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WHAT DO THE NINE-YEAR STATISTICS OF THE CONSTITUTIONAL COMPLAINT (INDIVIDUAL APPLICATION) MECHANISM ON ADMISSIBILITY AND ITS IMPLEMENTATION IN TURKEY TELL US? SOME QUESTIONS ON THE IMPLEMENTATION OF THE ADMISSIBILITY(*)

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Abstract: The Turkish Constitutional Court (CC) celebrates its 60th anniversary in 2022 and it is on the way of the first decade of its activity with constitutional complaint. Tons to raising the standards of fundamental rights and freedoms. However, in order to be a national filter on the way to the ECtHR in the sense of Article 35(1) of the ECHR, a national remedy under Article 13 of the ECHR must be *"effective"* and *"accessible"*. This article discusses the nine-year statistics of the constitutional complaint mechanism on admissibility and its implementations in Turkey, as of 23 September 2012, the date on which the mechanism was implemented, subsequently raising some questions on *"admissibility criterias"* with regard to *"accessibility"* of the mechanism in particular and *"principle of effectiveness"* of the mechanism in general with regard to admissibility, and puts forward some critics and new suggestions with regard to the implementation of the admissibility criterias. The CC must extend its approach in favour of the applicants as it is the last domestic institution to remedy and redress the contested human rights violation. Accordingly, the CC should have the opportunity and resources to effectively cope with the additional caseload.

Keywords: Constitutional Complaint, Individual Application, Constitutional Court, Admisibility Criterias, Accessibility.

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TÜRKİYE'DE ANAYASAL ŞİKÂYET (BİREYSEL BAŞVURU) MEKANİZMASINA İLİŞKİN DOKUZ YILLIK İSTATİSTİKLER BAĞLAMINDA KABUL EDİLEBİLİRLİK UYGULAMASI BİZE NE ANLATIYOR? KABUL EDİLİRLİK UYGULAMASI İLE İLGİLİ BAZI SORULAR

Öz: Türk Anayasa Mahkemesi (AYM) 2022'de, kuruluşunun 60. yılını kutlayacak ve anayasal şikâyet mekanizmasının hayata geçirilmesi bakımından da ilk onuncu yılını tamamlayacaktır. AYM, önemli kararlar vermiş ve temel hak ve özgürlüklere ilişkin standartların yükseltilmesine önemli katkılarda bulunmuştur. Ancak, AİHS) 35 (1) maddesi anlamında AİHM'e yapılacak başvurular öncesinde ulusal bir filtre işlevini görmek bakımından AİHS'in 13. maddesi kapsamındaki ulusal bir çözümün etkili ve erişilebilir olması gerekmektedir. Bu makale, Türkiye'deki anayasal şikâyet mekanizmasının uygulanmaya başladığı tarih olan 23 Eylül 2012 tarihinden itibaren geçen dokuz yıllık süredeki istatistikleri altında *"kabul edilebilirlik"* kriterlerini, *"erişilebilirlik"* bakımından özel olarak ve *"etkililik prensibi"* yönünden de genel olarak tartışmakta olup bilahare bu mekanizmanın uygulanmasıyla alakalı bazı eleştiriler yöneltmekte ve yeni öneriler ortaya koymaktadır. AYM itiraz edilen insan hakları ihlâlini giderecek son ulusal merci olduğu için bu konudaki yaklaşımını başvuranlar lehine esnetmelidir. Buna göre, AYM ek dava yüküyle etkili bir şekilde başa çıkmak için imkan ve kaynaklara sahip olmalıdır.

Anahtar Kelimeler: Anayasal Şikâyet, Bireysel Başvuru, Anayasa Mahkemesi, Kabul Edilebilirlik Kriterleri, Erişilebilirlik.

I. INTRODUCTION

At the beginning of the essay, the main purpose and rationale behind the constitutional complaint mechanism in Turkey will be presented. Then, the admissibility criteria of constitutional complaint will be succinctly outlined in terms of the personal *(ratione personae)* and material scope *(ratione materiae)*, time-limit *(ratione temporis),* place *(ratione loci)* and other procedural requirements. Then, data on inadmissible constitutional complaints will be statistically analysed in depth under the last nine years of implementation of the Turkish Constitutional Court. The methodology of the Court in handling individual complaints will be explained and some clarity will be brought to the strict approach of the Court with regard to admissibility criteria. Besides the accessibility of the constitutional

complaint mechanism, the effectiveness of the system with regard to admissibility will be addressed.

II. THE RATIONALE BEHIND THE CONSTITUTIONAL COMPLAINTS IN TURKEY

The constitutional complaint mechanism was introduced into the Turkish legal system by the 2010 constitutional amendments and has been concretised by the Law on the Establishment and Rules of Procedure of the Constitutional Court Law (Law No: 6216 "CCL") and Internal Regulations of Constitutional Court ("RCC"). CCL and CCR provide many specific details on constitutional complaints. Constitutional complaints could be launched as of 22 September 2012. Seven articles of the CCL (Articles 45-51) provide for the constitutional complaint procedure.

The term *"constitutional complaint"*, which is accepted as an *"individual application"* in the Turkish judicial terminology by definition, derives from the German word *"Verfassungsbeschwerden"* and is also called *"recurso de amparo"* in Spanish as a remedy for the protection of certain constitutional rights.[1] The function of a constitutional complaint is in principle the effective protection of fundamental rights by giving remedy to individuals in case of violation of their rights by administrative or judicial decisions. This is at the same time the main justification for the introduction of a constitutional complaint mechanism in Turkey. As formulated in the reasoning accompanying the CCL, *"The introduction of the constitutional complaint will result in a considerable decrease in the number of files against Turkey brought before the European Court of Human Rights (ECtHR)"*.

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[1] GUERRA Luis Lopez, "Spain and the European Court of Human Rights: Individual Applications and the Recurso De Amparo", **Anayasa Hukuku Dergisi,** Volume 4, Issue 7, 2015, pp. 49-83, p. 54, 71, http://anayasader.org/wp-content/uploads/2020/05/Lopez-Guerra-AYHD-7.pdf (11/10/2021); TARRIAS Susana Ruiz, "El nuevo trámite de admisión del recurso de amparo constitucional", **Teoria y Realidad Constitucional**, Issue 25, p686-694, 1st Semestre 2010, p.686; YOUNGS Raymond, **English, French & German Comparative Law,** 2nd Edition, Routledge-Cavendish, London-New York, 2007, p. 48-49; YOUNGS Raymond, **Sourcebook on German Law**, 2nd Edition, Cavendish Publishing Ltd., London-Sydney-Portland, 2002, p. 91. See, also KILINÇ Bahadır, "Karşılaştırmalı Anayasa Yargısında Bireysel Başvuru (Anayasa Şikâyeti) Kurumu ve Türkiye Açısından Uygulanabilirliği", **Anayasa Yargısı,** Vol.25, pp.19-59, p. 21-22. AUNG Nge Nge, "Composıtıon of the German Federal Constıtutıonal Court", **Lex ET Scientia International Journal,** LESIJ NO. XXVII, Vol. 2, 2020, pp. 101-112; KAHRAMAN, Mehmet, "Almanya'daki Anayasa Şikâyeti ile Karşılaştırmalı Olarak Türkiye'de Anayasa Mahkemesine Bireysel Başvuru Yolu", **HUMANITAS,** Sayı 1, 2013**,** pp. 129-146.

The constitutional amendment starting the constitutional complaint mechanism turned the Constitutional Court into a 'filter' between the Turkish courts and the ECtHR, whilst creating considerable attention when issuing 'popular' judgments in favor of protecting human rights.[2]

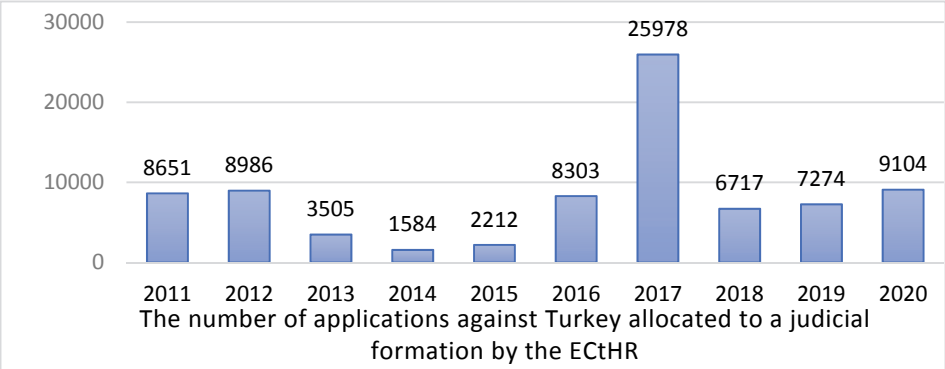


Figure 1[3]

The main purpose of introducing the constitutional complaint mechanism was expressed primarily as reducing the number of cases going to the ECtHR against Turkey. At first glance, this may make sense in terms of Turkey's negative image at the international level. As a matter of fact, and as can be seen in Figure 1, it has been shown in practice that this purpose has been met to a certain extent.[4] However, when we look at the number of applications made to the ECtHR against Turkey in recent years, we can say that there is again a partial increase.

