

RETROACTIVITY IN BINDING CASE LAW: IMPLICATIONS FOR TURKISH TAX LAW

Doc. dr. sc. Muhammet Durdu*

UDK 336.22(560)

<https://doi.org/10.30925/zpfsr.46.3.11>

Ur.: 24. veljače 2025.

Pr.: 11. studenoga 2025.

Stručni rad

Summary

Constitutional courts serve as guardians of constitutions, with their judgments binding on all parties to uphold the supremacy of the Constitution. In Türkiye, there is a distinctive judicial remedy for jurisprudential conflicts. The Council of State is mandated to resolve disputes between its sections. These decisions, known as “decisions on the unification of conflicting judgments,” are binding for all courts and the administration. These decisions, along with the Turkish Constitutional Court judgments, are considered binding case law in Turkish Law. However, the enforcement date of binding case law is a controversial issue in Turkish legal practice. In this paper, we intend to shed light on the issue of retroactivity of binding case law in Türkiye by comparing practices in other countries like Germany, France, and the U.S.A. Afterward, we analyze tax-related matters within binding case law and its retroactivity in Türkiye. Based on our findings, we suggest that binding case law in Turkish tax law should be interpreted with a greater emphasis on the principle of equality. The prohibition of retroactivity in binding case law should also be interpreted more flexibly. Moreover, we propose that the Turkish Constitutional Court should have the authority to determine the enforcement date of its judgments, including prerogatives such as the stay of execution and ruling of nullity legally to hinder controversy over its decisions.

Keywords: *retroactivity in laws; constitutional courts; tax law; ruling of nullity; stay of execution.*

* Muhammet Durdu, Ph.D., Assistant Professor, Necmettin Erbakan University, Faculty of Law; mdurdu@erbakan.edu.tr. ORCID: <https://orcid.org/0000-0003-4912-4410>.

1 INTRODUCTION

To ensure rule of law, the supremacy of the constitution must be acknowledged and practically enforced. This matter is too significant to be left solely to the legislators and executive branch in any state. Constitutional courts emerged in the 20th century. They are crucial in achieving this objective. Indeed, it can be argued that their very purpose is to realize the supremacy of the Constitution in practice. To achieve this, full compliance with the constitutional court's decisions is essential.

In addition to the binding decisions of the Constitutional Court, it is observed that the Council of State (Tr *Danıştay*) and the Court of Cassation (Tr *Yargıtay*) also deliver decisions on the unification of judgments in Türkiye. All these decisions are binding. In other words, other cases similar to these decisions must be assessed in accordance with them. These two types of decisions, known as "binding case law" stand out in Turkish law and represent a part of the legal rules. A legal debate arises during the determination of the regime for its enforcement.

Legal certainty is undermined if a binding judgment is applied retroactively, while a positive outcome for ensuring equality may emerge. Similar issues arise in the field of taxation. Even if the tax paid by the taxpayer is deemed unlawful by a subsequent binding judgment, the taxpayer may not receive a refund when the binding judgment is not retroactive. Meanwhile, the tax liability of non-payers is eliminated. In other words, those who pay remain with their payments; those who do not pay take advantage of it.

After explaining the general regime for the enforcement of binding case law in Türkiye, this study will provide examples from other countries. The outcomes arising in the context of tax law will be evaluated by addressing the debates in the doctrine. Proposals for changes to the current assumptions will be made to balance the principle of equality and legal certainty.

2 WHEN DO CONSTITUTIONAL DECISIONS ENTER INTO FORCE?

Constitutional courts have a vital role in ensuring the implementation of constitutional norms. In addition to other tasks like financial audit of political parties, and criminal court for senior public officials, they are mainly responsible for the adherence of laws to the constitution. They could annul the law they deemed unconstitutional to make sure this responsibility is granted; however, there is a problem relating to this responsibility in some countries where retroactivity of constitutional court decisions is constitutionally blocked. Therefore, unconstitutional laws would be in effect from the date they are legislated to the annulment decision. In that period, the government or other agencies can achieve their intended objectives.¹ There are ridiculous historical examples of this kind in the history of the Turkish constitution.

¹ Ş.Cankat Taşkın, "Anayasa Mahkemesinin Yürürlüğün Durdurulması Kararları ve Yasama Organının Hukuka Aykırı İşlemlerden Doğan Sorumluluğu," *TBB Dergisi*, no. 73 (2007): 306.

For example, in 1966, the Grand National Assembly of Türkiye (hereinafter GNAT) had enacted a law giving legislators favorable pension rights; however, the Constitutional Court of the Republic of Türkiye (hereinafter CCRT) decided that the law was unconstitutional. After the repeal, the GNAT enacted the same law one more time and the CCRT annulled it again. This process was repeated 10 times in total.² During this period, many deputies became pensioners because they were eligible for retirement during the period of the law's enforcement date from enactment to annulment. Article 153 of the Constitution gives rise to such a result, which says that "annulment decisions are not retroactive."³

Similarly, the law, which gives the prerogative to foreigners taking lands in Türkiye, was annulled by the CCRT.⁴ However, many property transfers to foreigners occurred from the decision date to the promulgation because the decision was in effect after the promulgation.⁵ In that period, a stay of execution was sought from the CCRT, but the Supreme Court dismissed the claim because it does not have the prerogative to do that.⁶ The stay of execution and ruling of nullity could play a crucial role in ensuring conformity to the Constitution, which will be discussed later in this paper.

The non-retroactivity of the decisions of the CCRT produces significant inequality between taxpayers. It penalizes compliant taxpayers by barring refunds for unconstitutional taxes, while simultaneously rewarding non-compliant taxpayers, who avoid the tax altogether by not paying before the ruling. This inequality is not desirable for tax compliance in Türkiye.⁷

2 Detected laws about this issue as following: The law no. 751, Official Gazette, no. 12244/66, the law no. 1425, Official Gazette, no. 13982/71, the law no. 2254, Official Gazette, no. 16861/80, the law no. 3284, Official Gazette, no. 19114/86, the law no. 19797/88, the law no. 3671, Official Gazette, no. 20679/90, the law no. 3855, Official Gazette, no. 21433/92, the law no. 4049, Official Gazette, no. 22133/94, the law no. 4104, Official Gazette, no. 22262/95, the law no. 4234, Official Gazette, no. 22965/97, the law no. 4505, Official Gazette, no. 23962/00. Detected annulment judgments about this issue as following: Anayasa Mahkemesi, E. 1971/44, K. 1072/29 of June 6, 1972; Anayasa Mahkemesi, E. 1986/22, K. 1986/28 of December 2, 1986; Anayasa Mahkemesi, E. 1988/11, K. 1988/11 of May 24, 1988; Anayasa Mahkemesi, E. 1993/38, K. 1993/5 of February 2, 1993; Anayasa Mahkemesi, E. 1994/59, K. 1994/83 of December 18, 1994; Anayasa Mahkemesi, E. 1996/4, K. 1996/39 of October 17, 1996; Anayasa Mahkemesi, E. 1996/51, K. 1998/17 of May 13, 1998; Anayasa Mahkemesi, E. 1998/58, K. 1999/19 of May 27, 1999.

