

TURKEY

Union of Turkish Bar Associations

I. UNION OF TURKISH BAR ASSOCIATIONS

In this short report, we would first like to give a brief description of the Union of Turkish Bar Associations (UTBA) and the Turkish Legal System. This is the first report presented to the European Presidents' Conference. For this reason, general information will be given on the UTBA, the legal profession in Turkey and the Turkish Legal System. Subsequent annual reports will mainly be devoted to the legal developments in Turkey and the activities of the UTBA.

a) Introduction

The efforts of Turkish Bar Associations to organize go back to 1934. As a result of these efforts, Bars were reorganized in a more effective way, and UTBA was established on 7 April 1969 through the new Law governing the legal profession (the "Attorneys' Act"). Today, 62,000 lawyers are practicing registered to 78 Bar Associations.

Under the Attorneys' Act, the UTBA is "an organization constituted from all the Bar Associations" in Turkey and is a "legal entity as a public professional organization".

In addition to its mission to develop the legal profession, the Union of Turkish Bar Associations is also charged with strengthening and protecting the concepts of the rule of law and human rights.

Since its establishment in 1969, the UTBA has worked in the most effective way to bring about the conditions necessary for "the rule of law" and "fair judgment".

UTBA is an effective participant in efforts to align the law as part of the EU accession process.

It is an associate member of the Council of Bars & Law Societies of Europe (CCBE).

b) The Legal Profession in Turkey

Our country follows a continental European understanding of the legal profession in which the founding principles of justice include the right of unrestricted defense by a legal profession which combines the qualities of the public sector with the attributes of the private sector. In Turkey, lawyers are not required to specialize and are free to address "... the resolution of every sort of legal relationship, every legal matter and equity" and to use their knowledge and expertise in the service of justice and persons "... before all courts, judges, private and public persons, boards and organizations".

In order to be admitted to the profession, a candidate must:

- a. Be a citizen of Turkish Republic;

- b. Be a graduate of a Faculty of Law in Turkey or a graduate of a foreign law faculty who has successfully passed exams in any missing subjects of Turkish law faculties curriculum;
- c. Hold a certificate confirming the completion of compulsory traineeship.

An attorney who is admitted to the profession is empowered to promote or defend the rights of real and legal persons before all courts, arbitrators of other bodies that have judicial power. They may give advice on law and legal issues and negotiate a settlement.

In Turkey, the profession is reserved to Turkish nationals. The only exception to this rule are those foreign lawyers involved in partnerships that fall within the scope of the regulations governing the encouragement of foreign investment. Such partnership may be established according to the Attorneys' Law and may only work within the areas of foreign and international law.

c) Bar Associations

Bar Associations are professional bodies with the status of public organizations having legal identity and working according to democratic principles. Their purpose is to meet the common needs of the legal profession, to support and protect the rule of law and human rights and the reputation, ethical approach and order of the profession. They encourage the development of the legal profession and ensure its members treat each other and their clients honestly and with integrity.

A Bar Association is founded in every provincial centre with at least 30 attorneys. There are currently 78 Associations in Turkey. Their organizational structure consists of a General Assembly, an Executive Board, a President, a Presidential Board, a Disciplinary Committee and a Supervisory Committee.

II. ACTIVITIES OF THE UNION OF TURKISH BAR ASSOCIATIONS

UTBA has engaged in various professional and cultural activities within the year 2009. Besides undertaking the organization of several activities and projects, it has also provided participation in a number of them.

- Mr. Özdemir Özok, attorney-at-law, has been re-elected as the President of the UTBA at the 30th Ordinary General Assembly of the UTBA held on May 25th 2009. Mr. Özok holds the position of President since 2001.

- The 40th anniversary of the Union was celebrated in August 2009.

- "Promoting Civil Dialogue in Bars through Legal Education Project" initiated in July 2008, was completed on November 30th 2009. Within the framework of this Project, scoping visits have been paid to seven Turkish Bars with the participation of attorneys from England-Wales, Austria, France, Italy, Poland, CCBE and Spain so as to determine the needs of those Bars. Besides, DVD's on Continuous Professional Training have been prepared; study visits have been made to our project partners: English-Welsh and French bars; and training workshops have been organized at eight bars.

- The activity on “Rethinking Atatürk in the Twenty First Century” was held on 9-14 November 2009 at the Cultural Convention Center of the UTBA within the scope of the “International Activities for the Commemoration of Atatürk on the 71st Anniversary of his Death”

- On 12-13 December 2009, in a conference on the “Identification of the Problems of Legal Profession and Recommendations within the context of the Draft Judicial Reform”, with the participation of the authorities of the Ministry of Justice, Chairmen of 58 Bar Associations, acting President, Secretary General and Members of the Executive Board of the UTBA, it was decided that, the draft of the new Legal Profession Act will be prepared by the UTBA.

- On 10-11 December 2009, a workshop was organized in Erzurum by the Presidency of the Council of Higher Education, where issues such as; the admission of students and the curricula of law faculties, the relations between law faculties and vocational schools of judicial practices, legal training and the requirements for admission to legal profession have been discussed within the context of the problems of legal education in Turkey.

