THE IMPACT OF THE COMPOSITIONAL CHANGE ON THE DECISIONS OF THE CONSTITUTIONAL COURT OF TURKEY

by

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ABSTRACT

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This thesis studies the motivations behind Constitutional Court justices' decisions, and investigates whether the compositional change of the Court significantly influenced the decisions justices make. By using an original and comprehensive dataset, I measure the Constitutional Court justices' ideal points in a two dimensional ideology space. I then question whether justices' ideologies and background characteristics are significant determinants of their votes and dissents in annulment action cases between 2002 and 2016. The findings suggest that the more restrainist and liberal a justice is, the more likely she will vote for the unconstitutionality. The empirical analyses also show that ideology is a significant determinant of justices' dissenting votes and conditional upon the majority decision. An equally important question this thesis seeks to answer is whether the impact of justices' ideologies on their votes has been significantly different after the Court's compositional change. I show that the activist-restrainist dimension was not a significant determinant of justices' votes but became significant after the 2010 Constitutional Amendments. The analyses also show that the probability of voting for the unconstitutionality of annulment action cases between 2010 and 2016 is significantly lower than the cases between 2002 and 2010.

Keywords: Constitutional Court of Turkey, Judicial Politics, Constitutional Amendment, 2010 Referendum, AKP

ÖZET

YAPISAL DEĞİŞİKLİĞİN TÜRKİYE CUMHURİYETİ ANAYASA MAHKEMESİ KARARLARINA ETKİSİ

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Tez Danışmanı: Dr. Öğr. Üyesi Oya Yeğen

Bu tez, Anayasa Mahkemesi yargıçlarının kararlarının ardındaki motivasyonları incelemekte ve mahkemenin yapısındaki değişikliğin yargıçların aldığı kararlara olan etkisini araştırmaktadır. Tezde oldukça kapsamlı ve orjinal bir veri seti kullanarak, Anayasa Mahkemesi yargıçlarının iki boyutlu ideolojik düzlemdeki ideal noktalarını saptıyoruz. Yargıçların ideolojilerinin, 2002 ve 2016 yılları arasında görülen iptal davalarındaki oylarının ve muhalefet etme davranışlarının anlamlı belirleyicileri olup olmadığını sorguluyoruz. Kısıtlayıcı ve liberal yargıçların, iptal davasında anayasaya aykırılık bulma olasılığının diğer yargıçlara göre daha yüksek olduğunu gösteriyoruz. İdeolojinin yargıçların muhalefet etme davranışlarının önemli bir belirleyicisi olduğunu ve çoğunluk kararına bağlı olduğunu da gösteriyoruz. Tezin üçüncü bölümünde, yargıçların ideolojilerinin oyları üzerindeki etkisinin mahkemenin yapısal deişikliğinden sonra anlamlı ölçüde değişip değişmediğini de sorguluyoruz. Ampirik tahliller, eylemci-kısıtlayıcı boyutun, 2002-2010 yılları arasında yargıçların oylarının anlamlı bir belirleyicisi değilken bu tarihten sonra anlamlı hale geldiğini gösteriyor. Ayrıca, mahkemenin 2010 yılı sonrasında görülen iptal davalarında anayasaya aykırılık bulma ihtimalinin bu tarihten önce görülen davalara nazaran önemli ölçüde düşük olduğunu da gösteriyoruz.

Anahtar Kelimeler: Anayasa Mahkemesi, Yargı, Anayasa Değişikliği Referandumu, AKP

To all teachers, academics, physicians and public officials who are dismissed from profession with executive orders.

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Abbreviations

AKP	Adalet ve Kalkinma Partisi
CCT	Constitutional Court of Turkey
DP	Democrat Party
ECHR	European Court of Human Rights
ECJ	European Court of Justice
HCJD	National High Courts Judicial Database
HCJP	High Council of Judges and Public Prosecutors
RPP	Republican People's Party
SCDB	Supreme Court Database
TBMM	Grand Turkish National Assembly

1 INTRODUCTION

During the Adalet ve Kalkinma Partisi (Justice and Development Party, AKP) period, a number of crucially important constitutional and institutional changes have taken place. Apart from the judiciary, institutional settings of almost all ministries and many other state agencies including the High Council of Education, Supreme Council of Radio and Television, and National Intelligence Organization have undergone series of changes with either the majority vote of the AKP deputies in the Grand Turkish National Assembly (TBMM), or via numerous constitutional amendments. Allegedly, state institutions were designed in a way to preserve the Kemalist state ideology, as well as the interests of its representatives within the military-bureaucratic-judicial elite and the influential economic stakeholders. Coming from the non-elite periphery and in explicit conflict with the dominant ideology among the "old elites," the AKP has legitimized most of these reforms through the need to democratize the institutions by disentangling them from the surveillance of state-ideology and elites.[1][2] Opponents of the reforms, however, have long argued that the motivation behind AKP's reforms was to remove the obstacles to extending its power (Somer, 2017; Gursoy, 2015). What the AKP calls democratization,

[1]Mynet News. October 21st, 2013. "Some elites struggle for reversing the democracy back." http://www.mynet.com/haber/politika/kurtulmustan-demokratiklesme-aciklamasi-835726-1 Consulted on June 27th, 2018.

[2]TRT News. March 13th, 2018. "Democratic transformation will be completed in 10 years" http://www.trthaber.com/haber/gundem/10-yil-icinde-demokratik-donusum-tamamlanacak-78182.html Consulted on June 27th, 2018.

they argue, is the transfer of key offices from the "old" state-elite to the newly emerging one, which would eventually allow for consolidating a great amount of power in the same hands.

While all such changes have become the subjects of severe public discussions, the 2010 reforms of the judiciary branch, especially the change in the composition of the Constitutional Court of Turkey (CCT) has often attracted particular attention. Since the judiciary is one of the, if not the, most powerful control mechanism over the executive and legislative bodies, the CCT is argued to assume the guardianship of the foundational state ideology, and thus the change in its institutional setting is argued to denote its democratization by letting the TBMM and president (i.e., two democratically elected bodies in the republican era) appoint its new members (Bali, 2011-12). In contradiction, the opponents of the reforms maintained that the increase in the number of Court members would allow the AKP to extend its influence over the Court and easily overpass its supervisory power over legislature (Kalaycioglu, 2012).

I believe that the close study of the compositional change of the CCT can help us not only understand the effects of such changes on the decisions made by the Court, but also give an idea about the nature of the reforms undertaken during the AKP rule. Firstly, a thorough analysis of the Court decisions would provide us with the empirical evidence to make inferences about the Court's ideological positioning. A longitudinal examination of the CCT decisions would bring whether the CCT has always been crammed with justices who adopt the foundational state ideology and behave in a way to guard the military-bureaucratic state elites' interests, or appointees of various presidents formed disparate combinations of justices to light. Such an analysis, for this reason, would help us assess the attested motivations behind the judicial reforms of 2010 in particular, and provide us with a better understanding of the motivations behind the AKP's reforms in general.

Secondly, more than seven years after the compositional change of the CCT, an

examination of the impact of the increase in the number of Court members can now yield empirical evidence showing for the Court had "democratized" after the reforms, or became vulnerable to the influence of legislative and executive bodies. With the comparison of justices' ideological preferences, and/or the comparison of the Court decisions made before and after the 2010 Constitutional Amendments, we can grasp whether the reforms have led to the intended consequences. We surely cannot draw broad inferences about all changes in the constitutional structure of Turkey, but I believe this project would at least provide us with the reasons to enquire more into some of many causes and consequences of them.

For such an undertaking, we need to seek answers to questions such as: 1) What motivates CCT justices' decisions? –e.g., Do justices vote ideologically? Which ideological dimensions help explain the CCT justices' voting patterns? Does the Court act as the guardian of the Kemalist state ideology? Do justices appointed by distinct presidents have varied ideological stands? Justices with which ideological preferences are more likely to find AKP legislation unconstitutional? 2) How did the compositional change affect justices' voting behavior? –e.g., Does the Court act as a guardian of the Kemalist state ideology after the increase in the number of its members? Did the change in the size of the Court altered the effects of justices' ideological preferences on their votes? –e.g., How much more or less likely is a justice with certain ideological preferences to vote against AKP legislation after the 2010 Constitutional Amendment?

In this project, by compiling and employing a comprehensive justice-level dataset[3] on the Court decisions between 2002 and 2016, I aim to come up with empirically supported answers to such questions. More specifically, this study builds on two main research questions: 1) What are the determinants of CCT justices' decisions?, and 2) how did the compositional change of the CCT affect the decisions justices make? To answer the former question, I examine the Court justices' voting and dissenting

[3]The dataset is available at https://dataverse.harvard.edu/dataverse/ipekecesener

behavior, and assess the alleged motivations behind the judicial reforms. In answering the latter, I compare justices' votes and dissents before and after the 2010 Constitutional Amendment, and examine whether the reforms gave rise to a significant change in the direction of Court decisions.

The rest of this project is divided into four chapters and a conclusion. The first chapter presents the historical background and discussions regarding the status of the judiciary in Turkish politics. With a brief examination of the constitution-making process from a historical perspective, I argue that the amount of power and independence granted to the judiciary in each constitution has been extensively used by the lawmakers as a means to strengthen its hand. I touch upon the discussions on the CCT's guardianship of state-elites' interests, and refer to a number of important instances that support this argument. The first chapter also provides an overview of the 2010 reforms and a discussion of whether they promise any improvement on democratization.

I present the dataset in the second chapter. In doing so, I first review the previous data compilation efforts on high courts from a comparative perspective, point out conventional practices, and explain the coding procedure I followed while compiling the dataset employed in this project. Since justices' ideology scores are highly important parts of the inferences we make about the Court decisions, I pay particular attention to the operationalization of justice ideology. I then provide an overview of the dataset, and show that the justices appointed by distinct presidents often have disparate ideological preferences and frequently vote in opposite directions. This chapter also provides descriptive statistics on justices' ideological preferences, and voting and dissenting patterns before and after 2010.

The third chapter aims to answer the first main research question noted above, and investigates the determinants of justices' votes for the unconstitutionality of AKP legislation. It concludes that activist-restrainist and liberal-conservative ideology dimensions are significant determinants of justices' votes. In the third chapter, I also

introduce the concept of "procedural cases," which stands for the cases that are concluded with unanimous vote. I maintain that justices' ideological preferences do not reflect onto their decisions in such cases. In this regard, I also report the findings for the non-procedural cases. By removing the procedural cases from the sample, we can reach at more precise estimates of the effects of justice ideologies on their votes.

In the second part of the third chapter, I touch upon the importance of dissent in the studies of judicial behavior, and examine the dissenting patterns of CCT justices. The findings suggest that justices' dissenting votes against majority decisions are also motivated by their latent ideological preferences. However, whether they dissent against majority decision largely varies conditionally on the direction of the majority decision.

The fourth chapter tackles with the second research question on the Court's compositional change. It investigates the impact of the increase in the number of the Court members by comparing the effects of justices' ideologies on their votes before and after the 2010 Constitutional Amendment. It also presents whether the predicted probabilities of voting against AKP legislation and dissenting against the majority decision demonstrate statistically and substantively significant change after the Amendments. The estimates for the cases excluding the procedural ones are also presented in the fourth chapter, where I briefly discuss whether the findings also suggest a change in the polarity in the Court after 2010.

In conclusion, I review the empirical findings and explain their significance for our understanding of the judiciary's place in Turkish politics. The thesis concludes that ideological preferences have been substantively significant determinants of CCT justices' voting and dissenting behavior during the AKP rule. However, the activist-restrainist dimension has become significant only after 2010. In other words, however ideological decisions the Court may have made in certain key cases between 2002 and 2010, the degree to which justices prefer preserving the Kemalist state ideology did not motivate their votes in the universe of annulment action cases between these years. The the-

sis also concludes that the probability that justices vote against AKP legislation has significantly decreased after 2010, which might suggest that the AKP has successfully extended its influence over the Court via the Constitutional Amendments increasing the size of the Court and changing the appointment procedures.

2 THE JUDICIARY IN THE CONTEMPORARY HISTORY OF TURKEY

Both the structure and the status of the judiciary of Turkish government have recently undergone a series of reforms with the supposed aim of strengthening independence, impartiality and efficiency of the judicial system. Along with several other complementing articles, the changes in the composition of the Constitutional Court and the High Council of Judges and Public Prosecutors (HCJP) with the constitutional amendment of 2010 were considered by many as notably promising reforms to improve the performance of the judiciary. Not only the supporters of the incumbent AKP but also a majority of independent liberal democrats, including academicians, journalists, and major European institutions such as the European Union, Venice Commission, and Council of Europe declared their support for the reforms.[4] In nearly eight years since the amendment, however, no major improvement in the performance of the judiciary has been reported. Contrarily, cross-national comparisons suggest that the Turkish judicial performance is in decline,[5] and international organizations often urge Turkey to

[4]BBC News. September 13, 2010. "Turkish reform vote gets Western backing." https://www.bbc.com/ news/world-europe-11279881 Consulted on June 27, 2018.

[5]Turkey's global rankings according to the World Justice Project Rule of Law Index are as follows: in 2014, 59/99; in 2015, 80/102; in 2016, 99/113. Available at: http://worldjustice project.org/publications Consulted on June 27, 2018.

respect the independence of the judiciary and uphold the rule of law.[6] Acknowledging the importance attached to it, I will examine the recent reforms of the judiciary in this section. I will first briefly put the Turkish judiciary in historical context, and then discuss the importance of the recent reforms for the contemporary Turkish politics.

2.1 The Evolution of the Turkish Judiciary

As only an independent and impartial judiciary duly enforcing land's law can make sure that the arbitrary government power is restricted, judicial independence is considered as *sine qua non* for a properly functioning democracy. Nevertheless, Turkey's experience in implementing the principle of separation of powers and ensuring judicial independence has been anything but consistent. Not only the power granted to each branch of government has been imbalanced, but the relative supremacy of one branch over the others has also altered with the constitutional changes and amendments. The first Constitution of the Republic, the 1924 Constitution, embodied a rather simplistic "Rousseauist" or majoritarian view of democracy with the concentration of the legislative and executive powers in the "assembly government" in theory, and transforming into a "legislative supremacy" over the executive body in practice (Kalaycioglu, 2005; Genckaya and Ozbudun, 2009). Concordantly, the main defect of the 1924 Constitution is considered to be "its lack of effective system of check and balances to check the power of elected majorities" (Ozbudun, 2000, p. 52). During the Republican People's Party (RPP) rule of the 1923-50 era, however, concentration of powers in the parliamentary did not seem to create a major system breakdown as no meaningful distinction between the government and the bureaucracy, and between the party and the state were to be drawn (Belge, 2006, p. 659).

In his well-known work, Mardin (1975) presents the part of the Turkish society

[6] Among them are the Office of the United Nations High Commissioner for Human Rights (OHCHR), European Network of Councils for the Judiciary (ENJC), and International Comission of Jurists (IJC).

Table 1 Judiciary in the Constitutions of the Republican Period

Constitutions	Judicial Review	Council of Judges	Supremacy
1924 Constitution	No	No	Legislative
1961 Constitution	Yes	Yes	Judiciary&Bureaucracy
1982 Constitution	Yes	Yes	Executive
2010 Amendment	Yes	Yes	Executive

concentrated all power at hand as the "Center," which corresponds to the military and the bureaucratic elites' alliance under RPP, and the remaining forces that do not belong to the military-bureaucratic ruling class as the "Periphery." Accordingly, with the transition to multi-party politics and Democrat Party (DP) gaining the majority of seats in the parliament, "military-bureaucratic ruling class"' domination over the politics was challenged by the effectively mobilized peripheral forces (Ozbudun, 2006, p. 284). Only then the need to put formal restraints on the legislative power, notably a judicial mechanism for reviewing the constitutionality of laws and sufficient safeguards for the independence of the judiciary found support among the state elites (Genckaya and Ozbudun, 2009, p. 13).

The RPP and the so-called state elites, namely the military-bureaucratic ruling class together with the intellectuals, wrote, confirmed, and promulgated the 1961 Constitution by which they secured important enclaves of political power for themselves (Belge, 2006, p. 657). Not only were the forces of the 'Periphery' left outside the process of constitution making, they were also not granted place in the composition of the Second Republic. More than anything, the 1961 constitution had put an end to the unconditional legislative supremacy by introducing an effective system of checks and balances to prevent arbitrary use of power. Introduction of judicial review and the High Council of Judges, also strengthening the administrative courts are instances demonstrating the enhancement of the relative power and independence of the judiciary with respect to others. Therefore, while the constitution expanded social rights and civil liberties of citizens, it reflected distrust of politicians and elected majoritarian assemblies (Genck-

aya and Ozbudun, 2009, p. 16), and increased bureaucracy's (especially senior judges, military officials, and technocrats) supervisory role over politicians (Belge, 2006, p. 663).

Starting with the 1971 and 1973 constitutional revisions, every attempt at amending the Constitution served to curb the judiciary's power in terms of restricting the scope and limits of judicial review. The making and substance of the 1982 Constitution reflected an even more distrust of authorities (mainly the National Security Council) than that of the 1961 Constitution towards all civilian actors, this time including the former allies in the judiciary and the state bureaucracy (Shambayati and Kirdis, 2009, p. 773). The formation of the third republic highlighted an "executive supremacy" with a legally and politically irresponsible Presidency in charge of guarding and arbitrating the political system, the executive being only nominally controlled by the legislature, and the judiciary strictly monitored by the Ministry of Justice (Kalaycioglu, 2005, p. 128). Once again, the power relations among the branches of the government were designed from above without necessarily considering the democratic principles, but to secure a stable order under the control of the office of the President.

2.2 Judiciary as the Guardian of State Elites' Interests

In his "hegemonic preservation" thesis, Hirschl (2004, p. 91) suggests that "political elites can insulate their increasingly challenged policy preferences against popular political pressure by the constitutionalization of rights and the establishment of judicial review when majoritarian decision-making processes are not operating to their advantage." In such conditions, he reminds, "an unprecedented amount of power is transferred from representative institutions to judiciaries" (2004, p. 71) creating what he calls "juristocracy." Basically, threatened political, economic and judicial elites reach an agreement on the judicial empowerment through constitutionalization, and the courts, in general, behave in the direction that such elites expect them to behave.

In Turkey's experience, that the military-bureaucratic elite entrusted the Consti-

tutional Court with the right of reviewing the constitutionality of the Parliament's abstract decisions is considered granting the judiciary with a privileged position vis-à-vis the "elected branch." Some scholars (Belge, 2006; Ozbudun, 2006; Shambayati and Kirdis, 2009) suggest that when state elites realized their impotence before the populist right-wing majority to acquire the necessary parliamentary power to pass desired laws and regulations, they came up with the instrument of judicial review which would protect their fundamental values and interests. The argument goes so far as to suggest that the Constitutional Court was first established "as the guardian of a Republican constitution against Democrats" (Belge, 2006, p. 664), and its primary function, with the 1982 Constitution, came to be "assisting the executive" in achieving the goals of the political system (Shambayati and Kirdis, 2009, p. 775). Hence, Hirschl's term "juristocracy" is found suitable for the Turkish context.

Several controversial decisions of the Constitutional Court support these arguments. Most recently in 2007 and 2008, two legislative attempts of the AKP, a non-state-elite party that gained more than 45% of votes, were averted by the Court. In 2007, the parliamentary voting for the presidency was cancelled as the non-state-elite candidate Abdullah Gul was expected to win, and in 2008, the constitutional amendment permitting the use of headscarf in universities was struck down. These instances are striking in the sense that both the usage of headscarves in universities and the presidency of Abdullah Gul were actually demanded by the grassroots of AKP, as became evident in the results of the subsequent general elections and the referendum. However, these demands were not compatible with state-elites' "fundamental values and interests," and therefore prevented by the judicial authorities. It seems that in certain circumstances, the existence of the rule of law, or that the government in all its actions is bound by law fixed and announced beforehand, does not follow the existence of government by and for the people, as the law that binds the government has not been written by and for the people.

Contrary to the arguments in favor of Constitutional Court of Turkey's "juristocratic" state, Hazama (2012), based on a quantitative analysis of Court's decisions during the 1984-2007 period, suggests that the above-mentioned instances reflect exemplary cases rather than a long-term pattern. In other words, although the Court has long showed a strong tendency to accept unconstitutionality claims by state-elite presidents, it has also frequently annulled laws passed by the executive branch. Therefore, Hazama (2012) argues that the Court's preference is for horizontal accountability over hegemonic preservation and not vice versa.

2.3 2010 Reforms of the Judiciary

The 1982 Constitution has been amended more than 15 times to enhance the liberal-democratic standards in general, but no major change in the status or functions of the judiciary could be made until 2010, although it was subject to debates all along. Even the proposal for a modest change in the selection of justices to the Constitutional Court in 2004 received severe criticisms from the presidents of high courts. That AKP kept his public support steadily increasing in the elections in face of the incidents such as the Constitutional Court's controversial provisions, the Ergenekon trials, and the proclamation of the "e-memorandum" made a constitutional amendment proposing fundamental changes in the relative power of judiciary possible. At this point it would be informative to briefly address two main changes 2010 Amendment brought about to the structure of the Turkish judiciary.

