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THE METAMORPHOSIS OF NORMATIVE REVIEW IN THE CONSTITUTIONS OF TURKEY

Özge Çelebi, page 47-62

ABSTRACT

The subject of this study is the emergence and development of norm review in Turkey. Our study covers the process of transition from political norm review to legal norm review in Turkey, the constitutional arrangements in this process, and the changes made by the derivative constituent power. In this context, it analyses and evaluates the norms that are subject to constitutional review in Turkey, the norms that are prohibited from review, the types of norm review, the persons who apply to the Constitutional Court for norm review, and the duration of the review. Our study first presents constitutional models in general and then explains the historical reasons for Turkey's adoption of these constitutional models. Then, in the constitutional history of Ottoman Turkey, from the first written constitution to the current constitution, the development of both political and legal review of the constitutionality of norms in all texts is explained. Subsequently, the types of norm review in the constitutional judiciary established by the 1961 Constitution are analysed in detail in terms of the applicants, the norms subject to review and the duration of the review. The innovations introduced by the 1971 amendments to the 1961 Constitution are analysed in terms of the rule of law and the results of the comparison with the first version of the Constitution. Finally, the amendments to the 1982 Constitution, which is currently in force, are presented and evaluated, first in their original form and then by the derived constituent power. Finally, all the constitutional amendments have been systematically analysed, the resulting developments examined and solutions proposed for various improvements.

Keywords: constitutional jurisdiction, constitutional review, abstract review of norms, contitutional procedural law

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Introduction

The models of constitutional jurisdiction are mainly divided into two. The first one is the American model, which emerged as a result of the jurisprudence of the American Supreme Court, although this power was not directly regulated in the Constitution of 1787. The event that forms the basis of the American model is the Marbury v. Madison case in 1803 (Corwin, 1914). The problem that led to this dispute was the political friction between federalists and republicans (Teziç, 2016). As a result of this friction, a constitutional jurisdiction opened by the Supreme Court through jurisprudence emerged (Teziç, 2016). According to the relevant decision, the court authorized itself to annul the norm that conflicts with the norm above it in the hierarchy of norms. This decision was considered as a tool arising from the idea that the judge has to apply not only the law but also the law (Kaboğlu, 2024). Especially the following part of the decision in the Marbury v. Madison case is noteworthy: "(...) The specific wording of the United States Constitution therefore confirms and reinforces the principle, fundamental to all written constitutions, that any law in conflict with the constitution is null and void, and that the courts and other departments are bound by the constitution." In the United States, there is no court with separate jurisdiction to review the constitutionality of other norms; review is carried out by all judges at all levels.

This practice in the United States of America affected other countries in Latin America in the 19th century, leading to the implementation of this model in countries such as Mexico, Argentina, Venezuela, Brazil, the Dominican Republic and Colombia (Kaboğlu, 2024). However, the number of states influenced by the American model in Europe remained limited. Accordingly, countries such as Norway, Denmark and Sweden are the leading countries that have implemented the American model in Europe. In the American model, decisions are in principle valid between the parties in the case (inter partes) and have ex nunc effect.

The emergence of constitutional jurisdiction in Europe is later than in the United States. This is because the laws made by the parliament in Europe are a reflection of the general will, i.e. the will of the people. Based on the principle of the infallibility of the general will, it was not possible at that time to subject the laws to any judicial review. Although the Supreme Constitutional Court established by the Austrian constitution is considered to be the first modern constitutional judicial institution in Europe, the first supreme court to review the constitutionality of laws was established in

Czechoslovakia with the law of February 29, 1920 (Kaboğlu, 2024). These two countries were followed by Spain in 1931 and Ireland in 1937, but due to the rise of fascism across Europe, it was observed that these courts did not progress in line with their founding objectives and could not be institutionalized (Kaboğlu, 2024). The spread of constitutional courts in Europe coincides with the period after World War II. In Germany before the Second World War, the process leading to the World War began as a result of the lack of judicial review of unconstitutional laws enacted by the will of the majority in the parliament. For this reason, countries in continental Europe established an institutionalized constitutional judicial system in their constitutions to prevent the events of World War II from happening again (Vesterdorf, 2006). In continental Europe, not all courts can review the constitutionality of norms. Instead, there is a single supreme judicial body specialized in constitutional disputes. In other words, instead of widespread review in the United States, we see a monopolistic review in Europe. The European model is a type of model in which abstract norm review or concrete norm review, as well as a priori and a posteriori review in terms of time, are possible and decisions have a general (erga omnes) effect, i.e. they affect everyone.

