

CONSTITUTIONAL NEWS

AN INTERNATIONAL CORPUS CONSTITUTIONAL GOAL: EIGHT YEARS OF JOURNAL OF CONSTITUTIONAL LAW (JConstL)

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Journal of Constitutional Law (*Revue de droit constitutionnel*) is a refereed journal that was decided to be published by the Constitutional Law Research Association (Anayasa-Der) in 2012. Scholars founded Anayasa-Der after a call to academics engaged in the field of constitutional law in Turkey, and today has a membership of close to a hundred. Shortly after the foundation of the association, Journal of Constitutional Law (hereafter JConstL) started to be published. It is Turkey's first and so far, (December 2020) the only "constitutional law" themed scientific peer-reviewed journal (ISSN: 2147-1061). It is published biannually, in June and December. The first issue of the JConstL was published in June 2012, and all issues have been published in a timely and complete manner so far. The journal is indexed in TR Index (ULAKBİM) Law Database.

JConstL from the first issue has shown sensitivity in the constitutional law developments in Turkey and the world, and the current problems of the constitutional issues. "The journal has kept Turkey's constitutional chronic" sentence will not be too extravagant. Sixteen issues published over eight years; constitutional developments in the world and Turkey's current constitutional problems discussed in both theoretical and practical format. Reviews and articles on recent judicial decisions have been published. In this respect, the JConstL has the feature of a reference that will shed light on constitutional developments and the history of Turkish constitutionalism as well as Turkish political life.

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First 16 Issues: A Short Description

The first issue of the journal has coincided precisely with the constitution renewing periods of Turkey. In April 2011, the symposium titled *Renewal of the Constitution: Constituent Power in the Continuity of the Constitutional Order* was held in cooperation with the International Association of Constitutional Law (IACL) and the Anayasa-Der. In the symposium, Turkey's constitutional experience from the beginning, constitutional developments in several states, new approaches to constitution-making, constitutional problems and some critical issues regarding the constitutional amendments were discussed. The journal, which the Anayasa-Der decided to publish, reserved its first issue on the renewal of the constitution. It started with the introduction of the papers presented at the mentioned symposium to the constitutional literature. 9 of the 19 articles in the first issue were written by Turkish scholars; 10 of them belong to authors who were professors of distinguished universities or members of high jurisdictions, from Germany, Philippines, France, South Africa, Switzerland, Egypt, Norway, Poland and Romania. All 19 articles were published in Turkish. At the same time, 12 of these articles were in English; 6 of these articles were in French, an essay is available in both English and French. In other words, a total of 39 articles were published in the first issue of the journal. The first issue is 657 pages in total. Published articles in this issue that will lead to the constitution-making debate in Turkey, have the capacity to provide a significant contribution.

The second issue deals with the constitutional developments in the Mediterranean basin from a regional perspective, with a theme that is complementary to the first issue. The papers presented at the *Les processus constitutionnels dans le bassin méditerranéen* (Constitutional Processes in the Mediterranean Basin) symposium organized jointly by the *Constitutional Law Association of France* and the *Tunisian Constitutional Rights Association* on April 27, 2012, formed the framework of the second issue. In this issue, authors were from 10 different countries, and 5 of them were from Turkey; totally, 15 articles were submitted to the second issue. From the Maghreb to Mashriq, Algeria, Tunisia, Egypt; constitutional experiences of Spain and France in the Northern Mediterranean were presented. Three Turkish parliamentarians from different political parties, who played the most active role in the constitution-making process in Turkey; their opinions on Turkey's constitutional renewal experience, have been helpful in terms of telling the period of the political

environment. Articles by foreign authors, all of which were in French, have been delicately translated into Turkish. The second issue was published as a total of 26 articles and 370 pages, including 11 papers in both Turkish and French. The second number, renovation of the constitutional process of Turkey, is an essential guiding manual.

