



British Institute of International and Comparative Law

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Reviewed work(s):

Source: *Journal of the Society of Comparative Legislation*, New Series, Vol. 9, No. 2 (1908), pp. 328-336

Published by: [Cambridge University Press](#) on behalf of the [British Institute of International and Comparative Law](#)

Stable URL: <http://www.jstor.org/stable/751962>

Accessed: 04/12/2012 07:38

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THE NEW TURKISH CONSTITUTION

[Contributed by NORMAN BENTWICH, ESQ.]

THE Constitution of Turkey, which has been granted as the outcome of the peaceful revolution of the Young Turks, whether regarded in the light of its origin or of its contents, is a most interesting document. The spirit of personal liberty and constitutional government spring up therein full-grown, like a new Athena, as it were, from the head of the most autocratic sovereign of Europe, armed with the full panoply of parliamentary executive and judicial institutions which have grown up in the course of ages among other peoples. To Englishmen, who have not a fixed constitution, and whose most cherished rights depend often upon traditional understandings and tacit principles, it is especially remarkable to notice how, with a number of detailed Laws about the rights and constitution of the Ministry, the Senate, the Chamber of Deputies, and the Courts of Law, there is set out explicitly a series of first principles touching the rights of the subject which, from their unbroken acceptance here since the time of Magna Charta, seem axiomatic. And it is not less remarkable to find provisions, which mark an advance upon the public Law of many Western States, side by side with statements of elementary duties and with the foundation of some dangerous prerogatives. The English Constitution, the mother of parliamentary governments, seems to have been the chief model of the Turkish reformers, but in the relations of the Ministry to the Parliament and in the constitution of the Senate there is imitation rather of Continental States. We propose to summarise the Constitution, adding a few notes upon provisions which seem noteworthy.

Provisions of the Constitution.—The first Article states that “The Ottoman Empire comprises the present territory and possessions and semi-dependent provinces. It forms one indivisible whole, from which no portion can be detached under any pretext whatever.”

In view of events which immediately followed the grant of the Constitution this Article has an ironical ring, but it is significant that the new régime is headed by a political declaration of this kind. The party of progress is also the party which will fight against the disintegration of the empire ; and the note of Turkish national pride is repeated in several later provisions.

The Constitution is in part an attempt to weld the diverse subjects of the Sultan into one united whole.

By Article 2 Constantinople is declared to be the capital of the empire; and the next five Articles describe the position and powers and prerogatives of the Sultan. The sovereignty belongs to the eldest prince of the House of Osman, who is also the Supreme Caliph of Islamism and the protector of the Mussulman religion. He is irresponsible and his person is sacred, and the lives of the members of the Imperial Dynasty, together with their property and their liberty, are under the guarantee of all the people. His sovereign rights resemble those which the English sovereign holds in theory but for some time will probably be more directly exercised. He dismisses and appoints ministers; he controls the coining of money; he concludes treaties; he declares war and makes peace; he commands the military and naval forces; he administers the Sacred Law (*Cheri*); he respites or commutes sentences pronounced by the Criminal Courts; he summons and prorogues the General Assembly; he dissolves, if he deems it necessary, the Chamber of Deputies, but he is bound in that case to direct the election of new members within a limited time.

The next section of the Constitution deals with the public rights of the citizen. All subjects of the empire are Ottomans, whatever faith they profess (Art. 8). This Law, again, marks the desire to create a national feeling among the heterogeneous populations of Turkey. "Every Ottoman enjoys personal liberty on condition of not interfering with the liberty of others, and this liberty is inviolable," i.e. he may not suffer imprisonment except by due process of Law (Arts. 9 & 10).

Islamism is the State religion, but at the same time the State will protect the free exercise of all faiths professed in the empire and uphold the religious privileges granted to various bodies, on condition that public order and morality are respected (Art. 11).

By Article 12 freedom of the Press is granted, within limits imposed by the Law—presumably the Law of libel—and by Article 15 freedom of education. Every Ottoman can attend public or private instruction on condition of conforming to the Law, and all schools are placed under State supervision. These provisions, if they become effective, should help more than anything else to establish a new order in Turkey, for the denial of the free expression of opinion and the restrictions on education have been in the past the chief obstacles to progress. The right is given to form companies industrial, agricultural, and commercial; and to present petitions to the authorities relating to the disturbance of law and order, and likewise to the General Assembly complaining of the conduct of State officials (Arts. 13 & 14).

All Ottomans are equal in the eye of the Law, without prejudice to their religious beliefs; they are admissible to public offices according to their fitness, merit, and ability; but a knowledge of Turkish, which

is the official language of the State, is a necessary qualification (Arts. 17, 18, and 19).

