RECEPTION AND APPLICATION IN TURKEY

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I. CODIFICATION AND TYPES OF CODIFICATION

1. CODIFICATION IN GENERAL

Although the purpose of this study is reception, it is impossible to cover the concept of reception before clarifying what "codification" is. Codification can be defined as "the process of collecting and arranging systematically, usually by subject, the law of country, or the rules and regulations covering a particular area or subject of law or forcible manner"[1]. This definition is the only one of the others. But they are generally explained on the same bases.

Codification has two meanings one is "a particular method of lawmaking", the other is "code" while the former means method, the later means result.

2. MOTIVES FOR CODIFICATION

By virtue of aims, codification can be divided into two sub-categories; they are the ones with the pure technical aims, i.e., static codifications and the ones with the alterative aims, i.e., dynamic codifications.

2.1. Static Codifications

These codifications do not aim to alter social, political, cultural and economic structure of the country. It is anxious only about clarifying the law which is in practice and about safety in law. Common law system codifications basically bear the characteristic of static codifications. objectives of static codifications can be mentioned

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1 ADAL, Erhan, Fundamentals of Private Law, Fourth Edition, İstanbul, 1994, P.458.

as follow:

aa. Practical needs for safely compiling law that is in practice. United States codes can be mentioned as an example.

bb. Codifications on the areas which have practical importance on commerce. Codification of companies and commercial papers in US are some examples.

cc. Codification aiming at unification in practice in federal states. Uniform Federal Laws are the examples of such codifications.

dd. Codification aiming at puting into ease the reception of common law in the other country. Such as UK./Indian laws.[2]

2.2. Dynamic Codifications

The target of these codifications are revolution or alteration in political, social and economic structure of a society. Moreover it can be used as a tool for unification of both law and culture in different countries developing inter-governmental co-operation.

2.2.1. Codifications Aiming to Alter the Regime

These codifications are visible both in continental Europe and some Asian countries, some of which were just after a revolution. "Code Civil" Which was put into effect just after French Revolution and the laws that were put into effect just after the Russian 1917 revolution are the striking examples of such codifications.[3] These codifications may usually be rigid on the provisions laid down because they intend to spread their own idea of system.

2.2.2. Codifications Aiming to Alter Social and Economic Structure

These codifications are suitable for all countries. Such codifications require insistent and persistent application of the provisions. The application is considered as a tool to change the system. Japanese and Turkish codification studies are mainly based

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2 ÖZSUNAY, Ergun (2), Medeni Hukuka Giriş, 5. Baskı, İstanbul, 1986, P.103.

3 ÖZSUNAY(2), op. cit. at 103.

on this type of codification.

2.2.3. Codifications Aiming to International Integrations

These codifications have recently been born. Globalisation or multi-national integration is the main purpose of such codifications. Classical codifications had always had national character, whereas, modern or post-modern ones based on multi-cultural, multi-national feature. European Union and GATT codifications are some examples of this category.

Another reason why such codifications took place is that; many countries face similar social and political problems and consequently have adopted similar legal solutions. Some areas of the law, such as intellectual property and human rights, are particularly concerned with developing laws which are valid internationally. With more international business and travel and a growing awareness that many socio-economic and environment problems need global solutions, the future of the world of law appears to be one of internationalization[4].

3. TYPES OF CODIFICATION

Codifications can be divided into three main categories namely; casuistic, abstract and abstract casuistic methods.

3.1. Casuistic Method

In such codifications every single gaps are intended to be filled. Legislator tries to arrange all relations of everyday life. In order to prevent arbitrariness these codifications do not endowe judges with the right of discretion.

Anxiety on arranging every single relation brings about a huge articled code. A clear example for such code is the General Land Law of Prussian states (ALR) which is composed of 17.000 passages. Some parts of Medjelle is another example of casuistic codifications in the Turkish history. As casuistic codes quickly become old, they are replaced with abstract codifications.

3.2. Abstract Method

In such codifications every single relation is not intended to be put into the provisions of the law. Legislator deals only with general

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4 POWELL, Richard, Law Today, London, 1993, P.121.

principles. Then, similar disputes are solved accordingly.

