



## An individual application must be lodged with the Turkish Constitutional Court before the case can be taken to Strasbourg

In its decision in the case of [Hasan Uzun v. Turkey](#) (application no. 10755/13) the European Court of Human Rights has, by a majority declared the application inadmissible. The decision is final.

The Court reiterated that the rule of the exhaustion of domestic remedies was an indispensable part of the functioning of the Convention mechanism. Having examined the main aspects of the new remedy before the Turkish Constitutional Court, the Court found that the Turkish Parliament had entrusted that court with powers that enabled it to provide, in principle, direct and speedy redress for violations of the rights and freedoms protected by the Convention.

### Principal facts

The applicant, Hasan Uzun, is a Turkish national who was born in 1937 and lives in Mugla (Turkey).

On 1 June 2009 a third party brought proceedings against Mr Uzun for the rectification of the land register, following a dispute about the boundaries between two adjacent plots of land. On 22 September 2001, on the basis of an expert's report, a visit to the property and various witness statements, the Mugla District Court ordered the registration of part of Mr Uzun's land in the name of the third party. An appeal by Mr Uzun on points of law, alleging procedural defects, was dismissed by the Court of Cassation on 25 September 2012.

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 3 January 2013.

Relying on Articles 6 (right to a fair hearing) and 14 (prohibition of discrimination), the applicant complained that the visit to the property in the presence of experts and witnesses had taken place the day before the scheduled date and that his two witnesses had not been notified of the change.

The decision was given by a Chamber of seven, composed as follows:

Guido **Raimondi** (Italy), *President*,  
Danutė **Jočienė** (Lithuania),  
Peer **Lorenzen** (Denmark),  
András **Sajó** (Hungary),  
Işıl **Karakaş** (Turkey),  
Nebojša **Vučinić** (Montenegro),  
Helen **Keller** (Switzerland), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

## Decision of the Court

### Article 35 § 1: exhaustion of domestic remedies

The Court had already ruled on cases where a specific remedy had been introduced by the State party, in particular following a leading judgment addressing a wide-scale issue that had given rise to a significant number of cases before it. It had thus declared inadmissible the repetitive applications once a remedy capable of resolving the structural problem had been made available in domestic law.

As the Court had also previously found, in a legal system providing constitutional protection for fundamental rights and freedoms it was incumbent on the aggrieved individual to test the extent of that protection.

Article 148 § 3 of the Constitution, as amended on 13 May 2010, gave jurisdiction to the Turkish Constitutional Court (the "CCT") to examine individual applications concerning the fundamental rights and freedoms protected by the Turkish Constitution and the European Convention on Human Rights, after the exhaustion of ordinary remedies. Under provisional section 1 § 8 of Law no. 6216, decisions that had become final after 23 September 2012 could be challenged in an individual application.

The Court noted that under Law no. 6216 the notice of appeal could be deposited with the CCT's Registry, with national courts or with Turkish representations abroad, for transmission to the CCT, within 30 days after the exhaustion of ordinary remedies. The procedure for bringing a case to the CCT by individual application was similar to that of the Turkish Court of Cassation, in respect of which the Court had not to date found any particular problem. Applicants were entitled to deposit their applications with any national court and thus did not need to travel or follow a complex procedure. The 30-day time-limit was, in principle, reasonable and an extension of 15 days was possible if an impediment could be validly justified. Lastly, the corresponding court costs did not appear excessive (about 84 euros), and an applicant could also be granted legal aid.

The Court noted that the CCT was empowered to request from the authorities any information or document that might be useful for the examination of the application and provisions had been made to address any inconsistencies in case-law between the court's divisions. The Court observed that the CCT had jurisdiction to indicate interim measures to the authorities for the protection of the applicant's rights and that under Law no. 6216 the scope of the CCT's jurisdiction extended to the European Convention on Human Rights and the Protocols thereto that had been ratified by Turkey.

The Court did not find any reason to doubt the legislature's intention to ensure identical protection to that provided for by the Convention mechanism. Under sections 49 § 6 and 50 § 1 of Law no. 6216, and under Rule 79 § 1 (d) of the CCT's Rules, after examining an individual application on the merits the court had to determine whether or not there had been a violation of human rights and fundamental freedoms, and, if so, to indicate the means of providing redress for such violation.

When the violation stemmed from a judicial decision, the case was to be referred to the competent court with a view to the re-opening of the proceedings for the purposes of remedying the violation and addressing its consequences. In cases where there was no legal interest in re-opening the proceedings, the applicant could be awarded compensation or be directed to bring proceedings before the appropriate court. The Court further noted that the number of judges serving at the CCT had been increased to 17 and that the law had provided for sufficient resources to ensure that the Registry could function properly.

As the domestic proceedings in Mr Uzun's case had ended on 25 September 2012 and the right of individual application before the CCT – under Law no. 6216 – was accessible in respect of all decisions that had become final after 23 September 2012, the Court found that Mr Uzun should have lodged an application with the Constitutional Court.

As the domestic remedies had not been exhausted, the application was declared inadmissible.

The Court emphasised that it retained its ultimate power of review in respect of any complaints submitted by applicants who, in accordance with the subsidiarity principle, had exhausted the available domestic remedies, and that it reserved the right to examine the consistency of the Constitutional Court's case-law with its own. The present decision was not therefore a ruling on the effectiveness of the remedy in question. It would be for the respondent Government to prove that the remedy was effective, both in theory and in practice.

*The decision is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.