The Turkish Constitutional Court has gained an important position as a result of its decisions on individual applications.[5] Additionally, *Dunja*

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2 ERDİNÇ Tahsin, "Karşılaştırmalı Olarak Türk Anayasa Mahkemesi'ne Bireysel Başvuru Hakkı (Anayasa Şikâyeti)", **Türkiye Adalet Akademisi Dergisi**, Volume (Year 6), Issue 20, 2015, pp. 87-138, p. 94, 105.

3 ECtHR Analysis of statistics 2020, p.12, January 2021, https://www.echr.coe.int/Documents/Stats_analysis_2020_ENG.pdf (10.12.2021); ECtHR Analysis of statistics 2016, p.11, January 2017, https://www.echr.coe.int/Documents/Stats_analysis_2016_ENG.pdf (10.12.2021).

4 ŞİRİN Tolga, **Bireysel başvuru Usul Hukuku,** Anayasa Mahkemesine Bireysel Başvuru El Kitapları Serisi-7, Avrupa Konseyi, MRK Baskı, (Joint Project on Supporting the Individual Application to the Constitutional Court in Turkey), 2018, p. 4.

5 See on this approach; ÇELİK Abdullah, "Bireysel Başvurunun Kazandırdıkları", **Anayasa Yargısı Dergisi,** Cilt. 32, 2015, pp. 443-447; BIÇAK Vahit, ""Ceza Hukuku Açısından Bireysel Başvuru Kararlarının Yargı Sistemine Etkileri" **Anayasa Yargısı Dergisi,** Cilt. 35, 2018, pp. 65-72; EREN Abdurrahman, "Hukuki Yorum Yöntemleri Açısından Bireysel Baş-

Mijatović, the Commissioner for Human Rights of the Council of Europe, observed that the Turkish Constitutional Court delivered important and crucial judgments in the context of constitutional complaint mechanism, closely following the case-law of the ECtHR in many cases, for example regarding detentions on remand. However, the Commissioner also observed that serious questions had surfaced regarding the effectiveness of the Constitutional Court for certain, highly sensitive cases. In her opinion, there are currently some interconnected issues casting doubt on the effectiveness of the constitutional complaint (individual application) procedure to the Constitutional Court as a remedy for human rights violations in Turkey. These concern the tardiness of the Constitutional Court in remedying serious human rights violations, the lower courts' highly problematic attitude vis-à-vis the case-law of the Constitutional Court, the extraordinary burden that this state of affairs put on the Constitutional Court, and finally, recent judgments of the Constitutional Court in which it appears to be departing from its previous, Convention-compliant approach towards a more security-oriented approach, to the detriment of human rights.[6]

III. THE PERSONAL AND MATERIAL SCOPE OF THE CONSTITUTIONAL COMPLAINTS

1. Personal Scope *(Ratione Personae)*

Both real and private-law legal persons may lodge a constitutional complaint in front of the Constitutional Court. However, public-law legal persons and entities cannot lodge a constitutional complaint and non-Turkish citizens (aliens) may not lodge a case concerning the rights peculiar and confined solely to Turkish citizens. As stated in CCL Article 46(3), aliens may not lodge a constitutional complaint based on rights that are only available to Turkish citizens.[7] It has been claimed that this provision refers

vuru Kararlarının Anayasanın Yorumuna Etkileri", **Anayasa Yargısı Dergisi,** Cilt. 33, 2016, pp. 231-301; PEKCANITEZ Hakan, "Bireysel Başvuru Sonunda Verilen Kararların Medenî Yargıya Etkisi", **Anayasa Yargısı Dergisi,** Cilt. 35, 2018, pp. 73-104.

6 Commissioner for Human Rights of the Council of Europe Dunja Mijatović, **CommDH(2020)1, Country Report,** Report Following Her Visit to Turkey from 1 to 5 July 2019, Strasbourg, 19 February 2020, pp. 24-27.

7 EKİNCİ Hüseyin / SAĞLAM Musa, **66 Soruda Bireysel Başvuru,** Anayasa Mahkemesi Yayınları (Bireysel Başvuru El Kitapları -1), 2015, Ankara, p. 8.

to rights such as the right to vote and to be elected,[8] the right to form political parties[9] or the right to be employed in the public sector.[10]

The complainants should be affected individually, currently and directly related to the right that is the subject of the applicants' application.[11] While the individuals who are able to operate the individual application remedy are essentially those who "*directly have the victim status"*, the individuals who have a personal or special relationship directly with the victim and, accordingly, have been affected by the alleged violation of the Constitution and the Convention or have a legitimate and personal interest in the elimination of the said violation, may also lodge a constitutional complaint in their capacity as *"indirect victims"*, by the particular circumstances of every concrete case and the nature of the violated right.[12] It is not possible for the statutory public bodies to make an individual applications according to the second paragraph of the 46th article of the CCL.[13]

2. Material Scope *(Ratione Materiae)*

Article 148 of the Constitution stipulates that anyone who thinks that his/her constitutional rights set forth in the European Convention on Human Rights (ECHR) have been infringed by a public authority will have the right to apply to the Constitutional Court after exhausting all administrative and judicial remedies. The concept laid down in CCL Article 45(1) allows for constitutional complaints, as long as the violated fundamental right or freedom under the Constitution *"falls into the scope of the ECHR"*.[14]

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8 Article 67 of the Turkish Constitution.

9 Article 68 of the Turkish Constitution.

10 Article 70 of the Turkish Constitution.

11 Article 46 (1) of the CCL stipulates that; *"The individual application may only be lodged by those, whose current and personal right is directly affected due to the act, action or negligence that is claimed to result in the violation"*. The Constitutional Court judgements on this provision of the CCL; *Onur Doğanay*, B. No: 2013/1977, 9/1/2014, paragraphs [41]-[47]; *Abdullah Yavuz,* B. No: 2016/59096, 7/11/2019, paragraphs [27]-[32]; *Ayşe Hülya Potur,* B. No: 2013/8479, 6/2/2014, paragraph [24].

12 The Constitutional Court judgements on this subject see; *Engin Gök and Others*, B. No. 2013/3955, 14/4/2016, [47]; *Semra Omak*, B. No: 2015/19167, 17/7/2019, paragraph [35]; *Veli Özdemir*, B. No: 2013/276, 9/1/2014, paragraph [26]; *Fatma Çaylan and others*, B. No: 2018/34323, 19/10/2021, paragraph [32].

13 See on thsi matter, BEYOĞLU Cem Ümit / ÇOKKAŞ Yakup, "Türk Hukukunda Kamu Tüzel Kişilerinin Bireysel Başvuru Hakkı Sorunu", Akdeniz Üniversitesi Hukuk Fakültesi Dergisi (AkdHFD) Aralık 2020 - C. 10 - S. 2 - pp. 409-437.

14 **ŞİRİN**, p. 76.

The jurisdiction of the Court *ratione materia* comprises fundamental rights which are regulated by both the Constitution and the ECHR. But some acts of public power are exempted from the scope of individual application. Essentially, according to CCL Article 45(3) direct constitutional complaints against legislative and regulatory administrative acts and the Constitutional Court judgments are excluded from the material scope of the CCL. This excludes complaints directed against statutes (laws passed by the Parliament of Turkey and regulatory administrative acts adopted by public bodies), which become effective against the complainant only by an intermediary act of administration or judicial decision. Therefore, the constitutional complaint may not be directed against legislative act which has not yet been executed to the applicant. However, the constitutionality of legislative and regulatory administrative acts can be reviewed in all cases where the complaint is directed against an act of a public authority based on the legislative and regulatory administrative acts, such as acts of administration or court decisions.

