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The Individual Application Remedy in Türkiye and Its Impact on the Paradigm Shift of the Constitutional Court of the Republic of Türkiye

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Abstract

The purpose of this paper is to explain why the Constitutional Court of the Republic of Türkiye adopted this remedy and how this remedy led to a paradigm shift in the Constitutional Court. This study uses a document analysis approach, covering of the period 1989-2023, to achieve the aims of the study. Individual application in Türkiye has been put into effect to protect human rights more effectively and to reduce the applications made to the European Court of Human Rights (ECtHR) against Türkiye. Social demand and international pressures were also effective in the enactment of this legal remedy. On the other hand, individual application has also led to a paradigm shift, from the dominant paradigm, the ideological-based approach, to the right-based paradigm, in the Constitutional Court of the Republic of Türkiye beyond these purposes. This research offers a unique contribution to its field by highlighting the significant impact of individual application remedies on Türkiye's Constitutional Court operations. It innovatively explores how this legal mechanism strengthens human rights and drives structural change within the nation's highest judiciary. By combining legal analysis with institutional theory, the study provides new insights into the intricate relationship between legal reforms and institutional transformation, particularly in the underexplored context of Türkiye's constitutional framework.

Keywords: individual application, Constitutional Court of Türkiye, ideological-based paradigm, right-based paradigm

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Türkiye'de Bireysel Başvuru Yolu ve Türkiye Cumhuriyeti Anayasa Mahkemesi'nin Paradigma Değişimine Etkisi

Öz

Bu makalenin amacı, Türkiye Cumhuriyeti Anayasa Mahkemesi'nin neden bu bireysel başvuru yolunu benimsediğini ve bu başvuru yolunun Anayasa Mahkemesi'nde nasıl bir paradigma değişikliğine yol açtığını açıklamaktır. Çalışmada, bu amaçlara ulaşmak için doküman analizi yöntemi kullanılmıştır. Türkiye'de bireysel başvuru, insan haklarının daha etkin bir şekilde korunması ve Türkiye aleyhine Avrupa İnsan Hakları Mahkemesi'ne (AİHM) yapılan başvuruların azaltılması amacıyla yürürlüğe girmiştir. Toplumsal talep ve uluslararası baskılar da bu hukuki yolun hayata geçirilmesinde etkili olmuştur. Öte yandan bireysel başvuru, bu amaçların ötesinde, Türkiye Cumhuriyeti Anayasa Mahkemesi'nde baskın ideolojik temelli yaklaşımdan hak temelli paradigmaya geçişe yol açmıştır. Bu araştırma, bireysel başvuru yolunun Türkiye'nin Anayasa Mahkemesi üzerindeki önemli etkisini vurgulayarak kendi alanına özgün bir katkı sunmaktadır. Hukuki mekanizmanın insan haklarını nasıl güçlendirdiğini ve ülkenin en yüksek yargı organında yapısal değişimi nasıl tetiklediğini yenilikçi bir şekilde incelemektedir. Çalışma, hukuki analizi kurumsal teori ile birleştirerek, Türkiye'nin anayasal yapısı bağlamında hukuki reformlar ile kurumsal dönüşüm arasındaki karmaşık ilişkiyi anlamaya yönelik yeni bakış açıları sunmaktadır.

Anahtar Kelimeler: bireysel başvuru, Türkiye Cumhuriyeti Anayasa Mahkemesi, ideoloji temelli yaklaşım, hak temelli yaklaşım

1. INTRODUCTION

The importance given to states today is determined not only by its economic or military power, but also by the respect and importance it attaches to human rights. In this context, human rights constitute one of the important criteria for the international reputation of the state (Tezcan, et al. 2011, p.65). In some countries, state organisations create mechanisms for those individuals who want to raise their demands for their human rights. These mechanisms mostly adopt application processes to a constitutional court. As a country's highest level of jurisdiction institution, the legal remedies to apply to these courts can vary based on the states' perspectives. One of the remedies of applying to the constitutional courts is individual application. Individual application to the Constitutional Court, applied in more than forty countries today (Fendoglu, 2013, p.36); came into force with the Constitutional amendment in consequence of the Referendum on 12.09.2010 in Türkiye and the temporal jurisdiction of the Turkish Constitutional Court began on 23.09.2012. Individual application is a fundamental right protected by the Constitution. It allows anyone under the European Convention on Human Rights and its additional protocols, to which Türkiye is a party, to claim that their rights were violated by a public authority (The Constitutional Court of the Republic of Türkiye, 2023).

There are national and international reasons for adopting this remedy. For Türkiye, the national reason for the entry into force of the individual application remedy is the more effective protection of fundamental rights and freedoms, while the reduction of applications made to the ECtHR against Türkiye constitutes the international reason.

The individual application remedy can initiate a paradigm shift in the constitutional courts. This research aims to answer how macro-national/international and meso-organizational contexts contribute to the entry into force of the individual application remedy and to the paradigmatic transformation of the Constitutional Court of the Republic of Türkiye as a result of this legislative amendment by adopting regulative and normative pillars of the institutional theory. In order to achieve the aforementioned aims, I adopt Türkiye as the case state to discuss and highlight national and international pressures to adopt the individual application and its effects on paradigm shift. The protection of human rights is not only the responsibility of individual countries but also a universal duty. This universal responsibility is fulfilled through the ECtHR. Türkiye, is a country worth examining, as it is one of the countries that preoccupies the ECtHR the most. The topic is important in explaining the progress that Türkiye has made in safeguarding fundamental rights and freedoms through the individual application remedy. In terms of theoretical lens, I adopt the institutional theory. I explain the subject through the regulative and normative pillars of institutional theory. In regulative pillar, I explain pressures, rules, regulations and treaties that affects the entering into force of the individual application remedy in Türkiye. In the normative pillar, I include the contributions of individual application to the Constitutional Court's transition from the dominant paradigm, the ideological-based approach, to the right-based paradigm.

This article addresses the questions of why the individual application mechanism entered into force in Türkiye and how it contributed to the paradigm shift of the Constitutional Court of the Republic of Türkiye. In this context, the article first provides an overview of individual application by establishing a connection between institutional theory and the individual application mechanism. In the following parts, to answer the research questions, the reasons for the implementation of individual application in Türkiye and its contributions to the paradigm shift of the Constitutional Court of the Republic of Türkiye are examined through the regulative and normative pillars of Institutional theory. The study concludes with a discussion section.

2. BACKGROUND

2.1. Theoretical Framework: Institutional Theory and Individual Application

The explanations of formal organizational structure are highly varied, reflecting the diverse range of current organizational theories. Two approaches, in particular, have sparked intense debate: one regards organizations as rational actors operating within a complex environment, while the other portrays organizations as being constrained by the institutional environment in which they are situated (Tolbert and Zucker, 1983, p.22). The second of these; institutional theory is a dynamic theory that has emerged as a prominent and influential framework for understanding both individual and organizational behavior, integrating and contrasting with various alternative perspectives (Dacin, et al., 2002, p.43).

