

The Institutionalization of the Constitutional Court in Türkiye

Hayati ÜNLÜ¹ 

¹Assistant Professor Dr., Turkish National Defense University, İstanbul, Türkiye, unluhayati@gmail.com.

Article Info

ABSTRACT

Article History

Received: 15/11/2024

Accepted: 26/11/2024

Published: 31/12/2024

Keywords:

Institutionalization,
Constitutional Court,
Autonomy,
Differentiation,
Resilience.

Jel Codes:

H10, H70, K40.

This study aims to analyze the degree of institutionalization of the Constitutional Court of the Republic of Türkiye. Institutionalization has become a significant focus in political science, particularly in light of the growing impact of institutional deterioration at global and local levels. The functionality and sustainability of institutions are critical for modern political systems. This study evaluates the extent to which the Constitutional Court meets key institutionalization criteria, adopting a rational institutionalism approach. The research begins with a literature review on institutionalization and develops a model specific to the Turkish context. This model enables comparative analyses with examples from national and international settings. The study evaluates institutionalization across three dimensions: autonomy, differentiation, and resilience. Autonomy involves the selection of court officials, independence in decision-making, and protection from external influences. Differentiation examines internal specialization, division of labor, and organizational complexity. Resilience considers the court's history, physical infrastructure, budget, and staff salaries. The findings provide a comprehensive analysis of the institutionalization process of Türkiye's Constitutional Court and judicial institutions more broadly. By identifying challenges and offering insights, the study aims to contribute to the theoretical and practical understanding of institutionalization in the judiciary.

Türkiye'de Anayasa Mahkemesinin Kurumsallaşması

Makale Bilgileri

ÖZ

Makale Geçmişi

Geliş: 15/11/2024

Kabul: 26/11/2024

Yayın: 31/12/2024

Anahtar Kelimeler::

Kurumsallaşma,
Anayasa Mahkemesi,
Özerklik, Farklılaşma,
Dayanıklılık.

JEL Kodları:

H10, H70, K40.

Bu çalışmanın temel amacı, Türkiye Cumhuriyeti Anayasa Mahkemesi'nin kurumsallaşma düzeyini kapsamlı bir şekilde incelemektir. Kurumsallaşma kavramı, özellikle küresel ve yerel düzeyde yaşanan kurumsal bozulmaların etkisiyle siyaset bilimi literatüründe önemli bir yer edinmiştir. Bu bağlamda, modern siyasal sistemlerde kurumların işlevselliği ve uzun vadeli sürdürülebilirliği kritik bir araştırma konusu haline gelmiştir. Literatürde, kurumların işlevlerini yerine getirebilmesi için belirli kriterleri karşılamaları gerektiği genel bir kabul görmektedir. Bu çalışmada, Anayasa Mahkemesi'nin bu kriterleri ne ölçüde karşıladığı değerlendirilmiştir. Çalışma, rasyonel kurumsalcılık yaklaşımını benimsemekte ve kurumsallaşma kavramına ilişkin teorik ve ampirik çalışmalardan faydalanmaktadır. Öncelikle, kurumsallaşma sürecine yönelik literatür incelenecek ve Türkiye bağlamına özgü bir kurumsallaşma modeli geliştirilmiştir. Bu model, hem ulusal hem de uluslararası bağlamdaki örneklerle karşılaştırmalı bir değerlendirme sunmayı hedeflemektedir. Geliştirilen model çerçevesinde Anayasa Mahkemesi'nin kurumsallaşma düzeyi, özerklik, farklılaşma ve dayanıklılık gibi temel kriterler üzerinden değerlendirilmiştir. Kurumsallaşmanın özerklik boyutu, özellikle mahkeme görevlilerinin seçimi, karar alma süreçlerindeki bağımsızlık ve mahkemenin dış müdahalelerden ne ölçüde korunduğu gibi unsurları içermektedir. Farklılaşma ise mahkemenin iç uzmanlaşma kapasitesi, iş bölümü, görev tanımları ve organizasyonel yapısının karmaşıklığı üzerinden ele alınmıştır. Dayanıklılık boyutunda ise mahkemenin kuruluş tarihi, fiziksel altyapısı, bütçesi ve mahkeme personelinin maaşları gibi uzun vadeli sürdürülebilirliği etkileyen göstergeler dikkate alınmıştır. Sonuç olarak, bu çalışma, Türkiye'de yargı kurumlarının kurumsallaşma sürecine dair teorik ve uygulamalı bir analiz sunmaktadır. Elde edilen bulgular, yalnızca Anayasa Mahkemesi'nin değil, genel olarak yargı kurumlarının karşı karşıya olduğu zorlukların anlaşılmasına da ışık tutmaktadır.

Atıf/Citation: Ünlü, H. (2024). The Institutionalization of the Constitutional Court in Türkiye, *Necmettin Erbakan Üniversitesi Siyasal Bilgiler Fakültesi Dergisi*, 6(2): 508-520.



"This article is licensed under a [Creative Commons Attribution-NonCommercial 4.0 International License](https://creativecommons.org/licenses/by-nc/4.0/) (CC BY-NC 4.0)"

INTRODUCTION: CONSTITUTIONAL COURT FROM AN INSTITUTIONAL PERSPECTIVE

Global politics is currently experiencing a pivotal shift. The foremost concern for social scientists lies in the fact that we are presently undergoing a period of institutional decline and decay (Fukuyama, 2000: 1-30). At the global level, numerous international organizations are unable to meet the expectations of the international community, and on a national level, it is apparent that institutions may not be equipped to address increasing social demands in specific areas. Such dysfunction, deregulation, and normlessness in institutions facing increasing mobilizations can lead to criticism that they are unable to shape constituent behavior or influence outcomes - both essential duties. In this direction, several countries are holding discussions to facilitate the return of institutional capital and institutionalization studies to reorganize institutions that are believed to be in crisis and keep them relevant (Mainwaring, 2018: 1-18).

