

## **Constitution of the Republic of Turkey**

### **The Ottoman Period**

Constitutional movements during the Ottoman period commenced towards the end of the 18th century. During the period of the 1789-1808, Sultan Selim the Third envisaged the formation of an advisory assembly, called the Meclis-i Meshveret, within the context of the New System (called the Nizam-i Cedid) that he wanted to have set up, which is seen as a major step towards a constitutional government system.

The "Sened-i Ittifak", or Charter of Alliance, is seen as the first important document from the point of view of a constitutional order. Whilst the 1808 charter restricted the Sultan's exercise of power, it also delegated some authorities to a senate body, called the Ayan. The charter is a significant document as it was also recognized by the Sultan.

The Tanzimat Reform era commenced with the issue of the decree entitled "Gulhane Hatt-i Humayun" in 1839. The subjects of the Ottoman Padishah were assured that their basic rights would be respected.

The documents is especially significant for its recognition of equal rights in education and in government administration for those of Christian persuasion, exemplifying egalitarian principles. The 1875 document entitled the Ferman-i Adalet, or the Imperial Edict on Justice, provided for independence of the judicial courts and ensured the safety of judges.

The most important step along the road to the rule of law was made with the introduction of the 1876 Kanun-i Esasiye, or Constitution, which also started the period known as the First Meshrutiyet, or First Constitutional Period. The basic concept in the 1876 constitution is that, although somewhat restrictive in the exercise of powers, it nevertheless, for the first time, recognized a parliamentary system. This constitution has provisions covering basic rights and privileges, the independence of courts and the safety of judges, among other aspects.

After the 1876 Constitution had been in effect for one year, the Second Meshrutiyet period laid the foundations of a parliamentary system by adopting the 1876 Constitution with some amendments made thereto.

### **The Constitutional System During the War of Independence**

When the Turkish Grand National Assembly congregated on April 23, 1920, this in itself marked a unique and important change in the exercise of sovereignty.

During the Ottoman reign, the workings of Parliament were to an extent, the use by delegation of the powers of the ruler in the legislative process. Whereas, in the case of

the workings of the Turkish Grand National Assembly, all authority was vested in Parliament itself.

The Constitution of January 20, 1921 is called the "Constitution Law", and when compared with the Ottoman legal system contains a radically new concept. According to this concept, whilst the power to legislate belongs to parliament, the executive powers can only be exercised by an "executive council" to be elected by majority vote from among the members of Parliament.

According to this "Law of Constitution", differences of opinion and disagreements between ministers are to be resolved in Parliament. In addition to this, the changing of ministers is also counted among the powers of Parliament. The name of the government during the course of the war of independence was the "Government of the Grand National Assembly" and the name of the regular army "The Army of the Grand National Assembly". On the other hand, the government itself was vested with the power to dissolve Parliament or to "renew the election of the Assembly".

In this system, which did not have a "Head of State", the members of Independence Tribunals were also elected from among the members of the Assembly.

An important step was taken to establish a Council of Ministers with more freedom of movement when a motion that the form of the state should be "Republic" was enacted on October 29, 1923; the President of the Republic was to be elected from among the members of the Assembly for one term of office. According to law, the President would select the Prime Minister from among the members of the Parliament. In turn the Prime Minister would select the other Ministers from among the members of Parliament and, finally, the President would submit the whole of the Council of Ministers for the approval of Parliament.

### **The 1924 Constitution**

The 1924 Constitution provided for the continuation of the system of parliamentary governments. Powers of both legislation and execution were held by Parliament. Whilst Parliament had the right to monitor and if necessary to bring down the Government, neither the President nor the Government could dissolve Parliament.

Although under the provisions of the 1924 Constitution, executive powers could only be exercised by the President or the Council of Ministers, the 1924 Constitution, contained elements of both the parliamentary system and governmental executive powers. In this manner, whilst Parliament directly exercised legislative powers, a separation of powers did exist in view of the exercise of executive power. Furthermore, the principle of collective responsibility of the Council of Ministers to Parliament and the concept of the President not being vested with political responsibility are embodied in the 1924 Constitution.

The judicial and executive powers are clearly separated. Independent courts exercise judiciary powers on behalf of the nation.

The 1924 Constitution was amended in 1937, the six main principles of the Republican Peoples' Party programme, republicanism, nationalism, populism, statism, secularism, and reformism, also being enshrined in the Constitution itself as basic qualities of the state.

### **The 1961 Constitution**

The 1924 Constitution represented a mixed system somewhere between parliamentary governments and a parliamentary model. The 1961 constitution brought about further developments in the parliamentary system.

The Legislature was a bi-cameral Parliament. One chamber was the National Assembly consisting of 450 deputies elected by universal suffrage. The other was the Republican Senate, composed of 150 Senators elected by universal suffrage, as well as fifteen Senators who were appointed by the President, in addition to which the members of the National Unity Committee and former Presidents of the Republic are lifetime Senators. In the functioning of the legislative process, the National Assembly has final say over the two houses.

In the exercise of executive power, the President symbolically represents the unity and integrity of the State, and the Prime Minister and other Ministers make up the Council of Ministers, who bear political responsibility in the use of this power.

The Prime Minister is appointed by the President from among the members of the Turkish Grand National Assembly. The Ministers are appointed by the Prime Minister and presented to the President for his ratification.

The 1961 Constitution fully separated the judiciary from the executive and the legislature, thereby clearly operating the separation of powers principle. In this system, details regarding the security of judges as well as matters related to full freedom and independence of the courts and the positions of the judges were turned over to the "High Commission for Judges", whose members were elected from among the judges of the Supreme Court.

Furthermore, the concept of the "Constitutional Court" was first introduced with the 1961 Constitution.

### **The 1982 Constitution**

Whilst the 1982 Constitution continued the basic structure of the 1961 Constitution, it nevertheless made significant changes in several areas.

The Republican Senate was abolished in the 1982 Constitution.

In order to make the workings of the legislature easier and to prevent deadlocks occurring in the election of the Speaker of the House, the quorum was reduced to one third of the total number of members. The taking of decisions was by majority of those present, but with the provision that this may not be less than one-quarter-plus-one of the total number of members.

The 1982 Constitution provided the executive with powers that derived directly from the Constitution itself, provided that the executive actions taken did not conflict with the law.

The Constitution regulated the election of the President so that, should the first two ballots, to be at least three days apart, not produce the required majority of two thirds of the total number of members, then an absolute majority in the third ballot would suffice to elect the President. Should it happen that the third ballot also failed to produce the required results, then a fourth ballot had to be held to determine between the two candidates with the highest number of votes. Should the fourth ballot again fail, then parliamentary elections had to be renewed.

The 1982 Constitution also provided that a State Audit Board functioned as a Constitutional body, appointed by the President and reporting to the President.

A supplementary provisional article in the Constitution also stipulated that the National Security Council would become the Presidential Council for a period of six years following the date the Turkish Grand National Assembly commenced to function.

According to a constitutional provision, the President could, upon the proposal of the Prime Minister, terminate the holding of office of any Minister.

The powers of the judiciary were limited and restrictions brought regarding the monitoring of laws with respect to their form were brought into effect.

This was especially so in connection with issues related to the Constitution and its legal administration, and whether or not new laws were framed according to the principles contained in the Constitution.

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