A. The Period Before The 1961 Constitution

Turkey established its constitutional judiciary at the same time as Europe. The Constitutional Court in Turkey was established for the first time with the 1961 Constitution. At the time of the 1961 Constitution, only four countries in Europe had a constitutional court. These countries with constitutional courts are Austria, Germany, Italy and France. These four countries were followed by other countries in continental Europe.

Although constitutional jurisdiction was established in our country with the 1961 Constitution, there are other regulations in previous constitutions. The first of the Ottoman-Turkish Constitutions is the 1876 Kanuni Esasi. Article 64 of the Kanuni Esasi included only political review in terms of conformity with the Constitution, and the persons conducting the review here were the part of the legislative body appointed by the Sultan. In the subsequent constitution of January 20, 1921, there is no political or legal regulation on constitutional review. This is because this constitution is a wartime constitution and contains the regulations of this period. Article 103 of the constitution of April 20, 1924 stipulates that laws cannot be contrary to the constitution. When we look at the period of the 1924 Constitution, we see that there was no clear separation of

legislative and executive functions, and a judicial mechanism that checks the constitutionality of laws had not yet been established. Under the 1924 Constitution, the constitutionality of laws was audited by the Grand National Assembly of Turkey, which also made these laws. This control by the Grand National Assembly of Turkey is, of course, not a legal control, but a political control mechanism. The ideas on political oversight were first advocated by Sieyes, one of the members of the parliament established after the French Revolution of 1789, and a committee to protect the constitution was established during this period (Özer, 2015). In the 1924 Constitution, the legislative body's control of the constitutionality of its own laws is called legislative interpretation (Özbudun, 2012). In the 1961 Constitution, this type of review, which continued until the 1961 Constitution, was replaced by legal review.

Under the 1924 Constitution, there was an important development in norm review. In 1949, Judge Refik Gür attempted to review the constitutionality of laws, just like the judges in the American model, and refrained from applying an unconstitutional law in a case he was hearing and took the constitution as a basis. However, the Court of Cassation overturned Refik Gür's decision to resist, stating that there was no court authorized to review whether laws were unconstitutional or not. Thus, in Turkey, the opening of the constitutionality review path through a judicial decision, as in the American example, was prevented by the judges serving in the high court (Onar, 2003). However, in accordance with the relevant provision of the 1924 Constitution, which stipulated that laws could not be unconstitutional, the constitutional review that Judge Refik Gür had tried to open could have been carried out and constitutional jurisdiction could have been introduced in Turkey earlier than other countries in continental Europe. Under the 1924 Constitution, constitutional judicial review, which could not be realized as a result of practices, would be realized under the 1961 Constitution as a result of the direct constitutional amendment made by the constituent power.

B. 1961 Constitutional Period and the Establishment of the Constitutional Judiciary

The separation of powers was first introduced with the 1961 Constitution and the Republic of Turkey became a state of law. At the center of these two important constitutional developments is the establishment of the Constitutional Court. This is because not only the separation of powers,

but also the exercise of judicial power by independent courts on behalf of the Turkish nation and the existence of a Constitutional Court that monitors the constitutionality of the norms made by the legislature have brought about the mechanisms of the rule of law. Established by the 1961 Constitution, the Constitutional Court made its first decision on norm review in 1963.

The duties and powers of the Turkish Constitutional Court are regulated in Article 147 of the 1961 Constitution. Accordingly, the Constitutional Court reviews the constitutionality of laws and internal regulations of the Grand National Assembly of Turkey. The relevant article puts the norm review duty of the Constitutional Court in the first place. This is because one of the most important duties of the constitutional courts is to review norms. However, constitutional courts are also authorized to try some political subjects and members of the higher judiciary for crimes related to their duties. When analyzed in terms of comparative constitutional law, it can be seen that in countries with a Constitutional Court, the court uses a different name when trying state officials for crimes related to their duties. Under the 1961 Constitution, the Constitutional Court tried the President of the Republic, ministers and members of the high courts as the Supreme Criminal Tribunal.