The third issue includes six valuable articles as well as translated articles, judicial decision reviews, translations of ECHR decisions, book review and up-to-date constitutional news. Besides articles mentioning Turkey's current constitutional problems in that term, also three papers were published in memory of two significant genius of Turkish Constitutional Law late Server Tanilli and late Bülent Tanör. With this issue, the studies of young academicians have also taken part in the journal.

The fourth issue was focused on the renewal constitution in Turkey and debates in 2013 following the presidential candidacy period, in particular, has given place to the problems of freedom and liberties that emerged after the Gezi riot, in eight essays that contribute mentioned issues. Also, judicial decision reviews and current constitutional news continued to be published in this issue.

The fifth issue included the works presented in the workshop titled *Three-year General Overview of 2011-2013*, in which the Constitutional Court's decisions taken in the period following the restructuring of the Constitutional Court after the 2010 Constitutional amendment were discussed in detail. This issue includes 18 articles and 2 article comments and is 454 pages in total. The Constitutional Court's decisions closely related to fundamental rights and freedoms between 2010 and 2013, various judicial review decisions, the decree regime, the individual application procedure and the structure of the Constitutional Court, both the design and the functioning of the Constitutional Court, as well as the content of its decisions, were discussed in many aspects. The fifth issue can be named the *Constitutional Court Special Issue*. Unlike the previous issues, all of the publications in the fifth issue are in Turkish.

In the sixth issue, more articles based on constitution-making experience in addition to rights and freedoms. Parallel to the constitutional debates in Turkey, papers which focused on the 2014 presidential election is selected for this issue. This issue includes French and Turkish refereed articles as well as judicial decision reviews, constitutional news and book reviews, and has reached 292 pages.

The articles in the seventh issue have focused on the impact of the European Convention on Human Rights and the decisions of the ECtHR on domestic law, and especially comparative studies are included. This issue contains individual complaint decisions and book review. Moreover, in this issue, a declaration was published both in Turkish and English language, with the signature of numerous public law professors, which concerns non-implementation of separation of powers in Turkey. The seventh issue, which includes eight peer-reviewed articles, is 311 pages in total.

The eighth issue of the journal contains papers relating to constitutional development in Georgia, Colombia and Bolivia, ECHR and electoral boards as well as critical news related to Turkey's agenda, judicial decisions and review of judicial decisions. In this issue, the *Anayasa-Der* published a declaration signed by 82 academics titled *Calls from Academics to Constitutional Institutions: The President Casts Shadows upon Elections!* The seven peer-reviewed articles, a broad assessment of the Constitutional Court decisions, two book reviews, several critical constitutional developments in the world and Turkey took place in, and the eighth issue was 330 pages.

The ninth issue consists of six peer-reviewed articles, most of which are on the legislature, and the decision, news and book review that also concern the legislature. All of the articles in this issue belong to Turkish authors and are in Turkish. This issue can be called the *Special Issue for Legislature* and is 273 pages in total.

In the tenth issue, under the spirit of the state of emergency, some articles prioritize the state of emergency and restrict rights and freedoms. Besides, two foreign authors' articles on Peruvian experience in constitutionalism and the unalterable articles of the constitution have been included. A significant feature of the tenth issue is that much space is reserved for judicial decision review, judicial decision translation and judicial decision summaries. The Constitutional Court's decisions on the emergency decrees, constitutional review and individual application decisions have been given in comprehensive coverage. This issue contains several numbers of translations and short summaries of ECtHR decisions and also 531 pages in total.

The eleventh issue was published at a time when the effects of the state of emergency conditions were felt. The eleventh issue starts with the foreword (total of 42 pages in Turkish and English) by İbrahim Özden

Kaboğlu, who is the president of Anayasa-Der, editor of JConstL and is also a victim of a state of emergency decree, that indicates all the lawlessness of the state of emergency in practice. This issue includes six peer-reviewed articles that three of them on the effects of the 2017 Constitutional amendments, two articles on the Constitutional Court and a theoretical article on comparative constitutional law by a foreign author. Similar to the previous issue, this issue has given comprehensive coverage of the ECtHR and Turkish Constitutional Court decision summaries, consists of 500 pages in total.