3 Kadir Arıcı, "Türkiye'de Milletvekillerinin Sosyal Güvenliği Meselesi," *GÜHFD* 17, no. 1-2 (2013): 77-121; Hıfzı Deveci, "Anayasa 11 Kez Delinse Bir şey Olur mu?," *Birikim Dergisi* 133 (2000): 105; Mustafa Babayigit, "Türk Hukukunda Anayasa Mahkemesi Kararlarının Geriye Yürümezliği Sorunu," *TBB Dergisi* 124 (2016): 193; Mehtap Demirörs, *Anayasa Mahkemesi Kararlarının Geriye Yürümezliği Sorunu* (Ankara: Astana Publication, 2020), 202.

4 Anayasa Mahkemesi, E. 1984/14, K. 1985/7 of June 13, 1985.

5 The time gap between the decision and promulgation date becomes more problematic when extended. See: Burhan Kuzu, "Anayasa Mahkemesinin İptal Kararlarının Geriye Yürümezliği Sorunu," *İÜHFMD* 52, no. 1-4 (1986/1987): 189.

6 Demirörs, *Anayasa Mahkemesi*, 149.

7 Atilla Uyanık, "Vergi Bilinci ve Vergiye Gönüllü Uyumun Vergi Gelirlerine Etkilerinin Değerlendirilmesi," *Maliye Dergisi*, no. 177 (2019): 354.

2.1 Some Examples from Other Countries

In some countries, there is no such problem because their constitutional court reviews laws before they come into force. This rule results in all laws being presumed to be constitutional. France is one of them.⁸ Senior officials of the executive branch, presidents of the legislative assembly and the Senate, and 60 members of each legislative branch may refer any law to the Constitutional Council for review on the grounds of unconstitutionality before it comes into force, which hinders the promulgation of the law.⁹ This type of constitutional review is exceptional and does not guarantee ongoing compliance with constitutional norms. Sometimes, a contradiction to the Constitution could only be realized upon enforcement.¹⁰

Mostly, constitutional courts review laws upon appeal.¹¹ In these circumstances, constitutional courts have developed jurisprudence relating to the problem to avoid unfair results. Upon this, legislation in line with this jurisprudence has subsequently developed, for example, in Germany.¹² The Federal Constitutional Court of Germany could make laws void and enforce them retroactively; additionally, it delivers judicial orders intended to direct legislative activity.¹³ Besides these, in specific instances, the Federal Constitutional Court declares certain provisions to be incompatible with the Basic Law and sets a future date beyond which these provisions may no longer be applied. This approach is particularly employed when the legislature has multiple options to rectify the constitutional violation, or when the immediate cessation of

8 Xavier Philippe, “Constitutional Review in France: The Extended Role of the Conseil Constitutionnel through the New Priority Preliminary Rulings Procedure (QPC),” *Annales U. Sci. Budapestinensis Rolando Eotvos Nominatae* 53 (2012): 66.

9 Martin Harrison, “The French Constitutional Council: A Study in Institutional Change,” *Political Studies* 38 (1990): 603; Alec Stone, “Where Judicial Politics Are Legislative Politics: The French Constitutional Council,” *West European Politics* 15, no. 3 (1992): 32. “Concrete review” of laws was introduced in France in 2010. See: Arthur Deyevre, “The French Constitutional Council,” in *Comparative Constitutional Reasoning*, ed. András Jakab, Arthur Deyevre, and Giulio Itzkovic (Cambridge: Cambridge University Press, 2017), 328.

10 Babayiğit, “Türk Hukukunda,” 193; Demirörs, *Anayasa Mahkemesi*, 149.

11 Germany, Italy and Portugal are exceptional samples where constitutional court decisions are retroactive. See Demirörs, *Anayasa Mahkemesi*, 7; Babayiğit, “Türk Hukukunda,” 193.

12 In Germany, the Federal Constitutional Court’s interim order prerogative is not in the Constitution but in the Federal Constitutional Court Law. See: Zafer Gören, “Türk Alman Anayasa Hukukunda Anayasa Yargısının Sınırları ve Yürürlüğü Durdurma Kararları,” *Anayasa Yargısı Dergisi* 44 (1995): 236; Yavuz Sabuncu, “Alman Anayasa Yargısında “Geçici Tedbir Kararı,” *Amme İdaresi Dergisi* 17, no. 2 (1984): 77; Bülent Serim, “Anayasa Yargısında Yürürlüğü Durdurma Yetkisi,” *Amme İdaresi Dergisi* 29, no. 1 (1996): 13.

13 Thomas Gavron, and Ralf Rogowski, “Implementation of German Federal Constitutional Court Decisions,” in *Constitutional Courts in Comparison*, eds. Ralf Rogowski and Thomas Gavron (New York: Berghann, 2016): 222; Arthur Benz, “The Federal Constitutional Court of Germany: Guardian of Unitarism and Federalism,” in *Federalists or Unitarists: Courts in Federal Countries*, eds. Nicholas Aroney and John Kincaid (Toronto: The University of Toronto Press, 2017): 204; Ruth Weber and Laura Wittmann, “The Role of Precedents and Case Law in the Jurisprudence of the German Federal Constitutional Court,” in *Constitutional Law and Precedent International Perspectives on Case-Based Reasoning*, ed. Monika Florczak-Wator (New York: Routledge, 2022): 86, 87.

the law's effect would result in greater disadvantages compared to its continued application during a transitional period.¹⁴ In the U.S., the decisions of the Supreme Court of the United States were applied retroactively till the 1960s. After that, the Supreme Court began to create some exceptions in criminal and civil law.¹⁵

A fundamental tension exists between legal certainty and the principle of equality in the retroactive application of Supreme Court decisions. On one hand, retroactivity is essential for correcting systemic injustices and ensuring that the law is applied consistently, even to past actions. On the other hand, it undermines the reliance interests of entities that acted in good faith under the previous legal understanding. The central challenge for the legal system is to establish an equilibrium that respects both the declaratory nature of judicial rulings and the practical need for predictable governance.

2.2 Grounds of the Prohibition of Retroactivity in Binding Case Law

The reason behind blocking retroactivity in constitutional court decisions is to protect the legitimate expectations and acquired rights. Everyone behaves according to the law in force. Annulling a law with retroactive effect harms legal certainty, even if done by a constitutional court.¹⁶ The theory of legal appearance stands with this view. According to the theory, once promulgated, the law should be in force till its repeal, even if it is unconstitutional.¹⁷ Besides, the presumption of constitutional conformity also necessitates non-retroactivity in constitutional court decisions.¹⁸ On the other hand, non-retroactivity in constitutional court decisions could result in inequality between persons. There should be an equilibrium between the principle of equality and legal certainty.¹⁹ When there is no legitimate expectation and unfair transactions relating to it, the annulment decision should be retroactive, as stated in the doctrine.²⁰

From the Turkish perspective, the prohibition of retroactivity in the decision of the CCRT has existed since the foundation of the Constitutional Court with the 1961 Turkish Constitution. The rationale of the 1961 Constitution demonstrates that

14 Bundesverfassungsgericht, "Effect of decisions," accessed December 5, 2024, https://www.bundesverfassungsgericht.de/EN/Decisions/EffectOfDecisions/effectofdecisions_node.html.