On September 20, 1971, a collective constitutional amendment was made to various articles of the 1961 Constitution. In Article 147, an important change was realized in terms of norm review and an addition was made to the norms that could be reviewed. Accordingly, while only laws and internal regulations of the Grand National Assembly of Turkey were audited in the first version of the article, we see that constitutional amendments were also added in the post-amendment version of the article. However, this change is not only limited to the increase in the number of norms, but also to the scope of the constitutionality review. The Constitutional Court, which in the first version of the article reviewed the constitutionality of laws and internal regulations of the Grand National Assembly of Turkey, regulated after the amendment that constitutional amendments can also be reviewed in accordance with the formal requirements set forth in the constitution. The most important point here is that constitutional amendments can only be reviewed in terms of form. Accordingly, with the amendment made in the 1961 Constitution, the norms listed in the relevant article are subject to two types of review: formal and substantive. However, constitutional amendments will be reviewed only in terms of form. This situation regulated for constitutional amendments means that constitutional amendments are deprived of

substantive review. The difference between the substantive review and the formal review is that the subject matter of the norm is reviewed whether it is in conformity with the constitution. In the substantive review, it is investigated whether the relevant norm is unconstitutional in terms of the element of reason, the element of purpose and the element of subject matter. However, in the form review, it is investigated whether the relevant norm is made in accordance with the rules of procedure and form specified in the constitution. When we look at the Constitutional Court's stance on form review, we see that the court considered the violation of form rules as a ground for annulment and decided that this violation could also be reviewed by the general courts (Özbudun, 2023). In the decisions of the Constitutional Court both in the 1961 and 1982 constitutional periods, it is observed that the Constitutional Court has frequently resorted to form review. Under the 1961 Constitution, the Constitutional Court did not establish a detailed criterion on the scope of form review.

Article 149 of the 1961 Constitution regulates the right to sue a lawsuit and Article 150 regulates the time limit for filing a lawsuit. Article 149 provides for abstract norm review. The Constitutional Court does not act spontaneously to determine whether a norm is unconstitutional or not; for this purpose, the persons specified in the Constitution must file a lawsuit to the Constitutional Court. Under the 1961 Constitution, it is possible to file a direct annulment action to the Constitutional Court for the unconstitutionality of laws or internal regulations of the Grand National Assembly of Turkey or certain articles and provisions thereof. Accordingly, the head of state, political parties or their parliamentary groups that received at least ten percent of the valid votes in the last parliamentary elections or have representatives in the parliament, members of one of the legislative assemblies amounting to at least one-sixth of the total number of members, the council of supreme judges, the Court of Cassation, the Council of State, the Military Court of Cassation and universities may directly file a lawsuit to the Constitutional Court in areas concerning their own existence and duties. However, the right of these persons to directly file a case to the Constitutional Court is limited to a certain period of time. According to Article 150 of the 1961 Constitution, the right to file a lawsuit expires 90 days after the publication of the annulled law or the Internal Regulations of the Parliament in the official gazette. With the 1971 constitutional amendment, Article 149 was also amended and changes were made regarding those who can file a lawsuit. Accordingly, the right of small political parties to file a norm

review case to the court was abolished. Political party groups in the legislative assemblies and political parties with a group in the parliament no longer have the right to file a case directly to the Constitutional Court. At the time of the amendment, there was the Workers' Party of Turkey in the parliament, and the majority of the opinion is that the reason for this amendment was to prevent the effective work of leftist parties such as this party (Tanör, 2012).

In the 1961 Constitution, another method within the mechanism established to ensure the constitutionality of laws is the concrete norm review. According to Article 151 of the 1961 Constitution, if the court hearing a case finds the provisions of a law to be applied unconstitutional, or if it is of the opinion that the claim of unconstitutionality raised by one of the parties is serious, it shall postpone the case until the decision of the Constitutional Court. The Constitutional Court shall render its decision within three months from the date of its receipt of the case. In 1971, this article was amended and the Constitutional Court's decision-making period, which had been limited to three months, was increased to six months. In addition, a provision that was not included in the first version of the article was added to the article. According to the newly added section, if the Constitutional Court does not render a decision within six months, the court of first instance will conclude the case by resolving the unconstitutionality claim according to its own decision.

