

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

Distinguished colleagues,

Ladies and gentlemen,

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

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

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

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

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

Distinguished participants,

As is widely recognised, the separation of powers presupposes that the State organs, namely the legislature, the executive and the judiciary, be constrained by one another in order to effectively administer justice. In other words, it entails the delegation of legislative, executive and judicial responsibilities within a State to organs that are independent of one another, elected through separate processes, and governed by a system of ‘checks and balances’ amongst them. According to this principle, the bodies that enact the law, implement it, and resolve disputes

arising from its implementation should be distinct within the organisation of the State.<sup>1</sup>

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

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

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

In this sense, it can be stated that the main task of constitutional courts is to ensure the functionality of constitutions, which are called social contracts

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

formulated to determine the exercise of sovereign power within the framework of democratic principles, by securing fundamental rights and freedoms.

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

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

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

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

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

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

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

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

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

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

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

Through the judgments delivered by our Court in individual applications, significant contributions have been made towards the protection of fundamental rights and freedoms. Furthermore, it must be noted that the individual application mechanism has facilitated the accelerated implementation of universal human rights standards at the national level, thereby triggering the more effective

enforcement of international human rights norms within domestic law. Additionally, following the introduction of the individual application mechanism, the number of cases filed before the European Court of Human Rights (ECHR) against Türkiye has noticeably decreased, and so have the violation judgments rendered by the ECHR against the latter. The individual application system in our country, which has been recognised by the ECHR as an effective remedy, is often cited as an example of good practice.

Distinguished Presidents, esteemed justices, and honourable participants,

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

The Constitutional Court’s review of presidential decrees holds paramount importance in upholding the principle of separation of powers between the

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

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

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

the democratic balance by preventing any undue intervention of the executive into the legislative sphere.

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

### **DECISIONS RENDERED IN CONSTITUTIONALITY REVIEW PROCESS**

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

### **DECISIONS RENDERED IN INDIVIDUAL APPLICATION PROCESS**

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



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

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

Esteemed colleagues, on behalf of myself and the justices of the Constitution Court of the Republic of Türkiye, I would like to extend my warmest regards to you all and express my sincerest hope for a renewed commitment to moral values and justice, for the benefit of humanity as a whole and for the establishment of a fair and lasting peace that prevails in every corner of the world.

I would also like to extend my heartfelt wishes for a healthy and prosperous life, in the company of your loved ones.

Thank you for your attention.

Kadir ÖZKAYA

President

Constitutional Court of the Republic of Türkiye