

PROGRAMME

12 May 2016

Thursday

Birecik Hall

09.15 **Registration**

09.30 **Opening Speeches**

Engin Yıldırım, Vice President, Constitutional Court

09.40 **Presentation of Project**

Yücel Erduran, Project Manager, Council of Europe

09.50 **Individual Application and Administrative Judiciary**

M. Sadık Yamalı, Rapporteur, Turkish Constitutional Court

10.00 **Common questions related with the review of the ECtHR case-law**

Şerif Yılmaz, Senior Legal Expert, ECtHR

SESSION I

Chair: Engin Yıldırım, Vice President, Constitutional Court

I- Fair Trial

10.20 Constitutional Court's examination method for right to fair trial

Rapporteur: Akif Yıldırım

A- Right to access to a court

10.30 *Mohammed Aynosah* (Application No. 2013/8896, 23/02/2016)¹

Rapporteur: Akif Yıldırım

Related with violation of right to access court due to rejection of a lawsuit on the grounds of prescription. The lawsuit was filed against administrative punitive fine charged on the grounds of failure in exiting customs area of Turkey in due time.

11.00 *Haluk Pek*, (Application No. 2013/9094, 04/02/2016)

Rapporteur: Bahadır Yalçınöz

Related with violation of right to access court due to rejection of lawsuit on the grounds of prescription. The lawsuit was filed with the claim of compensation for damage suffered due to illness experienced during the delivery of military service.

11.30 **Break**

B- Fair hearing

a. Equality of arms and adversarial trial principle

11.40 *Ahmet Erbek* (Application No. 2013/3197, 17/02/2016)

Rapporteur: M.Sadık Yamalı

Related with violation of the principle of equality of arms and adversarial trial principle due to the fact that the applicant was not allowed to examine confidential documents

¹ For each judgment, presentation by the rapporteur will be for 10 minutes and question-answer session will last 20 minutes.

submitted by the plaintiff administration and considered as a basis in the judgment of the ECtHR.

12.10 *Mustafa Kupai*, (Application No. 2013/7727, 04/02/2016)

Rapporteur: Bahadır Yalçınöz

Related with the fact that there was an unproportional intervention to the principle of equality of arms on the grounds that the applicant is in a situation weaker than the defendant administration due to the delivery of a judgment for a lawsuit filed on the basis of a report issued by a committee under the body of administrative organization of a military hospital where the applicant was previously treated and which issued related reports for the situation of the applicant. This situation made the defendant administration more advantageous significantly and the balance of interests was consequently destroyed against the applicant who was charged with difficult burdens that are difficult to bear.

12.40 **Lunch**

SESSION II

Chair: Kadir Özkaya, Member of the Turkish Constitutional Court

13.45 *Koray Erdoğan* (Application No. 2013/1989, 10/03/2016)

Rapporteur: Bahadır Yalçınöz

The lawsuit filed with the request for annulment of the rejection procedure of the request for reassignment to police position was rejected by first instance court due to a reasoning different than the reasoning related with procedure and the objection presented in the remedy stage was not met.

b. Right to reasoned judgment

14.15 *Şah Tarım İnş. Tur. Ltd. Şti.* (Application No. 2013/7847, 09/03/2016)

Rapporteur: M. Sadık Yamli

Related with violation of the right to reasoned judgment due to rejection of a lawsuit filed against the payment orders issued to collect motor vehicle tax without meeting claims related with merits of the lawsuit.

14.45 *Abbas Emre* (Application No. 2014/5005, 06/01/2016)

Rapporteur: Tuğba Yıldız

Related with violation of the right to reasoned judgment due to rejection of the claim of non-pecuniary compensation according to Law no. 5233 'the Compensation of Damages that Occurred due to Terror and the Fight Against Terrorism' (17/7/2004).

15.15 **Break**

II- Presumption of Innocence

15.30 Constitutional Court's examination method for the principle of presumption of innocence

Rapporteur: Recep Ünal

15.40 *Ramazan Tosun* (Application No. 2012/998, 07/11/2013)

Rapporteur: Recep Ünal

Related with violation of the presumption of innocence due to the fact that the reasoning of the judgment delivered by the High Military Administrative Court refers to the criminal trial which resulted with acquittal of the applicant and reflects the belief that the applicant whose criminality was not established with court judgments offended the actions that are the subject of the trial and that the applicant is guilty.

16.10 *Sebğatullah Altın* (Application No. 2015/1503, 02/12/2015)

Rapporteur: M. Sadık Yamli

Related with the violation of presumption of innocence by the statements in the judgment which was delivered in a lawsuit. The lawsuit was filed because the applicant was not returned to his office despite of the strike out decision in a criminal proceeding due to prescription. The criminal proceeding was considered as a basis for the termination of assignment.

