

Turkey's Progression Towards Europe
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The Turkish Legal Order and Europe

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To explain the Turkish legal system in regard to the efforts of accession to the European Union within a few minutes is merely 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. Please note that the Ottomans had already demolished the very well developed empire of the Seldjuks.

Step 2: Constantinople, a center of European civilization, falls in 1453. The Ottomans have already captured most of the Balkans.

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, the English noble politician and founder of Pennsylvania William Penn 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. Turkey joins the United Nations, the Council of Europe and many other international instruments. 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 in the European community. Checks and balances, democracy, rule of law, social security, independent judiciary, all what heart desires.

Step 12: The Ankara Treaty comes 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 – 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, privatisation and new legislation in commercial issues opens the door to the Customs Union, e.g: patent and trade mark, protection of consumers, monopoly and competition, financial markets.

Step 18: The year 2000: Turkey is a candidate

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

III. The situation today

In 2000, the President of the Constitutional Court is elected President of the Republic – Turkish politics obtain the chance of a general cleaning. In October, 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 a big 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 withdrawn. Especial the freedoms of opinion, association, trade unions and other democratic freedoms participate in this reform. It has to 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 connect a closing procedure to procedural 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.
- The death penalty is reduced. It still does not fit to the system of the Council of Europe, but the actual discussion seems 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.

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 came into force. Especially in family law matters, the equality of sexes has been taken under guarantee. 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 has been adapted to the European *acquis*.

Further reforms have been introduced by so called “adaption laws” which contain amendments to several codes and statutory laws such as the antiterror law, the criminal procedure law, the penal code and others. The framework for foreign investments is improved. Such reforms are to be continued.

IV. Perspectives

The above mentioned reforms are continuing. We may expect another important package of constitutional reform. A new commercial code is worked on. A new penal code is almost ready for parliamentary discussion. If we take into consideration which efforts have been made by the Turkish legislator, we have to admit that the work is going on quite successfully. In fact I may end my short contribution with the statement, that I am writing an “Introduction to Turkish Law” for one of the most famous publishers in Germany, but that I have troubles to accomplish my work – for it is a difficult task to hold the speed of the Turkish legislator.

Short bibliography:

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