

style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

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UDC 342.7(043.2)

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### **THEORETICAL ASPECT OF INDIVIDUAL APPLICATION TO THE CONSTITUTIONAL COURT IN TURKEY**

Individual application can be described as an extraordinary recourse to judiciary, a right given to the people whose fundamental rights and freedoms have been infringed by public authorities. The right to make an individual application, which has found a field of application in many countries in the world, has been legalized in Turkey with a referendum for an amendment of the constitution in 12<sup>th</sup> September, 2010 and has come into effect in 23<sup>rd</sup> September 2012. Therefore, individual application is a very recent establishment in Turkish law.

According to the amended provision to Article 148 of the Constitution, «Everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities. In order to make an application, ordinary legal remedies must be exhausted» [1]. When this adjustment in the Constitution and the provisions of the relevant law are considered together, each conclusion that is made should be perused separately.

First of all, only the ones whose current and personal right is directly affected can apply to the Constitutional Court. The applicant can be a real person, or a legal entity of private law. But the legal entities of private law may only apply to the court about the rights that belong to the legal personality, and a public corporate body cannot be an applicant. The real person may be a

citizen of Turkey or a foreigner, but foreigners cannot apply about a right that is only granted to the citizens of Turkey.

Secondly, the subject of the application can only be about a right which is guaranteed by the Constitution, as well as it is in the scope of the European Convention on Human Rights and the supplementary protocols that Turkey is a party to. Within this context, fundamental rights and freedoms such as right to life, prohibition of torture, right to liberty and security, right to a fair trial, right to respect for private and family life, freedom of thought, conscious and religion, freedom of assembly and association, protection of property, right to education, etc. are applicable to the Constitutional Court [2].

There is a criterion when applying to the European Court on Human Rights which is all domestic remedies should be exhausted before application. Before the right to make individual application to the Constitutional Court was given, the highest courts and the last remedies were Appellate Courts when a right was violated. That is why lots of applications were being brought to the European Court on Human Rights against Turkey [3]. Looking from that perspective, the individual application to the Constitutional Court can be considered as a legal reform, made in the purpose of adding one more step before applying to the European Court on Human Rights. With this reform, application to the Court has become a remedy in Turkish law, so now Constitutional Court is the final step before the European Court on Human Rights.

Another conclusion to discuss about is that the right has to be violated by a public authority. When we say public authority, we do not mean legislation, execution and judiciary. The transactions of legislation cannot be directly individually applied to the Court. For those transactions, there are supervisions as the action for annulment and the remedy of objection. Likewise, regulatory administrative transactions, the rulings of the Constitutional Court and transactions that have been excluded from judicial review by the Constitution cannot be the subject of individual application.

The individual application to the Constitutional Court mainly has two purposes: 1) preventing violations of rights; 2) if there has been a violation, removing the violation and its consequences. The procedure is simple. First, there is an examination of admissibility, which is held by the Commissions of the Court. During examination, two things are considered: 1) if the application is about interpretation and execution of the Constitutional fundamental rights and if the applicant has had a significant damage, and 2) if the application has an adequate ground. In the end of the examination, Commissions give either decision of admissibility, or decision of inadmissibility. If the decision is admissibility, the examinations on the merits are made by the Sections of the Court. In these examinations on the merits, Sections decide whether there is a violation or not [4].

The decisions of the Constitutional Court are final, binding and cannot be appealed. But whatever the decision is, one can always apply to the European

Court on Human Rights. Because the important thing is that all the remedies in domestic law have been exhausted with the application to the Constitutional Court, and the criteria to the European Court is completed. The applicant may waive from their application. In that case, the decision of strike-out is given. However, decision of strike-out is not given when it is required to implement or interpret the Constitution or define the scope and limits of fundamental rights, or when respecting human rights is required about the application [5]. The Constitutional Court may decide to continue examination and this application may be concluded on its merits. Those decisions are described as principal decisions, which concern everyone.

To sum up the things explained and make a comment, we can say that individual application is a big step to protect human rights and improve the law and democracy in our country. It helps to interpret the Constitution while performing the fundamental rights and freedoms of people. Individual application is not an appeal, but a way to claim a right, and is very necessary.

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УДК 342.7(043.2)

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### **ТЕОРЕТИКО-ПРАВОВЫЕ АСПЕКТЫ ИНСТИТУТА ВЫБОРОВ ЧЕШСКОЙ РЕСПУБЛИКИ**

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