
ENACTMENT OF CIVIL LAW (1926)

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Introduction

Civil Law regulates all of our daily relationships: The relationships experienced in every stage of social life from birth to death are regulated by laws and supervised by the law. In order for the revolutionary moves to be permanent and successful, laws and rules which would situate their principles are needed. If the community doesn't comply with these laws and rules as a whole, it is not possible to sustain a revolution. The reason underlying the immediate enactment of Civil Code is reinforcing the foundations of targeted revolutions without delay (Veldet, 1942, p. 516-520). Rules of law regulate the relationships in a community and everybody is obliged to comply with them. These rules are obliged to be followed. Because the power of the state is behind them. Thus, if the desired objectives are to be achieved, opening the power and applicability of laws up for discussion is extremely inconvenient.

Turkish Civil Code from Ottomans to Republic

In periods when the Ottoman Empire was powerful, rules of law were based on religious principles. Although this practice were partially changed during the periods of stagnation and regression, it didn't cover all segments of society in general. As a natural consequence of this, the confusion and chaos caused by customary and ecclesiastics laws which have been implemented together for hundreds of years have betrayed the trust in justice and state. A board was established under the presidency of Ahmet Cevdet Paşa (Pasha) with the intent of modernizing the field of law. Fiqh books in Arabic of Hanafi fiqh published by the Board is a statute book which included the provisions related to civil life. It is believed that enactment of Mecelle (Ottoman Code of Civil Law) based on Islamic principles and ecclesiastical rules will constitute legal order in every field of social life, commercial life being in the first place and difficulties experienced will come to an end. Mecelle-i Ahkâm-ı Adliye (Ottoman Code of Civil Law) has entered into force in 1876 but it was different than a legal system in today's context in many ways. The law composed of 1 books and 1851 articles included provisions based on Islamic Law instead of provisions related to family and inheritance laws in a universal context. Moreover, the provisions which pertain to civil proceedings included in the law (Karahasanoğlu, 2011, p.103-104; Kılıçoğlu, 2016, p.1720) caused restlessness in various ethnical and religious differences contained within itself. European states which have taken advantage of this situation have used the new law based on Islamic principles as an excuse and started to intervene in domestic affairs of Ottoman State on various pretenses and violate its sovereignty rights. Gradual increase of these violations and not

making regulations in favor of Turks who are the fundamental element have gradually increased the restlessness in society. Muslims and non-Muslims who have been living in tranquility and peace have lost their ability to coexist. It is seen that authors such as Ahmet Şuayip and Celal Nuri¹ were writing articles and stating that Mecelle should be amended. Celal Nuri has written an article in *İçtihad* magazine dated May 9, 1913 titled “The Mecelle Issue” and stated that Mecelle falls short and changes should be made (Esirgen, 2011, p.43). Just then, the Civil Code Commission divided into three sub-commissions was established to recompose Mecelle in 1916 but the commission has not made any proposal for any amendment up until 1923.

Founders of Turkish Republic which is regarded as continuation of Ottoman State have taken lessons from the distress going on for years and to begin with, they have begun to examine the law examples related to universal law. Thus they have become a civilized state of law and averted European states from interfering our domestic affairs again. For the new State of the Republic of Turkey founded as a fully independent state *Civil Code* became one of the most significant indicators of independency from this aspect. It can be said that Switzerland was taken as an example because it was an independent, idiosyncratic and neutral country at the time.

Why the Swiss Civil Code?

Switzerland is a country of peace which kept away from political disputes and has lived in felicity and tranquility between the years of 1892 and 1907. A long-lasting period of political and economic peace is the most important factor which facilitates enactment of laws suitable for people. This serene and peaceful environment ensured by Switzerland is the main characteristic of Switzerland envied by other states. However, it was not that easy to actualize this. In parallel with the increase in its population, the number of cantons and confederates has increased and it became necessary to do something to hold twenty-three legal regimes together. Feeling compelled to draft a law free from fanaticism which would embrace all social segments, they have made a series of investigations. At the end of these investigations, they have reached a neutral jurist who is able to observe the incidents comprehensively from a broad angle, Eugene Huber. Huber has conducted studies on Swiss and German laws and he was commissioned by Switzerland Jurists Society for this duty in 1892. They have figured out that the new law would build unity and solidarity on solid basis and thus, federalist opposition of central Switzerland and Romand cantons would lose its power. Huber has comparatively examined the civil laws of Germany and Switzerland and after a 15-year long study, Federal Assembly of Switzerland has unanimously enacted the civil code book written by Huber in 1907. Swiss Civil Law Book “ZGB” composed of 977 articles and four main

