DRAFT CONSTITUTION

PART ONE

G E N E R A L P R I N C I P L E S

1. THE FORM OF THE STATE AND THE IRREVOCABILITY OF THE FORM OF THE STATE

ARTICLE I. The Turkish State is a Republic.

This provision of the Constitution shall not be amended, nor shall any motion thereof be made.

II. THE FUNDAMENTAL PRINCIPLES OF THE REPUBLIC

ARTICLE 2. The Turkish Republic is a democratic, secular and social State governed by the rule of law; respecting human rights within the framework drawn by the concepts of public peace, national solidarity and equity; loyal to the nationalism of Atatürk; and based on fundamental tenets set forth in the preamble.

III. INTEGRITY AND THE OFFICIAL LANGUAGE OF THE STATE, ITS FLAG, NATIONAL ANTHEM AND CAPITAL

ARTICLE 3. The Turkish State is an indivisible whole comprising its territory and nation.

Its official language is Turkish.

Its flag is composed of a white crescent and star over a red background in the form defined by law.

Its national anthem is "The March of Independence".

Its capital is the city of Ankara.

IV. FUNDAMENTAL OBJECTIVES AND DUTIES OF THE STATE

ARTICLE 4. The fundamental objective and duty of the State is to safeguard the independence and the integrity of the Turkish nation, indivisibility of the State, the republic and the democracy and provide for the individual and public happiness and peace.

The State shall exert effort to remove all political, economic and social obstacles that restrict the fundamental rights of the individual in such a way as to be irreconcilable with the principles embodied in the rule of law and the principles of justice; and to provide the conditions required for the development of the individual's material and spiritual existence.

V. SOVEREIGNTY

ARTICLE 5. Sovereignty is vested in the Turkish Nation without reservation and condition.

The nation shall exercise its sovereignty through the authorized

agencies as prescribed by the principles laid down in the Constitution.

The right to exercise such sovereignty shall not be delegated to any person, group or class. No person or agency shall exercise any State authority which does not derive its origin from the Constitution. The provisions of accords which foresee membership to institutions possessing international competence are reserved.

VI. EQUALITY BEFORE THE LAW

ARTICLE 6. All individuals are equal before law irrespective of language, race, colour, sex, political opinion, philosophical views, religion or religious sect and other similar discriminations.

No privileges shall be granted to any individual, family, group or class.

State agencies and administrative authorities are obliged to carry all transactions and operations in accordance with the principle of equality before the law.

VII. LEGISLATIVE POWER

ARTICLE 7. Legislative power is vested in the Turkish Grand National Assembly. This power shall not be delegated. Provisions of the articles ..... of the Constitution are reserved.

VIII. EXECUTIVE POWER AND FUNCTION

ARTICLE 8. The executive power and function shall be exercised and be carried out by the President of the Republic and the Council of Ministers in conformity with the Constitution and the laws.

IX. JUDICIAL POWER

ARTICLE 9. Judicial power shall be exercised by independent courts on behalf of the Turkish Nation.

X. THE SUPREMACY AND THE BINDING FORCE OF THE CONSTITUTION

ARTICLE 10. The provisions of the Constitution shall be the fundamental legal principles binding the legislative, executive and judicial organs, administrative authorities and individuals.

Laws shall not be in conflict with the Constitution.

PART TWO

F U N D A M E N T A L R I G H T S A N D D U T I E S

CHAPTER ONE

GENERAL PROVISIONS

I. THE NATURE OF THE FUNDAMENTAL RIGHTS

ARTICLE 11. Every individual is entitled, in virtue of his existence as a human being, to fundamental rights and freedoms which cannot be usurped, transferred or relinquished.

The fundamental rights and freedoms accommodate the individual's duties and responsibilities toward the society, his family and the other individuals.

The fundamental rights and freedoms can only be exercised in conformity with these duties and responsibilities.

II. RESTRICTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

ARTICLE 12. Exercise of the fundamental rights and freedoms can be restricted with the aim of safeguarding the integrity of the State with its territory and nation, the republic, national security, public order, internal peace, public interests, public morals, public health, rights and freedoms of the other individuals and for special reasons designated in related articles.

The general reasons set forth in this article for the restrictions are valid for all fundamental rights and freedoms.

Restrictions of the fundamental rights and freedoms cannot be contrary to the requirements of the democratic public order and cannot be exercised for reasons other than the designated ones.

III. ABUSE OF FUNDAMENTAL RIGHTS AND FREEDOMS

ARTICLE 13. No right and freedom accommodated in the Constitution can be exercised with the aim of upsetting the integrity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, destroying the fundamental rights and freedoms, rendering the administration of the State to an individual or a group or securing hegemony to a social class over other social classes or creating discriminations based on language, race, religion or religious sect, or establishing an order of State based on communism, fascism or religious foundations through any other means. Exercisers of a fundamental right and freedom fostering aims cited above shall be alienated from those rights and freedoms. Verdicts of alienation shall be issued by courts.

The sanctions to be implemented against the real and legal persons and the groups which violate these prohibitions and those who incite and provoke others to the same shall be arranged by law.

No provision of this Constitution can be interpreted in such a way as to avail an individual or a group the right of destroying the rights and freedoms embodied herewith.

IV. SUSPENSION OF THE EXERCISE OF THE FUNDAMENTAL RIGHTS AND FREEDOMS

ARTICLE 14. Exercise of fundamental rights and freedoms can be suspended in part or as a whole and measures can be taken which contradict the guarantees embodied in this Constitution in states of war, martial law and emergency, to the extent that the situation calls for and under the condition that they do not constitute a violation of obligations arising from the international law.

However, even under the situations enumerated in the first paragraph (with the exceptions of deaths resulting from the law of war and the execution of capital penalties) the rules and freedoms recognizing rights of life, the wholeness of the material and spiritual existence of the individual, that the individuals cannot be coerced to disclose their religion, conscientious beliefs and thoughts, that they cannot be denounced or accused for holding them, that crimes and punishments cannot be retroactive and that the defendants cannot be considered guilty until conviction by court.

V. STATUS OF ALIENS

ARTICLE 15. The rights and liberties of aliens may be restricted by law in accordance with international law.

SECOND CHAPTER

THE RIGHTS AND DUTIES OF THE INDIVIDUAL

I. PERSONAL IMMUNITIES, SPIRITUAL AND MATERIAL EXISTENCE OF THE INDIVIDUAL

ARTICLE 16. Every individual shall enjoy the right to pursue improvement of himself materially and spiritually.

The material wholeness of the individual's existence is immune. He cannot be subjected to scientific and medical experiments and his organs cannot be extracted without his consent.

No individual shall be subjected to torture. No individual shall be inflicted with punishment and ill treatment incompatible with human dignity.

The execution of the death penalties arising from court verdicts is exempted from the provisions of the first paragraph.

In the same manner, the provisions of the first paragraph shall also be not considered violated in an act of killing occurring from cases of self defence which makes resort to force imperative, execution of warrants of arrest and capture, prevention of escape of arrested and convicted persons, suppression of an uprising and rebellion, fulfillment of the orders of the competent authorities in states of emergency and martial law.

II. PROHIBITION OF FORCED LABOR

ARTICLE 17. No individual shall be subject to forced labor. Drudgery is prohibited.

The form and conditions to be regulated by the law, work performed during periods of arrest, conviction and release on probation, services military in nature or done in lieu of military duty, services demanded from the citizens in state of emergency, physican and intellectual work in the nature of civil duty in cases where the needs of the country so require shall not be considered forced labor.

III. FREEDOM AND PERSONAL SECURITY OF THE INDIVIDUAL

A. FREEDOM OF THE INDIVIDUAL

ARTICLE 18. Every person shall have individual freedom.

No individual can be deprived of his freedom with exception for the cases (the form and conditions of which are to embodied by the law), are enumerated below:

a- Execution of penalties restricting freedom and the application of securuty measures,
b- Capture and arrest of the related person for the exercise of a court verdict or a legal obligation,
c- Execution of a decision requiring the correction of a minor under detention or which necessitates him to be brought to the competent authority,
d- Fulfilment of measures taken to restrict the freedoms of persons who constitute menace to the public on account of mental disturbance, addiction to drugs and alcohol, vagrancy and communicle disease,
e- Capture and arrest of persons who are seeking illegal entroy into the country or those who have accomplished it and those with orders of extradition and deportation.

B. SECURATIY OF THE INDIVIDUAL

ARTICLE 19. Every person shall have individual security.

Those who have strong evidence of a crime against them can be arrested with a court judgement only for the prevention of the destruction or alteration of evidence or in cases of the danger of the commitment of a crime or similar conditions which are embodied in the law and necessitate arrest. The same conditions shall be required for the continuation of the detention.

Capture without a court order can only be carried out when the offender is caught in the act and in other situations where delay is deemed objectionable. Conditions for these shall be embodied by the law.

Persons caught or arrested shall be informed immediately about the charges against them in written form (if possible) or in oral form.

Persons caught or arrested shall be brought before the court within 48 hours at the latest. For collective crimes, this period shall be at the most 15 days. This excludes the period necessary to bring the detainee before the court nearest to the place of detention. No one shall be deprived of his freedom without a court decision after

these periods. The position of the person arrested or detained shall be reported to his kin. The provisions related to states of emergency, martial law or war are reserved.

Persons arrested shall have the right of asking to be tried in a reasonable time or to be released during investigation or prosecution. Release can be made conditional to an appropriate guarantee safeguarding the defendant's presence at court sessions and the execution of the verdict.

Persons deprived of their liberty under any circumstances are entitled to appeal to the appropriate judicial authority to expedite the trial or to secure their release.

No person shall be deprived of their liberty because of their inability to repay a debt arising from private legal relations.

All damage suffered by persons subjected to treatment other than specified herein shall be indemnified by the State according to law.

IV. FREEDOM OF TRAVEL AND SETTLEMENT

ARTICLE 20. Every individual shall have freedom of travel. The said freedom, however, may be restricted due to crime investigation and prosecution and prevention of the commitment of crime, by the law.

Every individual shall have the freedom of settlement at any place of his choice. This freedom may, however, be restricted by the law for such purposes as the prevention of crime, realization of social and economic development or a healthy and orderly urbanization or protection of public property.

No citizen shall be deported and deprived of the right of entry into homeland. Citizens shall have the freedom of going abroad. This freedom may be restricted by law only on account of civil duties or crime investigation or prosecution.

V. SECRECY AND PROTECTION OF PRIVATE LIFE

A. SECRECY OF PRIVATE LIFE

ARTICLE 21. Every individual shall have the right of demanding respect for his private and family life. Secrecy of private life and family life are inviolable. However, exceptions required by legal investigation are reserved.

No individual shall be searched or his private property confiscated unless there exists a court order issued in accordance with legal procedures or by the authorized agencies in the instances when delay is objectionable, as expressly indicated by the law.

B. INVIOLABILITY OF RESIDENCE

ARTICLE 22. Residence of an individual is inviolable.

No person's residence shall be entered into, searched and the property therein shall not be confiscated unless there exists a court order issued in accordance with legal procedures or by an order of an agency authorized by the law in the instances when delay is objectionable, as clearly expressed in the law.

C. FREEDOM OF COMMUNICATION

ARTICLE 23. Every individual shall have freedom of communication.

Secrecy of communication is fundamental.

Freedom of communication shall not be hindered and its secrecy shall not be violated, unless there exists a court order issued in accordance with legal procedures or an order by an agency authorized by the law, as clearly expressed by the law.

VI. FREEDOM OF RELIGION AND CONSCIENCE

ARTICLE 24. Every individual shall have the freedom of conscience, religious belief and conviction.

No person shall be forced to participate in praying, religious masses and ceremonies or to disclose his beliefs and convictions; no person shall be criticised or blamed on account of his religious beliefs and convictions due to any reason or purpose whatsoever.

Education and training of religion shall be conducted under control and supervision of the State. Religious education and training of an adult shall be dependent upon his desire; whereas for the minors, the will of their guardians shall be sought.

No person shall exploit or abuse the religion or religious feelings or anything deemed sacred by a religion under no condition with an aim to base social, economic, political or legal order of the State on religious rules or to gain personal profits or influences.

VII. FREEDOM OF THOUGHT AND CONVICTION

ARTICLE 25. Every person shall have freedom of thought and conviction.

No individual shall be forced to disclose his thoughts and convictions or shall be criticised or blamed for his thoughts and convictions for whatever reason.

VIII. FREEDOM OF EXPRESSING AND DISSEMINATION OF THOUGHT

ARTICLE 26. Every individual is entitled to express and disseminate his thoughts and opinions singly or collectively, through word of mouth, in writing, through pictures and through other media. This liberty embodies freedom of exchange of opinion free from any interference of official authorities. This provision does not prevent putting under license system, radio, TV or cinema casts.

Exercising these liberties may be restircted for the purpose of preventing crimes, punishment of criminals, protection of the reputation, rights, privacy and family life and professional secrets of others, to prevent revealing of secret information of the state, prevent dissemination of false and premature news which would effect economic life, enabling the judiciary to accomplish its function

properly and to protect the youth from the influence of harmful currents and attitudes.

Provisions regulating the utilisation of media for disseminating news and opinions cannot be considered as restriction of liberties of expressing and dissemination of thoughts, provided that these provisions do not obstruct dissemination.

IX. FREEDOM OF SCIENCE AND ARTS

ARTICLE 27. Every individual is entitled to freely acquire and impart science and arts, to practice, profess and propogate knowledge concerning them, and to carry out all kinds of research in these fields. However, provisions of this paragraph shall not prevent regulation by a separate law, of entry into and distribution in the country ofg foreign publications.

X. PROVISIONS GOVERNING THE PRESS AND INFORMATION

A. FREEDOM OF THE PRESS

ARTICLE 28. The press is free and shall not be censored.

Establishment of printing houses cannot be subject to permission or depositing financial guarantees.

The state shall adopt measures to assure freedom of the press and dissemination.

In restriction of the freedom of the press, provisions of Article 26 on freedom of expressing and dissemination of thoughts shall be applicable. No matter in what capacity, those who furnish for publication any kind of news or information detrimental to internal and external security and the integrity of the State with its territory and nation, encouraging crime, revolt or rebellion, or related to secret information of the State, those who print or have such materials printed shall be liable to prosecution under the provisions of the applicable laws, even if the distribution of such materials has not materialized. Under such circumstances, distribution may be prevented through legal action.

Barring a court order passed in order that the judicial functions may be carried out properly, no ban shall be imposed on the publication of any item of information.

Periodicals and non-periodical publications can be confiscated in conformity with a court judgement in the event where investigation and prosecution has been initiated, and by order of the competent authority empowered by law in cases where delay is deemed prejudicial for the protection of the integrity of the State with its territory and nation, national security, public order, Atatürk's principles and reforms, public morality, reputation and rights of others, privacy of individuals and families, and prevention of crimes.

The competent authority making the decision for confiscation shall inform the court of its decision within 24 hours at the latest. If such decision is not ratified by the court within a maximum of three days, the decision for confiscation shall become null and void.

In confiscation of periodicals and non-periodicals because of criminal investigation or prosecution, general provisions are applicable.

Periodicals and non-periodicals in Turkey can be closed down by court judgement on a temporary basis up to one year in the event of conviction for offences carried out against the indivisibility of the integrity of the State with its territory and nation, fundamental principles of the Republic, national security, and public morality, and on a temporary or permanent basis in cases of conviction of more than once for these offences. The court, as a preventive measure may suspend the publication of the periodical concerned before the verdict. Any publication in nature of the continuation of the closed or suspended periodical is prohibited. These may be confiscated by court judgement.

B. RIGHT OF PUBLICATION OF PERIODICALS AND NON-PERIODICALS

ARTICLE 29. Publication of periodicals and non-periodicals shall not be dependent upon the condition of prior permission and deposition of financial guarantee.

Initiation, conditions for publication, financial resources of periodicals and non-periodicals and the fundamentals concerning the profession of journalism shall be regulated by the law. The law shall not impose political, economic, financial and technical conditions to hinder or to make difficult free dissemination of news, thought and convictions.

Non-periodicals shall benefit from the means and facilities of the State and other public legal persons or institutions attached thereon on the basis of equality.

C. PROTECTION OF PRINTING FACILITIES

ARTICLE 30. Printing works and annexes thereto established as a printing enterprise in accordance with applicable law shall not be confiscated and prevented from operation on the pretext of its being a tool of an offense, conviction due to an offense prescribed in the last paragraph of Article 28 being reserved.

D. RIGHT OF BENEFITING FROM NON-PRESS MASS COMMUNICATION FACILITIES OWNED BY PUBLIC LEGAL PERSONS

ARTICLE 31. Individuals and political parties shall have the right to benefit from non-press mass communications and publication facilities owned by public legal persons. Conditions for and the procedures to be followed in such benefiting shall be regulated by the law on the basis of democratic fundamentals and equity.

The law cannot impose restrictions impeding the public from receiving information, reaching an opinion and free formation of the public opinion for reasons other than those for general restrictions contained in Article 12.

E. THE RIGHT OF RECTIFICATION AND RESPONSE

ARTICLE 32. The right to rectify and to respond is recognized only in cases where the dignity and honor of individuals have been affected or where they have been subjected to unfounded statements on print and this right is regulated by the law.

If the counter statement containing individual's response is not voluntarily published, a court of justice shall decide against its publication.

XI. THE RIGHT AND FREEDOM TO ASSEMBLE

A. THE RIGHT TO FORM ASSOCIATIONS

ARTICE 33. Every individual is entitled to form associations without prior authorization. The forms and procedures to be applied in the execise of the freedom of forming associations are regulated by law. Associations cannot act against the reasons of general restrictions stipulated in Article 12, cannot have political aims, cannot carry political activities, cannot receive support from political parties, nor can they support political parties, cannot consort to joint action for this purpose with trade unions, professional organizations in nature of public institutions or foundations.

Associations losing the conditions of their establishment or failing to comply with the commitments envisaged by law are considered as dissolved.

Under conditions envisaged by law, associations may be closed by court judgement. In cases where delay is deemed prejudicial for the protection of the indivisibility of the integrity of the State with its territory and nation, national security, public order, rights and liberties of others and for prevention of crimes, activities of associations may be suspended by the competent authority, pending the court judgement.

Associations may also be closed by the Ministry of Interior for the protection of the indivisible integrity of the State with its territory and nation, national security, national sovereignty and public order.

Clause one of this article does not prevent putting restrictions on the rights of the armed forces personnel and security forces members to form associations, or to ban them from exercising this freedom.

This article is applicable for foundations and establishments of this nature.

B. THE RIGHT TO ASSEMBLE AND MARCH IN DEMOSTRATION

ARTICLE 34. All individuals are entitled to assemble or march in demonstrations without prior permission so long as they do not carry weapons and have no intention of assault.

The form, conditions and procedures to complied with in the exercise of arranging assembly and demonstration marches shall be prescribed by the law.

Societies, labor unions and professional organizations in the nature of public establishments shall not be permitted to arrange assembly and marches out of the scope of their subject and purpose, nor shall they participate in assemblies and meetings out of the scope of their subject and purposes.

XII. PROVISIONS CONCERNING PROTECTION OF RIGHTS

A. THE FREEDOM OF CLAIMING RIGHTS

ARTICLE 35. Every individual shall have the right to letigate and defend his case as plaintiff or defendant before judicial authorities by availing himself of all legitimate methods and procedures.

No court of justice shall abstain from conducting the trial of a case within its jurisdiction.

B. GUARANTEE OF A NATURAL AND LEGAL JUDGE

ARTICLE 36. No person shall be made to appear before a court other than that to which he is legally attached.

No court of extraordinary power shall be established to pass judgements which may result in the appearance of a person before a court other than that to which he is legally attached.

C. FUNDAMENTALS CONCERNING CRIMES AND PUNISHMENTS

ARTICLE 37. Crimes shall be described and penalties and security measures shall be established only by the law.

Penalty of general confiscation cannot be ruled.

Exceptions prescribed by the law in connection with expatriation and crimes pertaining to narcotics are reserved.

An administration cannot implement a punishment resulting in the restriction of personal freedom. However, exceptions to this provision may be brought about by the law from the internal order of Armed Forces point of view.

Execution of punishments or security measures of the same nature restricting personal freedom shall be oriented primarily to the improvement and education of the convicted.

Penal responsibility shall be personal.

No person shall be regarded guilty unless his guilt is established by verdict.

No person shall be coerced to make a statement resulting in self accusation or accusation of legal kins or to give ecidence in this respect.

Citizens cannot be extradited to a foreign country on account of a crime.

XIII. NON-RETROSPECTION OF THE LAWS

ARTICLE 38. No person shall be subjected to punishment for an act which was not considered an offence under the laws in force at the time when the act was committed; no person shall be punished with a heavier penalty embodied in the law for that particular offense at the time the offense was committed.

The provisions of the above paragraph shall be applicable for statute of limitation of crime and punishment and the results of penal conviction.

Taxes imposed and assessed cannot be increased by the subsequent legislations.

Laws retrospective and contrary to principles of a State governed by the rule of law shall not be enacted.

XIV. THE RIGHT OF PROOF

ARTICLE 39. Defendents in the cases of insult brought about die to the accusations made in connection with performance of duty and services against persons in the public service shall be entitled the right to prove the truth of their accusations. Acceptance of demand for the proof of the accusations in the instances other than the one indicated above shall be dependent on whether there is a public benefit in the establishment of truth of the incrimination or on the consent of the complainer for proof.

XV. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

ARTICLE 40. All persons whose rights and freedoms recognized by present Constitution are violated shall have the right to demand the facilities which will enable them to put their case before competent authorities, even in the instances when such violations are perpetuated by official persons in the course of the performance of their duty.

Losses incurred by persons as a result of unjust violations on the part of official persons shall be indemnified by the state per provisions of the law. Right of recovery of the state from concerned officials is reserved.

CHAPTER THREE

SOCIAL AND ECONOMIC RIGHTS AND DUTIES

I. PROTECTION OF THE FAMILY

ARTICLE 41. The family is the fundamental unit of Turkish society.

The State shall take necessary measures and establish required organizations for the welfare and peace of the family and for the protection and the education of the father and especially of the mother and the children.

II. THE RIGHT AND DUTY OF EDUCATION

ARTICLE 42. No person shall be deprived of the right of education and training.

Education and training is one of the primary duties of the State.

Education and training shall be conducted in the direction of Atatürk's principles, in accordance with fundamentals of contemporary science and education and under the supervision and control of the State.

The freedom of education and training shall not eliminate the obligation of allegiance to the Constitution.

The State shall take all required measures to spread literacy.

Primary education is compulsory for all female and male citizens and shall be provided at State schools free of charge.

Status of private schools shall be regulated by the law, commensurable with the level desired to be achieved by State schools.

The State shall extend required assistance through scholarships or other means to capable and deserving students in need of financial support in order for them to attain a high level of learning consistent with their abilities.

The State shall regulate and control vocational training consistent with the requirements of national economy and the sectors of industry, agriculture and services.

III. THE RIGHTS OF PROPERTY AND INHERITANCE

A. GENERAL RULE

ARTICLE 43. All persons are entitled to the rights of property and inheritance. These rights, like other fundamental rights, are under the guarantee of the Constitution. Rights of property

and inheritance can be restricted only for public interests and by the law.

Utilization of the right of property cannot be contrary to the benefit of the society.

Reserved shares of the heirs cannot be used even for public service and public interest purposes.

B. LANDOWNERSHIP

ARTICLE 44. The State shall take necessary measures in order to assure efficient management of land for contribution to the national economy to prevent loss of soil through land erosion and for the purpose of providing land to the farmers either having no land at all or having insufficient acreage of land. The law may, for this purpose, define the acreage of land according to various agricultural regions and crops.

Distribution of land to the farmers without land or with insufficient acreage of land will be started preferentially with uncultivated lands in the region suitable for the purpose and owned by the State; this will be followed with the distribution of the lands under the possession and disposal of the State, which are suitable for cultivation through land improvement; finally distribution will be made of the land expropriated for the purpose from lands under private ownership which are either not cultivated or cultivated inefficiently.

Distribution of land will not be made to the extent and in the form to result in reduction of forest areas decrease of soil resources and decrease of yield of the land cultivated efficiently.

Lands distributed for this purpose cannot be divided, assigned or transferred to others except through inheritance and can be used only by the farmer or his heir to whom land is distributed.

C. PROTECTION OF THE AGRICULTURE AND THOSE ENGAGED IN AGRICULTURE

ARTICLE 45. The State, in order to prevent misuse of agricultural lands and to increase agricultural output, shall assist producers in the acquisition of agricultural implements and requirements.

The State shall take necessary measures to enhance the value of agricultural products and to assure the producers to receive the real value of their harvest.

D. PROMOTION OF COOPERATIVE ACTIVITIES

ARTICLE 46. The State, taking into consideration the interests of the national economy, shall take necessary measures to promote the ccoperative activities aiming primarily at increasing the production and at protecting the consumers.

Cooperative organizations shall not be involved in politics, nor shall they collaborate with political parties.

E. UTILISATION OF COASTAL AREAS

ARTICLE 47. Priority shall be given to public interest in the utilisation of coastal areas of the seas, lakes and rivers. The possibilities and the conditions of their private utilisation shall be prescribed by law.

F. EXPROPRIATION

ARTICLE 48. The State and other corporate bodies, where public interest deems it necessary, are authorized, subject to the principles and procedures as set forth in the pertinent law, to expropriate the whole or part of any immovable property under private ownership, and to impose an administrative servitude thereon.

Expropriation shall be made on current value. The ways and methods of determining the current value shall be prescribed by law.

The equivalent value shall be paid immediately in cash, without any cuts.

The form of payment of the equivalent value of land expropriated for the purpose of implementing land and agricultural reform and realizing housing projects, for the nationalisation of forests, for aforrestation, for accomplishing the establishment of settlement projects, for the protection of coastal areas and for touristic purposes shall be prescribed by law.

The value of that part of the expropriated land tilled by the farmer or the small farmer himself shall be paid in cash under all circumstances.

Should the immovable property expropriated not be utilised as required by the purpose of public service or be made use of as it was without having built anything on within five years starting from the ratification of its equivalent value, the o owners or their heirs shall be given the right of claiming reownership. The duration, procedure and conditions of exercising this right shall be prescribed by law.

G. NATIONALISATION

ARTICLE 49. Where it is deemed necessary in the public interest, private enterprises which bear characteristics of a public service, may be nationalised provided that the current equivalent value thereof is paid in cash immediately and without any cuts.

Nationalisation in part shall be permitted only with plain approval of the owner of the enterprise.

IV. FREEDOMS OF WORK AND CONTRACTS

A. FREEDOM OF WORK, CONTRACT AND OPTING A PROFESSION

ARTICLE 50. Every individual is entitled to carry on business activities, and to enter into contracts in the field of his choice.

The law may restrict these rights only in the public interest.

B. FREEDOM OF PRIVATE ENTERPRISE

ARTICLE 51. The establishment of private enterprises is free.

The law may bring limitations on this freedom only in consideration of the public interest, the requirements of the national economy and social objectives.

The State shall adopt measures necessary to ensure the functioning of private enterprises in an atmosphere of security and stability.

V. PROVISIONS GOVERNING EMPLOYMENT

A. THE RIGHT AND DUTY TO WORK

ARTICLE 52. It is the right and duty of every individual to work.

The State shall protect peace and the balance of interests in industrial relations.

The State shall primarily adopt measures for the creation of an economic order that removes unemployment.

B. CONDITIONS OF WORK

ARTICLE 53. No individual can be employed at a job that does not suit his age, capacity and sex.

Children and women shall be accorded special protection in terms of conditions of work.

C. THE RIGHT TO REST

ARTICLE 54. It is the right of those who work to rest. Holidays and paid annual leave shall be regulated by law.

D. THE RIGHT TO ESTABLISH TRADE UNIONS

ARTICLE 55. Workers and employers, in order to promote the rights and interests of their members in their labour relations, are entitled to establish trade unions and trade union federations without having to obtain prior authorisation.

To enroll in trade unions as members, and to resign from such membership is free.

No person shall be forced to become a member, to pursue his membership or to resign from the membership of trade unions.

The regulations, management and operation of trade unions shall not violate democratic principles.

E. TRADE UNION ACTIVITY

ARTICLE 56. Trade unions, in addition to it that they shall not violate the reasons for general limitations listed in Article 12, shall not pursue political aims, shall not enroll in political activity, shall not engage in joint activities with associations, professional associations in the nature of public institutions, and foundations.

The administrative and financial auditing, as well as the incomes and the expenditures of trade unions shall be prescribed by law. Members of the trade unions submit themselves their subscription fees directly to their unions.

Trade union activity shall not be a justification for not working in the workplace.

Trade unions shall consume their incomes only in the areas necessitated by their goals. They shall save up their strike and lock-out funds in a national bank account.

VI. THE RIGHTS OF COLLECTIVE BARGAINING, STRIKING AND LOCKOUT

A. THE RIGHT OF COLLECTIVE BARGAINING

ARTICLE 57. Workers and employers shall be entitled to bargain collectively in order to set out mutually the wages and the working conditions.

The procedure of the collective bargaining shall be prescribed by law.

Collective agreements shall not include provisions that violate, alter or abolish the provisions brought by law.

No more than one collective agreement can be made or implemented in a workplace for the period covered by the agreement.

B. THE RIGHTS OF STRIKE AND LOCKOUT

ARTICLE 58. If the collective bargaining ends up with dispute, then the parties shall be entitled the rights of strike and lockout. The procedure and the conditions in which theres rights can be exercised shall be prescribed by law.

The rights of strike and lockout shall not be exercised in such a manner that abuses the principles of goodwill, that causes harm to society and destruction of the national wealth.

The drade union shall be responsible for the damage caused in the workplace during the strike either by itslef or by the workers.

The cases in which the strike or lockout my be banned or postponed shall be prescribed by law.

In case of such a ban or postponement, the dispute shall be settled by the High Board of Arbitration.

Strikes or lockouts pursuing political aims, solidarity strikes or lockouts, general strike or lockout, work-ins, productivity losses, and sit-ins shall not be allowed. The sanctions thereto shall be indicated by law.

Those workers who do not participate in the strike shall not be obstructed in any way from working in the workplace.

C. PROHIBITION OF STRIKES AND LOCKOUTS IN SMALL WORKPLACES

ARTICLE 59. There shall be no collective agreements, strikes or lockouts in the workplaces in which up to ten workers are employed. The suitable working conditions to be imposed on the workers in such workplaces shall be declared by the Council of Ministers for every collective agreement period.

VII. THE ORGANISATION OF ECONOMIC AND SOCIAL LIFE

A. CONTROL OF THE MARKETS

ARTICLE 60. The State shall assist useful development of the private enterprise activities in accordance with the conditions of competition, shall hinder de facto or intended monopolisation or formation of cartels.

B. PROTECTION OF CONSUMERS

ARTICLE 61. The State shall adopt measures to protect and enlighten the consumers and shall encourage them in their initiatives to protect themselves.

C. WAGES, SALARIES AND SOCIAL BENEFITS

ARTICLE 62. The wage and the salary is the remuneration for labor.

The State shall observe that wages, salaries, bonuses and social benefits are commensurate with the working period, productivity, the value and the type of the work performed.

In the determination of the minimum wage, the economic power of the country, and the peculiarities of the various economic sectors and regions shall be observed. The State, in order to protect the living standards of those who work, shall take necessary measures to hind destabilisation of prices.

The State shall adopt necessary measures in order to remove the disparities between the wages, salaries and social benefits of all workers, and in particular, of civil servants and those who work in public institutions in worker status.

