

# COMPARATIVE ANALYSIS OF JURISPRUDENCE ON INTERVENTIONS TO THE RIGHTS TO PROPERTY THROUGH TAXATION: THE CONSTITUTIONAL COURT OF TÜRKİYE AND EUROPEAN COURT OF HUMAN RIGHTS

Betül Hayrullahođlu\*

Usak University, Faculty of Economics and Administrative Sciences, Türkiye  
[betul.hayrullahoglu@usak.edu.tr](mailto:betul.hayrullahoglu@usak.edu.tr)

Received: 5 February 2023 | Last Revised: 28 November 2023 | Accepted: 19 December 2023

## Abstract

Fundamental rights and freedoms of individuals are guaranteed in both constitutions and international treaties. One of the most important treaties protecting fundamental rights and freedoms is the European Convention on Human Rights (ECHR). Türkiye, which adopts a monist understanding, is one of the countries that are party to the ECHR. Since it was founded in 1959, Türkiye has been one of the three countries that are subject to the most judgments by the European Court of Human Rights (ECtHR). In order to make this bad record better and to protect fundamental rights and freedoms more effectively, the individual application mechanism to the Constitutional Court has been entered into force in Türkiye since 2012. This paper argues whether the case law of the Constitutional Court of the Republic of Türkiye, which is necessary to reduce the applications made to the ECtHR against Türkiye and the violation decisions given by the ECtHR, is compatible with the case law of the ECtHR. The paper analyses the right to property, which is one of the most related rights to taxes, and focuses only on tax interventions to this right. The right to property is important not only because it is directly related to taxes, but

---

\* Associate Professor at the Public Finance Department, Faculty of Economics and Administrative Sciences, Usak University. This paper is derived from the research project titled *Turkey's Individual Application Experience in terms of Taxation Policies: Suggestions for Italy* written as a visiting fellow at the University of Milan-Bicocca- School of Law in 2021.

also because it is the second most violated right among the violation decisions made by the ECtHR against Türkiye between 1959-2022, after the right to a fair trial. The methodology employed is based on a comparative jurisprudential analysis of the Constitutional Court of the Republic of Türkiye and ECtHR. In this way, the similarities and differences between the way the two courts dealt with the cases in the interventions to the right to property through taxes can be analyzed. As a result, it is understood that both Courts treat the right to property in the same way, but the Turkish Constitutional Court adopts a stricter and more protective interpretation than the European Court of Human Rights in terms of legality criteria.

**Keywords:** Taxes; Right to Property; Individual Application; Constitutional Court; EctHR

## I. INTRODUCTION

As a result of the social contract, individuals who were initially without a state voluntarily relinquished a portion of their independence to a government or authority, embracing the concept of the rule of law. The financing of functions assumed by the more advanced organizational form of societies, the state, has necessitated the use of taxes. In this regard, taxes, whether in kind or in cash, have been employed in both primitive and modern communities to meet the common needs of society.

Taxes inevitably require intervention in some fundamental rights and freedoms of individuals. One of the most tax-sensitive rights is the right to property. Countries protect fundamental rights and freedoms through both constitutions and treaties. In this context, the right to property is protected both in the Constitution of the Republic of Türkiye and in the European Convention on Human Rights to which Türkiye is a party.

In Türkiye, the protection of fundamental rights and freedoms in national law are carried out through the individual application mechanism. Individual application to the Constitutional Court, applied in more than forty countries today; came into force with the Constitutional amendment as a consequence of the Referendum on 12.09.2010 in Türkiye. The jurisdiction *ratione temporis* of the Turkish Constitutional Court began on 23.09.2012.

The individual application mechanism has mainly two objectives; to protect fundamental rights and freedoms more effectively and to reduce the applications to the European Court of Human Rights (ECtHR) against the country.

As expected, the case law of the Turkish Constitutional Court is in line with the European Court of Human Rights in order to reduce the applications made against Türkiye to the European Court of Human Rights and to reduce Türkiye's conviction. On the other hand, in some cases, the Turkish Constitutional Court to adopts a more strict interpretation than the European Court of Human Rights in order to protect the rights of individuals more effectively.

The methodology employed is based on document and jurisprudential analysis. The scope of the study covers the jurisprudence of the Constitutional Court of the Republic of Türkiye and the European Court of Human Rights regarding interventions in the right to property through taxation. The focus on both the jurisprudence of the Constitutional Court of the Republic of Türkiye and the ECtHR in this study is justified by the fact that one of the objectives behind the brought into force of the individual application mechanism in Türkiye is to reduce the number of convictions by the ECtHR. Consequently, the alignment of the Turkish Constitutional Court with the ECtHR jurisprudence becomes important.

Furthermore, in Türkiye, the scope of individual applications includes the rights falling under the joint protection of the Turkish Constitution and the ECHR. As a result, the Constitutional Court of the Republic of Türkiye has undertaken projects in collaboration with the Council of Europe to support and enhance the individual application.

Additionally, Türkiye is a member of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC). Within this association, Azerbaijan, South Korea, and Thailand also implement individual application mechanisms. However, it is noteworthy that the concept of individual application originated in Europe, with Germany and Spain being among the pioneers in this regard,

boasting the most developed practices.<sup>1</sup> The success of the continental European model of constitutional review has also had an impact on the dynamics and outcomes of the alteration of constitutional review institutions in Middle East/North Africa (MENA) countries.<sup>2</sup>

For all these reasons explained, although the individual application applied in Türkiye has its own characteristics, the ECtHR case law is taken as reference in the study.

Within the scope of the paper, not all the decisions of the Constitutional Court of the Republic of Türkiye, only the basic decisions that determine the main approach of the Court are included. Examining the decisions of the ECtHR published only in English is another limitation of the study.

The importance of individual application and its contribution to the protection of fundamental rights and freedoms in domestic law has been discussed in the literature. Zühtü Arslan, President of the Constitutional Court of the Republic of Türkiye, draws attention to the fact that with the entry into force of the individual application mechanism, the Constitutional Court of the Republic of Türkiye has started to make decisions with a “rights-oriented” paradigm based on the protection of individuals’ fundamental rights and freedoms.<sup>3</sup> On the other hand, it is emphasized that the existence of individual application in domestic law will reduce the number of applications to the ECtHR against that country. The Venice Commission, in its report published in 2011, emphasizes the importance of resolving disputes at the national level before they reach the ECtHR, considering the caseload of the ECtHR. In this regard, the report draws attention to the importance of an individual application mechanism.<sup>4</sup> Zupančič also concluded that the constitutional complaint (individual application) is the

<sup>1</sup> M. Lutfi Chakim, “A Comparative Perspective on Constitutional Complaint: Discussing Models, Procedures, and Decisions,” *Constitutional Review* 5, no. 1 (May 2019): 96.

<sup>2</sup> Anja Schoeller-Schletter, “Mapping Constitutional Review in the Middle East and North Africa: Historic Developments and Comparative Remarks,” in *Constitutional Review in the Middle East and North Africa*, ed. Anja Schoeller-Schletter (Baden-Baden: Nomos Verlagsgesellschaft mbH & Co. KG, 2021), 21.

<sup>3</sup> Zühtü Arslan, “The Role of Individual Application in the Protection of Human Rights in Turkey,” Constitutional Court of The Republic of Türkiye, published May 03, 2021.

<sup>4</sup> European Commission for Democracy Through Law (Venice Commission), “Study on Individual Access to Constitutional Justice adopted by the Venice Commission at its 85th Plenary Session Venice, 17-18.10.2010, Gagik Harutyunyan, Angelika Nussberger, Peter Paczolay. Study No: 538/2009, 2011.

most ideal way to ensure harmony between national constitutional law and the Law of the EctHR.<sup>5</sup> Another legist Palguna also draws attention to the importance of the constitutional complaint.<sup>6</sup> Faiz, argues that constitutional complaint might be adopted as a new remedy in Indonesia to strengthen the protective role of the Indonesian Constitutional Court regarding the fundamental rights and freedoms.<sup>7</sup>

Individual application in Türkiye has a history of eleven years. So, there is not a very developed literature on it. The interest of law researchers and academics in case law that makes references to foreign and international law is immense.<sup>8</sup> However, since the development of the case law requires a certain period of time, studies that analyze the case law of the of the Constitutional Court of Türkiye are limited. In her study, which examines the individual application in terms of tax law, Akdemir did not analyze the case law, but focused on the functioning of the individual application in terms of not only the right to property but also other rights.<sup>9</sup>

Some of the studies that analyze the case law on tax interventions to the right to property, which is the subject of this study, focus only on the case law of the Constitutional Court of the Republic of Türkiye. For example, the study of Uygun and Gerçek aims at systematically classifying the judicial tax decisions of the Constitutional Court.<sup>10</sup> Hayrulloğlu, on the other hand, examined the case law of the Constitutional Court of the Republic of Türkiye on tax interventions to the right to property within the scope of the proportionality criterion, out

<sup>5</sup> Boštjan M. Zupančič, "Constitutional Law and the Jurisprudence of the European Court of Human Rights: An Attempt at a Synthesis," *Revus*, no. 1 (2003).

<sup>6</sup> I Dewa Gede Palguna, "Constitutional Complaint and The Protection of Citizens The Constitutional Rights," *Constitutional Review* 3, no. 1 (May 2017): 1.

<sup>7</sup> Pan Mohamad Faiz, "A Prospect and Challenges for Adopting Constitutional Complaint and Constitutional Question in the Indonesian Constitutional Court," *Constitutional Review* 2, no. 1 (May 2016): 103, <http://dx.doi.org/10.31078/consrev215>.

<sup>8</sup> Bisariyadi Bisariyadi, "Referencing International Human Rights Law in Indonesian Constitutional Adjudication," *Constitutional Review* 4, no. 2 (December 2018): 250.

