

Syllabus

Title of the Course:	Constitutionalism in Turkey / Türkiye’de Anayasal Devlet	Course Breakdown:	28 teaching hours online, 152 hours independent study
Name of the Instructors:	Dr.Melike Belkıs Aydın & Dr.Barış Işık	Weekly class time:	2 hours - Mondays, 16.30 (CET) / 18.30 (Turkey)
Language:	Turkish / Türkçe		
Hosted by:	Chair of Turkish Studies, Institute of Near and Middle Eastern Studies, LMU Munich	Certificate issued by:	LMU Munich (6 ECTS or Pass)
min. number of participants:	5	max. number of participants:	20

Description of the course

This course focuses on the Ottoman-Turkish Constitutional Developments; the 1982 Constitution of Turkey, Characteristics of the Republic, Fundamental Rights and Freedoms, Legislative Power, Elections, Members of Parliament, Parliamentary Immunities, Executive Power, Judiciary, Constitutional Court and Constitutional Review. It mainly gives an opportunity to develop a general sense and knowledge on the Ottoman-Turkish Constitutions. It provides students a chance to foster an analytical understanding and evaluation of constitutional history of Turkey.

Throughout the course, students will be developing an ability to analyze the current governing system of Turkey from a perspective of comparative constitutional law. They will not only acquire general knowledge on Turkish constitutional law and politics as well as political and constitutional history of the Turkish state –both late Ottoman era and the Republic; but also understand the significant discussions on human rights, democracy, and rule of law, from a perspective of constitutional law theory. Weekly lectures will help students to improve their skills to comment and discuss about past and contemporary issues of constitutional government in Turkey.

As a point of departure, course will start by explaining the main political and constitutional developments of the 19th century and early 20th century Ottoman Empire. It will then continue with exploring the nation and constitution building process of the young Turkish republic. Important political/constitutional developments of the 60’s and 70’s that lead to the military *coup d’etat* of 1980 is also a part of this course. Thereafter, the course will explore the constitutional order as provided by the 1982 Constitution. Finally, this course will tell the students about the contemporary problems of constitutional government in Turkey.

Learning Aims

To provide a general understanding about:

- the Ottoman-Turkish Constitutions
- Constitutional history of Turkey
- Current governing system of Turkey
- Contemporary problems of constitutional government in Turkey

Upon the successful completion of the course students will be able to:

- Tell the history of constitution making and constitutionalism in Turkey
- Compare the several constitutions in Turkey within a historical perspective
- Describe the founding principles of the 1982 Constitution
- Analyze the basic provisions of the 1982 Constitution
- Interpret the notions of democracy, rule of law, welfare state, human rights, secularism and equality as stipulated by the 1982 Constitution
- Describe the executive-legislative relation according to the 1982 Constitution

Course requirements

⇒ Course components include:

- Lectures
- Readings

⇒ The final grade for the course will be based on the following:

➤ Requirements for those who want to earn **PASS** grade

- Regular attendance to the weekly online classes %25
- Reading weekly uploaded articles and active participation in class discussions %25
- Mid-term written assignment %50 (c.a. 1000 words)

➤ Requirements for those who want to earn 6 ECTS

- Regular attendance to the weekly online classes %15
- Reading weekly uploaded articles and active participation in class discussions %15
- Mid-term written assignment %20 (c.a. 1000 words)
- Final written assignment %50 (c.a. 3500 - 4000 words)

⇒ All written assignments should be submitted in PDF format.

⇒ All written assignments should include a bibliography.

⇒ Students must write the assignments in their own words. Percentage of similarity should not exceed 30%. Verbatim and direct quotation should be applied only if necessary and given full citation.

Organization of the course

⇒ The course is organised in two parts:

- **Lectures (2 hours of lectures every week):** It is recommended that students read the reading materials before participating the courses. Every week will include the lectures based on these readings, with additional insights of more contemporary and recent cases, wherever applicable.
 - Reading materials that appear as certain pages of books and articles are indicative to the particular topic of a given week. It is recommended that students read the whole book or the article to grasp a wholistic understanding of the course.
- **Written assignments:** Students should prepare two written assignments per semester. The guideline is explained above. The research should be a result of each student's individual research work.
 - **First written assignment (Mid-term):** At the 7th week of the course students will be invited to write a written essay on one of the subjects taught in the lectures up until then.
 - **Second written assignment (Final):** At the end of the course, students should write an essay covering one of the issues of contemporary Turkish constitutional law and politics.