VIII. HEALTH, ENVIRONMENT AND HOUSING

A. THE HEALTH SERVICES

ARTICLE 63. The State is entrusted to render the citizens to be able to preserve their lives in good health both physically and mentally and to organize the environmental conditions required by that objective.

The State shall accomplish this task by controlling and supporting health and social assistance institutions in public and private sectors, by encouraging new establishments.

The citizens shall participate in the expenditures made by the State for materialising the health services, within the framework of general health insurance; poor and low-incomed citizens, who are unable to meet their share of participation, shall be provided

with State assistance. The procedures and conditions of such participation and of State assistance shall be prescribed by law.

B. THE PROTECTION OF THE ENVIRONMENT

ARTICLE 64. Everybody has the right to live in a balanced and healthful natural environment. The State shall adopt measures to prevent any kind of environmental pollution and to conserve and improve the natural environment.

C. THE RIGHT TO HOUSING

ARTICLE 65. The State shall take measures to meet the need to housing in the frame of a planning that observes the specialties of towns and of environmental conditions.

IX. SOCIAL SECURITY RIGHTS

A. THE RIGHT TO SOCIAL SECURITY

ARTICLE 66. Everybody has the right to social security.

The State shall take measures to provide this security and shall establish the organisation thereof.

B. THE RIGHT OF THE DISABLED TO PROTECTION

ARTICLE 67. The State shall take all necessary measures to ensure the protection of the disabled and their adoptation in social life and shall establish the necessary institutions for that purpose.

C. THE RIGHT OF THE ELDERLY TO PROTECTION

ARTICLE 68. The elderly shall be protected by the State. The State assistance for the elderly and other rights and facilities granted to them shall be regulated by law.

D. TURKISH CITIZENS LIVING IN FOREIGN COUNTRIES

ARTICLE 69. The State shall take necessary measures in order to ensure for Turkish citizens living in foreign countries, the uniting of their families, the education of their children, the meeting of their cultural needs and providing them with social security, to safeguard their ties with the motherland and to assist them in their return home.

E. THE PROTECTION OF THE YOUTH

ARTICLE 70. The State shall take necessary measures to ensure that youth, to whom our independence and our Republic are entrusted, be brought up and grow in the light of positive knowledge and in the direction of Atatürk's principles; it shall support them throughout the course of their education.

The State shall take measures to protect the youth from alcoholism, all kinds of pleasure giving poisons and drugs, crime, gambling and ignorance.

F. DEVELOPING THE SPORTS

ARTICLE 71. The State shall take measures to improve the physical and mental fitness of the Turkish citizens of all ages, shall promote the extension of sports to the masses.

X. PRESERVATION OF HISTORICAL AND CULTURAL ENTITIES

ARTICLE 72. The State shall secure the preservation of historical and cultural values. It shall take supportive and stimulative measures to this end.

XI. PROTECTION OF THE ARTS AND ARTISTS

ARTICLE 73. The State shall protect artistic activities and the artists. It shall take necessary measures to protect, to support and to ensure the appreciation of the works of art and artists.

XII. THE SCOPE OF THE SOCIAL AND ECONOMIC RIGHTS

ARTICLE 74. The State shall carry out its duties in social and economic fields as designated by the Constitution with the consideration of the maintenance of economic stability, in so far as its financial resources permit.

CHAPTER FOUR

POLITICAL RIGHTS AND DUTIES

1. TURKISH CITIZENSHIP

ARTICLE 75. Every individual who is bound to the Turkish State by ties of citizenship is a Turk.

The child of a Turkish father or a Turkish mother is a Turk. The citizenship status of a child of Turkish mother and a foreign father shall be regulated by law.

Citisenship is acquired under the conditions provided by law, and is lost only under circumstances provided by law.

No Turk shall be deprived of his citizenship unless he commits an act irreconcilable with loyalty to the homeland and to the State.

The right to litigate in cases of decisions and procedures involving deprivation of citizenship shall not be obstructed.

II. THE RIGHT TO ELECT, TO BE ELECTED AND TO ENGAGE IN POLITICS

ARTICLE 76. All citizens are entitled to elect and be elected, as well as to be engaged in politics in a political party or as an independent.

Elections shall be free and secret, and shall be conducted and controlled by the jurisdictional power on the basis of equality, direct suffrage, open counting and classification.

All citizens over twenty-one years of age shall have the right to elect.

The exercising of these rights shall be regulated by law.

III. PROVISIONS CONCERNING POLITICAL PARTIES

A. THE RIGHT TO FOUND POLITICAL PARTIES AND TO JOIN THEM

ARTICLE 77. Citizens are entitled to found political parties and to join in or withdraw from them pursuant to pertinent rules and procedures.

Political parties are indispensable entitites of democratic political life.

Political parties can be founded without prior authorisation and shall operate within the boundaries brought by the Constitution and other laws.

The statutes and programs of political parties shall not be in conflict with the principles of the integrity of the State with its territory and nation, human rights, nation's sovereignty, a democratic and secular republic.

No political parties can be founded on a class or group basis, or basing themselves on the defence and establishment in Turkey of communism, fascism, theocracy or any sort of dictatorship.

B, PRINCIPLES TO WHICH POLITICAL PARTIES MUST CONFORM

ARTICLE 78. Political parties, whether in power or in opposition, cannot operate beyond the scope of their statutes and programs; they cannot violate the restrictions enumerated in Article 13 of the Constitution. Those political parties which do not conform to these provisions shall be dissolved.

Political parties cannot consort to joint action, materially and spiritually, with associations, trade unions, foundations, professional organizations in the nature of public institutions, with the aim of carrying out and strenthening their policies.

The inner-party work and the decisions of political parties shall not be in conflict with democratic principles.

The Constitutional Court shall audit the finances of political parties.

The Chief Republican Prosecutor shall be responsible for the supervision of the conformity of the statutes and programs, as well as the legal status of the founders, of political parties with the provisions of the Constitution and other laws, immediately after their establishment, and primarily for the continuous scrutiny of their activities.

The verdict to dissolve political parties shall be rendered by the Constitutional Court as a result of the case initiated by the Chief Republican Prosecutor.

Those founders and members of the general administrative organs of political parties, quoted in the verdict of the Constitutional

Court as giving rise to the dissolution of the party with their actions and statements, shall not participate in the foundation of new political parties, even under a different name and with a different program, or hold administrative and auditing posts in the political parties already established.

The foundation and activities, auditing and dissolution of political parties shall be regulated by law within the framework of the above-mentioned provisions.

IV. THE RIGHT TO ENTER PUBLIC SERVICE

A. ENTRY INTO PUBLIC SERVICE

ARTICLE 79. Every Turk is entitled to enter public service.

In hiring personnel no discrimination shall be made other than job qualifications.

B. DECLARATION OF PROPERTY

ARTICLE 80. The law shall describe the conditions of declaration of property for persons entering public service. Those assuming duties in the legislative and executive organs shall not be exempt from this obligation.

V. PATRIOTIC SERVICE

ARTICLE 81. Every Turk has the right and obligation of patriotic service. The method of accomplishment of this obligation to serve in the armed forces or in public services shall be regulated by law.

VI. THE RIGHT TO PETITION

ARTICLE 82. Citizens are entitled to petition in writing singly or collectively to the competent authorities and the Grand National Assembly concerning requests and complaints involving themselves or the public.

The action taken as a result of petitioning, involving the applicants in person, shall be communicated to them in writing.

The scope and the method of exercising this right, as well as its exemptions shall be regulated by law.

PART THREE

B A S I C O R G A N S
O F T H E R E P U B L I C

CHAPTER ONE

LEGISLATIVE POWER

I. THE TURKISH GRAND NATIONAL ASSEMBLY

A. THE COMPOSITION

ARTICLE 83. The Turkish Grand National Assembly is composed of 400 deputies elected by direct general ballot.

B. ELECTION QUALIFICATIONS FOR DEPUTIES

ARTICLE 84. Every Turk who has completed his thirtieth year may be elected deputy.

Persons who have not completed a formal education of at least eight years, who are under interdiction, those who have not done their active military service for which they are liable, those who are barred from public service; those who have been sentenced to at least six months imprisonment, except in cases of conviction for negligence, or those who have been sentenced for any offense such as defalcation, misappropriation, embezzlement, bribery, theft, fraud, forgery, breach of confidence, fraudulent bankruptcy, and those who have been sentenced for involvement in smuggling, misconduct in the official adjudications and purchasings; those who have lost one of the fundamental rights and freedoms as required by the provisions of Article 13 of the Constitution, are not eligible for election even if they have been granted amnesty.

The conditions under which public servants may place their candidacy for being a deputy shall be prescribed by law.

Judges, army officers, military employees and non-commissioned officers are not entitled to place their candidacy or to be elected unless they resign from office.

II. DUTIES AND POWERS OF THE T.G.N.A.

A. GENERAL PROVISIONS

ARTICLE 85. The duties and powers of the Turkish Grand National Assembly are as follows: to enact, amend and repeal laws; to authorise the Council of Ministers, by virtue of a law and for definite objects, to promulgate decrees having the force of law; to debate and adopt the bills on the budget and final accounts; to pass resolutions with regard to minting currency and declaring a state of war; to ratify international treaties; to proclaim pardons and amnesties with the exemption of for those sentenced for the deeds listed in Article 13; to exercise the powers and to accomplish the duties stated in the other articles of the Constitution.

B. THE AUTHORISING TO PROMULGATE DECREES HAVING THE FORCE OF LAW

ARTICLE 86. The Turkish Grand National Assembly may authorise the Council of Ministers to promulgate decrees having the force of law.

The law concerning such authorisation should indicate the aim, the scope, the principles and the duration of the decree to be promulgated, as well as the possibility of promulgating more decrees for the same period.

The resignation of the minister concerned or of the Council of Ministers, or the termination of legislation period do not constitute grounds for the annulment of the above-mentioned authority granted for a definite period.

The decree having the force of law shall also state whether it will be in force until its expiry date or not during its ratification in the Turkish Grand National Assembly before its term actually expires.

Provisions authorising the President and the Council of Ministers to promulgate decrees having the force of law in the emergency circumstances are reserved.

The decrees having the force of law shall go into force as of the day of their publication in the Official Gazette. The decree may adopt a future date as of which it will go into force.

The decrees shall be submitted to the Turkish Grand National Assembly to be debated on the day of their publication in the Official Gazette.

The authorisation laws and the decrees having the force of law based on those laws shall be debated in the committees and the plenary sessions of the Turkish Grand National Assembly with priority and urgency.

Decrees not submitted to the Turkish Grand National Assembly on the day of their publication become ineffective as of that date; and those rejected by the Turkish Grand National Assembly shall cease to be effective as of the date of publication of such rejection in the Official Gazette. Modified provisions of decrees adopted under modification shall go into force as of the date of publication of these modifications in the Official Gazette.

C. RATIFICATION OF INTERNATIONAL TREATIES

ARTICLE 87. The ratification of treaties negotiated with foreign States and international organisations on behalf of the Turkish Republic is dependent upon its approval by the Turkish Grand National Assembly through the enactment of a law.

Treaties which regulate economic, commercial and technical relations, and which are not effective for a period longer than one year, may be put into effect through promulgation provided they do not entail a commitment of the State's finances and provided they do not infringe upon the status of individuals or upon the rights of ownership of the Turkish citizens in foreign lands. In such cases these treaties must be brought to the

attention of the Turkish Grand National Assembly within two months following their promulgation.

Agreements concluded in connection with the implementation of an international treaty, and economic, commercial, technical or administrative treaties concluded pursuant to the authority provided by laws are not required to be approved by the Turkish Grand National Assembly, provided however that economic and commercial treaties or treaties affecting the rights of the individuals shall not be put into effect unless promulgated.

The provisions of paragraph 1 shall apply in all treaties involving amendments in Turkish legislation.

International treaties duly put into effect carry the force of law. No recourse to the Constitutional Court can be made with regard to the violation of the Constitution by these treaties.

D. THE AUTHORITY TO PERMIT THE USE OF ARMED FORCES

ARTICLE 88. The authority to declare a state of war in cases deemed legitimate by international law, and exclusive of cases rendered necessary by international treaties to which Turkey is a party, or by rules of international courtesy, to send Turkish armed forces to foreign lands and to allow woreign armed forces to be stationed in Turkey, is vested in the Turkish Grand National Assembly.

However, if there arises a situation in which the country is subjected to a sudden armed attack and for this reason making an urgent decision as to the use of arms is indispensable, the President himself shall have the authority to allow the Turkish Armed Forces to use arms.

III. THE TERM OF OFFICE OF THE TURKISH GRAND NATIONAL ASSEMBLY

ARTICLE 89. Elections to the Turkish Grand National Assembly shall be held every five years.

The Assembly may decide to hold new elections before the termination of the five year period. Deputies whose term of office expires shall be eligible for re-election.

The Assembly remains in office until a new Assembly is elected.

IV. POSTPONEMENT OF ELECTIONS FOR THE TURKISH GRAND NATIONAL ASSEMBLY AND BY-ELECTIONS

ARTICLE 90. If new elections are viewed to be impossible due to a state of war, martial law or a state of emergency, then the Turkish Grand National Assembly may decide to postpone the elections for one year.

The President may also with the same considerations ask the Turkish Grand National Assembly to postpone the elections for one year.

By-elections shall be held when a vacancy arises in the Turkish Grand National Assembly. By-elections are held once a term in principle, and at least after thirty months from the general elections. Only in a situation where the vacancies reach or exceed five per cent of the whole that by-elections can be decided to be held within three months.

In any case, no by-elections can be held in the last year of the term.

The President can not ask the Assembly to postpone the general elections for one year in the last year of his own term.

V. PROCEDURES GOVERNING THE HOLDING AND SUPERVISION OF ELECTIONS

ARTICLE 91. To implement and cause to implement all the procedures necessary to the fair and orderly conduct of elections that are to be conducted under the control and supervision of judicial organs, from inception to completion, to review and pass final judgement on all irregularities, complaints and objections regarding election matters during and after elections, and to certify the validity of election credentials are functions devolving upon the High Election Board.

The duties and powers of the High Election Board and those of other election bodies shall be prescribed by law.

The High Election Board shall be composed of seven regular members and four alternates. Six of the members shall be elected by the general assembly of the Court of Cassation and five by the general assembly of the Council of State from among their own members by secret ballot, and by an absolute majority of their plenary session. These members in turn shall elect from among themselves by secret ballot and by absolute majority, a chairman and a vice-chairman.

The four alternate members of the High Election Board shall be elected by lot, two from the members chosen by the Court of Cassation, and two from the members chosen by the Council of State. The Chairman and the Vice-Chairman of the High Election Board are exempt from the drawing of lots.

VI. PROVISIONS GOVERNING THE MEMBERSHIP

A. REPRESENTATION OF THE NATION

ARTICLE 92. Members of the Turkish Grand National Assembly represent neither their constituencies nor their constituents, but the nation as a whole.

B. OATH TAKING

ARTICLE 93. The members of the Turkish Grand National Assembly shall take the following oath at their induction into office:

"I promise upon my honour that I will protect the existence and independence of the State, the indivisible integrity of the homeland and the nation and the unconditional sovereignty of the nation; and that I will remain committed to the ideal that everyone should benefit from human rights and basic freedoms

in an understanding of social peace, national solidarity and social justice; and that I will remain loyal to the principles of a democratic and secular republic that will ensure the superiority of law."

C. ACTIVITIES INCOMPATIBLE WITH MEMBERSHIP

ARTICLE 94. Members of the Turkish Grand National Assembly may not be employed by any governmental department or other public corporate bodies nor by enterprises and corporations in which the State or other corporate bodies participate directly or indirectly, nor may they hold positions in the administrative boards and in other public welfare societies of which the private sources of income and special facilities are provided by law, and neither may they directly or indirectly undertake any of their activities; neither may they hold positions of representation or arbitration -for or against- in the disputes among such bodies.

Members of the Turkish Grand National Assembly may not be charged with any official or private responsibility which entails proposals, recommendations, appointments or approval by the Executive organ. A member may accept a temporary assignment not exceeding six months on a specific subject given to him by the Council of Ministers only with the approval of the Assembly.

Other occupations and functions incompatible with membership in the Turkish Grand National Assembly are set forth by law.

D. LEGISLATIVE IMMUNITIES

ARTICLE 95. Members of the Turkish Grand National Assembly may not be held legally liable for their votes and statements, for the ideas and opinions they express in the Assembly, nor for repeating and disclosing them outside the Assembly.

No member of the Assembly who is alleged to have committed an offense before or after his election to office may be taken into custody, questioned, held in custody, nor brought to trial without the decision of the Assembly. This provision does not apply to cases where the accused was apprehended in "flagrante delicto' which entail heavy penalties, provided however, that in such instances the competent authority is under obligation to inform directly and forthwith the Turkish Grand National Assembly.

The execution of a penal sentence passed against a member of the Turkish Grand National Assembly before or after his election is suspended until his membership expires. Prescription does not operate for the duration of his term of office.

Prosecution of an elected member of the Assembly is dependent upon the suspension of his immunity by the Assembly.

Political party groups in the Assembly shall not hold debates and pass resolutions in connection with legislative immunities.

E. DISFRANCHISEMENT OF A MEMBER

ARTICLE 96. A member of the Turkish Grand National Assembly shall be disfranchised in cases of conviction rendered by a

competent court for an offense preventing his election as a member and in cases where he resigns, is interdicted, accepts a duty incompatible with his status as a member, or when the Assembly decides to disfranchise him for failure to attend the functions of the Assembly for a total preiod of forty-five days within a legislative year without taking leave or without offering an acceptable reason for his absence.

A deputy resigning from his party can continue his membership for that term only as an independent; he shall be disfranchised in case he joins another party or assumes a post in the Council of Ministers.

The members of political parties which are closed by the Constitutional Court shall also be disfranchised as from the date the verdict for closure is published in the Official Gazette.

F. REQUEST FOR INVALIDATION

ARTICLE 97. In the event of a member being deprived of legislative immunities or being definitely disfranchised from membership by the vote of the Assembly, the member concerned or any member of the Turkish Grand National Assembly may within one week from the date of such decision, apply to the Constitutional Court for an annulment of the decision of invalidation on grounds that it conflicts with the Constitution or with the regulations of the National Assembly. The Constitutional Court shall render a decision on the request for invalidation within fifteen days.

G. ALLOWANCES AND TRAVEL EXPENDITURES

ARTICLE 98. The allowances and travel expenditures of the members of the Turkish Grand National Assembly shall be regulated by law.

Allowances and travel expenditures paid in advance may not exceed their total for three months.

VII. PROVISIONS GOVERNING THE FUNCTIONING OF THE TURKISH GRAND NATIONAL ASSEMBLY

A. CONVOCATION AND ADJOURNMENT

ARTICLE 99. The Turkish Grand National Assembly shall convene on the first day of September each year without summons.

The Turkish Grand National Assembly shall be inaugurated by a speech from the President.

Each year the Turkish Grand National Assembly may take vacations not exceeding three months; during the vacation or recess it shall be convened directly or with the request of the Council of Ministers by the President.

The Chairman of the Assembly shall, either directly or upon the request of one fifth of the membership convene the Assembly.

Assembly convened while in recess or on vacation shall primarily debate the reasons necessitating the meeting.

B. CHAIRMANSHIP

ARTICLE 100. The Chairmanship of the Turkish Grand National Assembly shall be composed of a Chairman, Vice-Chairmen, secretary members and administrative supervisors.

The Chairmanship Council shall be so composed as to give proportionate representation to each political party group represented in the Assembly.

The Chairman of the Turkish Grand National Assembly shall be elected within ten days of the convocation among the candidates nominated to the Chairmanship Council by two-thirds majority of the plenary session of the Assembly and by secret ballot for the term of legislation. If this specified majority cannot be obtained in the first two ballotings, an absolute majority shall suffice in the third. If the absolute majority cannot be obtained in the third balloting, a simple majority shall suffice in the fourth.

Vice-chairmen, secretary members and administrative supervisors of the Chairmanship Council shall be elected twice a term of legislation, the term of those elected first being two years and of those elected second being three years. The procedures, majority ratios and number of ballotings required for these elections shall be prescribed by the Regulations of the Assembly.

The Chairman of the Turkish Grand National Assembly may not participate inside or outside the Assembly in the activities of the political party or political party group of which he is a member; the Chairman and Vice-chairmen cannot take part in the debates of the Assembly except in cases required by their functions. The Chairman may not vote.

C. REGULATIONS, POLITICAL PARTY GROUPS AND DISCIPLINARY MEASURES

ARTICLE 101. The functions of the Turkish Grand National Assembly shall be governed by the provisions of its own regulations.

The provisions of the regulations shall be so conceived as to assure to each political party group participation in all the activities of the Assembly in proportion to their size. A political party group shall consist of at least twenty members.

The Assembly shall enact its own disciplinary rules and enforce them.

D. QUORUMS FOR MEETINGS AND RESOLUTIONS

ARTICLE 102. A one-third majority of its plenary session, shall constitute a meeting quorum for the Assembly, and unless otherwise provided in the Constitution, an absolute majority of the attending members shall constitute a quorum of decision. In no case can the quorum of decision fall below one-fourth majority of the plenary session of the Assembly.

E. PUBLICITY AND PUBLICATION OF DEBATES

ARTICLE 103. Debates of the Turkish Grand National Assembly are public. These debates shall be published in extenso in the record of proceedings.

Subject to the provisions of the Assembly Regulations, closed sessions may be held; the publication of the debates of such sessions is subject to the decision of the Assembly.

VIII. THE WAYS OF SUPERVISION OF THE TURKISH GRAND NATIONAL ASSEMBLY

A. GENERALLY

ARTICLE 104. The Turkish Grand National Assembly shall exercise its supervision through questions, parliamentary inquiries, general debates, interpellations and parliamentray investigations.

Questions may be put to the Prime Minister or the Ministers to be answered in the name of the Council of Ministers for oral or written answers in order to get information.

Parliamentary inquiries are investigations conducted for obtaining information on a specific subject.

General debates are deliberations conducted on a specific subject concerning the society and the activities of the State in the plenary sessions of the Turkish Grand National Assembly.

The initiation, content, extent and adoption of motions concerning questions, parliamentary inquiries and general debates and the ways of answering, debating and investigating them shall be regulated by the Internal Regulation.

B. INTERPELLATION

ARTICLE 105. The motion for interpellations is made either in the name of a political party group or by the signature of at least twenty deputies.

The motion for interpellations shall be printed and distributed to the members within three days after its submission. Inclusion of a motion of interpellation in the order of the day shall be debated within ten days following its publication. In such debate only one of the signatories of the motion, one deputy for each party group and the Prime Minister or one minister on behalf of the Council of Ministers may take the rostrum.

The day on which the interpellation to be debated shall be determined at the same time as a decision to place the interpellation on the agenda; however, the interpellation shall not be debated before the lapse of two days following the date of the decision to place it on the agenda and shall not be delayed for more than seven days.

The motion of no-confidence to be submitted accompanied by a statement of the reasons therefor during the debate of an interpellation, or the request for a vote confidence on the part of the Council of Ministers shall be put to vote only after the lapse of one full day. For unseating the Council of Ministers or a Minister, an absolute majority of the plenary session shall be required in the balloting only the votes of non-confidence shall be counted.

Other provisions concerning interpellation, provided that they conform with a balanced functioning of the Assembly and the above requirements, shall be regulated in the Internal Regulations.

C. PARLIAMENTARY INVESTIGATION

ARTICLE 106. Requests for parliamentary investigation concerning the Prime Minister or other Ministers may be initiated at least by the one-tenth majority of the plenary session of the Turkish Grand National Assembly. The Assembly shall debate and decide upon this request within maximum one month.

In case of the decision for opening the investigation, fifteen member-commission shall be selected by drawing lots, from among the members to conduct the investigation. The commission shall submit its statement of the conclusion of investigation to the Assembly latest within two months.

The Assembly shall debate the statement with urgency and may decide to refer the matter to the High Court of Justice. The resolution to refer the matter to the High Court of Justice shall be taken by an absolute majority of the plenary session of the Turkish Grand National Assembly.

No debates shall be conducted and no resolutions shall be adopted at political party groups in the Assembly in regard to parliamentary investigation.

IX. ENACTMENT OF LAWS

A. THE RIGHT TO INITIATE LEGISLATION

ARTICLE 107. The Council of Ministers and the members of the Turkish Grand National Assembly are entitled to initiate legislation.

The Council of Ministers and the deputies may defend the proposed legislation at the relevant commissions of the Assembly.

B. THE DEBATE AND ENACTMENT OF BILLS AND PROPOSALS

ARTICLE 108. Bills and proposals shall be debated and enacted in the Turkish Grand National Assembly.

The rules concerning the debates of laws and the principles on these issues shall be regulated by the Internal Regulation.

C. PROMULGATION OF LAWS BY THE PRESIDENT OF THE REPUBLIC

ARTICLE 109. The President of the Republic shall promulgate the laws enacted by the Turkish Grand National Assembly within ten days; after taking the opinion of the State Consultative Council, any law disapproved by him shall be returned with the justifications of the disapproval to the Grand National Assembly for reconsideration within the same period. However, the period of the examination of the State Consultative Council shall be excluded from this period. The budget laws and the Constitution do not fall within the scope of this provision.

Should the Turkish Grand National Assembly re-enact the law so returned, the President of the Republic shall promulgate the said law within ten days following the re-enactment. Should the Turkish Grand National Assembly amend the law so returned, the President of the Republic may once more return the amended law to the Assembly.

CHAPTER TWO

EXECUTIVE

1. THE PRESIDENT OF THE REPUBLIC

A. QUALIFICATIONS AND IMPARTIALITY

ARTICLE 110. The President of the Republic shall be elected for a term of seven years among those members of the Turkish Grand National Assembly who have completed their fourtieth year and received high education or Turkish citizens who display the same qualifications and those necessary for eligibility to become a deputy. For candidacy for the Presidency of the Republic the condition of having possessed the Turkish citizenship for at least ten years shall also be required.

The candidates for the Presidency of the Republic shall be notified to the Speakership Council of the Assembly ten days before the commencement of the election. To become a candidate for the Presidency of the Republic from outside the Assembly shall require nomination by one-fifth of the plenary session of the Assembly.

The President shall not be eligible for election for the second consecutive term.

The President elect shall disassociate himself from his party and his membership of the Turkish Grand National Assembly shall terminate.

B. ELECTION

ARTICLE 111. The President shall be elected by secret ballot and by a two-thirds majority of the plenary session of the Turkish Grand National Assembly. The election shall be completed within twenty days.

If this majority cannot be obtained in the first two ballotings, between which an interval of five days has to take place, in the third balloting after the same interval the candidate who collects the majority of the plenary session's votes shall be elected.

In the event that the required majority cannot be obtained in the third balloting, fourth balloting shall be held with the participation of the two candidates who collect the highest number of votes in the previous balloting. In the fourth balloting, the candidate, who obtains the highest number of votes shall be elected.

C. OATHTAKING

ARTICLE 112. The President of the Republic shall take the following oath at his induction:

"As the President of the Republic, before the Turkish Nation and history, I promise upon my honor that I will fight against any threat directed to the independence of the Turkish State or against the integrity of the Motherland and the Nation; that I will respect and defend the sovereignty of the Nation without any reservations and conditions, and the Constitution; that I will remain committed to the reforms of Atatürk; that I will not deviate from the principles

of the democratic State based on the rule of law; that I will be free from all bias; and that I will do my utmost to protect and exalt the glory of the Turkish Republic and fulfil the task I have undertaken."

D. DUTIES AND POWERS

ARTICLE 113. The President of the Republic is the Head of the State. In this capacity, he shall represent the Turkish Republic and the integrity of the Nation.

The President of the Republic shall supervise the application of the Constitution and the operation of the organs of the State in harmony and order.

The President of the Republic shall preside the Council of Ministers whenever he deems it necessary, shall send representatives of the Turkish State to foreign States, shall receive the representatives of foreign States, shall ratify and promulgate international treaties and may commute or pardon on grounds of chronic illness, infirmity or old age, the sentences of the convicted individuals.

The President of the Republic shall also fulfil the duties and exercise the powers prescribed in the Constitution and other laws.

E. IMMUNITIES

ARTICLE 114. The President of the Republic shall not be held accountable for his actions connected with his duties.

All decrees emanating from the President of the Republic, excepting those which are concluded by the President without the signatures of the Prime Minister and the relevant Ministers in accordance with the Constitution and the other laws, shall be signed by the Prime Minister and the relevant Ministers; the Prime Minister and the relevant Minister shall be held responsible for these decrees.

F. RESPONSIBILITY

ARTICLE 115. The President of the Republic may be impeached for high treason upon the proposal of one-third of the plenary session of the Turkish Grand National Assembly and conviction of high treason shall require the vote of at least a two-thirds majority of the plenary session of the Assembly.

G. DEPUTATION FOR THE PRESIDENT OF THE REPUBLIC

ARTICLE 116. In the event the President of the Republic is temporarily absent on account of illness or a foreign travel, the Speaker of the Grand National Assembly shall act as his deputy until the President returns to his post; and in the event of demise and resignation of the President or in the event of a vacancy for any other reason, the Speaker of the Turkish Grand National Assembly shall act as his deputy and exercise his powers until the new President of the Republic is elected.

H. TERMINATION OF THE OFFICE OF THE PRESIDENT OF THE REPUBLIC AND THE ELECTION OF THE NEW PRESIDENT

ARTICLE 117. The Turkish Grand National Assembly shall elect the new President of the Republic twenty days prior to the termination of the term of office of the outgoing President, or in case of vacancy. In both instances, the candidates for the Presidency of the Republic shall be notified to the Speakership Council of the Assembly ten days prior to the commencement of the election.

The Turkish Grand National Assembly is immediately asked to convene in case it is not in session.

The living conditions and the facilities to be provided to the former Presidents of the Republic shall be regulated by law.

I. THE STATE CONSULTATIVE COUNCIL

1. COMPOSITION

ARTICLE 118. The State Consultative Council shall be established to provide consultation to the President of the Republic.

The Council shall compose of the following members:
a. Natural Members: the former Presidents of the Republic, the former Chairmen of the Constitutional Court, and the former Chiefs of Staff shall be the natural members of the Council.
b. Twenty members shall be appointed by the President of the Republic among persons who have done distinguished service to the State and the nation.
c. Ten members shall be elected jointly by the natural members and the members appointed by the President of the Republic among those possessing the qualifications prescribed in Paragraph (b).

Not being applicable to the natural members, the members of the State Consultative Assembly shall serve, under the condition of not exceeding seventy-five years of age, for six years; members who complete their term of office may be re-elected.

2. DUTIES

ARTICLE 119. The duties of the State Consultative Assembly shall be the following:

a. To investigate the subjects requested by the President of the Republic and express opinion on them;
b. To express opinion before the execution of the authority of the President of the Republic for returning the laws to the Turkish Grand National Assembly for reconsideration in accordance with the Article 109 of the Constitution.

