, for the decision of arrest, there must be hard evidence and vital justification showing that arrest is necessary.[362] In the context of the freedom of press, the European Court states that depriving a person of his or her liberty, especially when this person is journalist/writer, creates censorship for all other writers and journalists.[363] In the

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[356] The Constitutional Court, *Cem Burak Karataş*.

[357] The Constitutional Court, *Cem Burak Karataş*.

[358] The Constitutional Court, *Cem Burak Karataş*.

[359] *Şahin Alpay*, The Constitutional Court of Turkey, no: 2016/16092 (11/01/2018). Hereafter: The Constitutional Court, *Şahin Alpay*, http://www.kararlaryeni.anayasa.gov.tr/Content/pdfkarar/2016-16092.pdf.

[360] The Constitutional Court, *Şahin Alpay*.

[361] The Constitutional Court, *Şahin Alpay*.

[362] *Jecius vs. Lithuania*, The European Court of Human Rights, no: 34578/97 (2000). https://hudoc.echr.coe.int/tur#{"fulltext":["34578/97"],"itemid":["001-58781"]}.

[363] *Şık vs. Turkey*, The European Court of Human Rights, no: 53413/11, (2014). https://hudoc.echr.coe.int/tur#{"itemid":["001-156177"]}.

implementation of principles to a concrete case, the Constitutional Court decided that the applicant's arrest was not explained with tangible justifications in the criminal charge.[364] There was no hard evidence related to the offense.[365] Because the reason for arrest was only based on the applicant's opinion column, the arrest created a violation of the freedom of press.[366]

At the end of examination, the Constitutional Court decided there were a violation of the applicant's right to liberty and security and a violation of the applicant's freedom of press and expression.[367] After the Constitutional Court's decision in Alpay case on 11 January 2018, the judgement related to redress the violation of the applicant's right to personal liberty and security and freedom of expression press was sent to the 13th Chamber of Istanbul Assize Court.[368] The applicant requested to be released on reliance of the Constitutional Court's judgement.[369] However, for the first time, a domestic court resisted the decision of the Constitutional Court by dismissing the applicant's request and ordering the continuation of his detention.[370] Istanbul Assize Court stated the Constitutional Court's examination as to the merits of the case and judgement of a violation was a 'usurpation of power' that overstepped its legal mandate; therefore, the judgement could not be considered

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[364] The Constitutional Court, *Şahin Alpay*.

[365] The Constitutional Court, *Şahin Alpay*.

[366] The Constitutional Court, *Şahin Alpay*.

[367] The Constitutional Court, *Şahin Alpay*.

[368] *Şahin Alpay (2)*, The Constitutional Court of Turkey, no: 2018/3007 (13/03/2018). https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/3007. Hereafter: The Constitutional Court, *Şahin Alpay (2).*

[369] The Constitutional Court, *Şahin Alpay (2).*

[370] The Constitutional Court, *Şahin Alpay (2).*

final or binding.[371] The Istanbul Assize Court also remarked that the applicant's speeches on TV and his posts on social media, besides his articles, demonstrated a strong indication of guilt that he acted in accordance with the aims and purposes of the FETÖ/PDY.[372]

Following the decision, the applicant lodged another individual application to the Constitutional Court on 1 February 2018.[373] He also applied to the European Court on 28 February 2018.[374] In the second individual application of Alpay to the Constitutional Court, the applicant claimed that his right to liberty and security was violated due to non-implementation of the Constitutional Court's judgement finding a violation.[375]

At the end of the second examination, the Constitutional Court decided that any examination of fundamental rights and freedoms in the form of an individual application cannot be regarded as 'an assessment of an issue to be considered in appellate review' or 'a substantive review' by underlying that otherwise the Constitutional Court's power and duty would not be functional.[376] Furthermore, Law no. 6216 vests the Constitutional Court with a broad discretion in determining the way to redress the violation and its consequences.[377]According to this decision

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[371] The Constitutional Court, *Şahin Alpay (2).*

[372] The Constitutional Court, *Şahin Alpay (2).*

[373] The Constitutional Court, *Şahin Alpay (2).*

[374] *Şahin Alpay vs. Turkey*, The European Court of Human Rights, no: 16538/17 (20/03/2018). https://hudoc.echr.coe.int/tur#{"fulltext":["16538/17"],"itemid":["001-181866"]}. Hereafter: The European Court, *Şahin Alpay vs. Turkey.*

[375] The Constitutional Court, *Şahin Alpay (2).*

[376] The Constitutional Court, *Şahin Alpay (2).*

[377] Resmî Gazete, *6216 Sayılı Kanun*, Article, 50.

of Constitutional Court, the implementation of a violation judgement of the Constitutional Court is a necessity resulting from its authority and duty to adjudicate the individual applications by underlying that a judicial remedy incapable of being final and binding cannot be regarded as effective.[378]

Indeed, at the end of second examination, on 13 March 2018 the Constitutional Court decided that there had been a violation of the applicant's right to liberty and security.[379] As a result, Alpay was released on 16 March 2018.[380] On the other hand, on 20 March 2018, the European Court concluded its examination by stating that the applicant's right to liberty and security was violated.[381]

According to the decision of the European Court, the Constitutional Court's examination was endorsed by underlying that the Court could not accept the arguments of Istanbul Assize Court.[382] The European Court noted that decisions of the Constitutional Court are binding on the legislative, executive and judicial organs by offering an effective remedy to individuals.[383] The European Court stated that the conclusions of the Constitutional Court are valid for the European Court's examination by highlighting that the European Court does not change its previous view that the right to lodge an individual application with the Constitutional Court is an effective remedy.[384]

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[378] The Constitutional Court, *Şahin Alpay (2)*.

[379] The Constitutional Court, *Şahin Alpay (2)*.

[380] "Şahin Alpay Tahliye Edildi", *NTV*, 17 March 2018, https://www.ntv.com.tr/turkiye/sahin-alpay-tahliye-edildi,SrGrtYsq8E-88voPT68oHQ.

[381] The European Court, *Şahin Alpay vs. Turkey*.

[382] The European Court, *Şahin Alpay vs*. *Turkey*.

[383] The European Court, *Şahin Alpay vs. Turkey*.

[384] The European Court, *Şahin Alpay vs. Turkey*.

In analysing the milestone judgements of the Constitutional Court between 2012 and 2018, it can be concluded that the proceedings of the Constitutional Court in the context of individual applications were considerably similar with the European Court's proceedings. Although it had been only six years since the first decision, the mechanism had achieved a considerable success, which can be easily understood from its judgements of individual applications between 2012 and 2018.

It is obvious that there is a parallelism between the adjudication processes of the Constitutional Court and the European Court in the protection of human rights and freedoms, although there are still some issues in which the Constitutional Court needs to improve itself as it can be seen in the cases of Roboski and Z.A.

The European Court's indications on the Constitutional Court's effectiveness, as it can be seen in the case of Alpay, strengthen the arguments in this master thesis defending the individual application mechanism of the Constitutional Court in Turkey as an efficient development in the scope of human rights and freedoms.

3.2.4 Statistical Data: 23 September 2012 – 31 December 2017

With 40,530 new applications in 2017, the total number of applications to the Constitutional Court between 23 September 2012 and 31 December 2017 reached 173,479.[385] There are five important points in the examination of the Constitutional Court's statistics between September 2012 and December 2017. First of all, 65 per cent of the total applications concerned the right to a fair trial.[386] Of the remaining, 13 per cent concerned the right to property, 9 per cent concerned the prohibition of discrimination, 4 per cent concerned the right to liberty and security, and 9 per cent concerned other fundamental human rights and freedoms.[387] Second, 79 per cent of

[385] The Constitutional Court, *23 Eylül 2012 - 31 Aralık 2017 İstatistikleri*.

[386] The Constitutional Court, *23 Eylül 2012 - 31 Aralık 2017 İstatistikleri*.

[387] The Constitutional Court, *23 Eylül 2012 - 31 Aralık 2017 İstatistikleri*.

the total applications were adjudicated by the end of 2017, while 65 per cent of all adjudicated applications were concluded in 2017.[388] On the other hand, 79 per cent of the total applications were made through the domestic courts, while 19 per cent were made through the Constitutional Court and 2 per cent were made through the Office of Chief Public Prosecutor and representatives in foreign countries.[389]

Third, 21 per cent of the total applications were pending cases, while 61 per cent of all pending cases were made in 2017.[390] On the other hand, 82 per cent of all adjudicated applications were finalized with the decision of inadmissibility.[391] Of the remaining, 8 per cent were finalized with the decision of administrative denial, 8 per cent were finalized with the decision of consolidation and 2 per cent were finalized with the decisions of abatement, closing a file, denial of application, no violation and violation.[392]

Fourth, the Constitutional Court reached a verdict of at least one violation in 2,536 cases, while it reached a verdict of no violation in 257 cases.[393] Among 2,536 violation decisions, 78 per cent concerned the right to a fair trial.[394] Of the remaining 5 per cent concerned the right to property, 4 per cent concerned the right to protection of family life and privacy and 13 per cent concerned other

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[388] The Constitutional Court, *23 Eylül 2012 - 31 Aralık 2017 İstatistikleri*.

[389] The Constitutional Court, *23 Eylül 2012 - 31 Aralık 2017 İstatistikleri*.

[390] The Constitutional Court, *23 Eylül 2012 - 31 Aralık 2017 İstatistikleri*.

[391] The Constitutional Court, *23 Eylül 2012 - 31 Aralık 2017 İstatistikleri*.

[392] The Constitutional Court, *23 Eylül 2012 - 31 Aralık 2017 İstatistikleri*.

[393] The Constitutional Court, *23 Eylül 2012 - 31 Aralık 2017 İstatistikleri*.

[394] The Constitutional Court, *23 Eylül 2012 - 31 Aralık 2017 İstatistikleri*.

fundamental human rights and freedoms.[395] Regarding the applications related to the right to a fair trial, 80 per cent concerned the right to a fair trial in a reasonable time, 7 per cent concerned the right to access a court and 13 per cent concerned other rights related to the right to a fair trial.[396]Fifth, 35 per cent of all 2,536 infringement judgements were conducted in 2017.[397]

Of the remaining, 30 per cent were made in 2016, 21 per cent were made in 2015, 13 per cent were made in 2014 and 1 per cent were made in 2013.[398] The statistics of individual applications reveal several considerable consequences. First of all, it can be seen that the Constitutional Court had a large workload, with 173,479 applications in total. However, the determination of 79 per cent of them indicates that the Constitutional Court has shown considerable performance from the beginning.

Second, regarding inadmissible decisions, about 82 per cent of all adjudicated decisions reveal that the admissibility criteria worked properly by allowing the Constitutional Court to concentrate on more specific cases.

Third, in rendering approximately 10 times more violation judgements than no violation judgement, the Constitutional Court tended to find violations to solve human rights issues domestically. Last, the fact that 65 per cent of all applications concerned the right to a fair trial means that building a comprehensive case law in the context of right to a fair trial is important to reduce the number of applications.

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[395] The Constitutional Court, *23 Eylül 2012 - 31 Aralık 2017 İstatistikleri*.

[396] The Constitutional Court, *23 Eylül 2012 - 31 Aralık 2017 İstatistikleri*.

[397] The Constitutional Court, *23 Eylül 2012 - 31 Aralık 2017 İstatistikleri*.

[398] The Constitutional Court, *23 Eylül 2012 - 31 Aralık 2017 İstatistikleri*.

3.3 The Effectiveness of the Constitutional Court's Individual Application

Having provided examples of the Constitutional Court's milestone judgements in the context of individual applications and by comparing proceedings with the European Court, in this part of the master thesis, I will analyse the effectiveness of the individual application mechanism of the Constitutional Court with regard to external and internal aspects. Ekinci defines three criteria for individual application mechanism to be accepted as an effective mechanism. He determines the effectiveness of the individual application mechanism according to 'accessibility', 'effectivity' and 'sufficiency'.[399]

First, mechanism must be easily accessible by all people who suffer from a violation of right and freedom. There must not be any obstacles or complicating application procedures for all people without any discrimination. Application must be easily and fast conducted.

Second, mechanism must be effective. In other words, mechanism's results must be valid, applicable and efficient. According to the European Court, an effective domestic remedy must be applicable and valid in the practice, offer an opportunity to remove negative results of the violation, have a change to success and have an ability to provide reasonable and successful perspectives for domestic courts.[400] Third, mechanism's proceedings must be sufficient. There must not be any suspicion that application would remain inconclusive or would be insufficient to cover the damages arising from the violation.[401]

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[399] Ekinci, *Bireysel Başvuruların İncelenmesi Usulü*, 159.

[400] *Hasan Uzun vs. Turkey*, The European Court of Human Rights, no: 10755/13 (2013). https://hudoc.echr.coe.int/tur#{"fulltext":["10755/13"],"itemid":["002-7546"]}. Hereafter: Uzun, *The European Court*.

[401] Uzun, *The European Court*, 14.

The conclusions of the application must cover proportionately the loss of applicants. Similarly, according to Taşdelen, the effectiveness of a legal remedy depends on whether the remedy is accessible and whether there is a relief for the claim and a reasonable chance of success.[402]

As it can be seen in the case of Uzun vs. Turkey and in the case of Alpay vs. Turkey, Turkey's individual application mechanism is accepted as an effective domestic remedy by the European Court. As long as the individual application mechanism of Turkey's Constitutional Court meets three criteria of effectiveness, mechanism can continue to provide effective results both in external and domestic aspects.

3.3.1 External Improvements of the Individual Application Mechanism

In the evaluation of the effectiveness of the Constitutional Court, its accessibility, ability of settlement and success are substantial. As Uzun emphasized, the success of the Constitutional Court depends on its stable attitude on the behalf of the fundamental rights and freedoms.[403] Constitutively, individual application to the European Court and individual application to the Constitutional Court are two different concepts. Individual application to the European Court is a natural consequence of being a part of the Convention. In other words, states cannot block applications to the European Court.

On the other hand, individual application to the Constitutional Court is an improvement carried out by the government's choice. Furthermore, the individual application mechanism of the Constitutional Courts is an optional remedy, not obligatory one. According to Acu, uninformed law enforcement bodies about the

[402] Okan Taşdelen, "Biri Sizi Gözetliyor: Avrupa İnsan Hakları Mahkemesi Penceresinden Bireysel Başvuru Hakkı", *HUKAB*, no. 2 (September 2012): 8.

[403] Cem Duran Uzun, "Anaysa Mahkemesine Bireysel Başvuru Yolu (Anayasa Şikâyeti) Beklentiler ve Riskler", *SETA Analiz Dergisi*, no.50 (2012): 24. Hereafter: Uzun, *Beklentiler ve Riskler*.

European Court's case law and their incorrect interpretations related to the European Court's case law are the main causes of the European Court's violation decisions.[404] To prevent this, legislative regulations, executive trainings and symposiums related to individual application mechanism had been carried out in Turkey frequently after 2012.[405]

According to Kaboğlu, thanks to the individual application mechanism, the number of applications to the European Court can be reduced by recovering negative opinions about the human rights standards in Turkey.[406] Likely, Özbey remarked that as long as the Constitutional Court gives effective decisions in accordance with the case law of European Court, the number of applications to the European Court will diminish proportionally.[407]

Therefore, it can be concluded that one of the most important benchmark regarding the effectiveness and productiveness of the Constitutional Court is whether or not the number of applications to the European Court decreases. As Özbey points out, with the integration of individual application into the Turkish Constitution, the close relation between the Constitutional Court and the European Court was established with the common aim of protecting fundamental rights and freedoms.[408]

One of the most important aims of individual application is to reduce the number of applications to the European Court against Turkey. The number of judgements and the number of violation judgements by the European Court and the Constitutional

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[404] Melek Acu, "Bireysel Başvuruya Konu Edilebilecek Haklar", *TBB*, no. 110 (2014): 431. Hereafter: Acu, *Konu Edilebilecek Haklar*.

[405] Acu, *Konu Edilebilecek Haklar*, 431.

[406] İbrahim Kaboğlu, *Anayasa Yargısı* (Ankara: İmge Yayınevi, 1997), 76.

[407] Özbey, *İçtihatlar Işığında Değerlendirme*, 40.

[408] Özbey, *İçtihatlar Işığında Değerlendirme*, 40.

Court are summarized in the Table 4. As it can be seen from the above table, the number of judgements of the European Court against Turkey was decreased by 34 per cent over the years from 177 to 116. Similarly, we can see that the number of violation judgements of the European Court against Turkey also decreased by 38 percent over the years from 159 to 99.

Despite the increased number of judgements and violation judgements against Turkey in 2017 stemming from the decisions of the Commissions of State of Emergency after the coup attempt in July 2016, it can be said that overall there has been an accelerated improvement in the number of judgements and violation judgements against Turkey over the years.

Another important consequence related to the statistics of Turkey (see Table 4) in the ranking of states that have the highest number of human rights violations, Turkey has moved from the first place to the second place since 2012. Turkey had 11 per cent of all violation judgments in 2017, while the same amount was 16 per cent in 2011 before the individual application mechanism.

Although Turkey is the second state with the worst human right records among member states after Russia, there is a considerable difference in the recent number of violation judgements between Russia (293) and Turkey (99). It can be concluded that one of the most important benchmark regarding the effectiveness and productiveness of the Constitutional Court is whether or not the number of applications to the European Court decreases.

Table 4: The ECHR's Judgements: 2011-2017

Years	Total Judgements	The Number of Judgements Against Turkey	The Number of Total Violation Judgements	The Number of Violation Judgements Against Turkey	Turkey's Ranking
2011[409]	1,157	174	987	159	1
2012[410]	1,903	123	899	117	2
2013[411]	916	124	797	118	2[412]
2014[413]	891	101	756	94	2[414]
2015[415]	823	87	694	79	2[416]
2016[417]	993	88	829	77	2[418]
2017[419]	1,068	116	908	99	2[420]

[409] The European Court of Human Rights, *Facts and Figures 2011*, (Strasbourg: The ECHR, 2012), https://www.echr.coe.int/Documents/Facts_Figures_2011_ENG.pdf.

