



Turkey Law Review: Turkish Constitution

Comprehensive Overview of Turkish Laws and Constitution for Turkey Law Review Users

Introduction

Turkey's legal system is deeply rooted in its unique historical and cultural context, combining elements of Islamic law, Ottoman traditions, and European legal frameworks. The Turkish Constitution serves as the supreme law of the land, providing the foundation for governance, rights, and duties. This document aims to present an in-depth overview of the Turkish legal system, with an emphasis on constitutional provisions and their practical applications, to equip Turkey Law Review users with a nuanced understanding of this dynamic legal landscape.

Constitutional Principles

Preamble

The Preamble of the Turkish Constitution emphasizes the importance of the rule of law, the sovereignty of the nation, and the secular and democratic structure of the Republic. It declares loyalty to Atatürk's principles and reforms, highlighting the commitment to modernization and equality.

- **Key Note:** The Preamble is not enforceable in court but guides the interpretation of the Constitution.

Sovereignty and Republic

- **Article 1:** Declares Turkey as a Republic.

- **Article 2:** Defines Turkey as a democratic, secular, and social state governed by the rule of law, respecting human rights.
- **Article 3:** Establishes the indivisible unity of the Turkish state, language, flag, and national anthem.

Fundamental Rights and Freedoms

The Constitution guarantees basic rights such as:

- **Right to Equality (Article 10):** All individuals are equal before the law without discrimination.
- **Freedom of Expression (Article 26):** Ensures the right to freely express opinions.
- **Right to Privacy (Article 20):** Protects personal and family life, with restrictions limited to legal grounds.

Separation of Powers

Turkey follows the principle of separation of powers:

- **Legislative Power:** Exercised by the Turkish Grand National Assembly (TGNA).
 - **Executive Power:** Vested in the President and the Council of Ministers.
 - **Judicial Power:** Exercised by independent courts.
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Legislative Framework

The Turkish Grand National Assembly (TGNA)

The TGNA holds legislative authority, enacting, amending, and repealing laws. Key aspects include:

- **Composition:** Comprises 600 members elected for five-year terms.
- **Legislative Functions:** Debates and approves laws, budgets, and international treaties.
- **Oversight Role:** Monitors executive actions through inquiries and motions.

Law-Making Process

1. **Proposal:** Laws can be proposed by deputies or the President.
2. **Debate and Voting:** Draft laws are debated and voted on in the TGNA.

3. **Presidential Approval:** Laws are sent to the President for signing or veto.
 4. **Promulgation:** Approved laws are published in the Official Gazette.
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Judicial Structure

Constitutional Court

- **Role:** Ensures laws comply with the Constitution.
- **Powers:** Reviews individual applications on fundamental rights violations.
- **Composition:** Includes 15 members, appointed by various government bodies.

Court of Cassation and Council of State

- **Court of Cassation:** Acts as the highest appellate court for civil and criminal cases.
- **Council of State:** Reviews administrative cases and provides advisory opinions.

Judicial Independence

Judges and prosecutors are independent and must base their decisions solely on the law. The High Council of Judges and Prosecutors oversees appointments and disciplinary actions.

Human Rights Protections

European Convention on Human Rights (ECHR)

Turkey is a signatory to the ECHR, incorporating its principles into domestic law. Citizens can appeal to the European Court of Human Rights (ECtHR) after exhausting domestic remedies.

Ombudsman Institution

Established to address complaints against public administration, the Ombudsman Institution promotes accountability and transparency.

Anti-Discrimination Laws

Laws prohibit discrimination based on gender, ethnicity, religion, or other grounds, reinforcing equality in public and private life.

Key Legal Codes

Civil Code

- **Overview:** Derived from the Swiss Civil Code, it governs family law, inheritance, and property rights.
- **Equality in Marriage:** Emphasizes gender equality in marital rights and responsibilities.

Criminal Code

- **Principle of Legality:** No crime or punishment without law.
- **Human Rights Protections:** Prohibits torture and guarantees fair trial rights.

Commercial Code

- **Business Regulations:** Covers company formation, bankruptcy, and trade practices.
- **Consumer Protection:** Ensures fair practices in consumer transactions.

Code of Obligations

- **Contracts:** Defines general principles for contracts and liabilities.
 - **Torts:** Addresses compensation for damages caused by unlawful acts.
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International Law and Turkey

Treaties

Turkey adheres to international treaties, which become part of domestic law upon ratification. The Constitution ensures that international agreements on fundamental rights take precedence over domestic laws in cases of conflict.

United Nations and Regional Bodies

- **UN Membership:** Turkey actively participates in UN peacekeeping missions and development programs.
- **Council of Europe:** Turkey's membership reinforces its commitment to human rights and democracy.

Customary International Law

Turkey recognizes and applies customary international law in areas such as diplomatic immunity and maritime rights.

Challenges and Reforms

Judicial Efficiency

Efforts to reduce case backlogs and improve judicial efficiency include:

- Digitization of court processes.
- Specialized courts for areas like intellectual property and labor law.

Human Rights Concerns

Periodic tensions arise between security measures and human rights protections. Ongoing reforms aim to align domestic practices with international standards.

Legal Education and Awareness

Promoting legal literacy and providing accessible legal resources are crucial for strengthening the rule of law.

Conclusion

Turkey's legal system reflects its complex history and aspirations as a modern democratic state. By understanding its constitutional principles, legal codes, and international commitments, Turkey Law Review users can engage more effectively with the country's evolving legal landscape. This document serves as a foundational resource for scholars, practitioners, and anyone interested in Turkish law.

