



Strasbourg, 17 December 2022

CDL-JU(2022)004
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**Constitutional Complaint in Türkiye: A Decade of
Experience**

Paper presented to the Venice Commission

by

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Venice, Italy, 17 December 2022

Constitutional Complaint in Türkiye: A Decade of Experience*

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Honourable President and,
Distinguished Members of the Venice Commission,

It is a great pleasure to be here. I would like to thank you for giving me the opportunity to address this plenary session of the Venice Commission.

Let me begin my speech with Rudyard Kipling. In his famous ballad he says that “*Oh, East is East, and West is West, and never the twain shall meet*”.

These words are often quoted or rather misquoted to underline the divide between the east and the west. Undoubtedly, there are significant social, cultural and political differences between eastern and western societies. However, Kipling also stated that this division will disappear “*When two strong men stand face to face, though they come from the ends of the earth!*”

Human history has witnessed the raise of many strong men and women to unite the political and legal values of the twin parts of the earth.

One of them was Mevlânâ Jalâlu'ddîn Rûmî, a 13th century poet and thinker who lived in central Türkiye. Rûmî advocated not only moral values but also legal and political principles of social life. He often emphasised the importance of law and justice as well as judges for the peaceful coexistence of individuals.

According to Rûmî the law functions to resolve quarrels and disputes among people in a peaceful way. Therefore, he regarded the judge, who applied the law to resolve conflicts, as “*a mercy (bestowed by God) and the means of removing strife*”. He said that judge was “*a drop from the ocean of the justice of the Resurrection*”.¹

Rûmî's definition of justice is also still relevant today. He described justice as simply putting everything in its right place.²

The thoughts of Rûmî, like many others from the eastern and western parts of the world, reveal that we have common values and principles to be protected by the judiciary. In this regard, it is clear that today constitutional courts exist to protect the foundational pillars of constitutional democracy, such as the principles of rule of law, separation of powers and human rights.

Ladies and gentlemen,

* Speech delivered at the Plenary Session of the Venice Commission, 17 December 2022.

** President of the Constitutional Court of Türkiye.

¹ Mevlânâ Jalâlu'ddîn Rûmî, *The Mathnawî*, Volume II, trans. R. A. Nicholson, (Konya. Konya Metropolitan Municipality Book, 2010), Book VI, § 1495, p.517.

² Rûmî, *The Mathnawî*, Volume II, Book V, § 1090, p.277.

Following the footsteps of Rûmî, the Constitutional Court of Türkiye has been the bulwark of these constitutional principles and values, most notably basic rights and liberties of individuals.

The introduction of the constitutional complaint mechanism by 2010 constitutional amendment was a turning point in the field of constitutional justice in Türkiye.³ As emphasised in Venice Commission's "*Study on Individual Access to Constitutional Justice*", the main function of constitutional complaints is to protect constitutionally guaranteed rights of individuals.⁴

Indeed, the constitutional complaint has provided the Constitutional Court with the opportunity to adopt a rights-based approach which gives certain priority to the protection of individual rights and liberties vis-a vis any social and political interests. The rights-based approach, which is based on the assumption that freedom is the rule and restriction is the exception, requires the Constitution to be interpreted in favour of rights and liberties.⁵

With its rights-based approach, the Court has delivered many violation judgments resolving the legal problems of different segments of society. They include judgments concerning the blockade of the internet, the bans on woman's maiden name and headscarf, detention of members of parliament, imprisonment of journalists and so on.

The Court's case law has set out the standards to protect constitutional rights in conformity with the jurisprudence of the European Court of Human Rights. Since Article 148 of the Constitution clearly refers to the European Convention on Human Rights, the Constitutional Court takes into account the case law of the Strasbourg Court in deciding cases.

The Constitutional Court has also considered the reports and opinions of the Venice Commission on certain constitutional matters. Therefore, it wouldn't be wrong to say that the Venice Commission has significantly contributed to the case-law of the Court.

Distinguished members,

I must note that against all odds, a decade of experience proved that the constitutional complaint is an effective domestic remedy to be exhausted before lodging an application to the Strasbourg Court.⁶ In this sense, the Constitutional Court has achieved two main objectives in introducing the constitutional complaint mechanism.

³ In its opinion on the early draft proposal concerning the introduction of constitutional complaint the Venice Commission concluded that "*The constitutional amendments outlined in the Draft Proposal are justified, and follow solutions already known in other European countries and they meet European standards*". See Venice Commission, *Opinion on the Draft Constitutional Amendments with regard to the Constitutional Court of Turkey*, adopted by the Venice Commission at its 59th Plenary Session (Venice, 18-19 June 2004), Opinion 296/2004, Strasbourg, 29 June 2004, CDL-AD (2004) 024.

