

**XIVth Congress of the
Conference on European Constitutional Courts**



TURKISH NATIONAL REPORT

QUESTIONNAIRE
ON
**PROBLEMS OF LEGISLATIVE OMISSION IN CONSTITUTIONAL
JURISPRUDENCE**
For the XIVth Congress of the Conference of European Constitutional Courts

1. PROBLEMATICS OF LEGAL GAPS IN THE SCIENTIFIC LEGAL DOCTRINE.

1.1. The concept of the legal gap.

Provide with a short review of the positions of scientists and specialists of law of your country on legal gaps (how the legal gap is described, what are the sorts of legal gaps (for example, the indetermination of legal regulation, lacuna legis, legal vacuum, legislative omission, etc); does the scientific legal doctrine consider the reasons of appearance of legal gaps, the problem of real and alleged legal gaps and the peculiarities of gaps in public and private law and positive and negative consequences of legal gaps, etc?)

The concept of “legal gap” has been examined in detail by scientists and specialists of law in our country. But the scientific legal doctrine focused, considering the data of international law, on the concept particularly in the area of private law.

“Legal gap” is defined in general as the fact that “any necessary and obligatory regulation that has not been fulfilled by the lawmaker”.

The concept is analysed by making it subject to several variations within itself. These variations are named in this context as intra legem gap- legal gap; conscious gap- unconscious gap; explicit gap- implicit gap. Reasons for those variations of legal gap and their consequences are certainly made subject in the scientific legal doctrine and, questions on how and in which circumstances the judge can fill in the legal gap by means of his power to “create law” are discussed particularly in private law.

1.2. The concept of legislative omission.

Are the legal gaps which are prohibited by the Constitution¹ (or legal regulation of higher power) distinguished in the scientific literature? What is the prevailing concept of legislative omission as a sort of the legal gap in the scientific legal doctrine?

In Turkish law, the concept of “omission of the legislative organ” is more frequently used. The desired fact in using this term is that the legislature does not act or make any legislation in a particular area, although there is a directive given by the constitution to do so. In this framework, the fact to be separately discussed with in the context of different concrete examples is that whether the Constitution gives any directives or imperatives to the legislative organ and, if so, in which scale those requirements have been fulfilled by the lawmaker.

1.3. The concepts of the Constitutional Court or the corresponding institution which implements the constitutional control (hereinafter referred to as the constitutional court) as a "negative" and "positive" legislator.

What is the prevailing concept of the mission of the constitutional court as a judicial institution in the scientific legal doctrine of your country? The constitutional court as a "negative legislator". The concept of the constitutional court as a "positive legislator". Problems of the influence of the jurisprudence of the constitutional court on law-making? Does the scientific legal doctrine consider the

activity of the constitutional court when the constitutional court investigates and assesses legal gaps as well as the influence of the decisions of the constitutional court regarding filling in the said legal gaps? Was the naming of the activity of the constitutional court as the one of "activism", "moderation" and "minimalism" reasoned on the basis of such decisions?

The prevailing view on the mission of the Constitutional Court in the Turkish Law is that the Court can not be, in a positive or negative sense, regarded as a legislator. Moreover, in Par.2 of the Art. 153 of the Constitution, it is clearly established that the Constitutional Court shall not act as a lawmaker and pass judgements leading to new implementation. The basic task of the Constitutional Court in the Turkish legal system is to (a posteriori) review of constitutionality of laws, to annul them if it finds incompliance with the Constitution, and thus ensuring the principle of supremacy and binding force of the Constitution. Assessments regarding the "judicial activism" of the Constitutional Court or, criticisms that the Court acted somehow as an "intervening judiciary", are not resulted in the fact that the Constitutional Court acts so in order to avoid legislative omissions or to fill in the legal gaps. The reason for such assessments may arise from some criticisms that the Court, at times, gives priority to its own political preferences rather than those of lawmaker's in the course of annulling politically sensitive laws.