3. PROVISIONS CONCERNING THE MEMBERS OF THE STATE CONSULTATIVE ASSEMBLY

a. OATHTAKING

ARTICLE 120. For induction, the members of the State Consultative Assembly shall take the oath prescribed in the Article 93 of the Constitution.

b. IMMUNITY

ARTICLE 121. The members of the State Consultative Assembly may not be held legally liable for their opinions expressed and votes cast during the activities of the Council and shall enjoy the immunities prescribed in the Article 95 of the Constitution for the members of the legislative assembly.

c. ACTIVITIES INCOMPATIBLE WITH MEMBERSHIP

ARTICLE 122. The persons appointed to the State Consultative Assembly shall not assume duty from any governmental or other public corporate bodies, nor from enterprises or other corporate bodies in which the State or other corporate bodies participate directly or indirectly; nor shall they, directly or indirectly, undertake tenders from these institutions and take, in disputes involving the same, any positions representing or acting for the parties or the position of the arbitrator in the said disputes.

d. DISENFRANCHISEMENT OF A MEMBER

ARTICLE 123. A member of the State Consultative Assembly shall be disenfranchised upon resignation, interdiction, assumption of a duty incompatible with membership, conviction to six months or more in prison for crimes other than remmission or, by the decision of the Council, failure to attend meetings of the Council for forty-five days in one year without taking leave or offering excuse.

e. ALLOWANCE AND TRAVEL EXPENDITURES

ARTICLE 124. The allowances and the travel expenditures of the members of the State Consultative Assembly shall be regulated by the law. Only three-month equivalent of the allowances and the travel expenditures may be paid in advance.

4. PROVISIONS GOVERNING THE ACTIVITIES OF THE STATE CONSULTATIVE ASSEMBLY

ARTICLE 125. The President of the Republic shall be natural chairman of the State Consultative Assembly.

The Chairman and the Deputy Chairman shall be elected by the Council; the election of the other members of the Chairmanship Council shall be carried in accordance with the Internal Regulations.

The period of duty of the Chairmanship Council shall be two years.

The State Consultative Council shall convene with a quorum of absolute majority of its plenary session and, unless provided otherwise in its Internal Regulations, shall decide with a quorum of absolute majority of the attending members.

The convention term of the State Consultative Assembly shall be defined by its Internal Regulations. The President of the Republic shall, when he deems necessary, call the Council to convention.

The Council shall carry its activities in accordance with the Internal Regulations it shall adopt.

II. COUNCIL OF MINISTERS

A. COMPOSITION

ARTICLE 126. The Council of Ministers shall be composed of the Prime Minister and the Ministers.

The Prime Minister shall be appointed by the President of the Republic from among those who are members or eligible to be elected as members of the Turkish Grand National Assembly, and may be discharged by the President of the Republic in conformity with the procedures.

The Ministers shall be selected by the Prime Minister and appointed by the President of the Republic from among those who are or eligible to be members of the Turkish Grand National Assembly; and may be discharged by the President of the Republic upon the proposition of the Prime Minister.

B. TAKING OFFICE AND THE VOTE OF CONFIDENCE

ARTICLE 127. The list of the Council of Ministers shall be submitted to the Turkish Grand National Assembly in full. If the Turkish Grand National Assembly is in recess, it shall be called for convention.

The program of the Council of Ministers shall be read in no later than one week following its formation before the Turkish Grand National Assembly by the Prime Minister or one of the Ministers, whereupon the program shall be submitted for a vote of confidence. Debates on the vote of confidence shall begin after two full days following the reading of the program and the vote shall be taken after one full day following the termination of the debates.

C. VOTE OF CONFIDENCE WHILE IN OFFICE

ARTICLE 128. The Prime Minister, if he deems it necessary, may ask for a vote of confidence from the Turkish Grand National Assembly after discussing the matter in the Council of Ministers.

The request for a vote of confidence shall not be debated before the elapse of one full day from the time of submission to the Turkish Grand National Assembly and shall not be put to vote before one full day after the termination of the debate.

The request for a vote of confidence may only be rejected by an absolute majority of the plenary session.

D. DUTIES AND POLITICAL RESPONSIBILITY

ARTICLE 129. The Prime Minister shall frame the general policy of the Council of Ministers and shall implement this policy in cooperation with the ministers. The Council of Ministers shall be jointly responsible for the implementation of the policy.

Each Minister shall be further responsible for the conduct of the affairs in his field of authority and for the actions and the activities of his subordinates.

The ministers shall enjoy the same immunities and shall be subject to the same prohibitions as the members of the Turkish Grand National Assembly.

E. FORMATION OF MINISTRIES; THE MINISTERS

ARTICLE 130. The Ministries shall be formed by the law in accordance with the principles prescribed by the law and shall be dissolved by the law.

A Minister shall become the acting Minister for a Ministry in which there is a vacancy or for a Minister who is on leave or is absent for some valid reason. In no case, however, may a Minister act for more than one Minister.

A Minister who is brought to trial before the High Court of Justice by the decision of the Turkish Grand National Assembly shall be deprived of his ministerial status.

The new appointment shall be made latest within fifteen days to a ministerial post vacated for any reason whatsoever.

F. REGULATIONS

ARTICLE 131. The Council of Ministers may draw up regulations governing the implementation of the laws and the activities imposed therein, provided that they are not in conflict with the existing laws and examined by the Council of the State.

The Council of the State shall have the obligation of completing the examination within two months.

The regulations shall be signed by the President of the Republic and shall be promulgated in the same manner as the laws.

G. THE RENEWAL OF THE ELECTIONS OF THE TURKISH GRAND NATIONAL ASSEMBLY BY THE PRESIDENT OF THE REPUBLIC

ARTICLE 132. If the Council of Ministers is unseated with a vote of no confidence in accordance with the Articles 105 and 120 of the Constitution, the Prime Minister may request the President of the Republic to call new elections.

In the event that the unseated Prime Minister requests the renewal of the elections and that the new Council of Ministers cannot be formed in thirty days, the President of the Republic, after consulting the Speaker of the Turkish Grand National Assembly and the Chairman of the State Consultative Council, may call new elections.

The decision for the renewal shall be published in the Official Gazette and immediately thereafter procedures for the elections shall commence.

VII. NATIONAL DEFENCE

A. THE OFFICE OF THE COMMANDER-IN-CHIEF AND THE CHIEF OF THE GENERAL STAFF

ARTICLE 133. The office of the Commander-in-Chief cannot be parted from the moral existence of the Turkish Grand National Assembly and is represented by the President of the Republic.

The Council of Ministers shall be responsible to the Turkish Grand National Assembly for ensuring national security and the preparation of the Armed Forces for war.

The Chief of the General Staff is the Commander of the Armed Forces.

The Chief of the General Staff shall be appointed by the President of the Republic upon nomination by the Council of Ministers, and his duties and powers shall be regulated by the law. The Chief of the General Staff shall be responsible to the Prime Minister for the exercise of his duties and powers.

The duties and the powers of the Ministry of National Defence and its relations with the Chief of the General Staff and the Commanders of the Forces shall be regulated by the law.

B. THE NATIONAL SECURITY COUNCIL

ARTICLE 134. The National Security Council shall be chaired by the President of the Republic and shall comprise the Speaker of the Turkish Grand National Assembly, the Chairman of the State Consultative Council, the Prime Minister, the Chief of the General Staff, the Ministers of National Defence, Interior and Foreign Affairs, the Commanders of the Forces and those Ministers who, for each meeting, shall be chosen by the President of the Republic with respect to connection.

The agenda of the National Security Council shall be fixed by the President of the Republic. The decisions adopted by the Council shall be notified to the Council of Ministers. The decisions, which shall be adopted for the preservation of the existence of the State, its independence, integrity and indivisibility of the homeland and the peace and the security of the public are for the Council of Ministers, recommendations the implementation of which is compulsory.

IV. PROCEDURES OF EMERGENCY ADMINISTRATION

A. CASES OF EMERGENCY

1. PROCLAMATION OF STATE OF EMERGENCY IN CASES OF NATURAL CATASTROPHE AND GRAVE ECONOMIC CRISIS

ARTICLE 135. In cases of natural catastrophe and grave economic crisis, the Council of Ministers, chaired by the President of the Republic may declare state of emergency in one or more than one part or in the whole of the country, provided that its duration does not exceed six months.

2. PROCLAMATION OF THE STATE OF EMERGENCY IN CASES OF WIDESPREAD ACTS OF VIOLENCE AND SERIOUS BREACH OF THE PUBLIC ORDER

ARTICLE 136. The Council of Ministers, chaired by the President of the Republic, may also proclaim the state of emergency in case of the emergence of serious indications of widespread acts of violence directed towards destruction of the free democratic order or the fundamental rights and freedoms recognized by the Constitution or in case of serious breach of the public order on account of widespread acts of violence, provided that its duration does not exceed two months.

3. THE REGULATION OF THE CASES OF EMERGENCY

ARTICLE 137. In the event of adoption of the decision for the declaration of the state of emergency in accordance with the Articles 127 and 128 of the Constitution, this decision shall be published in the Official Gazette and shall immediately be submitted for approval to the Turkish Grand National Assembly. If the Turkish Grand National Assembly is not in session, it shall immediately be called to convene. The Assembly can alter the duration of the state of emergency or, upon request of the Council of Ministers, can extend the duration provided that each extension does not exceed two months.

In cases of the states of emergency based on economic reasons, financial, patrimonial and labor obligations to be charged to the citizens and,to be in force for all types of the emergency administration, the modes of restricting or suspending the fundamental rights and freedoms in conformity with Article 14 of the Constitution, the authorities to be given the capacity of taking the measures necessitated by the situation and the powers to be provided to them, alterations in the status of public functionaries, and the emergency administration procedures shall, with priority, be regulated by the State of Emergency Law.

While the state of emergency is in force, the President of the Republic with the Council of Ministers may issue decrees based on the State of Emergency Law on matters necessitated by the situation. The said decrees shall be published in the Official Gazette and shall, the same day, be submitted to the Turkish Grand National Assembly for approval; maximum period for the approval and its procedures shall be prescribed by the internal Regulation.

B. MARTIAL LAW, DEFENSE PREPARATION, MOBILIZATION AND THE STATE OF WAR

ARTICLE 138. In the event of war, or a situation necessitating war, in case of revolt or of a forceful and open uprising against the motherland and the Republic or of widespread acts of violence endangering the indivisibility of the land and the nation from within or abroad or directed to destroy the free democratic order or the fundamental rights and freedoms recognized by the Constitution, the Council of Ministers, chaired by the President of the Republic, may declare martial law in one or more than one part or in the whole of the country, provided that its duration does not exceed two months. This decision shall immediately be published in the Official Gazette and shall the same day be submitted to the Grand National Assembly for approval. If the Turkish Grand National Assembly is not in session, it shall be called to convene. The Turkish Grand National Assembly, if it deems necessary, may shorten the duration of the martial law, may extend it or dissolve the martial law.

The extension of the martial law, provided that each does not exceed two months, shall be dependent upon the decision of the Turkish Grand National Assembly.

While martial law is in force, all security forces shall be put under the command of the Martial Law Commander.

The Martial Law Commander shall, in accordance with the related

law, take necessary measures, including the suspension of fundamental rights and freedoms.

The provisions to be implemented in martial law, states of defence preparations, mobilization and war and the modes of action in the same situtations, the modes of restriction and suspension of the freedoms and the obligations to be imposed upon the citizens in war or in the situations necessitating war shall be regulated by the law.

V. THE FINANCIAL PROVISIONS

A. FINANCING OF THE PUBLIC EXPENDITURES AND THE TURKISH REPUBLIC CENTRAL BANK

1. TAXES AND SIMILAR FINANCIAL OBLIGATIONS

ARTICLE 139. Tax is each person's share of participating in the public expenditures.

The just and balanced distribution of the tax burden shall be the social aim of the financial policy.

Taxes and similar financial obligations shall be imposed, amended or dissolved by law.

The power of making alterations within the limits recognized by the law in those provisions of taxes and similar financial obligations pertaining to exemptions and exceptions and ratios and values may be delegated to the Council of Ministers.

2. BORROWING

ARTICLE 140. The State and the public legal persons may, within the authorization recognized by the laws, conclude credit agreements and issue bonds.

The sources of the Turkish Republic Central Bank shall not be utilized to meet the liquidity requirements of the Treasury. However, Turkish Republic Central Bank may open for the Treasury a short term advance payment account, under the condition that this payment does not exceed fifteen percent of the total allowances of the general budget of the current year. The advance payments acquired in the previous year shall be deducted from the amount which for each year shall be calculated in terms of the described basis, and for the particular year only the difference shall be made available to the Treasury.

3. TURKISH REPUBLIC CENTRAL BANK

ARTICLE 141. It shall be the task of the Turkish Republic Central Bank to implement the monetary principles adopted by the Council of Ministers and those pertaining to the credits in a manner conforming to the development plans and the annual programs.

The Governor of the Turkish Republic Central Bank shall be appointed by the President of the Republic.

The Turkish Republic Central Bank shall not purchase the bonds

issued by the State, the State economic enterprises, the municipalities or the provincial administrations; and it shall not, by direct or indirect methods, include the credits made available by the banks to the public sector among its assets.

The Turkish Republic Central Bank shall undertake exchange balancing operations to offset the ill-affecting undulations in the money supply caused by foreign exchange entries and withdrawals.

B. THE BUDGETS

1. THE PREPARATION AND IMPLEMENTATION OF THE BUDGETS

ARTICLE 142. The expenditures of the State and the public legal persons shall be conducted by budgets of maximum one-year duration.

The preparation and the implementation of the general and the annexed budgets and the budgets of the State economic enterprises shall be prescribed by the law. The budgets of the State economic enterprises shall be unified in one detailed, consolidated budget.

The law may set forth special durations and procedures in regard to the investments pertaining to the development plans and for the services to last more than one year.

No provisions other than those pertaining to the budget shall be incorporated in the budget law; and no provisions shall be included therein which amend or dissolve directly or indirectly the provisions of the existing laws.

2. FISCAL YEAR

ARTICLE 143. The beginning of the fiscal year for the general and annexed budgets and the budgets of the municipalities and the provincial administrations shall be defined by the law.

The beginning of the budget term for the State economic enterprises shall be the first day of January.

3. DELIBERATION OF THE BUDGET

ARTICLE 144. The Council of Ministers shall submit the bills on the general and the annexed budgets and the report carrying the national budget estimates to the Turkish Grand National Assembly latest three months before the beginning of the fiscal year.

The budget bills and the report shall be examined by the Budget Commission composed of forty members. At least twenty-five members representing the party groups or groups in power shall participate in the said commission. The remaining fifteen members of the commission shall be proportionately distributed among the other political party groups and the independent members.

The text which shall be adopted by the Budget Commission within two months shall be deliberated by the Turkish Grand National Assembly and shall be voted upon before commencement of the fiscal year.

The members of the Turkish Grand National Assembly, in the plenary sessions shall express their views on the budgets of the ministries and the departments and the annexed budgets during the deliberations on the entirety of each budget; the chapters and amendment proposals shall be read and put to vote without deliberation.

The members of the Turkish Grand National Assembly shall make no motions entailing increases in the expenditure and decreases in the specific incomes at the budget debates conducted in the plenary sessions.

4. THE BUDGETS OF THE MUNICIPALITIES, PROVINCIAL ADMINISTRATIONS AND THE STATE ECONOMIC ENTERPRISES

ARTICLE 145. The consolidated budget reports of the municipalities and the provincial administrations shall be examined by the Budget Commission during the deliberations on the budget of the Ministry of Interior.

The bill on the consolidated budget of the State Economic Enterprises shall be submitted to the Budget Commission at the beginning of December.

5. FUNDAMENTALS FOR AMENDING THE BUDGETS IN THE COURSE OF THE FISCAL YEAR

ARTICLE 146. Allocations made available with the general and the annexed budgets indicate the limits of the expendable amounts. No provisions shall be incorporated in the budgets to state that the said limits of the expendable amounts may be surmounted with a decision of the Council of Ministers. The Council of Ministers shall not be authorized to amend the budget by issuing decrees. It shall be compulsory to indicate the financial source which shall meet the expenditures generating from the bills amending the budget of the current year for increasing the expenditures and from the laws charging burdens on the budgets of the further years in those bills and laws.

C. THE FINAL ACCOUNT

ARTICLE 147. The bills of the final account shall be submitted by the Council of Ministers to the TGNA latest within six months following the end of the fiscal year they belong to, unless provided otherwise by the law. The Court of Accounts shall submit the statement of general acceptance for the bills, of final account to the TGNA latest within three months following the submission thereto of the concerned bill.

The bill of the final account shall be put into the agenda of the Budget Commission with the new years budget bill. The Budget Commission shall submit the bills of budget and final account to the plenary session at the same time. The plenary session shall deliberate and vote on the bill of final account together with the budget bill.

The fact that the bill of final account and the statement of the general acceptance are submitted to the TGNA shall not be understood to mean that auditings and trial of accounts not completed by the Court of Accounts are finalized and thus are to be barred.

D. ECONOMIC AND SOCIAL COUNCIL

ARTICLE 148. The Economic and Social Council shall submit to the Council of Ministers recommendations pertaining to the development of the national economy in stability, securing the balance between the economic and social policies,realization of the harmonious cooperation among various sectors of the economy, ensuring the balance and the equity among the salaries, wages and social benefits of all civil servants and workers. The Economic and Social Council shall also express views to and prepare new proposals for the Council of Ministers on the bills and the propositions of law pertaining to economic and social matters.

The Economic and Social Council shall compose of fifteen members, these being the Ministers of Finance, Industry and Technology, Agriculture and Forestry, Labor, the Under Secretary of the State Planning Department, the Governor of the Turkish Republic Central Bank; three members each to be elected by the higher organizations of the workers and the employers and three members to be appointed by the President of the Republic among those who possess expertise in the fields of economy, social policy and law.

The modes of formation and operation of the Economic and Social Council, terms of office and the personal matters of its members shall be regulated by the law.

E. HIGH COUNCIL OF ARBITRATION

ARTICLE 149. The High Council of Arbitration shall provide the definitive settlement for labor disputes on its own initiative in cases prescribed in the Article 58 of the the Constitution and upon the iniative of the Minister of Labor in cases of strikes and lockouts which last sixty days.

The concerned parties also may take the labor dispute to the High Council of Arbitration for settlement both before resorting to strike or the lockout or during the strike or the lockout.

The High Council of Arbitration shall adopt decisions in conformity with the principles embodied in Article 62 of the Constitution.

The formation and the operating procedures of the High Council of Arbitration shall be regulated by the law.

VI. ADMINISTRATION

A. THE FUNDAMENTALS OF THE ADMINISTRATION

1. THE INDIVISIBILITY OF THE ADMINISTRATION AND ITS LEGAL PERSONALITY

ARTICLE 150. Administration is a whole with its organization and functions and shall be regulated by the law.

The organization and the functions of the administration shall be based on the principles of centralization and decentralization.

Public corporate bodies shall be created only in virtue of the law or the authority expressly granted by the law.

2. BY-LAWS

ARTICLE 151. The Ministries and the public corporate bodies may issue by-laws for the purpose of the implementation of the laws and the regulations related to their particular fields of operation and in conformity withs such laws and regulations.

By-laws shall be published in the Official Gazette.

B. THE STATE SUPERVISORY COUNCIL

ARTICLE 152. The State Supervisory Council, which shall be established in subordination to the President of the Republic to achieve the purpose of ensuring the orderly and productive operation and promotion of the administration, shall, upon the request of the President of the Republic, carry all examination, investigation and inspection in all public corporations and establishments, and in all types of organizations the half of the capital of which is provided by the mentioned public corporations and establishments, in vocational organizations bearing the character of public institutions, in the vocational organizations of all echelons of the workers and of the employers, in the associations and the foundations of benefit to the public; the Council shall submit the conclusions of its activities to the President of the Republic in a report.

Armed Forces and the judicial organs shall be excluded from the field of task of the State Supervisory Council.

The State Supervisory Council shall compose of nine members; the members and the chairman among the members shall be appointed by the President of the Republic among persons possessing the qualifications prescribed by the law.

The establishment and the operation of the State Supervisory Council, the duration of office and the personal matters of its members shall be regulated by the law.

C. THE JUDICIAL CONTROL OF THE ADMINISTRATION

ARTICLE 153. The way to prosecution shall be open against all acts of the administration.

The actions taken single-handedly by the President of the Republic in accordance with the Constitution shall be excluded from judicial control.

In court actions instituted as a result of administrative acts, prescription shall start as of the date of the written notification.

Administrative juridical power shall be limited to the control of the administrative acts for their conformity to legality; no judicial decision in the form of administrative act or actions shall be ruled.

The law may, in the states of emergency, martial law, and for the reasons of national security, public order and public health, restrict the ruling of the decisions for the suspension of the actions.

Administrative jurisdiction shall not rule decisions for the suspension of the action in suits instituted by the civil servants against the administration for re-appointments and transfers, but shall have the obligation of ruling the decision on the essence of the suit in two months.

The administration shall be liable for the damages resulting from its acts and operations.

D. THE ORGANIZATION OF THE ADMINISTRATION

1. CENTRAL ADMINISTRATION

ARTICLE 154. In terms of the organization of the central administration, Turkey shall be divided, based on geographical and economic factors and on the requirements of public service, into provinces and the provinces shall further be divided into similar administrative districts.

The provincial administration shall be based on the principle of self-government.

Regional Self-governing organizations comprising more than one province may be established with the purpose of ensuring productivity and harmony in carrying out the public services.

2. LOCAL ADMINISTRATION

ARTICLE 155. The local administrative bodies are public corporate entities created to meet the common local needs of the citizens of the provinces, municipal districts and the villages, whose policymaking organs shall be elected by the people.

The establishment, duties and the powers of the local administrations shall be regulated by the law.

The law may prescribe special forms of administration for metropolitan areas.

The elections for the local administrative bodies shall be held in every five years in conformity with the fundamentals prescribed in Article 76 of the Constitution.

Jurisdiction concerning the settlement of the objections against the acquisition of status of the elected organs of the local administrative bodies and the supervision of their loss of status shall be exercised only by the courts. However, the Minister of Interior may suspend, as a provisional measure, the offices of the local administrative organs and their members against whom investigation or prosecution is under way for offenses pertaining to their duties.

The compulsory or the voluntary organization of the local administrations in unions for the fulfilment of the local administrative services shall be regulated by the law.

The State shall have, within the procedures and the fundamentals prescribed by the law, the power to supervise the local administrative bodies for the assurance of the uniformity of the duties, preservation of the public benefits and duly fulfilment of the local necessities.

E. PROVISIONS GOVERNING THE CIVIL SERVANTS AND THE OTHER PUBLIC OFFICIALS

1. GENERAL PRINCIPLES

ARTICLE 156. Qualifications, entry into service and promotion, duties and rights, salaries and allowances and other matters of the carriers of public servants and other public officials (other than those who are in the status of workers) who fulfil the public services the State and the other public corporate bodies are charged with shall be regulated by the law.

The primary and permanent duties necessitated by the public services the State or the other public corporate bodies are charged with shall be exercised, with the exceptions prescribed by the law, by the civil servants.

The civil servants and the other public officials shall be appointed in conformity with the criteria of efficiency and merit and shall carry out their duties in conformity with the principles of equality and impartiality.

The procedures and the fundamentals governing the appointment and the dismissal of the high level public officials shall specifically be regulated by the law.

2. DUTIES AND RESPONSIBILITIES

ARTICLE 157. The civil servants and other public officials shall have the obligation of working for the benefit of the country and with loyalty to the Constitution and the laws.

They shall be liable for the damages inflicted upon the administration by their defective acts pertaining to their duties.

3. PROTECTION OF THE CIVIL SERVANTS

ARTICLE 158. In cases of disciplinary action initiated against civil servants, other public officials or against the members of the staffs of the vocational institutions in the status of public institutions, it shall be an indispensible condition that the allegation is communicated to the defendant openly and in writing, that he is heard, and that he is accorded the possibility of making his defense.

No disciplinary action shall be taken unless the above-mentioned procedures are observed.

Disciplinary actions shall not be kept outside the supervision of the juridical authorities.

The provisions applicable to the personnel of the Armed Forces and to the judges are reserved.

4. PROVISIONS PROHIBITING THE CIVIL SERVANTS AND THE OTHER PUBLIC OFFICIALS FROM JOINING POLITICAL PARTIES AND THE TRADE UNIONS

ARTICLE 159. Civil servants and those officials of the State Economic Enterprises who do not possess the status of workers and those who are employed in the central offices of the associations and foundations of public benefit, the special sources income and the special facilities of which are provided by the law, shall not join the political parties and the trade unions.

Civil servants and the other public officials shall, in the performance of their official duties, make no discrimination whatsoever among the citizens on account of their political views.

Those, whose violation of the principles mentioned above is established by court judgement, shall be permanently dismissed from the public service.

The provisions binding the organizations which have the aim of safeguarding and promoting the professional interests of civil servants and of the other public officials shall be regulated by the law.

F. PLANNING

ARTICLE 160. It shall be the task of the State to plan the economic, social and cultural development, the balanced and in-tune growth of the economy with all its sectors and in all parts of the country and the conscious and productive utilization of the resources of the country by making an inventory and evaluation of those resources.

In planning, priority shall be given to the enlargement of national savings, promotion of investments and employment, and, for the investments, the public interest and requirements.

Initiatives for development shall be carried according to the plan.

The provisions and the fundamentals pertaining to the preparation of the development plans, their approval by the Turkish Grand National Assembly and their implementation shall be regulated by the law.

The development plans shall be binding for the public sector and encouraging and guiding for the private sector.

G. EXPLORATION AND EXPLOITATION OF NATURAL WEALTH AND RESOURCES

ARTICLE 161. Natural wealth and resources shall be under the jurisdiction and at the disposal of the State.

The exploration of the public wealth and resources shall be carried out by the State and by the private enterprises; in the exploration, the State shall have priority. The conditions governing the explorations to be conducted by the private enterprises shall be regulated by the law; the law shall encourage this exploration.

The right of exploration granted for a certain area shall be subject to forfeiture after two years. Prescription and conditions for petroleum explorations shall be regulated by the law.

The State shall also have the priority in exploitation of the natural wealth and resources. The exploitation right of private enterprises on the resources explored by them shall be reserved.

If the natural wealth and resources ready for exploitation cannot be exploited by the State in two years, the right of priority shall expire, and so shall the right of exploitation if they cannot be exploited by the private enterprises.

Conditions governing the exploitation of the natural wealth and resources by the private enterprise and the fundamentals of supervision and the sanctions, safeguarding the exploitation of the resources to be conducted in conformity with the national economic targets and without waste shall be regulated by the law.

The State may establish exploration and exploitation facilities in conjuncture with private enterprises.

H. THE PROTECTION OF FORESTS AND THE POPULATION THEREIN AND THE DEVELOPMENT OF THE FORESTS

1. THE PROTECTION AND THE DEVELOPMENT OF THE FORESTS

ARTICLE 162. The State shall enact requisite laws and shall adopt the necessary measures for conservation of the forests and the expansion of the forested areas. Forested areas destroyed by fire shall be re-forested, and other types of agriculture and stock breeding shall not be allowed in those areas. All forests shall be under the supervision of the State.

State forests shall be administered and exploited by the State in accordance with the law. The ownership and the administration of the State forests shall not be turned over to private persons. Such forests shall not be acquired through prescription and shall not, unless in public interest, be made subject to administrative servitude.

No acts and activities likely to harm forests shall be allowed.

The limits of forests, outside of those agricultural areas such as fields, vineyards, orchards, olive-groves whose complete loss of character as a forest has been scientifically and technically established and whose utilization present advantage in various fields of agriculture or in stock breeding, as well as urban, municipal and communal centers, shall not be restricted.

2. THE PROTECTION OF THE POPULATION LIVING IN FORESTED AREAS

ARTICLE 163. Measures deemed necessary to improve the conditions of the population inhabiting the forests or their immediate vicinity and to preserve the integrity of the forests, as well as those measures required to insure the cooperation of this population with the State for the conservation and the exploitation of the forests and, if need be, the resettlement in part or in whole of this population to the lands which display

scientifically and technically no benefit for being preserved as a forest area and, to the contrary, the conversion of which into agricultural land has been profoundly established to be economically profitable; inventorisation of the mentioned lands for the mentioned aim and their exclusion from the status of forested area and their melioration by the State and distribution to the mentioned population shall be regulated by the law.

The State shall take measures to facilitate the provision of the exploitation means and tools and inputs for this population.

The lands previously occupied by the population resettled from the forested areas shall immediately be forested as State forests.

I. THE DEVELOPMENT OF NAVIGATION AND AVIATION

ARTICLE 164. The State shall take the necessary measures for the development of Turkey's navigation and in particular for increasing the tonnage of the merchant navy and to support shipbuilding industry.

The State shall strive at reinforcing Turkey's aviation and encourage the development of the infrastructure and the aviation industry.

J. UNIVERSITIES AND HIGHER EDUCATIONAL INSTITUTIONS

1. UNIVERSITIES

ARTICLE 165. Universities shall be established by the State and according to law.

Universities are public corporate bodies.

Universities are governed by the organs elected by themselves.

The appointment of university teaching staff, their promotions, their dismissal are regulated on the basis of scientific autonomy and are carried out by their own organs.

University teaching staff shall carry out research and publish their work freely.

The establishment and functioning of the universities, their organs and the elections held to form such organs, the functions and authorities thereof, the assignment when need be of members of the teaching staff and their assistants attached to one university to duties in other universities, the execution of learning and instruction in freedom, in safety and in accordance with the exigencies of modern science and technology and in conformity with the principles of the development plan, and the rules for the manner in which the State shall exercise its right of supervision and control over the universities, are regulated by law according to the principle of scientific autonomy.

2. HIGHER EDUCATIONAL INSTITUTIONS

ARTICLE 166. The higher educational institutions shall be founded by the State and by the private sector.

The higher educational institutions are set up in specific professional fields, in conformity with the fundamental principles of the Constitution and within the framework of Turkish culture and the needs and employment plans of the country.

The higher educational institutions shall cooperate with universities in scientific areas.

K. RADIO AND TELEVISION ADMINISTRATION AND NEWS AGENCIES

ARTICLE 167. Radio and television stations are instituted by the State and their administration in the form of public corporate bodies is regulated by law. The law regulates the form in which the organs shall be set up and shall function in accordance with the principle of impartiality.

All radio and television broadcasts shall be according to principles of impartiality with due regard to the interests of the State and the nation. The selection, presentation and preparation of the news and the programmes, and the duty to assist the contemporary Turkish culture and education through these, shall be carried out in keeping with the exigencies of the basic principles of general security and morality, public order and of the integrity of the State with its territory and people. The authenticity of the news shall be ensured.

Impartiality is the rule for news agencies established or subsidized by the State.

The Director General of the Radio and Television Administration and three of the members of its Executive Council shall be appointed by the President.

L. TURKISH LANGUAGE ACADEMY

ARTICLE 168. The Turkish Language Academy is a public corporate body. Its objective and function is to carry out research on the Turkish language, according to the growing needs, to help the State shape its language policy, to establish the language in official correspondence, to engage in publications on this subject which are based on scientific principles, to encourage and to give country-wide support to studies on the Turkish language.

The Turkish Language Academy shall be formed of at the most forty members. All of these members shall be appointed by the President at its onset. Special attention shall be paid to selecting these members from among persons who have distinguished themselves as experts in this field. The appointment of members to vacancies shall be carried out by election by the Academy members.

The establishment, the work procedures and the authority and personnel matters of the Turkish Language Academy shall be regulated by law.

M. DIRECTORATE OF RELIGIOUS AFFAIRS

ARTICLE 169. The Directorate of Religious Affairs which takes its place within the General Administration shall fulfill the duties set out for it within the law pertaining to it.

N. PROFESSIONAL ASSOCIATIONS IN THE NATURE OF PUBLIC ORGANIZATIONS

ARTICLE 170. Professional associations in the nature of public organizations are set up through legislation and their organs are elected by themselves and by their own members.

The statutes, administration and functioning of professional associations cannot violate democratic principles.

The elections of the organs of the professional groups will be defined by law which will enable the largestamount of participation and which will be held under the administration and supervision of the judge.

