

Judicial Independence under Political Conflict:
An Empirical Investigation of Constitutional Review in Turkey

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Abstract

This paper examines constitutional review in Turkey. The aim is to empirically investigate the behavioral characteristics of constitutional review in a political setting under conflict and thus, to reveal the role and importance of the judiciary in this conflict. To this aim, we include political variables to our econometric model to assess the extent to which these factors influence judicial behavior. Using a unique data at the level of both judges and the court, we estimate a series of logit models under different scenarios. The findings are threefold. First, the Turkish Constitutional Court and judges are politicized. Second, constitutional review has an ideological bias. Three, the judiciary is not independent. We conclude that the judiciary is an important part of political conflict in Turkey.

Keywords: Judicial independence, constitutional review, political conflict, ideology, Turkey

JEL codes: K00

1. Introduction

Since the seminal study of Landes & Posner (1975), which defines judges, like other rational people, as maximizers of their own interests rather than public interest, researchers have intensively studied judicial independence (Boudreaux & Pritchard, 1994; Posner, 2005). It has been accepted that judicial independence cannot be examined by simply considering the judicial reversals of legal norms enacted by governments (Iaryczower et al., 2002; Franck, 2009; Garoupa et al., 2013). Judges are influenced by the factors such as ideology, better economic conditions and political conjecture in their decisions (Landes & Posner, 1975; Crain & Tollison, 1979; Segal & Cover, 1989; Boudreaux & Pritchard, 1994; Segal et al., 1995;

Iaryczower et al., 2002; Segal & Spaeth, 2002). For that reason, many studies have been done to reveal the determinants of judicial independence from political components to socio-demographic determinants. In those studies, constitutional review is extensively analyzed through the analysis of the decisions of constitutional court (Tate et al., 1989; Ramseyer & Rasmusen, 1997, 2003; Iaryczower et al., 2002; Franck, 2009; Garoupa et al., 2010).

Among others, Franck (2009) argues that *the politicians' ability to enforce political discipline on the court depends on the unification of the polity. When judges face strongly unified polities, they will not be able to express their political views of the law. Conversely, judges find it easier to express their political opinions when the polity is fragmented between opposing political parties.* As expressed by Iaryczower et al. (2002) *the central idea is that in environments where political fragmentation is the norm, the Judiciary is able to create a doctrine of judicial independence without fear of political reprisals. Similar attempts in a more unified political environment would generate political clashes, eventually limiting the Judiciary's power.* Moreover, Garoupa et al. (2013) claim that *constitutional courts are politicized and ideology explains judicial voting.* These approaches refer to the dependence of constitutional review on political setting. As a matter of fact, the empirical studies on judicial independence and constitutional review suggest that the political structure of a country impacts on the decisions of constitutional judges (Tate et al., 1989; Iaryczower et al. 2002; Fiorino et al., 2007; Amaral-Garcia et al., 2009; Brennan et al., 2009, Franck, 2009; Padovano, 2009; Garoupa et al., 2010; Garoupa et al., 2013, Fiorino et al., 2015).

We argue that the Turkish Constitutional Court (TCC) and its judges are not exempt from this tradition. Conversely, the TCC, as one of the most powerful representatives of the official state ideology in Turkey, has a strong ideological bias in its decisions. In this sense, it is one of the most influential players of unstable political structure in Turkey. Since, as elaborated below, political setting in Turkey has been unstable due to an ideological conflict among the

legislature, the executive, and the judiciary throughout the post-1982 Constitution period. Taking into account this institutional structure, we empirically investigate the decisions of the TCC at the level of both judges and the court in order to reveal the determinants of constitutional review in Turkey. To this aim, we use two unique datasets including the individual decisions of judges and the rulings of the court between 1984 and 2014 in order to attain more robust results. We analyze these datasets through two main models under various scenarios using a series of logit models. Because this estimation strategy enables us to compare the effects of different political determinants such as government structure, the ideologies of political parties, and the President, we believe that the paper introduces more reliable results. The rest of the paper is as follows. Section 2 presents an analysis of the relationship among constitutional review, political structure, and ideology in Turkey. Section 3 describes datasets and estimation methodology and provides the results obtained. Section 4 concludes.

2. Constitutional review, political setting, and ideology in Turkey

Established by the Constitution of 1961, which was an aftermath of the military coup initiated in 1960, the TCC was designed and defined as the guardian of the fundamental values and interests of the state elites and their Kemalist ideology¹ (Ozbudun, 2006; 2011). Another military coup, which was carried out on September 12, 1980, led to the Constitution of 1982. The Constitution of 1982, which was also established by the military elites of the Kemalist ideology, was stricter and more authoritarian than the Constitution of 1961 in terms of the power of state, social rights, and participatory democracy (Ozbudun, 2012). It did not change the discretions of the TCC. Conversely, the TCC was clearly designed as one of the main

¹ The Kemalist ideology, which has been the official ideology of the Turkish republic since the 1930s (Özyürek, 2004), refers to the principles such as etatism, nationalism, and a strict secularism designed by Mustafa Kemal Atatürk (the founder of the Republic of Turkey) in the 1920s. Because these principles are protected through many provisions of the Constitution of 1982 as in the previous constitutions, the Kemalist ideology is called the official state ideology of Turkey and is protected by the state elites consisting of tutelage members of military and administrative bureaucracy (Ozbudun, 2009; 2011). Following this approach, we use the Kemalist ideology and the official state ideology in the same meaning in this paper.

institutional structures, which will protect the Kemalist ideology. As a result, the Constitution of 1982 and the TCC, which strongly represent the statist and conservative Kemalist ideology and its tutelary mentality, have led to a deep conflict and incompatibility in political arena against the policies of governments representing the majority of the society² (Ozbudun, 2006; 2009; 2011).