2. CONSOLIDATION OF CONTROL OF THE CONSTITUTIONALITY OF THE LEGISLATIVE OMISSION IN THE CONSTITUTION, THE CONSTITUTIONAL JURISPRUDENCE AND OTHER LEGAL ACTS OF THE COUNTRY

2.1. The constitution in the national legal system.

Present the model of the hierarchical pyramid of your national legal acts (for example, in the Republic of Lithuania no national legal acts may be in conflict with the Constitution, while laws and other legal acts adopted by the Seimas or acts of the Government or the President of the Republic may not be in conflict with constitutional laws, etc). The place and importance of the constitution in the national legal system. What concept of the constitution as the highest law is developed by the constitutional court? The concept of the constitution as explicit and implicit legal regulation. Is the constitution considered as law without gaps in the constitutional jurisprudence?

Art. 11 of the Constitution reads the following provision; "The provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs, and administrative authorities and other institutions and individuals. Laws shall not be in conflict with the Constitution."

As can be seen from the provision, constitutional rules are binding upon all state organs, public institutions and persons including the President, the Council of Ministers, the National Assembly and all courts, so all these are bound to function in conformity with the Constitution. As a natural consequent of this fact, how to control and sanction of the commissions or actions contrary to the Constitution by those public organs, are indicated in the Constitution and corresponding legal provisions as well.

In the constitutional jurisprudence, the Constitution is not regarded as law without gap. However, there is no explicit regulation in the Constitution that probable gaps determined in the Constitution are to be filled in by the Constitutional Court. But the Court, in some rare instances at least, showed its tendency towards filling in such gaps; for example the Court is of the opinion that, while reviewing the constitutionality of law, it can also decide on the suspension of the enforcement of the impugned law, although there is no relevant rule (positive or negative) in the Constitution and, the Court has acted so for last 15 years.

2.2. The expressis verbis consolidation in the constitution concerning the jurisdiction of the constitutional court to investigate and assess the constitutionality of legal gaps.

What legal acts (constitutional, organic laws, laws adopted by referendum, ordinary laws, regulations of the parliament, international agreements, laws of the subjects of the federation, substatutory acts, as well as laws adopted before coming into force of the constitution and other legal acts) are directly named as the object of the constitutional control? Does the constitution of your country establish expressis verbis that the constitutional court investigates and assesses the constitutionality of gaps (legislative omission) in the legal regulation? Does the constitution provide for any special procedures for the investigation of legislative omission?

The following are the legal norms subject to constitutional review in Turkish Law; constitutional amendments (such regulations are subject to constitutional review in terms only of procedural grounds, not of their essence- content), laws, decrees having the force of law and Rules of Procedure of the Turkish Grand National Assembly.

There exists no rule in legal regulations stating that the Constitutional Court shall review the constitutionality of legal gaps (legislative omission). That's why, a fortiori, no special review procedure for legislative omission was provided.

Likewise, the Constitutional Court in many decisions stated; "The annulment competence of the Constitutional Court is exercised only by way of an existing legal provision. It is unimaginable that the absence of any provision shall be subject to constitutional review." However, the Court in some decisions, focused on whether legislative omission can be described as "deficient regulation" and, if so, this deficiency amounts, from the point of "rule of law" or "equality" principles, to an incompatibility with the Constitution. In addition, the Court also emphasized in some decisions the fact that "the absence of specific particularities in a regulation, which is provided and required by all means in the Constitution", can make the legal regulation contrary to the Constitution as a whole.

2.3. Interpretation of the jurisdiction of the constitutional court to investigate and assess the constitutionality of legal gaps in the constitutional jurisprudence.

The constitutional court as the official interpreter of the constitution. Has the constitutional court revealed in more detail its powers, which are explicitly entrenched in the constitution, to investigate and assess legislative omission? What are the grounds for the conclusions about the implicit consolidation in the constitution regarding the competence of the constitutional court to investigate and assess the legislative omission? Has the constitutional court formed the doctrine of consequences of stating the existence of legislative omission? If yes, describe it.

It is appropriate to repeat the answer given for the previous question.

