



This Project is co-funded by the European Union and the Council of Europe.
Bu Proje Avrupa Birliđi ve Avrupa Konseyi tarafından birlikte finanse edilmektedir.

ANAYASA MAHKEMESİNİN TEMEL HAKLAR ALANINDAKİ KARARLARININ ETKİLİ ŞEKİLDE UYGULANMASININ DESTEKLENMESİ

Avrupa Birliđi - Avrupa Konseyi Ortak Projesi



SUPPORTING THE EFFECTIVE IMPLEMENTATION OF TURKISH CONSTITUTIONAL COURT JUDGMENTS IN THE FIELD OF FUNDAMENTAL RIGHTS

European Union - Council of Europe Joint Project



**ROAD MAP FOR BETTER APPLICATION OF JUDGMENTS OF THE TURKISH
CONSTITUTIONAL COURT 2023-2025**

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LIST OF ABBREVIATIONS

CoC	Court of Cassation
CoST	Council of State
CJP	Council of Judges and Prosecutors
CSOs	Civil Society Organisations
DoA	Description of Action
ECHR	European Convention on Human Rights
ECtHR	European Court on Human Rights
ER	Expected Result
EU	European Union
GNAT	Grand National Assembly of Türkiye
HRAP	Human Rights Action Plan
HREI	Human Rights and Equality Institution
JAT	Justice Academy of Türkiye
MoJ	Ministry of Justice
OI	Ombudsman Institution
RCAs	Regional Courts of Appeals
SIAC	The EU/CoE joint programme on “Supporting the Individual Application System to the Constitutional Court of Turkey”
UTBA	Union of Turkish Bar Associations
TCC	Turkish Constitutional Court

INTRODUCTION

This Road Map for Better Application of Judgments of the Turkish Constitutional Court has been prepared within the framework of the EU/CoE Joint Project **Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights (the project)**.

The overall objective of the project is to contribute to the effective implementation of European standards in the field of human rights, including gender equality. This objective is being pursued by assisting judges and legal advisers of the Turkish Constitutional Court (TCC), judges and legal clerks of courts of general jurisdiction, public authorities, lawyers and prosecutors to ensure both the effective implementation of TCC judgments in the field of human rights within the scope of the individual application mechanism and better awareness of the TCC case law and individual application mechanism.

The project is expected to achieve the following results:

ER1 The monitoring mechanism for execution of judgments of the TCC is strengthened in line with the EU best practices, and the stakeholder platform has improved monitoring

ER2 Judges, prosecutors, relevant public officers and lawyers are aware of the case law of the ECtHR and the TCC, and are able to implement those judgments in similar cases

ER3 Inadequate implementation of the TCC judgments and serious human rights lacunas detected via the Turkish CCC's case-law are effectively addressed

ER4 The transfer of European Union expertise and cooperation between Turkish courts and relevant stakeholders with the European and Member States institutions/courts, and the ECtHR are enhanced

ER5 Awareness of the general public and public institutions on the role of the TCC in the protection of fundamental rights through its judgments is increased

ASSESSMENTS OF THE EFFECTIVENESS OF EXECUTION OF TCC JUDGMENTS

The individual application procedure concerning the protection of fundamental rights, which was introduced by the constitutional amendments of 2010 and the Law on the Constitutional Court of 2011 was put into force in September 2012. Anyone who claims that his or her fundamental rights has been violated can file a complaint to the TCC after having exhausted other legal remedies. The system works similarly with the ECtHR and applicants may claim that their rights, which are enshrined both in the Turkish Constitution and the ECtHR are violated by courts or administrative bodies. If the TCC finds a violation, the judgments are sent to the relevant courts

or administrative bodies for redress; if the violation arises out of a court decision, the retrial or compensation would be redressing measures. Unlike some other examples, the TCC cannot declare the judgments of lower courts null and void.

The EU/CoE joint programme on “Supporting the Individual Application System to the Constitutional Court of Turkey” (SIAC) contributed to the creation of synergy among different stakeholders involved in the individual application system. An ongoing dialogue has been established between the CoC and the CoST and the TCC and thereby making human rights case-law of the TCC a major reference for civil, criminal, and administrative adjudications. The individual application and the relevant case-law were also widely explained to first instance courts as well as lawyers who are another essential link in this system. Nevertheless, it has been shown during the previous project implementation that these mechanisms should be further improved and sustained in future.

