



TÜRKİYE BAROLAR BİRLİĐİ

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# LEGAL EDUCATION IN TURKEY

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by

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# Contents

Atatürk's Speech on Occasion of the Opening of Ankara Faculty of Law.....	7
<b>Historical Background .....</b>	<b>17</b>
The Legal System and Legal Education in the Ottoman Era.....	17
Westernization Efforts in the Ottoman Empire, .....	20
1839 Administrative Reforms.....	20
Foundation of the Turkish Republic: Revolution and Reception.....	24
Holocaust: Effects of the Exiled German Law Professors in Turkey .....	30
<b>Current Legal Education System .....</b>	<b>33</b>
General Organization of Universities	
Higher Education Council (YÖK).....	33
Inter-University Council .....	36
Universities .....	36
Rector .....	37
Senate .....	38
Executive Board.....	39
Faculty Administration .....	40
Dean .....	40
Faculty Board.....	40
Executive Board.....	41

Legal Education for Paralegals .....	41
Vocational Training.....	41
VET in Secondary Education:	
Vocational High School (Lycée) of Justice .....	41
VET in Higher Education: Vocational High School of Justice .....	43
<b>Higher Education.....</b>	<b>47</b>
Access to University.....	48
First Cycle: Undergraduate (Bachelor's) Degree in Law.....	48
Second and Third Cycle: Master's and Doctoral Degrees in Law ....	59
<b>Professional Training .....</b>	<b>63</b>
Professional Training for Judges and Prosecutors:	
Initial Training.....	63
Continuous Training.....	67
Professional Training for Lawyers.....	68
The First Stage of Training.....	69
Second Stage – Apprenticeship within a Law Office.....	73
Rules concerning the second stage of training .....	73
Analysis and Future Possible Developments	
in Turkish Legal Education .....	81

**TEXT OF THE SPEECH WHICH WAS DELIVERED BY  
ATATURK ON NOVEMBER 5<sup>TH</sup>, 1925 ON OCCASION  
OF THE OPENING OF ANKARA UNIVERSITY  
FACULTY OF LAW**

Dear audience, today's meeting has been gathered on the occasion of the opening of a school of law in the administrative centre of the Republic. The event that we are witnessing today has a greater significance than raising high officials and expert scholars. The Turkish Revolution that has been going on for years relied on defining and strengthening its existence and mentality on the new elements of law which are the basis of the social life.

What is the Turkish Revolution? This revolution represents a wider change, in addition to its literal meaning. The form of our State today is the most developed form that pushed aside the old forms that prevailed for centuries. The common bond among the individuals that is necessary for a nation to survive changed its form and nature which continued for centuries, and the nation gathered its individuals around Turkish nationalism, instead of religious

and sectarian ties. The nation believes in the principle that is the fact that science and media which will be the cause of being and strength in the international battle can only be found in modern civilization as an immutable truth.

In short, gentlemen, the nation embraced, as the cause that governs life, the world understanding that is essential to improve and needs to change continuously for ensuring that general administration and all laws are inspired by the world's requirements, as it is required as a natural and imperative requirement of the changes and revolutions. If you remember your memories of only six years ago, you will see that we have embraced completely different principles than the point of view of the provisions on which all organizations and requirements are based in terms of pursuing the way of civilization which will be main power for the common bonds of the individuals of a nation. This very change that has been accomplished by our great nation in their flow of life within six years is one of the biggest revolutions, being far too great than any other revolutions. It has been observed that many nations were such enthusiastic that they did not think about their end during their struggle for liberation and development. However, this ravenousness is not like the conscious enthusiasm of the Turkish nation.

The work performed by the Turkish nation for the great revolution that I pointed out was made for revealing the new form of presence of the Turkish nation and state in particular, by giving tireless struggles against internal and external ill-minded elements and in the field of the undisputed direct application national conscious and by, being seem unaware, yet being aware of the laws and other rules known by the legal professionals. Now it is time to make an attempt for creating new legal principles and new legal

professionals that will satisfy the understanding and requirements of this newly emerged great work. I think that with Ankara School of Law we have attempted to take the measures that will explain and defend the Law of the Republic with its cognitive and semantic attributes, with laws and legal professionals, instead of only by its appearance and word meaning. In the Republic of Turkey, it is a fait accompli which needs to be accepted without hesitation that the new rules of life and new law system has replaced the old rules and the old law. This fait accompli will be indicated and explained in your books and in the law that will be applied.

Dear Gentlemen Students and Legal Professionals!

While I mention the new legal principles, new requirements and the new laws that are imperative to be adopted, I do not only point out the fact that “every revolution needs to have its specific sanctions.” Avoiding from reproaching, I would like to woefully and vigilantly note that the efforts made by the Turkish nations for at least three hundred years for benefiting from the features of modern civilization had come to nothing against really sorrowful and agonizing obstacles.

The legal system that we had so far and its supporters were the negative and destructive power which confined our nation to fall and tired out and defeated those who in some periods initiated efforts and works in the productive lands of our nation. I am sure that my historical observation that is likely to be harsh will not surprise no one among your distinguished organization and the esteemed civil servants and judges from whose service the Government of our Republic is benefiting from. Furthermore, I would like you to allow me to further explain my thoughts with you a little more. Please remember the victory of the Turks in

1453, namely the conquest of Istanbul within the general course of international history. The power and strength that brought Istanbul to the Turkish community for good against the whole world, could not achieve to break the sinister resistance of the legal professionals in terms of adopting printing house, which was invented roughly on those years, in Turkey. Three hundred years of observation and waiting and exerting as a supporter of or opponent to the printing house were needed for the outdated law and its supporters to let the printing house to enter in our land.

Please do not think that the example I just gave you represents a very old and very far period and legal professionals that do not have the strength to emerge again. If I were to bring you the examples of the difficulties raised by the old law and old legal professionals during our revolution, I would probably cause you a headache. But you need to know that renowned legal scholars were leading those who deemed the nature and status of today's Grand National Assembly of Turkey against the principles of law and science, during its establishment. Well-known legal scholars who deceived the nation with their outdated skills were leading those who objected, when I proposed the law in the Grand Assembly prescribing that sovereignty rests unconditionally with the nation, by asserting that it violated the Ottoman Constitution.

Dear Gentlemen,

Also, I would like to explain to you another tragic event that happened after the declaration of the Republic. The Bar Association consisting of the highest experts who studied in Europe or in this country selected a person as their president who openly declared that he was the supporter of the caliph and said that he was honoured

to declare it. Is not this event enough to indicate the sincere and true situation and tendency of the outdated legal men who pursued the obsolete law with regard to the understanding of the Republic? All these events show that the biggest and most insidious enemy of the revolutionaries are the corrupt law and its legal men who cannot be corrected. The provisions of the old law and old legal men, who had to hide during the fiery revolutionary actions of the nation rouse as soon as the impact and fire of the good people, and wait for an opportunity to convict the revolutionary principles and its sincere supporters and their valuable ideals. This opportunity is provided by the presence of the old laws and the enforcement of the provisions of old law and the presence of the judges and lawyers who stubbornly keep on protecting the outdated understanding earnestly and with all their hearths.

I hope I achieved to explain to you the reason of the legal activities we take today. We intend to remove the obsolete legal principles by making new laws. And we open these institutions for raising a new legal generation who will start learning the principles of the new law from the beginning. In these efforts, we rely on the productivity, skills and absolute will of our nation. In these new initiatives, distinguished legal professionals, who embraced the new law with us in a way that I explained to you, are our fellows. The new legal basis of our life will be our nation and its tireless power that accompanied its revolution, and that will be efficient until the new legal principles will become real in theory and in practice.

Dear Gentlemen Students,

Starting to your education for being the founder and driver of the new Turkish social life, you will be the real legal scholars of the Republican period. The nation expectantly waits for you to be

educated and to satisfy the desires of the nation with your actions. I am sure that the professors who will educate you will fulfil their duties properly. I have not felt this happy in any other initiative more than during the opening of this institution which will be the fruit of the Republic and I am pleased to utter and remark this.

This text was simplified by Prof. Dr. Coskun Ucok and published in the Ankara University Faculty of Law 40th Anniversary Gift (pp. XXVII-XXIX).

## FOREWORD

Turkey carried its efforts for modernization commencing in the Ottoman period to the highest level in the early years of the Republic. Led by Mustafa Kemal Atatürk, the Young Republic dealt with, on the one hand, the issues resulting from the social and economic structure and, on the other hand, managed to create a secular and western legal system after having removed the religious patterns in the legal structure of the country. The non-secular structure of the Ottoman legal system did prevent the state from establishing a western legal system in real terms though the aforementioned efforts commencing in the last century of the Ottoman Empire progressed and gave successful results with respect to some subjects. Following the victory of the Turkish War of Independence, Atatürk enabled us to become a part, in real terms, of the western legal system applied in our country at a certain rate after having rapidly secularized our legal system through the efforts of the leading jurists at that time such as Mahmut Esat Bozkurt. The legal systems of all the leading countries in Europe were examined, and the newest and best laws among them were ensured to be included in the Turkish Law by means of translation.

Having been trained according to the former state and its legal system, famous Ottoman jurists objected the Constitutional amendment stating that *“sovereignty rests with the nation”* through putting forward the so-called scientific principles by saying that *“this is not possible according to the Ottoman law”*. In the speech the Great Atatürk addressed during the inaugural ceremony of the Ankara University Faculty of Law, he laid emphasis on the fact above saying that *“I will be faced with the danger of annoying you if I attempt to give you examples of the challenges that the former legal system and its jurists have directly caused for me at the new revolution time. However, you may know that famous jurists have led those who regard the present nature and status of the Grand National Assembly of Turkey to be against legal and scientific principles during the foundation thereof.”* Atatürk stated that he had never been so pleased with any attempts as with the foundation of the Ankara University Faculty of Law, which was founded precisely for that reason. The foundation of the Ankara University Faculty of Law had a great meaning in an environment where the Minister of Finance stated that *“there were no resources in the budget to found a Faculty and even a primary school”* in the years of absence. The Young Republic granted the meeting hall of the National Assembly to its new faculty, and this Faculty which was described as *“sanction of the Republic”* by Atatürk spent its first years providing training at the Assembly where the Republic was born.

Conducted for the purpose of providing benefit to the foreign researchers who intend to hold a view on the Turkish law and legal education in Turkey, this study is of crucial importance in that it commences with a historical perspective and provision of a short and successful summary of the Turkish legal revolution. We have unfortunately and many times witnessed the efforts of the experts who do not have any idea about Turkey to seek the tracks of the

religious law in our legal system and to find religious patterns in a state which inherits from an empire having reigned for hundreds of years. However, the Ottoman Empire provided, as emphasized in the work at your hands, the ruler with a quite large area where he would not be subject to religious rules through the implementation called custom with respect to Civil Law though the Empire applied the law of the religion to which its nationality was subject with respect to Private Law.

I feel appreciation for the publication of this study which provides satisfactory information on the current situation of legal education, the initial vocational training and vocational training of jurists amongst the publications of the Union. In my opinion, this work contributes to the researchers who intend to have information on the Turkish legal system and particularly the experts who attend the works, visits and projects carried out within the process of adaptation to the *acquis* of the European Union.

I would like to express my sincere gratitude to Professor Julian Lonbay, faculty member at the Birmingham University School of Law and member of the Advisory Council on International Relations at Union of Turkish Bar Associations and my colleague Lawyer Musa Toprak, who both conducted this study.

Metin FEYZİOĞLU, Esq.

President of the Union of Turkish Bar Associations



## Historical Background\*

### The Legal System and Legal Education in the Ottoman Era

The legal system at the time of the Ottoman Empire was naturally under a heavy influence of Sharia law, but the legal system of the Ottoman state exceeded the requirements of Sharia law because of a principle known as *örf* which gave power to the monarch to act as a legislator in areas relating to governance of the state.<sup>1</sup> *Örf* (the term might be translated as custom) declares that matters solely regarding the governing the state are outside the scope of the Sharia. Traditionally the legal system in the Ottoman state left private law, mostly civil law, to Sharia because of the *örf* principle. Public law was a unique system depending more on custom than Sharia.<sup>2</sup>

The Ottoman Empire had different religious and ethnic groups under its sovereignty, these groups were called *millets* and the same rules were applied to them; they were ruled by their religious authorities on issues regarding to civil law and they had to obey *örf* on the issues related to public law. The *millet* system was dependent on religion, there were three main *millets*: Rum (Greek), Jewish

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\* This book is an extended version of the paper which has been published on "Legal Education in Asia", Eleven Pub., The Hague, 2014

1 Halil İnalcık, *Osmanlı'da Devlet, Hukuk, Adalet*, (State, Law and Justice in the Ottoman) Eren Yay. İstanbul, 2000, p. 27

2 Id.

and Armenian.<sup>3</sup> The Ottoman state recognized the rights of *millets* with a decree of the Emperor (*berat*). Each *millet* had the right to choose their religious leader according to their own religion's orders. The religious leader had the right to manage community property, to regulate masses, rituals and other religious activities and to collect a certain amount of tax from their community. Beside that, community members' private affairs such as marriage, divorce and inheritance was handled by their religious leaders according to their religion.<sup>4</sup>

Thus the Ottoman Empire had a pluralistic legal system.<sup>5</sup> On the private issues the subjects of the Sultan had to obey their own religious rules, whereas the authority to sanction behaviour in criminal law belonged to the state in most cases. Very limited exceptions had allowed religious leaders or councils to punish their members on the issues related to practice of religion: apart from these exceptions on the issues of public law there was a centralized system to be applied all over the Empire.

As a result of this divided legal system, legal education was also divided. Legal education was left to religious organizations

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<sup>3</sup> We must stress that the notion of *millet* is a concept that emerged in the fifteenth century and it was dependent on religion not ethnicity; Serbians, Bulgarians, Romanians and even Arab Orthodox people were considered members of Rum (Greek) and Assyrians were considered members of Armenian *millets*.

