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The Right to a Remedy in Türkiye: From the Ottoman Era to the Republic of Türkiye

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Abstract

The *right to an effective remedy* is a foundational principle of international human rights law, ensuring that individuals whose rights have been violated can seek redress through accessible and impartial legal mechanisms. This principle is enshrined in *Article* 8 of the *Universal Declaration of Human Rights* (*UDHR*) and *Article* 2(3) of the *International Covenant on Civil and Political Rights* (*ICCPR*), which obligates states to provide effective remedies for violations of recognized rights. First, I will begin with the historical background of Turkish law to outline the scope of "rights" under Turkish law. Second, I will evaluate the right to a remedy within international human rights documents, especially in terms of the ICCPR and Türkiye. Third, I will examine the right to a remedy under Turkish law in relation to the European Convention on Human Rights and the cases of its court. Fourth, this study will examine the post-2010 constitutional amendment that introduced the right of individual application to the Turkish Constitutional Court, following the exhaustion of domestic remedies, and which entered into force on 23 September 2012.

Keywords

Right to Remedy, Türkiye, Ottoman Turks, Turkish Constitutions, Minorities

1. Introduction

This essay will broadly examine the right to a remedy for human rights violations in Türkiye, focusing on Türkiye's legislative and judicial response with regard to Article 8 of the Universal Declaration of Human Rights (UDHR) and Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR). From a narrow perspective, this section will explore remedies under Turkish law in relation to the European Convention on Human Rights. I will examine whether Türkiye provides an adequate and efficient remedy to its own citizens under Article 13 of

the ECHR, in terms of cases of the European Court of Human Rights[1]. This paper traces the evolution of the right to a remedy in Türkiye through three major historical stages:

1) The *Ottoman era*, during which legal pluralism and the petition system shaped early notions of redress.

2) The *Republican period* was characterized by formal codification but limited judicial independence.

3) The *contemporary period* is marked by Türkiye's integration into international human rights systems and the establishment of individual application before the *Turkish Constitutional Court* (*TCC*).

The discussion situates Türkiye's current challenges within this historical continuum, arguing that despite legislative progress, structural impediments rooted in centralized governance and political interference continue to constrain the realization of effective remedies.

2. Historical Background

The world's longest-lasting empire was the Ottoman state from 1299 to 1923 and is incomparable to any of today's time. The Ottoman State was mostly ruled under Islamic law, or the Hanefi school of thought. Its power extended over three continents: Europe, Africa, and Asia. After the collapse of the Ottoman Empire, Turks established the Republic of Türkiye on the basis of a unitary nation state in 1923. Islamic law, as a developed and fundamental legal system, was no longer widely interpreted or used as modern political thought or legal systems. Islamic law had addressed human rights since the Prophet Muhammad's time. The only difference was that these rights were practiced based on the understanding of Islamic states. Before the Magna Carta, Islamic law provided remedies for human rights abuses. The Constitution of Medina, enacted in the 7th century by the Prophet Muhammad, was the beginning of Islamic Constitutional law. Islamic law dictates that there is no discrimination between major or minor rights; all rights are equally important in God's eyes. Any one individual's right(s) cannot be sacrificed for society's sake. Islam additionally proclaims the following principles:

1) Power lies in truth, a repudiation of the common idea that truth relies on power.

2) Justice and the rule of law are essential.

3) Freedom of belief and the rights to life, personal property, reproduction, and

[1] *UDHR, Article* 8: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental human rights granted him by the constitution or by law."
G.A. Res. 217A (III), U.N. Doc. A/80 at 71 (1948).
ICCPR, Article 2 (3): Each state party to the present Covenant undertakes.
(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative, or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy;
(c) To ensure that the competent authorities shall enforce such remedies when granted.
G.A. Res. 2200A (XXI) (1966).

health (both mental and physical) cannot be violated.

4) The privacy and immunity of individual life must be maintained.

5) No one can be convicted of a crime without evidence, or accused and punished for someone else's crime.

6) An advisory system of administration is essential (Akgündüz, 1989: pp. 14-15).

An example of this major and minor rights interpretation may be given from the Ottoman Era when Sultan Mehmet II (Fatih) made a law that one of his sons should kill his other brothers in order to become the sole heir to the throne. The Sultan's reasoning behind this strange rule was to create the philosophy of major and minor laws. The Sultan's sons argued over who should become the next King, so the Sultan suggested that they battle each other rather than sacrifice the lives of soldiers or innocent civilians, instead, or minor law versus major law, respectively. The main reason for the law was to stop the bloodshed among many people for the sake of a few princes. This was considered a major right for society, even if brothers were killed to maintain this peace in society. Majority and minority rights could not be transferable. Individual rights cannot be abolished due to societal benefits (Armağan, 1987: p. 71)[2]. The Sultan's actions, according to Islamic laws, were unacceptable.

Islamic law does not separate its citizens based on their race, nationality, or citizenship. There are two kinds of citizens under Islamic law, (ra'iyye or teb'a), or Muslims and non-Muslims. However, this segregation does not create any differences between Muslim and non-Muslim human rights (Akgündüz & Cin, 1996: p. 332). Ottomans gave religious freedom and tolerance to minorities or non-Muslims (İnalcık, 1987: p. 140), but the Byzantine Empire likened the idea of seeing its minorities as "slaves," a philosophy inherited from the Roman Empire. In practice, the Ottoman State protected non–Muslim personal rights, but in Sultan Mehmet II's (1432-1481) era, the Sultan began declaring laws to provide more safeguards for non-Muslims (Öztürk, 2009). While Sultan Beyazid II (1481-1512) ruled, the Ottoman State sent ships to Spain to save Jews from religious persecution. Today their families live in Istanbul and continue to speak their mother language, Spanish (Akgündüz & Öztürk, 1999: p. 434)[3].

[2]Islam equates the killing of one innocent person to killing all of humanity and prescribes eternal hell for such an action. The Prophet stood up for the funeral procession of a Jew out of respect for the fact that the deceased was a fellow human being. Many Qur'anic verses deal with concepts of justice and peace, both of which are the current essence of the modern legal system developed to protect life, capital, and reproduction. For example: *Deal fairly, and do not let the hatred of others for you make you swerve to wrong and depart from justice. Be just, for that is next to piety, and fear Allah* (5:8); *If someone kills another person, unless it be for murder or for spreading mischief in the land, it would be as if he had killed all people* (5:32); *If the enemy inclines toward peace, you* (also) *incline toward peace and trust in Allah, for He is the All-Hearing, All-Knowing* (8:61); *and O believers, enter into peace* (*Islam*) *wholeheartedly, and do not follow Satan's footsteps, for he is your avowed enemy* (2:208).

[3]During World War II, Türkiye brought some Jews from Germany and gave them citizenship status, especially university professors. During the Ottoman era, non-Muslims could be exempted from military service; some opted to pay an exemption tax. Jews and Christians were also exempt from the jurisdiction of the Imperial courts in terms of religion and personal status, including family law, legitimacy, and inheritance…They fully enjoyed self-government within their religious communities and they also operated their own schools. See more Edward Mead Earle, "The New Constitution of Türkiye", 40 Pol. Sc. Q., (1925) at 77.