2.4. The establishment, either in the law which regulates the activity of the constitutional court or in other legal act, of the jurisdiction of the constitutional court to investigate and assess the constitutionality of legal gaps.

The powers of the constitutional court (provided for in the law which regulates the activity of the constitutional court or other legal acts (if it is not directly established in the constitution)) to investigate and assess legal gaps in the legal regulation established in laws and other legal acts. Does this law (or other legal act) provide for any special procedures for investigation into legal omission? If yes, describe them briefly. What decisions, under this law or other legal act, does the constitutional court adopt after it has stated the existence of the legislative omission? Does the said law or legal act provide as to who and how one must remove the legislative omission? Is it provided for in other laws and legal acts (for example, the regulation of the parliament)?

As in the Constitution, the Law on the Establishment of the Constitutional Court neither includes any provisions authorizing the Court to investigate and assess

legal gaps or legislative omission, nor is there any special controlling procedure provided.

3. LEGISLATIVE OMISSION AS AN OBJECT OF INVESTIGATION BY THE CONSTITUTIONAL COURT

3.1. Application to the constitutional court.

What subjects may apply to the constitutional court in your country? Can they all raise the question of legislative omission?

The President of the Republic, parliamentary groups of the party in power and of the main opposition party and a minimum of one-fifth of the total number of members of the Turkish Grand National Assembly shall have the right to apply for annulment action to the Constitutional Court, based on the assertion of the unconstitutionality of laws in form and in substance, of decrees having the force of law, of Rules of Procedure of the Turkish Grand National Assembly or of specific articles or provisions thereof.

In addition, if a court which is trying a case, finds that the law or the decree having the force of law to be applied is unconstitutional, or if it is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it shall postpone the consideration of the case until the Constitutional Court decides on the issue.

Except for these two ways, there is no possibility of application to the Constitutional Court including constitutional complaint as well.

There is no difference between annulment action or claims by ordinary courts in terms of application of unconstitutionality due to legislative omission. Those who has the right to apply to the Constitutional Court may as a rule assert grounds of legislative omission in their submissions. However applications so far have been based on the rule of law and/or the equality principles.

3.2. Legislative omission in the petitions of the petitioners.

May the petitioners who apply to the constitutional court ground their doubts on the constitutionality of the disputed law or other act on the fact that there is a legal gap (legislative omission) in the said law or act? What part of the petitions received at the constitutional court is comprised of the petitions, wherein the in compliance of the act with the constitution is related to the legislative omission? What subjects, who have the right to apply to the constitutional court, relatively more often specify in their petitions the legislative omission as the reason of the act's being in conflict with the constitution? Are there any specific requirements provided for as regards the form, contents and structure of the applications concerning the unconstitutionality of the legislative omission? If yes, describe them. Are they established in the law which regulates the activity of the constitutional court or are they formulated in the constitutional jurisprudence?

Those who has the right to apply for the annulment action to the Constitutional Court are bound to justify in their application why the contended legal provisions are contrary to the Constitution as well as to which article or articles of the Constitution they are contrary.

Likewise, if a court trying a case finds that the law or the decree having the force of law to be applied is unconstitutional, or if it is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it may apply with an application containing justified grounds to the Constitutional Court.

Since there is not a separate provision in the Constitution concerning the legislative omission, it seems inevitable for the applicant court to employ, in its

reasoning, other applicable principles of the Constitution, especially the principles of the rule of law and the equality regulated in the 2nd and 10th Articles. In the light of this explanation, we have not any data concerning applications based on legislative omission. As there is not separate procedure for such applications, they are, too, subject to the same procedure which is applicable to all other applications.

3.3. Investigation of legislative omission on the initiative of the constitutional court.

Does the constitutional court begin the investigation of the legislative omission ex officio on its own initiative while considering the petition and upon what does it ground it (if the petitioner does not request to investigate the question of the legislative omission)? Specify more typical cases and describe the reasoning of the court in more detail.

