

IDEOLOGIC CHARACTER OF THE 1924 CONSTITUTION

by

Prof. Dr. Tarık Z. TUNAYA

Faculty of Law, Istanbul

In the present 1924 (April 20th 1340) Constitution, the 1928 " laic revision " of its ideologic principles and another revision regarding the appendage of the 1937 RPP (Republican People's Party) principles to its Article 2 have been since 1945 a subject for permanent discussions. These discussions started with the multiple-party regime and it cannot be said today that they have been settled. No matter how political quarters may view the problem from their angle, the inclusion of ideologic principles in constitutions is, from a scientific point of view, a matter which deserves consideration ; scientific researches and discussions to be made in that field, especially in Turkey, may be of a nature to lead to the amendment of provisions which were frequently decided upon hastily and in an irresponsible manner, and to bring clarity to the matter.

We should dwell upon two major problems : *Firstly*, should constitutions in general include ideologic principles, and where does historic evolution stand ? *Secondly*, which are the ideologic principles in the 1924 Constitutional Law and what is their appreciation from the viewpoint of the realization of a democratic system? As it may be instantly realized, the answers to the second question are much more numerous than those to the first one, and the problems they present are proportionally more intricate and present more faces.

INTRODUCTION

CONSTITUTIONS AND IDEOLOGIES

In order to probe our problems more accurately, we must determine those which bear a general character.

a) *Definition of " ideology "* : It is of first importance that men of law and political science experts have the same criteria on this point. The Second Congress of Political Science, in fact, took this situation under consideration when it convened in the Hague in 1952 and invited the delegates to debate this subject. Among various opinions, the choice of a mutually - reached definition proved to be very difficult, but thanks to the efforts of the congress reporter, the definition of *ideology* was more or less clarified. As a conclusion, it was established that an ideology is a sum of thoughts and beliefs, or a sum of thoughts which have become a belief. This definition, howsver, is not sufficient. Those beliefs and thoughts must be tied together and they must constitute a homogenous whole, that is, they must be systematized. Again, those thoughts and beliefs must have a social character, namely, they must be related with the life of the individual within society, and aimed at settling the individual-society problem. This definition still is not enough. The realization of thoughts and beliefs requires the establishment of rules of behavior and action which will fit them. Therefore, *ideology* is not *idea* (the representation of a subject in the mind). It is not a *doctrine* (merely a mental construction). It is not a *theory* (systematized ideas). An ideology is a sum of thoughts and beliefs *with a property to materialize* ; it contains the *element of action*¹. It has an objective : to regulate and even modify social and political life. Being such, it is only natural that ideologies should be included in constitutions.

b) The Constitution, which guides the legislator of common law, defines the limits of political power, determines how and with which determine the kind of State and the system of government, may leave room to the motives which led to the foundation of the State, to its ethics, and to the principles related with the necessity for reforms in the event such reforms have actually been made. In a way, it should make room for all that.

c) Ideological elements in constitutions are seen under several forms : as *texts apart from the constitution* (the 1776 American Declaration of Independence ; the 1789 French Declaration on the Rights of Men and Citizens, the Populist Declaration relea-

1) Karl Loewenstein : L'influence des idéologies sur les change

sed by the Grand National Assembly of Turkey in 1921); as *texts contained in the constitution* in the form of a *Preface* (like in the 1949 Constitution of the Federal German Republic, the French Constitutions of 1946 and 1959); as *articles of the constitution* (like the 1947 Constitution of Italy and all the constitutions of the People's Republics).

d) What are the thoughts and beliefs, and the thoughts which became beliefs and were dogmatized, which are contained in the ideological elements seen under those forms? Certain constitutions have given a preference to political thoughts. For instance, in the American Declaration of Independence and other American constitutions and declarations, the *political* prevails over the *social*. In other constitutions, we see religious and mystical thoughts which bind the administration and the rulers (like in the constitutions of Afganistan, Ethiopia, Pakistan, the 1866 constitution of El Salvador, the 1950 Provisional Constitution of the Indonesian Republic). In our times especially and in the constitutions of People's Republics which were founded following World War II, social ideas — which all look alike — have taken place in the constitutions as if they were their natural components, with a view to diffuse Marxism within positive institutions. (As an example, the constitutions of Albania, White Russia, Bulgaria and Czekoslovakia may be cited.)

As it is seen, the presence in constitutions of ideological elements in the form of political or social ideas is not something new. From the times written constitutions came out, these elements have been given place in the texts. In our times, it is gone even further and not only political principles but also social ones, too, are gradually given more place. (For instance, in the constitutions of West Germany, Italy, India and France, large place has been made for ideological elements which are compounds of political, social and natural, of economic principles².

ments politiques (Bulletin International des Sciences Sociales, Vol. V, No. 1, 1953, p. 53-80) - J.J. Chevallier : L'idéologie des Constitutions écrites (Etudes Juridiques, No. 3-4, Mars-Avril 1954, p. 3-5).

2) For the Constitutions under reference in this part, see "Yeni Anayasalar" (New Constitutions) (Ankara 1954) by İlhan Lütem.

PART I

Following these short clarifications, we can proceed with the study of the matter in Turkey. An analysis of the present Constitutional Law will necessarily require the study of an historic development. This kind of analysis is necessary for two reasons : Firstly, for a classical reason because the present cannot be parted from the past. Even the most drastic revolutions conserve " something " from past regulations. Secondly, such a research (an ideological analysis) has not been made in Turkey so far, but the necessity to view the subject as a whole compels us once more to go in that direction.

I— IDEOLOGICAL FORMULAS RELATED WITH CONSTITUTIONAL PRINCIPLES OF THE OTTOMAN EMPIRE

It will be useful, in order to facilitate our analyses, to consider and study the constitutional principles of the Ottoman Empire under four different parts.

1 — The monist and Islamic formula on which relied the Ottoman order

Like all theocratic States, the Ottoman Empire, too, assimilated the aim of the State, the source of sovereignty, its exercise and its limitations with interpretations of religious principles. Those were the principles of Islam. Islam provided solutions for the problem of the individual and the society. Islam furnished religious and secular regulations. The sum of these regulations constitutes the (*Sharia* or Divine Law). To use another expression, the *Sharia* is a sum of behavior regulations set up by God for His creatures and binding both those who are ruled and those who rule. *Sharia* provided two basic principles for the aim of the State : To protect Justice and to defend the borders of the Islamic world. A Moslem State exists exclusively for this aim. Justice is the implementation of the *Sharia* within the territory of the State. In the Moslem constitutional system, the role of the chief of State, which consists in securing the implementation of the *Sharia*, confers upon him ideological duties. The chief of a Moslem State, the State being the body and the chief its head, must lead his subjects, the crea-

tures of God, to the objectives of the Moslem State. The human element in this State is broader than the *nation*; this mass, which has a "supranational" structure, is called *Ummet* (*Umma* or Moslem community) and it is a divine trust given to the Chief of State (*Vedîai Ilâhiye*). Tributary subjects sow, harvest, are recruited by the army, furnish the income sources of the State, but they cannot take part (as a nation) in civil life or in the administration of the State³. *Kınalızade Ali Efendi*, famed lawyer of the 16th century, reduced the ideological principles on which the Islamic State relies to the following (8) principles in his "Cycle of Justice":

- 1— Justice is the factor of universal improvement ;
- 2— The universe is a garden surrounded by the wall of State;
- 3— The Sovereign stands on the Divine Law;
- 4— Nobody but the sovereign is the keeper of the Divine Law
- 5— The Sovereign cannot conquer without soldiers;
- 6— He cannot recruit soldiers without revenue;
- 7— It is the people who can provide revenue;
- 8— Justice makes people devoted servants of the sovereign⁴.

