

## Turkey: Summary and Bibliography†

Turkey is a republic under a constitution. It has a legal system of substantive and procedural codes derived from Europe. In the 19th Century the Moslem Sheriat was codified into the Mecelle in 1876, a rudimentary Council of State was adopted in the 1860s and a commercial code, based on the French, was adopted in 1950. However, the major reform of the Turkish law took place between 1926 and 1929 when the entire Turkish law was replaced by codes derived from Europe, and the old Moslem Sheriat was completely abolished (although in some villages today some practices are still unofficially based upon it.)

While the present constitution was adopted on July 9, 1961, pursuant to referendum, Turkey has had constitutions, with some interruptions, since 1876. There is a parliament, the Grand National Assembly, consisting of two chambers, the National Assembly and the Senate. The President is elected periodically by the Grand National Assembly. However, real political authority rests in the Council of Ministers, headed by the Prime Minister, responsible to the Grand National Assembly. The Constitution provides for an independent judiciary. The system of local government is centralized under the national government, much as in the French system. In addition to the units of government familiar to Americans, there is a substantial number of state enterprises engaged in industry, banking, etc.

The principal codes adopted in the 1920s were the Civil Code and the Code of Obligations adopted in 1926, and based on the Swiss Codes of 1912; the Commercial Code adopted in 1926, based on various European laws—substantial revisions of this code in 1956 were based on Swiss and German laws; and the execution and bankruptcy Code adopted in 1929, and based on a Swiss law of 1889. These codes govern such matters as contract, tort, property, succession, marriage and other domestic relations, corporations and commercial transactions.

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†This is the first of a series of such summaries and bibliographies on the principal countries of the Middle East and North Africa.

The Criminal Code was adopted in 1929 and is based on the Italian Criminal Code of 1889. The Codes of Civil and Criminal Procedure were adopted in 1927; the code of civil procedure is based on that of the Canton of Neuchatel in Switzerland, and the code of criminal procedures on German law. Laws dealing more specifically with economic matters include a Labor Code, a Petroleum Law, a Mining Law, extensive foreign exchange regulations based on Law No. 1567 for the protection of the value of Turkish currency dated February 20, 1930, Law No. 6224 for the encouragement of foreign investment, and the tax laws.

A feature of the Turkish legal system which may be unfamiliar to Americans is the parallel system of administrative law and courts, separate from the normal civil and criminal law and courts, which govern the activities of the government and its relations with individuals, based on the French administrative law system.

In addition to the various codes and laws, one should be aware of the many decrees issued by the Council of Ministers, regulations and so-called circulars issued by various ministries and so-called by-laws issued by state enterprises and other government entities. Many of these when issued will be published in the Official Gazette, in which new laws are also published, and most of them are subject to judicial review by the administrative court system.

Turkey has an elaborate system of courts. These include the Constitutional Court (*Anayasa Mahkemesi*)—the 1961 constitution provides for a system of judicial review of all legislations; the Council of State (*Danistay*), which is the supreme administrative law court; the Court of Cassation (*Yargitay*), which is the supreme court in ordinary civil and criminal matters; the Court of Accounts (*Sayistay*), with responsibility for auditing certain government agencies; and the Military Court of Cassation.

As is the case in the United States, there are lower courts in each of these systems, with various provisions for appeal. The administrative law system includes such entities as tax commissions to which tax assessments may be appealed.

One point to be noted is the force of judicial decisions. Like other countries with a European code system, in theory, only the legislature can make binding law and the courts cannot. However, in fact, in all courts the judges consult prior decisions; and lower courts especially consult the opinions of higher courts. Moreover, the law specifically provides that certain decisions of the *Danistay* and *Yargitay* shall have the force of law.

Turkey is party to many treaties including, in addition to the United Nations Charter, GATT, the Articles of Agreement of the IMF, NATO, CENTO and the Regional Cooperation for Development along with Iran

and Pakistan. Turkey is an associate member of the European Economic Committee and a member of the World Bank. It subscribes to conventions in the field of patent, copyright and trade-mark. It has an investment guaranty agreement with the United States; at the present time there is no tax treaty with the United States.

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The following is a bibliography of materials in English (the *Düstur* is in Turkish as in the Official Gazette; however documents, such as agreements, originally in English, will be published in English and Turkish in the Gazette), which may be of use to the general practitioner:

- MARTENDALE-HUBBELL, *TURKEY LAW DIGEST* (Summit, N.J., 1969).
- DIGEST OF COMMERCIAL LAWS OF THE WORLD, section on Turkey (New York, N.Y. 1966).
- FRIEDMANN AND PUGH, *LEGAL ASPECTS OF FOREIGN INVESTMENT*, section on Turkey (Columbia Univ., N.Y.).
- ANSAY AND WALLACE, *INTRODUCTION TO TURKISH LAW* (Ankara, 1966) (includes additional bibliographies).
- ANSAY, *TURKISH-AMERICAN PRIVATE INTERNATIONAL LAW* (Parker School, 1968).
- ARSEL AND KARLEN, *CIVIL LITIGATION IN TURKEY* (Ankara, 1957).
- THE *TURKISH CRIMINAL CODE*, American Series of Foreign Criminal Codes No. 9 (London, 1965).
- REDDEN AND HUSTON, *THE PETROLEUM LAW OF TURKEY* (Istanbul, 1956).
- REDDEN AND HUSTON, *THE MINING LAW OF TURKEY* (Istanbul, 1956).
- WETTSTEIN, ET AL, *THE SWISS FEDERAL CODE OF OBLIGATIONS WITH TURKISH AT ALTERATIONS*, (Zurich, 1928).
- CENANI, *FOREIGN CAPITAL INVESTMENTS IN TURKEY* (Istanbul, 1967).
- INVESTMENT GUIDE TO TURKEY* (Union of Chambers of Commerce, etc., Ankara, 1964).
- OKSAY, *GUIDE TO FOREIGN CAPITAL INVESTMENT IN TURKEY* (Ankara, 1967).
- TURKISH GOVERNMENT ORGANIZATION MANUAL* (Public Administrative Institute for Turkey and the Middle East, Ankara, 1966).

Official Gazette (*Resmi Gazete*, published every day except Sundays and holidays by the Prime Minister's printing office, Ankara.)

DÜSTER (issued annually by the Prime Minister's printing office, Ankara; includes statutes).

TURK ARGUS (Istanbul; includes statutes and regulations in English).

Department of Commerce, U.S. Govt., INVESTMENT LAWS OF TURKEY (Washington, D.C., 1968).