

Judicial Coups, Activism and Politicization

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Abstract

A judicial coup can be defined as a decision taken or an action taken by a judicial body in any country that fundamentally disrupts the constitutional order of the country and turns the functioning State structure into a dysfunctional or ineffective and inefficient State order. Judicial activism, on the other hand, refers to the suspicion that judicial decisions are made based on personal or political motives rather than existing law. This action means supporting or opposing one of the parties in contentious debates. Political and legal phenomena that fall within the scope of both concepts and definitions have occurred in Türkiye and in some other countries. This review examines some case studies regarding judicial coups and activism. In this context, in addition to the forms, causes and effects of the judicial coup, various appearances of the concept of judicial activism are also examined.

Key words: Judicial Coup, Judicial Activism, Judicial Politicization, Democracy, Authoritarianism, Comparative Politics

1. INTRODUCTION

One of the fundamental pillars of democracy is an independent and impartial judicial system, which serves as an indicator of a country's commitment to the rule of law. However, throughout history, the judiciary, widely accepted as a core component of democracy, has often been subject to political manipulation and external interventions. In this context, the concept of "judicial coups" gains significance.

Judicial coups refer to political interventions in a country's legal system. These interventions typically manifest when political authorities exploit judicial bodies to protect their own interests or to neutralize their opponents. This article aims to explore judicial coups in greater depth, analyzing their impact on democracy through historical and contemporary examples. Furthermore, political, economic, and social factors that contribute to judicial coups and their threat to democratic institutions will be examined. Finally, strategies to combat judicial coups and the role of the international community in addressing this issue will be evaluated.

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This study seeks to promote public awareness and support defensive actions to preserve and strengthen the resilience of democracy, the rule of law, and the supremacy of law. The secondary objective of this research is to contribute to comparative political science by presenting case studies based on examples from several countries.

This paper argues that judicial coups, often disguised as judicial activism, have become a critical tool of autocratization in contemporary regimes. Judicial activism, when manipulated by autocratic leaders, allows them to sidestep democratic institutions, concentrate power, and undermine the rule of law, thus accelerating the transition from liberal democracy to authoritarianism.

2. DEFINITIONS

2.1 What is a Judicial Coup?

A judicial coup refers to a situation in which a judicial body, often in violation of constitutional order, alters legal processes or takes actions independent of legal foundations that render the constitutional order ineffective and dysfunctional. Such instances typically undermine judicial independence, erode the rule of law, and expose the legal system to political corruption, contradicting democratic norms. A judicial coup is characterized by measures that weaken or eliminate the independence of judicial institutions, posing a direct challenge to the principle of the rule of law.

2.2 What Are the Key Characteristics and Defining Elements of Judicial Coups?

The primary characteristic of judicial coups is the disruption of constitutional order. These interventions often manifest in judicial decisions aimed at neutralizing or dismantling constitutional governance by distorting or overriding legal norms.

- *Violation of the Rule of Law:* Judicial coups contradict the rule of law. They undermine fundamental legal principles such as judicial independence, impartiality, and the right to a fair trial.
- *Susceptibility to Political Influence:* Judicial coups frequently occur under political pressure. Political authorities may attempt to control judicial bodies or exploit them to serve their own interests, thereby weakening constitutional governance.
- *Contradiction to Democratic Norms:* A judicial coup disrupts democratic norms by jeopardizing judicial independence, which is a cornerstone of democracy. Such interventions damage the proper functioning of democratic institutions.
- *Social and Political Instability:* Judicial coups often result in widespread societal and political instability. These actions lead to a loss of public trust and legal uncertainty.
- *Violation of Legal Norms:* Judicial coups occur in defiance of established legal norms. They contravene the principles of judicial independence, impartiality, and due legal process essential to a functioning rule-of-law system.

2.3 What Is the Role of the Judiciary in Democracies?

- *Ensuring the Rule of Law:* The judiciary safeguards the rule of law, ensuring that individuals, institutions, and the state adhere to legal principles. Judicial independence and impartiality play a crucial role in maintaining this principle.
- *Protecting Fundamental Rights and Freedoms:* The judiciary is responsible for upholding individuals' fundamental rights and freedoms. Courts serve as a means for individuals to seek justice when their constitutionally protected rights are violated.
- *Providing Checks and Balances:* The judiciary acts as a check on the legislative and executive branches, preventing excessive concentration of power in a single entity and maintaining democratic balance.
- *Guaranteeing Legal Security:* The judiciary ensures that legal processes are fair and transparent. Courts provide individuals with the means to defend their rights, resolve disputes, and access legal protections.
- *Maintaining Political and Social Stability:* The judiciary plays a critical role in preserving political and social stability. Adherence to legal norms and fair judicial procedures enhance public trust and contribute to political stability.
- *Interpreting and Developing Laws:* The judiciary holds the authority to interpret and develop laws. Courts establish legal precedents to apply existing laws and address legislative gaps, enhancing the adaptability and evolution of the legal system.
- *Ensuring Judicial Protection:* The judiciary guarantees individuals access to a fair trial process, supporting their rights to equality and justice in legal disputes.

2.4 Judicial Independence and Impartiality

Judicial independence and impartiality are fundamental pillars of the rule of law and are of vital importance for the proper functioning of a democratic society.

- *Independence:* Judicial independence refers to the ability of judicial bodies to make decisions free from the influence of other branches of government, political powers, or external pressures. An independent judiciary can thus issue rulings in accordance with legal norms and principles and uphold the supremacy of law.
- *Impartiality:* Judicial impartiality denotes the ability of the judiciary to decide cases with an unbiased perspective regarding individuals, institutions, or events. An impartial judiciary treats everyone equally and fairly, avoids prejudice, and strives to maintain objectivity.
- *Freedom from Political and External Influences:* An independent and impartial judiciary resists interference from political power or external influences. A judiciary that remains free from political and external pressures renders decisions in line with democratic norms and the principles of the rule of law.
- *Commitment to Legal Norms and Ethical Principles:* An independent and impartial judiciary adheres to legal norms, constitutional principles, and ethical values. Judicial bodies act impartially in applying laws and uphold both universal and national legal principles.
- *Internal Independence of Judicial Bodies:* Judicial independence must also be maintained within the judiciary itself. Judicial bodies should be independent from one another so that they can provide checks and balances.

- *Ensuring Justice:* An independent and impartial judiciary plays a vital role in ensuring justice. Everyone has the right to a fair trial, and this right is based on the principles of judicial independence and impartiality.

2.5 Differences between Judicial Coup and Judicial Activism

Although both judicial coup and judicial activism involve judicial intervention in the political process, they have significant differences.

2.5.1 Judicial Coup:

- *Definition:* A judicial coup refers to the judiciary's intervention in the political process by directly dismantling or neutralizing the constitutional order and political system. This typically occurs when political authorities interfere with the judiciary or when judicial bodies exceed their authority and obstruct the functions of other branches of government. A judicial coup often weakens or abolishes the rule of law by exerting pressure on the judiciary through legislative or executive powers.
- *Objective:* To overthrow, alter or weaken the existing political power.
- *Methods:* Issuing unconstitutional rulings, dissolving the legislature or executive, removing political leaders from office.
- *Examples:* Certain decisions made by the Court of Cassation before the September 12, 1980 military coup; judicial rulings that paved the way for the February 28, 1997 military intervention in Türkiye.

2.5.2 Judicial Activism:

- *Definition:* Judicial activism refers to the judiciary's intervention in the political process by leading constitutional interpretation and legal application in ways that drive political and social change. Judicial activism involves courts actively using existing laws or constitutional provisions to promote social or political change. It may seek to fill legal gaps or address societal issues, especially in cases where legislative bodies are ineffective or inadequate. Judicial activism can serve to protect positive rights, ensure social justice, or expand fundamental rights. However, it also faces criticism, as some argue that such decisions replace democratic processes and encroach upon legislative authority.
- *Objective:* To fill legal gaps, protect minority rights, or encourage social and political development and change.
- *Methods:* Broad interpretation of the constitution and laws, overturning legislative or executive actions.
- *Examples:* The U.S. Supreme Court's ruling in *Roe v. Wade* which legalized abortion; the South African Constitutional Court's decision to legalize same-sex marriage. The *Roe v. Wade* case in the United States concerns women's right to abortion. In 1993, women in the U.S. gained the right to abortion through a law. However, in 2022, the U.S. Supreme Court overturned the 1973 "*Roe v. Wade*" decision, which had constitutionally guaranteed the right to abortion nationwide. In 2006, the Constitutional Court of South Africa ruled to allow individuals of the same sex to marry.

Differences:

- *Objective:* While the goal of a judicial coup is to overthrow or weaken political power, the goal of judicial activism is to fill legal gaps, protect minority rights, or encourage social change.
- *Methods:* A judicial coup employs direct methods such as issuing unconstitutional rulings and removing political leaders, whereas judicial activism employs indirect methods such as broad or restrictive interpretation of laws and the constitution.
- *Legitimacy:* A judicial coup is generally considered unconstitutional and illegitimate, whereas the legitimacy of judicial activism is debated. In both cases, judicial intervention in the political process may be seen as contrary to the principle of separation of powers.

3. CRITERIA DISTINGUISHING JUDICIAL COUP FROM JUDICIAL ACTIVISM

3.1 Legal Basis: Judicial activism is defined as the judiciary playing an active role based on existing laws or constitutions. A judicial coup, on the other hand, refers to judicial overreach beyond legal and constitutional limits or political interference in the judiciary.

3.2 Compliance with the Rule of Law: Judicial activism aims to uphold the rule of law and generally focuses on decisions that align with this principle. A judicial coup undermines the rule of law and may weaken or abolish it by allowing political forces to exert pressure on the judiciary.

3.3 Political Independence: Judicial activism represents judicial decisions made independently of political influences. A judicial coup involves control or manipulation of the judiciary by political authorities or other branches of government.

3.4 Social Impact: Judicial activism may have positive effects such as ensuring social justice, protecting rights, or filling legal gaps. A judicial coup may lead to social unrest, the weakening of legal institutions, and damage to democratic norms.