Upon the completion of the SIAC programme in 2019, several issues remain to be addressed:

- The lack of awareness among the related judicial organs on the binding effect of the judgments of the TCC and insufficient institutional mechanisms to monitor the execution of TCC judgments. It goes without saying that a legal dispute between lower ordinary courts and the TCC could severely limit the chance of the people of Turkey to access effective remedies for the human rights violations (see *Şahin Alpay v. Turkey*, 16538/17, 20 March 2018 and *Mehmet Hasan Altan v. Turkey*, 13237/17, 20 March 2018).
- A need to strengthen the monitoring mechanism within the TCC, which should ensure (i) the effective implementation of TCC judgments by following up whether judgments are properly executed or complied adequately by lower courts or other responsible bodies and recommend concrete solutions in cases where execution of judgments is not effective and (ii) an increased level of harmonization with the TCC case law at the level of first instance courts. The TCC has been receiving a number of follow-up applications from applicants, who claimed that the judgments of the TCC were not executed on time, effectively or not executed at all. All those issues need to be addressed systematically. Repetitive judgments on similar issues did not only increase the workload of the courts but also indicate the need to increase the knowledge or to enhance awareness of the lower courts on the judgments of the TCC. Therefore, there is a need to improve the case-law impact of the TCC judgments. The existing practice of preparing action plans within fundamental rights groups should be built upon so that these not only cover all the issues coming before the TCC but also the taking of the steps identified in the action plans is kept under close review, with particular shortcomings in fulfilling them that are evidenced by fresh applications to the TCC being highlighted.
- There is a need for a well-established communication system among various stakeholders of the individual application system; namely the CoC and the CoST, the Regional Courts of Appeals (RCAs) and administrative bodies, which are main actors to prevent violations

and redress them when they occur as well as lawyers and Bar Associations. The round table meetings and forums organised in the SIAC project showed that these mechanisms should be improved and sustained in future. Currently, the TCC judgments and some analyses are available on the TCC's website: this does not seem to be sufficient to meet the in-depth knowledge needs of legal professionals. The study on certain leading judgments (<https://anayasa.gov.tr/tr/bireysel-basvuru/temel-hak-ve-ozgurluklerin-ihlaline-dair-emsal-kararlar/>) is an important step in responding to this need but it would better if there was not only more comprehensive coverage in such studies but also they were regularly updated.

Despite the overall effectiveness of the individual application system, execution and implementation of the TCC judgments remain to be an issue. Even if the rates in the execution of individual application judgments are relatively high (40% to 80%, depending on the type of redress), their implementation by courts and public bodies in their judicial and administrative practices, legislation and policies, remain to be problematic.

A study carried out in 2016 and internal reports prepared by the TCC in 2020 and 2022 reveal that execution of judgments following the individual application procedure need to be improved. While the rate of execution of judgments seems relatively high, the judgments might not be regarded as binding in some cases by other instance courts. Furthermore, few opportunities exist in order to follow up on measures to be taken after a judgment is executed in order to prevent further violations. Thus, the current situation necessitates the enhancement of the institutional structure of the TCC for the execution of judgments and further activities to ensure the effectiveness of individual application procedure.

In April 2020, the TCC established a specialised unit with its Registry, Directorate of Judgments, which is responsible for monitoring the execution of the TCC judgments and carrying out studies to ensure fulfilment of the duty of informing the General Assembly on this matter in a qualified, effective and efficient manner. Under the newly established Individual Application Judgments Monitoring Bureau all of the information as regards the execution of the judgments was obtained as a result of correspondences with the judicial authorities responsible for retrial or re-investigation and administrative authorities responsible for remedying the violations. The results of the monitoring activity of the new unit are not publicly available. They are not either shared with the executive or legislative branches.

The assessment report on the current system of execution of judgments of the TCC (commissioned by the CoE in April 2021,) indicated the following needs to address:

- Individual Application Judgments Monitoring Bureau established by the TCC to monitor the execution of the judgments should be enhanced with more staff, especially those that are legal professionals, and the findings of the monitoring process should be shared with the general public and the relevant institutions.