[410] The European Court of Human Rights, *Facts and Figures 2012*, (Strasbourg: The ECHR, 2013), https://www.echr.coe.int/Documents/Facts_Figures_2012_ENG.pdf.

[411] The European Court of Human Rights, *Facts and Figures 2013*, (Strasbourg: The ECHR, 2014), https://www.echr.coe.int/Documents/Facts_Figures_2013_ENG.pdf.

[412] First state was Russia with 129 judgements, while 119 of them were violation judgements.

[413] The European Court of Human Rights, *Facts and Figures 2014*, (Strasbourg: The ECHR, 2015), https://www.echr.coe.int/Documents/Facts_Figures_2014_ENG.pdf.

[414] First state was Russia with 129 judgements, while 122 of them were violation judgements.

[415] The European Court of Human Rights, *Facts and Figures 2015* (Strasbourg: The ECHR, 2016), https://www.echr.coe.int/Documents/Facts_Figures_2015_ENG.pdf.

[416] First state was Russia with 116 judgements, while 109 of them were violation judgements.

[417] The European Court of Human Rights, *Facts and Figures 2016* (Strasbourg: 2017), https://www.echr.coe.int/Documents/Facts_Figures_2016_ENG.pdf.

[418] First state was Russia with 228 judgements, while 222 of them were violation judgements.

[419] The European Court of Human Rights, *Facts and Figures 2017* (Strasbourg: 2018), https://www.echr.coe.int/Documents/Facts_Figures_2017_ENG.pdf. Hereafter: The European Court, *Fact and figures 2017*.

Table 5: The ECHR's Pending Applications: 2011-2017

Years	The Number of Total Pending Applications	The Number of Pending Applications Against Turkey	Turkey's Ranking
2011[421]	151,600	15,160	2
2012[422]	128,100	16,900	2
2013[423]	99,900	10,950	5
2014[424]	69,900	9,500	4[425]
2015[426]	64,850	8,450	3[427]
2016[428]	79,750	12,800	2[429]
2017[430]	56,250	7,500	3[431]

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[420] First state was Russia with 305 judgements, while 293 of them were violation judgements.

[421] The European Court of Human Rights, *Analysis of Statistics 2011* (Strasbourg: The ECHR, 2012), https://www.echr.coe.int/Documents/Stats_analysis_2011_ENG.pdf.

[422] The European Court of Human Rights, *Analysis of Statistics 2012* (Strasbourg: The ECHR, 2013), https://www.echr.coe.int/Documents/Stats_analysis_2012_ENG.pdf.

[423] The European Court of Human Rights, *Analysis of Statistics 2013* (Strasbourg: The ECHR, 2014), https://www.echr.coe.int/Documents/Stats_analysis_2013_ENG.pdf.

[424] The European Court of Human Rights, *Analysis of Statistics 2014* (Strasbourg: 2015), https://www.echr.coe.int/Documents/Stats_analysis_2014_ENG.pdf.

[425] First state was Ukraine with 13,650 pending applications; while second state was Italy with 10,100 applications, and third state was Russia with 10,000 applications.

[426] The European Court of Human Rights, *Analysis of Statistics 2015* (Strasbourg: The ECHR, 2016), https://www.echr.coe.int/Documents/Stats_analysis_2015_ENG.pdf.

[427] First state was Ukraine with 13,850 pending applications, while second state was Russia with 9,200 applications.

[428] The European Court of Human Rights, *Analysis of Statistics 2016* (Strasbourg: The ECHR, 2017), https://www.echr.coe.int/Documents/Stats_analysis_2016_ENG.pdf.

[429] First state was Ukraine with 18,150 pending applications.

[430] The European Court of Human Rights, *Analysis of Statistics 2017* (Strasbourg: The ECHR, 2018), https://www.echr.coe.int/Documents/Stats_analysis_2017_ENG.pdf.

Another important indicator of the improvements in the number of individual applications against Turkey is the number of pending applications that are pending before a judicial formation which are summarized in the Table 5.

Table 6: The Comparison between the ECHR and the Constitutional Court

Years	Pending Applications Against Turkey	Applications to the Constitutional Court	Violation Judgements Against Turkey	Adjudicated Judgements of the Constitutional Court	Violation Judgements of the Constitutional Court
2011	15,160	-	159	-	-
2012	16,900	1,342[432]	117	4[433]	-
2013	10,950	9,897	118	4,924	25
2014	9,500	20,578	94	10,926	364
2015	8,450	20,376	79	15,429	524
2016	12,800	80,756	77	16,107	743
2017	7,500	40,530	99	89,673	880
Total	**96,460**	**173,409**	**971**	**137,063[434]**	**2,536[435]**

Resources: Data in the Table 6 includes same data in the Table 4 and 5. For the data related to the Constitutional Court, The Constitutional Court, *Bireysel Başvuru İstatistikleri*.

In conclusion, the relatively small decrease in the number of pending applications and decrease in the number of violation judgements against Turkey demonstrate that individual application mechanism provided positive contributions to the

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[431] First state was Romania with 9,900 pending applications, while second state was Russia with 7,750 applications.

[432] Applications to the Constitutional Court started on 23 September 2012.

[433] The Constitutional Court reached its first decision on 25 December 2012.

[434] 112,455 (%82) of adjudicated judgments of the Constitutional Courts were inadmissible, while 24,608 (%18) applications were found admissible by the Constitutional Court.

[435] In 2,536 admissible applications, the Constitutional Court found at least one violation, while in 257 admissible applications they found no violation. However, in other 21,815 admissible applications, the Constitutional Court decided dismissal of application, administrative denial, consolidation, abatement or closing of the file.

applications against Turkey to the European Court. On the other hand, in examining the effectiveness of the individual application mechanism of the Constitutional Court, it is important to analyse the number of applications and violation judgements of the European Court with the number of applications and violation judgements of the Constitutional Court for the same period (see Table 6). From the data summarized in Table 6, it can be concluded that until 2012 all applications related to human rights violations against Turkey were directly taken to the European Court. However, with the acceptance of the individual application mechanism of the Constitutional Court, in total 173,403 applications between 2012 and 2017 were not taken to the European Court. Furthermore, because 2,536 human rights violations were solved domestically, the number of violation judgments of the Court was 971, instead of 3,507 (2,536+971).

Another important benchmark of whether the individual application mechanism of the Constitutional Court is effective is the criticism by international authorities, especially the Venice Commission, which is the Council of Europe's advisory body on the issues of democracy, human rights and rule of law. According to '*the Opinion on the Draft Constitutional Amendments with Regard to the Constitutional Court of Turkey*' dated 29 June 2004, the Venice Commission opined that the individual application to the Constitutional Court is an important hallmark of constitutional justice.[436] The Venice Commission stated that besides the main aim of individual application, which is the effective protection of fundamental rights and freedom, the practical justification of expecting a considerable decrease in the number of cases against Turkey brought before the European Court provides a domestic remedy for the violation of fundamental rights.[437] Similarly, in "*The Interim Opinion on the Draft Law on the High Council for Judges and Prosecutors*

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[436] Peter Paczolay, *Opinion on the Draft Constitutional Amendments with Regard to the Constitutional Court of Turkey* (Strabourg: The Council of Europe, 2004), http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2004)024-f. Hereafter: Paczolay, *Opinion on the Draft*.

[437] Paczolay, *Opinion on the Draft*.

of Turkey", the Venice Commission declared its support related to the constitutional reform package of 2010.[438] According to "*The Opinion on the Law on the Establishment and Rules of Procedure of the Constitutional Court of Turkey*" in 2011, the Venice Commission declared that the Constitutional Court should avoid as much as possible having its interpretation diverges from the Court.[439]

The Venice Commission found the law on the establishment and rules of procedure of the Constitutional Court well drafted coherent and in the line with European standards, particularly in thanks to the development of the individual application mechanism.[440] To analyse specifically the external effectiveness of the decisions of Constitutional Court, it is important to compare consistency and coherence between the decisions of the European Court and the Constitutional Court. In the analyses of consistency and coherence, there is an example case of Hebat Aslan and Firaz Aslan. Because Hebat Aslan and Firaz Aslan applied to the European Court and the Constitutional Court, it provides a chance to compare the decisions of both courts. This case helps to understand the evaluations of the Constitutional Court from the perspective of the European Court.[441] Hebat Aslan and Firas Aslan applied first to the Constitutional Court and then to the European Court by claiming infringement of their right to liberty and security because the domestic court's decision of pre-trial detention was too long.[442] First, they applied to the Constitutional Court by

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[438] Venice Commission, *Interim Opinion on the Draft Law on the High Council for Judges and Prosecutors of Turkey* (Strasbourg: The Council of Europe, 2010), http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)042-e.

[439] Venice Commission, *Opinion on the Law on the Establishment and Rules of Procedure of the Constitutional Court of Turkey* (Strasbourg: The Council of Europe, 2011), http://www.venice.coe.int/webforms/documents/?opinion=612&year=all. Hereafter: Venice Commission, *Opinion on the Law on the Establishment of Constitutional Court*.

[440] Venice Commission, *Opinion on the Law on the Establishment Constitutional Court*.

[441] Bülent Algan, "Anayasa Mahkemesi ve Avrupa İnsan Hakları Mahkemesi'nin Kişi Özgürlüğü ve Güvenliği Hakkı Yaklaşımı: Hebat Aslan ve Firas Aslan Kararı Örneği", *Anayasa Yargısı*, no. 32 (2015): 187. Hereafter: Algan, *Hebat Aslan ve Firas Aslan Kararı*.

[442] Algan, *Hebat Aslan ve Firas Aslan Kararı*, 188.

claiming a violation of Article 5 (4) of the Convention.[443] Then, they applied to the Court by claiming a violation of Articles 5(3) and 5(4) of the Convention additionally.[444] Both courts found a violation of applicants' right of liberty and security because of the inefficacy of justification related to the detention decision.[445]

In the case of Hebat Aslan and Firas Aslan, the decision of the European Court related to Article 5(3) is important because the European Court's decisions were based on the Constitutional Court's evaluations.[446] Because the Constitutional Court decided that there was overflow for the reasonable period of detention and violation of the right, the European Court did not evaluate further whether there was a violation, instead focusing on whether the compensation decided by the Constitutional Court was enough.[447] An the end of the compensation evaluation, the European Court decided that the compensation previously determined by the Constitutional Court was enough to cover the damages of the applicants.[448] Furthermore, the European Court appreciated the promptness and sufficiency of the Constitutional Court in the compensation of the applicants.[449] According to Algan, the responsibility of the Constitutional Court is more than the European Court in the

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[443] Algan, *Hebat Aslan ve Firas Aslan Kararı*, 189.

[444] Algan, *Hebat Aslan ve Firas Aslan Kararı*, 189.

[445] Algan, *Hebat Aslan ve Firas Aslan Kararı*, 194.

[446] Algan, *Hebat Aslan ve Firas Aslan Kararı*, 190.

[447] Algan, *Hebat Aslan ve Firas Aslan Kararı*, 190.

[448] Algan, *Hebat Aslan ve Firas Aslan Kararı*,190.

[449] Algan, *Hebat Aslan ve Firas Aslan Kararı*, 191.

consideration and unravelling of distinctive problems and expectations of Turkey.[450] In addition to the concept of responsibility, the influence of the Constitutional Court is more effective and powerful rather than the European Court in the analysis of domestic court decisions by offering a solution to extinguish the results of violation.

Ekinci emphasized that application to the Constitutional Court in member states is an effective remedy that can be thought as a filtration mechanism before the European Court.[451] To be able to work as an effective filtration mechanism, the Constitutional Court must have its own internal effective mechanisms that specify admissibility criteria.

Ekinci stated that the Constitutional Court put several changes into practice to decrease its workload, such as gradation of priority among applications, withdrawal from the method of co-negotiation, abbreviation of draft resolution of Commissions, withdrawal from the principle of flexible interpretation on behalf of applicant, detention of misusing of right to apply and several changes in internal regulation.[452] Ekinci underlined that because of gradually increasing workload of the Constitutional Court there should be a balance between workload and maintainability of accessibility and effectiveness of the mechanism to be able to continue its filtration role for the European Court.[453]

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[450] Algan, *Hebat Aslan ve Firas Aslan Kararı*, 205.

[451] Ekinci, *Bireysel Başvuruların İncelenmesi Usulü,* 139.

[452] Hüseyin Ekinci, "Anayasa Mahkemesinin Bireysel Başvuru İş Yükü, Çözüme Yönelik Mahkeme Pratiği ve Öneriler", *Uyuşmazlık Mahkemesi Dergisi*, no. 5 (2015): 397-408. Hereafter: Ekinci, *Mahkeme Pratiği ve Öneriler*.

[453] Ekinci, *Mahkeme Pratiği ve Öneriler*, 427.

The effective filtration mechanism of the Constitutional Court contributes to the prevention of unnecessary time wasted on inadmissible cases; hence, the Constitutional Court can conclude applications in a shorter time. In January 2018, the speech by the head of the European Court, Raimondi, stated that mean time for adjudication of an application by the European Court is about 18 months.[454] On the other hand, the Constitutional Court finalized 137,063 applications out of 173,476 until the end of 2017.[455] Concluding 79 per cent of total applications reveals that the mean time of finalizing a case by the Constitutional Court is shorter than the process of the European Court.

In conclusion, since the acceptance of individual application mechanism of the Constitutional Court in 2012, the number of applications and the number of violation judgements against Turkey to the European Court have proportionally decreased. On the other hand, between 2012 and 2017, 173,403 applications and 2,536 violation judgements taken by the Constitutional Court were solved domestically without being taken to the European Court against Turkey. Those statistics show that the main external aims of the individual application mechanism, which are decreasing the number of applications to the European Court, decreasing the violation judgements against Turkey to the European Court and reforming Turkey's international image as the state with the worst human rights records, have been improving depending on the continuation of Constitutional Court's effectiveness and parallelism of its decisions with the European Court's case law. As long as the Constitutional Court gives fast and effective decisions in compliance with the European Court's standards, it is obvious that external improvements of the individual application mechanism will be gradually increased and developed, as we saw the European Court's appreciation of the promptness and sufficiency of the Constitutional Court in the example case of Hebat Aslan and Firas Aslan.

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[454] "Türkiye'den AİHM'e Yapılan Bireysel Başvuru Sayısı Azaldı", *TRT Haber*, 25 January 2018, http://www.trthaber.com/haber/dunya/turkiyeden-aihme-yapilan-basvuru-sayisi-azaldi-347726.html. Hereafter: TRT Haber, *Bireysel Başvuru Sayısı.*

[455] The Constitutional Court, *Bireysel Başvuru İstatistikleri*.

3.3.2 Internal Improvements of the Individual Application Mechanism

Although external improvements which are particularly decreasing the number of applications to the European Court and improving Turkey's international image were prioritized since the starting of the discussions on the individual application in Turkey, focusing on only the external improvements includes risks, as Uzun remarked.[456] According to Uzun, because only rights and freedoms which are protected in the Convention can be issued in the individual application mechanism, original purpose of the mechanism is to decrease the numbers of individual applications to the European Court.[457] Uzun argues that it is hard to say that there is strong will to protect fundamental human rights and freedoms and to restrain the violations of them with priority in the acceptation of individual application in Turkey.[458]

Because the primary aim of the individual application mechanism must be the abolishing the consequences arising from the violations of fundamental human rights and freedoms, focusing on only external aims would not be a comprehensive approach to the mechanism. Through the mechanism after restraining the human rights violations in domestic law, external aims will be achieved as a natural consequence. However, it can be said that since the beginning of the mechanism, external improvements have priority in Turkey.

On the other hand, internal improvements have as much importance as external improvements because the starting point of the mechanism is to improve human rights standards by preventing and solving human rights issues domestically. Unfortunately, the primary aims that include mainly internal improvements are of

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[456] Uzun, *Beklentiler ve Riskler*, 14.

[457] Uzun, *Beklentiler ve Riskler*, 12-13.

[458] Uzun, *Beklentiler ve Riskler*, 12-13.

secondary importance in Turkey.[459] It causes several deficiencies and problems, which will be argued in the next section of the thesis, such as rights and freedoms that are outside of the common protection area of the Convention and the Constitution. In the context of internal improvements of the individual application system, the main aim must be abolishing the consequences stemming from the violation of a person's rights and freedoms, which are secured in the Constitution and the Convention. The secondary aim of the mechanism should be the prohibition of similar violations.

According to Sağlam, the best solution to improve Turkey's human rights report is the approval of the individual application mechanism because the mechanism solves human rights problems domestically.[460] Özbey emphasized that the individual application mechanism of the Constitutional Court has a compulsory effect on the execution and implementation of the international human rights norms by the members of the domestic judiciary.[461] Furthermore, Özbey argued that because public authorities act more responsibly towards the fundamental rights and freedoms on which the highest authority of jurisdiction rules, an effective execution of the individual application mechanism can enhance the standards of human rights and freedoms in Turkey at the level of European Court's standards.[462] According to Özbey, because of the supremacy of the Constitutional Court over domestic courts, judges do not have a chance to disobey the rule of the Constitutional Court or to detain the decisions of the Constitutional Court.[463] Furthermore, Article 153 of the

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[459] Uzun, *Beklentiler ve Riskler*, 12-13.

[460] Fazıl Sağlam, "Avrupa'da Haklar Çerçevesinde Türkiye", *Mülkiyeliler Birliği Dergisi*, no. 24 (2000): 71-111.

[461] Özbey, *İçtihatlar Işığında Değerlendirme*, 43.

[462] Özbey, *İçtihatlar Işığında Değerlendirme*, 42-43.

[463] Özbey, *İçtihatlar Işığında Değerlendime*, 43.