15 U.S. Congress, "Analysis and Interpretation of the U.S. Constitution," accessed December 3, 2024, https://constitution.congress.gov/browse/essay/artIII-S1-7-3-1/ALDE_00013601/.

16 Anayasa Mahkemesi, E. 1989/11, K. 1989/48 of January 22, 1990; Demirörs, *Anayasa Mahkemesi*, 10.

17 Kuzu, "Anayasa Mahkemesi", 199.

18 Ülkü Azrak, "Anayasa Mahkemesi Kararlarının Geriye Yürümezliği", *Anayasa Yargısı Dergisi* 1 (1984): 158-160.

19 Erol Cansel, "Anayasa Mahkemesi'nin Verdiği İptal Kararından Doğan Kimi Sorunlar," *Anayasa Yargısı Dergisi* (1992): 101.

20 Billur Yaltı, "Anayasa Mahkemesi'nin Vergi Konulu Kararları Bakımından Geriye Yürümezlik Esası: "Ex Tunc- Ex Nunc- Pro Futuro Etki" Üzerine Değerlendirmeler," in *Vergi Hukukunda Geriye Yürümezlik Esası*, ed. Billur Yaltı (İstanbul: Beta Publication, 2011), 181; Babayiğit, "Türk Hukukunda," 192.

social order is the reason for the non-retroactivity in the CCRT decision.²¹ Article 153 of the current Turkish Constitution (1982 Constitution) also blocks the retroactivity of the CCRT decisions. In legal doctrine, the term used in the Constitution is criticized because “annulment” inherently contains a retroactive meaning. Instead of the annulment, the Constitution should have used the “abolition” term, from promulgation onward effectivity.²²

2.3 Derogations of the Prohibition of Retroactivity

Non-retroactivity in the CCRT judgments is an exceptional rule.²³ In the Turkish practice, within the concrete control of norms,²⁴ the applicant court must consider the CCRT’s decision on the issue, meaning that, especially after the annulment decisions, the CCRT judgments are in effect on these cases retroactively. Besides, all the ongoing proceedings must consider the judgment of the CCRT if it is related to the case.²⁵

In addition, the doctrine asserts that the annulment decisions relating to the laws about one-off execution should be retroactive. Otherwise, the judgment would be nonsense in these kinds of laws.²⁶ There is an example of this argument in the history of the Turkish Constitution. In 1953, the ruling party made a law stating the seizure of assets acquired unfairly by the previous ruling party (CHP). After the establishment of the CCRT in 1961, the CHP appealed against this rule, and the Supreme Court decided on the unconstitutionality of the law and did not dive into the retroactivity issues of the annulment decision. In practice, an executive order was given to return assets to CHP. The opposition party of that time appealed to the Council of State (hereinafter CoS), and the Court dismissed the appeal.²⁷ From this example, we could conclude that the annulment decisions on laws about one-off execution are in force retroactively. Whether we could infer that annulment decisions on one-of taxes are retroactive or not may be contested if this likelihood is realized.

2.4 Some Issues Relating to the CCRT Decisions

As a rule, the CCRT decisions enter into force from the promulgation onwards.

21 Grand National Assembly of Türkiye, The Rationale of the 1961 Constitution of the Republic of Türkiye, 1961.

22 Yıldırım Uler, “Anayasa Mahkemesi İptal Kararları Geri Yürür,” in *Bahri Savcı’ya Armağan*, (Ankara: Mülkiye Birliği Vakfı Publication, 1988): 517; Elif Yılmaz, *Hukuki Güvenlik İlkesinin Bir Gereği Olarak Vergi Hukukunda Geriye Yürümezlik İlkesi* (Ankara: GÜ SBE, 2014), 120.

23 The CCRT stated this truth in one of its judgment: “Annulment decisions in some cases affect the past, but in all cases the future”. See: *Anayasa Mahkemesi*, E.E.1989/11, K.1989/48 of December 12, 1989.

24 In this constitutional supervisory framework, courts, with the exception of the CCRT, may petition the CCRT regarding the unconstitutionality of the legislation they utilize in their proceedings.

25 Yaltı, “Anayasa Mahkemesi”, 185, 186.

26 Kuzu, “Anayasa Mahkemesi”, 221.

27 Uler, “Anayasa Mahkemesi”, 521.

Article 153 of the Constitution grants the CCRT the authority to defer the enforcement date of its decision for a year. In these circumstances, what happens to transactions completed between the decision and enforcement dates when the law is annulled? A CoS decision says that even if they are annulled, they should be legal since the decision will enter into force at the enforcement date.²⁸

The deferment prerogative of the CCRT is criticized in the legal doctrine because the Supreme Court can constitutionalize an unconstitutional law for a year, a power not even granted to the legislature.²⁹ In practice, when the enforcement date of an annulment decision is deferred, ongoing cases are generally postponed by interim orders.³⁰ From a taxation perspective, if a tax law is annulled by the Supreme Court, and the enforcement date of the decision is deferred, the tax should be resumed to be collected, because the only purpose of the deferment is to continue the collection of tax.

When the Supreme Court annuls a law, the previous law, lifted by the annulled law, will not enter into force, resulting from non-retroactivity, and the deferment prerogative of the court. If the decision of the CCRT were retroactive, the previous law would enter into force after the annulment, and there would be no legal gap, and no need for a deferment prerogative.³¹ Nevertheless, the CCRT ruled that if the Supreme Court annuls a constitutional amendment due to procedural irregularity, the previous version of the Constitution will be in force again.³²

2.5 *The Situation in the Decisions on the Unification of Conflicting Judgements*

Sometimes, administrative and tax courts in Türkiye interpret the law differently, causing divergent outcomes for similar legal situations. If this contradiction is permanent, the CoS has the authority to decide on the unification of conflicting judgments (Tr *içtihatların birleştirilmesi*). These decisions are binding for all courts and state administrations. With this kind of decision, the CoS could direct the interpretation of the law. The results of similar legal events resemble each other thanks to these decisions, which is essential for fairness and legal certainty. However, what is the fate of the adverse judgments being made before the decision on the unification of conflicting judgments (hereinafter DUCJ)? Are they reviewed again upon the DUCJ? To ensure equity, it should be so; however, legal certainty dictates that the DUCJ should not be enforced retroactively.

28 Danıştay 1D, E. 1988/336, K. 1988/355 of December 19, 1988. There are decisions against this opinion: Danıştay 5D, E. 1989/779, K. 1989/1919 of November 13, 1989; Danıştay 5D, E. 1992/1219, K. 1992/3872 of December 23, 1992.