¹ * Celâl Nuri İLERİ (1870-1939) is a pro-western intellectual of Second Constitutionalist Period and the Republic. He was a graduate in law and spoke French and English (Ülken, 1998, p.399).

sections regarding law of persons, law of family, law of inheritance, law of property and social life has entered into force on January 1, 1912 (Young, 1949, p.163-167).

Considering the differences within itself and its success to be a state, Switzerland bears significant resemblance to newly founded Turkish Republic. This resemblance and changing requirements in line with the etatism based on secularism has necessitated a new law based on universal values to replace Mecelle. Although two commissions have been established in the Assembly began to work in 1923, the laws they have drawn-up were found insufficient and non-contemporary. Since French Civil Code was old and German Civil Code was so technical and rhetoric, Switzerland became the focus. A new commission composed of 26 legist members of parliament, judiciaries, judges and faculty members has been established. French translations of Swiss Civil Code have been translated into Turkish by the commission with the influence of Mahmut Esat Bozkurt, Ministry of Justice at the time and the law was enacted on February 17, 1926 with no 743 in the Assembly and entered into force on October 4, 1926. The same commission has translated the Swiss Code of Obligations into Turkish and the law was enacted on April 22 and entered into force on May 8, 1926 (Stroppel, 2012).

This law dated 1926 is a great revolution which gave an opportunity to join the Western civilization and resurrect the creative powers of Turkish nation. A brand new era has begun upon disengagement with old and dilapidated law and custom (Arık 1948, p.13). Turkish legist Professor ARIK states that enactment of this law is a big move “towards Turkish national law by virtue of Swiss Civil Code” (Arık 1948, p.30).

Reasons of Enactment of the Swiss Civil Code

Absence of expert staff and legists in the said period might be the biggest factor in enactment of the Swiss Civil Code. Switzerland is the most civilized state in Europe and their civil code was enacted in 1912, so it was the most recent civil code. These two factors were also effective in enactment of the said law (Kılıçoğlu, 2016, p.1721).

It is not possible to consider choosing the Swiss Civil Code as a casually made decision or a consequence of coincidences. Many reasons can be shown in for its enactment and those can be enumerated in the most general sense:

1. It was the most recently enacted civil code in Europe and included all kinds of innovations by correcting the deficiencies of the current civil codes of European states,
2. It was delivering rational and practical solutions even to most insoluble problems,
3. It was suitable for custom and law of Turkish community,

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4. It was based on secularism and had a progressive and democratic nature,
 5. Expressions and concepts were clear and comprehensible,
 6. It was based on equality of women and men,
 7. It would take a long time to draw up a new civil code (Ataay, 1995, p.83-86). Due to these reasons, the Swiss Civil Code was translated into Turkish as is and enacted.

Character of Turkish Civil Code and Consequential Developments

Turkish Civil Code should not be seen only as a law. Due to its nature, it involves many characters within itself. These characters are below;

- 1. Democratic Character:** Principles of “equality and generality of rights” included in our law by virtue of the Civil Code are fully in compliance with philosophical and economic trends of our century. In other words everybody has equal rights and remedies and can take advantage of them.
- 2. Liberal and Individualist Character:** Civil Code places significant importance to personal freedom and individual initiative. Thus every person is enabled to freely take decisions in every field of life from birth till death and securely pass their savings to their successors.
- 3. Social Character:** The law generally protects the weak. Provisions related to many aspects such as those who don't have the power of discernment cannot be held liable due to their actions, adoption, alimony, custody etc. are evidences of existence of social character.
- 4. Secular Character:** Secularity principle stated in Article 2 of Constitution was adhered to and the same provision was stated as “Secularism is not interfering in religious affairs for and against in the sense that it is defined in law”. From this point forth, it is the assurance of equality of people regardless of their religion.
- 5. Populist Character:** The law is not hard-to-understand and technical and includes brief and explicit provisions. In this context, it has a populist character. It is not enough for the rules regulating daily relationships in life to be understandable for the legists. They should be clearly understood by the community. We cannot say that Turkish Civil Code has a populist character in terms of its language. Because it is very difficult to understand its language today.
- 6. Appraiser Character:** Civil Code provides broad authority to judges in practice. Hence, when a judge comes across an incident for which there is no applicable provision, he/she acts as a legislator, sets up a rule and adjudges accordingly. It has a

flexible and adaptable nature in this respect (Ataay, 1995, p.161-165).