2 — **Islamic Renaissance: A formula for the salvation of a decadent State**

The need for a reformation was felt around the 18th century. Until that time, the Ottomans ruled their States with the ethic principles which have been listed above. They have founded an autocratic empire which was not a despotic one, and they had succeeded in establishing a social and legal order which was, in comparison with contemporary Western States, more progressive, liberal and equitable. To quote a historian, "at the time Ottomans

3) A summary of the Ottoman order can be seen in our study entitled "Türkiye'nin siyasi gelişmeleri ve Batılılaşma meselesi" (Political development of Turkey and the problem of Westernization) Istanbul 1960) which is in the process of printing.

4) *Kınalızade Ali Efendi*. *Ahlâk-ı Alâi* (Bulak edition, Cairo 1830, Vol. III, p. 49)

were on the outskirts of Vienna, they had no need for the West"⁵. However, the educated class upon which the duty of guiding was incumbent gradually started to vanish, especially following the decay of the clergy. Some time after the Empire experiences defeat in front of Vienna and retreated, the reasons for the receding were sought. This investigation at the same time embraced the factors which were responsible for the ascension of the Ottomans : Which were these factors which had provided for the ascension of the State? According to such chroniclers and historians like *Koçi Bey, Defterdar Sarı Mehmet Paşa, Naima and Kâtip Çelebi*, the rise of the Ottoman State resides in the *observance of the Sharia*. Therefore, *non-observance of the Sharia and deviations from it* are the major reasons for the recession of the Ottoman Empire. The ideological formula expressing the policy line to be followed emerged through a logical deduction : the resumption of the method which had made the State ascend, namely, *observance of the Sharia*. There was not as yet in this formula any particularity which expressed and admitted the superiority of the West, but as result of many events and reasons —the development of which had gradually been acknowledged during the *Tulip Age (Lâle Devri)*, the *New Order (Nizamı Cedid)* and Sultan Mahmut the Second's regime of *Enlightened Despotism*, finally was officially admitted and expressed in a document which is a turning point of the Ottoman Empire, the *Tanzimat Imperial Decree (Tanzimat Fermanı)* (Ottoman Reformation) in 1839. Thus, the way was opened for the reconciliation of the idea of an Islamic Renaissance with the principles of Western policy. From there on, the blending of the idea of a liberal legal order with Islamic theses and even its incorporation to them will cause a dualism in all the institutions of the State, to begin with its very aim.

3 — The new ideology which relies on the blending of Eastern-Western elements: A dualistic formula of the Theocratic Constitutional system

Contacts with the West resulted in speeding the movements

5) "Tanzimattan evvelki Batılılaşma hareketleri" (Movements of Westernizations before the Tanzimat) by **Enver Ziya Karal**, (Tanzimat's 100th anniversary book, —not the 1940 edition— page 7).

of reformation. The fact that this ideological foundation, on which the reformation movements of the Ottoman Empire relied, partly implied Westernization consequently necessitated that the Sultan and the intelligentsia take steps towards the realization of those principles. However, and especially beginning with the Tanzimat period, a new element will intervene in this realization : *the West*. The West, which initially suggested and advised, eventually assumed a role whereby it dictated the reformation. The 1856 Reformation Imperial Decree is the result of such an interference. Events quickly led towards a constitutional regime. The Constitutional Regime will be founded in 1876 together with the first written Constitution (Kanunu Esasi, the Constitutional Law). If the first important milestone between 1839 and 1876 is the year 1856, the second one certainly is the year 1868. For the first time at that date the principle of election was accepted, even though it was only within the framework of local administration cadres (Teşkilî Vilâyet Nizamnamesi, Ordinance on the formation of Provinces). Again for the first time, at the inaugural speech of the State Council (Şûrayı Devlet), Sultan Abdülâziz in person proclaimed the principle of the separation of powers. Delegates from various provinces were enthusiastically seen off on their way to the first sessions of the State Council. The State Council assumed a supervisory role in face of the Court and it criticized palace expenditures. Subsequently, the members of the Council (Şûrayı Devlet) became a "Yes Council" (Şûrayı Evvet). Historians of that period considered the State Council as a small-scale Parliament⁶. This means that the passage from the Tanzimat to the First Constitutional Regime did not happen all of a sudden and in the form of a leap. The realization of the ideological formula in which constitutional ideas were contained, and its establishment as an institution took almost half a century.

The First Constitution, which was proclaimed in 1876, had

6) Enver Ziya Karal's "Osmanlı Tarihi" (Ottoman History) Vol. VII (Ankara 195..) p. 149 - For excerpts from speech by Abdülâziz, see (Takvimi Vekayi, 29 Nisan 1284 - 18 Muharrem 1285, No. 968) - Abdürrahman Adil's "İlk Osmanlı Parlamentosu" (The First Ottoman Parliament), (Legal and Historic Events), Vol. XII, p. 164-166.

certain deficiencies when compared with its Western counterparts. Although it was the first written constitution, the Constitutional Law of 1876 furnished poor guarantees for freedoms. The House of Deputies, opened with great hopes, could convene for only six months. During that time it held 86 meetings. On February 14th 1878 (7 Zilhice 1295), the Sultan cancelled "all sessions until further notice". What looked like a temporary postponement actually lasted thirty-one years. Absolute monarchy was restored in 1878 and the constitutional regime remained but attached to the memory of the 1876 Constitutional Law, the text of which was published—even though it was not implemented—in the first pages of almanacs. This memory was perpetuated for half a century thanks to the works of the Young Turks.

From the date when the reformation movement began until the closing of the Assembly of Deputies in 1878, the successful or unsuccessful movements and enterprises which we have shortly reviewed allow us to make certain observations : a) These movements followed a *downward course*. Liberal movements in the West were the result of revolutions the aim of which was to curb the power of the ruler and to secure the participation of representatives of the people in the use of power. In the Ottoman Empire and until the date under reference, there has been no *upward* movement meant to curb the power of the Sultan. Starting from Selim III until the year 1876, Sultans themselves limited their powers and granted certain liberties to the people. This policy, to which there are various motives, is an act of "autolimitation". This principle has its advantages as well as its drawbacks. b) The first theoretical and actual movement against the power of the Sultan was launched by the Young Turks. In that field, we may talk about two movements. *The first Young Turk movement* was aimed against Tanzimat supporter Sultan Abdulmecit whose self-limitation was not considered as sufficient. The spear-head of this movement is the "New Ottomans' Society" (Genç Osmanlılar Cemiyeti) founded in 1865 and the program of which unfortunately has not yet been discovered. *The second Young Turk movement*, directed against Sultan Abdulhamid, is the one that started after 1878 and lasted over thirty years. So, the formula of a constitutional ideology was first put forth by Young Turks and it ori-

ginated as an *upward* move⁷. It left its first mark on the ruling class during the preparatory phase of the First constitutional regime. The clash between the Conservative-Constitutionalist groups started at this period.

4 — The pluralist formula of the Second Constitution regime

One of the most interesting periods of the Ottoman Empire doubtlessly is the period which was given the name of Second Constitutional regime. The contemporary name of the period was "The proclamation of liberty". In this period when phases of anarchic freedom and authoritarian rules denying all freedom were interwoven, the ideological principles of the East and the West were debated and formulas deriving from various trends of political ideas were sought for the salvation of the Ottoman Empire. The trends of ideas under reference are the following : *Westernization, Islamism, Turkism, trend of Social Science and Socialism*. The ideological proposals put forth by those trends have their importance from various angles. To begin with, the Constitutional Period provided the founders of the new Turkish State with all the material needed for doctrinal preparation. Secondly, the ideological arrangements which came out of the trends of ideas impressed on the programs of political parties, Administration and opposition quarters, and the general policy of the State. Even if only briefly, we should review these trends.