The institutional approach is a theoretical framework that explores the decisions made by individuals and organizations, taking into account their behaviors shaped by the institutional environment in which they operate (Gokalp Aras et al., 2021, p.962-964). Martinez and Dacin (1999) state that the institutional theory focuses on the connection or *"fit"* between organizations and their environments, the impact of social expectations (norms) on organizations, and how these expectations are reflected in organizational traits.

According to North (1990), institutions are a human-designed and human-shaped limiting factor that creates political, economic, and social interactions within society. The primary function of institutions in a society is to mitigate uncertainty by providing a stable framework for human interaction. We inhabit a world where the speed of institutional change is strikingly evident. Institutions are constantly evolving, ranging from conventions, codes of conduct, and norms of behavior, to statutory law, common law, and contracts between individuals.

There are three types of institutions based on theoretical approaches. The first type is formal institutions, which derive their authority from constitutions, laws, policies, and official agreements established by the citizens of various regions. The second type is informal institutions, which draw their influence from the behavioral norms and cognitive models of individuals who may hold diverse cultural, religious, or political convictions, or who may reside in distinct geographical locations. The third type is organizations, which play a crucial role in shaping collective interests by taking into account both formal regulations and informal

practices (Doh and Guay, 2006, p.47-49). Constitutional Court of the Republic of Türkiye, is a formal institutions since derives its authority from constitution.

According to Scott (2008), the institutional approach comprises three pillars: *"regulative, normative and cultural-cognitive"*. Kostova (1997) defines the regulative pillar as encompassing the current legal and regulatory norms within a specific national context, which serve to incentivize certain behaviors while constraining others. The regulative pillar involves an examination of the political framework and the state's functions as a legislator, overseer, and enforcer of rules (Scott, 2008, p.62).

The normative pillar comprises of socially shared individuals' adherence to social norms, ideals, assumptions, and theories regarding human nature and behavior (Kostova, 1997, p.180). The primary objective of this pillar is to identify the normative regulations in social life (Aydin, 2017, p.54). Scott (2008) defines the rules as *"a prescriptive, evaluative, and obligatory dimension in the social life"*. Normative systems encompass both values and norms.

Finally, the cultural-cognitive pillar pertains to the ingrained cognitive structures in a society that are commonly accepted without question (Yiu and Makino, 2002, p.667-670). In other words, the cultural-cognitive pillar pertains to the cognitive frameworks and collective social knowledge held by individuals within a particular country. These cognitive structures impact individual behavior by influencing the cognitive processes, such as schemas, frames, and inferential sets, that people utilize in the selection and interpretation of information (Kostova, 1997, p.180). Scott (2008) asserts that the cultural-cognitive view of institutions highlights the crucial significance of the socially constructed establishment of a shared framework of meaning. Gokalp Aras et al. (2021) state that, as a result of their findings from theoretical studies, the cultural-cognitive pillar describes a pattern of behavior that is gradually and subjectively based on created rules and meanings that restrict acceptable ideas and behaviors.

Trevino et al. (2008) suggest that instead of presuming that a nation's social institutions completely correspond to cognitive, normative, and regulative pillars, most institutions establish and legitimize a platform through one or multiple processes related to each pillar.

Institutional theory offers a holistic view through which approaches to the rights-based paradigm and the individual application can be discussed because it emphasises the institutions that implement this remedy. For example, in Türkiye, the Constitutional Court of the Republic of Türkiye, as an official institution, protects the rights of individuals through its authority derived from the constitution. Furthermore, Constitutional Courts act as a bridge between domestic law and international law. Therefore, the theory explains why the Constitutional Court of the Republic of Türkiye adopt a rights-based paradigm that sees the protection of fundamental rights and freedoms as its primary function and how the Court protect the fundamental rights and freedoms individual application.

Individual application is in force in many countries today. Following the come into force of the individual application in Lithuania in 2019, only three Council of Europe member states remain, although having a constitutional court, not allowing direct individual application (Daneliene, 2021, p.281-307). The concept of institutional isomorphism highlights the influence of external coercive, mimetic and normative pressures on actors within the pillars (Gokalp Aras, et al., 2021, p.964). In the paper of DiMaggio and Powell (1983), isomorphism is defined as *"a constraining process that forces one unit in a population to resemble other units that face the same set of environmental conditions"*.

DiMaggio and Powell (1983), identified three types of pressures that drive organizations to become more similar coercive, mimetic, and normative pressures. Coercive pressures are typically the result of power dynamics and political relationships, whereby the state or other large actors demand that specific structures or practices be adopted, under the threat of sanctions (Boxenbaum and Arora-Jonsson, 2017). For Türkiye, the high number of applications made to the ECtHR against Türkiye has been a factor of pressure for the individual application to enter into force.

Mimetic pressures emerge mainly in situations of uncertainty. In such situations, organizations tend to mimic peers that are perceived as successful or influential in order to reduce their uncertainty (Boxenbaum and Arora-Jonsson, 2017). Although it is not known exactly how much the applications made against Türkiye to the ECtHR will decrease after the individual application remedy comes into force in Türkiye, the existence of successful practices in many countries such as Spain and Germany was effective in Türkiye's putting the individual application remedy into effect.

Normative pressures refer to the expectations and beliefs about what is appropriate or right in a given context. These pressures can be driven by factors such as cultural values, professional standards, or ethical considerations, and may influence organizations to adopt certain practices or structures that are perceived as morally or socially desirable (Boxenbaum and Arora-Jonsson, 2017). It has been especially expressed by academics that the individual application remedy should be put into effect in Türkiye. In addition, international institutions such as the ECtHR and the Venice Commission recommend individual application to countries. On the other hand, the individual application remedy is a socially desirable for Türkiye. Because this legal remedy came into force as a result of a referendum on the constitutional amendment.

The theoretical framework for this study is shown in Table 1. Table 1's pillars list the institutions I took into account while evaluating the data, and the analytical level lists the units I took into account when categorizing them as well as the key challenges in implementing each individual application. The cultural-cognitive pillar is ignored in this study as it addresses the issue at the individual level.

Table 1. Theoretical framework: Institutional theory

Type of pillars	Type of Institution	Level of Analysis
Regulative pillar	Formal Institution	**Macro-national/international level:** Pressures, rules, regulations and treaties that affects the entering into force of the individual application remedy in Türkiye
Normative pillar	Formal Institution	**Meso-organizational level:** The contributions of individual application to the Constitutional Court's transition from the dominant paradigm, the ideological-based approach, to the right-based paradigm.

*Formed by the author with the help of the paper of Gokalp Aras, et al., 2021, p.965.

2.2. Research Context: Individual Application in Türkiye

Any person who believes that his or her rights have been violated by an act or omission of a public authority may submit a constitutional complaint, which is one of the primary constitutional court jurisdictions. Currently, constitutional complaint has been adopted in various models in many countries (Chakim, 2019, p.96-98). It is shaped as the individual application in Türkiye.

