

# Rights and freedoms in the Turkish Constitution of 1924

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**Abstract:** *Diritti e libertà nella Costituzione turca del 1924* - The paper analyses the catalogue of rights and freedoms encompassed in Section V of the 1924 Charter, beginning with some historical considerations. The Turkish ideal of nation is discussed as the result of a complex historical process, deeply rooted in the constitutional project and pivotal in its development. Special consideration is devoted to religion and the rights belonging to its sphere, to the generous provisions designed by the 1924 Constitution to the protection of rights in the area of civil liberties, and to the sphere of economic rights and of the economic structure of the new Turkish society.

**Keywords:** rights; freedom; religion; Nation; representation.

## 1. Some historical premises

The long catalogue of rights and freedoms composed by Section V of the 1924 Charter and by other provisions scattered throughout its text has been the first to be applied in Turkey, but definitely not the first to be at least formally introduced into the legal system of the Ottoman Empire. Some historical considerations therefore need to be, albeit perfunctorily, put beforehand in order to achieve a better understanding of the topic.

In Ottoman history there have been at least three former declarations or proclamations implying a certain measure of protection of rights. However, the first one, in 1839, did not amount to a real constitution but resembled a unilateral bestowal in the *octrouayée* style; the second, in 1856, was strictly hetero-directed, having been drafted by the British, French and Austrian ambassadors as a measure of forced modernization at the same time that the Paris Treaty was being signed, saving Crimea to Turkey at the end of a war; the third<sup>1</sup> was included in a formal constitution, the one adopted in 1876, granted by Sultan Abdül-hamid II on the same day that peace negotiations were starting, with the aim of “pulling the teeth off Turkey saving its life”, in the famous words of Lord Salisbury, that however was soon suspended and never resuscitated. None of them was either sincerely conceived as a part of a constitutional structure (the first two), or able to survive longer than a few months (the third one).

The so-called Gülhane Decree, or Rose-Garden Edict (*Hatt-i-Şerif*) drafted by Sultan Mahmud II (1808-1839), which was published by his

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<sup>1</sup> See B.H. Sumner, *Russia and the Balkans*, 1870-1880, Hamden, 1962, 237.

successor Abdül-mecgid (1839-1861) on November 3, 1839, was a kind of solemn declaration of principles. Its purpose was to introduce some measure of modernization after the loss of two important territories formerly belonging to the Empire: Serbia in 1808 and Greece after the 1821-1829 war. The pivotal idea was to reform the old structure of the Empire following the Western pattern. The necessary implication consisted in an injection of equality in the legal system, formerly resting on the self-government of the several religious communities (millet), the balance between them and the preference for the Muslim group in comparison with all the others, exempted from military service obligations but subject to special taxes. The newly introduced equivalence of all the subjects of the Empire, implemented through “the absolute security, following new statutes to be passed, of honor, life and goods”, was committed to a centralized bureaucracy, financed by general fiscal imposition, applied with reference to a proportionality criterion. The elaboration of new civil and criminal legislation, homogeneously applicable to all subjects, the creation of a secular judicial system, of a public school system and of a modern defense apparatus founded on compulsory leverage for all were to follow. The protection of life and property was no simple promise, but it was the lesser part of a much wider restructuring of the whole traditional body of the Empire, typical of the Tanzimat period<sup>2</sup>. Unfortunately, the process of bureaucratic centralization, by subverting the century-old millet religious communitarianism and trying to raise new direct links between State and individuals, failed to create a national conscience and ended up in resurrecting ethnic and linguistic identities that had remained dormant for centuries, paving the way to a future total breakdown.

The Imperial Decree (Hatt-i-Hümayun) of February 18, 1856 proclaimed again by Abdül-mecgid, was elaborated by the diplomats of the European powers which had supported Turkey in the Crimean War against Russia. While the Paris Treaty admitted the Ottoman Empire to “the advantages of public law and of the European system” and put its “independence and security” under the shelter of Great Britain, Austria and France, its counterpart was represented by an Ottoman pledge to further modernization. Therefore, the Decree promoted a full freedom of religion, equality in civil rights and tax rationalization: however, it also included the creation of secular courts for the controversies between members of different religious communities, the reform of the jail system, of the police and of the military, and a plan of public works<sup>3</sup>. The new statute of the several millet introduced some sort of political representation in their organization, contributing to their secularization and to the marginalization of the religious elements, confined to spiritual matters<sup>4</sup>. The result over the next decades was the increase in national identity of the numerous components of the Ottoman populace, which included Muslims and Christians of different faiths, Jews, Serbians, Croatians, Albanians, Greeks, Bulgarians, Armenians, Tatars, Circassians, Kurds, Arabs and obviously Turks, whose relatively peaceful coexistence had so far put the mute to all possible ethnic

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<sup>2</sup> See the classic text by G. Engelhardt, *La Turquie e le Tanzimat*, Paris, 1882.

