

Turkey- Rule of Law Recent Developments

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History: Ottoman Period

- Early times
- Islamic approach: world divided in two parts: war zone (non Muslim world) and non war zone (Muslim countries).
- In Muslim world: Nations granted a Holy Book: Christians or Jews had a special status.
 - They had their own rules in respect of their relations among themselves but they were subject to ottoman rules (adopted in accordance with Muslim approaches) in their relations with Muslims.
 - They were “under the protection” of the Muslims, but had to pay a “special tax” for this.

History: Ottoman period -

- Millets (literally: nations)
- Muslim millets: Turkish, Arab, Kurdish, Albanian, Caucasians.....
- Non Muslim millets: Romans (Orthodox Greeks, Bulgarians, Albanians, Georgians, Arabs, Vlachs, Serbs), Armenians (Apostolic, Catholic or Evangelical), Syriac Orthodox, Jews, Roman Catholics.

History

- Ottoman Empire- an expansionist power until the end of 17th century.
- Under the reign of Suleiman the Magnificent (16th Century) 15.000.000 people in three continents, a major maritime power in the Mediterranean.
- First printing press in 1726 despite opposition from some religious leaders.

History

- The Serbian revolution (1804-1815) – beginning of the national awakening. Greeks declared war on the Sultan 1821 –Greek independence in 1829.
- Mid 19 century Ottoman Empire called “sick man”.
- Serbia, Wallachia, Moldavia and Montenegro independent de jure in 1860’s and 1870’s.

History

- In the 19 century, Christian population of the Empire much more educated than the Muslim population (higher level of education)
- This led to the fact that Christians played a major role in the economy
- (In early 20th century, just before the First World War, of ca. 650 wholesale companies ca.525 were owned by Greeks).

History

- Crimean War (1853-1856): 200.000 Tartars exodus to Anatolia
- Caucasian Wars (started under the reign of the Peter the Great, ended in 1860's): at least 500.000 Caucasians (mainly Circassians) emigrated to Ottoman land (with an important fraction of dead from diseases during transit)
- Balkan wars (1912-1913): As a result of the lost war and lands, a flood of immigration (estimated to 2,5 millions of Muslims) to safe regions within Ottoman territory.
- Balkan wars led to ultimate collapse of the Empire five years later at the end of the First World War.

History

- From the 1850's to early part of 20th century:
Some 7-9 millions of Turkish- Muslim refugees
from lost territories (Balkans, Crimea,
Caucasus, Greek Islands).....

History

- Modernization initiatives:
- 1839
- 1856
- 1876 Constitution
- 1908 Constitution
- Efforts to remedy the imbalances between Muslim and Non Muslim populations.

History

- In 1915 Russian Caucasus Army advanced in Eastern Anatolia supported by some Ottoman Armenians
- Ottoman Government decided the deportation of Armenians (according to a widespread belief outside Turkey- Internet sources : “Armenian Genocide” also known as the “Armenian Holocaust”, “Armenian Massacres”- Armenians call it the “Great Crime”) – allegedly 1-1,5 million dead.

History- First World War

- Ottoman Empire allied with Germany, Austria-Hungary
- Dardanelles (Gallipoli)
 - ANZACs – Australians celebrate the Gallipoli defeat -A very rare case: celebration for a lost war
- Sèvres Treaty
- Occupation of Istanbul and parts of Anatolia

War of Independence

- Under the leadership of Mustafa Kemal
- A new Parliament in Ankara
- A new Constitution
- Combat with Greek troops (Western Anatolia), with French (South East Anatolia) and Armenians (East Anatolia)

War of Independence

- Proclamation of the Republic (1923)
- Abolition of the Islamic world's religious leadership (Caliphate)
- Reforms: Latin letters, new Codes, unification of the education, secularism....

Switzerland

- Lausanne Treaty

Sèvres Treaty becoming dead; new state (RT) being recognized internationally.

