

An Empirical Investigation of Constitutional Review in Turkey

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1. Introduction

It has been accepted that judicial independence cannot be examined by simply considering the judicial reversals of legal norms enacted by governments. Judges are influenced by the factors such as ideology, better economic conditions and political conjecture in their decisions. 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. I 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, I empirically investigate the decisions of the TCC in order to reveal the determinants of constitutional review and to predict judge behaviors in the future in Turkey. To this aim, I use unique dataset including the individual decisions of judges between 1984 and 2014. I analyze data through different models under various scenarios using a series of logit models. 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 in addition some other control variables from socio-demographic features to economic ones.

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. 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. It did not change the discretions of the TCC. Conversely, the TCC was clearly designed as one of the main 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

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.

led to a deep conflict and incompatibility in political arena against the policies of governments representing the majority of the society (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 I assess those three periods, it is possible to say that the right-wing/liberal governments 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 amendment in 2010 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).

Table 1: Presidents and governments

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

*I 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), I define as the President who has the Kemalist ideology in his Presidency term.

***Although it is possible to define the coalition government of DSP as a left-wing government because the Prime Minister was a left-wing politician, I accept this term undefined because this government consisted of MHP (Nationalist Party) and ANAP (True Path Party) between 1999 and 2002.

Figure 1 depicts the votes of judges 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 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 period². 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.

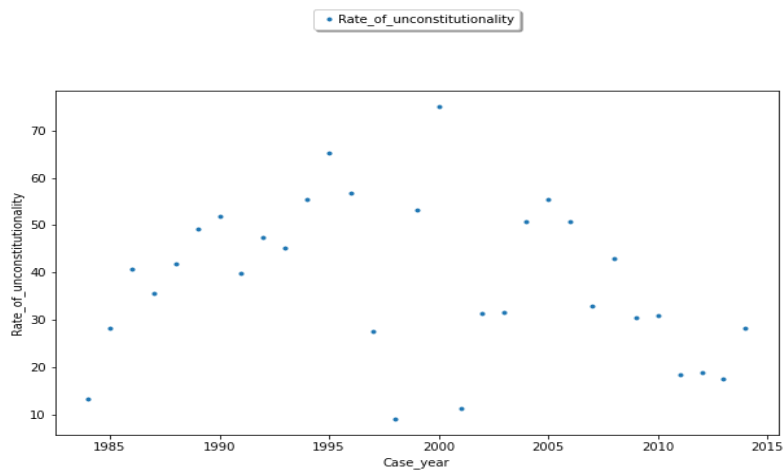


Figure 1. Distribution of the judge votes for the unconstitutionality by year

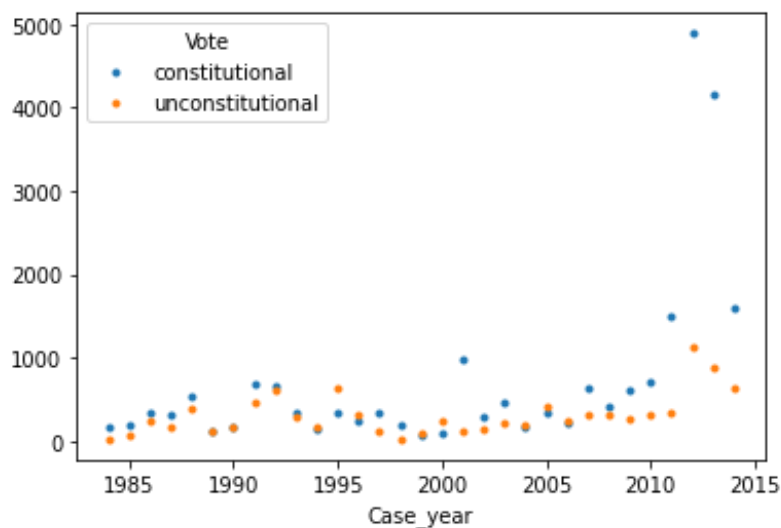


Figure 2. The number of annulment actions by year

² CHP filed 217 of the total 248 cases in the post-2002 period.

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, I 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-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.

3. Empirical analysis

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

3.1. Data and methodology

I use individual level dataset, including 419 annulment actions between 1984 and 2014. An action can include more than one decision. This is because each petition might challenge more than one article of the same law and each article has to be reviewed according to the constitution. The dataset (*data*) includes the vote of each judge at every voting for articles and consists of 31.556 votes. Variables in Table 2, which are extracted from *data*, allow us to investigate the judicial decision-making process at the level of judge. Data regarding all the variables were gathered from the web site of the TCC and the Turkish Statistical Institute.