III. TURKISH LEGAL SYSTEM

After the proclamation of the Turkish Republic in 1923, many legal reforms were instituted. As a result of the reforms in the legislation, Turkish legal system was renovated. Turkish legal system has been built on the foundations of Roman law or Continental legal system. Statutory law is the main source of Turkish Law in contrast to judge made law of Anglo- American legal system.

In general, Turkey’s administrative law has been influenced by French law while a Swiss-German influence can be seen on Turkish private law. The implications of the influence of Swiss-German law on Turkey’s private law and that of French law on administrative law have influenced the use of French and German languages in education and legal profession.

Turkish Constitution was enacted on April 20th 1924 as the first Constitution of the Turkish Republic. It was followed by the Turkish Penal Code which was enacted on March 1st 1926 and the Turkish Civil Code, Turkish Code of Obligations and the Turkish Commercial Code that were enacted concurrently on October 4th 1926. Written sources of Turkish law are hierarchically divided in six categories; the Constitution, occupying the highest level, is followed by laws, international agreements, statutory decrees, regulations and directives respectively.

a) Constitution of the Republic of Turkey

The provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs and administrative authorities. Laws cannot be in conflict with the Constitution.

The constitutional revision known as the Constitution of 1982 represents the current Constitution of the Republic of Turkey.

Republic of Turkey is defined as a democratic, secular and social state governed by the rule of law in the Constitution. As indicated by Article 4, the first three articles establishing the form, the language and the capital of the state and the basic features of the political regime can neither be amended, nor can their amendment be proposed.

Sovereignty is vested fully and unconditionally in the nation and it is exercised through the Turkish Grand National Assembly (TGNA). The first three articles establish the secularity, social justice, equality before the law, republican regime and the indivisible unity of the country. The legislative, executive and judicial powers are coequal and distinct from each other.

Legislative power is vested in the TGNA on behalf of the Turkish Nation and it cannot be delegated. The bicameral parliamentary system prescribed in the Constitution of 1961 was abolished with the current Constitution and the TGNA was united as a whole. Executive power is conferred upon the President of the Republic, the Prime Minister and the Council of Ministers.

b) Turkish Civil Code

Being the symbol of the Turkish Legal Reform, Turkish Civil Code is considered as the foundation of the reforms realized by Atatürk, as a document of the transition from a religious legal system to a secular one, and as a monument of law and civilization. The first version of the Code which entered into force on October 4th 1926, was the adoption of Swiss Civil Code.

The current version of the Code which has been prepared pursuant to the changing needs of the society was adopted on November 22nd 2001 under the amendments made by the draft law dated October 18th 1999.

The current version of the Code, which is drafted with a view to respond to the requirements of our day and developing technology, mostly covers amendments in the field of Family Law. The amendments made in the provisions which are allegedly detrimental to the equality of men and women, have intensified the “principle of equality” which is recognized in all modern legal systems. Provisions, which are deemed to be in conflict with the said principle, have all been modified.

c) Turkish Code of Obligations

Turkish Code of Obligations was also adopted from the Code of Obligations of Switzerland, entered into force on the same day with the Civil Code (October 4th 1926).

Currently, a bill amending the Code of Obligations is on the agenda of the Turkish Parliament. The draft bill on the said amendments was adopted by the Justice Commission of TGNA in December 2008. The draft bill introduces major improvements on various fields as rental contracts, warranty contracts and sales contracts.

A major novelty introduced by the draft bill is the “General Transaction Conditions” which is cited between Articles 20-25. The newly emerging contractual relations and the increasing need for consumer protection, made it compulsory to include such issues in the draft. The draft also stipulates the abolition of the Code of Obligations which is currently in force since 1926.

d) Turkish Commercial Code

The current Turkish Commercial Code was enacted on October 4th 1926. It was adopted mainly from the German and Swiss Commercial Codes. The Code is composed of five main sections: which are, “Commercial Enterprises”, “Corporations”, “Securities”, “Maritime Commerce” and “Insurance Law”.

However, amending the Turkish Commercial Code has become necessary within the process of harmonization with the Acquis Communautaire, not only due to the evolving technology and the eventually changing commercial needs, but also due to the prevalence of free market and competitive economy throughout the world and the inclusion of these concepts within the Copenhagen criteria as common values of the EU.

A draft Commercial Code implementing EU company law directives will abolish the current Code. Major amendments, regarding the establishment and auditing of corporations, groups of companies and the issuance of financial statements are provided. The draft is currently being negotiated in the Justice Commission of TGNA.

e) Turkish Penal Code

The first version of the Turkish Penal Code entered into force on March 1st 1926. It was mainly adopted from the Italian Penal Code of 1889. The current version of the Code implementing the relevant provisions of EU law is in force since April 1st 2005.

The new Penal Code aspires to adapt to the changing conditions and to guarantee the legal values, rights and freedoms of individuals. Amending 304 articles out of 502 of the preceding code, the new Code also provides for significant novelties such as the abolition of abatement in such sentences as honor killings and killings of illegitimate children; and penalization of first degree murders with life imprisonment.