

The Historical Development of Turkish Law

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Throughout history there have been different legal systems, states and nations had their own separate legal structures. Turks founded a state in 220 BC and developed the structure of a unique and independent legal system.

The turning point in the Turkish Legal System was the time when the Turkish nation accepted Islam as its religion, which paved the way for the incorporation of Islamic values and norms in the legal system.

The Islamization of Turkish law continued even after the establishment of the Ottoman Empire. The Turkish law at the time of Ottoman Empire was a combination of the rules of customary law and Islamic Law.

When the Ottoman Empire started declining and later collapsed, the Turkish nation began adopting European legal norms and rules and consequently developed a modern legal system suitable to it.

In this study, first time the Turks appeared on the scene in time to the present day legal structures, together with the Republic of radical changes that occurred before and after taking into consideration the Republic shall be dealt with in the form a separation.

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I . The Turkish Law before the Establishment of Turkish Republic in 1923

1. Turkish Law before Islam (From 220 BC to 940 AD)

Pre-Islamic Turkish law founded by the Turks in Central Asia contained the legal systems of the Huns (220 BC – 552 AD), Gokturks (552 – 745 AD) and Uighur (745-940 AD) states.¹

During that time, the Turks were under the influence of various religious beliefs including Turkish Shamanism, Buddhism, Mandeizm (Zarathustra), Manichaeism and Nestorianism.

The sources of law in this period was limited to inscriptions and gravestones. Prominent among them were Orkhon inscriptions (Ash-Thompson, Bilge-Kagan, Tonyukuk inscriptions) and the Yenisei inscriptions of Ergenekon Epic.²

2. Turkish Law after Islam (940 to 1923 AD).

Turks were introduced to Islam when they came into contact with the Islamic armies under caliph Omar.

The Chinese army was defeated in the famous battle of Talas (751) with the collective efforts of the Arab and Turkish forces and a friendly relation between the Arabs and the Turks began to be established.

The travel by Muslim merchants and the conversion to Islam by the military and administrative staff of Abbasids paved the way for the acceptance of Islam in the whole of Turkish nation.

By 868, Tolunoğulları (868-905) as the first Muslim Turkish state was established. Thereafter, other Turkish states including the Ghaznavids (963-1087), the Ayyubids (1171-1462), Mamluks (1250-1517), the Great Seljuk (1040-1157), the Anatolian Seljuk (1074-1277) and the Ottoman Empire (1299-1923) were established.³

¹ Ahmet **Akgündüz** / Halil **Cin**, Türk Hukuk Tarihi, Osmanlı Araştırmaları Vakfı, İstanbul 2011, s. 68.

² Halil **Cin** / Gül **Akyılmaz**, Türk Hukuk Tarihi, Sayram, Konya 2011, s. 16.

2.1 An Overview of the Islamic Law

Among the three types of law in the world today, Islamic Law belongs to the divine legal system.

The source of Islamic law is believed to be the Almighty God, Allah, whose angel named Gabriel brought the divine commandments and provisions to the Allah's prophet Muhammad.

Islamic law consists of three kinds of provisions: first, the provisions relating to faith (theological provisions); second, the provisions governing the human being's relationship with Allah, with his fellow human beings, and with his society and nation (operations and practices provisions); and third the provisions governing the moral interests (ethical provisions).⁴

2.2 Implementation of the Islamic Law

There are four primary sources of Islamic law

- The Qur'an: Muslims believe the Qur'an to be the direct words of Allah, as revealed to and transmitted by the Prophet Muhammad. All sources of Islamic law must be in essential agreement with the Qur'an.
- Sunnah: Sunnah is the traditions or known practices of the Prophet Muhammad (PBUH). Sunnah includes the speech, conversation, action, habits and events of the Prophet's life codified by his companions.
- Ijma: Ijma is the consensus of the jurists of a certain period over a religious matter. Consensus refers to the unanimous agreement of the jurists of a given era on a legal ruling. In situations when Muslims have not been able to find a solution to a specific legal problem in the Qur'an or Sunnah, the consensus of the community is sought (or at least the consensus of the legal scholars within the community).
- Qiyas: Qiyas is the detailed principles of analogical deductions derived by the scholars in cases when something needs a legal ruling, but has not been clearly addressed in the other sources.

³ Mehmet Akif **Aydın**, Türk Hukuk Tarihi, Osmanlı Araştırmaları Vakfı, İstanbul 2011, s. 26.

