

Scope and legal Binding of the European Court of Human Right Decisions

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Abstract

The European Convention on Human Rights is an international treaty that guarantees certain human rights and fundamental freedoms of those within the jurisdiction of the member countries of the Council of Europe. The number of member countries of the Council of Europe, which was 9 at the time of its establishment, has reached 47 today. The European Court of Human Rights (ECHR) has been given the authority to examine complaints about violations of the rights and freedoms set out in the Convention. The Court's decisions and the principles stated in these decisions reflect the common legal standards applicable in the European countries that have signed the Convention. With this institutional structure, a protection and control mechanism has been provided, giving the Convention a universal dimension. In this study, after determining the jurisdiction of the ECHR, who has the right to apply to the ECHR, which is one of the mechanisms for the international protection of fundamental rights and freedoms, what are the prerequisites for the application, the evaluation stages of the Court from the moment the application is made and what possible decisions it can give will be revealed. In light of this information, the scope and legal binding of the Court's decision will be analyzed.

Keywords: European Convention on Human Rights, European Court of Human Rights, Committee of Ministers, supervision of the implementation of decisions.

Avrupa İnsan Hakları Mahkemesi Kararlarının Kapsamı VE Hukuki Bağlayıcılığı

Özet

Avrupa İnsan Hakları Sözleşmesi, Avrupa Konseyi'ne üye ülkelerin yargı yetkisi kapsamında bulunanların belirli insan hakları ve temel özgürlüklerini güvence altına alan uluslar arası bir antlaşmadır. Avrupa Konseyi'ne üye ülkelerin sayısı, kuruluş tarihinde 9 iken, günümüzde bu sayı 47 ye ulaşmıştır. Sözleşmede yer alan hak ve özgürlüklerle ilgili olarak Sözleşme'nin ihlal edildiğine dair şikâyetleri inceleme yetkisi Avrupa İnsan Hakları Mahkemesi (AİHM)'ne verilmiştir. Mahkeme'nin kararları ve bu kararlarda belirtilen esaslar Sözleşmeyi imzalayan Avrupa ülkelerinde geçerli olan ortak hukuki standartları yansıtmaktadır. Oluşturulan bu kurumsal yapı ile koruma ve denetim mekanizması sağlanarak Sözleşmeye evrensel bir boyut kazandırılmıştır. Bu çalışmada AİHM'nin yetki alanı belirlendikten sonra, temel hak ve hürriyetlerin uluslararası boyutta korunması mekanizmalarından biri olan AİHM'ye başvuru hakkına kimlerin sahip olduğu, başvuru için aranan ön koşulların neler olduğu, başvuru gerçekleştiği andan itibaren Mahkemenin değerlendirme aşamaları ve verebileceği olası kararlar neler olabileceği ortaya konulacaktır. Bu bilgiler ışığında Mahkeme kararının kapsamı ve hukuki bağlayıcılığı analiz edilecektir.

Anahtar Kelimeler: Avrupa İnsan Hakları Sözleşmesi, Avrupa İnsan Hakları Mahkemesi, Bakanlar Komitesi, kararların uygulanmasının denetimi.

I- INTRODUCTION

The European Convention on Human Rights (ECHR) (Convention) is an international treaty that guarantees certain human rights and fundamental freedoms of those within the jurisdiction of the 47 member countries of the Council of Europe. These rights and freedoms are regulated in the Convention and its additional protocols. Compared to other international treaties, the Convention has a quite strong protection mechanism. The European Court of Human Rights (ECtHR) (Court) has been established to examine violations of the rights and freedoms set out in the Convention and its additional protocols. In this article, after determining the jurisdiction of the ECtHR, who has the right to apply to the ECtHR, which is one of the mechanisms for the international protection of fundamental rights and freedoms? What are the prerequisites for the application? What are the

evaluation stages of the Court from the moment the application is made and what possible decisions can it give? These questions will be answered. Taking into account the information obtained, the scope and legal binding of the Court's decision will be analyzed.