Examples of such codes are "Code Civil" in France, Austrian civil law "ABGB" also Swiss and Turkish civil codes are in the same category with the difference of discretionary power of judges.

3.3. Abstract Casuistic Method

This method does not appear a lot. German civil code "BGB" is an example of this method. In such codifications every single relation is intended to be put into the provisions of law. Through the casuistic method legislator intends to solve all disputes that can be seen by means of detailed law. On the other hand, such codes intends to solve as much concrete problems or disputes as possible by means of abstract provisions.

The method provides the code with a long life. In addition, these codes are the most helpful codes for the judges in practice, because the code is the first source to look at. So, in most cases, judges can decide according to the article in the code, which also results in decisional parallelism. These parallel decisions bring out continuos case jurisprudence that results in real justice for all.

II. RECEPTION

1. RECEPTION IN GENERAL

Codification, as it had been mentioned before, has two meanings namely one is the particular method of lawmaking, and the other is the code itself. Reception is also a method of codification in the sense of method for lawmaking. Legislator either creates the law by himself or recepts it from another country.

Definition of the reception is that a certain legal phenomenon developed in a given legal climate is put into effect in another legal climate.[5]

There are three receptionist movements in the history of law. The first and the most important one is the reception of Roman Law in Europe. The second one is the reception of "Code Civil" in some places in the world. The last one is the reception of European law in some Asian and African countries.

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5 RHEINSTEIN, Max(2), Types of Reception, İstanbul, 1956, P.31.

The reception should clearly be divided into sub-titles, otherwise, titles can not meet the concepts included.

2. REASONS FOR RECEPTION

Under this title concept will be covered by virtue of deriving forces or the facts which cause to reception.

2.1. Voluntary Reception

In such receptions deriving forces of reception are internal or voluntary facts. If reception is performed voluntarily and consciously, it means that the reception is a voluntary reception or a real reception.

This kind of reception can be seen in two ways. One is the reception of customary law, which took place in the reception of Roman Law into Germany. The second is the reception of a foreign law via legislation, Which took place in the reception of Swiss Law in Turkey.[6]

2.2. Imposed Reception

In such receptions deriving forces for reception are not internal and voluntary facts, they are external and impositional. Legal phenomenon of a legal climate are consciously introduced into a different one but without voluntary adoption. In other words, the imposition of a conqueror or otherwise dependent by a dominant group may not be called reception. "Imposition" as we might call this situation, can occur in various ways.

This type of reception can basically be imposed upon conquest by conqueror, as in the example of upon the Napoleonic conquest of the Netherlands. Another main area of implementing such reception is colonism. Colonist countries usually impose their law upon colonized countries.

2.3. Transplantation of Legal Phenomenon

In the striking sense of the word one should finally distinguish the situation which might be called transplantation of a legal phenomenon, i.e. the situation in which a group of migrants take

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6 ÖZSUNAY, Ergun(1), Karşılaştırmalı Hukuka Giriş, İstanbul, 1976, P.271.

their old law from the former to the new surroundings. For instance what happened in the American colonies and the later united states thus constitutes a combination of a transplantation of one kind of English law, and the reception of another.

Imposition and transplantation thus constitute phenomena which produce effects similar to those of reception, but in their inception they are different. The term "reception" should preferably be preserved to those situations in which legal phenomena of a legal climate are consciously adopted into another legal climate[7].

3. TYPES OF RECEPTION

A good many variations of receptions may be monitored, but systematically they may be divided into two main groups. The first is total receptions and the second is partial receptions. The later may also be sub-divided into three headings; structural receptions, conceptual receptions, and eclectic receptions.

3.1. Total Receptions

It appears as the adoption of a foreign code in toto. Total reception of "Code Civil" in Benelux countries, Romania and some American countries and that of Swiss civil law in Turkey are the examples of this type.

Total receptions are usually seen due to the political and extra-ordinary reasons. The reception of Swiss Civil Law in Turkey was because of revolutions aiming to modernize and secularize the Turkish Republic [8].

