

the 1990s might be left wanting for more, considering the brevity at which the book covers these developments. The author himself notes that the fact that many scholars have previously focused on issues such as the “basic structure doctrine” distracts from constitutional moments such as economic liberalisation in 1991 (p. 229). Consequently, it would be desirable for the parts that do describe this constitutional moment to be expanded in future editions of the book.

Still, overall, for Indians and non-Indians alike who are studying the Indian Constitution for the first time, for those who want to have a book for quick reference, for those who want to brush up on their existing knowledge and at the same time, understand the issues at hand against a broader context, the book is highly recommended. The accessible language makes it a very enjoyable read as well.

Florian Matthey-Prakash

*Silvia von Steinsdorff, Ece Göztepe, Maria Abad Andrade and Felix Petersen, **The Constitutional Court of Turkey Between Legal and Political Reasoning**, Nomos, 2022 ISBN 978-3-8487-4632-3 (Print), 978-3-8452-8862-8 (ePDF)*

In an era marked by a global resurgence of authoritarianism, populism, and debates about the weakening role of constitutional courts this book arrives quite timely. With its critical analysis of Turkey's Constitutional Court, the book provides useful insights, shedding light on the Court's history, its case-law, and its influence on Turkish constitutional order.

The authors note that surprisingly little is known about the AYM (*Anayasa Mahkemesi*), the Constitutional Court of Turkey, and its case law, despite its existence for over six decades. This assertion is convincingly sustained by a literature review that uncovers a limited number of outdated monographs, mostly written in Turkish, and a selection of articles that are limited in their scope and/or the time periods they cover. The book highlights an obvious absence of systematic judicial analyses pertaining to the AYM, covering the extensive period from the Court's establishment in 1961 up to recent times, as late as 2022. It undertakes the aim of filling this gap, an aim it achieves successfully.

The book is divided into three parts. "The Institution", the first part, delves into Turkey's constitutional history from 1924 and goes on to tell the establishment of the AYM under the 1961 Constitution. This section further encompasses the general constitutional framework, including the selection of judges for the AYM, the status and competences of the Court, and the effects and scope of its decisions.

While Part I serves as a valuable guide to the history of Turkish constitutional law and the Court's constitutional status and powers for those unfamiliar with the subject, it also goes beyond simply providing a descriptive glimpse of the Court. On top of that, it provides convincing observations about the impact of Court's internal structure on its

decision-making process and the development of its case-law. For example, in comparison to other European apex courts, this part highlights the unusually far-reaching discretionary power of the Court President, which holds complete authority over rapporteurs (law clerks). These rapporteurs are defined as the key players in the drafting and finalization of the Court's decisions subtly yet substantially contributing to the process. It is particularly eye-opening to read that "the President is free to decide which case is assigned to which rapporteur, which grants them an important degree of influence over the outcome of the procedure". (p. 79)

Part II, titled "The Case Law", includes a thorough analysis of the *AYM's* case-law using both quantitative and qualitative methods. It extensively explores the case law revolving around topics such as political party prohibitions, constitutional controversies linked to separation of powers, and fundamental rights and freedoms.

The authors initially pose the question: "How can we deduce from the argumentation displayed in the rulings whether the reasoning of the justices is mainly inspired by legal or by political reasoning?" (p. 84) To address this, they assemble a set of quantitative and qualitative criteria. (p. 89 - 90)

The quantitative section examines the frequency and initiator of applications in front of the *AYM*, the distribution of different proceedings, changes in caseload over time, and the ratio of accepted to rejected unconstitutionality claims. It also investigates which issues frequently arise, identifies underrepresented topics or norms, and assess the prevalence of dissenting and concurring opinions in rulings.

The quantitative component serves a dual function: it prepares the reader with the necessary background for the qualitative section, and it also helps validate the results derived from the qualitative analysis. Particularly in relation to the latter, it is interesting to see that "As a rule, the *AYM* tried to avoid deciding abstract norm reviews in the aftermath of major political crises." (p. 98) This observation supports one of the most important conclusions of the qualitative section suggesting that the *AYM* has somewhat exhibited opportunistic behavior during these periods.

The qualitative analysis of the book investigates whether the *AYM* judgments exhibit a standardized, coherent structure and what interpretative methods are being used. It examines how the 'gap' between abstract constitutional principles and concrete cases is linked, and whether there are recurring argumentative patterns, suggesting constitutional or political values. The importance of dissenting votes and opinions, potential strategies of self-empowerment or judicial activism, and the distinction between legal and non-legal arguments, particularly political ones, are also explored. Finally, the study seeks to uncover any changes in adjudication over time.

