LEGAL FRAMEWORK FOR AN OUTWARD ORIENTED ECONOMY

Prof. Dr. Ünal TEKİNALP

I.

1. The subject is self-limiting in two aspects. What is under study here is the determination of the economic policies for outward orientation and the identification of those policies that best serve Turkey's interests. Therefore, before going into theoretical explanations, the best way to deal with the subject would be to define those aspects of the Turkish economy that best fit outward orientation, to evaluate economic conditions within and outside of Turkey, thereby posing the problems that outward orientation will entail, and consequently to proceed towards a model. It is only thus that one can test the legality and fairness of the law that will formulate and implement the economic policies for outward orientation; that one can point out the value of the present and anticipated adjustment from the standpoint of legal dogma, and thereby one can study the social validity of the law in question. In fact, this is the attitute that is termed "three dimensionality of law" since Herman Kantorowicz[1]. Furthermore, there is no reason why the "entirety", that is, the economic law[2] that is defined as the law of

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1) Manfred REHBINDER, On the Advantages of the Sociology of Law. (Tr. Ömer Teoman), In memory of Halil Arslanlı, (127-152), Istanbul, 1978, 128 and the Kantorowicz study cited.

2) For the definition of the term, explanations and definitions from varicus viewpoints, see Ünal TEKİNALP, Evaluation of the Republican Era from the Standpoint of Economic Law, Istanbul University, the Faculty of Law, In Commemoration of the 50th Anniversary : Law in tıe Republican Era, (633 - 666), Istanbul, 1973, 634 and on.

economic order or of economic cooridnation and its major part, the outward orientation of the economy should not be approached with the same understanding.

2.a) A study of the economic law policies required for Turkey's outward orientation should primarily consider the "Agreement Establishing and Association between the European Economic Community and Turkey", (Association Agreement), dated September 12, 1963[3]. Because the principles of the Treaty establishing the European Economic Community (EEC Treaty) dated March 25, 1957[4] and particularly those that formulate economic policies are reflected on the Association Agreement.

b) Those principles which are accepted by the Association Agreement are taken up in detail by the "Additional Protocole to the Association Agreement", dated November 23, 1970[5].

Turkey's outward orientation in a sense —though in stages— is determined and the economic policies to be formulated are to a large extent indicated. The Association Agreement and the Additional Protocole do not merely include future oriented principles with regard to given economic policies, but at the same time include significant provisions that are in effect or will be so in the near future. Even if our obligations towards the EEC are postponed for a given period —a subject that is very up-to-date presently— and furthermore, even if the Additional Protocole is amended, there will be no change in the economic policies. The reason is that the policies in question are considered the fundamentals of the EEC and "association" or "membership" relationships can be established on these fundamentals.

In fact,

b. 1) Article 16 of the Association Agreement states that "The Contracting Parties recognize that the principles laid down in the

3) O.G. November 17, 1964, No. 11858, Validity date : Dec. 1, 1964.
4) For the text, see : Ergin NOMER/Özer ESKİYURT, European Agreements, Istanbul 1975, 499 and on.
5) O.G. August 29, 1972, No. 14406, Date of Validity : Jan. 1, 1973.

provisions on competition, taxation and the approximation of laws contained in Title I of Part III of the Treaty establishing the Community must be made aplicable in their relations within the Association. This basic principle is based on a detailed arrangement by the Additional Protocole. In other words, those sections of the EEC Treaty and the Additional Protocole that deal with economic policies have, through the provisions of Article 16, become more or less identical. Title III of the Additional Protocole entitled "Closer Alignment of Economic Policies" is subdivided into three chapters. Chapter I stipulates, "Competition, Taxation and Approximation of Laws" (articles 43-48); Chapter II stipulates "Economic Policy" (articles 49-52); and Chapter III stipulates "Commercial Policy" (article 53 and on). So much so that sometimes Additional Protocole uses exactly the same expression as the Treaty for corresponding articles or merely refers to the related provisions by indicating the article number.

b. 2) Article 18 of the Association Agreement reads, "Each State party to this Agreement shall pursue with regard to rates of exchange which ensures that the objectives of the Association can be attained," and thereby formulates the fundamentals of Iurkey's monetary policy.