3.5 Respect for Democratic Processes: Judicial activism generally respects democratic processes and can work in collaboration with legislative bodies rather than overriding their authority. A judicial coup disregards democratic processes and weakens or overrides the powers of other branches of government.

3.6 Objective: Judicial coup seeks to alter the constitutional order and political system, overthrow or weaken the existing political power. Judicial activism aims to take on a broader role in interpreting and applying the law to encourage social and political changes.

3.7 Methods: Judicial coup typically carried out directly and explicitly by higher courts such as constitutional courts or supreme courts, often against legislative or executive bodies. Judicial activism can occur in lower courts as well and is generally executed through more nuanced and indirect methods, such as filling legal gaps or using broad or narrow discretionary interpretation of laws.

3.8 Impact: Judicial Coup may create political instability and uncertainty in the short term. In the long term, it can undermine the rule of law and democratic governance. Judicial activism can lead to significant legal and social reforms but may also provoke controversy over judicial overreach.

3.9 Legitimacy: Judicial coup typically, its legitimacy is weak and it faces public backlash. Judicial activism the level of legitimacy varies depending on the methods used and the outcomes achieved. A judicial coup usually occurs suddenly and dramatically, whereas judicial activism emerges gradually over an extended period. While a judicial coup is generally limited to a single event, judicial activism can be seen as an ongoing trend. A judicial coup often arises as a result of a political crisis, whereas judicial activism may be linked to broader socio-political changes.

4. LITERATURE REVIEW

Prof. Sweet explains the judicial coup D'Etat as follows: "By the phrase *juridical coup d'état*, I mean a fundamental transformation in the normative foundations of a legal system through the constitutional lawmaking of a court. A "normative foundation" is a precept of a system's higher law. Although there are differences between Kelsen's conception of the *Grundnorm* and Hart's notion of a *Rule of Recognition*, a *juridical coup d'état* is a judicial decision that changes both. I conceptualize "fundamental transformation" restrictively. First, we must be able to infer, reasonably, that the constitutional law produced by the transformation would have been rejected by the founders had it been placed on the negotiating table. Second, the outcome must alter – fundamentally – how the legal system operates, again, in ways that were, demonstrably, unintended by the founders. The transformation will make it impossible for an observer to deduce the new system from institutional design at the *ex ante* constitutional moment. It will also imply a breach of pre-coup separation of powers orthodoxy. [13]

Professor Dr. Ergun Ozbudun states the following in one of his articles: "Judicial activism and judicial restraint are frequently discussed concepts in almost all countries that have adopted constitutional judiciary. The political nature of many issues brought before constitutional courts makes conflicts between these courts and parliaments almost inevitable. In the United States, Supreme Court Justice Frankfurter's views are frequently cited in support of judicial restraint: 'This law is the result of Congress exercising its legislative power as granted by the Constitution and the President utilizing his constitutional authority to approve the proposal, thereby making it a "law." Upholding it means respecting the actions of the two branches of government that are directly accountable to the people's will and have the constitutional authority to determine the wisdom of the law. This Court's tremendous

(awesome) power to invalidate such a law should be exercised with the utmost caution because, in practice, the Court is bound only by its own prudence in determining the limits of its constitutional function' (Koopmans, 2003: 51-52). In another instance, Justice Frankfurter also warned that involving the judiciary in public politics would be 'hostile to a democratic system' and added, 'the courts should not enter this political thicket'. [9]

Nilufer Coskun concludes her article on judicial activism with the following statement: "The 1982 Constitution contains ambiguous regulations in terms of scope, meaning, limits, and purpose. These regulations, evident in the preamble and introductory provisions of the Constitution, pose the risk of fostering a negative activist stance if judicial review is conducted with ideological concerns. Indeed, the Constitutional Court has strongly reinforced the statist structure by emphasizing the principle of indivisible unity derived from secularism and nationalism in its decisions, continuously interpreting democracy through these principles and reflecting a general political ideology. This situation suggests that, until a liberal legal understanding and a rights-based official ideology prevail in Turkey, constitutional interpretation, the existence of political conflict, the democratic legitimacy of

the Constitutional Court, and debates over judicial activism will continue with increasing intensity.” [2].

In his article on the subject, Professor Dr. Hasan Tahsin Fendoglu reaches the following conclusion: “The resolution of differences in opinion between the Constitutional Court and the Court of Cassation primarily lies in their own hands and then within the discretion of the Parliament. If they fail to resolve it, the issue can be addressed through a new constitution, constitutional amendment, or partially through legislation. Otherwise, the rule of law, public trust in the judiciary, the credibility of high courts, and the negative consequences of disregarding the judiciary will weaken the system, harm our country, and ultimately bring no benefit to the judiciary. Strengthening the weak aspects of our judiciary will enhance the institution and facilitate the resolution of problems.” [4].

A doctoral dissertation published on this topic includes the following findings: “Since its establishment, the Turkish Constitutional Court has frequently been accused of juristocracy due to numerous ideology-based rulings. However, with the constitutional amendments of 2010, significant structural changes and the introduction of individual applications have led the Court to evolve from an ideology-based approach to a rights-based approach. This shift is evident in the various human rights violation rulings issued as a result of individual applications. As of September 2019, the Court had ruled that at least one right was violated in approximately 8,038 individual applications, thereby preventing numerous rights violations. Some of these decisions gained public attention due to the applicant's popularity, sparking debates and eliciting different reactions from various political factions. Even though such reactions generated discussions about the Court, multiple cases exist where significant rulings have been either supported or strongly opposed by different political factions or parties. If the Court receives criticism from one political faction for a particular ruling while another faction criticizes a different ruling, it can be argued that the Court does not operate based on a specific political ideology or viewpoint.” [8].

Another doctoral dissertation defines judicial activism as follows: “Judicial activism is a concept used to describe judicial decisions that extend beyond ordinary judicial boundaries. Judicial activism is often seen as an intervention in the political choices of the legislature. However, it can also manifest when unconstitutional legislative acts go unpunished. If a court invalidates legislative acts that are explicitly prohibited by the Constitution, this cannot be considered activism, as it is required by constitutional law. However, if legislative acts that are not explicitly prohibited by the Constitution are invalidated by judicial decisions, this reflects an activist stance. In such cases, decisions are based on the personal interpretations of judges regarding constitutional requirements.” [6].

Dr. Ozan Ergul lists the following elements of judicial activism: “Finding the decisions resulting from constitutional adjudication 'incorrect' can trigger criticism against the court and its judges. However, criticizing the judiciary based on judicial activism does not seem entirely appropriate. The reasons for this can be summarized as follows: 1) As noted above, activism inherently involves a subjective value judgment based on the observer's perspective; 2) Activism is a relative concept not only in individual terms but also in temporal and spatial contexts; 3) Activism cannot be understood and evaluated independently of the doctrine of judicial limitation; 4) The function expected from constitutional adjudication justifies an activist rather than a limited approach. As stated earlier, limited judicial oversight largely means a judiciary that 'obeys' the legislature and the ruling power, without opposing it. Such a limited judiciary could lead to the collapse of the principle of separation

of powers and the system of checks and balances. Judicial independence alone is not sufficient because judicial independence is meaningless where judges themselves are not independent. Therefore, general evaluations of the Court based on the highly fluid concept of activism may not lead to accurate conclusions.”

In another article, Korucu adopts the following definition: “In its broadest sense, judicial activism refers to situations where judicial bodies responsible for constitutional review exceed the normal limits of judicial oversight. When judicial bodies intervene in the political discretion of the legislature or issue decisions of a political nature, an activist stance is generally observed.” [3].

Judicial coup is an act aimed at changing political power with weak legitimacy. Judicial activism, on the other hand, is a tendency that seeks to encourage social and political changes by assuming a broader role in interpreting and applying the law. Although both concepts may have political consequences, they differ significantly in terms of legitimacy and methods.

These criteria can be used to distinguish between judicial coups and judicial activism. However, each case can be complex in itself, and evaluating a specific event or decision often requires detailed analysis. The distinction between judicial coups and judicial activism is not always clear, and in some cases, the two concepts may overlap. Both concepts can be seen as dangerous for democracy. Judicial independence and impartiality are crucial to preventing both phenomena. In summary, a judicial coup refers to an intervention that undermines judicial independence, while judicial activism reflects a proactive approach by the judiciary to social change or justice.

5. EFFECTS AND CONSEQUENCES OF JUDICIAL COUPS

Judicial coups significantly impact a nation's political and social structure, often threatening democratic norms, the rule of law, and fundamental human rights.

- *Erosion of Democratic Principles:* Judicial coups undermine democratic principles and processes, weakening the rule of law and reducing public participation.
- *Weakening of the Rule of Law:* The erosion of judicial independence and impartiality leads to a dysfunctional legal system, reducing trust in legal norms and procedures.
- *Violation of Fundamental Rights and Freedoms:* Judicial coups often result in the violation of fundamental rights and freedoms, including unfair trials and the suppression of individual rights.
- *Social Divisions:* Judicial coups intensify political and social divisions, deepening polarization and increasing societal tensions.
- *Unlawful Arrests and Detentions:* Judicial coups often lead to arbitrary arrests, detentions, and punishments, targeting political opponents, journalists, and civil society activists.
- *Threats to Educational and Academic Freedoms:* Judicial coups negatively affect the education system and academic freedoms, leading to restrictions on free thought and critical inquiry.

- *Loss of International Reputation:* Countries experiencing judicial coups face strong international backlash, leading to diplomatic isolation, economic sanctions, and other international pressures.
- *Prolonged Political Instability:* Judicial coups often result in long-term political and social instability, triggering economic turmoil, investment shortfalls, and long-term development challenges.