<sup>3</sup> See e.g. R.H. Davison, *Reform in the Ottoman Empire, 1856-1876*, Princeton, N.J., 1963.

<sup>4</sup> See e.g. N. Berkes, *The Development of Secularism in Turkey*, Montreal, 1964.

and religious conflicts. The Christian groups, therefore, were not receptive of the efforts of the Ottoman intelligenzia towards the creation of a homogeneous society through the assimilation of the plurality of nations in a common citizenship. The middle class reformers, known as Young Ottomans and later on as Young Turks<sup>5</sup>, gathered in secret societies founded abroad, were able to achieve the dismissal of Sultan Abdül-Aziz and to put on the throne his cousin Abdül-hamid II, presumably enlightened and favourable to a full recognition of liberties in the Western meaning.

Once again, the new Sultan, apparently closed to the Ottomanistic ideals of enlightened monarchy, had to confront international problems, consisting in a war against Serbia, promptly supported, as usual, by Russia, displaying invasion efforts in Anatolia. The consequent meeting of European diplomats summoned in Constantinople in order to decide the future of the Empire, on December 23, 1876, coincided with the promulgation of a Constitution, whose adoption had been promised before the succession and whose elaboration had been entrusted to a working committee. The traditional relationship between international affairs concerning the territorial and governmental structure of the Empire and the resort to constitutional proclamation of rights and freedoms was therefore confirmed. The new Charter, in a Section titled “Public Law of the Ottomans”, preliminarily declared the full equality of the subjects regardless of their religion (Osmanlilik: arts. 8 and 17), notwithstanding the presence of ten Ulema in the drafting committee. Personal freedom was proclaimed inviolable (art. 10 and 11). Torture was also absolutely forbidden (art. 26). Freedom of the press and of all associations were guaranteed within the limits of a law reserve (arts. 12 and 13). Property was also protected (art. 21), and special clauses concerned the regulation of expropriation (art. 22) and the prohibition of seizures and compulsory personal services (art. 24). Equal access to public offices according to capacity (art. 18), statutory nature and proportionality of all fiscal impositions (arts. 20 and 25) and right to the natural judge (art. 23) completed the set of individual rights. However, Islamism was declared official State religion, but the free exercise of the cults recognized in the Empire and the privileges traditionally granted, if compatible with public order, were granted (art. 11). As of consequence, education and teaching are free (art. 15), and all schools were put under State control, in a perspective of unification of the syllabus and of compulsory primary education (art. 114), without prejudice to denominational teaching (art. 16). Turkish was to be the official language of the State (art. 18). The introduction of a sort of parliamentary form of government was limited by the preservation of important powers by the Sultan, such as the choice and nomination of all the Senators (art. 60) and of the President and Vice-presidents of the lower Chamber (art. 77), the appointment of Prime Minister (Grand Visir) and Ministers (art. 27 and 28) and the alternative faculty of dissolving Parliament (General Assembly, Megiliss-i-umumù, art.

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<sup>5</sup> See e.g. E.E. Ramsaur, *The Young Turks: Prelude to the Revolution of 1908*, Princeton, N.J., 1957; S.J. Mardin, *The Genesis of Young Ottoman Thought*, Princeton, N.J., 1962; M.G. Losano, *L'ammodernamento giuridico della Turchia (1839-1926)*, Milan, 1990; R. Mantran, *Histoire de l'Empire Ottoman*, Paris, 1989.

42) or dismissing Government in case of dissent between the two Chambers (art. 35).