29 Yalıtı, "Anayasa Mahkemesi," 180; Azrak, "Anayasa Mahkemesi Kararlarının," 153, 154.

30 Yılmaz Aliefendioğlu, "Anayasa Mahkemesi'nce Verilen İptal Kararlarının Zaman İçindeki Etkisi," *Amme İdaresi Dergisi* 23, no. 3 (1990): 7; Demirörs, "Anayasa Mahkemesi," 128.

31 Demirörs, "Anayasa Mahkemesi," 140; Uler, "Anayasa Mahkemesi," 527. The Turkish CoS has made judgment against this ruling. See: Danıştay 5D, E. 1998/4622, K. 1999/1685 of May 24, 1999.

32 Anayasa Mahkemesi, E. 1970/40, K. 1971/73 of October 19, 1971.

In terms of positive law, a DUCJ is not one of the grounds for renewal of proceedings. It is therefore evident that it should not be feasible to retry any final judgment solely on the grounds of related DUCJ. Interestingly, there is a DUCJ on whether the DUCJ is enforced retroactively. According to that decision, retroactivity in DUCJ is unlawful because these decisions are not the judgment of the court of appeal. The DUCJ does not affect either the conflicting judgments that prompted it or other final judgments rendered before it.³³ However, they must be considered in ongoing proceedings since the DUCJ is binding for all courts.

2.6 The Prerogatives of the CCRT to Prevent Inequality

2.6.1 Stay of Execution of Laws

The rationale of the old CCRT law, which dates back to 1962, and is no longer in force now, said that the Supreme Court could establish its trial procedure by laying down rules with its case law, meaning the Supreme Court could decide interim orders even if there is no prerogative to do that. However, the Court refrained from deciding on interim orders initially,³⁴ reasoning the absence of any obvious prerogative for doing so.³⁵ Besides, the enforcement date of the CCRT decisions is clearly defined as a promulgation date by the constitution. Granting the CCRT the prerogative stay of execution makes this rule null; indeed, an interim order containing the stay of execution means that the law is not in force anymore. Indeed, the stay of execution ruling generates similar results to annulment decisions.³⁶

During the ongoing process, the opinion of the Court relating to the stay of execution has altered. In 1993, the CCRT ruled that the stay of execution is a part of the trial. The court, which has the prerogative to decide on the main issue, should have the right to decide on the stay of execution disputes via interim orders. In addition, sometimes legislation could make laws similar or identical to annulled laws, which trivializes the prerogatives of the Supreme Court.³⁷ The Court should have instruments to prevent this consequence.³⁸ Nowadays, the Court holds that it has a prerogative to decide on the stay of execution of laws when necessary. The CCRT has criteria when deciding on the stay of execution disputes. The first is whether the law is manifestly unconstitutional, and the second is whether the case is urgent or the

33 Danıştay İBK, E. 1992/1, K. 1993/2 of June 10, 1993.

34 Gören, "Türk Alman," 236; Demirörs, "*Anayasa Mahkemesi*," 157; Serim, "Anayasa Yargısında," 9.

35 *Anayasa Mahkemesi*, E. 1963/162, K. 1964/19 of March 13, 1964; *Anayasa Mahkemesi*, E. 1972/13, K. 1972/18 of April 6, 1972. The doctrine thinks the stay of execution judgments should be retroactive to hamper legislation trivializing the Supreme Court. See: Babayiğit, "Türk Hukukunda," 209.

36 *Anayasa Mahkemesi*, E. 1977/60, K. 1977/81 of May 24, 1977.

37 *Anayasa Mahkemesi*, E. 1993/33, K. 1993/40 of October 21, 1993.

38 The doctrine says that the CCRT is in the state of necessity to guarantee the constitutionality of the law. If it does not use the stay of execution, it will not make his job. See: Emin Ruhi, "Türk Anayasa Yargısında Yürürlüğün Durdurulması," *AÜEHFD* 5, no. 1/4 (2001): 147.

annulment decision would be pointless if rendered later.³⁹

The CCRT has granted itself the stay of execution prerogative with case law. The doctrine supports this; however, this prerogative should be exercised with caution, as issues of separation of powers have arisen if the law, which is the subject of a stay of execution, is not annulled.⁴⁰ In this situation, the CCRT postpones the enforcement date of the law.

The stay of execution prerogative, created by the CCRT, has been criticized by doctrine in multiple ways. Firstly, in public law and public administration, ineligibility is the main rule. If there is no specific rule to give someone a prerogative, there is no prerogative.⁴¹ The CCRT could judge the stay of execution till the ultimate decision, however, in Germany, the Supreme Court could give an interim order only for three months. The limited time for the interim order is more precise, more preferable for legal certainty.⁴²

In the United States, courts have granted preliminary injunctions⁴³ before the judgment is rendered. The Supreme Court of the United States set the fundamentals of preliminary orders with the *Winter v. NRDC* decision,⁴⁴ stating that there must be four pillars to render preliminary orders: the probability of success in the main case (not the likelihood), irreparable harm without injunction, the balance between parties' interests, and the public interest.⁴⁵ Whether these criteria are considered together or there should be a relative assessment (sliding scale test) on them is a controversy among scholars and circuits.⁴⁶

39 Anayasa Mahkemesi, E. 2008/34, K. 2008/25 of October 31, 2008; Anayasa Mahkemesi, E. 2010/93, K. 2012/20 of February 9, 2012. The Turkish doctrine criticizes these measures because of their ambiguities. See: İlyas Doğan, "Anayasa Mahkemesi Kararlarına Göre Yürürlüğü Durdurmanın Koşulları," *İHFM* 55, no. 4 (1997): 49. In Germany, the Constitutional Court has similar prerogative arising from the Federal Constitutional Court Law. See: Babayiğit, "Türk Hukukunda," 194; The doctrine states that the Supreme Court should compare two situations. The first one is the stay execution decision with the dismissal of annulment appeal and, the other one is the dismissal of the stay of execution appeal with the annulment decision. The Court should choose the better option. See: Serim, "Anayasa Yargısı," 22.

40 Yusuf Karakoç, *Türk Hukukunda Vergi Kanunlarının Anayasaya Uygunluğunun Yargısal Denetimi* (Ankara: Yetkin Publication, 2017), 49.

41 Zehra Odyakmaz, "Yürürlüğü Durdurma," *Anayasa Yargısı* 12 (1995): 152; Fatih Demircan, "Türk Anayasa Mahkemesinin Yürürlüğü Durdurma Kararlarının Hukuki Niteliği," *TBB Dergisi*, no. 120 (2015): 144.

42 Serim, "Anayasa Yargısı," 26.

43 In United States, courts can render other kind of interim orders like temporary restraining orders, stays, injunctions pending appeals. See: Kevin J. Lynch, "Preliminary Injunctions in Public Law: The Merits," *Houston Law Review* 60 (2023): 1071, 1095.