In the Ottoman Era, personal rights and freedoms were very important, with their legal basis provided by the Quran. Even in the early sixteenth century before medical surgery was popular, patients had to sign a paper waiving their rights for the courts before any medical operations were performed, and jobs in the public service sector, under the Ottomans, were equal for Muslims and non-Muslims. Many Christians and Jews held the position of Sadrazam, or Prime Minister of the Ottoman State. Many nationalistic authors criticized that the collapse of the Ottoman Empire was due to the involvement of Christians and Jews in politics within the Ottoman state (Akgündüz & Öztürk, 1999: pp. 17-18, 119)[4]. However, objectively, Prince Said Halim Pasa disagreed with this criticism; he believed that the Ottoman Justice and Administrative System broke down because of the lack of progression with the times and that this was the reason the State lost its power.

Ottomans mostly followed Islamic law, where initially there were no prisons. The first prison was later built in the middle of the seventh century, during Caliph Omar's era. The general idea was to limit rights, according to Islamic law, not to imprison individuals. Due to changes in society, behavior, and socio-political conditions, prisons slowly became established in Islamic states. During the Ottoman era, numerous prisons did not exist until the Tanzimat Reform in 1839 (Akgündüz & Öztürk, 1999: pp. 87-88). In order to comply with the Western style of prisons, the Ottomans began following the European criminal punishment system. Punishing criminals under this correctional system became the principal rule. Judges mostly provided compensation to victims or ordered public services to be performed by offenders. The general rule was that if the individual was a victim, a remedy was provided personally to him, but if the offence was against society, judges ordered offenders to complete public services (Armağan, 1987). From a women's rights perspective, for example, a woman's right to divorce her husband was more pronounced, something uncommon during this period; before this, the right mainly belonged to the husband. Additionally, there were no limits to property rights for women during Ottoman times; she could get access to or ownership of all her husband's or father's property, just like men. During this time, this was a great challenge to the laws of the time. Finally, the Sultan was limited by the rules of the Quran and Seyhulislam (today the chief judge of the supreme court). Moreover, any person could make a claim of action against the authorities, including the Sultans, if this action was proved to be against the laws of the Quran. However, there was no formal system for this claim, and the claimant could be either the plaintiff or defender (Armağan, 1987).

[4]Today, many modern Ottoman historians agree that the Ottoman era was a great century for religious freedom. When we look at the Balkans and Europe, none of these nations lost their religion, language, or identity even when they were under the rule of the Ottomans for about 400 years. It was actually the Ottomans who introduced love and compassion to their subjects and showed a wider tolerance to the people living under their rule without distinguishing them according to their ethnicity, nationality, or color. Hence, the Ottomans were the first to introduce "human rights" in a modern sense into the world from the 13th to the 19th centuries.

2.1. The Ottoman Constitutional Period

The Constitution of 1876

According to the centuries-old tradition, the state religion of the Ottoman State was Islam. This fact found expression in the first written Constitution of the Empire in 1876, or the Kanunu Esasi. This constitution established the Sultan as the ultimate protector *of Islam* and recognized his title as Caliph (*Halife*). Although a great number of the State's subjects were non-Muslims, it was avowedly a Muslim state, and even the law of equality between Muslims and non-Muslims could not alter this fact. Article 11 of the Ottoman Constitution of 1876 stated that, while other religions and their services were not inimical to the public order, they were to be tolerated and protected; *the state religion was Islam.* This provision was retained as one of the main principles of the Ottoman Constitution until the fall of the Empire (Kuzu, 1997: p. 60)[5]. For the first time in Turkish law, this constitution enlisted classical rights. Article 8 called everybody under the Ottoman rule citizens without making any distinctions based on religion, nationality, or ethnicity. In 1909, there were amendments to the constitution, which increased freedoms and rights. With these amendments, due process of law became a very clear concept in Turkish Constitutional law (Memiş, 2001: p. 38). Unfortunately, after 1909, former freedom fighters became new dictators. These dictators turned down these constitutional positive changes (Tanör, 1992).

In sum, the Ottoman legal order embodied a proto-conceptual recognition of individual rights, yet the modalities of redress available within this framework were fundamentally pre-modern in character. While *şer'i* (Islamic) and *örfî* (customary or sultanic) norms articulated certain protections concerning property, personal status, and due process, these norms operated within a patrimonial system in which justice was conceived as an emanation of sovereign authority rather than as a constraint upon it. The mechanisms through which subjects could seek remedy—such as *arzuhal* petitions or appeals before the *Divan-ı Hümâyun*—were embedded in the moral economy of obedience and favor, reflecting a vertical relationship between ruler and ruled rather than a horizontal adjudicatory process between rights-bearing individuals and an autonomous judiciary. In this sense, Ottoman remedies functioned as instruments of administrative responsiveness ra-

[5]Before the first written constitution there were other written documents; **a) 1839 Tanzimat Fermanı** (Administrative Reforms), which provided that the aims of laws would be to protect lives, security, property, and decency. Before the law, Muslims and non-Muslims would be equal. Every citizen would be equal concerning taxation and military service. This document also brought to the Turkish legal system new criminal law concepts. In addition, the Sultan would also follow these rules. It appears that the French Human Rights Declaration affected this declaration, so Turkish law then began to follow European steps.

b) 1856 Islahat Fermanı (Development Reforms) This document provided more rights to non-Muslims than it did to Muslims, because non-Muslims did not have to go to military service but they had to pay the same tax equivalent as did the Muslims. However, Muslims did have to go to the military and it was more than five years of service. This document was prepared and declared increased rights for non-Muslims due to European state pressure. Akgündüz claims that the Ottoman State provided these rights to non-Muslims before the preparation of these documents (1839 and 1856). These documents provided a hard copy of the declared rights.

ther than as enforceable legal entitlements. The absence of institutionalized judicial independence meant that redress was contingent on executive discretion, not legal right. This distinction between the *conceptual recognition* of justice and the *procedural realization* of rights illuminates the historical discontinuity between Ottoman notions of justice and the emergence of constitutional remedies in the modern Turkish legal order, particularly following the institutional reforms of the late nineteenth century and the early Republican era.

2.2. The Republic of Türkiye

The Constitutional Amendment of 1921

In 1921, near the collapse of the Ottoman State, in Anatolia, the Republic of Türkiye was born. In 1921, the founder of the Republic declared a constitutional amendment, the Teskilat-i Esasiye Kanunu. In actuality, this constitution did not provide new or additional rights following the constitution of 1876. Both of these constitutional documents were active until 1924. In 1924, the Republic established its own constitution, thereby abolishing the 1876 and 1921 constitutional amendments (Kuzu, 1997: p. 63). Türkiye's original constitution was enacted in 1924 and lasted until the country's first military coup, which toppled the government of Prime Minister Adnan Menderes on May 27, 1960. The next constitution took effect in 1961 and lasted nineteen years, coming to an end on September 12, 1980, with Türkiye's second military coup.