6. IMPACTS OF JUDICIAL COUPS ON DEMOCRACY

- *Erosion of Democratic Principles:* Judicial coups weaken democratic principles, the rule of law, and fundamental human rights, diminishing democratic values.
- *Weakening of the Rule of Law:* Judicial coups distort legal processes, undermine judicial independence, and weaken trust in the legal system.
- *Decline in Public Participation:* Judicial coups often reduce political participation and undermine trust in democratic processes. The public loses confidence in democratic institutions and becomes less actively engaged in political affairs.
- *Increase in Corruption:* Judicial coups typically lead to a rise in corruption and unlawful practices. The weakening of the rule of law allows officials to act arbitrarily, resulting in increased corruption.
- *Political Repression and Restrictions:* Judicial coups enable political leaders to suppress opposition and silence critics. Press freedom and freedom of expression are severely restricted.
- *Reduction in Civil Society Activities:* Judicial coups hinder civil society activities. Opposition groups, human rights defenders, and other civil society organizations are forced to operate under pressure and threats.

7. SOCIAL DIVISIONS

Judicial coups can lead to significant divisions within society. They intensify political disagreements, deepen polarization, and increase social tensions.

- *Extrajudicial Arrests and Detentions:* Following judicial coups, unlawful arrests, detentions, and arbitrary punishments become common. Opponents, journalists, and civil society activists are often targeted.
- *Threats to Educational and Academic Freedoms:* Judicial coups negatively impact the education system and academic freedoms, leading to increased pressure on freedom of thought and critical thinking.

8. THE ROLE OF MEDIA AND SOCIAL MEDIA IN JUDICIAL COUP

The impact of the internet and social media in judicial coups can be highly significant, influencing the rapid spread of events, information flow, and public reactions.

- *Communication and Information Flow:* The internet and social media facilitate the instant dissemination of events, ensuring that information about coup attempts, arrests, and other developments reaches the public quickly. This accelerates public awareness.
- *Social Coordination:* Social media serves as an effective tool for mobilizing public reactions and fostering collective action. Citizens can organize and express their opposition in a coordinated manner.
- *Resistance against Government and Freedom of Expression:* The internet and social media allow individuals and civil society organizations to voice their criticisms against government actions, particularly judicial interventions.
- *Manipulation and Propaganda:* However, these platforms can also be exploited by governments for propaganda and misinformation campaigns against opponents. During judicial coups, governments may attempt to control information by manipulating online discourse.
- *Censorship and Access Restrictions:* In judicial coup scenarios, governments may impose internet and social media restrictions or enforce censorship, limiting public access to information.
- *Communication with the International Community:* The internet and social media play a crucial role in connecting with the international community and raising awareness about judicial coups, prompting international responses.
- *Strengthening Public Opposition:* These platforms can empower public opposition, uniting dissidents and fostering solidarity against the government through coordinated actions.

The role of social media and the internet in judicial coups is complex and varies depending on factors such as government policies, societal media usage habits, and both national and international support.

9. JUDICIAL POLITICIZATION

A meaningful distinction should also be made between the concepts of judicial coups and activism and the judicial politicization. Judicial politicization refers to the process by which courts and judges are influenced by political considerations, actors, or ideologies, undermining their independence and impartiality. This can occur through political appointments, pressure from the executive or legislature, or judges aligning their rulings with political interests rather than legal principles. It erodes the rule of law and shifts the judiciary from an objective arbiter to a tool of political power. Judicial politicization is a gradual process where the judiciary loses its neutrality over time due to political influence whereas judicial coups, on the other hand, are abrupt, strategic interventions where courts directly overturn elected governments, nullify democratic processes, or facilitate authoritarian consolidation. They involve judicial rulings that serve as a means to bypass or dismantle democratic institutions. On the other hand judicial politicization implies that judges make decisions based on political loyalties rather than legal interpretation whereas judicial activism occurs when courts take an assertive role in policymaking, often filling gaps left by the legislative or executive branches. While activism can be controversial, it is not necessarily driven by partisan interests, whereas politicization is inherently about aligning judicial outcomes with political agendas.

9.1 Examples of Judicial Politicization in Some Countries

Judicial misconduct driven by political motivations is a serious concern in many countries. Such misconduct can undermine democracy by allowing the judiciary to be manipulated for political gain, eroding public trust and undermining the rule of law. Below are real-life cases of judicial politicization and misconduct with political motivations in various countries.

Turkiye:

Case 1: Gezi Park Protest Trials

In recent years, Turkish courts have been accused of politicized judicial actions, particularly in highprofile political cases. The Gezi Park protests in 2013 saw mass demonstrations against the government of Recep Tayyip Erdogan. Many activists, journalists, and opposition leaders were targeted in trials where the judiciary's independence was questioned. In 2020, a Turkish court convicted several prominent activists and politicians connected to the protests, with critics accusing the judiciary of acting on behalf of the ruling government to suppress political dissent.

In the most recent phase of the Gezi Park trial, which culminated in April 2022, the court issued significant sentences against the defendants. Osman Kavala, the prominent human rights activist and businessman was sentenced to aggravated imprisonment for "attempting to overthrow the government." Kavala had already been in detention for years prior to this ruling, and his case has been widely criticized internationally, with calls for his release from various human rights organizations. Several other individuals, including well-known figures like architect Mucella Yapıcı and activist Can Atalay, were convicted of similar charges. They were sentenced to 18 years each for "aiding and abetting the attempt to overthrow the government" without directly participating in the violence during the Gezi Park protests. Atalay who already elected as a deputy from Hatay Province

at the latest general elections has been sentenced to 18 years imprisonment just before his inauguration as a member of Parliament and he is still in jail.

These sentences sparked significant domestic and international reactions, as many legal experts, human rights groups, and international organizations, including the European Court of Human Rights (ECHR), have called the trial politically motivated, lacking evidence, and violating basic human rights, particularly the right to a fair trial. The trial and the harsh sentences have continued to stir debates within Türkiye about the state of the judiciary, freedom of expression, and political dissent. The ruling party used the judiciary to silence opposition and political activism. Human rights organizations, including Human Rights Watch, have documented widespread concerns about the politicization of the judiciary in these trials.

Case2: The 2016 Coup Plotters

After the 2016 failed coup attempt in Türkiye, the government led a massive purge against alleged coup plotters, many of whom were arrested and tried. There were widespread allegations that the judiciary was manipulated to target political enemies and suppress opposition, with many of those accused being linked to Gulenist movements or other opposition factions.

The trials were widely seen as politically motivated, as opposition members, journalists, and activists were often caught up in the mass arrests, with some alleging that the judiciary was being used as a tool to eliminate Erdogan's political rivals.

These examples highlight the broader global issue of judicial misconduct driven by political motivations. Whether through direct interference with judicial decisions, selective prosecution, or leveraging the courts to weaken opposition, the politicization of the judiciary represents a serious threat to democratic systems and the rule of law. It underscores the need for judicial independence to be protected from political influence to ensure fair trials and the preservation of democratic governance.

Case 3: The Ergenekon Case (2007–2013)

The Ergenekon case was a large-scale criminal investigation and trial that began in 2007 and targeted a wide range of individuals, including military officers, journalists, academics, politicians, and businessmen. The accused were allegedly part of a clandestine, ultra-nationalist organization with the goal of overthrowing the Turkish government and destabilizing the country. The name "Ergenekon" is derived from a mythical place in Turkish folklore, symbolizing a secret, underground movement. The investigation was initiated by police and prosecutors aligned with the Gulen movement, which had close ties to the ruling Justice and Development Party (AKP) at the time. The prosecution claimed that members of Ergenekon plotted violent acts, including bombings, to create chaos and provoke a military coup. Thousands of people were arrested, and many prominent figures were put on trial, including retired military officers and journalists critical of the government.

In 2014, the Turkish Court of Appeals overturned the convictions of many of the individuals accused in the Balyoz Case, acknowledging the flaws in the case and the manipulated evidence. The trial was criticized for judicial overreach and political bias. In the years following the trial, many of the

accused were released from prison, and the Balyoz Case was seen by many as a politically motivated effort to target the military and secure the AKP's dominance.

Key Points of Criticism for Both Cases:

- *Politicized Judiciary:* Both the Ergenekon and Balyoz cases are widely seen as examples of judicial overreach and politicization. The trials were initiated and supported by factions within the government and the judiciary that had a vested interest in weakening the military and secular opposition.
- *Lack of Due Process:* Both cases raised significant concerns about violations of due process. The defendants were not afforded a fair trial, and there were widespread allegations of torture, forced confessions, and fabricated evidence.
- *Targeting Political Opponents:* Both cases were seen as political tools to eliminate rivals to the government. The military, which had been a long-standing power player in Turkish politics, was increasingly seen as a threat by Erdogan and the AKP, leading to a concerted effort to neutralize it.
- *Erosion of Trust in the Judiciary:* The reversal of convictions in both cases highlighted the extent of judicial misconduct. The public's trust in the judiciary was severely damaged, and the cases served to show how the judiciary could be manipulated for political purposes.
- *Long-Term Impact on Turkiye's Politics:* These cases played a critical role in shaping Turkiye's political landscape. The weakening of the military's influence allowed the AKP to consolidate power, but it also raised broader questions about the independence of the judiciary and the fairness of political trials in Turkiye.

Consequently, the Ergenekon and Balyoz cases are two examples where the Turkish judiciary became deeply embroiled in politically motivated actions. These trials were not just about the individuals accused of plotting a coup or engaging in illegal activities; they were symbolic of the broader struggle for political control in Turkiye. The cases underscore the dangers of judicial politicization, where the courts are used not to uphold the law but to serve the interests of political power.

Poland:

Case: Disciplinary Chamber of the Supreme Court

In Poland, the government has been accused of politicizing the judiciary through changes that allow the ruling party, Law and Justice (PiS), to control the judicial process. One of the most controversial moves has been the establishment of a Disciplinary Chamber of the Supreme Court, which allows political influence over the actions of judges. The European Union has expressed concerns over the undermining of judicial independence in Poland, arguing that the disciplinary system has been used to target judges critical of the government. In 2020, the European Court of Justice ruled that the Disciplinary Chamber must be suspended. Critics argue that the ruling government used the judiciary to suppress opposition judges and stifle legal challenges to government policies.

Hungary:

Case: Removal of Constitutional Court Judges

In Hungary, the ruling Fidesz party has been accused of undermining judicial independence by politicizing the Constitutional Court. In 2011, the government passed reforms that allowed it to appoint a significant number of new judges to the Constitutional Court, significantly altering the court's balance. The politicized court has been used to justify many controversial decisions, including approving laws that limit media freedoms and civil society organizations. The ruling party in Hungary has leveraged its control over the judiciary to shield its policies from legal challenges and suppress political opposition.