Outline of the Course: Courses are organized as lectures and students are encouraged to participate in the interval discussions throughout the course. The headings and subheadings refer to the subjects to be covered in each lecture.

Week 1: Introduction to the Course and Early Constitutional history of the Ottoman era

- Introduction to the Course
- Early Constitutional documents in the Ottoman Empire
- Charter of Alliance of 1808 (*Sened-i ittifak*)
- The Edict of Reorganization of 1839 (*Tanzimat Fermanı*)
- The edict of Reform of 1856 (*Islahat Fermanı*)

Reading materials:

- Bülent Tanör, *Osmanlı-Türk Anayasal Gelişmeleri*, İstanbul: Yapı Kredi, pp. 41-117
- Sina Akşin, *Sened-I ittifak ile Magna Carta'nın Karşılaştırılması*, (<http://dergiler.ankara.edu.tr/dergiler/18/22/83.pdf>)
- Kemal Gözler, “TANZİMAT FERMANI: GÜLHANE HATTI HÜMAYUNU (1839)” <https://www.anayasa.gen.tr/tanzimatfermani.htm>
- Niyazi Berkes (1978), *Türkiye’de Çağdaşlaşma*, İstanbul: Doğu-Batı Yayınları. pp. 213-220.

Week 2: Constitutional developments in the late Ottoman era

- The 1876 Constitution: Its content and implementation
- The making of the 1921 Constitution

Reading materials:

- Bülent Tanör, *Osmanlı-Türk Anayasal Gelişmeleri*, İstanbul: Yapı Kredi pp.121-166.
- Niyazi Berkes (1978), *Türkiye’de Çağdaşlaşma*, İstanbul: Doğu-Batı Yayınları. pp.309-336.

Week 3: Founding of the Republic: New Turkish State and its Constitution

- The 1924 Constitution of Turkey: Its content and implementation

Reading materials:

- Bülent Tanör, Osmanlı-Türk Anayasal Gelişmeleri, İstanbul: Yapı Kredi pp.290-359.

Week 4: The 1961 Constitution of Turkey

- The making of the 1961 Constitution
- The content and implementation of the 1961 Constitution
- The 1971 and 1973 Amendments to the 1961 Constitution

Reading materials:

- Bülent Tanör, İki Anayasa, Beta, pp.39-54.
- Ergun Özbudun, The Constitutional System of Turkey: 1876 to the Present. New York: Palgrave and Macmillan, 2011.

Week 5: The 1982 Constitution of Turkey

- The making of the 1982 Constitution
- Basic characteristics of the 1982 Constitution

Reading materials:

- Bülent Tanör, İki Anayasa, 3. Basım, Beta, 1994, pp. tbd.

Week 6: Democracy and Rule of Law According to the 1982 Constitution

- Democracy
- Secularism
- the Rule of Law

Reading materials:

- Barış Erman, “Düşman Ceza Hukukun Dönüşümü”, Yeditepe Üniversitesi Hukuk Fakültesi Dergisi, 2012, C. 9, S. 2.

- İlker Kılıç, “İki Hukuk Devleti, İki Devlet Teorisi-Mübadele Mantığı-Sermaye Mantığı”, Çankaya Üniversitesi Hukuk Fakültesi Dergisi, S.1, Nisan 2019.
- Kemal Gözler, Türk Anayasa Hukukuna Giriş, Bursa: Ekin, 2018 pp. 60-82.

Week 7: Gender Equality According to the 1982 Constitution

- Concept of equality
- Positive Discrimination
- Problem of Gender equality

Reading materials:

- “Bülent Yücel, Anayasa Mahkemesi Kararlarında Eşitlik İlkesinin Yorumlanması ve Cinsiyet Ayrımcılığına Yargısal Bakış” KAMU HUKUKÇULARI PLATFORMU ANAYASA HUKUKUNDA YORUM ve NORM Somutlaşması 29-30 Eylül 2012 Ankara (http://www.kamuhukukculari.org/upload/dosyalar/KHP_3_kitap.pdf)
- Kasım Akbaş ve İlker Gökhan Şen, Türkiye’de Kadına Yönelik Pozitif Ayrımcılık: Kavram, Uygulama ve Toplumsal Algılar, Anadolu Üniversitesi Sosyal Bilimler Dergisi Eylül 2013, Cilt 13, ss. 165-189 (to read: pp 168-175).