The Constitutional Court does not have to depend on the reasons put forward by the concerned applicant on the matter of the unconstitutionality of laws, decrees having force of laws or Rules of Procedure of the Turkish Grand National Assembly. The Constitutional Court can decide on the unconstitutionality of a norm by using different constitutional grounds which are not mentioned in the application on the condition that it remains limited with the request.

3.4. Legislative omission in laws and other legal acts.

Does the constitutional court investigate and assess the gaps of legal regulation only in laws or in other legal acts as well (for example international agreements, substatutory acts, etc.)? Does legislative omission mean only a gap in the legal regulation that is in conflict with the constitution, or a gap in the legal regulation that is in conflict with legal regulation of higher power as well (for example, when an act of the government does not include the elements of the legal regulation which, under the constitution or the law which is not in conflict with the constitution, are necessary)? Is it possible to perceive legislative omission in the case of delegated legislation, when the notion "may" ("has the right") is used while delegating, while the regulation established in the substatutory act includes only part of said delegation?

According to Art. 148 of the Constitution, the Constitutional Court shall examine the constitutionality, in respect of both form and substance, of laws, decrees having the force of law, and the Rules of Procedure of the Turkish Grand National Assembly. As its functions are restrictively enumerated in the Constitution, the Court, for example, shall not review international treaties. It shall examine and verify constitutional amendments only with regard to their form. Accordingly, the fact that legislative omission is a constitutional question to be solved by the Constitutional Court, may only be resalted in legal norms, such as laws and decrees having force of laws (or part thereof). It is also possible to state that substatutory acts may have legal gaps, but in case of such nature the problem is solved by courts of general jurisdiction.

As for the matter of decrees having force of laws, these should be enacted in compliance with both the Constitution and the law giving Council of Ministers the authority to enact. Where the Constitution has provided partial area for a decree having the force of law, and this partial area has been exceeded, by either the empowering law or the decree itself, both the empowering law and decree can be subject to annulment by the Constitutional Court. In that case the Constitutional Court examines the application with regard to Art. 91 of the Constitution, rather than depending on legislative omission. So constitutional review should inevitable focus on the limited conditions described in the said article (for instance, the fundamental rights, individual rights and duties included in the First and Second Chapter of the Second Part of the Constitution and the political rights and duties listed in the Fourth Chapter, cannot be regulated by decrees having the force of law except during

periods of martial law and states of emergency)

3.5. Refusal by the constitutional court to investigate and assess legal gaps.

How does the constitutional court substantiate its refusal to investigate and assess the constitutionality of a gap in legal regulation (absence of direct reference concerning such investigation in the constitution and the laws, the doctrine of "political questions", the respect to the discretion of the legislator in law-making, etc.)?

As has been stressed before, the Constitutional Court's examination of the legal gap takes place in the context of the rule of law and/or the equality principles. Accordingly, the Court may state in its reasoning that no contradiction to those principles (or to any other articles) of the Constitution has been noticed.

3.6. Initiative of the investigation of the "related nature"

Can the constitutional court which does not investigate into legislative omission carry out the "related nature" investigation in constitutional justice cases? Are such investigations begun upon the request of a petitioner or on the initiative of the court? Were such investigations related to the protection of the constitutional rights and freedoms?

In the light of afore mentioned explanations, it is unlikely for the Constitutional Court to initiate investigation of "related nature".

4. INVESTIGATION AND ASSESSMENT OF THE CONSTITUTIONALITY OF LEGISLATIVE OMISSION

4.1. Peculiarities of the investigation of legislative omission.

The peculiarities of the investigation of the legislative omission while implementing a priori control and a posteriori control. Do the problems of legislative omission arise also in the constitutional justice cases concerning the competence of public power institutions, the cases concerning the violated constitutional rights and freedoms, etc? The peculiarities of the investigation and assessment of legislative omission in the constitutional justice cases concerning the laws which guarantee the implementation of the rights and freedoms (civil, political, social, economical and cultural) of the person. The peculiarities of the investigation of the legislative omission in the laws and other legal acts which regulate the organisation and activity of public power. The peculiarities of investigation and assessment of legislative omission in substantive and procedural law. The particularity of investigation of legislative omission in private and public law. The particularity of investigation of legislative omission in the verification of the constitutionality of international agreements. When answering these questions, indicate the constitutional justice cases with more typical examples.