"Individual application is one of the basic rights or freedoms guaranteed by the Constitution and is a way of claiming rights which can be applied by anyone who is in the context of European Convention on Human Rights (ECHR) and additional protocols which Türkiye is a party by claiming that it was violated by public power" (The Constitutional Court of the Republic of Türkiye, 2023). In another definition individual application; *"is an exceptional and secondary way of seeking rights, which individuals whose fundamental rights and freedoms are violated due to acts, actions or omissions of public power apply after exhausting other remedies"* (Ekinci and Saglam, 2012, p.9).

As stated in the definition, individual application is considered a secondary remedy. This means that individuals who claim a violation of their fundamental constitutional rights must first exhaust other administrative and judicial mechanisms that primarily handle such cases. If these avenues fail to provide a satisfactory solution, only then can the claim be brought before the Constitutional Court. Therefore, individuals must fulfill their obligation to exhaust *"all administrative and judicial remedies prescribed by law"* before resorting to this remedy for a procedure, act, or neglect that is alleged to have caused a violation (The Constitutional Court of the Republic of Türkiye, 2023).

In order for an individual application to the Constitutional Court to be considered on its merits, the right claimed to have been violated by public authorities must be guaranteed by the

Constitution and protected under the ECHR and its additional protocols that Türkiye has ratified. This means that an application alleging a violation of a right that is not covered by both the Constitution and the Convention cannot be deemed admissible (The Constitutional Court of the Republic of Türkiye, 2023).

Individual applications can only be considered for alleged violations caused by acts, actions or omissions of public authorities exercising the state power in the Republic of Türkiye. Claims against acts of private individuals or entities cannot be the subject of an individual application, except for cases where public authorities have a positive obligation to prevent violations of constitutional rights. Individual applications may only be considered in cases where public authorities exercising state power in the Republic of Türkiye are alleged to have violated constitutional rights through acts, actions, or omissions. Claims against acts of private individuals or entities cannot be the subject of an individual application, except in cases where public authorities have a positive obligation to prevent violations of constitutional rights (The Constitutional Court of the Republic of Türkiye, 2023).

Legislative procedures (laws, bylaws, etc.) and administrative regulatory procedures (internal rules, regulations, etc.) cannot be directly subjected to an individual application since the individual application procedure does not regulate the direct challenge of specific unconstitutional public regulations. Additionally, no individual application may be made in any way against decisions made by the Constitutional Court or actions that are excluded from judicial review under the Constitution (The Constitutional Court of the Republic of Türkiye, 2023). In Comparative Constitutional Law, this remedy is perceived as the most advanced stage of the State of Law and the last step of the protection of human rights (Erdinc, 2015, p.87).

Individual Application to the Constitutional Court, applied in more than forty countries today (Fendoglu, 2013, p.23-36); came into force with the Constitutional amendment in consequence of the Referendum on 12.09.2010 in Türkiye. Temporal jurisdiction (ratione temporis) of the Turkish Constitutional Court began on 23.09.2012.

3. RESEARCH METHOD

This study uses document analysis method. Scott (1990) defines document as *"an artefact which has as its central feature an inscribed text."* In its broadest sense, a document refers to a written text (Scott, 1990).

Documents are created with a specific intention and are often influenced by particular assumptions, style, and audience. As such, researchers should have a thorough understanding of the origins, purpose, and original intended audience of the documents they are studying (Grix, 2001, p.80-81).

The terms 'primary documents' or 'eye-witness accounts' describe firsthand sources written by individuals who directly experienced a specific event or behavior. On the other hand, secondary documents are created by individuals who were not physically present at the event, but instead

gathered information from eyewitness accounts through interviews or from primary documents they have read in order to compile their document (Bailey, 1994, p.294).

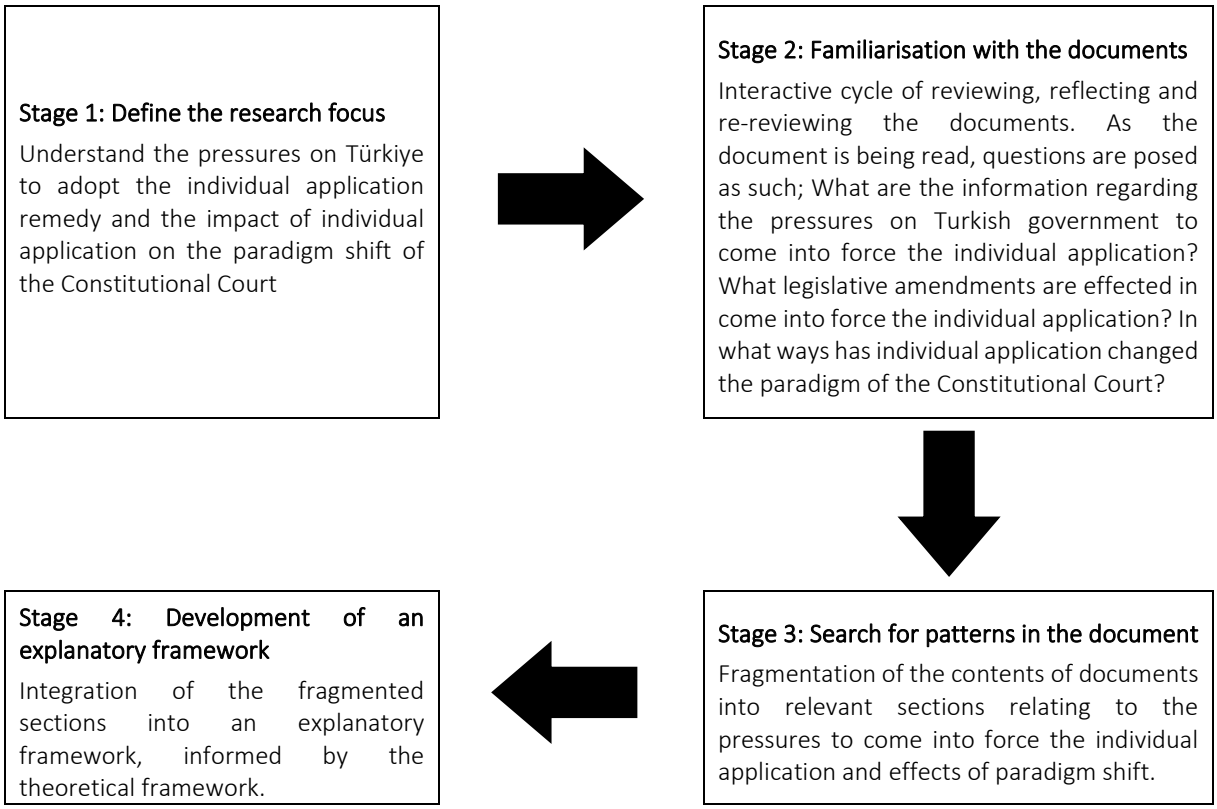
Mogalakwe (2006) classified documents into three broad categories: public, private, and personal. Public documents sources consist of publications by the government, such as Acts of Parliament, policy statements, census reports, statistical bulletins, reports from commissions of inquiry, annual reports from ministers or departments, consultancy reports, and other similar materials. Private documents are typically produced by civil society organizations such as businesses, trade unions, non-governmental organizations, and private individuals. Meeting minutes, board decisions, advertisements, bills, employment records, instruction manuals, interdepartmental memoranda, and other annual reports are examples of the kinds of papers that may fall under this category. Finally, personal documents are typically individual in nature and may include items such as household account books, photo albums, address books, medical records, suicide notes, diaries, personal letters, and other similar materials.