The first paragraph of Article 46 of the CCL excludes the filing of an abstract petition or actio popularis. Besides of that the Turkish Constitutional Court's approach on legal standing of the potential victims to lodge an individual application is somewhat different from the European Court of Human Rights. Article 45(3) of the CCL regulates that constitutional complaints against legislative, regulatory, administrative acts and the Constitutional Court judgments are excluded from the material scope of the CCL.[15] According to article 45(3) of the CCL, the violations directly stemming from statutes cannot be annulled under the individual application procedure is one of the important deficiencies of the constitutional complaint mechanism. Because, unless the law that violates

[15] As an example to the Constitutional Court judgements on this matter, the claims of the Grand Unity Party (Büyük Birlik Partisi), Felicity Party (Saadet Partisi) and Democratic Left Party (Demokratik Sol Parti) on a provision in the Parliamentary Election Law No. 2830 (art. 33) would infringe *"their right to elect, be elected and be a part of political activities"* in the parliamentary general elections to be held in 2015. As the said law provision envisages that the political parties receiving votes at the rate of 3% treshold may be granted financial state aid probably applied in the elections to be held in 2015 and thereby their rights enshrined in the Constitution would have been breached. Despite the fact that there were dissenting opinions at the Constitutional Court judgement this constitutional complaint was found inadmissible on the bases of the article 45(3) of CCL.; Appl. No: 2014/8842, 6/1/2015, paragraph [27]. See, on this judgement, ÇELİKYAY, Hakan Sabri, "Anayasa Mahkemesi'nin Ülke Seçim Çevresi Barajına İlişkin Bireysel Başvuru Kararının Değerlendirilmesi", **Trakya Üniversitesi İktisadi ve İdari Bilimler Fakültesi E-Dergi,** Volume 6, Issue 1, June 2017, pp. 19-54.

fundamental right is repealed, the violation will continue and it will not be possible to protect the right in concern effectively.[16] In Germany, there are no restrictions as to the type of act that can be complained against. This means that a constitutional complaint, *Verfassungsbeschwerde,* can be lodged against any act or omission of the executive, the judiciary or the legislature, including complaints directed against Acts of Parliament and even against changes in the constitution.[17] The main difference between the German and the Turkish approaches is, therefore, not the scope of review but the stage at which it takes place. As an example hypothetical Act of Parliament criminalizing homosexuality. In Germany a constitutional complaint could be raised directly against such an Act.[18] In Turkey, the complainant would first have to commit the crime in question, be prosecuted and convicted by a criminal court, and eventually exhaust all legal remedies before being able to file a constitutional complaint against Acts of Parliament (laws adopted by Parliament). Although there is no such restriction in Article 148 of the Constitution, it would not be appropriate to introduce such a restriction to the CCL.

As only the rights and freedoms regulated by both the Constitution and the European Convention on Human Rights may be relied upon in the constitutional complaint procedure, this amounts to a limited scope of human rights protection when compared to the fundamental rights and freedoms enumerated in the Constitution of Turkey and in other human rights treaties to which Turkey is a party. The material scope, *ratione materiae*, of the jurisdiction of the constitutional Court comprises fundamental rights which are regulated by both the Constitution and the European Convention on Human Rights.

Thus the main aim of the regulation provides a domestic remedy for the violation of a limited scope of fundamental rights. This purpose may also explain why the constitutional complaint procedure only relates to the ECHR and its additional Protocols, and not to other human rights treaties to which Turkey is a party. The wording of the Constitution and the CCLin this

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[16] GÜLGEÇ Yahya Berkol, "Özgürsüzlük, Kanun ve Bireysel Başvuru: Türk Bireysel Başvuru Sistemine Bir Eleştiri", **İnönü Üniversitesi Hukuk Fakültesi Dergisi, (İnÜHFD),** Volume 12(2), 2021, pp. 585-601.

[17] https://www.bundesverfassungsgericht.de [Proceedings/Types of proceedings/Constitutional complaints] (10.12.2021).

[18] **AUNG**, p. 103.

regard are interpreted narrowly by the Constitutional Court, as the provisional application is that only those fundamental rights and freedoms secured under the Constitution may be invoked in an application to the Constitutional Court, which are also guaranteed in the European Convention on Human Rights and its Protocols, and to the extent that their scope in the ECHR and its Protocols is identical to their scope in the Constitution.[19]

For example, Article 79 of the Constitution of the Republic of Poland stipulates that the grounds for a constitutional complaint are violations of the constitutional rights and freedoms.[20] Most of these rights are set forth in Chapter II *"The Freedoms, Rights and Obligations of Persons and Citizens"* of the Constitution of the Republic of Poland, but a constitutional complaint may concern the rights, freedoms or duties contained in other chapters of the Fundamental Law. Another example is the German Constitution, where the scope of the rights and freedoms subject to the constitutional complaint mechanism includes all the fundamental rights and freedoms guaranteed in the German Constitution.[21] The Federal German Constitutional Court understands itself as a "citizens' court."[22]

3. Time-Limit (Ratione Temporis)

Constitutional complaints must be filed within thirty days after the notification of the final proceeding which exhausts all legal remedies. The complaint has to be made within 30 days after the date of last domestic remedy exhaustion; otherwise, the application will be time-barred.[23] The

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[19] The Constitutional Court judgements on this matter; *Onurhan Solmaz*, B. No: 2012/1049, 26/3/2013, paragraph [18]; *Atila Sertel*, B. No: 2015/6723, 14/7/2015, paragraphs [37]-[40]; *Nurullah Efe ve Halkın Kurtuluş Partisi*, B. No: 2017/20127, 7/6/2017, paragraphs [11]-[18].

[20] Article 79 of the Constitution of the Republic of Poland stipulates that; *"In accordance with principles specified by statute, everyone* ***whose constitutional freedoms or rights*** *have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution"*.

[21] GERÇEKER Hasan, "Anayasa Mahkemesine Bireysel Başvuru (Anayasa Şikayeti) Konulu Uluslararası Sempozyum Açılış Konuşması", in **Bireysel Başvuru "Anayasa Şikayeti",** editor Musa Sağlam, Hukuk Adamları Birliği (HUKAB) Yayınları, Ankara 2011, p. 33.

[22] ROGOWSKI Ralf / GAWRON Thomas, Constitutional Litigation as Dispute Processing, "Comparing the U.S. Supreme Court and the German Federal Constitutional Court", **Constitutional Courts in Comparison the U.S. Supreme Court and the German Federal Constitutional Court**, edited by Ralf Rogowski and Thomas Gawron, Berghahn Books, August 2016, pp. 1-22, p. 5.

[23] **EKİNCİ / SAĞLAM**, s. 23.

complainant must submit a reasoned application, including all the necessary documents. The Constitutional complaint mechanism was put into force on 23 September 2012. The Constitutional Court started to examine acts and decisions finalized after 23 September 2012 as a time-limit for application.[24]

4. Place (Ratione Loci)

Hereby *ratione loci* means the jurisdiction on territorial competence of the Constitutional Court which is presumed to be exercised normally throughout the State's territory. Officials may be held responsible for acts of their authorities performed, or the effects produced, outside the territory of the country. However, this will occur only exceptionally, namely where the State is in effective control over an area or has at the very least a decisive influence over it.[25]

5. Other Procedural Requirements

The reasons substantiating a constitutional complaint are subject to strict requirements. They must be submitted in writing. Individual applications can be made in person to the Constitutional Court using the application form found in the annex of the Internal Regulation and published on the website of the Constitutional Court as per the conditions stipulated in the Code and the Internal Regulation; they can also be made via other courts or representations abroad. Application via mail, telegraph or electronic communication means are not allowed. Complainants do not have to be represented by a lawyer, they can either represent themselves or be represented by a lawyer.[26]

On the other hand, applicants are obliged to follow up their constitutional complaint applications upon submitting their applications made to the Constitutional Court. As a requirement of this obligation, the application form should be filled in diligently, all the facts on which the claim of violation is based should be explained, and all documents supporting the arguments that will illuminate the application and affect the substance of the provision should be attached to the application petition. If a document could not be obtained, the reasons for this should be explained.[27]

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[24] The Constitutional Court judgements on this matter; B. No: 2012/13, 2/7/2013, paragraph [51]; *Zeycan Yedigöl* [GK], B. No: 2013/1566, 10/12/2015, paragraph [31]; *Neziha Arıcı*, B. No: 2019/10570, 23/11/2021, paragraph [35].

[25] **EKİNCİ / SAĞLAM**, s. 9.

[26] **EKİNCİ / SAĞLAM**, s. 13.

[27] The Constitutional Court judgements on this matter; *Veli Özdemir*, B. No: 2013/276, 9/1/2014, paragraph [26]; *Fatma Çaylan ve diğerleri*, B. No: 2018/34323, 19/10/2021, paragraph [32].