Professional associations cannot function beyond the reasons for their establishment, professional groups cannot carry out political activities, cannot act jointly with political parties, trade unions and associations.

Those permanently employed in public corporations and organizations and in State Economic Enterprises cannot become members of professional groups.

In view of state integrity and national unity, for the protection of national security, public order, protection of rights and freedoms of others, prevention of crimes or in cases where delays will pose drawbacks, the highest ranking local administrator in a locality can suspend the elected organs of a professional association until a decision by the judge is announced.

CHAPTER THREE

JURISDICTIONAL POWER

GENERAL PROVISIONS

A. INDEPENDENCE OF COURTS

ARTICLE 171. Judges shall be independent in the discharge of their duties. They shall pass judgement in conformity with the Constitution, law, justice and according to their personal convictions.

No organ, no office, agency or individual may give orders or instructions to courts or judges in connection with the discharge of their duties, or make suggestions.

No questions may be raised, debates held, or statements issued in the legislative assambly in connection with the discharge of judicial power concerning a case on trial.

Legislative and executive organs and the Administration are under

the obligation to comply with court rulings; in no way can they change them and in no way can they delay their execution.

B. GUARANTEES FOR JUDGES

ARTICLE 172. Judges may not be dismissed. Unless they so desire, they may not be retired before the age limit provided in the Constitution. They may not be deprived of their salaries even for reason of the abolishment of a court or of a post therein.

The exceptions prescribed by law concerning those convicted for an offence entailing dismissal from office, those whose incapacity to discharge duty for reasons of ill health is definitely established, and those pronounced unsuitable to remain in the profession, are reserved.

C. THE PROFESSION OF JUDGES

ARTICLE 173. Judicial authority is carried out by career judges. However, due to the special nature of administrative and taxation courts, and due to absolute necessity in labor and juvenile courts, those who are not from the career can also be assigned duties.

Judges will function as justice at first degree courts, regional courts and higher courts.

Judges are obliged to keep away from all kinds of action in time of duty and in their private lives that will hurt their image of impartiality within the community. The qualification of judges in all levels of seniority, their appointment rights and duties, salaries and allowances, their promotion, the temporary or permanent change of their functions or places of service, the initiations of disciplinary proceedings and the disciplinary actions taken against them for offences arising from the discharge of their functions, decisions to question and try them for offences connected with the discharge of their functions, conviction for crimes necessitating dismissal from the profession or instances of incompetence which necessitate dismissal and other matters concerning their career and training are regulated by law in accordance with the principle of the independence of courts.

Judges shall remain in office until they complete the age of sixty-seven. The age limit, promotion and retirement from service of military judges is prescribed by law.

Judges may undertake no private or public duties other than those prescribed by law.

The allowances and social rights arising from the special duties of the judges at the higher courts will be preserved.

D. TRIALS WILL BE OPEN AND VERDICTS WILL HAVE JUSTIFICATIONS

ARTICLE 174. Court proceedings shall be open to all. The decision to hold all or a part of a court proceeding in secret may be taken only in cases definitely required by public morality and public security.

Special provisions shall be made for the trial of minors.

All verdicts will be written with the justifications of the verdicts.

It is the duty of the judiciary to conclude trials as quickly as possible.

E. ORGANIZATION OF COURTS

ARTICLE 175. The organization of courts, their functions and jurisdiction, operations and trial procedures shall be regulated by law.

General judiciary and administrative trials will be held in two degrees within the capabilities of the State.

F. STATE SECURITY COURT

ARTICLE 176. State Security Courts shall be established to deal with offences directed against the integrity of the state with its territory and nation, against the free democratic order and the Republic, the nature of which offences is defined in the Constitution, and also with offences which directly involve the internal and external security of the State. The provisions pertaining to the state of war and martial law are however reserved.

The State Security Court shall consist of a chairman, two regular and two substitute members, one public prosecutor and a sufficient number of deputy public prosecutors. The chairman, one regular and one substitute member and the public prosecutor shall be appointed from among first class judges and public prosecutors and the deputy public prosecutors from among public prosecutors, by the High Council of Judges and Prosecutors. One regular and one substitute member of the court shall be appointed from among the first class military judges and half of the deputy public prosecutors from among military judges, according to the procedures embodied by the specific law.

The authority for appeal for the rulings of the State Security Courts is the Court of Cassation.

Other provisions related to the functioning, the duties, authorities, and the juridical methods and procedures of the State Security Courts shall be established by the law.

G. PUBLIC PROSECUTION

ARTICLE 177. The public prosecutors are attached to the Ministry of Justice in so far as their administrative functions are concerned.

Only public prosecutors can initiate public prosecutions. The Minister of Justice can order the Public Prosecutor of the Republic to initiate public prosecutions.

In juridical matters, security officials are under the order of the Public Prosecutor.

The control and investigation of public prosecutors are carried out by higher ranking public prosecutors or by the Ministry of Justice inspectors.

The power to decide on all questions concerning the career of public prosecutors, on disciplinary action to be taken against them, or their discharge from the profession shall be vested in the High Council of Prosecutors.

In cases of necessity, the Ministry of Justice shall commission temporary powers for the public prosecutors and shall sabmit each decision for the approval of the Council at its first meeting.

The authority to appoint public prosecutors to temporary or permanent duties in the central administration of the Ministry of Justice rests with the Minister.

H. MILITARY JUSTICE

ARTICLE 178. Military justice is exercised by military courts. These courts are entitled to try military personnel for military offences, for offences committed by these against military personnel or in military areas or offences connected with military service and duties.

Military courts are empowered to try cases concerning military offences as prescribed by a special law committed by non-military persons and those offences committed against the military during the performance of their duties as specified by the law or in military areas designated by the law.

The specific offences and persons over which military courts shall have jurisdiction in time of war or during a period of martial law are prescribed by law.

It is imperative that the majority of members of military courts should possess the qualifications of a judge. However, in time of war this stipulation is not binding.

The organization of military judicial organs, their function, matters concerning the career of military judges, relations between military judges acting as military prosecutors and commanders under whom they serve, the independence of courts and judicial tenure shall be regulated by law in accordance with requirements of military service.

In view of military duties and services outside military judicial duties, military judges and prosecutors are under the order of the commander whose organization includes a military court.

Military disciplinary courts are regulated by law in accordance with the exigencies of the military service.

II. HIGHER COURTS

A. THE CONSTITUTIONAL COURT

1. ORGANIZATION

ARTICLE 179. The Constitutional Court consists of fifteen members selected by the President of the Republic.

The Chairman of the Constitutional Court and the Deputy Chairman are elected for a period of four years from among their own

members by secret ballot and with absolute majority.

2. TERMINATION OF MEMBERSHIP

ARTICLE 180. The members of the Constitutional Court shall be retired at the age of sixty-seven.

Membership in the Constitutional Court shall terminate automatically in case of a member being convicted of a crime entailing dismissal as a judge, in case it is definitely established that a member is incapable of discharging his duties for health reasons. Membership shall be terminated by the absolute majority vote of the Constitutional Court plenary session.

3. RIGHTS AND DUTIES OF MEMBERS

ARTICLE 181. Members of the Constitutional Court may undertake no private or public duties other than their duties at the court.

Members elected as Constitutional Court members from universities will continue enjoying the rights won as academics. Academics elected to the Constitutional Court may continue their activities at the university.

Members of the Constitutional Court, whose membership has been concluded, cannot within two years accept duties in public corporations or organizations and in the administration and supervisory bodies of professional associations in the nature of public organizations; they cannot be elected or become candidates in the elections of general and local administrations.

4. FUNCTIONS AND POWERS

ARTICLE 182. The Constitutional Court shall review the constitutionality of laws, government decrees in the force of laws, and the internal regulations of the Turkish Grand National Assembly from the point of view of procedure and substance. On amendments of the Constitution it can only study and review the constitutionality of the article from the point of view of procedure.

The review of laws from the point of view of procedure will in general cover whether or not the final voting was held with the necessary quorum, and in case of a constitutional amendment, the court will review whether or not, according to article (...), the amendment was proposed by the necessary number of deputies, on the majority of votes in favor of the amendment and whether the Pariament obeyed the rule that an amendment cannot be taken up with priority. The President or one fifth of the members of the Turkish Grand National Assembly may ask for the review of a law by the Constitutional Court on procedural grounds within the period the law is being made public. After the law is published, a suit for annulment cannot be filed on grounds of procedural defects, and cannot be petitioned for dismissal.

The Constitutional Court fulfills its duties shown in the Constitution and other laws.

5. PROCEDURES GOVERNING TRIALS AND FUNCTIONS

ARTICLE 183. The Constitutional Court meets with nine members including the President and the Acting President and decides with an absolute majority of votes, its members attend sessions in turns.

The foundation and procedures for hearings of the Constitutional Court shall be established by law. The procedure for the Constitutional Court to function as a council, the distribution of hearings among the members, with the exception of the President and the Acting President, in a balanced way and a prior arrangement to list the turns to be taken by members shall be organized by the internal regulations of the Court.

The Constitutional Court studies cases, with the exception of trials on the closure of political parties on files. However, in cases where the necessity arises, the Court can call in witnesses to testify.

6. ANNULMENT SUITS

ARTICLE 184. Only the President of the Republic, chairman of the main opposition party or one fifth of all the members of the Turkish Grand National Assembly may initiate annulment suits in the Constitutional Court based on the unconstitutionality of laws, or the internal regulations of the Turkish Grand National Assembly, or specific articles or provisions thereof.

7. THE TERM OF LITIGATION

ARTICLE 185. The right to introduce an annulment action directly to the Constitutional Court expires ninety days after the promulgation of the contested law or internal regulations in the Official Gazette.

8. CONTENTION OF UNCONSTITUTIONALITY BY OTHER COURTS

ARTICLE 186. A court which considers unconstitutional the provisions of the relevant law or is convinced of the seriousness of a claim of unconstitutionality put forward by one of the parties, shall postpone a case under consideration until the Constitutional Court decides on the matter.

If the court is not convinced of the seriousness of the claim of unconstitutionality, the claim shall be decided upon by the upper court of appeal along with the main contention.

The Constitutional Court shall decide on the matter and pronounce judgement within six months of receipt of the contention. If no decision is reached within this period, the court shall settle the claim of unconstitutionality according to its own law and shall thus resume the case. However, if the decision of the Constitutional Court should arrive before the judgement concerning the substance is finalized, the courts shall comply therewith.

Before three years have elapsed after the publication of a dismissal decision of the Constitutional Court in the Official Gazzette, annulment suits on the same subject shall not be introduced.

9. DECISIONS OF THE CONSTITUTIONAL COURT

ARTICLE 187. Decisions of the Constitutional Court are final. The decisions shall not be made public before statement of reasons for the ruling is written out.

Laws and regulations or their provisions which have been invalidated by the Constitutional Court for being contrary to the Constitution shall become void as of the date of publication of the decision, together with the motivations for it, in the Official Gazette. The Constitutional Court, when deemed necessary, may set the date for the annulment decision to go into effect. Such dates shall not exceed one year from the date of publication of the annulment decision. The Constitutional Court shall set the date for the annulment decision to go into effect in cases when its decision results in creation of a new law. The Turkish Grand National Assembly shall primarily handle and decide upon the bills and proposals that will fill legal gaps which may be created when the suspension of annulment decisions goes into effect.

The annulment decision cannot be retroactive.

Annulment decisions cannot be given or rulings that are invalidated.

The Constitutional Court may also rule that decisions, based on claims of unconstitutionality by other courts, are restricted in scope with the case in question and binding only on the parties involved.

Decisions of the Constitutional Court shall be published immediately in the Official Gazette and shall be binding on the legislative, executive and judicial organs of the State, as well as on the administration, real and corporate bodies.

The Constitutional Court shall not act like a legislator in annulling a law or law provision and shall not rule in a way that may result in the introduction of a new practice.

B. COURT OF CASSATION

1. DUTIES OF THE COURT OF CASSATION AND THE ELECTION OF THE JUDGES

ARTICLE 188. The Court of Cassation is the final judicial body to review court rulings and verdicts. In certain cases which are defined by law it hears trials as a first and final level court.

The members of the Court of Cassation are elected by the Judges and Prosecutors Supreme Council with the absolute majority of votes of the full Council through secret ballotting and from first class judges and Republican prosecutors and from judges who are regarded from the career.

The Court of Cassation elects the First Chairman among its own members with the absolute majority of votes and through secret balloting.

The terms of office of the First Chairman of the Court of Cassation, the first Vice Chairman and the Second Chairman shall be four years.

The foundation, functioning, procedures of trials, election of the first Vice Chairman and the second Chairman of the Court of Cassation will be regulated through law in line with the principles of the independence of courts and the guarantees for judges.

2. CHIEF PROSECUTOR OF THE COURT OF CASSATION

ARTICLE 189. The Chief Republican Prosecutor and the Acting Chief Republican Prosecutor shall be elected by the President for a term of 4 years from among the five candidates for each to be nominated by the Grand General Council of the Court of Cassation from its members through secret balloting.

The Chief Republican Prosecutor and the Acting Chief Republican Prosecutor are bound by laws on judges of Higher Courts.

The foundation of the office of the Chief Republican Prosecutor, its functioning, duties and powers shall be regulated by law.

3. THE SUPREME COUNCIL

ARTICLE 190. The President, members of the Council of Ministers, chiefs and members of the Constitutional Court, Court of Cassation, Council of State, Military Court of Cassation, Military Supreme Administrative Court, Judges and Prosecutors Supreme Council and the Court of Accounts, Chief Republican Prosecutor, Acting Chief Republican Prosecutor and Chief Prosecutors of Higher Courts shall be tried by the Supreme Council for crimes involving their duties.

The SUPREME COUNCIL is composed of the Chairman of the Court of Cassation as its Chairman, the First Vice Chairman in charge of criminal affairs and the Chairman of the Court of Cassation Criminal Departments. The Supreme Council convenes immediately when the need arises.

The Chief Republican Prosecutor or his Deputy act as prosecutors at the Supreme Council.

B. THE COUNCIL OF STATE

ARTICLE 191. The Council of State is an administrative court in the first instance for matters not referred by law to other administrative courts and an administrative court of the last instance in general.

The Council of State shall hear and settle administrative disputes and suits, shall express opinions on draft laws submitted by the Council of Ministers, shall examine draft regulations, specifications and contracts of concessions, and shall discharge such other duties as prescribed by law.

The election of the Council of State members shall be regulated by law according to the principles of freedom of courts and tenure of judges. Three-fourths of the members of the Council of State shall be elected by the Supreme Council of Judges and Prosecutors

from among judicial and administrative judges and prosecutors, and one-fourth of the members shall be selected by the President from among officials of certain qualifications.

The Chairman, the Chief Prosecutor, the acting Chairman and the heads of departments of the Council of State shall be elected with the absolute majority of the General Council members of the Council of State with a secret ballot for a period of four years.

The designation, functioning and judicial procedures will be regulated by law in line with the principles of the independence of courts and the guarantees for judges.

C. COURT OF ACCOUNTS

ARTICLE 192. The Court of Accounts is in charge of auditing on behalf of the Turkish Grand National Assembly the revenues, expenditures and properties of Government departments financed from the general and annexed budgets, of State Economic Enterprises and of other administrations, half or more of whose fixed or revolving capital budgets or funds are met by government departments. It is also in charge of reaching a definite decision concerning the accounts and operations of those responsible; and, in general, a court of accounts in charge of examining auditing and deciding matters proscribed by law.

The Court of Accounts carries out its auditing according to the principles of legality, productivity, in keeping with economic laws and appropriateness.

The methods and principles of the auditing by the Court of Accounts offices, of State Economic Enterprises and of local administrations shall be regulated by law with due regard to their structures and the manner in which these institutions function.

The decisions on the the legal responsibility of any members of the staff as a result of the accounts or the procedures of the Court of Accounts are finalized after appeal has been made to the Council of Appeals of the Court of Accounts.

The organization, functioning, the auditing and trial procedures, the qualifications of its staff members, their appointments, their duties and powers, their rights and obligations and other matters concerning their careers as well as the tenure of its chairman and members shall be regulated by law.

D. MILITARY COURT OF CASSATION

ARTICLE 193. The Military Court of Cassation is a court of the last instance for the review of decisions and verdicts rendered by military courts. It shall also try specific cases as a court of the first and last instance involving military personnel as prescribed by law.

The members of the Military Court of Cassation are selected by the President of the Republic from among senior grade military judges from among candidates proposed by an absolute majority of the General Assembly of the Military Court of Cassation and comprising three times the number of nominees per vacancy.

The Chairman, Chief Prosecutor, Vice-Chairman and Heads of Departments of the Military Court of Cassation are appointed from among its members with due regard to their rank and seniority in service.

The organization, functioning and the judicial procedure of the Military Court of Cassation and the independence of its Courts are regulated by law according to the exigencies of military services and the tenure of judges.

E. SUPREME MILITARY ADNIMISTRATIVE COURT

ARTICLE 194. The Supreme Military Administrative Court is charged with judicial supervision of administrative procedures and actions concerning military persons and military services.

The Supreme Military Administrative Court is the court of first and last instance in disputes arising from administrative procedures and actions concerning military services for military personnel.

The establishment, fucntioning, procedures of trials, qualifications of the Chairman, members and the prosecutor for the Supreme Military Administrative Court is regulated by law according to principles of military service and tenure of judges.

F. COURT OF JURISDICTIONAL DISPUTES

ARTICLE 195. The Court of Jurisdictional Disputes is empowered to settle definitely the disputes among civil, administrative and military courts arising from disagreements on jurisdictional matters and verdicts.

The organization and functioning of the Court of Jurisdictional Disputes is regulated by law. Its Chairman and Vice Chairman are appointed by the Constitutional Court from among the members of that Court.

The Constitutional Court's decision is final in disputes between the Constitutional Court and the other courts.

III. THE HIGH COUNCIL OF JUDFES AND PUBLIC PROSECUTORS

ARTICLE 196. The High Council of Judges and Prosecutors is regulated according to the tenure of judges.

The Chairman of the Council is the Minister of Justice. No other persons than the Minister or the Undersecretary can participate in the Council in the name of the Ministry. The Chief Public Prosecutor and his deputy are natural members of the Council.

The members of the Council shall consist of four regular and four substitute members from the members of the Court of Cassation Grand General Council and two regular and two substitute members from the Council of State General Council members, out of three times the number of candidates to the number of membership to be elected by the President for a term of four years.

The members of the Council may not undertake any other duties or functions during their term of office.

The organization, functioning and powers and duties of the Council and their working procedures are regulated by law.

No action can be taken against the decisions of the Council by applying to a higher body. The methods for the examination of the objections within the framework of the Council are regulated by the law.

PROTECTION OF REFORM LAWS

ARTICLE 197. No provision of this Constitution shall be construed or interpreted as rendering unconstitutional the provisions , which were in effect at the date this Constitution was adopted by popular vote, of the following Reform Laws which aim at raising the Turkish society to the level of contemporary civilization and at safeguarding the secular character of the Republic:

1. The Law on the Unification of Education, of March 3, 1340 (1923), No. 430,
2. The Hat Law of November 25, 1341 (1925), No. 671,
3. The Law on the closing down of dervish convents and mausoleums, and the abolition of the office of keepers of tombs, the law on the abolition and prohibition of certain titles, of November 30, 1341 (1925),
4. The Law on the conduct of the act of marriage according to Article 110 of the Civil Code of February 17, 1926, No. 743, by a marriage officer according to the provision No. 110 pertaining to the same law,
5. The Law on the Adoption of International Numerals of May 20, 1928, No. 1288,
6. The Law concerning the adoption and application of the Turkish alphabet, of November 1, 1928, No. 1353,
7. The Law on abolition of titles and appellations such as "efendi, bey, pasha", of November 26, 1934, No. 2590,
8. The Law concerning the prohibition to wear certain garments, of December 3, 1934, No. 2596.

I. THE CHANGING OF THE CONSTITUTION

ARTICLE 198. Changes in the Constitution can be proposed by a majority of at least one third of the members of the Turkish Grand National Assembly. These proposals shall not have priority. The acceptance of the proposals for the changes is possible only with the votes of a two-third majority of the full number of members of the National Assembly.

The debates on and the acceptance of the proposals for constitutional amendment are carried out according to the provisions concerning the acceptance and debate of laws, with the exception of the conditions set out in paragraph I.

II. INTRODUCTION AND SUB-TITLES

ARTICLE 199. The Introduction section of this Constitution, which sets out the fundamental views and principles are included in the text of the Constitution.

The sub-titles for the articles only point out to the subject of the articles and the relations between and the succession of articles. These titles may not be considered part of the text of the Constitution.

GOING INTO EFFECT OF THE CONSTITUTION

ARTICLE 200. This Constitution shall be established as the Constitution of the Turkish Republic when adopted by popular vote and will go into effect as of its immediate publication in the Official Gazette, with the results of the public vote.

Trade Union Rights and Freedoms In the Draft Constitution

OF

The Military Regime

IN

Turkey

August 1982

"SOLIDARITY WITH TURKEY"
BULLETIN
33 Rue de la Grange
Aux Belles 75010
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The sections concerning union rights and freedoms in the draft constitution prepared by the reactionary military Junta were adopted by the Consultative Assembly. This section of the Constitution which will be presented to a referendum in November has thus been extensively incorporated.

The unaltered adoption of the clauses concerning trade union rights and freedoms prompted the President of TURK-IS (Trade Union Confederation of Turkey) Sevket Yilmaz to conclude that: "All that is left to us is to put the lock-chains on our Confederation's headquarters". The **Guardian** also commented that: "Turkey's nominated Consultative Assembly has approved the repressive draft constitution in principle... turning a deaf ear to protests from the press, intellectuals, unions... The powers of the press and unions have been curtailed...". (Wednesday, 18 August 1982).... "According to sources in Ankara, the generals have already approved the draft constitution and do not appear to be in the mood for concessions".

THE JUNTA'S CONSTITUTION DISPENSES WITH HUMAN RIGHTS AND TRADE UNION FREEDOMS

The draft constitution puts heavy restrictions on fundamental human rights and liberties.

In effect, it rejects the security of life — the most essential human right. Security forces are given unlimited powers to execute people on the spot, to shoot to kill.

Press censorship has been codified. The freedom of expression has been limited by a series of restrictions.

The Draft accepts the existence of classes but bans class-based political organisations.

Thus beginning with the security of life, freedom of thought and expression, press freedom and the right to free association, the Draft intends to abolish fundamental human rights.

The government will be able to declare a "state of emergency" due to economic problems. In such periods, the Draft proposes that "fundamental rights and freedoms can be partially or wholly curtailed or measures can be taken which may contravene the guaurantees provided in the Constitution". In short, the Constitution will codify not only **restrictions** on fundamental human rights but will have built in it both their **suspension** as well as the periodic possibility of acts which may **contravene** these.

In his speech in the city of Afyon on 29th August the head of the Junta General Evren repeated the intention to do away with human rights and liberties. According to press reports he said:

> "They say that we will decrease freedoms in the country with the new Constitution... I have never said that the new Constitution would expand freedoms". **(Guardian** 30th August 1982)

On the contrary, Evren insisted that limitations were necessary on individual rights and freedoms.

In the same speech Evren went on to say that: "When I said that individual rights and liberties will have to be restricted, they mistook this for limitations on workers' rights and liberties". The head of the Junta thus defended the proposition that union rights could exist while individuals' freedoms were curtailed.

However, according to the ILO Trade Union Freedoms Committee Report 202, paragraph 315 in the section concerning Turkey, it is clearly stated that:

> "A genuinely free and independent trade union movement can only develop in an environment which respects fundamental rights and liberties and civic freedoms".

The obverse is ludicrous. It is impossible to talk of trade union rights and liberties in a system which denies human rights.

The Junta's constitution does precisely this. In bringinig the heaviest restrictions possible, it effectively eliminates fundamental individual rights and liberties as well as trade union rights and freedoms.

HOW TRADE UNION FREEDOMS ARE ELIMINATED BY THE JUNTA'S CONSTITUTION

The draft constitution is different from the relatively liberal 1961 Constitution not only in spirit but equally noticeably in the way it deals with trade unions.

The 1961 Constitution contained 2 clauses, 5 paragraphs and 79 words on trade union rights and freedoms. The Draft has 5 clauses, 20 paragraphs and 330 words. This comprehensiveness is due to the inclusion of previous restrictive union legislation as clauses of the Constitution and the addition of further detailed restrictions.

Such scope and detail effectively negates union rights and freedoms and codifies restrictions on union activities. Furthermore, since the clauses of the Constitution can only be changed by 2/3 majority of the Parliament, previous parliamentary legislation which has now been built in to be Constitution can not be reversed by simple majority. Besides, in the authoritarian regime which the Draft seeks to install, the trade union clauses can hardly be challenged. Thus, the intention is to use the Constitution to odd permanence to trade union restrictions.

THE SCOPE OF TRADE UNION ACTIVITY IS LIMITED

TRADE UNIONS ARE BANNED FROM POLITICAL ACTIVITY

According to Article 56 of the Draft, trade unions are prohibited from political activity, political aims, support for political parties (a receiving support from these) or combining with other associations, and professional bodies for political activity.

These restrictions are repeated in numerous clauses throughout the Constitution. The prohibitions are aslo extended to cooperatives, professional associations which are banned from any joint political action. This reflects the Junta's extraordinary fear of the organisation of working people and the joint actions of organisations in support of their rights and interests.

In short, the Junta's draft constitution excludes trade unions from "politics". This is an innovation! It is a total rejection of the traditions and history of the international labour movement as well as many of the resolutions passed by the ILO rejecting restrictions on the political rights of trade unions.

Of course trade unions have specific functions. But it is impossible to seperate the "political" from the "economic" and the "social". These are all interlinked. A general prohibition of trade unions from politics is in a sense equal to their demise as defenders of workers' rights and interests.

For example, throughout the years, trade unions have demanded the unfettered right to strike and the abolition of lock-out. The struggle for these demands is both historical as well as universal. The Junta's draft however, bans the unionisation of state employees, and general strike but accepts lock-out as a constitutional right.

Accordingly state-employees can not engage in activities which involve demands for unionisation, the lifting of the ban on general strike or the abolition of lock-out which is a crime against humanity. They can not support a party which declares that it is in favour of these demands. Even their verbal support for a political party which may share these views can be considered a political act.

Furthermore, the Constitution codifies how wages and the minimum wage are to be determined. Union work on these topics will also be regarded as political. In other words, although wages/minimum wage are "trade union activities" in the narrow sense of the term, trade unions can be banned from intervening in these because of the prohibitions on politics. They face the risk of closure.

Although DISK and its affiliates have been banned, TURK-IS and a few other trade unions are still allowed. But with Article 56, the Junta intends to do away with some of the limited union activities, still carried out under the current military dictatorship.

For example TURK-IS is criticising the limitations and reorganisation of the collection of union dues which Article 56 brings. Turk-Is calls for increases in the minimum wage. They express their views. That is, they are engaged in a certain activity. But if this

clause is adopted as it stands now, Turk-Is will be prohibited from making such public statements. For, these will constitute political activity and Turk-Is will be liable to proceedings and banned.

Thus, under "political" prohibition, it is impossible to consider "trade union activity" even in its narrow sense. The limitation of the sphere of union activities implied by this ban on politics ultimately results in the elimination of trade union rights.

BAN ON TRADE UNION ACTIVITY IN THE WORKPLACE

The sections of the Junta's draft dealing with unions also bans trade union activities in places of work. However, the essence of unionism is shopfloor activity.

It is impossible to cater to the needs of union membership if workplace representatives, regional officers and full-time officials are unable to deal directly with the rank and file. Trade unionists can only forge links with their membership on the shopfloor. This is the only way trade unions can find the strength to solve the problems raised by the employers.

By the banning trade union activities on the shopfloor, the Junta attempts to sever the jugular vein uniting the trade unions with their rank and file. This inevitably leads in practice to trade unions giving up their functions.

The Draft therefore aims to reverse all the trade union rights gained over the past 20 years. The attempt is to roll back the rights derived from established procedures of collective bargaining, the freedom of union action in places of work, and the rights of workplace representatives and union officials to carry out their duties through the restrictive clauses of the Constitution. These measures seriously threaten the rights and duties of elected full-time union officials.

The narrowing down of the sphere of union activity therefore includes not only political restrictions but concrete limitations to basic union functions at the workplace. In this way, the Junta attempts to transform trade unions simply into friendly societies.

TRADE UNIONS WILL BE PUT UNDER STATE CONTROL AND TUTELAGE

The Junta's constitution puts trade unions under official tutelage.

Beginning with the President, the Government, Ministers and right through to regional governors and local prefects, as well as local martial law commanders, a range of state functions are entitled to intervene and control union activities.

These controls and supervisory powers include both the administrative and financial aspects of union activities. State officials are vested with the powers not only to suspend trade unions but to close them down altogether. The "state of emergency" which, as mentioned above, can be called for "economic reasons", can only be wielded as the main weapon of the deadly arsenal of official interventions against trade union activities.

All this implies something more than "guided unionism" by the State and simply points out to the impossibility of union activity. The result is the relegation of trade unions to ineffective window dressing.

The provisions in the Junta's constitution concerning State administrative and financial controls over trade unions, openly contravene ILO conventions.

According to clause 87, paragraph 3 of ILO's Convention on Trade Union Freedoms and Protection of Trade Union Rights ratified in 1945, the State can not intervene in trade union affairs. The Republic of Turkey is a signatory to this convention.

THE RIGHT TO COLLECTIVE BARGAINING IS BEING ABOLISHED

The Junta puts into its constitution the ruling that "there is a right of collective bargaining". But at the same time abolishes the right to collective bargaining both through

the regulations concerning the right of strike — which is closely related with the exercise of the right of collective bargaining.

The ruling that the issues previously determined by legislation constitute the basis of the collective bargaining is altered by the Junta's constitution. The possibility of gains by the collective bargaining of rights not entailed by the law is being destroyed. It turns the issues regulated by laws into a ceiling for collective bargaining. Therefore, it takes back gained rights from the Turkish labour and trade union movement.

It is stated in the draft constitution of the Junta that "precepts that contradict the rulings of the law, that modify or abrogate these, can not be put into the collective bargaining". The free will of the parties to the collective bargaining is therefore violated in this paragraph. Thus, governmentns are provided with the oportunity to interfere directly in the process of collective bargaining in order to prevent settlement throught free collective bargaining. The parliament, the government and the president, with the laws or with decrees carrying the force of law will be able to take issues relating to collective bargaining out of the sphere of collective bargaining by transforming these into legislation. In this situation it is obviously impossible to speak of free collective bargaining.

This also violates the resolutions of the ILO Committee on Trade Union Freedom to the effect that the freedom of collective bargaining can not be hindered by any law and that a ceiling or an upper limit can not be imposed.

THE RIGHT TO COLLECTIVE BARGAINING IS BEING ABOLISHED BY COMPULSORY ARBITRATION

The draft constitution is establishing the High Arbitration Board as a constitutional institution. It empowers this board to settle disputes through direct intervention in cases arising out of postponement or banning of strikes. In the case of strikes lasting for more than 60 days the board is given powers to settle the dispute.

This is nothing but the imposition of a compulsory arbitration system instead of free collective bargaining. It means an end to collective bargaining mainly through a government appointed body. This is yet another important point in the restrictions brought about by the High Arbitration Board upon collective bargaining. This point is that the High Arbitration Board will settle collective bargaining disputes in accordance with that paragraph of the Constitution related with wages, salaries and social benefits.

As for the paragraph concerned this establishes concepts and criteria for wage and salary scales which are in line with the well-known demands of employers throught the world — as well as in Turkey.