Institutionalization refers to the systematic and artistic approach to policy-making. In his 1965 article "Political Development and Political Decay," Samuel P. Huntington, a key figure in institutionalization literature, defines the concept as "the process by which organizations and procedures acquire value and stability" (Huntington, 1965). For Huntington, institutionalizing political systems "of all types, not just modern ones," involves institutionalizing organizations and procedures (Huntington, 1965: 393). Therefore, institutions are significant because they establish the rules of the game. Legal institutionalization, in essence, manifests as consistent responses to recurrent questions. In other words, if an institution or organization has completed its institutional development, rules exist that shape and stabilize behavior.

Another important issue regarding institutionalization is the role of collective action. It is crucial to have a coordinated effort among institutions for the healthy functioning of the state. To ensure such collective action, both formal and informal norms, rules, and procedures are necessary. Therefore, the rules enabling institutions to act towards a shared common goal do not only need to be formally established. These informal capabilities that promote positive development within the system are hotly debated in the new institutionalist literature. An institution within the system is considered institutionalized to the extent that it is a crucial functioning component by integrating a distinct identity and mission through its formal and informal capabilities (Ostrom, 1990: 1-23).

While institutions have gained importance in the modern era, Constitutional Courts are one of the primary institutions that help maintain domestic socio-political order and stability in countries. In addition to their primary duty of safeguarding the rights and freedoms of individuals against state power and resolving inter-institutional disputes, Constitutional Courts have additional duties such as final adjudication of electoral disputes, judging high state officials as supreme court, and auditing political parties' programs and activities for constitutionality. Their critical roles in maintaining continuity of the state system in the era of institutional corruption and decay have been recognized (Atar, 2008: 104-112). Therefore, research will focus on the institutionalization of Constitutional Courts in the new era, with detailed analysis of the development of their formal and informal capacities. This study is unique in that it specifically examines the Turkish variant of these judicial bodies.

Looking at the developmental trajectory of the Turkish Constitutional Court, it is possible, that despite past political upheavals like coups d'état, a social scientist analyzing the court's evolution from the 1960s onwards, would observe a greater degree of institutionalization in its characteristics and structure. The current court demonstrates a more developed and structured approach, both formally and informally (Koç et al., 2023). While it is important to identify the line of change and development, previous studies have presented a cross-sectional perspective that prioritizes the legal dimension or evaluates the institution statically. Consequently, the historical dynamics of the court remain unknown, and a more thorough analysis of its significant changes is necessary.

The Constitutional Courts' crucial role in the state order necessitates their independence as institutions, resulting in contentious debates about the criteria for membership, selection methods, and term limits. Court structure directly impacts their efficiency and functionality. However, institutionalization studies suggest that a fully institutionally developed organization should exhibit

stable behavior patterns both internally and in its interactions with the external environment (Levitsky, 1998: 77-92). The objective of this study is to evaluate these debates in order to analyze the institutionalization of courts using objective criteria and indicators and to determine the level of institutionalization of the unit of analysis.

As the study aims to identify institutionalization through criteria and indicators, it is based on rational institutionalist approaches. The presupposition of the study is that political institutions are a byproduct of political bargaining processes. In other words, political institutions can be synonymous with organizations that establish the rules of the game in a particular system. In this regard, political actors may occasionally back the establishment of institutions like the judiciary, while at other times they may adhere to the view that institutions should only be managed with regard to power struggles (Frye, 1997). While some political elites may work to control institutions during times of uncertainty and chaos, others recognize the importance of institutional development and strive for judicial reform. It is essential to acknowledge this distinction. In this study, the rational institutionalist approach to judiciary institutional development assumptions will be utilized for support. These assumptions include the notion that politicians can make choices based on their concerns or interests, that choices can be influenced by uncertainty conditions, and that bargaining power related to uncertainty can also influence the choices made (Geddes, 1999).

This study aims to assess the level of institutionalization of the Turkish Constitutional Court. It will provide a historical overview of the Court since its establishment up until today, with a particular focus on its institutional changes during the Justice and Development Party (AK Party) period. There are advantages to examining the Constitutional Court with a narrowed lens on the AK Party era. The court holds significant duties and powers within the state administration system and serves as the chief mechanism for legal and constitutional oversight in contemporary political systems. Firstly, there is a distinct moment of break and rupture in the pre-AK Party period regarding the tutelage system over the judicial system. This is valuable for comparing institutional developments before and after 2002. Hence, 2002 marks as an identifiable starting point, and one can track the steps taken in institutional development. Another advantage is the remaining legacy of the tutelage system before 2002. The tutelage system, characterized by intense ideological affiliation, judicial activism, and lack of democratic legitimacy, may help explain the institutional changes promoted after 2002.

To summarize, this study will use a rational institutionalist approach and begin by reviewing existing literature on the institutionalization of Constitutional Courts. An overview of the standards and metrics used in previous literature to evaluate courts will be presented. Subsequently, this article will discuss the criteria and indicators that should be used in analyzing the Constitutional Court of Turkey with reference to the history of Turkish politics and judiciary, which has its own unique line of development. Finally, based on the identified criteria and indicators, an evaluation will be made regarding the level of institutionalization of the Turkish Constitutional Court.

1. INSTITUTIONALIZATION LITERATURE AND CONSTITUTIONAL COURTS

The literature on political institutions, which is as old and developed as the history of political science, has not only recognized the importance of institutions, but has also begun to emphasize the importance of institutionalization, especially since the 1960s with the rise of modernization political development studies. While institutionalization is the first characteristic to be considered in terms of modern political development, how to determine whether institutionalization is present or not has been a question mark. In this regard, Huntington, Polsby, Keohane, Welfling, Panebianco, Polsby, Keohane, Welfling, Panebianco and others have proposed certain criteria for determining the degree of institutionalization and tried to prove the evaluation of these criteria through the indicators they proposed. For the institutionalization of constitutional courts, names such as Bumin and McGuire have pioneered the literature.