Table 2. List of variables

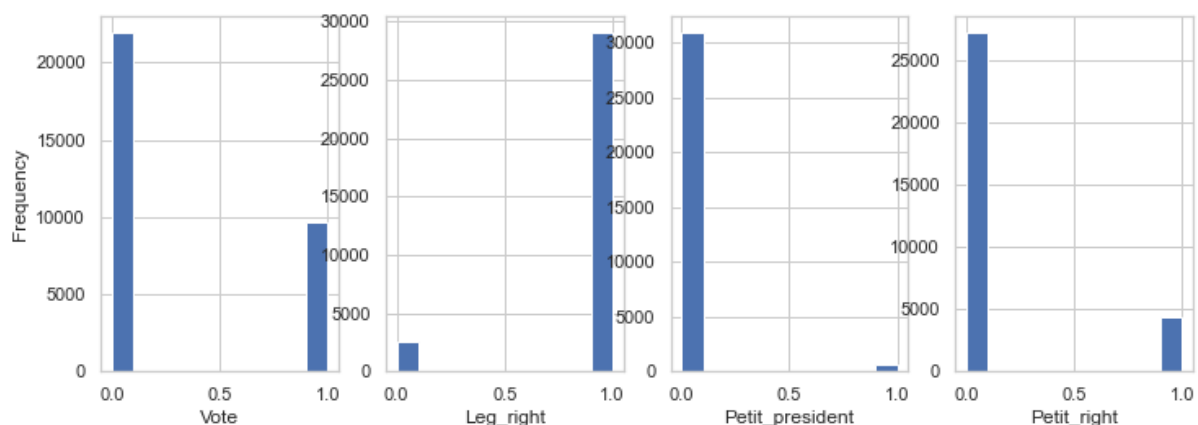
Dependent variable	
Vote_of_judge	=1, if law/article is rescinded by judge; = 0 otherwise
Explanatory variables	
Polity	
Gov_structure	=1, if government consists of one party at the time of decision; = 0 otherwise
Gov_right	=1, if government is right-wing at the time of decision; = 0 otherwise
Oppos_assembly	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