In the 1876 Constitution, the intent to preserve the unity of the Empire against further territorial losses through the equality of all subjects and of the ethnic and religious communities, dear to the Young Ottomans and acceptable to the European States, had to be balanced against the surviving Panislamic ideology, clinging to the traditional communitarian and hierarchical structure of the Ottoman society, and eventually the preference of the Sultan himself for a modernization that did not, however, amount to a fully parliamentary regime. The European powers, furthermore, had no special interest in the success of the democratic experiment, which might have been a hurdle to the partition of an agonizing big body, since long the sick patient of Europe. Another war declared by Russia in April 1877 and stayed by Disraeli<sup>6</sup> took to the Berlin Treaty of July 1878, which cost the Empire the loss of three provinces to Russia, of Bosnia-Herzegovina to Austria-Hungary, the enlargement of Montenegro and of Bulgaria, the British protectorate on Cyprus, and harsh economic conditions. The first Turkish Parliament, elected in February-March of 1877, and composed by 115 members, of which 67 Muslims, 44 Christians and 4 Jews, belonging to 14 different ethnic groups<sup>7</sup>, was dissolved by the Sultan and never summoned again in the next thirty years, while the most liberal provisions concerning the protection of political and civil rights were suspended<sup>8</sup>. The first Ottoman constitutional era (Meşrutiyet) was prematurely over and the expectation of individual freedoms in the Western shape was frozen.

Before the need of a new catalogue of rights inside a wider constitutional framework could come to surface again, it took a span of time of almost half a century: a period studded by frequent wars or warfare, due to the blowing up of enduring ethnic tensions in the Balkans, where the territorial remnants of the Empire were considered by the European States as pieces of the dying body of a sick entity to be shared by the modern members of the international community. In fact, Eastern Rumelia was tacitly lost to Bulgaria in 1885; a state of permanent turbulence in the Armenian community reached a peak between 1890 and 1896, with bloody atrocities that stirred the European public opinion; a Greek insurrection in Crete led to an open war with Greece, that was stayed by a truce required by Russia, imposing a kind international control of the island; in 1903 the repression of turmoil in Macedonia ended up in another international agreement signed by Russia and Austria-Hungary, including the same solution; in October 1908, while a semblance of liberal revolution was trying to take place, Bulgaria proclaimed its independence, Austria formalized the annexation of Bosnia Herzegovina and Greece that of Crete; between the

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<sup>6</sup> See W.E.D. Allen, P. Muratoff, *Caucasian Battlefields: A History of the War on the Turco-Caucasian Border, 1828-1921*, Cambridge, 1953.

<sup>7</sup> See K.H. Karpat, *The Ottoman Parliament of 1877 and Its Social Significance*, in *Studies on Ottoman Social and Political History*, Leiden, 2002.

<sup>8</sup> See A.A. Palmer, *The Decline and Fall of the Ottoman Empire*, London, 1992; J. McCarthy, *The Ottoman Peoples and the End of the Empire*, Oxford, 2001; M.S. Hanioglu, *A Brief History of the Late Ottoman Empire*, Princeton, N.J., 2008.

end of 1911 and the beginning of 1912 the Italian government formally declared war on Turkey and occupied Tripolitania, Cyrenaica and the Dodecanese islands; in October 1912 yet another war was declared by Montenegro, Serbia, Greece and Bulgaria, although soon Rumanians, Serbians and Montenegrins rapidly turned against the Bulgarian expansionist ambitions, and the last and final Balkan war was sealed by the Treaty of Constantinople of July 1913, which reduced the Ottoman presence in Europe to its historical minimum<sup>9</sup>. The Great War, that began for Turkey in November 1914, was just one more step in a process of disintegration that lasted one century and represented the trigger of the domestic constitutional evolution of the Empire: the treatment of rights and liberties in the Turkish institutional framework has always been intertwined with and conditioned by the recurring troubles and the enduring turmoil in foreign policy.

There have almost always been in Turkish society groups or leaders suggesting, proposing or even striving for the introduction of a catalogue of rights of Western inspiration: first the Tanzimat (reformers), then the Young Turks, at least in some of their segments. For about one hundred years, however, this aspiration, together with the passion for a modern constitution, was thwarted, hampered or at least slowed down by the tension between inner modernizing pressures and European efforts to sap the old Empire and pick up some of its pieces.