- Montreux Convention
- Transit passage through the “Turkish Straits” (Bosporus + Marmara Sea + Dardanelles)

Switzerland

- Civil Code,
- Code of Obligations,
- Code of Enforcement and Bankruptcy,
- Code of Civil Proceedings,
- Strassenverkehrsgesetz

Second World War- Cold War

- Death of Atatürk in 1938
- Turkey neutral during the entire World War II
- Elections in 1946
- Change of the ruling party in 1950
- Participation to Korean War
- Turkey becoming member of NATO
- Cold War
- 1960 coup – new constitution

Coups

- 1971- as a result 1960 Constitution amended
- 1980 – as a result 1982 Constitution was drafted and put into force after plebiscite

Constitution

- Preamble (extract)
- **Indivisible unity** of the Sublime Turkish State
- Historical and moral **values** of **Turkishness**
(reference to “Turkishness” is criticized)
Constitution, in line with the concept of **nationalism** introduced by the founder of the Republic of Turkey, Atatürk *(reference to “nationalism” is criticized)*

Constitution

- Preamble (extract)
- **Religious feelings** shall absolutely not be involved in state affairs and politics as required by the principle of **secularism**
- *(This fundamental principle is nowadays largely disregarded; politicians feel they should refer to religious rules when they talk about social and political events)*

Constitution

- Preamble (extract)
- The **sovereignty** is vested fully and unconditionally in the Turkish Nation
- *(sovereignty is used in practice by political party leaders whose words seem to be decisive; they are very strong in Turkey)*
- No individual or body empowered to exercise this sovereignty in the name of the nation **shall deviate** from the **liberal democracy** indicated in the Constitution and the **legal system** instituted according to its requirements
- *(the legal system is not working properly: The PM said there was a “parallel state” –alter state- which organized a “coup” against him and his reign)*

Constitution

- Preamble (extract)
- **The separation of powers** for a civilized cooperation and division of functions
- *(the judicial power is now controlled by the ruling party; they replaced prosecutors and judges allegedly belonging to the “parallel state”)*
- This does not imply an order of precedence among the organs of the State,
- only the **Constitution and the laws have the supremacy** *(this would mean that the judicial power has or should have the “supremacy”; this is the current problem)*

Constitution

- Preamble (extract)
- Every Turkish citizen has an innate right and power, to lead an honorable life **rule of law**, *(it is alleged and largely believed (by the supporters of the opposition parties) that the head of the ruling party is shifting towards a “dicta regime”)*
- **Fundamental rights and freedoms** set forth in conformity with the requirements of **equality** and **social justice**;
- *(The ruling party is criticized for infringing the fundamental rights- for instance use of excessive force against demonstrators –especially during and since Gezi Park protests- restrictions on the use of internet)*

Constitution

- Preamble (extract)
- That all Turkish citizens have the right todesire for and belief in “Peace at home; peace in the world”
- *(Turkish Secretary of State declared that Turkey would aim at having “0 problem with its neighbors”, but Turkey has now manifest troubles with Syria, Iraq, Iran, Armenia, Egypt, South Cyprus and has been traditionally in conflict with Russia, Greece and Bulgaria.....*
- *There was no peace at home neither until recent years....It is relatively calm now: ceasefire)*

Constitution

- **General Principles**
- **I. Form of the State**
- ARTICLE 1- The State of Turkey is a **Republic**.
- **II. Characteristics of the Republic**
- ARTICLE 2- The Republic of Turkey is a **democratic, secular and social state governed by rule of law**, respecting **human rights**, loyal to the **nationalism of Atatürk**, and based on the **fundamental tenets** set forth in the preamble.

Constitution

- **III. Integrity, official language, flag, national anthem, and capital of the State**
- ARTICLE 3- The State of Turkey, with its territory and nation, is an **indivisible** entity. Its **language** is **Turkish**.
- **Its flag**, the form of which is prescribed by the relevant law, is composed of a white crescent and star on a red background.
- Its **national anthem** is the “Independence March”. Its **capital** is Ankara.

Constitution

- **IV. Irrevocable provisions**
- ARTICLE 4- The provision of Article 1 regarding the form of the State being a Republic, the characteristics of the Republic in Article 2, and the provisions of Article 3 **shall not be amended**, nor shall their amendment be **proposed**.
- *(This excessive and sharp rule is an obvious obstacle to a deviation from secularism; but is not appreciated by ethnic minorities -other than Turks).*

Constitution

- **V. Fundamental aims and duties of the State**
ARTICLE 5-

.....to safeguard the independence and integrity of the Turkish Nation, the indivisibility of the country, the Republic and democracy, to strive for the **removal** ofobstacles which restrict the fundamental rights and freedoms in a manner incompatible with the principles of justice and of the social state governed by **rule of law**.

