



**3rd Congress of the World Conference on Constitutional Justice
'Constitutional Justice and Social Integration'
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Seoul, Republic of Korea**

Questionnaire

Reply by the Constitutional Court of Turkey

A. COURT DESCRIPTION

I. Basic Texts

The basic texts are as follows:

- 1- Constitution (http://global.tbmm.gov.tr/docs/constitution_en.pdf),
- 2- Law 6216 on Establishment and Rules of Procedure of the Constitutional Court ([http://www.codices.coe.int/NXT/gateway.dll/CODICES/laws/eng/eur/tur?fn=document-frame.htm\\$f=templates\\$3.0](http://www.codices.coe.int/NXT/gateway.dll/CODICES/laws/eng/eur/tur?fn=document-frame.htm$f=templates$3.0))
- 3- Rules of Procedure of the Constitutional Court

II. Composition, procedure and organisation

a. Judges

The Court is composed of seventeen members, whose term of Office twelve years and non-renewable. Their mandate expires at the age of 65. Three of the members are appointed by the Turkish Grand National Assembly (TGNA) among the three candidates nominated by the Court of Accounts and presidents of the Bar Associations for each vacant seat. Other fourteen members of the Court are appointed by the President of the Republic. The President appoints three members from the Court of Cassation, two members from the Council of State, one member each from the Military Court of Cassation and the High Military Administrative Court from among three candidates to be nominated for each vacant position by their respective plenary assemblies. The President also appoints three members from a list of three candidates nominated for each vacant seat by the Council of Higher Education from among the members of the teaching staff of institutions of higher education who are not members of the Council as well as four members directly from among senior civil service officials, senior judges and public prosecutors, self-employed lawyers or rapporteurs of the Constitutional Court.

Judges represent a diversity of experience based on different backgrounds and professions, varying standpoints and conceptions of society. Academicians are required to possess the title of associate professor or professor; lawyers must have practiced as a lawyer for at least twenty years; high level officials must have completed higher education and worked for at least twenty years in public service and first category judges and public prosecutors must

have at least twenty years of work experience including their period of candidacy, provided that they are all over the age of 45 to qualify for membership of the Constitutional Court. According to the 1982 Constitution, the President of the Republic has to choose one of each three candidates nominated by the high courts, whose presidents and members make up the majority of the members of the Constitutional Court. The Constitutional Court elects a President and two deputy presidents, who may be re-elected.

b. Rapporteur Judges

Rapporteur judges, who assist the works of the Court, are responsible for the preparation and presentation of reports and drafting of judgements. They are selected from among regular judges and prosecutors, with at least five years of experience, professors of law and legal researchers, auditors of the Court of Accounts and assistant rapporteurs with five years of experience. The President of the Court assigns the cases to them and they present their reports to the President and Plenary, which are non-binding and on which the Court members deliberate and decide in their presence. Rapporteur judges prepare the draft judgement in accordance with the decision adopted.

c. Administrative Staff

The number of judges of the Constitutional Court is 17, the number of rapporteur judges is 73, the number of assistant rapporteur judges is 26, and the number of administrative staff is 152.

The Constitutional Court consists of two sections convening with the deputy President as the chairman and four members and a plenary assembly convening with the Court President or a deputy President determined by him and at least twelve members. The sections decide principally on merits of individual applications and on admissibility in some exceptional cases. The plenary assembly hears the cases and applications concerning political parties, actions for annulment and objection and trials. As for commissions, they solely examine the admissibility of individual applications.

The sections and the plenary assembly shall take decisions by absolute majority. In order to decide for the annulment of a constitutional amendment, dissolution of political parties or their deprivation from state aid, two thirds majority of members attending the meeting is required.

The Court generally examines cases on the basis of documents in the case file, however, it may hold a hearing or hear oral explanations of the parties when it deems necessary.

III. Jurisdiction/ Powers

The Court has to work on the basis of relevant applications filed in the Court. Access to the Court can be made in the following ways:

a. Action for Annulment (Abstract Norm Review)

The President of the republic, parliamentary group of the ruling party and of the min opposition party and a minimum of one-fifth of the total number of members of TGNA may apply for an annulment action concerning laws, decrees having the force of law and the Rules of Procedure of Turkish Grand National Assembly or the provisions thereof. This right lapses sixty days after publication in the Official Gazette of the law, decree or rules of procedure in question.

b. Contention of Unconstitutionality (Concrete Norm Review)

Contention of unconstitutionality can be initiated any time by the general, administrative and military courts and any party involved in a case that is under scrutiny before a court a quo. The Court decides on the matter within five months of receiving the contention. If no decision is reached within this period, the applicant court a quo should decide the case under existing legal provisions.

c. Individual Application (Constitutional Complaint)

Individual application, which was introduced into the Turkish legal system by the 2010 constitutional amendments, began on 23 September 2012. According to Article 148 of the Constitution, after the exhaustion of other administrative and judicial remedies, citizens thinking that their rights set forth in European Convention of Human Rights have been violated by public power shall have the right to apply to the Constitutional Court.