The supporters of *Westernization* stood for a radical modernization. They especially advocated a struggle against myths and superstition and the use of scientific methods in the administration of the State as the main conditions for recovery. *Islamists* advocated an ideological formula made of a blend of Western technique and ethic principles of Islam (or the East) as the road to salvation. *Turkists* were confident that the movement of nationalism which had swept and shaken Europe was to save the Ottoman Empire. Supporters of " *Social Science* " did not see any hope for the

7) For Constitutional movements, see Ali Fuad Başgil's " *Türkiye Siyasî Rejimi ve Anayasa Prensipleri* " (Political Regime and Constitutional Principles in Turkey), (İstanbul 1957) Vol. I, fascicle I, p. 84-101. — Recai G. Okandan's " *Âmmî Hukukumuzun Ana hatları* " (Main lines of our public law), (İstanbul 1957) p. 118-461.

salvation of the Turks so long as they did not evaluate from a communitarian-type of society towards an particularist one. *Socialists* sought help in the principles of the Second International which had developed in hostile Western Europe⁸.

As it seen at the conclusion of this very brief and rather incomplete summary, the trends of ideas of the Second Constitutional regime were busy preparing prescriptions which were supposed to save the life of the Ottoman State. Neither of these formulas, however, could suffice to save the Empire. Within a Constitutional framework it had rendered inefficient and inoperative, the ruling party, especially starting from 1911, chose to remain *Turkist-Islamist-Centralized-Statist-and partly Laic* as the ideological foundation of the State's general policy. As the ruling party to come or an "alternate" ruling party, the opposition advocated an *Ottoman-Liberal-and Decentralized* ideology. Those two ideological camps went on a diet of personal ambitions and disputes and the State became their battlefield. A name was coined for all those disputes which took place behind the ideological front and which impressed on the over-all political life and the constitutional amendments: *Party spirit*⁹. The policy of the Union and Progress Party went bankrupt following the Mondros Armistice in 1918. Those who were faced with the duty of founding a new Turkish State found in the last phase of the Ottoman Empire all the particularities of a political laboratory.

The first popular movement against the Sultan, the first movement which more or less had the characters of an *upward* movement took place during the Second Constitutional regime. Despite all its private discords and its very diversity, the "people" element played an active role in this movement. To have an idea of

8) For the trends of ideas under reference, see our study entitled "Ämme Hukukumuz Bakımından İkinci Meşrutiyetin Fikir Cereyanları" (Trends of ideas during the Second Constitutional regime from the viewpoint of our public law), (İstanbul 1948).

9) **Tarık Z. Tunaya's** "Türkiyede Siyasi Partiler" (Political parties in Turkey), (İstanbul 1952) pages 181-186, 321-322, Also **Tarık Z. Tunaya's** "Fırkacılık" (Party Spirit), (Article in Vatan, İstanbul, March 3, 1950).

the moral foundation on which were held in certain Ottoman provinces on the European continent, the cables which were sent to the Yıldız Palace, and *Firzovik Besa*.

Although there is no doubt that, the people-factor had its part in the proclamation of the Second Constitution, its interference was not so forcible as to be counted like a popular movement. This Constitutional regime can be considered as the work of the intelligentsia. Apart from its dissimilarity from Ottoman uprisings, the real mistake of the regime is that it did not abandon the reformatory methods of the Tanzimat. All the efforts of this regime could not prevent the conservation of the old beside the new, and eliminate this dualist method the aim of which was the coexistence of principles and institutions which disowned one another. This kind of dualism could not secure a harmonious merger of factors of civilization, or rather, it failed to produce a synthesis of factors from the East and the West. *Despite all its efforts*, the Second Constitution had to share under different conditions the fate of the Tanzimat. The Second Constitution was a period of transition. From that angle, it has been unable to gather its own fruits. From the ideological angle, it stayed in the midst of confusion. Supporters of the regime had a clear vision of the social and political problems and they elucidated the troubles but they failed to devise judicious solutions because of the obligation to reconcile and make concessions within the framework of Ottomanism-Islamism-Turkism.

5 — The monist and laic formula of the Turkish Grand National Assembly Government regime : Defense of Rights

In 1918, Turks came at a turning point of their history. The catastrophic phases of defeat in World War I were followed by an even more afflicting event. The unjust application of the Mondros Armistice led a nation to use its right to make a revolution. Events and ideas are very closely tied with one another during that period. The road to salvation for Turks was to secure an equitable application of the Wilson Principles in their case, too. A national and independent State and government which rejected the system of personal government could be achieved only through this road.

The Turks, who were entrusted with the duty of forming a new political system, had to work it out under the most critical interna-

tional conditions and phases. This political structure had to rise between the East and the West. This ideological movement which was made to rely on the thesis of the protection of national rights bore the name of the *Defense of Rights (Müdafaai Hukuk)*.

The doctrine was that of *national sovereignty*. The Grand National Assembly of Turkey was the means to realize it. This organ on one hand conducted the struggle in which it had been engaged to form an independent State (the War of Independence), and on the other hand, it laid the political and legislative foundations of the future State. From this viewpoint, it had a constructive and laic function in the full sense of those meanings.

To reformers in Anatolia, the principle of national sovereignty looked as the only positive solution. We see this principle in all the documents pertaining to the reformation movement. *It is the nation's determination and only its will which will save the nation.* The holding of elections and the convening of the Assembly are indispensable. The nation thus will organize within itself for its salvation. This principle and requests for its application can be seen in the *Amasya Communique and in the decisions reached at the Congresses of Erzurum, Alaşehir and Sivas*, in the programs and the decisions of all revolutionary societies and in the decisions of all committees of the Defense of Rights Society, Organizations which had come into being here and there had adopted the ideology of the Defense of Rights; during another phase, this organization convened in local congresses; during a third phase, they were all united at the *Sivas Congress*. The congress acted as an actual legislative organ and it formed the *Representative Committee* as an organ of realization of the Defense of Rights ideology which it had made extend to the whole country. This Committee ruled Anatolia as a *de facto* government. Istanbul Government remained under the obligation to reach an agreement with the representatives of the Defense of Rights Society which stood before it as a genuine power.

Following the general election which was held at the end of the year 1919, the Ottoman Parliament convened at the beginning of 1920. The two houses of the General Assembly (Meclisi Umu-mi - the Ottoman Parliament) represented and advocated different ideologies. The House of Deputies stood for the Defense of

Rights; as a result of this stand, it endorsed the National Pact Proclamation " Misakı Milli " (17 February 1336 - 1920 at the second sitting of its 11th session), remained in permanent contact with Anatolia, decided to postpone the sessions of the House upon the occupation of Istanbul (18 March 1336 - 1920, 24th session), and thus paved the way to the continuation of the Anatolia meetings. The Upper House, with the exception of a couple of members, remained utterly royalist and conservative and it hoped for help from the inequitable *Sèvres Treaty*¹⁰.

When the Grand National Assembly of Turkey convened in April 23rd 1920, it proclaimed itself as the sole and legitimate architect who could achieve the ideology of the Defense of Rights, and also as the highest fundamental organ. This body was to found the national Turkish State. The Turkish GNA Government, however, remained under the obligation to fight on two hostile fronts in order to realize its own ideology. The West did not consider Turks as having the capacity and civilized level required to form a State. It held them responsible for all the mistakes of the Ottoman Empire and wanted to punish them with the *Sevres Treaty*. The East was represented by Soviet Russia. In the attitude of the Soviets towards the members of the Defense of Rights Society, their own ideology prevailed. Certain tactical steps had been decided upon during Komintern congresses. The Anatolian movement was to be helped, but the real objective could not be the gain of Turkey's national independence. The real objective was to see that, following national liberation, Turkey was annexed by the USSR as a Communist republic. Soviet Russia, too, thus did not accept that Turks form a national State and achieve independence. It considered the national liberation movement not as an *objective* but as a *means*.

The Turkish GNA Government remained under the obligation to work between these two ideological camps. The Assembly performed its duty under most difficult circumstances. Above all, it accepted the basic rule of national sovereignty. Later, it shaped the

10) Tarih Z. Tunaya's " Osmanlı İmparatorluğundan T. B. M. M. Hükümeti Rejimine Geçiş " (Transition from the Ottoman Empire to the regime of Turkey's Grand National Assembly Government), (Edition separate from the Hommage to Ord. Prof. Muammer Raşit Sevig, İstanbul 1956)

institutions and organs which were necessary for the realization and requirements of this principle, and it abolished the institutions which stood in the way to such a realization.