A distinctive feature of the post-82 political setting in Turkey is that it mainly consists of three periods in terms of government structures. As seen in Table 1, the first period is the sole party governments of ANAP (Motherland Party), which had been in power between 1983 and 1991. The second period is the coalition governments between 1991 and 2002. The third period is the sole party governments of AKP (The Justice and Development Party), which have been in force since 2002. If we assess those three periods, it is possible to say that the right-wing/liberal governments³ have dominated political setting in Turkey, because all of them mainly followed the neo-liberal policies, which are consistent with liberal democracy, such as liberalization, privatization, deregulation, civilization, and liberty. In other words, legal norms such laws and law-decrees enacted in the post-82 political structure have mainly been in a conflict with the Kemalist ideology. On the other hand, the military regime of the 1980 coup, which predicted that such a political structure would exist, established a strong presidency system as a control mechanism on governments. The President had the right to appoint all eleven regular and four substitute members of the TCC until a constitutional

² According to Ozbudun (2006), this attitude can most clearly be observed in the party prohibition cases. The Constitutional Court has consistently closed down Islamist and ethnic Kurdish political parties through a rigid interpretation of the Constitution and the law on political parties. Thus, it has given absolute priority to protecting the national and unitary state, and the principle of secularism, the two basic pillars of the Kemalist system of thought. This attitude of the TCC is defined as an “ideology-based” paradigm in contrast to a “rights-based” paradigm.

³ In this paper, right-wing refers to the neo-liberal and/or the non-Kemalist ideology including liberalization, privatization, deregulation, democratization, pluralistic democracy, and a non-strict secularism because governments, which pursuit these policies, are called right-wing, neo-liberal, and the non-Kemalist in Turkey. Conversely, governments, which follow the Kemalist ideology, are called left-wing. At this point, even though it can be argued that the recent AKP government is not included in this classification, our analysis does not cover this term.

amendment in 2010⁴ and there was no restriction in the term of office of judges until another constitutional amendment in 2010. Also, the first President in the post-82 period was Kenan Evren, the Chief of General Staff, who carried out the 1980 military intervention, for a period of seven years. Table 1 presents information about the Presidents and their ideologies. Thus, the Constitution of 1982 designed a court that is extremely open to the influence of the statist elites of the Kemalist ideology rather than the political elites of elected governments (Ozbudun, 2006).

⁴ The TCC has been amended eighteen times since 1987 and these amendments have aimed to make the Constitution more democratic and liberal (Topukcu, 2015; Metin & Gelbal, 2008). The amendment of 2010 has had important consequences in respect to the TCC. By this amendment, the number of members increased to seventeen as regular members without substitute. Whereas the President currently appoints fifteen of them, the Assembly appoints the other three members.

Table 1: Presidents and governments

President	Period	Ideology	Governments	Period	Ideology	Government structures
K. Evren	(1982-1989)	Kemalist	ANAP	(1983-1991)	Right-wing	One party
T. Özal	(1989-1993)	Right-wing	DYP	(1991-1996)	Right-wing	Coalition
H. Cindoruk*	(1993)	-	ANAP	(1996)	Right-wing	Coalition
S. Demirel**	(1993-2000)	Kemalist	RP	(1996-1997)	Right-wing	Coalition
A. N. Sezer	(2000-2007)	Kemalist	ANAP	(1997-1999)	Right-wing	Coalition
A. Gül	(2007-2014)	Right-wing	DSP***	(1999-2002)	Undefined	Coalition
R. T. Erdoğan	(2014-...)	Right-wing	AKP	(2002-...)	Right-wing	One party

*We do not include Cindoruk in our analysis, because he was the President of a transition period for one month in 1993.

**Even though S. Demirel is a right-wing politician, following Icener (2010), Narli (2000) and Bora (2000), we define Demirel as Kemalist, because he acted as the President who has the Kemalist ideology in his Presidency term⁵.

***Although it is possible to define the coalition government of DSP as a left-wing government because the Prime Minister was Bulent Ecevit, who is a left-wing politician, we accept this term undefined because this government consisted of MHP (Nationalist Party) and ANAP and it stayed in power only three years between 1999 and 2002.

⁵ Bora (2000) defines Demirel as the representative of right-wing Kemalism.

This institutional structure has inevitably led to a conflict between legal and political bodies because governments have initiated the neoliberal policies under a statist and conservative constitutional setting during the post-1982 period. With the first democratic elections carried out in 1983 after the military coup in 1980, the Ozal government initiated the first neo-liberal policies. Ozal put liberalization to the forefront in setting economic policies (Çetin & Yilmaz, 2010; Çetin & Oguz, 2011). The subsequent coalition governments followed these neo-liberal policies. However, those policies did not obtain a relaxation in the traditional state structure dominated by the Kemalist ideology. Instead, the legal and bureaucratic organs of the Kemalist ideology resisted this change. In fact, the resistance of judicial branch to the neo-liberal policies had continued in the first years of the 2000s even though the AKP of Erdogan came to power as a sole party government in 2002 (Çetin, 2010), because the AKP governments did not start to change judges of the TCC yet. Figure 1 depicts the decisions of the TCC for the unconstitutionality of laws filed by year. It shows that the TCC clearly responded to the requests of petitioners until the structure of judge profile changed in the beginning of the 2000s.