When we look at the factors that distinguish concrete norm review from abstract norm review, we first observe that the first difference is in terms of the persons authorized to file a lawsuit. Accordingly, in abstract norm review, politicians and relevant state institutions can file an application, whereas in concrete norm review, a lawsuit is filed as a result of a claim of unconstitutionality made by one of the parties in the pending case or the judge of the case. Another difference between the two types of review is that in abstract norm review, the norm claimed to be unconstitutional is not yet subject to a field of application. This is because, according to Article 150 of the 1961 Constitution, the right to file a direct annulment action before the Constitutional Court expires 90 days after the publication of the law or by-law sought to be annulled in the official gazette. Accordingly, it is not obligatory for the norms subject to annulment proceedings to find any field of application; it is sufficient that they are only published. The norm published in the official gazette may not be subject to any application within 90 days. Nevertheless, a lawsuit may be filed against the published norm within the framework of Article 149.

In the 1961 Constitution, Article 152 regulates the decisions of the Constitutional Court. Accordingly, the decisions of the Constitutional Court are final, and the norms or provisions thereof that are ruled unconstitutional shall cease to be in force on the date of the decision. However, in cases of necessity, the Constitutional Court may set the date of entry into force of the annulment decision separately, and this date may not exceed 6 months starting from the day of the decision, and the annulment decisions of the Constitutional Court shall not have any effect on past dates. The Constitutional Court may also decide, if necessary, that the decision it renders in concrete norm review shall be limited to the case and binding only on the parties. The decisions of the Court shall be published immediately and shall be binding on the legislative, executive and judicial organs, administrative authorities, real and legal persons. With the 1971 constitutional amendment, this article was also amended. Accordingly, it was stipulated that the decisions of the Constitutional Court cannot be announced without writing the reasons. Furthermore, the provision stipulating that the norms or their provisions annulled by the Constitutional Court shall cease to be in force on the date of the decision was also amended. According to this amendment, the reasoned decisions of the annulled norms or their provisions shall cease to be in force on the date of their publication. With the 1971 amendment, in the event that the Constitutional Court separately determines the date of entry into force of the decision on the annulment of a norm, this date may not exceed one year starting from the day of the decision.

C. Norm Review in the 1982 Constitution

In the 1982 Constitution, the duties and powers of the Constitutional Court are listed in Article 148. According to this article, the Constitutional Court reviews the conformity of laws, executive orders and the internal rules of the Grand National Assembly of Turkey with the Constitution in terms of form and substance. It examines and controls constitutional amendments only in terms of form. The form review of laws is limited to the issue of whether the final vote was held with the prescribed majority, and in the case of constitutional amendments, whether the majority of proposals and voting and the prohibition on fast-track deliberations are complied with. The 1982 Constitution limits the subjects who may request formal review to the President of the Republic and one-fifth of the members of the parliament. The 1982 Constitution limits the subjects who may request

form review to the head of state and one-fifth of the members of the parliament. At the same time, for laws, no abstract norm or concrete norm lawsuit can be filed for form review after 10 days from the date of publication. With the 2017 amendment, the existence of the decrees, which were among the norms that the Constitutional Court supervised, came to an end. Accordingly, with the amendment made in 2017, Turkey has changed its system of government. Turkey's government system, which has been shaped around the parliamentary regime since the Ottoman Turkish constitutional history, has been transformed into a government system that can be considered as a presidential system with the 2017 constitutional amendment (Çelebi, 2017). With this amendment, the Council of Ministers has been completely abolished and the executive branch has become a structure consisting only of the president. As a result of this situation, the type of regulatory act called decree issued by the Council of Ministers has been completely abolished. With the new government system, a new type of regulatory act of the President has emerged. This type of act, called presidential decree, is also subject to review by the Constitutional Court.