44 Supreme Court of the United States, *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7. (2008).

45 Although these are the main criteria in preliminary orders, there are differences between circuits while legal interpretation of them. See: Bethany M. Bates, "Reconciliation After Winter: The Standard for Preliminary Injunctions in Federal Courts," *Columbia Law Review* 111, no. 7 (2011): 1530.

46 Jean C. Love, "Teaching Preliminary Injunctions After Winter," *Saint Louis University Law Journal* 57, no. 3 (2013): 693; M. Devon Moore, "The Preliminary Injunction Standard:

Preliminary injunctions in the German Federal Constitutional Court Decisions are regulated by Article 32 of the Act on the Federal Constitutional Court. According to the German Federal Constitutional Court, “preliminary injunction is a provisional arrangement intended to ensure that the subsequent decision of the Federal Constitutional Court in the principal proceedings is effective and can be implemented. It is designed to prevent situations that can no longer be reversed”.⁴⁷ The court must consider the urgency and common good in the case. When deciding preliminary injunctions, the Court should weigh the consequences of the admission and dismissal of the preliminary injunction claims. The Court refrains from engaging in such a weighing of consequences only if the principal proceedings are deemed inadmissible from the outset or are manifestly unfounded. In this situation, there is no basis for issuing a preliminary injunction.⁴⁸

2.6.2 Ruling of Nullity

The ruling of nullity is different from annulment decisions. This kind of judgment states that the transaction has never been done or existed. In principle, a judgment is not required for the determination of nullity. Those transactions, which are counted as null, never enter into force from the beginning. The court decision relating to a null transaction is only a declaratory judgment on it.⁴⁹ The CCRT stated that a lack of constituent intent results in the nullity of the transaction. Other deficits had to be assessed within the context of the annulment decisions.⁵⁰ The CCRT had not made a decision that results in the nullity of the law till 2024.⁵¹ Nevertheless, in 2024, the Supreme Court adjudicated that after the infringement decision, revoking a parliamentary seat with a parliamentary decree was null because the CoS was ignorant of its infringement decision. According to the CCRT, there is no valid parliamentary decision about the revocation of the parliamentary seat due to the CoS’s ignorance of the infringement decision made by the CCRT.⁵²

The Turkish doctrine asserts that the ruling of nullity is not part of the continental law systems, except in Germany.⁵³ The Turkish Constitution and the law of the

Understanding the Public Interest Factor,” *Michigan Law Review* 117, no. 5 (2019): 943, 946-947.

47 The Federal Constitutional Court, “Preliminary Injunctions”, accessed November 24, 2024, <https://www.bundesverfassungsgericht.de/EN/TheFederalConstitutionalCourt/TypesOfProceedings>.

48 The Federal Constitutional Court, “Preliminary Injunctions.”

49 Anayasa Mahkemesi, E. 1970/40, K. 1971/73 of October 19, 1971; Yılmaz Aliefendioğlu, “Anayasa Mahkemesi Kararları Işığında Yokluk ya da Yok İşlem,” *TBB Dergisi*, no. 81(2009): 7.

50 Anayasa Mahkemesi, E. 2007/99, K. 2007/86 of November 27, 2007.

51 Demirörs, “*Anayasa Mahkemesi*,” 168. There is a nullity decision relating to the amendment of the Constitution resulting from the breach of the procedural constitutional rules in 70’s. See: Anayasa Mahkemesi, E. 1970/40, K. 1971/7 of October 19, 1971.

52 Anayasa Mahkemesi, E. 2024/43, K. 2024/65 of February 22, 2024, § 26.

53 In Europe, German Federal Constitutional Court has the prerogative to judge ruling of nullity derived from Law of the Supreme Court. See: Osman Can, “Anayasa Yargısında Yokluk,”

CCRT do not contain any prerogative relating to nullity. Despite these facts, giving the prerogative to the CCRT to issue a ruling of nullity would be unconstitutional. The CCRT should be entitled to do something only if it is in the Constitution.⁵⁴ Even if the legislation makes awkward laws, the CCRT will not gain new prerogatives to hamper these laws.⁵⁵

2.6.3 Evaluation of the CCRT Prerogatives

It is necessary, especially in Türkiye, for the CCRT to have the prerogative of ruling of nullity and stay of execution, since the GNAT made laws that aim to deactivate supervision of the CCRT on laws. For example, in 1990, the GNAT made a law, the number 3671, granting deputies some privileges regarding personal financial benefits. After the appeal for unconstitutionality, the GNAT made another law with the same content as a spare law, the number 3855, in case of an annulment of the previous law (3671) by the CCRT.⁵⁶ Making a law identical to another law, which is annulled by the Supreme Court or appealed against, should be regarded as null. Disregarding Supreme Court decisions or making a spare law in case of annulment is unacceptable. This undermines the authority of constitutional courts. However, the CCRT thinks that making a law similar or identical to the law annulled by the CCRT is a grave violation of the constitutional binding of CCRT decisions, not culminating in nullity.⁵⁷

Legislation's usurpation of authority should also be considered null, which means the parliament uses governmental functions other than legislation, i.e., execution and jurisdiction. If the GNAT, the Turkish parliament, makes a transaction relating to execution or jurisdiction, it should be granted as null.⁵⁸

As a result, there should not be retroactivity in constitutional court decisions in principle for legal certainty, in the writer's opinion, and the CCRT should be given the prerogative to retroactively determine the date of enforcement of the decision if it is essential.⁵⁹ In doing so, the CCRT could prevent unequal results by compromising legal certainty to some extent. In addition, the stay of execution and ruling of nullity must be a prerogative for the CCRT to prevent circumventing constitutional rules. The related legislation should be made to eliminate the discussion on the prerogatives of the CCRT.

From the taxation perspective, manifestly unconstitutional tax laws must be null and void at the outset. From promulgation to annulment, many taxpayers may be forced to pay those unlawful taxes. Ensuring a refund for these taxpayers is necessary to comply with the principle of equality. Nevertheless, there is neither derogation of

in *Anayasa Mahkemesinin Kuruluşunun 55.Yılı Anısına 55 Yıl 55 Makale* (Ankara: Anayasa Mahkemesi Publication, 2017): 1105.

54 Can, "Anayasa Yargısında," 1112, 1113.

55 Cem Eroğul, *Anayasayı Değiştirme Sorunu* (Ankara: AÜHF Publication, 1974), 167.

56 Demirörs, "Anayasa Mahkemesi," 169.

57 Anayasa Mahkemesi, E.1990/36, K.1991/8 of April 9, 1991.

58 Aliefendioğlu, "Anayasa Mahkemesi," 10.

59 Yaltı, "Anayasa Mahkemesi," 208.

the provision that binds retroactivity in the CCRT decisions in this regard, nor case law on the issue.