b. 3) Article 20/3 of the Association Agreement stipulates that "with respect to arrangements for foreign capital, residents of all Member states shall be entitled to all the advantages, in particular as regards currency and taxation, which Turkey accords to any other Member State or to a third Country" and to reinforce this principle, goes on to Article 21, according to which the Contracting Parties, "hereby agree to work out a consultation procedure in order to ensure coordination of their commercial policies towards third countries and mutual respect for their interests in this field." The said article reads the stipulation, "in the event of subsequent accession to or association with the Community by third countries," however, does not leave Turkey free to determine "commercial policies" *vis-à-vis* the third countries.

b. 4) However, Chapter 3 of the Association Agreement, "Other Economic Provisions" sets down specific principles, though not as definite as the others, on the free movement and establish-

ment of people, services and capital, and the freedom of establishment, viz., the "four freedoms" (Articles 12 and on). Most of these will be effective as the scope of relationships expands. Article 19 is interesting in this aspect: "The member States of the Community and Turkey undertake to authorize, in the currency of the country in which the creditor or the beneficiary resides, any payment or transfers connected with the movement of goods, services or capital, and any transfers of capital or earnings, to the extent that the movement of goods, services, capital and persons between them has been liberalized pursuant to this Agreement." Obviously, Turkey, which followed a very strict exchange control regime since the 1930's, will have to make changes in that policy if she will emphasize on these free movements.

3. While giving information on the various aspects of outward orientation, I must also point out that the fact that Turkey is linked with the EEC and that this link will in the future reach other stages does not mean that a unilateral policy is to be implemented. Various countries, presently EEC members, set up relationships with other countries and with central economic forces, provided they are not in conflict with the EEC policies.

4. Before dealing with the problems individually, and in detail, another point needs be clarified. The outward orientation of an economy involves the ability to form links with world markets under objective conditions and the conduct of trade on these markets. An economy can not be oriented to foreign markets via individual agreements with other countries or by barter trade. For, such economic relationships involve exports on pseudo-pricing, completely divorced from world market conditions, it involves high price imports, isolated domestic values of currency with no realistic tie between domestic and foreign currency values and the absence of cost and quality structure in line with world conditions. Non-salable products, when sold in free markets as collateral for imports against commodity, in addition to the usability of actual imports, other significant problems such as quality will obviously ensue from such transactions. The legal structure of terms of sale, however, will be devised parallel to the closed nature of bilateral agreements.

II.

1. Whether Turkey becomes a full or an associate member of an economic community, whether she prefers economic autarky, or sets up bilateral relationships with individual countries, or communities of countries, whether she sets up relationships with the Eastern or the Western Block, whether she takes her position in an economic set up with Arab countries, Turkey unquestionably will confront an important economic fact and will definitely be affected by it. This is what we may call —using terminology popular in foreign economic and legal circles— "concentration"[6].

a) The concentration of the economic forces is not particular to only certain Western countries or to the EEC. Concentration

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6) The European Association (Societas Europaea = SE) which is being set up within the EEC as a corporate entity, is based on a model that aims at the centralization of economic forces. Once the pertinent Regulations in the light of the EEC Treaty that ise the main support for this Association ,is prepared and ratified an implementation within the EEC in the direction of the above objectives will be effective Conflict arises from the interpretation of Articles 85 and 86 of the Treaty. (Wolfgang HEFERMEHL, Unternehmen - zusammenschlüsse im Lichte der Artikel 85 und 86 des Vertrages über die Europäische Wirtschaftsgemeinschaft, Rechtsvergleichung und Rechtsvereinheitlichung. Heidelberg (329 - 344), 330; Ernst - Joachim MESTMACKER, Im System unverfalschten wettbewerb in der Europaischen wirtschafts - gemeinschaft, wirtschaftsordnung und Rechtstordnung, Festschrift zum 70. Geburtstag von Franz Böhm, Karlsruhe 1965 (345 - 391); In the same book, Wolfgang FIKENTSCHER, Systemfragen im Europaischen Recths der wettbewerbsgeschrankungen (261 - 278); GROEBEN/BOECKH/ THIESING, Kommentar zum EWG - Vertrag, Bd. 1 : Articles 1 - 136, zweite Auflage, Baden - Baden, Art. 85, 86). But the general opinion —as will be pointed out later— is to the effect that this is not curbed. The European Association type, however, is indicated as a goal for the centralization and concentration of economic forces within the EEC, a goal to be encourraged and followed with responsibility. (For further information on the Association, see : Ünal TEKİNALP, Association of the European Type. EEC, Lectures on Selected Legal Problems, Istanbul 1973 (129).

of the economic forces has been realized in the Eastern block countries, with in a model somewhat different from he Western style and in line with the rules for utilizing the state or public forces.