II- RIGHTS AND FREEDOMS IN THE ECHR AND ITS ADDITIONAL PROTOCOLS

The European Convention on Human Rights (ECHR) (Convention) was adopted in 1950. The Convention was prepared within the Council of Europe, an international organization established as the first attempt to unite Europe after World War II. The purpose of the emergence of the Convention is the need to partially detail the obligations that Council membership entails (Haris, O'Boyle, Bates, Buckley, 2013:1).

The Convention is an international treaty that guarantees certain human rights and fundamental freedoms of those within the jurisdiction of the 47 member countries of the Council of Europe. This agreement was signed in Rome on November 4, 1950, and entered into force in 1953. Turkey ratified the ECHR on March 10, 1954 (Bilir, 2012:2).

The ECHR provides limited protection only for the rights and freedoms set out in the Convention and its additional protocols. These rights and freedoms are limited to the fundamental freedoms set out in Articles 1-18 of the ECHR and brought by additional protocols. The Court is not competent in all matters, but is only authorized to look at allegations of violation of the Convention. If a subject of application is not related to the rights and freedoms guaranteed in the Convention and additional protocols, it will not be examined by the Court.

The rights and freedoms regulated in the Convention and additional protocols are as follows.

- Right to life (Article 2),
- Prohibition of torture, inhuman and degrading treatment and punishment (Article 3),
- Right to liberty and security (Article 5),
- Right to a fair trial (Article 6),
- Legality of crimes and punishments (Article 7),
- Right to respect for private and family life, home and communication freedom (Article 8),
- Freedom of thought, conscience and religion (Article 9),
- Freedom of expression (Article 10), • Freedom of assembly and association (Article 11),
- Right to marry and found a family (Article 12),
- Right to an effective remedy (Article 13),
- Prohibition of discrimination (Article 14),

In addition to these articles, rights and freedoms are also regulated in Protocols 1,4,6, 7, 12,13,14 of the Convention.

The European Convention on Human Rights brings objective obligations that exist independently of other states for all party countries. In other words, Article 1 of the ECHR requires that the rights corresponding to the Convention Rights be guaranteed in domestic law in terms of content and scope. The ECHR, unlike classical international treaties, brings objective obligations for the protection of human rights for party states. The ECHR is almost a constitutional document of the European public order (Anayurt, 2004: 67-68).

Compared to other international treaties, the Convention has a quite strong protection mechanism. It recognizes the right to apply to anyone who claims to be a victim of a violation of the Convention, regardless of the nationality of the non-governmental organization or group of people. Under the

11th protocol, both state applications and individual applications are made to the European Court of Human Rights, which is composed of full-time judges and operates permanently (Haris, O'Boyle, Bates, Buckley, 2013:4).

III- INDIVIDUALS ENTITLED TO APPLY TO THE EUROPEAN COURT OF HUMAN RIGHTS

According to the ECHR, there are two types of application routes to the Court: state application and individual application.

a.) State Application: According to Article 33 of the Convention, any contracting state may apply to the Court for an alleged violation of the provisions of the Convention and its protocols. States can assert that a state legislation and practice is contrary to the Convention abstractly, without any violation of a person's rights.

b.) Individual Application: The most important feature that distinguishes the ECHR from other documents aimed at protecting human rights is the introduction of the individual application right, which grants the individual the authority to complain about the state, in other words, to sue the state before an international judicial body.

According to Article 34, which regulates individual application, those who claim that the rights recognized in the Convention and its protocols have been violated by one of the contracting states and have suffered from them:

- Every real person
- Non-governmental organization (all institutions and organizations with legal personality, excluding the state and affiliated public institutions and organizations).
- Groups of people can apply to the Court.

IV-) PREREQUISITES FOR APPLICATION

Applications made to the ECtHR are primarily subject to an "admissibility examination". The "merits examination" cannot be made for applications that are not found admissible. An inadmissibility decision is made for these applications (Gözler 2021:116).

