



Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından birlikte finanse edilmektedir.

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**ANAYASA MAHKEMESİNE BİREYSEL BAŞVURU SİSTEMİNİN DESTEKLENMESİ ORTAK PROJESİ**  
JOINT PROJECT ON SUPPORTING THE INDIVIDUAL APPLICATION TO THE CONSTITUTIONAL COURT IN TURKEY

CASE LAW FORUM:  
INDIVIDUAL APPLICATION JUDGMENTS  
RELATED TO CRIMINAL JUDICIARY

PROGRAMME

2-3 MARCH 2017

SWISSOTEL, ANKARA





2 March 2017

Thursday

Anadolu Hall

09.15 **Registration**

09.30 **Opening remarks**

Kemal Özcan, President of 4<sup>th</sup> Chamber, Military Court of Cassation

Vuslat Dirim, President of 13<sup>th</sup> Criminal Chamber, Court of Cassation

Burhan Üstün, Vice President of the Constitutional Court

09.50 **Presentation of the Project**

Yücel Erduran, Project Manager, Council of Europe

10.00 **Overview of the judgments of the Constitutional Court and under the light of the case law of the ECtHR and the concept of legal remedy complaint (Fourth instance doctrine in reviewing human rights)**

Seçkin Erel, Head of Division, ECtHR

10.30 **Break**

**11.00 First Session**

Chair: Prof. Dr. İzzet Özgenç

Chief Rapporteur: Abdullah Çelik

**A. Equality of arms**

*Yankı Bağcıoğlu et al [Plenary], App. No: 2014/253, 9/1/2015 [6]<sup>1</sup>*

***Failure in investigating the allegations that digital data do not reflect the truth and in sharing evidences with the defence***

In this application, the applicant requested an expertise review on the evidences for the investigation of the claims that digital data do not reflect the truth and further requested access to the related images. However, these requests of the applicant were rejected on the grounds that the contents of the digital documents were considered as classified information (state secrets) and the digital evidences were collected with a duly conducted search. This application is related to violation of the right to fair trial by the rejection of the applicant's requests.

**B. Adversarial trial**

*Cezair Akgül, App. No: 2014/10634, 26/10/2016 [7]*

***Evidences collected from another file were not discussed in the hearing***

In this application, the contents of the phone conversation against the applicant were not read during the hearing. So the applicant was not able to evaluate the relevance and significance of this evidence in relation to the case and could not express his claims and objections on the reliability of this evidence. The principle of adversarial trial was therefore violated.

<sup>1</sup> [ ] Numbers show the location of the relevant judgment in the book titled "Individual Application Judgments Related to Criminal Judiciary".



## C. Admission and evaluation of evidences

*Müslüm Turfan, App. No: 2013/2516, 18/11/2015*

### ***Considering unlawfully collected evidences as a basis for conviction [9]***

This application is related to the alleged violation of the right to a fair trial on the grounds that conviction decision was given on the basis of evidences collected with torture and failure in settling trial within reasonable time.

## 12.30 Lunch

### 13.30 Second Session

Chair: Prof. Dr. Muharrem Özen

Chief Rapporteur of Research and Caselaw Unit: M. İlhan Koç

### A. Right to reasoned judgment

*Billur Güzide Balyemez and Recai Alper Tunga, App. No: 2014/5909, 25/3/2015*

### ***Insufficient reasoning presented by instance courts with regards to the basis of conviction***

This application is related to the alleged violation of the right to reasoned judgment on the grounds that conviction was ruled with insufficient reasoning without interrelating facts and evidences.

### B. Right to legal assistance

#### 1. Legal assistance during custody

*Abdulselam Tatal et al, App. No: 2013/2319, 8/4/2015 [17]*

This application is related to alleged violation of the right to fair trial due to failure in exercising legal assistance during custody.

#### 2. Failure in informing the defendant about assignment of a mandatory advocate

*Gürhan Nerse, App. No: 2013/5957, 30/12/2014 [16]*

This application is related to the violation of the right to legal assistance due to the failure in informing the defendant about the assignment of a mandatory advocate by the court.

## 15:00 Break



2 March 2017

Thursday

Anadolu Hall

## 15.20 Third Session

Chair: Prof. Dr. Çetin Arslan

Rapporteur: Dr. Yunus Heper

### Right to hear and question witnesses

#### 1. Failure to hear witnesses called to prove the existence of facts that constitute grounds for conviction

*Ahmet Zeki Üçok*, App. No: 2013/1966, 25/3/2015 [20]

This application is related to violation of the right to hear witnesses on the grounds that witnesses requested to prove the facts that constitute grounds for conviction were not called and the request to hear expert scientists on scientific possibility of the alleged issue was rejected.

#### 2. Failure to question witnesses called in other lawsuit files

*Ali Rıza Telek*, App. No: 2013/2630, 30/12/2014 [19]

The application is related to violation of the right to question witnesses due to the fact that conviction is based on statements given by witnesses who were called during investigation phases of other lawsuits and no inquiry was made on whether or not those witnesses had the opportunity to be confronted by the applicant.