In addition to his definition, Samuel P. Huntington pioneered the institutionalization literature with the criteria and indicators he identified. To operationalize institutionalization, Huntington presented four continuous criteria for institutions: compatibility, complexity, autonomy, and coherence. The first criterion for organizations to endure challenges over time is adaptability. The proposed indicators to

assess adaptability include chronological age, generational age, leadership turnover, and the number of functional modifications. The second criterion is complexity, which pertains to "the proliferation of organizational subunits and functions, and the abundance of distinct types of organizational subunits". The indicators used to determine complexity include the quantity and types of organizational subunits, along with the quantity and types of functions performed by the organization. The third criterion, autonomy, is the antithesis of commitment and subordination, indicating "the degree to which political organizations and procedures exist independently of other social groups and methods of behavior". Autonomy can also be measured by personnel control norms like patronage, influence, and purges as well as the organization's ability to manage its material resources. The institutionalized organization's final criterion is coherence, which is the opposite of internal disagreements and can be gauged by the proportion of dissenting predecessors. According to Huntington's criteria of cohesion, autonomy, complexity, and coherence, an organization can be deemed institutionalized (Huntington, 1965).

After Samuel P. Huntington, who is often credited with being the father of institutionalization studies, another renowned work in this field is Nelson Polsby's (1968) study of the United States House of Representatives. Polsby offers a framework for understanding the institutionalization of the legislature based on three critical criteria: 1) boundaries, 2) complexity, and 3) universal decision-making rules. The first criterion, boundary, as measured by Polsby's indicators, includes factors such as an organization being relatively well bounded, free from environmental pressures, easily identifiable by its members, and with leadership primarily recruited from within the organization (Polsby, 1968: 145). Polsby's second criterion is complexity, which bears resemblance to Huntington's complexity criteria as both use indicators related to the product of the number and diversity of organizational sub-units. The final criterion for Polsby is institutionalization, where organizations generally rely on universal and automatic methods to conduct internal affairs, rather than specific criteria. Universal precedents and rules are followed, and merit-based systems replace clientelistic ones (Polsby, 1968: 145-146).

After analyzing the works of Huntington and Polsby, the final example to be considered is that of Robert Keohane. Keohane, a key figure in neo-liberal institutionalism, attempts to apply the concept of institutionalization to a decision-making body as a whole. In his study, which centers on the institutionalization of the United Nations General Assembly, Keohane enumerates the criteria for institutionalization by developing a fresh set of political criteria including autonomy, differentiation, and resilience. According to Keohane, all three dimensions are related to the relationship between the organization and its environment. In this context, differentiation reflects the "organizational differences between the organization and the environment," while resilience and autonomy reflect the interactions between organizational capabilities and environmental pressures (Keohane, 1969: 862).

Keohane argued that the autonomy criterion is the most significant and intricate variable among the three components he identified as elements of institutionalization. This criterion demonstrates the organization's capability to resist environmental pressures and make autonomous decisions (Keohane, 1969: 866). Accordingly, Keohane accepted some of Huntington's autonomy indicators and added the following indicators as an extra: 1) the distinct character of organizational norms and values; 2) personnel control; 3) control of material resources; and 4) the impact of organizational norms on the political process. Again, Keohane's indicators of differentiation include staff experience and incentivization within the organization, as well as experience analysis and incentive models. Meanwhile, indicators of durability consist of the level of acceptance in proportion to the number of members, and the willingness of the government to support the organization (Şahbaz et al., 2022). Additionally, simple adaptability in relation to Huntington's chronological and generational age, as well as functional change, and system stability are also crucial (Keohane, 1969: 866-867).

Mainstream examples using criteria and indicators to assess institutionalization have prompted the application of analogous criteria and indicators to the evaluation of Constitutional Courts. Within this framework, one can point to the works of Kirill M. Bumin on the Constitutional Courts of post-Communist countries and Kevin T. McGuire on the US Supreme Court as noteworthy examples. For instance, Bumin has assessed the institutionalization of post-Communist Constitutional Courts based on three primary criteria: differentiation, durability, and autonomy. Bumin explains that differentiation pertains to the organization's separation from its surroundings, while resilience and autonomy reflect the

interplay between organizational capabilities and political pressures. Applying three criteria to 28 countries that transitioned to a new post-communist system, Bumin utilized eleven indicators for assessment. Using objective evaluations such as legislative fragmentation, legislative-executive relations, political transparency, participation in the EU accession program, foreign aid conditions, annual GDP changes, political rights and civil liberties scores according to Freedom House, and their own judicial validity score, Bumin attempted to evaluate the level of institutionalization of the courts (Bumin, 2015).

Similar to Bumin, McGuire attempted to identify the institutionalization of the US Supreme Court based on criteria such as differentiation, resilience, and autonomy. However, he developed a different set of indicators for evaluating these criteria. In this context, McGuire identified seven indicators: internal court rules, court location, discretionary agenda, federal judicial experience, law clerks, judges' delegated duties, and expenditures per judge. Bumin discussed the first criterion for the institutionalization of the Supreme Court, differentiation. In this context, differentiation refers to the establishment of clear boundary lines that determine the court's distinctiveness from its environment. The standards for distinguishing are: 1) the nomination of federal judges to the Supreme Court, 2) the decrease in transfer obligations for judges, and 3) the geographic placement of the Court. According to McGuire, the second standard, resilience, indicates gradual advancement in terms of the capacity to withstand and adjust to changes. To determine the resilience criterion level, McGuire utilized objective indicators, including the judge's salary as an estimate of institutional expenditure and the number of clerks to evaluate their capacity to enhance internal quality. Finally, to evaluate autonomy – defined as the ability to make independent decisions, McGuire assessed the court's internal rules and the optional agenda indicators that it can pursue regardless of external factors (McGuire, 2004).

