

Turkey's Progression Towards Europe
Organised by the Turkish Union of Chambers and Stock Exchanges (TOBB)

The Turkish Legal System and Europe

Contribution delivered in Brussels, 25 June 2002

by Dr. Christian Rumpf, Attorney at Law, Stuttgart

Lecturer at Bamberg University (Germany)

To explain the Turkish legal system in regard to the efforts of accession to the European Union within a few minutes is nearly impossible. There is no other choice than to emphasize some fundamental outlines which might be helpful to obtain a general impression of the issue.

I. Historical Overview in Steps

Step 1: The Ottomans, with the end of the 13th century, start the conquest of Europe. Medieval Europe is an easy prize for the motivated and well equipped fighters and horse riders from Anatolia. Shortly before, the Ottomans had already demolished the very well developed empire of the Seldjuks.

Step 2: Constantinople, one of the centers of European civilization, falls in 1453. The Ottomans have already most of the Balkans under their control.

Step 3: Vienna is challenged in 1529 for the first time. The balance of arms technology between Ottomans and Europeans is in change in favour of the Europeans.

Step 4: Vienna is challenged in 1683 for the second time. In 1693 William Penn, the English noble politician and founder of Pennsylvania, which today is one of the United States, publishes "An Essay towards the Present and Future Peace of Europe By the Establishment of an European Diet, Parliament, or Estates" where he demands the foundation of a Council of Europe, with the participation of the Ottoman Sultan.

Step 5: During the 18th century a number of wars against the Austrian and the Russian Empires cause many losses to the Ottoman Empire. The practice of the so called "capitulations" is started.

Step 6: Selim III feels the necessity of reforms, starting with the military. This idea causes his death.

Step 7: Mahmut II and his successors start and continue the "Tanzimat" – the age of fundamental reforms in the legal and administrative order of the Empire.

Step 8: A modern constitution established in 1876 and, after the despotic rule of Abdulhamid II, re-structured in 1909 shows the way to democracy and modern statehood.

Step 9: After World War I the Republic is established, Mustafa Kemal Pasha succeeds to overcome traditional and rotten structures. With the new constitution of 1924, the legal order is almost totally modernized.

Step 10: After World War II, after a more than twenty years rule of the Republican People's Party, a multi-party system is established (1946). Turkey joins the United Nations, the Council of Europe and many other international agreements and organisations. Ideologically, Turkey is part of Western Europe.

II. Recent developments

Step 11: A new constitution nourishes the hope for integration. With the constitution of 1961, which establishes a very well designed regime of fundamental rights and the rule of law, including judicial control of the legislation by a Constitutional Court, Turkey continues seeking to find her way into the European community. Checks and balances, democracy, rule of law, social security, independent judiciary, all what heart desires.

Step 12: The Ankara Treaty is ratified in 1963 and comes into force 1964, joined by the Additional Protocol a few years later.

Step 13 is a short step back: The military urges Demirel to resign in 1971. The constitution is reshaped, a first attempt for the foundation of state security courts fails at the doors of the Constitutional Court in 1976.

Step 14: The coup d'Etat of 1980 causes another step back. Turkey misses the European train.

Step 15: 1982 a new constitution is adopted – the European Community is not amused.

Step 16: Since 1984, Turkey tries to recover what she had lost the steps before. Turgut Özal represents civil society and a new economy.

Step 17: In 1995 and after, privatisation and new legislation in commercial issues open the door to the Customs Union, e.g: patents and trade marks, protection of consumers, monopoly and competition, financial markets, banking, international arbitration and others.

Step 18: The year 2000: Turkey is a candidate. The President of the Constitutional Court is elected President of the Republic – Turkish politics obtain the chance of a general cleaning.

Step 19: In march 2001, the “national program” is in force.

III. The situation today

In October 2002, a first package of constitutional reform passes the Parliament. Some of the points to be mentioned are:

- National sovereignty: this is a point which is still discussed in Turkey. The legislator was not yet able to insert a clause into the Constitution which openly allows the accession to the European Union.
- Fundamental Rights: There has been made an important step. The Turkish legislator, also as a reaction on the jurisprudence of the Constitutional Court, reshapes the regime of rights and freedoms. The concept of limitation of rights and freedoms now follows European patterns, by enforcing the protection of the core of the fundamental rights and the principles of a democratic society. The literal insertion of the principle of proportionality is to be emphasized. The constitutional foundations for restrictions in speaking a language have been deleted. Especially the freedoms of opinion, association, trade unions and other democratic freedoms par-

ticipate in this reform. However, it should be noted, that some minor steps had already been taken in 1995.