The twelfth issue of JConstL was published soon after continued State Emergency conditions and also in a period which the most fundamental constitutional amendments created in the history of the Republic of Turkey. In this issue, four peer-reviewed articles, two of them by foreign authors, focusing on the theoretical issues of constitutional law, with emphasis on human rights and two book reviews took part. The most important feature of this issue was the publishing of seven valuable papers presented at the *Constitutional Achievements Workshop* organized by the Anayasa-Der on October 21, 2017, as a selected file. This issue was 217 pages in total.

The thirteenth issue was published during the 2018 general elections. There were five refereed articles on the 2017 Constitutional amendments, and situations after the state of emergency, and the decisions of the Constitutional Court in the state emergency period. This issue is different from other issues, except for the foreword, only peer-reviewed articles have been published, and it was 268 pages in total.

The fourteenth issue was the first published issue after the new government system was implemented. Five peer-reviewed articles in this issue are about some institutions in the new order and rights and freedoms. This issue also includes two non-refereed articles under the heading of constitutional news, examining how the new government system has been reached. In this issue, full-text translation of ECtHR decision of *Kaboğlu/Oran v Turkey*¹ case has been published. The fourteenth issue was 328 pages in total.

¹ *Kaboğlu/Oran v Turkey* App no 1759/08, 50766/10 and 50782/10 (ECtHR, 30 October 2018)

The fifteenth issue was published at a time when the state of emergency aftershocks continued, and the effects of the new government system were beginning to be understood. Published five peer-reviewed articles were generally related to these issues. This issue also includes a peer-reviewed judicial decision review. This issue, in a similar way to the previous issue, included three non-refereed assessments paper on the agenda of Turkish constitutional law. This issue has been published in a total of 274 pages.

The sixteenth issue is the last issue of the eight-year consistent publication of JConstL. In this issue of 243 pages, there were four peer-reviewed articles on the theoretical issues of constitutional law. Under the constitutional news, there were two judicial decision assessments, one of which is the Turkish Constitutional Court, and the other is the ECtHR as well as a report dealing with climate change with a rights-based approach.

A quantitative review of JConstL

The Journal of Constitutional Law has been published twice a year since 2012 when it started publishing and reached 16 issues in eight years. None of these volumes was combined. It is challenging to comply with the rule of stable publishing for many journals/reviews published in Turkey, both quarterly or biannually. Even the most rooted journals appear in combined numbers, especially in bed of nails such as coups and martial law. It is vital to maintain this stability in the eight most turbulent years of constitutional law in our history, under the state of emergency and despite the state of emergency.²

Nowadays, 125 peer-reviewed articles have been published in the Constitutional Law Journal, means that an average of 7-8 articles is published in each issue. This average is a pretty good number for a peer-reviewed journal. However, the number of peer-reviewed articles by years differs. The number of articles, which was 19 in the first issue, tended to decrease over time and decreased to around 5-6 average in the last issues.

The total of non-refereed articles, special issue articles and reviews on current constitutional law debates is 20. The average number of non-refereed articles per issue is 1.25. Three special files were published in

² For example, the Law Journal of Istanbul University was published between 1979-1982 by combining 12 issues (Volume: 45, Issues: 1-4). In other words, 12 issues have been subtracted as a single volume. It is a striking example in terms of showing the impact of the 12 September military coup on universities and academia.