<sup>9</sup> Tuğçe Akdemir, "Vergi Hukuku Açısından Türk Anayasa Mahkemesi'ne Bireysel Başvuru Yolu [Individual Appeals to The Turkish Constitutional Court With Regard to Tax Law]," *Türkiye Barolar Birliği Dergisi* [Journal of the Union of Turkish Bar Associations], no. 111 (March-April 2014): 255.

<sup>10</sup> Esra Uygun and Adnan Gerçek, "Anayasa Mahkemesinin Vergilendirme Alanındaki Bireysel Başvuru Kararlarının Değerlendirilmesi [Evaluation of Individual Applications Decisions in the Field of Taxation of Constitutional Court]," *Türkiye Adalet Akademisi Dergisi* [Journal of the Turkish Justice Academy], no. 29 (January 2017): 167.

of three criteria consisting of legality, public interest, and proportionality.<sup>11</sup> Hayrulloğlu's other paper, prepared with Gök, focuses on the decision of the Constitutional Court, which examines only the right to property in terms of non-discrimination.<sup>12</sup> The studies of Sağır and Türkay, who analyze both the case law of the Constitutional Court of the Republic of Türkiye and the ECtHR, examine the subject only in terms of legality, out of three criteria.<sup>13</sup>

This paper seeks an answer to the question of “to what extent does the approach of the Constitutional Court of the Republic of Türkiye overlap with the approach of the ECtHR in the interventions to the right to property through taxation?” Apart from this paper, which aims to find an answer to this question, only one study has been found that examines the tax interventions to the right to property by comprehensively considering the case law of both the Constitutional Court of the Republic of Türkiye and the ECtHR. Yılmazoğlu focused on the subject comprehensively in his doctoral thesis. Although this paper has the same purpose as Yılmazoğlu's thesis, it is important because it deals with the subject by focusing on important basic decisions in accordance with the limitations of an article, and because of its widespread impact due to its language.

This paper aims to reveal the compliance of the Turkish Constitutional Court's case law on interventions to the right to property through taxes with the European Court of Human Right case law. Thus, the similarities and differences between the approaches of both courts on the protection of fundamental rights and freedoms can be analyzed.

---

<sup>11</sup> Betül Hayrulloğlu, “Mülkiyet Hakkına Vergi Yoluyla Müdahalelerde Anayasa Mahkemesinin Ölçülülük Denetimi [Proportionality Control of the Constitutional Court in Interventions to Property by Tax],” in *Küreselleşen Dünyada Mali ve İktisadi Meseleler* [Financial and Economic Issues in a Globalizing World], ed. Serap Ürüt Saygın and Orçun Avcı, (Bursa: Ekin Press, 2021), 59.

<sup>12</sup> Betül Hayrulloğlu and Onur Gök, “Vergi İncelemelerinde Mükellef Hakkı Bağlamında Ayrımcılık Yasağı: Bir Anayasa Mahkemesi Kararı Çerçevesinde İnceleme [In the Context of Taxpayer's Right in Tax Auditing the Prohibition of Discrimination: A Review of the Constitutional Court Judgment],” in *Maliye Araştırmaları-2* [Public Finance Studies-2], ed. Selçuk İpek (Bursa: Ekin Press, 2018), 151.

<sup>13</sup> Harun Sağır, “Anayasa Mahkemesi'nin Bireysel Başvuru Kararları Çerçevesinde Vergisel Müdahalelerde Mülkiyet Hakkı İhlali Bakımından Hukuka Uygunluk Ölçütü [Legal Compliance Criterion for Violation of Right to Property in Tax Interventions within the Framework of Individual Application Decisions of the Constitutional Court],” *Vergi Dünyası Dergisi* [Tax World Journal] no. 492 (August 2022); İmdat Türkay, “Anayasa Mahkemesi Kararında Mülkiyet Hakkı ve Vergi İlişkisi [The Relation between Right to Property and Taxes in the Decision of the Constitutional Court],” *Mondaq*, published November 14, 2022.

The study proceeds as follows: Part 2 focuses on how fundamental rights and freedoms are limited by taxation policies. Part 3 examines what ECtHR wants for the protection right to property. This section explains some important decisions of the ECtHR. To make a comparison between the Turkish Constitutional Court and the European Court of Human Rights Part 4 focuses on the Constitutional Court of Türkiye case law. Part 5 concludes.

## II. RESTRICTION OF FUNDAMENTAL RIGHTS AND FREEDOMS THROUGH TAXATION POLICIES

It is possible to restrict individuals' fundamental rights and freedoms for various reasons. One of these reasons is taxation. The use of taxation authority, which is one of the most important powers of the government, requires a close and continuous relationship with human rights, and in this process, the state may interfere with the fundamental rights and freedoms of individuals.<sup>14</sup>

Since every tax or financial obligation results in interference with property,<sup>15</sup> the right to property is one of the most sensitive rights against taxation.<sup>16</sup> However, it is possible to restrict many other human rights, which are guaranteed by the constitution and contracts, apart from the right to property, through taxation. At this point, the important thing is that the limitation is legal, in other words, compliance with the boundaries of the restriction.

The conditions under which fundamental rights and freedoms will be restricted are stated in the constitutions.

In Article 13 of the Constitution of the Turkish Republic, as a condition of the restriction, in addition to legality,

<sup>14</sup> Gamze Gümüşkaya, *Mülkiyet Hakkına Vergisel Müdahaleler Bakımından İnsan Hakları Avrupa Mahkemesi'ne Kişisel Başvuru* [Personal Application to the European Court of Human Rights in Terms of Tax Interventions to the Right to Property] (Istanbul: On İki Levha Publishing House, 2010), 269.

<sup>15</sup> Funda Töralp, "Temel Hak ve Özgürlüklerin Vergilendirme Yetkisinin Kullanımına Etkisi [The Effect of Fundamental Rights and Freedoms on the Use of Taxation Power]," in *Anayasadan Mali ve Vergisel Beklentiler [Fiscal and Tax Expectations from the Constitution]*, ed. Feridun Yenisey, Gülşen Güneş and Z. Ertunç Şirin, (Istanbul: On İki Levha Publishing House, 2012), 175.

<sup>16</sup> Mine Nur Bozdoğan, "Mülkiyet Hakkına Haksız Bir Müdahale, İptali ve Yeni Hukuki Zemin: Fazla veya Yersiz Tahsil Edilen Vergilerin İadesinde Süre Sorunu [An Unjust Intervention with the Right to Property, Its Cancellation and New Legal Ground: The Problem of Time in Refunding the Over or Undue Collected Taxes]," *Maliye Dergisi* [Public Finance Journal], no. 162 (January- June 2012): 224.

“..in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence” requirements also emphasized. Moreover, “these restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality”.

Apart from constitutions, countries also protect fundamental rights and freedoms through international conventions.

A state also breaches its international obligation whenever its “actions” or “omissions” are not suitable with specifically determined rules in treaties.<sup>17</sup> One of the most important international conventions implemented for this purpose is the European Convention on Human Rights. With the Convention signed in Rome on 04.11.1950 by the member states of the Council of Europe, it is aimed to protect and develop human rights and fundamental freedoms.<sup>18</sup>

The Convention, whose full name is “*The Convention for the Protection of Human Rights and Fundamental Freedoms*” and known as the European Convention on Human Rights, is founded on the belief that fundamental freedoms, which constitute the main source of peace and justice in the world are based on a truly democratic political regime and a common understanding and respect for human rights.<sup>19</sup>

The Convention is an important milestone in the development of international human rights law. Sovereign states, for the first time, accepted the legal obligation to guarantee the classical human rights of all persons within their jurisdiction and allowed all persons, including their own nationals, to apply to an international court that could issue a legally binding violation decision.<sup>20</sup>

Actually, human rights obligations do not recommend exact taxation policies because states have the discretion to formulate the policies most proper to their

<sup>17</sup> United Nations General Assembly, “Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona.” (Report by United Nations, Human Rights Council Twenty-Sixth Session Agenda Item 3 Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, 2014).

<sup>18</sup> “European Convention on Human Rights,” opened for signature November 04, 1950, *European Treaty Series* no. 5.

<sup>19</sup> M. Refik Korkusuz, *Uluslararası Belgelerde ve Türk Anayasası’nda Temel Hak ve Özgürlükler* [Fundamental Rights and Freedoms in International Documents and the Turkish Constitution] (Istanbul: Özrenk Press, 1998), 82.

<sup>20</sup> David Harris, et. al., *Avrupa İnsan Hakları Sözleşmesi Hukuku* [Law of the European Convention on Human Rights], trans. Mehveş Bingöllü Kılıcı, Ulaş Karan (Ankara: Sen Press, 2013), 31.



circumstances. However, a wide range of human right treaties impose limits on the discretion of states in the formulation of fiscal policies. It is a necessity because, in order to ensure that states respect, protect and fulfill rights, fiscal policies must be guided by the obligations imposed by these treaties. International human rights law sets obligations for states to respect, protect and fulfill human rights in all the ways that they exercise their functions.<sup>21</sup> For example, in the second paragraph of Article 1 of the Additional Protocol 1, which regulates the Right to Property of the European Convention on Human Rights, it is stated that this right can be restricted only for the purpose of public interest and in accordance with the conditions stipulated in the law and the general principles of international law.<sup>22</sup>

### III. IN THE CONTEXT OF THE RIGHT TO PROPERTY, EXPECTATIONS OF THE ECtHR FROM TAX ADMINISTRATION AND JUDICIARY

In this section, first the right to property is defined, and then before the jurisprudence of the Constitutional Court of the Republic of Türkiye, the ECtHR case law in the context of right to property and taxation is explained.

#### 3.1. Right to Property

The right to property is always an important issue in law<sup>23</sup> and it constitutes one of the most fundamental and ancient rights in a liberal democratic state of law.<sup>24</sup> First and foremost it is a constitutional matter. In modern constitutional countries, with the right of life, and the right of liberty the right to property is also the most fundamental right of citizens.<sup>25</sup>

This right is also very important to the economic development necessary to ensure that human beings can supply themselves with everything to support

<sup>21</sup> United Nations General Assembly, "Report of the Special Rapporteur."