2.3. The Constitution of 1924

The constitution of 1924 was under the rule of eighteenth-century French philosophy, and thus, the acceptance of French Revolutionary ideas meant that the new Republic was built by freedom fighters, and the constitution was a great challenge for the Turkish society of the early 1920s (Kuzu, 1997: p. 64). This constitution brought to Turkish law and courts many great principles within the scope of individual rights and freedoms. Unfortunately, in terms of practice, none of these rights and remedies were provided for Turkish citizens. Again, the former freedom fighters became the new era's despots. In 1926, the government declared that social changes made it necessary to discard religious rules around conduct and began a full-scale reform of the legal system. The Swiss Civil Code and Code of Obligations were adopted to replace Islamic law: Turkish Civil Law (17 February 1926) and Contract Law (22 April 1926) (Kuzu, 1997: pp. 63-64). This was another major turning point in cutting the ties with Islamic rules. These changes were followed by the adoption of several other Western codes, among them the Criminal Code of Italy and the Civil Procedure Code of the Swiss canton Neuchâtel. On April 10, 1928, the constitutional provision stating that "the religion of the state of Türkiye is Islam" was deleted (Boyle & Sheen, 1997: p. 388). Although the principle of secularism was not yet openly expressed in the Constitution, the deletion of this provision was a clear sign indicating the removal of the religious character of the state.

Finally, on February 5, 1937, by an amendment of article 2 of the Constitution, six principles establishing the basic characteristics of the Republic were introduced. Secularism was one of the six principles of Kemalism (Weiker, 1981: pp. 5-7)[6]. This amendment represented a clear and positive step by the Turkish legislature towards the establishment of secularism in Türkiye. The fundamental secular foundation of the law was once again reaffirmed by the 1961 Constitution. Similarly, the secular character of the Turkish Republic was repeated by Article 2 of the 1982 Constitution[7]. After 1946, the multi-party system came into effect, which caused an increase in freedoms, rights, and remedies in Turkish law. However, this situation did not last long enough to create a stable democracy in Türkiye. Remedies were later turned down again in the Turkish legal system (Karatepe, 1997). Almost all Turkish legal and political scholars agree that 1946 is the beginning of the multi-party political system in Türkiye. For the first time, the Turkish army took control of Türkiye on May 27, 1960, and after a year, the Army had hanged the Democrat Party leader, Prime Minister Adnan Menderes, Foreign Minister Fatin Rustu Zorlu, and Finance Minister Hasan Polatkan.

2.4. The Constitution of 1961

Modern legal scholars of Türkiye believe that the 1961 constitution provided most of the freedoms and rights to Turkish society until today. This constitution was built upon the establishment of freedoms and rights, and putting limits on these rights and freedoms was an exceptional situation. It provided remedies for arbitrary detentions (Özbudun, 2004). But when this issue came before the courts, the courts ruled out insufficient compensation amounts. The constitution also stated that an accused individual should be brought before a judge within 24 hours (Soysal, 1986: p. 117). Former ideas and thoughts were changed, and individuals

[6]Kemalism (the founder of the republic of Türkiye, Mustafa Kemal Atatürk) developed six principles (in the Turkish literature they were called six arrows):
-*Republicanism:* It eradicated the Sultanate and Caliphate and replaced them with the sovereignty of the nation, which was expressed by the Grand National Assembly (parliament). This principle has never been seriously challenged.
-*Secularism*: There should be no state religion. There should be secular control in society, especially in the fields of law and education.
-*Nationalism*: There were many reforms in language and history based on nationalistic perspectives. In the following years, nationalism became self-esteem and pride in the Turkish nation.
-*Etatism*: The State should play an active role in economic development. Etatism became the main government economic policy during the early years of Atatürk.
-*Populism*: Turkish society was not formed from social classes. It defines the mutual responsibilities of the individuals and the state toward each other.
-*Revolutionism*: This is the main structure of Ataturk's reforms. This principle was introduced to the nation as a grand tool in order to change society's culture and traditions.

[7]*The Constitution of* 1982, *Article* 2: "The Republic of Türkiye is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble."
See *The Constitution of the Republic of Türkiye*, https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2024)029-e (accessed February 10, 2025).

were protected from the State, whereas before, the State was protected from individuals (Kuzu, 1997: p. 70). It also granted modern rights and freedoms, but again in practice, remedies were not effective, even if they were written in the constitution. This is the tragedy within modern Türkiye's attitude today. Especially after the 1971 military coup, the constitution of 1961 was amended and rights and freedoms articles were restricted. Courts had succumbed to the military's pressure (Weiker, 1981: p. 104).

2.5. The 1982 Constitution

After the 1960 and 1971 military coups, the Turkish army took control of Türkiye on September 12, 1980. The military prepared the 1982 Constitution, with the help of civilians, as it had in the 1961 Constitution.

The 1982 Constitution, Article 125 draws on the scope of remedies in today's Turkish legal system:[8]

> Recourse to judicial review shall be available against all actions and acts of administration (Sentence added on August 13, 1999; Act No. 4446). In concessions, conditions and contracts concerning public services, national or international arbitration may be suggested to settle the disputes arising from them. Only those disputes involving an element of foreignness may be submitted to international arbitration.
>
> (Sentence added on September 12, 2010; Act No. 5982) (As amended on April 16, 2017; Act No. 6771) Recourse to judicial review shall be available against all decisions taken by the Supreme Military Council regarding expulsion from the armed forces except acts regarding promotion and retirement due to lack of tenure.
>
> The time limit to file a lawsuit against an administrative act begins from the date of written notification of the act.
>
> (As amended on September 12, 2010; Act No. 5982) Judicial power is limited to the review of the legality of administrative actions and acts, and in no case may it be used as a review of expediency. No judicial ruling shall be passed which restricts the exercise of the executive function in accordance with the forms and principles prescribed by law, which has the quality of an administrative action and act, or which removes discretionary powers.
>
> A justified decision regarding the suspension of execution of an administrative act may be issued if its implementation results in damages that are difficult or impossible to compensate for and, at the same time, the act is clearly unlawful.
>
> The administration shall be liable to compensate for damages resulting from its actions and acts.

In practice, the Turkish judicial system has failed to provide adequate and effective remedies to its citizens, as the country's democracy was historically con-

[8]See https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2024)029-e.

strained by military tutelage and is currently influenced by an authoritarian civilian regime. Thus, many people took their grievances and rights violations to sue the Turkish government before the European Commission (or Court). In the following section, I will go into detail about the involvement between Türkiye, the UDHR and ICCPR, and the relevant articles for remedies.

3. The UHD and ICCPR and Türkiye

Türkiye was one of the founding members of the United Nations and adopted the UDHR at the General Assembly (1948) and later ratified it in 1949 (United Nations, 1966). However, it became clear that Türkiye did not comply with the UDHR, in the past or present, with Article 8 in terms of providing effective and sufficient remedies to its own citizens. It did not provide remedies for human rights violations.