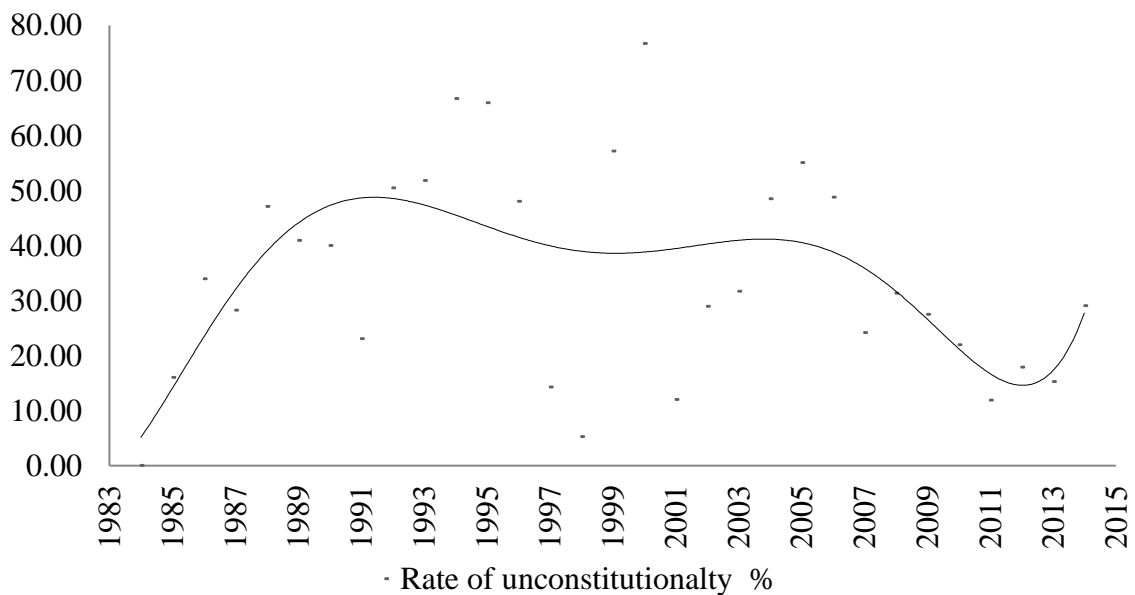


Figure 1. Distribution of the rulings for the unconstitutionality by year

Figure 1 also shows the occurrence of a remarkable change in the rulings of the court in favor of the constitutionality of laws under review as of the 2000s. Note that this change occurs even though the number of cases filed in the TCC dramatically increases in the same term, as depicted in Figure 2. More interestingly, the main opposition party was the CHP (Republican People's Party) of the Kemalist ideology established by Ataturk. CHP has been quite eager to use the right to litigate for the constitutional review of many laws during the post-2002 period⁶. However, the rate of decisions of the TCC for the unconstitutionality of laws during the 2000s is remarkably less than the pre-2002 period, as illustrated in Figure 1, even though the number of laws under review is considerably more than the cases in the 1980s and 1990s, as shown in Figure 2. Also, note that this attitude of the TCC existed under the same constitution.

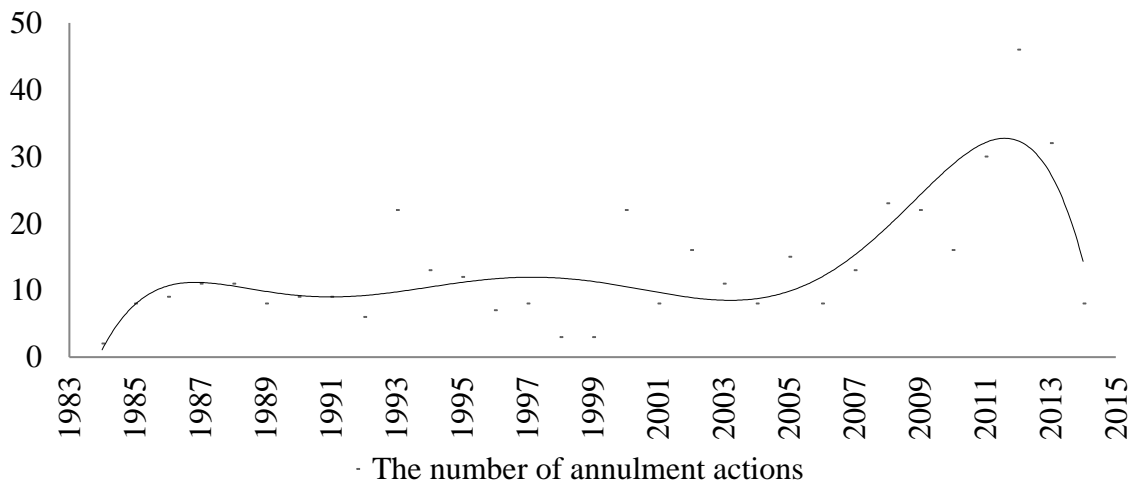


Figure 2. The number of annulment actions by year

This radical change in the behavior of constitutional review stems from the change in the judge profile of the TCC. In order to illustrate this change, we depict Figure 3 as per the rate of judges appointed by the Kemalist and the right-wing Presidents in the reviews carried out by judges. The rate of judges appointed by the Kemalist Presidents had been higher than that of judges appointed by the right-wing Presidents until the 2000s. As of 2008, the rate of right-

⁶ CHP filed 217 of the total 248 cases in the post-2002 period.

wing judges starts to exceed the rate of judges appointed by the Kemalist Presidents. In particular, the profile of judges considerably changes when the President Gul is in power. The rate of judges appointed by the Kemalist Presidents considerably declines associated with to the radical increase in the number of judges appointed by Gul. This change in the Turkish constitutional review suggests that the attitude of judges refers to ideological bias rather than judicial independence.