<sup>22</sup> "European Convention on Human Rights," opened for signature November 04, 1950, *European Treaty Series* no. 5.

<sup>23</sup> Pu Hong, "On Protection and Restriction of Private Property Right," *Journal of Politics and Law* 1, no. 4, (December 2008): 62.

<sup>24</sup> Muhammet Özkes, *İcra Hukukunda Temel Haklar ve İlkeler* [Fundamental Rights and Principles in Enforcement Law] (Ankara: Adalet Publishing House, 2009), 165.

<sup>25</sup> Hong, "Property Right," 62.

themselves such as foods or housing. As such, right to property is a strategic human right that protects other human rights.<sup>26</sup>

So what is right to property? Wilson says that “*property rights are an effect of property*” and defines property as a tradition that is learned and socially taught in each generation.<sup>27</sup> Alchian defines the right to property as “the rights of individuals to the use of resources.”<sup>28</sup> International law has long sought to protect the right to property as a “*human right.*”<sup>29</sup> So are domestic laws.

The right to property regulated in the 35th Article of the Constitution of the Republic of Türkiye is guaranteed by saying “*Everyone has the right to own and inherit property. These rights may be limited by law only in view of public interest. The exercise of the right to property shall not contravene public interest.*”

The right to property is also protected in the European Convention on Human Rights. According to Article 1 of the Additional Protocol 1 of the Convention titled “*Protection of Property*”:<sup>30</sup>

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The article contains 3 rules. The first rule, contained in the first sentence of the first paragraph, recognizes the right to respect for the right to property. The second rule in the second sentence of the first paragraph is about the abolition of the property, and it binds it to certain conditions. The third and last rule regulated in the second paragraph gives the state the right to control the use

<sup>26</sup> Rhoda E. Howard-Hassmann, “Reconsidering the Right to Own Property,” *Journal of Human Rights* 12, no. 2 (May 2013): 180.

<sup>27</sup> Bart J. Wilson, “The Primacy of Property; or, the Subordination of Property Rights,” *Journal of Institutional Economics* 19, no. 2 (August 2022): 251.

<sup>28</sup> Armen A. Alchian, “Some Economics of Property Rights,” *Il Politico* [The politician] 30, no. 4 (December 1965): 817.

<sup>29</sup> José Enrique Alvarez, “The Human Right of Property,” *University of Miami Law Review* 72, no. 3. (Spring 2018): 580.

<sup>30</sup> “European Convention on Human Rights,” opened for signature November 04, 1950, *European Treaty Series* no. 5.

of the right to property by enacting the laws it deems necessary in accordance with the general interest and for this purpose.<sup>31</sup>

Article 1 of Protocol No. 1 both recognizes the right of individuals to peacefully enjoyment their property, and clearly grants the state a broad mandate to intervene in this right for the public interest.<sup>32</sup> In other words, with this article, on the one hand, the state is given the right to take all the measures it deems necessary regarding taxes, on the other hand, the individual is protected against these measures and is made the subject of the right to property, which is one of the most basic human rights.<sup>33</sup>

It took a while to bring the claims of violation of right to property to the agenda in the field of tax law. The Commission was rather hesitant to decide on a right to property violation claim in the tax law field. Due to the recognition of the wide discretion of the state in the field of taxation and the acceptance of the tax within the absolute sovereignty of the states, the Commission has made many inadmissibility decisions. For this reason, it is very difficult to find a tax case brought before the Court between the years 1959-1995, which we can describe as the first period. However, after 1995, the Court decided violation of right to property related to taxation.<sup>34</sup>

According to the statistics of the ECtHR covering the years 1959-2021, the right to property is among the most violated rights for Türkiye.<sup>35</sup>

The individual application mechanism is limited to secure fundamental rights and freedoms regulated in the European Convention on Human Rights (ECHR) rather than all rights ensured in the Turkish Constitution.<sup>36</sup> Since the right to property is guaranteed in both the Constitution of the Republic of Türkiye and the ECHR, it is within the scope of individual application.

<sup>31</sup> Durmuş Tezcan et al., *İnsan Hakları El Kitabı* [Human Rights Handbook] (Ankara: Seckin Publishing House, 2011), 408.

<sup>32</sup> Harris, *European Convention*, 718.

<sup>33</sup> Suat Simşek, "Vergi Politikaları, Mülkiyet Hakkı ve Avrupa İnsan Hakları Mahkemesi [Tax Policies, Right to Property and the European Court of Human Rights]," *Maliye Dergisi* [Public Finance Journal], no. 159 (July- December, 2010): 324.

<sup>34</sup> Begüm Dilemre Oden, "Avrupa İnsan Hakları Mahkemesi Kararlarının Türk Vergi Hukukuna Etkisi [The Effect of European Court of Human Rights Decisions on Turkish Tax Law]" (PhD diss., Cankaya University, 2017), 104.

<sup>35</sup> European Court of Human Rights, (2022a). "ECHR Overview 1959-2021," European Court of Human Rights, published February, 2022.

<sup>36</sup> Engin Yıldırım, "Social Rights and The Turkish Constitutional Court," *Constitutional Review* 7, no. 2 (December 2021): 195.

### 3.2. ECtHR Case Law in the Context of Right to Property and Taxation

According to Article 35 of the ECHR, individuals can apply to the ECtHR following the exhaustion of domestic remedies. The requirement to exhaust domestic remedies before making an application to the ECtHR is a form of respect for states.<sup>37</sup>

The ECtHR gives a wide margin of appreciation to the states in the field of taxation.<sup>38</sup> However, in cases where the increase in taxes imposes an exorbitant burden on the persons concerned or undermines the financial situation of the concerned, the Convention bodies may consider the application.<sup>39</sup>

The first expectation of the ECtHR regarding the right to property is that the tax regulations should be public. However, the Court is not involved in how this requirement is to be fulfilled. The ECtHR, on the other hand, stated that the Convention did not make any provision about the degree of publicity of the rules; that no opinion could be expressed on the choice of the contracting states on this matter; that only the conformity of the method with the Convention could be evaluated.<sup>40</sup>

The second expectation of the ECtHR is predictability. Regarding the predictability of tax rules, the ECtHR states that there may be some convincing reasons for changes in the case law over time and differences in interpretation; that previous interpretations can be changed in order to keep the Convention up-to-date, as long as the reasons for the change are stated.<sup>41</sup> The Court also expects the administration to accept the approach in favor of the taxpayer if

<sup>37</sup> Kamil A. Strzepek, "The Relationship Between The European Convention on Human Rights and Domestic Law: A Case Study," *Constitutional Review* 6, no. 2 (December 2020): 354.

<sup>38</sup> Judicial Review of European Court of Human Rights, No. 15375/89, *Gasus Dosier- Und Fördertechnik GmbH, v. The Netherlands* (European Court of Human Rights February 23, 1995).

<sup>39</sup> Aida Grgic et al., *Avrupa İnsan Hakları Sözleşmesi Kapsamında Mülkiyet Hakkı* [The Right to Property under the European Convention on Human Rights], trans. Özgür Heval Çınar, Abdülcelil Kaya (Belgium: Council of Europe, 2007), 46.

<sup>40</sup> Judicial Review of European Court of Human Rights, No. 26449/95, *Spacek, s.r.o.v. The Czech Republic* (European Court of Human Rights November 09, 1999).

<sup>41</sup> Judicial Review of European Court of Human Rights, No. 39766/05, *Serkov, v. Ukraine* (European Court of Human Rights October 07, 2011).

the domestic law is unclear or there is a rule that can be interpreted more than once on the taxpayer's rights and obligations.<sup>42</sup>

The third expectation of the ECtHR is proportionality. The proportionality indicates that any action against any rights limitation should be proportional.<sup>43</sup> At this point, the ECtHR emphasizes that taxes should not impose an excessive burden on taxpayers.<sup>44</sup> Tax increases that are based on valid grounds and do not impose an intolerable burden on taxpayers do not violate the right to property.

In the *Azienda Case*,<sup>45</sup> the applicants were agricultural firms. In the relevant period, *fiscalizzazione* [concession] and *sgravi contributivi* [exemptions] were established to support agricultural activities. Companies only benefited from the exemption (*sgravi contributivi*). Since they could not benefit from both privileges, they applied to the ECtHR claiming that their right to property was violated.

In its adjudication, the ECtHR stated that the state aims to reduce public expenditures by limiting aid. In addition, as regards the effects of the interference on the applicant companies' financial condition, the Court found that the companies had consistently paid the relevant contributions without applying the concession. That is, companies are not in a position where they cannot run their business due to the associated financial burdens. The Court further noted that the applicant companies had even willingly chosen to withhold such assistance for a certain period of time, waiting for more than ten years before bringing their claims before the domestic courts. Moreover, companies were not completely deprived of benefits. They also benefited from an exemption, that is, another benefit.

In conclusion, the ECtHR held that the interference was in a fair balance.

---

<sup>42</sup> Judicial Review of European Court of Human Rights, No. 39766/05, *Serkov, v. Ukraine* (European Court of Human Rights October 07, 2011); Judicial Review of European Court of Human Rights, No. 23759/03, *Shchokin, v. Ukraine* (European Court of Human Rights January 14, 2011).

<sup>43</sup> Giri Ahmad Taufik, "Proportionality Test in the 1945 Constitution: Limiting Hizbut Tahrir Freedom of Assembly," *Constitutional Review* 4, no. 1 (May 2018): 71.

<sup>44</sup> Judicial Review of European Court of Human Rights, No. 66529/11, *N.K.M., v. Hungary* (European Court of Human Rights May 14, 2013); Judicial Review of European Court of Human Rights, No. 41838/11, *R.Sz., v. Hungary* (European Court of Human Rights November 04, 2013).