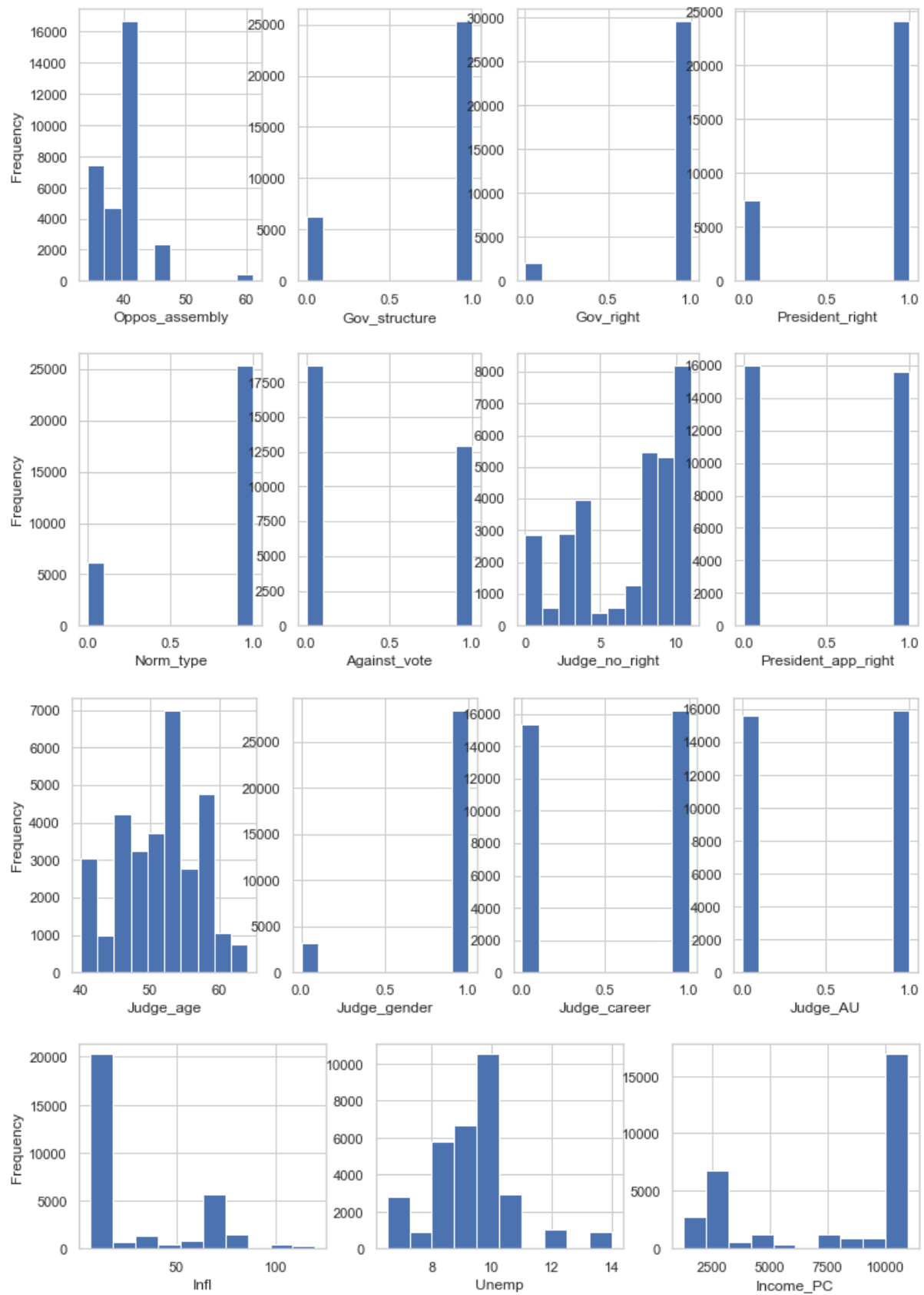
Table 3. Descriptive statistics

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

In order to test the political determinants of judicial independence, I 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, I constitute 11 explanatory variables in both models. The characterization of those variables is summarized in Tables 2 and 3. Note that I examine the effect of those variables in two groups: Polity and Presidency. As I 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. I 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.

Because I have a binary output in the form of the judges' vote or the ruling of the TCC, I 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, I estimate the appropriate logit models. I interpret the signs of coefficients estimated in these models to explain the relationships among variables.