Direct individual applications against legislative acts, regulatory administrative acts, Constitutional Court judgements and acts excluded from judicial review by the Constitution are excluded from the scope of individual application.

Individual applications are subject to payment of a fee of 198 Turkish liras.

The Court may decide on application inadmissible if it is manifestly ill-founded or if it does not bear any significance for the interpretation and application of the Constitution or for the determination of the scope and limits of fundamental rights and the applicant did not suffer any significant damage.

If the application is found admissible, it is examined on the file by a section on the merits. However, section may decide to hold a hearing as well.

If the Court finds a violation of the fundamental rights of the applicant at the end of the examination, it may decide what should be done to redress it and its consequences. The Court may decide some compensation for the applicant or ask the applicant to file a case before the competent first instance court for compensation.

d. Dissolution of Political Parties

Following the filing of a suit for the dissolution of a political party by the Office of Chief Public Prosecutor of the Court of Cassation, the Constitutional Court examines the case and gives its judgement on the basis of written defence and evidence.

A political party may be closed if its statutes and program are contrary to Article 68/4 of the Constitution, if it becomes an undertaker of actions contrary to the same article, if it receives financial aid from foreign countries, international institutions, from real persons and legal entities not belonging to Turkish nationality.

The Constitutional Court may rule that the concerned party be deprived of state fiscal aid wholly or in part instead of dissolving it permanently.

e. Financial Audit of Political Parties

The Court audits the income, expenditure and acquisitions of political parties with the assistance of the Court of Audits. The judgements it renders as a result of the auditing are final.

f. Trial of Statesmen before the Grand Tribunal

The Constitutional Court tries the President of the Republic, Speaker of the TGNA, Prime Minister and Ministers, presidents and members of the Constitutional Court, of the Court of Cassation, of the Council of State, of the Military Court of Cassation, of the High Military Administrative Court of Appeals, and their Chief Public Prosecutors, Deputy Public

Prosecutors, and the presidents and members of the High Council of Judges and Prosecutors and of the Court of Accounts, the Commander of Turkish Armed Forces (Chief of Staff), the Commanders of the Land, Naval and Air Forces and the General Commander of the Gendarmerie for offences relating to their official functions.

IV. Nature and effects of judgments

A law invalidated by the Constitutional Court becomes ineffective as from the date of publication of the Court's decision in the Official Gazette. The Court may also decide to postpone the date of entry into force of its decision. This date cannot be more than one year from the date of publication of the decision in the Official Gazette. According to Article 153 of the Constitution, the annulment decision cannot have a retroactive effect.

Judgments of the Constitutional Court are final. However, judgments of the Court when acting as the Grand Tribunal may be re-examined upon request. Annulment decisions cannot be made public without a statement of reasons (Art. 153).

Laws cannot be contrary to the Constitution, which only the Constitutional Court can authoritatively interpret. The Court's decisions bind legislative, executive and judicial organs, administrative authorities, persons and corporate bodies, which means that legislative and executive branches have no power to modify or delay the execution of the decisions of the Constitutional Court.

B. SOCIAL INTEGRATION

As concerns the specific sub-topics for the 3rd Congress, please reply to the following questions in a succinct manner, in any of the languages of the conference - but if possible with a translation into English.

1. Challenges of Social integration in a globalised world

1.1. What challenges has your Court encountered in the past, for example in the field of asylum law, taxation law or security law?

The Court comes across applications concerning issues related to socially weak segments from time to time, as changing and improving social and economic conditions transform social integration also in Turkey into a conflicting concept in certain fields. One of these is the situation of migrants. Decision of "precautionary measure" has been rendered through a recent individual application judgement rendered, with a view to preventing the extradition of a person taking refuge in Turkey due to the incidents occurring in Algeria, on the grounds that the person does not have a passport. (Individual application judgement, Application No: 2013/9673, 30/12/2013).