Brazil:*Case: Lava Jato (Operation Car Wash)*

The "Operation Car Wash" corruption investigation in Brazil led to the conviction of many high-profile politicians, including former President Luiz Inácio Lula da Silva. However, the case has been criticized for its potential political motivations. In 2019, it was revealed that the lead prosecutor who later became Minister of Justice under President Jair Bolsonaro, had coordinated with the media and acted in ways that suggested political bias, particularly in the lead-up to the 2018 presidential election. Moro's actions, including selective leaks of evidence, appeared to target political opponents of Bolsonaro, especially Lula, who was a leading candidate. Critics argue that the judicial system in Brazil was manipulated to weaken political opponents and ensure the election of Bolsonaro, which has had significant implications for the fairness of the judicial process.

Israel:*Case: Netanyahu's Legal Challenges*

In Israel, Prime Minister Benjamin Netanyahu faced corruption charges, which were politically charged due to his long-standing leadership. Netanyahu and his supporters have repeatedly accused the judiciary of acting with political motivations, particularly in relation to the corruption charges. In 2019, Netanyahu's trial began with accusations that he had accepted bribes and engaged in illegal dealings with media moguls. Netanyahu and his supporters argued that the judicial process was politically motivated and intended to remove him from power. Netanyahu's critics claim that his accusations of judicial misconduct are a means of undermining the legitimacy of the trial. His supporters, however, accuse the judiciary of being biased and politically motivated in its pursuit of the charges against him.

Russia:*Case: Political Prosecutions of Opposition Figures*

In Russia, the judiciary has been repeatedly used to target political opposition, including high-profile cases like those involving Alexei Navalny, a prominent anti-corruption activist and political opponent of President Vladimir Putin. Navalny has been jailed multiple times on politically motivated charges, and the judicial proceedings against him have been widely criticized as politically motivated. In

2021, Navalny was sentenced to prison after returning to Russia from Germany, where he had been treated for poisoning, which he blames on the Russian government. The Russian judiciary has been accused of acting as a tool of the government to suppress opposition and critics of President Putin, with trials and convictions that appear designed to discredit political opponents and silence dissent.

Egypt:

Case: Mohamed Morsi and Muslim Brotherhood Trials

After the 2013 military coup in Egypt, which ousted the first democratically elected president, Mohamed Morsi, the judiciary was heavily involved in prosecuting members of the Muslim Brotherhood, Morsi's political organization. In several cases, judges sentenced Muslim Brotherhood leaders to death or long prison terms in trials widely condemned as politically motivated. Morsi himself was sentenced to death, and several leaders were executed, despite claims of unfair trials and violations of due process. The judiciary in Egypt has been accused of aligning itself with the military-led government to suppress opposition and political movements that challenge the regime, particularly the Muslim Brotherhood.

United States of America:

The Supreme Court and Partisan Influence

While the U.S. has not experienced a judicial coup, concerns over judicial activism have intensified, particularly regarding Supreme Court decisions that significantly impact policy, such as *Bush v. Gore* (2000) and *Dobbs v. Jackson Women's Health Organization* (2022). Trump has pardoned the Congress assailants of four years ago and then the courts began to dismiss and close the cases. Trump pardoning the January 6th rioters, followed by courts dismissing cases raises concerns about judicial independence and executive influence over the judiciary. However, whether it constitutes a judicial coup depends on several factors. A judicial coup typically involves the courts actively dismantling legal structures or aiding in the seizure of power. If courts are dismissing cases due to legal technicalities related to presidential pardons rather than actively subverting democracy, this might not qualify as a judicial coup in the strict sense. If courts are dismissing cases under political pressure rather than on legal grounds, this could indicate judicial politicization or even complicity in executive overreach. If the judiciary independently found that dismissing cases was legally justified due to the pardons, this would fall more in the realm of judicial interpretation rather than a judicial coup. If the judiciary's actions enable the erosion of democratic accountability (e.g., setting a precedent that violent attacks on democratic institutions can go unpunished), then this could be seen as a step towards undermining constitutional order. However, if the dismissals are a routine legal response to executive pardons, they might not rise to the level of a judicial coup but rather illustrate weaknesses in the legal framework governing executive clemency. Consequently, while this development may reflect judicial politicization and executive overreach, it does not appear to meet the full criteria of a judicial coup unless evidence emerges that the judiciary is actively aiding in dismantling democratic governance. However, it could contribute to democratic backsliding, which is a broader concern tied to autocratization.

9.2 Differences between Judicial Coups, Activism, Politicized Judiciary and Legitimate Judicial Decisions

Although the main focus in this research is judicial coups the differences between the judicial coups and the the legitimate judicial o-decisions on political issue should also be delineated.

A "judicial coup" typically refers to a situation where the judiciary, through its decisions, oversteps its legitimate role and intervenes in political matters in a way that undermines the democratic process or the rule of law. The distinction between a judicial coup and legitimate judicial decisions in political cases lies in several key factors. The first one is motivation and intent. In judicial coup, the judiciary may be acting with the intention of advancing a political agenda or undermining the power of elected officials. It may be politically motivated or have the goal of manipulating the outcome of a political situation. In legitimate judicial decision a legitimate judicial decision is grounded in the law and impartial legal principles, without regard to political considerations. The aim is to interpret the law fairly and apply it to the facts of the case, respecting the separation of powers.

As far as constitutional and legal authority are concerned a judicial coup occurs when the judiciary oversteps its constitutional and legal boundaries, taking on powers that belong to other branches of government, such as the executive or legislature. This can happen through rulings that make or change laws or interfere with the functioning of democratic institutions. A legitimate decision respects the separation of powers, with the judiciary staying within its defined role of interpreting and applying the law to cases. While political cases may be contentious, the judiciary must ensure its rulings do not encroach on areas that are the domain of other branches of government.

From the point of view of impact on democracy a judicial coup often undermines democracy by weakening the legitimacy of elected representatives and interfering with the proper functioning of democratic processes. It may be used to advance authoritarian agendas or to suppress political opposition. Legitimate judicial decisions, even in political cases, are meant to uphold democratic principles and the rule of law. The courts may rule on the legality of government actions, but their role is to ensure that democratic values and human rights are upheld, not to subvert or bypass the democratic system.

For lack of accountability a key feature of a judicial coup is that it can be carried out by an unelected judiciary that is not accountable to the people or to the democratic institutions. In such cases, the judiciary becomes a political actor in its own right, unanswerable to the electorate or other branches of while judges are not elected, they are bound by law and judicial ethics and are accountable through the legal system, which includes appeals processes and oversight by other courts or institutions, ensuring that they act within the law.

In summary, while both a "judicial coup" and legitimate judicial decisions can occur in political cases, a judicial coup involves overreach, political motivations, and a disruption of democratic processes, whereas legitimate judicial decisions are based on the law, impartiality, and respect for the democratic system.

Responding to judicial coups in a democracy requires a delicate balance between ensuring accountability and preserving judicial independence. While judicial independence is fundamental to

upholding the rule of law and protecting citizens' rights, it's equally important to prevent the judiciary from overstepping its role and undermining democratic processes. There are several key strategies democracies can consider when responding to judicial coups. The first one is strengthening constitutional safeguards through checks and balances system and by constitutional amendments. Democracies should ensure that the separation of powers is robustly maintained, with clear boundaries between the judiciary, executive, and legislative branches. While judicial independence is essential, it should not come at the expense of the democratic system. Like wise, in extreme cases where judicial overreach becomes a systematic issue, constitutional reforms can clarify the judiciary's role and power, ensuring it does not encroach upon the authority of other branches. However, this should be done carefully to avoid politicizing the judiciary further.

Furthermore, independent oversight and accountability mechanisms should be more elaborated. Judicial decisions, especially those in political cases, should be subject to review by other independent bodies. This could include other judicial panels, supreme courts, or constitutional courts that act as a counterbalance to any potential misuse of power. Additionally, judicial accountability should be established by clear procedures for holding judges accountable for misconduct or overreach. This could involve specialized judicial ethics commissions or public transparency about judicial decisionmaking. However, any accountability mechanisms should be insulated from political influence to avoid undermining judicial independence.

Promoting transparency and public engagement is also important. Judicial decisions should be made transparently, with clear and public reasoning that allows citizens to understand the basis of decisions, especially in politically sensitive cases. This helps reduce the perception of political bias or improper influence. Also, fostering public debate about the role of the judiciary and the importance of judicial independence can help ensure that citizens understand when judicial decisions are legitimate or when they might constitute overreach. Civic education about the balance of powers and the judicial role in democracy is vital to maintaining trust.

In order to differentiate both concepts political dialogue should be strengthened in the society. This includes dialogue between branches of government. If a judicial coup is perceived, it is essential for the executive and legislative branches to engage in constructive dialogue with the judiciary. This can include seeking clarification of decisions, discussing reforms to prevent overreach, and ensuring that democratic norms are preserved without threatening judicial independence. In democratic systems, the legislature can respond to judicial overreach by introducing laws or amendments that clarify the role of the judiciary. However, such responses should not undermine judicial independence but rather seek to correct any imbalances.

In this regard international support and mechanisms should also be underlined. International bodies, such as the United Nations, regional human rights organizations, or legal institutions like the European Court of Human Rights, can offer support in cases where judicial overreach threatens democracy. These organizations can provide oversight, legal advice, and even sanctions if the independence of the judiciary is compromised. Democracies can learn from other countries that have faced judicial overreach, understanding how they responded without undermining judicial independence. This includes looking at international precedents for balancing accountability and independence.

Finally, respect for judicial independence must be maintained while addressing abuses. Any reforms or responses to judicial overreach should be proportionate, aimed at preserving the core principles of judicial independence while addressing instances of overreach. For example, if a court's decision is deemed to be politically motivated or an overstep of authority, it could be appealed or challenged within the framework of the law. The executive and legislature should avoid using judicial reforms as a tool for political gain. Politicizing judicial appointments or decision-making can lead to further erosion of public trust and further undermine democracy.