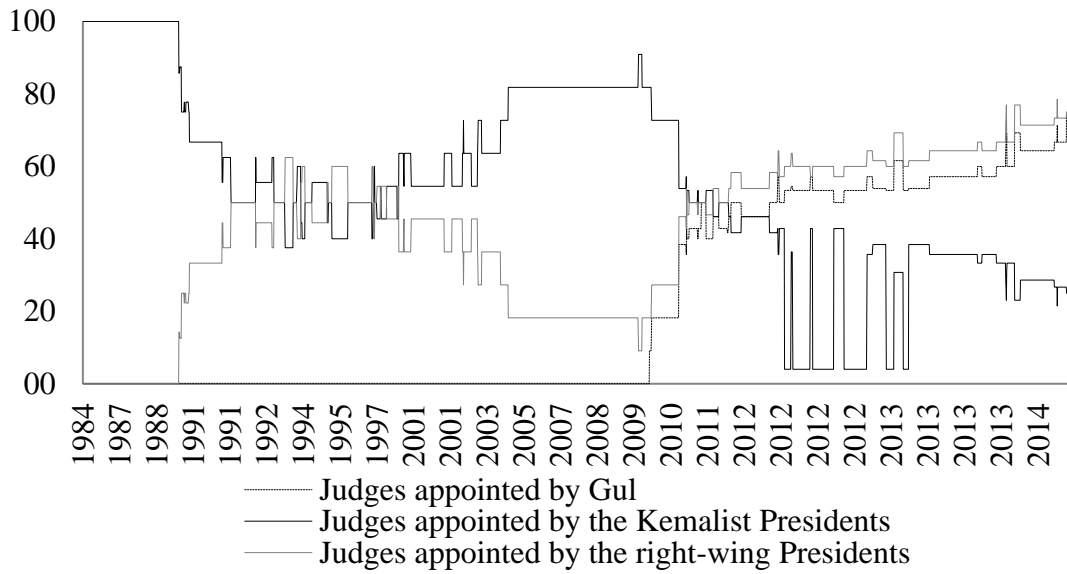


Figure 3. The change in the profile of judges by year

3. Empirical analysis

In order to empirically investigate the relationships between constitutional review and political structure under conflict, we include variables representing the aforementioned political components into our econometric model. Thus, we aim to reveal ideological tendency, independence, and politicization in the Turkish constitutional review.

3.1. Data and methodology

We use two different datasets constructed by us, including 419 annulment actions between 1984⁷ and 2014. An action can include more than one decision. This is because each petition

⁷ We analyzed the annulment actions after 1984 because the first democratic election was held on November 6, 1983 and the TCC started to review the constitutionality of laws again after this date.

might challenge more than one article of the same law and each article has to be reviewed according to the constitution. The first dataset (*dataset1*) includes the vote of each judge at every voting for articles and consists of 31.556 votes. The second dataset (*dataset2*) consists of 2.439 rulings of the court. Variables in Table 2, which are extracted from *dataset1*, allow us to investigate the judicial decision-making process at the level of judge, whereas the ones in Table 3, which are obtained from *dataset2*, enable an analysis of constitutional review at the level of the TCC. Also, note that we use the number of judges appointed by the President in *dataset2* because we analyze decisions at the level of the court by this dataset, while the characterization of each judge appointed by the President is used in *dataset1*. As a matter of fact, we obtained more significant results using those variables in Model 1 instead of using the form of these variables as in Model 2. Data regarding all the variables were gathered from the web site of the TCC.

Table 2. List of variables in Model 1 (*dataset1*)

Dependent variable	
Vote_of_judge	=1, if law/article is rescinded by judge; = 0 otherwise
Explanatory variables	
Polity	
Gov_structure	=1, if government consists of one party at the time of decision; = 0 otherwise
Gov_right	=1, if government is right-wing at the time of decision; = 0 otherwise
Oppos_assembly	percentage of opposition in the Assembly at the time of decision
Leg_right	=1, if law was legislated by right-wing party; = 0 otherwise
Presidency	
Petit_president	=1, if the petitioner is the President; = 0 otherwise
President_right	=1, if the President is right-wing at the time of decision; = 0 otherwise
President_ag	=1, if judge was appointed by the President Abdullah Gul; = 0 otherwise
President_ans	=1, if judge was appointed by the President Ahmet Necdet Sezer; = 0 otherwise
President_sd	=1, if judge was appointed by the President Suleyman Demirel; = 0 otherwise
President_to	=1, if judge was appointed by the President Turgut Ozal; = 0 otherwise
President_ke	=1, if judge was appointed by the President Kenan Evren; = 0 otherwise

Table 3. List of variables in Model 2 (*dataset2*)