<sup>4</sup> Gülnihal Bozkurt, "İslam Hukukunda Zimmilerin Hukuki Statüleri (Statutory Positions of Dhimmis in Islamic Law)" *Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi* V. 3 1987, p.115

<sup>5</sup> Akyılmaz points an interesting example to show the characteristic of Ottoman Law. According to Hanefi jurists pork and wine were not subject to ownership as they had no legal value, but they could be accepted as goods and subject to property claims if at least one side of the affair was a non-Muslim. Gül Akyılmaz, *Tanzimattan Önce ve Sonra Osmanlı Devleti'nde Gayrimüslimlerin Hukuki Statüsü* (Legal Status of Non-Muslims in Ottoman State, Before and After Administrative Reforms), *Yeni Türkiye Ermeni Sorunu Özel Sayısı II*, Vol. 38, 2001, p. 671.

that trained their judges under their own rules not limited to, but, especially regarding civil law. The understanding of a *kadi* court was dependent on the skills of the Islamic judge, called *kadi*. The purpose of the hearing was making sure that the *kadi* understood the actual facts of the case. When he truly understood what had happened, he was able to tell where this case stood in Sharia law. If we speak in modern terms there was no room for legal description in the *kadi's* presence. Both sides were supposed to tell the facts and leave the legal analysis to the *kadi*. For this reason there was no need for prosecutors or lawyers in the religious courts so the legal training was aimed solely to train judges to adjudicate mainly on civil law issues. According to the *millet* system religions were able to regulate themselves and they had authority over their people. Dependent on the type of religion there were various councils to decide on the issues related to religion. Councils had the right to decide on religious issues with only a limited authority to apply criminal sanctions. For the other issues regarding public law and administration, the Ottoman state had an elite school in Istanbul, inside the palace of the Sultan in Topkapı (Istanbul) called Enderun. This school trained high officers for the state, for both civil and military purposes. The school covered the functions of military academy, political sciences, fine arts, law and literature faculties.<sup>6</sup> The length of education in the Enderun School was fourteen years. The Enderun school was different from other schools of the period because its aim was not to educate a limited elite, such as members of royal family but it was aiming to train ordinary people.<sup>7</sup> Enderun

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<sup>6</sup> Hüseyin Özdemir, "Osmanlı'da Kamu Yönetimi ve Memuriyet (Public Administration and State Officers in Ottoman) <[www.sizinti.com.tr/konular/ayrinti/osmanlida-kamu-yonetimi-ve-memuriyet.html](http://www.sizinti.com.tr/konular/ayrinti/osmanlida-kamu-yonetimi-ve-memuriyet.html)>

<sup>7</sup> To secure the royal family's power and authority Enderun School was banned for the ethnically Turkish people to protect the royal family; Ottoman rulers preferred to take Christian boys and convert them to Islam. This way the high officers of the Empire who were once Christian boys

was designed to fulfil the needs of the Palace and students were also working at different positions in the Palace depending on their age, rank and abilities. Enderun was founded in 1460 and was closed in 1909 but it had lost its importance by the nineteenth century.<sup>8</sup>

Legal education was sponsored by religious schools called *Medressehs*: the first such formal school was established in 1304 at İznik.<sup>9</sup> In the Ottoman era legal education was based on the *fiqh* (in Turkish; *fıkıh*) system in the schools of law and administration. *Fiqh* is a concept of Islamic law, which is an expansion of the *Sharia* expounded in the Quran, often supplemented by tradition (*Sunnah*) and implemented by the rulings and interpretations of Islamic jurists (*Ijma*).

### Westernization Efforts in the Ottoman Empire, 1839 Administrative Reforms

The Ottoman Empire was starting to lose power by the seventeenth century and in the nineteenth century rulers of Ottoman state understood that they had to make fundamental changes to avoid a total collapse. Administrative reforms were announced on 3 November 1839 with an Imperial Decree (*Tanzimat Fermanı*, Firman of Reforms) marking the start of the reformist movements in the Ottoman Empire. The main legal characteristics of the reforms were the translation of the main laws from West European countries and at the same time, a codification of the Islamic law.

The process of translation and codification continued until the first years of Turkish Republic which means for almost a hundred

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had no family links to any powerful Turkish families of the era and had no other loyalties but to the Ottoman family.

<sup>8</sup> Ülker Akkutay "Enderun Mektebi", (Enderun School) *Osmanlı Eğitim Sistemi*, Vol V, 1999, Ankara, p.189

<sup>9</sup> Kenneth Redden, *Legal Education in Turkey*, İstanbul, 1957, p. 10.

years. There was a debate of West and East, European and Asian laws over the domination on legal structure of Ottoman state. Far-sighted pro-Turkish state reformists argued that, despite its very good aspects Islamic Law was no longer satisfying the needs of the Empire and it was not possible to make the Islamic law sufficient for the purposes of the Ottoman Empire.<sup>10</sup> On the other hand conservatives were defending Islamic law stating that Islamic law was strong enough to be applied to all matters and there were no need to take codes from Europe by reception. Conservatives were also accepting that there were serious problems in the legal area, but they believed that Islamic law was forgotten and its practice was wrong; remembering Islamic Law and returning to the true practice of it was supposed to solve all the problems of the Ottoman Empire.<sup>11</sup> When we look back to the legal history of Ottoman Empire at nineteenth century we can see that this debate of reformists, who wanted reception and the translation of Western Europe codes, and conservatives, who wants to freshen up the Islamic law and try to figure out the remedies for its correct application, fills the whole century: on some issues the reformists were successful and on some other issues the conservatives came forward. This century-old debate was ended with the establishment of the republic, with a certain victory of the progressive side.

The beginning of the modern epoch may be dated from the *Tanzimat* in 1839 when under guise of the ‘re-organization’ we can observe the start of some distinction between the law of the state and Islamic religious law, a distinction that marks a critical departure from classical Islamic conceptions. In 1850, a Code of Commercial Law based upon the French *Code de Commerce* was

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<sup>10</sup> Coşkun Üçök, *Türk Hukuk Tarihi Dersleri*, (Turkish Legal History Courses) İstanbul 1946, p. 140.

<sup>11</sup> Id.

introduced, followed in 1865 by a Maritime Code of similar origin. In 1856, a penal code of considerable amplitude (265 articles) was promulgated, again substantially based upon French law after a couple of more limited attempts in 1835 and 1846; and in 1866, there was a reform of penal procedure, which prepared the way for the acceptance, in 1879, of a code largely reproducing the French Code of Criminal Procedure.<sup>12</sup>

As a part of these efforts in 1880 a separate school of law was established attached to Ministry of Justice.<sup>13</sup> As we explained briefly, the Ottoman rulers were trying to create a synthesis of Islamic rules with Western understanding of law. As a matter of fact in modern Arabic *fiqh* now means jurisprudence, either religious or secular and in Ottoman legal education practice, *fiqh* was no more solely a concept of Sharia but it was a combination of different courses, which are: Procedure of *fiqh* (*Usul-i fiqh*), Civil Law (*Mecelle*), Wills and Testaments and Law of Succession (*Vasaya* and *Feraiz*), Land Law (*Abkam-ı arazi*) and Foundations Law (*Vakıflar*) All these courses were given in a dogmatic and theological way with an understanding based on the middle ages.<sup>14</sup>

Koprulu states that, it never occurred to the lecturers to get rid of the Sunni-Hannafi compliers' schematic lists by exploring more old legal and historical resources. Because Islamic law, like other systems, is a historical entity but they had never understood it that way, and studies in western countries were remained unknown even for the most famous and modern masters of law of that era.<sup>15</sup>

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<sup>12</sup> C. J. Hamson, "The reception of Foreign Law in Turkey", Vol. IX, No. 1, *UNESCO International Social Science Bulletin*, 1957 p. 9-10

<sup>13</sup> Redden, p. 10.

<sup>14</sup> Fuad Köprülü, *Ortazaman Türk Hukuki Müesseseleri*, (Turkish Legal Institutions in the Middle age) İstanbul, 1937, p. 15- 16

<sup>15</sup> Id.

In the administrative reforms era, the Ottoman state put significant efforts to make major innovations in judicial organization. They accepted new codes, some translated from Europe and some codifications of Islamic law. But the old judges (*kadi*) were working alone without the assistance of lawyers and prosecutors and they had been trained under Islamic law only. It was not an option to abolish them and found new courts from scratch because, as we explained, Islamic law still had a significant value and implementation in the Empire. Thus, reformist rulers of the Empire on the one hand were trying to found new courts and raising well-trained judges, and bringing new legal institutions such as the prosecutor's office and lawyers, and, on the other hand they were also trying to fix the Sharia courts. However, the results of these efforts were too late and rather inefficient. Having these two very separate legal systems together caused major struggles on the issues of duty and power; beside that, at first Muslim jurists training according to new Western law were reluctant and slow to act, thus slowing down the development of the judicial organization. However we can see at the end of the nineteenth century, there was a judicial system, which was very similar to the modern judicial organization.<sup>16</sup>

In the Ottoman state there was only one school of law, founded in 1880 in Istanbul, until 1907. In 1907 three more schools of law were opened in Konya, Bagdad and Salonika.<sup>17</sup> Even though it was stated that these schools were secular,<sup>18</sup> most of the lessons taught in the schools were dependent on Islam. The so-called secularity of these schools meant the difference of these schools from religion

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<sup>16</sup> Coşkun Üçok&Ahmet Mumcu, *Türk Hukuk Tarihi*, (Turkish Legal History), Ankara Üniversitesi Hukuk Fakültesi Yayınları, Ankara 1976 p. 330,

<sup>17</sup> Ekrem Buğra Ekinci, Konya Hukuk Mektebi ve Osmanlılarda Hukuk **Öğrenimi** (Konya Law School and Legal Education in Turkey) *Tarih ve Medeniyet* V. 58 January 1999 p. 50

<sup>18</sup> Redden, 1957 p. 20

schools (*medreses*). The staff and students of Bagdad and Salonika schools were transferred to Konya after the Ottoman Empire lost those territories. The Konya school of law was closed in 1919.<sup>19</sup> The Istanbul school of law continued to work until 1933 when it was transformed into a faculty of Istanbul University.

### Foundation of the Turkish Republic: Revolution and Reception

The reforms were not enough to keep the Ottoman Empire united; because the state was shaped under the deep influence of religion it was impossible to stop the nationalist movements neither with brute force nor by giving them some rights or even autonomy. Ottoman intellectuals tried to use the concept of *ummah* as a tool of Pan-Islamism but they were surprised to discover that the Muslim nations under Ottoman rule desired independence as much as Christian nations. World War I was the last blow to the weak Ottoman state. At the end of the war the Ottoman state had signed a peace treaty with Allies, and certain parts of Anatolia had been occupied: the resistance movement against occupation was declared to be an illegal uprising by the Ottoman state and it turned into a war of independence. Mustafa Kemal Atatürk, who was once an Ottoman general turned into the leader of the Turkish independence movement, was declared a rebel by the Sultan and was condemned to death by the Ottoman state.

The nationalist movement set up a government in Ankara and eventually succeeded in defeating occupiers in Anatolia: they announced the foundation of the Turkish Republic. The rulers of the new state were intending to clear all the remaining vestiges

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<sup>19</sup> Ekinci, p. 52

of the old regime. They believed that it was not possible to rule by religious rules and the failure of the reforms, which caused the doom of the Ottoman state, was because of trying to create a synthesis between the two systems. The facts showed that it was not possible to reach technological advances of Western civilizations without accepting the Western life style and Western thinking. The new state aimed to change the people and encourage them to adopt the Western lifestyle. Everything related to daily life had to change; new laws were adopted to change clothing, measurements, the calendar, and the alphabet. In 1925 Ataturk announced the prohibition of any kind of head-dresses, both religious and ethnic, to encourage the use of the Western hat, and explained the reason for this ban with these words:

“We have to be civilized persons in every aspect. We have suffered much. The cause for this is the misunderstanding of the world situation. Our opinions, our thoughts will be civilized from head to toe. We shall not take heed of nonsensical words. Look at the entire Turkish and Islamic world, in what grave and difficult situation they are because their ideas and thoughts are not adapted to the reforms made imperative by civilization. Our regression and our recent disaster stem from this as well. If we have rescued ourselves in 5 or 6 years, it is the result of our mental changes. We cannot stop any more. We shall definitely progress because we are obliged to do so. Our nation must clearly know that civilization is like a fire that can burn and harm the people who are unacquainted with it. We shall take our proper place in the civilization family, we are now a member of, and we shall protect and enhance it.”<sup>20</sup>

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<sup>20</sup> Higher-Education System in Turkey <<[www.kultur.gov.tr/EN,31613/civilization.html](http://www.kultur.gov.tr/EN,31613/civilization.html)>>.

The reforms of the young republic were pointing to a revolution. The abolition of the Ottoman Sultanate then Caliphate, the withdrawing of the *millet* system and the acceptance of equality of each citizen regardless of religion or sex, the banning polygamy and finally the acceptance of laicism had completely changed the legal system.

One might think that following a 600-year-old state, the young republic must have inherited a lot of its legal system or legal education, but the fact is, beside its attempts to receive Western law, the Turkish Republic denied everything about the Ottoman system and tried to adopt a Western legal system as quickly as possible. For the reasons explained very briefly above, Turkish Republic cut all the ties with the legacy of Ottoman Empire by choice. The new, young Turkish generations were not even able to read the old alphabet. The young Turkish Republic changed all the major legal codes. Hamson states<sup>21</sup>:

There was a fundamental revolution in Turkey after the first world war and that country decided to start so far as possible from a clean sheet with a complete reception of West European law. The great innovation of the revolution of the 1920's was to make a clean sweep, to take over en bloc, though by way of selection, an entire system of European law.

In particular it is a mistake to exaggerate the effect of the revolution, however thorough-going in some respects that may have been. Turkey did not in 1925 quite suddenly change from a mediaeval Ottoman despotism into a modern democratic state. The Turkish experience does not warrant the belief that any such startling and dramatic transition is possible. From our point of view

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<sup>21</sup> Hamson, 1957 p. 9

it is necessary to remember that Western law has been in process of being received into Turkey, however imperfectly or partially, for a period of at least one hundred years.

The Turkish Republic differs from the Ottoman state in the point that they were not trying to adopt Western law to a Turkish *mode de vie*, but they were trying to adopt Turkish lifestyle to Western law. After the revolution there was no legal plurality in the Turkish state. The unified, secular, law was applicable to all citizens of the Republic.