According to the Constitutional Court, legislative omission does not, as a rule, form a subject of review independently. In this respect, any challenge due to legislative omission, or aiming at expanding of the implementation of an existing regulation, seems to be unlikely (Decision of 27.9.1988 no: E.1988/9, K.1988/28). Reviewable facts are norm-shaped provisions of the legislative organ. Such regulations, however, shall be annulled only when they do not include facts which are required anyhow by the Constitution. (However) the deficiency in norm where the legislator has not included some regulations for some people cannot be accepted as a sole reason for annulment. To provide a new characteristic of rule to the Article of law by sorting out some words within itself is incompatible with the constitutional control system. Differences are to be annulled without causing this result and the legislator is given time so as to make a new regulation. Likewise, the annulment action in order to enhance the field of implementation of a norm cannot be lodged. A deficient regulation, always retrievable by the legislature, does not constitute a

contradiction except for above-mentioned constitutional requirement. (Decision of 18.1.1989, no: E.1988/3, K.1989/4).

Therefore, a legal regulation, if it is silent on an issue, which must, in any case, be covered in accordance with the imperative provision of the Constitution, and if this silence (legislative omission) constitutes inequality, shall be annulled.

4.2. Establishment of the existence of legislative omission.

Specify the criteria formulated in the jurisprudence of the constitutional court of your country, on the grounds whereof gaps in the legal regulation may and must be recognized as unconstitutional. Does the constitutional court investigate only the disputed provisions of a law or other legal act? Does the constitutional court decide not to limit itself with only autonomous investigation of the content of the disputed provisions (or disputed act) but to analyse it in the context of the whole legal regulation established in the act (or even that established in the system of acts or the whole field of law)? Can the constitutional court investigate and assess legislative omission of the legal regulation that used to be valid in the past? Does the constitutional court state the existence of gaps in the legal regulation which used to be valid in the past, when it analyzes the development of the disputed provisions (disputed act)? Does the constitutional court, when identifying the legislative omission, investigate and assess only the content and form of the legal regulation or also the practise of the implementation of the legal regulation?

There is not a different criterion developed by the Constitutional Court in the constitutional review of legal gaps. In the light of the previous explanations, other criteria applied may be valid in this case as well. The Constitutional Court, while examining laws from the constitutional point of view, does not limit itself with the discussed provisions; it tries to examine and analyze the problem by considering the scope of the challenged provision, laws or all regulations. For example, within this framework, in case of any contradiction between the provisions of a law, which has not been made subject of annulment before the Constitutional Court, and those of the Constitution, it may neglect the legal regulation by applying constitutional norms directly. In one of its judgments on dissolution of political parties, the Court applied the constitutional norms directly by neglecting provisions of the Law on Political Parties as legal regulations themselves could not be made subject of constitutional review because of the 15th provisional Article of the Constitution. The Court expressed its view by stating: "...although the legislator is required to remove laws contrary to the recently amended provisions of the Constitution and make such regulations without delay in line with the constitutional amendments, non-realization of this obligation does not necessarily result in that more supreme detailed constitutional rules shall not be applied. This is also a requirement of the supremacy and binding force of the Constitution formulated in Article 11th of the Constitution as: "The provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs, and administrative authorities and other in conflict with the Constitution." (Decision of 22.5.1997, no: E.1996/3(SPK), K. 1997/3).

Apart from this, it is also accepted that some recently introduced constitutional norms shall have priority in application over previously introduced legal norms, as they are directly applicable. The Constitutional Court held that more detailed constitutional norms on the burden of proof, should be applied in lieu of those in Penal Code, (Decision of 3.6.1976, no:E. 1976/13, K. 1976/31). The same result can be reached by means of the 2001 constitutional amendments. For example, it can be concluded that legal regulations in contradiction with the Constitution, as is the case in Articles 19 and 40, lost their validity after 2001, since the first Article shortened custody periods and the latter required public authorities to indicate legal remedies and time limits in all official documents. It must be noted that those articles have

characteristics of direct applicability.