Documentary methods refer to the techniques used to classify, investigate, interpret, and evaluate physical sources, primarily written documents, found in both private and public domains such as personal papers, commercial records, state archives, communications, and legislation. Through these methods, researchers can gain insights about the past or present, while also identifying potential limitations or biases in the information (Payne and Payne, 2004, p.60). According to Mogalakwe (2006), comparable to sociological surveys, in-depth interviews, and participant observation, the documentary research method might also be more affordable.

This study utilizes various public documents as sources of data. Most of these documents consist of publicly available documents, reports, judgments and statistics of the Constitutional Court of the Republic of Türkiye and ECtHR. Also President's speeches of the Constitutional Court of the Republic of Türkiye are other important documents.

The document analysis approach utilized in this study was consistent with the theoretical framework on the pillars of institutional theory. The analytical process employed by this study is depicted in Figure 1.

Figure 1. Method of document analysis



*Formed by the author with the help of the paper of Osinubi, 2020, p.575-582.

4. FINDINGS

4.1. Regulative Pillar: Pressures and Legislative Regulations

The Republic of Türkiye attaches great importance to universal criteria in the protection of fundamental rights and freedoms. In this context, Türkiye became a party to the ECHR in 1954; It accepted the right of individual application to the ECtHR in 1987 and the compulsory jurisdiction in 1990. With the constitutional amendment made in 2004, international conventions on fundamental rights and freedoms to which Türkiye is a party, especially the ECHR, have been given a higher value than the law. Finally, as a result of the constitutional amendment referendum held in 2010, individual application came into force in Türkiye (The Constitutional Court of the Republic of Türkiye, 2023).

The entry into force of the individual application in Türkiye was with the addition of the phrase *"... and decides on individual applications"* to Article 148 of the Constitution, which regulates the duties and powers of the Constitutional Court.

Both national and international pressures have been effective in the entry into force of individual application in Türkiye. These are the common expectations of the pressures from both sides; the more effective protection of fundamental rights and freedoms and the reduction of applications made to the ECtHR against Türkiye. While international pressures to reduce the

applications made to the ECtHR against Türkiye mostly aim to reduce the workload of the Court, the important issue for Türkiye is to protect the country's reputation and to reduce the compensation paid.

Thousands of applications against Türkiye to the ECtHR were cited as reasons in the draft law, which envisages amendments in the articles of the Constitution of the Republic of Türkiye regulating the establishment and duties of the Constitutional Court, and it was stated that the right of individual application was envisaged in order to resolve these applications through domestic remedies. Accordingly, through the ECtHR, it was accepted that the complaints regarding the violations of fundamental rights that could not be resolved in domestic law would be handled at the supranational level. Every year, a large number of lawsuits are filed against Türkiye at the ECtHR and Türkiye is sentenced to compensation in many cases (Yilmazoglu and Perdecioglu, 2021, p.901).

In assessing the exhaustion of domestic remedies, the ECtHR takes into account the presence of an individual application mechanism within the relevant country. It considers this mechanism as an effective remedy for addressing human rights violations. Therefore, the introduction of the individual application remedy is seen as a means to address a significant portion of claims of rights violations at the domestic level, before they reach the ECtHR. This, in turn, is expected to reduce the number of lawsuits and violation judgments against Türkiye. In this respect, a well-functioning individual application remedy in Türkiye will raise standards on the basis of rights and the rule of law (Yilmazoglu and Perdecioglu, 2021, p.922).

Since it was founded in 1959 to the end of the 2021, the ECtHR has delivered 24,511 judgments. Around 40% of these concerned 3 member States of the Council of Europe: Türkiye (3,820), the Russian Federation[2] (3,116), and Italy (2,466) (European Court of Human Rights, 2022).

The last report of the ECtHR reveals that a significant part of the caseload of the court consists of case applications originating from Türkiye, Russia, Ukraine, Romania, and Italy. As of 31 December 2023, approximately 68,450 applications were pending before a judicial formation. Of these, 34.2% originate from Türkiye, 18.2% from Russia, 12.8% from Ukraine, 6.1% from Romania, and 4% from Italy. This equates to about 75% of the total pending files (European Court of Human Rights, 2024).

Although the picture changes in proportion to the population, the number of applications in Türkiye is still higher than in other Council of Europe member States. While the average number of applications allocated per 10,000 inhabitants was 0,47 in 2023, it was 0,98 for Türkiye (European Court of Human Rights, 2024).

Erdinc (2015) states that when the countries implement the individual application remedy, the number of applications made to the ECtHR against the country significantly reduces compared with the other countries. When the data for Germany and Spain, where the individual

[2] On March 16, 2022, Russia was expelled from the Council of Europe due to its invasion of Ukraine.

application is successfully implemented, are analyzed from 1959, when the Court was established, to 2023, it is observed that the judgments finding at least one violation are 205 and 149, respectively. On the other hand, the number of violations in France and Italy, where the individual application does not exist, are 797 and 1963, respectively. In Türkiye, which is still very new to the individual application, this figure is 3530 (European Court of Human Rights, 2023).

In addition to all these statistics, the Recommendation No. 2004 (6) of the Committee of Ministers of the Council of Europe also mentioned the necessity of recognizing the individual application remedy in domestic law in order to reduce the caseload in the ECtHR. Likewise, the Venice Commission expressed that it found positive the proposal for constitutional amendment regarding the individual application, which was announced to the public in 2004 (Yilmazoglu and Perdecioglu, 2021, p.922).

In summary, the individual application remedy helps to reduce the caseload of the ECtHR by reducing the applications to the Court. In this way, the reputation of countries is also protected. However, the most important function of individual application is its strong function in the protection of human rights. The report of the Venice Commission in 2010 specifically mentions this issue. The Commission notes that not every kind of individual access to the Constitutional Courts is an effective remedy. This is due to the fact that some individual accesses are norm-oriented, as in *"actio popularis"*. However, in practice, human rights violations do not usually occur as a result of an unconstitutional law enforcement. These are often the result of an individual act that may be based on a constitutional law, but which is unconstitutional. Therefore, a large number of human rights violations based on an unconstitutional act may escape a normative complaint (Venice Commission, 2011). For this reason, individual application to the Constitutional Court is a very effective way to protect human rights.