JConstL so far. The first special file of JConstL was in the 3rd issue with the title of *Prof. Dr. Server Tanilli and Prof. Dr. Bülent Tanör Commemoration*. Two papers on Tanilli and one on Tanör were presented at the commemoration event held at the Istanbul University Congress Cultural Center on November 30 2012. The second Special File was published in the 5th issue of the journal. Eighteen papers presented at the *Constitutional Court Before the Dilemma of Security and Freedom* workshop organized by the Anayasa-Der on October 29, 2013. The third special file included eight papers presented at the *Constitutional Achievements Workshop* held by the Anayasa-Der on October 21 2017. This file has been published in the 12th issue. Apart from these selected files, several reviews (in fact, most of them are supposed to be scientific essays), which are under the title of constitutional news, but which include a comprehensive analysis and evaluation beyond just providing information, are included. The constitutional news heading started to turn into review papers beyond brief information starting from the 6th issue of the journal. Those between 6-9 numbers are relatively short. However, since the 14th issue, the volume and number of these articles have increased. For example, the article by Fazıl Sağlam in the 15th issue is 36 pages, and the report by Seda Yurtcanlı Duymaz in the 16th issue is 42 pages. It would be more appropriate to name them as "non-refereed articles" instead of "news". Until today, only one book chapter translation was published in JConstL. In the 3rd issue of the journal, a chapter of Dominique Rousseau's book *La démocratie continue* (Sustainable Democracy) was translated into Turkish by Nesrin Yılmaz Sales.

So far, a total of 22 papers have been published in the JConstL under the *constitutional law news* headings. This journal performs a critical function with the constitutional law news headings. For instance, in the 3rd issue under *constitutional law news* headings compiled by Serkan Köybaşı and Tolga Şirin, the current constitutional developments from Turkey, Bolivia, Mexico, Fiji, Iceland, Egypt, Scotland, Belgium, France, Germany and Hungary, the critical decisions of the Turkish Constitutional Court and the decisions of the ECtHR and a list of 22 books were given in the field of constitutional law, were the subject of the news. Erkan Duymaz and Tolga Şirin compiled the news in the 4th issue. Constitutional developments from many various countries such as France, Italy, Germany, Azerbaijan, TRNC and the developments regarding the Council of Europe, the ECHR and the ECtHR, the list includes the most

recent ECtHR and Turkish Constitutional Court decisions were held under constitutional law news headings as well as the list of 33 new books that have been newly added to the constitutional law literature. Constitutional law news is beneficial for theorists and practitioners who follow constitutional law literature and implementation. It has a feature that can attract the attention of those dealing with not only constitutional law, but also many social sciences disciplines such as political science, public administration, international relations, sociology and history.

Another type of study published in JConstL is the review, summary and translation of court decisions. Critical decisions of the European Court of Human Rights were translated, and decisions of the Turkish Constitutional Court of Turkey were published in critical analysis. To date, five decision reviews (a total of 7 with two peer-reviewed reviews) have been published.

Up to now, eight book reviews have been included in the Constitutional Law Journal. The average per issue is 0.5. The number of book reviews for a journal of this nature is deficient. The publication of book reviews on constitutional law should be encouraged.

The 16 issues of JConstL published so far are 5771 pages in total. The most voluminous of these is the 1st issue with 657 pages; the least voluminous is the 12th issue with 217 pages. The average number of pages in the number of journals is 360. This number is over most of the many academic journals in Turkey.

Most of the publications published in JConstL are in Turkish. Of the 125 peer-reviewed articles, 81 (64.8%) were published only in Turkish. However, 20.8% of the refereed articles are in French, and 12.8% are in English in the journal, which attracts a large number of foreign authors. Two articles have been published in all three languages so far. Turkish translations of 25 French and 16 English articles were published so far.

Why does the Journal of Constitutional Law matters?

JConstL is the first thematic academic journal in the name of *constitutional law* in Turkey. To date, many law faculties published a journal called "... Journal of Law Faculty". Istanbul University Faculty of Law has published journals specific to some branches of law. The Constitutional Court has been publishing the journal "Constitutional Review"

since 1984. Another journal in this field is the "Journal of Legislative", which is published by the Legislative Association as quarterly. This journal includes articles on parliamentary law in particular and constitutional law theory in general. This journal started to be published in 2006, and its 40th issue was published by the end of 2019. As a result, there are some similar periodicals, but JConstL is still the first and the only thematic academic journals in the field of constitutional law in Turkey.