Constitution states that 'decisions of Constitutional Court shall be binding on the legislative, executive and judicial organs, on the administrative authorities, and on persons, and corporate bodies.'[464] Özbey defended the idea of that the existence of the Constitutional Court, which does not constrain its citizens from applying to the other foreign courts such as the European Court, by solving human rights problems domestically and in accordance with the state's own historical values, traditions, hallmarks and universally accepted values, is the most important assurance of the protection of the human rights and freedoms.[465]

Therefore, the main internal improvement of individual application mechanism, which is to improve human rights in Turkey, can be ensured successfully. Karakaş argues that in the comparison of individual application mechanisms of the Constitutional Court and the European Court, the Constitutional Court can be a faster and more effective legal remedy thanks to its opportunity of direct contact with local authorities and its impact on domestic courts.[466] As an example of this argument, in 2017 the European Court decided 99 violation judgements against Turkey,[467] while the Constitutional Court decided 880 violation judgements in the same year.[468] In the span of 18 months, the mean time for concluding a case by the European Court,[469] the Constitutional Court's adjudication of 89,679 applications only in the year 2017[470] shows us that the individual application mechanism of the

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[464] The Constitution, Article 153.

[465] Özbey, *İçtihatlar Işığında Değerlendirme*, 44.

[466] Işıl Karakaş, "Bireysel Başvuru Kararlarının Etkileri", *Anayasa* Yargısı, no. 33 (2016): 14. Hereafter: Karakaş, *Bireysel Başvuru Kararlarının Etkileri.*

[467] The European Court, Fact and Figures 2017.

[468] The Constitutional Court, *Bireysel Başvuru İstatistikleri*.

[469] TRT Haber, *Bireysel Başvuru Sayısı.*

[470] The Constitutional Court, *Bireysel Başvuru İstatistikleri*.

Constitutional Court is a faster remedy to conclude human rights issues. Another domestic contribution of the individual application system is that the amount of compensation, which member states have to pay after a violation decision of the European Court, can be reduced thanks to the mechanism of the Constitutional Court.[471] For example, the amount of compensation that Turkey paid to the European Court was approximately 37 million Turkish Liras in 2011 before the individual application mechanism, while the amount was decreased to approximately 26 million Turkish Liras in 2016.[472]

With the acceptation of individual applications, the Constitutional Court set precedence about the protection of human rights among all public institutions by opening the door of putting international human rights standards into practice.[473] Ekinci emphasized that, thanks to the individual application mechanism, the responsibility of domestic courts to pursue and interiorize the decisions and case law of the European Court tripled.[474]

According to Çoban, the domestic courts' serious considerations of the case law of the Constitutional Court can contribute to decreasing the workload of the Constitutional Court.[475] The individual application mechanism of the

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[471] Turgut Candan, "Anayasa Mahkemesine Bireysel Başvuru (Anayasa Şikâyeti) Konulu Uluslararası Sempozyum Açılış Konuşması", in *Bireysel Başvuru "Anayasa Şikâyeti"*, ed. Musa Sağlam (Ankara: HUKAB, 2011), 24. Hereafter: Candan, *Sempozyum Açılış Konuşması.*

[472] "Türkiye 2004-2016 yıllarında AİHM'e açılan davalarda 258 milyon lira tazminata mahkûm oldu", *Sputnik*, 2 October 2017, https://tr.sputniknews.com/columnists/201710021030394613-turkiye-aihm-tazminat/.

[473] Ekinci, *Bireysel Başvuruların İncelenmesi Usulü*, 159.

[474] Ekinci, *Bireysel Başvuruların İncelenmesi Usulü*, 159.

[475] Ali Rıza Çoban, "Yeni Anayasa Mahkemesi Kanunu'nun Mahkemenin İş Yüküne Etkisi Açısından Değerlendirilmesi", in *Bireysel Başvuru "Anaysa Şikâyeti"*, ed. Musa Sağlam, (Ankara: HUKAB, 2011), 162.

Constituttional Court makes a major contribution to monism and compliance of human rights standards in Turkey with the European Court's standards. In other words, one of the most important internal improvements of mechanism is to bridge the gap between Turkish human rights law and international human rights law. Demirkol stated that human rights issues are not domestic problems of states anymore-they acquired an international dimension.[476]

Demirkol also remarked that with the recent improvements in the field of human rights, the integration of the Turkish legal system into the European legal system was aimed.[477] According to Göztepe, the acceptance of the individual application system in Turkey has a significant meaning because it provides the protection of human rights and freedoms to Turkish national law at the international level.[478] Individual application mechanism makes contributions to the internationalization of human rights issues in Turkey. According to Köküsarı, approaching and widening the Constitution in respect to the case law of the European Court contributes to the internationalization of the Turkish Constitution.[479] To illustrate this, the Constitutional Court approaches the issue of calculation of the detention period as to detention period for a single offence in the case of multiple offences in accordance with the case law of the European Court.[480] The coherence and consistency between the proceedings of the Constitutional Court and the European Court narrows the gap between Turkey's human rights standards and international

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[476] Selami Demirkol, "Avrupa İnsan Hakları Mahkemesi'ne Giden Yolun Daraltılmasında, Anayasa Mahkemesi'ne Bireysel Başvuru Yönteminin İçselleştirilmesi-Amaç; Dosyaları İç Hatlarda Tutabilmek, Uluslararası Yolculuk Yaptırmamak", *Anayasa Yargısı*, no.33 (2016): 180. Hereafter: Demirkol, *Bireysel Başvuru Yönteminin İçselleştirilmesi*.

[477] Demirkol, *Bireysel Başvuru Yönteminin İçselleştirilmesi*, 181.

[478] Ece Göztepe, *Anayasa Şikayeti*, (Ankara: Ankara Üniveristesi Hukuk Fakültesi Yayınları, 1998), 137-139. Hereafter: Göztepe, *Anayasa Şikâyeti*.

[479] İsmail Köküsarı, "Anayasa Mahkemesinin Bireysel Başvuru Kararlarının Anayasanın Genişlemesi ve Uluslararasılaşmasındaki Etkisi", *Anayasa Yargısı*, no. 33 (2016): 306. Hereafter: Köküsarı, *Anayasanın Uluslararasılaştırılması*.

[480] Köküsarı, *Anayasanın Uluslararasılaştırılması*, 307.

human rights standards. As long as domestic courts follow the case law of the Constitutional Court which is roughly similar to the European Court's case law, the internationalization of human rights issues in Turkey which is one of the most important internal consequences of the mechanism will be achieved. In conclusion, the individual application mechanism of the Constitutional Court provides several internal improvements as much important as external improvements, although the internal aims stayed in the background in Turkey.

First, the mechanism contributes to the abolishment of consequences coming from human rights violations and the prohibition of similar violations. Second, because the Constitutional Court can solve human rights problems domestically in accordance with the state's own historical values and traditions, it is more effective for and responsible to domestic authorities.

Thanks to the compulsory and direct effects of decisions by the Constitutional Court, the mechanism is faster in the comparison of the European Court's periods of concluding an application. Furthermore, it causes a decrease in the amount of compensation that Turkey pays to the European Court. Third, with the individual application mechanism, Turkish human rights law and the case law of the Constitutional Court can interiorize the case law of the European Court, so the internationalization of the Turkish legal system ensures the monism and compliance of human rights standards of Turkey with the European Court's standards.

3.3.3 Current Deficiencies and Problems of the Individual Application

Besides the external and internal effectiveness of the individual application mechanism, there are several criticisms of the mechanism due to its current deficiencies and problems. As far as mechanism has positive sides, it also has negative sides which include deficiencies and problems. The first criticism of the individual application mechanism of the Constitutional Court is about the fourth section of Article 148 of the Constitution, which states that 'judicial review shall not be made on matters required to be taken into account during the process of legal

remedies.'[481] In other words, as it happened in its appeal, it is *ultra vires* of the Constitutional Court that whether or not trial courts evaluate properly evidences and facts and interpret provisions of law correctly. Göztepe emphasized that, when there is offered false evidence or a wrong interpretation of law, because they are *ultra vires* of the Constitutional Court's examination in the context of individual application, its decision, which might be based on wrong evaluations, can violate the right.[482]

On the other hand, Fidan stated that the reason for fourth section of Article 148 is its criticisms of higher judicial bodies on interpleading to the Constitutional Court in the context of individual applications against their own decisions.[483] The only exception to this rule is the case of there is clear arbitrariness.[484]

Candan remarks that the Constitutional Court cannot make an examination whether or not domestic court ruled a case beyond its authority, a domestic court reached a verdict against law or a domestic court did not abide codes of practice.[485] He argued that if the Constitutional Court cannot make an examination in those three different aspects, it is not arguable that how the Constitutional Court can reach a conclusion of violation.[486]

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[481] The Constitution, Article 148/IV.

[482] Entscheidungen des Bundesverfassungsgerichts (Decisions of Federal Constitutional Court), no: 20/218. Cited from: Göztepe, *Anayasa Şikayeti*, 24.

[483] Seda Duysak Fidan, "Anayasa Yargısında Bireysel Başvuru Yolu ve Türkiye'de Gelişimi", Master's Thesis, University of Atılım, 2013, 110. Hereafter: Fidan, *Bireysel Başvuru Yolu.*

[484] Ayhan Döner and Yeşim Çelik, "Anayasa Mahkemesinin Bireysel Başvuruyu İnceleme Aşamaları, Ortaya Çıkan Sorunlar ve Sonuçları", *Erzincan Üniversitesi Sosyal Bilimler Enstitüsü Dergisi* 4, no. 1 (2016): 290-91. Hereafter: Döner and Çelik, *Bireysel Başvuru İnceleme Aşamaları*.

[485] Candan, *Sempozyum Açılış Konuşması*, 25.

[486] Candan, *Sempozyum Açılış Konuşması*, 26.

In conclusion, the provision of Article 148 is one of the moot points of the individual application mechanism because if the required matters are not taken into account or were taken into account wrongly, the Constitutional Court cannot determine the violation related to those matters.

The second criticism of the individual application mechanism is about that public legal entities do not have right to apply.[487] In other words, universities, TRT and other public legal authorities do not have access to the mechanism. According to Oder, the concept of '*everyone*' of the Constitution in the context of individual application mechanism is contractionary materialized in law no. 6216.[488] Fidan thinks that because the public legal entities have transactions subjected to the private law provisions and do not have right to individual applications, it is not possible to overcome the criticisms with the case law.[489] Furthermore, Fidan believes that problems related to the public legal entities can be solved with the entitled right of individual application to them.[490]

On the other hand, law no. 6216 corresponds to Article 34 of the Convention, which indicates that the application of the authorities that has public force is not possible against the state party.[491] As we can see in the case of Döşemealtı Belediyesi vs Turkey, Çınar remarked that the European Court adopted that the applications of

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[487] Resmî Gazete, *6216 Sayılı Kanun*, Article 46/II.

[488] Bertil Emrah Oder, "Anayasa Mahkemesi'ne Bireysel Başvuruda (Anayasa Şikayeti) Etkin ve Etkili Kullanım Sorunları", in *Bireysel Başvuru (Anayasa Şikayeti),* ed. Musa Sağlam (Ankara: HUKAB, 2011), 91. Hereafter: Oder, *Etkin ve Etkili Kullanım Sorunları.*

[489] Fidan, *Bireysel Başvuru Yolu*, 113-114.

[490] Fidan, *Bireysel Başvuru Yolu*, 114.

[491] Özbey, *İçtihatlar Işığında Değerlendirme*, 38.

public legal entities that were inadmissible.[492] However, according to Atay, because public legal entities in Turkey have a *sui generis* feature, there is a need to have the individual application mechanism for public legal entities in their transactions in the context of private law.[493]

The Venice Commission also criticized the article that prohibited the application of public legal entities by stating that applications of public legal entities such as universities, broadcasting companies, municipalities and churches are admissible in many European states such as Germany.[494] The Venice Commission recommended that public legal entities should be able to apply for their vested rights under the Constitution.[495]

Similarly, Göztepe underlined that according to German lawmakers, although the main aim of individual application is to protect real persons from the interventions of public authority; there are some exceptions for universities, faculties, research institution, art schools, radio institutions, municipalities and churches which have right to individual application in the case of the interventions on their rights and freedoms.[496] Çınar emphasized that states like Germany and Spain approach the individual application of public legal entities as an exception.[497] On the other hand,

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[492] İbrahim Çınar, "Bireysel Başvuru İnceleme Usulü ve Kabul Edilebilirlik Kriterleri", in *Yüksek Yargı Kurumlarının Avrupa Standartları Bakımından Rollerinin Güçlendirilmesi Ortak Projesi*, ed. Musa Sağlam (Strasbourg: The Council of Europe, 2013), 170. Hereafter: Çınar, *Kabul Edilebilirlik Kriterleri*.

[493] Ender Ethem Atay, "Anayasa Mahkemesi Bireysel Başvuruları Sağlıklı Değerlendirebilir Mi?", in *Bireysel Başvuru "Anayasa Şikâyeti"*, ed. Musa Sağlam (Ankara: HUKAB, 2011), 132-135. Hereafter: Atay, *Bireysel Başvuruların Sağlıklı Değerlendirilmesi.*

[494] Venice Commission, *Opinion on the Law on the Establishment of Constitutional Court*.

[495] Venice Commission, *Opinion on the Law on the Establishment of Constitutional Court*.

[496] Göztepe, *Anayasa Şikâyeti*, 53-54.

[497] Çınar, *Kabul Edilebilirlik Kriterleri*, 189.

the Constitutional Court does not approach to the issue as an exception, as it happened in the case of Büğdüz Köyü Muhtarlığı, the Constitutional Court found these applications inadmissible.[498] According to Şirin, this attitude of Constitutional Court is contrary to the Constitution.[499]

The third criticism is about the rights and freedoms, which are not clearly guaranteed in the Constitution and the Convention because the context of the individual application is limited to the rights and freedoms only taken part in them. According to the Venice Commission's report in 2004, the protection of constitutional rights and freedoms regulated in the Convention limits the scope of enumerated rights and freedoms in the Constitution; hence, the scope of rights and freedoms should be widen.[500] Furthermore, Gören emphasized that the European Court considers the rights and freedoms which are not clearly guaranteed in the Convention, differently from the restriction of the Constitutional Court.[501] Similarly, Oder stated that the European Court creates social and economic rights interpretively based on the rights that are guaranteed in the Convention.[502]

The fourth criticism is about operations and decisions that cannot be subject to the individual application. According to Article 45 of law no. 6216, it is not possible to use the individual application against legislative acts, regulatory administrative acts

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[498] *Büğdüz Köyü Muhtarlığı,* The Constitutional Court of Turkey, no: 2012/22 (25/12/2012), http://kararlaryeni.anayasa.gov.tr/BireyselKarar/Content/85a1603c-5c71-40cf-8890-d549ed13fb90?wordsOnly=False.

[499] Tolga Şirin, "Türk Anayasa Mahkemesi'nin Bireysel Başvuru Kararlarının Değerlendirilmesi", in *Anayasa Mahkemesine Bireysel Başvuru Türkiye Uygulamasının Almanya ve Strazburg Ekseninde* Karşılaştırılması, ed. Ece Göztepe and Mustafa Mert Alpbaz (İstanbul: Oniki Levha, 2017), 37-38.

[500] Paczolay, *Opinion on the Draft*.

[501] Zafer Gören, *Anayasa Hukuku*, (Ankara: Yetkin, 2015): 302.

[502] Oder, *Etkin ve Etkili Kullanım Sorunları*, 97.

and acts that are opted out judicial control of constitutional law.[503] Candan argued that restrictions on those acts are not appropriate with the purpose of the individual application mechanism.[504] Similarly, Gerçeker emphasized that because the sections of the Constitution related to the individual application were arranged without any restrictions, restrictions on the law can be interpreted as incompatible with the Constitution.[505]

Gerçeker also stated that excluding some transactions from the scope of the individual application mechanism creates suspicions about the effectiveness of the mechanism.[506] According to Zabunoğlu, it is objectionable that legislative acts are not in the scope of individual application, because human rights infringements can occur through legislative acts.[507] The fifth criticism is about whether or not the acceptance of Turkish individual application system as an effective judicial remedy by the European Court will be sustainable. According to Türmen, to be able to decrease the number of applications to the European Court against Turkey, the main requirement is the acceptance of individual application mechanism of the Constitutional Court as an effective domestic remedy by the European Court.[508] In

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[503] Resmî Gazete, *6216 Sayılı Kanun*, Article 45.

[504] Candan, *Sempozyum Açılış Konuşması*, 27.

[505] Hasan Gerçeker, "Anayasa Mahkemesine Bireysel Başvuru (Anayasa Şikayeti) Konulu Uluslararası Sempozyum Açılış Konuşması.", in *Bireysel Başvuru "Anayasa Şikayeti"*, ed. Musa Sağlam (Ankara: HUKAB, 2011), 33. Hereafter: Gerçeker, *Sempozyum Açılış Konuşması.*

[506] Gerçeker, *Sempozyum Açılış Konuşması*, 31.

[507] Yahya Zabunoğlu "Bireysel Başvuru Yolunun Açılması: Türkiye'de Yargı Kollarının Ayrılmasında Ortaya Çıkan Sorunlar", in *Bireysel Başvuru "Anayasa Şikâyeti"*, ed. Musa Sağlam (Ankara: HUKAB, 2011), 120-121.