For instance, the Draft regards the wage as the renumeration of labour but it disregards the requirements for the maintenance of the worker by fixing this on criteria such as productivity, the working day and skill which have been adopted by employers. As for the minimum wage, it throws existing rights 20 years back. A varying minimum wage with regard to regional and industrial differentials is being enforced. It determines the principles of even those collective bargaining disputes which will be settled by the High Arbitration Board in favour of the employers.

The Junta, by incorporating the High Arbitration Board in the constitution, by resorting to the system of compulsory arbitration, takes an attitude which is also contrary to the ILO Convention No. 98, dated 1949, on the right of organisation and collective bargaining. The fourth article of this convention strongly repudiates compulsory arbitration. The Republic of Turkey is also a signatory to this convention.

THE RIGHT TO COLLECTIVE BARGAINING IS TOTALLY DENIED FOR WORKERS IN SMALL FIRMS

The Junta's draft constitution, totally denies the right to collective bargaining in the work-places where less than 10 workers are employed. It sets a constitutional ruling that there can be no collective bargaining in such workplaces. The regulation of the conditions of employment in those workplaces is left in the hands of the Council of Ministers, or the administration.

What does this mean? This implies the rejection of the right to collective bargaining for a very significant proportion of workers in Turkey.

Because, in 88 out of 100 workplaces registered at the Social Insurance Institution, 10 or less workers are employed. That is, as a result of this ruling of the draft constitution, the right of collective bargaining for the workers in at least 88 per cent of the workplaces in Turkey has been abolished. A member of the Consultative Assembly declared during the debate of this clause that the number of workers affected by the ruling is over 2 million.

These three essential points contained in the Junta's constitution drastically restrict workers' rights to collective bargaining to the point where it has been totally inapplicable.

WHILE LOCK-OUT BECOMES A CONSTITUTIONAL RIGHT, THE RIGHT TO STRIKE IS BEING DESTROYED

A MENTALITY FAVOURING THE LOCK-OUT AGAINST THE STRIKE

In the draft of the Junta the issues of strike and lock-out are codified in one paragraph under a common heading. The lock-out, which is not recognised in contemporary constitutions and in the liberal 1961 Turkish Constitution, and which was considered to be a crime against humanity, is now defined as a constitutional right.

In this way both lock-out and strike are attributed equal validity and legality. Moreover, the lock-out is regarded as deserving more legal protection than the strike. Just as, in the Draft, while the workers and their trade unions are held responsible for the damages that may be caused in the course of a strike, employers are not held responsible for the damages to the workers and their families because of a lock-out.

EVERYTHING IS DESIGNED TO MAKE THE RIGHT TO STRIKE UNWORKABLE

The Junta's constitution severly curtails the right to strike by stipulating that it can not be exercised in such a way which contravenes good will, or used against public interest, or in a manner resulting in the destruction of national wealth. None of the criteria listed bear the necessary qualities of clarity, precision and objectivity.

For instance, what is exactly meant by exercising the right to strike in a manner which is not compatible with "good will"? A particular aspect of a dispute may mean the expression of goodwill for one of the parties while just opposite for the other. So, the meaning of good will varies depending on the event, the person and the time concerned.

In this way, the possibility of banning or suspending a strike will have been sustained for ever. And as a result, a "sword of Damocles" will be hanging on the right to strike, ready to destroy it whenever needed.

GENERAL STRIKE, POLITICAL STRIKE AND SYMPATHY STRIKE ARE BANNED

The Draft which sets out such repressive provisions on the right to strike, bans a complete and comprehensive implementation of it as well. In fact, Junta's constitution, very plainly bans workers from waging a general strike, a political strike and sympathy strikes.

COMPULSORY 60 DAYS UPPER LIMIT ON THE DURATION OF ALL STRIKES

The Draft limits the duration of any strike by 60 days. When this period is exceeded, the employer or the Ministry of Employment shall be given the right of bringing the dispute to the High Arbitration Board, in which case the union involved will have to suspend the strike. Due to the binding nature of the Board's verdict, this provision of the Draft turns out to be another total ban on the right to strike rather than only a limitation of its duration.

ARBITRATION MECHANISM AS A TOOL TO ABOLISH THE RIGHT TO STRIKE

The Draft brings about yet another provision to destroy the right to strike by entitling the executive power or the administration appointed by the government to postpone or to ban a strike.

In such cases, the dispute that caused the strike shall ultimately be solved at the High Arbitration Board. Thus, the right, to strike will no longer be a legal tool in the hands of the workers and their unions to be used until the accomplishment of their goals. So the right to strkie will in effect be abolished.

JUNTA'S CONSTITUTION AIMS AT WEAKENING TRADE UNIONS FINANCIALLY

The Draft, by stipulating that "the trade union members themselves hand in their dues to their organisations", terminates the existing practice of the check-off system. This new arrangement, when the present structure and the characteristics of the trade union movement in Turkey are concerned, will cause the unions to go into substantial financial losses in the short run; a situation in which they will have been weakened and held back from fulfilling their functions properly.

JUNTA CONTINUES TO DEPRIVE PUBLIC SERVANTS OF THE RIGHT TO UNIONISE

The anti-people and anti-labour outlook of the Junta's draft constitution demonstrates itself once again when it totally deprives 1.5 m. public servants of the right to organise in a union.

JUNTA'S DRAFT CONSTITUTION IS THE ONE PROPOSED BY BIG BUSINESS

Immediately after the declaration of the Draft, various circles, particularly academics and experts in labour law drew attention to this aspect of the issue. For example, Professor Metin Kutal of Istanbul University said: "Certain demands that have long been being put forward by the employers articles are now brought as provisions of the new constitution, while previously they were not regarded serious enough to be considered even in the preparation of labour legislation".

As is widely known, Turk-Is have collaborated with the Junta since the coup of 12th September 1980, and have kept silent when DISK (The Progressive Trade Union Confederation) was shut down and its 52 leaders were sent to face death penalties under a military tribunal; when trade union rights and freedoms were being abused; and when the Junta continuously attacked the wages and living standards of the workers. It even supported some of these measures.

Today, this confederation, Turk-Is comes up and raises its voice against the Junta's draft constitution. In its report to this effect, Turk-Is states that should this draft pass through, the system of collective agreements will collapse, the right to strike will be limited, the right of lock-out which is a crime against humanity will be constitutionalised, trade unions will be subjected to government control and enchained by the ban on political activity.

The report goes on to say that "all these provisions are in the direction of the employers' demands." As a matter of fact, the arrangements taking place in the Junta's constitution carry the hallmark of big business. Almost all the views of TISK (The Confederation of Employers' Unions) submitted to the Draft Committee have been included in various articles of the Draft.

For example, in the proposals of TISK, lock-out was defined "as a means of struggle of the employers" and it was argued that "the general strike and political strikes, sympathy strikes must definitely and openly be banned in the new constitution. As it happens, in Article 58 of the Draft, lock-out is described as a constitutional right of the employers, and "political strikes... sympathy strikes... general strike... work-to-rules and sit-ins" are banned.

Indeed, Junta's constitution is the constitution of monopolies and of big business.

NO TO JUNTA'S CONSTITUTION TO PREVENT DESTRUCTION OF TRADE UNION RIGHTS AND FREEDOMS

The ratification of this draft constitution will mean that the Junta will stay in power in collaboration with civilian forces hostile to democracy, and the continuation of its dictatorship under the guise of a parliamentary regime. It will mean the establishment of a police state against democracy. It will mean the intensification of the death threat over the 52 DISK leaders and further prosecutions and imprisonments of the workers and trade unionists.

What, then is to be done in these circumstances in which not only the fundamental rights but also trade union rights and freedoms are at stake?

Some circles argue that the perplexing proceedings in the Cunsultative Assembly shall be put in order when the National Security Council (i.e. the Junta) debates on it. They disseminate this false expectation to the workers, to the people and suggest that they should wait and see.

However, General Evren, the Junta chief, in his recent public speech in the Central Anatolian town of Afyon, made their stand very clear... He declared that they were determined to limit fundamental human rights and liberties. Thus, he refuted with his own words such allegations and expectations that the Draft would be improved when discussed at the National Security Council.

And now, not a single person is in a position to suggest to the workers and the people to wait and see the National Security Council version of the Draft, nor can anyone argue that the fundamenntal freedoms and trade union rights that were abolished in the Consultative Assembly shall be granted back by the National Security Council. But, those who happened to be doing it can not be considered as "sincere" democrats having "good intentions." Objectively, they will be the enemies of democracy and they will have supported the Junta.

Mr Sevket Yilmaz, Chairman of Turk-Is, says that there is hardly any other way but to hand in the keys of his organisation to the Junta and its government while the trade union rights are being abruptly abused following the destruction of fundamental rights and freedoms.

But there exists an "other way"!

That way is to appeal to the working class and to the people of Turkey who have accumulated democratic traditions. This calls for the alliance of democratic forces. This means a rapid improvement and strengthening of the unity and the wide spread opposition of the democratic forces to the draft constitution. This is the strengthening the struggle for the creation of at least a minimum level of free press, fredom of speech and other democratic conditions for the coming referendum. This means a "no" vote to the Junta's constitution at the referendum.

The working class of Turkey was able to obtain trade union freedoms through the years of struggle with the slogan: "Rights are not granted, but gained." Turk-Is, as a workers' organisation, must learn this principle from its rank-and-file. It must adopt itself to their tendencies and demands.

If theJunta's constitution ever goes into effect, fundamental human rights and liberties will have been totally destroyed in our country. The labour and trade union movement will be crushed. A militarist police state hostile to democracy and peace will have been institutionalised in Turkey.

If the Junta's constitution ever goes into effect, fundamental human rights and liberties a source of inspiration and power, an influential example for the employers and monopolies who are squeezed in the economic crisis in Europe and elsewhere in the world. Turkey will continue to be one of the principal bases strengthening the aggressive powers hostile to peace in the Middle-East, in Europe and in the world.

It will provide serious support and powerful justification for generals having dictatorial aspirations in countries like Portugal, Spain and Italy, indeed for the fascist "black international" which has been advocating "the Turkish model" to get out of the current crisis.

All who favour democracy and peace are in a position to suport the working class, the people and the democratic forces of Turkey in their struggle against the Junta's constitution, for a democratic regime.

A REVIEW
of the turkish
military regime's
DRAFT CONSTITUTION

"solidarity with turkey"
bulletin
33 Rue de la Grange aux Belles
75 010 PARIS FRANCE

C O N T E N T S

(A FULL TEXT OF THE DRAFT CONSTITUTION IS ANNEXED)

FOREWORD

The draft Constitution prepared by the Constitutional Commission of the Consultative Assembly, a body appointed by the ruling military junta in Turkey, has now been published. The draft will be discussed in the Assembly until September 21st, 1982, then given its final form by the junta, i.e. the National Security Council, and submitted to a public plebiscite in November.

The National Security Council has termed the preparation of this draft as a step towards the so-called "return to democracy" they had announced. However, an examination of the draft reveals its aim as to establish, not a democratic regime, but an authoritarian and repressive civilian regime where the junta will continue its existence through new institutions.

The draft is a new evidence to the fact that the regime of September 12th is of a nature hostile to human rights and freedoms.

The draft proves that the anxiety in Europe about the developments in Turkey were well-founded and the correctness of the various measures adopted: the decision of the EEC Parliament to observe the plebiscite process in Turkey, the forming of a commission by the European Council to study the new constitution in Turkey and the resolution by five European countries to place a complaint with the European Human Rights Commission about the situation in Turkey. It is not possible for anyone concerned with democracy and human rights in Europe to remain silent in the face of this draft.

A heated discussion continues in Turkey about the draft, which is now attracting the attention of the democratic European public opinion more and more.

Our bulletin, published since February 1982, aims to play a part in raising solidarity for democracy and freedom in Turkey. Therefore, we deemed it necessary to publish a review on this draft constitution which is of fundamental importance for our country. The study in your hands consists of a general criticism of the draft prepared by the Constitutional Commission of the Consultative Assembly, with the objective of presenting the European public opinion a material to assist them in considering the draft.

August 1982

"SOLIDARITY WITH TURKEY" BULLETIN
33, Rue de la Grange aux Belles
75010 Paris
FRANCE

SECTION I

INTRODUCTION AND GENERAL PRINCIPLES

From a military to a "constitutional" dictatorship

The military junta that seized power in Turkey on September 12th, 1980, abolished the parliament and suspended the Constitution, has now prepared a new constitution for the so-called "return to a democratic regime". Actually, from the very day it overtook power, the junta has, through its directives published under the names of "laws", "decrees" and "declarations", woven step by step the way towards this constitution and, via it, the repressive regime of tomorrow. The published draft constitution is of a nature to serve as the legal cover both for the anti-legal and anti-democratic position and practices of the junta in the past and a basis for the repressive, anti-democratic regime of the future.

Originally an unlawful constitution

Article 146 of the Turkish Penal Code considers an attempt to abolish the Constitution in part or totally or to impede and terminate the functioning of the Parliament as a crime punishable by the death penalty. Thousands of patriots, including the 52 DİSK leaders, are now tried with the demand of death penalty under this article (trade union activities are claimed to come within this context!). However, it is actually the junta itself who is guilty of this crime - going beyond the attempt and committing the act of abolishing the Constitution and disbanding the Parliament. Thus, from the start, the junta has an unlawful position with regard to the existing legislature. It holds power not as a consequence of the people's will, but by arms. Therefore is its position anti-democratic and anti-legal. In order to maintain power, the junta is continuing and even increasing its repressions on the people. For this objective it has adopted a series of "laws", "decrees" and "declarations". Despite this obvious fact, both the junta and its Prime Minister, particularly in their declarations to the foreign press, contend that they undertook no action to alter the existing laws. However, a research by the daily paper "Milliyet" published on September 17th, 1981, reveals that 214 new laws had been enacted only in the period between September 12th, 1980, to August 25th, 1981. The junta averaging one law every 1.5 days, had also issued 36 declarations and 5 decrees in the same period.

September 12th legislature

Hence, a special positive legislature, adopted and promulgated by the junta, has arisen in Turkey. This legislature determines, on the one hand, the newly announced constitution and the regime of the future, and on the other carries such a strength as to make any claims about their unconstitutionality forbidden. This legislature is basically anti-democratic both with regard to origin and in formation, as the people did not participate in their making, and hence can be termed as the legislature of September 12th. From the viewpoint of constitutional law and political science, it will be natural and correct to call the whole of these legislation

activities as "decree" or "ordinance".

This legislation activity of the junta formed the skeleton of the draft constitution now introduced. Thus, the constitution, which should form the basis and frame of laws, was prepared on the basis of this September 12th legislature, upsetting the universal rule that laws should not be contradictory to the constitution and that the constitution should define the laws. The actual situation here is the determination of the constitution by previously enacted laws. The junta has started the reconstruction of the structure it destroyed on September 12th not from the foundations but the roof. Hence the legal structure it envisages for the future of Turkey looks like a house standing on its roof.

Junta's directives for the constitution

The draft constitution we are starting to discuss, in accordance with the demands of the junta, is of a character anticipating a future for our people without freedoms, a period of repression and reaction; it aims to legalize the junta and make it feasible for it to continue its rule in the following periods. In fact, it is possible to find the guidelines for these characteristics in the speech delivered by General Evren at the opening session of the Consultative Assembly, comprising members appointed by the junta, on October 23rd, 1981. In his speech, Evren stressed the following points:

. The unlimited extension and safeguarding of the rights and freedoms of the individual should be avoided.
. More emphasis must be put on the rights and obligations of the state, which should be given a firm structure. The individual freedoms must not be considered as a barrier to achieve this aim.
. Limits should be brought to the demands placed by democratic mass organizations to the state and their rights to express opinions.
. The President of the State must be endowed with wider powers.
. The right to assemble and march in demonstrations has to be restricted.
. The establishment of parties on a communist or religious basis must be prohibited.
. The celebration of May Day, etc., must be banned.
. The continuity of political party leaders must be prevented. A party chairman should not have the possibility to be re-elected to the same post.
. The establishment of small parties and/or their representation in the Parliament has to be prevented.
. There should be no coalition governments.

When the repressive and anti-democratic make-up of the draft constitution drew broad criticism from all sections, General Evren made a new speech in the town Erdek, reiterating his views. Thus, he has declared openly that basically this draft constitution was prepared in line with the junta's requirements.

Today, a constitution, prepared in line with the junta's demands but without any say of the people, anticipating a regime of repression and contradictory with the concept of fundamental rights and freedoms in international documents and democratic and universal constitutional rules, confronts Turkey.

FUNDAMENTAL CHARACTERISTICS AND PRINCIPLES OF THE STATE

The draft constitution regulates the principles of the state in its 2nd article. According to this, the Republic of Turkey is a democratic, secular and social state governed by the rule of law, respecting human rights within the framework drawn by the concepts of public peace, national solidarity and equity; loyal to the nationalism of Atatürk; and based on the fundamental tenets set forth in the preamble.

As inferred from the article, democratic, secular, social and governed by the rule of law constitute the main qualities of the state. However, the principles enumerated above give the colour to these properties. This is the natural consequence reached when the article is analyzed as a whole.

This result, however, renders the content of the basic properties of the state quite undefinite, because these concepts themselves can carry widely different implications and vary according to persons, places, eras, etc. Moreover, as the mentioned preamble had not yet been written at the time of the draft's publication, it is not known what the fundamental tenets are.

The meaning of "Atatürk nationalism"

It must be mentioned here that the draft deletes the principle of national state in the 1961 Constitution and introduces here the term "Atatürk nationalism". We have to dwell on the consequences of this amendment:

First of all, nationalism cannot be a basic and objective characteristic of a state. It can only be a policy followed by the state.

Secondly, today nationalism does not play the positive role that it did in Europe in the last century. In our era, nationalism has reactionary implications. Particularly the experience of the Second World War showed humanity that the concept of nationalism can be used as a support to chauvinism, fascism or at least a repressive and reactionary regime.

Thirdly, in the preparation of the 1961 Constitution, democratic elements resisted the inclusion of nationalism among the properties of the state and achieved to replace it by the term "national state". Now obviously advantage is taken of the fact that democratic elements are forced to silence in this repressive medium, to introduce again the principle of nationalism in the constitution under cover of Atatürk's name.

INTEGRITY OF THE STATE WITH ITS TERRITORY AND NATION

The 3rd article of the draft asserts that the "Turkish State is an indivisible whole comprising its territory and nation."

In political science, the state is defined as the political and legal organization of a human community on a specific territory. By inference, in cases where these elements are separated, it will not be possible to speak of a state. However, the definition of the state as a political and legal organization of peoples on a definite territory does not necessarily mean that the state is uni-national. There can be more than one nation in the structure of the state. If existing together is the result of their free will and decision, then that state is a democratic one. For, in this case the nations within the state will have used their rights to self-determination in favour of unity. The democratic nature of the state mentioned in article 2 necessitates such a formation. This being the case, the articles of the constitution with regard to the basic properties of the state and those pertaining to other subjects have to conform to the principle of democratism.

However, we cannot find such a consistency in the draft. For example, the draft does not even recognize the existence of the millions of Kurdish people in Turkey.

Also, the phrase about the integrity of the state with its territory and nation has been employed in the draft very extensively as a criterion for the restriction of fundamental freedoms. This attitude shows direct parallelism with the reactionary and repressive amend-ments made to the 1961 Constitution in 1971.

WHO HAS THE RIGHT TO SOVEREIGNTY?

In this section, article 5 regulating the right of sovereignty must be examined more closely.

"Sovereignty is vested in the nation without any reservations or conditions" has been a slogan dating from the foundation times of our Republic and has acquired a historical significance, becoming actually synonymous with the concept of national independence. Following the 1st World War, the Grand National Assembly convening in Ankara, in spite of the emperor who submitted to the occupation of the country, declared that the people waging a war of independence were the only force to exercise the right to soverigntly. As a result of this origin, from our point of view, national independence and national sovereignty are two concepts that are closely connected and complementary to each other. Because of these properties, ever since 1921, in no constitution of Turkey, the right to sovereignty and its exercise has been a subject of discussion.

There is a similar article also in the present draft. However, the article makes a significant change this time, severing the right to sovereignty from national independence, because the last sentence of the article states that, "the provisions of accords which foresee membership to institutions possesing international competence are reserved". Thus the draft ushers in a dangerous exception to the exercise of the right to sovereignty.

Let us give an example: Turkey is a member of NATO, an institution possesing international competence. As inferred from the article, NATO will also be authorized in the exercise of sovereignty in Turkey. In the same manner, membership to another similar organization will restrict sovereignty by the authorities of that institution. This institution will be able to dispose of Turkey's lands as if its own and have a say and authority in all walks of social life, depending on the power granted to it by this article of the constitution.

SECTION II

FUNDAMENTAL RIGHTS AND FREEDOMS

GENERAL DEFINITIONS AND RESTRICTIONS

Fundamental rights and freedoms are those that the individual is entitled solely by virtue of being human, independent of any other qualification or condition, and that cannot be usurped, transferred or relinquished.

However, in its 11th article, the draft contends that fundamental rights and freedoms also "accommodate the individual's duties and responsibilities toward society, his family and other individuals", which is immediately followed by the statement: "Fundamental rights and freedoms can only be exercised in conformity with these duties and responsibilities". These definitions and conditions set from the very beginning on the content of fundamental rights and freedoms herald the severe and general restrictions by articles 12, 13 and 14.

The 12th article foresees the restriction of the exercise of these rights and freedoms with the aim of safeguarding,

. the integrity of the state with its territory and nation,
. the republic,
. national security,
. public order,
. internal peace,
. public interests,
. public morals,
. public health,
. the rights and freedoms of other individuals.

These are in fact quite obscure concepts that vary from person to person and with the times. With a collection of so many concepts covering all areas of social life, the article has in fact signed the death warrant for fundamental rights and freedoms. Not satisfied with these, the article went one step further by asserting that these rights and freedoms can also be restricted by ".. special reasons designated in other articles". Furthermore, in the second paragraph of the article there is a repetition stating that, "the general reasons set forth in this article for the restrictions are valid for all fundamental rights and freedoms."

We can say outright that with this restrictive conception and practice, the draft has opened the way for the total repudiation of basic rights and freedoms. It is not possible to associate this regulation with the concepts and rules of either modern constitutional law or international documents.

We must point out in this respect two important criteria that have to be closely observed in the restriction of basic rights and freedoms. Firstly, freedom should be the rule, restrictions the exception. Secondly, restrictions should in no way infringe upon the essence of freedoms, or be of a nature to destroy them.

Ever since the 1789 Declaration on Human and Citizen Rights and in particular in the modern stage reached in the constitutional movement after the 2nd World War, during which humanity lived under the terror of fascism, these criteria have been highly valued and painstakingly observed. However, the draft has taken up an attitude contrary to that of the 1961 Constitution, that complied with the basic principles now universally dominant, and made restrictions the rule and freedoms the exception. The draft has gone further to provide a series of regulations rendering the destruction of all freedoms possible. On these lines, the 13th article of the draft states that in some cases concerning the exercise of basic rights and freedoms, courts can decide to alienate persons from these rights and freedoms because of "misuse". Such a provision occurs for the first time in our constitutional history and is a concrete evidence of infringement upon the essence of freedoms. In practice, it is open to consequences seriously endangering democracy and freedoms.

For example, the article prohibits the exercise of fundamental rights and freedoms for "securing hegemony to a social class over other social classes", or "establishing a form of state based on communism...". This will mean that a communist party or a social-democrat party endeavoring to gain power by means of elections will be considered as "abusing" these rights and freedoms according to this article and their leaders will be punished and deprived of these rights.

Or, to quote another example, if an article or a book written or translated is deemed to come under this article, the writer or translator will be deprived of the right to freedom of thought and will not have the freedom to join any political party or to publish his views orally, in written form or by any other method for the rest of his life.

However, we have to look at the 14th article to see to which lengths the draft goes in destroying basic rights and freedoms. The 14th article says: "Exercise of fundamental rights and freedoms can be suspended in part or as a whole and measures can be taken which contradict the guarantees embodied in the Constitution in states of war, martial law and emergency to the extent that the situation calls for and under the condition that it do not constitute a violation of obligations arising from the international law."

- Such is the draft's concept of a free, parliamentarian state based on law!

- Such is the system of fundamental rights and freedoms the draft grants to our people!

- Such is the democracy promised by the junta!

THE DRAFT REPLACES THE RIGHT TO LIVE WITH THE RIGHT TO KILL

The 16th article of the draft is about the right to live, the primary right of all persons.

Although the article begins with the recognition of the immunity of the individual's existence and his right to pursue improvement of himself materially and spiritually (excepting death sentences issued by courts), a statement in the last paragraph is tantamount to the total denial of this right. Because, here it is asserted that the right of individuals to live will not be considered violated and that officials have the right to kill in the cases of:

. self defence necessitating the use of force,
. execution of warrants of arrest,
. prevention of escape of arrested or convicted people,
. suppression of an uprising and rebellion,
. fulfillment of the orders of the competent authorities (i.e. administrative authority) in states of emergency and martial law.

Actually, this article has recognized, for example, the right of the security forces to kill a citizen during a state of emergency declared for economic reasons in order to execute a command by the competent authority for forced labour.

Thus, the article has in fact accepted the killing of people as the rule and the right to live as an exception to this rule.

On the other hand, the draft which in many cases goes into such details that could be the subject of individual laws or even regulations, neither shows the way nor provide any obligations with regard to the right of the individual to improve himself materially and spiritually. In the same manner, tortures are prohibited, but no relative preventive measures adopted.

The article asserts that the execution of death penalties does not violate the right to live. However, in the modern world, death sentences are considered as a way of destroying the right to live and have been prohibited and deleted from laws. This draft, instead of eliminating the death penalty, does not even consider it as a violation of the right to life, giving a concrete proof of its irresponsible position with regard to this basic right.

Furthermore, the 1961 Constitution authorized the Grand National Assembly in the execution of death sentences thus providing, albeit limited, a guarantee. This draft however transfers this authority of the Assembly to the President of the Republic.

PROHIBITION OF FORCED LABOUR OR CONSTITUTIONAL DRUDGERY?

The 17th article of the draft states: "No individual shall be subject to forced labour. Drudgery is prohibited." The second paragraph of the article however constitutes a threat to this rule by saying that the work performed,

. during periods of arrest, conviction or release on probation,
. services military in nature or done in lieu of military duty,
. services demanded from citizens in states of emergency,
. physical and intellectual work in the nature of civil duty in cases where the needs of the country so require,

will not be considered as forced labour and drudgery.

When this article is taken up in conjunction with articles 135 and 137 concerning the state of emergency, it becomes obvious that drudgery is regulated as a constitutional institution, because in article 135, "severe economic crises" is considered as a justification for declaring a state of emergency, while article 137 mentions "labour obligations to be charged to citizens... in cases of the states of emergency based on economical reasons".

Consequently, political rulers are granted the power to declare state of emergency on a national or regional level citing economic crisis, thereby compelling citizens to forced labour, i.e. to drudgery.

THE DRAFT VIOLATES PERSONAL FREEDOM AND SECURITY

The draft has adopted a dual approach to the question of personal freedom and personal security, regulating the first by article 18, and the latter by article 19. Actually, it is erroneous to divide these two concepts as such, in so far as the impossibility of speaking about the freedom of a person without security. As a matter of fact, looking at their contents, we can see that the two articles complement each other and both regulate the same subject.

The 18th article enumerates the conditions under which individuals will be deprived of their freedoms. In this article, the most conspicuous and the most obscure condition is the one about the restriction of the freedoms of "persons who constitue menace to the public on account of mental disturbance, addiction to drugs and alcohol, vagrancy and communicle disease". This is a newly-fashioned article that did not exist in our former constitution. As inferred from the argumentation written after the draft was published, the vagrant mentioned in the article is anyone without a regular income or residence. In the reality of Turkey, the article threatens the millions that are unemployed and without housing. They now face the dilemma of either being evicted from large cities or arrest.

With regard to the 19th article pertaining to detention and deprival of freedoms, here we can meet concepts from the laws of the Hitler period. Among the reasons justifying the arrest of persons has been included the cases of "the danger of committing a crime". This concept, also a novelty compared with the former constitution, is exactly identical with the one stated as a reason of arrest in the Penal Code of Hitler Germany. Our Constitutional Court had ruled this concept to be cancelled from all legislation because of its anti-democratic nature.

On the other hand, the universal and democratic rule to inform the individual in written form of the reasons for his arrest is violated through the employment of such a slippery term as "if possible". This formulation puts on the green light for arresting a person first and creating a reason for arrest afterwards, i.e. the possibility to find a justification for arrest by means of torture.

The article also provides for the detention of persons for 48 hours before being taken to court; this period extends to 15 days for collective crimes. Furthermore, it is declared that these provisions will not be binding in states of emergency, martial law and war. By inference, under these conditions the obligation to report the position of the person arrested or detained to his kin will also be invalid.

INSTEAD OF FREEDOM OF TRAVEL AND RESIDENCE, FORCED SETTLEMENT

The 20th article of the draft regulates the freedom of travel and settlement. In the first paragraph, the first sentence provides for the universally accepted general principle and states that "every individual shall have freedom of travel". But, the next sentence immediately goes on to say that this freedom can be restricted on account of,

. investigations and prosecution, and,
. prevention of committment of crime.

Obviously, to say that the freedom to travel will be restricted to prevent crimes, is equivalent to making the total annihilation of this freedom possible, on account of indefinite reasons. The freedom will be restricted to prevent which sort of crimes? Or, who can decide beforehand and with which criteria that a person can commit a crime? It is a basic and universally accepted principle that a person will be considered innocent until the court gives its final verdict. Then, how can a person who is not yet accused of any crime, can be deprived of a freedom on the grounds that he will commit one? There can be no answers to these questions justifying this regulation of the draft in a democratic state based on law.

Furthermore, the last paragraph of the article sets forth that the freedom to travel abroad could be restricted on account of civil duties or crime investigations or prosecutions. By inference, the restriction in the first paragraph relates not to the freedom to travel abroad, but -or at least together with it- travelling inside the country. Thus the draft leaves the door open for issuing passports for internal travels - as was the case in feudal periods. It is impossible to consider the logic behind this regulation as contemporary and democratic. Besides, the article does not clarify either the authority to effect these restrictions.

The restrictions in the second paragraph that regulate the freedom of settlement are of an even more anti-democratic nature. According to this paragraph, the product of the obsolete logic behind "forced settlements", the freedom of settlement can be restricted for,

. the prevention of crime,
. realization of social and economic development,
. a healthy and orderly urbanization,
. protection of public property.

It is not possible to speak of a freedom of settlement that is restricted on these grounds. What is actually regulated here is not the freedom of residence, but forced settlement.

THREATS AGAINST THE PRIVACY OF INDIVIDUAL'S LIFE, IMMUNTIY OF DOMICILE AND FREEDOM OF COMMUNICATION

Articles 21, 22 and 23 regulate the privacy of individual's life, the immunity of domicile and the freedom of communication, respectively, which are known as the classical fundamental rights. However, clauses eliminating the court security for all three have been included in the articles.

Accordingly, "... in cases where delays are deemed dangerous, by the order of an agency authorized by the law..." these freedoms can be violated without a court warrant. Hence, a person's body, his private papers and belongings can be searched and the latter even confiscated; or, domiciles can be entered into and searched and the property therein confiscated. The restriction of the freedom of communication goes even further: not only the violation of its secrecy, but also the hindrance of communication is made possible.