⁴ Ekrem Buğra **Ekinci**, İslam Hukuku Umumi Esaslar, Arı Sanat, İstanbul 2006, s. 12; Mustafa **Avcı**, Türk Hukuk Tarihi Dersleri, Mimoza, Konya 2012, s. 62.

2.3 Implementation of the Islamic Law during the Ottoman Empire

When the Ottoman Empire was established, it did not invent a completely new legal system. It inherited the legal systems of the earlier Turkish states and the rules and principles of Islamic Law.

In order to cope with the time and their growing influence, the Ottomans revised their legal system on the basis of Islamic Law and according to their needs during the six centuries of their rule.⁵

The Ottoman legal framework consisted of two parts:

The first part was the Shari'a or codified norms and rules of "Islamic law" which came directly from the Quran, Sunnah, ijma, and analogy-based qiyas and fiqh books.

The other part of the Ottoman legal framework consisted of customary law. Customary law was not the mere traditions and customs law. The Ottoman customary law consisted of the common law codified by the legal experts under the limited legislative powers granted by the Sultan within the framework of the ijihad and fatwa.⁶ The customary law also included the sultans' orders and edicts of the law. Customary law was only valid if did not contradict with the provisions of the Shari'a.⁷

2.4 The Process of Secularization of the Law during the Ottoman Empire

In the Ottoman Empire, the Islamic law continued to be the main part of the legal system until 3 October 1839.

The Ottoman Empire was opened to the Western influence in all areas after the last period of the 18th century. Abdulmecid initiated the legal reform process on 3 October 1839 with the enactment of Gülhane Code and Tanzimat Edict and the reforms process continued until the proclamation of the Turkish Republic. The reform era is called the era of Islamic-Western law or Ottoman Tanzimat era law.

To save the Empire from collapse, to establish a rule of law and to promote

⁵ Aydın, s. 65.

⁶ Murat Şen, "Osmanlı Hukukunun Yapısı", Yeni Türkiye Yayınları Osmanlı Sayısı, C. 6, Ankara 1999, s. 328.

⁷ Şen, s. 329.

legal institutions of the country in the modern sense, the Ottomans started secularizing and westernizing their legal system.

Reform process in this period was influenced by two schools of thought. One was represented by Justice Minister Ahmet Cevdet Pasha, who argued for upholding Islamic law and issuing the applicable law and jurisprudence according to the requirements of modern times. Under the influence of this school of thought, two laws- the Ottoman Land Code of 1858 and Mecelle-i Ahkam-ı Adliyye of 1869-were enacted.⁸

The other thought was advocated by the vizier Ali Pasha, who favoured a completely westernized modern legal system. This school of thought advocated for a code similar to the French Civil Code, although it also agreed in maintaining the validity of the Islamic law in some areas, such as family law.

Under the influence of Ali Pasha, many western laws were translated and introduced, which included the 1850 Trade Code, the 1858 Criminal Code, the 1863 Trade Naval Decree, the 1879 Criminal Procedure Code, and the 1879 Civil Procedure Code.⁹

The Ottoman Tanzimat era law had two main characteristics. At the one hand, many aspects of the Islamic Law of the preceding era continued to be applied. On the other hand, many new rules and regulations were adopted from the western legal systems. Sometimes, these two types of law were not even compatible with each other.

The failure of the Ottoman law to provide an institutional structure was the reason for this new legal system not functioning in an orderly manner. This was natural considering that fact that the Constitution came very late and only in 1921.

The 1921 Constitution had withdrawn the responsibility of nation's governance from the sultan and vested the legislative and executive powers of the Turkish state in the Grand National Assembly of Turkey.¹⁰

⁸ Coşkun **Üçok** / Ahmet **Mumcu** / Gülnihal **Bozkurt**, *Türk Hukuk Tarihi*, Turhan, Ankara 2011, s. 321.

⁹ **Aydın**, s. 432.

¹⁰ *Düstur*, 3. Tertip, C. 1, s. 196.

II . The Period After the Establishment of Turkish Republic (1923 AD to present)

The Ottoman Empire was replaced by the Republic of Turkey on 29 October 1923.

1. The Process of Restructuring the Law during the Turkish Republic.

In line with the provision of Article 1 of the 1921 Constitution, which proclaimed for the first time the principle of “national sovereignty” and called the Grand National Assembly as the only and true representative of the nation, Article 3 of the 1924 Constitution also stated that the “Sovereignty unconditionally belongs to Nation”.¹¹

The 1924 Constitution, however, the first time in the Constitution also stated in its Article 2 that “The State of Turkey’s religion is Islam”.