3 IS IT POSSIBLE TO PAY UNLAWFUL TAXES BACK TO TAXPAYERS? TURKISH TAX LAW PERSPECTIVE

Following the resolution of tax-related matters by the DUCJ or the CCRT on their behalf, taxpayers, who already paid controversial taxes, may perceive the situation as inequitable. After the taxes were paid in accordance with the law in force, they were deemed unlawful. Naturally, they expect refund from the state; however, the facts are not so.

According to the Turkish practice of law, the CCRT decisions and the DUCJ are implemented from the promulgation onwards. These decisions are not effective retroactively. Therefore, tax agencies and taxpayers should behave and expect that administrative acts will be carried out in accordance with the CCRT decision and the DUCJ from promulgation. In this case, different options arise depending on the stage of the taxation process.

Firstly, if the tax is paid without proceeding, repayment is impossible since the binding case law cannot be enforced retroactively on definite administrative actions.⁶⁰ The result will depend on the judgment if the taxpayer has already commenced a proceeding siding with his payment. In this situation, the tax judge must consider the binding case law.

Secondly, in the compulsory execution phase against the taxpayer, after the judgment or without trial, the compulsory execution must cease, and the tax becomes inconvenient for the compulsory execution. The CCRT decision and DUCJ are binding for all state agencies and the compulsory execution agency should behave under the binding case law.⁶¹ If the agency wants to proceed the compulsory execution, the taxpayer could appeal to the tax court. The tax court should consider the binding case law because, after the binding case law, there is no tax liability, which is the reason for the admission of the cases in the compulsory execution phase.⁶² However, some judgments contradict this opinion, asserting that a DUCJ or CCRT decision does not affect a definitively assessed tax in the compulsory execution phase, particularly if a final judgment on the tax liability already exists.⁶³

Thirdly, in the trial phase, the court must unsurprisingly decide per the CCRT decision or the DUCJ.

Lastly, before the trial, the tax agency must behave under the DUCJ or the CCRT

60 Danıştay 3D, E. 1997/4135, K. 1999/505 of February 17, 1999; Danıştay 4D, E. 1990/2917, K. 1991/1745 of May 13, 1991. In doctrine, this opinion is criticized since the taxation with an unconstitutional law and not repaying it after the annulment is not complied with the taxpayers' legal certainty. See: Azrak, "Anayasa Mahkemesi Kararlarının", 160.

61 Danıştay 4D, E. 2001/3080, K. 2002/3041 of September 26, 2002.

62 Danıştay 4D, E. 2001/3080, K. 2002/3041 of September 26, 2002.

63 Danıştay VDDK, E. 1993/195, K. 1994/191 of April 22, 1994; Danıştay 4D, E. 1990/3122, K. 1991/2893 of September 24, 1991. Ali Volkan Özgüven, *Türk Vergi Hukukunda Geriye Yürümezlik İlkesi* (Ankara: Seçkin Publication, 2007), 189.

decision. The taxpayer does not have to pay the tax if binding case law supports their position.⁶⁴ If the agency proceeds to collect duties, taxpayers must appeal to the tax court. The court, naturally, considers the binding case law.

If there is a deferment decision about annulment by the CCRT, in the deferment period, how are court trials conducted? According to the tax agency, the law remains in force until the end of the deferment period. Therefore, the court should consider the annulled law.⁶⁵ But in case law, there is a decision against the agency. According to it, the court should consider the annulment decision if a trial commences in the deferment period. The other alternative approach, which is to enforce the annulled law with deferment of the annulment decision, would be a violation of the Constitution and the rule of law.⁶⁶ However, the only purpose of the Supreme Court for deferment may be to continue collecting the disputed taxes. In this regard, enforcement of the annulled law should continue in the deferment period.

4 CONCLUSIONS

Constitutional courts are an essential part of democracies. Without them, sustaining the validity of constitutions is complicated. As we have illustrated, executives and legislators are inclined to bypass constitutional rules. To hinder this result, constitutional courts have a duty to audit more effectively. Sometimes they interpret their prerogatives broadly to prevent them from circumventing the constitutional laws. Nevertheless, overstepping constitutional boundaries in prerogatives has the potential to cause political and legal disorder.

We assert that certain prerogatives are essential for constitutional courts, such as the authority to order the stay of executions and the ruling of nullity in cases of evident illegality, and single-use laws. This idea has been proven in the Turkish Constitutional Court (CCRT) History. The prohibition of retroactivity in the CCRT decisions constitutionally should be interpreted differently. Annulment decisions on obviously illegal laws should be retroactive. Otherwise, the constitution permits apparent illegalities, which is an undesired result. The same verdict should be on single-use laws. These kinds of laws lose their effect after execution. Annulment decisions should be retroactive to retrace the “status quo” before the execution, which is essential for fairness. The other option culminates in nonsense and void Supreme Court decisions.

In tax law, the Turkish practice needs some changes relating to the binding case law. Firstly, when the wrongful law is obvious, the retroactivity of binding case law could be possible even if there is a payment.⁶⁷ Taxpayers should be paid back when they pay taxes based on manifestly wrongful laws subsequently abolished by binding

64 Anayasa Mahkemesi, E. 1989/11, K. 1989/48 of January 22, 1990; Danıştay İBK, E. 1992/1, K. 1993/2 of June 10, 1993.

65 “Maliye Bakanlığı Gelir İdaresi Başkanlığı,” Açıklama, Hazine ve Maliye Bakanlığı, accessed March 25, 2025, <https://www.gib.gov.tr/fileadmin/haberler/Aciklama.htm>.

66 Danıştay İDDK, E. 2007/2326, K. 2008/1714 of June 26, 2008.

67 The same direction: Danıştay 4D, E. 2004/209, K. 2005/1440 of July 13, 2005.

case law. The state should not expect taxpayers to know the intricacies of tax law. Secondly, in the compulsory execution phase against the taxpayer, after the judgment or without trial, the execution must be stopped following the binding case law in favor of the taxpayer. These two aspects should be redesigned to comply with the rights of taxpayers.

A more robust application of interim measures, particularly stays of execution and rulings of nullity, would strengthen the CCRT's role as a guardian of the constitution. By suspending the application of contested laws before they cause irreparable damage, the Court can better protect fundamental rights during the review process. In addition, the principle of equality necessitates the restitution of executions carried out under manifestly unconstitutional laws. This remedy rectifies the unequal burden imposed on citizens who complied in good faith with an invalid legal norm. With them, the Supreme Court could hinder the undesired consequences of taxation. When the parliament enacts a manifestly wrongful taxation law, the Supreme Court may issue a stay of execution, thereby preventing the enforcement of the said law and safeguarding taxpayers' properties. In cases where the wrongfulness is more egregious and evident, the Court may declare the law null and void from the beginning by using a ruling of nullity.