## 2. Nation and representation

The Turkish set of ideas concerning political rights is apparently drawn from the French revolutionary thought<sup>10</sup>: art. 3 of the Constitution states, in fact, that “Sovereignty belongs without restriction to the nation”. However, it is well known that the transplant of even the most elementary political concepts into different legal systems, although far from rare, is never an automatic operation<sup>11</sup>. In the Turkish case, furthermore, the distance in history, politics, cultural social structure between the borrower and the lenders was enormous, although the elite of the Young Turks had been striving for decades towards a full modernization not only of army and bureaucracy, but also of the constitutional framework. The aim, in their ideology, consisted not simply in showing the European States a liberal face, thus preventing them from dismantling the Empire in the name of modernity, which was probably the project of Ottomanism, but in genuinely achieving a decent level of political efficiency in order to compete with the

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<sup>9</sup> These events are described in details for instance by S. McMeekin, *The Ottoman Endgame. War, Revolution, and the Masking of the Modern Middle East 1908-1923*, London, 2015, chs. II-IV; G. Castellan, *Histoire des Balkans, XIVe-XXe siècle*, Paris, 1991, 245-379; see also S.J. Shaw, E.K. Shaw, *History of Ottoman Empire and Modern Turkey*, Cambridge, 1977; A. Bombaci, S.J. Shaw, *L'Impero ottomano*; Turin, 1981, M. Dogo (a cura di), *Schegge d'impero, pezzi d'Europa. Balcani e Turchia tra continuità e mutamento 1804-1923*, Gorizia, 2006.

<sup>10</sup> See B. Lewis, *The Impact of the French Revolution on Turkey*, 1 J. of World Hist. 105, (1953).

<sup>11</sup> See e.g. D.Nelkes, J. Fest, *Adapting Legal Cultures*, London, 2001 and M. Graziadei, *Legal Transplants and the Frontiers of Legal Knowledge*, 10 Theoret. Inq. In L. 723 ff. (2009); G. Mousourakis, *Comparative Law and Legal Traditions*, Cham, 2019.

European powers on an equal footing and being able to sit at the same table with the same dignity in the international context<sup>12</sup>.

However, the Ottoman Empire had relied on large peripheral autonomy and decentralization, and even on tribalism, at least in some parts of its enormous territory. Not differently from the Austrian-Hungarian Empire, political stability was achieved through the coexistence of several ethnic groups, each of them having a denominational basis. The main inspiration of the whole was obviously Muslim, but all the other millet enjoyed a special status, including privileges and duties, such as the exemption from military obligations and peculiar fiscal regimes. The whole structure resembled a feudal pattern, with a hotchpotch of nationalities instead of a mixture of social groups. On the contrary, the drift towards modernization, promoted first by the Reformers and then by the Young Turks, stirred feelings of national and religious identity, formerly dormant. At that point the cohabitation on the same physical space became much more difficult, when not impossible. Nationalist jingoism was resuscitated, at the same time when a similar phenomenon was burgeoning and blossoming all over Europe. The level of conflict was raised at the beginning of the XIX century by the Greek secession war and never abated, and paved the way to several phases of ethnic violence, forced migrations and even exchanges of population of enormous dimensions. Since the time of the Berlin Treaty of 1878, the massive displacement of hundreds of thousands of inhabitants from a region to another in order to avoid religious and ethnic mixtures became more and more frequent: waves of nationalist violence took place on each occasion of local wars in the Balkans and also independently of them, becoming a constant of the so-called Eastern question<sup>13</sup>. The case of the Armenians has come to be better known to the Western public opinion and has been even recently described by ample literature<sup>14</sup>. However ethnic cleansing concerned in different manners and times almost all parts of the Ottoman territories, previously inhabited by peaceful racial mixtures<sup>15</sup>. Due both to loss of territories and to forced expulsions, the Muslim share of the

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<sup>12</sup> See H. İnalcık, *Turkey between Europe and the Middle East*, 3(1) J. of Intn'l Affairs 5 (1998) and Z. Gökalp, *Ziya Turkish Nationalism and Western Civilization. Selected Essays*, New York, N.Y., 1959.

<sup>13</sup> See e.g. M.S. Anderson, *The Eastern Question, 1774-1923*, London, 1966.