In the West, the centralization of economic forces occurs through enterprises that are constructed via agreements or *de facto* integration[7] and various structural associations for their management and direction, i.e., holding companies, thereby giving rise to different types of integration that provide growth of enterprises, whereas in the East, economic concentration occurs through the organization of state enterprises.

At present, the concentration of economic forces is an economic policy adopted by the Western countries. The legal system is developing various processes to reach this goal. "Concentration" lay at the bottom of the "Shared Association Law of Germany", dated 1965. Germany set up the legal framework for "concentration" on one hand, while on the other, provided incentives. The policy in question was formulated with regard to foreign economic relationships and to economic power abroad.

France follows the same policy. For a year now, the legal vehicles of the policy for competition have been significantly extended. That is, a new law now regulates enterprises that can control the market, i.e., the cartels which control the concentration of economic forces and which illegally curb competition[7a]. The economic and political considerations underlying this new law have been the sub-optimum level of concentration in France as compared to the world average and to the outstanding EEC members[7b]. Since out-

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7) For definition of terminology see : Ünal TEKİNALP The Legal Way to Growth via Mergers, Integration ,and other Channels among Holding Compaines, Management Association Periodical, March 1978, p. 119 (29-36) 30, 31 and 32.

7a) Law No. 77 - 806 ,July 19, 1977. The new law has developed and extended the present system in many ways.

7b) Dieter HOFFMANN, Einführung einer Fusionkontrolle in Frankreich, RIW/AWD, 24/9, September 1978, 567, and cited therein : Wickham, Concentration and Dimensions, 1966, p. 191; WEBER, Les concentrations industrielles dans la France contemporaine, 1971; Freitag Konzentrationpolitik in Frankreich 1972.

ward orientation through the EEC Treaty and other multilateral agreements seems to be disintegrating at a fast rate, "pressure from the top" and "concentration" are encouraged by various tax incentives, premiums on integration and new types of mergers[7c].

France sets a very interesting and enlightening example for a country which anticipates outward orientation of her economy. France suffered from a lag in full preparation for this purpose and consequently weakened her position *vis-à-vis* other "members" that have already been lenient towards controlled concentration.

b) Organizations such as the EEC and the COMECON constitute a kind of summit in the concentration of economic forces and are directed towards identical economic objectives. Same blocks exist in U.S.A. and in the neighboring regions and among other countries[8].

2. A country that aims at outward orientation needs not a pile of weak, individual enterprises, but a whole system of enterprises that are placed within a legal order, and whose total economy is regulated by rules that enhance the balance among the dual relationship of capital-labor and the triple relationship of producer-distributor-consumer. For, it is not feasible to confront systems of economic concentraton, to enter relationships with such institutions and to benefit from such relationships via individual enterprises and the policies they will be implementing. It is only through similar enterprises that any relationship on world market conditions can be set up with institutions thus regulated and controlled. Individual enterprises can not hold up against concentrations of economic forces. In fact, this is one of the connotations of the term, "economic order", and "economic coordination".

a) The concentration and organization of economic forces should be differentiated from the concept of large scale enterprises. Concentration and organization of economic forces entails the establishment of a system that is governed by given principles and

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7c) HOFFMANN, (dn. 7), 567.

8) For the U.S. and other Regional Organizations, see; Seha MERAY, International Law and Organizations, Ankara, 1977, p. 310 and on.

programs and that is under superior administration. What is involved here is not merely a random gathering of enterprises, but a group of enterprises that are organized under a given system, that are complementary and that operate in concert. The purpose of such organizing is not geared to domestic economy but to the country's foreign economic relationships.

b) Concentration of economic forces is a national economic policy that is followed in most of the Eurpean cuntries. The 1965 Shared Association Law of Germany has placed economic concentration within legal framework, has introduced the "affiliated enterprise" concept and has envisaged detailed provisions in Book 3. (Ger. SAL., articles 13-22, and 291-338). The German Law stipulates that technological progress gears the economy towards "concentration" in accelerated fashion, that 70% of corporations are affiliated with a parent enterprise, that the new legal concept of association should envisage not individual corporations but a phenomenon of interrelated and affiliated enterprises[9]. Countries such as France, Italy, Switzerland, Belgium and Holland did not adopt a detailed legal framework, but they have implemented policies aimed at encouraging concentration of economic forces. In addition to the integration of enterprises within these countries, integration of multinational is by now a vital current issue[10].