Amidst heated debates, the GNA disclosed its ideology in two major documents: *the 1921 Constitutional Law* and *the Populist Declaration*. The Constitutional Law of January 20th 1921, which has the character of a constitution, clearly stated in its First Article then principle of national sovereignty: "*The sovereignty belongs unconditionally to the nation*". And it also indicated how it should be used: "*The mode of government relies on the basic principle that people itself should rule de facto its destiny*". The foundation of a democratic system thus was laid for the first time at this date. In no phase of its history did the Ottoman Empire — with due consideration of the conditions at each period — proclaim with such openness the principle of national sovereignty. The application of the principle of national sovereignty was further developed: a regime of representations, and one of the forms of this regime, a government of Assembly (Conventional system) (Articles 2, 3, 4).

As it has already been mentioned, the defense of the principle of national sovereignty required a struggle against two hostile fronts. The *Populist Declaration*, which had been released independently before the Constitutional Law of 1921 (*Teşkilâtı Esasiye Kanunu*), had been prepared with that purpose. The main principles of the Declaration can be summarized as follows: "The people will be rescued from imperialism and capitalism, and will achieve genuine independence". The fourth article of the Declaration is worth mentioning in so far as it applies to the future: "The Turkish Grand National Assembly Government considers as a basic principle the removal of the causes for the misery of the people and the procurement of the factors and means for its happiness and prosperity, and subsequently, it considers as a primary duty to instate the renovations and institutions in accordance with the genuine needs of the justice, finance, economy and in general, other social subjects. However, the Turkish Grand National Assembly Government expressly guards itself in all its work and actions, which are meant to attain its ob-
sc-

tives and fulfil its plans, against impairing the unity and solidarity of the country and harming its defense and combat potential and power in the event of material aggressions and subversive actions. The Grand National Assembly Government, which attributes importance to seeking its political and social principles in the spirit of the nations, will take into consideration the genuine inclinations and needs of the nation in the application of these principles "½¹.

The terms which most draw attention in the *Populist Declaration* doubtlessly are those about the liberation from the domination of "imperialism and capitalism". It should immediately be added that the policy followed by Soviet Russia had its role in those terms being used in the Proclamation. However, as it appears from various documents and GNA debates, Soviet Russia in the first place did not believe that these words had been used with frankness and, through Zivoniev, it denounced the "Councils" in Turkey as "a deceit"¹². The phony communist party (Communist Party of Turkey) which had been founded in those dates and the foundation of a communist organization (Popular Communist Party) which truly was attached to the Third International should be sought in this opinion of the Soviets. The Soviets actually did not expect Mustafa Kemal and his equip to join their bloc and their plan was to achieve this purpose through the parties which they wanted to be founded. *Secondly*, a system to be devised in accordance with the inclinations of the nation never could have been a form of Bolshevism. The ideological character of Turkey's GNA can be reduced to the following basic principle: "To be neither a Soviet satellite nor a semicolony". The fact that the GNA always realized the geopolitical importance (of the country) between two hostile blocs and could carry out the movement of national libe-

11) The Turkish Grand National Assembly Proclamation of 21 Tesrinievvel 1336 (T.G.N.A. Collection of Minutes, Vol. 4, second edition, Ankara 1942, pages 179-180).

12) Tarık Z. Tunaya's "T. B. M. M. Hükümetinin kuruluşu ve siyasi karakteri" (The Foundation and Political Character of Turkey's Grand National Assembly Government), (Magazine of the Istanbul Law Faculty, Vol. XXIII —other than edition No. 3-4— p. 18).

ration and found a national State is the achievement of an ideological independence"¹³. The foundations of the Republic of Turkey thus were laid during the Turkish Grand National Assembly Government period. The spirit and the structure of the 1924 Constitutional Law presently in force have been embodied with the materials of this period. The Turkish GNA Government period emerges as an important reality from the standpoint of today's situation.

PART II

IDEOLOGICAL ELEMENTS OF THE 1924 CONSTITUTIONAL LAW

In a way to fit the definition of "ideology", the ideological character of the 1924 Constitutional Law can be analyzed under two sections. Firstly, its social and political principles can be generally considered, the conditions which necessitated them and the needs which they answer can be analyzed. Secondly, it can be passed to the analysis of the principles, which they answer can be analyzed. Secondly, it can be passed to the analysis of the principles, which we may term as principles of *realization* or *application*, that were set forth with a view to see that the principles under reference remain as isolated ideas. There is no doubt that such an attempt will reveal that there is not distinct difference between the two categories. This is natural because the functions of idea and action within an ideology interpenetrate one another. Together with that, this attempt of separation may give a clearer view of the tie between the ideas and the events.

The 1924 Constitution has been amended several times since the date it was proclaimed. These amendments were made in turns of succession in 1928, 1931, 1934, 1937 (twice), 1945 and 1952. Almost all of these amendments may touch our subject, but two among them directly involve it : The laic amendment of April 10th 1928 and the amendment of February 5th 1937 which appended the six principles of the Republican People's Party (RPP) to the Second Article of the Constitution¹⁴.

¹³) Same work, page 19

¹⁴) Ali Fuad Başgil : Op. cit. page 120.

I — POLITICAL AND SOCIAL PRINCIPLES IN GENERAL

1 — The principle of national sovereignty

a) When the phases of historic developments are remembered, it is easily understood that this principle should be on the pinnacle of the over-all ideological structure. The fact that the principle of national sovereignty occupies the most prominent place from the viewpoint of ideology is the fruit of a long maturity. Within the Ottoman Empire, Turks are the last ones to have embodied their own nation. As it has already been said above, the Union and Progress Party had been following since 1911 a nationalist (Turkist) and Islamic policy. As, however, it had always been put by intellectuals of that time, nationalism and Islamism contradict one another. Nationalist trends were considered as conflicting with Islam's aim since they were of a nature to shatter the Islamic Union. It had also been claimed that nationalism was in conflict with Ottoman policies. That is the reason why the principle of national sovereignty is not encountered in constitutional documents of the Ottoman Empire. Neither could the Constitutional regime accept the same principle because despite its aspirations to freedom, this regime meant a partnership in the exercise of power between the sovereign and the representatives of the people. The fact that this principle still is not encountered in the amendments of the 1876 Constitutional Law is due to the same reason.

b) As it has been pointed out, the principle of national sovereignty as a rule gained during the Defense of Rights period the quality of a rule of a *new public law*. It was first enunciated as a constitutional rule in the First Article of the 1921 Constitutional Law. The 1924 conserved the principle exactly as it was : " Article 3 : Sovereignty belongs unconditionally to the nation ". To give the highest power unconditionally to the nation was above all a disavowal of the Ottoman Empire with all its forms, and it meant the collapse of theocratic monarchy. In fact, the abolition of the monarchy has been a logical conclusion of this principle. The legal explanation of the power of disposition in the case of this abolition is found in the fact that the decision had not yet been reached through a special law but through a decision of the General Assembly.

c) In the acception of the principle one may rather talk of the influence of the French Revolution which prevailed in continental Europe. According to this principle, there is a single moral personality which is apart from that of the individuals but also the product of all of these persons : the Turkish nation. Again, and apart from the will of individuals, a single will which is the over-all product of all the wills : sovereignty. Conclusively, the Turkish nation is the sole master of this supreme will. The following classical conclusions can be drawn out of the principle : 1 — National sovereignty, which belongs to the Turkish nation, is the highest and fundamental (which does not ensue from another power) force within the Republic of Turkey. 2 — This sovereignty is unique and it has no equal. 3 — “ It is indivisible ”. 4 — With the exception of the nation, no community, person, corporate body, organ or class can possess it or put such a claim. 5 — It is necessary to set a constitutional machine and institutions which will plainly proclaim the above characters of the nation's sovereignty and the nation's will. 6 — Organs which are entrusted with the exercise of the will of the nation are not the master of this power and of the national sovereignty.