Türkiye's main problem is not the law; the problem is not practicing the rule of law. Untouchables in the system: state elites, civil and military bureaucrats, the academic world, and big businessmen still see themselves above the law (Karpat, 2004: p. 110; Kaboğlu, 2012)[9]. Thus, in this paper, I believe that Türkiye's domestic law is insufficient because remedies of domestic law are most often not accessible, effective, or sufficient for the victims. The big factor seems to be the lack of civil society in Türkiye, or that they do not significantly care about each other's human rights. Many torture or ill-treated victims who faced violence and had applied to the law enforcement or the judicial system for prosecution were turned down (Karpat, 2004: p. 110), even though every province has a human rights commission today[10]. Türkiye does not comply with providing efficient and prompt remedies when human rights are violated or when violations occur against citizens. There are remedies established especially after 2003, but the victims cannot rectify their rights. There are remedies; for example, when victims of arbitrary detention or abuse go to court and are told that there is insufficient evidence to compensate their claims, so remedies exist but are seldom used. The UDHR, article 8 states that individuals are entitled to an effective remedy from competent national tribunals for the violation of their human rights accorded by the declaration. I would like to touch briefly on the rights of minorities in Türkiye. According to the Turkish constitutional system, Türkiye does not have any minority groups. The con-

[9]This insightful study consists of many articles from an outsider's perspective of the Turkish state ideology. It is important to emphasize that, even today, state mechanisms in Türkiye—comprising civilian elites, bureaucrats, and intellectuals rather than the military—continue to operate distinctly from elected governments. Historically, ruling governments lacked the authority to implement substantial administrative reforms due to the entrenched influence of the military and the constraints imposed by the 1982 Constitution. Although the Erdoğan administration gained the capacity to restructure Türkiye's administrative system after 2012, it ultimately failed to pursue meaningful reform.

[10]It is also notable that the current government in Türkiye initially appeared committed to advancing human rights and democratic development as a means to curtail the political influence of the military—a goal that was largely achieved following the failed coup attempt of July 15, 2016. However, despite the diminishing role of the military, both the government and segments of the civilian bureaucracy have increasingly resisted adhering to new democratic norms. Consequently, human rights defenders have become primary targets of state pressure and administrative repression.

stitution of 1982, article 10 (as amended on May 22, 2004) rules that:

> "All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. Men and women have equal rights and the State is responsible for implementing these rights. No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings."[11]

Since the Lausanne Peace Treaty (signed on July 24, 1923), Türkiye recognizes only non-Muslim minorities: Greeks, Armenians, and Jews (Kaya & Baldwin, 2004)[12]. Clearly, the Lausanne Treaty does not provide adequate and sufficient protection for all minorities according to current international human rights standards. Moreover, Türkiye interprets the Lausanne Treaty very strictly and only applies it to the non-Muslims mentioned above and not to other non-Muslims. For many years, the Republic of Türkiye violated the rights of minorities and did not provide adequate and sufficient remedies for violations such as: freedom of expression and broadcasting in minority languages, discrimination against minority values, inability to register religious properties since 1974 (since 2004 it has been possible with some restrictions), inability to establish political parties that tend to defend minorities or minority groups, and the prohibition of minority languages in educational institutions (Kaya & Baldwin, 2004). Since 2004, the current Turkish government has tried to establish protection for minorities, which has not provided adequate, sufficient, or efficient remedies for the past years of violated basic human rights. Moreover, prohibitions still continue for minorities, such as the prohibition on promoting diversity, using minority languages in education, or the establishment of minority group parties. For the elites of Türkiye, diversity is a crime, a direct attack on the unity of the state.

The limited legal recognition of minority groups in Türkiye constitutes a structural impediment to the effective realization of remedies for collective rights violations. While the Treaty of Lausanne (1923) formally protects non-Muslim minorities, the state's restrictive interpretation of this framework—excluding ethnic and religious communities such as Kurds, Alevis, and others from minority status—has entrenched a hierarchy of legal visibility. This lack of recognition effectively forecloses access to judicial and administrative remedies for violations of group-specific rights, including language use, education, and religious freedom. Without standing as recognized rights-holders, these communities encounter procedural obstacles that prevent them from invoking constitutional or international protections before domestic courts or the European Court of Human Rights

[11] *The Constitution of the Republic of Türkiye*, Article 10.

[12]Currently, Türkiye has 60,000 Armenian Orthodox Christians, 20,000 Jews, and 2000 - 3000 Greek Orthodox Christians. Another non-Muslim minority are the Syriac Orthodox Christians, ranging from 15,000 to 20,000, and Yazidis, another 5000 - 7000. Moreover, Türkiye has Muslim minorities such as: Kurds, 8 - 12 million (mostly Sunni, some Alevis), Bosnians 1 million, Circassians 3 million, Laz 1 million, and Roma (Gypsies) numbering approximately 500,000.

(ECtHR). Consequently, the absence of a comprehensive minority-rights regime not only perpetuates substantive inequality but also undermines the remedial architecture of Turkish law, revealing that recognition itself operates as a precondition for the meaningful exercise of the right to an effective remedy.

Türkiye signed the International Covenant on Civil and Political Rights (1966) on August 15, 2000, and the Turkish Parliament ratified it on 23 September 2003. On October 17, 2001, the Turkish Parliament amended 34 articles of the constitution, 27 of which were related to human rights issues, which had to comply with the European Union and the ICCPR; these amendments were upheld[13]. Once more, I should note that since 2001, especially after 2003, Türkiye has almost updated and revised its legal system according to the norms and standards of international human rights. However, in practice, nothing much changed in terms of providing remedies and rights for the violation of human rights. Still, many people suffer in Türkiye because of the arbitrary actions of the security forces. Every day, at least one of the national newspapers contains news about human rights violations. More tragic is the hidden number of these violations due to fear of the security forces. The Turkish state uses on many occasions its own "special standards" in order to deny rights and remedies to the citizens of Türkiye.

The UN Human Rights Committee (General Comment No. 31[14]; nature of the General Legal Obligation Imposed on States Parties to the Covenant [ICCPR], dated 26 May 2004) significantly remarked that (UN, ICCPR, HRC, GC. No 31: 2004):

> "-…States parties are required to give effect to the obligations under the Covenant [ICCPR] in good faith—where such restrictions are made, states must demonstrate their necessity—Article 2 requires that states adopt legislative, judicial, administrative, educative, and other appropriate measures in order to fulfill their legal obligations—…states are reminded of the need to provide effective remedies…—the beneficiaries of the rights recognized by the Covenant are individuals. …rights of members of minorities (Article 27) may be enjoyed in community with others—States parties are required on ratification to make such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant.—A failure to comply with this obligation (Article 2, to take steps to give effect to the Covenant rights is unqualified and of immediate effect) cannot be justified by reference to political, social, cultural, or economic considerations within the state.—Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights, states must ensure that individuals also have accessible and effective remedies to vindicate those rights.—…establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations

[13]See online, "Türkiye'de İnsan Hakları Alanındaki Gelişmeler" [Human Rights Developments in Türkiye], online: http://www.mfa.gov.tr/turkce/grupa/ai/03.htm (accessed March 30, 2025).