c) Centralization brings its own economic institutions soon after, and credit financing, marketing, distribution and insurance functions are brought under new organizations. Banks which finance imports and exports of public or private sectors, underwriters and distribution chanels in the various countries are the outcome of this order of systematized enterprises.

d) Turkey should fully evaluate this new phenomena and should provide for central concentration of the economic forced as an integrity, should arrange and organize the enterprises under a

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9) Wolfgang HEFERMEHL Aktiengesetz mit Mitbestimungarecht, 14. Auflage, Münich 1977, Einführung, 28; Also BAUMBACH/HUECK, Aktiengesetz, 13. Auflage, Münich 1968, 853.

10) For a list of various types of integrations adopted in Switzerland in recent years, see: Niklaus STUDER, Die Quasifusion, Bern 1974.

given procedure. Economic reality should be well defined if the problem is to be resolved. The public sector should be organized under holding companies, on basis of economic rationale, and furthermore private economic forces should also be organized under this system. Otherwise, in addition to being uncompetitive on world markets, it is doubtful whether we can set up favorable agreements with other countries.

III.

Acceptance of the central concentration of economic forces brings with itself, as economic policy, a new legal concept. Immediate action should be taken in Turkey for this new legal concept as well. The legal framework should be developed to prevent unlawful collision to curb competition, and collision detrimental to the economic order, the comsumer and the producer should be eliminated. Each country has formulated a policy for cartels as the primary economic law policy and has developed anti-trust laws. As pointed out earlier, "Clearing the market from illegal competition is necessary to provide a competitive market to the advantage of the consumer, however, measures to that end should be supported by protection of unorganized or insufficiently organized producers against cartels or actual monopolistic enterprises that actually control the market"[11]. It is impossible to control this area through regulations governing unfair competition that are geared to individual enterprises. Specific detailed laws are needed. Many countries have had frequent amendments of their existing laws[12].

In Turkey, however, there is no law on unfair competition and the unlawful and detrimental merger operations and collisions and

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11) Halûk TANDOĞAN, Protection of the Consumer and the Limitation of the Freedom of Agreement in this Aspect, Ankara 1977, pp. 19 and 20.

12) To cite examples of this law: Germany - Gesetz gegen Wettbewerbsbeschrankungen (3.1.1966); Switzerland - Bundesgesetz über Kartelle und ähnliche Organisationen (20.12.1962); France Decret No. 53 - 704 (9.7.1953), Loi de Finances, No. 63 - 628 (2.7.1963) and No. 77 - 806 (19.7.1977), see also: Articles 85 and of of the EEC Treaty.

practices and boycotts to that end. Turkey will therefore suffer enormously from this deficiency in the new order that her anticipated economic relationships ensuing from outward orientation will bring about. Consequently, in addition to concentration of economic forces, as well as the systematization and organization of these factors, a new legal order should be created to prevent the discrepancies that will ensue from this new phenomena. There is a wealth of world experience unique to this field, that one can draw from.

1. The following are principles that are more or less common to all countries in this area: a) intra-organizational agreements, decisions and actions that aim at curbing, destroying or eliminating competition; b) misuse of market control despite the purpose; particularly, c) price-fixing and determination of other terms of sale directly or indirectly; d) limitation or control of production, marketing, technological progress or investments; e) market or supply source sharing; f) application of different terms to different parties under equal conditions in a manner to hinder and curb competition; conditions that lead to signing additional agreements that lead to supplementary payments, are on the part of one of the parties, that have no relationship whatsoever with the subject of the agreement proper nor with commercial procedures or practices[13].