<sup>14</sup> V.N. Dadrian, *The History of the Armenian Genocide: Ethnic Conflict from the Balkans to Anatolia to the Caucasus*, New York, N.Y., 1995; R.G. Ovannisian, *The Armenian Question in the Ottoman Empire, 1876-1914*, in ID, *The Armenian People from Ancient to Modern Times*, New York, N.Y., 1997; D. Bloxham, *The Great Game of Genocide: Imperialism, Nationalism, and the Destruction of the Ottoman Armenians*, Oxford, 2005; G. Levy, *The Armenian Massacre in Ottoman Turkey: A Disputed Genocide*, Salt Lake City, Ut., 2005; F. DüNDAR, *Crime of Numbers: The Role of Statistics in the Armenian Question (1878-1918)*, New Brunswick, 2010; R. Suny, F. & N. Müge Goçek, *A Question of Genocide: Armenians and Turks at the End of the Ottoman Empire*, Oxford, 2011; E. Erikson, *Ottomans and Armenians: A Study in Counterinsurgency*, New York, N.Y., 2013.

<sup>15</sup> See e.g. J. McCarthy, *Death and Exile: The Ethnic Cleansing of Ottoman Muslims, 1821-1922*, Princeton, N.J., 1995; M. Mazower, *Salonica, City of Ghosts: Christians, Muslims and Jews, 1430-1950*, New York, N.Y., 2005; B. Clark, *Twice a Stranger: How Mass Expulsion Forged Modern Greece and Turkey*, London, 2006; G. Milton, *Paradise Lost: Smyrna 1922: The Destruction of a Christian City in the Islamic World*, New York, N.Y., 2008.

Ottoman population grew from less than 72% between 1883 and 1891 to more than 75% in the 1906 census<sup>16</sup>. Again in 1923 all the Orthodoxes living in Anatolia, of Greek language or otherwise, moved back to Europe in number of 1.200.000, while 400.000 Muslims, not only Turks, had to take the reverse path. The advent of a new national State was ready in the aftermath of WWII.

Summarizing, the Turkish ideal of nation is the result of a complex historical process, which has followed a rut somehow not too different from that of many European eastern, central and southern States, born out of the erosion and final breakdown of the double Austrian-Hungarian Monarchy, but even more spotted by violence, havocs, massacres, bloodshed. The definition of the borders imposed at Sèvres in 1920 and reset at Lausanne two years later, after the military successes under the leadership of Mustafa Kemal that granted him the title of “Gazi” (victorious fighter), delimited the territorial identity of contemporary Turkey. The new national identity had been finally and dearly built: Kemal and his supporters were perfectly conscious that the end of the long Ottoman era implied the birth of a nation. A bloody revolution, carried out by an enlightened élite, needed to be implemented first of all through the resort to Western science, technology, art and above all values<sup>17</sup> without humiliating the traditional popular culture, but recovering the genuine characters mislaid or watered down by the wider Islamic culture. The foundation of a real State (“ordu”), finally had to rest on a strong identity feeling. In 1933, in his decennial speech, Kemal invented the famous formula: “Happy the one who says: I am Turk!” (“Ne mutlu Türküm diyene!”). The assimilation of the people living in what was left of the formerly Ottoman territory had to lead to a strong national identity, not simply due to an imitation of the French model, but because a full ideological compactness is needed for the edification of a competitive statal entity. After defeating the British fleet, holding off the winners of a world conflict, partially reversing a harsh peace treaty, simplifying the ethnical structure, limiting the religious power, it took an extreme effort to impose a modern political pedagogy inspired to a strong national identity<sup>18</sup>. Since 1919, the famous Amasya proclamation had clearly defined the contours of the idea of nation that Atatürk had in mind. And the famous formula “we only look like ourselves” (Biz bize benzeriz), declaimed in December 1921, was the short summary of this approach.

The only loophole in this theory proved to be the Kurd problem. The Kurds, Muslims and settled in Anatolia since centuries, could hardly be assimilated. To Kemal’s eyes they were people of Turkish origin, often of upper class in comparison with loyal lower class farmers, who had forgotten the language and were in need to be reintegrated in the national community.

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<sup>16</sup> K. Karpat, *Ottoman Population 1830-1914: Demographic and Social Characteristics*, Madison, Wis., 1985.

<sup>17</sup> This transformation pattern is described by S. Huntington, *The Clash of Civilizations and the Making of World Order*, New York, N.Y., 1996, 88 ff.

<sup>18</sup> The works concerning Kemal’s thought about nation-State are countless: see e.g. *Supreme Council for Culture, Language, History Atatürk Research Center, A Handbook of Kamalist Thought*, Ankara, 2001; P. Kinross, *Atatürk, The Rebirth of a Nation*, London, 1964; A. Kazancigil, E. Özbudun, *Atatürk, Founder of a Modern State*, London, 1981; A. Mango, *Atatürk*, London, 1999.