2.3.1 The High Council of Judges and Public Prosecutors

For the independence and impartiality of the judiciary, an internationally-held principle is that the tenure of judges needs to be secured, and this principle necessitates the existence of independent and impartial high judicial councils. To that end, all the proceedings regarding judges and public prosecutors of civil and administrative courts

are operated by the HCJP in Turkey. In the 1961 Constitution, the Council was formed as the High Council of Judges, and no member from executive was to be found among its ranks. Yet, the 1982 Constitution restructured the Council as the High Council of Judges and Public Prosecutors, and put the Minister of Justice in its presidency.

The main idea of the 2010 Amendment regarding the HCJP (also for the Constitutional Court) was to increase the number of its members to give it a more pluralistic and representative structure (Ozbudun, 2015*a*, p. 45). According to the initial arrangement, the High Council's members were being elected by and from among two high courts (the Court of Cassation and Council of State), whereas the 2010 Amendment changed the procedure such that they will be elected by and from among all general and administrative courts judges and public prosecutors, in addition to four regular members appointed directly by the President. In that sense, the popular vote in 2010 created a much more representative, pluralistic and powerful HCJP and so judiciary, but also one that is much open to the influence of the executive branch.

The Venice Commission, in its opinion dated in December 2010, states that "the new HCJP is formally a much more independent institution than its predecessor, and the new system formally fulfills most European standards" (Bartole and Maan, 2010, p. 28). Similarly, the Secretary General of the Council of Europe defined the reform "as a significant step in Turkey's further democratic development."[7] Seemingly, several international judicial organizations welcomed the new structure of the judiciary as it gave a democratic outlook and came to comply with the European standards and practices. However, both the proposal and the adoption of the law regarding the form of HCJP created great countrywide controversy among different segments of the Turkish population including political elites, academics, civil society organizations, business associations, trade unions, and alike. Those opposing the part of the amendment argued that the law intends to politicize the judiciary and brings it closer to the (non-state-

[7]Council of Europe, Press Release 648(2010). Available at: https://wcd.coe.int Consulted on June 27^{th}, 2018.

Table 2 The Change in the Composition of the HCJP

Members	1982 Constitution	2010 Amendment
President	Minister of Justice	Minister of Justice
Vice President	Undersecretary	Undersecretary
Appointed by the President	5	4
Elected by the High Courts	-	16
Total	7	22

elite) ruling party more than making the HCJP independent.[8] In fact, the elections in the aftermath of the amendment is alleged to be influenced by the Ministry of Justice as the seats were seemed to comprise AKP government favorites (Ertekin, 2001).

Only three years after the amendment ha passed, another major arrangement was proposed and regarding the structure of the HCJP. Following the disclosure of corruption charges involving four ministers and several other AKP members, the government attempted to change the law about "judicial police" so that the executive body to be informed priorly to the eruption of such cases. When the HCJP denounced the attempt as unconstitutional and prevented the execution of the law, then Prime Minister Erdogan declared that "the HCJP committed an illegal act, and the nation is who will judge them,"[9] and that "we made a mistake by empowering the HCJP, the Minister of Justice should have remained as its supervisory mechanism."[10] Two months later, a bill intending to limit the powers of the Plenary of the HCJP and strengthen the role of the Minister of Justice as its president went into force. Once again, judiciary's relative power among the branches of the government was altered as the Minister of Justice

[8]Former Izmir bar president Noyan Özkan's arguments can be an example of this stance: "Judicial system and High Courts will be harnessed by the executive with this constitutional amendment package." http://bianet.org/bianet/siyaset/124356-15-soruda-anayasa-paketi-ve-hayir Consulted on June 27^{th}, 2018.

[9]Hürriyet Daily News, December 27, 2013. "I would judge the Supreme Council of Judges and Prosecutors if I had authority: Turkish PM" http://www.hurriyetdailynews.com/i-would-judge-the-supreme-council-of-judges-and-prosecutors-if-i-had-authority-turkish-pm-60233 Consulted on June 27, 2018.

[10]Hürriyet. December 29, 2013. "Erdogan: Orada bir yanlis yaptik" http://www.hurriyet.com.tr gundem/erdogan-orada-bir-yanlis-yaptik-25465765 Consulted on June 27, 2018.

ended up with an unlimited authority to reorganize the HCJP (Ozbudun, 2015*a*, p. 47). Accordingly, starting with the allegations of corruption[11] and reaching its peak with the July 15 coup attempt,[12] the government stepped up a purge on the judiciary both in terms of relegation and dismissal from profession, which attracted great domestic and international criticism.

2.3.2 The Constitutional Court

Article 148 of the 1982 Constitution defines main functions of the Constitutional Court as "examining the constitutionality in respect of both form and substance, of laws, decrees having the force of law and the Rules of Procedure of the Grand National Assembly of Turkey, and decide on individual applications" (Const. of the Republic of Turkey, amend. 2011, art. 148). The types of cases that could be brought to the Court are annulment action/remedy of objection, financial supervision of political parties, suspension of execution, passing a warning to political parties, banning of political parties and abolition of immunity, and individual application. Annulment actions are lodged upon the claim that a code, decree in the power of law, and a particular article or provision is contradictory to the Constitution. According to the Article 35 of the Code on Establishment and Rules of Procedures of the Constitutional Court (Code No: 6216) only the president of the Republic of Turkey, parliamentary groups of the ruling and the main opposition party, and members of the Grand National Assembly of Turkey who constitute at least one fifths of the absolute number of members are authorized to lodge annulment actions. Remedy of objection, on the other hand, stands for lower courts' power to lodge a file to the Constitutional Court upon finding the provisions

[11]The Telegraph, January 22, 2014. "Turkey continues with huge purge of judges and police." https://www.telegraph.co.uk/news/worldnews/europe/turkey/10590399/Turkey-continues-with-huge-purge-of-judges-and-police.html Consulted on June 27, 2018.

[12]Bloomberg, July 18, 2016. "Turkey's Judicial Purge Threatens the Rule of Law." https://www.bloomberg.com/view/articles/2016-07-18/turkey-s-judicial-purge-threatens-the-rule-of-law Consulted on June 27, 2018.

of a code or a decree in the force of law which will be applied in a case, contradictory with the Constitution. While annulment actions should be lodged within ten days from the day on which a code is published in the Official Gazette, remedy of objection is available for courts any time they find the provisions of a code that will be applied in a certain case contradictory to the Constitution.

Whether the Constitutional Court has the authority of suspending the execution of an administrative act is a controversial issue since the Code on Establishment and Rules of Procedures of the Constitutional Court does not explicitly authorize the Court to do so. However, Article 125 of the Constitution which is titled "Judicial Review" states as follows: "A justified decision regarding the suspension of execution of an administrative act may be issued, should its implementation result in damages which are difficult or impossible to compensate for and, at the same time, the act would be clearly unlawful" (Const. of the Republic of Turkey, amend. 2011, art. 125). By giving reference to this article, the Constitutional Court suspended the execution of an administrative act for the first time on October 21, 1993, and the jurisprudence on suspension of executive has been built thereupon.

The Constitutional Court is also responsible for resolving cases related to the functioning of the political parties. Two types of cases the Constitutional Court is authorized to resolve are passing a warning to political parties and banning them. Only the Chief Prosecutor of the Republic at the Supreme Court of Appeals can lodge an action to ban a political party, and can address the Court regarding the ruling for a warning against a political party upon the claim that it has acted in violation of certain provisions of the Political Parties Code. Following the Constitutional Court's controversial rulings on party closures, lodging action to ban political parties has been made more difficult and the required portion of the Court members to ban political parties has been increased. The Court is also authorized to financially audit the political parties with help from the Supreme Court of Appeals and the Supreme Court of Accounts.

The bill of constitutional amendment allowing the abolition of TBMM deputies' legislative immunity and foreclosure of their membership is adopted on May 2016, with the votes of more than three-fifths majority of the total number of members of the Assembly (i.e., without a need for a referendum.) Before 2016, assembly members' immunity from interrogation could not be abolished, thus such a type had not existed. Now the Constitutional Court also accepts the applications of deputies who claim that the abolition of their legislative immunity or foreclosure of their membership is in violation of the Constitution. The last type of cases the Constitutional Court hears is individual application the right of which is granted to the citizens with the 2010 Constitutional Amendments. This matter is briefly explained below.

With the 2010 Constitutional Amendment, the structure, duties, and authorities of the Constitutional Court have been rearranged. The composition of the Court, the tenure of justices, and the scope of the applications to the Court have been changed with the Amendment. To start with the composition of the Court, while the initial arrangement of 1982 declared the Constitutional Court to be composed of eleven regular and four substitute members, the amendment increased the number of regular members to seventeen and abolished the seats reserved to the substitute members. Article 146 of the 1982 Constitution prescribed the composition of the Court as follows:

> "The President of the Republic shall appoint two regular and two substitute members from the High Court of Appeal, two regular and one substitute member from the Council of State; and one member each from the Military High Court of Appeal the High Military Administrative Court and the Audit Court, three candidates being nominated for each vacant office by the Plenary Assemblies of each court from among their respective presidents and members, by an absolute majority of the total number of members; the President of the Republic shall also appoint one member from a list of three candidates nominated by the Council of Higher Education from among members of the teaching staff of Institutions of higher education who are not members of the Council, and three members and one substitute member from among senior administrative officers and lawyers."

Table 3 The Change in the Composition of the Constitutional Court

Members	1982 Constitution	2010 Amendment
Elected by the President		
High Court of Appeals	2 R + 2 S	3 R
Council of State	2 R + 1 S	2 R
Court of Accounts	1 R	
High Military Court of Appeals	1 R	1 R
High Military Administrative Court	1 R	1 R
Teaching Staff in Higher Education	1 R	3 R
Senior Administrative Officers and Lawyers	3 R + 1 S	4 R
Elected by the Parliament		
Court of Accounts		2 R
Heads of Bar Associations		1 R
Total	11 R + 4 S	17 R

Note: R: Regular Member; S: Substitute Member.

Article 146 of the 1982 Constitution, as amended on September 12, 2010; Act No. 5982, prescribes the composition of the Court as follows:

> "The Constitutional Court shall be composed of seventeen members. The Grand National Assembly of Turkey shall elect, by secret ballot, two members from among three candidates to be nominated by and from among the president and members of the Court of Accounts, for each vacant position, and one member from among three candidates nominated by the heads of the bar associations from among self-employed lawyers. ... The President of the Republic shall appoint three members from High Court of Appeals, two members from Council of State, one member from the High Military Court of Appeals, and one member from the High Military Administrative Court from among three candidates to be nominated, for each vacant position, by their respective general assemblies, from among their presidents and members; three members, at least two of whom being law graduates, from among three candidates to be nominated for each vacant position by the Council of Higher Education from among members of the teaching staff who are not members of the Council, in the fields of law, economics and political sciences; four members from among high level executives, self-employed lawyers, first category judges and public prosecutors or rapporteurs of the Constitutional Court."

Table 3 summarizes the composition of the Court as it is prescribed in 1982 Consti-

tution before and after the 2010 Amendment. According to Provisional Article 18 of the Act No. 5982, existing four substitute members were to become regular members, and two new justices (one from the Court of Accounts and one from among the heads of bar associations) were to be appointed by the Parliament immediately after the Amendment came into force. Since the total number of members who will be elected from the High Court of Appeals was reduced from four to three, and members who will be elected from the Council of State was reduced from three to two, following the vacancy of the positions allocated to the High Court of Appeals and the Council of State, the President was to choose one member for each vacancy, from among three candidates to be nominated by the Council of Higher Education from among members of the teaching staff in Higher Education.

Another rearrangement in the structure of the Constitutional Court concerns Justices' tenure. While the 1982 Constitution stated that "the members of the Constitutional Court shall retire on reaching the age of sixty five" (Const. of the Republic of Turkey, amend. 1987, art. 147), the same article is amended as follows: "The members of the Constitutional Court shall be elected for a term of twelve years. A member shall not be re-elected. The members of the Constitutional Court shall retire when they are over the age of sixty-five" (Const. of the Republic of Turkey, amend. 2011, art. 147). In other words, while the only term limit had been justices' age before the amendment, now they were to serve only for twelve years. Those justices who were members of the Constitutional Court on the date of entry into force of the Act No. 5982, were to continue in their post until the statutory age limit.

2010 Amendment also provided individuals with the right to a remedy that can be exercised following the exhaustion of other remedies. Upon the claim that a lower Court violated her constitutional rights, an individual could, after the Amendment, resort to the Constitutional Court by filing an individual application. This reform proposal had been one of the primary reasons for the amendment package to attract great support

from the academicians, journalists, and several international organizations. This opportunity could put an end to, or at least constitute a constitutional check on, public authorities' violations of individuals' fundamental rights.

Changes in the composition of the Constitutional Court is regarded less radical than that of the HCJP since the majority of the members continue to be appointed either directly (the President may choose any justice from among a specific subgroup) or indirectly (the President may choose one justice from among three candidates proposed by the high courts) by the President. However, with the total increase in the number of the court members from 11 to 17, and the parliament being granted a limited role in the appointment of justices, a significant change in court decisions was a high probability. Besides, the radical change in the structure and the composition of the HCJP would most likely reflect in the Composition of the Constitutional Court in the long run.

Though the Provisional Article 18 ruled that only two new members were to be appointed to the Court upon the amended articles' entry into force, the designated dates of retirement for three regular (Sacit Adali, March 2010; Abdullah Necmi Ozler, April 2010; Sevket Apalak, November 2010) and two substitute (Cafer Sat, January 2010; Mustafa Yildirim, February 2010)[13] members were already within 2010. For this reason, the Constitutional Court was to welcome seven new members in one year. With Recep Komurcu whom the President Gul appointed to the Court in 2008, the number of Gul appointees were to become 8 to 9 in late 2010-early 2011, and 10 to 7 in early 2012.

The increase in the number of Gul appointees within the Court would be lower if the number of Court members were stuck to eleven regular and four substitute members. For this reason, debates on the change in the Court's composition have revolved around whether the reforms implied "court packing." Scholars were divided into two camps arguing either that the amendments would lead to the enlargement of the Constitutional

[13]A full list of justices' dates of entry and exit is provided in Table 11 of the Appendix.

Court, allowing it to be filled with conservative judges who would be more in tune with the AKP's conservative agenda (Kalaycioglu, 2012, p. 6) or that "the amendments opened avenues of appointment and advancement to a broader cross-section of the Turkish judiciary" (Bali, 2011-12, p. 309). Apparently, differing emphases on the change in the substantive representativeness of the Court and the intention with which its representativeness was altered seem to have determined these two camps' positions towards the reforms.

In a way to support the arguments in favor of the reforms, the Constitutional Court ruled against the incumbent government's interests in several key cases since 2010. One of the most controversial rulings of the Court was its unconstitutionality decision of the aforementioned bill that transferred the powers of the Plenary of the HCJP to the Minister of Justice. An equally polemical ruling was the one that led to the release of journalists Can Dündar and Erdem Gül who have been charged with publishing classified governmental information. Following this seemingly activist attitude of the Court, some scholars' portrayal of it as "the principal defender of human rights and democratic standards" (Ozbudun, 2015*a*, p. 7) and the reforms as "an important step in the direction of improved fundamental rights, judicial accountability and civilian control over government" (Bali, 2011-12, p. 309) can be argued to have gained meaning. Furthermore, the Court received severe criticisms from the ranks of the government and AKP representatives. Then Prime Minister Erdogan accused justices of involving in politics and invited them to take-off their robes and engage in politics.[14] An AKP parliamentarian even demanded the abolishment of the Constitutional Court claiming that appointed justices assume judicial guardianship over elected deputies.[15] In few years, as part of the broad purge on the state bureaucracy including judges and public

[14]Cumhuriyet, April 13, 2014. "Take off your robe and engage in politics." Consulted on June 27, 2018

[15]Hurriyet, March 13, 2016. "Constitutional Court should be abolished." http://www.hurriyet.com.tr/ gundem/anayasa-mahkemesi-kaldirilmali-40067785 Consulted on June 27, 2018

prosecutors, two judges from the Constitutional Court were charged with being members of the Gulen Movement, and imprisoned immediately after the July 15 coup attempt.

3 DATASET

In this chapter, I briefly review the data compilation efforts for the empirical study of judicial behavior, explain the coding procedure and the operationalization of the justice ideology employed in the empirical analyses of this study, and then provide an overview of the dataset.

3.1 Databases on Courts

With the rigid and doctrine-centered legal formalism of the 1800s leaving its place to legal realism in the early twentieth century, a more flexible style of legal scholarship that is "attentive to policy, politics, and the law-in-action of self-regulating social communities (Suchman and Mertz, 2010, p. 558)" has become prominent. This flexible style of scholarship approaches the law as a construct of lawmaker and adjudicator, and social, political and economic factors as important determinants both in the making and in the adjudicating of law. Expectedly, the expansion of legal scholarship to the students of sociology, political science, psychology and economics also follows this major shift in literature.

Once theoretical developments in these areas had achieved the threshold of maturation, questions that would yield to empirical testing have emerged (Heise, 2002, p. 820), and empirical studies gained ground among legal academists. While early em-

pirical work in legal research relied heavily on qualitative surveys of judicial decisions, the first scholar to rely on empirical data to support a hypothesis was Pritchett, a political scientist from the University of Chicago. In early 1940s, he started tallying the votes of the United States Supreme Court in order to test the hypothesis that justices' votes are not mere reflections of the existing law but determined by their individual preferences, most important of them being their ideologies. Pritchett also showed the ideological groupings within the Court and place the justices on the left-right spectrum using matrices and descriptive statistics without resorting to the more advanced tools at our disposal today.

Pritchett's project of collecting quantitative data on the US Supreme Court cases has inspired many scholars to build similar datasets on the Supreme Court, and other national and international higher courts. First among them was in late 1980s, when Spaeth initiated a comprehensive justice-level dataset collection, and the dataset is publicized ever since under the name of Supreme Court Database (SCDB).[16] The current SCDB offers two definitive datasets, the so-called Modern and Legacy Databases, the former including the terms between 1946 and 2016, and the latter between 1791 and 1945. These two databases are definitive in that they provide almost all information found in the script of a case. To illustrate, the Modern Database consists of two main datasets, one is case-centered data with its unit of analysis being case, and the other is justice-centered data with its unit of analysis being justice. The former only includes case-related information such as the origin and source of the case, the reason the Court agreed to consider it, legal provisions, issues, direction of decision, disposition of the case, winning party and alike, whereas the latter -in addition to all those variables the case-centered dataset contains- also provides information on each justice's vote and opinion for each case. It stands as the most extensive database ever compiled on a court and attracts unceasing attention from both academic and non-academic researchers.

[16]Available on: http://supremecourtdatabase.org Consulted on June 27^{th}, 2018

Another major data compilation project is the U.S. Appeals Courts Database Project initially directed by Songer in mid-1990s.[17] Though also extensive in its scope, the U.S. Appeals Courts Database is not as definite as that of the Supreme Court, since it relies on a random sample of cases between 1925 and 2002. Given the great number of cases heard so far, the project initiators seem to have desired to catch the trends over time, rather than an absolute depiction of the Courts in a shorter term. Contrarily, the State Supreme Court Data Project, directed by Hall and Brace, contains data covering a shorter time period but is definitive in terms of its scope. It provides information on state Supreme Court decisions in all fifty states of the U.S. between 1995 and 1998.[18]

Starting with early 2000s, both data collection initiatives and the related scholarship on judicial politics have stepped up. With near to absolute information on the U.S. high courts had been made available, scholars turned their attention to international and other national high courts. With regard to the data collection efforts on overseas countries in the U.S., the National High Courts Judicial Database (HCJD) provides justice-level information about eleven countries' highest courts.[19][20]Within HCJD, whether the coded information on the content of the cases is universal or relies on a randomly drawn sample depends on the specificities the country's apex court i.e. since when it operates and how many cases it has heard so far.

There have also been individual efforts of data collection on the national high courts. Latin American courts seem to predominate the studies in that area. Helmke (2002) and Iaryczower's (2002) works on Argentina, and Staton's (2006) works on Mexican

[17]Available on: http://artsandsciences.sc.edu/poli/juri/appct.htm Consulted on June 27, 2018

[18]Available on: http://www.ruf.rice.edu/ pbrace/statecourt/ Consulted on June 27, 2018

[19]Data on the following countries are available in HCJD: Australia (1969-2003), Canada (1969-2003), India (1970-2000), Namibia (1990-1998), Philippines (1970-2003), South Africa (Supreme Court of Appeal, 1970-2000; and Constitutional Court, 1995-2000), Tanzania (1983-1998), United Kingdom (1970-2002), United States (1953-2005), Zambia (1973-1997), Zimbabwe (1989-2000).

[20]Haynie, S. L., Sheehan, R. S., Songer, D. R. and Tate, C. N. 2007. High Courts Judicial Database. Accessed via the University of South Carolina Judicial Research Initiative (www.cas.sc.edu/poli/juri Consulted on June 27, 2018).