Such explanations, in general, might be counted as foreign to Anglo-Saxon law.

d) As it is known, theories of national sovereignty aim at settling the problem of obedience. From this viewpoint, they also render a verdict of estimation. At this stage of the problem we face a question which is most important as far as its answers are concerned : Does sovereignty belong to the nation or to the people? On one hand, national sovereignty constitutes a will above individual wills, but on the other hand, the will of the people is a sum of authority which is shared by each one of the individuals. The 1924 Constitution has accepted the principle of direct national sovereignty. Besides, the classical conclusions we are trying to draw from the acception of the principle of national sovereignty stand as pieces of evidence in this situation. According to the 1924 Constitution, sovereignty is *legitimate only* it belongs to the nation and it enjoys the characteristics listed above.

e) What would have happened if the sovereignty of the

people had been accepted as a basic principle ? According to such a principle, power gains a right to obedience provided it comes from the people. Being a sum of persons, the people therefore is a more *typified personification*. Conclusion: Power (or sovereignty) can be divided, it can stem out of a majority and it can even be in its possession. The majority can be the *master* of power or of sovereignty, which has a more concrete character. Once it is submitted to the normal developments of this notion, two conclusions are possible. The factor which determines both conclusions is the definition of *majority*. One of the conclusions leads us to the Marxist system : sovereignty belongs to the proletariat and to the class of workers. The term " people " is reduced to its gross sense of mass. All political rights will belong to this larger class which is the exploiting class has been denied the right to vote until 1935. The second conclusion served to foster the prevalence of a rightist system. According to National Socialism, sovereignty belongs to Germanic stock which especially has racial superiority. The 1924 Constitution did not favor this theory.

f) The problem, however, cannot be considered as settled simply because the Constitution proclaimed the basic principle of national sovereignty, or rather, the provisions of democracy cannot be considered as having been entirely fulfilled. The problem, in our time, tackles the issue which comes out of the crisis of a regime of representation. In fact, as Professor Prélot has plainly put it, such terms like *nation, people, national will, etc.* in Constitutional Law can be reduced to definite majorities : *electoral majority, assembly majority*. After passing through various phases, the national will eventually emerges with the decisions taken by the parliament's majority. The power of the parliament's majority thus fits national sovereignty.

g) At this point, we meet one of the most important problems of Turkish Constitutional law : the determination of the authorities of the majority. The thesis that once it has been elected the *GNA majority has the power to do anything* can be considered as having been presently accepted in our country. It is true that in England the party which holds the majority control the Parliaments but there are in this country very strong parliamentary traditions,

on exceptionally influential public-opinion outside the Parliament, a wide freedom which allows for the manifestation of this force, and finally a high political level; all of these make that the Parliament majority can be prevented from doing what it pleases. The people might fail to re-elect a parliament majority which acted against popular desires, it might punish it. In Turkey, the situation is quite different. Above anything else, Turks have gone to the polls since 1876 (a period of 83 years) only 16 times for general elections. Intermittent political developments did not allow for the formation of a strong public opinion capable of checking parliament majorities; they also prevented the establishment of constitutional traditions. The electoral system based on a uniform and relative majority and on the ticket-method has not changed since the Ottoman period. Since 1908, the Assembly has always been controlled by the overwhelming majority of a party: *The Union and Progress Party*, *Defense of Rights Association*, the *Republican Party* and presently the *Democratic Party*. Those parties in turn have controlled with their majorities the Ottoman Assembly, the Turkish GNA Government and the Assembly of the Republic of Turkey. This makes that despite changes in the form of the State and the regime this situation emerges as a "constant", and the sovereignty of the nation is tantamount to the party which controls the Grand National Assembly of Turkey through its majority, namely, the ruling party. Under the conditions of the Government of Assembly, this situation becomes even graver (because the Turkish Grand National Assembly being the only organ which is formed through the votes of the people, all the power is concentrated in it).

h) In that case, the most important constitutional problem in Turkey is to put an end to the system of control, established by the majorities which prevail at the Assembly, on the over-all social and political life. In that respect, various steps can be considered, including short-range and long-range steps. At first sight, however, the improvement and change of the electoral system appears as the most important and urgent step to be taken. Unless this is done, as a result of historical development all the social and political life again will remain under the control of a single party group is capable of doing anything and even of "bringing back the

“Caliphate”. This experiment to be made by Turkey within a constitutional system, such as the transition from a singleparty regime to a multiple-party regime, will constitute a contribution to Western democracy. It will gain the genuine ideological value which fits the conditions of its time. Unless this is done, next to the theory of the people’s sovereignty the concept of national sovereignty will remain a mould which does not meet the needs of the day, which has lost its essence, and most often, which conceals authoritarian measures.

2 — The Principle of Nationalism

Since the principle of national sovereignty occupies the pinnacle of the edifice of ethic principles, the other principles derive from it. The other principles are natural conclusions of the first one. The principle of nationalism is one among those and it explains the following political and legal developments : a — The Republic of Turkey is the work of the Turkish nation. It is known that within the Ottoman Empire, Turks constitute the last element to have formed a state of its own although they are the ones who have founded one of the greatest states, the Ottoman Empire. The trend of Turkism has constituted the doctrinal basis of this event. b — The Republic of Turkey is the last of the nationalist revolutions which have stirred Europe for a hundred years. It also proved in 1918 that the trend of nationalism was not “outfashioned”. c — The human element of the State is formed by Turks. The Constitution defined the term “Türk” (Article 88). d — For Turks, a *national* State became tantamount to *independent* State. Independence was accepted as a national goal and as the freedom of a nation. This concept, which takes place and is proclaimed as national goal in almost all documents pertaining to the reformation, also took place in the 1924 Constitution, thus expressing a historical continuity. The refusal of all sorts of vassalage, whether political or economic (or a regime of semi-colony and that of Capitulations) should be sought in this principle. e — The national liberation movement, or the Turkish Reform is a *goal*, and not a *means* as it had been accepted by the Marxist-Leninist ideology.

3 — The Principle of Populism

a) This principle constitutes and determines the social façade of a national and independent State. As it had been pointed in the analysis of the basic principles of the Ottoman order, the people was a passive element which did not participate in the administration of the state. Its role in the principal uprisings of the Ottoman history has been unimportant. As we have tried to emphasize, there has been almost no serious upward struggle directed against the powers of the Sultan until the 1908 movement.

If this principle, which had been accepted by the 1924 Constitution with the 1937 amendment, had not been appended to the Second Article of the Constitution, it would still have found its natural place as one of the basic principles of democracy in a regime claiming to be a democratic system. Actually, as it has been seen in the historical development, it has always been asserted in all revolutionary documents and in the debates of the GNA. The national character of the Reform has brought about populism as a natural conclusion.

b) When we come to the conclusions under reference, we see that : 1 — The Turkish Reform has been made in the name of and by the whole nation. In the defense of its national rights, the Turkish nation did not struggle for the defense for the privileges and rights of a class or a royal dynasty. 2 — The system of social and political castes, which in time and in conflict with Islamic rules had been established within the Ottoman Empire, had been rejected. From there on, there could be no mention of Moslem and non-Moslem communities and differences between city dwellers and peasants. 3 — The people emerges as a new political element. This is one of the most important factors which differentiates the Ottoman Empire from the new Turkish State. Long time before 1937 it had been asserted in the revolutionary documents and in the debates of the GNA that the new state is a peasant State. 4 — The people no longer was a tool of the administration. It settled more firmly in political life after it had entered in it through the door of the Second Constitution. This situation naturally will have extensive repercussions. In the first place, the na-

tion being the foundation of power, the privilege of forming a government no longer will be the right of a definite class. Organs of power which it was unable to change will be (and have been) abolished. Power belonged to the nation and it was under its control. 5 — In general, it should be considered as a normal result that the principle "The Turkish people (or the Turkish nation) rules for the people through the people" was accepted. This meant that a democratic system patterned on Western counterparts was being formed. Therefore, the Turkish people or nation can be ruled neither by a royal aristocracy nor by a class monopolizing power as in the Marxist system. Besides, as it will be seen in the development of the principle of statism, the system of personal property accepted by the Constitution will reinforce this situation (Articles 70, 74, 79). 6 — The right "to own and dispose" of personal property was restricted from the angle of this principle: "... The expropriation indemnity and the manner of payment of such indemnity for land and forests to be expropriated in order to make the farmer proprietor of land to place administration of forests under the State, shall be determined by special laws". (Article 74)