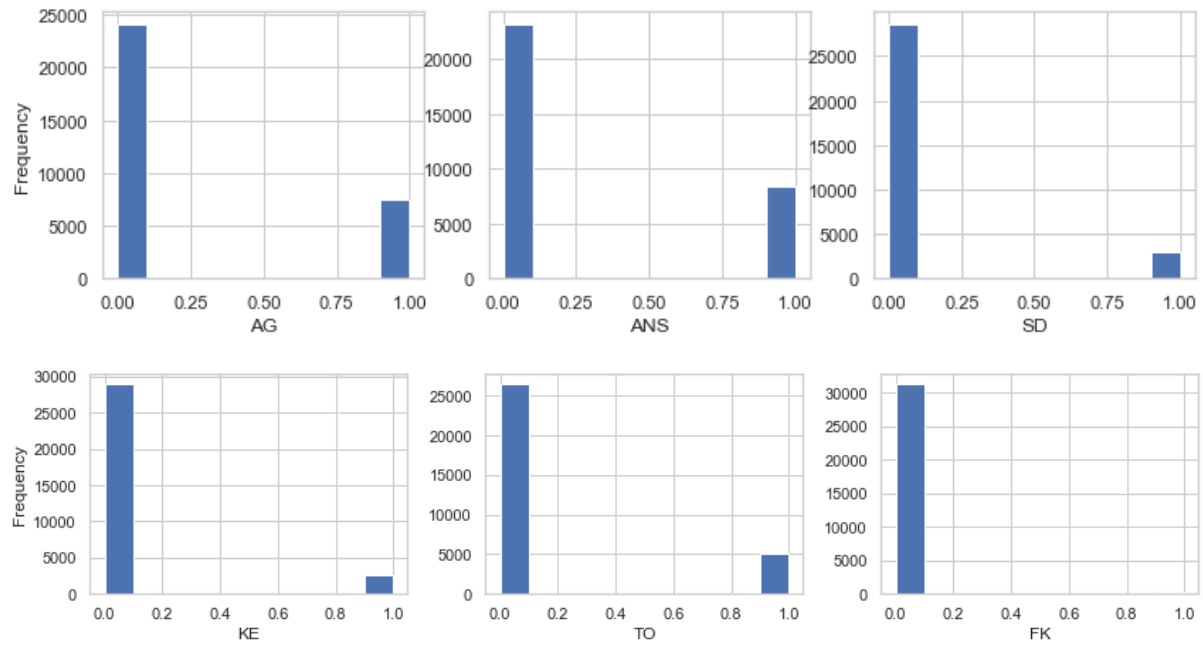


Figure 3. Histograms

3.2. Results

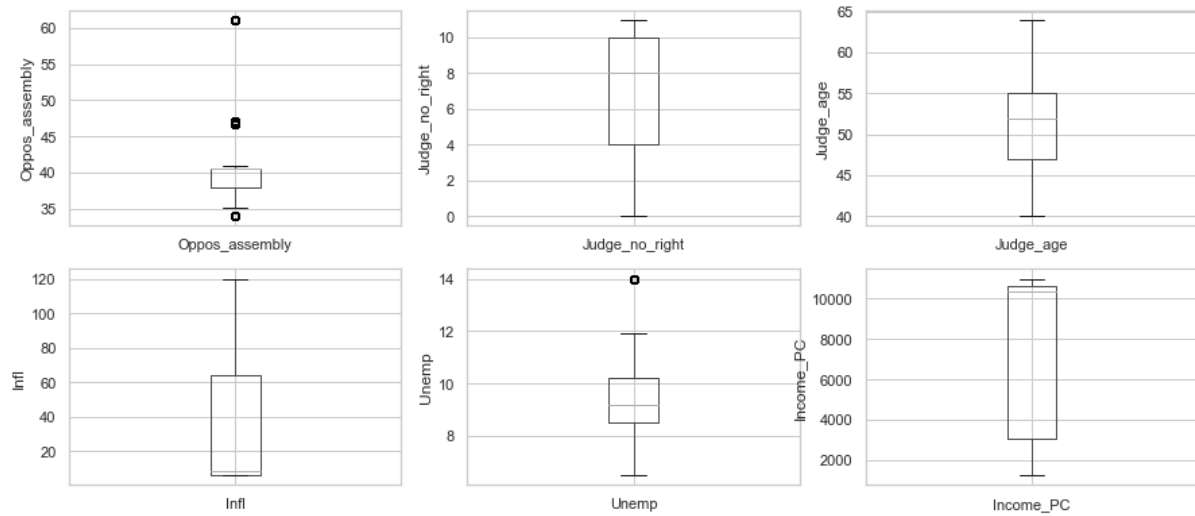


Figure 4. Outliers

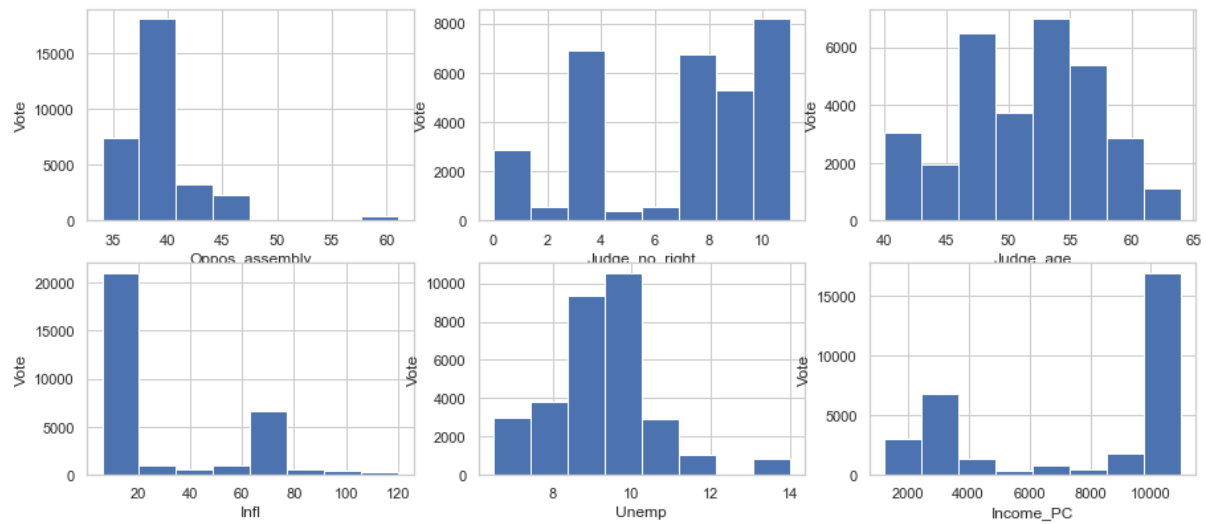


Figure 5. Relationships between Dependent and Independent Variables

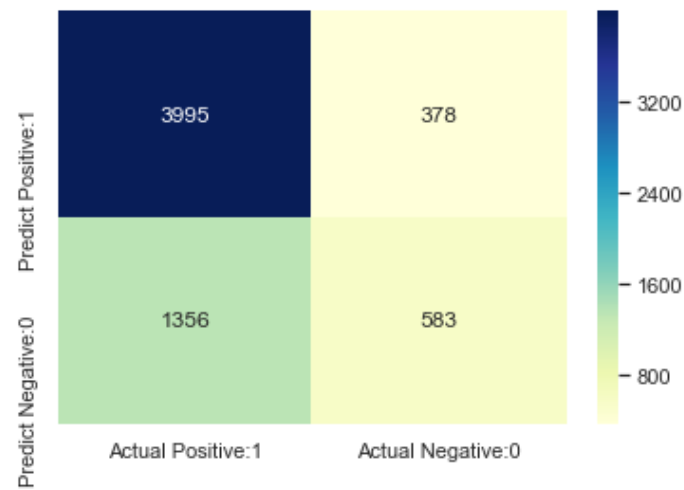


Figure 6. Confusion Matrix

Table 3. Classification Report

	precision	recall	f1-score	support
0	0.75	0.91	0.82	4373
1	0.61	0.30	0.40	1939
accuracy			0.73	6312
macro avg	0.68	0.61	0.61	6312
weighted avg	0.70	0.73	0.69	6312

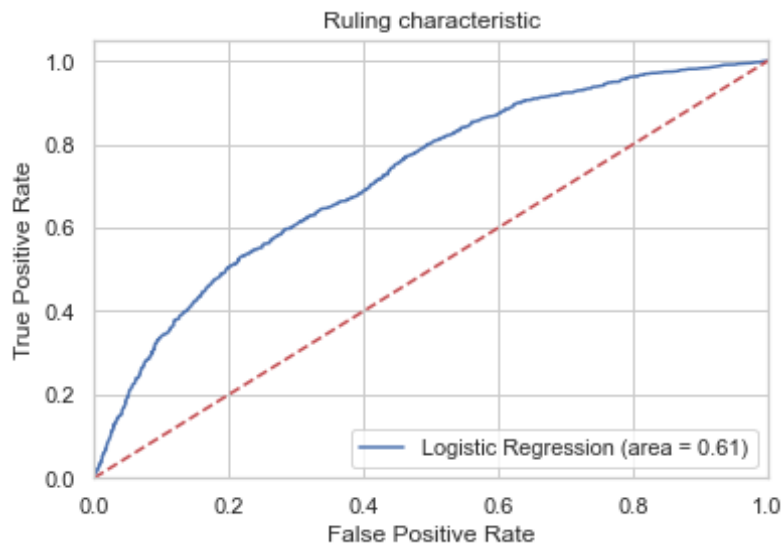


Figure 7. ROC Curve

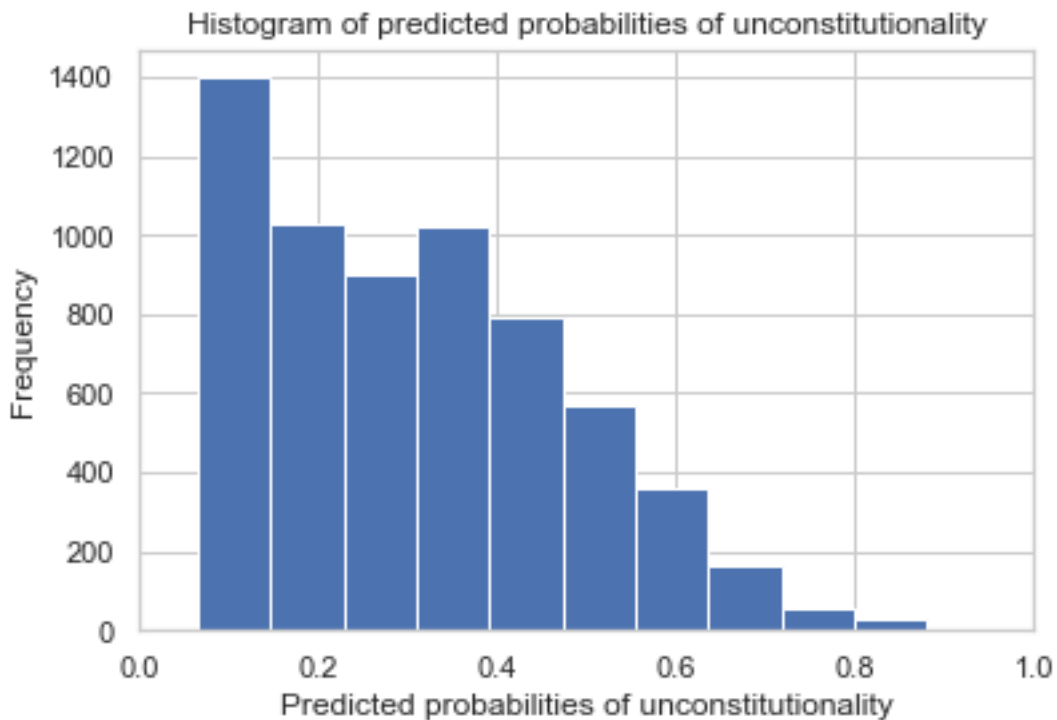


Figure 8. Predicted probabilities of unconstitutionality

Findings and Inferences: Prediction Models

Because the logistic regression model accuracy score is 0.7253, we can infer that the model is valid to predict whether or not vote will constitutional in the next voting in the Turkish Constitutional Court. Small number of observations predict that there will be rain tomorrow. Majority of observations predict that there will be no rain tomorrow. While small number of observations predict that vote will be unconstitutional in the next vote of the judges, majority of observations predict that vote will be