Dependent variable	
The_ruling_of_the_TCC	=1, if law/article is rescinded by the TCC; = 0 otherwise
Explanatory variables	
Polity	
Gov_structure	=1, if government consists of one party at the time of decision; = 0 otherwise
Gov_right	=1, if government is right-wing at the time of decision; = 0 otherwise
Oppos_assembly	percentage of opposition in the Assembly at the time of decision
Leg_right	=1, if law was legislated by right-wing party; = 0 otherwise
Presidency	
Petit_president	=1, if the petitioner is the President; = 0 otherwise
President_right	=1, if the President is right-wing at the time of decision; = 0 otherwise
President_gul	number of judges appointed by the President Abdullah Gul
President_sezer	number of judges appointed by the President Ahmet Necdet Sezer
President_demirel	number of judges appointed by the President Suleyman Demirel
President_ozal	number of judges appointed by the President Turgut Ozal
President_evren	number of judges appointed by the President Kenan Evren

In order to test the political determinants of judicial independence, we regress the judges' vote and the ruling of the TCC on the political variables in Tables 2 and 3. The characterization of dependent variables enables us to empirically investigate which political variables influence the vote of judges and the court's ruling. Accordingly, in both analyses, the dependent variable takes the value of 1 if law is rescinded by judges or the court, and zero otherwise. In other words, if the dependent variable is 1, the law under review is declared unconstitutional by judge and/or the court. If the dependent variable takes the value 0, the law under review is compatible with the Constitution of 1982. Taking into consideration the main components of political structure in Turkey, we constitute 11 explanatory variables in both models. The characterization of those variables is summarized in Tables 2 and 3. Note that we examine the effect of those variables in two groups: Polity and Presidency. As we clarified above, two main components of the political institutional setting or executive branch in Turkey are governments and the Presidents. The variables under Polity in Tables 2 and 3 represent the effect of governmental factors on the dependent variables, whereas the variables under Presidency refer to the relationship between the Presidents and constitutional review. We also use this classification as a specification strategy to estimate models under different scenarios below. Tables 4 and 5 report descriptive statistics for *dataset1* and *dataset2*, respectively.

Table 4. Descriptive statistics for Model 1

Variable	Obs	Mean	Std.	Min	Max
Vote_of_judge	31556	0.30552	0.4606348	0	1
Gov_structure	31556	0.801654	0.3987603	0	1
Gov_right	31556	0.936557	0.2437615	0	1
Oppos_assembly	31556	39.65151	4.113087	34.00	61.09
Leg_right	31556	0.919477	0.2721063	0	1
Petit_president	31556	0.021993	0.1466617	0	1
President_right	31556	0.763405	0.4249984	0	1
President_ag	31556	0.236088	0.4246838	0	1
President_ans	31556	0.264926	0.4413007	0	1
President_sd	31556	0.094689	0.2927893	0	1
President_to	31556	0.162853	0.3692377	0	1
President_ke	31556	0.084833	0.2786379	0	1

Because we have a binary output in the form of the judges' vote or the ruling of the TCC, we model the conditional probability $\Pr(\text{vote/ruling} = 1|x) = p(x)$ as a function of x . Since the unknown parameters in the function can be estimated by maximum likelihood, we estimate the appropriate logit models. We interpret the signs of coefficients estimated in these models to explain the relationships among variables.

Table 5. Descriptive statistics for Model 2

Variable	Obs	Mean	Std.	Min	Max
The_ruling_of_the_TCC	2439	0.2935629	0.4554874	0	1
Gov_structure	2439	0.7667077	0.4230135	0	1
Gov_right	2439	0.9253793	0.2628323	0	1
Oppos_assembly	2439	39.53649	4.430121	34.00	61.09
Leg_right	2439	0.9052891	0.2928753	0	1
Petit_president	2439	0.0254203	0.1574301	0	1
President_right	2439	0.7232472	0.4474849	0	1
President_gul	2439	3.051661	3.746778	0	10
President_sezer	2439	3.430914	2.866321	0	9
President_demirel	2439	1.225092	1.545247	0	6
President_ozal	2439	2.110701	1.710139	0	6
President_evren	2439	1.095531	1.786232	0	6

3.2. Results

Table 6 reports the results of the regressions (Model 1) run on *dataset1* including the judges' vote as the dependent variable, while Table 7 shows the results of the regressions (Model 2) carried out on *dataset2* including the rulings of the TCC as the dependent variable⁸. In both models, we run separate regressions under three different scenarios. Under the first scenario, we analyze the relationships between constitutional review and governmental factors. For that reason, we call this scenario Polity. Under the second scenario called the Presidency, we examine the interaction between constitutional review and the Presidents. Under the third scenario, we include the variables used in the previous scenarios in the models to be estimated

⁸ To avoid an unnecessary iteration of the results' interpretation, we evaluate the findings from both models at the same time.

to reveal if a change will occur in the results when we analyze all these variables in the same models. Thus, we aim to attain more reliable and significant findings. As a matter of fact, the results in both tables are statistically significant and show strong evidence of the judicial behavior in Turkey.

3.2.1. The relationship between the judiciary and the polity

The sign of coefficients for the variable *Gov_structure* is negative and strongly robust at any specification under all the scenarios in both models. As expressed in Tables 2 and 3, *Gov_structure* takes the value 1, if government consists of one party at the time of decision making of judges and the court and equals 0 otherwise. Because there is a negative relationship between decision and *Gov_structure*, in the presence of the sole-party government, judges and the court reject the review case. Conversely, the laws under review are rescinded in the existence of coalition governments. This finding is consistent with the polity in Turkey and the literature showing that constitutional judges mostly rescind laws when the polity was divided (Franck, 2009; Garoupa et al., 2013). The Turkish constitutional review is not independent from political setting.