- *(Minorities which expect autonomy or independence or political parties desiring to change the current regime to a totalitarian regime or to a regime based on religious principles are not happy with this rule)*

Constitution

- **VII. Legislative power**
- ARTICLE 7- Grand National Assembly of Turkey

- **VIII. Executive power and function**
- ARTICLE 8- President of the Republic and the Council of Ministers

- **IX. Judicial power**
- ARTICLE 9- Judicial power shall be exercised by independent courts

(separation of the powers)

Constitution

- **X. Equality before the law**
- ARTICLE 10- Everyone is equal before the law without distinction as to language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such grounds.

(One of the main problems in Turkey: “othering” (saying for somebody “he is not one of us”). Members of the ruling party including relatives of the top leaders are treated better in all respects.

Atheists or persons having a belief other than Islam are considered as “deserving less respect.

This fact leads to their “exclusion” (from nearly any occasion – for instance: Being clerks, obtaining a bid etc.)

Constitution

- **X. Equality before the law**
- ARTICLE 10
- (Paragraph added on May 7, 2004; Act No. 5170) **Men and women have equal rights**. The State has the obligation to ensure that this equality exists **in practice**. (Sentence added on September 12, 2010; Act No. 5982)
- *(Women are treated in Islamic rules less favorably than in today's legal provisions. It would not be wrong to admit that in many areas there is factual gender discrimination*
- *Suicide attempts of sexually abused young girls/women are frequent).*

Constitution

- X. Equality before the law
- ARTICLE 10 (continued)
- No privilege shall be granted to any individual, family, group or class. *(The members of the ruling party leader are in the eyes of the large part of the opposition supporters, treated differently than ordinary citizens)*
- State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceedings. *(It was reported in the press that the State police did not comply with the orders given by the judicial authorities with regards to the family members of the ruling party leader).*

Constitution

- **XI. Supremacy and binding force of the Constitution**
- ARTICLE 11-The provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs, and administrative authorities and other institutions and individuals.
- Laws shall not be contrary to the Constitution.
- *(The ruling party made legislation in order to be able to control the judiciary and it is largely believed by the supporters of the opposition that this was in obvious violation of the Constitution. Turkish Constitutional Court canceled this legislation a few days ago).*
- *Were recently disclosed on the internet “phone conversations” where the ruling party leaders intervened in order to stop prosecutions or to control the media, thus totally disregarding the Constitutional rules. They allege that those conversations are produced by “montage”).*

Constitution

- II. Restriction of fundamental rights and freedoms
- ARTICLE 13- (As amended on October 3, 2001; Act No. 4709)
- Fundamental rights and freedoms may be restricted **only by law** and in conformity with the reasons mentioned in the relevant articles of the Constitution **without infringing upon their essence**.
- *(The right of peaceful demonstrations is largely hampered by the State and the essence of this right is obviously infringed).*

Constitution

- **CHAPTER TWO**
- **Rights and Duties of the Individual**
- I. Personal inviolability, corporeal and spiritual existence of the individual
- II. Prohibition of forced labor
- III. Personal liberty and security
- IV. Privacy and protection of private life
- A. Privacy of private life
- **ARTICLE 20- Everyone has the right to demand respect for his/her private and family life.**

Constitution

- *Private life was not respected in the past for the opposition leader and some MP of one of the opposition parties. The head of the ruling party said this was a “public issue” and not a “private issue”.*
- *When phone conversations between the ruling party leader and his relative was put on the internet, he said “it was private” and made laws (or took measures) to control the internet*

Constitution

- **C. Freedom of communication**
- ARTICLE 22- (As amended on October 3, 2001; Act No.4709)
- Everyone has the **freedom of communication**.
Privacy of communication is fundamental.
- *The rule about privacy is violated since everybody was illegally listened to....*

Constitution

- **VI. Freedom of religion and conscience**
- ARTICLE 24- Everyone has the freedom of conscience, religious belief and conviction.
- Acts of worship, religious rites and ceremonies shall be conducted freely, as long as there is no abuse of fundamental right.
- No one shall be compelled to worship, or to participate in religious rites and ceremonies, or to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions.