- A series of meetings should be organized to make exchanges on the experiences of various European Constitutional Courts particularly about types of judgments and methods for execution of judgments.
- Awareness raising activities for the general public, primarily for the lawyers should be carried out in terms of the contents and effects of the TCC judgments and social demand for compliance with judgments should be created to eliminate issues experienced in the execution of the judgments of the TCC.
- The number of press releases issued by the TCC should be increased and social media accounts of the Court should be used more effectively.
- A database similar to HUDOC EXEC should be established on the execution of the judgments of the TCC in domestic law but the current judgments database could also highlight the state of execution of cases included in it, with a link to this new database.
- The handbooks similar to those produced within the previous projects should be produced within the context of the execution of the judgments of the TCC.
- Occasionally, the first instance courts are reluctant to fully implement the judgments of the TCC. Judges and prosecutors working in first instance courts at times might require additional training on human rights issues.
- For a better understanding of the role of the TCC in the protection of human rights, regular roundtable meetings should be held with the participation of judicial bodies in all instances and a superior courts network should be established. Also, national human rights institutions such as the Ombudsman Institution and Human Rights and Equality Institution of Turkey should be involved in such activities.
- It is recommended to establish a new set of round tables with the participation of lawyers and non-governmental organizations which will focus on the issue of execution of judgments.
- The practice of communicating the judgments, where relevant, to the Grand National Assembly of Türkiye (GNAT) should be resumed to enhance the execution of the judgments and eventually to guarantee the effectiveness of the individual application procedure.
- Evaluations of the judges and prosecutors by the Council of Judges and Prosecutors should be handled more diligently and any case of resistance against the execution of the judgments of the TCC should be subject to a disciplinary investigation and administrative sanctions, if needed.
- The Ombudsman Institution (OI) and the Human Rights and Equality Institution of Türkiye (HREI), which have the mandate to monitor the relevant bodies that fail to execute judgments of the TCC, should prepare reports in that sense and share them with the general public as well as with the GNAT.
- The dialogue between the TCC and the Human Rights Inquiry Committee of the GNAT should be enhanced and systematised, particularly in connection with direct appeals to

the GNAT and the execution of pilot judgments. It would also be helpful if the Committee also highlighted the key rulings of the TCC in its annual reports.

The Road Map has been developed on the basis of these findings and an in-depth review of the implementation of judgments of the TCC and provides the framework to enable the implementation of solutions to the issues identified in the review. Its purpose is to provide a shared understanding between the stakeholders and the project team of the actions required to implement solutions.

The content of the Road Map reflects the consultations made with the key stakeholders of the Project, i.e., the Ministry of Justice (MoJ), TCC, the Council of State (CoST), the Council of Judges and Prosecutors (CJP), the OI, the HREI and the Union of Turkish Bar Associations (UTBA).

It also takes account of the factors important for the execution of judgments of constitutional courts in other CoE member States. Although those judgments are binding on other courts, the constitutional courts – like the TCC- have no power to enforce them but rely instead on the effective dissemination of their rulings to the public, legal professionals and the legislature, more general public education of the role of these courts, relevant education for established and intending professionals, dialogue and cooperation with judicial and other stakeholders, prompt handling of cases in which violations already found have been repeated and the publication on an annual basis information concerning the state of implementation of rulings. These efforts are reinforced by attention being given to execution of constitutional court judgments by parliamentary committees, ombudspersons and other national human rights institutions.

The Road Map is a ‘living document’ and will be periodically updated both over the life of the project, as further analysis and planning activity takes place, and subsequent to its completion.

HUMAN RIGHTS ACTION PLAN – MARCH 2021

In March 2021, the Turkish Government published an Action Plan on Human Rights (HRAP). The aims of the HRAP include the following:

AIM 1: A STRONGER SYSTEM FOR PROTECTION OF HUMAN RIGHTS

AIM 2: STRENGTHENING JUDICIAL INDEPENDENCE AND THE RIGHT TO A FAIR TRIAL

AIM 3: LEGAL FORESEEABILITY AND TRANSPARENCY

AIM 9: HIGH-LEVEL ADMINISTRATIVE AND SOCIAL AWARENESS ON HUMAN RIGHTS

The HRAP set out a number of Goals and Activities, some of which link directly or indirectly to this Road Map and on which it builds, namely,

1.1. (d) - The nine-years of practice in the individual application system will be evaluated and the system will be rendered more effective;

2.2. (a) - pre-service and in-service training will be organised to ensure that the decisions issued by courts and public prosecutors are sufficient, convincing and comprehensible in a manner that also satisfies the standards laid down by the judgments of the Constitutional Court and the ECtHR;

3.3. (g) - Regular evaluation meetings will be organised regarding certain topics with an aim to increase cooperation and interaction among members of the CoC and the CoST, academics and practitioners;

9.1 - Raising the Awareness of Public Officials on Human Rights;

9.2 -Raising the Awareness of Judges, Prosecutors and Lawyers on Human Rights;

9.3 - Raising Public Awareness on Human Rights; and

9.4 - Improving and Spreading the Education on Human Rights.