Due to the nature of these freedoms, the elimination of court guarantee with such justifications gives rise to the infringement of the essence of these freedoms and totally destroys them. For instance, after the police enters and searches a domicile by the order of the administrative authority and applies afterwards to obtain a court decision, what will change if the judge rules against the search? The freedom has already been violated. Such vague and arbitrary justifications will, as a consequence, give rise to not a democratic but authoritarian rule. When will it be deemed that a delay is dangerous? Who and with which criteria estimates this danger? To restrict or even prevent a freedom without answering these questions is unacceptable by democratic standards.

THE DRAFT DESTROYS THE FREEDOM OF THOUGHT

According to the concepts common to our age, we cannot speak of a freedom of thought that does not incorporate the freedom to express. In other words, the freedom of thought means the freedom of expression. That these two elements as a whole make up the freedom of thought is evident in all international documents on human rights and freedoms and reflected in the principles of contemporary constitutional legislature, including our 1961 Constitution. The draft, however, takes a stand directly opposite to this principle.

Draft says "yes" to censure

Although the 25th article grants the freedom of thought and convictions, the immediately following one, article 26, brings a discriminatory regulation under the title of "freedom of expressing and dissemination of thought". Hence, the freedom of thought has been divided into thought and its expression and these two complementary concepts put against each other.

Furthermore, the last sentence of the first paragraph of article 26, asserts that the expression of thought by radio, television or cinema can be subject to prior approval, thus providing a constitutional potentiality for censure in these fields. The drafting commission was not content with this restriction and and brought other prohibitions and limits on the expression of thought that actually destroy all the freedoms granted in the previous articles. According to these provisions, expression of thoughts can also be restricted for,

. the preventing of crimes,
. punishment of criminals,
. protection of the reputation, the rights, privacy and family life and professional secrets of others,
. to prevent the revealing of secret information of the state,
. to prevent the dissemination of false or premature news which would effect economic life,
. enabling the judiciary to accomplish its function,
. to protect the youth from harmful currents and attitudes.

Also, the article, by asserting that provisions regulating the utilization of mass media channels ("provided these provisions do not obstruct publication") can not be considered as restrictions on the freedom to express thoughts, actually brings restrictions from this point of view. In fact, when article 28 and those that follow are studied in conjunction with the last sentence of this paragraph, then it becomes clear how misleading the phrase, "...on condition that their publication is not obstructed", really is.

It is apparent that the draft has brought regulations that will eliminate the freedom of thought totally. However, it will be useful to study more closely the reasons for the restrictions quoted in the articles to be able to discern the methods employed and the dimensions reached in destroying one of the most important freedoms, gained through hundreds of years of struggle, and also the type of regime those who enforce this constitution on our people have in mind.

Draft prohibits also the unexpressed thought

The first argument for restrictions quoted in this article is the concept of "preventing crimes". This concept alone is sufficient to smash the freedom of thought. The article thus restricts an idea even before it is expressed, acting from a possibility concerning the future.

Prohibitions and measures can only be provided for existing material facts, not possibilities. In legislature dealing with crime and

punishment, only a concrete act or attitude constitute the subject of sanctions, not probable acts or attitudes. This is the free and contemporary concept of democracy. A regulation contrary to this can only be possible in a repressive, anti-democratic regime. In fact, this regulation, providing the prohibition of a thought that is unexpressed, has been borrowed from the laws of Hitler Germany.

Is the criminal punished or the freedom of thought?

On the other hand, "punishment of criminals" naturally comes within the competence of the state. However, this authority cannot be cited as a justification for the restriction of the freedom of thought, because it is a completely different matter that can not be connected with this freedom.

If, overlooking this obvious fact, such a reason is included in the article, we cannot consider this regulation only as an anarchy of concepts or the product of a confused mind. It is the clear indication of an intention to destroy the freedom of thought by using a slippery and vague concept.

Can freedom of thought be held identical with the invasion of privacy?

Undoubtedly, the protection of the reputation, the rights, privacy and family life and professional secrets of others is a noble objective, but citing this as a justification for limiting the freedom of thought cannot be considered as such. Nobody would define the invasion of the private life of a person as the freedom of thought. If such an invasion occurs and a damage ensues, then the victim has the right to establish private and public lawsuits in the courts, as regulated in the 35th article of the draft. In view of this possibility, to put the above condition as a reason of restricting the freedom of thought cannot be assumed as a sign of a democratic regime. The same holds true with regard to the revealing of secret information of the state. Such disclosures actually do not come under the freedom of thought, but the freedom of receiving and publishing information. Even in that case, it is important to ascertain what can be viewed as secret. If the publication of an information will really be harmful for the state, the sanction for such damage is a matter to be judged by independent courts. The inclusion of this concept in the constitution, and furthermore as a restriction for the freedom of thought, does not comply either with legal techniques or the principles of a democratic regime.

Freedom of thought sacrificed for economic life

The draft surpasses itself in its attack against the freedom of thought with the statement, "preventing dissemination of false and premature news which would effect economic life". It is not possible to comprehend the nature and the actual meaning of this argument. However, its implications are obvious: for example, an economic policy that could seriously harm the country's economy cannot be discussed by an economist or a politician before the damage is realized. Another example: a newspaper obtaining advance information about a government decsion for a devaluation, or about the plans of a bankrupt money lender to leave the country after collecting large sums, will not be able to publish it, because printing about an event before it occurs will meet the barrier of "prematureness" put up by the constitution.

Protection of youth - a pretext to restrict freedom of thought

The restriction brought under the justification of "protecting youth from harmful currents and attitudes" is openly the derivation of a fascistic mentality. What are the boundaries of youth? What should be fathomed from the term, "harmful currents"? Which attitudes will be considered harmful? What will be the nature, the boundaries and the field of the protection? Who will determine them and with which criteria?

Let us make the questions concrete: Is youth, for instance, those in the age group between 18-21 or 21-30 or still another? Will an 18 year-old married factory worker with children come within the range of youth, or a 30 year-old university student?

It is apparent that the regulation is unable to clarify a series of questions that can be directed to it. It follows that with this condition the article unjustifiably destroys the freedom of thought. And, as a regime that does not recognize this basic right cannot be considered democratic and contemporary, this constitution can only become the basis of a repressive, reactionary and authoritarian system.

NEGATION OF THE FREEDOM OF SCIENCE AND ARTS

The 27th article of the draft is reserved for the restriction of the freedom of science and arts. Indeed, the first paragraph of the article does not give this impression. It must be remembered however that owing to the methodology of the draft, the restrictions set forth in former articles are also applicable here. Furthermore, the second paragraph asserts that "the entry into and distribution in the country of foreign publications" will be regulated separately by laws, revealing yet a new restriction.

This position of the draft is conflicting with the principles set in international documents, and in particular that section of the Helsinki Final Act dealing with cooperation and exchange in the cultural area.

Impeding the exchange of contemporary and universal publications and works, a basic requirement for the development of science and arts, can only be compatible with the narrow limits of an outdated mentality. Obviously these pseudo-Atatürkists repudiate the objective set by Atatürk "to reach the level of comtemporary civilization".

FREEDOM OF PRESS OR PRESSURE ON FREEDOM?

The freedom of press where the freedom of thought becomes most concrete also appears here as a field under the heaviest repressions.

In fact, article 28 has pointed out the close connection between these two freedoms by saying that "in restriction of the freedom of press the provisions of article 26 on freedom of expressing and dissemination of thoughts will be applicable".

Increased restrictions

After drawing this parallel, the article continues to regulate special cases of restrictions. These have such a broad range as to exclude

any mention of the freedom of press and it will not be an exaggaration to say that under these conditions a free press will have no chance to function.

In fact, the article commences with the prohibition,

. to furnish for publication, or,
. to print, even if distribution is not realized,

news and articles that are,

. detrimental to internal and external security and the integrity of the state with its territory and nation,
. encouraging crime, revolt or rebellion, or,
. related to secret information of the state.

The article also says that under such circumstances, distribution may be prevented.

These restrictions prompt censure

First of all, these restrictions open the door to censure, as it is not possible to know without prior inspection whether an unpublished news comes within the range of these criteria. This regulation also does away with the rule that a press offence can be culminated only on condition of printing and dissemination and calls the unprinted press to account. Furthermore, it tramples the traditional hierarchy of responsibility in the press, adopting a "wholesale responsibility" position. It goes without saying that the criteria cited here for restriction of the freedom are also indefinite, ambiguous and unintelligible and violate the most traditional and universal basic principle of penal law - the rule of "legality".

A regulation preventing distribution

Another restriction set by the article is the regulation for the confiscation of printed matter by order of the competent authority when the delay in obtaining a court decision is deemed prejudicial. The competent authority can give such an order for the protection of,

. the integrity of the state with its territory and nation,
. national security,
. public order,
. Atatürk's principles and reforms,
. public morality,
. the reputation and rights of others, privacy of individuals and families,

and/or prevention of crimes.

We have to repeat that these concepts are vague and indefinite and how a publication will be considered as violating these conditions has not been clarified.

And besides, after a daily paper is confiscated by the order of the competent authority, if the court rules against confiscation, the essence of the freedom will already be violated. Such a consequence cannot be compensated; a violated freedom cannot be repaired.

Printing shops also confiscated

One of the most serious threats to the freedom of press can be found in the last paragraph of the article, where it is stated that newspapers and publications can be closed down for a period of one year or permanently and any publication in nature of a continuation can be confiscated. Obviously, closing down a daily paper for one year will mean the death of the paper.

The draft gets even more ruthless in article 30 and states that in case of conviction to the charges mentioned above, the printing works and the annexes thereto will be considered as "tools of an offence" and confiscated.

When such strict stipulations are inserted in the constitution, the door is opened for restrictions of an even more repressive nature in individual laws, reflecting the spirit of the constitution more concretely and in detail. Undoubtedly, a really free and democratic regime can not tolerate such harsh repressions on the press, as this draft regulates.

PROHIBITION OF THE RIGHT TO FORM ASSOCIATIONS

Article 33 pertaining to the right to form associations asserts that associations cannot act against the general restrictions as stated in article 12. The vehement stress on restrictions is actually a confession that the article was penned with feelings of reaction and even a sort of vengeance. Evidently, the article is a product of the accusations often repeated by the junta and the reactionary forces after September 12th that "the state had fallen into the position of being ruled by associations."

The formulation of the article is also unnecessary and erroneous from the point of legal techniques. Article 12 had already confirmed that "the general reasons set forth in this article for the restrictions are valid for all fundamental rights and freedoms." Therefore, the repetition here does not carry any objective or legal value or significance apart from the subjective reason we have already pointed out.

The 33rd article does not stop with these general restrictions and stipulates even further anti-democratic conditions. According to this article, associations cannot,

. have political aims,
. cannot carry political activities,
. cannot receive support from political parties, nor can they support political parties,
. cannot consort to joint action for this purpose with trade unions, professional organizations in nature of public institutions or foundations.

It seems the draft draws a line of demarkation between associations and political parties. It is common knowledge that the two types of organizations have different qualifications and characteristics. But, can this justify the restrictions regulated by the draft? In order to give a correct answer to this question, we must first of all define the concept "political aims and activities", a question often discussed in the past.

As known, political aims and activities can be divided into two, in the narrow and broad senses of the term. In the narrow sense, political aim becomes concrete in the objective to acquire state power and rule and political activities are those practiced to achieve this aim. In this sense, the organizations adopting and acting towards this aim are not associations, but political parties.

In the broader sense, any view pertaining to any social problem can, in the last analysis, be considered to be "political". Who can decide which subject or field is of a political nature or not? If we put it the other way round, is it not political to prohibit an activity alleging that it has a political aim?

Let us make the questions concrete: if, demanding and organizing for the aims of a just and lasting peace in the world, general and total disarmament, abolition of all military pacts and a peaceful foreign policy, may be considered political and prohibited, will not an aim and activities in the opposite direction also be political? Or, is it possible to ignore the political nature of the oft-repeated principle in the constitution about protecting Atatürk's principles and reforms? Will the activities of an association for protecting seashores from becoming private property be prohibited, even though this is a measure that takes place in the constitution?

Obviously, in the broad sense of the term, "politics" cover all areas of social life. As the establishment of political parties, the organizations working for political aims in the narrow sense of the term, have been regulated elsewhere in the draft, we can only draw the conclusion that this article pertains to those subjects as can be called "political" in the broad sense of the term, and from this point of view, threatens to annihilate the right to form associations totally.

Looking further into the stipulations in this article, we see that an association will not be able to support or receive support from a political party even if the subject in hand is one of its reasons for establishment. Moreover, associations are banned from joint action "with this purpose" with trade unions, professional organizations in the nature of public institutions and foundations. First of all, it is not clear what the article means with the term "this purpose". Even if we assume that it implies "political aim and political activities", it is not quite possible to agree with the logic of the regulation. For example, an association for the abolition of the death penalty -a political aim in the broad sense of the word-, formed despite the constitutional restrictions, will not be able to cooperate with the Bar Association in this subject as this article restricts that possibility. Again, the associations of those labourers denied the right to enroll in unions will not be able to conduct joint action with trade unions in order to gain this right.

Judiciary guarantees abolished

The article says that although the closing down of associations will be by court judgement, this authority may also be exercised by competent authorities when "delay is deemed prejudicial" for the "protection of the integrity of the state with its territory and nation, national security, public order, the rights and liberties of others and for the prevention of crimes". The article then adds that associations may also be closed down by the Ministry of Interior for the above-mentioned reasons, hence altogether doing away with court decisions. At the same time, this provision raises the executive organ over the jurisdictional power, expressing a lack of confidence in the latter.

A final blow is dealt to the right of association in the last paragraph where it says: "This article is applicable for foundations and establishments of this nature."

THE RIGHT TO ASSEMBLE AND MARCH IN DEMONSTRATION

Article 34, on the right to assemble and march in demonstration, stipulates: "Societies, labor unions, and professional institutions in the nature of public establishments shall not be permitted to arrange assembly and marches out of the scope of their subject and purpose, nor shall they participate in assemblies and meetings out of the scope of their subject and purpose."

Thus, the draft opens the door for the designing of laws and for practices that can completely eliminate this right.

RESTRICTIONS ON SOCIAL AND ECONOMIC RIGHTS

Articles 41 to 74 regulate the social and economic life and rights. Some of these articles seem to have been penned in the way of "altruisms", with the stress on a pleasing appearance, rather than their actual implementatiton. Article 74 gives a concrete example to this deceptive attitude.

According to this article, "the state shall carry out its duties, in the social and economic fields as designated by the constitution only in so far as its financial resorts permit, taking care to maintain economic stability." This is actually tantamount to dispensing with these duties. The article has another implication as well: the state will give priority to the maintenance of economic stability to the detriment of the social and economic needs of the people and the requirements of social development. The criteria to be employed in the maintenance of economic stability are not clarified, but clear indications can be found from an examination of the draft as a whole that this expression will actually serve to protect the interests of monopolists, large business circles and big landlords.

Land reform suspended

For example, article 44 on land ownership is a reflection of such an intention. With this article, the allotment of land to peasants has been severely restricted. As known, a radical land reform has never been implemented in Turkey. Consequently, while millions of

peasant families are without any land at all, extremely large areas are concentrated in the hands of big landowners. Despite this situation, the draft (introducing a new restriction from the 1961 Constitution) asserts that the following order will be observed in land allotments: first, state property; then, state-owned lands that can be made available to cultivation through reclamations; and, finally, those private lands that are not properly cultivated.

On the other hand, articles 48 and 49 confirm that in case of expropriation and nationalization, payments will be made on the current market price and in cash, at once. This measure totally alters the regulation in the 1961 Constitution to the effect that such payments be made only according to the tax value, and in installations.

When these two articles are studied in conjunction, we can see that,

. the implementation of a land reform is hindered, and,
. in case of expropriation and nationalization, monopolies and big landowners will acquire large and unjust profits, and that nationalizations are rendered almost totally impossible.

To sum up: the draft has limited the economic and social duties of the state towards citizens with "the sufficiency of resources", actually eliminating these duties in practice, while the interests of big landowners and monopolies are placed under double security.

TRADE UNION RIGHTS, COLLECTIVE NEGOTIATIONS, STRIKES PROHIBITED - LOCK OUT BECOMES A CONSTITUTIONAL RIGHT

Trade unions' sphere of activities restricted

Article 56, titled "trade union activities", is in fact a list of the bans and restrictions on these activities. According to this article, in addition to the obligation to abide by the restrictions stipulated in Article 12, trade unions,

. cannot have political aims,
. cannot carry political activities,
. cannot receive support from political parties, nor can they support political parties,
. cannot consort to joint action for this purpose with associations, professional organizations in nature of public institutions or foundations.

These justifications are identical with those for the restrictions on associations.

The demand for an unrestricted right to strike and the prohibition of lock-outs is common for all trade unions and the subject of a historical struggle. However, according to this draft, unions in Turkey will not be able to demand the right to general strike (which is banned) nor the prohibition of lock-outs (which are free), because this will be regarded as a political aim. Nor may they support a political party promising to grant these rights. Even

to declare that they share the views of this party will be sufficient for the unions to be penalized for supporting a party.

The article aims to deprive the unions in the future of even the limited range of activities exercised under the present military regime. For example, TÜRK-İŞ today criticizes the stipulation in the draft pertaining to union dues. If this article is adopted in this form, then in the constitutional period to follow the military regime, TÜRK-İŞ will not have the same opportunity.

Financial blows for unions

While on this subject, we would like to take up the new system introduced for the collection of union dues. The draft rules out the present practice, i.e. the deduction of union dues directly from wages (the check-off system). In the realities of Turkey, relinquishing the check-off system will mean heavy financial losses for unions, creating serious difficulties in the fulfillment of their duties to their members. This stipulation in the draft has already drawn severe criticism.

Furthermore, the last paragraph of the article obliges unions to deposit their strike funds in state banks. There will be two upshots of this practice: a part of union incomes will be frozen and indirectly placed in the service of employers, while the employer will have the chance to know the exact financial power of the union at a moment of strike.

Right to strike prohibited

The 58th article of the draft carries the title "right to strike and lock out". Lock-out, which is not accepted as a right in any contemporary, including our 1961, constitution, has now been declared as such. Thus lock-out acquires a strength and legality equal to that of strike. It is in fact even more so, because while workers and their unions are held responsible for the damages that might occur in workplaces during strikes, the employers bear no such responsibility for the damages the workers might suffer during lock-outs.

On the other hand, there is a restriction on the right to strike stipulating that this right cannot be used,

. contrary to the requirements of goodwill,
. to public harm,
. to destroy national wealth.

None of these justifications are clear, definite or objective. How will a strike deemed to be contrary to the requirements of goodwill? How will this criterion be reflected in the laws? In case of a controversy, what is good for one party may be regarded as an indication of ill-intention by the other. This stipulation constitutes an omnipresent weapon to prohibit or terminate a strike with such a relative concept as "goodwill".

In the same manner, there are no objective criteria to determine whether a strike is to public harm or destructive to national wealth. Even the act of stopping production may, in itself, be regarded as harmful to public or destructive to national wealth. Thus, another sword of Democles is hung on the right to strike ready to fall at any moment.

In addition to the above restrictions, the right to politically aimed strikes, solidarity and general strikes are prohibited outright. Furthermore, article 59 bans the right to collective bargaining and striking in workplaces employing a maximum of 10 workers, bestowing the authority to determine the working conditions in these workplaces to the Council of Ministers.

According to the industrial statistics published by the State Institute of Statistics, attached to the Prime Minister, in the manufacturing industry in Turkey, 90 out of every 100 enterprises employ 10 or less workers. In textile and furniture producing industries this percentage goes up to 93-97. Again, among the workplaces reporting to the Social Security Institution, 88 out of every 100 employ 10 or less workers. Consequently, with this provision, the draft has declared the right to collective bargaining null and void in at least 88 per cent of all the workplaces in Turkey.

Another stipulation opening the door to the annihilation of the right of collective bargaining and striking can be found in article 58, asserting that in cases of the prohibition or deferring of a strike, the dispute will be settled directly and definitively by the High Council of Arbitration, this Council now made into a constitutional institution. Article 149 pertaining to the High Council of Arbitration deals yet another blow to the right to strike, limiting the maximum duration of a strike down to two months.

The first paragraph of article 149 states: "The High Council of Arbitration shall provide the definitive settlement for labor disputes on its own initiative in cases prescribed in the Article 58 of the constitution and upon the initiative of the Minister of Labor in cases of strikes and lockouts which last sixty days." By inference, the strike will be terminated at the end of the two month period, which is equivalent to an outright prohibition of the right. On the other hand, the right to free collective bargaining is also eliminated as the parties have to accept the settlement provided by the Council.

Waged slavery instead of human wages

The draft abandons the criteria in the 1961 constitution that wages should be just, commensurate with the work performed and be sufficient enough to enable workers to maintain a standard of living befitting human dignity. On the contrary, now the following measures will be taken into consideration in determining minimum wages:

. the economic power of the country,
. the peculiarities of the economic sector,
. the economic and social differences between regions,
. the maintenance of the living standards of labourers,
. preventing instable prices.

This regulation first of all recognizes a constitutional possibility to freeze minimum wages, as governments can keep the minimum wage on the same level for years on end on grounds of economic crisis, regional peculiarities and price increases.

Secondly, the door is opened for minimum wages that do not provide humane living standards, but just enough to keep the workers alive. Thus, working only for a bare existence is constitutionalized.

Finally, wages will not be just, but compatible with the economic power of the country. Undoubtedly, the quoted "economic power" means in fact not the economic power of the country, but that of the class dominating the economy. Hence, the article provides for the regulation of the wages as suitable to the economic interests of this class.

In the 62nd article, elements that will be decisive in determining wages have been enumerated. The article states that wages should be commensurate with the working period, labor production, labor value and the quality of work. By introducing these criteria that come totally within the evaluation of employers, the article tramples the basic contemporary criterion, i.e. the right of the worker to live decently.

DECEPTIONS PREPARED FOR TURKISH MIGRANT WORKERS

In the section on social and economic rights, one of the articles that are only in the form of a statement is article 69, pertaining to migrant workers.

Obviously, the article carries no other weight or value then as a delusion for migrant workers, regarded only as a source of foreign currency. Most of the measures that the article says will be adopted by the state actually come within the jurisdiction of the countries where they work. Therefore, the stipulations in the article are not realistic. The only realistic side to it is the last sentence, asserting that help will be provided to the returning workers.

On the other hand, a basic right for migrant workers, the right to vote in their own country and to participate in the coming constitutional plebiscite has not been recognized in the draft.

THE DRAFT AND THE VOTING AGE

Article 78 of the draft asserts the voting age to be 21. In Turkey, people are considered to be of age at 18. The young people between 18 to 21 are liable for their political opinions and activities, put on trial and even sentenced with the death penalty. It is

natural that where there is responsibility, there should also be right and authority. The determination of the voting age as 21 is both contradictory with realities and depriving a quantitively significant section of the population from the right to vote.

This position constitutes a discrimination to the rule of general suffrage and hinders the expression of the people's will as a whole. On the other hand, the effects of the modern developed technology on the cultural development of youth ensures political maturity at an earlier age, which is another reason rendering this regulation unwarrantable.

DRAFT OBSTRUCTS FREE OPERATION OF POLITICAL PARTIES

Parties defending fascism, the enemy of democratic regimes, have been prohibited by constitutions, particularly after the 2nd World War. On the other hand, communist parties work freely in Europe, because it is universally accepted in our era that the latter cannot be considered on a par with the former.

The 77th article of the draft pertaining to political parties adopts a position exactly opposite this conception. While banning fascist parties, the objective enemies of democracy, the draft places the communist parties on the same footing with them and prohibits the communists parties also in the very same sentence.

Article 78 carries other specific restrictions on political parties.

In the first place, political parties are also bound with the anti-democratic restrictions stated in article 13.

Secondly, the article stipulates that, "political parties cannot consort to joint action, materially and spiritually, with associations, trade unions, foundations, professional organizations in the nature of public institutions, with the aim of carrying out and strengthening their policies".

A third and very important restriction stipulated in the article is the prohibition of the founders and leaders of a dissolved party from establishing a new party with a different name and program or assuming posts in the executive and controlling organs of another already established party.

SECTION III

BASIC ORGANS OF THE REPUBLIC

IN GENERAL

Under the title "Basic Organs of the Republic", the draft has taken legislative power, the executive function and jurisdictional power separately and accepted in principle the separation of powers. However when the relations between these three powers are studied closely, we can observe a violation of this principle in favour of the executive function. Furthermore, within the executive, the President of the Republic has been granted superior powers.

Starting with this intention, the draft has taken a turn towards the establishment of an authoritarian rule, through a series of regulations and new-fangled institutions. The draft, while arriving at such an anti-democratic rule under the claim of solving crisis, has actually opened the door for further potential crisis.

We shall go deeper into the relevant sections of the draft to better explain this judgment.

LEGISLATIVE POWER WITHOUT POWER

The draft has vested the legislative power in the Turkish Grand National Assembly with article 7, stating that this power cannot be delegated. But, the last sentence of the article points out the exceptions which the constitution can make to this principle. As the nature of these exceptions and the articles regulating them are not stated clearly, at first glance it is not possible to comprehend them. But, by inference, it can be assumed that what is meant here are decrees having the power of laws. Such decrees can be issued by the Council of Ministers in normal periods (article 86 asserts that the Grand National Assembly may authorize the Council of Ministers to promulgate decrees) and jointly by the President and the Council of Ministers in emergency periods (article 137).

Right to be elected restricted

In article 84, the draft brings new and more severe restrictions to the qualifications and specifications required to be elected, as compared with the relevant articles of the 1961 Constitution. First of all, although the 1961 Constitution had deemed literacy sufficient to be elected as a deputy to the Grand National Assembly, the draft foresees the condition of a minimum of 8 years schooling. Considering the percentage of those with 8 years of schooling among the population of Turkey, the workers and peasants who constitute the majority are thus losing their right to be elected. The draft has violated the principles of general suffrage and democracy by placing the right to be elected in the domain of those who have the possibility and means to education.

The same article makes another amendment to the former constitution, which had regulated that persons sentenced to 5 years imprisonment were not eligible for election as deputies; now, this limit has been lowered to 6 months. A concrete outcome of this change will be that, a citizen possibly sentenced for exercising his democratic rights and freedoms, his work in trade unions or associations, expressing his opinions in writing or orally or participating in meetings and demonstrations, will be deprived of the right to be elected. This regulation becomes even more anti-democratic in view of the fact that for sentences up to 6 months issued by martial law courts the way to appeal to higher courts has been closed.

The draft has deleted the judgement in the 1961 Constitution that "placing one's candidacy shall not be made dependent upon resignation from public service", and the provisions pertaining the conditions of candidacy for civil servants. The draft's provision on this subject is: "The conditions under which civil servants can place their candidacy for deputy will be regulated by law".

Thus, civil servants are deprived of the constitutional support which they enjoyed in placing their candidacy, a threat to this natural right of 1.5 millions of civil servants in Turkey.

Finally, the draft brings the most severe restriction with the clause that those who are "alienated from their rights" cannot be elected (article 13). We can say that with this formulation in the article, the right and possibility to be elected has been recognized only for a very limited section of the population - an infringement on the right of the people to participate in the ruling of the country as deputies.

We have to touch upon another matter here: the draft regulates that deputies will represent neither their constituencies nor their constituents, but the nation as a whole. However, with a contradictory provision, the draft also pronounces that when a party is closed down by the Constitutional Court, all member deputies will be disfranchised. Obviously, all these anti-democratic stipulations also have the effect of weakening the power and authority of the legislative organ.

The mentality restricting the composition of the legislative power is also reflected in the limitations on its duties and powers, in favour of the executive, and in particular the President of the Republic.

The draft assigns parliamentarian powers to the President

In the first place, article 88 regulating the authority to permit the use of armed forces, says: "In case of a sudden armed attack against the country, rendering an immediate decision to resort to the use of arms unavoidable, the President of the Republic can also permit the Turkish Armed Forces to use arms."

This is a new and important stipulation. Although such a clause may seem natural at first glance, there is certainly a reason why it is inserted for the first time in a constitution of Turkey.

In order to see this intention clearly, the first paragraph of this article and the 5th article on sovereignty must be considered in conjunction with Turkey's military agreements, the foreign policies of the junta and the current situation in international relations in the world.

Turkey is a member of NATO, an international organization that has a share to the right of sovereignty in Turkey, ensuing from the stipulation in article 5 of this draft. With the first paragraph of article 88, sending Turkish armed forces to foreign lands and allowing foreign armed forces to be stationed in the country "..as rendered necessary by international treaties to which Turkey is a party.." has been exempted from the authorities of the National Assembly.

As there cannot be an authority gap on such a vital problem, we can assume from the general logic of the draft that this authority is vested in the executive. Thus the President has been granted the power to involve the armed forces in a war or to call foreign forces to Turkey, dragging the country into a war -or, at least the danger of a war- while the parliament remains completely ineffectual.

The inherent danger of such a regulation involves not only Turkey, but,as a result of the existing chain of relations, the provisions of the article are also of a nature to endanger peace and detente in Europe.

Let us continue. The draft stipulates the elections to the National Assembly to be held every four years. Article 89 also recognizes the authority of the Assembly to renew itself before the end of this period and article 90 the possibility to postpone elections for one year. But, in addition to the parliament, the draft grants the same authority to the President, splitting the authority of legislative power between the Assembly and the President.

In accordance with the rules of a parliamentarian regime, the draft regulates that the Council of Ministers will assume and maintain office by obtaining the vote of confidence. Thus, the authority to discharge the Council of Ministers or one minister from office is vested in the parliament. But, here again the President becomes a partner in the authority of the legislative organ, with the power to discharge the Prime Minister and ministers on his own accord.

Yet at another subject, involving the function of legislation directly, the draft sets the President against the parliament's will and grants him a superior and possibly obstructive position with regard to this function. According to the stipulations in the draft, laws enacted by the National Assembly shall be promulgated by the President, who has the authority to return a law to the parliament for reconsideration. More important, however, before returning, the President may also ask the opinion of the State Consultative Council, attached to himself. The President has a period of 10 days to promulgate a law or to return it to the Assembly. However, no time limit is set for the Council to examine the law, and in any case this period has been excluded from the period granted to the President. Consequently, if there is a disagreement between the Assembly and the President about a law, the latter has the authority not to promulgate or to postpone the law for an indefinite period. This possibility naturally gives him a power and position above the Assembly, infringing directly in the field of legislation, the natural function of the National Assembly.

DRAFT CONCENTRATES POWER IN ONE BASIC ORGAN:
THE EXECUTIVE

The dominant spirit in the draft is the inclination to give the executive function the sway over the legislative and jurisdictional powers and to place the President at the top of the executive hierarchy. Therefore, it will be proper to follow the sequence in the draft and start the review of the executive function with the Presidency.

President of the Republic or a dictator?

The Presidency constitutes one of the most important points in the draft and the key position in the envisaged regime. Although in the draft's synopsis, the Presidency takes place at the beginning of the section on the executive function, articles concerning his authorities, rights, duties and functions have been sprinkled in all sections. The main reason for this lies in the state structure deriving from the draft.

The aim of this constitution is to set up an authoritarian rule, with the powers and authorities centralized in the President. Hence, in the new structure, in addition to the legislative power, the President is also superior and more influential with regard to the executive and the jurisdictional powers. The President is granted the authority to appoint directly or indirectly, control or even discharge from office many of the bodies in the executive, administrative and judiciary organs, beginning with the Prime Minister and the Council of Ministers, thus gaining prevalence over the whole state power. In view of this, it will not be amiss to state that the draft concentrates all, or at least the majority of the, state power in one person.

Furthermore, the draft introduces various novel institutions attached to the President that enhance his powers.