But creating a new understanding is not simple; at first, the National Parliament of Turkey established commissions to accept the new codes, after long discussions on the issues of: preparation of the civil code, the founding new courts after abolishing the Sharia courts, the new education code, The Minister of Justice of the young Republic, Mahmut Esat Bey, delivered a famous speech saying that: “what we need is not a reform, but a revolution”<sup>22</sup> and announced that the commissions set up to accept new codes would not work anymore. Because the commissioners were trained under the old system, their legal understanding were an obstacle to the creation of new laws; they were still trying to create a synthesis of Islamic law and Western law. The government decided on a complete reception of Western law, which meant that commissions were not supposed to adopt the rules but only translate them. The failing of the commissions also uncovered the need for a new law school. Ankara decided to found a new school to train new jurists only in Western Law.

In three years from 1926 to 1929 the National Parliament accepted many major laws<sup>23</sup> and changed many aspects of daily

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<sup>22</sup> Uçok, Mumcu, Bozkurt, 1976, p. 375

<sup>23</sup> Uçok *et al.* lists the reception of the major codes: in 1926, Civil Code and

life. To support these changes a law school was founded in Ankara in 1925. The new state was taking the new law school seriously; because they had no building in Ankara they let the school use the building of the Grand National Assembly for the first two years.<sup>24</sup> Prof. Dr. Kansu, Rector of the Ankara University telling about those days in his opening speech for the academic year 1945-46:

[T]he first attempt on opening a law school in Ankara was in 1922 and the National Parliament decided to discuss the matter in future because the Education Commission stated that ‘the state has no funds and no buildings even for elementary schools’. Ankara Law School had to wait for two more years to be opened.<sup>25</sup>

Ankara Law School’s first academic staffs demonstrates the urge to create a western law school and the difficulties of finding professors who had adequate knowledge and training:<sup>26</sup>

- Ağaoglu Ahmet Bey (Deputy of Kars) - Professor of Conditional Law
- Akçuraaoğlu Yusuf Bey (İstanbul) - Professor of Political Sciences
- Bahaeddin Bey (Lecturer in Darülfünun) - Professor of Criminal Law and Law of Criminal Procedure

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Code of Obligations from Switzerland, Penal Code from Italy, Commercial Code from Germany and Italy, in 1927, Civil Procedure Code from Canton de Neuchatel, Switzerland, Criminal Procedure Code from Germany in 1929, Maritime Code from Germany, Bankruptcy and Enforcement Code from Switzerland, Tax Law mainly Germany, Uçok, Mumcu, Bozkurt, 1976, p. 376, 377

<sup>24</sup> Ed. Doç. Dr. Dogan Atılgan Rektörlerimizin Eğitim Yılı Açıs Konusmaları, (Opening Speeches of Our Rectors) 1946-2004 Ankara, 2003, p. 5

<sup>25</sup> Id.

<sup>26</sup> Ertuğrul Akçaoğlu, Ankara Üniversitesi Hukuk Fakültesi’nin Kuruluşu ve İlk Günleri, (Foundation and the First Days of the Ankara University Law Faculty), TBB Journal, V. 80, p. 375, 2009

- Tevfik Kâmil Bey (Deputy of İstanbul) - Professor of Roman Law
- Cemal Hüsnü Bey (Deputy of Gümüşhane) - Professor of Economics
- Cemil Bey (Lecturer in İstanbul University Lecturer in Darülfünun) Professor of International Law
- Hasan Bey (Deputy of Trabzon) - Professor of Finance
- Refik Bey (Sihhiye Vekili) - Professor of Forensic Medicine
- Saraçoğlu Şükrü Bey (Deputy of İzmir) - Professor of Theoretical Economics
- Şükrü Kaya Bey (Deputy of Menteşe) - Professor of Schools of Economics
- Şevket Mehmet Ali Bey (Legal Adviser of İş Bank) - Professor of Commercial Law
- Sadri Maksudi Bey (Former President in exile of Idel-Ural) - Professor of Turkish Legal History and Legal History
- Süheyp Nizami Bey (Managing Director of Ziraat Bank) - Professor of Administrative Law
- Mahmut Esat Bey (Minister of Justice) - Professor of History of Revolutions
- Mustafa Fevzi Bey (Deputy of Saruhan) - Professor of History of Fıkıh
- Veli Bey (Legal Advisor of Ministry of Foreign Affairs) - Professor of Civil Law
- Yusuf Kemal Bey (Deputy of Sinop) - Professor of Economics

### Holocaust: Effects of the Exiled German Law Professors in Turkey

An awful event of the history lent help from an unexpected quarter; Jewish law professors had to flee from the Holocaust, and the young Turkish Republic accepted them despite the objections of the Nazis. The German law professors made the final changes to the Turkish legal system, building on the hundred years of Turkish efforts to westernization of Turkish Law and its legal education system.

Ernst Hirsch, one of these exiled professors, was already in Istanbul and then he started to work in Ankara. He tells in his memoirs of the situation of the Ankara Law Faculty when he arrived in Ankara:<sup>27</sup>

When I arrived in Ankara the so-called faculty of law was actually a vocational school with a dormitory attached. The school was founded as to train judges of future by Atatürk himself in 1925, and National Parliament turned the school into a vocational school by a commentary decision in 1926. In time everybody started to name the school as 'faculty' also the budget laws mention the school as 'faculty' but actually there had been no change in its legal status. Faculty of Law had no authority to deliver doctorate and associate professor titles. When I was speaking with the Minister, I had mentioned this issues and he replied 'if you are willing to do the most of the work, we should.'

*Darülfunun*<sup>28</sup> in Istanbul was closed in 1933 and Istanbul University took its place. The aim of this change was to get rid

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<sup>27</sup> Ernst E. Hirsch, *Anılarım*, (Memoirs) Ankara, 2012, p. 330

<sup>28</sup> *Darülfunun* means house of sciences, as a part of Ottoman's westernization efforts it was founded in 1900; Konya, Bagdat and Istanbul law schools become a part of it in time.

of the *Medrese* spirit from the University and renew it with “the Ankara spirit.”<sup>29</sup> Hirsch, Schwarz, Koschaker and so many other scholars who had to flee from Germany under the Nazi regime, found refuge in Turkey, and they helped Turkey a lot in its efforts to create Western-style universities.

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<sup>29</sup> Hirsch, 2012, p. 225



## Current Legal Education System

### General Organization of Universities

There are two types of universities in Turkey; universities owned by state and the not-for-profit foundations (so called private universities). All universities are public entities with scientific autonomy under the protection of Constitution.<sup>30</sup>

#### Higher Education Council (YÖK)

Turkish universities exist in a very centralized system. The Code of Higher Education number 2547 adopted in 1981, by the National Security Council which was the body that replaced the national parliament after the coup d'état for the first period of martial law, aimed at reorganising the higher education system.<sup>31</sup>

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<sup>30</sup> Article 130 of the Turkish Constitution explains the rights and duties of the Universities, secures the members of the University by declaring that management and supervisory bodies and academic staff cannot be removed from their office unless the decision of competent bodies of university or YÖK. Constitution states that budgets of the universities will be prepared by themselves and be approved by YÖK than will be presented to Ministry of Education and the budgets gets into force according to rules and procedures of central administration.

<sup>31</sup> The 4th article of the Higher Education Code states the aims of the higher education. Which give us an idea about the characteristic of the Code; among other aims the Code clearly states that, the purpose of higher education is to educate students to raise as citizens who "have national, moral, humanistic, spiritual and cultural values of the Turkish nation, bearing the honour and happiness of being a Turk" (art. 4/a-2), "holds interest of the society above personal interest, filled with love of family, country and the nation" (art. 4/a-3).

All higher education bodies were reorganized as universities with a hierarchical understanding. All universities were divided into faculties, faculties divided into sections, sections divided into departments and departments divided into disciplines.<sup>32</sup> Even though the Constitution states that there should be academic autonomy<sup>33</sup> because all of these bodies have to follow the decisions of the higher bodies and the universities have to obey the Higher Education Council (in Turkish *Yüksek Öğretim Kurulu*, hereinafter YÖK). YÖK's decisions there is in fact a strict centralising bureaucracy. In this hierarchical structure all academic staff are subordinate to the head of their own disciplines who is under the head of sections. Thus there is almost no room left for the members of academy to act according to their own will which degrades academic autonomy as all have to follow YÖK's decisions. This code has been heavily criticized since then but has not had any major changes to it, unlike many of the Codes accepted after the coup d'Etat.<sup>34</sup> The main tool for the reorganization of the higher education system was the Higher Education Council known as YÖK). YÖK has a major role in the higher education system of Turkey; its role is so important that the Code of Higher Education is often abbreviated as the Code of YÖK, which is a common mistake.

Even though each university has its own decision-making procedures, which are explained below, YÖK has three main tools to control universities. First the budgets of the universities are

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<sup>32</sup> Same order is applied in graduate schools with institutes instead of faculties and vocational training with vocational schools.

<sup>33</sup> Constitution Article 130

<sup>34</sup> In 2012 YÖK announced that they are working on a new Code of Higher Education, they organized panels and discussions and they even founded a section on the official web site: [yeniyasa.yok.gov.tr](http://yeniyasa.yok.gov.tr)

subject to YÖK's approval,<sup>35</sup> second YÖK has the duty to inspect the universities and carries out this function through the board of inspection,<sup>36</sup> and third YÖK has the power to decide the number of chairs for academic staff<sup>37</sup> and the numbers of the students to be admitted to each Faculty.<sup>38</sup> YÖK also has the power to open, to merge or to close the faculties, institutes, departments and branches in a university<sup>39</sup> but this excessive power remains unnecessary because of the three powers we have mentioned.

YÖK has 21 members<sup>40</sup>: 7 members are directly appointed by the President of the Republic consisting of former rectors and academic staff; 7 are selected by the Council of Ministers (Cabinet) from among distinguished, high ranking civil servants; and 7 are selected by the Inter-University Council from among professors who are not already members of that YÖK. The selections of members by the Council of Ministers and the Inter-University Council are subject to approval of the President of the Republic. Each member is appointed for a renewable term of four years. The President of the Republic appoints the President of YÖK from among the Council members.

Nine members of the Council are elected to an Executive Board to carry out day-to-day functions of the Council. Members of the

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<sup>35</sup> Code no. 2547 article 7/k

<sup>36</sup> According to Code no. 2547 article 8/a, Board of Inspection is a dependent body of YÖK has a to carry out inspection functions. Board of Inspection has 10 members, YÖK decides 8 members of it; YÖK appoints 5 professors directly and chooses 1 member for each among the 3 candidates suggested by Supreme Court, Council of state and Court of Accounts. This article also gives a chair to the Ministry of Education and Chief Office of the Turkish Armed Forces.

<sup>37</sup> Code no. 2547 article 7/f

<sup>38</sup> Code no. 2547 article 7/h

<sup>39</sup> Code no. 2547 article 7/d-2

<sup>40</sup> Code no. 2547 article 6/b

YÖK continue to their work in their institutions but the members of Executive Board get appointed on a full-time basis.

### Inter-University Council

The Inter-University Council is the body that decides on academic issues. The Council consists of the rectors all of the universities, one professor from each university selected by the senate of that university and a professor from Turkish Armed Forces selected by the Chief Office of TAF.<sup>41</sup> The Inter-University Council offers recommendations to YÖK and universities on issues related to teaching, research or publications. The Council decides on the conditions for the obtaining of doctorates and on the conditions of associate professor (entrance) examinations. Article 65 of the Higher Education Code authorizes YÖK to issue regulations in almost every area related to higher education with two exceptions. According to article 65/b the Inter-University Council has the power to issue regulations about the principles of the graduate and post-graduate (second and third cycle) education and on academic matters related to the practice of Code 2547.

Rectors of universities hold the presidency of the Council for one year, presidency is taken in turn depending on the age of the University.

### Universities

There are two types of universities in Turkey; universities owned by state and by not-for-profit foundations (so called private universities) as mentioned above. All universities, including so called private universities, are public entities and the National Parliament

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<sup>41</sup> Code no. 2547 article 11

must adopt a code of law in order to found a university. There are 172 universities in Turkey, 102 of them are owned by state and 70 of them are owned by foundations.<sup>42</sup> The total number of vocational training school and undergraduate students is 4,112,687 (2,238,988 male and 1,873,699 female).<sup>43</sup> 534,055 students (244,224 female and 289,831 male) graduated in the 2011 academic year.<sup>44</sup>

### Rector

The Rectors of the state universities are appointed by the President of the Republic by a three phased election process. The process starts with an election in each university. Academic staff (professors, associate professors and assistant professors) of the universities has the right to vote; and each university sends the name of the six candidates in order of the votes they received in the election. YÖK shortlists the candidates to three names regardless of the vote they had in the university election. In the last step of the process, the President chooses one of the three nominees. YÖK has been criticized as having no objective criteria for shortening the lists to three names.<sup>45</sup> Also the President has been criticized for the same reason.<sup>46</sup>

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<sup>42</sup> <[www.yok.gov.tr/web/guest/universitelerimiz](http://www.yok.gov.tr/web/guest/universitelerimiz)

<sup>43</sup> <[www.osym.gov.tr/dosya/1-60426/h/5onlisanslisansduzeyogrencisay.pdf](http://www.osym.gov.tr/dosya/1-60426/h/5onlisanslisansduzeyogrencisay.pdf)

<sup>44</sup> <[www.osym.gov.tr/dosya/1-60395/h/1ogrencisayozettablosu.pdf](http://www.osym.gov.tr/dosya/1-60395/h/1ogrencisayozettablosu.pdf)

<sup>45</sup> There are several occasions that YÖK has changed the list, as an example we can look to the elections in Giresun University in 18 June 2010. 88 votes have been used in this small University and the first candidate had 31 votes, the other votes were 29, 21, 4, 2 and 1. YÖK decided to leave out the first two candidates and decided a short list with the candidates who had 21, 4 and 2 votes. After the withdrew of the candidate who had two votes YÖK had to put another name to the list and they decided to add the candidate in the last place who had only one vote. (from the national newspaper *Milliyet* 19.03.2012) <[gundem.milliyet.com.tr/tek-oy-alan-aday-yok-listesine-girdi/gundem/gundemdetay/19.03.2012/1517063/default.htm](http://gundem.milliyet.com.tr/tek-oy-alan-aday-yok-listesine-girdi/gundem/gundemdetay/19.03.2012/1517063/default.htm)

<sup>46</sup> There are also several occasions that President has decided not to appoint the candidate who had the majority, as an example we might mention the

According to Code of Higher Education, rector's duties and powers are:<sup>47</sup>