Generally, the constitutional complaint is only admissible if all legal remedies before the courts (first instance/appeal/cassational remedial process) have been exhausted, respectively. Therefore, all other available means must have been used to remedy or prevent the contested violation of the fundamental rights in concern before a constitutional complaint can be brought (subsidiarity principle).[28] The constitutional complaints are not free of charge. According to Article 47(2) of the CCL, constitutional complaints are subject to the payment of a fee. The amount of the fee is determined by Article 47(2) of the CCL, and for 2021 this is 487,60 Turkish Liras (approximately 40 US Dollars). Among the member states of the Venice Commission, such a fee is rather exceptional. In its study on individual access to constitutional justice, the Venice Commission concluded *"The Venice Commission recommends that in view of increasingly more comprehensive human rights protection, court fees for individuals ought to be relatively low and that it should be possible to reduce them in accordance with the financial situation of the applicant. Their primary aim should be to deter obvious abuse."*[29]

Legal aid can only be granted if complainants are unable to cover the cost of the trial and if there is a request for legal aid; it is obligatory for the applicant to attach the documents related to his financial situation to the application form.[30] Having considered the principles set forth in the *Mehmet Şerif Ay* judgement of the Constitutional Court,[31] legal aid requests of applicants who are unable to cover the costs of the lawsuit without making their livelihoods difficult are accepted by the Court.

6. Statutory Provisions

According to Article 149 of the Constitution and Article 20 of Law no. 6216, the Constitutional Court functions in the form of the Plenary, Sections and Commissions. The requirements for the admissibility of constitutional

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[28] ÇELİKYAY, Hakan Sabri, "Anayasa Mahkemesi'nin Bireysel Başvuru Kararlarının "Başvuru Yollarının Tüketilmesi" Ölçütü Açısından Değerlendirilmesi", **İstanbul Üniversitesi Hukuk Fakültesi Mecmuası (İÜHFM),** Cilt LXXIII, S. 1, 2015, pp. 21-62, p. 23, 24, 25.

[29] CDL-AD(2010)039rev. paragraph [117]; https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)039rev-e (15.12.2021).

[30] **ŞİRİN**, p. 236-237.

[31] The judgement of the Constitutional Court on the requirements for legal aid requests, *Mehmet Şerif Ay,* B. No: 2012/1181, 17/9/2013.

complaints are laid down in Articles 45 to 47 of the CCL. Examination of admissible individual applications on the merits is conducted by the Sections. The President takes necessary measures to balance the distribution of workload evenly among Sections.

There shall be two Sections of the Court in order to examine individual applications and these Sections shall be composed of the members except for the President of the Court. Each Section shall consist of six members and a vice-president. These sections are named *"the First Section"* and *"the Second Section"*. The members of the Section, except for the Vice-Presidents, are designated by the President taking into account their origin of appointment to the Court and a balanced distribution among the Sections.

Article 22 CCL deals with the two Sections of the Court as defined in its Article 2(1)(ç), which are entitled to rule constitutional complaints. Whereas the Sections consist of seven members each, it convenes with only four of them under the chair of a deputy president. The latter number is arguably to be seen as a minimum requirement, *i. e. a quorum*. Otherwise, clarification is required with regard to the selection of those four members. In this respect, an objective system is favourable to rule out all possibilities of subjective influence on a Section's composition.[32]

Commissions refer to any of the boards set up in order to conduct the examination of the admissibility of constitutional complaints. Members (Judges) work sequentially in the Commissions to be set up from among the members (Judges) of the Section.

According to Article 48 of the CCL, examination for admissibility of the constitutional complaints is conducted by the Commissions. In case the Commission decides by unanimous vote that an application does not fulfill requirements for admissibility, the application is declared non-admissible. Application files for which a unanimous vote cannot be reached are referred to the Sections. Non-admission decisions are final and are notified to the parties concerned. Other matters relating to the procedures and principles of admissibility conditions and examination are regulated by the Internal Regulation of the Constitutional Court.

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[32] CDL(2011)065-e, paragraph [27]; Comments on the law on the establishment and rules of procedure of the constitutional court of Turkey; https://www.venice.coe.int/webforms/documents/?pdf=CDL(2011)065-e (12.11.2021).

The President may assign Rapporteurs to the Commissions. The Rapporteurs play a significant role in the concept of the Turkish Constitutional Court. Their competences set out in Article 26 CCL comprise *inter alia* the preparation of reports of preliminary examination and examination on the merits, to attend meetings and - depending on an assignment of the Court's President - hearing of witnesses and experts or similar duties.[33]

The Venice Commission has underlined the importance of staff in its study on the individual access to constitutional justice: *"The Venice Commission recommends that judges are supported by qualified assistants; their number should be determined in relation to the court's case-load. (...) In fact, permanent or long serving staff allow for the construction of an institutional memory conducive to greater consistency and continuity of the court's case-law; an issue more pertinent to civilian systems than common law systems."*[34] Nevertheless, the competences of the staff are subject to certain limitations. Bearing this in mind, the Venice Commission emphasized; *"Depending on the number and qualification of the staff, the secretariat of the court may perform a first preliminary examination in order to weed out manifestly inadmissible complaints as far as possible. However, as the judicial power cannot be delegated to the secretariat, its opinion can only be advisory".*[35]

Article 26 CCL does not sufficiently address these requirements. For instance, taking evidence, such as the hearing of witnesses, should be carried out by the judges themselves since it requires immediateness to develop an own opinion on matters like credibility. Hence, taking evidence cannot be delegated. With respect to rapporteurs attending meetings, it should be underlined, that the Court's deliberations should be open exclusively to the respective judges. Altogether, the competences of the rapporteurs should be refined, bearing in mind that judicial functions may only be exercised by the judges themselves.

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[33] Ibid, paragraph [28].

[34] Ibid, paragraph [29].

[35] Ibid, paragraph [30].

IV. INADMISSIBLE COMPLAINTS

Most constitutional complaints to the Constitutional Court turn out to be wholly and obviously devoid of merit. This is unsurprisingly the result of the extension of the right to file a constitutional complaint unimpeded by formal requirements to aggrieved persons.

The aim of the admissibility examination is to control whether the complaint is within the jurisdiction of the Court in terms of time *(ratione temporis)*, personel scope *(locus standi- ratione personae)*, material scope *(ratione materiae)* and place *(ratione loci)* of the CCL. Besides that, the CCL empowers the Court to eliminate some unimportant applications.

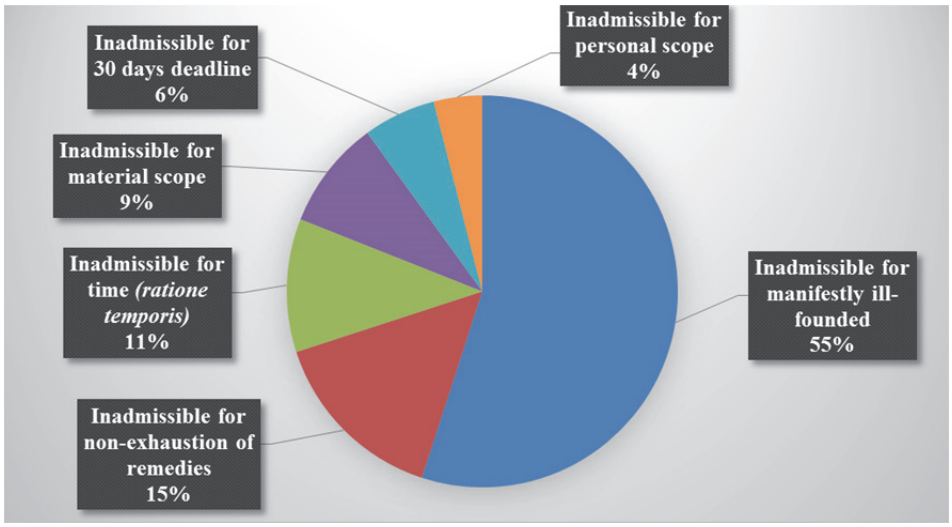


Figure 2: *Rates of Inadmissibility Decisions*[36]

Article 48(1) of the CCL states that in order to give a decision on the merits of a constitutional complaint, the application must first be examined in terms of admissibility as prescribed in articles 45 to 47. Article 48(2) of the CCL stipulates that the Constituional Court may decide on the inadmissibility of applications that are not important for the implementation and interpretation of the Constitution or for determination of the scope and limits of fundamental rights, and also applications where the applicant has not incurred significant damages in addition to applications that are manifestly ill-founded.

[36] Individual Application Procedure and Admissibility Criteria, Modul 3, p. 23; https://www.anayasa.gov.tr/bireyselbasvuru/pdf/EgitimModulu/bireysel_basvuru_usulu.pdf (12.11.2021).