Therefore, in the state structure set up by the draft, the President is supported, on the one hand, the stipulations extending his authorities, functions and duties, and on the other by the new institutions to assist him in wielding his power.

President's powers extended

It might seem at first glance that the authorities and the duties of the President are collected in one article of the draft. Actually, in addition to article 113, which enumerates the general and traditional duties and powers of the President, originating from his position as the head of the state, a series of articles extending his authorities can be found in various sections of the draft.

In addition to the authorities in the legislative, executive and judiciary fields and those recounted in article 133, the President is also empowered to appoint the Governor of the Central Bank, the Director General of the Turkish Radio and Television Institution, and 3 members of its Executive Council, and all 40 founding members of a new introduced institution, the Turkish Language Academy.

Institutions under control of the President

The draft sets up a number of institutions under the control of the President, to reinforce in the exercise of his vast powers.

Through these institutions, the President has become closely connected in the wielding of power with the social classes and strata that are represented in the composition of these institutions. The President depends on the potentiality of these groups, but at the same time they become influential on the political power through or together with the President.

1. The State Consultative Council

The draft makes away with the Senate of the Republic, established by the 1961 Constitution, but sets up a new organ, the State Consultative Council, attached directly to the President. The people will not have any say in the formation of the Council. According to article 118, pertaining to its establishment, the Council will be composed of "the former Presidents of the Republic, the former Chairmen of the Constitutional Court and the former Chiefs of Staff", "twenty members appointed by the President of the Republic among persons who have done distinguished service to the State and the nation", and "ten members to be elected jointly by the natural members and the members appointed by the President of the Republic".

According to article 119, the Council has two duties: a) to investigate the subjects requested by the President of the Republic, and, b) to express opinion before the execution of the authority of the President for returning the laws to the parliament for reconsideration.

The State Consultative Council has actually been introduced by the draft as a new assembly counteracting the parliament (Grand National Assembly), which represents the people's will, in order to give a flexibility of power and movement to the Presidency. We can observe that the military and civilian high bureaucracy will be dominant in its composition. The President is the natural chairman of the Council and shall call it to convention whenever he deems necessary (article 125). Its composition, structure, function and operation, place this Council directly under the control of the President, as one of the footholds of the administration centralized in his person.

2. The Economic and Social Council

Article 148 introduces yet another institution, the Economic and Social Council, that will, with the aim of,

- the development of the national economy in stability,
- securing the balance between the economic and social policies,
- the realization of the harmonious cooperation among various sectors of the economy,
- ensuring the balance and the equity among salaries, wages and social benefits of all civil servants and workers,

perform the following functions:

- submit the Council of Ministers recommendations on these matters;
- express views to the Council of Ministers on the bills and the propositions of law pertaining to economic and social matters;
- prepare new proposals on these matters.

The Council is composed of 15 members, three of them appointed by the President. The other members are, the Governor of the Central Bank (also appointed by the President), Ministers of Finance, Industry and Technology, Agriculture and Forestry, Labour, the Under Secretary of the State Planning Department, three members each to be elected by the higher organizations of the workers and the employers.

Its aims and composition render this Council an organ through which the employers can participate directly in state power in the economic and social fields. At the same time, the President has the possibility of dominating the Council, as he is influential over the majority of the Council members, directly or indirectly. Parallel to the overall spirit of the draft, the representation of monopolies in the make-up of the Council facilitates the establishment of a bridge, a close connection between the President and these circles through this organ.

3. The State Supervisory Council

The 152nd article of the draft regulates the State Supervisory Council, another new institution. However, the novelty is with respect to the constitution, not positive legislature, because among the jurisdictional actions of the junta, there is the Law on the State Supervisory Council, enacted on April 1st, 1981 - a concrete proof that the draft constitution is actually based on the legislature of September 12th.

Through this Council, the President acquires the possibility to interfere directly in the administration. The Law on the State Supervisory Council imposes on the Prime Minister the duty of reporting back to the President the practical results of the President's directives, which he will issue on the advice of this Council.

The subjects or the range of these "examinations, investigations and inspections", have not been specified either in the constitution or the relevant Law, leaving an open door for an extensive exercise of this power in practice.

4. The Armed Forces and the President

The relation of the President to the Armed Forces is regulated in various articles of the draft from different angles.

First of all, there is article 88 which transfers to the President the authority of the parliament to mobilize the Armed Forces at a moment of crisis.

Then comes article 133, pertaining to the office of the Commander in Chief and the appointment of the Chief of Staff. According to this, the office of the Commander in Chief that "cannot be parted from the moral existence of the Turkish Grand National Assembly" will be represented by the President. On the other hand, the article also states that the Chief of Staff, who is the commander of the Armed Forces, will be appointed by the President upon nomination by the Council of Ministers.

5. The National Security Council

The relations between the President and the Armed Forces are also reflected in the National Security Council, which is regulated in article 134 as an organ much more under the control of the President then was the case in the 1961 Constitution.

According to this article, the Council convenes under the chairmanship of the President, with the agenda determined by him, and with the participation of the ministers he designates.

The Council is composed of the chairmen of the National Assembly and the State Consultative Council, the Prime Minister, the Chief of Staff, the Ministers of National Defence, Interior and Foreign Affairs, and the Commanders of the Forces. Enhancing the participation of the upper echelon of the army in state administration, the article provides that the decisions adopted by the Council will be "recommendations the implementation of which is compulsory".

Thus, with the support of the top army leadership, the President's legal powers and effectiveness gain a concrete character, in addition to the fact the army leadership in power since September 12th, will continue to keep their positions.

COUNCIL OF MINISTERS

According to article 126, the Council of Ministers is composed of the Prime Minister, who will be appointed by the President from among the members of the parliament or from outside, and the ministers, who can be selected by the Prime Minister also from among the deputies or others, but will be appointed by the President. In view of this regulation in the draft, the Council of Ministers is placed under the authority of the President.

The Council has to obtain a vote of confidence in the National Assembly to assume office; however, as mentioned before, the Prime Minister and the ministers may be discharged by the President, the first directly, the latter upon the proposition of the Prime Minister.

This stipulation empowers the President to force the Prime Minister to make such a proposition and hence the President becomes dominant on both the Prime Minister and the Ministers.

The general policies of the Council is determined by the Prime Minister and implemented in cooperation with the ministers, who bear collective responsibility for them. Each minister is also responsible for the conduct of the affairs in his field of authority and for the actions of his subordinates. The natural consequence of this is that the administrational hierarchy is attached to the Council of Ministers, with the President at the top of the ladder.

Weapons to implement an authoritarian rule

The Council of Ministers has two basic and significant powers to be used in implementing an authoritarian regime. The first is issuing decrees having the force of law, and the second, to declare the state of emergency and martial law.

1. The power to rule by decree

The power to rule by decree has essentially been regulated by article 86. The legislative organ will determine the aim, content, principles and the duration of the authority to rule by decree when granting the Council of Ministers the right to use this authority.

As inferred from the formulation in this article, the National Assembly has the right to authorize the Council of Ministers to rule by decree, in all fields, in normal periods, because the article has also regulated separately the possibility and right of the Council of Ministers and the President to rule by decree in emergency periods without obtaining such previous authority. This being the case, to grant the Council of Ministers the authority to rule by decree in normal periods actually means the transfer of the legislative power to the executive.

Furthermore, in this way, the executive organ, by obtaining legislative power, will also become influential on those basic rights and freedoms, which will be regulated by laws, according to the draft. As a consequence of this regulation, the authoritarian regime will have further possibilities to escalate repressions on the citizens.

2. Proclamation of the states of emergency and martial law

The draft has regulated that the Council of Ministers, only under the chairmanship of the President can declare a state of emergency "in cases of natural catastrophe and grave economic crisis" (article 135), and "in case of the emergence of serious indications of widespread acts of violence.. or in case of serious breach of the public order" (article 136). Article 137 states that, "while the state of emergency is in force, the President of the Republic, with the Council of Ministers, may issue decrees based on the State of Emergency Law on matters necessitated by the situation". From this it is natural to assume that in such a case, the President himself will be ruling directly and openly.

The responsibility, however, will lie with the Council of Ministers. Undoubtedly, the use of power by someone who does not assume the responsibility for it, is incompatible with the democratic concepts of jurisdiction.

Furthermore, article 135 renders possible the declaration of a state of emergency and the suspension of fundamental rights and freedoms at any moment, considering that the Turkish economy has been in a state of crisis since the 1970's, getting more and more sharper.

On the other hand, the present junta seized power in Turkey claiming as a justification the spreading of the acts of violence and a serious breach of public order. The inclusion of these as justifications for the proclamation of a state of emergency in the draft can only mean that the anti-democratic, repressive practices, in violation of human rights, suffered during the junta period will be pursued by civilian governments in the future. This is another evidence that the real objective of this junta is not democracy, but a civilian authoritarian regime.

The draft has also granted the civilian regime of the future the right to rule by martial law in the 138th article. Justifications to proclaim a state of martial law have been increased, while their contents have become more indefinite and vague. Also, martial law commanders have been vested with the broadest possible authorities, including the right to suspend fundamental rights.

When we consider that over half of the 60 year history of the Turkish Republic has been spent under martial law, we can realize the extent of the threat presented by this regulation against fundamental rights and freedoms and democratic life.

THE DRAFT EXEMPTS THE ADMINISTRATION FROM JUDICIARY CONTROL

The subject of judicial control of the administration is another evidence of the intentions to lay the basis of an authoritarian and repressive regime with this draft.

In the first place, article 153 excludes the actions taken single-handedly by the President from judicial control. Secondly, it regulates that the administrative judicial power shall be limited to the control of the administrative acts for their conformity to legality and that no judicial decision in the form of administrative acts or actions shall be ruled. There are also new restrictions with regard to court decisions for the suspension of the action, for the acts and activities of the administration. Those decisions formerly constituted a safeguard for citizens not to suffer from such activities harm that can not be compensated afterwards. According to the article, these decisions will be restricted in states of emergency, martial law or war, for reasons of national security, public order and public health.

Let us give a concrete example how this restriction will work in life: at a state of emergency declared for economic reasons, an unjust and unlawful decision by the administration adopted to force citizens to work, cannot be appealed to the Council of State for suspension.

The draft goes one step further with the stipulation that, "the administrative jurisdiction shall not rule decisions for the suspension of the action in suits instituted by the civil servants against the administration for re-appointments and transfers". In practice, this means that, a civil servant, re-appointed or transferred from one town to another, will not be able to go back to his former position even if he eventually wins the case he established against the administration. This stipulation will enable political rulers to keep the civil servants continually under pressure and deprive them of security and peace of mind.

LOCAL ADMINISTRATIONS LEFT TO THE MERCY OF GOVERNMENTS

Article 155 regulating local administrations contains two important variations from the 1961 Constitution.

First of all, the article which states that the objections against the elections of the elected organs of local administrative bodies will be through legal means, has been supplemented with the following stipulation: "However, the Minister of Interior may suspend, as a provisional measure, the offices of the local administrative organs and their members against whom investigation or prosecution in under way for offenses pertaining to their duties".

This regulation is contradictory with the very principle of a democratic state based on law, as it empowers the Minister of Interior to suspend from office an elected mayor or a member of the city council any moment, by having his security forces start investigations against them. This is a power that can be used to nullify the will of the people.

Secondly, the draft has suspended the provision by the 1961 Constitution that, "sources of income shall be provided for these administrative bodies in proportion to their functions". Consistent with its repressive nature, rather than providing freedoms and possibilities to them, the draft has now introduced the following: "The state shall have, within the procedures and the fundamentals prescribed by the law, the POWER TO SUPERVISE the local administrative bodies for the assurance of the uniformity of the duties, preservation of the public benefits and the duly fulfillment of the local necessities." Thus, instead of supporting the local administrations, formed as an expression of the will of the people, in their services to the people, the draft carries stipulations rendering them liable to pressures by the political rulers.

We shall skip similar rules in this section of the draft, but would like to dwell briefly on article 170, pertaining to professional associations in the nature of public organizations.

This article goes beyond the general restrictions put on the activities of these associations, stating in its last paragraph, "in view of state integrity and national unity, for the protection of national security, public order, protection of rights and freedoms of others, prevention of crimes or in cases where delays will pose drawbacks, the highest ranking local administrator in a locality can suspend the elected organs of a professional association until a decision by the judge is announced." We shall give but one possible example to the practice of this provision: the governor of a city will have the authority, as ensuing from this article, to suspend the chairman and the executive committee of the Bar Association in that town.

JURISDICTIONAL POWER

Article 9 of the draft asserts that the judicial power will be exercised by independent courts, a regulation that is as a rule the expression of the principle of the separation of powers. However, can we say that in this draft the jurisdictional power is really independent, in compliance with this principle? It is not possible to give a positive reply to this question, because, in addition to provisions hindering to a great extent the independence of the jurisdictional power with regard to the legislative power and the executive, there are also restrictions incompatible with the concept of a state based on law, violating judicial guarantees.

For example, article 173, entitled "the profession of judges", states at first that "judicial authority is carried out by career judges", but then asserts, "due to the special nature of administrative and taxation courts, and due to absolute necessity in labor and juvenile courts, those who are not from the career can also be assigned duties", enabling persons without a legal formation to assume judicial duty.

Moreover, with article 176, the draft foresees the establishment of State Security Courts, which are in the nature of extraordinary courts as distinct from general and administrational courts, and which were severely criticized by the democratic public opinion in the past.

In contemporary democratic states, fundamental rights and freedoms are placed under the security of court. However, this draft has adopted measures seriously reducing the power of and, in places, eliminating this guarantee. Thus, freedoms are deprived of guarantees while the principle of the independence and superiority of the jurisdiction is violated, and sometimes totally disregarded in favour of the executive organs.

The draft culminates its attempts in this direction with the powers vested in the President in the field of jurisdiction. There are two sides to the regulations concerning this matter: the first are the vast authorities granted to the President in appointing the judges of the higher courts, and the second is his exemption from judicial control.

Thus, with article 179 of the draft, the President acquires the authority to appoint all the members of the Constitutional Court. Here, it should be pointed that articles 182 and 184 recognize the right of the President to apply to the Constitutional Court for the annulment of a law enacted by the National Assembly. Consequently, the President now has the right to initiate an annulment suit for a law which he does not approve of at a court appointed by himself. This provision, in the final analysis, enables a single person, the President, to disregard the parliament completely.

Secondly, article 191 stipulates that the President will appoint one fourth of the members of the Council of State (among officials of certain qualifications), an administrative court empowered to control judicially all actions and activities of the administration and the executive. Here, in addition to the violation of the principle of the independence of jurisdiction, the President, by acquiring a say and vote in the formation of administrative jurisdiction, has also become influential on the actions and activities of the Council of Ministers and the administration.

In contrast to this, all actions and activities carried out single-handedly by the President, are exempt from juridical control and taken outside the powers of the Council of State.

Thirdly, a rule carrying great significance with regard to the independence of courts, the guarantees for judges and public prosecutors is violated with article 196. This article stipulates that the Chairman of the High Council of Judges and Public Prosecutors will be the Minister of Justice. Moreover, the President is granted the authority to elect the Council members for a period of four years, according to the provided procedure.

Fourthly, article 193 rules the members of the Military Court of Cassation also to be selected by the President, from among the three candidates for each vacant seat proposed by the General Assembly of the said Court.

Finally, according to the 189th article, the Chief Republican Prosecutor and the Acting Chief Republican Prosecutor shall also be elected by the President, from among the five candidates for each to be nominated by the General Council of the Court of Cassation. Article 190 stipulates that if the President is tried by the Supreme Council on charges of treason, then the Chief Republican Prosecutor or his deputy will occupy the seat of prosecution. This means that the President will be tried by persons appointed by himself, a situation enhancing the dangers inherent in their selection by the President.

SECTION IV

CONCLUSION

We can see that the draft constitution, prepared by the junta that seized power on September 12th, is against the interests of our people and the universal and contemporary democratic principles and established rules.

First of all, this constitution is far from satisfying our people's longing for peace, freedom and independence, but goes in exactly the opposite direction. The draft begins by depriving our people from the right of sovereignty and bestowing it to international organizations to which Turkey is affiliated, thus actually enhancing dependence.

The draft contains provisions threatening to drag the country in a war any moment. It transfers the authority of the parliament, an expression of the people's will, although in a limited manner, to decide on matters of war to the executive organ, in the person of the President. A similar condition takes place with regard to the deployment of foreign troops on our lands. Article 88 disposes with the authority of the National Assembly to send Turkish troops abroad or to permit foreign troops into the country, as and when required by international treaties -for example, the bilateral agreements with the USA. This authority is now vested in the executive.

The constitution presented to the people by the junta is not content with restricting freedoms, but destroys their very essence. All contemporrary and democratic fundamental rights and freedoms achieved by humanity through long struggles have now been denied to our people. With vague, indefinite justifications, some of which are borrowed from Hitler laws, and with anti-democratic prohibitions on all basic freedoms, an authoritarian and repressive regime is envisaged for our people. In order to implement such a regime, either the existing institutions have been modified in a reactionary way or new institutions introduced.

The rights of association, the right of the working class to trade union and political organizations have been severely restricted and, in places, totally denied. The rights to assemble, march in demonstration and even the right to live and all other freedoms have been endangered.

On the other hand, economic and social life has been reorganized on a class basis, in favour of monopolies and against the interests of the people. Institutions and regulations that will serve to maintain the interests of this elite minority have been introduced. The rights of workers to collective negotiations and strike have been so weakened as to become totally ineffectual. Provisions have been made to protect large private property on land and render an agricultural reform impossible.

The basic organs of the state are designed, not on the basis of the people's will and the universal and contemporrary principles and rules of a democratic, pluralist parliamentarian regime, but in favour of an authoritarian and repressive rule. Under the banner of a "strong state", the power has been centralized in the hands of the executive, particularly in the person of the President of the Republic. The executive function has gained a position superior to the legislative and jurisdictional powers.

Particularly through new-fangled institutions, a structure has been established, enabling the reactionary, repressive and authoritarian rule of monopolists over the people, through a small group of military-civilian high bureaucrats. As long as this structure exists in the draft, minor revisions will not effect the regime to be instituted. Moreover, even any changes in the authorities of the President will not create much of a difference in the presence of the state structure set up with this constitution.

The draft constitution prepared by the Constitutional Commission of the junta-appointed Consultative Assembly, all its mentioned characteristics and qualities, constitute an irrefutable proof that the statements of the junta about a "return to democracy" have no meaning, except to deceive the public opinion in Turkey and in the world.

ANAYASA KONUSUNDA LENİN NE DİYOR?

"Halkın yasama ve yönetime katıldığı bu hükümet türüne, anayasal hükümet biçimi denilir. (Anayasa = Halk temsilcilerinin yasama ve devlet yönetimine katılmaları konusundaki yasa). O halde, otokrasinin devrilmesi, otokratik hükümet biçiminin anayasal hükümet biçimiyle değiştirilmesi demektir. (Cilt 4, sayfa 265)

Ayrıca Bak: Cilt 8, sayfa 557-559.

Üç hükümet biçimi: Mutlak monarşi, anayasal monarşi, demokratik cumhuriyet.

"Liberaller bir Avrupa anayasası istiyorlar. Ama Avrupa'nın çeşitli ülkelerinde ortaya çıkan anayasalar, bir yandan feodalizm ve mutlakiyet, öte yandan burjuvazi, köylüler ve işçiler arasındaki uzun ve çetin sınıf savaşımlarının sonucuydu. ..... Liberallerin program ve taktikleri gelip şuraya dayanıyor: Avrupa'da ortaya çıkan yaşam tarzı, ülkemizde zorlu savaşım olmaksızın biçimlensin!
(Cilt 18, sayfa 564. 1913)

1841 Meclis-i Maarif-i Umumiye'nin kurulması

1838 – 1847 Rüştiyeler – Darülmuallimin

1858 Ilkokul rüştiyeleri

1849 Darülmaarif

1847 Mekteb-i Ziraat

1858 Mekteb-i Ziraat ve Maadin

1859 Mekteb-i Mülkiye

1860 Mekteb-i Telgraf

1854 Encümen-i Daniş

Askerî okullar ve meslek okulları (Abdülmecid zamanında, 1839–1861)

1773 Mühendishane-i Bahri

1793 " Berri

Mekteb-i Tıbbiye

ve Harbiye

1834 Muzika-i Hümayun

Erkân-ı Harbiye Sınıfı.

atılım:

AÇIKLAMA

Cunta, anayasa taslağını, bir iki küçük değişiklikle onayladı. İşbirlikçi tekelci burjuvazinin, vurguncuların bu zorbalık yasası, halka süngüyle dayatılmıyor. Bu, partimiz için, ilerici kamuoyu için beklenmedik bir sonuç değildir. Generallerin anayasadaki halk düşmanı kimi maddeleri değiştireceği yönündeki beklentiler boşa çıkmıştır. Üstelik cunta, eski taslaktan çıkartılan üniversite ve gençlik düşmanı YÖK'ü yeniden anayasa maddesi yaptı.

Cunta, sendikalarla ilgili Anayasada yer alan üye kesenklerinin ödenme biçimine ilişkin olan gibi ayrıntı bir maddeyi, yoğun tepkiler karşısında geri çekmek zorunda kaldı. Buna karşılık, cunta anayasası, sendikal hak ve özgürlükleri kökten budıyor. Dahası, genç işçilerin sendika yönetimlerine gelmesini büsbütün yasaklıyor.

Bunun yanısıra cunta,12 Eylül sonrasında kapatılan politik partilerin yöneticilerine ve parlamenterlere politik eylem yasağı koyuyor. Bununla generaller , yalnız işçi sınıfının örgütlerini ve demokratik güçleri değil, kendilerinin dışında saydıkları tüm politik güçleri de saf dışı bırakmaya yelteniyor.

TKP, bugüne dek, cunta anayasasının iç yüzünü aralıksız yığınlara açıkladı. Daha şimdiden, cunta anayasasına karşı çıkanlar toplumda büyük bir güç oluşturuyor. Cuntanın referandum öncesi partimize, DİSK'e, Tekstil Sendikası'na ,Barış Komitesi'ne karşı giriştiği yeni saldırılar onun korkusunu yansıtıyor. Bu durumda, daha güçlü bir savaşım zorunluktur.

Cuntanın,halk he derse desin, anayasayı nasılsa onaylatacağı yönünde şurada burada karamsar görüşler de boy veriyor. Bunlar, yığınların savaşımını zayıflatmaktan başka bir sonuç doğurmaz. TKP, özellikle, AP çevrelerinden yayılan bir demagojiye karşı halkımızı uyarıyor: Bu çevreler, sözde bunalım çıkmasın diye anayasaya evet denmesinden söz ediyorlar. Onlar, anayasa ileride değiştirilir sözleriyle halkı avutuyorlar.

Gerçekte, bu halk düşmanı anayasa süngü zoruyla referandumda onaylatılırsa, bugün süren bunalım, daha da derinleşecektir. Baskı ve hileyle alınmış oylara dayanan cunta, daha da zorbalaşacaktır. 7 Kasım'da cunta anayasasının yırtılması ise, yalnızca demokrasi isteyenleri güçlendirecektir. Cuntaya ve onun anayasasına hayır dendiği gün bunalımdan çıkış yolu da görünecektir. Halkın istemediği generallerin diktatörlüğüne karşı, demokratik bir hükümetin kurulması için gerekli ön koşullar ortaya çıkacaktır.

Referandumda sandık başına ! Cuntaya ve onun anayasasına hayır!

20 Ekim 1982

Türkiye Komünist Partisi
Merkez Komitesi

110 YILLIK ANAYASA KAVGAMIZ

Bu yıl, "Mithat Paşa Anayasası" diye de bilinen Kanun-u Esasi'nin 110'uncu yıldönümünü kutluyoruz. Diktatörlüğe karşı demokrasi güçlerinin yeni bir anayasa için savaşım verdiği günümüzde, bu yıldönümü, daha da büyük bir anlam ve önem kazanıyor.

19'uncu yüzyılda, ülkemizin siyasal yaşamında, "anayasa" kavramı yeni bir kavram, yeni bir düşüncedir. Padişahın "astığı astık, kestiği kestik" mutlak istibdat rejimine karşı direnişte, 1876 Anayasası bir sıçrama noktasıdır.

Bilindiği gibi, anayasalar, devletin yapısını düzenleyen, insan hak ve özgürlüklerini güvence altına alan temel belgelerdir. Lenin'in belirttiği gibi, "halkın yasama ve yönetime katıldığı hükümet türüne, anayasal hükümet biçimi denilir. Anayasa, halk temsilcilerinin yasama ve devlet yönetimine katılmaları konusundaki yasa" demektir. (Lenin, Toplu Yapıtlar, İng., Cilt 4, s. 265).

Ve yine tarihin gidişi içinde, üç tür hükümet sistemi vardır Mutlak monarşi, anayasal monarşi ve demokratik cumhuriyet (Lenin, ToplukYapıtlar, İng., Cilt 8, s. 557-559)

Ülkemizin siyasal yaşamında, mutlak monarşiden anayasalı monarşiye geçiş kolay olmamıştır. Bundan 110 yıl önce kabul edilen ilk Türk Anayasası, büyük özgürlük savaşçıları Namık Kemal ve Mithat Paşa'nın adlarıyla bağlıdır.

Bizde egemenliğin kamuya ait olabileceği düşüncesi, ilk kez Namık Kemal'in yapıtlarında sistemli olarak işlenmiştir. Meşrutiyet (şartlılık, anayasalılık) hareketinin siyasal programının oluşmasında Namık Kemal'in yapıtları önemli bir rol oynamıştır.

Namık Kemal ve Yeni Osmanlılar Cemiyeti'nin kurucuları (1865) Sultan Abdülaziz'in despotluğuna karşı savaşım verdiler. Onlar Avrupa'da, sürgünde Fransız İhtilâli'ne temel oluşturan düşüncelerle te-

ANAYASA KONUSUNDA LENİN NE DİYOR?

"Halkın yasama ve yönetime katıldığı bu hükümet türüne, anayasal hükümet biçimi denilir. (Anayasa = Halk temsilcilerinin yasama ve devlet yönetimine katılmaları konusundaki yasa). O halde, otokrasinin devrilmesi, otokratik hükümet biçiminin anayasal hükümet biçimiyle değiştirilmesi demektir. (Cilt 4, sayfa 265)

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masa geldiler. Rousseau, Voltaire, Montesquieu'nün despotluk rejimini yeren yapıtlarını incelediler. Yeni Osmanlılar, Avrupa'da cumhuriyetçi, bir ölçüde de sosyalist görüşlerle temasa geldiler. Örneğin, Yeni Osmanlılar Cemiyeti tüzüğünün hazırlanmasında (1867), Birinci Enternasyonal üyesi Simon Deutsch'un da payı oldu. Cemiyetin kurucularından Mehmet, Reşat ve Nuri Bey'ler, 1871'de Paris Komünü'nün savunulmasına aktif olarak katıldılar.

Yeni Osmanlılar, Avrupa'da gördüklerini, ülke koşullarının prizmasından geçirip bir senteze vardılar. Örneğin Mehmet Bey, "köylü Osmanlı İmparatorluğu'nda henüz devrim için sosyal bir taban, Marksist görüşlerin gerçekleştirilmesi için bir temel olmadığı gerçeğini kavramıştı. Bundan ötürü o, ülkenin Abdülaziz despotluğundan kurtarılması, eşitlik, özgürlük ve halkın eğitimi ilkelerinin gerçekleştirilmesi için savaşımı ilerici Türk aydınlarının başta gelen ödevi sayıyordu." (E.Y.Gasanova, "19'uncu Yüzyılın Son Çeyreğinde Sol Görüşlerin Türkiye'ye Girişi Tarihi Üzerine, "Problemi istorii Turtsii" adlı kitaptan, Moskova, 1978)

İbret gazetesinde Paris Komünü'nü savunan Namık Kemal, Batı'da "bir şirketten servetli adamlar, bir devletten kuvvetli şirketler peydah ediyor" diyor, "Bir fabrikamız yok. Mülkümüzde sanat ne ile ileri gider?.. Beynimizde servet nasıl vücuda gelir?" diye soruyordu. Namık Kemal'e göre, ülkenin önündeki dönüşümler için, despotluğun kalkması, anayasalı bir rejim gerekiyordu.

1876 Anayasası'nın ve meşrutiyetin gerçekleştirilmesi ise doğrudan Mithat Paşa'yla bağlıdır. 19'uncu yüzyılın ikinci yarısında yönetime halkın katılımıyla ilgili üç düzenlemenin üçünde de Mithat Paşa'nın imzası vardır? Bunlardan ilki, 1867 tarihli Vilâyetler Kanunu ile kurulan Meclis-i Umumi'lerdir. Günümüze dek gelen İl Genel Meclislerinin, seçime dayalı kısmî yönetimin illerde başlangıcını oluşturmaktadır.

İkinci düzenleme, yine temsili nitelikli Şûray-ı Devlet'in (Danıştay) kuruluşudur. Prof. Tarık Zafer Tunaya'nın belirttiği gibi "Şûray-ı Devlet'in kuruluşu, meşruti rejime geçişte bir adım teşkil etmiştir."

Üçüncüsü ve en önemlisi ise, Birinci Meşrutiyet'in ilânı ve 23 Aralık 1876'da Türkiye tarihinde ilk kez bir anayasanın kabul edilmesi, 19 Mart 1877'de de Meclis-i Meb'usan'ın toplanmasıdır. Gerçi 1876 Anayasası'nın ve Meclis-i Meb'usan'ın ömrü bir yıldan az sürmüştür ve ardından 30 küsur yıllık koyu bir despotluk dönemi gelmiştir ama ilk anayasanın getirdiği aydınlık düşüncelerin insanlar üzerindeki izi, ışığı silinememiştir.

Kısa sürmelerine karşın, bu ilk anayasanın ve Meclis'in önemi nereden geliyor? En başta, o sıralar birçok Avrupa ülkesinde anayasa da yoktu, Meclis de. Nitekim despotizmin kalesi olan Çarlık, 1876 Anayasası'nın "örnek" olma gücünden, kendi halkına bir anayasa verme zorunda kalacağı için kaygıya kapıldı. Tanzimat'ı destekleyen İngiltere, anayasa hareketine aynı desteği vermedi. Örneğin, İngiltere Dışişleri Bakanlığı, İstanbul'daki elçiliği kanalıyla, Abdülhamit'in kulağına gidecek şekilde şu düşünceyi yaymıştır: "Mithat Paşa, cumhuriyetçi bir sosyalisttir, hanedanı yıkarak cumhuriyeti kuracak ve kendisi de cumhurbaşkanı olacaktır." (Layard, Unpublished Memoirs, Aktaran Tevfik Çavdar, "Osmanlıların Yarı-Sömürge Oluşu", Ant Yayınları, 1970, s. 59)

Buna karşılık, bilimsel sosyalizmin kurucuları Marks ve Engels Mithat Paşa'yı ve Türkiye'deki anayasa hareketini yakından ve ilgiyle izlemişlerdir. Marks, 25 Mayıs 1876'da Engels'e yazdığı mektupta şöyle diyordu: "Hatırlarsın, bir süre önce Türkiye üzerine konuşurken, sana Türkler arasında (Kur'ana dayanan) bir puritan (ilkelerine katı bağlı) bir partinin çıkma olasılığından söz etmiştim. İşte gerçekleşti." (Marks ve Engels, Tüm Yapıtları, Rusça, Cilt 34, s. 13)

Engels üç gün sonra, 28 Mayıs'ta, Ramsgate'den Londra'daki Marks'a yazdığı mektupta şöyle diyordu: "Türkiye olaylarına gelince sen kesinlikle haklısın; ben yine de işlerin ilerleyeceğini sanıyorum; geçen haftanın olaylarına bakıldığında, belli bir duraklama var. Doğu devrimleri ise, ötekilere göre çok daha hızlı bir çözüm gerektiriyor. Sultan (Abdülaziz) sarayda muazzam bir hazine yığdı -zâten

onun ardı arası kesilmeyen para isteklerinden şikâyetin nedeni de budur- ; softaların kendilerine 5 milyon sterlin istediği bu hazır öylesine muazzamdır ki, bunun fazlasını da verebilir. Gerçakov'un notasının üç imparatora verilmesi, sanırım, bu işi bir krize dönüş türecek." (Agy, s.16)

Mithat Paşa'nın sadrâzamlığı (Başbakanlığı) çok kısa sürd "Cumhuriyet yanlısı olarak gösterilen Mithat Paşa, Zaptiye Nâzırı Ömer Fevzi Paşa'nın bu sanısını ortaya koyan iki satırlık bir jurnal sonucu sadaretten uzaklaştırılarak sürüldü" (Abdurrahman Şeref "Tarih Konuşmaları", İstanbul, 1978, s. 144). Mahmut Paşa, Cevat Paşa, özellikle Cevdet Paşa sürekli olarak Sultan Abdülhamit'e "jakoben" olarak isimlendirdikleri Mithat Paşa'yı görevden uzaklaştırması gerektirdiğini, çünkü Mithat Paşa'nın cumhuriyet ilân ederek Osmanlı saltanatına son vermeyi planladığını söylediler (Prof. Aliev'den aktaran Yalçın Küçük, "Aydın Üzerine Tezler-2", Tekin Yayınevi, Aralık 1984, s.336-337).