- The system of political parties is up to be reformed. According to the Constitution, the pre-conditions for closing down a political party have been revised. It has to be noted, that the problem is a system which has tried to relate the procedure of closing down a party to clear legal rules which raises the question of a critical relationship between the concepts of the “rule of law” and “democracy”.
- The National Security Council survives. But now, there is a “civil” majority in this council. Further reform in this point may be expected in order to reduce the political role of the Council.
- The death penalty is reduced. It still does not fit to the system of the Council of Europe, but the actual discussions seem to lead to the end of almost total abolition of the death penalty.
- Preliminary Article 15: with the abolition of paragraph 3 of this Article, the heritage of the military regime of 1980 – 1983 (“ideology of 12 September”) is abandoned. The Constitutional Court has now full jurisdiction on all Turkish laws.
- The politics of amnesty have been restricted.

Beside the constitutional reform, which is expected to continue this year, other fields of Turkish law have been affected by new developments. Some of the constitutional amendments have already been transformed into statutory law, such as the law of demonstrations. In June 2001, the legislation on international arbitration has been accomplished by the ratification and publication of the *Arbitration Law* which is a revised version of the UNCITRAL Model law. On 1 January 2002, the new *Civil Code* has come into force. Especially in family law matters, the equality of sexes has been guaranteed. The protection of the weaker spouse has been enforced by new rules of alimony and a new regime of the matrimonial estate. *Public procurement* legislation – January and April 2002 – has been adapted to the European *acquis*.

Further reforms have been introduced by so called “adaption laws” – “uyum yasaları” – which continue bringing one amendment to the legal system after the other, such as to the antiterror law, the criminal procedure law, the penal code and others.

IV. The Role of the EU

For the EU, it would be worthwhile to review its own role in the process of accession of Turkey to the EU.

First, there are the “financial protocols”. It is a well know fact that the EU was itself not able to fulfill its own obligations within the EU-Turkey relationship.

Second, there is Cyprus. It is politically and legally wrong to link the accession of Turkey to the solution of the Cyprus question. In this respect, the EU is without the meanest doubt a hostage of the Greek national interests. In the past, Greece had failed to meet her obligations as to the protection of the constitutional framework of the Republic of Cyprus which today is – as a matter of fact – constitutionally not existent; we also have forgotten that the United Kingdom has not met its obligations under the treaties of 1959/1960 on the establishment of the Republic of Cyprus. It is politically and legally wrong to blame solely Turkey with the present situation. Before this background, we must regret that the EU does not undertake an active step to help and urge the parties involved to come to a just solution.

V. Perspectives

Of course, many things have still to be criticised, especially in the field of practising human rights protection. But the reforms are continuing. The revised framework for foreign investments has been brought to the Parliament recently. Another package of constitutional amendments is discussed, a new commercial code is worked on. A new penal code is almost ready for the final parliamentary debate.

For the further perspective we have to take into consideration two most important things:

(1) We have to admit that the efforts which have been made by the Turkish legislator have shown impressive results. The train which is called the "EU" is running fast, Turkey does its best and with remarkable success to catch it. This is valid for all fields which have to be worked on, including the improvement of human rights protection.

(2) We have furthermore to admit that the reforms need discussion on the national level. As long as we call for more democracy – see the Copenhagen Criteria – we also have to accept that results can only be obtained within a democratic process.

And finally, we would appreciate the financial commitment of the EU. It is Turkey who has fulfilled her obligations related to the Customs Union, whereas the EU is still behind with its own obligations.

Short bibliography:

Ansary, Tugrul/Schneider, Eric (ed.): Introduction to Turkish Business Law, Kluwer 2001.

Ansary, Tugrul/Wallace, Don (ed.): Introduction to Turkish Law, 4th edition, Kluwer 1996

Rumpf, Christian: Das türkische Verfassungssystem (The Turkish Constitutional System), Wiesbaden 1996 (= Türk Anayasa Hukukuna Giriş, Ankara 1995).