2. A MODEL PROPOSAL FOR TÜRKİYE

Leading studies proposing a model to identify the institutionalization of Constitutional Courts can provide inspiration for the Turkish case. In institutionalist research, a proposed model may be applicable to all case studies, but at times, due to diverse characteristics of the unit of analysis, it may not be feasible. The literature reviewed above indicates that the well-known works cannot be universally applied to every country, given the various historical, sociological, and institutional experiences of the countries under analysis. In other words, it would be incorrect to utilize the models employed in the USA, European countries or post-communist countries in Turkey. In other words, Turkey's distinct political history, geopolitical position, and social and institutional transformation necessitate the development of a uniquely tailored institutionalization model. Comparative institutional studies aim to capture localized adaptations of global trends. As such, variations in indicators are to be expected, even when the criteria for the proposed model are consistent (Çemrek, 2004).

Following the precedent set by the model, this study will examine the institutionalization of the Turkish Constitutional Court utilizing three distinct criteria: differentiation, resilience, and autonomy. These criteria are chosen for their universality and their definitions are widely accepted, resulting in minimal divergence. In this context, differentiation is primarily an expression of an institution's identity, position, and abilities in relation to its environment over time, while resilience refers to an institution's capability to withstand the pressures it faces in its relations with its environment, particularly in terms of its organizational structure (Bumin et al., 2009). Autonomy, defined as the primary criterion for institutionalization in any organization, pertains to the organization's capacity to make independent decisions and demonstrate behavior in its environmental relationships, free from external actors (Bumin et al., 2009). While all the suggested criteria aid in determining an organization's functionality within the system, an organization that satisfies all three criteria is considered to have achieved the highest degree of institutionalization.

Tablo 1. *Constitutional Court Institutionalization Model*

Criteria	Indicators
1-) Differentiation	1-) Election of Court Members 2-) Physical Location(s) of the Court
2-) Resilience	1-) Court Date 2-) Internal Specialization Capacity 3-) Internal Rules and Procedures
3-) Autonomy	1-) Budget of the Court 2-) Salaries of Court Members 3-) Decision Autonomy 4-) EU Accession Process 5-) International Aid

Source: Author's Own Framing

Since the criteria are universal, and the indicators are specific, we plan to identify ten indicators to evaluate each criterion. The differentiation criterion will be assessed through the court member selection and physical court location indicators. The resilience criterion will be assessed through court history, specialization capacity, and internal rules and procedures indicators. The autonomy criterion will be evaluated based on the court's budget, the salaries of its members, decision-making independence, the process of joining the EU, and international assistance.

To clarify the chosen criteria, the indicator for selecting court members is crucial for establishing the identity, position, stance, and legitimacy of the institution. The institution's status and position relative to other institutions in the system demonstrates its value. Again, the court's legitimacy among the public and other institutions is indicative of its position within the system. The selection of members by institutions elected by the people enhances the court's democratic legitimacy. Conversely, the selection of members by tutelage bodies or veto actors within the system diminishes the degree of legitimacy. Another concrete measure of differentiation pertains to the physical location and space of the Court. The absence of a dedicated building is deemed to reflect the Court's lack of importance and value in the system. Conversely, the possession of a building with physical capacity signifies the Court's elevated identity and status in the system. Similarly, owning or moving to a building with greater capacity can also exemplify the increase in the value of the court.

Within the durability criteria, the court's history provides an indicator of its well-established nature. Important indicators include the founding of the institution, its growth, and its age. The ability for the institution to endure through challenges is evident in its current status as an established and strong entity. In this context, the level of institutionalization is higher in older institutions that have had more positive or negative experiences throughout history. Additionally, the court's growing specialization is another indicator of institutional resilience. This increase in capacity, which facilitates efficient functioning and enables action-taking, is linked to organizational development and internal processes. In this regard, the organizational differentiation and existence of hierarchical sub-units since the institution's establishment are more appropriate for evaluation. The court's level of institutionalization can be determined by the complexity of its structure, including its internal affairs, relations with other institutions, and units created for relations with society. Indeed, here the criterion of resilience is also combined with Huntington's criterion of complexity. The final aspect to evaluate for resilience pertains to the ability to establish and implement institutional regulations and protocols. The indicator, which may also be considered in the autonomy criterion of certain institutionalist analyses, is included in the resilience criterion because the internal production and development of rules, norms, and values help construct a court structure that is as durable as it is autonomous. In this regard, an institution's development of its internal rules serves as an indicator of institutionalization and carries more weight than the existence of formal rules. Additionally, the capacity for informal rules is also highly valued within the system, in addition to the rules that govern it as a whole.

In terms of autonomy, which corresponds to the final criterion, the institution must first and foremost be independent for institutionalization to occur. Since this independence has a financial component, the budget for meeting the court's needs will be discussed. While who controls the institution's budget is significant, the institution should not be financially dependent in terms of its functioning. Again, the autonomy of the institution is crucial not just in relation to institutional funding, but also for guaranteeing the financial independence of its members. Since it is the members of the court who will be making key decisions, objectivity is essential. Therefore, judges must have the ability to lead self-sufficient lives in order to reach unbiased judgments. This is determined based on the salaries of the members.

The evaluation of the Court members' independence in decision-making requires consideration of non-material elements alongside material ones. In this regard, case studies that allow for an assessment of decision autonomy within the institutional framework are valuable, despite the significance of the decision-making process. In this regard, the court's capability to form its own agenda and subsequently decide on cases independently is a crucial parameter reflecting its autonomous decision-making process, despite the forceful and structured political agenda. Furthermore, it is acknowledged that countries during the harmonization process, striving to join the European Union, can realize a comparatively greater autonomous judiciary decision-making process. In this regard, this essay will briefly analyze Turkey's protracted EU membership process. Moreover, it is acknowledged that foreign financial or non-financial aid given to countries has an effect on their judicial processes. Thus, this paper will examine the influence of foreign assistance received by Turkey after the establishment of the court.