<sup>45</sup> Judicial Review of European Court of Human Rights, No. 48357/07, 52677/07, 52687/07 and 52701/07, *Azienda Agricola Silverfunghi S.A.S. and Others v. Italy* (European Court of Human Rights September 24, 2014).

Besides taxes, tax penalties also should not create an excessive burden on the fiscal status of taxpayers.<sup>46</sup>

According to the court, the disproportionately of the tax security measures also violate the right to property. To avoid this, powers should not be used arbitrarily. As an example, the ECtHR has stated that the administration can use its pre-emption authority, which is an intervention for the purpose of public interest, such as the prevention of tax evasion, in a “fair” and not “arbitrary”. However, the failure of those concerned to effectively discuss the pre-emption measure against them gave the State a very wide margin of discretionary power as to the limits of the measure. This makes this authority unpredictable and unjustified. The application of the pre-emption power against the applicant, who has no evidence of malicious behavior, places an excessive burden on the applicant and this situation violates his right to property by making the intervention disproportionate.<sup>47</sup>

In another case, the Court emphasized that states can take certain measures to prevent, stop or penalize when they receive information about the declaration and payment of Value Added Tax (VAT); however, despite the absence of such a finding, the punishment of the buyer, who fulfills his obligations and does not have the opportunity to control whether the seller complies with his obligations, cannot be considered reasonable because the seller does not comply with his obligations, and this violates the fair balance between the requirements of the general interest of the society and the protection of the fundamental rights of the individual.<sup>48</sup>

In another case, the Court stated that, while it was acceptable to be detained by the authorities for short periods of time on the plane on suspicion of tax

---

<sup>46</sup> Judicial Review of European Court of Human Rights, No. 35533/04, Mamidakis, v. Greece (European Court of Human Rights January 11, 2007); Judicial Review of European Court of Human Rights, No. 14902/04, OAO Neftyanaya Kompaniya Yukos v. Russia (European Court of Human Rights September 20, 2011).

<sup>47</sup> Judicial Review of European Court of Human Rights, No. 13616/88, Hentrich, v. France (European Court of Human Rights September 22, 1994).

<sup>48</sup> Judicial Review of European Court of Human Rights, No. 3991/03, Bulves AD., v. Bulgaria (European Court of Human Rights January 22, 2009).

evasion, the accompanying abusive and arbitrary actions of the authorities had rendered these safeguards ineffective in practice.<sup>49</sup>

In the Travers Case,<sup>50</sup> the applicants are partners of companies operating in the iron industry and trade sector. As per the law, they are obliged to pay taxes in advance. However, the applicants complain that although this tax withholding system is highly effective in terms of tax evasion, it has adversely affected not only tax evaders but also, and disproportionately, the entire industry. The reason is that the amount cut is very high (about 60%). In addition, tax refunds are paid to them after an average of 5 years. Moreover, the interest paid to them on their tax return is lower than the rate paid to holders of government bonds.

For all these reasons explained, the ECtHR emphasizes that although this system has been adopted to combat tax evasion effectively, it poses a significant burden for taxpayers. Moreover, this burden is exacerbated by the delay in receiving tax refunds from tax authorities. Therefore, the ECtHR held that the applicants' right to property had been violated by a disproportionate or unjustified interference with their property.

The ECtHR attaches so much importance to the principle of proportionality that it finds that in certain circumstances it should be possible to make procedural exceptions. This means that the national courts of Member States should not dismiss cases that appear inadmissible too easily. In one Case,<sup>51</sup> enforcement proceedings were initiated against the applicant to collect the company's tax liability because he was the so-called chairman of a company, a position that he had systematically rejected from the beginning. In this process, the appeal of the applicant was late.

---

<sup>49</sup> Judicial Review of European Court of Human Rights, No. 19336/04, *West/Alliance Limited, v. Ukraine* (European Court of Human Rights January 23, 2014).

<sup>50</sup> Judicial Review of European Court of Human Rights, No. 15117/89, *Riccardo Travers and 27 Others v. Italy* (European Court of Human Rights January 16, 1995).

<sup>51</sup> Judicial Review of European Court of Human Rights, No. 27785/10, *Melo Tadeu., v. Portugal* (European Court of Human Rights October 23, 2014).

Precisely this case shows that the sole fact of a disproportionate interference caused a violation of right to property, regardless whether the appeal was too late.<sup>52</sup>

The ECtHR states that it is also against the principle of proportionality that people have to pay more taxes for reasons such as a delay in the implementation of judicial decisions by the administration<sup>53</sup> or problems experienced by local authorities in implementing international norms such as EU directives.<sup>54</sup>

In the Di Belmonte Case,<sup>55</sup> the applicant, Pietro Bruno di Belmonte, an Italian national, owns a plot of land in Ispika. The applicant's land was expropriated. In accordance with the legislation in force at the time of the expropriation, the expropriation value payments are not subject to tax. In 1992, 20% withholding tax was introduced on expropriation revenues. The expropriation cost, which should be paid to the land owner in the year the expropriation was made, was delayed due to some disputes with the administration. Therefore, the administration paid the expropriation cost by deducting the 20% tax.

According to the ECtHR, if there had been no disruption in the implementation of the judicial decisions of the administration within the conditions of the concrete case, the applicant would have reached the expropriation compensation tax-free before the enactment of the Law that brought new provisions. In these circumstances, the application of the new Law to the applicant's expropriation compensation constitutes an excessive burden for the applicant. The local administration's failure to comply with the judicial decisions and to pay the compensation due to the applicant on time and in full left the applicant face to face with new taxes. Therefore, the applicant's right to property had been violated. The ECtHR also notes that the delay in reimbursement of the unduly

---

<sup>52</sup> Eric Poelmann, "ECHR Melo Tadeu: A Tax Case Which Should Bring on More Carefully Selected Criminal Procedures", *Intertax* 44, no. 5 (2016): 434-435, <https://doi.org/10.54648/taxi2016035>.

<sup>53</sup> Judicial Review of European Court of Human Rights, No. 72638/01, Di Belmonte., v. Italy (European Court of Human Rights March 16, 2010).

<sup>54</sup> Judicial Review of European Court of Human Rights, No. 36677/97, S.A. Dangeville, v. France (European Court of Human Rights April 16, 2002).

<sup>55</sup> Judicial Review of European Court of Human Rights, No. 72638/01, Di Belmonte., v. Italy (European Court of Human Rights March 16, 2010).



collected tax<sup>56</sup> and the non-interest levying on such refunds<sup>57</sup> in cases where it is determined by the national authorities that the tax has been overpaid, is also contrary to the principle of proportionality.

In the Buffalo Sri Case,<sup>58</sup> the applicant was a limited liability company headquartered in Italy until 2001 and entered into a voluntary liquidation process. Between 1985-1992, the company paid taxes over the amount accrued to the government. As a result, the right to receive a tax refund has arisen. The state began reimbursement payments in 1997. However, the full refund amounts were not paid at that time. During that period the applicant company had to seek financing from banks and private individuals. For this reason, it was exposed to an extra cost burden and had to pay high interest rates from the tax refunds paid by the State.

Noting that the applicant company had suffered disproportionate delays in paying its tax refunds, the Court held that there had been a violation of Article 1 of Protocol No. 1 to the Convention.

As stated before, the ECtHR gives a wide margin of appreciation to the states in the field of taxation.<sup>59</sup> According to the ECtHR, national authorities, because of their direct knowledge of their society and their needs, are in principle in a better position than an international judge to decide what is in the “*public interest*”. For this reason, the ECtHR gives member states a wide margin of appreciation in taxation policies.<sup>60</sup> For example; *Cacciato v. Italy* and *Guiso and Consiglio v. Italy* Cases concerned the expropriation of land by municipal authorities and in particular the tax of 20% that the applicants had to pay on

---

<sup>56</sup> Judicial Review of European Court of Human Rights, No. 38746/97, *Buffalo S.r.l. in Liquidation, v. Italy* (European Court of Human Rights July 03, 2003); Judicial Review of European Court of Human Rights, No. 803/02, *Intersplav, v. Ukraine* (European Court of Human Rights January 09, 2007).

<sup>57</sup> Judicial Review of European Court of Human Rights, No. 10162/02, *Eko- Elda Avee, v. Greece* (European Court of Human Rights June 09, 2006).

<sup>58</sup> Judicial Review of European Court of Human Rights, No. 38746/97, *Buffalo S.R.L., in Liquidation, v. Italy* (European Court of Human Rights July 03, 2003).

<sup>59</sup> Judicial Review of European Court of Human Rights, No. 15375/89, *Gasus Dosier- Und Fördertechnik GmbH, v. The Netherlands* (European Court of Human Rights February 23, 1995).

<sup>60</sup> Judicial Review of European Court of Human Rights, No. 15117/89, *Riccardo Travers and 27 Others v. Italy* (European Court of Human Rights January 16, 1995).

the compensation they received. They complained about the right to property. However, applications were declared inadmissible.<sup>61</sup>

In the Scordino Case,<sup>62</sup> where the expropriation price was contested, the applicants claimed that their right to property was violated also due to the 20% tax deduction on this price. The ECtHR did not find the 20% tax deduction from the expropriation price unfair. However, the power of the state is not unlimited. According to the ECtHR, the right to property may be violated when the tax system imposes an excessive burden on taxpayers or interferes in a substantial way with their fiscal situation.<sup>63</sup>

In summary, considering the case law of the ECtHR on the right to property for tax interventions, it can be understood that, if taxes and tax penalties create an excessive burden on the fiscal status of taxpayers, if the tax security measures are disproportionately, if taxpayers have to pay more taxes for reasons such as a delay in the implementation of judicial decisions and problems experienced by local authorities in implementing international norms, if the refunds to the taxpayers are not made on time, if non-interest levying on such refunds in cases where it is determined by the national authorities that the tax has been overpaid, the ECtHR decides that the fair balance is disturbed against the taxpayers and the right to property is violated.