Furthermore, integration, agreement and practices that help encourage improvements in the production and marketing of goods or technological and economic progress are permissable provided

13) Examples are cited with consideration of Articles 85 and 86 of the EEC Treaty. These provisions are based on the formulation and implementation of policies aiming at prevention of unlawful and unfair limitation of competition as adopted by many European countries. (See: Eberhardt GÜNTHER, Europäische und Nationale Wettwerbspolitik, Festschrift Böhm (279-310). It is also stated that certain variations exist among the laws of competition in Western European countries, that these diffences are subsantial in certain points, and that the biggest resemblance exists between the laws of Federal Germany and France (GÜNTHER, 311). However, primary differences are not great. Holland and Belgium possess the legal provisions that meet their requirements. Luxembourg and Italy did not yet have laws governing cartels at the time of Günther's studies (1965), but by now they have eliminated this deficiency.

the consumer benefits, within limits, from the ensuing advantages. Article 85/3 of the EEC Treaty contains explicit provisions in this respect.

2. Article 43/1 of the Added Protocole stipulates that. The Council of Association shall, within six years of the entry into force of the Protocole, adopt the conditions and rules for the application of the principles laid down in Articles 85, 86, 90 and 92 of the Treaty establishing the Community, thereby envisaging that Turkey would develop her laws against unlawful elimination of competition as outlined in Articles 85 and 86 of the Treaty. This is not simply a process of integrating the laws but it is, at the same time, an economic law policy that is to Turkey's best interest.

However, as the explicit stipulations of Article 43/1 of the Protocole indicate, provisions which Turkey is to formulate as economic policy and thereby adopt the principles are not merely limited to Articles 85 and 86. I had previously pointed out that the Association Agreement had also referred to these principles[14].

a) Principles which Turkey has to consider under the Additional Protocole, and the "conditions and procedures of implementation" of which are to be determined by the Association Council are Provisions of Article 90 of the EEC Treaty containing the major principles which Turkey has to consider under the Additional Protocole and the "conditions and procedures of implementation" of these principles are to be determined by the Association Council. Under this article, member countries can not take or maintain any measures in contradiction to the provisions of especially Articles 85 to 94, with regard to public and private enterprises and those enterprises which are accorded monopolistic rights[2]. For enterprises which are assigned to serve general economic interest or which possess a financial monopolistic nature, provisions of this Treaty are valid as long as they do not hinder the rules of competition, in particular, and the specific duties assigned to these enterprises. The development of commerce can not be damaged to the extent that it is in conflict with the interest of the Community.

14) See I.

As it is observed, the provisions in question, from the standpoint of enterprises that are granted private and monopolistic rights, enterprises that are granted the right to services of general economic interest, and enterprises that possess a financial monopolistic character, in addition to the implementation of all competition rules of the EEC Treaty (Articles 85-94), "the most favored nation treatment" that is one of the basic principles of the Treaty and which is stipulated under Article 7, is expressed in full validity. Thus the references under Article 43/1 are expanded, and in addition to the entire rules governing competition, the "most favored nation" treatment is also covered. Article 9 of the Association Agreement refers to Article 7 which regulated the "most favored nation" treatment, however, Article 90, by referring to the provisions in question under Article 43/1, has a special significance, and leads the way towards interpretations that the enterprises in question are handled apart from the "most favored nation" principle.

The said enterprises also exist in Turkey. In addition to all Public Economic Enterprises, some of the state enterprises, through decrees or laws are granted or are intended to be granted certain rights which are "special" or "monopolistic", consequently, these and certain other enterprises are covered by the article in qusetion. The said article does not eliminate such enterprises, it only aims at eliminating decisions, attitutes, collision and implementation on their part that are unlawful. And while aiming at such prevention, it brings a special enforcement, and under Article 3 stipulates that the Commission will heed the implementation of this article, and, if necessary, will give proper instructions and will inform member states of the decisions. In addition to the evident provisions of the article in question, this enforcement has a special meaning[15]. As the Additional Protocole would determine the rules and procedures of the implementation of principles cited under the article in question and while doing so will not violate the Commission's instructions and resolutions, it follows that Article 43/1 of the Additional Protocole and paragraph 3, Article 90 of the EEC Treaty are both valid for Turkey. Therefore, enterprises of the type mentioned above should be linked with regulations that prevent their limitation.

15) MESTMACKER (dn. 6), 383.