STRUCTURE OF THE ROAD MAP

The overall structure of the Road Map is intended to reflect and complement the HRAP.

The “**Activities**” column of the Road Map lists the activities included in the project Description of Action (DoA).

Lead/Supporting Institutions refers to the project stakeholder(s) which will be responsible jointly or solely to support the implementation to reach an intended outcome.

Supporting activities refers either to those organised under the project or to those organised by stakeholders following its completion.

Aims refers to the changes or concrete results that will be realised through implementing the Road Map.

Timeline refers to the date by which a particular activity is expected to be completed.

OTHER RELEVANT PROJECTS

There are two on-going Council of Europe projects engaged in the same field and/or engaging with the same partners:

- EU/CoE joint programme on "Strengthening the Criminal Justice System and the Capacity of Justice Professionals on prevention of the European Convention on Human Rights Violations in Turkey" which is focused on making the Turkish judiciary more efficient, effective and visible by ensuring its compliance with the international and European standards in the field of criminal justice. Apart from strengthening the capacity of the legal professionals working in the criminal justice field, the Action also provides support to the national authorities to make a comprehensive assessment on relevant criminal legislation in Turkey and judicial practice;
- Action under the EU/CoE joint programme: Horizontal Facility for the Western Balkans – Phase II, which aims at increasing the institutional capacity of Turkish authorities, primarily of the MoJ to better monitor the implementation of the "Action Plan on the prevention of violations of the European Convention on Human Rights" in Turkey. In addition, this Action will subsequently support the Action Plan's evaluation and dissemination of its result in three thematic areas (the right to liberty and security, the fairness of proceedings and freedom of expression).

The exchange of information with these two projects will be ensured to support the effort on strengthening an oversight mechanism to monitor the execution of the judgments of the TCC, ensuring the implementation of judgments of TCC to the greatest extent possible by the judiciary and developing standardised practices in terms of follow-up on judgments.

MONITORING OF THE ROAD MAP

An Interim Assessment Report will be published at the conclusion of the project . This will contain further analysis and recommendations for continued activities, and report on progress towards Road Map aims. As a 'living document' the Road Map will also be updated to reflect the progress made and to refine future activities/ aims.

A Final Assessment Report will be published at the conclusion of the timeline envisaged for the Road Map. This will assess the value of the changes and reforms introduced pursuant to the project and make recommendations for further reforms.

One of the actions for both the Interim and Final Assessment Reports will be to identify any legislative changes required to give effect to further reforms determined to be necessary in the course of the implementation of the project.

I ENHANCING THE COMPREHENSIBILITY OF REQUIREMENTS FOR EXECUTION IN TURKISH CONSTITUTIONAL COURT JUDGMENTS AND THEIR ACCESSIBILITY

ACTIVITY	LEAD/ SUPPORTING INSTITUTIONS	SUPPORTING ACTIVITY	AIMS	TIMELINE
1. Ensure that the formulation of matters specifically required for execution is sufficiently clear and specific	TCC	Placements and study visits organised by the project and then the TCC	Greater precision of the steps needing to be taken for the execution of the TCC judgments and of the basis on which these are considered to be required	September 2025 and to be continued until September 2027
		Forum to discuss relevant issues organised by the project and then the TCC		
		Relevant conferences and round tables organised by the project and then the TCC		
		Discussion of the comparative study on European practice in executing judgments of constitutional courts organised by the project and then the TCC		
		DoA Activity [1.1, 3.5, 4.1-4.4]		
2. Raise awareness of the specific requirements for execution in judgments through press releases and social media	TCC CJP CoC CoST HREI MoJ OI RCAs UTBA	Development of public outreach and communication strategy		March 2024