Admissibility conditions: The admissibility conditions of the application are regulated in Article 35 of the Convention. This article includes two common conditions for both individual and state applications in terms of admissibility. These conditions are:

- Exhaustion of domestic remedies
- The application must be made within 4 months (The period for application, as of February 1, 2022, has been reduced to 4 months. For decisions finalized before this date, this period is 6 months) from the final decision in domestic law.

a-) Exhaustion of Domestic Remedies: The condition of exhaustion of domestic remedies means that the protection of the rights brought by the agreement is primarily owned by the relevant state, and the protection mechanism of the agreement organs is secondary. The priority for the elimination of the violation is given to the domestic law of each state (Bilir, 2012:18).

The individual who is violated by the contracting state of the basic rights and freedoms must have completely exhausted the domestic law application routes of the relevant state that committed the violation in order to bring the said violation to the ECtHR (Doğru and Nallbant, 2012:5). The exhaustion of domestic remedies is a condition sought not only for individual applications but also for state applications. In other words, when there is an allegation of violation, the protection mechanism should be operated first by using the "effective application right" in domestic law, and if no result is obtained, the international protection mechanism should be applied (Bilir, 2012: 20).

The removal of violations related to fundamental rights and freedoms is not limited to only judicial ways. Administrative and political ways are also envisaged ways to eliminate rights violations in domestic law outside the judicial ways.

The exhaustion of domestic remedies means not only applying to normal courts but also applying to all kinds of legal ways that are effective and bring solutions to the problem. Appeal and appeal are ordinary legal ways, so they are domestic remedies that need to be exhausted. In some countries, it is possible for an individual to apply to the Constitutional Court. In our country, the right to individual application to the Constitutional Court has been recognized. The Constitutional Court is a mandatory domestic law route that needs to be exhausted before applying to the ECtHR.

b-) Application must be made within 4 months: The application must be made within 4 months from the moment the violation subject to the application occurred or from the date of the final decision given within the framework of domestic law rules. This period starts from the notification of the Constitutional Court decision.

V-) EVALUATION STAGES OF THE COURT FROM THE MOMENT OF APPLICATION AND POSSIBLE DECISIONS THAT CAN BE GIVEN

With Protocol No. 14 of the Convention, many regulations have been introduced to alleviate the workload of the Court and speed up the trial process, and regarding the examination of the case and the binding and implementation of its decisions. After this change, the Court has been structured as a single judge system, committees of three judges, chambers of seven judges, and a Grand Chamber of seventeen judges (Haris, O'Boyle, Bates, Buckley, 2013:845).

a-) Decisions to be Given as a Result of Preliminary Examination

The ECtHR primarily evaluates the applications made to it in terms of admissibility. The Court initiates the trial process in applications it finds admissible.

1-) Admissibility Examination by a Single Judge

With Protocol No. 14, the admissibility examination is done by a single judge. The single judge can find the application inadmissible or drop it from the record in cases where a decision can be made without re-examination. It is envisaged that the first examinations of insignificant applications, which are not worth examining by the Court and cause a great loss of time, will be examined by a single judge.

If the single judge does not make an inadmissibility decision or decides to drop the application from the record, the application examination will be forwarded to a committee or a chamber.

2-) Admissibility Examination by Committees

Committees can unanimously make an inadmissibility decision on individual applications in the presence of clear and obvious conditions. With Protocol No. 14, committees were also given trial authority. Committees must make their decisions unanimously. If the committee does not make these decisions unanimously, the decision on admissibility and the merits will be given by the chamber.

There is no possibility to apply to the Chamber and the Grand Chamber for applications that the committees have decided on the merits.

b-) Decisions to be Given as a Result of Examination on the Merits

1-) Examination on the Merits by the Chamber

Chambers are the places where the applications found admissible by the single judge and the committees are examined in essence. Chambers are authorized to make decisions on the

admissibility and merits of state applications. While single judges and committees do not have the authority to make decisions on state applications, chambers have the authority to make decisions on this matter.