[508] Rıza Türmen, "Anayasa Mahkemesine Bireysel Başvuru", *Milliyet*, 13 January 2011, http://www.milliyet.com.tr/anayasa-mahkemesi-ne-bireysel-basvuru/riza-turmen/siyaset/yazardetayarsiv/14.01.2011/1338969/default.htm. Hereafter: Türmen, *Bireysel Başvuru*.

the case the European Court does not accept that the Constitutional Court's mechanism is effective, there is the potential for direct applications to the European Court without any application to the Constitutional Court.[509] As happened in the case of Constitutional Court in Georgia, the European Court can decide that an individual application is not effective because of unreasonable periods of adjudication, so the European Court can accept directly the applications without any exhaustion of domestic remedies.[510]

Besides Georgia, Özbey stated that because the European Court decided that the individual application mechanism of the Constitutional Court in Azerbaijan was not effective, the European Court started to accept individual applications directly without any applications to the Constitutional Court of Azerbaijan.[511]

As it can be seen from the examples of Azerbaijan and Georgia, if the accession to the Constitutional Court became difficult because of long periods of concluding a case or inconsistency of decisions of the Constitutional Court with the case law of the European Court, the European Court can decide that the Turkish individual application mechanism is ineffective, which means the end of the essential purpose of the mechanism.

According to Algan, it is important to protect essentiality and functionality of the mechanism despite a heavy workload to sustain the effectiveness of the mechanism.[512] According to Candan, the Turkish public tends to exercise a right given to them up to the end, referring to a saying among Turkish lawyers that 'we

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[509] Türmen, *Bireysel Başvuru*.

[510] Türmen, *Bireysel Başvuru*.

[511] Özbey, *İçtihatlar Işığında Değerlendirme*, 35.

[512] Algan, *Hebat Aslan ve Firas Aslan Kararı Örneği*, 186.

lost the case, but we gained the right of appeal.'[513] He also gave a statistical example of that four out of five of settled cases were appealed and denied in 2009.[514] In those circumstances, it is inevitable that the individual application mechanism causes an excessive case burden. According to Atay, the best solution to the workload problem of the Constitutional Court is an effective selection mechanism that can separate admissible applications from inadmissible ones.[515]

A current criticism related to the individual application mechanism of the Constitutional Court is about whether the Constitutional Court can handle with the applications coming from the executive orders during the state of emergency. After the coup attempt on 15 July 2016, a state of emergency was declared in Turkey.[516] Several executive orders and many transactions by the Commission of State of Emergency were conducted with the intent of taking precautions in the counter-terrorism activities. Those executive orders and transactions were concluded with thousands of claims related to human rights violations. On 23 January 2017, the Investigation Commission of Transactions of State of Emergency ('Investigation Commission') was established, while since 17 July 2017 the Investigation Commission has started to accept the applications related to transactions of dismissal and disengagement from profession, public service and governance after the declaration of a state of emergency.[517] However, until 17 July 2017 there was a large amount of individual applications both to the Constitutional Court and to the

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[513] Candan, *Sempozyum Açılış Konuşması*, 28-29.

[514] Candan, *Sempozyum Açılış Konuşması*, 29.

[515] Atay, *Bireysel Başvuruların Sağlıklı Değerlendirilmesi*, 132.

[516] "OHAL Dün Gece İlan Edildi", *Hürriyet*, 21 July 2016, http://www.hurriyet.com.tr/gundem/son-dakika-haberi-tum-ulkede-ohal-ilan-edildi-40156536.

[517] 29957 Sayılı Olağanüstü Hal İşlemleri İnceleme Komisyonunun Kurulması Hakkında Kanun Hükmünde Kararname, *Resmi Gazete*, 23 January 2017, http://www.resmigazete.gov.tr/eskiler/2017/01/20170123-4.htm.

European Court at the same time. Executive orders by the Commission of State of Emergency created a large workload in the context of individual application for both the Constitutional Court and the European Court.[518] One of the most important conclusions of statistics in Table 6 is the increase in the number of applications to the Constitutional Court (296 per cent) and to the European Court (34 per cent) in 2016 during the state emergency following the coup attempt.

The Constitutional Court stated that the applications, which were conducted without any previous application to the Investigation Commission, were inadmissible because of the deficiency of exhaustion of domestic remedies.[519] As it was seen in the case of Remziye Duman, in the applications related to the executive orders, the Constitutional Court found those applications inadmissible if applicants did not exhaust all domestic remedies including applying to the Investigation Commission.[520] Therefore, there were approximately 71,000 inadmissible applications in the Constitutional Court related to the decisions of discharge by the Commission of State Emergency.[521] Similar to the excessive applications to the Constitutional Court, according to the Annual Report of the European Court, 2017 was distinguished by a wideness of applications which were approximately 27,000 inadmissible applications directly related to the measures taken after the attempted coup in Turkey.[522] Raimondi underlines that there was a huge amount of

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[518] The Constitutional Court, *Yıllık Rapor 2017*.

[519] "Ohal Kanun Hükmünde Kararnameleri İle Yapılan İşlemler Ve Ohal Kapsamında Yapılan İdari İşlemlere Yönelik Bireysel Başvurular Hakkında Basın Duyurusu", *The Constitutional Court of Turkey*, accessed 30 June 2018. *http://www.anayasa.gov.tr/icsayfalar/duyurular/detay/65.html*.

[520] The Constitutional Court, *Remziye Duman*.

[521] "AYM açıkladı 70 bin 771 başvuru reddedildi", *Hürriyet*, 4 August 2017, http://www.hurriyet.com.tr/gundem/aym-acikladi-70-bin-771-basvuru-reddedildi-40540803.

[522] The European Court of Human Rights, *Annual Report 2017* (Strasbourg: The ECHR, 2018), https://www.echr.coe.int/Documents/Annual_report_2017_ENG.pdf. Hereafter: The European Court, *Annual Report 2017*.

inadmissible applications because there had been no appeal to the Constitutional Court.[523] According to statistics, in 2016 there were 8,308 new applications to the European Court against Turkey, while 5,363 of them (65 per cent) were after the declaration of state of emergency related to the decisions of dismiss and detention.[524] With 8,308 new applications, the number of pending applications passed 12,000, while the number was 8,450 in 2015.[525]

According to statement of the Venice Commission in 2016, the Constitutional Court should examine injunctions rigorously related to state of emergency.[526] In particular, because it is not known that why some people and some institutions are in the list of dismissal, it is important to follow that arbitrary discrimination is not acceptable.[527] To sum up, the attitude of Constitutional Court towards executive orders during the state of emergency is at the centre of future success of individual application mechanism. If the Constitutional Court continues to give verdicts in the line with the Court's case law in the context of violation claims arising from executive orders during state of emergency, it can be said that the success of mechanism is forward looking. Otherwise, the number of applications and the number of violation judgements to the European Court would be gained steam. As another current issue, Ekinci observed that because decisions of the Constitutional Court are binding on all other domestic courts, it is unthinkable that other domestic

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[523] The European Court, *Annual Report 2017*.

[524] "Ohal döneminde Türkiye'den AİHM'e 5,363 başvuru yapıldı", *BBC Türkçe*, 27 January 2017, https://www.bbc.com/turkce/haberler-turkiye-38766427.

[525] "AİHM'e başvurular 15 Temmuz'dan sonra yüzde 276 arttı", *CNN Türk*, 27 January 2017, https://www.cnnturk.com/dunya/aihme-basvurular-15-temmuzdan-sonra-yuzde-276-artti.

[526] Venice Commission, *15 Temmuz 2016 Başarısız Darbe Girişimi Sonrasında Çıkarılan Olağanüstü Hal Kanun Hükmünde Kararnameleri Hakkındaki Görüş* (Strasbourg: Council of Europe, 2016), http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-tur. Hereafter: Venice Commission, *OHAL KHK'ları Hakkındaki Görüş.*

[527] Venice Commission, *OHAL KHK'ları Hakkındaki Görüş.*

courts could resist or react to the decisions of the Constitutional Court.[528] However, we have already seen the example of resistance from other domestic courts (Alpay case), bureaucrats and even the President of Republic, Recep Tayyip Erdoğan. For example, in February 2016, about the violation judgement of the Constitutional Court in the context of the individual application related to the continuing detention of two prominent journalists, Can Dündar and Erdem Gül, who were on trial for treason and espionage, Mr. Erdoğan stated that 'I neither obey nor respect that ruling'.[529]

The criticisms of Mr. Erdoğan towards the domestic court that did not resist the decision of the Constitutional Court show us there are essential and important problems in the process of consolidating the authority of the Constitutional Court over the domestic courts in the context of human rights issues. On the other hand, Karakaş remarked that the example case of Dündar and Gül presents clearly that the Constitutional Court gives decisions in accordance with the case law of the European Court.[530] She stated, 'It is not possible to talk about the principle of rule of law in a place that is not complied with the court decisions.'[531]

In conclusion, the individual application mechanism has primarily external improvements that contribute to international relations, such as decreasing the number of applications and violation judgements of the European Court against Turkey, recovering negative opinions about human rights standards of Turkey, gaining support from international authorities, having coherent proceedings with European standards, and providing an effective filtration mechanism for the European Court. On the other hand, besides its external improvements, there are

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[528] Ekinci, *Bireysel Başvuruların İncelenmesi Usulü*, 156.

[529] "Karara Uymuyorum, Saygı Duymuyorum", *Milliyet*, 29 February 2016, http://www.milliyet.com.tr/karara-uymuyorum-saygi-duymuyorum-siyaset-2201472/.

[530] Karakaş, *Bireysel Başvuru Kararlarının Etkileri*, 17.

[531] Karakaş, *Bireysel Başvuru Kararlarının Etkileri*, 17.

also several internal improvements that contribute to the process of the protection of human rights in Turkey, such as abolishing consequences coming from violations; prohibiting similar violations; solving human rights problems domestically; providing faster, more responsible and more effective domestic remedies; decreasing the amount of compensation, proceeding in accordance with history, tradition and hallmarks; and monism and compliance of human rights standards in Turkey with the European Court's standards.

However, besides its positive outcomes over five years, the mechanism of the Constitutional Court still has several deficiencies and problems waiting to be solved, such as the article that restrains judicial review on matters required to be taken into account, public legal entities without any right to apply, rights and freedoms that are not clearly guaranteed both in the Constitution and the Convention, legislative acts, regulatory administrative acts and acts that are opted out judicial control of the Constitutional Court, whether or not the European Court accepts the individual application of the Constitutional Court is an effective remedy, current heavy case burden of the Constitutional Court and the future of the Constitutional Court's decisions related to executive orders arising from the state of emergency after 15 July 2016.

CHAPTER 4

CONCLUSION

Beyond all controversy, the individual application mechanism of the Constitutional Court is an important development in the framework of Turkey's human rights issues. If the Constitutional Court succeeds in the implementation of the mechanism and ensures the sustainability of this successful implementation, the individual application mechanism will continue to make significant contributions both in domestic law and in the international relations. In this master thesis, the role of the individual application mechanism on the human rights developments in Turkey was argued. In this study, it was examined whether the individual application mechanism is an effective domestic remedy for Turkey's human rights issues and whether the decisions of the Constitutional Court coincide with the case law of the European Court.

In 1950, Turkey that is one of the first countries signed the Convention, accepted the European Court's individual application mechanism in 1987. After the acceptation of the European Court's individual application mechanism, judgements by the European Court related to Turkey's human rights violations in the 1990s played an influential role in the transformation of the Turkey's legal system.

The European Court, since the beginning of the relations, have both supported the human rights developments in Turkey and seriously criticised Turkey within the framework of fundamental rights and liberties such as right to a fair trial and right to life. As a result of human rights record that goes badly for years and serious criticisms coming from European community, Turkey accelerated the developments

in the field of human rights following the European Union candidacy in 1999. In this regard, between 1999 and 2004 a relatively positive period compared to other periods was experienced. There were significant legislative developments such as the constitutional amendments no. 4709 in 2001 and the amendments within the framework of the Civil Code and Criminal Code. Within the scope of Copenhagen Criteria and eight Harmonization Packages, many legal changes for the compliance with European regulations were implemented. The successful completion of Harmonization Packages in 2004 and Turkey's efforts in the field of human rights with 218 constitutional and 53 law amendments were effective in the EU's decision to start membership negotiations with Turkey.[532]

In light of all these developments, the year 2004 that is regarded as a milestone in the Turkey's human rights developments was chosen as the start date of the Chapter 1 and the relevant part ended with the year 2010 that is another milestone. Within the human rights developments between 2004 and 2010, it was seen that the volume of human rights developments relatively slowed down. Even though significant developments occurred with the constitutional amendments no. 5170 in 2004, in the next period, a slowdown in the human rights developments was observed in parallel with the slowdown in the Turkey's EU membership process. On the other hand, within the statistics of the European Court between 1959 and 2009, it was seen that 19 per cent of the European Court's decisions were against Turkey.[533] Turkey was the lead among the states having the highest human rights violation rates. It was seen that 2,017 (88 per cent) of 2,295 the European Court's decisions resulted with at least one violation decision and one third of the violation decisions were about the right of a fair trial.[534]

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[532] Baskın Oran, *Kurtuluş Savaşından Bugüne Olgular, Belgeler, Yorumlar* (Ankara: İletişim Yayınları, 2013), 337. Hereafter: Oran, *Kurtuluş Savaşından Bugüne*.

[533] Yaşar Salihpaşaoğlu, "Avrupa İnsan Hakları Mahkemesi ve Türkiye: Bazı rakamlar ve Gerçekler", *Gazi Üniversitesi Hukuk Fakültesi Dergisi*, no. 13 (2009): 253. Hereafter: Salihpaşaoğlu, *Bazı Rakamlar ve Gerçekler*.

[534] Salihpaşaoğlu, *Bazı Rakamlar ve Gerçekler*, 253.

Although legislative regulations were conducted in the field of human rights, it can be concluded that no achievement was reached in the practice. Because Turkey had the highest number of human rights violations, legal developments in the 2000s were not enough successful to improve Turkey's human rights standards. They contributed to the legal process, but their effects in the practice were not efficient as they were aimed in the beginning. Despite of Turkey's efforts to conduct law amendments in accordance with the European Court standards and serious criticisms by the European Court on the Turkey's human rights issues, Turkey did not make significant progress.

On the other hand, from the beginning of Turkey's desire to be a part of European community, although many legal improvements were made in the field of human rights, the individual application mechanism, which was implemented in 2012, is the most important development in the field. The Law on the Constitutional Amendment no. 5982 was published in the Official Gazette and entered into force as a result of the referendum organized on 12 September 2010. As a consequence of the law no. 5982, with the amendments in the Articles 148 and 149 of the Constitution, individual application mechanism gained a legal basis, while from 23 September 2012 mechanism has been put into practice.

In the Chapter 2, the scope, definition, aims, legal foundations and processes of the individual application mechanism were addressed. According to the Article 45 of the Law on the Establishment and Procedural Principles of the Constitutional Court no. 6216 which entered into force in 2011, 'Everybody may apply to the Constitutional Court with the claim that any one of his or her fundamental rights and liberties secured in the Constitution and within the scope of European Convention on Human Rights and protocols, of which Turkey is a party, in addition to that are violated by public force.'[535]

[535] Law on the Establishment and Procedure of the Constitutional Court No. 6216, *Resmi Gazete*, 3 March 2011, http://www.resmigazete.gov.tr/eskiler/2011/04/20110403-1.htm.

Chapter 3 includes the main discussions on the effectiveness of the individual application mechanism that depends on the accessibility, effectivity and sufficiency. As long as the individual application mechanism is accepted as accessible, effective and sufficient, its contributions can be developed and expanded. For the analysis of the mechanism's effectiveness, the decisions of the Constitutional Court were taken as a basis. The effectiveness of the Constitutional Court's decisions mostly depends on their similarities with the European Court's decisions that were given earlier in similar cases. The consistency and coherence between the decisions of two courts have determining role in the analyses of the Constitutional Court's effectiveness.

After examinations on the case examples of the Constitutional Court, in this study, not only the internal and external developments of the mechanism were concluded, but also the current problems and deficiencies of the mechanism were addressed. As well as court decisions, literature review, the opinions of the Venice Commission, court statistics and legal reforms were examined, while the Convention and the Constitution were taken as a basis.

As an analyses method of the effectiveness of the mechanism, first, case examples between the years 2012 and 2018 were chosen. Second, their proceedings by the Constitutional Court were compared with the European Court's case law in the previous similar cases. Case examinations were supported with the statistical data of the individual application mechanism. In the end of examinations, external and internal developments of the mechanism were analysed with its current deficiencies and problems.

In the framework of the historical development of the individual application, first of all, in 2012 and 2013 there were 9,897 individual applications to the Constitutional Court.[536] In this period, the Constitutional Court mostly focused on the admissibility issues such as 30 days' rule, the exhaustion of all domestic remedies, manifestly ill-

[536] "23 Eylül 2012-31 Aralık 2017 Tarihleri Arası Bireysel Başvuru İstatistikleri", The Constitutional Court of the Republic of Turkey, accessed 20 March 2018, http://www.anayasa.gov.tr/icsayfalar/istatistikler/pdf/31122017_istatistik_tr.pdf. Hereafter: The Constitutional Court, *23 Eylül 2012-31 Aralık 2017 İstatistikleri*.

founded provisions and other admissibility criteria. Second, in 2014 and 2015 the number of individual applications reached 20,578.[537] After the clarifying the admissibility criteria, the Constitutional Court mostly focused on serious fundamental human rights violations. Several milestone cases in the field of fundamental rights and freedoms such as the right to life, the prohibition of torture and torment, the right to liberty and security, the right to a fair trial, the freedom of commenting and spreading of a thought, the freedom of communication and the right to elect, be elected and be a part of political activities were chosen as examples. In each example case, the construct of the case, the claims of the applicants and the proceeding processes of the Constitutional Court were explained by referring the European Court's case law. It was shown that the final decisions of the Constitutional Court complied with the case law of the European Court.

Third, in 2016 and 2017 the number of individual applications to the Constitutional Court reached 80,756.[538] In this period, it was seen that the fields of rights and freedoms that the Constitutional Court dealt with were varied and expanded. The right to protection and development of material and non-material being and gay rights were added into scope of the Constitutional Court's decisions.