Total receptions affect almost all structure of everyday life. In general, reception of a foreign law brings about no problem to the countries having parallel cultural backgrounds. On the contrary, as in the example of Turkey and Japan, reception of foreign law, by the countries which do not have parallel custom in law, effects everyday life deeply and completely[9]. Because Law is a system of reasons, a set of deductions from principles of ethics, morals, or justice[10].

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7 RHEINSTEIN(2), op. cit. at 34.

8 ÖZSUNAY(1), op. cit. at 273.

9 RHEINSTEIN, Max(1),Einfuhrung in die Rechtsvergleichung, 1970, P.128.

10 LIBERMAN/ SIEDEL, The Legal Environment of Businsss, Florida, 1989, P. 5.

3.2.Partial Reception

3.2.1. Structural Receptions

In such codifications systematic and conceptual structures are adopted whereas, contents are adapted to fit the requirements of the country. Reception of "Code Civil" in Spain, Portugal and some Latin American states are some examples of this type.

3.2.2. Conceptual Receptions

In this type of codifications only one concept constitutes the subject of reception. To illustrate, German limited company law was adopted by some European countries. Through the conceptual receptions the concept may either be adapted or adopted.

3.2.3. Eclectic Receptions

In this case a foreign law is neither totally nor structurally adopted. Some details of a foreign law are collected together and adopted. This is also called as synthetic reception.

These types are basic ones. Hybrid receptions can possibly occur in some receptions[11].

4. GENERAL PROBLEMS OF RECEPTION

Whenever the system of laws of one country is taken over by another, especially appearing in the form of a code, tree questions emerge;

.How does it fit into an entirely different background?

.How is the linguistic differences overcome by the translator?

.How do the local courts succeed in interpreting and applying a foreign law?[12]

These are general categories of problems, but problems can not be limited to only these three; some special problems may possibly be seen as to the reception performed in different countries.

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11 ÖZSUNAY(1), op. cit. at 276.

12 LIPSTEIN, K., The Reception of Foreign Law in Turkey, 1956, P.12.

4.1. How Does it Fit into an Entirely Different Background?

Especially in total receptions many problems can arise in the countries having different cultural structures. The first best policy can be a structural reception. Because, in such codifications, the law is adapted to the country. It should also be taken into consideration whether it is a static or dynamic codification. If it is a static codification and even voluntary codification anxiety about "How does it fit to the country?" can be taken into consideration. In contrast, if it is a dynamic codification and even imposed codification this argument turns out to be meaningless because the law is intentionally adopted. In dynamic codifications the problem is never how the law fits to the country, instead, the problem is how people can be forced to espouse the law.

Generally accepted point of view is that laws will never create morals and customs, but they will always follow morals and customs and habits, and that the role of laws will be that of setting principles[13]. Complete reception of foreign law cannot take place where it is accompanied by the extinction of the national character of the receiving country[14].Reception will only be possible on condition that societies are not sharply different to each other[15].

4.2. How is the Linguistic Differences Overcome by the Translator?

Apart from translators' translation capability, he should also possess an excellent background in the source language into which he is translating activity will be influenced by the translator attitudes.

Every translator experiences certain difficulties during the process of translation. The modern translation science lists four types.

aa. Language-specific translation difficulties; difficulties that can be put down to the languages involved, and in particular to the direction of the translation.

bb. Translator-specific difficulties; difficulties that can be put down to the skill of the translator and his mastery in

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13 FINDIKOĞLU, Z. F., Special Aspects of the Turkish Reception of Law, Istanbul, 1956, P.163.

14 AYİTER, F., The Interpretation of a National System of Laws Received From Abroad, Istanbul, 1956, P.42.

15 UMUR, Ziya, Türk Hukuk Tarihi Dersleri, 1. Cilt, Istanbul, 1987, P.59.

disposing of the source and receptor languages.

cc. Text-type-specific difficulties; difficulties that can be put down to the type of text, e.g. technical translations (technical in the sense of dealing with a particular art, science, profession, including law), literary translations.

dd. Difficulties specific to the individual text; i.e. difficulties that can be put down to the author's mode of expression as regards content and style[16].