In line with the proclamation of Islam as the state religion of Turkey, Article 26 of the 1924 Constitution included the power to enact legal provisions in order to enforce Sharia as one the Grand National Assembly’s powers. However, this provision was removed by the constitutional amendment in 1928, and with the changes in 1937, the Constitution formally adopted the principle of secularism.¹²

The 1924 Constitution had, unlike the 1921 Constitution, included the concepts of natural or basic rights, thereby recognizing the classical rights and freedoms as adopted in Europe since the French Revolution. Thus the fundamental rights and freedoms were constitutionally guaranteed, but such rights would be enjoyed only within the limits stipulated by law.¹³

The 1924 Constitution also adopted, for the first time, the principle of social state. Thus the religious character of the Republic of Turkey in the field of law was abandoned.

¹¹ Düstur, 3. Tertip, C. 1, s. 196.

¹² R.G., 15.01.1945, S. 5905.

¹³ R.G. 15.01.1945, S. 5905.

1.1 Administrative Law

In Turkey, administrative law became the part of the legal system during the Ottoman Tanzimat period of westernization and it was modeled after the French legal system.

The Turkish Constitution of 1961 is the main source of administrative law in Turkey now. The rules of administrative law are codified. Besides, the decisions of the judiciary are also the important source of administrative law and in the development of administrative law, judicial decisions have played a greater role.¹⁴

In Turkey, the administrative justice system is separate from the general courts system. Disputes are resolved in the administrative courts with different methods and rules of private law.

The highest court in the administrative jurisdiction is the Council of State, which was established, for the first time, during the Tanzimat era.

1.2 Criminal Law

In the area of criminal law, a new Turkish Penal Code was enacted in 1926. This Code was based almost entirely on the Italian Penal Code of 1889. Then, some changes were made to the Penal Code in 1930, again on the basis of the Italian Penal Code.

Significant changes in the Turkish Penal Code were made from time to time to adapt to the modern and democratic life. Some criminal matters were also governed by separate criminal law related statutes, for example, the Establishment, Duties and Trial Procedures of Juvenile Courts Law (1982) and the Law on the Execution of Sentences (1965).

When the earlier Penal Code was found to be inadequate, a new criminal code was enacted in 2005 in the form of Law No. 5237, the Turkish Penal Code. The provisions of this new Penal Code have been adopted mostly from the German Penal Code.¹⁵

¹⁴ Şeref **Gözübüyük**, *Yönetsel Yargı*, Turhan, Ankara 2009, s. 17.

¹⁵ Mehmet Emin **Artuk** / Ahmet **Gökçen** / Caner **Yenidünya**, *Ceza Hukuku Genel Hükümler*, Turhan, Ankara 2007, s. 90.

1.3 Civil Law

The Turkish Civil Code was enacted in 1926 by making some small changes in the Swiss Civil Code. This Code remain in force for 75 years.

In 2002, the new Turkish Civil Code, Law No. 4721, was enacted by taking into account the provisions of the German, French, and, to a certain extent, even the Italian Civil Codes. It also incorporated the legal obligations under the international agreements and conventions to which the Republic of Turkey was a party, for example, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the of Rights of the Child.¹⁶

1.4 Law of Obligations

The Law of Obligations came into force in 1926. It was actually translated directly from the French text of the 1911 Swiss Code of Obligations by excluding some items.

Changes were made in the Turkish Law of Obligations from time to time. Since the Law of Obligations did not cover many issues, new laws were to cover those issues, for example, the Road Traffic Law, the Law on Real Estate Lease, Business Law, Financial Leasing Law, and the Law on Consumer Protection.

A new comprehensive Turkish Code of Obligations, the Law No. 6098, was enacted in 2011.¹⁷

1.5 Tax Law

In Turkey, a tax law system in the true sense came into existence only after the Turkish Republic was formed.

After the establishment of the Republic of Turkey, the Ottoman tax system was completely eliminated and a new tax law was enacted. This new law was based on the tax laws of the countries of Western Europe, in particular the Federal German tax law. For this reason, the origin of the Turkish tax law is

¹⁶ Jale **Akipek** / Turgut **Akıntürk**, Türk Medeni Hukuku Başlangıç Hükümleri, Beta, İstanbul 2007, s. 49.

¹⁷ Fikret **Eren**, Borçlar Hukuku Genel Hükümler, Beta, İstanbul 2008, s. 9.

not indigenous.