4 — The Principle of Statism

a) Statism, a subject which has caused controversies so far unsettled, is a mixed regime between but different to the capitalist-liberal and the collectivist-economic systems. In a way, it is an expression of the interventionist and guided (*dirigée*) economy. Its general characters are that commercial enterprise and means of production are individualistic. The State (the ruling power) has an interfering character. Those are the main characters which differentiate Statism from Communism and Socialism.

b) Pure liberal economy had gradually started to vanish before World War I. It was seen after the war, and especially following the 1929 depression, that even the most liberal states followed more or less a system of guided economy. This has happened because the classical rule of demand and offer had rendered inoperative the system of free competition. Classical price fluctuations, which were counted as normal, were abandoned and replaced by

a rational price system. To face the economic crisis, the State (or ruling power) began to determine prices, supervise and limit production. This control of the state on economic life has been seen to go as far as regulating the consumption. The political power thus found a way to also control economic life and intervene further in the field of individual freedoms. Since an interventionist economy is the fruit of definite national and international circumstances, it has constantly been in a State of awkward progression, experiment and investigation. The interventionist system thus came out as an empirical system.

c) When the Republic of Turkey was founded, economic interventionist systems had spread. The interference of the ruling power in political and economic fields presented dissimilarities according with the political psychologies of the countries. The recognition of the system of intervention by Turks did not take place for the first time under the republican regime. The Second Constitutional regime had attempted to apply this kind of economic system within a framework of autarchy and it had obtained its first results. The Republican regime took over the various institutions which were borne of this experiment (İtiban Milli Bankası - the National Credit Bank, for instance, is one among those institutions). On the other hand, there could be no point, in a world where liberal economic systems were gradually vanishing, on insisting over a liberal system while the task which lay ahead was to rebuild a country which had been utterly neglected. It is rather after 1930 that the Republican regime decided to adopt a statist system. The principle itself was appended to the Constitution with the 1937 amendment. The improvement of the national income and industry was seen possible through such a policy.

d) We had stated that statism is not a collectivist (Communist) principle, and not even a socialist one. One particularity should be noted on socialism: Especially in English and American literature, socialism is used as a term which means statism in its large sense or an interventionist economy. In that sense, socialism is seen in a very large sense and rather remote from its true meaning. Socialism is not generally accepted in that sense because, otherwise, another name should be found for socialism in its true

and actual sense. Outside of that, socialism is seen under two forms: *Marxist Socialism* (we are not referring here the shapes it has taken at the outcome of the International movements) and the doctrine of *Welfare State* as it is seen in England and in Scandinavian countries. In our opinion, those are the two forms which should be studied when speaking of socialism.

e) Whether statism, which had been established by the Second Article of the Constitution, had any conformity with either of those systems has been investigated, with little results however. Ideological movements which, among other particularities of the Turkish Reform, gave importance to its social character, argued before the 1937 amendments had been made that the revolutionary principles should be developed from a socialistic angle. Presently, it is put forth as thesis that the same principles must be developed from the angle of the Welfare State.

f) The ideologic controversy which had been caused by the principle of statism started again when the multiple-party regime was resumed in 1945. It had been claimed that liberal parties could not be formed on account of the acception of the principle of statism by the Constitution. When the true meaning of the principle is considered, it will be seen that it is not incompatible with private property and a regime of freedom, and the conclusion will be that the foundation of a liberal political party is possible. In our opinion, the existence of this principle in our Constitution does not constitute an obstacle to the foundation of a party the program of which is liberal. In the same order of idea, the question of whether or not a socialist party can be founded might be discussed. There is no special regulation which defines what kinds of political parties can be founded might be discussed. There is no *special legislation* which defines what kinds of political parties can be founded in our country. For instance, the new 1958 French Constitution has clearly defined the ideological stand of the parties : " Political parties and organizations participate in the proclamation of the election results. They enjoy freedom in their foundation and activities. They must, as a duty, abide by the principles of national sovereignty and democracy ". (Article 4). It is seen that this provision aims especially at the parties of the extreme right and left wings. However, as we have pointed it, there

isn't in our country special laws which deal with the foundation and activities of the political parties which in our political life have a part in the modification of the principles and institutions of representative democracy and which play a very important role. Regulations concerning such organizations are seen especially in the Law on Societies and the Penal Code. In accordance with the provisions of these laws, a multiple-party regime in Turkey can only be established between two boundary lines. Those lines are *anti-kulicism* (it has been accepted that this is tantamount to reaction) and *Communism*. As we pointed in our book, "parties which radically advocate the return of the Caliphate, parties which are royalist, racist, subversive and revolutionist (especially extreme leftist and rightist) cannot be founded in Turkey". Can a socialist party be founded? At this point of the question, we should enter details. In view of the clear stipulation of the articles, a Marxist socialist party cannot be founded. Nevertheless, there is no legal obstacle to the foundation of a political party which does not rely on Marxism and which would be patterned on the British Labour Party or have a similar program. This is possible because the program of a political party relying on the Welfare State doctrine cannot be considered as "aimed at establishing the domination of a social class on the other, or removing a social class, or abolishing any of the basic economic or social orders already established in the country". Such a kind of doctrine manifested itself especially in movements of "nationalization". Within present developments this situation is not incompatible with democracy, to the extent that when the British Conservative Party came to power with the 1955 general election, it did not change the policy that had been followed by the Labour Party and, although it did not pursue any further the policy of nationalization, it travelled on the same road, continued—and presently continues—to apply the social welfare program. Briefly, just as the doctrine of Welfare State is not a Marxist socialism, the Labour Party is not an organization attached to the Third International. In the present situation of our regulations, the foundation of such a political party can be considered as feasible.

g) One more point must be developed in the matter of statism. The narrow scope of this study does not allow for the dis-

cussion of whether or not the principle of statism is good or bad. It remains to be said that when rendering a verdict about any institution, it should be natural that its advantages and drawbacks are estimated in accordance with the political and social conditions of the country. To say that statism, as a principle and a policy, is indispensable for Turkey does not mean to say that it is successfully applied. On the contrary, many ill-advised applications have been recorded in that field, and it has been claimed that statism has assumed the aspect of a "State Capitalism". The Democratic Party, which came to power in 1950, had considered a change in the policy of nationalization and proclaimed that certain state-operated factories would be turned over to private enterprise. From that angle, no action worthy of note can be recorded. On the contrary, quite a progress has been made in the policy of statism. It is our observation that the principle of Statism in Turkey confers an economic character to the ruling power in Turkey by the very fact that political power has the right to intervene in the economic field. To fit a classical description, Turkish Governments conclusively enjoy not only political but in addition economic power, too. Interferences in the fields of production and consumption have impressed upon the development of the system of individualism as well as of individual freedoms. The interferences of the economic power in the fields of political and civil rights impresses on freedoms, restricts and prevents their use. (The current procedure in the distribution of newsprint and newspaper advertisements and its repercussions over the freedom of thought and the freedom of press may be mentioned here.) As a result, it can be said that when political powers assume an economic character, they would'nt lead to the destruction of democratic institutions. Economic recovery should be achieved through democratic procedures. Economic recovery cannot be counted as an instrument which infallibly brings and establishes democracy.