On the other hand, the biggest issue that the Constitutional Court dealt with during 2016 and 2017 was the decisions taken by the Commission of State of Emergency that was established after 15 July coup attempt. With 40,530 new applications in 2017, the number of pending cases of the Constitutional Court reached 126,093 in 2017, while 97 per cent were adjudicated in this period. 82 per cent of all adjudicated applications were related to the decisions made by the Commission of

[537] The Constitutional Court, *23 Eylül 2012-31 Aralık 2017 İstatistikleri*.

[538] The Constitutional Court, *23 Eylül 2012-31 Aralık 2017 İstatistikleri*.

State of Emergency.[539] In other words, the workload and the focus point of the Constitutional Court, particularly in 2017, was constituted by the decisions of the Commission of State of Emergency. The most part of the applications against the decisions of the Commission of State of Emergency were finalized with the inadmissible decision because the applicants applied to the Constitutional Court without any previous applications to the Investigation Commission of the State of Emergency. On the other hand, a major part of the applications during the State of Emergency consists of the decisions related to the removal of public office as it was seen in the case of Remziye Duman. The case of Şahin Alpay was another milestone case during the State of Emergency in Turkey because the applicant applied both in the Constitutional Court and to the European Court.

As a result of the examinations of cases during 2016, 2017 and 2018, it was concluded that there was the insistence of the Constitutional Court on deciding parallel to the case law of the European Court. Particularly, in the examination of the European Court's comments on the Alpay case and the opinion of the Venice Commission regarding the decisions of the Commission of State of Emergency, it can be understood that the effectiveness of the Constitutional Court's individual application mechanism was maintained during the State of Emergency period.

The main conclusion of case analyses is that individual application mechanism of Turkey's Constitutional Court has external and internal improvements as well as several deficiencies and problems. In the context of external improvements, it can be said that there is a consistency between the Constitutional Court's judgements and the case law of the European Court. As long as the Constitutional Court gives fast and effective decisions in compliance with the European Court's standards, external improvements of individual application mechanism will be gradually increased.

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[539] The Constitutional Court of Turkey, *Yıllık Rapor 2017* (Ankara: The Constitutional Court, 2018), http://www.anayasa.gov.tr/icsayfalar/yayinlar/yillikraporlar/2017yillikrapor.pdf. Hereafter: The Constitutional Court, *Yıllık Rapor 2017*.

One of the most important indicators of external improvements is the number of individual applications and the number of violation judgements of the European Court against Turkey. Despite of the increase in the number of judgements and applications stemming from the decisions of the Commission of State of Emergency after 15 July 2016, there is considerable decrease in the number of violation judgements against Turkey by the European Court. Between 2012 and 2017, in total 173,403 applications and 2,536 violation judgements (see Table 6) were solved domestically by the Constitutional Court without taken them to the European Court against Turkey.

It means that the main external aim of individual application mechanism, which is to decrease the number of applications and violation judgements against Turkey to the European Court, was achieved. Furthermore, the international image of Turkey as a state with the worst human rights records is improving by depending on the continuation of Constitutional Court's effectiveness and parallelism of its decisions with the European Court's case law. Individual application mechanism provides an effective solution in the subjects of human rights for which Turkey has been criticized by European communities for many years. In the context of internal improvements, because the Constitutional Court can solve human rights problems domestically in accordance with the state's own historical values and traditions, the mechanism of Constitutional Court is a more effective and more responsible remedy than individual application mechanism of the European Court. Because there are compulsory and direct effects of the decisions taken by the Constitutional Court, the mechanism is faster in the comparison of the European Court' periods in the context of concluding an application. Taking into consideration that the Constitutional Court's performance of finalising more than 137 thousand applications in 5 years[540] and the European Court' performance of finalising an

[540] The Constitutional Court, *23 Eylül 2012-31 Aralık 2017 İstatistikleri*.

application in approximately 18 months[541], it can be concluded that the mechanism of the Constitutional Court is a rather effective method to solve human rights issues. Furthermore, with the individual application mechanism, Turkish human rights law and the case law of the Constitutional Court can interiorize the case law of the European Court. Internationalization of the Constitution contributes the monism and compliance of human rights standards in Turkey with the European Court's standards. The mechanism has brought national law into conformity with international law on the human rights issues. With the acceptance of individual application mechanism, the Constitution of Republic of Turkey integrated with the Convention and has acquired an international dimension.

In the fourth part including the current problems and deficiencies of individual application mechanism, it was emphasized that the mechanism is an effective solution in the human rights issues of Turkey as well as it still has some deficiencies and problems waiting to be solved such as restraining judicial review on matters required to be taken into account, public legal entities without any right to apply, rights and freedoms that are not explicitly specified both in the Constitution and the Convention, some acts and decisions that are excluded from the judicial control of Constitutional Court, whether the acceptance of the individual application mechanism as an effective domestic remedy by the European Court can be sustainable and current heavy case burden of the Constitutional Court. Lastly, it was emphasized that the decisions of the Constitutional Court during the State of Emergency period are critical in the evaluation of the mechanism's future effectiveness. In 2017, there were 27 thousand inadmissible applications in the European Court against the Turkey's Commission of State of Emergency.[542] In those inadmissible cases, the European Court ruled that they were inadmissible

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[541] "Türkiye'den AİHM'e Yapılan Bireysel Başvuru Sayısı Azaldı", *TRT Haber*, 25 January 2018, http://www.trthaber.com/haber/dunya/turkiyeden-aihme-yapilan-basvuru-sayisi-azaldi-347726.html. Hereafter: TRT Haber, *Bireysel Başvuru Sayısı.*

[542] The European Court of Human Rights, *Annual Report 2017* (Strasbourg: The ECHR, 2018), https://www.echr.coe.int/Documents/Annual_report_2017_ENG.pdf. Hereafter: The European Court, *Annual Report 2017*.

because all domestic remedies in Turkey including the individual application to the Constitutional Court were not exhausted. It was assessed that the effectiveness of the Constitutional Court depends on its effective decisions as it was seen in the case of Alpay.

In conclusion, through the master thesis, the individual application mechanism of the Constitutional Court that has been put into practice in September 2012 was examined in the light of court decisions, legislative regulations and the case law of the European Court. It was argued whether the individual application mechanism is an effective internal solution for Turkey's human rights issues. As a conclusion of all discussions made throughout the thesis, it was concluded that the mechanism is in conformity with the case law of the European Court and provides internal and external contributions. Although the mechanism that has been in practice for more than 5 years has several problems and deficiencies, it can be concluded that the individual application mechanism of the Constitutional Court is an important milestone. It has been assessed that as long as the Constitutional Court continues to make decisions in the line with the European Court's standards and the domestic courts gain more experience in making decisions that comply with the Constitutional Court's judicial opinion, the individual application mechanism will continue to provide significant contributions in the field of human rights.

REFERENCES

Acu, Melek. "Bireysel Başvuruya Konu Edilebilecek Haklar." *TBB*, no. 110 (2014): 403-34.

Algan, Bülent. "Anayasa Mahkemesi ve Avrupa İnsan Hakları Mahkemesi'nin Kişi Özgürlüğü ve Güvenliği Hakkı Yaklaşımı: Hebat Aslan ve Firas Aslan Kararı Örneği." *Anayasa Yargısı*. No. 32 (2015): 185-206.

Altıntaş, Ömer Faruk Altıntaş. *Avrupa Birliği'ne Aday Ülke Olarak Türkiye'de AB Uyum Yasalarının İç Uyuma Etki ve Katkısı*. Ankara: Avrupa Birliği Genel Müdürlüğü, 2008. http://www.abgm.adalet.gov.tr/yayinlar/belgeler/e-kutuphane/ABUyumYasalarininIcHukukaEtkisiVeKatkisi.pdf.

Anayasa Mahkemesi Yayınları. *Bireysel Başvuru Seçme Kararlar 2012-2013*. Ankara: 2013.

Anayasa Mahkemesi Yayınları. *Bireysel Başvuru Seçme Kararlar 2014*. Ankara: 2015.

Anayasa Mahkemesi Yayınları. *Bireysel Başvuru Seçme Kararlar 2015*. Ankara: 2016.

Anayasa Mahkemesi Yayınları, *Bireysel Başvuru Seçme Kararlar 2016/I*. Ankara: 2017.

Atay, Ender Ethem. "Anayasa Mahkemesi Bireysel Başvuruları Sağlıklı Değerlendirebilir Mi?" In *Bireysel Başvuru "Anayasa Şikâyeti."* Edited by Musa Sağlam, 126-136. Ankara: HUKAB, 2011.

Aydın, Öykü Didem.“Türk Anayasa Yargısında Yeni Bir Mekanizma: Anayasa Mahkemesi’ne Bireysel Başvuru.” *Gazi Üniversitesi Hukuk Fakültesi Dergisi* 15, no. 4 (2011): 121-70.

Belgin, Derya. “Anayasa’nın 90. Maddesinde (7 Mayıs 2004) Yapılan Değişikliğin Getirdiği Sorunlar ve Çözüm Önerileri.” *Ankara Barosu Dergisi* 4, no. 66 (2008): 110-13.

Bilir, Faruk. “2004 Anayasa Değişiklikleri Üzerinde Bir Değerlendirme.” *Gazi Üniversitesi Hukuk Fakültesi Dergisi* 1, no. 2 (2004): 240-51.

Bilir, Faruk. “Avrupa İnsan Hakları Mahkemesi’nin Yapısı ve 14 No’lu Protokol.” *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, no.55 (2006):135-56.

BBC Türkçe. “Ohal döneminde Türkiye’den AİHM’e 5,363 başvuru yapıldı.” 27 January 2017. https://www.bbc.com/turkce/haberler-turkiye-38766427.

Candan, Turgut. “Anayasa Mahkemesine Bireysel Başvuru (Anayasa Şikâyeti) Konulu Uluslararası Sempozyum Açılış Konuşması.” In *Bireysel Başvuru “Anayasa Şikâyeti.”* Edited by Musa Sağlam, 24-29. Ankara: HUKAB, 2011.

CNN Türk. “AİHM’e başvurular 15 Temmuz’dan sonra yüzde 276 arttı.” 27 January 2017. https://www.cnnturk.com/dunya/aihme-basvurular-15-temmuzdan-sonra-yuzde-276-artti.

Constitution of the Republic of Turkey. https://global.tbmm.gov.tr/docs/constitution_en.pdf.

Cumhuriyet. “Erdoğan 11 istedi 1 aldı.” 21 December 2004.

Cumhuriyet. “Roboski Dosyasında AYM’den Skandal Ret.” 26 February 2016, http://www.cumhuriyet.com.tr/haber/turkiye/488121/Roboski_dosyasinda_AYM_den_skandal_ret.html.

Çağıran, Mehmet Emin. “14 no’lu Protokol Çerçevesinde Avrupa İnsan Hakları Sözleşmesi Denetim Sisteminde İyileştime Çalışmaları.” *SÜ İİBF Sosyal ve Ekonomik Araştırmalar Dergisi*, no. 1 (2007): 1-29.

Çınar, İbrahim. "Bireysel Başvuru İnceleme Usulü ve Kabul Edilebilirlik Kriterleri." In *Yüksek Yargı Kurumlarının Avrupa Standartları Bakımından Rollerinin Güçlendirilmesi Ortak Projesi*. Edited by Musa Sağlam, 165-224. Strasbourg: The Council of Europe, 2013.

Çoban, Ali Rıza. "Yeni Anayasa Mahkemesi Kanunu'nun Mahkemenin İş Yüküne Etkisi Açısından Değerlendirilmesi." In *Bireysel Başvuru "Anaysa Şikâyeti"*. Edited by Musa Sağlam, 161-177. Ankara: HUKAB, 2011.

Demirkol, Selami. "Avrupa İnsan Hakları Mahkemesi'ne Giden Yolun Daraltılmasında, Anayasa Mahkemesi'ne Bireysel Başvuru Yönteminin İçselleştirilmesi-Amaç; Dosyaları İç Hatlarda Tutabilmek, Uluslararası Yolculuk Yaptırmamak." *Anayasa Yargısı*. No.33 (2016): 177-184.

Döner, Ayhan and Yeşim Çelik. "Anayasa Mahkemesinin Bireysel Başvuruyu İnceleme Aşamaları, Ortaya Çıkan Sorunlar ve Sonuçları." *Erzincan Üniversitesi Sosyal Bilimler Enstitüsü Dergisi* 4, no. 1 (2016): 275-94.

Ekinci, Hüseyin. "Anayasa Mahkemesinin Bireysel Başvuru İş Yükü, Çözüme Yönelik Mahkeme Pratiği ve Öneriler." *Uyuşmazlık Mahkemesi Dergisi*. No. 5, (2015): 391-432.

Ekinci, Hüseyin. "Anayasa Mahkemesi Kanunu Çerçevesinde Bireysel Başvuruların İncelenmesi Usulü." In *Bireysel Başvuru "Anayasa Şikâyeti"*. Edited by Musa Sağlam, 137-160. Ankara: HUKAB, 2011.

Ekinci, Hüseyin. "Anayasa Mahkemesine Bireysel Başvuruda Kabul Edilebilirlik Kriterleri ve İnceleme Yöntemi." *Anayasa Yargısı,* no. 30 (2013): 161-97.

Ekinci, Hüseyin and Musa Sağlam. *66 Soruda Bireysel Başvuru.* Ankara: Anayasa Mahkemesi Yayınları, 2015.

Ergül, Ergin. *Anayasa Mahkemesi'ne ve Avrupa İnsan Hakları Mahkemesi'ne Bireysel Başvuru ve Uygulaması.* Ankara: Yargı, 2012.

Fendoğlu, Tahsin. "2001 Anayasa Değişikliği Bağlamında Temel Hak ve Özgürlüklerin Sınırlanması." *Anayasa Yargısı,* no. 19 (2002): 111-149.

Fidan, Seda Duysak. "Anayasa Yargısında Bireysel Başvuru Yolu ve Türkiye'de Gelişimi." Master's Thesis, University of Atılım, 2013.

Gerçeker, Hasan. "Anayasa Mahkemesine Bireysel Başvuru (Anayasa Şikayeti) Konulu Uluslararası Sempozyum Açılış Konuşması." In *Bireysel Başvuru "Anayasa Şikayeti."* Edited by Musa Sağlam, 30-36. Ankara: HUKAB, 2011.

Gölpınarlı, Abdulbâki. *Mevlânâ Celâleddin Mektuplar.* İstanbul: İnkilap, 1999.

Gören, Zafer. *Anayasa Hukuku*. Ankara: Yetkin, 2015.

Göztepe, Ece. *Anayasa Şikayeti*. Ankara: Ankara Üniveristesi Hukuk Fakültesi Yayınları, 1998.

Greer, Steven. *The European Convention on Human Rights: Achievements, Problems and Prospects*. Cambridge: Cambridge University Press, 2006.

Hürriyet. "AYM açıkladı 70 bin 771 başvuru reddedildi." 4 August 2017. http://www.hurriyet.com.tr/gundem/aym-acikladi-70-bin-771-basvuru-reddedildi-40540803.

Hürriyet. "Başardık." 18 December 2004.

Hürriyet. "OHAL Dün Gece İlan Edildi." 21 July 2016. http://www.hurriyet.com.tr/gundem/son-dakika-haberi-tum-ulkede-ohal-ilan-edildi-40156536.

Kaboğlu, İbrahim. *Anayasa Yargısı*. Ankara: İmge Yayınevi, 1997.

Karakaş, Işıl. "Bireysel Başvuru Kararlarının Etkileri." *Anayasa Yargısı*, no. 33 (2016): 13-17.

Kılınç, Bahadır. "Federal Almanya'da Bireysel Başvuru (Anayasa Şikayeti) Yolu." *Anadolu Üniversitesi Hukuk Fakültesi Yayınları*, no. 10 (2011): 87-97.

Kılınç, Bahadır. "Karşılaştırmalı Anayasa Yargısında Bireysel Başvuru (Anayasa Şikayeti) Kurumu ve Türkiye Açısından Uygulanabilirliği." *Anayasa Mahkemesi Yayınları*, no. 25 (2008): 19-59.

Köküsarı, İsmail. "Anayasa Mahkemesinin Bireysel Başvuru Kararlarının Anayasanın Genişlemesi ve Uluslararasılaşmasındaki Etkisi." *Anayasa Yargısı*. No. 33 (2016): 303-317.

Kunig, Philip. "Türkiye İçin Bir Örnek: Federal Almanya'da Bireysel Başvuru." In *Bireysel Başvuru "Anayasa Şikâyeti*", edited by Musa Sağlam, 45-52. Ankara: HUKAB, 2011.

Milliyet. "Karara Uymuyorum, Saygı Duymuyorum." 29 February 2016. http://www.milliyet.com.tr/karara-uymuyorum-saygi-duymuyorum-siyaset-2201472/.

Milliyet. "Türkiye'nin Tercihi 'Evet' Oldu." 12 September 2010. http://www.milliyet.com.tr/turkiye-nin-tercihi-evet-olldu-/referandum/sondakika/12.09.2010/1288148/default.htm.

NTV. "Şahin Alpay Tahliye Edildi." 17 March 2018. https://www.ntv.com.tr/turkiye/sahin-alpay-tahliye-edildi,SrGrtYsq8E-88voPT68oHQ.

Oder, Bertil Emrah. "Anayasa Mahkemesi'ne Bireysel Başvuruda (Anayasa Şikayeti) Etkin ve Etkili Kullanım Sorunları." In *Bireysel Başvuru (Anayasa Şikayeti).* Edited by Musa Sağlam, 89-106. Ankara: HUKAB, 2011.

Oran, Baskın. *Kurtuluş Savaşından Bugüne Olgular, Belgeler*, *Yorumlar*. Ankara: İletişim Yayınları, 2013.

