Table of Contents

AE	BBREVIATIONS	
TA	BLES AND FIGURES	19
IN	TRODUCTION	21
1.	The AYM – an Influential but Under-Researched Institution	23
2.	Non-Legal Explanations of Judicial Behaviour and the AYM	25
	nterdisciplinary Analysis of AYM Rulings and its Politico-Legal Reasoning	31
	Plan of the Book	36
PA	RT I: THE INSTITUTION	37
1.	Constitutional History of Turkey and the AYM	38
	1.1 The 1961 Constitution and the AYM	38
	1.2 The 1982 Constitution and the AYM	42
2.	Selection of the Justices	49
3.	Status and Competences of the AYM	56
	3.1 Abstract Judicial Review	58
	3.2 Concrete Judicial Review	60
	3.3 The AYM as the Supreme Criminal Tribunal	61
	3.4 Immunity and Loss of Membership Cases	63
	3.5 Procedures for the Prohibition of Parties	65
	3.6 Financial Checks on Political Parties	66
	3.7 Constitutional Complaints	67
4.	Effects and Scope of AYM Decisions	68
	4.1 Suspensive Effect and Interim Measures	68
	4.2 Scope of Decisions	71
	4.3 Binding Force	73
5.	Internal Organisation and Decision-Making Process	75
	5.1 Structure and Prominent Figures of the Court	76
	5.2 Decision-Making Process	79

Table of Contents

PART	II: THE CASE LAW	84
1. Coı	ntent Analytical Approach	86
2. AY	M Rulings – a Quantitative Assessment	90
3. The	Sample: Selection Criteria and Overall Features	104
4. Qua	alitative Analysis of AYM Key Decisions	112
4.1	Political Party Ban Cases	115
	State Organisation Issues	126
	4.2.1 General Principles of Rule of Law and Separation of	
	Powers	127
	4.2.2 Judicial Independence	130
	4.2.3 Decree Power	133
	4.2.4 State Security and Anti-Terrorism	137
	4.2.5 Presidency and Parliament	144
4.3	Protection of Fundamental Rights and Freedoms	149
	4.3.1 Fundamental Rights vs. Principles of the Republic	151
	4.3.2 Freedoms of Assembly and Association	161
	4.3.3 Freedom of Speech and Media	164
	4.3.4 Prisoners' Rights and Fair Trial	167
	4.3.5 Equality Before the Law and Gender Equality	181
5. The	Constitutional Reasoning of the AYM - General	
Cha	aracteristics	199
5.1	Formal, Structural and Linguistic Incoherencies	200
	Methods and Patterns of Argumentation	205
	Key Concepts and Values	219
	Internal Dissent and Doctrinal Inconsistency	226
PART	III: COMMENTED KEY DECISIONS	241
1. Ho	w to Read the AYM's Decisions	241
2. Dec	cisions on State Organisation	245
	Limits of Administrative Privilege in Prosecution	245
	Stay of Execution and Freedom to Claim Rights	251
	Limitation of Executive Influence on Selection Procedures	255
	Re-Organisation of the Statistical Institute	262
	Independence of Public Prosecutors	269
	Legal Basis of the Formation of State Security Courts	275
2.7	Appointment Procedures of Judges and Public Prosecutors	282
2.8	Unequal Treatment of Military and Civilian Judges	302
	Hierarchy of Enabling Laws and Statutory Decrees	308

	2.10	Time Limits of Enabling Laws	312
	2.11	Judicial Emancipation in Review of Statutory Decrees	318
	2.12	Constitutional Basis of Privatisation Law	321
	2.13	Judicial Self-Restraint in Review of Statutory Decrees	327
	2.14	Constitutional Review of Emergency Decrees I	329
	2.15	Constitutional Review of Emergency Decrees II	335
	2.16	Constitutional Review of Emergency Decrees III	345
	2.17	Constitutionality of Anti-Terrorism Law	349
	2.18	Right to Life of Terror Suspects	359
	2.19	Criminal Responsibility of Children in Case of Terrorist	
		Accusations	363
	2.20	Immunity of Members of Parliament	368
	2.21	Parliamentary Procedure of Presidential Election	385
	2.22	Constitutional Amendments Concerning Presidential	
		Elections	405
	2.23	Constitutionality of the New Presidential Election Law	407
3.	Deci	sions on Fundamental Rights and Freedoms	415
	3.1	Religious Identity in ID Cards I	415
	3.2	Religious Identity in ID Cards II	421
	3.3	Headscarf Decision I	429
	3.4	Headscarf Decision II	446
	3.5	Right to Property of Foreigners	468
	3.6	Right of Minorities to Choose a Non-Turkish Family Name	476
	3.7	Freedom of Association of International Organisations	483
	3.8	Freedom of Association and Assembly	487
	3.9	Duties of a Demonstration's Organisation Committee	497
	3.10	Crime of Stirring Up Social Unrest	500
	3.11	Press and Broadcasting Privilege	503
	3.12	Death Sentence	508
	3.13	Amnesty for Certain Groups of Political Prisoners	542
	3.14	Treatment of Prisoners and Visiting Rights	559
	3.15	Unequal Standards in Military and Civilian Criminal Law	563
	3.16	Mitigation of Sentence for Rape Crimes	566
	3.17	Mitigation of Sentence for Honour Killings	581
	3.18	Increase of Sentence in Domestic Violence Cases	587
		Equal Treatment of Spouses in Case of Adultery I	596
	3.20	Equal Treatment of Spouses in Case of Adultery II	604
		Work Permission of Female Spouses	611
	3.22	Severance Payment for Female Employees	621

Table of Contents

3.23 Right of Female Spouses to Use Their Premarital Family		
Name I	631	
3.24 Right of Female Spouses to Use Their Premarital Family		
Name II	637	
3.25 Rights of Children Born Out of Wedlock I	654	
3.26 Rights of Children Born out of Wedlock II	672	
3.27 Social Equality and the Right to Receive Health Benefits	682	
CONCLUSION	687	
REFERENCES	697	
INDEX		