So, not only inadmissible complaints but also "*trivial"* complaints need to be weeded out. According to Article 48(2) of the CCL, the Court may decide that an application inadmissible if it is manifestly ill-founded or if it does not bear any significance for the interpretation or application of the Constitution, or for the determination of the scope and limits of fundamental rights or applications which lack explicit basis, or where the applicant did not suffer any significant damage.[37] A complaint is to be rejected as trivial whenever a decision would neither be likely to clarify an open constitutional question nor relieve an applicant of otherwise-inevitable, severe consequences. One may declare that these (*"non-triviality"* and *"manifestly not ill-founded"*) requirements have been explained with judgements of the Constitutional Court on a case by case basis.

In the case of clear absences of violation, the Constitutional Court decides that an application is inadmissible by the criterion of *"manifestly ill-founded"*. As an example; according to the Constitutional Court, an applicant claiming to have been discriminated against has to prove negatively that the treatment subjected to him is different from the treatment of other people; otherwise, the application is manifestly ill-founded.[38] The rationale behind the recognition of these inadmissibility reasons is to protect the Court from excessive workload and to provide more time to deal with serious fundamental rights allegation.[39] However, these complex

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[37] According to the *"significant damage"* admissibility criteria, the Turkish Constitutinal Court have a wide margin of appreciation when deciding whether an individual application is significant or not. Actually, this criteria, which has been applied for a long time for the individual application procedure to the European Court of Human Rights in European human rights law and the constitutional complaint procedure in Germany and Spain in individual application procedure. See, on this matter, DOĞAN Zelal Pelin, Bireysel Başvuru Usulünde Önemli Zarar Ölçütü, Yüksek Lisans Tezi, İstanbul, İstanbul Bilgi Üniversitesi Lisansüstü Programlar Enstitüsü Hukuk Yüksek Lisans Programı, 2021; DUVAN, Ayse Özkan, "Possible Effects of the Constitutional Complaint Mechanism on Human Rights Practices", **Annales de la Faculté de Droit d'Istanbul**, Cilt 45, Sayı 62, 2013, pp. 29 - 42, p. 35-36.

[38] For example, the Constitutional Court judgement, *İbrahim Sılibi*, B. No: 2019/131, 24/11/2021, paragraphs [45]-[48]; in *İbrahim Sılibi* case; the applicant did not make a statement that he was subjected to a different treatment from those who were in the same situation as him, and did not provide any concrete information about the reason for discrimination, basing his claims on probabilities. Therefore, the allegations made by the applicant could not be justified and it was concluded by the Constitutional Court that the application *"manifestly not ill-founded"*. Another example, *M.Y.*, B. No: 2019/4865, 23/11/2021, paragraph [16]; in this case the applicant has failed to fulfill its obligation to present evidence regarding the alleged violations, and to make statements regarding the violation of his fundamental rights and freedoms, therefore the Court concluded that the application is inadmissible as it is *"manifestly ill-founded"*, without examining it in terms of other admissibility requirements.

[39] ÜLVAN Nazlı Can, "Constitutional Complaints and Individual Complaints", **Ankara Bar Review***,* Vol.2, 2013, pp. 180-186, p. 184.

requirements need explanation by words of the statutory provisions instead of decisions of the Constitutional Court for the sake of legal clarity. So *"non-triviality"* and *"manifestly not ill-founded"* should be defined clearly.

The practical conclusion is that many decisions on the admissibility of complaints exist only in the form of a letter stating the reasons for the refusal to the applicant by the Commission consisting of two judges of the Constitutional Court. These letters are not published. Therefore, the opportunity for scholars to analyse this material for clarifications on the court's approach to the question of admissibility is denied.

Indmissibility is the Court's predominantly used weapon against meritless complaints, and it is broadly wielded. The Court has received 335.324 constititutional complaints between 23 September 2012 and 30 September 2021. 276.307 of them (82,4% of the total applications) have been concluded and 246.752 of applications were found inadmissible, which consists of 89,3% of the total number of judgements. The overwhelming majority of constititutional complaints were rejected and over 89% of all complaints were disposed of by this means. Considering the total number of all applications (335.324) and the total number of cases examined on the merits (15.721) over the past nine years, it can be understood that only 5,6% of the total applications were examined on the merits. *"Accessibility"* is a very important criterion for an individual application mechanism to be qualified as an effective mechanism. This is so in the individual cases accepted for a full hearing (in merits) and judgment, more or less 6 per 100 of the cases registered in the constitutional court.

Should the consitutional complaint procedure function as an open door through which "anybody" can pass in order to question the acts of the public institutions? Sending a complaint (even without the help of a lawyer) is easy, as is pointing to some basic constitutional rights when people feel seriously violated. Indeed, the text of the Constitution is more general than any statute or regulation.[40] In this regard, the Constitutional Court must mitigate its strict approach on admissibility and, thereby, open the gates of access for individual complainants.

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[40] Article 148 paragraph 3 stipulates that; *"Everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms... has been violated by public authorities".*

In Turkey, as opposed to Spain, individuals complaints may be presented without a lawyer signing the application form. The requisite of representation by a lawyer should be a serious filter, not only of procedural aspects but of substantive dimension as well. The lawyers should not submit a complaint without serious reasons to fear that a fundamental right has been breached; in other words, without a serious probability of success.

The very short time-limit to start a constitutional complaint proceeding, only thirty days after the last judicial ruling, is insufficient to demand expert advice and prepare well researched and written opinion briefs and must be addressed and extended if the overflow of insignificant (non-trivial) and manifestly ill-founded constitutional complaint litigation is to be reduced.

1. Preliminary Examination of the Application form and Its Annexes and Deficiencies

According to Article 66 of the CCR, upon receipt of a constitutional complaint, the Constitutional Complaint Bureau examines the incoming applications in order to determine whether or not they contain formal deficiencies. In the event that a deficiency is determined in the application form or its annexes, a period not exceeding fifteen days shall be provided to the complainant, to his/her attorney or legal representative, if any, in order for these to be remedied. Why is this provision limited to missing documents?

The reason for granting an extension of the time-limit (up to 15 days) is to provide the applicant with the opportunity to rectify and complete the deficencies in the application and not to build up artificial formal barriers. However, it is debatable why this provision is limited to missing documents; it should be expanded to other minor deficencies that can easily be rectified.

In the paper pertaining to the completion of the deficiencies, the applicant shall be notified that a decision to reject his/her application will be made in the event that s/he does not remedy the deficiencies within the provided period without a valid excuse. In cases where the application has not been completed in due time, for not being in compliance with the requirements in Articles 59 and 60 of the CCR[41] and the deficiencies specified have not been completed within the provided period time-limits, the Commission's Chief Rapporteur decides to reject it and this decision

[41] These articles are the formal requirements that should be included within the application form or added to the application form of the cconstitutional complaints.

shall be notified to the applicant. This decision can be appealed to the Commission within seven days from the date of notification. Decisions of the Commissions in this regard are final.[42]

However, the constitutional complaint is separate from the appeals process before the ordinary courts; it is an extraordinary legal remedy that only examines whether specific fundamental rights have been violated. The constitutional complaint mechanism is exceptional, extraordinary and secondary in its characteristics as the mechanism is not another way to have legal remedy. The Constitutional Court is not a trial court, devoted to hearing evidence and declaring the facts of the case under the rules of proof. Besides, the Constitutional Court is not a court of cassation or appeal court as it does not examine the accuracy of the implementation of the substantive or procedural domestic rules.

The Constitutional Court hears complaints on the violation of fundamental rights from trial courts, appeal courts and other cassation courts alike. It conducts its examination on the fundamental rights enshrined both at the ECHR and Constitution. The Constitutional Court's examination is limited to the determination as to whether a fundamental right safeguarded by the Constitution has been violated or not, and if violated, how it would be redressed. It decides whether the concerned human rights were respected or infringed on, and its distinctive feature is that of finality. It is the court of last resort in domestic law, because it offers the last national forum for the protection of fundamental rights of individulas. It only subjects to the declaratory jurisdiction of the ECtHR.

V. STATISTICS

1. ECtHR Statistics on Turkey

Before examining the effectiveness of the individual application mechanism of the Constitutional Court in the following sections of the article, it would be useful to present an overview of the statistical situation regarding the individual applications made to the ECtHR against Turkey between 1959 and 2020.

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[42] ÇINAR İbrahim / ÇINAR Sinan, "Bireysel Başvurunun Ön İnceleme Usulü, Bireysel Başvuru Bürosunun Çalışma Sistemi ile Bu Aşamada Verilen İdari Ret Kararlarının Nitelikleri ve İtiraz Aşamaları", **Uyuşmazlık Mahkemesi Dergisi**, Issue 4, 2014, pp. 263-310, p. 283.