Taxes are to be assessed in proportion to the fortunes of the taxpayers, and no sum of money can be exacted under the name of tax or impost except by a Law duly passed. Confiscation of property, forced levies, and forced labour are prohibited, saving only contributions levied in time of war and measures rendered necessary by the exigencies of war (Arts. 20, 24, and 25).

Property lawfully acquired is guaranteed. There can be no dispossession by the State save on good public cause shown, and subject to the payment of fair compensation. The home is inviolable, and cannot be entered by the authorities except in cases prescribed by Law. No man is bound to appear before any other than a competent and lawfully constituted tribunal; and torture and inquisition are wholly and absolutely forbidden (Arts. 21, 22, and 26).

The charter of liberties seems to be complete save only that no right of public meeting appears to be provided, and trial by jury is not introduced.

The third section deals with Ministers of the Crown, of whom the chief is the Grand Vizier, appointed by the Sultan at his pleasure (Art. 27). He holds a position more like that of the Imperial German Chancellor than the English Prime Minister, for he not only presides over the Cabinet of Ministers which considers all important affairs of State, domestic or foreign, but he exercises a general control over every department of State and takes action on the measures presented to him by the heads of departments, either by referring them to the Cabinet and then presenting them for the Imperial sanction, or by deciding on them himself and then referring them to the approval of the Sultan.

The ministers, however, are declared to be responsible for their Acts and measures, and power is given to members of the Chamber of Deputies to lodge a complaint against any minister which, at the discretion of the President of the Assembly and a special Committee of the House, may be brought before the whole Chamber. If the Committee's report is adopted, an address praying for the trial of the minister is to be transmitted to the Grand Vizier and will be remitted by the Sultan to the High Court.

This procedure has some of the characteristics of the old English impeachment, but is an improvement on it, in that the Court which finally tries the issue is not an exclusively political tribunal, though it will act under special rules (Arts. 30-32).

Suits between ministers and private individuals in respect of private causes are to be judged by the ordinary tribunals. Each minister, though appointed independently of the General Assembly, has the right to be present or be represented at the sittings of either House, and when requested by a vote to appear to give explanations he is bound to reply. When the General Assembly is not in session a minister may adopt measures to

protect the State which have provisionally the force of law, but they must be submitted to the Assembly immediately upon its meeting. In case of a conflict between ministers and the Chamber of Deputies upon a Bill on which the minister is of opinion that he should insist, the Sultan may change his ministers or dissolve the Chamber, subject to a new election within a limited period (Arts. 35 and 36).

One of the Articles dealing with public officials is noteworthy: it makes obedience due to a superior only when the orders given are legal; and in respect of acts contrary to law the fact of having obeyed a superior will not relieve the official who has performed them from responsibility. This law adopts one of the well-known principles of the English Constitution.

The next and longest section of the Constitution treats of the General Assembly, which corresponds with Parliament and is composed, in accordance with the best models, of two Chambers, the Senate and the Chamber of Deputies, which are to sit annually from November 1 to March 1. Neither Chamber can assemble when the other is not sitting, but the sittings may be prolonged or abridged at the discretion of the Sultan. The opening of the Session will be marked by an Imperial Speech, answering in substance to the King's Speech of our Parliament. All the members of the Assembly are to take an oath of fidelity and to bind themselves to observe the Constitution, and they are free to express their opinions and vote as they like; they cannot be bound by any promises or conditions, or prosecuted for opinions or votes in the course of debate (Arts. 46 and 47).

Part of this provision appears to embody the spirit of the recent English decision that it is against public policy for a Member of Parliament to contract to obey any party whip.

Voting must be in person; no business may be transacted in either Chamber unless more than half the members are present. Resolutions must be carried by an absolute majority of members present (Arts. 49 & 51).

The ministers in general have the initiative of bringing forward a Bill or altering an existing law; but the Senate or Chamber of Deputies may originate a new, or amend an old law, referring to matters within their province, and their Bill may be adopted by the Sultan and enacted (Art. 53).

A draft Bill once thrown out by either Chamber cannot be brought forward a second time in the same Session; and before it is carried each article of it and the whole Bill must be passed by a majority of votes in both Chambers (Arts. 54 & 55).

The debates are to be conducted in the Turkish language, a knowledge of which is here again made a condition of entering public life. Votes are given by show of hands, or by ballot if a majority of members so resolve.

The Senate.—Turkey is free from those difficulties of historical tradition which make the reform of the second English Chamber so hard to effect, and the Constitution provides for a Second Chamber filled up on a reasonable

system and endowed with definite functions. The President and members of her Senate are to be nominated for life directly by the Sultan, and are not to exceed a third of the members of the Lower House. In order to be nominated a man must be at least forty years old, and have shown by his acts that he is worthy of public confidence or have rendered signal service to the State. Senators are to receive a stipend of 10,000 piastres a month, but if already holding a paid office they receive only the difference between their salary and their stipend (Arts. 60 to 63).