Constitution

- **VI. Freedom of religion and conscience**
- ARTICLE 24 (continued)
- **Instruction** in religious culture and morals shall be one of the **compulsory lessons** in the curricula of primary and secondary schools.
- *(This rule is heavily criticized, except ardent defenders of Sunnite sect)*

Constitution

- **VI. Freedom of religion and conscience**
- ARTICLE 24 (continued)
- No one shall be allowed to **exploit or abuse religion or religious feelings**, or things held sacred by religion, in any manner whatsoever, **for the purpose of personal or political interest or influence, or for even partially basing the fundamental, social, economic, political, and legal order of the State on religious tenets.**
- *Some political parties (including the ruling party) refer regularly to historical events (sometimes contested) which would degrade the rivals in the eyes of Muslim electors: Closing of the mosques or prohibition of books written by some religious leaders; prohibition of wearing the scarf etc.*

Constitution

- **VII. Freedom of thought and opinion**
- ARTICLE 25- Everyone has the **freedom of thought and opinion**.
- No one shall be compelled to **reveal his/her thoughts and opinions** for any reason or purpose; nor shall anyone be **blamed or accused** because of his/her thoughts and opinions.
- *The leader of the ruling party said in the past that businessmen who are not taking a clear position in respect of certain political issues would be “eliminated” (would be “put aside”).*

Constitution

- **VIII. Freedom of expression and dissemination of thought**
- ARTICLE 26-Everyone has the right to **express** and **disseminate** his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. **This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities.** This provision shall not preclude subjecting transmission by radio, television, cinema, or similar means to a system of licensing.
- *It is practically prohibited to criticize the Islam religion*

Constitution

- **IX. Freedom of science and the arts**
- ARTICLE 27- Everyone has the right to **study and teach, express, and disseminate science and the arts**, and to **carry out research** in these fields **freely**.
- The right to disseminate shall not be exercised for the purpose of changing the provisions of articles 1, 2 and 3 of the Constitution.

Constitution

- **X. Provisions relating to the press and publication**
- **A. Freedom of the press**
- ARTICLE 28- The press is **free**, and shall not be **censored**. The establishment of a printing house shall not be subject to **prior permission** or the deposit of a financial guarantee.
- *According to the disclosed phone conversations in the internet, the leader of the ruling party has intervened on different occasions to censure the press and to replace daily authors...*

Constitution

- **B. Right to publish periodicals and non-periodicals**
- ARTICLE 29- Publication of periodicals or non-periodicals shall not be subject to prior authorization or the deposit of a financial guarantee.

Constitution

- **XI. Rights and freedoms of assembly**
- **A. Freedom of association**
- ARTICLE 33- (As amended on October 3, 2001; Act No.16)
- Everyone has the right to **form associations**, or **become** a member of an association, or **withdraw from membership without prior permission.**
- No one shall be **compelled** to become or remain a member of an association.

Constitution

- **B. Right to hold meetings and demonstration marches**

- ARTICLE 34- (As amended on October 3, 2001)

- Everyone has the right to **hold unarmed and peaceful meetings and demonstration marches without prior permission.**

- *The ruling party and its leader intervened to stop demonstrations. The leader of the ruling party declared the riot policemen who intervened during Gezi Park protests, as “heroes who wrote a legend” and thus approved their using of excessive force.*

Constitution

- **XIII. Provisions on the protection of rights**
- **B. Principle of natural judge**
- ARTICLE 37- No one may be tried by any judicial authority other than the legally designated court.
- Extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction of his legally designated court shall not be established.
- *State Security Courts (later “Courts Specifically Empowered” were dissolved only a month ago.*

Constitution

- **C. Principles relating to offences and penalties**
- ARTICLE 38- (Paragraph added on October 3, 2001; Act No. 4709)
.....Findings obtained through illegal methods shall not be considered evidence.
- *It is alleged that the listening to the phone conversations of the ruling party leadership is not legal (though the conversations already “leaked” seem to have been recorded -at least an important part of them- pursuant to a court order).*
- *It is true that the leakage of those conversations to the press or their putting on the internet violate the basic principle that judicial investigations should be conducted in secrecy by public prosecutors.*

Constitution

- **C. Principles relating to offences and penalties**

- ARTICLE 38 (continued)

(Paragraph added on October 3, 2001; Act No. 4709) No one shall be deprived of his/her liberty merely on the ground of inability to fulfill a **contractual obligation**.