	TCC	Implementation of public outreach and communication strategy	Greater awareness of what should follow where the TCC finds that a constitutional right has been violated	September 2025 September 2027
	TCC	Capacity building for TCC's press service and of press offices of courts of general jurisdiction		September 2025
	TCC	Development of IT platform and database relating to execution of TCC judgments		September 2025
	TCC	Implementation of IT platform and database relating to execution of TCC judgments		September 2027
		DoA Activity [1.2, 2.7, 5.1-5.5]		

II ENHANCING THE ARRANGEMENTS FOR IMPLEMENTING JUDGMENTS OF THE TURKISH CONSTITUTIONAL COURT BY ORDINARY COURTS

ACTIVITY	LEAD/ SUPPORTING INSTITUTION	SUPPORTING ACTIVITY	AIMS	TIMELINE
1. Clarify the status of TCC judgments and of the role of public authorities and courts of general jurisdiction and prosecutors in their execution	TCC CJP CoC CoST CSOs HREI JAT MoJ OI TCC CJP CoC CoST HREI JAT MoJ OI	Forum to discuss relevant issues organised by the project and then the TCC Regional roundtables organised by the project and then the TCC DoA Activity [1.3, 2.1]	Remove uncertainty as to status of TCC judgments within the Turkish legal system and the role of courts of general jurisdiction and prosecutors in executing those judgments Identify practical problems affecting execution of TCC judgments with a view to agreeing solutions for them Develop the capacity of judges of general jurisdiction and prosecutors to execute TCC judgments Develop the capacity of lawyers and CSOs to contribute more effectively to the process of executing TCC judgments	September 2025 September 2027

2. Promote dialogue between the TCC and courts of general jurisdiction and prosecutors on problematic issues affecting execution of TCC judgments	TCC CJP CoC CoST JAT	Continued discussions to enable practical arrangements to be established DoA Activity [1.3]		September 2025 September 2027
3. Provide tailored training for judges and prosecutors as to the performance of their respective roles in the execution of TCC judgments	TCC CJP CoC CoST	Development of training courses on execution of TCC judgments for judges of courts of general jurisdiction and prosecutors DoA Activity [2.3-2.6] Continued implementation of training courses on execution of TCC judgments for judges of courts of general jurisdiction and prosecutors	Develop the capacity of judges of general jurisdiction to execute TCC judgments	September 2025 September 2027
4. Reception of judges from courts of general jurisdiction as rapporteur judges in the TCC for 3-month periods	TCC CJP CoC CoST	Continued Implementation of practical arrangements		September 2027
5. Provide lawyers and CSOs with training on the execution of TCC judgments	UTBA	Training seminars DoA Activity [2.2]		

III ENHANCING THE MONITORING OF IMPLEMENTATION OF JUDGMENTS OF THE TURKISH CONSTITUTIONAL COURT

ACTIVITY	LEAD/ SUPPORTING INSTITUTION	SUPPORTING ACTIVITY	AIMS	TIMELINE
1. Publish on an annual basis an analysis of the execution of the TCC judgments	TCC GNAT HREI OI UTBA	Development of IT platform and database relating to execution of TCC judgments DoA Activity [1.2] Implementation of IT platform and database relating to execution of TCC judgments	Promote a better understanding of the state of play of execution of TCC judgments	March 2025 September 2027
2. Promote best practice in the monitoring of the execution of TCC judgments		Arrangement of placements by the project and then the TCC Discussion of the comparative study on European practice in executing judgments of constitutional courts by the project and then the TCC DoA Activity [3.4, 4.1]		September 2025 September 2027
3. Review on annual basis the extent to which requirements in applicable TCC judgments have been executed by the courts of general jurisdiction concerned and identify any obstacles that might	TCC	Discussions to enable practical arrangements to be established DoA Activity [1.3]		September 2025

have precluded this from occurring			Develop the capacity of the TCC to establish how well its judgments are being executed	
4. Take account of execution of TCC judgments as a positive factor in the performance evaluation of the judges concerned and of the failure to do so as a consideration that might justify disciplinary action		Implementation of the practical arrangements discussed and decided in the meetings (activity 1.3)		September 2027
5. Draw specific attention to any aspects of the execution of TCC judgments that might have implications for legislative or administrative reform		Forum for discussion organised by the project and then the stakeholders DoA Activity [1.3]	Promote a better understanding within courts of general jurisdiction of the state of play of execution of TCC judgments and help them identify issues requiring attention	September 2025 September 2027