Supreme Court are among the individual efforts to collect votes of Latin American apex court justices. To count the published studies using justice-level data on the courts from outside the U.S. or Latin America, Georg Varberg's (2001) works on the German Constitutional Court, Songer and Johnson's (2007) work on the Supreme Court of Canada, Eisenberg and colleagues' (2012) work on the Israel Supreme Court, Ramseyer and colleagues' (2001) work on the Japanese Supreme Court, and Robinson's (2013) work on the Indian Supreme Court are among the well-known quantitative analyses of judicial decision-making.

On international courts, Voeten's (2008) data on the European Court of Human Rights (ECHR), Posner and de Figueiredo's (2004) data on the International Court of Justice (ICJ), Meernik's (2003) data on International Criminal Tribunal for Rwanda (ICTR) and International Criminal Tribunal for Yugoslavia (ICTY), and Carruba and Gabel's (2012) data on the European Court of Justice (ECJ) provide extensive justice-level information as well. Each of these dataset formed the basis for a prominent study and helped increase our knowledge of judicial behavior in international level. In addition to usual interest from comparativists, international courts justices' votes and cases held by those courts in general have also attracted attention from international relations scholars. This is understandable given the dyadic information these datasets provide -nationality of the justice and the government accused of a certain crime- and the content of the cases usually being a matter of transnational interest.

Though such efforts started to be seen considerably later than aforementioned projects, empirical studies on the Turkish Constitutional Court have been relying increasingly more on different sorts of quantitative data in the last decade. Not only works such as Belge's (2006), providing descriptive statistics on the Court's case conclusions, have increased in number, but many scholars also use case- and justice-level coded data as part of their works. Hazama's (2012) article has been the first published work using case-level coded data for empirical analysis and was influential for the subsequent

studies. Aydın's (2012) dissertation used another extensive case-level coded data to assess Court decisions. Moral and Tokdemir's (2016) work has been the first to collect justice-level data and investigated whether justices vote ideologically in party closure cases. Yildirim and colleagues (2017) also rely on a justice-level coded dataset. In their work, not justice's votes for the constitutionality of the provision at hand are coded 1 (or 0, for that matter), but whether the decision was in accordance with the state-elites' interest is coded 1. Lastly, Varol's (2017) recent article also relies on justice-level coded data from 200 randomly drawn cases. It is important to note here that none of these datasets have yet been made publicly available and that all authors compiled their respective datasets with regard to the necessities of their research question at hand.

3.2 Coding Procedure

The dataset I used in this study builds on Moral and Tokdemir's (2016) justice-level data on the CCT decisions. In order to update their data which consisted of 2870 cases CCT had heard between 1982 and 2011, I coded 1660 additional cases from 2011 to the end of 2016. For the cases brought to the CCT by opposition parties (i.e., actions for annulment) after the incumbent party AKP came into power in 2002, I used different coding rules, and also compiled more information on those cases' content. Lastly, I also updated the background information of justices appointed after 2011 to be able to account for other possible determinants of justices' behavior.

I referred the "Database of Legal Provisions" on the official website[21] of the CCT as the source for the coding of the CCT cases. This website provides full scripts of all cases published by the *Resmi Gazete*[22] since 1982, which corresponds to the date of the current Constitution entering into force. The cases are broken into five categories with regard to their content: 1) Action for annulment/Remedy of objection 2) Suspension

[21] http://anayasa.gov.tr/icsayfalar/kararlar/kbb.html

[22] *Resmi Gazete* is the official newspaper in which the Grand Turkish National Assembly's new legislations and the cases held in high courts are pronounced.

Table 4 Number of cases by case content and decision date

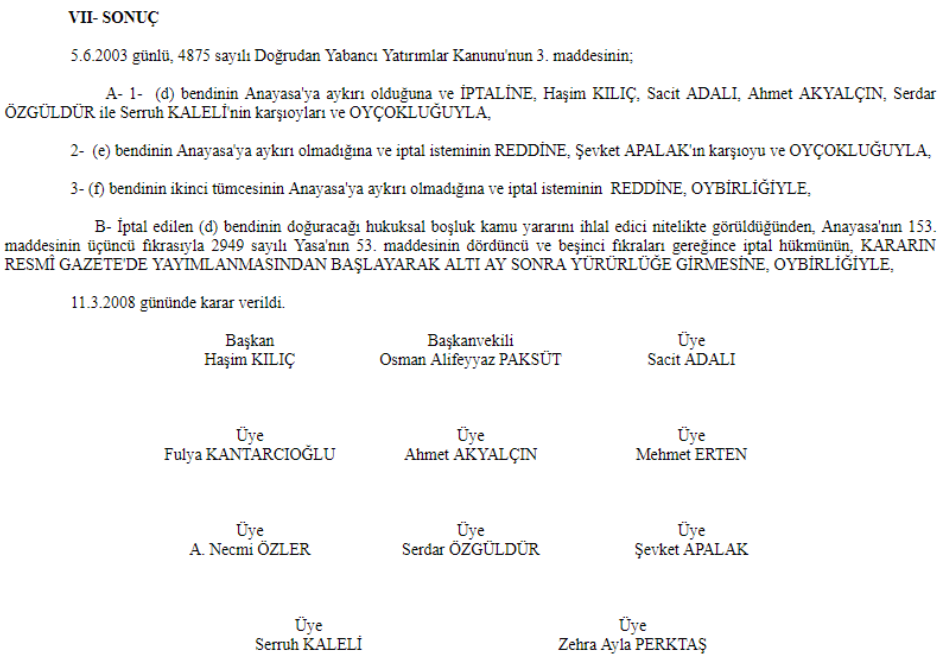
	1982-9	1990-9	2000-9	2010-6	Total
Action for annulment/Remedy of objection	221	610	991	917	2739
Financial supervision of political parties	-	124	294	491	909
Suspension of execution	-	42	97	20	159
Passing a warning to political parties	12	36	27	6	81
Banning of political parties (Party closure)	8	17	15	1	41
Total	241	829	1424	1435	3929

of execution 3) Banning of political parties (party closure) 4) Financial supervision of political parties and 5) Passing a warning to political parties. These categories are explained in the second chapter under the section of Constitutional Court. The dataset includes information on justices' votes on the universe of the cases in these five categories. Table 4 shows the number of cases in our data falling into each category. The only category on which we have not yet coded any data is individual applications – the right of which is granted to every citizen of the Republic of Turkey with the 2010 Constitutional Amendment.

The original dataset of Moral and Tokdemir includes one set of justice votes for each dispute. Cases with multiple issues or legal provisions appear only once. In other words, each row stands for a justice's decision in a given case. In this dataset, a justice's decision is coded 1 if she accepted the unconstitutionality claim of the complainant for any of the legal provisions within a case, and her decision is coded 0 if she rejected the unconstitutionality claim for all legal provisions within a case. Therefore, each row answers the question of "did she accepted complainant's unconstitutionality claim in case number (let's say) 2016/85?"

I recoded all action for annulment cases between 2002 and 2016 since I will be using those cases as my dependent variable. For this time period, action for annulment cases are the cases opened by opposition parties and almost all of them by the Republican People's Party. This dataset houses one set of justice votes for each legal provision within a dispute. Cases with multiple issues or legal provisions thus appear multiple

Figure 1: Conclusion of an Annulment Action Case (No. 2008/79)



VII- SONUÇ

5.6.2003 günlü, 4875 sayılı Doğrudan Yabancı Yatırımlar Kanunu'nun 3. maddesinin;

A- 1- (d) bendinin Anayasa'ya aykırı olduğuna ve İPTALİNE, Haşim KILIÇ, Sacit ADALI, Ahmet AKYALÇIN, Serdar ÖZGÜLDÜR ile Serruh KALELİ'nin karşıoyları ve OYÇOKLUĞUYLA,

2- (e) bendinin Anayasa'ya aykırı olmadığına ve iptal isteminin REDDİNE, Şevket APALAK'ın karşıoyu ve OYÇOKLUĞUYLA,

3- (f) bendinin ikinci tümcesinin Anayasa'ya aykırı olmadığına ve iptal isteminin REDDİNE, OYBİRLİĞİYLE,

B- İptal edilen (d) bendinin doğuracağı hukuksal boşluk kamu yararını ihlal edici nitelikte görüldüğünden, Anayasa'nın 153. maddesinin üçüncü fıkrasıyla 2949 sayılı Yasa'nın 53. maddesinin dördüncü ve beşinci fıkraları gereğince iptal hükmünün, KARARIN RESMİ GAZETE'DE YAYIMLANMASINDAN BAŞLAYARAK ALTI AY SONRA YÜRÜRLÜĞE GİRMESİNE, OYBİRLİĞİYLE,

11.3.2008 gününde karar verildi.

Başkan Haşim KILIÇ	Başkanvekili Osman Alifeyyaz PAKSÜT	Üye Sacit ADALI
Üye Fulya KANTARCIOĞLU	Üye Ahmet AKYALÇIN	Üye Mehmet ERTEN
Üye A. Necmi ÖZLER	Üye Serdar ÖZGÜLDÜR	Üye Şevket APALAK
Üye Serruh KALELİ	Üye Zehra Ayla PERKTAŞ	

times in the sample. Differently from the original dataset, a justice's decision is coded 1 if she accepted the unconstitutionality claim of the complainant for a legal provision within a case, and 0 if she rejected the unconstitutionality claim for that legal provision within the case. Therefore, each row answers the question of "did she accepted complainant's unconstitutionality claim in the (let's say) second legal provision of case number 2016/85?" I also coded relevant chronological (i.e. the date of litigation and decision) and background information (i.e. which political party opened the case) on these cases.

Figure 1 provides an example of the conclusion of an annulment action case (No. 2008/79) heard on March 11, 2008. It includes three legal provisions within a single case, and some justices voted differently for these legal provisions. The first legal provision rules with majority vote that the code of concern should be annulled. Osman Alifeyyaz Paksut, Fulya Kantarcioglu, Mehmet Erten, A. Necmi Ozler, Sevket Apalak, and Zehra Ayla Perktas voted in favor of the annulment of the code. In other words, they found the code unconstitutional and *voted for the unconstitutionality of the AKP*

legislation. Hasim Kilic, Sacit Adali, Ahmet Akyalcin, Serdar Ozguldur, and Serruh Kaleli, on the other hand, voted against the annulment of the code. They found the code constitutional, *voted against the unconstitutionality of the AKP legislation* and *dissented the majority vote in favor of the annulment.* The second provision rules with majority vote against the annulment of the code of concern. Only Sevket Apalak voted for the unconstitutionality, in other words, he dissented the majority vote against the annulment. The third provision was ruled unanimously against the unconstitutionality.

Moral and Tokdemir's original dataset (Moral, 2016) provides one set of justice votes for this case, i.e., one column is reserved as representative of this case. Justices voting for the unconstitutionality (Osman Alifeyyaz Paksut, Fulya Kantarcioglu, Mehmet Erten, A. Necmi Ozler, Sevket Apalak and Zehra Ayla Perktas) are coded 1, and those voting against the unconstitutionality (Hasim Kilic, Sacit Adali, Ahmet Akyalcin, Serdar Ozguldur and Serruh Kaleli) are coded 0. The dataset on the annulment action cases which I coded in order to use as the dependent variable in the empirical analyses, provides three sets of justice votes for this case – i.e., each column corresponds to a single legal provision. In short, this dataset houses all legal provisions including the ones the conclusions of which are reached with unanimous vote as the third provision shows. It is however important to note here that the decisions made unanimously are coded as "procedural" and excluded from the limited sample employed in robustness checks.

3.3 Operationalization of Justice Ideology

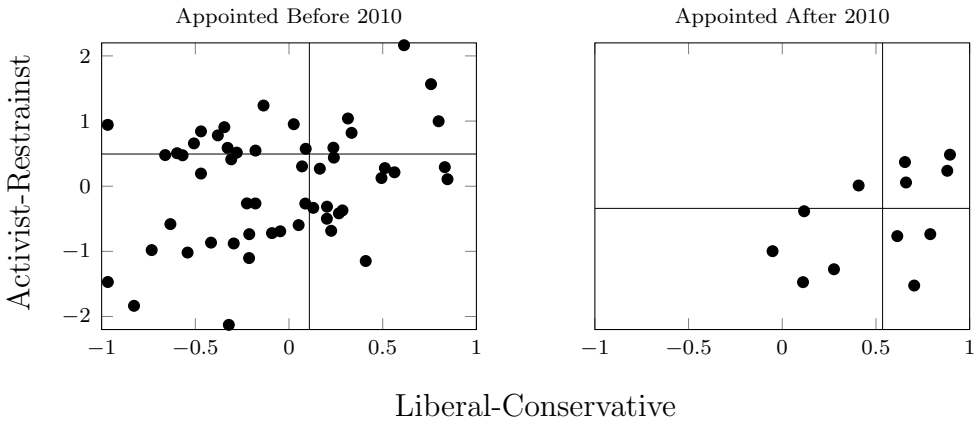
For this study, I operationalized justice ideology as a measure of justices' ideal points, also known as NOMINATE Common Space scores developed by Poole and Rosenthal (1997). Ideal points are measured using a scaling algorithm that takes a set of issue scales (e.g., Legislators' vote for a bill of law, justices' vote for a case) in order to measure latent quantities positioning issues on a common space (Armstrong and Rosenthal,

2014). In other words, it employs a scaling algorithm to provide a spatial map, which help us position voters, candidates, or respondents with regard to their ideology, religiosity, and alike. This procedure of estimating latent quantities out of observed indicators is commonly accepted as a reliable and valid measurement strategy for placing justices on both unidimensional and multidimensional ideology space (Epstein and Westerland, 2007), and also used by several scholars to map CCT justices on a political space (Moral and Tokdemir, 2017; Yildirim and Gulener, 2017; Varol and Garoupa, 2017).

As it will we elaborated more in the next chapter, I would like to measure the impact of justices' ideology on their votes in annulment action cases between 2002 and 2016. In other words, I will use justices votes in annulment action cases as the dependent variable, and justices' ideal points as the independent variable. For this reason, I measured justices' ideal points using the universe of cases except for the annulment action cases. Cases of remedy of objection, financial supervision or political parties, suspension of execution, passing a warning to political parties and banning of political parties[23] (the case-justice dyad level dataset of Moral and Tokdemir) are used to measure justices' ideal points, and annulment action cases (the legal provision-justice level dataset I coded) will be used as the dependent variable on which we will measure

[23]Differences in these cases are explained in the first chapter.

Figure 2: Justices' α-NOMINATE Positions before and after 2010 Constitutional Amendment



the effect of ideology.

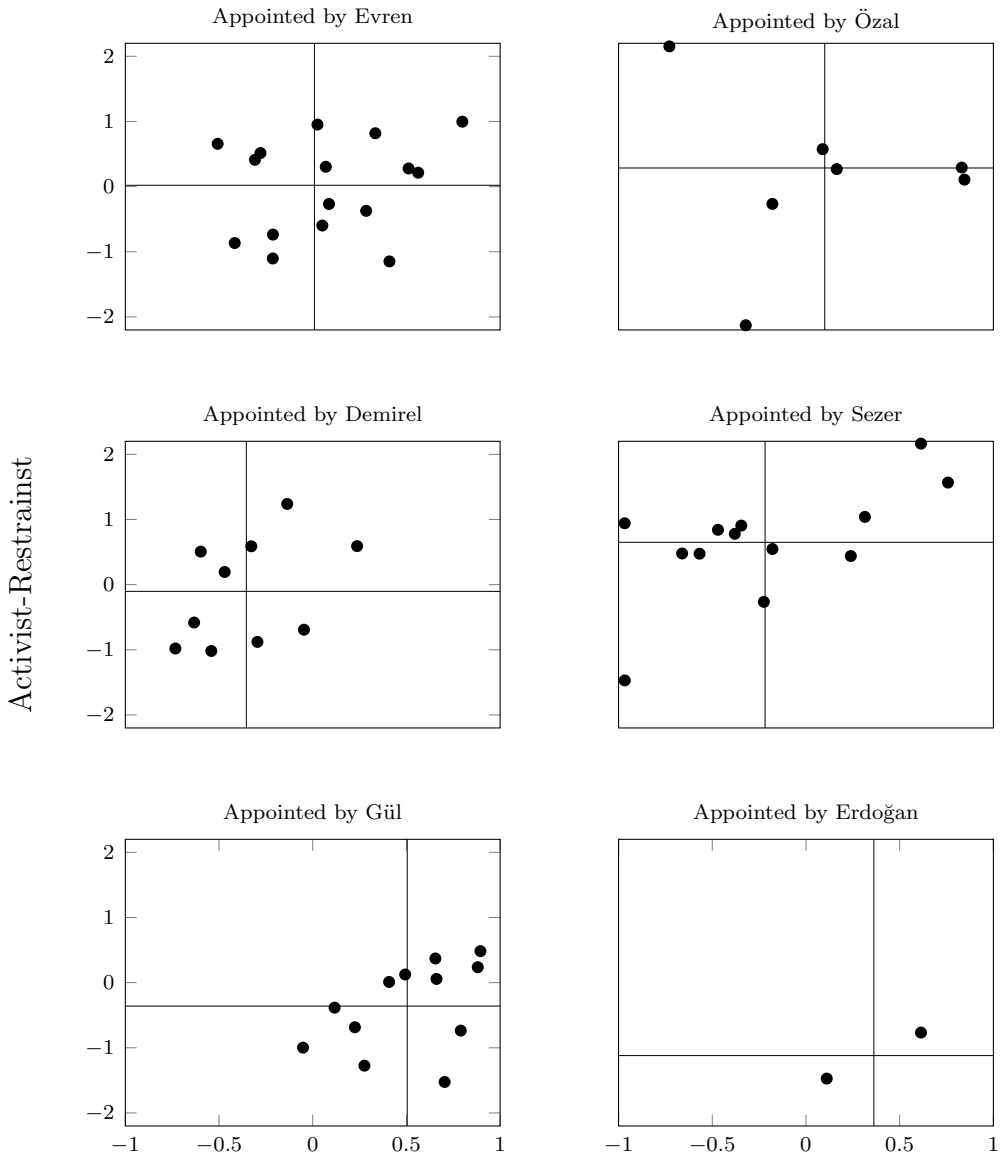
I used the α-NOMINATE package (Carroll and Rosenthal, 2013) in the R Project for Statistical Computing to estimate justices' ideal points. I follow the previous literature in assuming that the political space in Turkey is multidimensional (Carkoglu and Hinich, 2006; Schofield and Zakharov, 2011; Moral and Tokdemir, 2017). In other words, this study assumes that the space in which the CCT justices operate is two-dimensional. α-NOMINATE scaling algorithm provides two continuous variables, which allow us to position justices on a two-dimensional space. Labeling these dimensions, however, has to be a matter of researcher's theoretical expectations. Previous research and prior knowledge on the political space of Turkey has identified religiosity and nationalism as underlying dimensions, thus labeled the first as the liberal-conservative, or secular-islamist dimension, and the second as the activist-restrainst, or the pro-Kurdish-anti-Kurdish dimension (Mardin, 1975; Erguder, 1980-81; Kalaycioglu, 1994; Esmer, 2002; Carkoglu and Hinich, 2006; Moral and Tokdemir, 2017).

Drawing on Moral and Tokdemir's study, I refer to the first ideological dimension as the liberal-conservative dimension, and the second ideological dimension as the activist (anti-status quo)-restrainist (pro-status quo) dimension. I take the classical liberal-conservative dimension to account for justices' tendency to favor conservative governments' legislation, regardless of the presidents by whom they were appointed. The second dimension capture individual justices' tendency to favor state ideology, or military-bureaucratic elites' interest. In the most general sense, I expect the justices appointed after 2010 to score higher on the first dimension (i.e., to fall closer to the conservative pole), and to score lower on the second dimension (i.e., to fall closer the anti-status quo pole). Figure 2 shows how the justices' ideal point estimates are dispersed in the two-dimensional space when divided according to their date of appointment.

It is important to note here that what the NOMINATE model actually provides is the distances between the points and not the exact coordinates where the points fall on

a line or plane. As such, the polarity dimension used to determine the common space scores is chosen arbitrarily. In other words, while measuring the scores, one of the two poles on each dimension needs to be specified by the researcher so that the other points' distances to the poles can be scaled. In order to determine the poles of the two dimensions, I use Hasim Kilic (for the liberal-conservative dimension) and Osman Alifeyyaz Paksut (for the activist-restrainst dimension) to define polarity. Before doing

Figure 3: Justices' α-NOMINATE Positions by Appointed President



so, I estimated two-dimensional α-NOMINATE scores using different sets of justices and checked whether CCT's compositional change might have necessitated doing so. More than any others, I questioned whether I should draw on Moral and Tokdemir's study to take Hasim Kilic and M. Yilmaz Aliefendioglu to define polarity dimensions, but I decided to replace Aliefendioglu with Paksut in order to have the set of justices that served within the time period I will use as my dependent variable (2002-2016). Moreover, the α-NOMINATE estimates based on the polarity defined by Hasim Kilic and Osman Alifeyyaz Paksut seem to provide a good fit to the data, too. This is understandable, considering how distinct dissenting patterns these two justices show in their votes. That is also what Moral and Tokdemir mentioned in the Supplementary Appendix of their study to take into consideration while choosing the polarity dimensions. In addition, Hasim Kilic was appointed by Turgut Ozal and Osman Alifeyyaz Paksut was appointed by Ahmet Necdet Sezer, the former leading the center-rightist movement in 1980s and the latter himself being a former member of the CCT, appointed by Kenan Evren, who led the 1980 military coup against the government, and had a direct impact in the making of the 1982 Constitution.