Consequently, democracies must respond to judicial coups with a focus on preserving the integrity of the judiciary while ensuring that judicial overreach is addressed in a way that does not erode democratic principles. A careful balance of judicial independence, accountability mechanisms, political dialogue, and respect for constitutional boundaries can help prevent judicial coups without compromising the core values of democracy.

The politicization of the judiciary has profound and far-reaching implications for democratic backsliding. When the judiciary becomes subject to political influence, it undermines one of the key pillars of democracy: the rule of law. The broader implications of judicial politicization for democratic backsliding are exemplified below. The first issue is the erosion of judicial independence. Judicial independence is critical to maintaining the rule of law, where the law is applied equally and impartially, regardless of political affiliation or influence. Politicizing the judiciary compromises its ability to deliver justice impartially, leading to selective enforcement of laws and undermining the public's trust in the judicial system. Secondly, politicized judiciaries are susceptible to "judicial capture," where judges serve the interests of the ruling political elites rather than the law or public interest. This can result in biased decisions that favor specific political groups or individuals, undermining fairness and equality before the law. Thirdly, weakening of checks and balances harms the democratic accountability. Fourthly, a politicized judiciary can become an enabler of executive overreach by validating unconstitutional or authoritarian policies. In democracies, the judiciary acts as a counterbalance to the executive and legislative branches, ensuring that power is not concentrated in one area. When the judiciary is politicized, this essential check on executive power weakens, enabling the concentration of power in the hands of the ruling party or individual. Finally, political interference with the judiciary also diminishes its role in holding the government accountable. A neutral and independent judiciary is essential for investigating and challenging abuses of power, corruption, or violations of human rights. If the judiciary becomes a tool for political gain, it loses its ability to effectively check government actions.

Judicial politicization undermines trust in democratic institutions. Citizens lose faith in the fairness and legitimacy of the political system when they perceive the judiciary as politically compromised. Public trust in the judicial system is essential for social cohesion and democratic legitimacy. When judicial decisions appear biased or influenced by political considerations, it can lead to widespread disillusionment, eroding support for democratic institutions. On the other hand, politicized judicial decisions often deepen social and political divisions and polarization. If the judiciary is seen as aligning with one political faction or another, it can exacerbate polarization, leading to greater societal tension. This undermines national unity and the ability to forge consensus on key democratic values and policies.

When the judiciary becomes an instrument of political power, it can be used to silence or discredit opposition, dissent, or critical voices. This might include politically motivated prosecutions, selective enforcement of laws, or the targeting of opposition leaders and activists. The judiciary may play a key role in legitimizing the repression of political freedoms, such as free speech, assembly, and association. Politically motivated legal actions, such as lawsuits or investigations against political opponents or activists, become more common in a politicized judicial system. This creates a chilling effect on dissent, as individuals or groups may fear legal retribution for criticizing the government. When the judiciary is politically influenced, it becomes more vulnerable to corruption. Judges may be incentivized to rule in favor of political elites or to receive personal benefits in exchange for favorable decisions. This undermines the judiciary's role as a neutral arbiter of disputes and leads to a breakdown in the integrity of the legal system. A politicized judiciary also compromises the legal system's overall integrity. Laws are less likely to be applied consistently and fairly, creating a system where justice is not based on legal principles but on political expediency. This further erodes the foundation of democratic governance.

Judicial politicization often results in the erosion of constitutional safeguards and democratic norms. The judiciary may become complicit in undermining the constitution itself, such as by approving unconstitutional changes to the political system, legitimizing the suppression of rights, or permitting the abuse of power by the executive. As the judiciary becomes politicized, the legitimacy of the entire political system may be questioned. Courts are often the last line of defense in upholding constitutional norms and protecting citizens' rights. If they are no longer seen as impartial, the legitimacy of the entire democratic framework is undermined, leading to the potential for full democratic collapse.

A politicized judiciary makes it difficult to enforce contracts or resolve disputes impartially. This can discourage both domestic and foreign investment, as businesses are reluctant to operate in an environment where the judiciary is unpredictable and subject to political whims. The erosion of the rule of law also hampers economic development, as legal protections for property rights and contracts are weakened. The lack of an independent judiciary can exacerbate social inequalities. Marginalized or disadvantaged groups may find it difficult to seek redress for grievances or challenge discriminatory laws or policies. This leads to social unrest, as large sections of society feel that they are not receiving fair treatment under the law.

Consequently, the politicization of the judiciary is a key driver of democratic backsliding. It weakens the rule of law, undermines checks and balances, erodes trust in democratic institutions, suppresses political opposition, and fosters corruption. As the judiciary becomes politicized, its impartiality and legitimacy are compromised, paving the way for authoritarian tendencies and the consolidation of power by the ruling elite. For democracies to remain resilient, it is critical to safeguard judicial independence, ensure accountability, and maintain the judiciary's role as a defender of constitutional principles and the rule of law.

10. CAUSES OF JUDICIAL COUPS

10.1 Political Causes

The political causes of judicial coups vary from country to country.

- *Political Instability and Crises:* Political instability, government crises, or social unrest in a country can be primary causes of judicial coups. The weakening of the government or social upheavals may justify intervention by military or judicial forces.
- *Corruption and Weak Rule of Law:* In countries where corruption is widespread or the rule of law is weak, military or judicial forces may intervene, believing that the existing government is inadequate. Such situations are often used to legitimize judicial coups.
- *Authoritarian Tendencies and Opposition to Democratization:* In some cases, military or judicial forces may have authoritarian tendencies that oppose democratization or seek to weaken democratic institutions. In this scenario, a judicial coup may aim to limit government authority or suspend democratic institutions.
- *Ethnic or Religious/Sectarian Tensions:* Ethnic or religious/sectarian tensions in a country can lead to judicial coups. These tensions weaken the government and divide society, triggering military or judicial intervention.
- *Elimination of Separation of Powers:* If political power (government) is excessively concentrated within the legislative, executive, and judicial branches or in the hands of a prime minister/president, it creates a suitable environment for judicial coups. In such cases, a single authority attempts to control all decisions, disrupting the democratic balance.
- *Constitutional Crises or Violations:* Constitutional crises or violations can prompt military or judicial forces to intervene. If the government fails to adhere to constitutional order or violates the constitution, a judicial coup may be justified.
- *Ideological or Political Conflicts:* Ideological or political conflicts can create sharp divisions between the government and opposition. In such cases, military or judicial forces may intervene in the political environment to support a particular ideology or political stance.

10.2 Economic Causes

The economic causes of judicial coups are generally linked to economic instability, corruption, mismanagement, or financial crises:

- *Economic Crises and Instability:* Severe economic crises or instability can lower living standards and create social unrest. Such conditions may lead military or judicial forces to criticize the government's economic policies and intervene.
- *Corruption and Financial Scandals:* High levels of corruption or financial scandals can deeply affect a country's economy. This situation may serve as a justification for military or judicial forces to intervene in economic governance.
- *Poor Governance and Misuse of Economic Resources:* Mismanagement of economic resources, unfair tax policies, or the misuse of economic assets by certain groups can trigger a judicial coup due to economic reasons.

- *Unstable Exchange Rates and Lack of Investment:* In countries where investors and international financial institutions have lost confidence, unstable exchange rates and a lack of investment negatively impact the economy, potentially leading to military or judicial interventions.
- *Price Increases and Inflation:* High inflation can cause economic hardship and lower living standards. If the government fails to control this situation, military or judicial forces may intervene.
- *Social Unrest and Protests:* Economic difficulties, unemployment, and income inequality can lead to social unrest and protests. This may provide military or judicial forces with a pretext to overthrow or intervene in the government.
- *International Economic Pressure and Sanctions:* Economic pressure or sanctions imposed by the international community can deepen internal economic difficulties. This situation may serve as a justification for military or judicial forces to intervene in the existing government.

Table 1: Judicial Coup vs. Judicial Activism vs. Judicial Politicization

Table 1: Judicial Coup vs. Judicial Activism vs. Judicial Politicization			
Criteria	Judicial Coup	Judicial Activism	Judicial Politicization

Definition	A judicial intervention that disrupts constitutional order and undermines the rule of law to alter the political system.	A proactive role by the judiciary in interpreting laws and shaping policy, often leading to political or social change.	The influence of political ideologies, actors, or interests on judicial decisions, undermining judicial independence.
Intent/Motivation	To change, overthrow, or weaken an existing political power.	To interpret laws broadly or narrowly to address perceived social injustices or gaps.	To serve political interests rather than impartial justice.
Methods Used	Issuing unconstitutional rulings, removing political leaders, dissolving legislatures or executives.	Broad constitutional or statutory interpretation, overruling past precedents, establishing new legal norms.	Selective application of laws, politically motivated rulings, appointment of judges based on ideology.
Impact on Democracy	Weakens democratic institutions and erodes constitutional order.	Can expand rights but may also bypass democratic processes.	Undermines the rule of law, public trust, and judicial neutrality.
Legitimacy	Generally considered unconstitutional and illegitimate.	Debated; some view it as necessary for social progress, while others see it as judicial overreach.	Considered a threat to judicial impartiality and democracy.
Political Influence	Strong; judiciary acts as a direct political actor in a power struggle.	Minimal direct political influence but may be influenced by prevailing social and ideological movements.	Strong; judiciary aligns with political powers or ideologies.
Examples	Turkey's 2008 AKP closure case, Poland's judicial reforms undermining judicial independence.	U.S. Supreme Court's <i>Roe v. Wade</i> (1973), South African Constitutional Court's ruling on same-sex marriage.	Turkey's post-2016 purge of judiciary, Poland's disciplinary chamber targeting judges critical of the government.