Week 8: Fundamental Rights and Freedoms

- Freedom of speech
- Freedom from arrest and arbitrary detention
- Freedom of assembly

Reading materials:

- Kemal Gözler, 1982 ANAYASASI HÂLÂ YÜRÜRLÜKTE Mİ? Anayasasızlaştırma Üzerine Bir Deneme, <https://www.anayasa.gen.tr/anayasasizlastirma.htm>
- Yaman Akdeniz ve Kerem Altıparmak, “Türkiye’de Can Çekişen İfade Özgürlüğü: OHAL’de Yazarlar, Yayıncılar ve Akademisyenlerle İlgili Hak İhlalleri”, mart 2018, pp. 45-57 <https://www.englishpen.org/posts/campaigns/turkey-freedom-of-expression-in-jeopardy/>

Week 9: Electoral Democracy According to the 1982 Constitution

- Elections
- Referendums

Reading materials:

- İlker Gökhan ŞEN, “Doğrudan Demokrasi Aracılığıyla Siyasal Katılımı Artırmak: Referanduma Dair Sorunlar ve Çözüm Önerileri”
(<http://panel.stgm.org.tr/vera/app/var/files/d/e/demokrasi-ve-siyasal-katilim.pdf>)
- AGİT/ DKİHB, “Türkiye Cumhuriyeti Erken Cumhurbaşkanı Ve Milletvekili Genel Seçimleri” 24 Haziran 2018 DKİHB Seçim Gözlem Heyeti Sonuç Raporu, 2018
<https://www.osce.org/files/f/documents/4/6/399938.pdf>
- AGİT/ DKİHB, “Türkiye Cumhuriyeti Anayasa Değişikliği Referandumu 16 Nisan 2017 AGİT/DKİHB Sınırlı Referandum Gözlem Heyeti Sonuç Raporu”, 2017
<https://www.osce.org/files/f/documents/7/4/331101.pdf>

Week 10: Constitutional Amendments

- Procedure
- Amendments to the Constitution (2001,2007, 2010, 2017)

Reading material:

- Kemal Gözler, Türk Anayasa Hukukuna Giriş, Bursa: Ekin, 2020, pp 466-490

Week 11: Presidential System Executive and Legislative Relations

- The parliament
 - The Election of the President
 - The Competences of the President.
 - The problem of separation of Powers in the post-2017 politics
- Kemal Gözler, Elveda Kuvvetler Ayrılığı, Elveda Anayasa: 10 Aralık 2016 Tarihli Anayasa Değişikliği Teklifi Hakkında Bir Eleştiri, Yıl 2016, Cilt , Sayı 4, Sayfalar 25 – 36 (<https://dergipark.org.tr/tr/pub/abd/issue/33847/374813>)

- Bülent Yücel, *Temsilî Demokratik Sistemde Yasama Erki ve Kural Koyma Faaliyetinin Belirleyicileri (Türkiye Uygulaması Üzerine Bir İnceleme)*, Adalet Yaynevi, Ankara, 2020 pp. 130-160.

Week 12: State of Emergency

- Legal nature
 - Procedural aspects
 - 15 July 2016 coup attempt and relevant problems
- Kemal Gözler, *Türk Anayasa Hukukuna Giriş*, Bursa: Ekin, 2020, 396-405.
 - Christelle Palluel, “Olağanüstü Hal ve İnsan Hakları İhlalleri: Türkiye Vatandaşları İçin Hangi Adalet?” *Anayasa Hukuku Dergisi - Cilt: 8/Sayı:15/Yıl:2019*, p. 19-36. (<http://anayasader.org/anayasa-hukuku-dergisi-15-sayi-2019-1>)

Week 13: Constitutional Review

- Formation of the Constitutional Court
 - Competences of the Constitutional Court
 - Recent important decisions
- Kemal Gözler, *Türk Anayasa Hukukuna Giriş*, Bursa: Ekin, 2018, pp. 426-464.
 - Fazıl Sağlam, “Anayasa Mahkemesinin Verdiği İki Yeni Karar Çerçevesinde Anayasa Şikâyeti Kurumunu Geleceğiyle İlgili Kuşklar” (<https://anayasatakip.ku.edu.tr/proje-akademisi/akademinin-sesi>)

Week 14: Summary and a general evaluation

- Reflections on contemporary problems of democracy and rule of law in Turkey
- Prospects for the future

Reading materials:

- Freedomhouse, Turkey Report 2020:
<https://freedomhouse.org/country/turkey/freedom-world/2020>
- Demirhan Burak Çelik, “16 Nisan Anayasa Değişikliği: Osmanlı-Türkiye Anayasacılığının İkinci Büyük Kopuşu” Anayasa Hukuku Dergisi - Cilt: 6/Sayı:12/Yıl:2017.