Today, this remedy, which is applied for the protection of fundamental rights, is accepted as an inseparable part of the constitutional judiciary in many civilized countries. Although the scope of individual application differs from country to country, it is applied in many countries such as Federal Germany, Austria, Spain, Switzerland, Belgium, Hungary, Poland, Czech Republic, Slovak Republic, Mexico, Brazil, Argentina. In most of the Eastern European countries, an individual application institution is accepted and operated. Although there is no individual application institution technically in Anglo-American law, there are legal remedies that have similar functions with individual application. Considering Türkiye's situation, the fact that the institution of individual application was not accepted has created a normative pressure. It is believed that individual application in Türkiye will provide better protection of the fundamental rights and freedoms of individuals on the one hand, and will force the public bodies to act more in line with the Constitution and laws, on the other hand (Yilmazoglu and Perdecioglu, 2021, p.922).

It is possible to give an example through tax legislation that individual application in Türkiye provides better protection of fundamental rights and freedoms of individuals. The Turkish Tax

Procedure Law did not allow individuals to file a lawsuit against the decision of the valuation commission, which was the basis for the real estate tax accrual. A lawsuit filed in the tax court against this provision was brought to the Constitutional Court by the tax court at the request of the suitor. The Constitutional Court annulled this provision, considering it unconstitutional. However, since a tax court decision was made before the annulment decision and the person's appeals were rejected by the Council of State, an unconstitutional verdict was given about the person. The individual's ability to protect his constitutional right has been through individual application. It was decided that the applicant's right of access to the court, who brought the issue to the Constitutional Court with the individual application mechanism, was violated and he had the right to be tried again in the tax court (The Constitutional Court of the Republic of Türkiye App. No: 2013/7698, 2016).

The above statements suggest that all *"coercive"*, *"mimetic"* and *"normative"* pressures are part of the driving force for the mandatory adoption of the individual application remedy in Türkiye. Since Türkiye is a party to the ECHR, it has to take into account the recommendations of institutions such as the ECtHR and the Council of Europe. Both the coercive pressures resulting from the numerous applications filed against Türkiye before the ECtHR, and the mimetic pressures caused by the existence of successful implementations in countries like Spain and Germany—although it remains uncertain how much the come into force of the individual application remedy will reduce the number of cases filed against Türkiye before the ECtHR—have played a role in the mandatory adoption of the individual application remedy in Türkiye. Additionally, normative pressures from international bodies such as the ECtHR and the Venice Commission, and the fact that this remedy is viewed as socially desirable by Turkish society, have further contributed to its adoption.

4.2. Normative Pillar: Individual Application and the Paradigmatic Transformation of the Constitutional Court of the Republic of Türkiye

Individual application is a regulation demanded by the society in Türkiye. Because the entry into force of individual application was possible as a result of the constitutional amendment referendum held in 2010. It is also stated in the report of the Constitutional Commission that individual application is a social demand. In report, the Constitutional Commission also underlined that with the recognition of this right, the image of the Constitutional Court, which was perceived as protecting the State and the system with a statist approach, will now be perceived as making liberal decisions and guaranteeing freedoms, and the prestige of the Court will increase (Yilmazoglu and Perdecioglu, 2021, p.923).

The Constitutional Court has been criticized in academic writings for adopting an ideological approach for a considerable period of time (Erdem, 2017, p.1056-1057; Kaya, 2016, p.210; Ozbudun, 2007, p.258-267; Yazici, 2017, p.1307). It is alleged that the Court's decisions regarding the protection and preservation of fundamental rights and freedoms are notably influenced by the state's ideological priorities. Specifically, it is claimed that instead of adopting

a protective and expansive stance towards freedom of thought, the Court has aligned itself with the ideological preferences of the current political regime (Erdem, 2017, p.1057). The decisions of the Court regarding the closure of political parties have not only been subject to academic and political criticism but also, a significant number of these decisions have been interpreted by the ECtHR as violations of the ECHR since Türkiye recognized the right of individual application to the ECtHR in 1987. As a result, Türkiye has been condemned to pay compensation (Yazici, 2017, p.1308).

Arslan (2002) also states that although there are decisions that fully comply with the rights-based paradigm in the case-laws of the Constitutional Court, the court adopted an ideology-based approach rather than rights, especially in its controversial decisions regarding political parties in the 1990s. However, what is expected from the constitutional judiciary in a state of law is to adopt a *"right-based"* approach and use its discretion in favor of freedom, not authority (Keskinsoy et al., 2020, p.139-164). Both the social demand for the entry into force of the individual application and the understanding of the rule of law created normative pressure on the Constitutional Court, and finally, in 2012, the individual application came into force.

Arslan, who evaluated the approach of the Constitutional Court as its President, twenty-one years after writing his article in 2002, states that within the past ten years of implementing individual applications, the Court has transitioned from an ideology-based approach to a rights-based approach. He further asserts that the Court openly acknowledges this shift in its decisions[3] and fulfills the necessary requirements.

Arslan (2022a) states that individual application has three transformative effects in Türkiye, two of which are for the Constitutional Court and the other is more general. First of all, individual application caused a significant constitutionalization of legal, social, political and economic issues. In other words, institutions holding public power, especially courts of instance, have begun to interpret and implement constitutional provisions on fundamental rights and freedoms at all levels.

The second and most important transformative effect of the individual application is the paradigm shift it caused on the Constitutional Court. As a matter of fact, thanks to individual application the Constitutional Court has In this context, Arslan divides the 60-year history of Turkish constitutional judiciary into two periods: the first 50 years and the last 10 years. He identifies the beginning of the second period as the introduction of individual application and the paradigm shift it has caused (Arslan, 2022b). Yazici (2017) also highlights the adoption of

[3] For the decisions in which the Court states that the constitutional provisions can fully fulfill their functions in the context of the protection of democracy and if they are interpreted on the basis of rights, see. The Constitutional Court of the Republic of Türkiye (2021) Case of Ömer Faruk Gergerlioğlu [GK], App. No: 2019/10634, 01.07.2021, §133, The Constitutional Court of the Republic of Türkiye (2022a) Case of Ali Kuş [GK], App. No: 2017/27822, 10.02.2022, §50, The Constitutional Court of the Republic of Türkiye (2022b) Case of Figen Yüksekdağ Şenoğlu and others, App. No: 2016/39759, 30.03.2022, §133, The Constitutional Court of the Republic of Türkiye (2022c) Case of Leyla Güven [GK], App. No: 2018/26689, 07.04.2022, §110 and The Constitutional Court of the Republic of Türkiye (2022d) Case of Enis Aras [GK], App. No: 2018/36485, 14.12.2022, §13.

the individual application remedy as one of the significant factors influencing the change in the Constitutional Court's attitude. Indeed, following the come into force of the individual application mechanism, special efforts were made, initiated by the Court's President and its members, to ensure that individual applications were decided in accordance with the provisions of the ECHR and the case law of the ECtHR. She expresses that, as a result of these efforts, the Court has shifted toward interpreting constitutional provisions with a more liberty-oriented mindset.