[14]United Nations Human Rights Committee. (2004, May 26). General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26th May 2004 (UN Doc CCPR/C/21/Rev.1/Add.13), OXIO 198. Retrieved April 5, 2025, from https://opil.ouplaw.com/display/10.1093/law-oxio/e198.013.1/law-oxio-e198?prd=OPIL.

> under domestic law.—…judiciary and administrative mechanisms are required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly, and effectively through independent and impartial bodies.—A failure by a state party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. —…state parties may not relieve perpetrators from personal responsibility, as has occurred with certain amnesties and prior legal immunities and indemnities.—"

As I mentioned earlier, it is stated that with the exception of minority rights, Türkiye has adopted and revised its own legal system to comply with the standards of the ICCPR and EU law. The fact is that the Human Rights Committee of the UN clearly explains the legal obligation of the states parties, which Türkiye failed to comply with. How does Türkiye fall short in complying with these legal obligations? First, Türkiye restricted and eliminated some rights and freedoms, using excuses within its own political, social, cultural, and economic considerations. Second, yes, Türkiye changed and revised its own legal system in order to meet the standards of the ICCPR, but did not provide efficient and accessible remedies due to the inoperability of its criminal justice and administrative system. In other words, it almost completed revising its system, but in practice almost changed nothing. Third, Türkiye did not prosecute perpetrators; even if it did, it prosecuted offenders with minor punishments. Moreover, Türkiye failed to investigate allegations promptly. In addition, some amnesties helped to reduce the prison terms of human rights violators. Fourth, and most importantly, Türkiye still enforces restricted laws and regulations on diminishing the rights of minorities in Türkiye. Overall, Türkiye is still in violation of the ICCPR. In my view, Turkish democracy runs under the powerful military; thus, the state cannot establish a stable democracy because of the civil society barrier and ineffective democratic institutions.

4. Reaching Human Rights Using European Union Instruments

In 1954 Türkiye signed the 1953 European Convention for the Protection of Human Rights and Fundamental Freedoms, henceforth the Convention. The Convention has the force of law in Turkish domestic law under Article 90 of the Turkish Constitution[15]. The signatories (High Contracting Parties) to the Convention pledge to uphold a host of fundamental rights enshrined in the document, including the right to life (Article 2), free expression (Article 10), the right not to be subjected to torture (Article 3), the right to a fair trial (Article 6), and the right to an effective legal remedy before a national authority if rights in the Convention are violated (Article 13). In early 1987, Türkiye ratified Article 25 of the Conven-

[15]"The ratification of treaties concluded with foreign states and international organisations on behalf of the Republic of Türkiye shall be subject to adoption by the Turkish Grand National Assembly by a law approving the ratification… International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements on the grounds that they are unconstitutional. In case of contradiction between international agreements regarding basic rights and freedoms approved through proper procedure and domestic laws due to different provisions on the same issue, the provisions of international agreements shall be considered."
See *The Constitution of the Republic of Türkiye*, Article 90.

tion, the right of individuals to petition the European Commission of Human Rights of the Council of Europe, henceforth the Commission. Since that time, Turkish citizens who believed that the state had violated their rights guaranteed under the Convention, and who had not been able to find domestic legal redress, could bring suit against their own government under Article 25 (Batum, 1993).

ECHR, Article 13 draws on the scope of the Convention's remedy, which states:

> "Everyone whose rights and freedoms as set forth in this convention are violated shall have an effective remedy before a national authority, notwithstanding that the violation has been committed by persons acting in an official capacity."

Under the European Court (Commission) of Human Rights judgments Türkiye was found in violation of Article 13 of the Convention. The cases were especially from the Eastern and Southeastern regions of Türkiye. From 1990 to April 2002, the Court had reached 274 verdicts for applications against Türkiye, in which Türkiye won 13 and lost 261 (Tezcan et al., 2002: p. 392). In 30 cases, the Court stated that Türkiye had violated Article 13 (Tezcan et al., 2002: pp. 150-151)[16].

[16]Case of Bilgin v. Türkiye (16/11/2000), App. no: 23819/94
Case of Buyukdag v. Türkiye (21/12/2000), App. no: 28340/95
Case of Tanli v. Türkiye (10/4/2001), App. no: 26129/95
Case of Huseyin/Devrim Berktay v. Türkiye (1/3/2001), App. no: 22493/93
Case of Cicek v. Türkiye (27 February 2001), App. no: 25704/94
Case of Tas v. Türkiye (14/11/2000), App. no: 24396/94
Case of Aksoy v. Türkiye (18/12/1996), App. no: 21987/93
Case of Aydin v. Türkiye (25 September 1997), App. no: 23178/94
Case of Mentes and Others v. Türkiye (26/11/1997), App. no: 23186/94
Case of Kaya v. Türkiye (19/2/1998), App. no: 22729/93
Case of Selcuk and Asker v. Türkiye (24/4/1998), App. no: 23184/94
Case of Tekin v. Türkiye (9 June 1998), App. no: 22496/93
Case of Gulec v. Türkiye (28/7/1998), App. no: 21593/93
Case of Ergi v. Türkiye (28 July 1998), App. no: 23818/94
Case of Yasa v. Türkiye (2 September 1998), App. no: 22495/93
Case of Cakici v. Türkiye (8 July 1999), App. no: 23657/94
Case of Tanrikulu v. Türkiye (8 July 1999), App. no: 23763/94
Case of Cemil Kilic v. Türkiye (28 March 2000), App. no: 22492/93
Case of Mahmut Kaya v. Türkiye (28 March 2000), App. no: 22535/93
Case of Timurtas v. Türkiye (13 June 2000), App. no: 23531/94
Case of Salman v. Türkiye (27/7/2000), App. no: 21986/93
Case of Jabari v. Türkiye (11/7/2000), App. no: 40035/98
Case of Ilhan v. Türkiye (27 July 2000), App. no: 22277/93
Case of Akkoc v. Türkiye (10/10/2000), App. nos: 22947/93 and 22948/93
Case of Gul v. Türkiye (14/12/2000), App. no: 22676/93
Case of Dulas v. Türkiye (31 January 2001), App. no: 25801/94
Case of Cyprus v. Türkiye (10 May 2001), App. no: 25781/94
Case of Sarli v. Türkiye (22 May 2001), App. no: 24490/94
Case of Akdeniz v. Türkiye (31/5/2001), App. no: 23954/94
Case of Avsar v. Türkiye (10/7/2001), App. no: 25657/94
Case of Irfan Bilgin v. Türkiye (10 July 2001), App. no: 25659/94
Case of Orak v. Türkiye (14/2/2002), App. no: 31889/96
Case of Semse Onen v. Türkiye (14/5/2002), App. no: 22876/93
Case of Aktas v. Türkiye (24 April 2003), App. no: 24351/94
Case of Djavid An v. Türkiye (20/2/2003), App. no: 20652/92
Case of Ekinci v. Türkiye (16/7/2002), App. no. 27602/95