16.40

End of the First Day

SESSION III

Chair: Muhittin Karatoprak, Member of High Military Administrative Court

III- Right to life

09.30 Constitutional Court's examination method for right to life

Rapporteur: Nahit Gezgin

09.35 *Oktay Can* (Application No. 2013/6379, 14/10/2015)

Rapporteur: Nahit Gezgin

Related with alleged violation of right to life due to ruling for insufficient compensation in a compensation lawsuit filed against the administration who is claimed to have a fault in applicant's son's suicide during military service and alleged violation of right to fair trial due to ruling for attorneyship fee at high amounts against the applicant in the same lawsuit.

10.05 *Salih Ülgen et al.* (Application No. 2013/6585, 18/9/2014)

Rapporteur: Elif Karakaş

Related with alleged violation of the positive obligation aspect of the right to life secured under Article 17 of the Constitution due to the fact that safety measures required to avoid mine explosion which resulted in permanent injury of the applicants had not been taken at adequate level in the concrete incident.

10.35 **Break**

IV- Right to respect for private life and family life

10.45 Constitutional Court's examination method for right to respect for private life and family life

Rapporteur: Şebnem Nebioğlu Öner

10.50 *Serap Tortuk* (Application No. 2013/9660, 21/01/2015)

Rapporteur: Şebnem Nebioğlu Öner

Dismissal from civil service due to acts related with private life and unrelated with professional activities: Related with violation of the right to confidentiality of private life due to execution of the punishment of dismissal from civil service because of applicant's acts related with private life and unrelated with professional activities.

11.20 *Ata Türkeri* (Application No : 2013/6057, 16/12/2015)

Rapporteur : Şermin Birtane

Private lives of public officials: Related with the violation of the right to confidentiality of private life on the grounds that it was not clearly presented that under which conditions the applicant who is a member of armed forces explained his sexual life which constitutes the most private aspect of his private life in details as of his years of education and that the judgment of instance court did not contain any reasonable reason that may justify intervention to the applicant's right to privacy with the consideration of the claims related with the conditions of statement taking.

11.40 *Tevfik Türkmen* (Application No. 2013/9704, 03/03/2016)

Rapporteur: Aydın Şimşek

Related with the violation of the right to confidentiality of private life and freedom of correspondence due to the procedure of non-renewal of sergeant contract with the consideration of e-mail correspondences.

12.00 **Lunch**

SESSION IV

Chair: Emin Sınmaz, Member of the 6th Chamber, Council of State

VI – Right to unions

14.00 Constitutional Court's examination method for right to unions

Rapporteur: Okan Taşdelen

14:05 *Kristal – İş Trade Union (Grand Chamber)* (Application No. 2014/12166, 2/7/2015)

Rapporteur: Okan Taşdelen

Council of Ministers' decision for postponement of a strike: Related with the violation of right to unions due to failure in presenting that the decision to postpone a strike is based on a compelling social requirement and that this decision is not required in a democratic society.

14.35 *Tayfun Cengiz* (Application No. 2013/8463, 18/9/2014)

Rapporteur: Yunus Heper

Right to union activities: Examination should be made on whether or not restrictions related with right to unions and stipulated in the Constitution comply with the principles of requirements of a democratic society order and proportionality in Article 13 of the Constitution. In case of the consideration that the balance between the right to unions intervened with the disciplinary punishment given the applicant's act of not coming to work for union activities and the public interest sought with disciplinary punishment is proportionate then it can be concluded that the reasoning behind the disciplinary punishment and the rejection of the lawsuit by instance courts are convincing, in other words relevant and sufficient. On the other hand, although it is a minor one, the punishment given has the nature of preventing members of unions like the applicant from participating in legitimate strikes or activities organized to defend their interests. Therefore, this case is related with the violation of article 51 of the Constitution due to the intervention to the right to unions.

15:05 **Break**

VII- Right to property

15.15 Constitutional Court's examination method for right to property

Rapporteur: Murat Azaklı

15.20 *Ayşe Öztürk (B. No: 2013/6670, 10/6/2015)*

Rapporteur: Murat Azaklı

This case is related with i) a fair balance should be sought between intervention to the real estate caused by the request for evacuation of the building by the applicant who used the building on the real estate (land) with title deed for years and paid related taxes and applicant's right to property in relation with the building; ii) this balance can be achieved upon payment of the value of the real estate to the applicant and loss of right to building's property without payment of the building's value cannot be considered as a proportionate intervention to the applicant's right to property; and iii) failure in payment of the building's value to the applicant despite the request for evacuation of the building under the property of the applicant constitute violation of right to property.

15.50 *Türkiye İş Bankası A.Ş.* (Application No. 2014/6192, 12/11/2014)

Rapporteur: Abdullah Tekbaş

This case is related with the violation of the right to property. It was considered that the tax stipulated in the third paragraph of Article 73 of the Constitution does not provide the predictability required at legal level due to the legality principle, unpredictability in legal provisions are not remedied with sublegal administrative practices and regulations or judicial case laws and accordingly, procedures concerning taxation of contributions paid by the applicant to the Foundation in 2007 as a fee lacks predictable legal grounds.

16.20

Plenary

Muhittin Karatoprak, Member of High Military Administrative Court
Selami Demirkol, Member of Council of State
Kadir Özkaya, Member of Constitutional Court

16.35

Closing