The Senate is essentially a revising Chamber. It is to examine Bills sent up from the Chamber of Deputies and if it finds a provision contrary to the sovereign rights of the Sultan, or to liberty, or the Constitution, etc., it either rejects it definitely by a vote, assigning its reasons, or it sends the Bill back, with its observations, to the Lower House, demanding that it should be modified or amended in the sense of those observations. It also examines petitions and transmits those which it thinks deserving of reference, with its observations, to the Vizier.

The Chamber of Deputies.—The constitution of the Turkish Chamber of Deputies is also more logical and uniform than that of our House of Commons, the clean slate with which the reformers started enabling them to avoid some of the inconsistencies which appear in historical constitutions. There is one Deputy for every 50,000 males belonging to the Ottoman nationality, who is to be elected by secret ballot. No public office can be held together with the post of Deputy, save that of a minister; any official elected may accept or refuse election, but if he accepts he must resign his other functions (Arts. 65 and 67).

A number of persons are declared ineligible as Deputies, among them those who are not of Ottoman nationality, who do not understand Turkish, who are under thirty years of age, who are attached to the service of a private individual, who are undischarged bankrupts, who are notoriously in disrepute for their conduct, and who are under judicial sentence. The national note is further emphasised by a provision that, after the first period of four years, eligibility will be dependent upon the ability to read Turkish, and, as far as possible (whatever that may mean), to write in that language (Art. 68).

The Government is anxious, it seems, to avoid the difficulties of language which have occurred in the heterogeneous parliament of the Austro-Hungarian Empire.

General elections of Deputies are to be held every four years, and are to commence at least four months before November 1, when the Chamber meets (Arts. 69 and 70).

Although the Deputy is to be chosen from among the inhabitants of the province to which the electors belong, every member represents the whole of the Ottoman people, and not exclusively the district which has elected him (Arts. 71 & 72). This is an admirable declaration of con-

stitutional law which Western countries might imitate. In case of the dissolution of the Chamber by Imperial decree a general election must be held in such time that the Chamber may meet again within six months of the date of dissolution.

Each Deputy is to receive 20,000 piastres per Session and a travelling allowance, and he cannot during the Session be arrested or prosecuted except in case of flagrant crime, unless a majority of the Chamber authorises his prosecution (Arts. 76 and 79).

The President and the two Vice-Presidents of the Chamber are selected by the Sultan from a list of nine candidates elected by the Chamber by a majority of votes.

The sittings are public in general, but the Chamber may form itself into Secret Committee on the motion of the ministers or the President, or fifteen members, which is adopted by vote (Arts. 77 and 78).

The work of the Chamber is to discuss the Bills submitted to it, to adopt, amend, or reject provisions affecting finances or the Constitution, to examine the Budget and settle the yearly expenditure with the ministers, and to determine with the ministers the nature, amount, and mode of assessment of the revenue (Art. 80).

The Judiciary.—Next follow the provisions for the Courts of Law and the Supreme Court of Justice.

The judges, who are to be nominated by a special Law, are irremovable, but may resign. The sittings of the tribunals are public and the publication of judgments is authorised (Arts. 81 and 82). No tribunal can under any pretext refuse to judge an affair within its competence; it cannot arrest or adjourn judgment after it has commenced the hearing, unless the plaintiff desists, and in criminal matters the public prosecutor continues in spite of the plaintiff's desisting.

There are separate tribunals for the Sacred Law (*Cheri*) and the Civil Law; but there is no *Droit administratif*; suits between individuals and the State being within the competence of the ordinary tribunals. Nor, apart from the ordinary tribunals, can extraordinary Courts or Commissions be formed to judge special cases; but arbitration and the nomination of a referee are sanctioned, in accordance with established usage (Arts. 85 to 89).

No judge is to exercise any other State functions. But the Supreme Court is to be formed of thirty members, of whom ten must be Senators, ten Councillors of State, and ten chosen from among the Presidents and members of the Courts of Cassation and Appeal. Its members are elected by lot from these groups, and it is only convoked when necessary by Imperial decree. Its functions are to try the ministers or the President and members of the Court of Cassation, and all other persons accused of treason or attempts against the safety of the State (Art. 92).

It resembles, therefore, in part the French Conseil d'État, in part the ancient English High Court of Parliament; but in its power to try any

attempt against the safety of the State there may lurk a considerable danger to individual liberty and the independence of the judiciary. Its constitution is somewhat remarkable. The High Court is divided into two Chambers—the Chamber of Accusation and the Chamber of Judgment; the former is composed of nine members chosen by lot equally from the three bodies constituting the Court, and its verdict must obtain a majority of two-thirds of its members before it is sent up to the Chamber of Judgment (Arts. 93 and 94).