Essentially, the nature of individual application necessitates such a paradigm shift (Arslan, 2017). Indeed, in the rationale of the constitutional amendment, it is stated that the Court is entrusted with the mission of *"protecting and enhancing freedoms"* with its new role (Yilmazoglu and Perdecioglu, 2021, p.923) turned into a high judicial body that touches people's lives, all aspects of social and political life, and examines complaints of violations with a rights-based approach (Arslan, 2022a).

After the individual application came into force, various special studies were carried out by the president and members of the Court in order to resolve the applications in accordance with the ECHR and the case law of the ECtHR. In this way, the members of the Court had the opportunity to discuss and evaluate various issues with ECtHR judges and local and foreign academics (Yazici, 2017, p.1331) As one of these special studies the *"Joint Project on Supporting the Individual Application to the Constitutional Court in Turkey"* which is co-financed by the European Union, the Republic of Türkiye and the Council of Europe, and implemented by the Council of Europe, aimed to contribute to supporting and strengthening the individual application by empowering the judiciary in Türkiye in line with the EU acquis, the rights and freedoms guaranteed under the system of the ECHR and the Constitution of the Republic of Türkiye (Council of Europe, 2023). Under the influence of all these studies, the Constitutional Court of the Republic of Türkiye has tended to interpret the constitutional provisions with a more liberal mentality and has experienced a transformation from an ideology-based paradigm to a rights-based paradigm (Yazici, 2017, p.1331).

The rights-based perspective transformed by the Constitutional Court of the Republic of Türkiye through individual application sometimes even causes it to adopt a stricter interpretation than the ECtHR in terms of protecting fundamental rights and freedoms. For instance, for right to property, the ECtHR considers domestic court rulings on violations of rights and freedoms to have created legal precedents that satisfy the legality criteria without the need for a specific piece of legislation passed by the legislative body (Inceoglu, 2013, p.30). In other words, while the ECtHR accepts that the conditions envisaged in the law, that is, the principles developed through jurisprudence based on judicial decisions that have gained stability by interpreting the legality broadly can also meet the legality requirement, Constitutional Court of the Republic of Türkiye emphasizes that the limitations to the right to property should be explicitly defined by the law (The Constitutional Court of the Republic of

Türkiye App. No: 2013/1436, 2014a). Thus, through the Constitution, the Constitutional Court of Türkiye provides broader protection than the ECHR and the ECtHR.

The third transformative effect of the individual application on the Constitutional Court of the Republic of Türkiye was that it enriched its interpretation of constitutional provisions to include constitutionality review. The Court, which interpreted the constitutional provisions only in terms of abstract norms before the individual application, started to interpret the norm area of fundamental rights and freedoms by taking into account concrete events together with the individual application. This situation brought about the dominance of the right-based approach, which was put into practice with the individual application, on norm control (Arslan, 2022a).

As a result, the Constitutional Court of the Republic of Türkiye has completed its paradigmatic transformation to a great extent thanks to the individual application, and has created a rich jurisprudence in both constitutionality review and individual application with a right-based approach. This accumulation of jurisprudence, built by the Constitutional Court with a right-based approach, not only enabled the legal order to be compatible with the Constitution, but also increased the standards by expanding the protection area of fundamental rights and freedoms (Arslan, 2022c).

5. DISCUSSION and CONCLUSION

Türkiye is the country that has received the highest number of violation judgments from the ECtHR. Additionally, approximately 27% of the pending cases before the Court are from Türkiye, and Türkiye also holds the first position in terms of pending cases.

Türkiye's poor record before the ECtHR has exerted pressure on it to make certain reforms in its domestic legislation. As a result of recommendations from international commissions such as the Venice Commission and the Committee of Ministers of the Council of Europe, as well as advice from domestic bodies like the Constitutional Commission and academics, an individual application mechanism has been introduced in Türkiye since 2012.

The introduction of individual application aims to both improve Türkiye's reputation before the ECtHR and enhance the effective protection of fundamental rights and freedoms. However, the most significant impact of individual application has been on the paradigm shift of the Constitutional Court. Prior to the implementation of individual application, the Constitutional Court of the Republic of Türkiye had faced criticism for adopting an ideology-based approach, particularly in cases related to the closure of political parties and the principle of secularism. However, the principle of the rule of law, which is one of the fundamental principles of the Constitution of the Republic of Türkiye, necessitates that the Constitutional Court adopts a rights-based paradigm in order to effectively protect basic rights and freedoms (Arslan, 2023).

Undoubtfully, it is not possible to claim that individuals' fundamental rights and freedoms were not protected before the introduction of individual application. However, due to the nature of individual application, the Constitutional Court underwent a shift from a statist approach to a

rights-based approach, prioritizing freedoms. One of the most influential examples that explains this paradigm shift in the Constitutional Court of the Republic of Türkiye is the headscarf decisions. In 1989, the Court invalidated a legislative regulation aimed at allowing the wearing of headscarves in universities, deeming it contrary to the principle of secularism (The Constitutional Court of the Republic of Türkiye E.1989/1, K.1989/12, 1989). In 2008, the Constitutional Court invalidated a constitutional amendment aimed at lifting the headscarf ban, citing its inconsistency with the principle of secularism (The Constitutional Court of the Republic of Türkiye E.2008/16, K.2008/116, 2008). After the implementation of individual application, the Constitutional Court, in its rulings, emphasized that the headscarf is an essential aspect of freedom of religion and conscience, that the ban on the headscarf had no legal basis, and that this ban constituted discrimination based on belief. The Court decided that the constitutional rights of the lawyer who was expelled from the courtroom for wearing a headscarf (The Constitutional Court of the Republic of Türkiye App. No: 2014/256, 2014b), the student who was expelled from the university for the same reason (The Constitutional Court of the Republic of Türkiye App. No: 2015/269, 2018a), and the civil servant who was dismissed from their job for wearing a headscarf were violated (The Constitutional Court of the Republic of Türkiye App. No: 2015/8491, 2018b). These decisions demonstrate that the Constitutional Court adopted an approach based on freedom rather than ideology.

In conclusion, it can be said that the adoption of the individual application mechanism in Türkiye has led to a paradigm shift from an ideology-based approach to a rights-based approach. On the other hand, when evaluating the purposes of introducing individual application, although it has failed in the objective of reducing the number of applications to the ECtHR against Türkiye, it is possible to say that fundamental rights and freedoms have been more effectively protected, especially thanks to the significant decrease in the number of violations of the ECHR. The number of violations in the last five years prior to the introduction of individual application in Türkiye, between 2007 and 2011, were 319, 257, 341, 228, and 159, respectively. In the last five years, from 2019 to 2023, these figures were 96, 85, 76, 73, and 72, respectively (Rebuplic of Türkiye Minister of Justice, 2023). It is believed that if the Court continues to uphold its rights-based approach without yielding to political pressures, both the number of applications to the ECtHR and the violation rulings against Türkiye will decrease in the coming years.