constitutional in the next vote of the judges. The model shows no signs of overfitting. Increasing the value of C results in higher test set accuracy and also a slightly increased training set accuracy. So, we can conclude that a more complex model should perform better. Increasing the threshold level results in increased accuracy. ROC AUC of our model approaches towards 1. So, we can conclude that our classifier does a good job in predicting the unconstitutionality of judge votes. The original model accuracy score is 0.7253 whereas accuracy score after RFECV is 0.7273.. So, we can obtain approximately similar accuracy but with reduced set of features. In the original model, we have FP = 295 whereas FP1 = 594. So, we get approximately same number of false positives. Also, FN = 1918 whereas FN1 = 1345. The results suggest that false negative significantly decreases while false positives significantly increases. The original model score is found to be 0.7253. The average cross-validation score is 0.7273. So, we can conclude that cross-validation does result in performance improvement. The original model test accuracy is 0.7293 while GridSearch CV accuracy is 0.7253. We can see that GridSearch CV does not improve the performance for this particular model

Table 4. Estimation Model 1 - Logit Regression Results

Dep. Variable:	Vote	No. Observations:	31556
Model:	Logit	Df Residuals:	31549
Method:	MLE	Df Model:	6
Date:	Mon, 25 May 2020	Pseudo R-squ.:	0.05441
Time:	12:52:03	Log-Likelihood:	-18365.
converged:	True	LL-Null:	-19422.
Covariance Type:	nonrobust	LLR p-value:	0.000

	coef	std err	z	P> z	[0.025	0.975]
Intercept	1.9215	0.140	13.760	0.000	1.648	2.195
Gov_structure	-1.5028	0.039	-38.681	0.000	-1.579	-1.427
Gov_right	1.2044	0.089	13.474	0.000	1.029	1.380
Oppos_assembly	-0.0787	0.004	-21.826	0.000	-0.086	-0.072
Leg_right	1.0454	0.080	13.039	0.000	0.888	1.203
Petit_president	0.6115	0.081	7.520	0.000	0.452	0.771
President_right	-0.7436	0.035	-21.538	0.000	-0.811	-0.676

Table 5. Estimation Model 1 - Logit Marginal Effects

=====						
Dep. Variable:	Vote					
Method:	dydx					
At:	overall					
=====						
	dy/dx	std err	z	P> z	[0.025	0.975]

Gov_structure	-0.2964	0.007	-42.487	0.000	-0.310	-0.283
Gov_right	0.2375	0.017	13.619	0.000	0.203	0.272
Oppos_assembly	-0.0155	0.001	-22.432	0.000	-0.017	-0.014
Leg_right	0.2062	0.016	13.168	0.000	0.175	0.237
Petit_president	0.1206	0.016	7.544	0.000	0.089	0.152
President_right	-0.1467	0.007	-22.116	0.000	-0.160	-0.134
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Table 6. Estimation Model 2 - Logit Regression Results

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Dep. Variable:	Vote	No. Observations:	31556			
Model:	Logit	Df Residuals:	31545			
Method:	MLE	Df Model:	10			
Date:	Mon, 25 May 2020	Pseudo R-squ.:	0.06079			
Time:	12:52:04	Log-Likelihood:	-18241.			
converged:	True	LL-Null:	-19422.			
Covariance Type:	nonrobust	LLR p-value:	0.000			
=====						
	coef	std err	z	P> z	[0.025	0.975]

Intercept	2.0133	0.196	10.297	0.000	1.630	2.397
Gov_structure	-1.4750	0.039	-37.551	0.000	-1.552	-1.398
Gov_right	1.2019	0.090	13.412	0.000	1.026	1.378
Oppos_assembly	-0.0787	0.004	-21.836	0.000	-0.086	-0.072
Leg_right	1.1173	0.081	13.812	0.000	0.959	1.276
Petit_president	0.6101	0.082	7.474	0.000	0.450	0.770
President_right	-0.7140	0.035	-20.305	0.000	-0.783	-0.645
Judge_age	-0.0019	0.003	-0.691	0.490	-0.007	0.003
Judge_gender	-0.3461	0.042	-8.265	0.000	-0.428	-0.264
Judge_career	0.1331	0.029	4.611	0.000	0.077	0.190
Judge_AU	0.2596	0.028	9.339	0.000	0.205	0.314
=====						