Figure 3 illustrates how justices' ideal points differ with regard to the Presidents appointing them, and the lines in each box stand for the mean position on each ideological dimension. The differences in these mean α-NOMINATE ideology estimates are statistically significantly different than zero at 95% confidence level. Evidently, the presidents have appointed ideologically distinguishable justices. While the justices Sezer appointed have been restrainist and liberal, those Gul appointed have been highly conservative and relatively more activist. One cannot help but wonder whether these ideological positions, in return, determine how justices vote in the existing governments' legislation. If this is the case, we may have reason to infer that, through their power to appoint justices, the presidents indirectly take part in the law-making process.

Lastly, justices' α-NOMINATE scores are estimated from votes on cases between

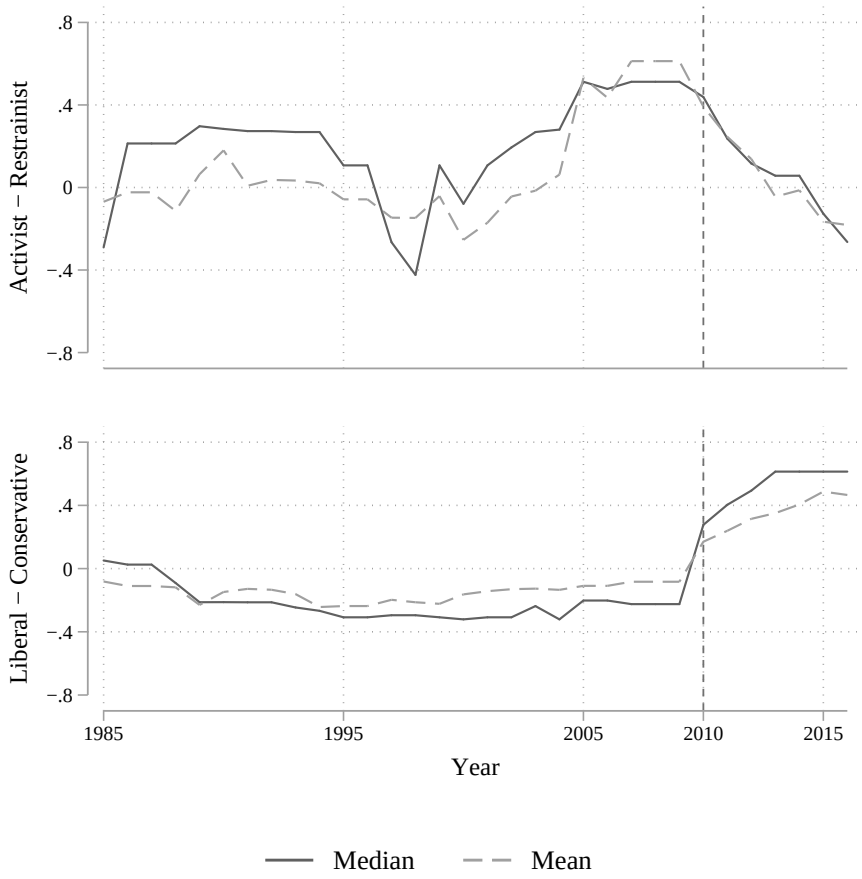
1982 and 2016 excluding the annulment action cases. The estimates are only available for those 59 justices who voted on at least 20 constitutional review cases between these years. The measures correctly predict 76.5% of "yes" and 85% of "no" votes and classify 77.14% and 81.21% of the justices' ideal points. Figure 4 illustrates the annually change in the median and mean justices' ideological positioning from 1985 to 2016. On the activist restrainist dimension, though the ideological positioning seems to have always been fluctuating between the two extremes, starting with early 2000s until 2010, a considerable lean towards the restrainist pole is evident. Between 2010 and 2016, on the contrary, the Court seems to have driven to the other extreme, and last few years demonstrated an activist attitude. On the liberal conservative dimension, the Court seems to have always been leaning slightly towards the liberal pole until the first few years of Gul's presidency. After the reforms of the judiciary, however, it seems to have been increasingly conservatized and in last years it reached to a level that has never been seen in the Court's history.

The sharp transformations of 2010s could easily be attributed to the court-packing act initiated with the 2010 Constitutional Amedment. In a way, the figure depicts how the CCT has been impacted by the ongoing discussions revolving around preserving or overcoming the Kemalist state-ideology. It requires further tests, however, to infer whether this ideological transformation of the Court has significantly impacted justices' votes in annulment action cases, or whether there has been a significant change after 2010 on the probability that they vote for the annulment of newly enacted laws.

3.4 Overview of the Dataset

In regard to the dependent variable, there are 274 annulment actions lodged to the CCT between 2002 and 2016, and there are 1,873 conclusions in these cases. Since my unit of analysis is justice-conclusion, the number of observations is 1,873 times the number of justice vote for each conclusion, which equals to 26689. Table 5 illustrates justices' yay

Figure 4: Change in the Median and Mean Justices' Ideological Positioning



and nay votes for the constitutionality of the AKP legislation grouped by the date of conclusion and by justices' appointment date, and Table 6 illustrates those grouped by the Presidents by whom the justices were appointed. By specifying if majority voted for or against the government, these tables also show the dissenting behavior of individual justices and the outcome of the conclusion.

According to the Table 5, after the 2010 Constitutional Amendment, justices votes in favor of the government had increased near to 10% when the majority voted for the government (i.e., when the Court rejected the annulment of the AKP legislation). Likewise, justices' votes in favor of the government have almost doubled when majority voted against the government i.e., when the Court accepted the annulment action

of the opposition parties. Comparing justices' votes appointed before and after the 2010 Amendment provides more striking findings. Those who were appointed after the Amendment have 10% more frequently voted against the annulment action when the majority rejected it, and they have three times more frequently dissented against the annulment of the AKP legislation. Difference in dissenting pattern of justices appointed by different presidents is also worthy of further notice. As seen in Table 6, the justices appointed by Gul and Erdogan vote more than 10 percent more frequently in favor of the AKP legislation, regardless of the direction of majority vote. As is seen in Table 6, the justices appointed by Gül and Erdoğan are more than 10% more likely to vote in favor of AKP's legislation, regardless of the direction of majority vote.

These simple statistics hint at that when majority rejects an annulment, they do so with a stronger support within the Court, and when the majority accepts it, dissent against it is now greater. These differences are statistically significant at p = .001 and give reason to test the hypothesis that the Court's compositional change significantly altered the decisions it makes. Yet the table also clearly shows that the CCT justices had not always voted for the rejection of political parties' annulment actions after 2010, decisions against the government's legislation have continued to be made. However, it seems that justices' incentive to dissent, in other words, the opposition among the CCT have weakened.

Table 7 illustrates the dependent and independent variables in my dataset and presents the descriptive statistics. To go over the independent variables employed in the empirical analyses in the following chapters, it seems that both the range and the standard deviation of the 1^{st} dimension, which we labeled as "Activist-Restrainist," almost doubles that of the second, which is the so-called "Liberal-Conservative" dimension. It may amount to a greater divergence among justices in terms of their activism against "hegemonic preservation" than their devotion to the values of liberalism or conservatism.

Table 5 Justice Vote by Justices' Appointment Date and the Case Conclusion

			Justice Appointment		Case Conclusion		
			Before 2010	After 2010	Before 2010	After 2010	Total
Majority rejected annulment	Did judge reject annulment?	Yes	11,228 (89.82%)	8,215 (98.08%)	4,487 (89.87%)	14,956 (94.16%)	19,443 (93.13%)
		No	1,273 (10.18%)	161 (1.92%)	506 (10.13%)	928 (5.84%)	1,434 (6.87%)
	Total		12,501 (100%)	8,376 (100%)	4,993 (100%)	15,884 (100%)	20,877 (100%)
Majority accepted annulment	Did judge reject annulment?	Yes	279 (7.14%)	414 (21.72%)	189 (8.16%)	504 (14.41%)	693 (11.92%)
		No	3,627 (92.86%)	1,492 (78.28%)	2,126 (91.84%)	2,993 (85.59%)	5,119 (88.08%)
	Total		3,906 (100%)	1,906 (100%)	2,315 (100%)	3,497 (100%)	5,812 (100%)

Pearson chi2(4) = 1143.562 Pr ¡ 0.001

Table 6 Justice Vote by the Appointed President

			Presidents					
			Özal	Demirel	Sezer	Gül	Erdoğan	Total
Majority rejected annulment	Did judge reject annulment?	Yes	1,754 (98.59%)	1,032 (81.84%)	6,527 (87.08%)	9,831 (97.89%)	299 (100%)	19,443 (93.13%)
		No	25 (1.41%)	229 (18.16%)	968 (12.92%)	212 (2.11%)	0 (0%)	1,434 (6.87%)
	Total		1,779 (100%)	1,261 (100%)	7,495 (100%)	10,043 (100%)	299 (100%)	20,877 (100%)
Majority accepted annulment	Did judge reject annulment?	Yes	132 (20.50%)	11 (2.04%)	94 (4.10%)	405 (17.94%)	51 (67.11%)	693 (11.92%)
		No	512 (79.50%)	529 (97.96%)	2,200 (95.90%)	1,853 (82.06%)	25 (32.89%)	5,119 (88.08%)
	Total		644 (100%)	540 (100%)	2,294 (100%)	2,258 (100%)	76 (100%)	5,812 (100%)

Pearson chi2(4) = 527.206 Pr ¡ 0.001

Table 7 Descriptive Statistics

Variable	N	Mean	Std. Dev.	Min	Max
Vote for Annulment Action	26689	.246	.430	0	1
Dissent against Majority	26689	.08	.270	0	1
1^{st} Dimension (α-NOMINATE)	26689	.173	.895	-2.128	2.164
2^{nd} Dimension(α-NOMINATE)	26689	.273	.535	-.967	.895
Military Background	26689	.178	.382	0	1
Education Level	26689	1.612	.863	1	3
Law Graduate	26689	.741	.438	0	1
Years of Experience	26689	5.875	5.279	0	25
Age when voted	26689	56.271	5.829	42	70
Status of the Justice	26689	1.268	.598	1	3
Duration of a case	26689	1.325	1.049	0	5

Most of the other independent variables are related to justices' background characteristics. While coding these variables, I used the information provided on the CCT's official website. Military background provides information on whether the justice had served in a martial court before becoming a member of the CCT. Education level connotes the latest degree the justices have pursued. Respectively, the variable is coded 1, 2, and 3 if the justice has a B.A., M.A., and Ph.D. degree. One justice according to the 1982 Constitution, and three justices according to the 2010 Amendment can be appointed from among the members of the Higher Education Council to the CCT by the presidents without necessary respect to their background in legal scholarship. The variable "law graduate," therefore, takes account of whether the justice is a graduate of the faculty of law or not. Status of the justice gives information on whether the justice has served as the president, vice-president, or as a member of the CCT.

The remaining variables are generated using the case-level data. Years of Experience is a measure of the number of years a given justice has served in the CCT by the time she voted in a case. I generated this variable by subtracting the year of the justice's entry to the Court from the year the decision is made. The age variable accounts for a justice's age when she voted for any legal provision. I generated this variable by subtracting justices' birthyears from the year they voted for any legal provision. Lastly,

the duration of a case is a measure of the number of years it takes for the CCT to make a conclusion on a case. I generated this variable by subtracting the year a given case is filed to the CCT from the year the conclusion is made.

4 DETERMINANTS OF JUSTICES' VOTES AGAINST ACTIONS FOR ANNULMENT

Against "legalistic accounts" which suggest that judges are neutral, principled decision-makers ruling what laws dictate, "political accounts" approach legal factors generally as constraints on the multiple factors influencing judicial decisions. Ideology among those factors has long been argued to have an important, if not central, role in the studies of judicial decision making (Epstein and Segal, 2012) Several studies provide empirical evidence showing the effect of ideology on judicial decisions in the US courts (Epstein and Posner, 2013) and in other countries including Norway (Grendstad and Shaffer, 2015), Spain (Garoupa and Grembi, 2013), Britain (Iaryczower and Katz, 2016), France and Germany (Honnige, 2009), as well as in Turkey (Moral and Tokdemir, 2017). Previous research shows that, regardless of whether it is measured endogenously (i.e., based on the decisions justices make within the court) or exogenously (i.e., based on indicators other than justices' judicial decisions such as their column articles or lectures), ideology plays a significant role in justices' decisions-making calculus.

Following the previous literature, in this chapter, I question the role justices' ideology plays in their votes on the annulment action cases between 2002 and 2016, which correspond to the period of AKP rule. In other words, I empirically assess the role of ideology in determining justices' votes for or against the AKP legislation. I employ two

probit regression models differing in their dependent variables. While discussing the findings, I report the results for different groups of cases and justices both in the regression tables and in the figures displaying the predicted probabilities of justices' votes 1) for the unconstitutionality of AKP legislation and 2) against the majority decision within the Court. I argue that the CCT justices' first and second dimension ideology scores are statistically and substantively significant determinants of their votes and dissents in annulment action cases. In addition, the following background characteristics are included in both models as control variables: Justice age; whether she had served as a justice in a military court; the number of years she has served in the CCT; whether she has served as the president, vice-president or as a member of the CCT; whether she is a graduate of a Law Faculty or a Faculty of Social Sciences; whether she holds a B.A., an M.A., or a Ph.D.; the number of years it took for a case to be concluded; and the year the decision was made. The baseline model is the following:

$$\Pr\Big(\begin{array}{c}\text{Vote for the Unconstitutionality}\\ \text{of Newly Enacted Laws}\end{array}\Big) = \begin{array}{r}\beta_0 + \beta_1\text{Ideology (1)} + \beta_2\text{Ideology (2)}\\ + \beta_3\text{Military Background} + \beta_4\text{Position}\\ + \beta_5\text{Education} + \beta_6\text{Age} + \beta_7\text{Faculty}\\ + \beta_8\text{Experience} + \beta_9\text{Case Length} + \beta_{10}\text{Year} + \mu\end{array}$$

where justice ideology stands as the primary independent variable and measure justices' latent ideological attitudes using of two-dimensional α-NOMINATE ideal-point estimates on the liberal-conservative and activist (anti-status quo)-restrainist (pro-status quo) dimensions as explained in Chapter 3. While the independent variables are the same for all models, the dependent variable of the second model is dissent against the majority vote as mentioned above.

4.1 Voting for Unconstitutionality

Hypothesis 1: The more restrainist a justice is, the more likely she will vote for the unconstitutionality of AKP legislation.

Hypothesis 2: The more conservative a justice is, the less likely she will vote for the unconstitutionality of AKP legislation.

The first and second hypotheses investigate whether justices' ideologies or background characteristics determine their votes for the unconstitutionality of the AKP legislation. As Table 8 illustrates the regression output of the model, both the liberal-conservative and activist-restrainist dimensions' estimates are statistically significant at 99% confidence level and in the expected directions. Since the coefficient of justices' first dimension α-NOMINATE score is positive and the second dimension is negative, we understand that the increase in the former increases the predicted probability of voting against AKP legislation and the latter decreases it. In other words, on the activist-restrainist dimension, the more restrainist a justice is, the more likely she will vote for the unconstitutionality of AKP legislation, and on the liberal-conservative dimension, the more conservative a justice is, the less likely she will vote for the unconstitutionality of AKP legislation.

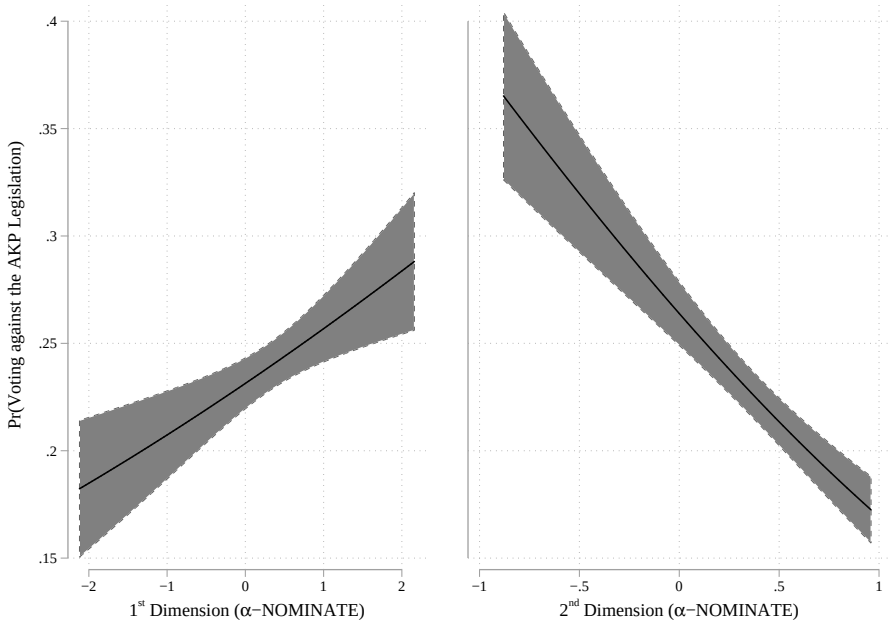
The findings about the cases' and justices' background characteristics are also worth mentioning here. Model 1 shows that the number of years a CCT justice has served in the court; whether she has served as the president, vice-president, or as a member of the court; and whether she is a graduate of a law faculty or a faculty of social sciences are statistically significant determinants of their votes, while whether she was a justice of a military court before being appointed to the CCT; whether she holds a B.A., M.A., or Ph.D.; and her age are not significant determinants of their vote for the unconstitutionality of AKP legislation. As the directions of statistically significant coefficients suggest, being a law faculty graduate and being a tenured member of the court (i.e., higher number of years spent in the CCT) increases the predicted probability

Table 8 Determinants of the CCT Justices' Votes on the Constitutionality of the AKP Legislation

	Vote		**Dissent**			
Dependent Variable	(1)	(2)	(3)	(4)	(5)	(6)
1^{st} Dimension (α-NOMINATE)	0.081***	0.139**	-0.167***	0.205***	-0.259***	0.223**
	(0.024)	(0.058)	(0.055)	(0.064)	(0.077)	(0.093)
2^{nd} Dimension (α-NOMINATE)	-0.326***	-0.739***	0.528***	-0.860***	0.796***	-1.146***
	(0.041)	(0.090)	(0.130)	(0.122)	(0.189)	(0.171)
Military Background	-0.055	-0.135	0.474***	0.047	0.724***	0.039
	(0.042)	(0.112)	(0.141)	(0.165)	(0.205)	(0.242)
Position in the CCT	-0.076***	-0.154**	0.179	-0.145*	0.255	-0.197
	(0.025)	(0.069)	(0.110)	(0.084)	(0.155)	(0.126)
Level of Education	0.034	0.097*	-0.078	0.056	-0.176	0.093
	(0.022)	(0.053)	(0.075)	(0.071)	(0.109)	(0.091)
Law Faculty Graduate	0.154***	0.509***	-0.807***	0.320**	-1.186***	0.448**
	(0.054)	(0.121)	(0.170)	(0.142)	(0.229)	(0.185)
Years of Experience	0.018***	0.040***	-0.040**	0.041***	-0.051**	0.060***
	(0.005)	(0.011)	(0.018)	(0.008)	(0.025)	(0.013)
Age	0.004	0.010	-0.006	-0.006	-0.023	-0.001
	(0.005)	(0.012)	(0.018)	(0.013)	(0.026)	(0.016)
Length of Case	-0.094***	-0.097***	0.062	-0.028	0.118**	-0.034
	(0.013)	(0.028)	(0.038)	(0.022)	(0.050)	(0.030)
Year	-0.037***	0.024**	0.001	0.029*	-0.058**	0.046**
	(0.006)	(0.012)	(0.017)	(0.015)	(0.025)	(0.021)
Constant	73.922***	-49.160**	-2.311	-59.116**	117.828**	-93.609**
	(11.226)	(23.523)	(33.812)	(30.131)	(51.406)	(41.805)
Procedural Cases are Included	✓		✓	✓		
Majority against Unconstitutionality			✓		✓	
N	26689	10043	5812	20877	2451	7592
Pseudo R^2	0.045	0.138	0.151	0.139	0.264	0.223
ll	-14201.040	-5411.808	-1802.408	-4498.043	-1074.288	-2857.381

Note: Probit regression. Robust standard errors clustered by justices in parentheses. Two tailed tests: * p<0.1; ** p<0.05; *** p<0.01. Second, fifth, and sixth models report the results for cases excluding the procedural ones. For the models with dissent as the dependent variable, observations are divided according to the majority vote. Third and fifth models report results for majority vote against unconstitutionality.

Figure 5: The Effects of the First and Second Dimension α-NOMINATE Scores on the Probability of Voting for the Unconstitutionality of the AKP Legislation (Model I)



of voting against AKP legislation, whereas being the president of the Court decreases the predicted probability of voting against the AKP legislation.