Öniş, Ziya. "Domestic Politics, International Norms and Challanges to the State: Turkey–EU Relations in the Post-Helsinki Era." *Turkish Studies* 4, no. 1 (2003): 9-34.

Özbey, Özcan. "Anayasa Mahkemesine Bireysel Başvuru Hakkının Avrupa İnsan Hakları Mahkemesi İçtihatları Işığında Değerlendirilmesi." *TAAD* 3, no. 11 (2012): 21-46.

Paczolay, Peter. *Opinion on the Draft Constitutional Amendments with Regard to the Constitutional Court of Turkey*. Strabourg: The Council of Europe, 2004. http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2004)024-f.

Pimentel, David. "Dünyada Anayasa Şikayeti Uygulamaları." In *Bireysel Başvuru "Anayasa Şikayeti"*, edited by Musa Sağlam, 53-76. Ankara: HUKAB, 2011.

Polat, Necati. *Regime Change in Contemporary Turkey Politics, Rights, Mimesis*. Edinburgh: Edinburgh University Press, 2016.

Redmond, John. "Turkey and the EU: troubled European or European Trouble." *International Affairs*, no. 83 (2007): 305-17.

Resmî Gazete. 28351 Sayılı Anayasa Mahkemesi İçtüzüğü. 12 July 2012. http://www.anayasa.gov.tr/files/pdf/ictuzuk.pdf.

Resmi Gazete. 29957 Sayılı Olağanüstü Hal İşlemleri İnceleme Komisyonunun Kurulması Hakkında Kanun Hükmünde Kararname. 23 January 2017. http://www.resmigazete.gov.tr/eskiler/2017/01/20170123-4.htm.

Resmi Gazete. 4121 Sayılı Kanun. 26 July 1995.

Resmi Gazete. 4709 Sayılı Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinin Değiştirilmesi Hakkındaki Kanun. 3 October 2001.

Resmi Gazete. 5170 Sayılı Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinin Değiştirilmesi Hakkındaki Kanun. 7 May 2004.

Resmî Gazete. 522 Sayılı Yüksek Seçim Kurulu Kararı. 7 May 2010. http://www.resmigazete.gov.tr/eskiler/2010/08/20100802M1-1.htm.

Resmi Gazete. 5237 Sayılı Türk Ceza Kanunu. 12 October 2004.

Resmî Gazete. 5982 Sayılı Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinde Değişiklik Yapılması Hakkında Kanun. 13 May 2010. http://www.resmigazete.gov.tr/eskiler/2010/05/20100513-1.htm.

Resmi Gazete. 6216 sayılı Anayasa Mahkemesinin Kuruluşu ve Yargılama Usulleri Hakkında Kanun. 30 March 2011. http://www.resmigazete.gov.tr/eskiler/2011/04/20110403-1.htm.

Resmî Gazete. 846 Sayılı Yüksek Seçim Kurulu Kararı. 23 September 2010. http://www.resmigazete.gov.tr/eskiler/2010/09/20100923-10.htm.

Sabah. "2010'da Avrupalıyız." 14 December 2002. http://arsiv.sabah.com.tr/2002/12/14/s0121.html.

Sabuncu, M. Yavuz and Selin Esen Arnwine. "Türkiye İçin Anayasa Şikayeti Modeli Türkiye'de Bireysel Başvuru Yolu." *Anaysa Yargısı*, no. 21 (2013): 229-41.

Sağlam, Fazıl. "Avrupa'da Haklar Çerçevesinde Türkiye." *Mülkiyeliler Birliği Dergisi*. No. 24 (2000): 71-111.

Sağlam, Musa. "Önsöz." In *Bireysel Başvuru "Anayasa Şikayeti"*, edited by Musa Sağlam, 1-22. Ankara: HUKAB, 2011.

Salihpaşaoğlu, Yaşar. "Avrupa İnsan Hakları Mahkemesi ve Türkiye: Bazı rakamlar ve Gerçekler." *Gazi Üniversitesi Hukuk Fakültesi Dergisi*, no. 13 (2009): 253-76.

Smith, Thomas W. "Leveraging Norms: The ECHR and Turkey's Human Rights Reforms." In *Human Rights in Turkey*, edited by Zehra F. Kabasakal Arat, 262-74. Pennsylvania: University of Pennsylvania Press, 2007.

Soysal, Mümtaz. "Uluslararası Anlaşmalar Konusunda Anayasa Yargısı." *Anayasa Yargısı*, no. 14 (1997): 171-87.

Sputnik. "Türkiye 2004-2016 yıllarında AİHM'e açılan davalarda 258 milyon lira tazminata mahkûm oldu." 2 October 2017. https://tr.sputniknews.com/columnists/201710021030394613-turkiye-aihm-tazminat/.

Şener, Hasan Engin. *Bir Fırsat Olarak İdari Reform Macaristan ve Türkiye'nin AB'ye Uyum Süreci*. Ankara: Phoenix Publish House, 2009.

Şirin, Tolga. "Türk Anayasa Mahkemesi'nin Bireysel Başvuru Kararlarının Değerlendirilmesi." In *Anayasa Mahkemesine Bireysel Başvuru Türkiye Uygulamasının Almanya ve Strazburg Ekseninde Karşılaştırılması*. Edited by Ece Göztepe and Mustafa Mert Alpbaz, 26-110. İstanbul: Oniki Levha, 2017.

Taşdelen, Okan. "Biri Sizi Gözetliyor: Avrupa İnsan Hakları Mahkemesi Penceresinden Bireysel Başvuru Hakkı." *HUKAB*. No. 2 (September 2012): 8.

T.C. Başbakanlık Avrupa Birliği Genel Sekreterliği. *Avrupa Birliği Uyum Yasa Paketleri*. Ankara, 2007.

The Commission of the European Communities. *2004 Regular Report on Turkey's Progress towards Accession*. Brussel: COM, 2004.

The Constitutional Court of the Republic of Turkey. "Short History." Accessed 18 October 2017. http://www.constitutionalcourt.gov.tr/inlinepages/constitutionalcourt/shorthistory.html.

The Constitutional Court of the Republic of Turkey. "Bireysel Başvuru Formu." Accessed 18 October 2017, http://anayasa.gov.tr/files/bireyselbasvuru/b_b.pdf.

The Constitutional Court of the Republic of Turkey. "22 Eylül 2012 - 31 Aralık 2017 Tarihleri Arası Bireysel Başvuru İstatistikleri." Accessed 14 June 2018, http://www.anayasa.gov.tr/icsayfalar/istatistikler/pdf/31122017_istatistik_tr.pdf.

The Constitutional Court of the Republic of Turkey. "Individual Application." Accessed 11 March 2018. http://www.constitutionalcourt.gov.tr/inlinepages/proceedings/IndividualApplication.html.

The Constitutional Court of the Republic of Turkey. *Türkan Altun*. No: 2012/388 (25 December 2012). https://kararlarbilgibankasi.anayasa.gov.tr/BB/2012/388.

The Constitutional Court of Turkey. *Sadık Koç and Others*. No: 2013/841 (2014). https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/841.

The Constitutional Court of Turkey. *Remziye Duman*. No: 2016/25923 (2017). https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/25923.

The Constitutional Court of Turkey. *Z.A*. No: 2013/2928 (2017). https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/2928.

The Constitutional Court of Turkey. *Cem Burak Karataş*. No: 2014/19152 (2017). https://kararlarbilgibankasi.anayasa.gov.tr/BB/2014/19152.

The Constitutional Court of Turkey. *Şahin Alpay*. No: 2016/16092 (11/01/2018). http://www.kararlaryeni.anayasa.gov.tr/Content/pdfkarar/2016-16092.pdf.

The Constitutional Court of Turkey. *Şahin Alpay (2)*. No: 2018/3007 (13/03/2018). https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/3007.

The Constitutional Court of Turkey. *Büğdüz Köyü Muhtarlığı*. No: 2012/22 (25/12/2012). http://kararlaryeni.anayasa.gov.tr/BireyselKarar/Content/85a1603c-5c71-40cf-8890-d549ed13fb90?wordsOnly=False.

The Constitutional Court of Turkey. *Yıllık Rapor 2017*. Ankara: The Constitutional Court, 2018. http://www.anayasa.gov.tr/icsayfalar/yayinlar/yillikraporlar/2017yillikrapor.pdf.

The Constitutional Court of Turkey. "Ohal Kanun Hükmünde Kararnameleri İle Yapılan İşlemler Ve Ohal Kapsamında Yapılan İdari İşlemlere Yönelik Bireysel Başvurular Hakkında Basın Duyurusu." Accessed 30 June 2018. *http://www.anayasa.gov.tr/icsayfalar/duyurular/detay/65.html*.

The Council of Europe. *Protocol No. 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms: Restructuring the Control Machinery Established Thereby*, Strasbourg, 1994. https://www.echr.coe.int/Documents/Library_Collection_P11_ETS155E_ENG.pdf.

The European Court of Human Rights. "50 Years of Activity ECHR: Some Facts and Figures." Accessed 13 April 2018. https://www.echr.coe.int/Documents/Facts_Figures_1959_2009_ENG.pdf.

The European Court of Human Rights. *Hasan Uzun vs. Turkey*. No: 10755/13 (2013). https://hudoc.echr.coe.int/tur#{"fulltext":["10755/13"],"itemid":["002-7546"]}.

The European Court of Human Rights. *The Conscience of Europe: 50 Years of the European Court of Human Rights*, London, 2010. https://www.echr.coe.int/Documents/Anni_Book_content_ENG.pdf.

The European Court of Human Rights. *Cyprus vs*. *Turkey*. No: 6780/74 (1975).

The European Court of Human Rights. *Cyprus vs*. *Turkey*. No: 25781/94 (2014).

The European Court of Human Rights. *Miran vs*. *Turkey*. No. 43980/04 (2009), https://hudoc.echr.coe.int/tur#{"itemid":["001-124021"]}.

The European Court of Human Rights. *Ali and Ayşe Duran vs. Turkey*. No: 42942/02 (2008). https://hudoc.echr.coe.int/tur#{"fulltext":["42942/02"],"itemid":["001-85767"]}.

2000).

The European Court of Human Rights. *Mehmet Emin Yüksel vs. Turkey*. No: 40154/98 (2004). https://hudoc.echr.coe.int/tur#{"fulltext":["40154/98"],"itemid":["001-61923"]}.

The European Court of Human Rights. *Nahkmanovich vs*. *Russia*. No: 55669/00 (2006). https://hudoc.echr.coe.int/tur#{"fulltext":["55669/00"],"itemid":["001-72633"]}.

The European Court of Human Rights. *Özgür Radyo-Ses Radyo Televizyon Yapım ve Tanıtım A.Ş vs. Turkey*. No: 64178/00 (2006). *https://hudoc.echr.coe.int/tur#{"itemid":["001-124419"]}*.

The European Court of Human Rights. *Times Newspaper Ltd*. *vs United Kingdom*. No: 23676/03 (2009). https://hudoc.echr.coe.int/tur#{"fulltext":["23676/03"],"itemid":["001-70942"]}.

The European Court of Human Rights. *Keenan vs*. *United Kingdom*. No: 27229/95 (2001). https://hudoc.echr.coe.int/tur#{"fulltext":["27229/95"],"itemid":["001-59365"]}.

The European Court of Human Rights. *Campbell vs*. *United Kingdom*. No: 13590/88 (1992). https://hudoc.echr.coe.int/tur#{"fulltext":["13590/88"],"itemid":["001-57771"]}.

The European Court of Human Rights. *New Horizons vs. South Cyprus*. No: 40436/98 (1998). https://hudoc.echr.coe.int/tur#{"fulltext":["40436/98"],"itemid":["001-4418"]}.

The European Court of Human Rights. *Özgürlük ve Dayanışma Partisi vs. Turkey*. No: 7819/03 (2012). https://hudoc.echr.coe.int/tur#{"fulltext":["7819/03"],"itemid":["001-110866"]}.

The European Court of Human Rights. *Times Newspapers Ltd vs. United Kingdom*. No: 3002/03 and 2367/03 (2009). https://hudoc.echr.coe.int/tur#{"fulltext":["3002/03"],"itemid":["001-91706"]}.

The European Court of Human Rights. *Lütfiye Zengin and others vs. Turkey*. No: 36443/03 (2015). https://hudoc.echr.coe.int/tur#{"itemid":["001-156967"]}.

The European Court of Human Rights. *Pretty vs. United Kingdom*. No: 23462/02 (2002). http://bib26.pusc.it/can/p_martinagar/lrgiurisprinternaz/HUDOC/Pretty/PRETTY%20vs%20UNITED%20KINGDOMen2346-02.pdf.

The European Court of Human Rights. *Jecius vs. Lithuania*. No: 34578/97 (2000). https://hudoc.echr.coe.int/tur#{"fulltext":["34578/97"],"itemid":["001-58781"]}.

The European Court of Human Rights. *Şık vs. Turkey*. No: 53413/11, (2014). https://hudoc.echr.coe.int/tur#{"itemid":["001-156177"]}.

The European Court of Human Rights. *Şahin Alpay vs. Turkey*. No: 16538/17 (20/03/2018). https://hudoc.echr.coe.int/tur#{"fulltext":["16538/17"],"itemid":["001-181866"]}.

The European Court of Human Rights. *Selahattin Encu and Others vs. Turkey*. No: 49976/16 (2018). https://anayasagundemi.files.wordpress.com/2018/05/encu-ve-digcc86erleri-v-tucc88rkiye.pdf.

The European Court of Human Rights. *Annual Report 2009*. Strasbourg: The ECHR, 2010. https://www.echr.coe.int/Documents/Annual_report_2009_ENG.pdf.

The European Court of Human Rights. *Annual Report 2017*. Strasbourg: The ECHR, 2018. https://www.echr.coe.int/Documents/Annual_report_2017_ENG.pdf.

The European Court of Human Rights. *Facts and Figures 2011*. Strasbourg: The ECHR, 2012. https://www.echr.coe.int/Documents/Facts_Figures_2011_ENG.pdf.

The European Court of Human Rights. *Facts and Figures 2012*. Strasbourg: The ECHR, 2013). https://www.echr.coe.int/Documents/Facts_Figures_2012_ENG.pdf.

The European Court of Human Rights. *Facts and Figures 2013*. Strasbourg: The ECHR, 2014. https://www.echr.coe.int/Documents/Facts_Figures_2013_ENG.pdf.

The European Court of Human Rights. *Facts and Figures 2014*. Strasbourg: The ECHR, 2015. https://www.echr.coe.int/Documents/Facts_Figures_2014_ENG.pdf.

The European Court of Human Rights. *Facts and Figures 2015*. Strasbourg: The ECHR, 2016. https://www.echr.coe.int/Documents/Facts_Figures_2015_ENG.pdf.

The European Court of Human Rights. *Facts and Figures 2016*. Strasbourg: The ECHR, 2017. https://www.echr.coe.int/Documents/Facts_Figures_2016_ENG.pdf.

The European Court of Human Rights. *Facts and Figures 2017*. Strasbourg: The ECHR, 2018. https://www.echr.coe.int/Documents/Facts_Figures_2017_ENG.pdf.

The European Court of Human Rights. *Analysis of Statistics 2011*. Strasbourg: The ECHR, 2012. https://www.echr.coe.int/Documents/Stats_analysis_2011_ENG.pdf.

The European Court of Human Rights. *Analysis of Statistics 2012*. Strasbourg: The ECHR, 2013. https://www.echr.coe.int/Documents/Stats_analysis_2012_ENG.pdf.

The European Court of Human Rights. *Analysis of Statistics 2013*. Strasbourg: The ECHR, 2014. https://www.echr.coe.int/Documents/Stats_analysis_2013_ENG.pdf.

The European Court of Human Rights. *Analysis of Statistics 2014*. Strasbourg: The ECHR, 2015. https://www.echr.coe.int/Documents/Stats_analysis_2014_ENG.pdf.

The European Court of Human Rights. *Analysis of Statistics 2015*. Strasbourg: The ECHR, 2016. https://www.echr.coe.int/Documents/Stats_analysis_2015_ENG.pdf.

The European Court of Human Rights. *Analysis of Statistics 2016*. Strasbourg: The ECHR, 2017. https://www.echr.coe.int/Documents/Stats_analysis_2016_ENG.pdf.

The European Court of Human Rights. *Analysis of Statistics 2017*. Strasbourg: The ECHR, 2018. https://www.echr.coe.int/Documents/Stats_analysis_2017_ENG.pdf.

TRT Haber. "Türkiye'den AİHM'e Yapılan Bireysel Başvuru Sayısı Azaldı." 25 January 2018. http://www.trthaber.com/haber/dunya/turkiyeden-aihme-yapilan-basvuru-sayisi-azaldi-347726.html.

Turkish Foreign Ministry. "İnsan Hakları: Hedefler ve Gelişmeler." Accessed 19 September 2017. http://www.mfa.gov.tr/insan-haklari_-hedefler-ve-gelismeler.tr.mfa.

Turkish Foreign Ministry. "Human Rights." Accessed 5 October 2017. http://www.mfa.gov.tr/insan-haklari_.tr.mfa.

Türkmen, Füsun. "Turkey's Participation in Global and Regional Human Rights Regimes." In *Human Rights in Turkey*, edited by Zehra F. Kabasakal Arat, 249-61. Philadelphia: University of Pennsylvania Press, 2007.

Türmen, Rıza. "Anayasa Mahkemesine Bireysel Başvuru." *Milliyet*. 13 January 2011. http://www.milliyet.com.tr/anayasa-mahkemesi-ne-bireysel-basvuru/riza-turmen/siyaset/yazardetayarsiv/14.01.2011/1338969/default.htm.

Uzun, Cem Duran. "Anaysa Mahkemesine Bireysel Başvuru Yolu (Anayasa Şikayeti) Beklentiler ve Riskler." *SETA Analiz Dergisi*, no.50 (2012): 3-25.