4.3. The methodology of revelation of legislative omission.

Describe the methodology of revelation of legislative omission in the constitutional jurisprudence: what methods and their combinations does the constitutional court apply while revealing legislative omission? How much importance falls upon grammatical, logical, historical, systemic, teleological or other methods of interpretation in stating the existence of legislative omission? Does the constitutional court, while investigating and assessing legislative omission, directly or indirectly refer to the case-law of the European Court of Human Rights, the European Court of Justice, other institutions of international justice and constitutional and supreme courts of other countries?

It can be said that no different method has been invented in this matter.

4.4. Additional measures.

Does the constitutional court, after having stated the existence of the legislative omission, and if it is related to the protection of the rights of the person, take any action in order to ensure such rights? If yes, what are these actions?

No additional measures

4.5. The constitutional court investigates legislative omission as an element of the investigation of the case of constitutional justice, but it does not assess its constitutionality.

Is a gap of in legal regulation (legislative omission) stated in the reasoning part of the ruling of the constitutional court and is the attention of the legislator (other subject of law-making) drawn to the necessity to fill in the gap (legislative omission); is an advice set forth to the legislator (other subject of law-making) on how to avoid such deficiencies of legal regulation (are there any specified criteria of a possible legal regulation and recommended deadlines for the adoption of the amendments)?

Does the constitutional court set forth in the reasoning part of its decision how the legal regulation is to be understood so that it would not include the legislative omission, by this essentially changing the existing legal regulation (actually by supplementing it)?

Does the constitutional court state the existence of legislative omission or other gap in the legal regulation in the reasoning part of its decision and does it specify that such inexistence of the legal regulation is to be filled in when courts of general jurisdiction apply the general principles of law? Does the constitutional court apply other models of assessment and filling in legislative omission?

If the legislative omission has been deemed by the Court as having characteristics of inequality or of violating other provisions of the Constitution, this is specified in the reasoning of the decision. In such a case, the Constitutional Court may decide on the date on which the annulment decision shall come into effect not exceeding one year. Thus, the attention of the legislative organ is drawn to the case. Apart from this, however, the Constitutional Court has no power to give information or recommendation to any state organs on how to fill in the legal gap. There is no other model of assessment applied by the Constitutional Court concerning this matter.

4.6. Assessment of legislative omission in the resolution of the constitutional court decision.

The constitutional court, after it has stated the existence of the legislative omission in the reasoning part of the decision, in the resolution of the decision performs the following:

- a) recognizes the law (other legal act) as being in conflict with the constitution;
- b) recognizes the provisions of the law (other legal act) as being in conflict with the constitution;
- c) leaves the act (provisions thereof) to be in effect and at the same time recognizes the failure to act by the legislator (other subject of law-making) as unconstitutional by specifying the time period in which, under the constitution, the obligatory legal regulation must be established;
- d) states the duty of the legislator (other subject of law-making) to fill in the legal gap (by specifying or without specifying the filling in of the legal gap);
- e) states the existence of a gap in the legal regulation and points out that it may be filled in by general or specialized courts;
- f) obligates courts of general jurisdiction and specialized courts to suspend the consideration of the

cases and not to apply the existing legal regulation until the legislator (other subject of law-making) fills in the gap;

g) states the existence of the gap in the legal regulation without drawing direct conclusions or establishing any assignments;

h) applies other models of assessment of legislative omission.

If the Constitutional Court finds that the legislative omission constitutes for instance inequality or against the principle of rule of law, it shall annul the impugned provision. If the Court deems it necessary, it may also decide on the date on which the annulment decision shall come into effect not exceeding one year, for the purpose of giving time to the legislator to fill in the gap.

4.7. The "related nature" investigation and decisions adopted.

What is typical for the "related nature" investigation carried out in the constitutional justice cases by the constitutional court which does not investigate the legislative omission? The peculiarities of decisions adopted in such cases, When answering this question, point out the constitutional justice cases with more typical examples.