4.3. How Do the Local Courts Succeed in Interpreting and Applying a Foreign Law?

This is an important point in codification. Especially in the total receptions between different law families, a great many problems can raise. General principles of the receptor changes, the social and moral values of a society has to be re-appraised by the courts.[17] Total reception from another law family empties the cumulation of ways in which local problems are solved, level of informational cumulation is also falls down. On the other hand, in structural receptions the level of information to which has been reached in the history is saved. It is only problematic areas which are re-arranged to operate, sufficiently.

If judges are instructed to show how the law is to be applied, interpretation problems can be solved. But in the rule of law, it is impossible for anyone to instruct judges on the case. So, this problem can be solved on the law level. While passing from one law family to another law family, abstract laws bring about interpretation problems. Solution can either be casuistic method or abstract casuistic method. As it is known that casuistic laws are sentenced to death in the birth day, the solution can be abstract casuistic method. So that, judges rarely face with interpretation problems. Otherwise, old customs and concepts derived therefrom may imperceptibly influence the interpretation of perfectly straightforward provisions of the code[18].

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16 WEISFLOGF, W. E., Problems of Legal Transaliton, Publications of Civil Institute of Comparative Law, 12th International Congress of Companative Law, 1987, Zürich, P. 179-218. / K. LIPSTEIN, op. cit. at 12 / ADAL, op. cit. at 37-39.

17 LIPSTEIN, op. cit. at 15.

18 Ibid.

III. HISTORICAL ASPECT OF TURKISH RECEPTION

1. Meanings of Reception in the Turkish History

In the Turkish history, the history before the Ottoman is omitted in this study, reception has basically two meanings; the first is renewal in Ottoman and, the other is revolution in Turkish Republic. Western law has been in process of being received into Turkey however imperfectly or partially for a period of at least one hundred years[19].

1.1. Ottoman Empire; Renewal

1.1.1. General Circumstances

As a theocratic state Ottoman Empire had a religious legal system. There was not, in fact, renewal movements until Tanzimat. Prior to Tanzimat codification had been in the meaning of "code" , as we had mentioned at the very begining of this study; result, code itself.

Afterwards it gained another meaning, that is to say, renewal. The adoption of foreign codes in Ottoman Empire and in all countries of the near east was due both to the activities of the Western power and the wishes of the countries concerned[20]. There was a shar'i law which is based on sharia, moreover, customary law was created by the power given by sharia, furthermore, there was a law applied for minorities and for foreigners living in the country, this law had been created due to the capitulation, for this reason it can be called as Capitulation Law and finally secular law adapted to the country via translation[21]. For the reasons mentioned, Ottoman Empire has poignantly felt the necessity for the establishment of a well settled, universally accepted and universally applicable legal system[22]. For this reason it was Commercial Law in which the first reception of a

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19 HAMSON, C.J., Preliminary Report, Istanbul, 1955, P.7.

20 ÖZSUNAY, Ergun(3), The Total Reception of Foreign Codes in Turkey, 1970, P.804.

21 KAŞIKÇI, Osman(2), Mecelle'nin Hazırlanışı, Özellikleri ve Üzerinde Yapılan Değişiklik Çalışmaları, Basılmamış Doktora Tezi, İstanbul, 1995, P.81.

22 TİMUR, H.,The Place of Islamic Law in Turkish Law Reform, İstanbul, 1956, P.75.

foreign law was able to be given place in Turkey; Kanunname-i Ticaret, 1850[23]. This clutter, at least, had to be solved on the civil law because it was the fundamental law[24].

1.1.2. Argument on the Sources and Conservative Solution

Almost everyone had agreed on the necessity of, at least, civil law. Yet, these persons divided into two groups by virtue of the fact how the law has to be created. The first group supported the idea of reception from a western country. Ali Pasha was leading to this group. They claimed that French civil law had to be translated into Turkish. Reception of "Code Civil" could get over the problem that country facing with. In contrast, the other group leaded by A. Cevdet Pasha was opposite to this idea. They asserted that alterating the basic law would constitute destruction... It was impossible to adopt a western law because there was neither religional and cultural nor historical unification between Ottoman and Europe.