Turkish Civil Code led to many changes in social and public fields and consequently significant gains are obtained. These gains are below;

- 1- Unity of law is ensured in Turkish Republic.
- 2- Turkish citizens became equal in terms of religion, sect, rights and duties.
- 3- Gaps and discrepancies of Islamic law are removed, a rational and contemporary system is established.
- 4- Authorities of patriarchates regarding earthly affairs are withdrawn.
- 5- Turkish law system is completely secularized.
- 6- Women have acquired the right to choose the occupation they want.
- 7- Equality of women and men is secured in testimony and receiving a share of inheritance.
- 8- Marriage and divorce affairs came under the rule of the state. Women are also granted the right to divorce.
- 9- Family is regarded as the foundation of society.
- 10- Monogamy principle is accepted.
- 11- Wedding procedure came under the rule of the state.
- 12- Obligations are imposed on parents in child rearing.
- 13- Mothers are also granted the right of custody.
- 14- Mecelle is abolished (Özateş, 2013,434; Ataay, 1978).

With the Civil Code, all laws are enforced equally on all citizens of Turkish republic and unity in law is ensured. Secular state approach was adapted to law system. For this purpose, law systems implemented in Europe are examined and after determining the appropriate ones, they are regulated in incorporated into Turkish law system. In this context, Swiss Code of Obligations, Italian Criminal Code and German Code of Commerce are examined and incorporated into Turkish Law System on May 8, 1928, July 1, 1928 and May 10, 1928 respectively.

In this table constituted by Ataay, Turkish and Swiss Civil Codes are compared with Mecelle and their differences are revealed (Ataay, 1995, p.186). Only the issues stated in this table show that it is a law in modern sense.

	Turkish CL	Swiss CL	Mecelle
In Terms of System	Modern Pandects ^{1*} System	Modern Pandects System	It doesn't depend on a system in Western sense.
In Terms of Method	Abstract Method	Abstract Method	Casuistic Method
In Terms of Root	Not national	National	Based on religion
In Terms of Revolutionism	Revolutionist	Conservative	Conservative
In Terms of Integrity	Civil C. + C. of Obligations	Civil C. + C. of Obligations + Commercial Section	Doesn't cover the whole of the field of Civil Law
In Terms of Language	Not populist	Populist	Not understandable by community
In Terms of Secularism	Secular	Secular	Not secular
In Terms of Authorities of Judge	Broad authorities are provided to judges	Broad authorities are provided to judges	No authority is provided to judges

Although Turkish women became equal to men in social and civil fields with Turkish Civil Law, some of their democratic rights are also granted by laws enacted in GNAT in subsequent years and full equality is ensured. Turkish women have gained the right to elect and be elected in political and democratic fields before their fellow women in many European countries. This fact by itself indicates the desire of the newly founded state to have contemporary and universal values.

Turkish Civil Law has entered into force in 1926 by the law no. 743 and successfully remained in force until 2001. The said law has regulated social life according to current conditions in a progressive and democratic manner. Although it has been partially amended in time, in essence it has the basic characters of the Civil Code No. 4721 enacted in 2001. The language of Civil Code dated 2001 is more plain and more detailed explanations regarding the experienced incidents are included. Main headings in both laws are almost exactly the same. Thus it is possible to compare the former (1926) and new (2001) civil codes. First of all, former law was composed of 935 articles but the new one includes 1030 articles. The biggest reason of this increase in the number of articles due to the fact that some provisions mentioned as paragraphs in former law are mentioned as articles in the new law (Savaş Yayınları, 2018, p.775-795).

When the main headings are considered, first eight articles are preserved and enumerated as is.

1. Law of Persons : While there were 44 articles in total from Article 8 to Article 52 under the heading of Law of Persons in former law, the number of articles under the heading of Law of Persons are 38 in total, from Article 8 to Article 46 in the new one. In this section there are principles including capacity to act, settlement place, personality rights, protection of rights, right to sue, right to change of name, birth and death and personal rights and rules to apply these principles.