#### 3. Hearing anonymous witnesses without providing sufficient assurance to the defence

*Baran Karadağ*, App. No: 2014/12906, 7/5/2015 [22]

This application is related to violation of the right to question witnesses in the context of the right to fair trial due to the fact that conviction is mainly based on statement of an anonymous witness, no reason is specified for why the identity of the witness is kept anonymous and no balance is achieved between the interests of the anonymous witness and the rights of the defence.

## 16.30 End of the first day



3 March 2017

Friday

Anadolu Hall

## 09.15 Fourth Session

Chair: Prof. Dr. Cumhur Şahin

Rapporteur: Akif Yıldırım

Rapporteur: Abuzer Yazıcıoğlu

### A. Right to access to a court

*Rıza Gençoğlu, App. No: 2013/3543, 7/5/2015 [1]*

***The request for withdrawal of the decision for suspension of the pronouncement of judgment cannot be reviewed since this request is considered as an appeal application***

This application is related to the claim that the applicant is deprived of the review of his request for withdrawal of the decision for suspension of the pronouncement of judgment despite two petitions filed on different dates and this deprivation violates the applicant's right to access to a court.

### B. Legal Judge Assurance

*Mehmet Çelik, App. No: 2015/889, 17/11/2016 [3]*

***Legal certainty due to decisions given by different branches of judiciary***

This application is related to the claim that decisions given by courts in different branches of judiciary lead to legal uncertainty and the legal judge assurance is violated on the grounds that mechanisms to redress this legal uncertainty cannot be operated functionally.

*Şehap Korkmaz, App. No: 2013/8975, 23/7/2014 [\*]<sup>2</sup>*

### ***Transfer of the case***

The application is related to violation of the right to fair trial and effective remedy due to legal regulations concerning transfer of the trial from the location of the death incident to another location and due to the judicial process.

## 10.15 Break

<sup>2</sup> Judgments marked with [\*] are not in the book "Individual Application Judgments Related to Criminal Judiciary" and will be distributed before the discussion session.



3 March 2017

Friday

Anadolu Hall

### 10.30 Fifth Session

Chair: Prof. Dr. Adem Sözüer

Chief rapporteur for Commissions: Murat Azaklı

Rapporteur: Özgür Duman

#### A. Right to trial within reasonable time

1. *Ahmet Uğur Soylu*, App. No: 2014/1036, 15/10/2014
2. *M. B.*, App. No: 2014/6159, 17/11/2014
3. *Salih Şahin*, App. No: 2013/7040, 11/12/2014
4. *Aycan Yılmaz*, App. No: 2014/10799, 10/3/2015
5. *Mehmet Aslan*, App. No: 2013/7040, 22/6/2015
6. *Ömer Çoygun*, App. No: 2013/3396, 22/6/2015
7. *Fikri Yazan et al.*, App. No: 2013/6796, 15/10/2015
8. *İffet İnci Gültekin*, App. No: 2013/9585, 9/3/2016

Applications are related to the failure of settling ongoing criminal proceedings within reasonable time. Application no. 2013/7040 is related to the claim of detention exceeding reasonable time.

#### B. Right to Property (Confiscation)

*Bekir Yazıcı*, App. No: 2013/3044, 17/12/2015

The application is related to the alleged violation of the right fair trial due to failure in concluding the lawsuit within reasonable time in a smuggling proceeding and the right to property due to confiscation of a vehicle purchased by a third party in good faith on the grounds that the vehicle is a subject of smuggling.

### 11.30 Break



3 March 2017

Friday

Anadolu Hall

### 11.45 Sixth Session

Chair: Prof. Dr. Feridun Yenisey

Rapporteur: Murat Şen

Rapporteur: Nahit Gezgin

#### A. Right to life

*Makbule Talay*, App. No: 2013/8592 [23]

The application is related to the alleged violation of the procedural aspect of the right to life due to failure in concluding investigation and subsequent prosecution of case resulting in death of relative within reasonable time.

*Nesrin Demir et al*, App. No: 2014/5785, 29/9/2016 [25]

#### ***Death incident during the execution of duties by law enforcement officers***

The application is related to the alleged violation of the right to life of the relatives of the applicants due to killing of the applicant by law enforcement officers against the law and failure in conducting effective criminal investigation.

#### B. Prohibition of torture and ill treatment

*Arif Haldun Soygür*, App. No: 2013/2659, 5/10/2015 [\*]

This application is related to the alleged violation of the prohibition of torture and ill treatment due to use of force by police officers and the right to person's liberty and security due to arbitrary custody.

### 12.45 Closing remarks

Kemal Özcan, President of 4<sup>th</sup> Chamber, Military Court of Cassation

Vuslat Dirim, President of 13<sup>th</sup> Criminal Chamber, Court of Cassation

Engin Yıldırım, Vice President of the Constitutional Court

Note:

1. Each judgment will be discussed for 30 minutes on first day and for 20 minutes on the second day.
2. Participants will be briefed on each judgment (5 minutes) by the relevant TCC rapporteur before discussion.