I plot the effects of the first and second dimension α-NOMINATE scores on the predicted probabilities of justices' votes against the unconstitutionality of AKP legislation in Figure 5. While the predicted probability of a restrainist justice (when the first dimension is equal to 2) to vote against AKP legislation is 28.8%, an activist justice votes against it with a predicted probability of 18.2% (first dimension=-2). In other words, a restrainist justice is 10% more likely than an activist justice to vote against the AKP legislation. The difference between the two extremes of the second dimension is greater in terms of justices' propensity to vote against unconstitutionality. While the most conservative justice (second dimension=1) would vote against AKP legislation with an estimated probability of 17.2%, the most liberal justice would vote against it with an estimated probability of 36.5%. Moreover, the standard errors of the predictions for the second dimension are smaller compared to those from the first dimension.

Figure 6: Predicted Probability of Voting for the Unconstitutionality of the AKP Legislation (Model I)

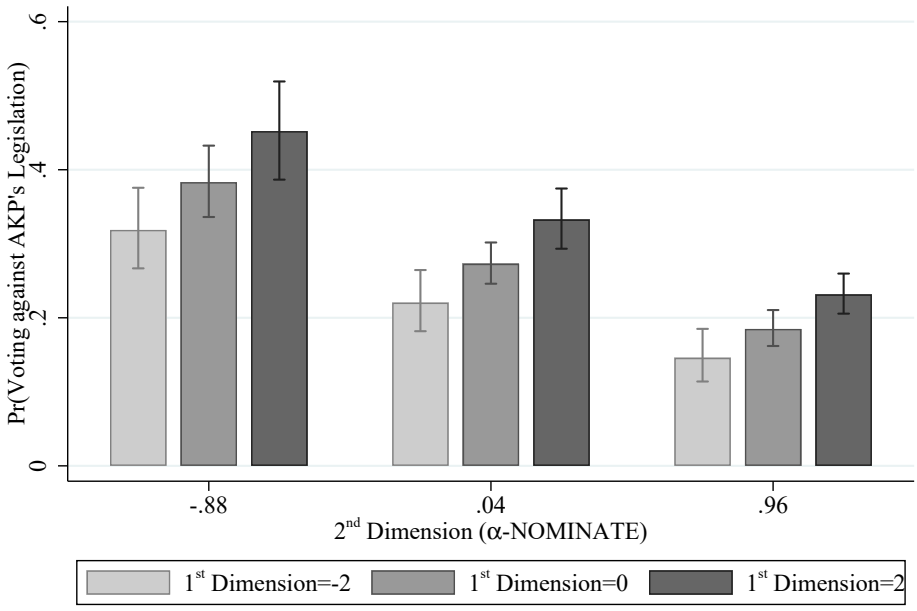


Figure 6 presents the marginal effects of minimum, mean, and maximum values of the first and second dimension ideology scores on the probability of voting in annulment actions when all other variables are set to their in-sample mean or mode values. In other words, it shows nine hypothetical justices on the two dimensional ideology space and plot their predicted probabilities of voting against AKP legislation. Accordingly, while a hypothetical justice with the minimum scores in both dimensions (i.e., the first dimension= -2.12 and the second dimension= -1) would vote against the AKP legislation with a 14% predicted probability, a hypothetical justice with the maximum scores in both dimensions (i.e., the first dimension= 2.16 and the second dimension= 1) would have a 46% predicted probability. In other words, a highly restrainist and liberal justice has 32% higher probability and is approximately three times more likely than a highly conservative and activist justice to vote for the unconstitutionality of AKP legislation in annulment actions.

Lastly, ceteris paribus, Figure 6 shows that the mean justice's predicted probability

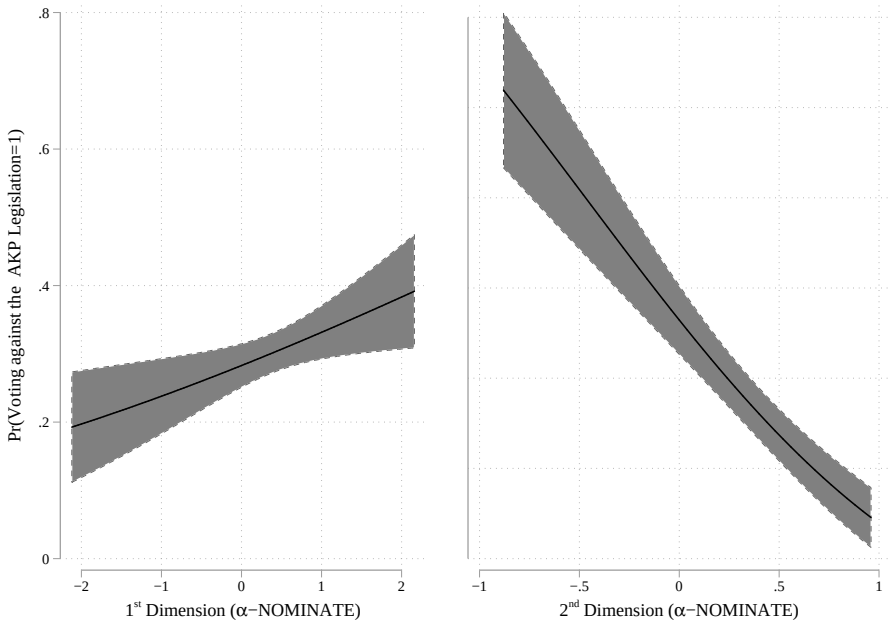
of voting for the annulment of new legislations (the first dimension= .02 and the second dimension= 0) is 28%. However, this figure changes substantively when we group justices with regard to the presidents who appointed them. As Figure 15 in the appendix shows, ceteris paribus, the predicted probability of voting against AKP legislation is 39% for the mean justice from among those who were appointed by Ahmet Necdet Sezer, and the predicted probability becomes 27% for a mean justice from among those who were appointed by Abdullah Gul.

Excluding Procedural Cases

Within my dependent variable, which is justices' votes for the annulment actions filed between 2002 and 2016, 16646 observations belong to cases where conclusions were reached with unanimity, while 10043 observations belong to those that were reached with at least one dissent. Since the CCT also deal with numerous cases that may not necessarily require individual justices' dictum, but are solved with procedural actions, I also report the findings of Model I for the annulment action cases concluded with at least one justice's dissent. I call those cases which were concluded with unanimity vote as "procedural cases" for the sake of simplicity. Filtering out the procedural cases helps us measure the impact of justice ideology on AKP legislation when the justices can reflect their dictum on their votes. Therefore, the following tests are expected to provide a more precise estimate of justice ideology on their votes.

It is important to note that this approach assumes the cases concluded with unanimity vote are procedural without regard to the content of the respective cases. A drawback to this approach would be the presence of same cases that are not procedural (i.e., cases that require justices to reflect their dictum rather than merely implementing procedural actions) but are concluded with unanimity vote. Having read the cases while coding the dependent variable, however, it was quite difficult to find many examples making this assumption questionable. Expectedly so, it is quite hard for justices dispersed in a two dimensional ideological space to come to unanimity for the most

Figure 7: The Effects of the First and Second Dimension α-nominate Scores on the Probability of Voting for the Unconstitutionality of the AKP Legislation – Procedural Cases are Excluded (Model II)

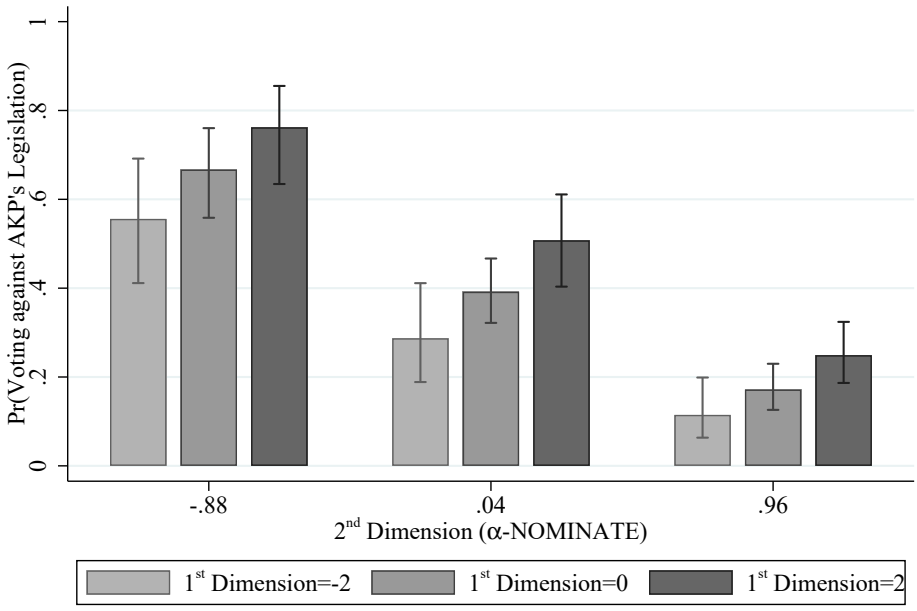


possible ideological cases like opposition parties' actions for annulment.

Model II in Table 8 presents the findings for actions for annulment cases excluding the procedural ones. The direction of all variables' coefficients are the same when we exclude the procedural cases with that of the regression output when we include the universe of annulment action cases. Likewise, the first and second dimension α-NOMINATE estimates, justices' position within the CCT, whether she is a law faculty graduate and the number of years of justices' experience in the CCT are significant determinants of justices' votes in the non-procedural annulment action cases at either 95 or 99% confidence levels.

An important difference in the regression outputs for the universe of cases and for the cases excluding the procedural ones is related to the magnitude of their coefficients. Since I aim to filter out the cases where justices are assumed to vote in accordance with the due process of law, I expect to obtain more precise estimates of the effect of first and

Figure 8: The Predicted Probability of Voting for the Unconstitutionality of the AKP Legislation – Procedural Cases are Excluded (Model II)



second dimension α-NOMINATE scores on justices' votes. More specifically, I expect the magnitudes of the estimates to be higher (substantively more significant) when the procedural cases are removed from the sample, and greater magnitude of coefficients in the second regression output provides evidence for that. In order to show the effect of α-NOMINATE ideology scores on the annulment action cases excluding the procedural ones, I plot the predicted probabilities of voting for the unconstitutionality of AKP's legislation in Figure 7. As Figure 7 demonstrates, when there is at least one dissent in the votes of a conclusion, restrainist justices are 20% more likely than activist justices to vote against AKP legislation, and liberal justices are 42% more likely than conservative justices. In line with my expectations, when the procedural cases are filtered out from among the cases filed between 2002 and 2016, the predictive powers of the first and second dimension ideology scores are much higher.

Figure 8 shows nine hypothetical justices on the two dimensional ideology space and plot their predicted probabilities of voting against the annulment action cases when the

procedural ones are excluded from the sample. Accordingly, when there is at least one dissent in the votes of a conclusion, the most conservative and activist justice would vote against the unconstitutionality of AKP legislation with 10% predicted probability, while the most liberal and restrainist justice would vote against AKP legislation with almost 80% predicted probability. This substantive difference demonstrates both the importance of ideological preferences in determining justices' votes in action for annulment cases, and the magnitude of ideological polarization within the CCT. When the constitutionality of a newly enacted law is disputable; that is, when court members cannot unanimously accept or reject its unconstitutionality, with 70% probability the justices in either of the two poles of the ideological space will vote very differently.

Lastly, Figure 16 in Appendix shows how the minimum, mean, and maximum values of justices' predicted probabilities of voting on these cases change depending on the presidents appointed them. While the lowest probability that a hypothetical highly restrainist and liberal justice appointed by Ahmet Necdet Sezer would vote against annulment action cases (excluding the procedural ones) is 33%, it is 6% for a hypothetical highly activist and liberal justice appointed by Abdullah Gul. Another interesting point is regarding the distribution of predicted probabilities among the justices appointed by either President. While the difference in the predicted probabilities of two hypothetical justices appointed by Sezer to vote against AKP legislation in these cases is at most 47%, the difference can be as large as 80% for two justices appointed by Gul. Apparently, justices appointed by Gul are more dispersed compared to those appointed by Sezer in terms of their predicted probabilities of voting.

4.2 Voting against Majority Decision

In a lecture at Columbia University, Charles Evans Hughes, 11^{th} Chief Justice of the United States, defined dissent in a court of last resort as "an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possi-

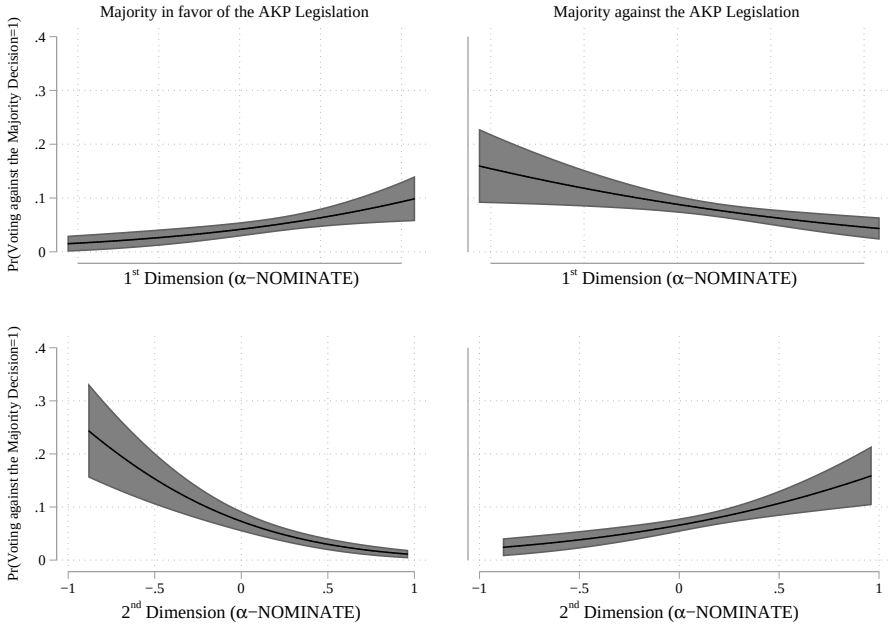
bly correct the error into which the dissenting judge believes the court to have been betrayed" Hughes (1928). As the quote unfolds, dissenting behavior in a court of last resort is valued not only as a mechanism to express a different opinion, but also as a way to leave a mark in the history, make an influence in the audience, and perhaps shape forthcoming court decisions. As a result of such an importance attributed by legal experts and scholars to dissents, dissenting behavior in high courts has become the subject of several prominent theoretical and empirical studies on high courts of the United States (Ulmer, 1970; Epstein and Landes, 2011), whereas only Varol and Garoupa (2017)'s study, which examines a limited number of randomly drawn cases (i.e., a small subset of the cases examined here), has yet touched upon the dissenting behavior of the CCT justices. My third and fourth hypotheses attempts to contribute to this literature.

Hypothesis 3: The more restrainist a justice is, the more likely she will vote against the majority decision in favor of AKP legislation, and the less likely she will vote against the majority decision against AKP legislation.

Hypothesis 4: The more conservative a justice is, the less likely she will vote against the majority decision in favor of AKP legislation, and the more likely she will vote against the majority decision against AKP legislation.

The third and fourth hypotheses question whether CCT justices' dissenting behavior is motivated by their ideological preferences. In order to test these hypotheses, I divide the sample according to the direction of the majority decision, and assess separately whether justices' ideology scores significantly influence their dissenting vote when the majority decision is in favor of the AKP legislation or against it. The underlying assumption for dividing the sample according to the majority decision is that since justices' vote for or against the AKP legislation is used as the baseline of their dissenting vote, their predicted probability to dissent should be altered when the majority vote is

Figure 9: The Effects of the First and Second Dimension α-NOMINATE Scores on the Probability to Dissent against the Majority Decision (Models III and IV)



for or against the AKP legislation. To illustrate, I would expect a hypothetical highly conservative and activist justice to dissent against the majority decision with a high probability when the majority direction is against the AKP legislation and dissent with lower probability when it is in favor of the AKP legislation.

Model III and IV in Table 8 reports the probit regression estimates of the determinants of justices' dissent for the two subgroups. The first and second dimension ideology scores are statistically significant at 99% confidence level and are in the expected directions in both types of majority decision. It provides evidence for that the direction of justices' dissenting behavior is conditional upon the majority decision. Among justices' background characteristics, the faculty justices graduated from and their experience within the CCT are also statistically significant factors influencing their dissenting behavior against the majority decision.

In Figure 9, I plot the effects of the first and second dimension α-NOMINATE ideology scores on the predicted probabilities of dissenting against the majority decision

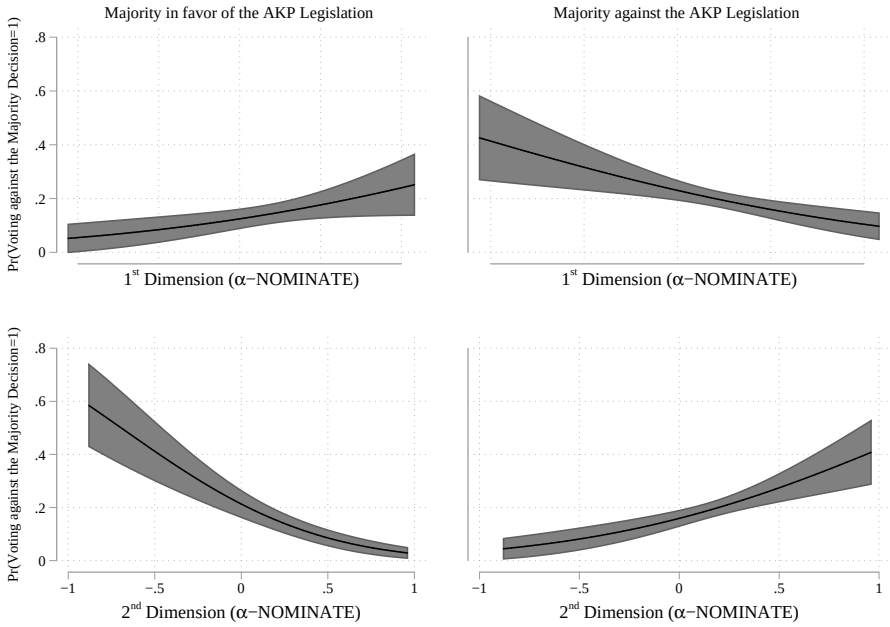
in the cases when the majority is in favor of the AKP legislation and when the majority is against the AKP legislation. Moving from the lowest to the highest levels of the first dimension ideology score shows an 8% increase in the predicted probabilities of dissenting when the majority is in favor of the AKP legislation, and 11% decrease when the majority is against the AKP legislation. On the contrary, moving from the lowest to the highest levels of second dimension ideology score shows a 24% decrease in the predicted probabilities of dissenting when the majority is in favor of the AKP legislation, and 14% increase in the predicted probabilities of dissenting when the majority is against the AKP legislation. These differences in the predicted probabilities show substantive and statistical significance. As Table 7 in Chapter 3 presents, the mean of the second model's dependent variable is 0.07, therefore even an 8% of difference in the predicted probabilities between the two poles of each ideological dimension, although it may seem like an inconsequential amount at first glance, indicates a highly substantively significant finding.

Figure 9 supports the second hypothesis by providing empirical evidence for that not only justices' votes for the unconstitutionality of annulment action cases but also their dissenting votes against the majority decision are motivated by their ideological preferences. As Figure 17 in the appendix also illustrates, while the mean justice would dissent a majority decision in favor of the AKP legislation with 7.7% predicted probability, a hypothetical restrainist and liberal justice would dissent with %48 predicted probability. It also reveals how large the ideological polarization within the CCT is. In light of the empirical evidence, we can thus safely reject the null hypothesis that the impact of the CCT justices' ideological preferences on their dissenting behavior is not statistically significantly distinguishable from zero.

Excluding Procedural Cases

As we did above, here I report the findings from Model II while excluding the procedural cases from the universe of annulment actions cases, since this approach better reflects

Figure 10: The Effects of the First and Second Dimension α-NOMINATE Scores on the Probability to Dissent against the Majority Decision – Procedural Cases are Excluded (Models V and VI)



the predictive power of justices' ideologies for their dissenting behavior. When we exclude the procedural cases, the mean of the dependent variable of Model II increases to 0.21, therefore I also expect an increase in the predicted probabilities of dissenting in annulment action cases in the sample limited to non-procedural cases.

Figure 10 displays the effect of justice ideology on the predicted probabilities of justices' dissenting vote, when there is at least one dissenting vote in the conclusion of a case. Concurrently with my expectations, filtering out the procedural cases from the sample demonstrates higher predicted probabilities, and the magnitude of the effects of ideology scores is greater. When the majority decision is in favor of AKP legislation, the most restrainist justice would dissent with a predicted probability of 25%, and the most liberal justice would dissent with a 58% predicted probability. When the majority vote is against AKP legislation, the most activist justice would dissent with a 42% predicted probability, and the most conservative justice would dissent with 41%

probability. Lastly, as Figure 18 in the Appendix shows, the mean justice's predicted probability to dissent a majority decision in favor of AKP legislation is 22.5%, while it is 80.5% for a hypothetical restrainist and liberal justice, and 2% for a hypothetical activist and conservative justice.