5 Şubat 1877 günü Mithat Paşa, Avrupa'ya sürgüne gönderildi. Marks ve Engels'in Mithat Paşa'nın Avrupa'daki temaslarını yakın ilgiyle izlediği görülüyor. Londra'daki Marks'ın Brightoh'daki Engels'e 31 Mayıs 1877 günü yazdığı mektupta, Engels'in "Türkiye'deki durumla ilgili değerlendirmesine aynen katıldığını" belirtiyor ve şöyle yazıyordu: "Rusların doğrudan etkisi altında bulunan Damat Mahmut (Celâleddin Paşa) ve şürekâsı, Ruslara barış anlaşması vâdederken, anayasayı kaldırmayı da vâdediyordu..Çar için bundan elverişli bir şey olamazdı... Çar böyle bir anlaşmayla, yalnız itibarını korumakla kalmayacak, bir anayasa verme zorunluluğundan da kurtulmuş olacaktı... Bana söylendiğine göre, Mithat Paşa burada, Türkiye'nin yağısının (ve Rusya'daki "gelişme"nin doğrudan perspektifinin) bağlı olduğu Konstantinopol'deki hareketi hızlandırmak için her şeyi yapıyor" (Marks ve Engels, Tüm Yapıtları, Rusça, Cilt 34, s. 37) .

Marks, Engels'e 8 Ağustos 1877 günlü mektubunda da şöyle yazıyordu: "République Française'in Konstantinopel muhabirinin yazdığına göre, Damat Mahmut (Celâlettin) Paşa'nın entrikalarıyle, uçucu, yaşlı şeyhülislâm devrimci düşünce tarzınnedeniyle görevden uzaklaştırılmış, onun yerine budalanın teki getirilmiştir. Muhabire göre, bu saray entrikalarının sonu gelmezse, Konstantinopol'de çalkantılar beklenebilir" (Agy, s. 57)

Marks, 4 Şubat 1878 günü Leipzig'deki Wilhelm Liebknecht'e yazdığı mektupta, "Çarlık hükümetinin Mithat Paşa'yı İstanbul'dan uzak tutabilmek ve Damat Mahmut Celâlettin Paşa'nın yönetimin dümeninde kalmasını sağlamasının Plevne'yi almaktan daha önemli olduğu büyük bir stratejik ve taktik sanat uyguladığı"nı belirtiyordu. (Agy, s. 247)

Görülüyor ki, kısa bir süre de olsa, anayasanın varlığı Avrupa gericiliğini örnek olur, yol olur diye dehşete salıyordu. İç ve dış gericilik, Mithat Paşa gibi bir devlet adamını İstanbul'dan uzak tutabilmek için her yola başvuruyordu. bilimsel sosyalizmin kurucuları Marks ve Engels, tıpkı Kırım Savaşı sırasında olduğu gibi (1853-56), Birinci Meşrutiyet sırasında da Türkiye'deki siyasal gelişmelere özel bir dikkat vermişlerdir. Anayasa hareketine ve onun mimarı Mithat Paşa'ya büyük değer biçmişlerdir. Kısa ömürlü de olsa, İstanbul'da o dönemde anayasanın varlığı, Avrupa'nın en gerici güçlerini irkiltmiştir. Henüz Avrupa'da birçok ülkede bir anayasa ve Meclis yokken, Türkiye'ye bir anayasa ve Meclis'in varlığı ileri toplumsal ilerleme açısından bir adım olmuş, ancak dış ve iç gericilik, bunu kısa sürede boğmuştur. 33 yıllık uzun bir despotluk dönemi, 1908 Genç Türk devrimiyle kırılabilmiştir.

Engels'den Marx'a 28 Mayıs 1876 günlü mektup:

"Türkiye olaylarına gelince, sen kesinlikle haklısın; ben yine de işlerin ilerleyeceğini sanıyorum; geçen haftanın olaylarına bakıldığında, belli bir duraklama var. Doğu devrimleri ise ötekilere göre çok daha hızlı bir çözüm gerektiriyor. Sultan (Abdülaziz) Saray'da muazzam bir hazine yığdı.(ki, onun ardı arası kesilmeyen para isteklerinden şikâyetin nedeni de budur. Softaların kendilerine 5 milyon sterlin istediği bu hazine öylesine muazzamdır ki, bunun fazlasını da verebilir. Gerçakov'un notasının üç imparatora verilmesi, sanırım, işi bir krize dönüştürecek."

(Marx ve Engels, Tüm Yapıtları, Cilt 34, s. 16)

Londra'daki Marx'dan Leipzig'deki Wilhelm Liebknecht'e 4 Şubat 1878 günlü mektup:

"Nihayet, - onların kesin yenilgisinin nedenlerinden biri de - İstanbul'da Türklerin zamanında devrimi yapmamalarıdır; Eski saray rejimini kişiliğinde cisimleştirmiş olan Damat Mahmut (Celalettin Paşa), tıpkı Rus kabinesinin kendisine karşı savaşı yönetmesi gibi, savaşın baş ve gerçek yürütücüsüdür. Bu kişinin Türk ordusunu felce uğrattığı ve itibarını yoketttiği olgusu, en küçük ayrıntılarına varıncaya kadar kanıtlanabilir. Kaldı ki, bunun Türklerin tarihsel suçunu derinleştirdiği, İstanbul'da da herkesçe biliniyor. Eğer bir halk, bunalımın doruk noktasına çıktığı anlarda devrimci tarzda hareket edemezse, o halk yokolur gider. Rus hükümeti, Damad (Mahmut Celalettin Paşa), kendisi için taşıdığı değeri bildi; Mithat Paşa'yı İstanbul'dan uzak tutabilmek ve Damad'ın yönetimin dümeninde kalmasını sağlamanın Plevne'yi almaktan daha önemli olduğu büyük bir stratejik ve taktik sanatı uyguladı."

(Marx ve Engels, Tüm Yapıtları, Rusça, Cilt 34, s.247)

Temmuz 1986 - Yol ve Amaç için
29 Temmuz günü vardı.

1876 ANAYASASI, MİTHAT PAŞA VE GÜNÜMÜZ

Mehmet ERGÜL

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Ve yine tarihin gidişi içinde, üç tür hükümet sistemi vardır: "Mutlak monarşi, anayasal monarşi ve demokratik cumhuriyet."(2)

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Bizde egemenliğin kamuya ait olabileceği düşüncesi, ilk kez Namık Kemal'ın yapıtlarında sistemli olarak işlenmiştir. Meşrutiyet (şartlılık, anayasallılık) hareketinin siyasal programının oluşmasında Namık Kemal'in yapıtları önemli bir rol oynamıştır.

Namık Kemal ve Yeni Osmanlılar Cemiyeti'nin kurucuları (1865) Sultan Abdülaziz'in despotluğuna karşı savaşım verdiler. Onlar, Avrupa'da sürgündeyken, Fransız İhtilâli'ne temel olan düşüncelerle (yakından) tanıştılar. Rousseau, Voltaire ve Montesquieu'nün despotluk rejimini yeren yapıtlarını incelediler. Avrupa'da cumhuriyetçi, bir ölçüde de

sosyalist görüşlerle teması geldiler. Örneğin, Yeni Osmanlılar Cemiyeti tüzüğünün hazırlanmasında (1867), Birinci Enternasyonal üyesi Simon Deutsch'un da payı oldu. Cemiyetin kurucularından Mehmet, Reşa ve Nuri Bey'ler, 1871'de Paris Komünü'nün savunulmasına aktif olarak katıldılar.

Yeni Osmanlılar, Avrupa'da gördüklerini, ülke koşullarının prizmasından geçirip bir senteze vardılar. Örneğin Mehmet Bey, "Köylü Osmanlı İmparatorluğu'nda henüz devrim için sosyal bir taban, Marksist görüşlerin gerçekleştirilmesi için bir temel olmadığı gerçeğini iyi kavramıştı. Bundan ötürü o, ülkenin Abdülaziz despotluğundan kurtarılması, eşitlik, özgürlük ve halkın eğitimi ilkelerinin gerçekleştirilmesi için savaşımı Türk aydınlarının başta gelen ödevi sayıyordu."(3)

İbret gazetesinde Paris Komünü'nü savunan Namık Kemal, "Batı'da bir şirketten servetli adamlar, bir devletten kuvvetli şirketler peydah ediyor" diye yazıyor, bizim bir fabrikamız bile olmadığını işaret ettikten sonra, şu soruyu soruyordu: "Mülkümüzde sanat ne ile ileri gider?.. Beynimizde servet nasıl vücuda gelir?" Namık Kemal, ateşli yazılarında, ülkenin önündeki dönüşümleri yapabilmesi için, despotluğun kalkması, anayasalı bir rejim gereğini vurguluyordu.

1876 Anayasası'nın kabulü ve meşrutiyetin ilânı ise, doğrudan Mithat Paşa ile bağlıdır. 19'uncu yüzyılın ikinci yarısında, yönetimi halkın katılımıyla ilgili üç düzenlemenin üçünde de Mithat Paşa'nın imzası vardır. Bunlardan ilki, 1867 tarihli Vilâyetler Kanunu ile kurulan Meclis-i Umumi'lerdir. Günümüze dek gelen İl Genel Meclislerinin, illerde seçime dayalı kısmi yönetimin başlangıcını oluşturmaktadırlar.

İkinci düzenleme, yine temsili nitelikli Şûray-ı Devlet'in (Danıştay) kuruluşudur. Prof. Tarık Zafer Tunaya'nın belirttiği gibi, "Şûray-ı Devlet'in kuruluşu, meşruti rejime geçişte bir adım teşkil

etmiştir."(4)

Üçüncüsü ve en önemlisi ise, Birinci Meşrutiyet'in ilânı ve 23 Aralık 1876'da Türkiye tarihinde ilk kez bir anayasanın kabul edilmesi, 19 Mart 1877'de Meclis-i Meb'usan'ın toplanmasıdır. Gerçi 1876 Anayasası'nın ve Meclis-i Meb'usan'ın ömrü bir yıldan az sürdü. Ardından 32 yıllık koyu bir despotluk dönemi geldi. Ama ilk anayasanın getirdiği aydınlık düşüncelerin insanlar üzerindeki izi, ışığı bilinemedi.

Çok kısa ömürlü olmalarına karşın, bu ilk anayasanın ve Meclis'in önemi nereden geliyor? O sıralar birçok Avrupa ülkesinde henüz bir anayasa ve Meclis'in varolmadığı göz önüne alınırsa, bu adımın önemi daha kolay kavranabilecektir. Hele bunun doğu despotizminin kalesi bir ülkede gerçekleşmesi, bu önemi daha da artırmaktadır.

Nitekim despotizmin bir başka kalesi olan Çarlık rejimi, 1876 Anayasası'nın "örnek" olma gücünden büyük ürküntü duydu. Çar, kendi tebasına da bir anayasa vermek zorunda kalacağı için dehşetli kaygıya kapıldı. "Aydınlık mutlakıyet"(5) Tanzimat'ı (1839) desteklemiş olan ve emperyalist aşamaya yükselme süreci içindeki İngiltere, Türkiye'deki anayasa hareketine aynı desteği vermedi. Hattâ, İngiltere Dışişleri Bakanlığı, İkinci Abdülhamit'in kulağına gidecek şekilde şu düşünceyi yayıyordu: "Mithat Paşa, cumhuriyetçi bir sosyalisttir, hanedanı yıkarak cumhuriyeti kuracak ve kendisi de cumhurbaşkanı olacaktır."(6)

Türkler arasında (Kur'ana dayanan) puritan bir partinin çıkma olasılığından söz etmiştim. İşte gerçekleşti."(7)

Mithat Paşa'nın sadrâzamlığı (Başbakanlığı) çok kısa sürdü. Mahmut Paşa, Cevat Paşa, özellikle Cevdet Paşa, sürekli olarak Sultan Abdülhamit'e, "jakoben" olarak isimlendirdikleri Mithat Paşa'yı görevden uzaklaştırması gerektiğini, çünkü Mithat Paşa'nın cumhuriyet ilân ederek Osmanlı saltanatına son vermeyi planladığını söylediler.(8)

5 Şubat 1877 günü Mithat Paşa, İstanbul'dan uzaklaştırılıp Avrupa'ya sürgün edildi. Anayasa kabul edileli, henüz 43 gün olmuştu. Meclis-i Meb'usan'ın açılmasına ise daha 43 gün vardı.

Marks ve Engels'in Mithat Paşa'nın Avrupa'daki temaslarını da yakından izledikleri anlaşılıyor. Marks, Londra'dan Brighton'daki Engels'e yazdığı (31 Mayıs 1877 günlü) mektupta, Engels'in "Türkiye'deki durumla ilgili değerlendirmesine aynen katıldığını" belirttikten sonra şöyle diyordu:

"Rusların doğrudan etkisi altında bulunan Damat Mahmut (Celâlettin Paşa) ve şürekâsı, Ruslara barış anlaşması önerirken, anayasayı kaldırmayı da vâdediyordu... Çar için bundan elverişli bir şey olamazdı... Çar, böyle bir anlaşmayla, yalnız saygınlığını korumakla kalmayacak, bir anayasa verme zorunluluğundan da kurtulmuş olacaktı... Bana söylendiğine göre, Mithat Paşa burada, Türkiye'nin yazgısının (ve Rusya'daki "gelişme"nin doğrudan perspektifinin) bağlı olduğu İstanbul'daki hareketi hızlandırmak için her şeyi yapıyor."(9)

Marks, Leipzig'deki Wilhelm Liebknecht'e yazdığı 4 Şubat 1878 günlü mektupta, Çarlık hükümetinin, "Mithat Paşa'yı İstanbul'dan uzak tutabilmesi ve Damat Mahmut Celâlettin Paşa'nın yönetimin dümeninde kalmasını sağlamasının Plevne'yi almaktan daha önemli olduğu büyük bir stratejik ve taktik sanat uyguladığı"nı (10

belirtiyordu.

Görülüyor ki, Marks ve Engels, tıpkı Kırım Savaşı (1853-56) sırasında olduğu gibi, Birinci Meşrutiyet (1876) ve Osmanlı-Rus Savaşı (1877-78) sırasında da, ülkemizdeki siyasal gelişmelere, Avrupa'da güçler dengesinin değişmesi ve devrimci-demokratik gelişme yönünden özel bir dikkat ayırmışlardır. Anayasa hareketine ve onun mimarı Mithat Paşa'ya büyük değer biçmişlerdir. Despotik bir ülkede anayasa ve meclisin gelmesi, sınırlı da olsa halkın yasama ve yönetime katılması düşüncesi, Avrupa'daki gericilik güçlerini irkiltmiştir. Henüz Avrupa'nın birçok ülkesinde bir anayasa ve meclis yokken, Türkiye'de bir anayasa ve meclisin varlığı ileri bir adım olmuş, ancak iç ve dış gericilik bunu kısa sürede boğmuştur. 1908 yılına dek sürecek olan koyu bir despotluk dönemine girilmiştir.

1876 ANAYASASI VE BUGÜNKÜ DURUM

1908 Genç Türk Devrimi, 1876 Anayasası'nı yeniden yürürlüğe koydu. 1921 Anayasası, ulusal kurtuluş savaşımızın anayasasıydı. Bunu 1924 ve 1961 Anayasaları izledi. Bütün bu anayasalar, ana çizgileriyle toplumsal gelişmenin gereksinimlerine açık anayasalar oldu. 1982 Anayasası ise, öteki anayasaların tam tersine, toplumsal gelişmenin önüne set çekme amacı güden, açıkça karşı devrimci bir anayasadır.

110 yıldır anayasa kavgamız, anayasa savaşımımız sürüyor. 1982 Anayasası ile helenbugünkü uygulamalarla kıyaslanırsa, 1876 Anayasası'nın önemi daha iyi anlaşılabilir.

Örneğin, 1876 Anayasası'nın 10. maddesinde "kişi özgürlüğünün her türlü saldırıya karşı korunacağı" belirtilmiştir. 26'ıncı maddeyle "işkence ve her türlü eziyet kesinlikle ve toptan yasak"lanmıştır. 22'inci maddeyle "konut dokunulmazlığı" güvence altına

alınmıştır.

12 Eylül 1980'deki darbeden sonra ise, kişinin en temel hakkı olan yaşama hakkı devlet eliyle sistemli bir şekilde yokedilebilmektedir. Kişinin vücudunun bütünlüğü ve dokunulmazlığı ilkesi düpedüz çiğnenebilmekte, kişi özgürlüğünün her türlü saldırıya karşı korunması gereği hiçe sayılabilmektedir. Yurttaşlar, ~~kendilerini~~ saldırıdan korunacakları yerde, devletin kolluk kuvvetlerinin sürekli ve düzenli biçimde saldırısına uğramakta, devletin silahlı güçlerince sokak ortasında ya da evleri basılarak kurşunlanabilmektedir. Son beş yılda ülkemizde 800'ü aşkın insanımız, karakollardan, hapisanelerden içeri sağ girmiş, ama sağ çıkamamıştır. 110 yıl önce anayasanın yasakladığı işkence, bugün devletin sistemli bir terör aracı ve uygulaması olmuştur. Öyle ki, bugün Cumhurbaşkanlığı makamında oturan kişi, "Türkiye'de bugüne kadar işkenceden ve kötü muameleden ölmüş insanların rakamını ~~mevcut~~ mevcut polis miktarına böldüm. Onbinde 17 çıktı ve bir yerde bu kadar düşük bir rakam varsa, o ülkede işkence vardır denemez" diyebilmektedir.

110 yıl önce Mithat Paşa Anayasası, kişinin yaşama hakkını, insan vücudunun dokunulmazlığını güvence altına alır, işkenceyi yasaklarken, 110 yıl sonra devletin başındaki bir alafranga general, işkencede öldürülen bunca insanın sayısını az bile bulabilmektedir.

1876 Anayasası'nda; 23 ve 85'inci maddelerle "doğal yargıç" ilkesi getirilmiş, "hiç kimsenin kanunen mensup olduğu mahkemeden başka bir mahkemeye gitmeye zorlanamayacağı" belirtilmiştir. 1982 Anayasası ise, bu ilkeyi hiçe sayarak Devlet Güvenlik ~~Mahkemeleri~~ Mahkemeleri'ni kurumlaştırmıştır.

1876 Anayasası'nın 14'üncü maddesinde Meclis'e tek tek ve toplu insanların dilekçe verme hakları tanınmıştır. Bugün ise, aydınlarımız toplu dilekçe verdiler diye yargılanmakta, ek sınav hakkı için dilekçe veren üniversite öğrencileri koğuşturulmaktadır. Besbelli ki, bu rejim, günümü-

zün yurttaşını 110 yıl önceki tebadan daha az hakka lâyık ~~görmekte~~ görmekte, daha düşük bir değer biçmektedir.

~~110yıl önce~~

Geçen yüzyıldaki anayasa ve özgürlük şehitlerimizi, başta Mithat Paşa

Başta Mithat Paşa ve Namık Kemal olmak üzere geçen yüzyıldaki anayasa şehitlerimizi saygıyla anıyoruz. 110 yıllık anayasa kavgamız, demokratik bir anayasa için ~~sürü~~ kavgamız bitmedi, sürüyor.

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(1) Lenin, Toplu Yapıtlar, İng., Cilt 4, s. 265.

(2) Lenin, Toplu Yapıtlar, İng., Cilt 8, s. 557-559.

(3) E.Y.Gasanova, "19'uncu Yüzyılın Son Çeyreğinde Sol Görüşlerin Türkiye'ye Girişi Tarihi Üzerine", "Problemi istorii Turtsii başlıklı kitaptan, Moskova, 1978.

(4) Tarık Zafer Tunaya, "Türkiye'nin Siyasi Hayatında Batılılaşma Hareketleri", s. 41.

(5) Tanzimat (düzenlemeler) ve Islahat (reformlar), bir bakıma, Aydınlanma Çağı düşüncelerinin mutlakıyet rejimine şırınga edilmesidir. Sovyet araştırmacı N.A.Ayzenştayn'ın deyimiyle, Tanzimat, "feodal monarşinin özel bir biçimi olarak aydınlık mutlakıyetçilik"tir. Ancak "çok geç kaldığı için, etkinliği tarihsel olarak önceden sınırlanmış, feodal devletin yıkılışını önleyecek güçte olamamıştır."

(6) Layard, "Unpublished Memoirs", Aktaran Tevfik Çavdar, "Osmanlıların Yarı-Sömürge Oluşu", Ant Yayınları, 1970, s. 59.

(7) Marks ve Engels, Tüm Yapıtları, Rusça, Cilt 34, s. 13. Engels, üç gün sonra, 28 Mayıs 1876'da, Ramsgate'den Londra'daki Marks'a yazdığı mektupta şöyle diyordu: "Türkiye olaylarına gelince

sen kesinlikle haklısın; ben yine de işlerin ilerleyeceğini sanıyorum; geçen haftanın olaylarına bakıldığında, belli bir duraklama var. Doğu devrimleri ise, ötekilere göre çok daha hızlı bir çözüm gerektiriyor. Sultan (Abdülaziz) sarayda muazzam bir hazine yığdı. -Zâten onun ardı arası kesilmeyen para isteklerinden şikâyetin nedeni de budur- Softaların kendilerine 5 milyon sterlin istediği bu hazine, öylesine muazzamdır ki, bunun fazlasını da verebilir. Gorçakov'un notasının üç imparatora verilmesi, sanırım, bu işi bir krize dönüştürecek." (Agy, s.16)

(8) Prof. G. Aliev'den aktaran Yalçın Küçük, "Aydın Üzerine Tezler-2", Tekin Yayınevi, 1984, s. 336-337.

(9) Marks ve Engels, Tüm Yapıtları, Cilt 34, s. 37. Marks, 8 Ağustos 1877 günlü mektubunda da şöyle yazıyordu: "République Française"in İstanbul muhabirinin yazdığına göre, Damat Mahmut (Celâlettin) Paşa'nın entrikaları sonucu, yaşlı şeyhülislâm devrimci düşünce tarzı nedeniyle [illegible]klaştırılmış, onun yerine budalanın teki getirilmiştir. Muhabire göre, bu saray entrikalarının sonu gelmezse, İstanbul'da çalkantılar beklenebilir." (Agy, s. 57)

(10) Marks, Wilhelm Liebknecht'e yazdığı mektubun başında şöyle diyordu: "Biz şu iki nedenle en kararlı bir biçimde Türklerin yanında yer alıyoruz: 1) Çünkü Türk köylüsünü -dolayısıyla Türk halk yığınlarını- inceledik ve onun kişiliğinde, hiç kuşku yok ki, Avrupa köylülüğünün en verimli ve sağlam ahlâklı temsilcilerinden birini görüyoruz. 2) Çünkü Rusların yenilgisi, pekçok öğesi artık gözle görülen Rusya'daki sosyal darbeyi ve dolayısıyla tüm Avrupa'da kesin bir dönüşümü çok daha hızlandırabilirdi." Marks, "ancak böyle olmadı" diye yazdıktan sonra, bunun nedenlerini sıralıyor ve şöyle yazıyordu: "Nihayet -kesin yenilgilerinin nedenlerinden biri de- İstanbul'da Türklerin zamanında devrimi yapmamalarıdır. [illegible] Aynı şekilde, eski saray rejimini kişiliğinde cisimleştirmiş olan Damat Mahmut (Celâlet-

tin Paşa), savaşın baş ve gerçek yürütücüsüdür. Bu, tıpkı, Rus kabinesinin kendisine karşı savaşı doğrudan yönetmesine benziyor. Bu kişinin Türk ordusunu felce uğrattığı ve uzleştiği olgusu, en küçük ayrıntılarına varıncaya kadar kanıtlanabilir. Kaldı ki, bunun Türklerin tarihsel kabahatini derinleştirdiği, İstanbul'da da yaygın olarak biliniyor. Eğer bir halk, bunalımın doruk noktasına çıktığı anlarda devrimci tarzda hareket edemezse, o halk yokolur gider. Rus hükümeti, Damad'ın (Mahmut Celâlettin Paşa), kendisi için taşıdığı değeri iyi bildi. Mithat Paşa'yı İstanbul'dan uzak tutabilmenin ve Damad'ın yönetimin dümeninde kalmasını sağlamanın Plevne'yi almaktan önemli olduğu büyük bir stratejik ve taktik sanat uyguladı." (Marks ve Engels, Agy, s. 247)

(11) 6 Temmuz 1986 günlü gazetelerden

M'den Engels'e 31.5.77

MacMahon / Anayasa düzeni

~~Mahmut Damat~~ / Ruslar'ın doğrudan birlikte Boğaz anlaşma-

etkisi altında bulunan. Ruslar'la

~~bir~~ Mehmut Paşa 'Anayasayı

kaldırmayı da vâdediyordu. Çar

için bundan daha elverişli

bir şey olamazdı /

gizli bir anlaşmayla

Çar yalnız İstanbul'u kazanmakla

değil, bir anayasa sunma zorun-

luğunun da gündelik gündemden

çıkarma zorunluluğundan kurtulmuş

~~oluyor~~ olacaktı.

Bana söylendiğine göre, Midhat Paşa,

Bt. daha / harekete daha bir ~~[illegible]~~, ~~[illegible]~~ [illegible]

kazandırmak için çaba harcıyor. Türkiye'nin

~~gelecek~~ kaygısı da gerçekten

buna bağlı oluyor.

M. Engels'e 1.8.77

T'de en büyük kayıplar, bütün mutlak monarşi-

lerin eski dostlarıdır. /

İzmir (1978.)

"Frankfurter Zeitung"un ~~İstanbul~~ Konstantinopl kaynaklı haberine göre padişahın tahttan düşürülmesi, eğer bu böyle devam ederse, onun yerine kardeşinin oturtulması eğilimi vardır. Çok iyi Türkçe konuşan ve Kon.'da Türklerle temas içinde olan muhabir, teşhis ettiklerin yanında ~~Igna~~ Türklerin Bizdeki hıristiyanlar arasında tedbirsizlik yaradan İgnatiyef'in oyunlarını çok iyi anlıyorlar. Konuşulan ki, Türkleri dikkate almadan yok etmek olanaksızdır. ~~rüşvete~~ ~~k~~ bilerleyişi hareketler için bekleyen uygun anları yakalamaya cesaret edemeyen insanlar şimdi buna kalkışırlarsa, zamanı kendi rejimlerinin çöküşünü hızlandıracaktır.

Türkleri Avrupa'da ~~yenilgiye~~ uğratmaktan çok

Engels'den Marx'a , 28 Mayıs 1876

Concerning Turkish events you were absolutely right; I all hope, that things push forward; last week, apparently, a lit bit slowed down, eastern revolution, already more than the others, demands quicker development. Sultan (Abdülaziz) accumulated ~~has~~ in the place huge treasure — here is the reason of complaints on his uninterrupted demands of money, – treasure table significant, which softas demanded take out of 5 000 000 pound sterling; consequently there should be ~~one~~ ~~more~~ ~~bigger~~ all the more bigger. Delivery of Gorça-~~kov~~kov's note of three emperors brings about, should hope, to a crisis.

Türkiye olaylarına gelince sen kesinlikle haklısın; bu yönde işlerin ilerleyeceğini sanıyorum. ~~son~~ geçen haftaya bakıldığında olayların ~~bir az yavaş~~ ağır gidiyor gibi ... bakıldığında olayların ~~belli bir~~ yavaşlamış görünüyor. Doğu devrimleri de öbürlerine göre çok daha hızlı bir gelişim ~~daha hızlı bir gelişme~~ ... ~~bir gelişim de bir yavaşlama~~ ~~gerektiren doğu devrimi~~

Sultan Abdülaziz sarayda muazzam ~~var~~. bir hazine yığdı — onun ara vermeyen kesilmeyen ~~kesintisiz~~ para isteklerinden şikâyetin nedeni de budur. Bu ~~muazzam hazineden~~ hazine epeyce muazzamdır, softalar 5 milyon sterlin istiyorlar, ~~sonunda~~ dolayısıyla bunun daha da fazla, ~~...~~ Üç imparatora Gorçakov'un notasının verilmesi, sanırım, bir krize ~~yol açacak~~ dönüştürecek.

Softaların 5 milyon sterlin istemeleri, bu hazinenin ~~...~~ hakkı

R.F.'in yazdığına göre,
yaşlı generallerden Mahmut Damad'ın
entrikalarıyla ~~tahtından~~ makamından
devrimci düşünce tarzı nedeniyle
indirilmiş ve onun yerine
bir eşek getirilmişti. Ona göre,
bu savaş entrikalarından sonra ~~zafer~~ (Muhakere) gelmezse,
o zaman İst'da büyük huzursuzluklar
beklenebilir.

(247)

Hikayet – ve aslında onların devrimin yenilgisinin ana nedenlerinin biri de –
Türklerin (İst. da) zamanında devrimi yapmamalarıydı; Sultan'ın damadı Mahmut Damat
savaşın baş ve gerçek yöneticisi (eski saray rejimini kendinde cisimlendirmiştir, bu kişi Rusya
kabinesinin kendisine karşı savaşı yönetmesi gibidir –
Bu kişi, Türk ordusunu felce uğrattığı ve gözden düşürdüğü en büyük ayrıntılarına kadar
olgusu kanıtlanabilir. Kaldı ki, bu Türklerin
tarihsel suçunu derinleştiriyor. İstanbul-
da da herkesçe biliniyor. Eğer bir halk
bunalımın en yüksek anlarında doruk noktasına
çıktığı anlarda, devrimci bir biçimde harekete
edemezse, o halk yok olup gider. Rus hükümeti,
Damad'ın kendisi için ne değerde olduğunu bili-
yordu, o (Rus hükümeti) Mithat Paşa'yı İst.dan
uzak tutabilmeli ve Damad'ın yönetimin dümeninde kal-
masını sağlayabilirdi, hatta Plevne'yi almaktan daha büyük önem değerli büyük bir str. ve taktik sanatı [illegible]