However, taking into account this finding, one can only argue that constitutional review is independent during the coalition governments while it is not independent under the sole-party governments. Note that the TCC and its judges consistently annulled the laws under review during the short-termed coalition governments in the 1990s, while they rejected the cases reviewed under the sole party governments in the 2000s. Also, note that the review cases filed in the TCC in both terms intensively consisted of the neo-liberal policies of right-wing governments. For instance, the TCC had been annulled the laws regarding the privatization of state-owned assets in public utilities industries such as energy,

telecommunications, and transportation during the coalition governments in the 1990s⁹. On the other hand, the same policies and laws have been seen constitutional by the TCC judges during the AKP governments.

The reason for this change in constitutional review is the change in the structure of the TCC or the profile of judges. As discussed above, the AKP governments almost completely changed the structure of the court and its members. In fact, the AKP governments changed the profile of the court with the Kemalist members and this change led to the dependence of constitutional review on the sole party governments in the 2000s. That is, the constitutional review process protected the statist values of the Kemalist ideology until the 2000s and then, the non-Kemalist policies of the AKP governments during the 2000s. For that reason, this finding refers to more than judicial independence. This suggests the presence of ideological bias in the Turkish constitutional review, but not only dependence on the polity, because this change in the judiciary has occurred under the Constitution of 1982.

⁹ See for more information Çetin & Yilmaz (2010) and Çetin & Oguz (2011).

Table 6. Results from Model 1

	<i>Scenario 1: Polity</i>				<i>Scenario 2: Presidency</i>			<i>Scenario 3: Overall</i>		
	I	II	III	IV	I	II	III	I	II	III
<i>Vote of judge</i>										
<i>Gov_structure</i>	-.448*** (.035)	-.734*** (.039)	-1.224*** (.049)	-1.256*** (.049)				-1.507*** (.039)		-1.226*** (.054)
<i>Gov_right</i>		.954*** (.061)	1.438*** (.067)	.872*** (.084)				1.040*** (.084)		.829*** (.084)
<i>Oppos_assembly</i>			-.157*** (.008)	-.183*** (.009)				-.176*** (.009)		-.183*** (.009)
<i>Leg_right</i>				.756*** (.076)				1.115*** (.077)		.762*** (.087)
<i>Petit_president</i>					1.043*** (.077)	.965*** (.076)		.616*** (.088)	.833*** (.079)	.701*** (.090)
<i>President_right</i>						-.403*** (.027)		-.631*** (.038)	-.032 (.039)	-.009*** (.058)
<i>President_ag</i>	-.738*** (.044)	-.705*** (.044)	-.659*** (.045)	-.647*** (.045)			-.804*** (.439)		-.775*** (.044)	-.628*** (.045)

Table 6. (continued)

<i>Vote of judge</i>	<i>Scenario 1: Polity</i>				<i>Scenario 2: Presidency</i>			<i>Scenario 3: Overall</i>		
	I	II	III	IV	I	II	III	I	II	III
<i>President_ans</i>	.136*** (.038)	.186*** (.039)	.071* (.039)	.080** (.040)			.082* (.038)		.101*** (.038)	.089*** (.040)
<i>President_sd</i>	.253*** (.051)	.400*** (.052)	.162*** (.053)	.245*** (.054)			.416*** (.048)		.4390*** (.051)	.257*** (.054)
<i>President_to</i>	-.044 (.044)	-.013 (.044)	-.228*** (.045)	-.191*** (.045)			.132*** (.042)		.144*** (.044)	-.182* (.046)
<i>President_ke</i>	.607*** (.050)	.532*** (.051)	.311*** (.053)	.286*** (.053)			.747*** (.049)		.743*** (.049)	.289*** (.053)
Constant	-.437*** (.043)	-1.139*** (.063)	-.412*** (.074)	-.4548*** (.074)	-.847*** (.012)	-.542*** (.024)	-.821*** (.080)	-.403*** (.057)	-.851*** (.031)	-.469*** (.097)
Observations	31556	31556	31556	31556	31556	31516	31556	31556	31516	31516
Pseudo R ²	0.037	0.044	0.053	0.056	0.004	0.009	0.033	0.052	0.036	0.058
Log-likelihood	-18691	-18560	-18380	-18333	-19331	-19229	-18772	-18405	-18716	-18295

Table 6. (continued)

<i>Vote of judge</i>	<i>Scenario 1: Polity</i>				<i>Scenario 2: Presidency</i>			<i>Scenario 3: Overall</i>		
	I	II	III	IV	I	II	III	I	II	III
Wald (X^2)	1343.95	1574.78	1892.59	1960.54	182.33	397.03	1180.66	1466.30	1277.93	1989.80
Probability > Wald (X^2)	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000

Now, we will assess the results from the variables *Gov_right* and *Leg_right* in both models, which represent the ideologies of governments and legislators, respectively. *Gov_right* takes 1, if government is right-wing at the time of decision making of judges and the court and equals 0 otherwise, while *Leg_right* takes the value 1 for the laws legislated by a right-wing government and equals 0 otherwise. The coefficients for both *Gov_right* and *Leg_right* have a positive sign and are statistically significant in all the models in both tables. Accordingly, when a right-wing government is in power or enacts the law to be reviewed, the likelihood that constitutional review rescinds the laws under review increases. Both findings suggest that constitutional review interprets that the policies of right-wing governments are inconsistent with the Constitution of 1982. Both judges and the TCC strongly respond to the cases filed for the unconstitutionality of legislative actions of right-wing governments and assess their policies unconstitutional.