This findings became quite striking when we filter the procedural cases from the observations. Moving from one extreme to the other on the ideology dimensions changes the predicted probability to dissent vey substantively. The most activist and conservative justices almost never dissent against the majority decision in favor of AKP legislation, while the most restrainist and liberal justices dissent against it very often. This picture not only provides empirical evidence supporting my hypothesis, it also reveals how individual justices can be consistent in dissenting majority decisions in favor of AKP legislation regardless of the content of the case. Since the CCT justices are appointed by the presidents of Turkish Republic, one cannot help but wonder whether presidents knowingly appoint such justices who would consistently avoid dissenting the majority vote against the unconstitutionality of newly enacted laws. Since all justices have been appointed by either Gul or Erdogan -both are founding chairmen of the AKP- after the 2010 Constitutional Amendment, the change in the composition of the CCT since then may provide us with a beter understanding of this possible pattern. I will tackle with such questions in the next chapter.

5 VOTING AGAINST AKP LEGISLATION BEFORE AND AFTER 2010

The term court-packing was first used to refer to Franklin D. Roosevelt's plan to increase the number of Supreme Court justices from 9 to 15 allegedly to make it more "efficient," and admittedly to fill the Court with liberal justices who would support his legislation and outvote the majority (Cushman, 2013). Roosevelt proposed the Judicial Procedures Reform Bill of 1937 after a series of court decisions against his array of policies known as the New Deal, therefore his proposal for Judicial Reform was perceived as a threat to the existing balance in the Court. Though the Congress opposed this reform plan and it was never initiated, the plan of increasing the number of highest court members so as to fill it with loyal appointees is described as a form of power grab and "an invasion of judicial power" (Senate Committee, 1937).

The judicial reforms in Argentina in 1989, in Venezuela in 2004 and in Turkey in 2010 are reported as more recent examples of court-packing. In Argentina, the number of the members of the Supreme Court of Argentina was increased from five to nine by President Menem, and in Venezuela, the Congress under Chávez expanded the Supreme Tribunal of Justice from twenty to thirty two members. Both attempts are considered by scholars (Helmke, 2003; Corrales, 2005) and international organizations (Amnesty International, 2004; Human Rights Watch, 2004) as acts of court-packing as they allowed

respective presidents to maintain the majority vote within the courts and remove the obstacle behind their legislation. Similarly in Turkey, for many with a court-packing plan, AKP government expanded the CCT from eleven to seventeen members with the 2010 Constitutional Amendment. The main arguments for and against the 2010 judicial reforms are reviewed in Chapter 2. My aim in this chapter will be to empirically assess the impact of this compositional change.

5.1 Voting for Unconstitutionality

Hypothesis 1: Activist-Restrainist ideology is a significant determinant of justices' vote against the AKP legislation after the 2010 Constitutional Amendment.

Hypothesis 2: The probability of voting against the AKP legislation was higher before the 2010 Constitutional Amendment.

The first and second hypotheses investigate the impact of the CCT's compositional change on the decisions justices make in annulment action cases. More specifically, I question whether the effects of the first and second dimension α-NOMINATE scores on justices' vote for the unconstitutionality of AKP legislation has changed significantly over time and as a function of justice ideology. Table 9 presents the probit regression estimates for the baseline model specified in Chapter 4 before and after the 2010 Constitutional Amendment, and including and excluding the procedural cases. Accordingly, the first dimension α-NOMINATE estimates are not statistically significant in determining CCT justices votes before the amendment, while they are significant at 99% confidence level after the amendment. It suggests that being an activist or restrainist justice was not a significant predictor of justices' votes against AKP legislation before the 2010 Constitutional Amendment. Since the restrainist (pro-status quo) pole in the first dimension denotes the ideological agenda of preserving the foundational Kemalist state values, this result suggests that the degree to which justices prefer guarding the Kemalist state ideology does not predict their votes in annulment action cases between

2002 and 2010. Between 2010 and 2016, on the other hand, being a restrainist as opposed to an activist justice increases the probability of voting against the unconstitutionality of AKP legislation. It both provides empirical evidence supporting my first hypothesis, and shows that ideology gained great importance within the Court after the amendments.

Table 9 Determinants of CCT Justices' Votes on the Constitutionality of AKP Legislation before and after the 2010 Constitutional Amendment

	(1)	(2)	(3)	(4)
	Before	After	Before	After
1^{st} Dimension (α-NOMINATE)	0.001	0.076***	-0.059	0.176**
	(0.074)	(0.028)	(0.130)	(0.071)
2^{nd} Dimension (α-NOMINATE)	-0.251**	-0.277***	-0.609***	-0.703***
	(0.110)	(0.067)	(0.218)	(0.162)
Military Background	-0.068	-0.101	-0.190	-0.270
	(0.079)	(0.062)	(0.155)	(0.172)
Position in the CCT	-0.040**	-0.173***	-0.074	-0.394***
	(0.020)	(0.048)	(0.046)	(0.129)
Level of Education	-0.001	0.046	0.042	0.122
	(0.044)	(0.030)	(0.089)	(0.075)
Law Faculty Graduate	0.039	0.251***	0.241	0.657***
	(0.120)	(0.058)	(0.257)	(0.147)
Years of Experience in the CCT	-0.003	0.032***	-0.016	0.077***
	(0.012)	(0.007)	(0.021)	(0.019)
Age	0.002	-0.004	-0.004	-0.005
	(0.010)	(0.006)	(0.023)	(0.017)
Length of Case	-0.107***	-0.032	-0.038	-0.065
	(0.019)	(0.019)	(0.036)	(0.041)
Year	-0.003	0.066***	-0.034	0.189***
	(0.017)	(0.018)	(0.034)	(0.032)
Constant	6.328	-133.140***	68.523	-381.447***
	(34.960)	(35.341)	(68.626)	(64.156)
Procedural Cases	✓	✓		
N	7308	19381	2889	7154
ll	-4652.012	-9425.660	-1730.917	-3502.452
Pseudo R^2	0.026	0.034	0.105	0.185

Note: Probit regression. Robust standard errors clustered by justices in parentheses. Two tailed tests: * p<0.1; ** p<0.05; *** p<0.01. Third and fourth models report the results for cases excluding the procedural ones.

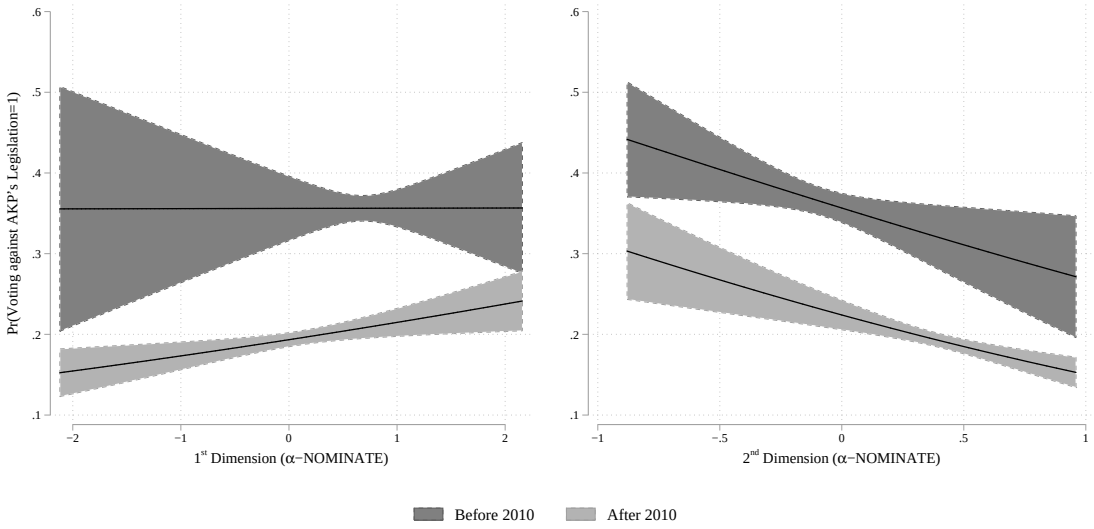
The second dimension is a significant determinant of justices' votes at 95% confidence level between 2002 and 2010 and at 99.9% confidence level between 2010 and

2016. According to this, being a liberal or conservative had always been a significant determinant of justices' votes in annulment action cases during AKP rule. Considering that the AKP has been the center-right party upholding conservative values and mobilizing conservative voters since 2002, this outcome is fairly expectable. Negative coefficients of both models suggests that the more conservative a justices is, the less likely she will vote against the unconstitutionality of newly enacted laws both before and after the amendment. In addition, magnitudes of the coefficients of the second dimension in the first and second models is very close to each other. Different from the findings for the first dimension, we understand that the effect of liberal-conservative dimension on the decision-making calculus of CCT justices was not altered with the change in the Court's composition.

Among justices' background characteristics in the model, the estimates of two variables, whether a justice is a law faculty or a faculty of social sciences graduate, and the years of justices' experience in the CCT, are worthy of attention. While they are not significant determinants of justices' votes against AKP legislation between 2002 and 2010, they are significant at 95% confidence level between 2010 and 2016. Since both variables' coefficients are positive, we understand that being a law faculty graduate and being a senior justice in the Court increases the probability of voting against AKP legislation. Since 8 of 14 justices appointed after the change in the composition of the CCT are graduates of faculties of social sciences, and new appointees have spent less years in the Court, it signals that justices appointed by Gul or Erdogan are less likely to vote against AKP legislation.

I plot the effects of the first and second dimension ideology scores on the probability of voting against AKP legislation before and after the 2010 Constitutional Amendment in Figure 11. The figure illustrates that for both the first and second dimension α-NOMINATE estimates, predicted probabilities of voting against the unconstitutionality of newly enacted laws were higher before 2010 than after the amendments. Since the

Figure 11: Effects of the First and Second Dimension α-NOMINATE Scores on the Probability of Voting against AKP Legislation before and after the 2010 (Models I and II)



confidence intervals around the predicted probabilities do not intercept, we understand that the difference in the predicted probabilities of voting before and after 2010 are statistically significantly different than zero for both dimensions. It suggests that no matter how much restrainist or liberal a justice is, she is less likely after the amendment to vote against AKP legislation than before it.

Though the overall decrease in the predicted probabilities also holds for the first dimension, here I would like to focus more on the liberal-conservative dimension since its effect on justices' votes is significant at 95% confidence level before 2010. While the most liberal justice would vote against the unconstitutionality of newly enacted laws with 44.2% probability before 2010, she votes against it with 30.5% predicted probability after 2010. Similarly, while the most conservative justice would vote against AKP legislation with 27.2% probability before 2010, she would vote against it with 15.5% predicted probability after the amendment. It seems that the expansion of the CCT from eleven to seventeen members gave rise to a 12 to 14% decrease in the predicted probabilities of voting against the unconstitutionality of annulment action cases. Since

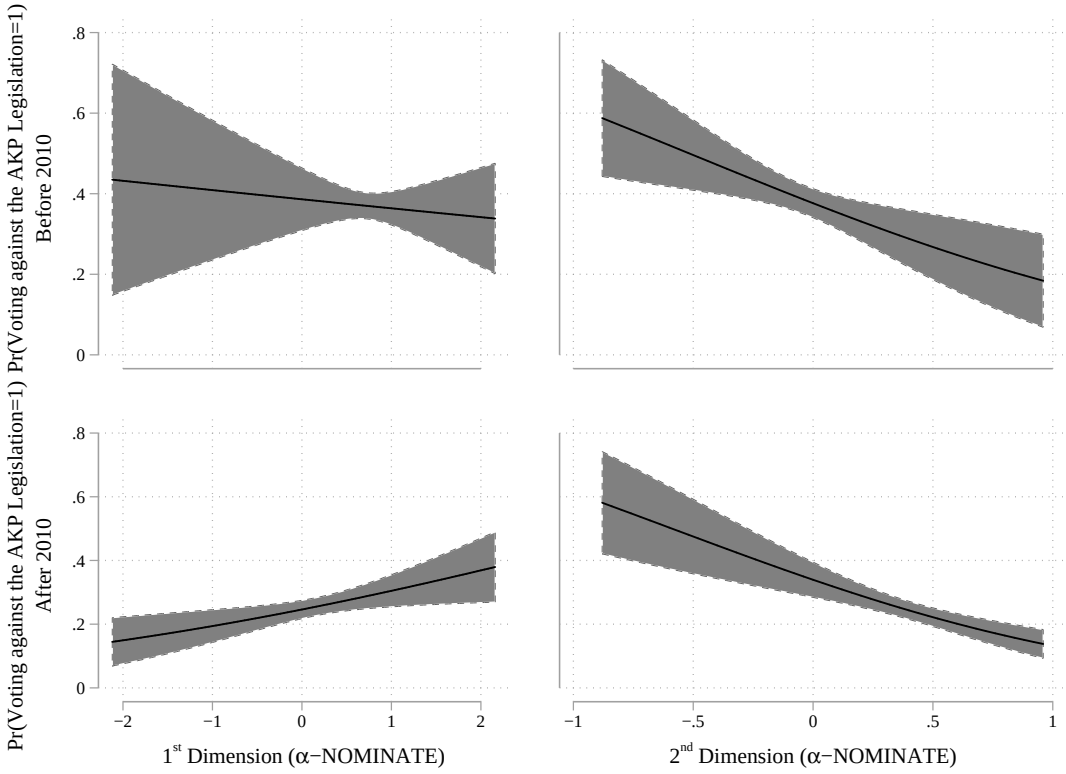
the means of the first and second models' dependent variables respectively are 0.16 and 0.3, 12-14% decrease in predicted probabilities denotes substantive, alongside statistical significance. Another point to make is that moving from the most liberal to the most conservative α-NOMINATE estimate yields 17% decrease in the predicted probabilities of voting for the unconstitutionality of AKP legislation before 2010 and 15% decrease in it after 2010. In addition, the difference in the two poles of the liberal-conservative dimension in terms of their effect on the predicted probabilities of voting stayed more or less the same after the Court's compositional change, meaning that the existing ideological polarity in the second dimension has been preserved after the amendment.

A couple of important conclusions can be made in light of these findings. Firstly, Table 5 in Chapter 3 has already demonstrated that the overall amount of justices' yay and nay votes before and after 2010 are statistically significantly different from each other with a χ^2 test at 99% confidence level. What these findings show is the change in the effect of individual justices' ideologies on their votes and thus on court decisions after 2010. According to this, 1) activist-restrainist dimension became a significant predictor of justices' votes only after the constitutional amendment, which may amount to a sharpening of ideological positions in the first dimension after 2010. 2) While the difference between the two poles of the second dimension a-NOMINATE estimates in terms of their effect on the predicted probabilities of voting stayed much the same after 2010, the predicted probabilities of voting against the unconstitutionality have decreased significantly after the amendment for each value in the Liberal-Conservative ideology dimension. It might well show that a court-packing act does not only result in a change in Court decisions by outvoting the majority, but it also effects all members in such a way to alter their voting patterns, i.e., abstain from voting against ruling party's legislation.

Excluding Procedural Cases

I would also like to report the results of Models I and II for annulment action cases

Figure 12: Effects of the First and Second Dimension α-NOMINATE Scores on the Probability of Voting against AKP Legislation before and after the 2010 – Procedural Cases are Excluded (Models III and IV)



excluding the procedural ones (Models III and IV in Table 9) since it might better reflect the effects of ideology scores on voting against AKP legislation for the reasons explained in Chapter 4. As noted in the previous chapter, I expect an increase in the coefficients of all variables when the unanimously decided cases are excluded from the cases, and the regression outputs of Models III and IV in Table 9 meet this expectation. Similar to Models I and II, the activist-restrainist α-NOMINATE scores are not significant determinants of justices votes' before 2010, while they become statistically significant with a negative coefficient after 2010. For the liberal-conservative dimension, the significance level and the direction of the coefficients before and after 2010 are same with those in Models I and II, while the magnitude of the coefficients are greater in Models III and IV than those in Models I and II.

In order to make sense of the difference in the magnitude of models' coefficients, in Figure 12, I plot the effects of the first and second dimension ideology scores on the predicted probabilities of voting before and after 2010 in annulment action cases excluding the procedural ones. As expected, predicted probabilities are higher when we exclude the unanimously decided cases. After 2010, the predicted probabilities of voting against AKP legislation increases to 37.5% for the most restrainist justices, and 59% for the most liberal justices, while the probabilities are, in turn, 24% and 30.5% for the most restrainist and liberal justices respectively.

It is important to note that, however, we cannot see the significant decrease in the predicted probabilities of voting for either of the ideology dimensions after the expansion of the court from eleven to seventeen members. For the liberal-conservative dimension, for example, predicted probabilities of voting against AKP legislation is almost the same before and after the 2010 Amendment when we filter out the procedural cases from the sample. The reason for this might be the existence of multiple cases unanimously voted against the newly enacted laws between 2002 and 2010. In other words, the portion of procedural cases that are unanimously voted against new legislations to the cases that are unanimously voted in favor of them must be higher before 2010 than after it. It further suggests the fading of the unanimous opposition against the ruling government in the Court after the constitutional amendment.

5.2 Voting against Majority Decision

As noted in the previous chapter, high court justices' dissenting patterns can inform us about the political history of a country, and we showed that CCT justices dissenting votes in annulment action cases between 2002 and 2016 are determined by their ideologies. In view of these findings, in this section, I would like to examine the impact of 2010 Constitutional Amendment on justices' dissenting patterns.

Hypothesis 3: Only between 2010 and 2016, the more restrainist a justice is, the more

Table 10 Determinants of CCT Justices' Dissenting Votes in Annulment Action Cases before and after the 2010 Constitutional Amendment

	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
	Before	Before	After	After	Before	Before	After	After
1^{st} Dimension (α-NOMINATE)	-0.110	0.010	0.269***	-0.158**	-0.204	-0.053	0.350***	-0.224***
	(0.123)	(0.102)	(0.071)	(0.076)	(0.156)	(0.154)	(0.109)	(0.083)
2^{nd} Dimension (α-NOMINATE)	-0.551**	0.484**	-1.034***	0.004	-0.678**	0.763**	-1.541***	0.001
	(0.239)	(0.200)	(0.162)	(0.202)	(0.319)	(0.320)	(0.229)	(0.297)
Military Background	-0.142	0.076	0.155	1.140***	-0.297	0.102	0.311	1.642***
	(0.224)	(0.202)	(0.205)	(0.176)	(0.285)	(0.251)	(0.256)	(0.274)
Position in the CCT	-0.085	0.103	-0.224*	0.600***	-0.112	0.146	-0.344**	0.626***
	(0.071)	(0.098)	(0.126)	(0.163)	(0.112)	(0.155)	(0.174)	(0.241)
Level of Education	-0.010	0.052	0.019	-0.309***	0.061	0.046	-0.022	-0.548***
	(0.109)	(0.088)	(0.076)	(0.115)	(0.136)	(0.129)	(0.099)	(0.171)
Law Faculty Graduate	0.002	-0.393	0.471***	-0.961***	0.150	-0.671	0.603***	-1.326***
	(0.274)	(0.273)	(0.124)	(0.165)	(0.370)	(0.409)	(0.159)	(0.268)
Years of Experience	-0.025	-0.003	0.066***	-0.056*	-0.039	-0.011	0.104***	-0.053
	(0.019)	(0.022)	(0.011)	(0.029)	(0.024)	(0.033)	(0.018)	(0.044)
Age	0.002	0.006	-0.030*	-0.043*	0.014	0.021	-0.046**	-0.086**
	(0.024)	(0.016)	(0.017)	(0.025)	(0.031)	(0.025)	(0.023)	(0.036)
Length of Case	-0.046	0.037	0.064*	0.125**	0.011	0.065	-0.027	0.108
	(0.037)	(0.059)	(0.039)	(0.057)	(0.047)	(0.074)	(0.055)	(0.085)
Year	0.087***	-0.014	0.177***	0.130**	0.034	-0.030	0.195***	-0.093
	(0.032)	(0.031)	(0.032)	(0.051)	(0.039)	(0.051)	(0.044)	(0.077)
Constant	-176.290***	25.574	-357.237***	-260.050**	-70.139	57.836	-391.158***	192.310
	(63.315)	(61.775)	(65.231)	(102.345)	(78.153)	(102.165)	(89.494)	(154.595)
Procedural Cases are Included	✓	✓	✓	✓				
Majority against Unconstitutionality	✓		✓		✓		✓	
N	4993	2315	15884	3497	2077	812	5515	1639
ll	-1469.275	-584.483	-2912.122	-1175.868	-975.171	-350.932	-1763.330	-676.525
Pseudo R^2	0.103	0.107	0.176	0.185	0.154	0.203	0.294	0.331

Note: Probit regression. Robust standard errors clustered by justices in parentheses. Two tailed tests: * p<.01; ** p<0.05; *** p<.01. Ninth, tenth, eleventh and twelveth models report the results for cases excluding the procedural ones. Fifth, seventh, ninth and eleventh models report the results for majority vote against unconstitutionality.

likely she will vote against the majority decision in favor of, and the less likely she will vote against the majority decision against AKP legislation.