The most crucial feature that makes JConstL outstanding is its seriousness. This journal has been published with great effort, enthusiasm and patience since 2012. The last eight years, the period in which Turkey had one of the most critical constitutional debate, and the journal was issued without a break. The forewords reflect the seriousness of the JConstL the best. These forewords are not just a cover paper for a journal, but most of them are worth an article, evaluate current constitutional developments before presented articles.

JConstL is a truly international journal, even though it did not use this adjective. It has an advisory board consist of academics from the world's and Turkey's elite universities. JConstL has published so far, a total of 40 articles, 34 of which are refereed, have been published by 34 different authors from 15 different countries. All of these articles have been published in their original versions and with their Turkish translations.

The Journal of Constitutional Law includes theoretical studies on Turkish political life, political parties and electoral law, as well as sub-fields of constitutional law regarding institutional, rights and freedoms law and procedural law. These studies include both in-depth theoretical discussions and offer solutions in the practical field. In other words, they do not beat the air, and the most realistic solutions are offered regarding the agenda and the current constitutional problems. It is possible to observe Turkey's constitutionalism process by following JConstL. It also provides up-to-date coverage of high court case law and ECtHR judgments, which concern theorists but mostly practitioners. The journal includes not only a refereed article but also a decision review, decision summary, decision chronicle; Having review articles on current issues, in other words, the variety of articles makes it not a dull academic journal.

What makes JConstL significant is not only that publishing articles with great content, but acting with an understanding that cares for its hometown. They are fighting for democracy, human rights and the rule of law. It fulfils a historical duty both by determining the themes of the

articles and by making the press releases published by Anayasa-Der. In 6th issue of JConstL, a declaration published for informing the public on the most critical debate of constitutional issues in Turkey's election of the President "President: Election and Appointment Process". In the 7th issue (2015/1), a statement signed by 30 valuable legal academics with the title of "Declaration of Respect for the Press and the Public to the Constitution and Democratic Processes" was published. In issue 8 (2015/2) "Call from Academics to Constitutional Institutions: The President Casts Shadows on Elections!" In the statement, published with the signatures of 82 academics, it was stated that the President had overshadowed the security of the elections while going to the June 7, 2015 elections and called for impartiality. The JConstL preferred to fight against the lawlessness caused by the state of emergency despite the state of emergency, not with a conformist approach, in the most painful days of the state of emergency.

Consequently, the JConstL is the witness of Turkey's constitutional development. It is also a constitutional law corpus that involves theoretical discussions about this period in the world. Not only authors from Turkey, but most authors from various countries also contributed to the JConstL. Not a university or a government agency or an economically strong organization; the publication of the JConstL by a robust academic association that conducts its business with membership fees, makes it more valuable.

Conclusion

The JConstL should continue its publication line that it has been maintaining since 2012, without breaking it. The first goal of the journal, which has been indexed in ULAKBİM TR Index for a long time, should increase its awareness to be indexed in the Social Science Citation Index (SSCI). There are two significant journals that it can take as an example, one is the European Constitutional Law Review (EuConst), published by Cambridge University, and other the International Journal of Constitutional Law (ICON), published by Oxford University and New York University. The JConstL should focus on internationalization.

JConstL includes many different types of essays. However, in its latest issues, constitutional news has been replaced by up-to-date reviews. The constitutional reporting by Tolga Şirin-Serkan Köybaşı-Erkan Duymaz in the third and fourth issues of the JConstL should be resumed. It involves a long process and a great effort such as detecting interesting

news and reporting it in Turkish by a careful screening carried out in many countries around the world to Asia-Africa-Europe-America-Oceania in the background. Young academics, in particular, should be encouraged to write decision review, decision summary and decision translation, as well as constitutional news.

At least the JConstL is on its way to becoming an international constitutional corpus. There is no doubt that it will achieve this.