- President of the university boards,
- Executes the decisions of higher education boards
- Decides about the suggestions of the university boards,
- Informs the Inter-university Council upon the educational activities, scientific researches and publications of the university,
- Determines on the budget, investment program and vacant positions,
- To inspect and supervise all units of the university and its staff at every level

### Senate

The Senate is the academic body of the university. Under the rector's presidency, the Senate consists of vice-rectors of the university, deans of the faculties and one academic staff designated

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elections of Gazi University, which is one of the three main universities in Ankara, 1740 votes has been counted in election and at the last of the process President appointed the candidate who was in the fifth place with 188 votes. <[siyaset.milliyet.com.tr/rector-atamasinda-gul-den-uc-surpriz/siyaset/siyasetdetay/08.07.2012/1564242/default.htm](http://siyaset.milliyet.com.tr/rector-atamasinda-gul-den-uc-surpriz/siyaset/siyasetdetay/08.07.2012/1564242/default.htm)> Ministry of National Education replied to a parliamentary question and stated that the current President had appointed 32 Rectors after elections. In this process YÖK has decided not to present 11 candidates in the first place of the list even though they had the majority of the votes. The President appointed 18 candidates who had the majority of the votes and has decided not to appoint 14 candidates even though they had the majority. In percentage %56 of the appointed Rectors had the majority in the elections of the Universities. <[www.abbasguclu.com.tr/egitim/rector\\_atamalarinda\\_gul\\_mu\\_yoksa\\_sezer\\_mi\\_daha\\_demokrat.html](http://www.abbasguclu.com.tr/egitim/rector_atamalarinda_gul_mu_yoksa_sezer_mi_daha_demokrat.html)>

<sup>47</sup> Code no. 2547 article 13/b

by the faculty board for three years per each faculty, and heads of the institutes and vocational schools. The Senate meets at least twice a year; in the beginning and the end of each academic year. The Senate's duties and powers are:<sup>48</sup>

- To decide upon the basics of the education, scientific research and publications of the university.
- To prepare drafts of the codes of law or regulations which interests the whole university or to deliver opinion on the drafts.
- To prepare draft regulations to present to the approval of the rector or to deliver opinion on the drafts.
- To decide upon the academic calendar.
- To deliver honorary academic titles.
- To decide about the objections to the boards of faculties, institutes and vocational schools.
- To chose members of the Executive Board of the university.

### **Executive Board**

The executive board of the university consists of deans and three academics who have been assigned to it by the university Senate for four years. The rector is the president of the executive board, vice-rectors have the right to sit in the meetings but they do not have right to vote. The executive board is an administrative body and it helps the rector in his administrative duties.<sup>49</sup>

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<sup>48</sup> Code no. 2547 article 14/b

<sup>49</sup> Code no. 2547 article 15

## **Faculty Administration**

### **Dean**

The dean is the head of the faculty and its sub-units. The rector of the university suggests the names of three candidates to the YÖK, which may or may not be from the academic staff of the relevant faculty and might not even be from the relevant field. YÖK appoints a dean from this list for a term of three years, though it is possible to be reappointed at the end of each term of office.

The dean is the head of all boards and units of the faculty and is responsible to the Rector to ensure the full use of the faculty's academic capacity, to take necessary security precautions, to present social services to students, to maintain education, research and publications on a regular basis, and to inspect and supervise all activities in the faculty.<sup>50</sup>

### **Faculty Board**

Faculty board is an academic body and the equivalent of the university senate at faculty level. The dean of the faculty is the president of the board and it consists of the heads of the sections, heads of institutes and vocational schools - if there are any attached to the faculty - three professors, who have been elected by professors; two associate professors, who have been elected by associate professors; and one assistant professor, who has been elected by the assistant professors. They all get elected for a three-year term. The faculty board meets at the beginning and at the end of each academic year. The board decided the basis of the faculty's activities on education, research and publication, academic

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<sup>50</sup> Code no. 2547 article 16

calendar of the faculty and elects members to the executive board of the faculty.<sup>51</sup>

### Executive Board

The executive Board of the faculty consists of three professors, two associate professors and one assistant professor who have been elected by faculty board and the dean is the president of the board. The executive board is an administrative body to help the dean on administrative duties. This board is also authorized to accept students entering from another Faculty or university and may then decide which of the previous courses on that student's transcript to accept and to decide all the matters related to education or examination in the faculty. We must note that, the board's authority to accept students is only for the students who are already enrolled to a faculty. Because of the centralised system neither universities nor the faculties have authority to accept any student who is going to be enrolled for the first time.

## Legal Education for Paralegals

### Vocational Training

VET in Secondary Education: Vocational High School (Lycée) of Justice

Vocational High Schools of Justice (in Turkish; *Adalet Meslek Lisesi*) are four year schools that follow the eight year compulsory primary education. Vocational High Schools of Justice (herein after lycée<sup>52</sup>) aim to educate their students at secondary school level, in

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<sup>51</sup> Code no. 2547 article 17

<sup>52</sup> Ministry of Education prefers to use the term "high school" for this secondary level school, but we prefer the term *lycée* as it is close to Turkish name of the school; *Adalet Lisesi* (Justice Lycée) and to make a difference

according to general principles of Turkish National Education system. The graduates of the VHS of Jus. gain the necessary information and skills to be employed as court clerks and correction officers and other middle and low-level positions in the justice bureaucracy. The lycées work under the Ministry of Education according to Code number 5450.<sup>53</sup>

Lycée is accepts students by means of a nation wide centralised exam carried by the Student Selection and Placement Center (herein after with its Turkish acronym; ÖSYM). There are 27 lycées in Turkey and they had 5,006 students (2,300 male and 2,706 female) in the 2012/13 educational year.<sup>54</sup> Successful candidates of the centralised exam must comply with the following conditions in order to be registered in the Lycée;<sup>55</sup>

- To be a Turkish citizen
- To be graduated from primary school
- Must have good health and physical condition
- Shall not have suspended her/his education after primary education
- Shall not be registered to any secondary school
- Shall not be married, engaged or divorced

Twelve years of education is compulsory in Turkey. The students of lycée start from the ninth grade. Lessons become more specific

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<sup>53</sup> with the vocational high school of justice in the higher education level.  
Code no: 5450 is adopted on 26.01.2006, published in Official Gazette dated 03.02.2006 numbered 26069

<sup>54</sup> National Education Statistics, Published by Official Statistic Programme, Turkish Ministry of National Education and Turkish Statistical Institute, Ankara, 2013, p. 151

<sup>55</sup> <<ttogm.meb.gov.tr/haber.php?go=tamhaber&haberid=37>

to vocational matters each year. In the twelfth year students spend two days at lycée and receive practice training three days a week.<sup>56</sup> The main purpose of these schools is to prepare students for the employment exams of Ministry of Justice. Those who succeed in that exam start to work in the Ministry, indeed graduates from lycée are favoured by the Ministry.<sup>57</sup> The graduates of the lycée may also apply to the central university entrance exam, as an advantage to the graduates of the lycée, they have the right to continue to Vocational High School of Justice without any exams, which is a two year high school, with possibility to continue to Faculties of Law at universities.

#### VET in Higher Education: Vocational High School of Justice

The Vocational High School of Justice (VHS of Jus.) is a two-year high school that aims to educate and prepare its students for administrative duties in the legal field. Students get classes of introduction to main areas of law, criminal, civil and administrative procedure laws, documentation and office administration. They are usually employed in courts, enforcement and bankruptcy offices, correction facilities, legal offices and in the offices of notaries. It has been reported that, especially in recent years, the legal departments of private companies and banks are hiring graduates of VHS of Jus.<sup>58</sup>

In the Turkish higher education system high schools are placed under faculties thus naturally VHS of Jus are placed under law faculties. 4,103 students (2,089 male and 2,014 female) are enrolled to these schools at the moment.<sup>59</sup>

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<sup>56</sup> <kizlarinegitimi.meb.gov.tr/files/doc/sorularla\_cok\_amacli\_liseler.pdf>

<sup>57</sup> <togm.meb.gov.tr/haber.php?go=tamhaber&haberid=37>

<sup>58</sup> <istanbuluniversitesi.hukukfakultesi.gen.tr/admyo/tarihce.asp>

<sup>59</sup> <www.osym.gov.tr/dosya/1-60400/h/14ogretimalanonlisansogrencisay.pdf>

Successful students have a possibility to continue to law school. OSYM runs a centralised exam called the Vertical Transfer Exam, Law Faculties accept student from VHS of Jus depending to their GPA and their grades in the Vertical Transfer Exam. This right stands as an important advantage when it is considered in 2013, 1,923,033 students undertook the university entrance exam<sup>60</sup> and law faculties only offered some 10,500 seats.<sup>61</sup>

## Curriculum of the İstanbul University Faculty of Law, Vocational High School of Justice<sup>62</sup>

### I. YEAR (I. SEMESTER)

COMPULSORY COURSES	Hours
Introduction to Public Law	3
Introduction to Administrative Law	2
Introduction to Private Law -I-	3
Keyboard Skills -I-	3
Turkish Language -I-	2
The Principles of Atatürk and the History of Turkish Revolution -I-	2
The History of Art -I-	2
Foreign Language -I-	2
Computer Skills -I-	3
Introduction to Accounting -I-	2
Justice Psychology	2
Introduction to Tax Law	2

<sup>60</sup> <[www.osym.gov.tr/belge/1-14917/2013-osysye-basvuran-aday-sayilari-16012013.html?vurgu=%c3%b6%c4%9frenci+say%c4%b1s%c4%b1](http://www.osym.gov.tr/belge/1-14917/2013-osysye-basvuran-aday-sayilari-16012013.html?vurgu=%c3%b6%c4%9frenci+say%c4%b1s%c4%b1)>

<sup>61</sup> <[www.osym.gov.tr/dosya/1-60399/h/13ogretimalanlisansogrencisay.pdf](http://www.osym.gov.tr/dosya/1-60399/h/13ogretimalanlisansogrencisay.pdf)>

<sup>62</sup> <[istanbuluniversitesi.hukukfakultesi.gen.tr/admyo/english.asp](http://istanbuluniversitesi.hukukfakultesi.gen.tr/admyo/english.asp)>

**I. YEAR (II. SEMESTER)**

<b>COMPULSORY COURSES</b>	<b>Hours</b>
Civil Procedure Law	3
Administrative Trial Law	2
Introduction to Private Law -II-	2
Introduction to Commercial Law	2
Keyboard Skills -II-	3
Turkish Language II	2
The Principles of Atatürk and the History of Turkish Revolution -II-	2
Foreign Language -II-	2
Computer Skills -II-	3
Introduction to Accounting -II-	2
Advocacy Law	2
Introduction to Documentation	2
SELECTIVE COURSES	-
The Law of Judicial Organisation	2
The Law of The Police and Its Organisation	2

**II. YEAR (III. SEMESTER)**

<b>COMPULSORY COURSES</b>	<b>Hours</b>
Introduction to Criminal Law	2
Introduction to Execution Law	3
Keyboard Skills -III-	3
Forensic Medicine	2
The Law of The Processes and the Organisation of Court Offices	2
The Law Of Notices	1
Computer Skills -III-	3
Introduction to Accounting -III- (Cost Accounting)	2
Introduction To Banking Law	2

II. YEAR (IV. SEMESTER)

<b>COMPULSORY COURSES</b>	<b>Hours</b>
Introduction to Criminal Procedure Law	2
Introduction to Bankruptcy Law	2
Keyboard Skills -IV-	3
Computer Skills -IV-	3
Introduction to Accounting -IV- (Managerial Accounting)	2
The History of Art -II-	2
Introduction to Management	3
Introduction to Execution of Penalties Law	2
Basic Banking Processes	2
	-

## Higher Education

There are 4,353,542 (1,978,343 female and 2,375,199 male) students enrolled to a higher-education institutions in Turkey.<sup>63</sup> Roughly 900,000 students are admitted to university in Turkey every year. When we take out vocational school students and open education students the number of students who are admitted to a four-year undergraduate school in last academic year is 337,291 (174,004 female and 163,287 male).<sup>64</sup> There are 172 universities in Turkey, 102 of them are owned by state and 70 of them are owned by foundations.<sup>65</sup> Access to university is organized via a centralized examination system run by the Student Selection and Placement Centre (ÖSYM). ÖSYM is a public body with administrative and financial autonomy and related with Turkish Higher Education Council (*Yükseköğretim Kurulu - YÖK*).<sup>66</sup> The ÖSYM was a de facto organization of YÖK until 2011. In 2011, the Centre has been totally reorganized after a cheating scandal in the university entrance exam.<sup>67</sup>

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<sup>63</sup> <[www.osym.gov.tr/dosya/1-60395/h/1ogrencisayozettablosu.pdf](http://www.osym.gov.tr/dosya/1-60395/h/1ogrencisayozettablosu.pdf)>

<sup>64</sup> Id.

<sup>65</sup> <[www.yok.gov.tr/web/guest/universitelerimiz](http://www.yok.gov.tr/web/guest/universitelerimiz)>

<sup>66</sup> Code no: 6147art. 3

<sup>67</sup> "ÖSYM head resigns after cheating scandal" news from Today's Zaman newspaper, published on 22.09.2010, <[www.todayszaman.com/news-Detail\\_getNewsById.action;jsessionid=B8C4BD40DB929AF2221565B-FE158D8B3?p.No=15&category=103&dt=2010&newsId=222312&column-istId=0](http://www.todayszaman.com/news-Detail_getNewsById.action;jsessionid=B8C4BD40DB929AF2221565B-FE158D8B3?p.No=15&category=103&dt=2010&newsId=222312&column-istId=0)>

## Access to University

The examination (*Yükseköğretime Giriş Sınavı* or YGS) takes the form of a multiple-choice test in several subjects, some of them compulsory and others reflecting a choice of specialisation (in literature, sciences, *etc.*) by the student. The marks they obtain as well as the relevance of the subjects for the university education they would like to pursue will condition their access to the university and degree subject of their choice. Not unlike many other countries, law is considered a noble subject and a desirable occupation and competition for entry into the best law faculties of the country is strong. At the moment 40,439 students (19,619 female and 20,820 male) are enrolled in Turkish law faculties. The university law degree usually takes four years to complete.