⁴ Venice Commission, *Study on Individual Access to Constitutional Justice*, adopted by the Venice Commission at its 85th Plenary Session, (Venice, 17-18 December 2010), Study No. 538/2009. Strasbourg, 27 January 2011, CDL-AD (2010) 039, § 81.

⁵ See *Ömer Faruk Gergerlioğlu* [Plenary], App. No: 2019/10634, 1/7/2021, § 50; *Ali Kuş* [Plenary], App. No: 2017/27822, 10/2/2022, § 50.

⁶ See, among many others, *Hasan Uzun v. Türkiye* (dec.), no. 10755/13, §§ 25-27, 30 April 2013; *Koçintar v. Türkiye* (dec.), no. 77429/12, § 41, 1 July 2014; *Kaya and Others v. Türkiye* (dec.), no. 9342/16, 20 March 2018).

The principal purpose was to enhance the standards for the protection and promotion of individual rights and liberties. The second and practical objective was to reduce the number of the applications and violations against Türkiye in Strasbourg.

On the other hand, we have been facing formidable challenges in terms of maintaining the constitutional complaint as an effective and successful remedy. The most serious of these challenges is the intensive workload that poses the danger of overburdening the Court.

From the very beginning, we have had the problem of an incomparable workload. As of today the Court has about 100 thousand pending applications. The devastating effect of this workload can better be understood by comparing it to the workload of the European Court of Human Rights which currently has about 75 thousand pending applications from 47 countries.

In order to manage the workload problem, the Constitutional Court has adopted two effective means. First, the Court has established a very efficient system for filtering inadmissible applications. Second, following the practice of the Strasbourg Court, the Constitutional Court has also adopted "*the pilot judgment procedure*" that is applicable in cases where an application raises a systematic and structural problem causing massive and repetitive violations.

I would like to mention a striking example of pilot judgments. The case concerned the excessive length of proceedings, which is the subject-matter of more than half of the pending applications. The Court found a violation on the ground that there was no administrative or judicial remedy for the excessive length of proceedings that may be invoked by the applicant before lodging a constitutional complaint. The Court called the Parliament to introduce a legal remedy within 4 months, while postponing the examination of similar applications.⁷

In another pilot judgment, the Court held that blocking the access to internet violated the freedoms of expression and press of the applicants.⁸ In this judgment (§ 71 and §§ 135-136) the Court has taken into consideration the opinion of the Venice Commission on "*the Internet Law*"⁹ as well as its opinion on some articles of the Turkish Criminal Code.¹⁰

More recently the Court has taken up the complicated problem of suspension of the pronouncement of the judgment (known in Turkish as "HAGB") which concerns a large number of applications before the Court regarding the freedom of expression. The Court has examined all aspects of the procedure of the "HAGB" and found structural violations of both freedom of expression and right to hold meetings and demonstration marches. With a special reference to the ineffectiveness of the appeal procedure, the

⁷ *Nevriye Kuruç* [Plenary], App. No: 2021/58970, 5/7/2022.

⁸ *Keskin Kalem Yayıncılık ve Ticaret A.Ş. and Others* [Plenary], App. No: 2018/14884, 27/10/2021.

⁹ Venice Commission, *Opinion on Law No. 5651 on Regulation of Publications on the Internet and Combating Crimes Committed by Means of such Publication ("the Internet Law")*, adopted by the Venice Commission at its 107th Plenary Session (Venice, 10-11 June 2016), Opinion No. 805/2015, Strasbourg, 15 June 2016, CDL-AD (2016) 011.

¹⁰ Venice Commission, *Opinion on Articles 216, 299, 301 and 314 of the Turkish Criminal Code*, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), Opinion No. 831/2015, Strasbourg, 15 March 2016, CDL-AD (2016) 002.

Constitutional Court held that the legislation regarding “HAGB” involves structural problems that lead to continuous violations of fundamental rights and freedoms guaranteed by the Constitution.¹¹

In this judgment, the Court has especially referred to paragraph 31 of the Venice Commission’s opinion on some articles of the Turkish Criminal Code to emphasise the fact that “*The highest courts’ guidance is very important for the lower courts in the interpretation and implementation of human rights standards in their case-law*”.¹²

Ladies and gentlemen,

Let me conclude by noting that with all these judgments and many others, the Constitutional Court has been wholeheartedly endeavouring to keep the constitutional complaint as an example of good practices within the Council of Europe.

It goes without saying that the success of the constitutional complaint mechanism is very important for the protection of the basic pillars of the Council of Europe, that is, democracy, human rights and the rule of law. As a founding member of the Council of Europe, Türkiye has been committed to these basic values which are deeply entrenched in the Constitution.

The Turkish Constitutional Court is also determined to continue protecting these constitutional values.

Thank you for your attention.

¹¹ *Atilla Yazar and Others* [Plenary], no. 2016/1635, 5/7/2022.

¹² *Atilla Yazar and Others*, § 152.