Table 7. Estimation Model 2 - Logit Marginal Effects

Dep. Variable:	Vote					
Method:	dydx					
At:	overall					
	dy/dx	std err	z	P> z	[0.025	0.975]
Gov_structure	-0.2886	0.007	-41.008	0.000	-0.302	-0.275
Gov_right	0.2352	0.017	13.555	0.000	0.201	0.269
Oppos_assembly	-0.0154	0.001	-22.443	0.000	-0.017	-0.014
Leg_right	0.2186	0.016	13.964	0.000	0.188	0.249
Petit_president	0.1194	0.016	7.499	0.000	0.088	0.151
President_right	-0.1397	0.007	-20.789	0.000	-0.153	-0.127
Judge_age	-0.0004	0.001	-0.691	0.490	-0.001	0.001
Judge_gender	-0.0677	0.008	-8.295	0.000	-0.084	-0.052
Judge_career	0.0260	0.006	4.616	0.000	0.015	0.037
Judge_AU	0.0508	0.005	9.380	0.000	0.040	0.061

Table 8. Estimation Model 3 - Logit Regression Results

Dep. Variable:	Vote	No. Observations:	31556			
Model:	Logit	Df Residuals:	31542			
Method:	MLE	Df Model:	13			
Date:	Mon, 25 May 2020	Pseudo R-squ.:	0.06721			
Time:	12:52:05	Log-Likelihood:	-18116.			
converged:	True	LL-Null:	-19422.			
Covariance Type:	nonrobust	LLR p-value:	0.000			
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	coef	std err	z	P> z	[0.025	0.975]

Intercept	4.5378	0.314	14.429	0.000	3.921	5.154
Gov_structure	-1.3486	0.060	-22.621	0.000	-1.465	-1.232
Gov_right	0.9248	0.090	10.244	0.000	0.748	1.102
Oppos_assembly	-0.0882	0.004	-21.885	0.000	-0.096	-0.080
Leg_right	1.1915	0.081	14.796	0.000	1.034	1.349
Petit_president	0.5437	0.082	6.644	0.000	0.383	0.704
President_right	-0.0934	0.053	-1.774	0.076	-0.197	0.010
Judge_age	-0.0060	0.003	-2.206	0.027	-0.011	-0.001
Judge_gender	-0.4183	0.043	-9.813	0.000	-0.502	-0.335
Judge_career	0.1097	0.029	3.772	0.000	0.053	0.167
Judge_AU	0.2430	0.028	8.708	0.000	0.188	0.298
Infl	-0.0172	0.001	-11.610	0.000	-0.020	-0.014
Unemp	-0.0466	0.013	-3.507	0.000	-0.073	-0.021
Income_PC	-0.0002	1.15e-05	-15.221	0.000	-0.000	-0.000

Table 9. Estimation Model 3 - Logit Marginal Effects

Dep. Variable:	Vote					
Method:	dydx					
At:	overall					
	dy/dx	std err	z	P> z	[0.025	0.975]
Gov_structure	-0.2617	0.011	-23.347	0.000	-0.284	-0.240
Gov_right	0.1794	0.017	10.310	0.000	0.145	0.214
Oppos_assembly	-0.0171	0.001	-22.495	0.000	-0.019	-0.016
Leg_right	0.2312	0.015	14.981	0.000	0.201	0.261
Petit_president	0.1055	0.016	6.661	0.000	0.074	0.137
President_right	-0.0181	0.010	-1.774	0.076	-0.038	0.002
Judge_age	-0.0012	0.001	-2.206	0.027	-0.002	-0.000
Judge_gender	-0.0812	0.008	-9.861	0.000	-0.097	-0.065
Judge_career	0.0213	0.006	3.774	0.000	0.010	0.032
Judge_AU	0.0472	0.005	8.741	0.000	0.037	0.058
Infl	-0.0033	0.000	-11.702	0.000	-0.004	-0.003
Unemp	-0.0090	0.003	-3.510	0.000	-0.014	-0.004
Income_PC	-3.404e-05	2.21e-06	-15.417	0.000	-3.84e-05	-2.97e-05