Oppos_assembly represents the percentage of opposition in the Assembly. It has a negative sign and statistically significant in all the models. When the power of opposition parties in the parliament increases, constitutional review rejects the petition. Even though this finding is not compatible with the literature, the other findings from the regressions run on the scenarios under Polity in both models are compatible with the previous literature.

Table 7. Results from Model 2

<i>The ruling of the TCC</i>	<i>Scenario 1: Polity</i>				<i>Scenario 2: Presidency</i>			<i>Scenario 3: Overall</i>		
	I	II	III	IV	I	II	III	I	II	III
<i>Gov_structure</i>	-.861*** (.228)	-1.260*** (.236)	-2.628*** (.325)	-2.521*** (.323)				-1.778*** (.140)		-2.37*** (.330)
<i>Gov_right</i>		1.18*** (.237)	2.133*** (.289)	1.563*** (.332)				1.189*** (.275)		1.475*** (.329)
<i>Oppos_assembly</i>			-.268*** (.044)	-.292*** (.046)				-.186*** (.030)		-.247*** (.053)
<i>Leg_right</i>				.850*** (.311)				1.105*** (.252)		.940*** (.309)
<i>Petit_president</i>					1.035*** (.258)	.973*** (.254)		.598** (.302)	.740*** (.262)	.599* (.310)
<i>President_right</i>						-.398*** (.096)		-.724*** (.131)	-.326** (.172)	-.370 (.236)
<i>President_gul</i>	-.046** (.020)	-.051** (.020)	-.061*** (.021)	-.063*** (.021)			-.044** (.020)		-.006 (.026)	-.020* (.031)

Table 7. (continued)

<i>The ruling of the TCC</i>	<i>Scenario 1: Polity</i>				<i>Scenario 2: Presidency</i>			<i>Scenario 3: Overall</i>		
	I	II	III	IV	I	II	III	I	II	III
<i>President_sezer</i>	.095*** (.032)	.080** (.032)	-.056 (.038)	-.083** (.040)			.043 (.029)		.072** (.032)	-.033* (.050)
<i>President_demirel</i>	.167*** (.058)	.271*** (.064)	.068 (.071)	.092 (.071)			.145** (.058)		.110* (.064)	.102 (.071)
<i>President_ozal</i>	-.138** (.059)	-.216*** (.062)	-.359 (.066)	-.336 (.065)***			.028 (.040)		.099* (.055)	-.251 (.081)
<i>President_evren</i>	.276*** (.063)	.241*** (.062)	-.056 (.076)	-.093 (.078)			.240*** (.061)		.285*** (.064)	-.002*** (.094)
Constant	-.675*** (.325)	-1.330*** (.352)	1.380 (.542)	1.224** (.544)	-.908*** (.045)	-.624*** (.081)	-1.442*** (.254)	-.362* (.192)	-1.60*** (.260)	.568 (.656)
Observations	2439	2439	2439	2439	2439	2439	2439	2439	2439	2439
Pseudo R^2	0.046	0.055	0.069	0.072	0.005	0.011	0.041	0.070	0.045	0.075
Log-likelihood	-1407	-1394	-1373	-1369	-1468	-1460	-1415	-1371	-1409	-1365

Table 7. (*continued*)

<i>The ruling of the TCC</i>	<i>Scenario 1: Polity</i>				<i>Scenario 2: Presidency</i>			<i>Scenario 3: Overall</i>		
	I	II	III	IV	I	II	III	I	II	III
Wald (X^2)	126.89	147.43	192.56	200.64	16.10	33.57	113.43	198.18	127.19	206.71
Probability > Wald (X^2)	0.000	0.000	0.000	0.000	0.0001	0.000	0.000	0.000	0.000	0.000

3.2.2. *The relationship between the judiciary and the Presidency*

In this section, we examine the relationship between constitutional review and the Presidency because the Presidents are actors, which have played a crucial role in the political conflict in Turkey. To this aim, we constructed two main variables: *Petit_president* and *President_right*. These variables directly enable us to measure the relationship between the constitutional review process and the Presidents. In addition, using the separate variables for judges appointed by the Presidents Kenan Evren, Turgut Ozal, Suleyman Demirel, Ahmet N. Sezer, and Abdullah Gul¹⁰, we directly aim to estimate the response of constitutional review to the ideology of the President.

Petit_president takes the value of 1, if the petitioner is the President and equals 0 otherwise. Coefficients for the variable have a positive and statistically significant sign in all the models, even though the significance levels are lower under some scenarios in Model 2. Accordingly, when the President files the petition, the likelihood that judges and the court vote in favor of the President increases. This result confirms the loyalty to the appointer and consistent with the literature (Salzberger & Fenn, 1999; Garoupa et al., 2010; 2013). Moreover, this finding confirms the ideological tendency in the Turkish constitutional review. However, paying attention to the Presidents Ozal, Gul and Erdogan, one can argue that this finding does not refer to an ideological behavior for the judiciary in Turkey, because they are not Kemalist. This is not true since Ozal filed only two cases while Gul and Erdogan filed no petition. This is because Gul and Erdogan, as the Presidents during the AKP governments, are affiliated with the AKP. For that reason, the results from this variable mainly measure the response of constitutional review to the

¹⁰ We did not include the President R. T. Erdogan in the model because he became the President on August 2014.

Kemalist Presidents and are consistent with both the literature and political structure in Turkey. In other words, constitutional review mostly responded to the petitions of the Kemalist Presidents and annulled the laws filed by these Presidents. This result confirms the loyalty of the Kemalist judges to the Kemalist presidents and the ideological bias in their decisions.