The above-mentioned regulations cover the ordinary period. The 1982 Constitution stipulated in the same article that decrees issued in states of emergency, martial law and war cannot be sued for unconstitutionality. With the 2017 amendment, the state of martial law was completely abolished, and the decrees issued in states of emergency were replaced by Presidential Decrees issued in states of emergency. Furthermore, with the amendment made in 2004, international treaties that have been duly entered into force cannot be applied to the Constitutional Court with the claim of unconstitutionality (Art. 90). The 1982 Constitution also places reform laws in a different position from other laws in terms of review. Reform laws within the scope of Article 174 of the Constitution cannot be reviewed by the Constitutional Court. Apart from these, parliamentary decisions taken by the Grand National Assembly of Turkey cannot be reviewed by the Constitutional Court. However, it is necessary to mention three exceptions regarding parliamentary decisions. Although it is a parliamentary decision, the Rules of Procedure of the Grand National Assembly of Turkey can be reviewed by the Constitutional Court. Furthermore, the lifting of legislative immunity and the termination of parliamentary membership are also parliamentary decisions that can be reviewed by the Constitutional Court.

When we compare Article 148 with the provisions of the 1961 Constitution, we first observe that the number of persons authorised to file

a case before the Constitutional Court has been reduced and the scope has been narrowed. The right of political parties to file a lawsuit has been amended by recognising the ruling party and the party with the highest number of votes after it. The authority of universities and the judiciary to file lawsuits in areas concerning their own sphere of existence has also been abolished. In addition, the Constitution of 1982 limits the persons who may file a lawsuit for the formal incompatibility of laws and constitutional amendments to the president and one-fifth of the members of the parliament. In the internal rules of parliament and presidential decrees, there is no such limitation in terms of those who can file a lawsuit in terms of formal review, and the two parties with the highest number of votes can also file a lawsuit. Since under the 1961 Constitution, the Constitutional Court could not establish a detailed criterion for the scope of the form review of the Constitutional Court, the 1982 Constitution introduced new and more limited principles in terms of formal review. In fact, during the 1961 period, the Constitutional Court continued to review constitutional amendments in terms of subject matter after the 1971 amendment on the basis of the immutability of the first three articles (Kaboğlu, 2024). In the 1982 Constitution, as a reaction to this, we see that the limits of the conditions of the form review of constitutional amendments have been determined.

Article 149 of the Constitution regulates the working and judicial procedure of the Constitutional Court. This article stipulates that the Constitutional Court shall first examine and decide on abstract norm review cases based on the form defect of a norm. In order to decide on the annulment of constitutional amendments, a two-thirds majority vote of the members of the Constitutional Court attending the meeting is required.

Article 150 originally authorised the president, the parliamentary groups of the ruling and main opposition parties, and one-fifth of the members of the Grand National Assembly of Turkey to claim that laws, decrees and rules of procedf the parliament were unconstitutional in both form and substance. With the 2017 constitutional amendment, decrees were replaced by presidential decrees. Also with the 2017 constitutional amendment, the parliamentary groups of the ruling party and the main opposition party were changed to the two political party groups with the largest number of members. The prescription period for filing an action for annulment of a law, a parliamentary internal regulation and a presidential decree is 60 days starting from the publication of these norms in the official gazette (Art. 151).

In the 1982 Constitution, concrete norm review is regulated in Article 152. Accordingly, if the court hearing the case finds a law or decree or its provisions, which will be applied in the current case, unconstitutional, or if one of the parties makes such a claim and the judge considers it to be serious, in such a case, the judge shall suspend the case and apply to the Constitutional Court to decide on the unconstitutionality of the norm. The 2017 amendment replaced decrees with presidential decrees. The Constitutional Court renders its decision within 5 months of the application, and if it does not render a decision within this period, the first instance judge will finalize the case according to the existing laws. If the Constitutional Court decides that the relevant norm is constitutional in the case before it, in such a case, it dismisses the case and the same norm cannot be applied to the Constitutional Court again with the claim of unconstitutionality until 10 years have passed. The noteworthy point here is the ten-year time limit. This period applies to the court's rejection decisions on the merits of the case. Under the 1961 Constitution, the reason for the ten-year term ban, which did not exist under the 1961 Constitution, is shown in the preamble of the article as ensuring stability. In our opinion, this time limit is too long and should be reduced. The reason for this is the possibility of the laws falling behind the times during this period. Considering that even the articles of the Constitution are amended over time, it is much more likely that the laws will lag behind the requirements and wishes of the society. Therefore, this prohibition should be reduced to a minimum period. The last noteworthy point about this article is the increase of the court's decision-making period from six months in 1961 to six months and, more importantly, the complete abolition in 1982 of the power to review the constitutionality of the Constitution, which was granted to the general courts exceptionally and conditionally (Özbudun, 2023). The Constitutional Court retains this power exclusively.