#### **IV. THE CONSTITUTIONAL COURT OF TÜRKİYE CASE LAW IN THE CONTEXT OF THE RIGHT TO PROPERTY AND TAXATION**

Increased awareness of human rights questions resulting from the misappropriation of State power has led to the coming into force or expansion of existing legal mechanisms to protect constitutional rights and freedoms.<sup>64</sup> One of these mechanisms is constitutional complaint. Constitutional complaint is one of the important constitutional court jurisdictions that can be qualified as

<sup>61</sup> European Court of Human Rights, (2022b). "Italy," European Court of Human Rights, published November 2022.

<sup>62</sup> Judicial Review of European Court of Human Rights, No. 36813/97, Scordino v. Italy (European Court of Human Rights March 29, 2006).

<sup>63</sup> Harris, *European Convention*, 716.

<sup>64</sup> Gerhard Dannemann, "Constitutional Complaints: The European Perspective," *The International and Comparative Law Quarterly* 43, no. 1 (January 1994): 142.

a complaint or lawsuit filed by any person who thinks that his/her rights have been violated by an act or omission of public authority.<sup>65</sup> 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 access.<sup>66</sup> Currently, constitutional complaint has been adopted in various models in many countries.<sup>67</sup> It is shaped as the individual application in Türkiye.

In the individual application examinations of the Turkish Constitutional Court, such as the ECtHR, the regulations for determining, changing and paying taxes and similar obligations and social security premiums and contributions are handled within the scope of the state's authority to regulate the use of property or control the use of property for the public benefit.<sup>68</sup>

Again, like ECtHR, the Constitutional Court in its judicial review of right to property through taxation, determines whether the intervention constitutes a violation of the right to property by examining three criteria. These are; legality, public interest, and proportionality.<sup>69</sup>

In its decisions, the ECtHR considers the stable case law formed by domestic judicial decisions on interference with rights and freedoms sufficient to meet the requirement of legality and does not seek a law enacted by the legislature.<sup>70</sup> 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, the Constitutional Court emphasizes that the limitations

---

<sup>65</sup> Chakim, "A Comparative Perspective," 96.

<sup>66</sup> Ingrida Daneliene, "Individual Access to Constitutional Justice in Lithuania: the Potential within the Newly Established Model of the Individual Constitutional Complaint," *Revista de Derecho Político*, no. 111 (May- August 2021): 307.

<sup>67</sup> Chakim, "A Comparative Perspective," 96.

<sup>68</sup> Individual Application to Constitutional Court, Arif Sarıgül, Application No. 2013/8324 (The Constitutional Court of the Republic of Türkiye, February 23, 2016).

<sup>69</sup> Individual Application to Constitutional Court, Türkiye İş Bankası A.Ş., [Turkey İş Bank Joint Stock Company], Application No. 2014/6192 (The Constitutional Court of the Republic of Türkiye, November 12, 2014).

<sup>70</sup> Sibel Inceoğlu, "Hak ve Özgürlükleri Sınırlama ve Güvence Rejimi," [Limitation of Rights and Freedoms and the Assurance Regime] in İnsan Hakları Avrupa Sözleşmesi ve Anayasa Anayasa Mahkemesine Bireysel Başvuru Kapsamında Bir İnceleme, [An Analysis within the Scope of the European Convention on Human Rights and the Individual Application to the Constitutional Court], ed. Sibel Inceoğlu (Ankara: Sen Press, 2013): 30.

to the right to property must be made by law. In this respect, the Constitution provides broader protection than the European Convention on Human Rights.<sup>71</sup>

According to the case law of the Constitutional Court, in order for an interference with the right to property to be legal, it is not sufficient for the interference to be based on a legal regulation existing in national law, but it must also be accessible and foreseeable for the owner of the right to property.<sup>72</sup>

The Court accepts that in cases where certainty is provided for the individual by clarifying the content and scope of laws with judicial jurisprudence, the condition of foreseeability is met and therefore the legitimacy of the interference with the right to property.<sup>73</sup>

The resolution of the Constitutional Court to violate the right to property, on the grounds that predictability could not be achieved, is the Case of Türkiye İş Bankası A.Ş. [Türkiye İş Bank Joint Stock Company].<sup>74</sup>

Türkiye İş Bankası A.Ş. [Türkiye İş Bank Joint Stock Company] is a bank operating in Türkiye since the foundation of the Republic. For many years, the Bank has made contribution payments to the foundation, which was established to provide various benefits to its employees. As a result of the tax inspection, these payments should be considered as wages and income tax should be paid, but a penalty tax was imposed on the bank because the tax was not withheld and paid.

<sup>71</sup> Individual Application to Constitutional Court, Celalettin Aşçıoğlu, Application No. 2013/1436 (The Constitutional Court of the Republic of Türkiye, March 06, 2014).

<sup>72</sup> Gamze Gümüşkaya, "İnsan Hakları ve Vergilendirme: Mülkiyet Hakkı Yönünden İnsan Hakları Avrupa Mahkemesi'ne Kişisel Başvuru" [Human Rights and Taxation: Personal Application to the European Court of Human Rights in Terms of Right to Property] (Master diss., Istanbul University, 2009), 80.

<sup>73</sup> Individual Application to Constitutional Court, Türkiye İş Bankası A.Ş., [Turkey İş Bank Joint Stock Company], Application No. 2014/6192 (The Constitutional Court of the Republic of Türkiye, November 12, 2014).

<sup>74</sup> For similar Cases see Individual Application to Constitutional Court, Türkiye İş Bankası A.Ş. Şubeleri, [Turkey İş Bank Joint Stock Company Branches] Application No. 2014/6193 (The Constitutional Court of the Republic of Türkiye, October 15, 2015); Individual Application to Constitutional Court, Türkiye İş Bankası A.Ş. Şubeleri (2) [Turkey İş Bank Joint Stock Company Branches (2)], Application No. 2015/356 (The Constitutional Court of the Republic of Türkiye, September 22, 2016); Individual Application to Constitutional Court, Anadolu Anonim Türk Sigorta Şirketi Şubeleri [Anadolu Anonim Turkish Insurance Company Branches], Application No. 2014/17286 (The Constitutional Court of the Republic of Türkiye, November 16, 2016); Individual Application to Constitutional Court Türkiye İş Bankası A.Ş. Şubeleri (4) [Turkey İş Bank Joint Stock Company Branches (4)], Application No. 2015/6691, (The Constitutional Court of the Republic of Türkiye, March 08, 2018); Individual Application to Constitutional Court Narsan Plastik San. Tic. Ltd. Şti., Application No. 2013/6842, (The Constitutional Court of the Republic of Türkiye, April 20, 2016).

In its evaluation, the Constitutional Court stated that absolute clarity cannot always be expected from the laws, therefore, it should be accepted that the uncertainty in the legal regulations can be eliminated with the interpretations in practice. It is stated that the content and scope of the legal regulation is clarified by sub-law regulations or judicial case law, that is, in cases where certainty is provided for the individual, it can be said that the condition of predictability is met.

The Court drew attention to the fact that from 1974 when the Foundation was established until 2012 when the tax inspection was conducted, the tax administration did not have any initiative or precedent regarding the taxation of the contributions paid by the Bank to the Foundation. In other words, contribution payments made by the Bank for many years have not been taxed. The practice regarding the evaluation of contribution payments as wages and subjecting them to tax was initiated in line with the tax technique report prepared as a result of the tax inspection conducted in 2012. The jurisprudence in this direction, on the other hand, was formed by the 2013 decisions of the Council of State due to the lawsuits filed against the taxes levied upon this examination. Therefore, predictability could only come into question with the decisions of the Council of State in 2013. As a result, the Constitutional Court stated that in the taxation period of 2007, which is the subject of the application, since the provision of law regarding the time the benefit is obtained is not clear, it cannot be considered that the said contribution payments will be taxed within the scope of wages.

Individual applications<sup>75</sup> made by the same applicant to the Constitutional Court are related to the contradiction of the judicial decision with the general case law. There is no clarity in the legislation about whether a person who has a school canteen in Türkiye is exempt from VAT or not. However, the Council of State, which is the administrative high court, has decisions that these services are

---

<sup>75</sup> Individual Application to Constitutional Court, Murat Çevik, Application No. 2013/3245 (The Constitutional Court of the Republic of Türkiye, December 12, 2014); Individual Application to Constitutional Court Murat Çevik (2), Application No. 2013/3244 (The Constitutional Court of the Republic of Türkiye, July 07, 2015); Individual Application to Constitutional Court Murat Çevik (4), Application No. 2013/3241 (The Constitutional Court of the Republic of Türkiye, December 16, 2015); Individual Application to Constitutional Court Murat Çevik (5), Application No. 2013/3246 (The Constitutional Court of the Republic of Türkiye, December 16, 2015).

exempt from VAT. However, the tax court decided that the school canteen service is subject to VAT. Thereupon, the Constitutional Court decided that the right to property was violated due to the “*unpredictable*” nature of the interpretation and application of legal rules.

The Constitutional Court states that there is no interference with the discretion of public administrations regarding public interest unless it is clearly found to be baseless or arbitrary in the individual application review, and the burden of proof that the intervention is contrary to the public interest is on the claimant.

According to the criteria of the Constitutional Court, like the ECtHR, it is not sufficient for an interference with the right to property to be legal and has a legitimate aim based on the public interest, but also the interference must be proportionate.

In order for the action that interferes with the right to property to be considered legitimate by the Constitutional Court within the scope of proportionality, it is required that the intervention is convenient and necessary and that the new situation and the deteriorated balance of benefits as a result of the intervention do not reach an intolerable dimension for individuals, in other words, they must be proportional.<sup>76</sup>

In an application made to the Constitutional Court,<sup>77</sup> the applicant complained that the vehicle, which was confiscated for the purpose of collecting the public debt, was de facto sequestered instead of placing a lien on its registry. The applicant also argues that his current receivable from the tax administration is greater than his debt and that these receivables should be accepted as collateral for the debt. Despite all this, he claimed that he was a victim because the vehicle was not put up for sale within three months even if it was considered possible to make a lien, and although the vehicle was put up for sale for the second time, it could not be sold and was not returned to him after a reasonable period of time.