## First Cycle: Undergraduate (Bachelor's) Degree in Law

Law Faculties have no authority to select the students who are going to enrol in their school.<sup>68</sup> The ÖSYM handles all examination and placement issues. In accordance with the numbers of students that YÖK has assigned to faculties, the ÖSYM asks students for a preference form and places students depending their success ratings. For example last student placed to Ankara University Law Faculty was in 5,360th place from among 1,920,000 students. The best law faculties accept only the candidates with the highest grades. Law faculties can set the level of grades necessary for admission but they cannot control the numbers of students admitted. Some law faculties have seen the number of students to be admitted massively increased (Gazi: from 150 students to 300 in 2008, Ankara: from 400 to 600 students, again in 2011, to 800 students) at very short

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<sup>68</sup> Faculties have an authority to accept students who are already enrolled to another law faculty. See title 4.b "Faculty Board"

notice. No additional state funding is attached to the extra students. The private law schools can recoup costs from students (who pay fees of 16,800TL/annum at Başkent University in Ankara, which goes up to 33,000 TL in İstanbul). This is not an option open to state law faculties where the fees are set at approximately 400TL/annum. This situation gives clear cause for concern. Law faculties are increasingly unable to fulfil their educational mission.

Fifteen years ago there were just four law faculties. In 2010 there were 47 law school, 22 in state universities and 25 in private universities.<sup>69</sup> There are now 68 law faculties currently able to accept students in Turkey.<sup>70</sup> 36 in state universities and 32 in private universities.

The remaining faculties are still waiting for YÖK accreditation. In addition 10%-15% of the law graduates training as lawyers come from Turkish Cypriot universities. There are four law faculties in the (territory known in Turkey as the) Turkish Republic of Northern Cyprus for a population of about 100,000 -150,000 inhabitants. These universities are alleged to be of a lower level in quality of education than Turkish universities.

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<sup>69</sup> Prof. Dr. Yasemin Işıқтаç - Dr. Sercan Gürler, General Report of the Turkish National Legal Education System prepared for the 18th International Congress on Comparative Law : The Role of Practice in Legal Education held in Washington during July 25 - August 1, 2010 is based on the information which has been collected from the Law Schools all around Turkey, available at <journals.istanbul.edu.tr/tr/index.php/hukuk/article/download/17155/16415>

<sup>70</sup> There is no officially confirmed number of the law faculties in Turkey. Ministry of Justice and Union of Turkish Bar Associations stated that they have officially applied to YÖK to get the official number, but YÖK is failed to provide it. This number 68 is taken from ÖSYM placement guide by counting the law faculties in this official guide, which does not include new law faculties that are not accepting students yet. <dokuman.osym.gov.tr/pdfdokuman/2012/OSYS/2012OSYSKONTKILAVUZ.pdf>

The expansion of law degree providers, necessary to accommodate a young and growing population, has however threatened the quality of academic education received by students. There are considered to be too few law professors with good qualifications. YÖK has set up minimum standards for university lecturers that are enshrined in statutes, namely, to have a masters degree and a PhD, proficiency in a foreign language and a track record of publications (books and articles) in Turkey and abroad. Apart from these minimum standards, there exists no other assessment system related to the qualifications and practice of the university lecturers. There is also insufficient financial wherewithal for the university law faculties who often have numbers of student increased with no automatic increase in funding levels.

Research from 2009 shows that the number of students per academic staff in the law faculties is 37, but the number of students per academic staff ranges from 12 to 70 in state law faculties.<sup>71</sup> According to ÖSYM's official statistics there are 853 persons, working as academic staff in the 2011-2012 academic year in Turkey.<sup>72</sup> According to same statistics the total number of students is 40,439 which shows us that the number of students per academic member of staff has increased to 47.

### The Curriculum

The law programmes are not themselves regulated by YÖK nor does the Ministry of Justice, or Ministry of Education prescribe what is taught. There is no formal mechanism for input from the Union of Turkish Bars into the curriculum of university

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<sup>71</sup> Fahrettin Demirag & Hasan Çiftçi, *Faculties of Law and Legal Education in Turkey*, TBB Journal, V.91, 2010, p. 272, 273

<sup>72</sup> <[www.osym.gov.tr/dosya/1-60416/h/29lisansogretimalan.pdf](http://www.osym.gov.tr/dosya/1-60416/h/29lisansogretimalan.pdf)>

legal education necessary to obtain to qualify as a lawyer, unlike, for example, the role of the Joint Academic Stage Board of the Solicitors Regulation Authority and the Bar Standards Board in England and Wales in issuing a statement on what constitutes a 'qualifying law degree' and guidance to providers of recognised legal education. Academic independence is considered sacrosanct although concerns have been voiced about political interference in the appointments of senior university officials. It seems that the cooperation between the Bar, judiciary and academics teachers, which could improve the quality of legal education, has not been sufficiently developed. Perhaps the examination for Judges has influenced the content of the law degree in Turkey.

University legal education is said to be of a rather theoretical character, lacking any practical application of the law. The personal relationship between the professor and students is mostly lacking and there is relatively little learning in small groups. The classes have a form of formal lectures *ex cathedra* without any significant interaction on the part of the audience or their active participation in a discussion. Furthermore, only written exams are being carried out which deprives the students of the opportunity to acquire at least the basic oratorical skills. There exist no debating clubs similar to those existing in the British system, although there exist some but not many moot courts. The practical skills are deemed to be acquired by young lawyers only later, during the training preparing to the profession of judge, prosecutor or advocate.

The promotion of learning of foreign languages is not at a sufficient level. Some private law schools insist on knowledge of a second language prior to admission. Some courses in private universities are conducted in English language and at all states universities, English courses are compulsory for one year.

The law degree lasts for four years but often takes longer to achieve. Students are allowed to retake a year but the main rule is that they must graduate in a maximum of seven years. Before 2011 students were expelled from the faculties at the end of seventh year, but this has changed with amendment to Article 44 of the Code of Higher Education. Such students are now allowed to continue with their education on condition that they pay extra fees and are treated like an external student, with the right to sit exams, but not to receive tuition. A student who fails to graduate in seven years loses the rights given to students, i.e. Social Security rights. We might say students who fail to graduate in the given time have a status similar to external students. Grading is done by continuous assessment as well as by end of year exams, although the latter are changing fast to semester exams following the Bologna Process.

There is no internal mechanism to object to the grades awarded. If a student feels unjustly graded he or she may sue the university. The Court will request the marking scheme from the University and alternate professors will re-mark the exam script. There is no final grade at the end of the degree but the student must have achieved 240 ECTS credits according to Bologna Process. Universities are allowed to decide for additional requirements, for example to graduate law faculties in Istanbul Kültür University and Başkent University students must collect 240 ECTS credits and to have a 2.00/4.00 GPA.

CURRICULUM OF BAŞKENT UNIVERSITY FACULTY OF LAW<sup>73</sup>

First Term (Fall)		T	P	C	ECTS
ATA101	ATATÜRK'S PRIN. AND THE HIST. OF THE TURKISH REP. I	2	-	2	2
ENG131	ACADEMIC ENGLISH I	4	-	4	5
LAWXXX	NON-DEPARTMENTAL ELECTIVE COURSES 1	2	-	2	4
LAWXXX	NON-DEPARTMENTAL ELECTIVE COURSES 2	3	-	3	4
LAW104	INTRODUCTION TO LAW	3	-	3	4
LAW113	CIVIL LAW I (GENERAL PRINCIPLES AND LAW OF PERSONS)	4	1	4	5
LAW123	CONSTITUTIONAL LAW I (FUNDAMENTAL PRINCIPLES)	3	-	3	4
TÜRK101	TURKISH I	2	-	2	2
Second Term (Spring)		T	P	C	ECTS
ATA102	ATATÜRK'S PRIN. AND THE HIST. OF THE TURKISH REP. II	2	-	2	2
ENG132	ACADEMIC ENGLISH II	4	-	4	5
GSBHS	FINE ARTS ELECTIVE/FIRST AID	-	2	1	1
LAWXXX	NON-DEPARTMENTAL ELECTIVE COURSES 3	2	-	2	4
LAWXXX	NON-DEPARTMENTAL ELECTIVE COURSES 4	3	-	3	4
LAW114	CIVIL LAW II (FAMILY LAW)	4	1	4	5
LAW124	CONSTITUTIONAL LAW (THE TURKISH CONS. LAW)	3	-	3	4
LAW136	ROMAN LAW	3	-	3	3
TÜRK102	TURKISH II	2	-	2	2
Third Term (Fall)		T	P	C	ECTS
ENG231	ACADEMIC ENGLISH III	4	-	4	5
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 5	1	2	2	4
LAWXXX	ELECTIVE COURSES IN ENGLISH 6	2	-	2	4
LAW213	LAW OF OBLIGATIONS I (GENERAL PROVISIONS)	3	1	3	5
LAW235	CRIMINAL LAW I (GENERAL PROVISIONS)	3	1	3	4

<sup>73</sup> <<http://angora.baskent.edu.tr/ankaraweb/katalog/katalog.php>>

*Legal Education in Turkey*

LAW257	HISTORY OF TURKISH LAW	3	-	3	3
LAW263	ADMINISTRATIVE LAW I	3	1	3	5
Fourth Term (Spring)					
		T	P	C	ECTS
ENG232	ACADEMIC ENGLISH IV	4	-	4	5
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 7	1	2	2	4
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 8	1	2	2	4
LAW214	LAW OF OBLIGATIONS II (GENERAL PROVISIONS)	3	-	3	3
LAW238	CRIMINAL LAW II (GENERAL PROVISIONS)	3	1	3	3
LAW256	EUROPEAN UNION LAW	2	-	2	3
LAW264	ADMINISTRATIVE LAW II	3	-	3	4
LAW286	PUBLIC FINANCE	3	-	3	4
Fifth Term (Fall)					
		T	P	C	ECTS
ENG315	TRANSLATION I	2	-	2	2
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 9	1	2	2	4
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 10	1	2	2	4
LAW351	LAW OF TAXATION	3	-	3	3
LAW355	PHILOSOPHY OF LAW (JURISPRUDENCE)	2	-	2	3
LAW361	PROPERTY LAW I	3	1	3	4
LAW371	LAW OF OBLIGATIONS (SPECIAL TERMS)	4	1	4	4
LAW381	LAW OF CIVIL PROCEDURE I	3	1	3	3
LAW391	COMMERCIAL LAW (COMMERCIAL UNDERTAKING)	3	-	3	3
Sixth Term (Spring)					
		T	P	C	ECTS
ENG316	TRANSLATION II	2	-	2	3
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 11	1	2	2	4
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 12	1	2	2	4
LAW314	CRIMINAL LAW (SPECIAL PROVISIONS)	4	1	4	4
LAW358	SOCIOLOGY OF LAW	2	2	2	4

*Legal Education in Turkey*

LAW362	PROPERTY LAW II	3	-	3	3
LAW382	LAW OF CIVIL PROCEDURE II	3	1	3	4
LAW392	COMMERCIAL LAW II (BUSINESS COMPANIES)	3	1	3	4
Seventh Term (Fall)					
		T	P	C	ECTS
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 13	1	2	2	4
LAW411	FORENSIC MEDICINE	2	-	2	3
LAW427	HUMAN RIGHTS	2	-	2	3
LAW465	PRIVATE INTERNATIONAL LAW I	3	-	3	4
LAW467	LABOR LAW	3	-	3	4
LAW471	LAW OF ENFORCEMENT AND BANKRUPTCY I (ENFORC.)	3	1	3	4
LAW481	COMMERCIAL LAW I (NEGOTIABLE INSTRUMENTS)	3	1	3	4
LAW491	LAW OF CRIMINAL PROCEDURE I	3	-	3	4
Eighth Term (Spring)					
		T	P	C	ECTS
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 14	1	2	2	4
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 15	1	2	2	4
LAW434	GENERAL PUBLIC LAW	3	-	3	3
LAW450	LAW OF SUCCESSION	4	1	4	4
LAW466	PRIVATE INTERNATIONAL LAW II	3	-	3	3
LAW468	COLLECTIVE LABOUR LAW	3	-	3	3
LAW472	LAW OF ENFORCEMENT AND BANKRUPTCY II (BANKRUPTCY LAW)	2	-	2	3
LAW482	COMMERCIAL LAW II (INSURANCE LAW)	2	-	2	3
LAW492	LAW OF CRIMINAL PROCEDURE II	3	-	3	3
Departmental Elective Courses					
		T	P	C	ECTS
LAW268	VICTIMOLOGY	1	2	2	4
LAW272	INTELLECTUAL PROPERTY RIGHTS	1	2	2	4
LAW273	TURKISH ECONOMY	1	2	2	4
LAW275	PARLIAMENTARY LAW	1	2	2	4

*Legal Education in Turkey*

LAW276	ECONOMICS OF THE EUROPEAN UNION	1	2	2	4
LAW277	THE FORMS OF GOVERNMENT	1	2	2	4
LAW278	EUROPEAN LAW OF HUMAN RIGHTS	1	2	2	4
LAW279	CONSUMER RIGHTS	1	2	2	4
LAW281	CONSTITUTIONAL ADJUDICATION	1	2	2	4
LAW288	PROCUREMENT LAW	1	2	2	4
LAW290	TURKISH POLITICAL HISTORY	1	2	2	4
LAW363	LAW OF CONSTRUCTION	1	2	2	4
LAW364	LAW OF CAPITAL MARKET	1	2	2	4
LAW365	INFANCY LAW	1	2	2	4
LAW366	TAX APLICATIONS	1	2	2	4
LAW367	LAW OF LAND AND CADASTRE	1	2	2	4
LAW369	FOUNDATION LAW	1	2	2	4
LAW372	BANKING LAW	1	2	2	4
LAW373	ADMINISTRATIVE PROCEDURE LAW	1	2	2	4
LAW374	PROTECTION OF CULTURAL PROPERTY	1	2	2	4
LAW375	LAW OF SPORT	1	2	2	4
LAW376	TURKISH TAX SYSTEM	1	2	2	4
LAW377	ANIMAL RIGHTS	1	2	2	4
LAW378	ARBITRATION/CANCELATION	1	2	2	4
LAW379	LAW OF LOCAL ADMINISTRATIONS	1	2	2	4
LAW384	PUBLIC PROPERTIES	1	2	2	4
LAW432	SOCIAL SECURITY LAW	1	2	2	4
LAW442	MARITIME LAW	1	2	2	4
LAW473	LAND LAW	1	2	2	4
LAW474	FOREIGN BUSINESS LAW	1	2	2	4
LAW475	PRESS LAW	1	2	2	4
LAW476	INTELLECTUAL AND INDUSTRIAL PROPERTY LAW	1	2	2	4
LAW477	LAW OF COMPETITON	1	2	2	4