3. INSTITUTIONALIZATION of THE CONSTITUTIONAL COURT in TÜRKİYE

3.1. Differentiation:

Established following the adoption of the 1961 Constitution, the Constitutional Court is regarded as a prestigious institution due to its unique selection process. Members of the court are elected via a mixed system, whereby the power to elect is shared among the higher courts (eleven members), the Parliament (seven members), and the President (two members). Although the Constitutional Court comprises fifteen regular and five substitute members, the election of seven members by the Turkish Grand National Assembly, including five regular and two substitute members, provides a certain level of democratic legitimacy and public acceptance. However, the capacity of high courts to appoint eleven members, including eight regular and three substitutes, diminishes the court's democratic power, despite the positive evaluation of judicial independence. Moreover, even the President of the Republic must select one member from the candidates proposed by the Military Court of Cassation when appointing two members (Turkish Constitution, 1961).

The Constitutional Court, which had limited democratic legitimacy under the 1961 Constitution, was further demoted under the 1982 Constitution. The Court's membership was reduced to eleven original and four substitute members, and it was perceived as an institution requiring more control. While the authority to determine all members now rests with a single person (the President) who does not directly receive the people's vote, the proposed capacity of the high courts to exert influence has been maintained. However, the TGNA has not been granted the power to appoint even one member. This arrangement has sparked debates about tutelage in the judiciary, but it has also diminished the level of democratic legitimacy. Indeed, prior to 2010 and the amendment of the Constitution, the most notable critique centered on the democratic character of the court and recommended that the TGNA play a role in selecting new members (Atar, 2008: 100-101).

Article 146 of the 1982 Constitution restructured the Constitutional Court following the referendum of September 12, 2010. The amendment increased the number of members from eleven to seventeen and abolished the reserve membership. While the increase in the number of members indicates a change in the Court's outlook, more importantly, the TGNA has regained the power to elect members. Accordingly, paragraphs 2 and 3 of Article 146 of the 1982 Constitution gave the power to elect the members of the Constitutional Court to the Parliament and the President of the Republic. Although this

was a very strategic step in terms of democratizing the Court, the fact that the TGNA did not have the power to directly elect members again reveals a limited democratic change. In this respect, the TGNA had the power to appoint indirectly through the recommendation of the Court of Accounts and the presidents of the Bar Associations, while the President had the power to select four members directly. The President could select the remaining ten members from among three candidates nominated by the Court of Cassation, the Council of State, the Military Court of Cassation, the Military High Administrative Court, the Court of Accounts and the Council of Higher Education. Finally, it can be said that the Court reached its most democratic status with the constitutional amendments made by referendum in 2017. In addition to retaining the TGNA's power to choose members, the highest level of institutionalization in member selection has been achieved in history through the removal of the Military Court of Cassation and the Military Administrative Court, as well as the inclusion of popular votes for the presidential election.

Regarding the physical structure of the court and the institutional identity it represents, it is noteworthy that the court has been housed in three buildings to date. The Constitutional Court, which held greater importance during the 1960s than in the 1980s, initially began its operations in a rented service building on Selanik Street in Ankara. Considering the Court's place and importance as a State Institution, efforts to build a new structure reflecting its position began in 1973. In 1974, a 7250 square meter plot of land on Atatürk Boulevard near the entrance of the Grand National Assembly of Turkey was allocated as an appropriate location. However, construction of the building was prevented by zoning plan issues, and the Constitutional Court was unable to relocate to the TBMM because Simon Bolivar Street property had been allocated to the court in 1982 (Bayrakçı & Koçman, 2023).

Between 1962 and 1989, the Constitutional Court was located in a rented service building on Selanik Street. Later, it was relocated to the service building on Simon Bolivar Street from 1989 to 2008. The Court gained occupancy of the building in 1989 after it was transferred from various state institutions. In 1982, the building was no longer of use and was transferred to the Court. The anniversary events were previously hosted at conference halls of Hacettepe University and Ziraat Bank. However, on April 25-26, 1989, they were held for the first time in the Supreme Court Hall, which was built as an annex to the existing building. Until 2008, the Court remained active on Simon Bolivar Street. It then relocated to its current service building in Ahlatlıbel Yalıncağ Village in the Çankaya district of Ankara in 2009. The Court's new service building was inaugurated on April 24th, which coincided with the anniversary of its establishment. The building's capacity has reached an all-time high. The media reported on the multifunctional features of the building, which includes the President, Deputy President, members, and rapporteurs in Block "A," the Supreme Court in Block "B," the Court of Dispute and other administrative personnel in Block "C," and social areas in Block "D."

In conclusion, it is noteworthy that the Turkish Constitutional Court has shown positive institutionalization progress over time, evident in the method of member selection and infrastructure improvements. It can be stated that the court, established in the 1960s, has undergone a democratization process and has attained its most democratic state. This is linked not only to the TBMM's role in appointing members but also to the fact that the President, who plays a key role in the selection, is elected by the public. The court experienced a setback in the 1980s but has since rebounded. This demonstrates that the external environment's design can have a positive impact on any institution within the system. In essence, the alteration in Turkey's government system has boosted the Constitutional Court's democratic capability. Likewise, it can be noted that the court's standing within the system is on the rise in terms of its location. The move from a leased space to a dedicated building, which can impact staff efficacy, is a crucial factor in assessing the Constitutional Court's elevating status. In essence, it can be concluded that the court has achieved a significant level of institutionalization in terms of differentiation.