Therefore, among the economic policies that Turkey will have to formulate for outward orientation, should include provisions that will prevent the limitatin of the enterprises in question vis-à-vis the rules of competition. In other words, this subject should primarily be evaluated within the context of general competition policy. Decisions imperative on creating cartels are not compatible with Articles 43/1 and 90.

b) Under the EEC Treaty, government subsidies above a given level are also considered uncompetitive, in other words, they are considered as acts that illegally curb competition. Article 92 that governs this regulation because of Article 43/1 of the Added Protocole is a factor of economic policy that is significant of Turkey, because, Turkey, in certain cases whereby the Turkish economy, through tax rebates, credit facilities and similar incentives, is engaged in an implementation that brings these incentives above a given level. Article 43/2 of the Additional Protocole brings a solution to the problem from the standpoint of Turkey, and Turkey is considered within the exception clause that is cited under paragraph 3(a) of Article 90. In fact, the Treaty has an article stipulating "government subsidies" and subsequently includes various exceptions to this principle. The principle cited under various exceptions to this principle. The principle cited under paragraph 1 of Article 90 provides the following; Reserving the articles to the contrary contained in this Treaty, subsidies and aids granted by the States, or, regardless of the manner, subsidies that are extended through governmental sources that destruct or tend to destruct competition by favoring certain enterprises or production areas, to the extent that they detriment commerce among the member states, can not be considered compatible with the EEC".

Certain exceptions are accorded to this principle whereby limited government subsidies, or to put it differently, economic incentives are considered acceptable. One of the exceptions are cited under Article 92/3.a. Under the said article, government aids granted with the purpose of "providing economic development to regions of substantial unemployment or regions where the standard of living is exceptionally low" are considered "compatible" with the EEC. Article 43/2 of the Additional Protocole reads, "During

the transitional stage Turkey may be considered as being in the situation specified in Article 92/3(a) of the Treaty establishing the Community. Accordingly, and to promote the Turkish economic development shall be considered to be compatible with the proper functioning of the Association if such aid does not alter the conditions of trade to an extent inconsistent with the mutual interests of the Contracting Parties".

A policy to support this very valuable opportunity granted by Article 43/2 of the Additional Protocole should be adopted to reinforce our industry or those areas of commerce that are included in the cverage of economic incentives against foreign competition. Otherwise, we will be treating those incentives only for import-substitutes and would be paving the way towards eliminating competition and towards the creation of a market that is devoid of competitive forces.

3. Thinking that member and associate countries may indirectly destroy competition via taxation policies, the EEC member states have brought provisions on taxation under articles 95-99 of the Treaty. We observe that these provisions are reflected in articles 44 and 45 of the Additional Protocole. I would like to state that the same ratio exists here as well, however, tax problems are outside the scope of this paper.

IV.

The Association Agreement and the Additional Protocole include principles that bear upon our monetary policy which has a special significance among economic policies. As pointed out earlier, Article 17 of the Association Agreement provides that "Each State party to this Agreement shall pursue the economic policy needed to ensure the equilibrium of its overall balance of payments and to maintain confidence in its currency, while taking care to ensure a continuous, balanced growth of its economy in conjunction with stable prices". Under paragraph 2, it goes on to stipulate that "Each State party to this Agreement shall pursue a conjunctural policy, in particular a financial and monetary policy, which furthers these objectives". Article 49 of the Additional Pro-

tocole confers this function to the Council of Association. "The Council, where necessary, shall recommend appropriate measures."

1. It is observed that the Additional Protocole indicates certain goals while determining the fundamentals of a) the conjunctural policy, b) financial policy, and c) monetary policy. These are: to provide equilibrium to the balance of payments, and to win confidence to the domestic currency. As is inferred from the article in question, while providing development to the economy, these two factors of confidence will not be sacrificed. The same article, citing the "determination of the price level", is, in a sense, repeating the goals.

Outward orientation is impossible with disequilibrium in the balance of payments and with a currency that lacks confidence. Therefore, economic measures should be taken to reach the desired goal in this area. The nature of these measures are beyond the scope of the paper and the specialization of the speaker. However, the legal framework of the set up that will implement the policies formulated, is, though only secondary, yet quite significant for the subject in question. To summarize the thoughts on foreign exchange regime which will be taken up in detail later, we can simply say that neither the conjunctural nor the monetary policy can be formulated or implemented through frequently changing resolutions and Ministry decrees. It should be realized that a dependable policy should be based upon a dependable legal framework and consequently the way should be paved for a legal framework that totally avoids ministerpretation and unfair treatments that are encouraged by the state.