11. JUDICIAL COUPS IN TURKIYE

According to A.S. Sweet, a "judicial coup" is when a court makes a radical transformation in the normative foundations of a country's legal system. [13] The normative foundation, meaning the Constitution, is the highest legal norm in a legal system. When the Constitution comes into effect, all stakeholders acknowledge the rules and processes set forth in the highest law. In subsequent stages, they cannot claim not to recognize this norm. A judicial coup is a court decision that radically changes the principle of recognition, i.e., the principle of the Constitution's binding nature and supremacy. A judicial coup creates a special form of lawmaking that alters the "Basic Norm" and the "Rule of Recognition." A judicial coup is carried out through a decision, interpretation, or application presented by the court.

The criteria for a judicial decision to make a "radical transformation" in the legal system are as follows:

1. The result or situation arising from the radical transformation must be something that the framers of the Constitution would never have accepted from the outset.
 2. The resulting situation must fundamentally change the functioning of the legal system.
 3. The radical transformation must involve a content so profound that it would have been inconceivable for an expert closely following the issue to have considered it during the constitutional drafting phase.
 4. The principle and system of separation of powers must be violated. In other words, after a judicial coup, traditional separation of powers should become ineffective and powerless.
- [13]

In this context, seven case studies of judicial coups that occurred in Turkiye will be examined.

Case Study 1: The AKP Closure Case (2008)

The closure case against the Justice and Development Party (AKP) was opened on the grounds that the party had become a center for "acts contrary to secularism." The indictment included a request to close the party and to ban 71 individuals, including then-Prime Minister Recep Tayyip Erdogan and then-President Abdullah Gul, from politics for five years.

In a news report by [1], the following details are provided: "Supreme Court Chief Prosecutor filed a case with the Constitutional Court for the closure of the Erdogan's Justice and Development Party (AKP) on the grounds that it had become a center for acts contrary to secularism... The Chief Prosecutor sent the indictment to the Presidency of the Constitutional Court.. The indictment claims that the AKP has become a center for acts contrary to secularism... The Constitutional Court will conduct a preliminary examination of the indictment, and if no deficiencies are found, it will be sent to the AKP for its preliminary defense. AKP is legally required to submit its preliminary defense within one month. After the preliminary defense is submitted to the Constitutional Court, the Chief Prosecutor will present his opinion on the main case... The opinion of the Chief Prosecutor will be sent to the

AKP, after which a date will be set for the oral defense by both parties."

Dr. Murat Sevinc concludes an article on the matter as follows: "As a result, the success or failure of the AKP's defense, the weakness or strength of the Chief Prosecutor's indictment, aside, the AKP case is nothing more than an attempt to solve a political problem through legal means. Therefore, it would not be wrong to look for its outcome in future political developments." [12].

An article on the website "Haber Vesaire" includes the following information: "Wikileaks' leaked US documents reveal that the AKP closure case is reflected in US reports. The document titled 'The Consequences of AKP's Closure and Our Stance,' written with the code 'Special for Service,' begins with the sentence 'The AKP closure case is a coup against this country's future.' The document, written by US Ambassador Ross Wilson, states that the case reflects unresolved conflicts in Turkiye, such as the state's nature, the country's democracy, and the role of religion in society."

On the other hand, NTV, a well established TV network in Turkiye, website provides the following information on the same topic: "The AKP closure case filed in 2008 is also among the documents leaked by Wikileaks. The document states that the case against the ruling AKP is closely related to the future of the country. It mentions that 'there is an unresolved problem in Turkiye's nature, that of the spread of popular democracy and the role of religion in society.' While the importance of the case against the AKP is emphasized, the document underlines that the priority for the US is to support the development of democracy in Turkiye within mutual interests, but without determining Turkiye's unique political characteristics. In the conclusions section, it is stated that the case is a form of judicial coup, and it is noted that in the press, along with the closure of the party, a political ban for 70 of its members was requested."

Case Study 2: FETO's Intervention in the Judiciary on December 17-25, 2013

To recall the events of December 17-25, 2013, let's take a look at Anatolian News Agency's report: "Members of the terrorist organization, acting under the orders of its leader Fetullah Gulen, began executing their covert operations on December 17-25, 2013. The FETO (Fethullahist Terrorist Organization) plot soon backfired, and the FETO members within the police and judiciary were removed from their positions. December 17-25, 2013 marked a turning point in the fight against the organization. FETO, which had infiltrated significant state institutions since the 1970s, faced a determined struggle in every field... The seeds of the December 17-25 operations were planted by FETO members in 2012. At that time, FETO's members in the judiciary launched a plot against then Prime Minister Recep Tayyip Erdogan and the government. On February 7, 2012, FETO members within the judiciary summoned five individuals, including MIT, Turkish Intelligence Service, Undersecretary to testify at the now-defunct Istanbul Special Prosecution Office. The plot for the MIT operation was thwarted when the surgery of Erdoğan, who was waiting to undergo an operation, was delayed. Upon learning about the summons, Erdogan instructed Undersecretary not to attend, thus preventing the plot. The prosecutors and police officers involved in the MIT operation were dismissed from their duties. Having failed in the MIT operation, FETÖ then set its sights on the December 1725 plot. FETÖ members, in the form of special prosecutors, initiated an investigation on March 6, 2012, under the false charge of "bribery in tenders," even though the matter was not within the jurisdiction of special prosecutors. Despite the investigation being unlawful, illegal phone tapping was carried out. In the indictment prepared by the FETO members, a terrorist financier was portrayed as having connections with the Prime Minister and ministers, creating the false perception that the government was involved with him. Up until December 17, 2013, many wiretapping

decisions were made. High-ranking officials, such as the Prime Minister and Ministers, who were legally immune from investigations, were illegally wiretapped and their communications turned into 'tapes.' These individuals, who were not suspects, were included in the file. The organization kept this file within its own control, not allowing it to be transferred to another prosecutor or judge, and began laying the foundations of a long-term conspiracy through persistent wiretaps. Some wiretap decisions were extended 24-25 times, while others were issued under false or non-existent names. On December 17, 2013, a fugitive former prosecutor who led the December 25 operation, instructed the police to terminate the investigation and send him the indictment. Fugitive former prosecutor, another key figure in the conspiracy, initiated the December 17 operation. Several individuals, including public officials and businessmen, were arrested by FETO-affiliated police officers. The Prosecutor who was meeting with fugitive FETO-affiliated journalists, called in other journalists to brief them on the operation in a mocking tone. While avoiding direct answers to journalists' questions about government officials, the prosecutor later admitted in an interview with fugitive former prosecutor that "Number one was Erdogan."

The events summarized above can be interpreted as both a judicial coup attempt and as something else, depending on perspective. To me, it can be seen as a judicial coup attempt. The primary reason for this interpretation is the actions of certain judicial bodies exceeding their legal authority, actively working to overthrow the existing government. Members of the FETO identified as part of the judiciary, initiated legal processes aimed at arresting and punishing specific individuals, potentially violating legal procedures, such as failing to obtain required authorization for wiretapping suspects who held special statuses. The fact that some of the accused fled the country further strengthens this perspective. As noted in the news above, members of the FETO judiciary aimed to overthrow the government, which aligns with the definition of a judicial coup attempt. The alternative view suggests that these were judicial attempts to address corruption, which were blocked. Judicial efforts to investigate corruption were obstructed, and the prosecution of suspects was halted. In this view, the failure to pursue legal actions against certain ministers accused of corruption and the return of seized money could indicate the issue was more about preventing the exposure of corruption rather than a judicial coup. In my opinion, the December 17-25 incident represents an example of a failed judicial coup, despite opposing arguments.

Case Study 3: The Acceptance of Invalid Votes as Valid by the Supreme Election Council (YSK) in the 2017 Constitutional Referendum

On April 16, 2017, during the Constitutional referendum, the Supreme Election Council (YSK) decided to accept invalid votes as valid, marking another example of a judicial coup. In its decision, the YSK stated: "Due to numerous complaints about some ballot box committees handing out ballot papers and envelopes without the stamp of the ballot box committee, the YSK convened today and decided that votes and envelopes lacking the committee's stamp would be considered valid unless it was proven that they were brought from outside."

YSK's Decision regarding the 2017 Constitutional Amendment Referendum: On April 17, 2017, the YSK decided that votes with invalid envelopes would be counted as valid: "In the country, including the Domestic and Foreign Voter Rolls, 49,798,855 out of 58,291,898 registered voters cast their votes, resulting in a participation rate of 85.43%. Out of these, 48,936,604 votes were valid, and

862,251 votes were invalid. Of the valid votes, 25,157,463 were 'YES' votes, and 23,779,141 were 'NO' votes, with the percentage of 'YES' votes being 51.41% and 'NO' votes 48.59%, as recorded in the final tally of the Constitutional Amendment Referendum."

President of the Constitutional Court, addressed the issue during the 55th anniversary speech of the Court: "In constitutional democracies, the founding power, or the constitution-maker, is the one who draws the map of authority. This map is the constitution itself. Of course, one may argue that the drawn boundaries are insufficient for establishing the rule of law with all its institutions and rules. However, until changed, the existing constitutional boundaries bind us all. Therefore, it is not expected of the Constitutional Court, which is responsible for protecting these boundaries, to step outside of them. Changing the clear rules set by the constitution-maker through judicial interpretation would essentially amount to making a constitutional amendment through judicial activism, which would lead to discussions on judicial overreach and legitimacy. Thus, the Constitutional Court's 'rights-based' approach should be understood as one that protects fundamental rights and freedoms while staying within constitutional boundaries and refraining from judicial activism." (Arslan, Z. 2017).

Kemal Kılıçdaroğlu, ex-leader of the Republican People's Party (CHP), commented on the issue during the opening of the CHP Party Assembly meeting in Ankara: "The President of the Constitutional Court has clearly stated that this referendum is tainted, lacking legitimacy, and has raised concerns over its validity on the Court's 55th anniversary. I sincerely thank the President of the Constitutional Court for this sensitivity. The person making this statement is not just any ordinary judge or a university professor, but the President of the Constitutional Court, and he has said it today."

In response to these views, the Supreme Election Council (YSK) defended its decision: "This decision, made before the results of the election were clear and before its potential impact on preferences was known, is an objective decision consistent with the principles of equality and impartiality. Therefore, it is not possible to evaluate the Council's decision (to accept unstamped votes as valid) as an intervention affecting the outcome of the election."