3.2. Resilience:

Returning to the resilience of the Constitutional Court, we can begin by acknowledging that, in terms of party history, it is a 58-year-old institution with extensive experience from its inception. In domestic politics, the Court was established during a period of uncertainty following a coup d'état, and

later endured challenges during events such as the 1980 coup d'état and the post-modern coup d'état process of February 28, 1997. In addition, our Court has also successfully survived FETÖ's coup attempts of December 17-25, 2013 and July 15, 2016 and emerged from this process with increasing experience and capacity. The court has encountered several foreign policy challenges, including the Cold War, the EU negotiation process, and the post-9/11 War on Terror. The court has also been exposed to the institutional learning environment where external influence is feasible. Its institutional history is marked by tests such as party closure cases. At this point, the Constitutional Court has demonstrated its adaptability as one of the most functional institutions throughout Turkey's historical institutional transformation period. The President of the Court, Zühtü Arslan, divides the court's history into three distinct phases, as evidenced by his speeches (Arslan, 2016). From a supreme judicial body that supervised the constitutionality of laws until 2012, the Court has evolved into a jurisdictional body focused on safeguarding the fundamental rights and freedoms of individuals. This transformation occurred as a result of the inclusion of individual applications in its jurisdictional framework post-2012, and the latest phase of the Court emerged following the adoption of the new government system through the 2017 Constitutional Amendment. In this system, the Constitutional Court's jurisdiction has been extended to encompass the judicial review of presidential decrees - executive regulatory acts - alongside legislative acts (Constitutional Court 57, 2009). This expansion demonstrates the court's exceptional institutionalization over time, reflecting its adaptive capabilities.

Within the framework of the resilience criterion, institutionalization requires the Constitutional Court's judicial function, based on its own powers, to be supported by the central organizational structure. In fact, the central organizational structure's capacity of expertise from the top to the bottom positively impacts the process of taking action. The Presidency, General Assembly, Research and Jurisprudence Unit, Divisions, Commissions, and General Secretariat of the Court fulfill their duties according to established protocol, contributing to the Court's operation. Additionally, specialized officials such as rapporteurs and deputy rapporteurs participate in judicial and administrative tasks to support institutional processes. In addition, the court regulation specifies that there are also departments which aid the institution's administrative duties. Service units, including the Registry, Directorate of Administrative and Financial Affairs, Directorate of Personnel, Directorate of Publications and Public Relations, Directorate of External Relations, Directorate of Strategy Development, Directorate of Technical Services, Directorate of Private Secretariat, Press Consultancy, Directorate of Individual Application, Directorate of IT, Institutional Medicine, Civil Defense Expertise, and the Center for Constitutional Jurisdiction Research, facilitate the smooth functioning of the court's interactions with both internal and external environments. These services encompass needs ranging from technical requirements to public relations with the media and external relationships. In conclusion, it can be stated that the essential requirements for a rational and efficient functioning process in line with a contemporary bureaucratic institution have been fulfilled.

The final measure of institutionalization with regards to resilience pertains to the internal regulations and protocols of the organization. The existence of a body of internal regulations that direct the behavior of its members, in contrast to regulations enforced by the overarching system, indicates a sustained and steadfast institutional conduct. In this regard, the court's internal regulations align with a necessary set of rules. Although Article 140 of the Constitution and Law No. 6216 establish the duties and powers of the court, it created internal bylaws and regulations to govern its operations. These rules only apply to the court and regulate its internal functioning. However, although the formal capacity is significant, it is acknowledged that informal rules also assist in adapting to changes in the external environment. In this regard, a similar informal capacity can be observed in the addresses of the Constitutional Court's President, Mr. Arslan. For example, Arslan suggested that the Constitutional Court's rights-based approach in individual cases exceeds the guarantees outlined in the European Convention on Human Rights. This implies the Court's ability to generate international norms informally in the modern era. Again, it is stated that the court's decisions in the new government system will have a significant impact on the relations between the legislative, executive, and judicial branches. Mr. Arslan referred to the court's informal capacity to promote institutional harmony needed in the new era (Arslan, 2023).

3.2. Autonomy:

While the autonomy criterion is a significant aspect for the court to perform its duties independently, the institution having its own resources is equally crucial for judicial independence. Hence, analyzing the budget of the Constitutional Court reveals that the institution is not reliant on external actors, which is imperative. In the institution, which is managed with its own budget within the central general budget, the President of the Court is the primary individual accountable for the budget, with the General Secretariat following. In actuality, the President of the Court supervises the compliance of court expenses with the budget, while the General Secretariat is responsible for budget allocation and keeping the President informed. The Court's Budget Operations Office creates unit budgets based on their appropriation needs and legal principles. The Secretary General represents the Court in budget negotiations with Parliament, but there is no observed dependency relationship in this process. The Secretary General represents the Court in budget negotiations with Parliament, but there is no observed dependency relationship in this process. The Secretary General represents the Court in budget negotiations with Parliament, but there is no observed dependency relationship in this process.

In addition to the court's budget, the court members, who are the crucial factors and correspond to the main decision-makers, should also have individual independence. Therefore, it is widely accepted that the court members should receive an adequate salary to maintain an autonomous life that excludes external pressure. In this context, an objective analysis of court member salaries reveals that the average salary is 200,000 TL, which is significantly higher than the average income in Turkey. With a 49,864 TL average salary, it is evident that a member of the court earns almost four times more than the average income in the country. When evaluated within the context of Turkey's average income, which is approximately 27,550 TL, it can be determined that the court members belong to the high-income category, exceeding upper middle-income levels (IMF, 2024). Therefore, the court members' salaries typically provide enough income to avoid any potential misconduct allegations during the decision-making process (Özşahin & Şahin, 2023).