The Court[17] also accepted applications directly from the Eastern and South-eastern parts of Türkiye which did not require that the conditions of Article 26 had to be met[18], such as in the case of *Akdivar and others v. Türkiye*[19] where the applicants' village was attacked by the PKK (Separatist Kurdish Movement) in June 1992. As a result of this attack, three villagers were killed and three were wounded. In November 1992, the State security forces (Gendarme) were attacked in one of the neighbouring villages. One Gendarme was killed and eight villagers were injured. After this event, Gendarme security became more restrictive in the area and many searches for terrorists were carried out. The applicants claimed that a few days later the Gendarme attacked their village, burnt down nine houses, and forced the evacuation of the rest of the village. The Government denied that the forces had acted in such a manner or had even been in the village at the time. In April 1993, the village was almost completely destroyed by fire, although it was disputed whether terrorists or security forces had caused it. The applicants filed a complaint under Articles 8, 14, 18, and 25 of the European Convention on Human Rights and Article 1 of the First Protocol of the European Convention on Human Rights, alleging that their homes and contents were burnt and that they were forcibly and summarily expelled from their village by state security forces. The Court also reported that the Commission found that the applicants did not have at their disposal adequate remedies to deal effectively with their complaints. The Commission stressed that if any remedies were effective, it should have been possible to show examples of court judgments in which compensation had been granted or the officers responsible had been prosecuted for the deliberate destruction of houses in villages. However, the respondent Government had not been able to furnish such a judgment. Moreover, it was doubtful whether an administrative court judgment would grant compensation or would leave open and undecided the question of the responsibility for the destruction, or what could be considered to provide adequate and sufficient redress for these people and if such a remedy would be effective in relation to the specific complaint. The Turkish government had defended itself by claiming that the region was under a state of emergency and that Article 125, which states that "***All acts or decisions of the administration are subject to judicial re-***

[17]The European Commission for Human Rights was abolished in November 1998.

[18]The ECHR, article 26, states, "The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken." Online: https://www.mfa.gov.tr/the-european-convention-on-human-rights.en.mfa (accessed April 3, 2025). The article is a procedural provision provided to an applicant to apply to the Court. However, the Court ruled that for Turkish cases, if the area is under a state of emergency, the applicant does not need to finalize domestic remedies. In Öcalan v. Türkiye [(12/3/2003), App. no: 46221/99], the Court rejected Türkiye's argument that Mr. Öcalan failed to exhaust domestic remedies. The Court noted that the special circumstances of the case, in particular Mr. Öcalan's isolation, and the fact that the Turkish police obstructed his access to lawyers made it impossible for the applicant to have effective recourse to a domestic remedy under Turkish law.

[19]Case of *Akdivar v. Türkiye* (16 September 1996), App. no: 21893/93.

view", had to be restricted; however, the Court replied that the administration is liable to indemnify any damages caused by its own acts and measures and that Article 125 is not subject to any restrictions even in a state of emergency or war. The Court was not convinced by the government's explanations and held that there were no adequate and effective remedies before the civil and administrative courts under the state of emergency rule. If applicants are from within the jurisdiction of a state of emergency, they do not need to exhaust domestic remedies; they could apply to the court directly without using local remedies. A dissenting judge cited many cases as examples from Turkish administrative courts and added that "the foregoing case-law shows that if the applicants had applied to the administrative courts, they could have obtained an order against the authorities for compensation of their loss on the grounds of objective liability. The administrative courts would not have needed to establish that the soldiers had unlawfully and negligently destroyed the houses in question. According to Turkish law, the state has strict liability in administrative court cases. This means that even if state officials did nothing wrong, the state had to compensate the plaintiffs for damages.

In sum, the court ruled that Turkish security forces were guilty of house destruction within state of emergency locales. Villagers were seeking remedies for their burnt homes under Turkish law, and Türkiye argued that these locales were already under a state of emergency and everything within these areas was chaotic; therefore, finding those guilty of any crimes was difficult to determine and thus no compensation could be distributed. The Court rejected the government's defense, stating that the "special standards" of a state of emergency could not be an excuse for human rights abuses (Gemalmaz, 1994: pp. 257-289).

In *Jabari v. Türkiye*[20] the applicant appealed to the European Court of Human Rights against Türkiye, claiming that deportation to Iran violated his rights under Articles 3 and 13 of the European Convention on Human Rights. She claimed that her deportation would result in cruel and inhumane treatment, as adulterers are stoned to death in Iran. She also claimed that she was denied an effective remedy before a national tribunal. The European Court of Human Rights ruled that an Iranian woman accused of adultery had a well-founded fear of persecution for the purposes of awarding her asylum, and that Türkiye's decision to deport her violated Article 3 of the European Convention on Human Rights; protection against cruel and inhumane treatment. The Court further ruled that Turkish law regarding refugee procedures requires asylum applications to be submitted within five days of arrival in Türkiye and does not provide a mechanism for appeal, both violations of Article 13 of the Convention, which requires an effective remedy before national tribunals. In many cases like this, the Court ruled that Türkiye did not have any "effective and sufficient remedies available"

[20]Case of *Jabari v. Türkiye* (11/7/2000), App. no: 40035/98.

(Gözübüyük, 2004)[21] before the civil courts, criminal courts, and administrative courts.

In *Semse Onen v. Türkiye*[22] the applicant was from southeastern Türkiye. In March 1993 her parents and older brother were killed. The applicant alleged that the killers were the village guards who formed part of the state security forces. A preliminary investigation was conducted by the local Gendarmes who concluded that the killings had been carried out by unidentified Kurdish terrorists. However, since the applicant and one of her sisters claimed to have recognized the killers as the village guards, the file was passed to the state security court. That court tried and acquitted the village guards in absentia and without the presence of the applicant. One of the applicant's claims was that the authorities did not adequately investigate her brother's and parents' killer(s), a violation of Article 13 of the ECHR. The Court, like the Commission, held there had been a violation. The Court refused the Turkish government's preliminary objection based on non-exhaustion of domestic remedies (ECHR, article 26) and specifically explained that the public prosecutor who accepted the official version of the events did not carry out a thorough investigation, a violation of Article 13. The Court determined that under the circumstances of the events domestic law remedies were equally ineffective.