The most important tax reform in the history of the Republic of Turkey was carried out in 1949. On the basis of the laws of the Federal Republic of Germany, Income Tax Law and the Corporate Income Tax Law were adopted. In 1953, the Law on the Procedure of Collection of Public Receivables came into force. Later, motor vehicle tax and business tax laws were also introduced. Finally, as a result of Turkey's efforts to join the European Union, the Special Consumption Tax was enacted in 2002.¹⁸

1.6 Commercial Law

Turkey's first Trade Act of 1926 was based on different principles taken from various foreign legislation.

General provisions were taken from the Italian Trade Commission Act (Cidimar by commerciale) dated 1882, whereas the partnerships related provisions were taken from the German and French laws.

TK received from the Swiss Code of Obligations of the Civil Code and had not established compliance. A number of issues regulated in the Law of Obligations, in a different way in the TA was also adjudged (eg sale, attorney and commission contracts). This basic law in order to resolve the conflict in a new Commercial Code was introduced to remove the preparation and drafting of the German jurist Prof. task. Dr.. Ernst Hirsch was given. Prof. Dr.. Hirsch draft prepared by the National Assembly after changes are made scrutinized by various commissions to be adopted and entered into force in 1957.

In fact, TK has started to work in order to amend the breeding and although ultimately, the new law is made can be counted. For many years, remaining in force, the law changed again in 2011 by the Law No. 6102, entered into force in 2012.¹⁹

¹⁸ Mualla **Öncel** / Ahmet **Kumrulu** / Nami **Çağan**, Vergi Hukuku, Turhan, Ankara 2003, s. 11.

¹⁹ Sabih **Arkan**, Ticari İşletme Hukuku, T. İş Bankası A.Ş. Vakfı, Ankara 2009, s. 6.

1.7 Labour law and Social Security Law

The most important law governing business in the Ottoman period was Mecelle-i Ahkam-ı Adliyye. Mecelle, business relationships of workers and employers had agreed they would organize in full freedom.

In the early years of the Republic, the most important law regulating the business life was the Law of Obligations. Later, a separate Labor Law was enacted in 1936.

Turkish Labour Law is a law in the field of protection of workers' rights. Because of this law, preparing contracts of the International Labour Organisation have been used to a large extent. Thus, workers in foreign countries who have adopted the same or similar rights is provided, it can be said. In the actual development work legislation after the 1961 Constitution was. Along with this constitution, constitutional rights such as the right to strike and lockout when guaranteeing collective labor law, issued after the entry into force of the 1982 Constitution and the laws established permanent changes could be made.

Fourth Labour Act of the Republic of Turkey was adopted in 2003; its Law No. 4857. And In 2006, Social Security and General Health Insurance Act was adopted; its Law No. 5510.²⁰ And in 2012, Unions and Collective Bargaining Agreement Act was adopted. In addition to this, occupational health and safety act was adopted in 2012. So that It had been taken important steps towards the European Union harmonization process.

1.8 Law of Civil Procedure

The source of the law of civil procedure in Turkey is the Code of Civil Procedure of 1927, which was amended many times.

The 1927 Turkish Code of Civil Procedure was based mostly on the Civil Procedure Law of 1925 of the canton of Neuchâtel, Switzerland. Some portions were also derived from the German and French Procedure Codes.

In order to respond to the new needs, a new Code of Civil Procedure, Law No. 6100, was enacted in 2011.²¹

²⁰ Nuri Çelik, İş Hukuku Dersleri, Beta, İstanbul 2008, s. 8.

²¹ R.G., 12.01.2011, S. 6100.

2. An Overview of the Current Turkish Law

The current Turkish legal system belongs to the family of Civil or Continental Legal System.

The Continental Legal System is a codified legal system, which means that legal rules are collected and compiled in codes (codification). Therefore, it is considered a written legal system. Formal sources of law, essentially the constitution, laws, rules and regulations are all written.²²

III. Conclusion

There have been different legal systems on the lands of Turks. Legal systems and implementations have been different before Islam and after Islam.

In Ottoman Empire, the ancestor of the Turkish Republic, though, the dominant legal system was based on Islamic law.

The legal system of the Republic of Turkey, on the other hand, is not Islamic law; instead it is based on the Continental European law.

Many laws that were received from the West after the establishment of the Turkish Republic were amended in accordance with the needs of the people. When such amendments were not seen enough to particular cases, new legislations have been put in place or new practices have been adopted.

Key Words : Turkish Law, Historical proseses, Ottoman Law, Islamic Law

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²² Muhammet **Özekes**, Temel Hukuk Bilgisi, Yetkin, Ankara 2010, s. 63.

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