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2. **Family Law:** While there were 158 articles in total from Article 82 to Article 240, the number of articles are 163 in total, from Article 118 to Article 281 in the new one. In this section there are rules in many issues such as engagement, breaking off the engagement, formation of capacity of marriage, multiple marriages, divorce, alimony after divorce, compensation, custody, marital property, sharing, debts etc.
 3. **Kinship Law:** While there were 198 articles in total from Article 240 to Article 438, the number of articles are 212 in total, from Article 282 to Article 494 in the new one. This section includes issues related to children's bloodline such as parenting responsibilities, paternal rights, adoption terms, paternity, custody, right to education, family properties, guardian and curatorship.
 4. **Inheritance Law:** While there were 155 articles in total from Article 439 to Article 594, the number of articles are 187 in total, from Article 495 to Article 682 in the new one. It includes rules determined regarding the issues such as arrangement of properties belonging to individuals having blood relation, will, inheritance, debarment from inheritance, property sharing etc.
 5. **Law of Property:** While there were 340 articles in total from Article 595 to Article 935, the number of articles are 444 in total, from Article 683 to Article 1027 in the new one. Additional three articles are about the removed law, entry into force and executive authority.

The number of amended articles is in this section at the most. In this section there are regulations regarding ownership, immovable property ownership, movable property ownership, rights in kind, right of usufruct and receivables related to immovable property pledge, mortgage, bill of debt etc. and possession and land registry (Arpacı,2008; <https://www.lexpera.com.tr/mevzuat/kanunlar/turk-kanunu-medenisi-743>).

Conclusion

Being born out of the ashes of an underdeveloped state disconnected from Europe for hundreds of years, Turkish Republic set its goal as reaching the level of contemporary civilization and accordingly and swiftly enacted such important laws and put them into force. This progress led to confusion in Europe. In his work titled "The Reception of European Law in Turkey" Sauser Hall states his opinions as follows: "The most powerful Islamic state abolishes its customs dating back to thousand years in a period of six months. History cannot exemplify such a radical and sudden change in any country. There is no bolder change experienced in any country and by any community". French legist Kont Ostrorog who has conducted studies on Islamic law states the following in one of his articles: "Reception of European law by Turkish Republic is one of the most remarkable events occurred in the East ever since 14th Century, that is, acceptance

of Islam.” According to Mahmut Esat Bozkurt, “A new direction is steered to Turkish history and life, a new and prosperous civilized life is opened to Turks” (Arik, 1948, p.25; Stroppel, 2012).

Today Swiss citizens take a pride in reception of Swiss Civil Code which is called as “ZGB” by them in Turkey. Because small Switzerland has sent something to big Turkey and this makes them see themselves greater and important. In addition Switzerland has hosted Lausanne Peace Treaty in 1923, Montreux Convention in 1936, Cyprus Treaty in 1960, Davos Declaration in 1988 and Cyprus Talks in 2004. So they accept this as the indicator of their friendship and alliance with Turkey (Blocher, 2006). Convergence between Switzerland and Turkey has provided an opportunity to Turkish law students and Turkish students have continued their education on Switzerland scholarship. However the amendments made by Switzerland in parallel to developments in recent years have not been followed up, our law lost its practicality in time and following the partial amendments made, the new law has entered into force on 01.01.2002. The new law is composed of 1030 articles and 950 of them are just redefinitions of former law (Kılıçoğlu 2016, s.1755). This is the proof of how successful the Swiss Civil Code is and how rightful those who have chosen it.

Another point to notice is that Swiss Civil Code is not only accepted by Turkey due to its plain language and properties like granting the judges the authority to construe the law. It is taken as an example and adapted by countries like Peru, Albania, People’s Republic of China, Poland, Romania, Bulgaria, Latvia, Estonia, Lithuania and Czechia (Stroppel, 2012).

Consequently, it is seen that Turkish Civil Code has been regulated and amended again in the years following its enactment as needed. The first one has been realized in 1938. The last and most radical amendment made after the years of 1990 and 1998 was actualized with the law no. 4721 enacted on 22.11.2001 (Arpacı,2008, p.141-142). With enactment of the new law, Swiss Civil Code is expired.

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