The Chamber of Judgment is formed of twenty-one members, of whom seven are Senators, seven State Councillors, and seven members of the Court of Cassation or Court of Appeal. Its decisions on cases sent up by the Chamber of Accusation likewise require a majority of two-thirds of its members, and it is to judge according to the regular laws. There is no appeal from its sentences (Art. 95).

The last two parts of the Constitution deal with Finance, *i.e.* the levying of taxes; and with Provincial Administration, of which the general principle is declared to be decentralisation. The details of the provincial organisation are to be fixed by subsequent legislation, but it is provided here that there shall be a General Council to meet annually in the chief town of each province, which shall deliberate on matters of public utility such as the establishment of means of communication, the development of manufactures and commerce, and the spread of education (Arts. 108-10).

The administrative subdivisions of the Province (Vilayet) are the District (Sandjak) and Carton (Kaza). In each Kaza there is to be a council composed of members elected by each of the different (religious) committees, which will be charged with the control of—

(1) The administration of the revenues of real property or of wakouf estates (charitable foundations), of which the special destination has been fixed by the expressed dispositions of the founders, or by usage.

(2) The employment of charitable funds or property affected with a charitable purpose by testamentary dispositions.

(3) The administration of funds of orphans (Art. 111).

These local councils are proof of the willingness of the Turks to grant equality to the various religious denominations which are gathered in the Empire. The demands of some of the communities for local autonomy may indeed go further; for already the feelen are agitating for the complete control of the education of their children, and they resist the attempt to place all the schools under State supervision and to make Turkish the language of instruction. It is possible, therefore, that the powers of the local councils of the denominations will be extended to cover the control of educational institutions.

Finally the Constitution contains a few miscellaneous dispositions which affect various rights previously given (Arts. 113-9).

When the Imperial Government has proof of or apprehends danger in any part of the Empire, it may proclaim there a state of siege, which has

the same effect as the proclamation of martial law in the English dominions, *i.e.* it causes a temporary suspension of the civil laws and brings into effect a special law which is to be enacted. The Sultan has the exclusive power by expelling from the Empire any persons who, upon trustworthy information collected by the administration of police, are recognised as dangerous to the safety of the State. This power is analogous to that recently exercised by the executive in India under the terms of the special Act to prevent seditious conspiracy.

Another article makes elementary education obligatory for all Mussulmans ; but it is noteworthy that compulsory education is not provided for the members of other creeds, so that it is likely that in the near future Turkey will have two classes of schools as we had here till lately : State-schools for the established religion and voluntary schools for others. Provision is made for the alteration of the Constitution. The proposed change must be submitted in the first place to the Chamber of Deputies and be passed there by a two-thirds majority of the members, and must then receive a similar majority in the Senate. Finally it is submitted to the sanction of the Sultan, and if it obtains his assent it is promulgated by Imperial Iradé and has the force of law.

The interpretation of the laws is divided between the Court of Cassation, which decides upon the civil and penal laws ; the Council of State, which, as in France, determines the scope of administrative laws ; and the Senate, which settles disputed points of the Constitution. This division of the interpretative function does not seem as admirable as the English practice, which draws no distinction between different kinds of law, and leaves their interpretation altogether to the ordinary Courts of the land, or the American practice, which entrusts the determination of the Constitution to the Supreme Federal Court. It is another instance of increasing the powers of the Executive beyond what is considered desirable in democratic countries.

The large powers given to the Vizier and the existence of the special Court for the trial of political offenders are the two points in the Constitution which would appear to menace the liberty which constitutional government requires for its proper development and is intended to secure. And doubtless it is inevitable that, in a country which has been ruled so long by a small body of officials, the Executive should for a time retain larger powers than it enjoys in countries where parliamentary government has long been established. The Chamber of Deputies has, however, already shown its independence and its determination to establish the reality as well as the semblance of popular control over the government by bringing about the dismissal of the first Vizier appointed since the Constitution was granted. An attempt was indeed made in the House to impeach the fallen minister, but it failed to win any support. The Cabinet crisis and the constitutional way in which it was solved are hopeful auguries for the future smooth working of

laws which, when originally enacted in 1876, were not given a fair trial because there was then no great popular force behind the reform party. To-day that popular force exists and is dominant. Of course, it is possible that provisions which are admirable on paper may be nullified in practice ; but, so far as present indications go, the spirit of the Turkish people is now for reform and free institutions, and the Constitution is but one expression of a Renaissance which has revolutionised their whole outlook. If that spirit is maintained, the grant of the Constitution will mark an epoch, not only in the history of Turkey, but in the history of the civilised world ; for it will prove that Eastern peoples are as capable as Western of enjoying and developing progressive political institutions.

Note.—The writer of this paper desires to express his obligations to the editor of *The Hellenic Herald*, who has allowed him to make use of the English translation of the Constitution which has appeared in that paper.