Neither death penalty nor general confiscation shall be imposed as punishment.

The administration shall not impose any sanction **resulting in restriction of personal liberty**.

- *Inability to perform contractual obligations should not give rise to the result that the debtor loses his liberty (the right for a creditor to sell his debtor as a slave on the other side of the river Tevere” is far behind now).*
- *Although not constituting a great number, Turkey is a country having a record of executions – an important portion of them being for political crimes. The PKK (Kurdish Labour Party) leader will then not face death.*

Constitution

- **XV. Protection of fundamental rights and freedoms**
- ARTICLE 40-
- Damages incurred to any person through **unlawful treatment by public officials** shall be **compensated** for by the State as per the law. The state reserves the right of recourse to the official responsible.
- *This is a happy rule....*

Constitution

- **Preservation of Reform Laws**
- ARTICLE 174- No provision of the Constitution shall be construed or interpreted as rendering unconstitutional the **Reform Laws** indicated below:
 - 1. Act No. 430 of March 3, 1340 (1924) on the **Unification of the Educational System,**
 - 2. Act No. 671 of November 25, 1341 (1925) on the **Wearing of Hats,**
 - 3. Act No. 677 of November 30, 1341 (1925) on the **Closure of Dervish Monasteries and Tombs,** the Abolition of the Office of Keeper of Tombs and the Abolition and Prohibition of Certain Titles,

Constitution

- **Preservation of Reform Laws**
- ARTICLE 174- (continued)
- 4. The principle of **civil marriage** according to which the marriage act shall be concluded in the presence of the competent official, adopted with the Turkish Civil Code No. 743 of February 17, 1926, and Article 110 of the Code,
- 5. Act No. 1288 of May 20, 1928 on the Adoption of **International Numerals**,
- 6. Act No. 1353 of November 1, 1928 on the Adoption and Application of the **Turkish Alphabet**,
- 7. Act No 2590 of November 26, 1934 on the Abolition of Titles and Appellations such as Efendi, Bey or Pasha,
- 8. Act No. 2596 of December 3, 1934 on the Prohibition of the Wearing of Certain Garments.

Final remarks

- “L’Etat c’est moi” - words attributed to Louis XIV of France allegedly pronounced on 13 April 1655 before Parisian members of Parliament (Historians don’t confirm that the King really said this).
- The King would have emphasized by those words the **supremacy** of the **royal authority**.
- The supremacy of the ruling party leader’s personal authority is still beyond doubt on **14 March 2014** and **nowadays**. Until when?

Final remarks

- ADR are not very developed
- Average cases per year per chamber at the Court of Cassation: 10.000-15.000
- Most of the decisions contain very short reasoning (of ca. five lines).
- Court experts (Judges decide mostly according to legal comments made by court experts)

Final remarks

- Compulsory insurance (recently developed syndrome)
- Superficial legislation (a long standing illness)

Final remarks

- Insufficiency of the laws? No until recently
- Erroneous application of law? Yes. Judicial errors always existed.
- But the cases considered as “legal scandals” are rather deliberate disregard of the law.

Final remarks

- Part of the population still strongly supporting the Government believe they were treated fairly during the reign of AKP (they were “ganz unten” and now they are “respected” and “well treated”).
- Although they probably don't approve a large number of recent initiatives by the Government, this was not enough for most of them to drastically change their position.
- Sociologists should study this.

Final remarks

- “Nous nous ressemblons” (We resemble us)
- Hemos tocado fondo....
- The legal culture largely owed to Switzerland will help us to recover from illness... hopefully.