*Legal Education in Turkey*

LAW479	ENVIRONMENTAL LAW	1	2	2	4
LAW483	INTERNET LAW	1	2	2	4
LAW484	ADVOCACY AND PUBLIC NOTERY LAW	1	2	2	4
LAW485	LAW PRACTICE II	1	2	2	4
LAW486	LAW PRACTICE I	1	2	2	4
LAW487	MILITARY PENAL LAW	1	2	2	4
LAW488	REFUGEE LAW	1	2	2	4
LAW493	HEALTH LAW	1	2	2	4
LAW494	LAW OF COOPERATIVE COMPANIES	1	2	2	4
LAW496	LAW OF ELECTION	1	2	2	4
Non-Departmental Elective Courses					
		T	P	C	ECTS
LAW191	INTRODUCTION TO PHILOSOPHY	2	-	2	4
LAW192	INTRODUCTION TO SOCIOLOGY	2	-	2	4
LAW193	ECONOMICS I (MICRO ECONOMICS)	3	-	3	4
LAW194	ECONOMICS II (MACRO ECONOMICS)	3	-	3	4
LAW237	HISTORY OF CIVILIZATION	1	2	2	4
LAW258	ACCOUNTING II	1	2	2	4
LAW265	ACCOUNTING I	1	2	2	4
LAW283	INTRODUCTION TO BUSINESS	1	2	2	4
LAW294	INTERNATIONAL ECONOMIC ORGANIZATIONS	1	2	2	4
LAW296	ECONOMIC DOCTRINES	1	2	2	4
LAW357	INTERNATIONAL POLITICAL INSTITUTIONS	1	2	2	4
LAW359	POLITICAL SCIENCE	1	2	2	4
LAW368	JUDICIAL PROCEDURAL WRITING	1	2	2	4
LAW478	FOREIGN POLITICS AND DIPLOMACY	1	2	2	4
LAW489	HISTORY OF POLITICAL OPINIONS	1	2	2	4
LAW498	INTERNATIONAL TRADE	1	2	2	4

*Legal Education in Turkey*

Elective Courses in English		T	P	C	ECTS
LAW239	LAW AND ECONOMICS	2	-	2	4
LAW291	INTERNATIONAL LAW	2	-	2	4
LAW349	CRIMINOLOGY	2	-	2	4
LAW370	LEGAL CONCEPTS	2	-	2	4
LAW436	INTERNATIONAL CRIMINAL LAW	2	-	2	4
T:Theoretic P:Practice C:Credit ECTS:European Credit Transfer System					

## Second and Third Cycle: Master's and Doctoral Degrees in Law

Social Science Institutes are in charge of graduate level education. The separation was one of the steps during the foundation of YÖK after the 1980 coup, and it has been criticized as being designed to weaken the faculties. The institutes are in charge of graduate level education and even though legally they have the possibility of hiring their own staff, institutes usually do not have academic staff and use the faculties' academic staff. In practice institutes are running administrative duties and leave the academic part to faculties' members as it should be. Yet the administrative distinction creates problems, because all of the decision making process is separated from faculties, and academic areas are separated as sections under institutes. Like university entrance exam, there is a centralized entrance exam to be used for the entry process to graduate education, called the Academic Personnel And Postgraduate Education Entrance Exam (ALES) carried out by ÖSYM. But with a difference to undergraduate education, ÖSYM is not responsible for the placement, and institutes have right to chose their students. To apply for master's and doctoral degrees candidates must also be successful in the Foreign Language Exam (YDS) also organised by ÖSYM. Each institute takes students on an average of oral exam results carried out by institutes, the results of ALES and YDS exams and the GPA of the student. Some graduate degrees are open only to law graduates though most of them are open to all who hold an undergraduate degree but it is difficult for a non-law graduate to pass the oral entry exams.

**BAŞKENT UNIVERSITY INSTITUTE OF SOCIAL SCIENCES LAW  
MASTER IN CIVIL LAW WITH THESIS<sup>74</sup>**

First Term (Fall)		T	P	C	ECTS
LAWGXXX	ELECTIVE COURSE I	3	-	3	7
LAWGXXX	ELECTIVE COURSE II	3	-	3	7
LAWGXXX	ELECTIVE COURSE III	3	-	3	7
LAWG514	LATEST DEVELOPMENTS ON TRADE LAW	3	-	3	9
Second Term (Spring)		T	P	C	ECTS
LAWGXXX	ELECTIVE COURSE IV	3	-	3	7
LAWGXXX	ELECTIVE COURSE V	3	-	3	7
LAWGXXX	ELECTIVE COURSE VI	3	-	3	7
LAWG598	SEMINAR	-	-	-	9
Third Term (Fall)		T	P	C	ECTS
LAWG597	PRO-THESIS	-	-	-	30
Fourth Term (Spring)		T	P	C	ECTS
LAWG599	THESIS	-	-	-	30
Elective Courses		T	P	C	ECTS
LAWG509	ALTERNATIVE DISPUTE RESOLUTION	3	-	3	7
LAWG510	ALTERNATIVE DISPUTE RESOLUTION PROCESSES II	3	-	3	7
LAWG526	CONSUMER LAW	3	-	3	7
LAWG542	RECENT DEVELOPMENTS IN INSURANCE CONTRACT LAW	3	-	3	7
LAWG566	GUARANTY LAW	3	-	3	7
LAWG576	DEVELOPMENTS IN THE PERSONAL RIGHTS	3	-	3	7
LAWG577	INNOMINATE CONTRACTS IN LAW OF OBLIGATIONS	3	-	3	7
LAWG581	SUPERFICIES	3	-	3	7

<sup>74</sup> <<http://angora.baskent.edu.tr/ankaraweb/katalog/katalog.php>>

LAWG588	LIABILITY OF THE HEAD OF FAMILY	3	-	3	7
LAW518	SHAREHOLDERS RIGHTS IN JOINT STOCK COMPANIES	3	-	3	7
LAW521	LAW OF ADVERTISEMENT	3	-	3	7
LAW523	PROTECTIVE AND PROVISIONAL MEASURES	3	-	3	7
LAW525	STANDARDIZED TERMS OF CONTRACT	3	-	3	7
LAW532	TRUST RESPONSIBILITY	3	-	3	7
LAW596	LATEST DEVELOPMENTS ON THE LAW OF OBLIGATIONS	3	-	3	7

**BAŞKENT UNIVERSITY INSTITUTE OF SOCIAL SCIENCES LAW  
MASTER IN PUBLIC LAW WITH THESIS<sup>75</sup>**

First Term (Fall)		T	P	C	ECTS
LAWGXXX	ELECTIVE COURSE I	3	-	3	7
LAWGXXX	ELECTIVE COURSE II	3	-	3	7
LAWGXXX	ELECTIVE COURSE III	3	-	3	7
LAWG548	DEVELOPMENT OF HUMAN RIGHTS IN TURKEY	3	-	3	9
Second Term (Spring)		T	P	C	ECTS
LAWGXXX	ELECTIVE COURSE IV	3	-	3	7
LAWGXXX	ELECTIVE COURSE V	3	-	3	7
LAWGXXX	ELECTIVE COURSE VI	3	-	3	7
LAWG598	SEMINAR	-	-	-	9
Third Term (Fall)		T	P	C	ECTS
LAWG597	PRO-THESIS	-	-	-	30
Fourth Term (Spring)		T	P	C	ECTS
LAWG599	THESIS	-	-	-	30

<sup>75</sup> <<http://angora.baskent.edu.tr/ankaraweb/katalog/katalog.php>>

*Legal Education in Turkey*

Elective Courses		T	P	C	ECTS
LAWG536	COMMERCIAL CRIMES AND PUNISHMENTS	3	-	3	7
LAWG543	DISSOLUTION CASES OF POLITICAL PARTIES	3	-	3	7
LAWG544	FREEDOM OF EXPRESSION	3	-	3	7
LAWG545	LOCAL GOVERNMENTS LAW	3	-	3	7
LAWG546	PROCUREMENT LAW	3	-	3	7
LAWG547	ANALYSIS OF TAX LAW	3	-	3	7
LAWG549	TYPES OF GOVERNMENTS	3	-	3	7
LAW568	GENERAL THEORY OF CRIME	3	-	3	7
LAW571	EUROPEAN UNION	3	-	3	7
LAW583	CRIMES AGAINST GOVERNMENT ADMINISTRATION	3	-	3	7
LAW585	PRESS LAW	3	-	3	7
LAW592	CRIMINAL RESPONSIBILITIES OF HEALTH CARE WORKERS	3	-	3	7
LAW593	CRIMINOLOGY	3	-	3	7
LAW594	ATTEMPT CRIMES	3	-	3	7
<p>T:Theoretic  P:Practice  C:Credit  PRE:Precondition  ECTS:European Credit Transfer System</p>					

## Professional Training

### Professional Training for Judges and Prosecutors:

#### Initial Training

The Justice Academy of Turkey (TAA) is the body responsible for the initial training of judges and prosecutors. The TAA is a public body with scientific, administrative and fiscal autonomy.<sup>76</sup> Law graduates must first pass a centralized written exam, again organized by ÖSYM, and then pass an oral exam organized by the TAA. Oral exams are handled by a committee of seven persons. The Undersecretary of the Ministry of Justice (MoJ) holds the chair of the committee and four of the six other members of the committee come from the MoJ. The candidates who are successful in the exams earn the title *candidate judge/prosecutor* and can start their career officially, with payment and Social Security entitlements. The initial training takes two years and consists of two parts each taking one year. Trainee judges and prosecutors get trained together in the first part of the training. In the second part, training differs for *judge candidates* and *prosecutor candidates*. The training also differs for administrative judges.

To apply to the centralized exam persons must:<sup>77</sup>

- be a Turkish citizen;

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<sup>76</sup> Code of Law no: 4954, art. 4

<sup>77</sup> <[www.taa.gov.tr/dosya/mevzuat/adliidariyazili.pdf](http://www.taa.gov.tr/dosya/mevzuat/adliidariyazili.pdf)>

- be in good mental and physical health;
- be under 30 years old, (35 for those holding a doctoral degree);
- be a law graduate (for those applying to administrative judges; those holding a undergraduate degree from political sciences, administrative sciences, economics, finance may apply with the condition to prove they had enough legal courses in their curriculum);
- have no military obligations,
- have no criminal record (except negligence crimes),
- Not be known as disreputable

Initial (pre-service) training covers interactive training programmes for the candidate judges and prosecutors in civil and criminal judicial work. The TAA can also carry out training for the military judiciary (upon the demand of Ministry of National Defence), trainee lawyers (upon the demand of Union of Bar Association) and candidate notaries (upon the demand of Union of Turkish Notaries). The TAA has dormitory facilities and candidates stay in the facilities during their training in the Academy.

The TAA describes the phases of the training as:<sup>78</sup>

1. Pre-service training programs are composed of two stages. Each stage has two terms.

The First Stage begins when candidates are recruited as trainee judges and public prosecutors and it is composed of a preparatory and a general probation term. The training program is common for all candidates at this stage.

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<sup>78</sup> <[www.taa.gov.tr/31-egitim-merkezi-mudurlugu-meslek-oncesi-egitim-bolum-koordinatordlugu.html](http://www.taa.gov.tr/31-egitim-merkezi-mudurlugu-meslek-oncesi-egitim-bolum-koordinatordlugu.html)>

a. Preparatory Training

Period: 4 months

Location: Turkish Justice Academy

b. General Probation

Period: 8 months

Location: One month with the Chief Public Prosecutor's Office

One month with other judicial divisions

Three months with Criminal Courts

Three months with Civil Courts

The Second Stage begins when trainees are appointed as candidate judges and public prosecutors it is composed of duty probation the final-stage training. At this stage, training programs differ for judges and prosecutors.

a. Duty probation

aa. For the judges;

Period: 8 months

Location: 3 months with Criminal Courts

3 months with Civil Courts

2 months with the Court of Cassation

ab. For the public prosecutors

Period: 8 months

Location: 3 months with the Chief Public Prosecutor's Office

3 month with Criminal Courts

2 months with the Court of Cassation

b. Final Training

Period: 4 months

Location: Turkish Justice Academy

Pre-Service Training for Administrative Judge Candidates

This training is composed of three terms.

a. Preparatory Training

Period: 4 months

Location: Turkish Justice Academy

b. Probation

Period: 16 months

Location: 6 months with the Council of state

4 months with Administrative Courts

4 months with Tax Courts

1 month with Regional Administrative Courts

1 month with Provincial Governorships

c. Final Training

Period: 4 months

Location: Turkish Justice Academy

3. Pre-Service Training for Civil, Criminal and Administrative Judge Candidates coming from Private Practice

This training is composed of two terms.

a. Preparatory Training

Period: 3 months

Location: Turkish Justice Academy

b. Final Training

Period: 3 months

Location: Turkish Justice Academy

(The training program differs for Candidates who will work at Civil Courts)

### Continuous Training

Responsibility for the continuing training of judges and prosecutors belonged to Justice Academy until the reorganization of High Council of Judges and Prosecutors (HSYK) in 2010 with Code of Law no: 6087. HSYK still uses the staff and the personal of TAA for continuing training of judges and prosecutors. There is no compulsory continuing training for judges and prosecutors, nor a regular regime of training in place.

