



ISTANBUL  
**GELISIM**  
**UNIVERSITY**

# **ATATURK'S PRINCIPLES AND HISTORY OF TURKISH REVOLUTION II**

## **JUDICIAL REFORMS**

**WEEK 3**

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# Symbol of Justice and Its Meaning



- Themis, the goddess of justice and order, is used as the symbol of justice.
- The «Feminity» and «Chastity» of Themis symbolizes her independence.
- GözlHer's being bilindfold symbolizes her objectivity to the complainant and defendant.
- «Scales» in Themis' hand symbolizes the justice and the balanced distribution of rights.
- The «Sword» in her hand symbolizes the execution of verdict even forcibly by the sword.

# Ottoman Law System

- The Ottoman Empire was a religious empire in which each religious community enjoyed a large degree of autonomy with the Millet (Ottoman Empire) structure. Each millet had an internal system of governance based upon its religious law, such as Sharia, Catholic Canon law, or Jewish Halakha. The Ottoman Empire tried to modernize the code with the reforms of 1839 Hatt-i Sharif which tried to end the confusion in the judicial sphere by extending the legal equality to all citizens.
- Customary Law (Based on Traditions and Custom)
- Religious Law
- Local Law of the conquered places
- Joint Courts, Consular Courts and Western style courts emerges with the Tanzimat Reforms.
- Mecelle, the Civil Code which was prepared by Ahmet Cevdet Pasha, based on the Islamic Law was also present in the Ottoman Law System. It was the first attempt to codify a part of the Sharia-based law of an Islamic state.



**Ahmed Cevdet Paşa**(1822–1895),  
the lead author of the Mecelle



An Ottoman trial in 1877.



# THE ADOPTION OF THE TURKISH CIVIL CODE AND ITS NATURE (FEBRUARY 17, 1926)



- \* The Turkish Civil Code has been perceived as the basis of Ataturk's reforms, the certification of transition from the religious law to the secular law system and a monument of law and civilization.
- \* Turkish Civil Code or Civil Code dated back to 1923.
- \* Atatürk stated the nonconformity of the ancient laws to present situation in 1923.

- \* The leadership of the Republic of Turkiye aimed to enhance and modernize the law system while forming a new state structure. Therefore, in 1923, two commissions were formed within the Ministry of Justice to reorganize the laws including the Civil Code.
- \* The instructions of the commissions required them to depend firstly on the Islamic Law and only in the condition of inexistence of the issue in this source, the Western Laws could be referred. As the members of the commission generally resorted to the Islamic Law and the opinions to adopt western laws gained acceptance, these commissions were dismissed.

- \* When new commissions were assigned to discuss the laws on May 19, 1924, the members were authorised to receive «law and principles from the westerners» if needed.
- \* However, the laws prepared by these commissions were found insufficient and far from modern and this method was proved to be short of the capacity to produce the laws to meet the demands and needs of the country. Mahmut Esat Bozkurt, Minister of Justice, declared that the laws would be taken from the Western Countries to seize the Western Civilization.



- \* After the examination of the Civil Codes of the Western Countries, the Swiss Civil Code was taken as basis for the Turkish Civil Code.
- \* The Swiss Code was preferred as it was adopted in 1912, had a system of family which equated men and women and enabled the judicial discretion.
- \* The French Civil Code was evaluated to be too old as it was one of the oldest Civil Codes in Europe. The Austrian Civil Code was found to have «absolutist» attitude and the German Civil Code was not preferred as its nature of technical details.



- \* A commission of 26 people of jurist deputies, academicians, judges and lawyers was formed for the preparation of Turkish Civil Code.
- \* This commission translated the Swiss Civil Code to Turkish and formed a new draft.
- \* This draft was approved by the Cabinet on December 20, 1925.



**The Members of the Commission which prepared the Turkish Civil Code**



- \* The draft was passed in the commission without any change.
- \* The Commission Report stated that the Swiss Civil Code was one of the most successful laws of the civilized countries, that its clauses were of the quality to meet the necessities of time in terms of social and economic life.
- \* Even though the draft was proposed to be debated by article, Mahmut Esat Bozkurt opposed this by defending the unity of the Civil Code.
- \* After a short discussion of the draft, Turkish Civil Code was passed on April 4, 1926 and entered into force October 4, 1926.

- \* This was followed by the Obligations Law and the same commission translated the Swiss Obligations Law and prepared a new draft. After its approval on April 22, 1926, the Obligations Law came into force on October 4, 1926 at the same time with the Civil Code.
- \* The shift from the religious law to the new Civil and Obligations Law aroused astonishment also in the Westerners. A foreign advisor, Sauser Hall describes the situation in his book «The Adoption of European Law in Turkey» as «The most powerful country of the Islamic States abolished the thousand year old custom in six months. History cannot show such a radical and sudden change in any country. There is no braver experience incurred by a nation that this.»

# Summary

- The leading legal reforms instituted included a secular constitution (laïcité) with the complete separation of government and religious affairs, the replacement of Islamic courts and Islamic canon law with a secular civil code based on the Swiss Civil Code, and a penal code based on that of Italy.
- *April 8, 1924*: Abolition of sharia courts.
  - Religious courts were abolished and replaced with civil courts.
- *March 1, 1926*: Introduction of the new penal law modeled after the Italian penal code
  - A Turkish criminal code was established based on the Italian Criminal Code.
- *October 4, 1926*: Introduction of the new civil code modeled after the Swiss civil code
- *1926*: The Obligation Law
- *1926*: The Commercial Law
- *February 5, 1937*: The inclusion of the principle of laïcité in the constitution