Table 10. Estimation Model 4 - Logit Regression Results

Dep. Variable:	Vote		No. Observations:	31556		
Model:	Logit		Df Residuals:	31537		
Method:	MLE		Df Model:	18		
Date:	Mon, 25 May 2020		Pseudo R-squ.:	0.07495		
Time:	12:52:05		Log-Likelihood:	-17966.		
converged:	True		LL-Null:	-19422.		
Covariance Type:	nonrobust		LLR p-value:	0.000		
	coef	std err	z	P> z	[0.025	0.975]
Intercept	5.0683	0.327	15.500	0.000	4.427	5.709
Gov_structure	-1.1523	0.064	-18.098	0.000	-1.277	-1.028
Gov_right	0.7983	0.091	8.752	0.000	0.620	0.977
Oppos_assembly	-0.0810	0.004	-20.077	0.000	-0.089	-0.073
Leg_right	1.2255	0.083	14.814	0.000	1.063	1.388
Petit_president	0.5472	0.082	6.702	0.000	0.387	0.707
President_right	0.0264	0.054	0.488	0.625	-0.079	0.132
Judge_age	-0.0201	0.003	-6.808	0.000	-0.026	-0.014
Judge_gender	-0.2351	0.051	-4.608	0.000	-0.335	-0.135
Judge_career	0.1127	0.031	3.669	0.000	0.052	0.173
Judge_AU	0.1838	0.029	6.382	0.000	0.127	0.240
Infl	-0.0180	0.001	-12.119	0.000	-0.021	-0.015
Unemp	-0.0931	0.014	-6.860	0.000	-0.120	-0.066
Income_PC	-0.0002	1.29e-05	-15.885	0.000	-0.000	-0.000
AG	0.0239	0.061	0.393	0.694	-0.095	0.143
ANS	0.6456	0.057	11.408	0.000	0.535	0.757
SD	0.5516	0.067	8.249	0.000	0.421	0.683
TO	0.1116	0.052	2.153	0.031	0.010	0.213
KE	0.3156	0.055	5.733	0.000	0.208	0.424

Table 11. Estimation Model 4 - Logit Marginal Effects

Dep. Variable:	Vote					
Method:	dydx					
At:	overall					
	dy/dx	std err	z	P> z	[0.025	0.975]
Gov_structure	-0.2217	0.012	-18.486	0.000	-0.245	-0.198
Gov_right	0.1536	0.017	8.795	0.000	0.119	0.188
Oppos_assembly	-0.0156	0.001	-20.566	0.000	-0.017	-0.014
Leg_right	0.2358	0.016	15.001	0.000	0.205	0.267
Petit_president	0.1053	0.016	6.720	0.000	0.075	0.136
President_right	0.0051	0.010	0.488	0.625	-0.015	0.025
Judge_age	-0.0039	0.001	-6.825	0.000	-0.005	-0.003
Judge_gender	-0.0452	0.010	-4.613	0.000	-0.064	-0.026
Judge_career	0.0217	0.006	3.671	0.000	0.010	0.033
Judge_AU	0.0354	0.006	6.396	0.000	0.025	0.046
Infl	-0.0035	0.000	-12.225	0.000	-0.004	-0.003
Unemp	-0.0179	0.003	-6.879	0.000	-0.023	-0.013
Income_PC	-3.949e-05	2.45e-06	-16.103	0.000	-4.43e-05	-3.47e-05
AG	0.0046	0.012	0.393	0.694	-0.018	0.027
ANS	0.1242	0.011	11.476	0.000	0.103	0.145
SD	0.1061	0.013	8.277	0.000	0.081	0.131
TO	0.0215	0.010	2.153	0.031	0.002	0.041
KE	0.0607	0.011	5.743	0.000	0.040	0.081

Findings and Inferences: Estimation Models

Tables report the results of the regressions run on *data* including the judges' vote as the dependent variable. I run separate regressions under three different scenarios. Under the first scenario, I analyze the relationships between constitutional review and governmental factors. For that reason, I call this scenario Polity. Under the second scenario called the Presidency, I examine the interaction between constitutional review and the Presidents. Under the third scenario, I include the variables used in the previous scenarios in the models to be estimated to reveal if a change will occur in the results when I analyze all these variables in the same models. Thus, I 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.

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. *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.

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 1990s. 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.

Now, I 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.

The relationship between the judiciary and the Presidency

In this section, I 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, I 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, Süleyman Demirel, Ahmet N. Sezer, and Abdullah Gül³, I 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, Gül and Erdoğan, 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 Gül and Erdoğan filed no petition. This is because Gül and Erdoğan, 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 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 findings clearly suggest the behavioral features of the Turkish constitutional review. First, it confirms 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

³ I did not include the President R. T. Erdoğan in the model because he became the President on August 2014.

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 Tables, 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 I 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 I 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.

The relationship between the judiciary and all the political variables

Lastly, I 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.