References

Arslan, Z. (2002). Conflicting paradigms: Political rights in the Turkish Constitutional Court. *Critique: Critical Middle Eastern Studies, 11*(1), 9-25. https://doi.org/10.1080/10669920120122225

Arslan, Z. (2017). *The conference under the joint project on supporting the individual application to the constitutional court in Turkey on 'The legal remedy of intermediate appeal and the individual application before the constitutional court*. https://www.anayasa.gov.tr/en/president/presidents-speeches/welcome-address-conference-on-the-legal-remedy-of-intermediate-appeal-and-the-individual-application-before-the-constitutional-court/ (Accessed Date: 7 February 2024).

Arslan, Z. (2022a). *An Evaluation on the past, present and future of individual application in Türkiye*. https://www.anayasa.gov.tr/en/president/presidents-speeches/an-evaluation-on-the-past-present-and-future-of-individual-application-in-turkiye/ (Accessed Date: 7 February 2024).

Arslan, Z. (2022b). *Anayasa Mahkemesinin temel hakların korunmasındaki rolü konulu panelin açış konuşması*. https://www.anayasa.gov.tr/tr/baskan/konusmalar/anayasa-mahkemesinin-temel-haklarin-korunmasindaki-rolu (Accessed Date: 7 February 2024).

Arslan, Z. (2022c). *Swearing-in ceremony of justice Mr. Muhterem İnce*. https://www.anayasa.gov.tr/en/president/presidents-speeches/opening-address-swearing-in-ceremony-of-justice-mr-muhterem-ince/ (Accessed Date: 7 February 2024).

Arslan, Z. (2023). *The rights-based interpretation and the Constitutional Court of Türkiye*. https://www.anayasa.gov.tr/en/president/presidents-speeches/the-rights-based-interpretation-and-the-constitutional-court-of-turkiye (Accessed Date: 7 February 2024).

Aydin, E. (2017). *Understanding the role of NGOs for legitimising inclusion of sexual minorities in Turkey and the UK: An institutional perspective* [Unpublished Doctoral Dissertation]. Brunel University.

Bailey, K. D. (1994). *Methods of social research*. Simon and Schuster.

Boxenbaum, E., & Arora-Jonsson, S. (2017). Isomorphism, diffusion and decoupling: Concept evolution and theoretical challenges. In R. Greenwood, C. Oliver, T. B. Lawrence, & R. E. Meyer (Eds.), *The SAGE handbook of organizational institutionalism* (pp. 79-104, 2nd Edition). SAGE Publications.

Chakim, M. L. (2019). A comparative perspective on constitutional complaint: Discussing models, procedures, and decisions. *Constitutional Review, 5*(1), 96-133.

Council of Europe. (2023). *Joint project on supporting the individual application to the Constitutional Court in Turkey*. https://www.coe.int/en/web/ankara/joint-project-on-supporting-the-individual-application-to-the-constitutional-court-in-turkey (Accessed Date: 7 February 2024).

Dacin, M. T., Goodstein, J., & Scott, W. R. (2002). Institutional theory and institutional change: Introduction to the special research forum. *Academy of Management Journal*, *45*(1), 43-56. https://doi.org/10.5465/amj.2002.6283388

Daneliene, I. (2021). Individual access to constitutional justice in Lithuania: The potential within the newly established model of the individual constitutional complaint. *Revista de Derecho Político,* (111), 281-312.

DiMaggio, P. J., & Powell, W. W. (1983). The iron cage revisited: Institutional isomorphism and collective rationality in organizational fields. *American Sociological Review, 48*(2), 147- 160. https://doi.org/10.2307/2095101

Doh, J. P., & Guay, T. R. (2006). Corporate social responsibility, public policy, and NGO activism in Europe and the United States: An institutional-stakeholder perspective. *Journal of Management Studies, 43*(1), 47-73. https://doi.org/10.1111/j.1467-6486.2006.00582.x

Ekinci, H., & Saglam, M. (2012). *66 soruda Anayasa Mahkemesine bireysel başvuru*. T.C. Anayasa Mahkemesi.

Erdem, F. H. (2017). Türkiye'de 'ideolojik devlet' gölgesinde yargı ve bağımsızlığı sorunu. Anayasa Mahkemesi (Ed.), *Anayasa Mahkemesinin kuruluşunun 55. yılı anısına 55 Yıl 55 makale* içinde (ss. 1047-1067) Anayasa Mahkemesi Yayınları.

Erdinc, T. (2015). Karşılaştırmalı olarak Türk Anayasa Mahkemesine bireysel başvuru hakkı (Anayasa şikâyeti). *Türkiye Adalet Akademisi Dergisi, 6*(20), 87-138.

European Commission for Democracy Through Law (Venice Commission). (2011). *Study on individual access to constitutional justice adopted by the Venice Commission at its 85th plenary session.* https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)039rev (Accessed Date: 7 February 2024).

European Court of Human Rights. (2022). *ECHR overview 1959-2021*. https://www.echr.coe.int/documents/d/echr/Overview_19592021_ENG (Accessed Date: 7 February 2024).

European Court of Human Rights. (2023). *Violations by article and by state.* https://www.echr.coe.int/documents/d/echr/Stats_violation_1959_2022_ENG (Accessed Date: 7 February 2024).

European Court of Human Rights. (2024). *Analysis of statistics 2023*. https://www.echr.coe.int/documents/d/echr/stats-analysis-2023-eng (Accessed Date: 7 February 2024).

Fendoglu, H. T. (2013). Kamu denetçiliği (Ombudsmanlık) ve Anayasa Mahkemesine bireysel başvuru hakkı. *Ankara Barosu Dergisi*, (4), 23-49.

Gokalp Aras, N. E., Kabadayi, Ozeren, E., & Aydin, E. (2021). Right to health and access to health-care services for refugees in Turkey. *Journal of Services Marketing, 35*(7), 962-976. https://doi.org/10.1108/JSM-06-2020-0256

Grix, J. (2001). *Demystifying postgraduate research.* Bloomsbury Academic.

Inceoglu, S. (2013). Hak ve özgürlükleri sınırlama ve güvence rejimi. Sibel Inceoglu (Ed.), *İnsan Hakları Avrupa Sözleşmesi ve Anayasa-Anayasa Mahkemesine bireysel başvuru kapsamında bir inceleme* içinde (ss. 23-52). Şen Printing House.

Kaya, E. (2016). Anayasa Mahkemesinin muhafazakar-liberal ikilemi. *Türkiye Adalet Akademisi Dergisi,* (27), 181-214.