Various situations of social conflict also arise concerning issues in the field of social security and the court approaches these issues within the framework of its constitutional powers. For instance, it rejected the request of annulment of the rule by indicating that the fact that granting a monthly payment to persons who have been decided to have lost their earning ability in the profession due to silicosis by Social Security Institution has been dependent upon making a request in respect thereof within 3 months as of the publication of the Law, that those not applying within this time period and contracting silicosis after the publication date of the Law cannot exercise the right in question, that a right granted for silicosis patients has been restricted to a certain time period and those contracting the disease after this period of time have been excluded from the scope of the Law does not conform to the principle of social legal state and bears contrariness to the principle of equality as well (Registry 2011/42, Judgement 2013/60-REVIEW OF THIS JUDGEMENT HAS BEEN

COMPLETED; HOWEVER, IT HAS NOT BEEN PUBLISHED IN THE OFFICIAL GAZETTE YET).

Inequalities of income distribution among social groups are one of the issues encountered by the Court from time to time as one of the crucial problems in the field of social integration. Noting that subjecting wage incomes to tax at the same rate as incomes earned apart from wage and increasing them in a way that will result in a decrease in wage without taking any measures shall undermine the principle of 'fairness', the Court rendered a judgement of annulment in its decision concerning the law regulating the issue of "receival of taxes in accordance with financial power". Thus, the Court indicated the principle of "fairness" as reference in the resolution of a problem arising in the field of social integration.

1.2. How were issues of social integration or conflict transformed into legal issues?

Problem in certain fields which should be resolved within political process may take place in the Court's agenda from time to time. One of these issues is concerned with the usage of maiden name by women. Women constitute a social group included in the field of positive discrimination in Article 10 of the Constitution regulating the principle of equality. Women are obliged to use the surname of their spouses after marriage in accordance with Turkish Civil Code. This situation creates crucial problems particularly in terms of women in business life; they encounter difficulties notably in the exercise of their careers and professional fame. This issue came before the Court through individual application and the Court held that such a situation violated the right to privacy along with the principle of equality (Individual application judgement, Application No: 2013/2187; 19/12/2013).

One of the primary concepts used in the issue of illegal housing (urbanisation) is squatting in Turkey. These constructions erected without any license are considered as a serious problem in terms of functionality and aesthetic of cities. The swift increase in these constructions where financially weak segments of society reside in particular is marked as a crucial social problem. Within this framework, the Court rejected an application for annulment brought before it by noting that the law in question is Constitutional (Registry 2010/82, Judgement 2012/159).

Another crucial judgement recently rendered by the Constitutional Court is concerned with the individual application lodged by a female lawyer concerning the fact that she could not participate in hearings with her head scarf. The Court assessed the application and reached the conclusion that the ban in question was contrary to the principles of freedom of religion-conscience and equality of the Constitution. Thus, the Court paved the way for women to practice law with their head scarves by generating a legal solution in an issue in which a deadlock is the case in respect of its resolution at a social level (Individual application Judgement, Application No 2014/256, 25/6/2014).

1.3. Is there a trend towards an increase on legal issues relating to social integration? If so, what are the dominant questions before your Court in the past and what are the present?

It seems possible to mention about an uptrend when compared with the past on account of the introduction of the remedy of individual application to the Constitutional Court on 23 September 2012. Anyway, a considerable majority of the examples given in 1.1 and 1.2 are concerned with the judgements rendered as a result of individual application. Therefore, it can be said that persons, even if not social groups directly, have attained a significant opportunity in terms of social integration thanks to individual application.

2. International standards for social integration

2.1. What are the international influences on the Constitution regarding issues of social integration/social issues?

Referring to international norms in its certain articles, 1982 Constitution demands the application of those articles with these norms. Yet, social integration and international norms

concerning social problems are not specifically among these norms. For instance, Article 16 of the Constitution provides that fundamental rights and freedoms may be restricted “by law in conformity with international law for foreigners”.

Nevertheless, it can be said that letter and spirit of the Constitution are open to the application of international norm concerning human rights, including those in the field of social integration, by national organs, considering the general principles of the Constitution, constitutional provisions and the amendments introduced in the Constitution until today.

On the other hand, the amendment introduced in Article 10 of the Constitution regulating the principle of equality in 2004 and notably in 2010 should be mentioned. Thanks to these amendments, it is provided that the measures taken by the State in order to maintain equality between women and men and the measures to be taken for the segments to be especially protected (children, the elderly, handicapped, widows and orphans of war and duty martyrs along with the disabled and veterans) cannot be regarded as contrary to the principle of equality. Thus, the State was enabled to maintain equality among all segments of society, as well as to take measures for the protection of those who are needed to be protected. Thanks to a similar regulation in Article 41 of the Constitution, the obligation of taking protective measures for children against abuse and violence of all kinds has been imposed on the State.