President_right takes the value of 1 if the President is right-wing at the time of decision and equals 0 otherwise. The results from both tables are statistically significant and as expected. The negative sign of coefficients for this variable confirms that constitutional review rejects the review case if the President has the right-wing character at the time of decision. At the same time, this result confirms that judges and the TCC annul the laws under review for unconstitutionality when the Kemalist Presidents are in power at the time of decision. These finding clearly suggests the behavioral features of the Turkish constitutional review. First, it confirms to the loyalty of constitutional review to the President. Second, both judges and the court have an ideological and political bias in the constitutional review process. Note that judges essentially approved the constitutionality of laws passed by the right-wing governments under the right-wing Presidents Gul, Erdogan, and Ozal while they rescinded the laws enacted by the right-wing governments under the Kemalist Presidents Evren, Demirel, and Sezer.

As shown in Table 1, the sole party governments of ANAP and AKP and the coalition government of DYP were in power when the Presidents were Ozal, Gul, and Erdogan. Because the negative sign of coefficients for the variable *President_right* suggests that constitutional review rejects the review case when the President is right-wing at the time of decision, the Turkish constitutional review has a right-wing

ideological bias in its decisions under the right-wing political setting. This is particularly evident in the 2000s. As depicted in Figure 3, the number of judges appointed by the right-wing Presidents dramatically increases after Gul became the Presidency in 2007. When we evaluate the above finding along with this change in the judge profile of the TCC, it is clear that the judges appointed by the AKP governments essentially reject the cases filed for the unconstitutionality of the laws enacted the AKP governments. Also, note that the most of the laws reviewed by the TCC was filed by the CHP, as expressed before.

Moreover, the results from the variable *President_right* also confirm the reverse. That is, the Turkish constitutional review annulled the laws enacted by the right-wing governments in the presence of the Kemalist Presidents Evren, Demirel, and Sezer. However, when we evaluate this finding along with the change in the profile of judges illustrated in Figure 1, it is more evident that the judges appointed by the Kemalist Presidents declared unconstitutional the laws passed by the right-wing governments in fact, when the Presidents who appointed these judges were in power. These findings refer to the political and ideological behavior rather than judicial independence in the Turkish constitutional review.

The results from the variables that represent each judge (in Model 1) and the number of judges (in Model 2) appointed by the Presidents corroborate to the findings regarding the variables *Petit_president* and *President_right*. In particular, the results in Model 1 are more significant and as expected, because the signs of coefficients for the variables *Gul* and *Ozal* are negative and the signs for the variables for Sezer, Demirel, and Evren are positive. The results from Model 2 are also similar with some exceptions in terms of

significance levels and the signs of coefficients. Thus, the results in both models confirm that the likelihood that judges vote in favor of the unconstitutionality of law under review increases when they are appointed by the Kemalist Presidents, and vice versa. Accordingly, the judges appointed by the Presidents Ozal and Gul reject the petition filed and thus declare constitutional the laws of right-wing governments. Conversely, the judges appointed by the Kemalist Presidents Evren, Sezer, and Demirel rescind the laws under review and thus, declared the policies of right-wing governments unconstitutional. Note that the judges that Ozal appointed rejected the petitions even though they were in office during the same period with the judges appointed by the Kemalist Presidents Evren, Demirel, and Sezer and these judges voted for the unconstitutionality of the same laws according to the findings from these variables.

3.2.3. The relationship between the judiciary and all the political variables

Lastly, we evaluate the results from the regressions under scenario 3. Because the results in both models are mostly significant and as expected, they are consistent with the findings from the previous models. This also suggests that our model specifications and results are reliable and significant.

4. Conclusion

Our findings are mainly threefold. First, both judges and the TCC in Turkey are politicized. Second, constitutional review in Turkey is ideological. Third, the judiciary in Turkey is not independent. Constitutional review is a political apparatus, because it strongly responds to the political components at the level of both judges and the court. Judges have the loyalty to their appointer in their decisions. When the Kemalist Presidents are in power or when those Presidents appoint judges, these judges annul the

laws passed by the right-wing governments. Similarly, when the right-wing Presidents are in power or when they appoint judges, those judges reject the petitions for the unconstitutionality of laws that a right-wing government enacted.

However, the attitude of constitutional review regarding the loyalty of judges to the appointer is not only about the politicization of the judiciary in Turkey. Rather, this attitude is ideological. The findings confirm that the Kemalist judges declare the laws of right-governments unconstitutional, while judges who are affiliated with the right-wing political components legitimate the constitutionality of laws including the neo-liberal policies of right-wing governments. Note that the Constitution of 1982 is still in force. Even though many constitutional amendments have been carried out, the main principles of Kemalist ideology have remained unchanged so far. Under the same constitution, the differing behaviors of both judges and the court represent an ideological bias in the Turkish constitutional review.

Lastly, the behavioral features of judges and the TCC suggest that the judiciary in Turkey is not independent. Judges and the court prioritize their political and ideological opinions rather than legal arguments in interpreting the constitutionality of legislative action. Constitutional review has been a political tool by backing up the Kemalist ideology until the beginnings of the 2000s and the sole party governments of AKP during the 2000s. As such, constitutional review is one of the principal factors of political conflict in Turkey. Even though the main problem in this political conflict in Turkey is the Constitution of 1982, this does not change the fact that judges and the TCC is part of this conflict.

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