It has been effectively said that, as of consequence, “a defensive nationalism turned into an aggressive one, and a struggle for freedom into a struggle to dominate others”<sup>19</sup>. A two-nation State would have required a too sophisticated balance, possibly incompatible with the state of the institutional thought of the time and would have probably created irredentist impulses in Kurd minorities living in Iraq, with destabilizing effects in the whole newly organized Middle-East.

The concept of nation, therefore, was deeply rooted in the constitutional project, being pivotal in its development. According to the French revolutionary blueprint, the Grand National Assembly was declared the sole lawful representative of the nation (art.4), vesting both the legislative power (art. 6) and the executive one, to be carried out through the intermediary of the President of the Republic (art. 7). The right to vote was granted to every citizen over the age of eighteen (art. 10), while the eligibility to the Assembly was conditioned on the age of thirty (art. 11). The right to address petitions and make complaints either to administrative authorities or to the Grand National Assembly (art. 82) completed the set of political rights of the Turk.

### 3. The religion issue

Religion and the rights belonging to its sphere are another of the central topics both in the Kamalist thought and in the Constitution of 1924.

Art. 2 states that “The religion of the Turkish State is Islam”. After uttering such a general principle, however, the Charter is totally silent about religious issues, but for including freedom of conscience in the rights included in a catalogue of liberties protected by the Constitution (art.70) and mentioning religion as a parameter for the interpretation of the equality principle (art.88). Even the oaths prescribed to the members of the Grand National Assembly before taking the office (art. 16) and to the President of the Republic (art. 38) only mention values such as “happiness and safety of the fatherland”, “the absolutely unrestricted sovereignty of nation”, “republican principles” the first one, to which the second adds “the respect, defense and execution of the laws” and the “glory and honor of Turkey”. Only the members of the Assembly swear “before God”.

The attitude of Kemal and his entourage towards religion had always been quite aloof. Many members of the reform movement (*tanzimat*) and later of the Young Turks had lived abroad for years, many as refugees, had assimilated Western habits, had often belonged to masonic associations. They found themselves in opposition both to Ottomanism, trying to reassure the non-Muslim communities in order to earn their loyalty to the reigning dynasty, and to Islamism, resisting many forms of modernization in the Western style and mobilizing the Muslim world under the guide of the Sultan-Khalif<sup>20</sup>. Between and against such trends, secularization was, at

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<sup>19</sup> G. Chaliand (Ed.), *A People without a Country. The Kurds and Kurdistan*, London, 1993, referring word by Nehru.

<sup>20</sup> Abdul Hamid had long tried to promote Islamism by distributing thousands of copies of the Coran freely, financing the restoration of mosques, promoting Arabs and Muslims to the highest positions of the Empire as never before and awarding them

least at the beginning, a defensive attitude. The educated Turks of the generation that fought WWI were thus skeptical about religious matters, if not openly irreligious. Islam was to them a mere sociological identity factor, yet linked to the past and subject to ample derogations by cultured sectors of the population: however, it needed protection as one of the remaining unifying strengths of the new nation<sup>21</sup>. It must also be considered that the fundamental elements of the prevailing ideology of the reformers, besides their sympathy towards modernity and Western culture, were slow to aggregate in a coherent vision, as slow was the creation of a political party during the so-called “second constitutional period” (1908-1920). The special caution in the elaboration of a consistent doctrine also depended on the understanding that every effort of domestic reform ran the risk of fueling centrifugal forces in the minority communities. Even communism at times was not apparently far from the Khemalist thought: concretely, however, the relationship with the USSR was tactically necessary to confront the winners of the Great War in their imperialistic ambitions, while the very idea of class conflict was incompatible with the need of gathering all possible social forces in an effort of national emancipation<sup>22</sup>.