Judges must ask for the HSYK's permission to join a training course. The first chamber of the HSYK has right to approve the requests of judges and prosecutors who would like undertake further training.<sup>79</sup> We must also mention that EU funded projects resulted increasing the numbers of training course available. HSYK as the partner of six different projects in 2013.<sup>80</sup>

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<sup>79</sup> <[www.hsyk.gov.tr/uyeler/1dairegorevleri.html](http://www.hsyk.gov.tr/uyeler/1dairegorevleri.html)>

<sup>80</sup> <[www.hsyk.gov.tr/dis-iliskiler.html](http://www.hsyk.gov.tr/dis-iliskiler.html)>

## Professional Training for Lawyers

### Initial Training

Completing an apprenticeship period is one of the conditions set by Article 3 of the Advocacy Act<sup>81</sup> to qualify as an *avukat*. Article 15 of the Advocacy Act provides that the overall duration of this apprenticeship period is one year: the first six months are spent in courts under the authority of judges and prosecutors and the second are spent in a law office under the supervision of an *avukat* with at least five years of experience. It is further prescribed in Article 23 of the Advocacy Act that the apprenticeship period must be served without any interruption. However, some individuals with legal experience of a prescribed duration obtained in courts as judges or prosecutors, in academia or in government agencies can apply to be exempted from the apprenticeship period.<sup>82</sup>

### Application and Character and Fitness Check

Candidates must first apply in writing to the Bar Association where they will serve their apprenticeship. Pursuant to Article 17 of the Advocacy Act, their application must include originals and certified copies of their qualifications, a personal statement that the candidate is free of any circumstances deemed incompatible with the practice of *avukat*<sup>83</sup>, the written consent of an experienced *avukat* with whom apprenticeship will be served and a character reference drawn up by two *avukatlar* practicing with the relevant Bar Association. Article 4 of the Advocacy Apprenticeship Regulations further requires evidence of identity, of residence in the district of the bar association in which registration is sought as

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<sup>81</sup> Advocacy Act no:1136, adopted on 19.03.1969, published in Official Gazette dated 07.04.1969 numbered 13168

<sup>82</sup> Article 4 Advocacy Act.

<sup>83</sup> Article 3(f) and 5(a) Advocacy Act.

well as a criminal record check and medical evidence that they do not suffer from a physical or mental handicap hindering them from practising advocacy permanently ‘in an appropriate manner’.

After receiving the letter of application, the President of the Bar Association will assign one *avukat* enrolled with the Bar Association with the task of investigating whether the apprentice candidate possesses the requisite qualifications for admission into the profession of *avukat* and whether he or she is engaged in any activities incompatible with advocacy. This *avukat* will prepare a report on the outcome of the investigation and submit it to the Bar within a period of fifteen days. The Bar Association may also require further medical evidence if it deemed it necessary.

Once the Bar Association is satisfied with the application, there will be a so-called ‘announcement’ phase,<sup>84</sup> whereby the application will be made publicly known, and everyone is given the opportunity to object to the to the candidate’s application. Only then could the Bar Association enter the candidate in the apprenticeship list.

### **The First Stage of Training**

After being admitted into the apprentice roster, the candidate has to apply to the Judicial Committee in order to begin his or her apprenticeship with courts. Sequence and periods of apprenticeship are then regulated by Article 12 of the Advocacy Apprenticeship Regulations:

“Apprenticeship with courts and judicial offices will be served in the following sequence and periods:

- a) Public prosecutors’ offices: One month.

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<sup>84</sup> Article 7 of the Advocacy Apprenticeship Regulations.

- b) High criminal court: One month.
- c) Criminal court of first instance: Fifteen days.
- d) Criminal court of peace: Fifteen days.
- e) Civil court of peace: Fifteen days.
- f) Civil court of first instance (including commercial, business, property records courts): One-and-a-half months.
- g) Enforcement court and enforcement office: One month.

The judicial committee may change this sequence at its discretion and may allow an apprentice to serve with commercial, business or property records courts upon his/her request.

If there are administrative tribunals in the district of the Bar Association where apprenticeship is served, the apprenticeship will be served fifteen days each with public prosecutors' offices and administrative tribunals.”

The core tasks that the apprentice is obliged to undertake are specified in Article 13 of the Advocacy Apprenticeship Regulations: the apprentice must attend trials, on-site viewings, investigations and the debating and writing of the decision. He or she has to study the files and decisions given to him/her and will prepare reports.

Practical prescriptions on the supervision of the apprenticeship are also given in Article 13. According to this, it is provided for the keeping of an apprenticeship book and an attendance sheet in the Justice Hall<sup>85</sup>; the apprenticeship sheet has to be signed by the apprentices every day. However, there are indicated specific events that can exempt the apprentices from signing the attendance sheet, such as conferences, panel discussions, and symposiums organized by the Bar Association; in such cases the apprentices have to provide documentation supporting their excuses.

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<sup>85</sup> See a sample of such a document in App.2.

It is then provided that upon the completion of each of the two periods of apprenticeship, a report has to be prepared, showing the apprentice's days of absence, if any; the assignments given to the apprentice, his or her general level of interest and performance and the apprentice's propensity to observe the principles and rules of profession. According to Article 24 of the Advocacy Act, the first report has to be completed by the judges and prosecutors with whom the apprentice served the first period, whereas the host *avukat* will issue two reports, one at the end of the third month and a final one.<sup>86</sup>

A good point is that there is a compulsory scheme of lectures, conferences and seminars for trainee lawyers. However, this provision is not always effective. According to Articles 22<sup>87</sup> and

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<sup>86</sup> Apprenticeship reports Article 24 - <Amended as per Article 2178/5 dated 30 January 1979>

Apprenticeship will be served under the supervision of the judicial committee, the bar association, and the host *avukat*.

The judges and public prosecutors with whom the apprentice serves will issue a report evaluating his/her performance as an apprentice, professional interest, and moral character.

The host *avukat* will issue a report at the end of the first three months and a final one at the completion of the apprenticeship period evaluating the performance of the apprentice, his/her professional interest, and moral character.

<sup>87</sup> Apprentice training duty of the Bar association Art. 22 -

Every Bar association conducts apprentice training activities within its own organization in order to produce independent and free *avukat* who are dedicated to the principles of the profession, capable of resolving real-life issues in the light of the principle of the state of law and the rules of the supremacy of law, and operating as one of the constituents of jurisdiction with the goal of achieving just and effective jurisprudence.

Bar associations may form apprentice training units for discharging the duty of training apprentices assigned to them as per the provisions in the Advocacy Act and the Regulations in the light of scientific principles and on a regular basis. The establishment, operation, powers and responsibilities, and other affairs of these units will be defined by house regulations to be adopted by the general assembly of each bar association as provided for in these Regulations.

For apprentices serving their apprenticeship with bar associations lacking the necessary and sufficient means to offer apprentice training on a sys-

23<sup>88</sup> of the Advocacy Apprenticeship Regulations issued by the Union of Turkish Bars, the local Bars are in charge of organising specific training activities and apprentice training of at least 120 hours in the course of a one-year attorney apprenticeship term will be given at the apprentice training units under an annual training program prepared and announced in advance. Moreover, at least sixty hours of this training period will be regularly allocated to the principles and rules of the profession and ‘the attorney in practice.’

However, it seems that the system of supervision over this stage of apprenticeship and, particularly, over the attendance to courses and seminars organized by the local bars, is lacking effectiveness: there is not a real control on attendance by the trainee *avukat* to the events, and this provision seems not to be completely applied in practice.

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tematic and scheduled basis, this training will be given at the apprentice training units to be established in Ankara by the Union of Turkish Bars. The establishment, operation, powers and responsibilities of these units will be defined by regulations to be prepared by the Council of the Union of Turkish Bars.

The training to be given to apprentices at apprentice training units will be counted towards the period of apprenticeship to be served with an *avukat* and may not be interpreted as being contradictory to the rule of non-interruption of apprenticeship.

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Article 23 -

Ensuring the service of apprenticeship in a manner compliant with the “Purpose” Article of these Regulations, providing apprentices with a knowledge of Advocacy Act and professional rules, and developing their skills of applying professional knowledge to real-life situations make up the basic principle of *avukat* apprentice training.

In view of this principle, apprentice training of at least one-hundred-and-twenty hours in the course of a one-year *avukat* apprenticeship term will be given at the apprentice training units under an annual training program prepared and announced in advance. At least sixty hours of this training period will be regularly allocated to the principles and rules of the profession and “the *avukat* in practice.”

Additionally, bar associations will prescribe in the house regulations they will prepare the manner how apprentice training will be conducted and the topics to be covered, taking into consideration the particular characteristics of their local area. Seminar activities will also be conducted and cultural activities such as panel discussions and symposiums organized.

## Second Stage – Apprenticeship within a Law Office

Part four of the Advocacy Apprenticeship Regulations of the Union of Turkish Bars deals with the second six-month period of training, which takes place within a law office.

Article 23 Advocacy Act “Serving the apprenticeship and the duties of the apprentice”

The apprentice is under the obligation to attend hearings together with the *avukat*, to conduct the *avukat*'s business with courts and administrative offices, to manage lawsuit files and correspondence, to participate in training activities organized by the Bar Association, and to perform other tasks assigned by the Council of the Bar Association and to be designated in regulations. Apprentices have to abide by the rules of the profession and the principles set forth in regulations.

### Rules concerning the second stage of training

After having completed the training with the Court, the trainee starts the second part of his training which takes place at a law office. Article 14 and 15 set the conditions required for an *avukat* to be able to become a trainer.

According to Article 14:

The remaining six months of advocacy apprenticeship will be served with an *avukat* enrolled with the bar association, having a minimum seniority of five years in the profession (including the length of service spent as prescribed in Article 4 of the Advocacy Act) and having an independent office. Apprenticeship may be served within a lawyer partnership if an *avukat* having these qualifications is available in the partnership.

Thus, as stated in Article 14, having a minimum of five years in the profession and having an independent law office are the two conditions required for the *avukat* who wants to be a trainer.<sup>89</sup>

It is the duty of each respective Bar association to decide whether the *avukat* with whom the training will be completed possesses the qualifications provided for in the above-mentioned regulations.<sup>90</sup>

Article 16 sets up the framework and the rules for the commencement of the training. The Council of the Bar Association has to provide a “letter on the commencement of training with an attorney” which contains the necessary guidelines for the training. This letter shall contain

[...] information on the apprentice training program and request cooperation in ensuring the apprentice’s participation therein, stating also the precautions to be taken to ensure that the apprenticeship is served in compliance with the provisions in the Regulations, and the rules of training and evaluation that must be applied.

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<sup>89</sup> Article 15 sets further conditions for becoming an *avukat*-trainer: Firstly, “the *avukat* with whom apprenticeship will be served must not be the subject of a decision to initiate final investigation for an offense constituting an impediment to Advocacy, or punished with a fine or dismissal from employment by a decision of the disciplinary board which has become final during the last five years”.

Secondly, “the *avukat* with whom apprenticeship will be served will be identified by the president of the bar association in the event that the *avukat* with whom apprenticeship is currently being served is prohibited from practice as a precaution by a decision of the disciplinary board in accordance with Article 153 of the Advocacy Act”.

<sup>90</sup> Cf Article 21:

“The Council of the Bar Association or, if authorized, the apprenticeship board will also inspect throughout the apprenticeship period whether apprenticeship is being served in accordance with the training goals prescribed in the “Purpose” Article of these Regulations and the rules of the profession”.

The obligations of the trainer are listed in article 17 of the Advocacy Apprenticeship Regulations of the Union of Turkish Bars.

The *avukat* is obliged to

train the apprentice to become an independent and free *avukat* dedicated to the principle of the supremacy of law and the principles and rules of the profession, and capable of applying his/her legal knowledge to specific cases.

This is a very interesting provision, especially the part concerning “the independent and free *avukat*” stipulation. This obligation is important in a country where attorneys complain about the difficulties and the pressure they face in their everyday activities and where corruption can be present. The respect of this provision is also controlled by the Council of the Bar association that has the power able to inspect throughout the training period whether the training is completed in accordance with the rules of the profession.<sup>91</sup>

In order to respect this obligation, Article 17 provides for a list of tasks imposed on trainee lawyers: The trainee has to accompany the *avukat* during prison consultations, has the possibility to follow-up contacts with the court and administrative offices and prepares lawsuit files and correspondence.

The trainer has finally a duty to supervise the participation, the regular attendance and satisfactory performance of the trainee in the training activities of the Bar Association.

Also, similarly to the first part of the apprenticeship training, the training has to be completed without interruption.<sup>92</sup>

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<sup>91</sup> Article 21 *Id.*

<sup>92</sup> Article 18 provides: “The apprentice will attend and observe trials in the

Article 19 sets the tasks that the trainees may perform. Thus, the trainee may, with the written consent and under the supervision and responsibility of his or her supervisor

attend hearings concerning the court actions and other business being conducted by their host *avukat* in civil courts of peace, criminal courts of peace, and enforcement courts as well as conduct business at enforcement offices.

Article 19 specifies that this power will terminate with the issuance of the training completion certificate or deletion from the apprentice roster.

It is then provided in Article 20 that the supervisor has to issue two reports: the first one at the end of the three months and the second upon full completion of the training period (the last report will be the final one).

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company of the *avukat* provided that this does not interfere with the apprentice training activities. The apprentice may appear as counsel in the trials in the courts stated in the Advocacy Act with the written consent of the *avukat*.

The apprentice will conduct business in courts and administrative offices prepare lawsuit files, carry out research as may be needed, manage correspondence, conduct enforcement proceedings, and participate actively in the stages of enforcement law. Apprentices will be under the obligation to comply with the principles and rules of the profession and the rules in the Regulations in serving their apprenticeship.

Apprenticeship is served without interruption. The days of absence with a valid excuse will be authorized to be served to completion by the decision of the chairperson of the judicial committee in the case of apprenticeship with courts, and the decision of the Council of the bar association in the case of apprenticeship with an *avukat*, provided that an application to that effect is made during the one month following the cessation of the excuse. In the presence of a valid excuse, the president of the bar association may grant the apprentice a leave of absence not to exceed thirty days by receiving also the opinion of the *avukat* with whom the apprenticeship is being served and the apprenticeship board.

An apprentice in military service who is on leave of absence from his military unit may continue serving his apprenticeship in civilian attire from where he left off.

According to Article 20, the reports

will evaluate the attendance of the apprentice, interest in the profession, propensity to observing the principles and rules of the profession, the trials participated in, the work conducted with a certificate of authorisation, research and practical work done, and similar activities.

The Turkish training system is very similar to several European Member States systems. For instance, the French system also requires six-month training in a law office.<sup>93</sup> In a similar way as in Turkey, the French supervisor is required to have a minimum of four years (five years in Turkey) experience in order to be a trainer. The French trainee has very similar duties as the Turkish trainee: he has to attend meetings with clients, hearings in front of different courts, prepare lawsuit files, carry out research as may be needed, manage correspondence, conduct enforcement proceedings.