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4.8. Means of the legal technique which are used by the constitutional court when it seeks to avoid the legal gaps which would appear because of the decision whereby the law or other legal act is recognized as being in conflict with the constitution.

What means of the legal technique are used by the constitutional court when it seeks to avoid the legal gaps which would appear because of the decision whereby the law or other legal act is recognized as being in conflict with the constitution? Postponement of the official publishing of the constitutional court decision. Establishment of a later date of the coming into force of the constitutional court decision. Statement by the constitutional court that the investigated act complies with the constitution temporarily, at the same time specifying that in case that the act is not amended till certain time, it will be in conflict with the constitution. Recognition of the act as being in conflict with the constitution due to the legislative omission, without removing such act from the legal system. interpretation of the act (provisions thereof) which complies with the constitution, in order to avoid the statement that the act (provisions thereof) is in conflict with the constitution due to the legislative omission. "Revival" of previously effective legal regulation. Other models of the decision are chosen (describe them).

Deciding on coming into effect on a later date of the decision of the Constitutional Court.

5. CONSEQUENCES OF THE STATEMENT OF THE EXISTENCE OF LEGISLATIVE OMISSION IN CONSTITUTIONAL COURT DECISIONS

5.1. Duties arising to the legislator.

Does the statement of the existence of legislative omission in a decision of the constitutional court mean a duty of the legislator to properly fill in such gap of legal regulation? Does the regulation of the parliament provide how the questions are considered concerning the implementation of the constitutional court decisions? Does the parliament promptly react to the decisions of the constitutional court, wherein the legislative omission is stated? Are there cases when the parliament disregarded the decisions of the constitutional court concerning the legislative omission? How is it ensured that the parliament would implement the duty which has appeared due to the decision of the constitutional court? What are the powers and role of the constitutional court in this sphere?

If the Constitutional Court annuls any legal provision because of the legislative omission or any other grounds, this does not mean that the task of the legislator on filling in the legal gap begins. However, it may take necessary measures in order to fill in the legal gap on its own initiative. In addition, the Constitutional Court, in specific

cases, may also decide on the date on which the annulment decision shall come into effect, in accordance with the 3rd and the 4th paragraphs of Article 153 of the Constitution. That date shall not exceed one year from the date of publication of the decision in the Official Gazette. In case of such postponement of the date on which an annulment decision is to come into effect, the Turkish Grand National Assembly shall debate and decide with priority on the draft bill or law proposal, designed to fill in the legal gap arising from the annulment decision.

In spite of this provision, there may be cases in which the legal gap was not or could not have been filled in within the given time by the legislature. In a such case, the annulment provision come into effect, regardless of consequences.

5.2. Duties arising to other subjects of law-making (for example, the Head of State, the Government). Does the statement the existence of legislative omission in a decision of the constitutional court mean the duty of other law-making subjects to properly fill in such gap of legal regulation? Do the acts regulating the activity of these subjects provide how the said subjects implement the constitutional court decisions? Do the said subjects promptly react to the decisions of the constitutional court, wherein the legislative omission is stated? Are there any cases when these subjects disregarded the decisions of the constitutional court concerning the legislative omission? How is it ensured that the said subjects would properly implement such duty? What are the powers and role of the constitutional court in this sphere?

In view of previous explanation, there is no regulation in this matter in our laws.

6. WHEN DRAWING CONCLUSIONS concerning the experience of the constitutional court of your state regarding consideration of cases by the Constitutional Court related to legislative omission, answer the following questions: is it possible to consider such investigations as an important activity of the constitutional court (explain why), does the constitutional court have sufficient legal Instruments of such investigation and how do the constitutional court decisions influence the process of law-making in such cases?

Note: If possible, present the statistical data about the considered cases related to legislative omission and their relation with other cases together with the national report.

Since individual complaint is not applicable in Turkey, it can not be said that the examinations concerning this matter constitutes an important workload on the Constitutional Court.