Constitutional complaint mechanisms have gained an increasing importance in Turkey, where the case-law of the ECtHR shows, approximately 62.000 applications were pending before a judicial formation of the ECtHR at 31 December 2020 and nearly 20% of these applications had been lodged against Turkey.[43]

The total number of individual applications (allocated to a judicial formation within the ECtHR) made to the ECtHR against Turkey between the years 1959 and 2020 was 119.492. According to the ECtHR statistics, until December 2020 the total number of applications from all party states to the ECtHR was 975.214, while the second country with the most applications was Turkey with 119.492 applications, after Russia with 182.533 applications.[44] Since it was established in 1959 the Court has delivered 23.406 judgments in merits. Around 40% of these concerned three member States of the Council of Europe: Turkey (3.742 - 15,99%), the Russian Federation (2.884 - 12,32%) and Italy (2.427 - 10,37%).[45]

Nature of Violation / Convention Article	**Total Number of Judgements**
Right to a Fair Trial / Article 6	953
Right to Liberty and Security / Article 5	787
The Protection of Property / Article 1	688
Freedom of Expression / Article 10	387
Right to an Effective Remedy / Article 13	281
Lack of effective investigation	223
Right to Life / Article 2	141
Respect for Family and Private life / Article 8	126
Freedom of Assembly and Association / Article 11	108

[43] According to statistics of the ECtHR in 2020; since the ECtHR was established in 1959, the Court has delivered 23,406 judgments. More than a third of them have concerned 3 member States: Turkey (3,742), the Russian Federation (2,884) and Italy (2,427). https://www.echr.coe.int/Documents/Facts_Figures_2020_ENG.pdf p. 3, 5 (...)

[44] https://www.echr.coe.int/Documents/Overview_19592020_ENG.pdf p.5, (15.12.2021).

[45] https://www.echr.coe.int/Documents/Overview_19592020_ENG.pdf p.3, (15.12.2021).

Nature of Violation / Convention Article	**Total Number of Judgements**
Non-enforcement	67
The Prohibition on Torture / Article 3	31
The Prohibition of Discrimination / Article 14	19
Freedom of Thought, Conscience and Religion / Article 9	12
Right to Free Elections / Article 3	12
Right to education	7
No Punishment without the Law / Article 7	5
Other articles of the Convention	36
Total Number	**3309**

Figure 3[46]

According to the ECtHR statistics in Figure 3, between 1959 and 2020, there were 3742 judgements on Turkey as a respondent, of which 3309 found at least one violation. The fact that 88,42 per cent of judgements against Turkey were finalized as Turkey's violation of at least one article of the ECHR shows that the resolution mechanism of human rights problems was not effective. It is understood that most of the cases brought against Turkey have resulted in at least one violation of the rights enshrined in the ECHR, and mostly due to the violation of the right to a fair trial. Developments and improvements in the field of human rights were ineffective and weak with a considerable number of violation judgements of the ECtHR against Turkey. Considering the reforms and developments in the field of human rights, *inter alia* constitutional amendments, new laws and harmonization packages in Turkey between 2004-2012, it can be said that Turkey still has serious human rights problems when the number of violations is taken into account. Although some significant legislative improvements has been realized in the field of human rights over the last two decades, Turkey still needs further development and improvement with regard to the implementation of the provisions of the ECHR and Constitution.

[46] https://www.echr.coe.int/Documents/Stats_violation_1959_2020_ENG.pdf (15.12.2021).

2. Constitutional Court statistics

	Received Applications	**Adjucated Applications**	**Ratio of Adjucation**
2012	1342 0.5% out of the total	4 0% out of the total	0%
2013	9.897 3.9% out of the total	4.924 2.3% out of the total	50%
2014	20.578 8.1% out of the total	10.926 5.2% out of the total	53%
2015	20.376 8% out of the total	15.368 7.3% out of the total	75%
2016	80.756 31.7% out of the total	16.089 7.6% out of the total	20%
2017	40.530 15.9% out of the total	89.651 42.3% out of the total	221%
2018	38.186 15% out of the total	35.356 16.7% out of the total	93%
2019	42.971 16.9% out of the total	39.376 18.6% out of the total	92%
2020	40.402 13.6% out of the total	45.414 17.6% out of the total	112%
Total	**Received applications 295.038**	**Adjucated applications 257.108**	**In ratio 87,14%**

Figure 4[47]

[47] https://www.anayasa.gov.tr/media/7444/2020_yillik_rapor.pdf (15.12.2021).

According to the statistics provided by the Constitutional Court, the Court has received 335.324 constititutional complaints between 23 September 2012 and 30 September 2021, 276.307 (82,4% of the total applications) of which have been concluded and 59.017 of which are still pending (17,6% of the total applications). 246.752 applications were found inadmissible, which constitutes 89,3% of the total number of judgements, whilst 12.459 judgements (making up 4,5% of the total number of judgements) were overruled with the decision of Commission's Chief Rapporteur on administrative gronds.[48]

Looking at Figure 4, an overriding trend of a steady rise in constitutional complaints can be seen. The peak in 2016 can largely be explained due to administrative and procedural acts following a coup attempt on 15 July 2016 that lead to a flood of complaints. When the state of emergency measures came to an end, the number of complaints returned to normal levels.

It is a fact that the over the past four years, the Constitutional Court has received about 40.000-45.000 complaints. Nowadays, the Court has to adjudge between 40.000 and 45.000 complaints per year on avarage.

There is another sub-category of judgements concluded with the decision of dismissal on the ground of the death of the applicant or withdrawal of the application or the alleged violation and its consequences having been resolved, or the Court reaching the opinion that it is unnecessary to continue with the examination of the complaint.[49] The number of these judgements is 1375 and in ratio term it constitutes 0,5% of the total number of judgements. The number of the decisions of non-violation is 810, which makes up 4,5% of the total number of judgements. The remaining 14.911 judgements, comprising 5,4% of the total number of judgements, were concluded with the decision of violation of at least one right.

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48 Article 47(6) of the CCL and Article 66(3).of the CCR. These provisions are the legal basis for rejection of the constitutional compliants on the ground that the application does not meet the necessary formal requirements.

49 Article Article 80 of the CCR.

Type of the decisions	**Number of the judgements**	**In ratio**
Non-violation	810	0,3%
Other	1375	0,5%
Violation of at least one right	14.911	5,4%
Rejection on administrative grounds	12.459	4,5%
Inadmissible	246.752	89,3%
Total	276.307	

Figure 5[50]

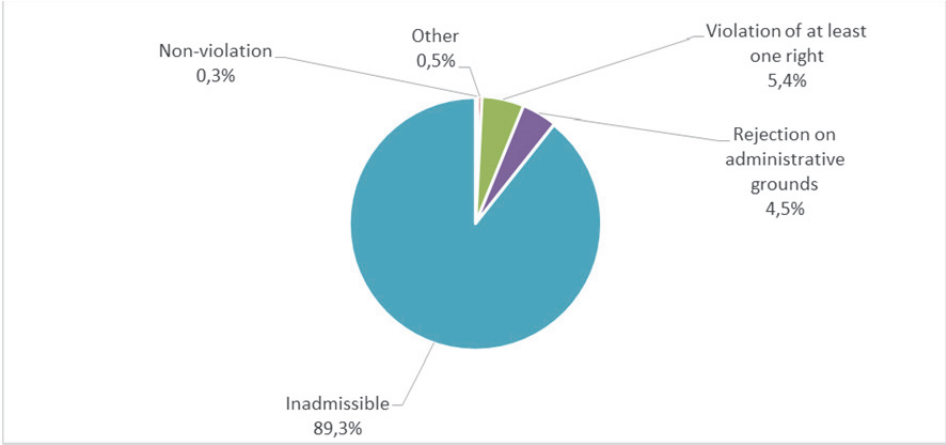


Figure 6[51]

The total number of cases examined on the merits is 15.721 and violations of rights were detected in 14.911 of them (94,84%). The effectiveness of the Constitutional Court's constitutional complaint mechanism depends on whether or not the mechanism is accessible, effective and sufficient. The Constitutional Court must focus on the

[50] https://www.anayasa.gov.tr/media/7602/bb_istatistik_2021-3.pdf (15.12.2021).