2. Article 50 of the Additional Protocole adopts a system that is closely related to ur foreign exchange regime and which envisages the liberalization of this regime in successive stages. It can be summarized as follows:

— The Contracting Parties declare their readiness to undertake the liberalization of payments beyond the extent provided for in Article 19 of the Agreement of Association, in so far as their economic situation in general and the state of their balance of payments in particular so permit.

— In so far as movements of goods, services and capital are limited only by restrictions on payments connected herewith, these restrictions shall be progressively abolished by applying the provisions relating to the abolition of quantitative restrictions, the proviisons of services and to capital movements.

— The Contracting Parties undertake not to make more restrictive the arrangements which they apply to transfers connected with the invisible transactions listed in Annex III to the Treaty establishing the Community, without the prior agreement of the Council of Association.

Even without the above principles of the Additional Protocole, the Turkish economy, under the present strict foreign exchange restrictions has no chance for outward orientation, Because these restrictions levy strict burdens on economic relationships that are perfectly normal in other countries, and because it is subjected to a system of permits, gives way, to a very large extent, to subjective judgement.

The Law on the Protection of the Turkish Currency No. 1567 is dated 1930. Perhaps it was appropriate under the economic conditions of the time. But this law, entertwined with various decrees and instructions, hardly protects the value of the Turkish currency today. One can easily think that and because it is an instrument of a strictly closed and restricted regime, it can be said to lead to loopholes and evasions. Thus, another system aimed to counteract the system of protecting the value of the Turkish currency, is at least as successful as the former system. In fact, one can hardly envisage a law of economic sanction that is dated 1930 to be still alive and effective.

Law 1567 and the regulations based on the law, and the ensuing legal implementation are interesting. In contradiction to other restrictive laws, here implementation is more strict than stipulation and depends rather on formal law. The Courts psychologically interpret the ratio legis in a manner that will channel them towards even more strict implementation. The reason for that lies with the great expectations that the country attaches to a restrictive, limited foreign exchange regime. Therefore, each violation is penalized in

the strictest manner, and in fact there is a tendency towards broadening the area of restrictions.

Finally, a "legal framework" that is built up of decrees and declarations and which is frequently changed, is unhealthy from the standpoint of confidence it inspires. One can hardly consider it a set of laws in the real sense of the word. For, in an order where what was free yesterday is unlawful or restricted today and may be let free again tomorrow and may be brought under totally different rules at that, it is impossible to anticipate outward oriented economic relationships.

The foreign exchange regime constitutes a portion of monetary policy. Turkey today has to reorganize its foreign exchange regime in line with a new economic policy. There is no need to immediately give up a controlled foreign exchange regime. But the direction should be towards not reinforcing but relaxing restrictions. Liberalization can be achieved in stages.

The next foreign exchange regime should bring a legal framework with it and the principles that define the framework of the laws should not be surpassed by extensive interpretations.

Implementations that are being carried on since the 1930's provide a wealth of experience indicating the principles that should support this law, therefore we are confident that the preparation of an appropriate law will not be difficult. One should take off from the starting point that with the present foreign exchange regime, outward orientation is impossible and a careful study should be made to see what this regime really protects.

V.

Article 51 of the Additional Protocole reads, "Turkey shall, on the entry into force of this Protocole, endeavor to improve the treatment accorded to private capital from the Community which can contribute to the development of the Turkish economy, "thereby giving way to a principle that points to a policy on foreign capital. The present law in effect, though satisfactory in many ways, gives room to an excess of bureaucratic evaluations and jud-

gement, consequently becoming obsolete and cumbersome in many cases. If we fail to base our foreign capital policy on rational grounds, we may in the future be confronted with a trend for which we would be totally unprepared and unable to counteract. For, the policy Turkey implements in the field of foreign capital at present, due to political reasons, may lead to discrepancies in the future as it lacks any specific principles.

Turkey has to adopt a policy for foreign capital and should devise the legal system that will implement this policy. In principle, areas of priority or subjects that are totally closed to foreign capital should be clarified and indicated in advance; this will inspire legal confidence and furthermore will decrease the arbitrary judgement of the administrators that will enforce the principles at various levels of the Administration. Areas where foreign capital will be encouraged or areas which will be closed to foreign capital should be handled in relation to the Development Plan, i.e., should be taken up within the plan strategy. In time, these areas may be extended or restricted.

The subject of foreign capital should be dealt with in exclusion of the EEC relationships and should be gover:ned by a predetermined policy.