A number of episodes tells of the reluctance of Kemal to submit to religious precepts: for instance, in April 1913, during the Thracian war, he refused to receive preachers to better the mood of his troops, as suggested by the Minister of War Ahmed İzzet Pasha; in October 1922, after explaining the concept of revolutionary regime to a group of members of the elected Great General Assembly of Turkey (TBMM), he compelled the Quran doctors to apologize for the misunderstanding; in Spring 1924, immediately after coming back to Ankara and a few weeks before the approval of the Constitution, he obtained at the same time the abolition of the ministry of Seriat and Pious Foundations, the closing of the Medrese, or higher schools of religious education, and a few days later the suppression of the Seriat courts and the abrogation of the ban on alcoholic beverages. The influent fraternities and mystic orders such as the Dervishes and their practices were also suppressed altogether. The abolition of the Caliphate, together with the imposition of the exile on the Sultan and his dynasty (April 1924), was the final seal on the most complete separation between religion and politics<sup>23</sup>. In a famous speech after the advent of the Republic in 1925 he was clear in explaining that it was impossible to make Quran doctors and the Islamic world happy without giving up reaching the goals of the revolution.

It is true that art. 26 of the Constitution, in defining the sphere of competences of the Legislative body, states that “The Grand National Assembly itself executes the holy law”. Yet such provision has to be read in a minimalist sense: the Muslim faith, in its version mounting back to the Medina Constitution, presupposes a covenant between the peoples of the

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honors, and even requesting to call the Sublime Porte the Refuge of the Caliphate (Hilâfetpenâh): see details in S. McMeekin, *The Ottoman Endgame*, cit., ch. I.

<sup>21</sup> See on this point F.L. Grossi, *Atatürk*, Rome, 3<sup>rd</sup> ed., 2020, ch. I.

<sup>22</sup> See in particular T. Parla, R. Davison, *Corporatist Ideology in Kemalist Turkey*, Syracuse, N.Y., 2007.

<sup>23</sup> See in general N. Berkes, *The development of Secularism in Turkey*, Montreal, 1964.

Book, that means the monotheistic religions, and a Muslim holistic community (“umma”), which is responsible of rights and duties and constantly heads to justice<sup>24</sup>. It is likely that to Kemal and his followers the very general provision of art. 26 might mean little more than that<sup>25</sup>.

#### 4. Civil liberties

In the area of civil liberties the 1924 Constitution is very generous of provisions designed to the protection of rights. Some list rights, some others include definitions of each of them. The general inspiration is clearly represented by French constitutional law: art. 68 defines liberty and its limits with terms literally drawn from the French charters of 1791 and 1793 and from the Declaration of Rights. The heading of Section V (“Public Law of the Turks”) seems more akin to German doctrine, but is reproductive of that of Title II of the 1876 Constitution, to which also many other aspects of the drafting owe much.

The principle of equality is put before the catalogue of rights. The abolition and prohibition of all “privileges of whatever description claimed by groups, classes, families and individuals” is evidently aimed at the suppression of the millet system and emphasizes the radical change of regime. Then, a group of rights are declared inviolable: they comprise liberty of person, freedoms of conscience, thought, speech and press, freedom of travel, assembly, association (art.70), inviolability of life, honor and home (art. 71), secrecy of telephone and telegraph (art. 81.2) . The content and limitations of some of such rights are specified in the following provisions. For instance, personal liberty is further protected against restrictions or interferences (art.72), torture and corporal punishments (art. 73), search and molestation (art.76); freedom of press against previous censorship (art. 77). In most cases the drafting technique applied resorts to a law reserve, such as in arts. 72, 76, 77). Religious freedom deserves a special treatment: art. 75, without distinction according to faith, prohibits molestations on account of religion, sect, rituals and philosophic convictions and gives full protection to religious observance on condition that no disturbance is made to public peace or public decency or no violation is made to social conventions. The opening of letters, documents and packages needs to be ordered by the Attorney General and confirmed by a court (art. 81).

The constitutional provisions necessarily depict a formalistic portrait, which could be partially hollowed or totally emptied by different means: by the Legislative through a skillful use of the law reserves, by the Executive by way of borderline practices or even by a Judiciary resisting innovation and resilient in assimilating the principles of a new regime. Mustafa Kemal himself was not temperamentally averse to harsh measures, often necessary

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<sup>24</sup> See the synthesis of M. Campanini, *Ideologia e politica nell'Islam*, Bologna, ch.2.