1.1.3. Commissions and Medjelle

The argument was decided in favour of Cevdet Pasha. A commission was set up and he was appointed to be the head of the commission. This commission started to work in 1868 and activities of the commission were suspended or were given a vacation in 1876. The planned activity of the commission was not complated up, in any case, there appeard a code under this circumstances. The code was named to be "Medjelle"

Medjelle represents the earliest example of the reduction of Moslem law to the form of a modern legislative enactment[25].The reader may diagnose the application of the case law casuistic system in medjelle [26]. whereas, it also includes abstract provisions of the casuitic solutions.

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23 POROY, Reha, Son Elli Yılda Türkiye'de Kara Ticareti Hukuku Alanındaki Kanunlaştırma Hareketlerinin Genel Teori Açısından Değerlendirilmesi, 50.Yıl Armağanı, İstanbul, 1973, P 587.

24 KAŞIKÇI(2), op. cit. at 81.

25 ÖZSUNAY(3), op. cit. at 805.

26 The basic difference between two case law system is, the Anglo-American case system developed from court dicisions, whereas the Medjelle itself, is a code and does not rely on jurisprudence. ADAL, op. cit. at 36.

As it has clear and brief expressions; Medjelle can be considered to be successful law by virtue of the language. However, technical law terms keep it away from public. To some extent it imitated western technique. It tended to be a comprehensive restatement of the law except for family law and the law of inheritance[27]. These exceptions came out due to the characteristic of İslamic law[28]

Medjelle was tried to be up-dated by commissions. It could bring out almost nothing, but 60+30 articles. These articles were not enacted,so, remained to be drafts[29]. The reason why this commission did not work properly is that; there was a huge bigotry on the sects, and independent judgments on the law was not functioned.

By means of drafts following medjelle, to some extent, practice of formal sect was able to got rid of, this practice had strongly been exercised. Instead of adopting the law offered by western civilization, the law was changed by other sects' provisions.

Its pure religional bases, caused medjelle impossible to be used in the contemporary Turkish Republic. The idea of adapting the law to contemporary conditions is completely foreign to the system, one can not hope to adapt the law to the needs of a modern society[30].This view on the Islamic law was shared by the new Republic as well.On the contrary, it was only recently, when medjelle was abolished in Israel.

1.2. Turkish Republic; Revolution.

As a secular country Turkish Republic had to have a secular law. It mustn't discriminate on the basis of religion. For this reason ministry of justice set up two committees on civil law. These committees were instructed to use religious institutions, foreign laws were allowed to be used as a secondary source on the study. This instruction made impossible to draft a law.

The attempts of Ottoman was reversed in the new republic. The attempts took place in Ottoman had intended to up-date firstly the law and then the government. Seeing that it was impossible to be

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27 ÖZSUNAY(3), op. cit. at 805.

28 See for details, KAŞIKÇI, Osman(1), İslam ve Osmanlı Hukukunda Mecelle, İstanbul, 1997, P 80.

29 Ibid, P 353 et seq.

30 DAVID, René, Major legal Systems in the World Today, Condon, 1968, P. 428.

accomplished, new republic acted in contrast with the Ottoman; First of all the government was secularized then law was dealt with[31].

No commission succeeded in drafting a code. As a result commissions were disintegrated and a foreign law was investigated to be adopted. Commissions were working insufficiently, and were still under the influence of Islamic law. They failed to fit the revolutionist ideology.

2. Reception of Swiss Civil Code in Turkey

2.1. General Circumstances

Since the time required for the preparation of a new national civil code was limited, there remained for the Turkish jurists, desirous of the great codes of the century[32].

Atatürk, himself, strongly interested in this law. He thought this law as a tool for carrying Turkish nation to the western civilization[33]. A special committee was set up in order to translate the Swiss Civil Code from French version into Turkish. While translating, committee had made some changes in the code, because it did not suit to Turkish system as a whole. Spirit of the code was saved. Both civil code and obligation code were translated into Turkish. This study was carried and completed perfectly under supervision of Atatürk.

