

September 13 2022

How to file an individual application with Constitutional Court

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Introduction

According to article 45 of the Code on Establishment and Procedure Rules of the Constitutional Court (No. 6216) (the Code), anyone can apply to the Constitutional Court on the grounds that their fundamental rights and freedoms – protected under the Turkish Constitution, the European Convention on Human Rights and any additional protocols to which Turkey is a party – have been violated by public force. Any and all administrative and judicial remedies regarding the act, action or negligence that caused the alleged violation must be exhausted before an individual application can be made.

An individual application can only be filed by those whose current and personal rights have been directly impacted by the act, action or negligence causing the alleged violation. Private legal persons can only file individual applications on the grounds that the rights belonging to the legal person have been violated.

According to the Constitutional Court, 428,554 individual applications were filed between 23 September 2012 and 30 June 2022, and 320,253 (ie, 74.7%) of these have been concluded. Of the applications that have been concluded:

- 276,188 applications were found to be inadmissible;
- no violations were found in 902 applications;
- at least one right was deemed to have been violated in 28,838 applications;
- 12,843 applications resulted in administrative rejection; and
- 1,482 applications were concluded in other ways (eg, discontinuance, closure of the case or rejection).

The right to a trial within a reasonable time was the most common cause of a violation decision, followed by the right of property and the right to a fair trial.

Individual application procedure

The procedure to file an individual application is regulated under article 47 of the Code. The application petition must specify:

- the identification and address of the applicant and its representative, if any;
- the rights and freedoms alleged to have been violated due to an act, action or negligence and the relevant constitutional provisions;
- the grounds of the violation claims;
- the stages of exhausting all remedies;
- the date of exhausting the remedies, or the date of learning of the violation if no remedies are applicable; and
- the damage, if any.

Originals or copies of the action or decision alleged to have caused the violation and the evidence relied on must be affixed to the application petition. If the applicant is represented by a lawyer, the power of attorney must also be presented.

According to article 59 of the Internal Regulation of the Constitutional Court, individual applications must be filed in an official language using the sample application form annexed to the Internal Regulation. The application form must include, among other things:

- a chronological summary of the events regarding the act, action or negligence alleged to have caused the violation by public force;
- concise explanations regarding which of the current and personal rights in the scope of the individual application have been violated and for what reasons, along with any explanation and evidence;
- the fundamental rights alleged to have been violated and any explanations; and
- an injunction request regarding material and moral integrity, if any, as well as any justifications.

Application term

According to article 47 of the Code, in principle, individual applications must be filed within 30 days of exhausting the legal remedies, or within 30 days of learning of the violation if no legal remedies are available.

As per the Constitutional Court's precedents, "the date of exhausting the legal remedies" must be construed as "the date of learning [of] the reasoning of the final judgment". Such "learning" can take place differently based on the specifics of each case.⁽¹⁾ Service of the decision is a way of learning of the reasoning of the final judgment, but this is not the only way – other methods are also possible. In this regard, where the applicant becomes aware of the final judgment's reasoning before the service, the 30-day period should start from this

date, not the date of service.

According to the Manual on Individual Application (Constitutional Complaint) Procedure, published under the scope of the Joint Project on Supporting the Individual Application to the Constitutional Court in Turkey, the Constitutional Court's precedents sets forth that, among others, the following instances would be construed as the "date of learning [of] the final judgment's reasoning":

- the date of service of the final judgment;
- the date on which the applicant obtained a copy of the final judgment from the file;
- the date that the applicant declares that they became aware of the final judgment;
- the date on which it became possible to learn of the reasoning of the court's decision;
- the date on which the applicant appears to have been aware of the decision based on the content of the file;
- the pronouncement of the judgment during the hearing before the Court of Cassation;
- the date of service of the invitation writ;
- the date of service of the payment order; or
- the date of obtaining a photocopy from the file.

Fees

According to article 47 of the Code, individual applications are subject to a fee. A receipt proving that the fee has been paid must be affixed to the application form. According to the Judicial Fee Tariff of 2022, the fee set for applications before the Constitutional Court is 664.10 lira.

Admissibility criteria, examination of individual applications and examination on the merits

According to article 48 of the Code, the Court may give an inadmissibility decision regarding individual applications that are:

- insignificant in terms of interpreting or applying the Turkish Constitution or determining the scope and limits of fundamental rights where the applicant did not incur significant damage; and
- clearly devoid of grounds.

Under article 48, individual applications that are deemed admissible are examined in terms of their merits. During the examination on the merits, the Court may decide to impose any compulsory injunctions that are required to protect the applicant's fundamental rights *ex officio* or upon the applicant's request.

According to article 50 of the Code, as a result of the examination on the merits, the Court may decide whether the applicant's right has been violated. If the Court finds a violation, it rules on the actions necessary to be taken to remove the violation and its consequences. If the violation detected by the Court arises from a court decision, the case shall be returned to the relevant court for a retrial to remove the violation and its consequences. Where there is no legal benefit in conducting a retrial, the Court may rule on compensation in favour of the applicant or lead the applicant to initiate a lawsuit before the general courts.

For further information on this topic please contact Beril Yayla Sapan or Kardelen Özden at Gün + Partners by telephone (+90 212 354 00 00) or email (beril.yayla@gun.av.tr or kardelen.ozden@gun.av.tr). The Gün + Partners website can be accessed at www.gun.av.tr.

Endnotes

(1) Bülent Aktaş and others, Constitutional Court, 2014/19389, 07 December 2016, section 11.