BIBLIOGRAPHY

Books and Articles:

1. Aliefendioğlu, Yılmaz. "Anayasa Mahkemesi Kararları Işığında Yokluk ya da Yok İşlem." *TBB Dergisi* 81 (2009): 1-14.
2. Aliefendioğlu, Yılmaz. "Anayasa Mahkemesi'nce Verilen İptal Kararlarının Zaman İçindeki Etkisi." *Amme İdaresi Dergisi* 23, no. 3 (1990): 3-9.
3. Arıcı, Kadir. "Türkiye'de Milletvekillerinin Sosyal Güvenliği Meselesi." *GÜHFD* 17, no. 1/2 (2013): 77-123.
4. Azrak, Ülkü. "Anayasa Mahkemesi Kararlarının Geriye Yürümezliği." *Anayasa Yargısı Dergisi* 1 (1984): 151-169.
5. Babayiğit, Mustafa. "Türk Hukukunda Anayasa Mahkemesi Kararlarının Geriye Yürümezliği Sorunu." *TBB Dergisi*, no. 124 (2016): 183-221.
6. Bates, Bethany M. "Reconciliation After Winter: The Standard for Preliminary Injunctions in Federal Courts." *Columbia Law Review* 111, no. 7 (2011): 1522-1557.
7. Benz, Arthur. "The Federal Constitutional Court of Germany: Guardian of Unitarism and Federalism." In *Federalists or Unitarists: Courts in Federal Countries*, eds. Nicholas Aroney, and John Kincaid, 193-222. Toronto: University of Toronto Press, 2017.
8. Can, Osman. "Anayasa Yargısında Yokluk." In *Anayasa Mahkemesinin Kuruluşunun 55.Yılı Anısına 55 Yıl 55 Makale*, 1097-1134. Ankara: Anayasa Mahkemesi Publication, 2017.
9. Cansel, Erol. "Anayasa Mahkemesi'nin Verdiği İptal Kararından Doğan Kimi Sorunlar." *Anayasa Yargısı Dergisi* (1992): 87-105.
10. Demircan, Fatih. "Türk Anayasa Mahkemesinin Yürürlüğü Durdurma Kararlarının Hukuki Niteliği." *TBB Dergisi*, no. 120 (2015): 131-155.
11. Demirörs, Mehtap. *Anayasa Mahkemesi Kararlarının Geriye Yürümezliği Sorunu*. Ankara: Astana Publication, 2020.
12. Deveci, Hıfzı. "Anayasa 11 Kez Delinse Bir şey Olur mu?" *Birikim Dergisi*, no. 133 (2000): 103-111.

13. Doğan, İlyas. “Anayasa Mahkemesi Kararlarına Göre Yürürlüğü Durdurmanın Koşulları.” *İHFM* 55, no. 4 (1997): 45-64.
14. Dyevre, Arthur. “The French Constitutional Council.” In *Comparative Constitutional Reasoning*, eds. András Jakab, Arthur Dyevre and Giulio Itzkovic, 323-355. Cambridge: Cambridge University Press, 2017.
15. Eroğul, Cem. *Anayasayı Değiştirme Sorunu*. Ankara: AÜHF Publication, 1974.
16. Gavron, Thomas, and Ralf Rogowski. “Implementation of German Federal Constitutional Court Decisions.” In *Constitutional Courts in Comparison*, eds. Ralf Rogowski and Thomas Gawron, 210-226. New York: Berghann, 2016.
17. Gören, Zafer. “Türk Alman Anayasa Hukukunda Anayasa Yargısının Sınırları ve Yürürlüğü Durdurma Kararları.” *Anayasa Yargısı Dergisi*, no. 44 (1995): 199-244.
18. Harrison, Martin. “The French Constitutional Council: A Study in Institutional Change.” *Political Studies* 38 (1990): 603-620.
19. Karakoç, Yusuf. *Türk Hukukunda Vergi Kanunlarının Anayasaya Uygunluğunun Yargısal Denetimi*. Ankara: Yetkin Publication, 2017.
20. Kuzu, Burhan. “Anayasa Mahkemesinin İptal Kararlarının Geriye Yürümezliği Sorunu.” *İÜHF* 52, no. 1-4 (1986-1987): 185-228.
21. Love, Jean C. “Teaching Preliminary Injunctions After Winter.” *Saint Louis University Law Journal* 57, no. 3(2013): 689-712.
22. Lynch, Kevin J. “Preliminary Injunctions in Public Law: The Merits.” *Houstin Law Review* 60, no. 5 (2023): 1067-1114.
23. Moore, M. Devon. “The Preliminary Injunction Standard: Understanding the Public Interest Factor.” *Michigan Law Review* 117, no. 5 (2019): 939-962.
24. Odyakmaz, Zehra. “Yürürlüğü Durdurma.” *Anayasa Yargısı* 12 (1995): 143-170.
25. Özgüven, Ali Volkan. *Türk Vergi Hukukunda Geriye Yürümezlik İlkesi*. Ankara: Seçkin Publication, 2007.
26. Philippe, Xavier. “Constitutional Review in France: The Extended Role of the Conseil Constitutionnel through the New Priority Preliminary Rulings Procedure (QPC).” *Annales U. Sci. Budapestinensis Rolando Eotvos Nominatae* 53 (2012): 65-94.
27. Ruhi, Emin. “Türk Anayasa Yargısında Yürürlüğün Durdurulması.” *AÜEHFD* 5, no. 1-4 (2001): 129-150.
28. Sabuncu, Yavuz. “Alman Anayasa Yargısında Geçici Tedbir Kararı.” *Amme İdaresi Dergisi* 17, no. 2 (1984): 76-86.
29. Serim, Bülent. “Anayasa Yargısında Yürürlüğü Durdurma Yetkisi.” *Amme İdaresi Dergisi* 29, no. 1 (1996): 3-28.
30. Stone, Alec. “Where Judicial Politics Are Legislative Politics: The French Constitutional Council.” *West European Politics* 15, no. 3 (1992): 29-77.
31. Taşkın, Ş. Cankat. “Anayasa Mahkemesinin Yürürlüğün Durdurulması Kararları ve Yasama Organının Hukuka Aykırı İşlemlerden Doğan Sorumluluğu.” *TBB Dergisi*, no. 73 (2007): 287-306.
32. Uler, Yıldırım. “Anayasa Mahkemesi İptal Kararları Geri Yürür.” In *Bahri Savcı'ya Armağan*, 515-534. Ankara: Mülkiye Birliği Vakfı Publication, 1988.
33. Uyanık, Atilla. “Vergi Bilinci ve Vergiye Gönüllü Uyumun Vergi Gelirlerine Etkilerinin Değerlendirilmesi.” *Maliye Dergisi*, no. 177 (2019): 354-386.
34. Weber, Ruth, and Laura Wittmann. “The Role of Precedents and Case Law in the Jurisprudence of the German Federal Constitutional Court.” In *Constitutional Law and Precedent International Perspectives on Case-Based Reasoning*, ed. Monika Florczak-Wator, 83-105. New York: Routledge, 2022.
35. Yaltı, Billur. “Anayasa Mahkemesi'nin Vergi Konulu Kararları Bakımından Geriye Yürümezlik Esası: “Ex Tunc- Ex Nunc- Pro Futuro Etki” Üzerine Değerlendirmeler.” In *Vergi Hukukunda Geriye Yürümezlik Esası*, ed. Billur Yaltı, 173-208. İstanbul: Beta Publication, 2011.