<sup>25</sup> See R. Anciaux (Ed.), *La République laïque Turque trois quarts de siècle après sa fondation par Atatürk*, Bruxelles, 2003. The Turkish constitutional approach to the religion issue used to be classified as secular: see e.g. N.J. Brown, M. Revkin, *Islamic Law and Constitutions*, in A.M. Emon, R. Ahmed (Eds.), *The Oxford Handbook of Islamic Law*, Oxford, 2018, 779-818; L. Mezzetti, *Diritto islamico. Storia, fonti, istituzioni, società*, Turin, 2022, 105 ff.

in times of institutional transition. In the revolutionary phase, he ordered the complete stop of opposition newspapers, even after the approval of the Basic Organization Law (*Teşkilât-ı Esasiye Kanunu*) in January 1921, and did not hesitate to found a supporting newspaper, named *Cumhuriyet*. The Kurd movement invoking autonomy was stifled and subdued since the very beginning. On February 25 the TBMM unanimously approved a statute equaling the use of religion for political use and on March 4, with only 22 contrary votes, the Statute for the keeping of public order (*Takrir-i sükûn kanunu*), granting the Government the power of dissolving associations and closing down subversive press. The Kurd territory was subjected to a special administration, authorized to massive exchanges of population, according to the Reorganization Plan for the East (*Şark Islahat Plâni*). Freedom could not be an instrument in the hands of the reaction. Such measure paved the way to the inauguration of a true dictatorship, followed by the erection of monuments celebrating himself.

## 5. Economic rights

In the sphere of economic rights and of the economic structure of the new Turkish society the founding fathers of the Constitution, and in particular Kemal, had to apply thoughtful considerations. Atatürk had received a military education and made the army his home; however, he was always conscious that military strength is far from being the most important factor in the elevation of a nation. Although the ideological premises of the cultural platform of the revolutionary movement was never totally clear, the self-sufficiency of the Turkish economy in the post-war international environment was always perceived as a pivotal question and was doomed to find some constitutional codification. Foreign policy never had a real weight in the choice of a model of economic constitution. Even when it was necessary to lean towards the Soviet Union in order to strengthen the Turkish position in the difficult context of the peace negotiation and the preservation of territorial integrity, Kemal and his supporters never inclined towards communism, by far preferring social integration to class conflict. The two revolutions had to follow very different paths. Full modernization implied a pragmatic, non-rigid approach to the economy. The struggle against the European winners never implied the refusal of Western values and modernization. Since February 1920 Kemal was able to get the approval of the "National Covenant", also known as "Communitarian Covenant" (*Misak-ı Milli*), whose point 6 stated the importance of economic development in the nation-State and of the limitation of the indemnification to be paid to the winners<sup>26</sup>. The project of constitutional reform of September 1920, translated into the "Constitutional Act" of January 1921, also included several progressive reforms. The vindication of national self-sufficiency from both the financial and economic point of view, including the

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<sup>26</sup> In fact the Sèvres Treaty included some financial provisions (arts. 231-260) imposing heavy damages, the repayment of which should have been supervised by an Italian-French-British commission. However, the enormous public debt accumulated in the last 40 years should have been divided between the successor States. There was talk of "imperialist brigantage".

creation of a modern non-collective economy was often reiterated, from the speech in the TBMM of March 1, 1922 to the negotiation of Lausanne, up until the Izmir Congress of January 1923, which ended with an ambitious Economic Covenant, that envisaged the creation of companies and national banks and freedom of domestic commerce. The country had to abandon the semi-colonial state of the Ottoman Empire without massive indebtedment and excessive State intervention, by stirring all possible investments. Economic liberalism, social progressivism, administrative centralization and a certain measure of political authoritarianism had to be the ambitious recipe for a national rebirth.

The text of the 1924 Constitution obviously keeps into account the ideological premises shaped during the struggle for the consolidation of the nation-State. Freedom of private property, freedom of labor and freedom of incorporation were described in art. 70 as “natural rights of Turks”, on the same level with civil rights. Expropriation is specially regulated by art. 74: it is admitted only in the public interest, on condition of previous restoration, while any other personal or economic sacrifice must be imposed by law only in extraordinary circumstances. A global revision of the tax system is prescribed, including the elimination of contributions of any nature imposed by individuals or corporations other than the Government, all taxes or contributions paid in conformity with usage being tolerated only until a new statute is passed (arts. 84-85). The clear intent is to operate a total rationalization of public finance, but a foreign reader cannot escape the suspect that a possible afterthought might have been to reassure the European public opinion about both a full guarantee of foreign investments and the certainty of a well organized tax machinery.

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