5 — The Principle of Laicism

a) There is no doubt that the ideological principle which most causes controversies today is the principle of laicism. In its true and national sense, the principle of laicism is the disavowal

of the Ottoman theocracy. It is thus connected on one hand with the general principle of Western democracy, and on the other hand, with the historic developments and events in Turkey.

b) When we investigate the common characters of the various reformation movements since the 18th century we see that, either attempts or actual reformation movements, all faced two obstacles, fought against two forces which sabotaged the Westernization trend, succeeded to the extent that they were able to check the repelling pressure of these forces, and when they abolished them, they made possible the reformation which had long been considered as a dream which could not be realized. Those forces were the Janissary Corps and the decaying Clergy (İlmiye). The historic developments of the reformation, hastened by the abolition of the Janissary Corps in 1826, has been studied in its place. The monopoly of the Clergy, however, continued to prevail on the individuals, the society, the State organization and public opinion; this class forgot its role of intellectual leadership and became the enemy of modernization and of all movements of renovation. The Clergy, which had complete control of educational matters, saw that all movements of the Ottoman society remained under the influence of theological schools because, due to the theocratic structure of the State, affairs of religion were considered to be also the affairs of the State.

c) The principle of laicism, which was appended to the Constitution with the 1937 amendment, has been the expression of Turkey's desire to free herself of this social monopoly. Even if only from a theoretical point of view, the Ottoman State was a theocratic State. The Republic of Turkey is simply a secular State. Keeping in mind that Westernization is the only access to an advanced State, it liberated the State from the monopoly of the Clergy. Matters related with justice and education were referred to secular organizations. Persons and society thus could be saved from the tutelage of a clergy which no longer could keep pace with the developments of its time and lacked a rational mentality. There was no need anymore for the visa of the "Şeyhülislâm" and religious officers, which, in order to administer the affairs of the State

and take decisions of an executive nature claimed that they represented the *Sharia* but which actually should not have been in possession of such authority because they had reduced it to a completely static state. Religion was to remain a private matter and to invite the interference of the State to the extent it involved social order(*). Namely it was to be regulated. From there on in the Turkish Republic, religious matters were not State affairs. While in the Ottoman Empire obedience to the Caliph was considered as a worship of God, in the Turkish Republic, there was nothing divine in the relations between the President and the citizen.

d) All these ideas can be considered as being among the reasons for the foundation of the new Turkish State which had begun to take shape starting from 1918. The principle of laicism, however, has a character which makes it a contemporary of the Turkish Revolution because it especially involves religious quarters with its decisiveness. It is still one of the ideological problems which is most discussed. The fact that the structure of revolutionary regulations relies especially on this principle is among the reasons for long controversies. This study is not going to review thoroughly the ideas which have been expressed about the principle of laicism, but in the subject of Religion-State relations we believe that the opinions on laicism can be grouped under three categories : 1 — Those who reject the laic State. 2 — Those who think that the principle of laicism is insufficiently applied and who want it to be fully implemented. 3 — Those who consider the fact that the structure of the Reform relies on the principle of laicism is a necessity required by the very nature of the Reform, and who defend this idea. Each one of those three opinions today is defended by various quarters, writers and thinkers.

e) As it has been evidenced by historic developments, the principle of laicism is a necessity which was called for by the political and social growth in Turkey. Laicism at the same time is one of the basic conditions for a democratic regime which is supposed to be a rational one. From the viewpoint of its application in our country, it is certain that it differs from the application of

(*) Dr. Hüseyin Nail Kubalı : " Esas Teşkilât Hukuku Dersleri " (Courses of Constitutional Law) pages 316-318 (İstanbul 1957).

laicism in democratically mature countries. In our opinion, this also was a necessity. The Turkish Reform, too, had been opposed by quarters which had nothing to do with Islam, or rather, with Islam's liberal mentality and who wanted to force a society to live under uncivilized conditions and amidst superstitions. The particularities of its application in our country should be sought in this situation.

f) From the viewpoint of its application, the stages of transition of the principle of laicism into the multiple-party regime is seen as a factor. From 1923 until our days, all the political parties have included with slight differences the principle of laicism in their programs. (Of course, there are certain exceptions.) However, all those parties in Turkey, whether as a ruling party or in the opposition ranks, have exploited religious feelings with the purpose of securing votes. This policy has made that the principle of laicism has fallen into a situation where it is incomprehensible. To accept, on one hand, the principle of laicism as a historic necessity and as the basic condition for democracy, and on the other hand, in radical opposition with laicism, to make an electioneering principle out of the exploitation of the people's religious feelings consequently leads to a situation whereby the very ethic principles on which the State relies and the ideologic system where the Constitution finds its essence are somewhat disavowed. A situation of this sort is delicate to the extent of not only preventing the settlement of democracy but also of increasing social and political crises. Certain moves which started in 1945 and still continue (such as the reopening of sepulchres, the foundation of schools for imams and preachers, the establishment of religious instruction in schools) should be considered not from a narrow angle but from that of Turkey's vital interests. Actually, laicism is not atheism and disrespect of religion, but it does not also mean to exploit religion, and least of all, to give a distorted picture of even Islam and to make concessions to certain quarters.

g) Laicism is one of the vital principles of the Turkish Reform. The safeguard of the Turkish Reform requires a strict implementation of the principle of laicism. In order to safeguard the basic principles of the Turkish Revolution and to prevent the exploitation of religious issues by quarters which rely on supersti-

tion and legends and whose actions are incompatible with the objective of becoming a modern State, adequate steps must be taken by the State and the activities of such quarters must be put under control. In the Republic of Turkey, the ruling political powers *must undertake this control as a public service*. But, to say it again, this control must be made exclusively with the aim of safeguarding and developing the principles of the Reform. The duty of the State is to prevent the initial movement from deviating from its original course, rather than to reopen sepulchres and inaugurate Imams and Preachers Schools. Such a control will present a dissimilarity in comparison with the classical meaning of laicism, but this situation can only be accepted for the sake of the conservation and expansion of the Turkish Reform. This delegation of control which is recognized to the State should not otherwise be instrumental in securing votes for a party.

6 — The principle of Reformism

This principle, which was appended to the Second Article of the Constitution with the 1937 amendment, is the expression of the stride which aims at the realization and the development of the ethic principles on which the State relies.

a) It had been admitted as a principle that the State which was founded following the collapse of the Ottoman Empire should be a modern one and built in accordance with Western standards. The basic principle on which the Revolutionary laws relied was to reach the "contemporary civilization level". Contemporary civilization was Western civilization. Hence, a shift was to be made in the direction of Western civilization. One of the great differences which separates the Turkish Reform from the Ottoman Empire is the decisive resoluteness to step into the field of Western civilization. Never before at any stage of the Ottoman Empire can we encounter a similar one-track decision which is not of a compromising character and which does not allow for the coexistence of old and new institutions which disavow one another. According to the Turkish Reform, Western civilization cannot be considered as the exclusive work of Christendom: it belongs to mankind. This decision does not imply that Turks have but lost their religion and their

personalities : no nation has completely lost its own culture and civilization simply because it decided to adopt a new civilization and it undertook an indispensable cultural metamorphosis. Consequently, the thing which is obtained is a synthesis of two civilizations. The whole problem resides in securing a harmonious merger of the various elements of each civilization. While in the process of this synthesis, the Turkish Reform from the beginning had in mind that Turks have a long civilization of their own. Thus, the most decisive answer was given to the thesis which claimed that Turks are not civilized.

b) The ideas and movements known as "Turkish Reform" are still discussed as to what they are worth, and polemics still continue on this subject, sometimes in the open, sometimes behind the scenes. We are in the days when it is talked of the destructiveness of the Reforms which are referred to as "the last ring or the last stage of the delusive reformatory movements" of the Ottoman Empire. One opinion has it that the reforms followed a course *against* the interests of the people, and democracy has been sacrificed for the sake of those reforms. In order to agree with such claims, one has above all to deny all the positive achievements throughout the world of the thing called "reform". Great religions always have proclaimed that they are the expression of a reform. The verse of the Koran which says "God came and Superstition vanished" is the best example to sustain this assertion. Therefore, whether it is acknowledged or not, reforms are a fact in man's history. The objective of reforms is to abolish an established order and to substitute another order in its place, and their progressive character always clashes with local reactionary obstacles which take refuge in the past.