One difference is the lack of remuneration during training. The Turkish system not only does not provide for any remuneration during the training in a law firm but it prevents the trainees from engaging in any other job activity. According to article 5-(d) of the Advocacy Act, it is an impediment to admission into the profession “*to be engaged in occupations not compatible with the profession of avukat*”. Trainees are not usually paid during this training. Union of Turkish Bars pays for each trainee to ensure their access to the Social Security System. . In the French system, trainees are paid a fraction of the minimum wage depending on the size of the law firm and they can benefit from the Social Security System through their firm. Many young lawyers and law students complain about the lack of income and of access to Social Security during the

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<sup>93</sup> Cf la loi n°71-1130, 31 déc. 1971, art.12 et le décret n°91-1197 du 27 novembre 1991, article 57 and article 58 and le décret 2004-1386 2004-12-21 art. 49 I.

apprenticeship which is difficult to bear when at the same time outside employment is prohibited. Violation of this rule can result in the apprentice being refused access to the Bar.<sup>94</sup>

As in many countries, there is no organised system of selection, review and inspection of the trainers for the apprenticeship other than drawing up a list of available firms. There are no on-site inspections or review of what the trainees are doing or should be doing. As a result the quality of the training depends very much on the trainer's motivation and availability. The large numbers of trainees that must be processed by the apprenticeship system every year make it difficult to ensure a certain degree of harmonisation between the different experiences of each apprentice and to set high minimum standards.

As pointed out by Julian Lonbay in his scoping visit report<sup>95</sup>:

- There seems to be no detailed requirements as to what should be covered in the training
  - Trainers must report on the trainees after three months when they should have been exposed to the main principles arising from court cases and been able to follow case files and can include debt collection work
  - The second three months should include preparing a case, writing a petition to the court of appeal and debt collection.
  - There seems to be little training prescribed regarding transactional work, office accounts, and no formal courses on matters such as interviewing skills, how to plead *etc.*

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<sup>94</sup> See Lonbay, et al, *Experts' Report on the Legal Education and Training System in Turkey* (2010), see <[papers.ssrn.com/sol3/results.cfm](http://papers.ssrn.com/sol3/results.cfm)>

<sup>95</sup> Id.

- Many trainees are sent to collect debts and other time-consuming but not particularly formative tasks (though some such training would seem desirable)

### Continuing Training

As the Council of Bars and Law Societies in Europe indicated in 2006<sup>96</sup>

*Continuing training is of great importance to lawyers and their clients. For everyone seeking legal advice, it is important that that their lawyer is familiar with the latest developments in the fields in which they practise. The CCBE recognises this importance, and therefore considers that all lawyers in Europe should participate in Continuing (Professional) Training programmes, and that the Bars and Law Societies of the CCBE should all develop, in their own specific way, programmes and/or regulations for Continuing Training.*

Continuing training refers to training that is undergone after the completion of professional training for the purpose of maintaining, perfecting and assuring the quality of the service provided to end users, whether it is obligatory or not. Training for a recognized specialised status and its maintenance is also included here. In those countries in which additional training or exams are compulsory in order to have a right of audience before superior courts the training undertaken for that aim shall be considered continuing education.

There is no compulsory continuous or permanent training for lawyers in Turkey.. Most lawyers we had the chance to interview told us about the need of a continuous training and how difficult it was to carry it out and to implement it.

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<sup>96</sup> CCBE Model Scheme for Continuing Professional Training  
<[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/en\\_train-ing\\_ccbe\\_mod1\\_1182247022.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/en_train-ing_ccbe_mod1_1182247022.pdf)>

Continuing Professional Development is a duty of the Union of Turkish Bars<sup>97</sup> and could be developed along the lines suggested

<sup>97</sup> **Part Nine /Union of Turkish Bars/.Section One/General Provisions.  
Duties of the Union:**

*Article 110: The duties of the Union of Turkish Bars are the following:*

1. *Ensuring the precipitation of a majority opinion by finding out the respective opinion of each bar association in matters concerning bar associations by means of mutual discussions.*
2. *Promoting the professional of Advocacy by coordinating the efforts of bar associations in order to reach a common goal.*
3. *Safeguarding the interests of large of the members of bar associations and the ethics, order, and traditions of the profession.*
4. *Strengthening professional ties by introducing Turkish bar associations and their members to each other.*
5. *Making efforts to have bar associations established in every province capital to instill in citizens a conviction as the necessity and benefits of having their lawsuits filed and cases defended thorough the agency of lawyers.*
6. *Disseminating recommendations and publications to have the laws developed and enforced in keeping with the requirements of the country, and developing preliminary drafts if necessary.*
7. *Voicing its views with authorities in matters concerning bar associations.*
8. *Submitting reports covering its views and ideas on legal and professional topics queried by the Ministry of Justice, agencies with judicial or legislative power, and bar associations.*
9. *Taking all kind of measures to encourage and ensure the professional development of lawyers.*
10. *Cooperating with the Ministry of Justice and judicial authorities in order to have court opinions systematically compiled and published.*
11. *Making efforts toward the realization of the rights conferred, and the thorough and honourable discharge of the duties imposed upon lawyers by statutes.*
12. *Setting up libraries, publishing periodicals, organizing conferences, and offering incentives to the creation of original translated works to heighten the scientific and professional levels of the members of bar associations.*
13. *Hold occasional meetings to discuss solutions and measures for rendering the profession more attractive and reaching the stated goals in this area.*
14. *Displaying an interest in, and making contact with boards and organizations related to jurisprudence in the country.*
15. *Keeping the contact with foreign bar associations, lawyers' unions, and legal institutions and participating in international conferences.*
16. *Defining and recommending the mandatory rules of the profession.*
17. *( Added as per article 4667/59 dated 2 May 2001) Defending and safeguarding the supremacy of the law and human rights, and promoting the functionality of these concepts.*

by the Council of Bars and Law Societies of Europe (CCBE) in its Recommendation and Model Rules on continuing training. This is an ongoing process across Europe with many states (*e.g.* Denmark, France, Italy and Austria) recently adopting modes of continuing legal education obligations for lawyers. In France, continuing training has been in existence for a long time but only became mandatory a few years ago. It is compulsory and regulated.<sup>98</sup> Each lawyer is responsible for his own personal legal training and he has to prove to his Local Bar association, at the end of each year, that he has fulfilled his obligation.

### Analysis and Future Possible Developments in Turkish Legal Education

Any discussion on Turkey cannot evade the issue of its application for European Union (EU) membership. Turkey achieved candidate status in 1999. It has since October 2005 opened negotiations with the EU on a variety of chapters of what constitute the *acquis communautaire*, *i.e.* the body of primary and secondary legislation that makes EU law. Some parts of the *acquis* would have an impact on the legal and education training system and would need to be taken into account in any discussions over reforms.

However, EU membership does not mean (and has not meant for current Member States) uniformity of approach as far as legal education and training systems are concerned. Some countries would strongly favour an academic education of considerable length while

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<sup>98</sup> 18. *Exercising other powers conferred by statutes.*  
Articles 13, 14-2, 17-11° et 21-1 de la loi n° 71-1130 du 31 décembre 1971 modifiée, articles 85 et 85-1 du décret n° 91-1197 du 27 novembre 1991 modifié, décision à caractère normatif n°2008-001 adoptée par l'Assemblée générale du Conseil National des Barreaux le 16 mai 2008.

others put more emphasis on vocational skills acquired through taught courses and/or training periods. Likewise, some countries have a common system for legal and judicial professions while the separation is strictly enforced in others. Most countries would have examinations and/or other quality assurance mechanisms set at various stages of the initial and training period but not all.<sup>99</sup>

EU membership has nevertheless meant that internal market principles are applied to the legal profession and in particular the principle of mutual recognition of professional legal qualifications, however diverse the routes to qualifying are between Member states.

Directive 89/48/EEC on mutual recognition of professional qualifications,<sup>100</sup> recently replaced by Directive 2005/36/EC on the recognition of professional qualifications,<sup>101</sup> has provided for an equivalence examination (or an adaptation period) enabling lawyers qualified in one Member State to re-qualify in another one without having to start from the beginning. There is currently no system in Turkey that enables a foreign lawyer to re-qualify as a Turkish *Avukat* (indeed, Turkish citizenship is actually a condition for qualifying as a lawyer) and this would need to be reviewed.

Likewise, the European Court of Justice decision in the 2003

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<sup>99</sup> For a comparative overview of legal education and training systems in Europe, please refer to the work of the CCBE Training Committee: CCBE Comparative Table on Training of Lawyers in Europe: <[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/comparative\\_table\\_en1\\_1183977451.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/comparative_table_en1_1183977451.pdf)>

<sup>100</sup> Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration: <[eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989L0048:EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989L0048:EN:HTML)> .

<sup>101</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications: <[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/02005L0036200701011\\_1190190901.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/02005L0036200701011_1190190901.pdf)> .

*Morgenbesser* case provides that ‘would-be’ lawyers who are not fully qualified as a member of a legal profession coming from one Member state but in the process of doing so, can request access to legal training in another Member state.<sup>102</sup> The only current form of pre-qualification recognition of equivalence in Turkey is done at the academic level (mainly for law degrees coming from the territory known in Turkey as the Turkish Republic of Northern Cyprus) but this would need to be extended to post-university education and training as well.

The Sorbonne-Bologna Process, which consists of a structural alignment of higher education across Europe towards a bachelor-masters-doctorate structure (The ‘3 – 5 – 8’ rule), may also impact on the Turkish legal education and training system and particularly on the structure of the law degree.<sup>103</sup> The Sorbonne-Bologna Process is not strictly confined to the EU but rather open to Council of Europe Member states that are also party to the European Cultural Convention of the Council of Europe. Turkey became a signatory to the 1998 Bologna accords in 2001. Although the implementation of the Process has been uneven across EU member states and is yet to impact on some Member States’ legal education systems, this factor should be considered in any debates on reforming the Turkish legal education and training systems.<sup>104</sup>

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<sup>102</sup> Case C-313/01 *Christine MORGENBESSER v Consiglio dell’Ordine degli avvocati di Genova* [2003] ECR I-13467. See also CCBE guidelines on the *Morgenbesser* case: <[www.ccbe.org/doc/En/morgenbesser\\_guidance\\_en.pdf](http://www.ccbe.org/doc/En/morgenbesser_guidance_en.pdf)>.

<sup>103</sup> For further information on the Sorbonne-Bologna Process, please refer to the various websites set up for the conferences taking place every two years: Berlin 2003 <[www.bologna-berlin2003.de](http://www.bologna-berlin2003.de), Bergen 2005> <[www.bologna-bergen2005.no/](http://www.bologna-bergen2005.no/), London 2007 <[www.dcsf.gov.uk/londonbologna/](http://www.dcsf.gov.uk/londonbologna/) and Leuven/Louvain-la-Neuve 2009> <[www.ond.vlaanderen.be/hogeronderwijs/bologna/conference/index.htm/](http://www.ond.vlaanderen.be/hogeronderwijs/bologna/conference/index.htm/)> .

<sup>104</sup> For information on the implementation of the Sorbonne-Bologna Process in Turkey, please refer to: <[www.bologna.gov.tr/index.cfm?action=index&lang=TR](http://www.bologna.gov.tr/index.cfm?action=index&lang=TR)> (Turkish version) or <[www.bologna.gov.tr/index.cfm?action=index&lang=EN](http://www.bologna.gov.tr/index.cfm?action=index&lang=EN)> (English version).

The operation of the Lisbon Agenda has meant, *inter alia*, that the EU is creating a European Qualification Framework which national qualification frameworks will be latched into thus allowing a clearer view of the equivalence of educational qualifications in Europe. This is having a significant impact on the way the legal professions are viewing education and training, as it requires national frameworks that establish learning outcomes for particular educational programmes. The emphasis is in establishing what individuals can 'do' once they have completed a course rather than how long they have been learning.

Despite the impact of EU membership and of the Sorbonne-Bologna Process on EU Member States, diversity rather than uniformity in the legal education and training process reflects the true picture and is likely to remain so for the foreseeable future. There has however been an impetus to share and develop best practice among the members of the CCBE and the work of its Training Committee is of great relevance to the subject of this report. The CCBE has 32 full members (EU and European Economic Area (EEA) Member states and Switzerland), three associate members (Turkey, Croatia and Serbia) and 9 observer members (mostly from the Western Balkans and Former Soviet Union areas).

The CCBE has over the years adopted recommendations (a) on the training of lawyers, namely the 2000 CCBE Resolution on training for lawyers in the EU<sup>105</sup> and, adopting the approach of the above-mentioned European Qualification Framework, the 2007 CCBE Recommendation on Training Outcomes for European Lawyers<sup>106</sup> and (b) on continuing education, namely, the 2003

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<sup>105</sup> <[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/form\\_en-pdf1\\_1183977205.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/form_en-pdf1_1183977205.pdf)> .

<sup>106</sup> <[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/EN\\_Training-Outcomes1\\_1196675213.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Training-Outcomes1_1196675213.pdf)> .

CCBE Recommendation on Continuing Training<sup>107</sup> the 2006 CCBE Model Scheme on Continuing Training<sup>108</sup> and the CCBE Resolution on Continuing Legal Education of November 2013.<sup>109</sup>

Among the more recent recommendations, the 2007 CCBE Recommendation on Training Outcomes for European Lawyers sets out the knowledge, skills and competences to be expected of newly-qualified lawyers along three sections:

- Who lawyers are? (knowledge and understanding of ethics and professional rules);
- What lawyers do? (theoretical and practical knowledge that lawyers should have in order to perform their functions);
- How lawyers should work (technical skills necessary to perform the functions of a lawyer more effectively).

The 2006 Model Scheme on Continuing Training aims to provide practical assistance to CCBE members in setting up a continuous professional education system. In the CCBE's words, "it offers a framework for the development of guidelines or regulations on continuing training, covering *inter alia* the activities that can qualify as continuing training and credits systems".<sup>110</sup>

Although these recommendations are not mandatory, they represent best practice in the CCBE Member States and should also be taken into account in the debate to reform the Turkish legal education and training system.

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<sup>107</sup> <[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/ccbe\\_recommendation\\_1\\_1183977067.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/ccbe_recommendation_1_1183977067.pdf)>.

<sup>108</sup> <[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/en\\_training\\_ccbe\\_mod1\\_1182247022.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/en_training_ccbe_mod1_1182247022.pdf)> .

<sup>109</sup> [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/29112013\\_EN\\_CCBE\\_res1\\_1386580122.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/29112013_EN_CCBE_res1_1386580122.pdf)

<sup>110</sup> CCBE Press Release, 7 December 2006, <[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/pr\\_0706\\_en-pdf1\\_1182235901.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/pr_0706_en-pdf1_1182235901.pdf)>.



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