2-) Examination on the Merits by the Grand Chamber

If the case before the Chamber raises serious problems regarding the interpretation of the Convention and its protocols, or if the solution of the problem will conflict with a decision previously given by the court, the Chamber, which has not yet ruled and one of the parties has not objected, the Chamber may waive its jurisdiction in favor of the Grand Chamber. In addition, within 3 months from the date of the chamber decision, each of the parties to the case can request that the case be sent to the Grand Chamber.

c-) Decisions Given by the Chamber and the Grand Chamber

1-) Friendly settlement: In this process, the friendly settlement method is first applied. If a friendly solution is reached at the end of the proceedings, the Court drops the application from the record by means of a decision containing a brief explanation limited to the events and the solution reached (Simmons, 2005:56). If the parties cannot agree on a friendly solution, the Court decides by examining the file in essence.

2-) While evaluating the applications related to its task, the ECtHR can make a decision to **suspend the execution according to Article 39 of the Court Rules.**

3-) The Grand Chamber and the Chamber of the European Court of Human Rights can make three types of decisions on the merits of a dispute: It is possible to categorize the substantive decisions of the ECtHR into three categories (Akay 2009:122):

i. Decisions stating that there is no violation: If the Court finds that there has been no violation of the Convention or the Protocols thereto, it will issue a judgment to that effect.

ii. Decisions stating that there is a violation, but the court does not foresee compensation with the determination of this (violation).

iii. Decisions where it identifies a violation and foresees compensation: if the Court finds that there has been no violation of the Convention or the Protocols thereto, it will issue a judgment to that effect.

The Court does not make decisions on matters other than these. The judgments of the Grand Chamber are final. They cannot be appealed. The judgments of the Chambers become final when the parties declare that they will not request that the case be referred to the Grand Chamber; or three months after the date of the judgment, if referral has not been requested; or when the panel of the Grand Chamber rejects the request to refer the case to the Grand Chamber.

VI-) SCOPE AND LEGAL BINDING OF THE COURT DECISION

The European Court of Human Rights (ECHR) is not an appellate court that reviews the decisions of national courts. Decisions of national courts cannot be annulled or altered by the ECHR. Moreover, the court cannot repeal the application, transaction, or law contrary to the convention. The court only decides on violations of human rights protected by the European Convention on Human Rights (ECHR) and determines the violation of the convention, therefore the control performed by the ECHR is secondary. The decisions of the ECHR are not constructive (constitutive), but declarative (Bilir, 2012:57-58).

The decisions of the ECHR, according to the provisions of Article 44, paragraph 2 of the ECHR; it becomes final when the parties declare that they do not want the case to be referred to the Grand Chamber after the decision or if it is not requested to be sent to the Grand Chamber within three

months after the decision or if the Committee rejects the request envisaged in Article 43. On the other hand, the decisions given by the Grand Chamber are also final.

According to Article 46 of the Convention, the decisions of the Court are final and binding. It is the responsibility of the relevant state to eliminate the situation where the violation of the Convention is determined. Each contracting state will determine how the decision will be implemented, and its form and content. The task of monitoring the implementation of the finalized decisions of the Court has been given to the Committee of Ministers.

VII-) STRUCTURE AND FUNCTION OF THE MINISTERS' COMMITTEE

The Ministers' Committee, although not an organ envisaged by the Convention, derives its normative basis from the Statute of the Council of Europe (Arslan, 2002:22).

The Council of Europe Ministers' Committee, representing the governments of the member states of the Council of Europe, consists of one representative at the level of Foreign Ministers of the member states of the Council (De Vel, 1995:15). It has a secretariat composed of officials employed in the Council of Europe's Directorate General of Human Rights and Legal Affairs to review decisions. The Committee has adopted a Rules of Procedure regarding its working method.

