EXTENDED SUMMARY

This study discusses the case-law of the Turkish Constitutional Court regarding the right to strike of public servants. In this article, firstly, the concepts of "public servant" and "right to strike" are explained. While the legal classification of these individuals is defined by doctrine and legislation, especially the complexity of legislation in this regard makes it difficult to distinguish between statuses such as workers, public servants, and contracted officer.

In the second part of this article, the definition and scope of the right to strike is explained in comparison with the position of the right in the legal order of some other states. Accordingly, the right to strike can be characterized as an intertwined "double fundamental right" with both individual and collective characteristics. Our main purpose of writing the second section was to demonstrate that the right to strike has become an established norm in international human rights law, particularly through ILO conventions. Indeed, Türkiye has legally recognized the right to strike by accepting and ratifying the relevant ILO conventions.

Although Türkiye has ratified international human rights instruments guaranteeing the right to strike, it is difficult to say that the constitution and laws provide sufficient guarantees. The constitution recognizes the right to strike for private sector workers, but only the right to form and join trade unions is guaranteed for public servants.

The Constitutional Court has recognized the right to strike for public servants in its decisions on the subject. In doing so, it has also used ILO conventions and ECtHR judgments as norms. This preference is undoubtedly an important step for the protection and development of the right. However, the Court's failure to discuss the legal obstacles to public servants' right to strike, its silence on the lack of constitutional guarantees, and its preference to define the actions that unions characterize as "strikes" as "union activities aimed at making a voice heard" are all subject to criticism. Despite the positive decisions of the Constitutional Court, the exercise of the right to strike in Turkey is unfortunately fraught with difficulties, especially due to the limitations imposed by law.

The Constitution states that Türkiye is a state that respects and is based on human rights, and also includes a provision in Article 90 that international conventions on human rights shall prevail when they conflict with the law. However, since the laws in Turkish law explicitly prohibit the right to strike, hesitation arising both in the actions of the administration and in judicial decisions results in the application of prohibitive laws. To avoid this hesitation in practice, we have proposed two solutions. The first is to amend laws that conflict with international human rights norms to bring them into conformity with these conventions, and the second is to train and inform the legislative, administrative, and judicial bodies that when laws conflict with international human rights norms, they should interpret them in favor of human rights. Another solution, which could perhaps solve the issue on its own without the need for these two solutions, is, of course, the constitutional amendment explicitly guaranteeing the right to strike for public servants.

The Constitutional Court should fulfill its judicial duty to ensure that the right to strike for public servants is recognized as indisputable in domestic law. The Court should rely more on ILO conventions in its judgments, considering international standards. Not only the conventions but also the case law of ILO committees are norms. Therefore, the Constitutional Court should not only rely on the judgments of the ECtHR, but also on the jurisprudence and opinions of ILO committees. Furthermore, it would be very useful for the Court to use dynamic means such as a parliamentary appeal to ensure that the constitution and laws include clearer and stronger guarantees for the right to strike for public servants.