In *Aydin v. Türkiye*[23] the Court held:

> "Reaffirmation of the Court's case-law that where an individual has an arguable claim that he has been tortured by agents of the State, the notion of an effective remedy entails, in addition to the payment of compensation where appropriate, the conduct of a thorough and effective investigation capable of leading to the identification and punishment of the culprits—in the instant case the authorities only carried out an incomplete inquiry—no meaningful measures were taken to establish the veracity of the allegations—corrob-

[21]In Turkish Administrative law, there are administrative actions: a) Case for Annulment (İptal Davası), b) Full Remedy Case (Tam Yargı Davası); **a. Case for Annulment:** A case for annulment is the principal remedy against illegal administrative acts, regulations, and by-laws. The complainant seeks the annulment of the administrative act retroactively on the ground of its illegality. In order to commence an action of annulment, the plaintiff should have standing to sue, which means the existence of an adverse effect of the decision on his personal rights. The decision of the administration must be of an executory nature and final; all administrative remedies must be exhausted, and a sixty-day time limit should not have expired. In a case for annulment, the administrative court has the power only to decide on the legality of the administrative decisions. If the judge declares that the decision is illegal, he sets it aside. He neither has the power to modify it nor to take a new decision in place of the decision annulled, nor to indicate the way in which it should be executed. **b. Full Remedy Case:** A complainant may bring a full remedy case, which alleges that the administration has infringed some right of his, thereby entitling him to compensation. This case is available not only for administrative acts but for actions as well. In order to commence a full remedy action, the plaintiff should have standing to sue, which now means the existence of concrete, personal, actual, and direct damage arising from the act or action of the administration. The beginning of the sixty-day time limit for bringing the action differs according to the origin of the damage, depending on whether it is an act or an action. A full remedy case is a suit where the liability of the administration is reviewed; to decide in favor of the plaintiff, the court shall either find a service fault committed by the administration or base its judgment on the theory of liability without fault. See general.

[22]Case of Semse Onen v. Türkiye (14/5/2002), App. no. 22876/93.

[23]Case of Aydin v. Türkiye (25 September 1997), App. no: 23178/94.

orating evidence was not sought—medical reports were perfunctory and not focused on whether the applicant had in fact been raped—a thorough and effective investigation into an allegation of rape in custody implies also that the victim be examined by competent, independent medical professionals—this requirement was not satisfied in the instant case."

In *Cyprus v. Türkiye*[24], the Court found a violation of Article 13 when the Turkish government failed to provide Greek Cypriots with any remedies to contest their denial of permission to reside in Northern Cyprus, an interference with their rights under Article 8 and Article 1 of Protocol No. 1. On the other hand, it held that Article 13 was not violated by the Turkish government's prohibition of *travel* into Northern Cyprus by Greek Cypriots residing in Southern Cyprus under Article 8 and Article 1 of Protocol No. 1. In *Djavid v. Türkiye*[25], the applicant was a Cypriot national of Turkish origin residing in Nicosia, Northern Cyprus. He was also the Turkish Cypriot Coordinator of the 'Movement for an Independent and Federal Cyprus'. The aim of this movement was to develop close relations between the two communities and to organize bi-communal meetings of a political, cultural, medical, or social character. In 1992, the applicant was unable to obtain a permit from the Turkish and Turkish Cypriot authorities to visit the southern part of the island in order to participate in various bi-communal meetings. The applicant claimed that the cabinet of the Turkish Republic of Northern Cyprus had adopted a decision prohibiting him from contacting Greek Cypriots. His complaints were not responded to until 1994, when the cabinet informed the applicant that his permission requests were denied due to security reasons. The government response also stated that the applicant produced propaganda against the state. After being denied permission to visit South Cyprus subsequent to the 1994 decision, the applicant resubmitted his complaints to the deputy Prime Minister, asking if the previous decision of the cabinet was still in force. The applicant received no response and then filed a complaint with the European Court of Human Rights, alleging that refusing to allow him to cross into southern Cyprus was a breach of his human rights under Articles 11 and 13 of the European Convention on Human Rights. The Court dismissed the government's response on domestic remedies by stating:

"The respondent Government referred to a number of constitutional provisions with emphasis, firstly, on the judicial review of administrative acts, decisions and omissions of any organ, authority or person exercising administrative/executive power in relation to individual administrative acts; secondly, on the possibility of recourse to the High Administrative Court in case of failure by the authorities of the cabinet to reply to an individual petition within the required time-limit; and thirdly, on the submission of a complaint to the Attorney-General. The Court notes that the respondent Government's submissions regarding this point are very general. The respondent Govern-

[24]Case of Cyprus v. Türkiye (10/5/2001), App. no: 25781/94.
[25]Case of Djavid An v. Türkiye (20/2/2003), App. no: 20652/92.

ment has not shown that any of the remedies cited would have afforded redress in any way whatsoever to the applicant. Moreover, the Court does not consider that a remedy before the administrative courts can be regarded as adequate and sufficient in respect of the applicant's complaints, since it is not satisfied that a determination can be made in the course of such proceedings concerning the refusal of the permits at the green line."

On February 20, 2003, the Court ruled again that the Turkish government did not provide an "effective remedy."

5. After the 2010 Constitutional Amendment

Pursuant to the constitutional amendment adopted in 2010 and entering into force on 23 September 2012, the *right to individual application* was incorporated into the domestic legal order. This reform conferred upon the Turkish Constitutional Court (TCC) the competence to undertake constitutional review of applications lodged by natural and legal persons alleging infringements of fundamental rights and freedoms enshrined in both the Constitution and the European Convention on Human Rights (ECHR) (Çalı, 2021; Gözler, 2019).

The Law on Foreigners and International Protection (LFIP) does not regulate either the detention of foreigners under administrative detention or the remedies available against the conditions of such detention. In the absence of domestic legislation providing effective remedies, the European Court of Human Rights (ECtHR) has repeatedly held Türkiye liable to pay damages. In its landmark judgment in *Yarashonen v. Türkiye*[26], the ECtHR found a violation of Article 13 of the European Convention on Human Rights (ECHR) in conjunction with Article 3, on the grounds that there were no effective remedies to challenge the material conditions of detention. In this case, the Turkish Government argued that the applicant could have raised his complaints by bringing an action for compensation before the administrative courts, as provided under Article 125 of the Turkish Constitution and Section 2(1)(b) of the Administrative Procedure Act, which regulates full remedy actions. The European Court of Human Rights (ECtHR) emphasized that where the conditions of detention constitute a violation of Article 3, a domestic remedy must be capable of terminating the ongoing breach of the prohibition against inhuman or degrading treatment. Merely providing compensation after the fact risks legitimizing such treatment. The Court further noted that the burden was on the Government to demonstrate that the remedies under Article 125 and Section 2(1)(b) were practically effective, supported by relevant case law from administrative courts. The Government, however, failed to submit any judicial or administrative decisions demonstrating the effectiveness of these remedies. Consequently, the Court held that there had been a violation of Article 13 in conjunction with Article 3 of the European Convention on Human Rights.

In its judgment in *Uzun v. Türkiye*[27], the European Court of Human Rights

[26]Case of Yarashonen v. Türkiye (24/09/2014), App. no. 72710/11.
[27]Case of Uzun v. Türkiye (3 December 2020), App. no. 37866/18.

(ECtHR) held that the Turkish Constitutional Court (TCC) constitutes an effective remedy mechanism for the protection of fundamental rights and freedoms. Consequently, the ECtHR determined that individuals alleging violations of human rights may bring an application before the ECtHR only after the exhaustion of domestic remedies in Türkiye, specifically through the submission of an individual application to the TCC.