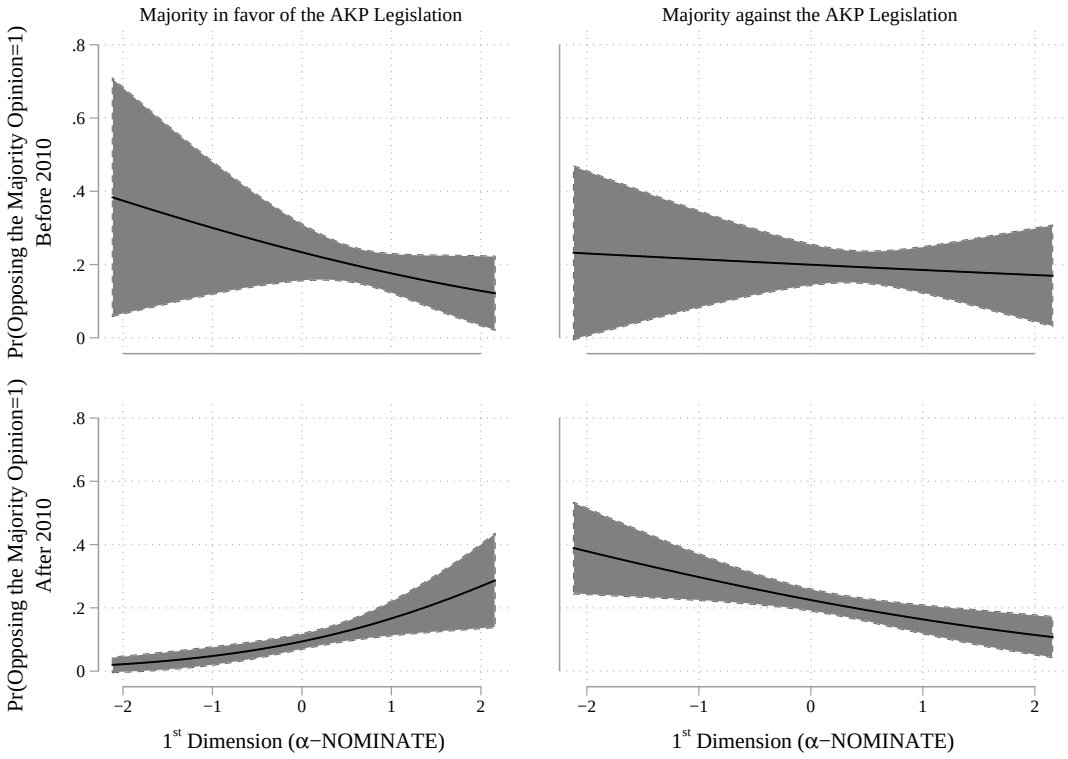
Hypothesis 4: The more liberal a justice is, the more likely she will vote against the majority decision in favor of AKP legislation both before and after 2010, while she is less likely to vote against the majority decision against AKP legislation only until 2010.

The third and fourth hypotheses ask whether the expansion of CCT from eleven to seventeen members had an impact on the predictive power of justices' ideology scores on their dissenting votes in annulment action cases during the AKP rule. As in the previous chapter, I divided the sample into two based on their outcome of the decisions (i.e. whether the case is concluded for or against the unconstitutionality of the newly enacted law) for the reasons explained before. I expect 1) statistically significant difference in the predictive power of ideology scores' effect on justices' dissenting votes before and after 2010, and 2) different direction in justices' dissenting behavior (conditional on majority vote) both before and after 2010 whenever the effects of ideology scores are statistically significant.

Table 10 illustrates the probit regression estimates of the determinants of justices' dissents against majority decision before and after 2010, including and excluding the procedural cases, and when majority vote is for and against the unconstitutionality. Accordingly, the first dimension ideology is a statistically significant determinants of justices' dissenting votes only for the cases resolved after 2010. After 2010, first dimension ideology scores are significant at 95% confidence level when the majority is in favor of AKP legislation, and significant at 95% confidence level when the majority is against AKP legislation. In addition, the coefficients are in the expected directions. After 2010, being a restrainist justice increases the probability that a justice will vote against the majority decision in favor of AKP legislation, and decreases the probability that she will vote against the majority decision against AKP legislation.

In Figure 13, I plot the effects of the first dimension α-NOMINATE scores on justices'

Figure 13: Effects of the First Dimension α-NOMINATE Scores on the Probability of Dissenting against the Majority Decision before and after 2010 – Procedural Cases are Excluded (Models IX, X, XI and XII)



dissents in the annulment action cases before and after 2010, when there is at least one dissent in the conclusion of a case. Since I have explained what difference filtering out the procedural cases makes in the predictions in the previous chapter, here I will only report the predicted probabilities of justices' dissenting votes in annulment action cases excluding the procedural ones.[24]

As Figure 13 illustrates, activist-restrainist ideology is not a statistically significant in explaining justices' dissenting votes before the 2010 Constitutional Amendment. After 2010, however, moving from low to high levels on the first ideological dimension scores leads to a 27% increase in the predicted probability of dissenting when the ma-

[24]The figures plotting the predicted probabilities of dissenting before and after 2010 for the universe of cases can be found in the appendices of this chapter (Figures 19 and 20).

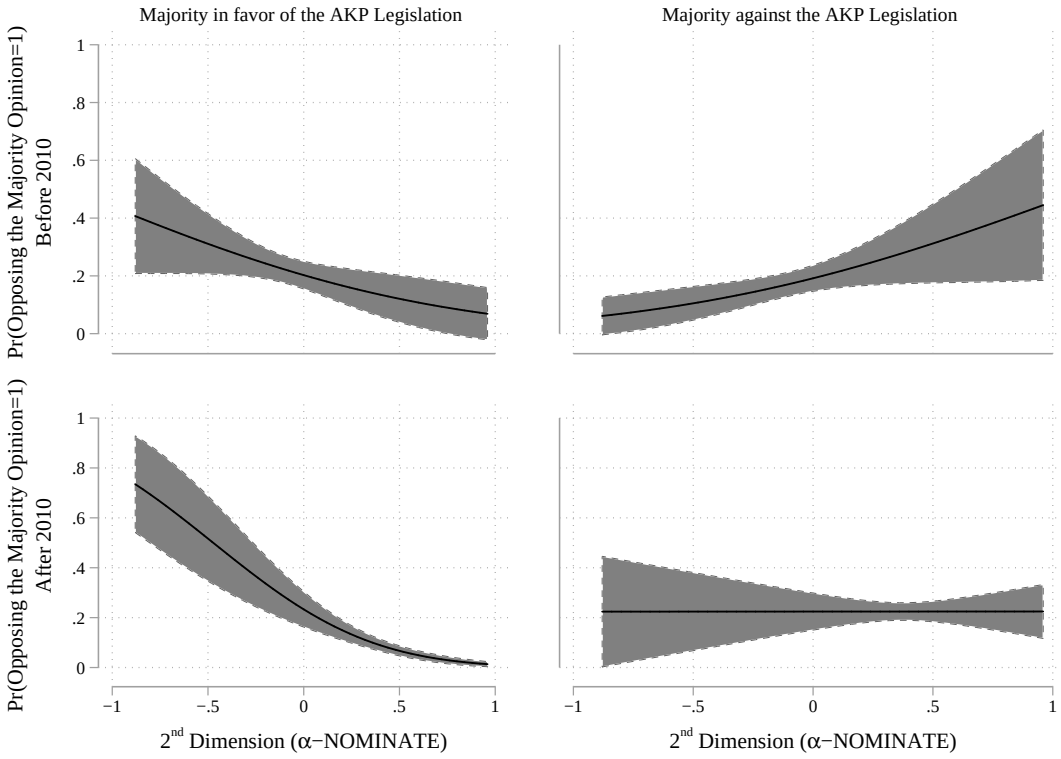
jority is in favor of AKP legislation, and a 28% decrease when the majority is against AKP legislation. The means of the models' dependent variable dissent for the cases excluding procedural ones after 2010 are 0.16 when the majority is in favor of AKP legislation, and 0.3 when majority is in favor of it. For this reason, the findings reported in Figure 13 has substantive and statistical significance. Another point regarding the results is that for each point increase in the activist-restrainist dimension, the predicted probabilities of dissenting becoems about 10% higher when the majority is against AKP legislation compared to when the majority is in favor of it. It amounts to that after the compositional change of the court, justices are about 10% more likely to dissent the majority decision when it leans against AKP legislation.

Figure 13 provides empirical support for the third hypothesis. As it can be observed, the change in the composition of the CCT had a significant impact in the effect of justices' ideology scores on the predicted probabilities of dissenting. Before 2010, being a restrainist or activist justice would not significantly affect whether the justice would dissent against the majority decision in an action for annulment, after 2010, however, the polarity in the first dimension seems to have crystallized in a way to determine whether the justices dissent in annulment cases.

The findings for the second dimension are a bit less straightforward to interpret. As shown in Table 10, the second dimension α-NOMINATE estimates are statistically significant for the cases held before 2010 in expected directions at 95% confidence level. After 2010, however, they became statistically significant predictors of justices' dissenting votes only when the majority is in favor of AKP legislation. In addition, the increase coefficients' magnitudes and their significance level after 2010, at least when the majority is in favor of AKP legislation, signals the increasing polarization and importance of the liberal-conservative ideology dimension in the CCT.

Focusing on the magnitudes of control variables might explain why ideology cannot predict justices' dissenting votes after 2010 when the majority is against AKP legisla-

Figure 14: Effects of the Second Dimension α-NOMINATE Scores on the Probability of Dissenting against the Majority Decision before and after 2010 – Procedural Cases are Excluded (Models IX, X, XI and XII)



tion. Model 12 in Table 10 shows that the predictive power of the two control variables "military background" and "law faculty graduate" (whether justices had served in a military court before CCT and whether they are graduates of law faculties) seem so strong that other variables including the second dimension α-NOMINATE remain ineffective in explaining justices' dissenting votes. According to this, having served in a military court is a statistically highly significant determinant of justices' dissent and increases the probability that they vote against the majority decision for the unconstitutionality of AKP legislation. This finding might be considered surprising since one would expect a justice with military background to score highly on the activist-restrainist dimension, i.e., be a restrainist desiring to preserve the foundational state ideology, and dissent with less probability when the majority is against AKP legislation. For law faculty

graduates, expectedly, the probability of voting against AKP legislation is lower when the majority vote is already against it.

The effects of the second ideological dimension on the predicted probabilities of dissenting before and after 2010 are plotted in Figure 14. While the most liberal justice would dissent against the majority decision in favor of AKP legislation with a predicted probability of 40.5% before the 2010 Constitutional Amendment, she would vote against it with 73% predicted probability after the compositional change. Such increase in the predictions is another striking example of how much the ideological polarity is intensified within the CCT after its expansion. It also provides empirical evidence for the fourth hypothesis.

In the cases when the majority is against AKP legislation, moving from low to high scores of second dimension ideology scores suggests a 38% change in the predicted probabilities of dissenting the majority decision in cases held before 2010. After 2010, however, the figure shows no such change in the predicted probabilities when we move from low to high scores of liberal-conservative dimension. It might amount to the fading of the opposition in the court with the compositional change. In such case, however, one would also expect similar findings for the cases when the majority is in favor of AKP legislation. Although it is hard to explain this much of a difference between the predicted probabilities of dissenting when the majority decision is for and against AKP legislation, as I noted above, I attribute this difference to the great significance of control variables compared to the second dimension ideology scores.

6 CONCLUSIONS

This thesis bears significant findings regarding the CCT's place in contemporary Turkish politics. Among the main objectives of the thesis have been describing the Court's ideological positioning, and explaining the Court justices' voting behavior in annulment action cases during AKP period. In line with the previous literature depicting Turkish political space as multidimensional (Carkoglu and Hinich 2006, Moral and Tokdemir 2017), this study provided evidence for that activist-restrainist and liberal-conservative dimensions correctly represent CCT justices' ideological positioning, and also that justices appointed by different presidents show statistically significantly different ideological preferences. While the mean justice Sezer appointed seems to fall at around the restrainist and liberal poles, the mean justices Gul and Erdogan appointed fall within the conservative and activist poles. Apparently, the CCT has been through sharp ideological transformations during Sezer's and Gul's presidencies. As we understood, the CCT became increasingly restrainist between 2005 and 2010, which was most probably the reason for AKP to call forth the judicial reform discussions in 2010.

The findings further suggested that justices are not mere adjudicators of what the legal scripts dictate, but are motivated by their ideological preferences and certain background characteristics. These findings are in line with the previous literature on judicial behavior. In the same way with the highest court justices of the US, Norway, Britain, Spain and France, ideology is a significant determinant of CCT justices. Within

the two dimensional ideology space, the results suggest that the more liberal and the more restrainist a justice is, the more likely she will rule that the AKP legislation is unconstitutional, while the more conservative and the more activist a justice is, the less likely she is to rule against AKP legislation.

It is important to re-emphasize that the dependent variable on which we measured ideology's effect is the AKP legislation between 2002 and 2016. These are the cases which high-ranking AKP members argued to prove that the country is governed under judicial tutelage.[25] This thesis provided evidence that CCT justices' ideological preferences are important factors in the determination of whether a law enacted by AKP will stay in force. In a way, CTT is another political body evaluating the constitutionality of new legislation in light of the existing justices' ideological preferences, so far as the keen constitutional constraints permit. Whether to call this kind of a check on the legislative power "judicial tutelage" as AKP members frequently did, however, is a political choice, I would say. After all, at least for the case of Turkey, all justices have been appointees of Presidents who were, in turn, elected either by the parliament or, recently, directly by the people. In other words, justices have always been appointed by the elected bodies. In a democracy with a properly working horizontal accountability, being checked by the appointees of the previous presidents would be the guarantee of the system continuation, not an imposition of tutelage.

The findings also manifested the extreme polarity within the Court. The difference in the probabilities that a hypothetical highly activist and conservative justice and a highly restrainist and liberal justice to vote against AKP legislation is as high as 70% when we exclude the procedural cases. This percentage difference as a consequence of polarity is so high that it is almost certain that two justices positioned on the different extremes of the two-dimensional ideological space will vote differently when a newly

[25]Yeni Safak News. January 14^{th}, 2010. Bekir Bozdag: "AKP period is the period during which the highest number of annulment decisions are made. Currently the military is being blamed, but in fact there is judicial tutelage in Turkey." https://www.yenisafak.com/gundem/yargi-vesayeti-sistemi-kilitliyor-235287 Accessed on June 27^{th}, 2018.

enacted law is brought to the Court for annulment. This magnitude of polarity might be considered a reflection of the growing polarization in the parliament and the society.

This study has been the first to systematically examine CCT justices' dissenting behavior. Interestingly, the findings show that the direction of justices' dissenting votes depends on the direction of the majority decision. In addition, ideology also proves also to be a significant determinant of justices' dissents against the majority decision. Taken together, it seems to me that when a controversial case is brought to the Court for annulment, usually the same clusters of justices vote for or against the annulment, and choose to side with those who dissent or not.

The second main objective of the thesis was to empirically assess the effect of the compositional change on the decisions CCT justices make. The comparison of the effects of justices' ideology scores on the probability of voting before and after 2010 Constitutional Amendment shows that the probabilities of voting against AKP legislation has significantly dropped after the change in the Court's composition. In other words, not only the Court has become less restrainist with the compositional change in 2010, but also the probability that any justice, including the existing restrainist ones, of finding AKP legislation unconstitutional has significantly decreased. Not surprisingly, yet strikingly, the court-packing act of increasing court size from 11 to 17 members has created a more amenable, if not a more submissive Court. In a way, the findings provide suppor for those arguing that AKP aimed at extending its influence over the Court. However, we cannot conclude whether it is democratized, i.e., whether it became more representative of the parliament/society. What we know are 1) the Court has become highly restrainist before 2010 Amendment, especially between 2005 and 2010; 2) the activist-restrainist ideology dimension was not a significant determinant of justices' votes or dissents before 2010, but has become significant after it. Combining these findings, It is possible to argue that the Court made ideological decisions in certain key cases before 2010. However, the degree to which justices prefer preserving

the Kemalist state ideology did not motivate their votes in the universe of annulment action cases between these years.

This project provides us with a strong idea about AKP's motivations for initiating the 2010 reforms. As previously noted, high-ranking AKP members have often noted that the judicial reforms were aimed at democratizing the Court. Though the Court had become highly restrainist before the Constitutional Amendment, I could not find any empirical evidence suggesting that the Court has neutralized. On the contrary, the Court has driven to the activist and conservative extremes, become highly polarized and more likely to vote in favor of the AKP legislation. After 2010, for these reasons, the Court seems to have transformed into a form that is highly desirable for the AKP. In my opinion, it goes without saying that this court-packing act was a successfully organized project aimed at subduing the Court. One cannot help but wonder whether the reforms undertaken in other state institutions have yielded similar transformations. I hope that this thesis motivates further research investigating other constitutional changes that other state institutions have been subject to in this period.

6.1 Limitations of the Study

I would like to note that the α-NOMINATE ideal point estimation takes the ideology space to be stable over time. In other words, it assumes that justices have constant ideology scores which do not vary over time. Whether this assumption holds for the CCT justices has been a question I have struggled during my study. Previous research shows how the voters' ideological stands evolve over time (Carkoglu and Kalaycioglu, 2009), and I doubt if the society's attitudes do not reflect in the ideology space of a political institution. Critics of this assumption formulated the dynamic ideal point estimation, also known as the Martin-Quinn scores (2002), which introduces latent ideal points and allows for spatial movements over time. This model, however, assumes the political space to be one-dimensional, and do not provide two-dimensional dynamic ideal

points estimates. Among these two models, I found α-NOMINATE estimates to better fit to our data. In other words, a two dimensional ideology space that is stable over time provides better fit than the one-dimensional space moving over time. Nevertheless, a more precise estimate of the effect of the CCT justices' ideologies on the probability of voting might have been to use multi-dimensional ideal point estimates that vary over time.

Another limitation of the study is the use of sub-sample models as the method of comparison. Considering that between 2002 and 2016, the justices serving in the Court has been subject to a gradual change, dividing the sample in accordance with the date of case conclusion has its limits in showing the exact impact of the Court's compositional change on the decisions it makes. To illustrate, the Court has already begun being conservatized with the justices appointed by Gul before the examined Constitutional Amendment, and continued getting more so with the justices appointed after the initial increase in the number of members in 2010. Although taking the amendment date as a milestone and comparing the justices' voting behavior prove to be a useful exercise in many respects, it may exaggerate the exact simultaneous impact of the compositional change.

