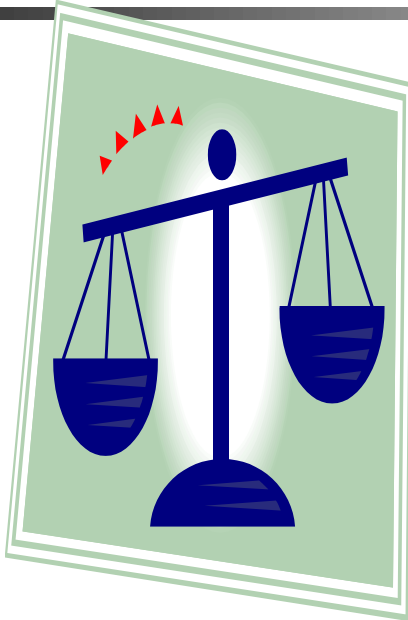


Fundamentals Of Law(IV)

Branches of Public Law Constitutional Law



Asst.Prof.Dr. Zeynep ŞİŞLİ




Branches of Public Law

- Constitutional Law
- Administrative Law
- Criminal Law
- Judicial Law (Law of Procedure)
- Public International Law



Constitutional Law regulates ;

1. *the organization, powers and frame of government,*
2. *the distribution of political and governmental authorities and functions,*
3. *the fundamental principles which regulate the relations of government and citizen,*
4. *and which prescribe generally the plan and method according to which public affairs of the nation are to be administered.*



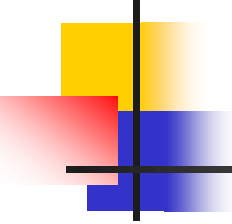
The Constitution is the fountainhead of public law and also juridical foundation for legislation in other fields of law

"Laws shall not be in conflict with the Constitution" and

"the provisions of the Constitution shall be the fundamental legal principles binding the legislative, executive and judicial organs,

administrative authorities and individuals",

as it is regulated by 11th Article of Constitution.



The Characteristics of Turkish Constitution;

- The Rule of Law
- Secularism
- Respect for Human Rights
- Democratic State
- National State principle
- Social State
- Judicial Review,

the principles of the state;

Republic of Turkey



The Rule of Law (the Supremacy of Law)

- “the rule of law” requires, a system where governmental agencies must operate within the frame work of law and their actions are subject to review by independent judicial authorities.
- Legal security of the individual is assured in the system of “the Rule of the Law”.



Secularism

- Absence of a state religion
- Freedom of religion(belief)
(Articles 24 and 69)
- The Office of Religious Affairs
[*Diyanet İşleri Başkanlığı*]
 - *Protection of “reform laws”
 - *Prohibition of the exploitation of religion and religious feelings for political benefit.



Respect for Human Rights

- Recognition of all basic human rights
- Suspension of the exercise of fundamental rights and freedoms is accepted in extraordinary conditions, but limited strictly.
(Even under “martial law” or “state of emergency”, the inviolability of a “core area” of human rights has been guaranteed by the Constitution)



Article 90 of the Constitution

provides that if a statutory provision is in conflict with an international treaty relating to fundamental rights and freedoms,

in other words "human rights",
the international text should prevail.



Democratic State

- Free and competitive elections based on universal suffrage
(Right to vote, Free elections, Secret ballot, Free expression of the opinion of the people)
- Multiparty system



National State principle

- Turkey is a unitary state
- In terms of organization and functions, the administration is a whole.
- The principle of unity and indivisibility of the administration.
- The units of local administration are subject to the control of the central administration(tutelage)



Social State principle

- **The concept of social state**

(required to take the necessary measures and establish the necessary structures to provide social rights, social security and social justice for all citizens to the extent of the sufficiency of economic conditions)

- **Principal social rights are recognized by the Constitution**



Judicial Review

- Judicial control of the legality of administrative acts (Art.125)
- Judicial control of the constitutionality of laws(Art.150-152)

- Action for Annulment

(The president of the Republic, parliamentary groups of the party in power and of the main opposition party, and a minimum of one-fifth of the total members of parliament)

- The Constitutional Objection

- Constitutional Complaint

Safeguards regulated in Constitution for "the rule of law"

- **Principles relating to offences and penalties (Art.38)**
 - Legality of criminal offences and penalties
 - Non retroactivity of criminal law in the case of negative regulation
- **Legal judicial process(Art.37) "Natural judge principle"**

No one can be put to trial before a court other than the one previously determined by law.
- **Freedom to claim rights (Art. 36)**

Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through lawful means and procedures. No court shall refuse to hear a case within its jurisdiction.
- **Independence of Judiciary(Art.138)**

Constitutional Government,
is a system in which political power is shared and reciprocal controls are legally established among different branches of government, in other words,

a system of "checks and balances".

"Constitutional Democracy", in addition to the these qualities, must be based on effective and wide spread political participation by the people.



Turkish Constitution has regulated three powers, namely;

- The legislative power (the Grand National Assembly of Turkey)
- The executive power (the President of the Republic and the Council of Ministers)
- The Judicial Power (Independent Courts),

as all democratic states.

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