Great leaders, as in the example of Atatürk, rarely devoted himself to such outputs in the area of law, this is the fact in the history. At give examples; Emperor Justinianus, in drafting "Corpus Juris Civilis" and Napoleon in drafting "Code Napoleon" which is known as "full of spirit of French revolution". Napoleon succeeded in such a result by means of attending into the study with great energy and effort. Justinianus, as another example, was great leader who was perfect at selecting the person whom. he studied with. He selected Tribonianus, who had a wide vision on law as well as the other social areas, moreover, he was clever and witty. Justinianus

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31 KAŞIKÇI(2), op. cit. at 228.

32 İZVEREN, Adil, The Reception of the Swiss Civil Code in Turkey and the Fundamental Problems Arising in the Practice of Turkish Courts out of This Reception of a Foreign Civil Law, Istanbul, 1956, P.172.

33 SUNGURBEY, İsmet, Medeni Yasa Tasarısında Yöntem ve İçeriğe İlişkin Temel Yanılgılar, Yasa Hukuk Dergisi, C.8, S.12, Aralık 1985, P.1663.

appointed him to be the chairman of codification board. These are all true for Atatürk who appointed M. Esad BOZKURT as a minister of Justice, the minister which brought in the Swiss Civil Code[34].

2.2. Alternatives and Selection of Swiss Civil Code

It was possible to select among French "Code Civil", ABGB of Austria, Codice Civile of Italy and the German civil code BGB at the time of studies. ABGB and Codice Civile were the first to be taken out from the list. Main argument was carried on BGB and Code Civil.

Although Code Civil was an old law, it could still be adopted because it was an abstract law. Abstract laws require a long time to become old fashioned. But its spirit was a bit old this is the reason why it was rejected.

For the BGB of Germany, on the other hand, it is different. It was also a new law as much as Swiss Law. Because no law becomes old in 11 years. Abstract casuistic method supplies a long life for BGB. It is also individualist and liberalist law, yet, it is considered a bit conservative. Its support on the freedom is another advantage. One of its disadvantage is that, it has a clear and neat language, but very scientific, Every term has a fix and technical meaning. An ordinary people can hardly understand it. This feature can also be considered as an advantage because every science requires a terminology. BGB has another advantage; in total reception, casuistic method supplies judge with ease; the code itself is the first source for judges to refer. So, by means of casuistic method a lot of provisions can be found in the code and abstract method of the code helps judges with its abstract solutions to settle the dispute easily. Moreover, German law has a huge background on both doctrine and case jurisprudence. Furthermore, in total receptions especially in reception between different law families casuistic method is the best one due to the fact that interpretation does not bring about resurrection of the former law. This is immensely important especially for revolutionist receptions. Yet, it is known that casuistic laws quickly become old, abstract method balances this disadvantage.

Swiss civil code has a national character with language of everyday life. Its articles contain short and comprehensive principles along with its individualist character. Also it is open to renewal. On the other hand there is almost nothing in common between Turkish

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34 Ibid. P 1666.

and Swiss society. For this reason, it is not a reception, instead, is a copying action due to the requirement of "Revolution".If an adaptation process had not been continuing since mid-XIX th century, it (application of foreign law) would have been impossible . In any case, Turkish nation had a great difficulty, in accepting this stranger law[35].

2.3. Characteristics of Turkish Civil Code

Although Turkish Civil Code was Put into effect as a total reception of Swiss Civil Code, in its task of interpreting and applying the code; Turkish practice has not followed slavishly the Swiss Court or Swiss legal doctrine. Instead, in a number of instances, the Turkish Court of Cassation has disagreed both[36].

In practice Turkish Civil Law had a unique character. As a spiritual approach its character can be described as : Revolutionist, Secularist, Democratic, Individualist, Liberalistic, Populist and it also has a social character[37].

IV. CONCLUSION

Turkish reception has a special character among all receptions. It is a result and an integrated part of the Turkish Revolution which took place in the new Turkish Republic. The existing laws were not complying with its spirit. In the new system it was impossible to continue with the religion based law.