While President Arslan did not directly name it, his words clearly pointed to a judicial coup.

This case represents a typical example of modern judicial coups. Such situations can reflect potential threats to democratic values, the rule of law, and fundamental human rights. The independence and impartiality of judicial systems are fundamental pillars of democratic societies.

Case Study 4: The Can Atalay Case and the Judicial Coup that Followed (2023)

In the context of the Gezi trial, Can Atalay was sentenced to 18 years in prison for "aiding an attempt to overthrow the government" and was arrested on May 25, 2022. Despite being imprisoned, Atalay was elected as a Member of Parliament (MP) from Hatay in the May 14, 2023 elections.

Given the reasons listed above, it can clearly be stated that another judicial coup has occurred in Türkiye.

Case Study 5: Violation of Individual Rights through Court Decisions and Judicial Coup

The last case we will discuss regarding judicial coups involves the potential for a judicial coup through court decisions. The recent legal event in this context occurred after the local elections held on March 31, 2024. The candidate of the DEM Party, Abdulahat Zeydan, who won the election by a wide margin, was denied the certificate of election by the Van Provincial Election Board, and the certificate was given to the candidate of the AK Party, who finished second.

According to a news article on BBC Turkish: “In the local elections held on Sunday, according to unofficial results, Abdullah Zeydan, the candidate of the DEM Party, won the Van Metropolitan Municipality Mayorship with 55.48% of the vote. AKP candidate Abdulahat Arvas received 27.15%, and the candidate from the Rebirth Party, Abdullah Sadıksoy, received 5.37%. In all districts of Van, the DEM Party won the local elections. The Central Executive Board (MYK) of the DEM Party announced that, following an application by the Ministry of Justice, Abdullah Zeydan, who was elected as Mayor of Van, had his banned rights restored. The restoration of his banned rights means that Zeydan loses his eligibility to run for office, and if no outcome comes from objections, the certificate of election will not be granted. DEM Party spokesperson Ayşegül Doğan emphasized the need to respect the people's will, saying, ‘This is the requirement of the law, it is not a privilege. This wrong decision should be immediately reversed.’ A written statement from the party’s MYK reminded that the DEM Party won all 14 municipalities, including the metropolitan city, in Van. The statement said, ‘The people of Van expressed their will clearly and powerfully at the ballot box. This strong will is also a response to the trustee regime.’ Furthermore, it was stressed that the decision to reinstate Abdullah Zeydan's banned rights, following the Ministry of Justice’s appeal, had been disregarded: ‘Our Metropolitan Municipality Co-Mayor Abdullah Zeydan, after completing all legal procedures, applied to the Supreme Election Board (YSK), and after the required investigations, his candidacy was accepted by the YSK. Zeydan was elected with the overwhelming support of the people of Van. However, just 5 minutes before the close of business on March 29, 2024, two days before the election, the Ministry of Justice issued an administrative decision and letter, challenging Zeydan’s banned rights that were imposed in 2022 and had passed all legal inspections. The competent prosecutor's office reapplied to the court that had made the final decision on the banned rights, requesting the decision be reversed. The court accepted the request and rejected the banned rights, notifying the YSK before the decision had become final, meaning without the opportunity for appeal or revision. The restoration of banned rights means that individuals who have been sentenced for certain crimes, including the right to vote and run for office, will have their fundamental rights reinstated once their sentence is fully executed or they are acquitted. After the restoration of Zeydan’s banned rights by the court, the YSK accepted Zeydan’s mayoral candidacy. With the Ministry of Justice’s application, the court now reversed this right.’”

Within the framework of the information above, although the issue was resolved through the YSK decision, it has been concluded that the decision made by the Van Provincial Election Board was arbitrary, influenced by political power, and aimed at blocking the right to vote and run for office of an opposition party, thereby clearly serving the political interests and dominance of the ruling power. In this respect, this event is recorded in the history of democracy as an attempt of judicial coup.

Case Study 6: Approval of non-valid ballots by the Election Board

Which legal rules will be applied to the issue of the validity of a vote cast with an unstamped ballot? In other words, based on which legal provision will it be determined whether a vote cast with an unstamped ballot is valid or not? As can be seen, this question is nothing more than an issue of determining the applicable legal rule for the case. The question of "Which legal rule will be applied to the issue of the validity of a vote cast with an unstamped ballot?" has, in our opinion, a simple answer. There is only one rule to be applied in resolving this issue, and that rule is found in Article 101 of the Law No. 298 on the Basic Provisions on Elections and Voter Registers, amended by Law No. 5980 on April 8, 2010. The article explicitly states: "Article 101 – ... 3. Ballot papers that do not bear the seal of the ballot box committee on the back are invalid." Therefore The Supreme Election Council (YSK) declared three of the four ballots in the same envelope valid and one invalid. Five minutes before the closing of the polls, the YSK decided that ballots without stamps would be counted as valid.

Case Study 7: Constitutional Court's Decision Ignored by Parliament and Constitutional Court's Website Inaccessibility

When the Constitutional Court's decision is declared null and void (often through a statement from the government or another body), this reflects the ongoing politicization of the judiciary. The courts are expected to serve as an independent check on the executive and legislative branches. However, if the Parliament or government chooses to ignore the court's ruling, it undermines the principle of the separation of powers and judicial independence. If a Constitutional Court decision is not implemented, it sends a signal that the rule of law is being selectively applied, undermining the authority of the judiciary and weakening democratic principles. This action might be seen as the executive's or legislature's attempt to bypass judicial checks, further consolidating political control. It can set a dangerous precedent where the courts' authority is challenged, leading to greater government control over legal decisions. If the ruling was rendered null by another political body, this indicates a lack of judicial independence and could show that the government is using its political power to neutralize judicial outcomes that do not align with its interests.

On the other hand, the inaccessibility of the Constitutional Court's website, followed by its reopening after an announcement was removed, raises concerns about information control and censorship in a time when the judiciary's independence is under strain. If a high court's website is taken down or modified, it may indicate a broader attempt to control the flow of information or hide critical legal decisions. This is particularly concerning when transparency in judicial matters is essential for the public's trust in the justice system. Restricting access to information about judicial decisions could also suggest a politicization of the judiciary, where certain rulings or legal proceedings that contradict the government's interests are suppressed or hidden from public view.

Together, these incidents highlight how the politicization of the judiciary can result in actions that undermine both judicial independence and democratic institutions, potentially furthering the government's control over legal processes and public discourse.

12. POLITICIZATION OF JUDICIARY IN TURKIYE

Examples of politicization of judiciary in Turkiye were given earlier. The politicization of the judiciary refers to the process by which judicial decisions, appointments, and operations are influenced or controlled by political interests or political actors, rather than being based solely on legal principles, fairness, and impartiality. It occurs when judges or courts act in ways that align with the preferences, ideologies, or goals of political powers, which can undermine the independence of the judiciary.

This politicization can manifest in several ways, such as:

- *Judicial Appointments:* When political leaders select judges based on their political affiliations or ideological alignment, rather than on merit or qualifications, leading to a judiciary that may be more responsive to political pressures.
- *Judicial Decision-making:* When courts issue rulings that reflect the interests of political parties or government policies, rather than adhering strictly to the law and the constitution.
- *Interference in Court Operations:* Political actors may exert pressure on the judiciary through threats, intimidation, or manipulation of legal procedures, creating a climate where judges feel compelled to rule in favor of the political establishment.

Politicization can be damaging to the legal system as it threatens the rule of law, erodes public trust in judicial fairness, and weakens the overall system of checks and balances within democratic governance.

There are numerous examples of judicial politicization in Turkiye. In the June 7, 2015 elections, the AKP failed to form a government. In this case, the task of forming a government should have been given to the opposition political party. However, the President did not assign this task to People's Republican Party (CHP) and decided to call for new elections. The President's principle of neutrality was violated. CHP did not resort to judicial remedies. The elections held on November 1, 2015, were won by AKP, and they formed the government.

The leader of Hamas has been assassinated in Tehran by the Israeli agents in July 2024. The pro-Hamas government of Turkiye has decided to launch an official mourning program thus closing the social media, limiting the broadcasting of TVs and radios and lowering the national flags. For instance Instagram was blocked due to condolences for Haniye. The actions surrounding the assassination of Haniye—such as limiting social media access, modifying TV and radio broadcasts, and censoring communication—can indeed be seen as a limitation of the freedom of communication. In a democratic system, freedom of communication includes the right to access information, express opinions, and participate in public discourse without undue government interference. The measures taken by the Turkish government in response to such an event reflect actions that restrict these freedoms.

On 09.11.2023 President's Chief Advisor and Deputy Chair of the Presidency's Legal Policy Board made a statement regarding the Supreme Court's refusal to recognize the Constitutional Court's decision on Can Atalay and its filing of a criminal complaint against Constitutional Court members.

Supreme Court's decision had been criticized for being unconstitutional, described the criminal complaint as a "reactionary stance" due to the "great accumulation of attacks against the National Judiciary." Additionally the decision has been described as Judicial Activism. Despite this clear provision of the Constitution, the Constitutional Court continues to make unconstitutional decisions. The Constitutional Court disregards not only the explicit provisions of the Constitution but also the Criminal Code and Judicial Decisions. Unfortunately, the decisions the Constitutional Court has made in this regard are a clear example of judicial activism. In this context, the Supreme Court's decision not to comply with the Constitutional Court's violation ruling is correct, based on its reasoning. Whether those who oppose the Supreme Court's decision have actually read it is another issue. What is more important, during the arguments on the issue the website of the Supreme Court was blocked by the Communication Board which has been later revoked when the Supreme Court bowed to lower court decision.

The Constitutional Court on August 2, 2024 ruled that the article in question violated Article 104, Paragraph 17 of the Constitution. The Court emphasized that fundamental rights and freedoms cannot be regulated by Presidential Decrees and that such regulations must be enacted solely through legislation. Additionally, it was decided that the establishment of the Revolving Fund Enterprise and the financial regulations made within this scope must also be exclusively regulated by law. The Constitutional Court ruled to postpone the enforcement of the annulled provisions for nine months. During this period, it is expected that the necessary adjustments will be made by the Presidency.