Venice Commission. *15 Temmuz 2016 Başarısız Darbe Girişimi Sonrasında Çıkarılan Olağanüstü Hal Kanun Hükmünde Kararnameleri Hakkındaki Görüş*. Strasbourg: Council of Europe, 2016. http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-tur.

Venice Commission. *Interim Opinion on the Draft Law on the High Council for Judges and Prosecutors of Turkey*. Strasbourg: The Council of Europe, 2010. http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)042-e.

Venice Commission. *Opinion on the Law on the Establishment and Rules of Procedure of the Constitutional Court of Turkey*. Strasbourg: The Council of Europe, 2011. http://www.venice.coe.int/webforms/documents/?opinion=612&year=all.

Yücel, Bülent, and İlker Gökhan Şen. *Anayasa Mahkemesi'ne Bireysel Başvuru Hakkı Sempozyumu*. Eskişehir: Anadolu Üniversitesi Hukuk Fakültesi Yayınları, 2011.

Zabunoğlu, Yahya. "Bireysel Başvuru Yolunun Açılması: Türkiye'de Yargı Kollarının Ayrılmasında Ortaya Çıkan Sorunlar." In *Bireysel Başvuru "Anayasa Şikâyeti"*. Edited by Musa Sağlam, 116-125. Ankara: HUKAB, 2011.

APPENDICES

A. TURKISH SUMMARY / TÜRKÇE ÖZET

Tüm tartışmaların ötesinde, Anayasa Mahkemesi'ne bireysel başvuru mekanizması, Türkiye'deki insan hakları gelişimi çerçevesinde önemli bir dönüm noktasıdır. Anayasa Mahkemesi tarafından, mekanizmanın başarılı uygulanması ve bu başarılı uygulamanın sürdürülebilirliğinin sağlanması durumunda, bireysel başvuru mekanizması hem iç hukukta hem de uluslararası ilişkilerde önemli katkılar sağlamaya devam edecektir. Bu yüksek lisans tezinde, Türkiye Cumhuriyeti Anayasa Mahkemesi'nin bireysel başvuru mekanizmasının, Türkiye'deki insan hakları gelişmeleri üzerindeki rolü analiz edilmiştir. Bu çalışmada, bireysel başvuru mekanizmasının Avrupa standartları doğrultusunda Türkiye'deki insan haklarının gelişimi için etkili bir iç çözüm yolu olup olmadığı incelenmiş olup, Anayasa Mahkemesi kararlarının Avrupa İnsan Hakları Mahkemesi kararlarıyla tutarlı olup olmadığı tartışılmıştır.

Tezde temel olarak, Türkiye'nin Avrupa topluluğunun bir parçası olmayı istemesinin başlangıcından buyana, insan hakları alanında pek çok yasal yenilik yapılmış olmasına rağmen, bu alandaki en önemli gelişmelerin başında 2012 yılında hayata geçirilen bireysel başvuru mekanizmasının geldiği savunulmuştur. Bu savunmada, bireysel başvuru mekanizmasının etkinliğinin analizi için Anayasa Mahkemesi'nin kararları esas alınmıştır. Anayasa Mahkemesi'nin kararları, Avrupa İnsan Hakları Mahkemesi'nin benzer konularda daha önceki başvurularda vermiş olduğu kararlarla karşılaştırılmış olup, iki mahkemenin kararları arasındaki benzerlik ve uyum incelenmiştir. Mekanizmanın sadece içsel ve dışsal gelişimi incelenmemiş olup, aynı zamanda mekanizmaya ait güncel sorunlar ve eksiklikler

de ele alınmıştır. Bireysel başvuru mekanizması çerçevesinde, literatür taramasının yanı sıra, mahkeme kararları, Venedik Komisyonu görüşleri, mahkeme istatistikleri ve yasal mevzuat incelenmiş olup, Avrupa İnsan Hakları Sözleşmesi ve Türkiye Cumhuriyeti Anayasa'sı temel alınmıştır. Tezin birinci bölümünde, çalışmada ele alınacak konulara ilişkin genel bir giriş yapılmıştır. İkinci bölümünde ise, 2004 ve 2010 yılları arasında Türkiye'deki insan hakları alanındaki yasal gelişmeler incelenmiştir. İkinci bölümde, öncelikle Türkiye ve Avrupa İnsan Hakları Mahkemesi arasındaki ilişkiler genel anlamda özetlenmiştir. 1950 yılında Avrupa İnsan Hakları Sözleşmesi'ni imzalayan ilk ülkelerden biri olan Türkiye, 1987 yılında Avrupa İnsan Hakları Mahkemesi'nin bireysel başvuru mekanizmasını kabul etmiştir. Bireysel başvuru mekanizmasının kabulünün ardından, Avrupa İnsan Hakları Mahkemesi tarafından 90'lı yıllarda Türkiye aleyhine verilen insan hakları ihlallerine ilişkin kararlar, Türkiye'deki yasal sistemin dönüşümünde etkili bir rol oynamaktadır.

Avrupa İnsan Hakları Mahkemesi, ilişkilerin başlangıcından bu yana hem Türkiye'deki insan hakları alanındaki gelişmeleri desteklemiş hem de özellikle adil yargılanma hakkı ve yaşama hakkı gibi temel hak ve özgürlükler çerçevesinde Türkiye'yi ciddi bir şekilde eleştirmiştir. Yıllar boyu kötü giden insan hakları karnesi ve Avrupa topluluğu tarafından gelen ciddi eleştiriler neticesinde, özellikle 1999 yılındaki Avrupa Birliği adaylığının resmileşmesinin ardından, Türkiye, insan hakları alanındaki gelişmelere hız vermiştir.

Avrupa Birliği'ne aylık sürecinde, insan hakları gelişmeleri Türkiye tarafından önemli bir dış politika aracı olarak görülmüş olup, özellikle Kopenhag kriterlerine uyum amacıyla pek çok yasal geliştirme için 2000'li yılların başından itibaren çalışmalar hızlanmıştır. Bu bağlamda, 1999-2004 yılları arasında insan hakları alanında diğer dönemlere kıyasla görece pozitif bir dönem yaşanmış olup, özellikle 2001 yılındaki 4709 sayılı anayasa değişikliği ve Medeni Kanun ile Ceza Kanunu çerçevesindeki değişiklikler başta olmak üzere önemli yasal gelişmeler yapılmıştır. Kopenhag kriterleri ve 8 adet Uyum Paketi kapsamında çok sayıda Avrupa düzenlemeleriyle uyumlu değişiklikler hayata geçirilmiştir. 2004 yılında Uyum

Paketlerinin başarılı olarak tamamlanması ve Türkiye'nin son yıllardaki 218 anayasa değişikliği ve 53 kanun değişikliğiyle insan hakları alanındaki gayreti, 2004 yılında AB'nin Türkiye ile üyelik müzakerelerinin başlanmasına karar vermesinde etkili olmuştur. Tüm bu gelişmeler ışığında, Türkiye'deki insan hakları gelişmelerinde bir dönüm noktası kabul edilen 2004 yılı, ikinci bölümün başlangıç tarihi seçilmiş olup, ilgili bölüm bir diğer dönüm noktası olan 2010 yılı ile sona ermiştir. 2004 yılında müzakerelerin başlamasına yönelik alınan kararlar ardından, 2005 yılında Türkiye ve Avrupa Birliği arasındaki müzakere süreci başlamıştır. Fakat, yasal düzenlemelerdeki isteğe rağmen uygulamada sonuç alınamaması, Avrupa Birliği'ndeki bazı politikacıların Türkiye'nin üyeliğine yönelik negatif tutumu, üyelik sürecinin uzamasıyla Türkiye tarafında da isteğin azalması gibi etkenler müzakere sürecinin yavaşlamasına neden olmuştur. 2004-2010 yılları arasındaki insan hakları alanındaki yasal gelişmeler incelendiğinde, 2004 yılına kadar olan insan hakları gelişmelerindeki hızın, zamanla yavaşladığı görülmektedir. 2004 yılındaki 5170 sayılı anayasa değişikliğiyle önemli gelişmeler yaşanmış olsa da bundan sonraki dönemde Türkiye'nin Avrupa Birliği üyeliğindeki yavaşlamaya paralel olarak insan hakları alanındaki yasal gelişmelerde de yavaşlama gözlemlenmiştir.

Öte yandan, 1959-2009 yılları arasındaki Avrupa İnsan Hakları Mahkeme'sinin istatistikleri incelendiğinde, mahkeme tarafından verilen kararların %19'unun Türkiye'ye ait olduğu ve insan hakları ihlallerinde Türkiye'nin yıllar boyunca en yüksek ihlal adetine sahip ülkelerin başını çektiği görülmüştür. Türkiye aleyhine verilen toplamdaki 2,295 kararın 2,017'sinin (%88) en az bir ihlal kararıyla sonuçlandığı ve ihlal kararlarının üçte birinin adil yargılanma hakkıyla ilgili olduğu görülmektedir. Dolayısıyla, insan hakları alanında yasal düzenlemeler getirilmiş olmasına rağmen, bu yasal düzenlemelerin uygulamada başarılı olmadığı sonucuna ulaşılmaktadır. İkinci bölüm, Türkiye'deki insan hakları gelişmelerine ait bir diğer önemli tarih olan ve aynı zamanda bir dönüm noktası olan 2010 yılında Anayasa Mahkemesi'nin bireysel başvuru mekanizmasının kabulüyle sona ermektedir. 5982 Sayılı Anayasa Değişikliği Hakkındaki Kanun, 13 Mayıs 2010 tarihinde resmî gazetede yayınlanmış ve 12 Eylül 2010 tarihinde düzenlenen referandum sonucunda

da yürürlüğe girmiştir. 5982 sayılı kanun neticesinde Anayasa'nın 148 ve 149 numaralı maddelerinde yapılan değişikliklerle, bireysel başvuru mekanizması yasal zemin kazanmış olup, 23 Eylül 2012 tarihinden itibaren de mekanizma uygulamaya alınmıştır. Tezin üçüncü bölümünde, bireysel başvuru mekanizmasının içeriği, tanımı, amaçları ve süreçleri ele alınarak, bireysel başvuru mekanizmasının kapsamı ve yasal dayanakları hakkında bilgi verilmiştir. 2011 yılında yürürlüğe giren 6216 Sayılı Anayasa Mahkemesi'nin Kuruluşu ve Yargılama Usulleri Hakkındaki Kanun'un 45. maddesine göre "Herkes, Anayasa'da güvence altına alınmış temel hak ve özgürlüklerinden Avrupa İnsan Hakları Sözleşmesi ve buna ek Türkiye'nin taraf olduğu protokoller kapsamındaki herhangi birinin kamu gücü tarafından ihlal edildiği iddiasıyla Anayasa Mahkemesi'ne başvurabilir."[543] Söz konusu ifadeden yola çıkarak, Anayasa Mahkemesi'nin bireysel başvuru mekanizmasının, Avrupa İnsan Hakları Sözleşmesini ve Türkiye Cumhuriyeti Anayasasını temel aldığı, bireylerin kamu güçleri tarafından yapılan hak ihlallerine karşın anayasal bir güvence sağladığı anlaşılmaktadır.

Üçüncü bölümde, bireysel başvuru mekanizmasının diğer yasal yollardan ayrılan özelliklerine, mekanizma kapsamında yer alan hak ve özgürlüklere, başvuruculaların taşıması gereken özelliklere, bireysel başvuru hakkı olan ve olmayan gerçek ve tüzel kişiliklere ve bireysel başvurunun Anayasa Mahkemesi tarafından incelenme süreçlerine yer verilmiştir. Özellikle Komisyonlar tarafından yapılan kabul edilebilirlik incelemelerine ve bir başvurunun kabul edilebilir bulunmasındaki gerekli şekil şartlarına, başvuru sürelerine ve açıkça dayanaktan yoksunluk hükümlerine detaylı olarak yer verilmiştir. Komisyonlar tarafından kabul edilebilir bulunan bir başvurunun, Bölümler tarafından tabi tutulduğu esasa ilişkin incelemeler, karar verme süreçleri ve incelemeler neticesinde verilen karar türleri incelenmiştir. İlgili bölümde, 50 yıldan uzun bir süredir bireysel başvuru mekanizmasına sahip, Federal Alman Anayasa Mahkemesi'ndeki bireysel başvuru

[543] 6216 sayılı Anayasa Mahkemesinin Kuruluşu ve Yargılama Usulleri Hakkında Kanun, *Resmi Gazete*, March, 3, 2011. http://www.resmigazete.gov.tr/eskiler/2011/04/20110403-1.htm. Hereafter: Resmi Gazete, *6216 Sayılı Kanun*.

mekanizması incelenmiş ve Türkiye'deki mekanizma ile karşılaştırılması yapılmıştır. Tezin dördüncü ve bireysel başvuru mekanizmasının etkinliğine ilişkin tartışmaların ana hatlarıyla yer aldığı bölümünde, öncelikle 2010-2012 yılları arasındaki geçiş süreci incelenmiş ve Anayasa Mahkemesi'nin 25 Aralık 2012 tarihinde verdiği ilk bireysel başvuru kararı incelemiştir. Söz konusu incelemeden sonra, çalışmanın dördüncü bölümü 4 ana başlıkta incelenmiştir: "2012 Yılından İtibaren Anaysa Mahkemesi Kararları Üzerinde Genel Değerlendirme", "23 Eylül 2012-31 Aralık 2017 Arasında Anayasa Mahkemesi'nin Bireysel Başvuru Mekanizmasına İlişkin İstatiksel Veriler", "Anayasa Mahkemesi'nin Bireysel Başvuru Mekanizmasının Etkinliği" ve "Bireysel Başvuru Mekanizmasının Güncel Eksiklikleri ve Sorunları".

2012-2017 yılları arasında Anayasa Mahkemesinin verdiği bireysel başvurulara ilişkin genel değerlendirmeleri içeren birinci bölümde, öncelikle, Anayasa Mahkemesi'nin verdiği 25 Aralık 2012 tarihli ilk karardan, Aralık 2017 dönemindeki kararlara ilişkin beş yıllık süreç genel hatlarıyla anlatılmıştır. İlgili kısımda temel dayanak Anayasa Mahkemesi kararları ve Avrupa İnsan Hakları Mahkemesi'nin benzer konulardaki önceki dönemlerde verdiği kararlarıdır. Söz konusu başlıklarda, mahkeme kararları detaylı olarak incelenmiş olup, inceleme neticelerine özetler halinde yer verilmiştir.

İlk olarak, 2012 ve 2013 yıllarındaki Anayasa Mahkeme'sinin kabul edilebilirlik incelemesine yoğunlaştığı dönem ele alınmış olup, mahkemeye yapılan bu dönemdeki 9,897 başvuru arasından "30 gün kuralı", "kabul edilebilirlik kriterleri", "tüm iç hukuk yollarının tüketilmesi" ve "açıkça dayanaktan yoksunluk" gibi mahkemenin daha yoğun bir şekilde uğraştığı konular ele alınmıştır. Her bir konu başlığına ilişkin, dava örneklerine yer verilmiştir. İncelenen dava örnekleri neticesinde, Anayasa Mahkemesi'nin kabul edilebilirlik incelemelerinde ve esasa ilişkin değerlendirmelerde, Avrupa İnsan Hakları Mahkemesi'nin içtihatlarından faydalandığı, her bir dava özelinde konuyla ilgili yasal düzenlemelerin haricinde, başta Avrupa İnsan Hakları Mahkemesi kararları olmak üzere uluslararası düzenlemelere atıfta bulunduğu ve kararlarını düzenlemelerle uyumlu bir şekilde

verdiği neticesine ulaşılmıştır. 2014-2015 yıllarında, Anayasa Mahkemesi'ne yapılan bireysel başvuru sayısı 20,578'e ulaşmış olup, söz konusu döneme kadar kabul edilebilirlik kriterlerine ilişkin bir açıklık getiren Mahkeme, bu dönemde daha çok temel insan hakları ihlallerine yoğunlaşmıştır. Özellikle yaşama hakkı, işkence, insanlık dışı ve onur kırıcı muameleye tabi tutulmama hakkı, hürriyet ve güvenlik hakkı, adil yargılanma hakkı, düşünceyi yayma ve haberleşme hakkı ve seçme ve seçilme hakkı gibi temel hak ve hürriyetler kapsamında pek çok mahkemenin gündemini oluşturmuştur. 2014-2015 yıllarının anlatıldığı tezin ilgili bölümlerde her bir hak ve hürriyet başlığı altında, dönüm noktası niteliğinde olan birer dava örneği seçilmiştir. Seçilen her bir dava örneğinde, davanın kurgusu, tarafların iddiaları ve Anayasa Mahkemesi'nin yargılama süreçleri anlatılmış olup, konuyla ilgili Avrupa İnsan Hakları Mahkeme'sinin içtihadıyla ilgili örneklere yer verilmiştir. Verilen örneklerde, Anayasa Mahkemesi'nin nihai kararlarının, Avrupa İnsan Hakları Mahkeme'sinin içtihadıyla uyumlu olduğu neticelerine ulaşılmıştır.

2016-2017 yıllarında Anayasa Mahkeme'sine yapılan bireysel başvuru sayısı 80,756'ya ulaşmış olup, bu dönemde mahkemenin incelediği hak ve özgürlük alanlarının çeşitlendiği ve genişlediği görülmüştür. Bu dönemde, eşcinsel hakları gibi mahkemenin daha önce oldukça seyrek ele aldığı konularda da önemli kararlar verdiği görülmektedir.