In addition to the court's financial independence, its impartiality towards external factors that may influence decision-making is a key indication of institutionalization. Therefore, a court's ability to establish and follow its own agenda is directly related to its decision-making autonomy. In order to demonstrate the Constitutional Court's autonomy, particularly in relation to political institutions, recent experiences have revealed that Decree Laws (KHK) were deemed unconstitutional when appropriate. For instance, the non-reappointment of executives who were dismissed by decree and then reinstated by a commission decision was ruled unconstitutional by the unanimous decision of the Constitutional Court (Açıl, 2020). Again, the Constitutional Court's General Assembly determined that the freedom of expression of 10 scholars who were dismissed by an emergency decree had been violated (Kıran, 2019). Finally, the Supreme Court reviewed individual requests concerning Wikipedia, which was blocked on April 29, 2017, due to "articles and comments attempting to portray Turkey on the same level as and in collaboration with various terrorist groups". The court ruled that the decision to block access violated freedom of expression (Dal, 2020). While more examples could be provided, the crucial matter here isn't whether the court's rulings are correct or incorrect, but rather the court's capacity to make independent decisions, even if it might draw political interference and criticism.

Institutionalization of the judiciary serves to provide financial and decision-making independence. Additionally, it is seen as an opportunity to promote the institutional development of Constitutional Courts in connection with the European Union (EU) membership processes. It is generally believed that in exchange for the various benefits associated with EU membership, politicians in member states will act rationally and implement judicial policies that align with EU standards. Turkey-EU relations have been dealt with on a political basis rather than a legal one since the beginning. From the closure cases of political parties to the current refugee crisis, all issues have been approached politically instead of legally. The Turkish political establishment has tended to evaluate these relations in a rational and pragmatic manner (Arıkan, 2012). Intervention from the EU has focused on politics rather than actions that could impede the independence of the judiciary. The EU has made recommendations and criticisms on various issues, from politics to the judiciary, in its annual country

progress reports. However, none of these efforts have undermined the decisional autonomy of the Constitutional Court. On the contrary, Turkey has frequently implemented judicial reforms by referring to the EU accession process. Since 2001, Turkey has received 140 million Euros from the EU to support judicial reform. It can be argued that Turkey shares the perspective of the "EU 2020 Justice Agenda." Therefore, Turkey's EU accession process has not negatively affected the autonomy of Constitutional Court institutionalization.

Finally, it is acknowledged in the literature that foreign aid can have both positive and negative effects on judicial development. While there are instances where foreign aid has incentivized countries to reform their judiciary and make progress, there are also cases where it has led to political instability through judicial activism. In recent years, Turkey has stood out for its humanitarian and development assistance rather than being a recipient of foreign aid. Nonetheless, in the past, Turkey has received foreign aid during certain periods. It is worth noting that Turkey has not received foreign aid recently. The \$4.1 billion it received as a coalition partner during the 1991 Gulf War, the \$635.8 million it received from the OECD for economic development in 2002, and the \$8.5 billion it received during the 2003 Iraq War can be considered in this category (A Request For, 2003: 19). However, none of this aid has resulted in an incentive for judicial development or activism. In recent years, the EU has provided assistance to Turkey, particularly in the refugee domain, alongside judicial reform support. Turkey received €3 billion annually from EU countries in 2015-2016, 2016-2017, and 2018-2019 (European Civil Protection, 2020). While this assistance was primarily utilized for refugees in need of support within the country, it cannot be objectively stated that it produced either a favorable or unfavorable impact on judicial development. Thus, there is no discernible trend in the history of Turkey with regard to dependency relationships stemming from foreign aid that could potentially compromise the judiciary's autonomy.

CONCLUSION

The evaluations made based on the criteria and indicators established for institutionalizing the Constitutional Court demonstrate that the court in the Republic of Turkey has achieved a high level of institutionalization and continues to improve this capacity daily. However, it should be noted that these criteria and indicators may not accurately reflect the full institutional reality and may require additional criteria or indicators for a comprehensive institutionalization study. However, as the criteria and indicators in this study are based on widely accepted institutionalization models in the literature, utilizing this framework can provide a comprehensive analysis for uncovering local adaptations of emerging global topics of interest. In fact, evaluating an institution based on general principles embraced in the literature will contribute significantly to the socio-institutional experience. In this regard, the institutionalization of the Constitutional Court can be highlighted as having reached a notable level of development.

- While we are in the midst of a global age of institutional decay, the Constitutional Court of the Republic of Turkey appears to be functioning well and has even expanded its capacity. Initially, this was achieved by including individual applications within its jurisdiction, and subsequently, by reviewing presidential decrees within the new system.

- Considering the coup attempts, instances of judicial activism, and closure cases of political parties, the system has successfully navigated moments of potential democratic legitimacy issues and gained valuable experience in the ongoing development of its judicial process in alignment with the goals of democratization. Throughout this process, the system has maintained its autonomy.

- In the current tumultuous global environment, where political harmony is needed most, institutions have proven their capacity to contribute to collective action. By recognizing their powers and duties, they have demonstrated that institutional solidarity can support socio-political solidarity.

- While contributing to collective action, the organization has remained within the legal boundaries of the system. Additionally, it has established internal regulations to guarantee that its institutional identity is upheld and its institutional interests are not disregarded.

- It has provided an exemplary framework for its global peers, which promotes democratization, prioritizes judicial reform and development, and assumes a balanced role without clashing with political institutions or creating negative power dynamics.

- It has set an example that Turkey can contribute to its stance on extraterritorial issues by developing not only its formal institutional capacity - which is on the agenda of new-era institutionalist studies - but also its informal capacity through the informal rules and norms it has developed.

In conclusion, it is important for the Constitutional Court to enhance its research opportunities in order to further develop its institutionalization capacity. It should adopt rational practices suitable for our country's model while also being aware of new methods and approaches implemented by other prominent Constitutional Courts globally. This will facilitate the Court's institutional learning. However, it is important to avoid undermining the trust placed in other institutions by the system and society. We can learn from the negative effects of excessive institutionalization, such as the inability to create policies, becoming vulnerable to uncertainty, and engaging in office abuse - all of which are often observed in modern bureaucracies.