[51] https://www.anayasa.gov.tr/media/7602/bb_istatistik_2021-3.pdf (15.12.2021).

violations against fundamental rights. Considering the total number of all applications (335,324) and the total number of cases examined on the merits (15,721) over the past nine years, it can be understood that only 4.6% of the total applications were examined on the merits. This figure is quite low and it brings with it some doubts that the mechanism of individual application to the Constitutional Court provides an effective legal remedy at the desired level in terms of protection of fundamental rights.

3. Subject-Matter of the Court's Violation Judgments (23.09.2012-30.09.2021)

Over the past nine years, the Court has ruled for violation of rights in 15,721 judgments. Approximately 62,5% of these judgments concern the right to a fair trial, 19,1% the right to property, 4,2% freedom of expression, 3,3% the prohibition of torture and inhuman or degrading treatment, 3,1% the right to respect for private and family life, 1,9% the right to an effective remedy, 1,7% the right to liberty and security of person, 1,1% the right to life, 0,9% the right to hold meetings and demonstration marches and 2% other rights and freedoms.

Most of the violations found by the Constitutional Court have concerned article 6 of the ECHR and article 36, article 141 of the Constitution,[52] whether on account of the fairness or the length of the proceedings. According to the delivered speech of the President of the Constitutional Court in 2016, it is remarkable that 75% of the violations of the right to fair trial are related to the right to trial within a reasonable time. Of these violations, 55% are related to trial proceedings lasting 5 to 10 years, 19% 10 to 15 years, and 16% are related to proceedings of which the length is over 20 years.[53] Figure 7 shows the number of constititutional complaints in which there are violations of the right to a fair trial by Inherent safeguards between 23 September 2012 and 31 December 2019.

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[52] An important element inherent in the right to a fair trial, safeguarded by Article 36 of the Constitution, is *inter alia* the right to be trialed within a reasonable time. In the last paragraph of Article 141 of the Constitution, which provides for *"It is the duty of the judiciary to conclude trials as quickly as possible and at minimum cost"*, it is explicitly indicated that proceedings are to be concluded within a reasonable period. The State has, by virtue of this right, the positive obligation to conclude the cases within a reasonable time.

[53] Annual report 2016, p. 63. https://www.anayasa.gov.tr/media/2742/annualreport2016.pdf (13.12.2021).

	TOTAL	**RATIO**
Right to a trial within a reasonable time	3.006	56,6%
Principle of equality of arms / principle of adversarial proceedings	833	15,7%
Right to a reasoned decision	608	11,5%
Right to a fair hearing	542	10,2%
Right of access to a court	276	5,2%
Right to call and examine witnesses	16	0,3%
Right to legal assistance	12	0,2%
Other (Right to defence, right of effective participation in trial, manifest error of assessment, right not to be tried or punished twice for the same offence and right to obtain enforcement of decision and etc.)	16	0,3%
TOTAL	**5.309**	

Figure 7[54]

As can be seen from the data, complaints regarding fair trial occupy an important place among the applications in which the Constitutional Court has found violations. As a matter of fact, the lengthy trial proceedings are a general and structural problem of the Turkish judiciary system. The principles of the right to a trial within a reasonable period of time have been established in details by the ECtHR and the Turkish Constitutional Court. The applications within this scope are decided in line with the said principles and, when a violation of right is identified, the Constitutional Court awards a just satisfaction as a natural consequence of decision.

4. Statistics by Years

Following the constitutional complaint application that started on September 23, 2012, 1.342 applications were received until the end of the same year, while the number of applications rose rapidly to 9.897 in 2013

[54] Annual report 2019, p.193. https://www.anayasa.gov.tr/media/6789/2019_annual_report.pdf (12.12.2021).

(with an increase of %637). In 2014, the total number of individual applications reached 20.578 (with an increase of %108).

The period from 2012 to 2013 is regarded as the first period of the individual application mechanism, in which the Constitutional Court mostly concentrated on the issue of admissibility criteria. In this period, the Constitutional Court worked on the determination of the conditions under which an application can be regarded as admissible. After clarifying the admissibility criteria, in 2014, the Constitutional Court started to give decisions in all material aspects.

In 2015, the total number of applications reached 20.376 and caused an excessive workload for the Constitutional Court. Having clarified the admissibility criteria in 2012 and 2013, the Constitutional Court had the opportunity to focus more on the merits of the applications in 2014 and 2015. In addition to the increase in the number of applications in 2014 and 2015, the subject-matter and content of the rights and freedoms that have invoked a constitutional complaint have varied. In 2016, the number of applications to the Constitutional Court increased from 20,376 in 2015 to 80,756 (296%), due to administrative and procedural acts following a coup attempt on 15 July 2016.

In 2017, the Constitutional Court received 40.530 new applications and 89.651 judgements were delivered, of which approximately 72.134 were deemed inadmissible applications related to the decisions of "dismissal or discharge from public office, profession or other organizations" by the Commission of State Emergency for non-exhaustion of available remedies due to the establishment of the Commission for the Examination of the Proceedings under the State of Emergency. In 2017, the Court decided on 89.637 (out of a total of 126.101) individual applications, 40.530 of which were received within 2017 and 85.563 of which were taken over from earlier years. 86.537 applications were found inadmissible (83,35% of which related to the decisions of discharge), which makes up 96,54% of total number of judgements, while 859 applications were examined on the merits by the Plenary and the Sections. The Court rendered decisions on violation of at least one right in 880 applications, and no violation of any right in 69 applications in 2017.

In 2018, the number of pending applications substantially decreased and the Constitutional Court received 38.186 new applications. In total 35.395 judgements were delivered, of which approximately 33.134 were considered inadmissible applications (93,6% of the total number of judgements), whilst 2.261

applications (6,3%) were examined by the Plenary and the Sections. The Court rendered decisions on violation of at least one right in 2.162 applications in 2018.

In 2019, the Constitutional Court received 42.971 new applications. In total, 39.469 judgements were delivered, of which approximately 38.019 were considered inadmissible applications (96,3% of the total number of judgements), whilst 1450 applications were examined by the Plenary and the Sections. The Court rendered decisions on violation of at least one right in 1225 applications and no violation of any right in 225 applications in 2019.

In 2020, the Constitutional Court received 40.402 new applications. In total, 45.414 judgements were delivered, of which approximately 39.614 were considered inadmissible applications (87,2% of the total number of judgements), whilst 5800 applications were examined by the Plenary and the Sections. The Court rendered decisions on violation of at least one right in 5.658 applications and no violation of any right in 142 applications in 2020.

Many of the constitutional (individual) complaints made to the Constitutional Court turn out to be inadmissible. This is unsurprisingly the result of the extension of *"the right to file a constitutional complaint unhindered by official requirements"* to a contested public. However, the court was not slow to find a way to summarily dispose of unsubstantiated cases in the form of Article 48(2) of the CCL. This provision stipulates that the Constitutional Court may decide inadmissibility of applications which do not bear significance for the enforcement and interpretation of the Constitution or for the determination of the scope and limits of fundamental rights, applications which do not involve significant damage sustained by the applicant and applications which lack of explicit basis. This provision allows a summary dismissal of inadmissible or clearly unsubstantiated claims by the Court and it was widely used against groundless complaints. Unsubstantiated complaint is one of a merits-based ground of inadmissiblity criteria and lies at the later stages of admissibility examination, after tests targeting the formal and procedural aspects of admissiblity.[55] Many constitutional complaints were disposed of in this way as it has been explained above via the statistics of the Court.

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[55] For analyses of the unsubstantiated individual complaints see, VURAL, Hasan Sayim, "Anayasa Mahkemesine Bireysel Başvuru Yolunda Bir Kabul Edilemezlik Sebebi Olarak Temellendirilmemiş Şikâyet ve Cemal Günsel Kararı Üzerine Bir İnceleme", Uyuşmazlık Mahkemesi Dergisi - Yıl 9, Sayı 18, Aralık 2021 - pp.. 457-487.

VI. WORKING METHODS OF THE CONSTITUTIONAL COURT

Since 23 September 2012, the Court has received over 335.000 individual applications, approximately 276.000 of which have been concluded. In the aftermath of the coup attempt of 15 July 2016, the Court has received additional applications as well and during the state of emergency, the Court has dealt with a heavy workload, which is still the most significant problem of the individual application mechanism. Currently there are nearly 60.000 pending applications on the Court's agenda.