c) If we expect the last phases of the Ottoman Empire, we shall easily see when we review the conditions under which Turks lived since 1918 that the most realistic step that could be taken at this date was to found a national-independent State. The liberation from the foreign yoke and the Independence War are not the only characteristics of the Turkish Reform. Another among its characteristics is that this national and independent State has determined its social structure within a world separated into two ideological camps. Besides, the fact that Turkey stands as an

example for the Middle East and even for all the countries which wage or endeavor to wage a fight to win their independence proceeds from this particularity.

d) Another characteristic of reforms is not only to bring a new order but also to see that this order becomes deep-rooted. This operation of settlement involves a *struggle against spheres of petty interests* which keep the masses under the pressure of old traditions and superstitions, rather than it does a struggle against the habits of the masses. The Turkish Reform, too, fought against domestic and foreign hostile forces which endeavored to prevent the foundation of a State patterned on Western standards. It is natural that the force it fought most and it still has to fight even today is composed by the conservative elements which have no progressive objective whatever. The Reform has not been a march against the people but a struggle against the forces which had prevented the people from attaining a civilized level.

e) Coming to the matter of reforms and democracy, we can consider the Turkish Reform as the stride which leads to a civilized level and to a climate of democracy. Democracy cannot be accepted and defined merely as the desires of a numerical majority. Democracy is, above all, the realization of definite principles. Democracy is not a form, it is an ideology. One may speak of a democratic movement when the will of the majority manifests itself in the form of the realization of an ideology. Otherwise, the majority is to be accounted as a force under any regime. Democracy's understanding and estimation of the majority is from the angle of the realization of the principles of freedom. A definite phase of the Turkish Reform can be considered, from the viewpoint of the preparation of a climate of democracy, as a historic event which happens only once. More explicitly, the much talked-about era labeled as "the 27-year despotism", namely the single party regime, does not bear all alone the responsibility for our present complaints. To express one more time one of our ideas, "In any State, regardless of its form or its system of government, where the parliament is dominated by an overwhelming majority and where there is no powerful public opinion institutions to check this domination, the majority of a definite party has the means to dominate the social and political life of this country". The need

in Turkey for institutions which will act as a brake in the face of the ruling power once more appears as an absolute necessity¹⁵.

II — INSTITUTIONS INSTRUMENTAL IN THE REALIZATION OF THE IDEOLOGICAL PRINCIPLES

Which are the political forms corresponding to the ideological principles under reference? Under which form is national sovereignty to be used? What are the forms of the Turkish State and Government? Since the problem lies in the realization of the essence embodied in the ideology, it is also necessary to found institutions which are needed for the realization of the principles themselves.

a) The preparatory phases of the 1924 Constitution show that the principles under reference were to be implemented within a democratic system, but among the forms of democracy, which one? Developments until that day show that under the conditions prevailing in Turkey this form was decided to be the *republic*. As it may be seen in the history of other States, the republican regime in Turkey has not been proclaimed more than one time, although it is claimed that the Second Republic started in 1950. From that angle, the regime enjoys a continuity. Together with that, we should dwell upon some particularities of the Republican regime.

b) It is stipulated in the second paragraph of the First Article of the 1923 Law, which amends the 1921 Constitutional Law, that the republic has been accepted as "*the form of Government of the Turkish State*". The current meaning of the terms, besides, is that the form of government is tantamount to the use of political power. The 1924 Constitution accepted the principle of the republic with a view to express at the same time the form of the State and that of the Government. During the debates, the reporter of the Constitutional Committee gave the following answer to motions which claimed that the term "*Republic*" applied only to the form of Government: "It is not only the Government but also

15) Political Parties in Turkey op. cit. pp. 756-758. Also see "Türkiye tarihinde iktidarlar" (Ruling Powers in Turkey), (Articles in Cumhuriyet, April 7, 1954).

the State which is Republican. When the State is a republican State, its Government also is a republican government"¹⁶. Consequently, accordingly with the 1924 Constitution, the term " Republic " serves a dual purpose and has a dual meaning : it names the kind of the political society (the form of foundation of the State) and at the same time, it determines the mode of use of the political power. From the viewpoint of the realization of democratic principles, this situation carries an ideological importance.

c) Another particularity of the principle of the Republic is contained in Article 102 of the Constitution, stipulating that under no circumstances can this principle be changed or be the subject of a proposal for modification. This situation, too, carries the importance of a principle which establishes the form of both the State and the Government.

d) Alongside the fact that the principle of republicanism accepted by the Constitution was the expression of a democratic State and form of Government, it should be pointed that it also was the expression of a representative regime. One of the modes of use of national sovereignty is representative regime. This means that the 1924 Constitution did not initially accept outright democracy, and partly democratic was (the other two modes of use of the principle of national sovereignty). Coming to the form of representative regimes it has accepted, this is neither the presidential nor the parliamentary form of government. Controversies are presently going on over the government system established by the 1924 Constitution. Generally, it is spoken of a form which " leans towards parliamentarism ". However, it should be difficult to claim that the factors which might sustain this assertion are contained in the Constitution. It is true that there are certain points which deviate from the form of Assembly Government, but we are of the opinion that we can hardly claim that these points " lean " towards the form of parliamentary government. This confusion arises from the fact that the project of government system of 1924 inclines towards the presidential system while within the Assembly, the desire to maintain a form of government of assembly strongly

16) A. Şeref Gözübüyük - Zekâî Sezgin : " 1924 Anayasası Hakkındaki Meclis Görüşmeleri " (GNA debates over the 1924 Constitution), (Ankara 1957) pages 96-97.

prevails. The 1924 Constitution thus has been the product of a reconciliation of trends.

d) We see that from the standpoint of application, the Assembly or parliamentary system has hardly been taken into consideration because, as a result of the electoral system, the domination of the Assembly by the overwhelming majority of a party has established by means of a strong party discipline the supremacy of a sort of executive organ which very easily fitted itself the single-assembly system. This system, however, is in utter contradiction with the system which the Constitution had wanted to establish. Next to the system established by the Constitution, this situation, which has resulted from its application and which can be considered as actual, in fact is the result of the very deficiencies of Western democracy. This state of being, at any rate, aggravates all the more the situation in which we are. While she is building a system in accordance with her ideological principles, Turkey at the same times faces the duty of finding a solution to the problems which are tackled by Western democracy.

CONCLUSION

The problems appear under one form : We have drifted from a system which fits the ideological principles of our Constitution. The course to be followed, just like in other countries, is to harmonize, with due respect of the time factor, all the political institutions which are to materialize the ideology and the system. Proposals of amendments are made every now and then, but to they aid at the establishment of a system which will fit the ideological whole, or at a change in that ideological whole itself ? It is difficult to think that the request for a change in the ideological whole might be supported because as it may be seen in the conclusions of this report, political developments in Turkey led, at the outcome of long and strenuous struggles, to the rejection of the theocratic formula of the Empire and its replacement by a laic and republican (democratic) State and form of Government. If ideological changes should cause this natural and historic course to deviate, the result might be a denial of our natural and historic development. The problem which should be dealt with today is the finding of a system to fit the ideological

whole, the basic points of which we have tried to describe and which actually necessitates a completely democratic system. Through the Independence War, Turkey secured her national freedom and her independence (which means collective freedom). Today, she is in the process of realizing and consolidating the system of individual freedoms. It is the kind of activities which suit the purpose of this ideological phase which will lead to success. In that case, what is solved will just be a domestic problem, but efforts and realizations in that field will also constitute a contribution in the achievements of Western democracy.