Furthermore, it should be reminded that paragraph four of Article 51 of the Constitution regulating trade union right was repealed following the Constitutional referendum in 2010, due to the fact that it was found contrary to the Convention numbered 87 of International Labour Organisation (ILO) Concerning the Protection of Freedom of Trade Union and Right to Association.

2.2. Does your Court apply specific provisions on social integration that have an international source or background?

The Constitutional Court has the opportunity to solely apply the related norms directly in articles of the Constitution directly referring to international norms. Yet, it seems rather difficult for these articles to give rise to a conclusion in the context of social integration in accordance with their feature

However, the Constitutional Court may utilize international human rights instruments including those concerned with social integration as supplementary norm according to the general spirit of the Constitution it has acquired over time thanks to the amendments introduced. In other words, it adopts the method of interpretation reconciling and conforming to international human rights norms to the extent that they do not contradict with the Constitution, while concretizing constitutional provisions

2.3. Does your Court directly apply international instruments in the field of social integration?

It should be noted that articles of the Constitution permitting the direct effect of international norms have no practice in the context of social integration in the practices of the Constitutional Court until now.

2.4. Does your Court implicitly take account of international instruments or expressly refer to them in the application of constitutional law?

The Constitutional Court utilizes international norms as supplementary norms. It benefits from these norms while interpreting articles of the Constitution and generally confines itself to stating that its interpretation of the mentioned articles also do not conflict with international norms.

Within this scope, the Court refers notably to the Conventions signed within the framework of International Labour Organisation (ILO) rather in the issues of trade union rights and social security in its almost 10 judgements. For instance, in its judgement numbered 2009/92 with registry number 2006/94 dated 25.6.2009, the Court held that "International Labour Organisation has banned intervention in trade unions also in its Conventions numbered 98 and 151" and underlined that "these international conventions approved by TGNA and the principles adopted in Article 51 of the Constitution do not include any differences in terms of their essence."

The Court supported its view by referring to recommendation decisions of International Labour Organisation in one of its judgements (Registry 1989/14 Judgement 1989/49 Date of Judgement 9.12.1989).

Judges of the Constitutional Court benefit from the Conventions in the context of International Labour Organisation in their dissenting opinions as well (Registry 2008/54 Judgement 2011/45 Date of Judgement 21.10.2011).

Within the same framework, the Court referred to the European Convention on Social Security formed within the Council of Europe in its two judgements. (Registry 2012/33 Judgement 2012/174 Date of Judgement 8.11.2012).

2.5. Has your Court ever encountered conflicts between the standards applicable on the national and on the international level? If so, how were these conflicts solved?

The Constitutional Court is to apply the Constitution in a conflict between international norms of all kinds and the Constitution. In this sense, the problem shall be resolved in favour of the Constitution, in case the conflict is with a constitutional provision. Anyway, the Court renders its judgement by manifestly taking the Constitution as basis in these cases and does not prefer referring to international norms.

However, in case the conflict is between a law, that is to say, a text subordinate to the Constitution, and international norm concerning fundamental rights and freedoms, it is the duty of other courts to eliminate this conflict and resolve the problem according to the related international norm to the extent that it does not conflict with constitutional norms. It should be noted at this point that the Court is not assigned with the review of conformity of a law with international norms.

3. Constitutional instruments enhancing/dealing with/for social integration

3.1. What kind of constitutional law does your Court apply in cases of social integration – e.g. fundamental rights, principles of the Constitution ("social state"), "objective law", Staatszielbestimmungen, ...?

The approach of the Constitutional Court should initially be assessed within the framework of norm review. The Court reaches a solution in social integration initially by considering the related fundamental right. For instance, in its judgement numbered 2003/10 with registry number 2001/351 dated 11.3.2003, the Court examined the regulation concerning the elderly and disabled from the perspective of Article 61 of the Constitution titled "Those needed to be especially protected in respect of social security" and reached the conclusion that the State introduced a regulation by considering the right to social security provided in Article 60 of the Constitution and its duty of special protection envisaged for the disabled in Article 61.

Surely the Court also utilizes the principle of social state counted among the features of republic in Article 2 of the Constitution, which it evaluates as an umbrella principle in respect of constitutional fundamental rights in this matter, sometimes together (Registry 2013/74 Judgement 2013/143 Date of Judgement 28.11.2013) and sometimes with other

constitutional provisions (Registry 2012/33 Judgement 2012/174 Date of Judgement 8.11.2012) as a criterion norm in norm review.