Appendices

Table 11 List of Justices

Justice	1^{st} Dim.	2^{nd} Dim.	President	Entry	Exit
Ahmet H. Boyacioglu	-0,332051	0,129346	Sunay	17-Sep-1970	6-Apr-1985
Necdet Daricioglu	-0,720141	-0,090904	Koruturk	24-Oct-1977	4-May-1991
Kenan Terzioglu	-0,314232	0,202758	Koruturk	18-Sep-1978	1-Aug-1986
H. Karamustantikoglu	-0,499222	0,201958	Koruturk	19-Sep-1978	1-Dec-1984
M. Y. Aliefendioglu	0,914174	-1,135437	Koruturk	16-Jan-1979	15-Nov-1995
Yekta Gungor Ozden	-1,835970	-0,827173	Koruturk	16-Jan-1979	1-Jan-1998
Orhan Onar	-0,416440	0,266150	Koruturk	1-Apr-1980	1-Mar-1988
Muammer Turan	0,289794	-1,043479	Evren	10-Feb-1981	10-Jun-1990
Mehmet Nuri Cinarli	0,951718	0,025342	Evren	9-Apr-1981	1-Jul-1990
Servet Tuzun	0,996922	0,798416	Evren	8-Jul-1981	2-Aug-1993
Selahattin Metin	-1,148290	0,409398	Evren	10-Jul-1981	15-Apr-1988
Mahmut C. Cuhruk	-0,266605	0,086891	Evren	2-Oct-1981	1-Mar-1990
Hasan Semih Ozmert	0,818904	0,333853	Evren	2-Oct-1981	27-Jul-1986
Osman Mikdat Kilic	-0,371607	0,285212	Evren	16-Mar-1982	1-Jul-1985
Mustafa Gonul	0,411932	-0,308346	Evren	12-Feb-1985	20-Aug-1994
Mustafa Sahin	0,515431	-0,278636	Evren	17-May-1985	1-Jul-1993
Adnan Kukner	-0,597054	0,051262	Evren	28-Nov-1985	1-Jul-1988
Vural Savas	0,213328	0,562772	Evren	16-Sep-1986	19-Oct-1988
Mehmet Serif Atalay	0,656942	-0,507378	Evren	1-Oct-1986	1-Jul-1989
A. Oguz Akdoganli	-0,736381	-0,212208	Evren	25-Mar-1987	19-Nov-1993
hsan Pekel	0,304310	0,069634	Evren	21-Mar-1988	1-Nov-1995
Selcuk Tuzun	-0,865905	-0,416188	Evren	2-May-1988	14-Feb-1998
Ahmet Necdet Sezer	-1,103016	-0,213134	Evren	28-Sep-1988	28-Sep-1998
Erol Cansel	0,277970	0,511539	Evren	7-Dec-1988	23-Jun-1992
Yavuz Nazaroglu	0,574406	0,089057	Ozal	11-Apr-1990	1-Jul-1992
Guven Dincer	3,152281	-0,728884	Ozal	9-Jul-1990	24-Nov-1999
Samia Akbulut	0,268775	0,164374	Ozal	30-Oct-1990	12-Feb-2004
Hasim Kilic	0,107251	0,845753	Ozal	24-Nov-1990	10-Feb-2015
Yalcin Acargun	-2,128359	-0,321181	Ozal	31-May-1991	3-Jan-2004
Mustafa Bumin	-0,265023	-0,179203	Ozal	9-Nov-1992	26-Jun-2005
Sacit Adali	0,292361	0,831346	Ozal	16-Mar-1993	5-Mar-2010
Ali Huner	-0,692180	-0,046728	Demirel	22-Sep-1993	28-May-2004
Lutfi F. Tuncel	1,238437	-0,136009	Demirel	2-Nov-1993	1-Oct-1999
Mustafa Yakupoglu	0,506560	-0,597462	Demirel	18-May-1994	14-Jul-2000

Justice	1^{st} Dim.	2^{nd} Dim.	President	Entry	Exit
Nurettin Turan	0,591058	0,236836	Demirel	25-Jan-1995	24-Jan-2003
Fulya Kantarcioglu	-0,581846	-0,632912	Demirel	19-Dec-1995	17-Feb-2013
Aysel Pekiner	-0,878978	-0,295007	Demirel	21-Dec-1995	10-Apr-2004
Mahir Can licak	-0,980574	-0,732841	Demirel	4-Feb-1998	5-Aug-2001
Rustu Sonmez	-1,018682	-0,541279	Demirel	1-Jun-1998	3-Jun-2002
Ertugrul Ersoy	0,588643	-0,327701	Demirel	8-Dec-1999	1-Jan-2005
H. Tulay Tugcu	0,194231	-0,469798	Demirel	24-Dec-1999	12-Jun-2007
Ahmet Akyalcin	1,039545	0,314373	Sezer	16-Apr-2000	16-Mar-2012
Enis Tunga	0,906080	-0,345142	Sezer	10-Aug-2001	10-Jun-2003
Mehmet Erten	0,780179	-0,379855	Sezer	2-Jul-2002	9-Feb-2014
Mustafa Yildirim	0,546936	-0,178895	Sezer	24-Feb-2003	1-Feb-2010
Cafer Sat	0,438576	0,239356	Sezer	14-Jul-2003	3-Jan-2010
Fazil Saglam	-1,470438	-0,966841	Sezer	22-Aug-2003	23-Feb-2005
A. Necmi Ozler	0,841586	-0,469674	Sezer	18-Feb-2004	1-Apr-2010
Fettah Oto	0,477834	-0,660878	Sezer	30-Apr-2004	1-Dec-2011
Serdar Ozguldur	1,566288	0,757786	Sezer	21-Jun-2004	
O. Alifeyyaz Paksut	-0,264176	-0,224882	Sezer	1-Jul-2005	
Serruh Kaleli	2,163994	0,613768	Sezer	19-Jul-2005	
Sevket Apalak	0,941641	-0,967323	Sezer	20-Jul-2005	2-Nov-2010
Zehra Ayla Perktas	0,474716	-0,567961	Sezer	27-Jun-2007	15-Dec-2014
Recep Komurcu	0,125356	0,493528	Gul	4-Dec-2008	
Dr. Alparslan Altan	-0,684533	0,225060	Gul	30-Mar-2010	4-Aug-2016
Burhan Ustun	0,370689	0,654696	Gul	30-Mar-2010	
Prof. Engin Yildirim	-0,384184	0,116721	Gul	9-Apr-2010	
Nuri Necipoglu	0,236828	0,880620	Gul	22-Apr-2010	2-Jul-2018
Hicabi Dursun	-0,736204	0,789907	Gul	6-Oct-2010	
Celal Mumtaz Akinci	0,483744	0,894966	Gul	13-Oct-2010	
Prof. Erdal Tercan	-0,997220	-0,051716	Gul	7-Jan-2011	4-Aug-2016
Muammer Topal	0,057015	0,660404	Gul	29-Jan-2012	
Prof. Zuhtu Arslan	-1,274453	0,275846	Gul	17-Apr-2012	
Muhammed Emin Kuz	-1,524516	0,704032	Gul	8-Mar-2013	
Hasan Tahsin Gokcan	0,010730	0,407549	Gul	17-Mar-2014	
Kadir Ozkaya	-0,766176	0,613819	Erdogan	18-Dec-2014	
Ridvan Gulec	-1,472707	0,110727	Erdogan	13-Mar-2015	

Figure 15: The Predicted Probability of Voting for the Unconstitutionality of the AKP Legislation. (Model I)

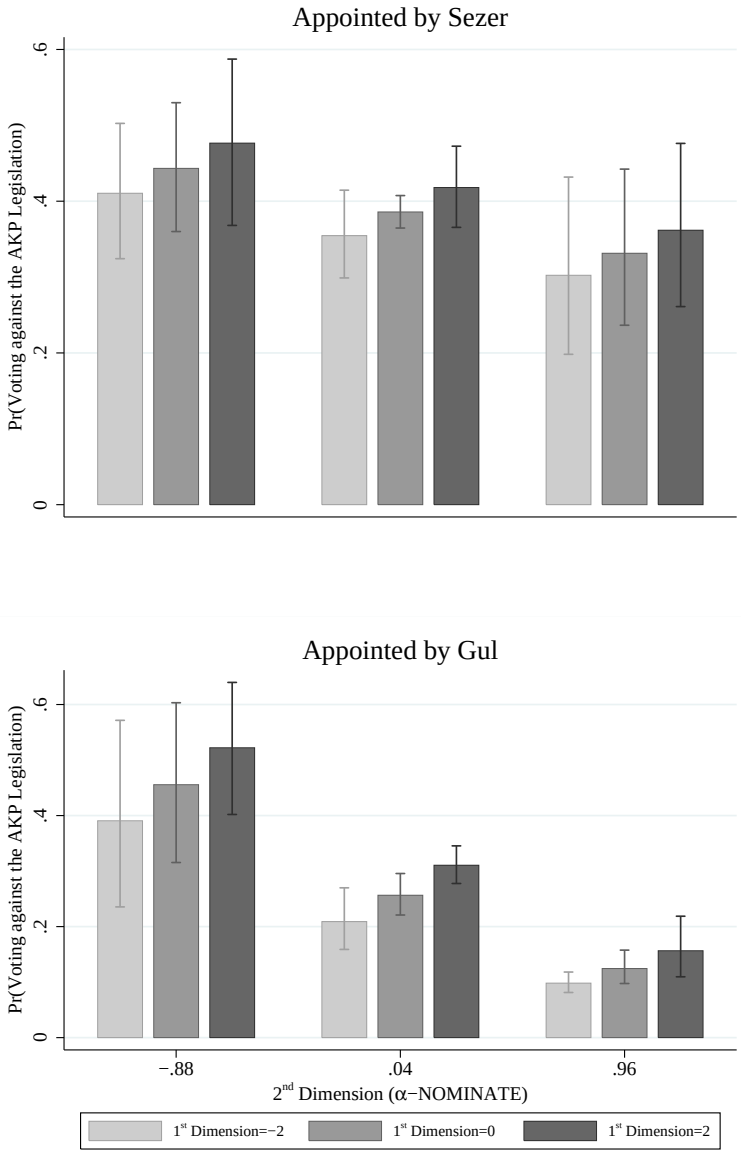


Figure 16: The Predicted Probability of Voting for the Unconstitutionality of the AKP Legislation (Model II)

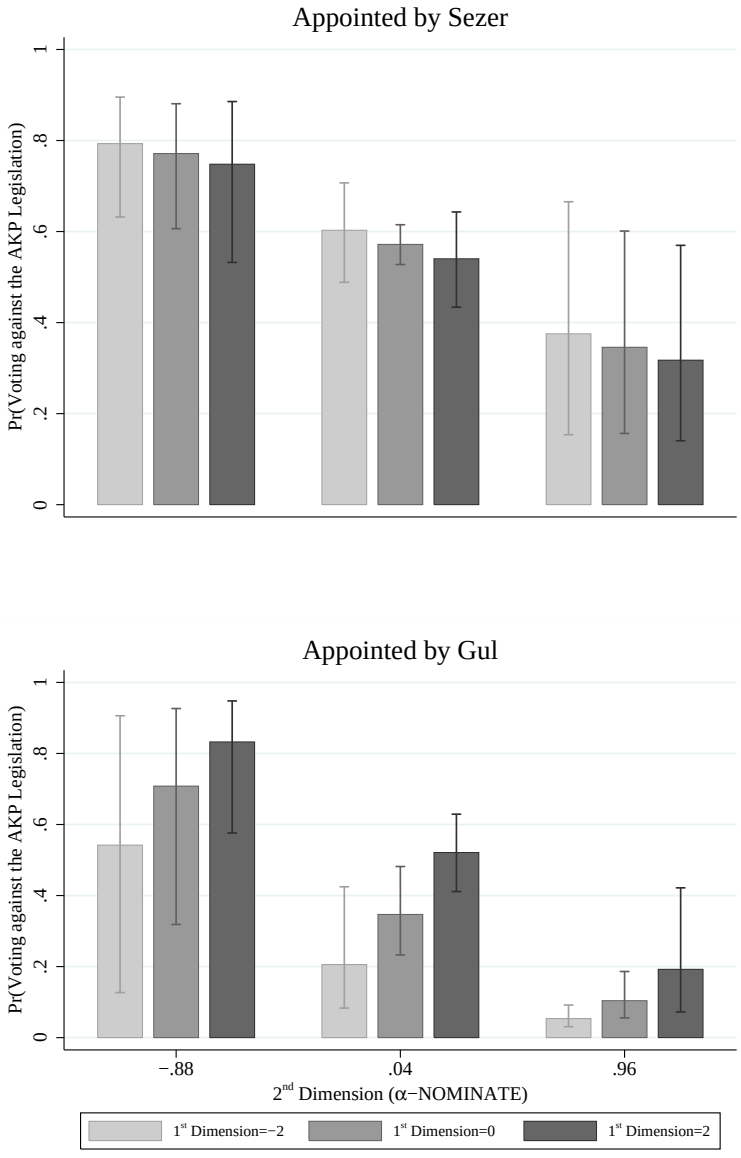


Figure 17: The Predicted Probability of Voting against Majority Decision (Models III and IV)

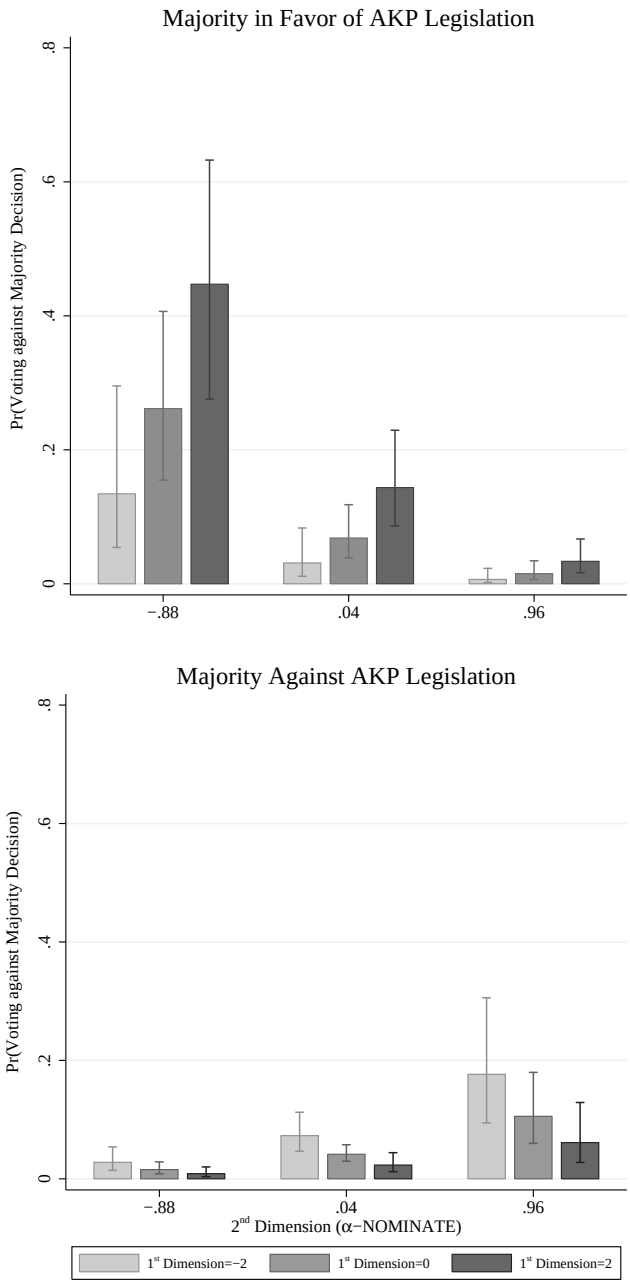


Figure 18: The Predicted Probability of Voting against Majority Decision – Procedual Cases are Excluded (Models V and VI)

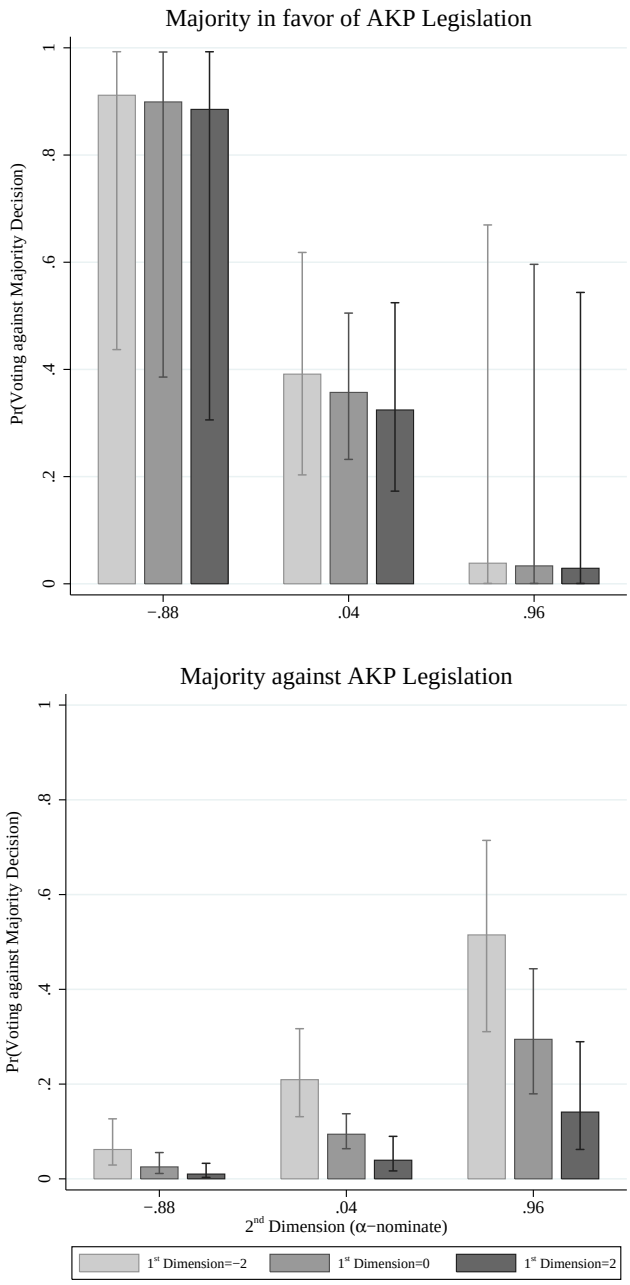


Figure 19: Effects of the First Dimension α-NOMINATE Scores on the Probability of Dissenting against the Majority Decision before and after 2010 (Model I, II, III and IV)

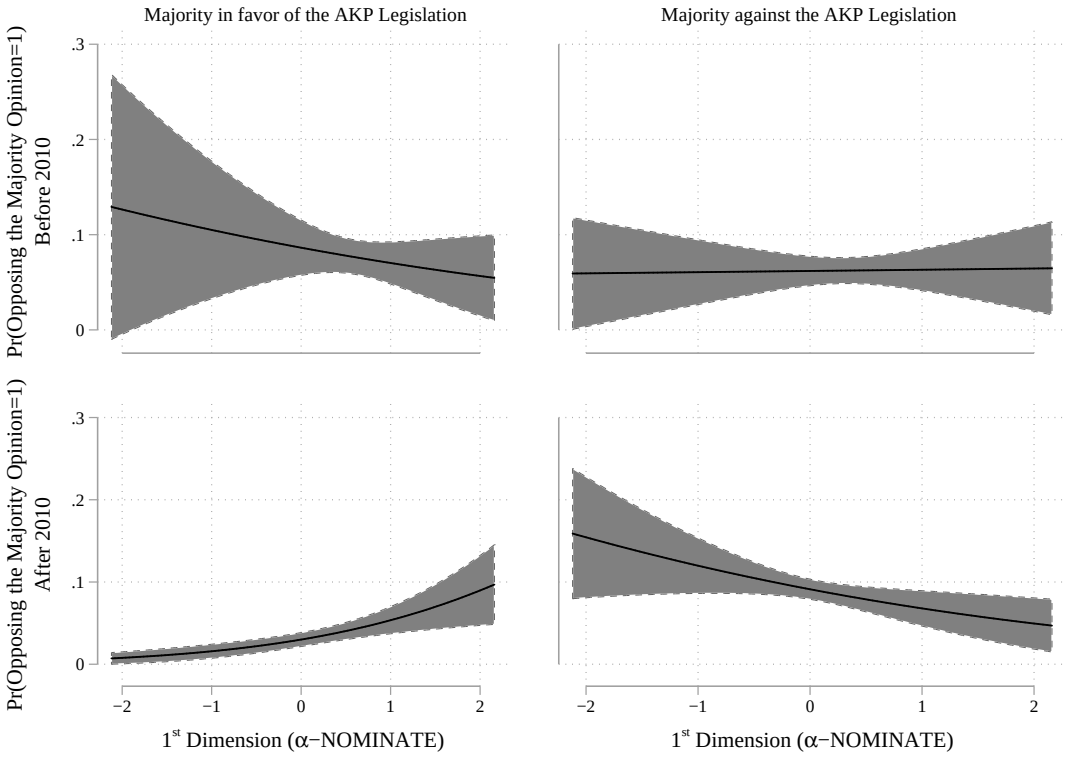
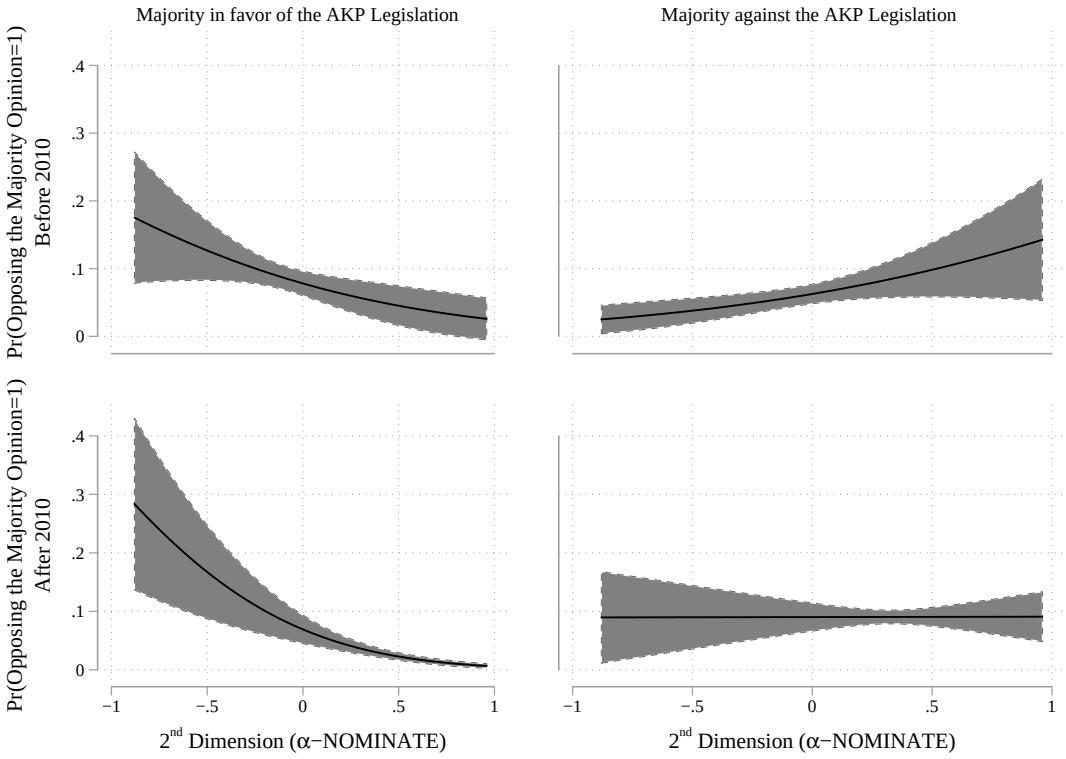


Figure 20: Effects of the Second Dimension α-NOMINATE Scores on the Probability of Dissenting against the Majority Decision before and after 2010 (Models I, II, III and IV)



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