In *Mercan v. Türkiye* (no. 56511/16, decision of 17 November 2016), the applicant, Zeynep Mercan—a judge dismissed in the aftermath of the attempted coup of 15 July 2016—challenged the lawfulness of her pre-trial detention, alleging a lack of sufficient evidence, inadequate reasoning, and excessive duration, as well as improper treatment during her detention. The European Court of Human Rights (ECtHR) declared the application inadmissible on the ground of non-exhaustion of domestic remedies, noting that the applicant had failed to submit an individual application to the Turkish Constitutional Court concerning her detention. The Court likewise rejected the complaints regarding detention conditions for not having been properly raised before domestic authorities and found the fair trial claim to be premature.

The TCC's subsequent reluctance to review state-of-emergency decree-laws and its calibrated deference in politically sensitive cases reveal an institution operating under constrained autonomy. Hence, post-2016 rights-upholding judgments, while rhetorically robust, often function as *symbolic performances of legality* rather than as effective instruments of constitutional accountability.

As of 2024, the Turkish Constitutional Court (TCC) had delivered a total of 601,726 decisions since the introduction of the individual application mechanism in 2012. Of these, 16,647 decisions—representing approximately 3 - 3.5 percent—found at least one violation of a fundamental right. The remaining 97 percent comprised decisions in which no violation was established, or applications were declared inadmissible or dismissed on procedural or administrative grounds[28].

6. Conclusion

Evidently, the European Court of Human Rights has held many times that Article 13 guarantees the availability of remedies at the national level, a remedy to put into effect the substance of the ECHR in whatever form they might happen to be secured within domestic law (Dışişleri Bakanlığı, 2025). Unfortunately, Türkiye has been violating Article 13 and failing to provide "effective and sufficient remedies" to its own citizens. As of 2024, the European Court of Human Rights (ECtHR) has registered 60,350 pending complaints from 47 member states. Notably, 35.8 percent of these applications—approximately 21,600 cases—originate from Türkiye, placing it significantly ahead of all other states in terms of alleged human rights violations. Türkiye is followed by the Russian Federation, which has with-

[28]Speech delivered by the Chief Judge of the Turkish Constitutional Court, Kadir Özkaya, at the 62nd Opening Ceremony of the Court, 25 April 2025, *Anayasa Yargısı*, vol. 41, no. 1 (June 2024), pp. XIX-XX. Turkish Constitutional Court. (2024). Annual report 2024.

drawn from the Council of Europe, with 8150 pending applications, and Ukraine with 7700. The remaining 44 countries collectively account for 22,900 applications[29]. Moreover, Türkiye has been in violation of the ICCPR since its ratification by the Turkish parliament in 2003.

In 2004, the Turkish parliament abolished state security courts, the major turning point in terms of increasing the impartiality of criminal courts. Even the Constitution of 1982, article 125, states that there should be remedies for human rights violations, yet Turkish judges could not establish any effective remedies for Turkish citizens. However, the real problem exists in Türkiye where the established laws are good in theory, but many of the laws are not practiced properly in reality. Interestingly, when we compare the Turkish legal system to a Western legal system from the human rights perspective, Turkish people never had to fight for their rights in the eighteenth century under the Ottoman era; they were recognized for individuals. The Western world had to fight and struggle for its rights many times throughout history. After the fall of the Ottoman state, Turks began to lose their rights and looked to the West's struggle for inspiration. Now, Turkish society would like to reach this level of human rights standards as well[30]. While Turkish civil society is ready for a more democratic constitution, many politicians still lack the maturity, sophistication, and sense of responsibility needed from leadership.

On the other hand, today's politicians are certainly no *worse* than they were in the past and may, on the whole, be somewhat better. Since 1999, Türkiye has been a candidate for the European Union and intends to complete the Copenhagen criteria. However, the EU gave an assignment to Türkiye, asking it to make progress on its human rights and economic reforms. In conclusion, it can be argued that the Turkish Government has largely achieved its strategic objective of consolidating influence over the Constitutional Court. Since 2014, and increasingly in the aftermath of the 2016 attempted coup, the Turkish Constitutional Court (TCC) has demonstrated a tendency to align its decisions with the Executive (Kaya, 2019). While the Court occasionally issues rulings upholding fundamental rights and freedoms, such decisions appear largely 'strategic' or 'cosmetic,' aimed pri-

[29]See "Top rights court finds violations of European convention in 92 percent of Rulings on Türkiye", online: https://nordicmonitor.com/2025/02/Türkiye-leads-europe-in-pending-human-rights-applications-with-67-out-of-73-rulings-found-in-violation-at-top-rights-court/.

[30]American legal literature has very interesting articles about the European Union and Türkiye. See, Joseph R. Crowley, "Special Report: Justice On Trial: State Security Courts, Police Impunity, and the Intention of Human Rights Defenders in Türkiye," 22 Fordham Int'l L. J. 2129 (1999); Dinesh D. Barani, "Reforming History: Türkiye's Legal Regime and Its Potential Accession to the European Union," 26 B.C. Int'l & Comp. L. Rev. 113 (2003); Irum Taqi, "Adjudicating Disappearance Cases in Türkiye: An Argument for Adopting the Inter-American Court of Human Rights Approach," 24 Fordham Int'l L.J. 946 (2001); David J. Gottlieb, Richard E. Levy, Stephen R. McAllister, John C. Peck, and Feridun Yenisey, "Conference on Comparative Law Recent Developments in European, American, and Turkish Law: Team Texas Goes to Türkiye," 45 Kan. L. Rev. 671 (1997); Christopher Frank, "Türkiye's Admittance to the European Union: A Keystone Between Continents," 11 Currents Int'l Trade L.J. 66 (2002); Olivia Q. Goldman, "The Need for an Independent International Mechanism to Protect Group Rights: A Case Study of the Kurds," 2 Tulsa J. Comp. & Int'l L. 45 (1994); Patrick R. Hugg, "The Republic of Türkiye in Europe: Reconsidering the Luxembourg Exclusion," 23 Fordham Int'l L. J. 606 (2000).

marily at forestalling the European Court of Human Rights from overturning its prior recognition of the TCC as an effective domestic remedy, and at sustaining the semblance that Türkiye remains a state governed by the rule of law (Öztürk, 2022).

The enduring difficulties in securing effective individual remedies against state action cannot be disentangled from the historical trajectory of Türkiye's legal culture. The Ottoman and early Republican legal systems institutionalized a state-centric conception of justice in which legality primarily served to preserve administrative order rather than to empower the individual as a rights-bearing subject. This hierarchical understanding of the law has persisted, shaping judicial attitudes toward the scope of state accountability and the justiciability of fundamental rights. Consequently, contemporary challenges—ranging from the limited implementation of Constitutional Court judgments to the uneven enforcement of ECtHR decisions—reflect not only institutional weaknesses but also a deeper cultural continuity in which the protection of state authority continues to eclipse the vindication of individual rights. Recognizing this historical legacy is therefore essential to understanding why the transition from formal rights recognition to substantive, enforceable remedies remains incomplete in the Turkish legal system.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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