One noteworthy conclusion drawn from the qualitative analysis is that "the Court never succeeded in developing a coherent, sustainable interpretation of the Turkish Constitution which could have strengthened its authority as guardian of the Constitution in times of political crisis and authoritarian backlash." While the authors recognize that the court does "in some ways develop substantiated positions on a range of important constitutional

issues," they also observed that "the degree of doctrinal inconsistency of AYM case law is extraordinarily high." (p. 691) The case law of the Turkish Constitutional Court is notably marked by "unexpected turns in the interpretation of certain constitutional norms, sudden and unexplained doctrinal changes, and argumentative gaps' which dominate a significant part of the case law". (p. 200)

In this context the authors point out to two problems. First, they show a notable inconsistency in the decision-writing approach of the Court. Some judgements exhibit systematic interpretation of constitutional norms, following clear, albeit limited, patterns. These decisions apply abstract constitutional principles to specific cases and support their arguments with references to past rulings or external sources. On the other hand, there are other key decisions that are quite the opposite - the judgements are delivered without any apparent constitutional reasoning. It's almost as if the judges didn't feel the need to provide any justification for their decisions in these cases. The sloppiness of some decisions even extends to judges overinterpreting constitutional provisions or international treaties, giving them diametrically opposed meanings to fit their rulings. One striking example highlighted in the book pertains to a law encouraging women to quit their careers following their marriage. With a very odd reasoning, the Court upheld this law, in its decision "Severance Payment for Female Employees" citing, among others, international law instruments aimed at empowering women. (p. 215)

The second problem is that fundamentally opposing constitutional ideas and values (i.e. communitarian vs libertarian/state vs the individual) are presented together without a consistent method to mediate or reconcile these conflicts within the constitution. As a result, there are certain occasions where one constitutional principle is prioritized over another without a clear, logical basis. This arbitrary prioritization becomes even more evident when matters related to public order are involved.

One noteworthy example is the principle of equality before the law, usually well-defined and actively defended by the Court, was entirely overlooked because it conflicted with traditional, paternalistic family values. These values, despite their clash with the principle of equality, are also recognized in the Constitution. However, the AYM does not provide any justification for its preference to favour one constitutional principle over another, demonstrating an arbitrary and inconsistent approach.

The final Part III, entitled "Commented Key Decisions", contains translations of key AYM decisions cited throughout the book. Considering the absence of a systematic database for the Court's decisions in languages other than Turkish, this portion proves particularly valuable for researchers in the field who do not speak Turkish.

The book concludes by drawing three generalizable deductions, which provide valuable insights into the current state of constitutional courts in different countries, particularly in the context of the ongoing clash between democracy and authoritarianism. Furthermore, these deductions also lay a useful foundation for research frameworks to be used in future studies of this sort. One of the conclusions emphasizes the importance of institutional

autonomy and internal structure, drawing attention to the lack of transparency within the Court.

A more important observation may be the recognition that Constitutional Courts, irrespective of the instability and vulnerability of the political regimes in which they operate, can create significant effects in safeguarding the rule of law and democracy. However, a critical caveat exists, particularly in post-2016 AYM situation, referred to by the authors as a "self-abandonment." During times of major political crises, the AYM often behaves with cautiousness that borders on opportunism, thus representing a limitation in its potential to effect safeguarding constitutional democracy.

In the book, such behavior is emphasized throughout: across various eras and about different issues, the court sometimes prioritized state interests over individual freedoms. It occasionally employed evasive strategies towards divisive issues such as the gender, the Kurdish issue, and the role of the army in the government. At times, it also exhibited sudden judicial self-restraint. At other times, it safeguarded rights and freedoms and carefully protected the separation of powers. However, even in these cases, the Court's actions were flawed with "many ambiguities" (p. 150) - a Court seemingly haunted by a statist-Kemalist ideology.

Considering this, as the third deduction, the authors assert that consistent and convincing constitutional reasoning is crucial for building the court's legitimacy, as well as for defending democracy and human rights in highly polarized and unstable regimes like Turkey. Many significant political questions can be successfully tamed as legal issues and resolved by invoking constitutional provisions, provided the argumentative and methodological quality of the reasoning is maintained.

As a final note, after reading this book it becomes apparent that for those seeking to safeguard and progress their constitutional democracy, the unpredictability and unreliability of this court is disappointing. However, it should be noted that the court has never been merely a puppet of the government. This refutes several widely held assumptions in the literature, such as the ideas of hegemonic preservation and a homogenous court consistently backing one political position. In retrospect, the book delivers an indispensable critical examination of Turkey's Constitutional Court, its evolution, and its influence on Turkey's constitutional order, offering key insights relevant to the contemporary comparative studies concerning the role of constitutional courts.

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