In terms of the consequences of the Constitutional Court's decisions, it is useful to examine Article 153 of the 1982 Constitution. According to this article, the decisions of the Constitutional Court are final and if the court annuls a norm, it cannot make an announcement without writing its reasoning. This provision is identical to the provision in the 1961 Constitution. The second paragraph of this article stipulates that the Constitutional Court, when annulling the whole or part of a norm, cannot substitute the legislative body and decide in a way that would lead to a new practice. If a norm is annulled by the Constitutional Court, the norm will cease to be in force on the date of publication of this decision in the

official gazette. However, in necessary cases, the Constitutional Court may set a later date for the annulment provision to enter into force. However, a time limit has been set here as well. Accordingly, the date of entry into force of the annulment provision cannot exceed one year starting from the day the decision is published in the official gazette. Of course, the annulment decision of the Constitutional Court regarding a norm may create a legal gap. For this reason, the Grand National Assembly of Turkey shall first discuss and decide on the law proposals related to the annulled norm. The annulment decisions of the Constitutional Court cannot affect the past. The decisions of the Constitutional Court are published in the official gazette and bind the legislative, executive and judicial organs, administrative authorities, real and legal persons.

Conclusion

In the United States of America, the first country to review the constitutionality of norms, norm review emerged as a result of practices, not through the provisions regulated in the constitution. The 1803 Marbury v Madison case is very important in terms of paving the way for legal review of norms in the United States. Norm review in the USA is conducted by the general courts and the decisions of the courts as a result of norm review are binding only on the parties. In Europe, on the other hand, norm review emerged at a later period compared to the United States. Accordingly, in order to prevent the same problems after World War II and to ensure that the norms enacted by the legislative assemblies are reviewed, European countries have made relevant regulations in their constitutions and constitutional courts have emerged. In continental Europe, norm review is carried out only by constitutional courts authorized by the constitution. Accordingly, the decisions resulting from norm review are generally binding on everyone. In Turkey, as in other countries of continental Europe, the European model of constitutional jurisdiction is used.

Turkey established the constitutional judiciary mechanism with the 1961 constitution and became one of the leading countries in Europe to have a Constitutional Court. In the constitutions of the pre-1961 period in Turkey, there was no legal review mechanism to ensure the constitutionality of norms, but only political review. Accordingly, in the first written constitution of the Ottoman Empire, there was a bicameral

structure and the laws passed by the parliaments were made only by the members of the parliament appointed by the sultan. In the 1924 Constitution, on the other hand, there was a unicameral parliament and the parliament itself supervised the laws it passed. With the 1961 Constitution and the establishment of the Constitutional Court, Turkey became a state of law. The review of the constitutionality of norms is carried out in two ways: abstract norm review and concrete norm review. While only the political individuals specified in the constitution can apply to the abstract norm review, in the concrete norm review, the parties or the judge of the case who think that the norm applied to them in a case is unconstitutional can also go to the Constitutional Court by asserting the claim of unconstitutionality. There are also differences between the two types of review in terms of time limits. Accordingly, the application period in abstract norm review is quite limited. However, in concrete norm review, there is no such time limit, and it is deemed sufficient that the norm in force can be applied in a case.