The Ministers' Committee, under Article 46, holds a 3-day meeting 4 times a year to fulfill its responsibility regarding the execution of decisions. The Committee, which examines an average of 2500-3500 decisions at each meeting, works by making decisions. The Committee can make two types of decisions. Both types of decisions are taken by a two-thirds majority of the voting representatives and a majority of the representatives present in the Committee. If the Committee is of the opinion that a state has fulfilled all measures that can be taken to comply with a decision or that the conditions of a friendly solution have been realized, it makes a final decision 'final solution'. The Committee also has the authority to make interim decisions 'interim resolution' to provide information about the status of the execution of a decision during the control process or to express concern and/or make suggestions if there is a situation to be concerned about the execution of the decision. In cases where the execution process is not completed quickly due to the complexity of the status of the execution process or the reluctance of the state to execute the decision, interim decisions play an important role (Haris, O'Boyle, Bates, Buckley, 2013:896).

The Committee has the authority to monitor the execution of both the main and friendly solution decisions. Priority is given to decisions where the Court has identified a systemic problem.

The examination of a case begins with the Committee inviting the state party against which a decision has been made to provide information about the measures it has taken or plans to take as a result of the decision. The Committee will then examine the following three steps: The Ministers' Committee examines whether the compensation decided by the Court to be awarded, together with the delay interest, has been paid to the applicant. If necessary, the Committee also investigates whether specific measures have been taken to end the violation and restore the plaintiff to his/her pre-violation status. Finally, the Committee checks whether general measures have been taken to prevent new violations and end ongoing violations (Akay, 2009: 123).

In recent years, the Committee has embarked on a new practice to improve its working methods. In this context, it has initiated the 'first stage' procedure. Accordingly, after a decision becomes final, the Secretariat sends a letter to the defendant state and asks for information about what measures the state plans to take. Sometimes it also makes suggestions on what measures should be taken. In response to this letter, states submit an action plan to the Committee within six months from the date of the final decision (Haris, O'Boyle, Bates, Buckley, 2013:897).

The Ministers' Committee has also made guiding decisions on the implementation of Court decisions by member states. In the recommendation decision no. R (2000) 2 taken at the 694th Meeting of the

Ministers' Delegates of the Council of Europe Ministers' Committee on 19/01/2000: "...The most suitable and sometimes the only solution for the full implementation of the Court's decision is the retrial (retrial) or correction of the decision. Therefore, the Council of Europe Ministers' Committee:

1- Invites member states to ensure that appropriate solutions are included in national legislation as much as possible for the full implementation of the decision,

2- In a case where the ECHR has determined a violation, member states are encouraged to ensure that the most appropriate solutions, including retrial and decision correction, are included in national legislation, in cases where:

a. The victim's national court decision continues due to the violation and this can only be remedied by retrial or decision correction,

b. From the ECHR decision:

ba. The national court decision is fundamentally contrary to the Convention,

bb. If a violation has been determined based on a serious procedural error or deficiency in the outcome of domestic remedies, it is requested to implement the recommendation decision by saying '...The most suitable and sometimes the only solution for the full implementation of the Court's decision is the retrial (retrial) or correction of the decision'" (Tezcan Erdem Sancaktar; 127-128).

VII-CONCLUSION AND EVALUATION

Article 1 of the ECHR imposes on the contracting states the obligation to recognize the rights and freedoms contained in the Convention to everyone within their jurisdiction. This obligation primarily requires the domestic legal order to be in compliance with the Convention. The legislative, executive and judicial organs of the contracting states are responsible for effectively implementing and implementing the Convention in all areas within their own jurisdiction.

The Convention has a very strong protection mechanism. The European Court of Human Rights, which is authorized to examine the violation of the Convention regarding the rights and freedoms within its scope, has been established. According to Article 46 of the Convention, the decisions of the Court are final and binding. Contracting states are obliged to fulfill the requirement of the Court decision. Thus, the Convention has turned into a living legal document with the ECHR jurisprudence.

It is the responsibility of the relevant state to eliminate the violation identified in the Court decision and to do what is necessary. Each contracting state must determine how to implement the decision, including its form and content. The task of monitoring the implementation of the Court's final decisions has been given to the Ministers' Committee. The Ministers' Committee fulfills this duty by publishing recommendation decisions from time to time on the compliance of the states party to the Convention with the ECHR decisions, taking individual and general measures.

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