Ottoman attempts indicated that studies on drafting a law got stucked by the sect bigotry, and no efficient study was accomplished. On the other hand, new republic did not have time to waste, there was a hurry to complate up the chain of revolutions.

It was impossible to draft our own law basically due to two reasons. There was not much enough time to spend studying on and, secondly country was lacking of experts to draft the law in the spirit of revolutionist philosophy. Although the experts supporting revolutions were graduated from western universities, they were still under the influence of Islamic law. Under this circumstences it was

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35 UMUR, op. cit. at 59.

36 For the examples, see, ARIK, K.Fikret, The Principal Differences Between Swiss Practice in Interpreting the Civil Code, Istanbul, 1956, P.144.

37 For the detailes, see, ÖZSUNAY(2), op. cit. at 157.

considered to be impossible to draft our law in Turkey, and so, reception was the only solution for the revolutionist leaders.

At that time, it was possible to select among "Code Civil" of France, "Codice Civile" of Italy, ABGB of Austria, German Civil Code BGB and Swiss Civil Code. ABGB and "Codice Civile" was the first to be taken out from the list. Main argument carried on BGB, "Code Civil" and Swiss code.

There had been attempts to adopt "Code Civil". Since the time before Medjelle, French law was a strong alternative. But its spirit was old this is the reason why it was rejected.

Swiss law had a strong national character, in other words, it had been drafted only for the Swiss people. Switzerland had a cantonal structure which was different from Turkey's uniform structure. In addition to its cantonal structure, Swiss law had not had an advanced or deep background on neither doctrine nor case jurisprudence. Both doctrine and case jurisprudence have vital importance in the total receptions, indeed especially in the receptions by means of which a country passes from a law family to another law family.

Another factor affecting the success of the reception is; what the type of code adopted is. This is immenselly important particularly in the reception of code belonging to another law family. In such codifications casuistic laws make more success, because the code is the first source for the judges to consider or look at in the case. In contrast, abstract method keeps the law in effect or maintains its success in the long run. German Civil Code, BGB, was the only law that gathers together these two opposite characters succesfully. BGB was also a new law as Swiss law. Because no law becomes old in 11 years. Abstract casuistic method supplies a long life for BGB. In total reception, casuistic method supplies judge with ease. The code itself is the first source for judges to refer. So, by means of casuistic method a lot of provisions can be found in the code and abstract method of the code helps judges with its abstract solutions to settle the dispute easily. Moreover German law has a huge background on both doctrine and case jurisprudence. Furthermore in total receptions particularly in reception between different law families casuistic code is the best choice, because interpretation does not bring about resurrection of the former law. This is immensely important especially for revolutionist receptions. Yet, it is known that casuistic laws quickly become old, abstract method can balance this disadvantage.

It is also individualist and liberalist law. Its support on the freedom is another advantage. One of its disadvantage is that, it has a clear and neat language, but very scientific. Every term has a fix and technical meaning. An ordinary people can hardly understand it. This feature can also be considered as an advantage because every science requires a terminology. Law must be different from poem.

The main reason to adopt Swiss law was M.Esat BOZKURT. He was graduated from a Swiss law faculty. As a revolutionist Minister of Justice he insisted on the Swiss law as if imposing on the other alternatives. If a pure scientific approach is made, reception of Swiss law does not base on the perfect reasons.

Althoug Swiss Civil Code had not been the best choice, Turkish Civil Law did not develop parallel to Swiss Law. Legal Doctrine and Court of Cassation developed the law through their own view, which adapted the code to the Turkish people. This successful background resulted in a different and independent special civil law for 75 years old Turkish Republic.

As it is known that Turkish Civil Law has been morally accepted. From now on there is only one thing to be done, that is to say; we should advance our law until reaching to the ideal level. We should be anxious about treating wrong goings in practice, and also about how we can arrange our law to meet our all needs that are deriven from the nature of mankind. Because those who want to make a revolution, should comply with the requirements of feature of human. Otherwise actions, in the long or short run, can not make a success and results in a chaos or return.

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