<sup>76</sup> Individual Application to Constitutional Court, Zekiye Şanlı, Application No. 2012/931 (The Constitutional Court of the Republic of Türkiye, June 26, 2014).

<sup>77</sup> Individual Application to Constitutional Court, EM Export Dış Ticaret A.Ş. [EM Export Foreign Trade Inc.], Application No. 2014/10283 (The Constitutional Court of the Republic of Türkiye, April 05, 2017).

The Constitutional Court in its review stated that the actual seizure of the vehicle, which was confiscated due to non-payment of the tax debt, in order to be able to sell it, was a reasonable and ordinary measure. It is also emphasized in the decision that being a public creditor may not mean that these receivables are accepted as direct collateral. Moreover, although it was stated that the vehicle seized by the applicant was not put up for sale within the time specified in the law and it was not returned to him after a reasonable period of time after it could not be sold, as a result of the examinations, the Court realized that the tax administration told the applicant that the vehicle could be returned as it was received, but the applicant did not receive it. Moreover, in addition to all these, it is also possible for the applicant to pay the tax debt and take delivery of the vehicle. Therefore, the seizure period was considered reasonable.

Finally, stating that the actual seizure of the applicant's vehicle was due to the nature of the seizure process, the Court decided that the intervention did not upset the fair balance between the public interest and the individual interest and was proportionate, since the applicant could not concretely demonstrate that he had suffered an extraordinary loss.

In another application<sup>78</sup> to the Constitutional Court, the applicant sued the tax authority for the cancellation of the payment orders sent to him for the collection of the public receivables, which could not be collected from the company. However, they were rejected. In his application, he claimed that he could not be held responsible for the public receivables because he was not authorized to represent the company and his right to property has been violated due to the payment order.

Since the applicant did not claim that he had been under a heavy and intolerable burden due to a payment order notified for the purpose of collecting the unpaid tax debt during the period when he was a member of the board of directors, the Constitutional Court decided that the burden imposed on the applicant with the purpose of the intervention is proportionate.

---

<sup>78</sup> Individual Application to Constitutional Court, Hüsametdin Kemal Esiner, Application No. 2013/1949, (The Constitutional Court of the Republic of Türkiye, June 24, 2015).

There are also many decisions that the Constitutional Court reviews in terms of proportionality criteria and decides on violations. The first of these violations is the non-payment of interest for the unduly collected taxes, as in the case law of the ECtHR.

In an application<sup>79</sup> with the demand for the refund of the unduly collected taxes with the interest, the interest request of the applicant was rejected despite the decision to refund the unduly collected taxes. Considering the current inflationary conditions, the Constitutional Court drew attention to the depreciation that occurred during the time elapsed between the date when the overpayments from the applicant were made and the lawsuits filed with the request for restitution were concluded in favor of the applicant. Consequently, the Court held that the applicant had to endure a non-proportional and excessive burden.

An application<sup>80</sup> subject to proportionality control by the Constitutional Court is for declarations submitted with reservations. Accordingly, the Court emphasizes that taxpayers have the right to put reservations about their declarations in order to file a lawsuit against their declarations in matters of legal disagreement. Thus, it is stated that it will otherwise deprive people of a mechanism where they can claim the arbitrariness or illegality of the interference with their right to property as well as leading to an excessive burden on the right holder. In the case, upon the detection that the company from which the applicant company purchased goods and services used false invoices, the tax administration submitted a correction statement from the applicant company and requested compensation for the value-added taxes incurred on these purchases, and stated that otherwise they would be included in the negative taxpayer list. Thereupon, the applicant company submitted its correction declarations with reservations, and the tax administration accrued value-added tax, stamp duty, and delay interest on the

<sup>79</sup> Individual Application to Constitutional Court, Akün *Gıda* Maddeleri Sanayi ve Ticaret A.Ş. [Akün Foodstuff Industry and Trade Inc.], Application No. 2013/1993 (The Constitutional Court of the Republic of Türkiye, May 06, 2015).

<sup>80</sup> Individual Application to Constitutional Court, Arbay Petrol Gıda Turizm Taşımacılık Sanayi Ticaret Ltd. Şti. ve Arbay Turizm Taşımacılık *İthalat İhracat İnşaat* ve Organizasyon Sanayi ve Ticaret Ltd. Şti. [GK], [Arbay Petrol Food Tourism Transportation Industry Trade Ltd. Sti. and Arbay Tourism Transportation Import Export Construction and Organization Industry and Trade Ltd. Sti. [GA]], Application No. 2015/15100, (The Constitutional Court of the Republic of Türkiye, February 27, 2019).



submitted declarations and imposed a penalty for loss of tax. As a result of the refusal of the cases he brought against the assessments without examining the merits, the applicant filed an individual application.

The Court evaluated that the interpretation made that the lawsuit could not be filed despite the reservation made in the correction statement caused the applicants to be unable to make claims regarding illegality. Therefore, the Court decided that as a result of this interpretation made by the judicial organs, an excessive burden was placed on the applicant and the fair balance was disturbed against the applicant.

With this decision, the Constitutional Court protected the right of taxpayers to file a lawsuit against their own statements by making reservations. However, the situation is different for the tax returns submitted if the taxpayers admit their mistakes and apply to the tax administration with repentance.

In the application,<sup>81</sup> the lawsuits filed against the accrual transactions and penalties based on the declaration of regret given by the tax administration with reservations were rejected by the tax court without examining the merits. In its examination, the Constitutional Court drew attention to the difference between the two declarations and emphasized that the inability to file a lawsuit on the repentance declarations filed with reservation creates a natural limit stemming from the nature of the repentance system. The Court therefore concluded that no undue burden was placed on the applicant personally.

It is seen that most individual applications to the Constitutional Court are made as a result of compulsory enforcement practices in the interventions to the right to property through tax interventions. As in other taxation processes, there is usually not much problem in the eligibility and necessity criteria in forced enforcement proceedings, but from time to time there can be some problems with proportionality.<sup>82</sup>

<sup>81</sup> Individual Application to Constitutional Court, Millî Reasürans Türk A.Ş., Application No. 2016/70, (The Constitutional Court of the Republic of Türkiye, July 01, 2010).

<sup>82</sup> Özekes, *Fundamental Rights*, 209.

It should be taken into account in terms of proportionality in the enforcement practices that the debtor's damage as a result of the proceedings is an inevitable result due to the nature of the enforcement law. However, it is not possible to argue that the principle of proportionality is damaged if this damage is within reasonable limits legally accepted because, at this point, there is a reasonable proportion between the purpose and the means.<sup>83</sup> So, in its decisions on compulsory enforcement practices, the Constitutional Court seeks the allegation that "*a heavy and intolerable burden has been incurred*" as a result of the practice. Otherwise, the Court finds that the interference was proportionate,<sup>84</sup> on the grounds that no allegation was made by the applicant that he was under a heavy and intolerable burden.

## V. CONCLUSION

Both Turkish Constitutional Court and ECtHR, the regulations for determining, changing and paying taxes and similar obligations and social security premiums and contributions are handled within the scope of the state's authority to regulate the use of property or control the use of property for the public benefit.

The ECtHR emphasizes that the tax regulations should be public, the case law should be predictable and taxes, tax penalties and tax measures should be proportionally and should not create intolerable burden on taxpayers. Like ECtHR, the Constitutional Court in its judicial review of right to property through taxation, determines whether the intervention constitutes a violation of the right to property by examining three criteria; legality, public interest and proportionality.

The difference in interpretation between the Constitutional Court and the ECtHR emerges in the criterion of legality. While the ECtHR accepts that besides law the principles developed through jurisprudence based on judicial decisions that have gained stability can also meet the legality requirement by interpreting the legality broadly, the Constitutional Court of Türkiye emphasizes that the

<sup>83</sup> Özkes, *Fundamental Rights*, 210.

<sup>84</sup> Individual Application to Constitutional Court, Hüsamettin Kemal Esiner, Application No. 2013/1949, (The Constitutional Court of the Republic of Türkiye, June 24, 2015).

limitations to the right to property can be made only by law. According to the Turkish Constitutional Court, the existence of the law is not sufficient to ensure the legality condition, it must also be accessible and foreseeable for the owner of the right to property.

For the public interest criterion, both courts make similar interpretations. The ECtHR gives member states a wide margin of appreciation in taxation policies. However, the power of the state is not unlimited. According to the ECtHR, the right to property may be violated when the tax system imposes an excessive burden on taxpayers or interferes in a substantial way with their fiscal situation. The Turkish Constitutional Court also emphasizes that there is no interference with the discretion of public administrations regarding the public interest unless it is clearly determined to be groundless or arbitrary.

In terms of both courts, the examinations are mostly made on the basis of proportionality criteria. According to both courts, it is not sufficient for an interference to be legal and it has a legitimate aim based on the public interest, but the interference must also be proportionate. On the proportionality examination, most of the applications are made as a result of compulsory enforcement practices in the interventions to the right to property through tax interventions. In these applications, the Constitutional Court of Türkiye seeks the claim that the applicant has been under a heavy and intolerable burden due to interference from the tax authority. Otherwise, it decides that the property right is not violated.

Türkiye is one of the countries against which the most violations are ruled by the ECtHR every year. A significant part of the ECtHR's case file consists of applications from Türkiye. The individual application that Türkiye has put into effect to improve its poor record against the ECtHR has only been in force for 11 years. In this respect, the ECtHR record of Türkiye has not yet improved. However, positive results are inevitable in the long run. For this reason, it is important that Türkiye does not deviate from both the ECtHR jurisprudence and its own principles. On the other hand, Türkiye has made significant progress in terms of more effective protection of fundamental rights and freedoms,

which is another main purpose of individual application. Both the number of individual applications to the court and the reflection of the Constitutional Court's jurisprudence on the practices of institutions prove this.