The Constitutional Court has so far been taking the necessary measures in order to overcome the increasing workload of the individual application mechanism. The Constitutional Courts have assigned rapporteuron the basis of expertise on certain freedoms and rights, and the applications have been classified accordingly to tackle with such heavy workload. The rapporteur-judges have examined the applications that contain an allegation of violation related to the rights and freedoms in their field of expertise. As another tool to overcome the heavy workload, a Filtering Department has been established within the Constitutional Court in order to ensure a more efficient filtering of applications. Established on 14 December 2015, this department aims to ensure that *prima facie* inadmissible applications are examined and decided on by the rapporteur-judges at once, and thereby, inadmissible applications are decided on in a short period of time. By eliminating such applications from the registry, this method aims to ensure that the Sections conduct a more efficient review on the rest of the applications.[56]

However, the functioning of this mechanism as an effective solution depends on the elimination of structural problems and the improvement of the Turkish legal system in a way that causes less violations. The Constitutional Court is not in a position to individually examine and decide on all violations of rights claimed through constitutional applications throughout the country.

Over the last nine years, the number of constitutional complaints to the Constitutional Court have increased steadily, exceeding the Court's capacity to a considerable extent. In September 2021, more than 59.000 applications

[56] 2015 Annual Report, p.30. https://www.anayasa.gov.tr/media/2743/annualreport2015.pdf (15.12.2021).

were pending before the Constitutional Court.[57] Having considered the pending constitutional complaints and the Court's limited personnel and other capacities too conclude these cases, in the year 2022 it will be hard to cope with this caseload of the constitutional complaint system.[58]

Complaints against human rights violations arising from similar human rights problems within the country are referred to as repetitive or similar applications in which the Court applies its established case-law repeatedly to them. These applications compel the Constitutional Court to repeat the same finding of violations in a large number of well-founded cases concerning the same or similar problems in Turkey. Apart from that if the Constitutional Court determines that the violation of fundamental rights guaranteed under the Constitution and the European Convention on Human Rights is stemmed from a structural problem and it determines that this problem will lead to similar individula applications, it can initiate a pilot judgement process according to the CCR.[59]

The large number of repetitive applications pose a serious threat to the constitutional complaint system. A major part of the violation judgments rendered by the Constitutional Court relates to the right to a fair trial. Over the past nine years 62,5 % of all constitutional complaint judgments of the

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[57] Nine years statistics p. 2-3. https://www.anayasa.gov.tr/media/7602/bb_istatistik_2021-3.pdf (17.12.2021).

[58] For similar observations and findings see, TEKBAŞ Abdullah, "Anayasa Mahkemesi Bireysel Başvuru İstatistiklerinin Değerlendirilmesi", **Anayasa Yargısı Dergisi,** Cilt. 35, 2018, pp. 195-223, p. 222; EKİNCİ Hüseyin, "Anayasa Mahkemesinin Bireysel Başvuru İş Yükü, Çözüme Yönelik Mahkeme Pratiği ve Öneriler", **Uyuşmazlık Mahkemesi Dergisi**, Issue 5, 2015, pp. 391-432.,

[59] See, Constitutional Court pilot judgement procedure in Y.T., B. No: 2016/22418, 30/5/2019; Süleyman Başmeydan, B. No: 2015/6164, 20/6/2019; and the very recent Constitutional Court judgement in *Keskin Kalem Yayıncılık and Ticaret A.Ş. and others* [GK], B. No: 2018/14884, 27/10/2021. In this case the Constitutional Court applied the pilot judgement procedure in line with article 75 of the RCC for individual application files numbered 2019/3462, 2019/12282, 2019/14680, 2019/24541, 2019/39731, 2020/24330, 2020/24333, 2020/27928 and combined these applications with the individual application file numbered 2018/14884 due to legal liaison regarding the subject matter of theses cases, It was decided that the examination would continue on the individual application file numbered 2018/14884. See also, GÖZTEPE, Ece; "Bireysel Başvuru Kararlarının İcrası: Anayasa Mahkemesi'nin Doğrudan ve Dolaylı "Çağrı Kararları" Üzerine Bir İnceleme", **Anayasa Yargısı Dergisi,** Cilt. 38, Sayı.1, 2021, pp. 43-83; **DUVAN,** p. 39; ŞİRİN, Tolga, **Türkiye'de Anayasa Şikâyeti (Bireysel Başvuru**, İstanbul: On İki Levha Yayıncılık, 2013, pp. 631-648; ÖZBEK, Nimet/ KUŞCU, Döndü, ("Anayasa Mahkemesinin 30.05.2019 Tarihli Pilot Kararı (Y.T. Kararı) İncelemesi ve Sınır Dışı Kararına Karşı Etkili Başvuru Üzerine Bir Değerlendirme", **Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi**, C. XXIV, S. 3, 2020, s. 3-39.

Court have been concerned with fair trial cases.[60] When it is noted that the majority of violations of right to a fair trial are related to right to trial within a reasonable time, the role of the structural problems in the violation of fundamental rights and freedoms become clear.

As a result, the Court lacks capacities for conducting its important task (besides upholding individual human rights protection) at a standard setting in the field of human rights. The problem of an overwhelming number of repetitive applications on fair trial originates from the reluctance of several judicial courts to fully adapt their implementation in line with the standards highlighted and emphasized in the case-law of the Constitutional Court and ECtHR on fair trial.

Therefore, the success of the consitutional complaint system depends on a more delicate and sensitive conduct of administrative and judicial authorities, which precludes the occurence of the violation of rights primarily before the judicial courts. Despite all the difficulties and problems, consitutional complaint mechanisms play a very important role in improving the standards of rights and freedoms in Turkey and in the transformation of the judicial system.

VII. CONCLUSION

Since 2012, the Constitutional Court rulings on constitutional complaints play a crucial role in transforming the Turkish legal system and promoting the human rights in Turkey, by simply implementing the principles and standards of the ECHR. The constitutional complaints mechanism has indeed supported the Turkish democratic and institutional consolidation and rule-of-law system. For example, at an early stage the Constitutional Court used a variety of (rejected) constitutional complaints to define the nature and function of the right to constitutional complaint, and to clarify the requirements and procedures of this mechanism.

The Constitutional Court received 335.324 constitutional complaint applications between September 2012 and September 2021, 276.307 of which (82,4% of the total applications) have been concluded, whilst only 15.721 applications have been examined on merits, rendering 14.911 judgments that find a violation of at least one right in the same period.

[60] Nine years statistics p. 9. https://www.anayasa.gov.tr/media/7602/bb_istatistik_2021-3.pdf (17.12.2021).

Considering the very large number of inadmissible applications (in number 246.752 and in ratio of percentage 89,3%) and the much lower number of applications examined on merits (15.721 in number) and violation judgments (14.911 in number) issued by the Constitutional Court, among others, this raises serious questions about core requirements concerning the admissibility criteria and accessibility of the complaint review mechanism. *"Accessibility"* is very important for the individual application mechanism to be qualified as an effective mechanism. This is so in the individual cases accepted for a full hearing and judgment (examination on merits), more or less 5 per 100 of the cases registered in the Constitutional Court.

In order to give a decision on the merits of a constitutional complaint, the application must first be examined in terms of admissibility. This review does not mean that it is actually at the Constitutional Court's discretion in full terms. The Constitutional Court should accept the constitutional complaint in its merits if it is important for the implementation and interpretation of the Constitution or for determination of the scope and limits of fundamental rights in concern under the Constitution. Therefore, a comprehensive legal analysis must be carried out at the admissibility phase of the constitutional complaints.

The Constitutional Court continues to work to alleviate the heavy workload of individual applications. However, the system should not be rendered dysfunctional in order to reduce the number of applications by using the admissibility criteria, in particular through the requirements on groundless and manifestly ill-founded applications and the requirements on constitutional importance of the application or significant damage of the applicant *(non-triviality)*. The Constitutional Court should not see and restrict itself like the ECtHR in applying the admissibility criterias very strictly. Instead it must extend its approach in favour of the applicants as it is the last domestic institution to remedy and redress the contested human rights violation. Accordingly, the Constitutional Court should have the opportunity and resources to effectively cope with the additional caseload.

Additionally, all decisions founded as inadmissable by the Court should be published on the web-site of the Court. Therefore, the opportunity for scholars to analyse this material for clarifications on the Court's approach to the question of admissibility would be possible, satisfying the individuals in terms of access to justice and to have an effective remedy, legal certainty and foreseeability.

Considering that approximately 55% of the individual applications were manifestly ill-founded (groundless) by the Constitutional Court so far, the 30 days deadline for lodging a complaint must be extended as it is very short and the implementation of admissibility criteria is applied in a strict manner and lodging a substantive (well-grounded) application requires a serious preparation process.

In view of these requirements, *inter alia*, the constitutional (individual) complaint mechanism must be accessible, and preventive to be qualified as *"effective constitutional complaint"*. As such, it must provide comprehensive protection of constitutional rights, and needs to take into account the subsidiary nature of the remedy in the ECtHR to resolve human rights problems at the national level.

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