Keskinsoy, Ö., Demir, H. S. & Kaya, S. B. (2020). İfade özgürlüğü ekseninde Anayasa Mahkemesi'nin hukuku değiştirme sorunu. *Erciyes Üniversitesi Hukuk Fakültesi Dergisi, 15*(1), 139-190.

Kostova, T. (1997). Country institutional profiles: Concept and measurement. *Academy of Management Proceedings,* (1), 180-184. https://doi.org/10.5465/ambpp.1997.4981338

Martinez, R. J., & Dacin, M. T. (1999). Efficiency motives and normative forces: Combining transactions costs and institutional logic. *Journal of Management, 25*(1), 75-96. https://doi.org/10.1016/S0149-2063(99)80004-X

Mogalakwe, M. (2006). The use of documentary research methods in social research. *African Sociological Review, 10*(1), 221-230.

North, D. C. (1990). *Institutions, institutional change and economic performance.* Cambridge University Press. https://doi.org/10.1017/CBO9780511808678

Osinubi, I. S. (2020). The three pillars of institutional theory and IFRS implementation in Nigeria. *Journal of Accounting in Emerging Economies, 10*(4), 575-599. https://doi.org/10.1108/JAEE-07-2019-0139

Ozbudun, E. (2007). Türk Anayasa Mahkemesinin yargısal aktivizmi ve siyasal elitlerin tepkisi. *Ankara Üniversitesi SBF Dergisi, 62*(03), 257-268. https://doi.org/10.1501/SBFder_0000002041

Payne G., & Payne, J. (2004). *Key concepts in social research*. SAGE Publications.

Republic of Türkiye Minister of Justice. (2023). *Yıllara göre AİHS ihlal sayıları (1995-2023)*. https://inhak.adalet.gov.tr/Resimler/Dokuman/60220241010377-%20YILLARA%20G%C3%96RE%20A%C4%B0HS%20%C4%B0HLAL%20SAYILARI%20(1995%20-%202023).pdf (Accessed Date: 7 February 2024).

Scott, J. (1990). *A matter of record: Documentary sources in social research.* Polity Press.

Scott, W. R. (2008). *Institutions and organizations: Ideas and interests*. Sage Publications.

Tezcan, D., Erdem, M. R., Sancakdar, O., & Onok, R. M. (2011). *İnsan hakları el kitabı*. Seçkin Yayıncılık.

The Constitutional Court of the Republic of Türkiye. (1989). *E.1989/1, K.1989/12.* https://www.anayasa.gov.tr/tr/kararlar-bilgi-bankasi/ (Accessed Date: 7 February 2024).

The Constitutional Court of the Republic of Türkiye. (2008). *E.2008/16, K.2008/116.* https://www.anayasa.gov.tr/tr/kararlar-bilgi-bankasi/ (Accessed Date: 7 February 2024).

The Constitutional Court of the Republic of Türkiye. (2014a). *Case of Celalettin Aşçıoğlu, App. No: 2013/1436*. https://www.anayasa.gov.tr/tr/kararlar-bilgi-bankasi/ (Accessed Date: 7 February 2024).

The Constitutional Court of the Republic of Türkiye. (2014b). *Case of Tuğba Arslan [GK], App. No: 2014/256*. https://www.anayasa.gov.tr/tr/kararlar-bilgi-bankasi/ (Accessed Date: 7 February 2024).

The Constitutional Court of the Republic of Türkiye. (2016). *Case of Gemak Gemi İnşaat Sanayi ve Ticaret A.Ş., App. No: 2013/7698*. https://www.anayasa.gov.tr/tr/kararlar-bilgi-bankasi/ (Accessed Date: 7 February 2024).

The Constitutional Court of the Republic of Türkiye. (2018a). *Case of Sara Akgül [GK], App. No: 2015/269*. https://www.anayasa.gov.tr/tr/kararlar-bilgi-bankasi/ (Accessed Date: 7 February 2024).

The Constitutional Court of the Republic of Türkiye. (2018b). *Case of B.S., App. No: 2015/8491*. https://www.anayasa.gov.tr/tr/kararlar-bilgi-bankasi/ (Accessed Date: 7 February 2024).

The Constitutional Court of the Republic of Türkiye. (2021). *Case of Ömer Faruk Gergerlioğlu [GK], App. No: 2019/10634*. https://www.anayasa.gov.tr/tr/kararlar-bilgi-bankasi/ (Accessed Date: 7 February 2024).

The Constitutional Court of the Republic of Türkiye. (2022a). *Case of Ali Kuş [GK], App. No: 2017/27822*. https://www.anayasa.gov.tr/tr/kararlar-bilgi-bankasi/ (Accessed Date: 7 February 2024).

The Constitutional Court of the Republic of Türkiye. (2022b). *Case of Figen Yüksekdağ Şenoğlu and others, App. No: 2016/39759*. https://www.anayasa.gov.tr/tr/kararlar-bilgi-bankasi/ (Accessed Date: 7 February 2024).

The Constitutional Court of the Republic of Türkiye. (2022c). *Case of Leyla Güven [GK], App. No: 2018/26689*. https://www.anayasa.gov.tr/tr/kararlar-bilgi-bankasi/ (Accessed Date: 7 February 2024).

The Constitutional Court of the Republic of Türkiye. (2022d). *Case of Enis Aras [GK], App. No: 2018/36485*. https://www.anayasa.gov.tr/tr/kararlar-bilgi-bankasi/ (Accessed Date: 7 February 2024).

The Constitutional Court of the Republic of Türkiye. (2023). *Individual application.* https://www.anayasa.gov.tr/en/individual-application (Accessed Date: 7 February 2024).

Tolbert, P. S., & Zucker, L. G. (1983). Institutional sources of change in the formal structure of organizations: The diffusion of civil service reform 1880-1935. *Administrative Science Quarterly, 28*(1), 22-39. https://doi.org/10.2307/2392383

Trevino, L. J., Thomas, D. E., & Cullen, J. (2008). The three pillars of institutional theory and FDI Latin America: An institutionalization process. *International Business Review, 17*(1), 118-133. https://doi.org/10.1016/j.ibusrev.2007.10.002

Yazici, S. (2017). Kuruluşundan bu yana Türk Anayasa Mahkemesinin değişen rolü. Anayasa Mahkemesi (Ed.), *Anayasa Mahkemesinin kuruluşunun 55. yılı anısına 55 yıl 55 makale* içinde (ss. 1305-1331). Anayasa Mahkemesi Yayınları.

Yilmazoglu, Y. E., & Perdecioglu, I. E. (2021). *Türkiye Cumhuriyeti Anayasası (Gerekçeli).* Anayasa Mahkemesi Yayınları.

Yiu, D., & Makino, S. (2002). The choice between joint venture and wholly owned subsidiary: An institutional perspective. *Organization Science, 13*(6), 667-683. https://doi.org/10.1287/orsc.13.6.667.494

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