Individual application also has a major role in the paradigm transformation of the Constitutional Court of the Republic of Türkiye, from an ideology-based approach to a rights-based approach. Today, many countries implement constitutional complaints in different models in accordance with their internal dynamics. In this regard, it is thought that this legal remedy will contribute to the more effective protection of human rights in countries such as Italy and Indonesia, which have not yet implemented the individual application mechanism.

## BIBLIOGRAPHY

- Akdemir, Tuğçe. "Vergi Hukuku Açısından Türk Anayasa Mahkemesi'ne Bireysel Başvuru Yolu [Individual Appeals to The Turkish Constitutional Court With Regard to Tax Law]." *Türkiye Barolar Birliği Dergisi* [Journal of the Union of Turkish Bar Associations], no. 111 (March-April 2014): 255-278, <https://search.trdizin.gov.tr/yayin/detay/221644/>.
- Alchian, Armen A. "Some Economics of Property Rights." *Il Politico* [The politician] 30, no. 4 (December 1965): 816-829.
- Alvarez, Enrique, José. "The Human Right of Property." *University of Miami Law Review* 72, no. 3 (Spring 2018): 580-705, <https://repository.law.miami.edu/umlr/vol72/iss3/3>.
- Arslan, Zühtü. "The Role of Individual Application in the Protection of Human Rights in Turkey" Constitutional court of The Republic of Türkiye, published May 03, 2021, <https://www.anayasa.gov.tr/en/president/presidents-speeches/the-role-of-individual-application-in-the-protection-of-human-rights-in-turkeystar>.
- Bisariyadi, Bisariyadi. "Referencing International Human Rights Law in Indonesian Constitutional Adjudication." *Constitutional Review* 4, no. 2 (December 2018): 249-270, <http://dx.doi.org/10.31078/consrev424>.

- Bozdoğan, Mine Nur. “Mülkiyet Hakkına Haksız Bir Müdahale, İptali ve Yeni Hukuki Zemin: Fazla veya Yersiz Tahsil Edilen Vergilerin İadesinde Süre Sorunu, [An Unjust Intervention with the Right to Property, Its Cancellation and New Legal Ground: The Problem of Time in Refunding the Over or Undue Collected Taxes].” *Maliye Dergisi [Public Finance Journal]*, no. 162 (January-June 2012): 219-237.
- Chakim, M. Lutfi “A Comparative Perspective on Constitutional Complaint: Discussing Models, Procedures, and Decisions.” *Constitutional Review* 5, no. 1 (May 2019): 96-133 <https://doi.org/10.31078/consrev514>.
- Daneliene, Ingrida. “Individual Access to Constitutional Justice in Lithuania: the Potential within the Newly Established Model of the Individual Constitutional Complaint.” *Revista de Derecho Político*, no. 111 (May-August 2021): 281-312, <https://doi.org/10.5944/rdp.111.2021>.
- Dannemann, Gerhard. “Constitutional Complaints: The European Perspective.” *The International and Comparative Law Quarterly* 43, no. 1 (January 1994): 142-153.
- Dilemre Öden, Begüm. “Avrupa İnsan Hakları Mahkemesi Kararlarının Türk Vergi Hukukuna Etkisi. [The Effect of European Court of Human Rights Decisions on Turkish Tax Law].” PhD diss., Cankaya University, 2017.
- European Commission for Democracy Through Law (Venice Commission), Study on Individual Access to Constitutional Justice adopted by the Venice Commission at its 85th Plenary Session, Venice, 17-18.10.2010, Gagik Harutyunyan, Angelika Nussberger and Peter Paczolay, Study No: 538/2009, Strasbourg: 2011, [https://www.venice.coe.int/WebForms/documents/default.aspx?pdffile=CDL-AD\(2010\)039rev-e](https://www.venice.coe.int/WebForms/documents/default.aspx?pdffile=CDL-AD(2010)039rev-e), (30.11.2021).
- “European Convention on Human Rights.” Opened for signature November 04, 1950. *European Treaty Series* no. 5. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005>.

European Court of Human Rights. (2022a). "ECHR Overview 1959-2021." European Court of Human Rights, published February, 2022. [https://www.echr.coe.int/Documents/Overview\\_19592021\\_ENG.pdf](https://www.echr.coe.int/Documents/Overview_19592021_ENG.pdf).

European Court of Human Rights (2022b). "Italy." European Court of Human Rights, published November 2022. [https://www.echr.coe.int/documents/cp\\_italy\\_eng.pdf](https://www.echr.coe.int/documents/cp_italy_eng.pdf).

European Court of Human Rights (2022c). Accessed October 19, 2022. <https://hudoc.echr.coe.int/eng#%7B%22documentcollectionid%22:%5B%22GRAND%22,%22CHAMBER%22%7D>.

European Court of Human Rights. Case of Hentrich., v. France, App. No: 13616/88, 22.09.1994.

European Court of Human Rights. Case of Riccardo Travers and 27 Others v. Italy, App. No: 15117/89, 16.01.19.

European Court of Human Rights. Case of Gasus Dosier- Und Fördertechnik GmbH, v. The Netherlands, App. No: 15375/89, 23.02.1995.

European Court of Human Rights. Case of Spacek, s.r.o.v. The Czech Republic, App. No: 26449/95, 09.11.1999.

European Court of Human Rights. Case of S.A. Dangeville, v. France, App. No: 36677/97, 16.04.2002.

European Court of Human Rights. Case of Buffalo S.r.l. in Liquidation, v. Italy, App. No: 38746/97, 03.07.2003.

European Court of Human Rights. Case of Scordino v. Italy, App. No: 36813/97, 29.03.2006.

European Court of Human Rights. Case of Eko- Elda Avee, v. Greece, App. No: 10162/02, 09.06.2006.

European Court of Human Rights. Case of Intersplav, v. Ukraine, App. No: 803/02, 09.01.2007.

European Court of Human Rights. Case of Mamidakis, v. Greece, App. No: 35533/04, 11.01.2007.

- European Court of Human Rights. Case of Bulves AD., v. Bulgaria, App. No: 3991/03, 22.01.2009.
- European Court of Human Rights. Case of Di Belmonte., v. Italy, App. No: 72638/01, 16.03.2010.
- European Court of Human Rights. Case of Serkov, v. Ukraine, App. No: 39766/05, 07.10.2011.
- European Court of Human Rights. Case of Shchokin, v. Ukraine, App. No: 23759/03 and 37943/06, 14.01.2011.
- European Court of Human Rights. Case of OAO Neftyanaya Kompaniya Yukos v. Russia, App. No: 14902/04, 20.09.2011.
- European Court of Human Rights. Case of N.K.M., v. Hungary, App. No: 66529/11, 14.05.2013.
- European Court of Human Rights. Case of R.Sz., v. Hungary, App. No: 41838/11, 04.11.2013.
- European Court of Human Rights. Case of West/Alliance Limited, v. Ukraine, App. No: 19336/04, 23.01.2014.
- European Court of Human Rights. Case of Azienda Agricola Silverfunghi S.A.S. and Others v. Italy, App. No: 48357/07, 52677/07, 52687/07 and 52701/07, 24.09.2014.
- Faiz, Pan Mohamad. "A Prospect and Challenges for Adopting Constitutional Complaint and Constitutional Question in the Indonesian Constitutional Court." *Constitutional Review* 2, no. 1 (May 2016): 103-128, <http://dx.doi.org/10.31078/consrev215>.
- Grgic, Aida, Zvonimir Mataga, Matija Longar and Ana Vilfan. Avrupa İnsan Hakları Sözleşmesi Kapsamında Mülkiyet Hakkı [The Right to Property under the European Convention on Human Rights]. Translated by Özgür Heval Çınar and Abdulcelil Kaya). Belgium: Council of Europe, 2007.
- Gümüşkaya, Gamze. "İnsan Hakları ve Vergilendirme: Mülkiyet Hakkı Yönünden İnsan Hakları Avrupa Mahkemesi'ne Kişisel Başvuru. [Human Rights and

Taxation: Personal Application to the European Court of Human Rights in Terms of Right to Property].” Master diss., Istanbul University, 2009.

Gümüşkaya, Gamze. Mülkiyet Hakkına Vergisel Müdahaleler Bakımından İnsan Hakları Avrupa Mahkemesi’ne Kişisel Başvuru [Personal Application to the European Court of Human Rights in Terms of Tax Interventions to the Right to Property]. Istanbul: On İki Levha Publishing House, 2010.

Harris David. et al. *Avrupa İnsan Hakları Sözleşmesi Hukuku [European Convention on Human Rights Law]*. Translated by Mehveş Bingöllü Kılıcı, Ulaş Karan. Ankara: Sen Press, 2013.

Hayrulloğlu, Betül and Onur Gök. “Vergi İncelemelerinde Mükellef Hakkı Bağlamında Ayrımcılık Yasağı: Bir Anayasa Mahkemesi Kararı Çerçevesinde İnceleme [In the Context of Taxpayer’s Right in Tax Auditing the Prohibition of Discrimination: A Review of the Constitutional Court Judgment].” In *Maliye Araştırmaları-2 [Public Finance Studies-2]* ed. Selçuk İpek, 151-166. Bursa: 2018.

Hayrulloğlu, Betül. “Mülkiyet Hakkına Vergi Yoluyla Müdahalelerde Anayasa Mahkemesinin Ölçülülük Denetimi,” [Proportionality Control of the Constitutional Court in Interventions to Property by Tax] in *Küreselleşen Dünyada Mali ve İktisadi Meseleler [Financial and Economic Issues in a Globalizing World]*, ed. Serap Ürüt Saygın and Orçun Avcı, 59-80. Bursa: Ekin Press, 2021.