Öte yandan, 2016-2017 yılları arasında, Anayasa Mahkemesi'nin esas gündemini 15 Temmuz darbe girişimi neticesinde verilen Olağanüstü Hal Kararlarına (OHAL) ilişkin başvuruların oluşturduğu görülmektedir. 2017 yılındaki, 40,530 yeni başvuruyla birlikte, mahkemenin bekleyen dava sayısı 2017 yılı içinde 126,093'e ulaşmış olup, davaların yüzde 97'si bu dönemde neticelendirilmiştir. Neticelendirilen başvuruların yüzde 82'si, Olağanüstü Hal Komisyonunun verdiği kararlar neticesinde Anayasa Mahkemesi'ne yapılan başvurulardan oluşmaktadır. Özellikle 2017 yılında Anayasa Mahkemesi'nin iş yükünün ve odak noktasının temelini, Fethullahçı Terör Örgütü'nün (FETÖ) 15 Temmuz 2016 tarihindeki darbe girişimi sonrasında kurulan Olağanüstü Hal Komisyonu'nun verdiği kararlar neticesinde Anayasa Mahkemesi'ne bireysel başvuru mekanizması aracıyla yapılan

itirazlar oluşturmaktadır. OHAL kararları çerçevesindeki başvuruların büyük bir kısmında, başvuruların ilk olarak OHAL İnceleme Komisyonu'na yapılmadan Anayasa Mahkemesi'ne başvurması nedeniyle, iç hukuk yollarının tamamı tüketilmeden Anayasa Mahkemesi'ne başvurulduğu ve kabul edilemez bulunduğu görülmüştür.

Öte yandan, başvuruların büyük bir kısmı meslekten çıkarma kararlarından oluşmakta olup, OHAL kararlarına ilişkin örnek teşkil eden başvuru tarihi 2016 ve karar tarihi Temmuz 2017 olan Remziye Duman davası ve karar tarihi Nisan 2018 olan aynı zamanda Avrupa İnsan Hakları Mahkemesi'ne taşınan Şahin Alpay davası tezin ilgili kısımlarında detaylarıyla incelenmiştir. İncelemeler neticesinde, Anayasa Mahkemesi'nin Avrupa İnsan Hakları Mahkeme'sinin içtihadıyla paralel karar verme eğilimindeki ısrarcı tutumu ve titiz değerlendirmeleri Avrupa İnsan Hakları Mahkemesi tarafından olumlu değerlendirilmiştir. Özellikle Alpay davasındaki Avrupa İnsan Hakları Mahkeme'sinin yorumları ve Venedik Komisyonu'nun Türkiye'deki OHAL kararlarına ilişkin görüşü incelendiğinde, Anayasa Mahkemesi'nin bireysel başvuru mekanizmasının etkinliğinin OHAL döneminde de sürdürüldüğü neticesine ulaşılmıştır.

23 Eylül 2012-31 Aralık 2017 tarihleri arasındaki Anayasa Mahkemesi'nin istatiksel verilerinin incelendiği ikinci bölümde, Anayasa Mahkeme'si tarafından yayınlanan analiz raporlarındaki istatiksel veriler ele alınmıştır. Söz konusu dönemde Anayasa Mahkemesi'ne toplamda 173,479 başvurunun yapıldığı görülmektedir. Bu bölümde, başvuruların yüzde 65'inin adil yargılanma hakkına ait olması, yüzde 79'unun 2017 yılına kadar karara bağlanmış olması, karara bağlanan başvuruların yüzde 82'sinin kabul edilemezlik kararıyla sonuçlanması gibi önemli noktalar ele alınmıştır. Anayasa Mahkemesi'nin bireysel başvuru mekanizmasının etkinliğinin incelendiği üçüncü bölümde, mekanizmanın gelişimi içsel ve dışsal olmak üzere iki başlık altında incelenmiştir. Dışsal gelişimde en temel göstergeyi, Türkiye'deki bireysel başvuru mekanizmasının kabulünden önceki ve sonraki dönemlerde, Avrupa İnsan Hakları Mahkeme'sine Türkiye aleyhine yapılan başvuru adetlerinin ve ihlal adetlerinin oluşturduğu savunulmuştur. Savunmanın en temel

noktasını, bireysel başvuru mekanizmasının etkinliği için Avrupa İnsan Hakları Mahkemesi'ne mekanizmanın kabulünün ardından Türkiye aleyhine yapılan başvuru sayılarında ve ihlal kararlarında azalma görülmesi oluşturmaktadır. Avrupa İnsan Hakları Mahkemesi'ne mekanizmanın kabulünün ardından yapılan başvuru ve ihlal kararı adetleri karşılaştırıldığında, bireysel başvuru mekanizması sayesinde başvuru adetlerinde ve ihlal kararı adetlerinde bir azalmanın yaşandığı görülmektedir.

Beş yıllık dönemde Anayasa Mahkemesi'nin ihlal kararı verdiği 2,536 başvuru, Avrupa İnsan Hakları Mahkemesi'ne götürülmeden iç hukuk yollarıyla çözüme kavuşturulmuştur. Bireysel başvuru mekanizmasının kabulünden önceki dönemde, Avrupa İnsan Hakları Mahkemesi'ne üye devletler arasında en yüksek başvuru adetine ve ihlal kararı adetine sahip ülke olan Türkiye'nin, bireysel başvuru mekanizmasının kabulünün ardından 5nci sıraya kadar düştüğü gözlemlenmiştir. İhlal ve başvuru adetlerinin düşmesinin bir diğer sonucu olarak, Türkiye'nin Avrupa İnsan Hakları Mahkemesi tarafından verilen her bir ihlal kararı neticesinde ödemekle yükümlü olduğu tazminat miktarlarının da yıllar boyu düştüğü sonucunda ulaşılmıştır.

Başvuru adetlerinin ve ihlal adetlerinin düşmesi, Türkiye'deki insan hakları sorunlarının çözümünde iç çözüm yollarının etkinliğinin arttırıldığının yanı sıra, uluslararası anlamda Türkiye'nin insan hakları imajının iyileştirildiğinin de bir işaretidir. Dolayısıyla, bireysel başvuru mekanizmasının sadece yasal süreçlerdeki gelişmelerine değinilmemiş olup, özellikle uluslararası ilişkilerdeki pozitif katkıları da ele alınmıştır. Bireysel başvuru mekanizması, Türkiye'nin Avrupa toplulukları tarafından uzun yıllardır eleştirilmesine neden olan insan hakları konularında, etkili bir çözüm sağlamaktadır. İçsel gelişimde ise, bireysel başvuru mekanizması, oluşan insan hakları ihlallerinin ortadan kaldırılması ve gelişen içtihat sayesinde benzer ihlallerin önlenmesi gibi temel konularda katkı sağlamaktadır. Anayasa Mahkemesi, Avrupa İnsan Hakları Mahkemesi'ne kıyasla davaları ülkenin kendi değerlerine, tarihine, geleneklerine ve yerel mahkemelerin içtihadına göre ele alabilmesi, daha neticelerinin daha kalıcı sonuçlar vermesine yarar sağlamaktadır. Ayrıca, Anayasa

Mahkemesi'nin yerel mahkemeler üzerinde doğrudan etki etme gücünün bulunması gibi nedenlerden dolayı, daha hızlı ve etkili olacağı savunulmaktadır. Anayasa Mahkemesi'nin 5 yılda yaklaşık 137 bin başvuruyu karara bağlama performansı ile Avrupa İnsan Hakları Mahkemesi'nin bir başvuruyu yaklaşık 18 ayda sonuçlandırabilmesi performansı karşılaştırıldığında, Anayasa Mahkemesi'nin daha hızlı bir hukuk yolu olduğu görülmektedir. Dolayısıyla, bir başvurunun Anayasa Mahkemesi tarafından bir iç hukuk yolunda çözüme ulaştırmasının etkili bir yöntem olduğu değerlendirilmiştir.

Bireysel başvuru mekanizma, Türkiye'deki insan hakları alanındaki yasal düzenlemelere, uluslararası standartlarda bir katkı sağlamış ve ulusal hukuku, uluslararası insan hakları hukukuyla uyumlu hale getirmiştir. Bireysel başvuru mekanizmasının kabulüyle, Türkiye Cumhuriyeti Anayasa'sı Avrupa İnsan Hakları Sözleşmesi'yle bütünleşerek, uluslararası bir nitelik kazanmıştır. Anayasa Mahkemesi'nin yerel mahkemeler üzerindeki üstünlük rolü ve etkileyici gücü dikkate alındığında, Anayasa Mahkemesi'nin vereceği ihlal kararlarının, Avrupa İnsan Hakları Mahkemesi tarafından verilecek ihlal kararlarına kıyasla yerel mahkemeler tarafından daha fazla dikkate alınacağı değerlendirilmiştir. Söz konusu durumun, yerel mahkemeler tarafından Avrupa İnsan Hakları Mahkemesi içtihadının benimsenmesinde katkı sağlayacağı gibi, zamanla yerel mahkemeler bu içtihada uygun karar verme eğilimini arttırarak hem Anayasa Mahkemesi'ne hem de Avrupa İnsan Hakları Mahkemesi'ne yapılan başvurularda bir azalmanın görülmesinin ilerleyen dönemlerde pozitif bir katkı sağlayacağı öngörülmektedir.

Bireysel başvuru mekanizmasının güncel sorunlarının ve eksikliklerinin incelendiği dördüncü bölümde, mekanizmanın Türkiye'deki insan hakları gelişiminde etkili bir çözüm olmasının yanı sıra, halihazırda birtakım eksikliklerinin ve çözülmeyi bekleyen problemlerinin de olduğu vurgulanmıştır. Mekanizmanın sadece olumlu katkılarını ele almanın bütüncül bir yaklaşım olmayacağı değerlendirilerek, mekanizmaya ilişkin eksiklikler ve sorun üreten alanlar da ele alınmıştır. Özellikle;

- Kanun yollarında gözetilmesi gereken hususlarda Anayasa Mahkemesi tarafından bireysel başvuru kapsamında inceleme yapılamaması,
- Kamu tüzel kişiliklerinin Anayasa Mahkemesi'ne bireysel başvuru hakkının bulunmaması,
- Anayasada ve Avrupa İnsan Hakları Sözleşmesinde açıkça belirli olmayan ve ikisinin de kapsama alanı dışında kalan hak ve özgürlüklerin mekanizmaya konu edilip edilmeyeceğine ilişkin net bir işleyişin bulunmaması,
- Anayasa Mahkemesi'nin yargı denetimi dışında kalan bazı işlemlerin ve kararların bireysel başvuru mekanizmasının dışında bırakılması,
- Avrupa İnsan Hakları Mahkemesi tarafından Türkiye'deki bireysel başvuru mekanizmasının etkili bir iç hukuk yöntemi olarak kabul edilmesinin sürdürülüp sürdürülemeyeceği

gibi eksiklikler ve sorun teşkil eden hususlar ele alınmıştır. Eksiklikler ve sorun teşkil eden hususlar ele alınırken, konuyla ilgili literatür taraması bulgularına yer verilmiş olup, aynı zamanda bireysel başvuru mekanizmasının dünyada en iyi örneklerinden birine sahip Federal Alman Anayasa Mahkemesi'nin işleyişiyle kıyas yapılmıştır.

Tespit edilen eksikliklerin ve sorunlu hususların ele alınmasının ardından, son olarak, 15 Temmuz 2016 tarihindeki darbe girişiminin ardından ilan edilen Olağanüstü Hal döneminde Anayasa Mahkemesi'ne yapılan başvurular kapsamında Anayasa Mahkemesi'nin verdiği bireysel başvuru kararlarının, mekanizmanın etkinliğinin değerlendirilmesinde kritik önem taşıdığı değerlendirilmiştir. Özellikle, Anayasa Mahkemesi'nin Şahin Alpay davasındaki kararlı ve Avrupa standartlarındaki tutumunun ilerleyen dönemlerde de sürdürülebilirliğinin sağlanmasının kritik olduğu vurgulanmıştır. 2016 ve 2017 yıllarında, Anayasa Mahkemesi'nin gündemini oluşturan OHAL kararlarıyla ilişkin başvurularda, Anayasa Mahkemesi tarafından izlenecek tutumun, önümüzdeki dönemlerde mekanizmanın etkinliğinin odak noktasını oluşturduğu değerlendirilmektedir. 2017

yılında Avrupa İnsan Hakları Mahkemesi'ne Türkiye'den OHAL kararlarıyla ilgili yapılan başvuruların 27,000 adeti, Avrupa İnsan Hakları Mahkemesi tarafından kabul edilemez bulunmuştur. Bunun sebebi ise, söz konusu başvuruların Anayasa Mahkemesi'ne başvuru adımı tamamlanmadan Avrupa İnsan Hakları Mahkemesi'ne yapılması nedeniyle iç hukuk yollarının tamamının tüketilmediği gerekçesiyle kabul edilemez bulunmuştur. Bu durumdan yola çıkarak, söz konusu başvuruların Anayasa Mahkemesi tarafından iç hukukta çözüme kavuşturulmasının ve mahkemenin etkili ve ulaşılabilir olmaya devam etmesinin, mekanizmanın geleceğinde kritik öneme sahip olduğu değerlendirilmiştir.

Nisan 2018 dönemine ait Alpay davasında görüldüğü gibi, Anayasa Mahkemesi'nin bu konudaki tutarlı ve Avrupa İnsan Hakları Mahkemesi kararlarıyla uyumlu performansı önemli bulunmakla birlikte, bu performansının sürdürülebilirliği de mekanizmanın etkili olduğuna ilişkin değerlendirmelerin devam edebilmesi adına kritik önem taşımaktadır. Tüm değerlendirmelerin özetinde, Türkiye Cumhuriyeti Anayasa Mahkemesi'nin Eylül 2012'den uygulamaya aldığı bireysel başvuru mekanizmasının 2012-2017 yılları arasındaki beş yıllık gelişim süreci, mahkeme kararları, yasal düzenlemeler ve Avrupa İnsan Hakları Mahkemesi içtihadı ışığında incelenmiş olup, bireysel başvuru mekanizmasının etkin bir iç çözüm yolu olduğu sonucuna ulaşılmıştır.

Tez boyunca yapılan tüm tartışmalar neticesinde, bireysel başvuru mekanizması kapsamında Anayasa Mahkemesi kararlarının, Avrupa İnsan Hakları Mahkeme'sinin içtihadıyla uyumlu olmasının bir sonucu olarak, mekanizmanın içsel ve dışsal anlamda Türkiye'deki insan hakları gelişiminde olumlu katkılar sağladığı değerlendirilmiştir. Özellikle Avrupa İnsan Hakları Mahkemesi'ne yapılan başvuru sayısının ve ihlal kararı sayısının azaltmasının neticesinde, bireysel başvuru mekanizmasının hem uluslararası ilişkiler çerçevesinde hem de iç hukuk gelişimi çerçevesinde dönüm noktası niteliğinde etkili bir gelişme olduğu savunulmuştur. 2000'li yılların başından beri Türkiye'deki insan hakları alanındaki tüm yasal gelişmeler incelendiğinde, bireysel başvuru mekanizmasının en önemli yasal yenilik olduğu sonucuna ulaşılmıştır. Sağladığı yasal düzenlemeler ve iç

hukuk yolunun dışında, beş yıllık süreçte verdiği kararların değerlendirilmesinin neticesinde uygulamada da başarılı olması mekanizmanın önemini bir kez daha ön plana çıkarmaktadır. 5 yılı aşkın bir süredir uygulamada olan bireysel başvuru mekanizmasının halihazırda güncel problemleri ve henüz tamamlanmamış eksik yanları olsa da uluslararası standartlarda önemli bir dönüm noktası olduğu neticesine ulaşılmıştır.

Bu düşüncenin en temel dayanağını ise, tez boyunca örneklerle anlatılan mahkeme kararları oluşturmaktadır. Anayasa Mahkemesi'nin verdiği bireysel başvuru kararları, Avrupa İnsan Hakları Mahkemesi'nin benzer konularda önceki dönemlerde verdiği kararlarla karşılaştırdığında, iki mahkeme kararları arasındaki benzerlik, Anayasa Mahkemesi'nin ihlal kararı verme yönündeki yüksek eğilimi ve Avrupa İnsan Hakları Mahkemesi'ne kıyasla davaları daha hızlı bir şekilde çözümleme yöntemi göz önünde alındığında, etkili bir çözüm sağladığı anlaşılmaktadır. Nitekim hem Anayasa Mahkemesi'ne hem de Avrupa İnsan Hakları Mahkemesi'ne başvuru yapılan Hebat Aslan ve Firas Aslan dava örneğinde de görüldüğü gibi, Avrupa İnsan Hakları Mahkeme'de Anayasa Mahkemesi'nin bireysel başvuru mekanizmasının etkin bir iç hukuk yolu olduğu görüşünü paylaşmaktadır. Söz konusu dava örneğinde de görüldüğü gibi, Avrupa İnsan Hakları Mahkemesi, Anayasa Mahkemesi tarafından verilen ihlal kararlarını yeniden inceleme gereği duymamakta ve Anayasa Mahkemesi'ne başvuru yapılmadan kendisine gelen başvuruları kabul edilmez bulup incelememektedir.

Nihai olarak, Avrupa İnsan Hakları Mahkemesi tarafından da etkili kabul edilen ve etkinliğine ilişkin bu yüksek lisans tezi boyunca detaylı analizler yapılan bireysel başvuru mekanizmasının, etkin bir yasal yol olma özelliğinin sürdürülebilmesi için şüphesiz ki Anayasa Mahkemesi'nin bu yöndeki tutumunun sürdürülebilirliği oldukça önemlidir. Anayasa Mahkemesi incelediği bireysel başvurularda Avrupa İnsan Hakları Mahkemesi standartlarında karar vermeye devam ettikçe ve yerel mahkemeler Anayasa Mahkemesi içtihatlarına uyum sağlayan kararlar vermede daha çok deneyim kazandıkça, bireysel başvurunun Almanya örneğinde olduğu gibi insan hakları alanında önemli katkılar sağlamaya devam edeceği değerlendirilmiştir.

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TEZİN TÜRÜ / DEGREE: **Yüksek Lisans** / Master ■ **Doktora** / PhD ☐

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