Within the framework of individual application, the Court conducts an examination by directly considering the right with which the complaint is concerned. However, it should be reminded that the Court considers the general spirit, principles of the Constitution while determining the scope of that right, although it does not express this explicitly.

3.2. In cases where there is access of individuals to the Constitutional Court: to what extent can the various types of constitutional law provisions be invoked by individuals?

The Constitutional Court can examine the allegation of violation of rights which we can define as rights of first generation indicated in the Constitution within the context of individual application. As a principle, the violation of social and economic Rights cannot be brought before the Court by individuals. However, it should not be forgotten that rights of first generation may have reflections which can be evaluated within the context of social integration. For instance, the principle of equality, prohibition of discrimination in a sense, is within the scope of individual application in this sense and persons can bring before the Court the allegation of discrimination they are subject to in comparison with other groups and persons. Similarly, certain social problems within the context of the protection of private life or family life can be submitted for the Court's assessment (sexual orientation etc.). It does not seem possible to give an example of a concrete problem within this framework, as the individual application mechanism is currently new.

3.3. Does your Court have direct competence to deal with social groups in conflict (possibly mediated by individuals as claimants/applicants)?

The Court does not have a role in conflict between social groups.

3.4. How does your Court settle social conflicts, when such cases are brought before it (e.g. by annulling legal provisions or by not applying them when they contradict the principle of equality and non-discrimination)?

If conflict between social groups has somehow been brought before the Constitutional Court within the context of norm review, surely the Court may annul the related norm by considering it unconstitutional or identify its constitutionality. In this case, the resolution of the problem can be in question.

3.5. Can your Court act preventively to avoid social conflict, e.g. by providing a specific interpretation, which has to be applied by all state bodies?

It is not possible for the Court to act in a way which shall play a preventive role in conflict between social groups.

3.6. Has your Court ever encountered difficulties in applying these tools? It has been mentioned above that the Court does not have a preventive role in such conflicts.

3.7. Are there limitations in the access to your Court (for example only by State powers), which prevent it from settling social conflicts?

The power to apply within the framework of norm review has been granted only for public authorities in respect of requesting for the annulment of certain types of norms. Therefore, social groups cannot lodge an application to the Court in this type of review. However, these

groups may enable the problem to be brought before the Court within the context of norm review by persuading main opposition party or a certain number of deputies.

On the other hand, there are certain restrictions for these problems to be brought before the Court by means of individual application, as only those alleging that one of their current and personal rights has been directly affected may lodge an individual application. Therefore, as a principle, social organisations may apply only with the allegation of violation of their own rights; otherwise, they cannot submit the problem for the Court's examination with a view to defending the rights of the group whose rights they advocate or the rights of certain people from the group.

4. The role of constitutional justice in social integration

4.1. Does your Constitution enable your Court to act effectively in settling or avoiding social conflict?

The Constitutional court acts within the boundaries indicated by the Constitution in order to eliminate social conflicts and enabling social integration. The Constitution does not assign the Court with the function of directly resolving social conflicts. Therefore, the Court acts within the framework of duties assigned to it by the Constitution. While performing these duties, the Court settles the disputes brought before it through both norm review and individual application. Sample cases in respect thereof are available in 1.1. The Court does not avoid resolving social conflict; it targets to contribute to the settlement within the framework of its own field of duty in its judgements in question.

4.2. Does your Court de facto act as “social mediator”, or/and has such a role been attributed to it?

As also indicated in previous replies, no role has been assigned to the Court in resolving social conflicts in constitutional terms. The Court targets to generate solutions with the judgements it renders within the scope of issues brought before it concerning social conflicts only on legal grounds. A situation otherwise shall constitute an example of “a negative judicial activism” for the Court and create an image of an intervention in the legislative/executive field. The Court may render judgements within the context of norm review when social conflicts are transformed into a norm by the legislative organ, as for individual application, as a rule, when the allegation of violation is put forward and the violation is not eliminated by other judicial organs and when an application is lodged in both of them as a result.

4.3. Has there been cases, when social actors, political parties could not find any agreement, they would send the issues to your Court which had to find a legal solution, which normally should have been found in the political area?

The fact that political actors or social groups have brought a problem directly before the Court does not mean that the problem in question shall be definitely resolved. The Court approaches the mentioned problem in constitutional terms under given conditions; however, in case of lack of unconstitutionality, the problem in question cannot be resolved.