Howard-Hassmann, Rhoda E. “Reconsidering the Right to Own Property.” *Journal of Human Rights* 12, no. 2 (May 2013): 180-197. <https://doi.org/10.1080/14754835.2013.784667>.

Inceoğlu, Sibel. “Hak ve Özgürlükleri Sınırlama ve Güvence Rejimi [Limitation of Rights and Freedoms and the Assurance Regime].” In *İnsan Hakları Avrupa Sözleşmesi ve Anayasa Anayasa Mahkemesine Bireysel Başvuru Kapsamında Bir İnceleme [An Analysis within the Scope of the European Convention on Human Rights and the Individual Application to the Constitutional Court]*, edited by Sibel İnceoğlu, 23-52. Ankara: Sen Press, 2013.



- Korkusuz, M. Refik. *Uluslararası Belgelerde ve Türk Anayasası'nda Temel Hak ve Özgürlükler* [Fundamental Rights and Freedoms in International Documents and the Turkish Constitution]. Istanbul: Özrenk Press. 1998.
- Ozekes, Muhammet. *İcra Hukukunda Temel Haklar ve İlkeler* [Fundamental Rights and Principles in Enforcement Law]. Ankara: Adalet Publishing House, 2009.
- Palguna, I Dewa Gede. "Constitutional Complaint and The Protection of Citizens The Constitutional Rights." *Constitutional Review* 3, no. 1 (May 2017): 1-23, <http://dx.doi.org/10.31078/consrev311>.
- Poelmann, Eric. "ECHR Melo Tadeu: A Tax Case Which Should Bring on More Carefully Selected Criminal Procedures." *Intertax* 44, no. 5 (2016): 434-437, <https://doi.org/10.54648/taxi2016035>.
- Pu, Hong. "On Protection and Restriction of Private Property Right." *Journal of Politics and Law* 1, no. 4 (December 2008): 62-66. 10.5539/jpl.v1n4p62.
- Sağır, Harun. "Anayasa Mahkemesi'nin Bireysel Başvuru Kararları Çerçevesinde Vergisel Müdahalelerde Mülkiyet Hakkı İhlali Bakımından Hukuka Uygunluk Ölçütü [Legal Compliance Criterion for Violation of Right to Property in Tax Interventions within the Framework of Individual Application Decisions of the Constitutional Court]." *Vergi Dünyası Dergisi* [Tax World Journal], no. 492 (August 2022).
- Schoeller-Schletter, Anja. "Mapping Constitutional Review in the Middle East and North Africa: Historic Developments and Comparative Remarks." In *Constitutional Review in the Middle East and North Africa*, edited by Anja Schoeller-Schletter, 13-32. Baden-Baden: Nomos Verlagsgesellschaft mbH & Co. KG, 2021.
- Strzepak, Kamil A. "The Relationship Between The European Convention on Human Rights and Domestic Law: A Case Study." *Constitutional Review* 6, no. 2 (December 2020): 338-365, <https://doi.org/10.31078/consrev626>.
- Şimşek, Suat. "Vergi Politikaları, Mülkiyet Hakkı ve Avrupa İnsan Hakları Mahkemesi [Tax Policies, Right to Property and the European Court of Human Rights]." *Maliye Dergisi* [Public Finance Journal], no. 159

(July-December 2010): 323-345. <https://ms.hmb.gov.tr/uploads/2019/09/Suat%C5%9E%C4%B0M%C5%9EEK.pdf>.

Taufik, Giri Ahmad. "Proportionality Test in the 1945 Constitution: Limiting Hizbut Tahrir Freedom of Assembly." *Constitutional Review* 4, no. 1 (May 2018): 45-79, <https://doi.org/10.31078/consrev413>.

Tezcan, Durmuş, Mustafa Ruhan Erdem. Oğuz Sancakdar and Rıfat Murat Önok. *İnsan Hakları El Kitabı [Human Rights Handbook]*. Ankara: Seckin Publishing House, 2011.

The Constitutional Court of the Republic of Türkiye. Case of Celalettin Aşçıoğlu, App. No: 2013/1436, 06.03.2014.

The Constitutional Court of the Republic of Türkiye. Case of Zekiye Şanlı, App. No: 2012/931, 26.06.2014.

The Constitutional Court of the Republic of Türkiye. Case of Türkiye İş Bankası A.Ş., [Türkiye Is Bank Joint Stock Company], App. No: 2014/6192, 12.11.2014.

The Constitutional Court of the Republic of Türkiye. Case of Murat Çevik, App. No: 2013/3245, 11.12.2014.

The Constitutional Court of the Republic of Türkiye. Case of Akün Gıda Maddeleri Sanayi ve Ticaret A.Ş., [Akün Foodstuff Industry and Trade Inc.], App. No: 2013/1993, 06.05.2015.

The Constitutional Court of the Republic of Türkiye. Case of Hüsametdin Kemal Esiner, App. No: 2013/1949, 24.06.2015.

The Constitutional Court of the Republic of Türkiye. Case of Murat Çevik (2), App. No: 201/3244, 07.07.2015.

The Constitutional Court of the Republic of Türkiye. Case of Türkiye İş Bankası A.Ş. Şubeleri, [Türkiye Is Bank Joint Stock Company Branches], App. No: 2014/6193, 15.10.2015.

The Constitutional Court of the Republic of Türkiye. Case of Murat Çevik (4), App. No: 2013/3241, 16.12.2015.

- The Constitutional Court of the Republic of Türkiye. Case of Murat Çevik (5), App. No: 2013/3246, 16.12.2015.
- The Constitutional Court of the Republic of Türkiye. Case of Arif Sarıgül, App. No: 2013/8324, 23.02.2016.
- The Constitutional Court of the Republic of Türkiye. Case of Narsan Plastik San. Tic. Ltd. Şti., [Narsan Plastik San. Trade Co. Ltd.], App. No: 2013/6842, 20.04.2016.
- The Constitutional Court of the Republic of Türkiye. Case of Türkiye İş Bankası A.Ş. Şubeleri (2), [Türkiye Is Bank Joint Stock Company Branches (2)], App. No: 2015/356, 22.09.2016.
- The Constitutional Court of the Republic of Türkiye. Case of Anadolu Anonim Türk Sigorta Şirketi Şubeleri, [Anadolu Anonim Turkish Insurance Company Branches], App. No: 2014/17286, 16.11.2016.
- The Constitutional Court of the Republic of Türkiye. Case of EM Export Dış Ticaret A.Ş., [EM Export Foreign Trade Inc.], App. No: 2014/10283, 05.04.2017.
- The Constitutional Court of the Republic of Türkiye. Case of Türkiye İş Bankası A.Ş. Şubeleri (4), [Türkiye Is Bank Joint Stock Company Branches (4)], App. No: 2015/6691, 08.03.2018.
- The Constitutional Court of the Republic of Türkiye. Case of Arbay Petrol Gıda Turizm Taşımacılık Sanayi Ticaret Ltd. Şti. ve Arbay Turizm Taşımacılık İthalat İhracat İnşaat ve Organizasyon Sanayi ve Ticaret Ltd. Şti. [GK], [Arbay Petrol Food Tourism Transportation Industry Trade Ltd. Sti. and Arbay Tourism Transportation Import Export Construction and Organization Industry and Trade Ltd. Sti. [GA]], App. No: 2015/15100, 27.02.2019.
- The Constitutional Court of the Republic of Türkiye. Case of Millî Reasürans Türk A.Ş., App. No: 2016/70, 01.07.2020.
- The Constitutional Court of the Republic of Türkiye, “Kararlar Bilgi Bankası [Decisions/Judgments Database.]” Accessed October 19, 2022. <https://kararlarbilgibankasi.anayasa.gov.tr/>.

- Töralp, Funda. “Temel Hak ve Özgürlüklerin Vergilendirme Yetkisinin Kullanımına Etkisi [The Effect of Fundamental Rights and Freedoms on the Use of Taxation Power].” In *Anayasadan Mali ve Vergisel Beklentiler [Fiscal and Tax Expectations from the Constitution]*, edited by Feridun Yenisey, Gülsen Güneş, Z. Ertunç Şirin, 163-182. Istanbul: On İki Levha Publishing House, 2012.
- Türkay, İmdat. “Anayasa Mahkemesi Kararında Mülkiyet Hakkı ve Vergi İlişkisi [The Relation between Right to Property and Taxes in the Decision of the Constitutional Court].” Mondaq, published November 14, 2022, <https://www.mondaq.com/turkey/tax-authorities/1250532/anayasa-mahkemesi-kararinda-m%C3%BClkiyet-hakki-ve-vergi-ili%C5%9Fkisi>.
- United Nations General Assembly, Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona. Human Rights Council Twenty-Sixth Session Agenda Item 3 Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, New York: United Nations, 2014. <https://undocs.org/A/HRC/26/28> (16.11.2021).
- Uygun, Esra and Adnan Gerçek. “Anayasa Mahkemesinin Vergilendirme Alanındaki Bireysel Başvuru Kararlarının Değerlendirilmesi [Evaluation of Individual Applications Decisions in the Field of Taxation of Constitutional Court].” *Türkiye Adalet Akademisi Dergisi [Journal of the Turkish Justice Academy]*, no. 29 (2017): 167-191.
- Wilson, Bart J. “The Primacy of Property; or, the Subordination of Property Rights.” *Journal of Institutional Economics* 19, no. 2, (August 2022): 251-267, doi:10.1017/S1744137422000212.
- Yıldırım, Engin. “Social Rights and The Turkish Constitutional Court.” *Constitutional Review* 7, no. 2 (December 2021): 188-202, <https://doi.org/10.31078/consrev721>.
- Zupančič, Boštjan M. “Constitutional Law and the Jurisprudence of the European Court of Human Rights: An Attempt at a Synthesis.” *Revus*, no. 1 (2003), <https://doi.org/10.4000/revus.1441>.