In recent months, two mayors from Istanbul's districts, both affiliated with the opposition Republican People's Party (CHP), have been detained on separate charges. The first case was related to Ahmet Ozer (Mayor of Esenyurt). On October 31, 2024, Ahmet Ozer was arrested over alleged affiliations with the outlawed Kurdistan Workers' Party (PKK). He faces charges of "membership in an armed terrorist organization." Following his arrest, 11 individuals were detained for their past phone communications with Ozer. Among them were a former student who sold Ozer pepper paste and a graphic designer who worked on a book cover for him. The CHP has refuted the terrorism-related allegations against Ozer, asserting that the charges are unfounded and politically motivated. CHP leader Ozel criticized the arrest, describing it as an attempt to undermine the democratic will of the people.

The second was related to Rıza Akpolat (Mayor of Beşiktaş). On January 13, 2025, Akpolat was detained in Balıkesir province as part of a corruption investigation related to public tenders. He is accused of involvement in a criminal organization that manipulated tender processes by bribing public officials. Following his detention, Akpolat, along with 30 others, was referred to the criminal court with a request for arrest. The court ultimately ordered the arrest of 22 suspects, including Akpolat. The CHP has denounced the investigation as politically motivated, asserting that there is no concrete evidence to justify the arrest. Party leader Özgür Özel called the arrest an attempt to defame the party. These incidents have sparked significant debate in Türkiye, with critics arguing that the arrests are part of a broader strategy to suppress opposition voices, especially in municipalities led by the CHP.

The role of experts in legal cases, particularly in Türkiye, has become a crucial and contentious issue, especially in politically sensitive trials. Experts are often appointed by courts or prosecutors to provide technical or specialized knowledge on matters that require expertise beyond the legal

profession. However, in recent years, concerns have been raised about the credibility, impartiality, and manipulation of expert reports in legal cases, particularly in those involving opposition politicians. In most legal cases, experts are responsible for conducting forensic examinations, analyzing financial and technical data, preparing reports that influence judicial decisions and providing professional opinions on issues such as public procurement, corruption, or security-related matters. However, their influence becomes problematic when their findings are manipulated to serve political purposes rather than objective legal standards.

Ahmet Ozer, the Mayor of Esenyurt, was arrested based on alleged links to the PKK. The case heavily relies on expert reports analyzing digital evidence and phone records. In politically motivated cases such as phone record analysis. Experts review past calls, messages, and contacts to establish "guilt by association." For example, the police detained 11 individuals merely for past phone conversations with Ozer, including a student who sold him pepper paste and a graphic designer who worked on a book cover. Experts often examine whether certain documents or statements can be linked to a suspect. In many cases, their evaluations have been criticized for lacking transparency and relying on questionable interpretations.

Rıza Akpolat, the Mayor of Besiktas, was arrested on corruption and bid-rigging charges. His case revolves around public procurement investigations, where forensic accountants and financial experts assess whether public tenders were manipulated, construction and procurement experts determine whether contracts were lawfully awarded or if there was favoritism and however, opposition figures argue that these reports are often produced under political pressure, selectively targeting oppositioned municipalities.

There have been increasing allegations that expert reports in high-profile political cases are biased and politically driven (experts appointed by government-friendly institutions tend to favor rulings that align with the political agenda of the ruling party), lacking transparency (defense lawyers often complain that they are denied access to full expert reports or that independent experts are not allowed to review evidence) and fabricated or exaggerated: In many cases, the so-called "evidence" presented by experts is later debunked, but it remains sufficient for detentions and arrests.

All these issues are connected to broader judicial issues such as judicial independence concerns (the appointment of pro-government experts undermines confidence in the legal system), weaponization of legal cases (reports by politically influenced experts are used to justify arrests and suppress opposition figures) and selective prosecution (opposition figures face intense scrutiny based on expert reports, similar allegations against pro-government figures are often dismissed).

Consequently, the increasing reliance on questionable expert reports in politically charged cases like those of Ahmet Ozer and Rıza Akpolat reflects the broader erosion of judicial independence in Türkiye. Experts, instead of serving as neutral analysts, often become tools for legal persecution. This has serious implications for the rule of law, democratic governance, and opposition-led municipalities, as expert testimonies and reports are frequently used to justify arrests, dismissals, and even re-run elections under dubious legal grounds.

13. EXAMPLE OF JUDICIAL COUP CARRIED OUT BY THE EXECUTIVE BRANCH: BAN ON MAY DAY CELEBRATIONS IN TAKSIM, ISTANBUL

13.1 Development of Events

Judicial coups are not only carried out by judicial institutions; the executive branch can also take decisions that result in a fundamental change of the constitutional order through various institutions. The events that occurred during the May Day celebrations in Istanbul on May 1, 2024, are a significant example in this regard.

As a result of similar developments in 2014, the Governorate of Istanbul decided that gatherings and demonstrations could not be held in Taksim Square. Following this, on August 10, 2016, the Revolutionary Workers' Unions Confederation (DİSK), the Confederation of Public Employees' Unions (KESK), the Union of Turkish Engineers and Architects Chambers (TMMOB), and the Turkish Medical Association (TTB) applied to the Constitutional Court (AYM), claiming that the Governorate of Istanbul's refusal to permit events for May Day in Taksim Square violated the right to hold meetings and demonstrations.

The President made the final statement: "In 2008, we declared May 1st as Labor and Solidarity Day. In 2009, we declared it a public holiday, and in 2010, we allowed the celebrations to take place in Taksim. Despite this, opposition and some marginal groups are trying to overshadow May Day. Everyone knows that Taksim Square is not suitable for rallies, and I do not find such demands appropriate. The demonstration, rally, and march routes in Istanbul are clearly defined. There are rally areas on both sides of the city. There are 40 designated routes for the May Day celebrations. I do not believe it is in good faith to organize rallies and marches outside of these approved areas." On May 1, 2024, trade unions and some political parties wanted to march to Taksim and hold commemorative events there. However, the executive took extraordinary measures and did not allow workers to enter Taksim. In order to avoid further tension, union leaders announced they had abandoned their plans and actions.

13.2 Legal Assessment

The decision made by the Istanbul Governorship to ban the May 1st meeting at Taksim has led to a significant and profound legal consequence: the executive branch has disregarded the Constitutional Court's ruling. The Constitutional Court has been rendered ineffective, powerless, and unauthorized. Secondly, the principle of the supremacy and binding nature of the Constitution, which regulates the establishment, duties, and powers of the Constitutional Court, has been nullified. In other words, the country has been reduced to a state without a constitution. In our view, this situation constitutes a constitutional/judicial coup. This is because the executive's actions have, above all, created an extraordinary change in the constitutional order. It is inconceivable that the framers of the constitution could have foreseen and accepted such a scenario during the preparation of the constitution. Moreover, the situation that has emerged fundamentally alters the functioning of the constitutional legal system. Fundamental human rights and freedoms, such as equality before the law, labor union rights, freedom of expression, and the right to hold meetings and demonstrations, have been taken away, and the Constitutional Court, which is meant to protect these constitutional rights, has been rendered ineffective and powerless. Therefore, the executive's approach has fundamentally

altered the constitutional order. It is not possible that such a fundamental change was foreseen and accepted during the preparation of the constitution. Similarly, the principle of separation of powers has been violated, and the traditional separation of powers principle has been rendered ineffective and powerless due to the executive's actions.

Changing the constitutional order means altering or abolishing the fundamental provisions of the constitution. However, the constitutional order is the entirety of rules and institutions (such as the Constitutional Court) that form the foundation of a country's political, social, and legal system, and guarantee basic rights and freedoms. This order is determined by the constitution and other laws, and is of vital importance for the stability and peace of society. The decisions taken by the executive and their implementation have profoundly affected the constitutional order.

The executive's actions in Taksim also violate the principles of the rule of law and the supremacy of law. In a state governed by the rule of law, executive actions and operations must be based on law. Although the governorship's decision was based on the powers granted to governors by Law No. 5442 on Provincial Administration, the Constitutional Court rejected this justification. The executive branch's failure to comply with this ruling is a violation of the rule of law. The arbitrary disregard of the Constitutional Court's decision by the executive is contrary to constitutional law and universal legal principles. Furthermore, when exercising executive powers, the executive cannot act in ways that restrict or violate basic human rights and freedoms. The justification for the executive's actions, which was not clearly presented, is based on concepts such as public order, security, and freedom of economic enterprise, but these justifications were not accepted as valid by the Constitutional Court.

Another legal issue to be considered is the principle of proportionality. The measures taken by the executive should be proportional to the risk they aim to mitigate. Whether there was a risk large enough to justify banning the meeting at Taksim is debatable.

As previously defined, judicial coups are typically carried out by constitutional courts or high judicial bodies and are aimed at seizing the powers of a legitimate government or disrupting the constitutional order. Although a judicial coup is defined as an attempt to forcibly and unconstitutionally change the constitutional order by misusing the judicial organs' powers, the Taksim example has shown that the executive can also cause fundamental changes to the constitutional order through some of its actions. What is missing in this situation is that the executive's actions cannot be seen as an attempt to overthrow the current legitimate government.

14. OVERALL EVALUATION AND CONCLUSIONS

Judicial interventions can significantly impact the balance of power in democratic societies. Judicial coups pose a serious threat to constitutional order by undermining democratic institutions and the rule of law, often leading to political instability. Judicial activism, while sometimes criticized for judicial overreach, can contribute to social progress by expanding rights and addressing legal gaps. However, it remains a contentious issue depending on the political context in which it operates. Judicial politicization, on the other hand, is particularly dangerous as it erodes public trust in the judiciary, allowing political forces to manipulate legal decisions to their advantage.

To safeguard democracy, it is essential to ensure judicial independence while maintaining appropriate checks and balances. Establishing transparent judicial appointment processes, enforcing legal accountability, and protecting courts from political interference are key measures to prevent judicial overreach or manipulation. By maintaining a balance between judicial restraint and necessary legal activism, democracies can uphold the rule of law and ensure that judicial power is exercised in a way that serves justice rather than political interests.

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