36. Yılmaz, Elif. *Hukuki Güvenlik İlkesinin Bir Gereği Olarak Vergi Hukukunda Geriye Yürümezlik İlkesi*. Ankara: GÜ SBE, 2014.

Case Law:

1. Anayasa Mahkemesi, E. 1963/124, K. 1963/243 of October 11, 1963.
2. Anayasa Mahkemesi, E. 1963/162, K. 1964/19 of March 13, 1964.
3. Anayasa Mahkemesi, E. 1970/40, K. 1971/73 of October 19, 1971.
4. Anayasa Mahkemesi, E. 1971/44, K.1072/29 of June 6, 1972.
5. Anayasa Mahkemesi, E. 1972/13, K.1972/18 of April 6, 1972.
6. Anayasa Mahkemesi, E. 1977/60, K.1977/81 of May 24, 1977.
7. Anayasa Mahkemesi, E.1984/14, K.1985/7 of June 13, 1985.
8. Anayasa Mahkemesi, E. 1986/22, K. 1986/28 of December 2, 1986.
9. Anayasa Mahkemesi, E. 1988/11, K. 1988/11 of May 24, 1988.
10. Anayasa Mahkemesi, E. 1989/11, K. 1989/48 of January 22, 1990.
11. Anayasa Mahkemesi, E. 1989/11, K.1989/48 of December 12, 1989.
12. Anayasa Mahkemesi, E.1990/36, K.1991/8. of April 9, 1991.
13. Anayasa Mahkemesi, E.1993/33, K.1993/40 of October 21, 1993.
14. Anayasa Mahkemesi, E. 1993/38, K. 1993/5 of February 2, 1993.
15. Anayasa Mahkemesi, E. 1994/59, K. 1994/83 of December 18, 1994.
16. Anayasa Mahkemesi, E. 1996/4, K. 1996/39 of October 17, 1996.
17. Anayasa Mahkemesi, E. 1996/51, K. 1998/17 of May 13, 1998.
18. Anayasa Mahkemesi, E. 1998/58, K. 1999/19 of March 27, 1999.
19. Anayasa Mahkemesi, E. 2008/34, K. 2008/25 of October 31, 2008.
20. Anayasa Mahkemesi, E. 2010/93, K. 2012/20 of February 9, 2012.
21. Anayasa Mahkemesi, E. 2024/43, K. 2024/65 of February 22, 2024.
22. Danıştay 1D, E. 1988/336, K. 1988/355 of December 19, 1988.
23. Danıştay 3D, E. 1997/4135, K. 1999/505 of February 17, 1999.
24. Danıştay 4D, E. 1990/2917, K. 1991/1745 of May 13, 1991.
25. Danıştay 4D, E. 1990/3122, K. 1991/2893 of September 24, 1991.
26. Danıştay 4D, E. 2001/3080, K. 2002/3041 of September 26, 2002.
27. Danıştay 4D, E. 2004/209, K. 2005/1440 of June 13, 2005.
28. Danıştay 5D, E. 1989/779, K. 1989/1919 of November 13, 1989.
29. Danıştay 5D, E. 1992/1219, K. 1992/3872 of December 23, 1992.
30. Danıştay 5D, E. 1998/4622, K. 1999/1685 of May 24, 1999.
31. Danıştay İBK, E. 1992/1, K. 1993/2 of June 10, 1993.
32. Danıştay İDDK, E. 2007/2326, K. 2008/1714 of June 26, 2008,
33. Danıştay VDDK, E. 1993/195, K. 1994/191 of April 22, 1994.
34. Supreme Court of the United States, *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7. (2008).

Internet Sources:

1. Bundesverfassungsgericht. "Effect of Decisions." Accessed December 5, 2024. https://www.bundesverfassungsgericht.de/EN/Decisions/EffectOfDecisions/effectofdecisions_node.html.
2. "Maliye Bakanlığı Gelir İdaresi Başkanlığı." Açıklama, Hazine ve Maliye Bakanlığı. Accessed March 25, 2025. <https://www.gib.gov.tr/fileadmin/haberler/Aciklama.htm>.
3. The Federal Constitutional Court. "Preliminary Injunctions." Accessed November 24, 2024. <https://www.bundesverfassungsgericht.de/EN/TheFederalConstitutionalCourt/TypesOfProceedings>.
4. U.S. Congress. "Analysis and Interpretation of the U.S. Constitution." Accessed December 3, 2024. https://constitution.congress.gov/browse/essay/artIII-S1-7-3-1/ALDE_00013601/.

Other:

1. Grand National Assembly of Türkiye. The Rationale of the 1961 Constitution of the Republic of Türkiye. 1961.

Muhammet Durdu*

Sažetak

**RETROAKTIVNOST U OBVEZUJUĆOJ SUDSKOJ PRAKSI:
IMPLIKACIJE ZA TURSKE POREZNI ZAKON**

Ustavni sudovi služe kao čuvari ustava, a njihove su presude obvezujuće za sve strane kako bi se osigurala vrhovnost ustava. U Turskoj postoji specifičan pravni lijek za rješavanje sudskih sukoba. Državno vijeće ovlašteno je rješavati sporove između svojih odjela. Ove odluke, „odluke o objedinjavanju proturječnih presuda,“ obvezujuće su za sve sudove i upravna tijela. One se, zajedno s presudama turskog Ustavnog suda, u turskom pravu nazivaju obvezujućom sudskom praksom. Datum provedbe obvezujuće sudske prakse predmet je kontroverzi u turskoj pravnoj praksi. Cilj ovog rada jest rasvijetliti pitanje retroaktivnosti obvezujuće sudske prakse u Turskoj kroz usporedbu s praksama drugih zemalja, poput Njemačke, Francuske i SAD-a. Zatim, rad analizira porezna pitanja povezana s obvezujućom sudskom praksom i razmatra njezinu retroaktivnost u Turskoj. Na temelju provedenih analiza, obvezujuću sudsku praksu u području turskog poreznog prava potrebno je tumačiti s većim naglaskom na načelo jednakosti. Zabranu retroaktivnosti u obvezujućoj sudskoj praksi trebalo bi primjenjivati fleksibilnije. Osim toga, turskom Ustavnom sudu trebao bi omogućiti donošenje odluka o datumu izvršenja presuda. Sudu bi također trebalo dodijeliti dodatne prerogative, poput odgode izvršenja i zakonske odluke o ništavosti, kako bi se spriječile kontroverze oko njegovih odluka.

Ključne riječi: *retroaktivnost zakona; ustavni sudovi; porezno pravo; odluka o ništavosti; odgoda izvršenja.*

* Dr. sc. Muhammet Durdu, docent, Sveučilište Necmettin Erbakan, Pravni fakultet; mdurdu@erbakan.edu.tr. ORCID: <https://orcid.org/0000-0003-4912-4410>.