The 1971 constitutional amendments led to a regression in the achievements related to constitutional jurisdiction. Prior to this amendment, the Constitutional Court could review constitutional amendments in terms of both subject matter and form through jurisprudence, whereas with the amendment, constitutional amendments could only be reviewed in terms of form. At the same time, small political parties have been excluded from the list of those who can file an abstract norm case. These amendments are unfavorable in terms of the rule of law, democratic state and pluralism. The 1971 amendment, which can be characterized as extremely positive in terms of the rule of law, is the obligation to write the decisions of the Constitutional Court with reasons. In a state of law, courts must explain in detail the legal grounds on which they base their decisions. This constitutional amendment is a positive achievement in this respect. The other amendment of the 1971 Constitutional Amendment is related to the duration. Accordingly, if no response is received from the Constitutional Court within 6 months, the court of first instance will finalize the case according to its own decision. Here, we characterize the decision-making authority left to the court of first instance in the event that there is no decision on norm review within the relevant period as positive. Another regulation regarding the time limit is the rule regarding the postponement of the entry into force of the Constitutional Court's decision to a later date when it annuls a norm. Accordingly, when the Constitutional Court annuls a norm, the relevant decision will enter into force upon its publication in the official gazette

and the postponement of this decision will not exceed a period of one year from the publication of the decision. Of course, the reason for postponing the entry into force of the Constitutional Court's decision on the annulment of a norm is to ensure that the parliament makes a law on this issue in order to prevent the damages that may arise in the event of a legal gap and to give the parliament a period of time for this purpose. With the constitutional amendment, we see the one-year time limit as a positive achievement. The reason for this view is the principles of openness, transparency and predictability, which are among the principles of the rule of law.

When we look at the 1982 Constitution period, we see a change in the norms subject to review. In the first version of the Constitution, constitutional amendments, laws, rules of procedure of the parliament and decrees were subject to judicial review, whereas a differentiation was made due to the transformation in the system of government in 2017. The existence of decrees was abolished and presidential decrees were introduced and their judicial review was left to the constitutional court. In line with the previous constitutional period, constitutional amendments were regulated only in terms of form, while all other norms were regulated in terms of both subject matter and form. However, as a reaction to the jurisprudence of the Constitutional Court in the previous period, a provision was enacted to limit the formal review of constitutional amendments only to the issue of whether the majority of proposals and voting and the prohibition of the prohibition of rapid discussion are complied with. Undoubtedly, this is a restrictive regulation that narrows the court's scope of action. Under the 1982 Constitution, the number of norms that cannot be reviewed was also increased. State of emergency presidential decrees, parliamentary resolutions (with exceptions), reform laws listed in Article 174 and international treaties on fundamental rights and freedoms under Article 90 are non-reviewable norms. In states of law, pluralism and legal control of norms are essential, and this regulation is contrary to the characteristics of the rule of law. All norms in the Turkish legal system must be audited as a requirement of compliance with the rule of law. Again, when we look at the regulations regarding those who file lawsuits, it is seen that narrowing regulations have been made in this regard. The right of universities, the judiciary and political parties to file lawsuits has been abolished and regulations have been made that move away from pluralistic democracy. The right to sue is limited to the president, one fifth of the members of parliament and the two parties with

the highest number of votes. In the form review of laws and constitutional amendments, only the President of the Republic and one-fifth of the members of the parliament can file a lawsuit and this type of review is even more restrictive than the others. In addition, it is observed that the right to file a lawsuit for norm review, which had expired ninety days after the publication of the annulled law or internal regulation in the official gazette under the 1961 Constitution, was reduced to sixty days in the 1982 Constitution (presidential decree was added in 2017).

In the concrete norm review, the period for the Constitutional Court to issue a decision has been increased from five to six months, while the review by the courts of first instance in case of failure to issue a decision within the relevant period has been completely abolished. Accordingly, if the Constitutional Court does not issue a decision within the relevant period, the judge of the case will finalize the case according to the norm in force. However, the most striking issue here is the provision that if the Constitutional Court rejects the annulment of a norm, the same norm cannot be sued again for ten years. This rule, which was introduced on the grounds of ensuring stability, both hinders the achievements of the rule of law and fails to fulfill the necessities of the age.

Within the scope of all these evaluations, it is seen that the 1982 Constitution, both in its first version and the subsequent constitutional amendments, has fallen behind the legal gains achieved under the 1961 Constitution. According to the criticisms we have made against each article of the 1982 Constitution in our study, it is imperative to return to the practices we have pointed out in the 1961 Constitution period with the amendments to be made in the constitution in order to regain the gains of the rule of law and democratic state.

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