REFERENCE

- Arslan, Z. (2002). Conflicting Paradigms: Political Rights in the Turkish Constitutional Court, 11 Critique. *Critical Middle Eastern Studies*, Spring: 9–25.
- Arslan, Z. (2016). Inaugural Speech on the 54th Anniversary of the Establishment of the Constitutional Court. Access Address: <https://www.anayasa.gov.tr/tr/baskan/eski-baskanlarin-konusmalari/zuhtu-arslan/konusmalar/anayasa-mahkemesinin-54-kurulus-yildonumunde-yapmis-oldugu-acis-konusmasi/> Access Date: 13 April 2024.
- Arslan, Z. (2023). AYM Başkanı Arslan: Bireysel başvuruyla birlikte Türk Anayasa Mahkemesi bir paradigmatik dönüşüm yaşadı. Anadolu Agency. Access Address: <https://www.aa.com.tr/tr/gundem/aym-baskani-arslan-bireysel-basvuruyla-birlikte-turk-anayasa-mahkemesi-bir-paradigmatik-donusum-yasadi/2778586> Access Date: 13 April 2024.
- Atar, Y. (2008). Anayasa Mahkemesi'nin Yeniden Yapılandırılması. *Anayasa Yargısı Dergisi*, 25: 93-115.
- Bayrakçı, E., & Koçman, M. A. (2023). BİLGİ GÜVENLİĞİ VE ELEKTRONİK HARP. Necmettin Erbakan Üniversitesi Siyasal Bilgiler Fakültesi Dergisi, 5(Özel Sayı): 184-206.
- Bumin K. M. (2015). Determinants of Judicial Institutionalization: A Study of the Post-Communist Constitutional Courts. *Journal of Power, Politics & Governance*, 3 (1): 1-25.
- Bumin K. M., & Randazzo K. A. & Walker, L. D. (2009). Institutional Viability and High Courts: A Comparative Analysis of Post-Communist States. *Australian Journal of Political Science*, 44(1): 127-153.
- Çemrek, M. (2004). The EU Impact on the Political Culture of Bulgaria, Romania and Turkey. *Journal of Foreign Policy of Moldova*, EuroJournal.org- Journal of Foreign Policy of Moldova, 7. Access Address: <http://www.cceol.com>. Access Date: 13 April 2024.
- Fukuyama, F. (2000). *The Great Disruption: Human Nature and the Reconstitution of Social Order*. The Free Press: New York.
- Frye, T. (1997). A politics of institutional choice: Post-communist presidencies. *Comparative Political Studies*, 39(5): 523-552.
- Geddes, B. (1999). What do we know about democratization after twenty years?. *Annual Review of Political Science*, 2: 115-44.

- Huntington, S. (1965). Political Development and Political Decay. *World Politics*, Volume 17, Issue 3: 386-430.
- IMF Report. (2024). World Economic Outlook Database Groups and Aggregates Information April 2024. International Monetary Fund, Access Address: <https://www.imf.org/en/Publications/WEO/weo-database/2024/April/groups-and-aggregates>. Access Date: 13 April 2024.
- Keohane, R. O. (1969). Institutionalization in the United Nations General Assembly: *International Organization*, 23 (4): 859-896.
- Koç, Ş., Mercan, B., & Gömleksiz, M. (2023). Türkiye’de Bilgi Taşmaları ve Ekonomik Büyüme İlişkisi: ARDL Sınır Testi Yaklaşımı. *Necmettin Erbakan Üniversitesi Siyasal Bilgiler Fakültesi Dergisi*, 5(Özel Sayı): 207-221.
- Levitsky, S. (1998). Institutionalization and Peronism: The Case, the Concept, and the Case for Unpacking the Concept. *Pacific Affairs*, 4 (1): 77-92.
- Mainwaring, S. (2018). *Party Systems in Latin America*. London, Cambridge, Cambridge University Press.
- McGuire K. T: (2004). The Institutionalization of the U.S. Supreme Court. *Political Analysis*, 12 (2): 128-142.
- North, D. C. (1990). *Institutions, Institutional Change and Economic Performance*. St Louis, Washington University.
- Ostrom, E. (1990). *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge, Cambridge University Press.
- Özbudun, E. (2007). Türk Anayasa Mahkemesi'nin Yargısal Aktivizmi ve Siyasal Elitlerin Tepkisi. *Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi*, 62 (3): 257-268.
- Özbudun, E. (2009). *Türk Anayasa Hukuku*. 10. Baskı. Yetkin Yayınları: Ankara.
- Özşahin, Ş., & Şahin, T. (2023). 1960 Sonrası Türkiye Ekonomisinde Askeri Harcamalar ile Ekonomik Büyüme Arasındaki İlişkinin Nedensellik Analizi. *Necmettin Erbakan Üniversitesi Siyasal Bilgiler Fakültesi Dergisi*, 5(Özel Sayı): 52-76.
- Polsby, N. W. (1968). The Institutionalization of the U. S. House of Representatives. *American Political Science Review*, 62 (1): 144-168.
- Şahbaz, A., Koç Ş. & Ceylan A. (2022). Demokrasi ve Dışa Açıklığın Vergi Gelirleri Üzerindeki Etkisi: OECD Ülkeleri İçin Panel Veri Analizi (1980-2018). *Fiscaoeconomia*, 6 (3): 1367-1388.
- T.C. 1961 Anayasası. Access Address: <https://www.anayasa.gov.tr/tr/mevzuat/onceki-anayasalar/1961-anayasasi/>. Access Date: 13 April 2024.
- T.C. 1982 Anayasası. Access Address:: <https://www.anayasa.gov.tr/tr/mevzuat/anayasa/>. Access Date: 13 April 2024.
- The World Factbook (1995). Access Address: <https://www.cia.gov/the-world-factbook/>. Access Date: 13 April 2024.
- The World Factbook (2002). Access Address: <https://www.cia.gov/the-world-factbook/>. Access Date: 13 April 2024.