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# The Spirit of the Police Laws in Turkey: Legislative Discourses, Instruments and Mentality

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The legislation which regulates police practices gives clues about the nature of the limits and powers defined by these laws, and the functioning of the policing system in a country. Furthermore, it helps us comprehend what kind of a system the state strives to establish via policing, and what kind of a relationship the state has with its citizens. Following this perspective, the present report analyzes the Turkish laws concerning the police force and the discourses inherent in these laws, with a view to grasping the political strategies included therein.

Undoubtedly, the state's security mentality and its underlying values need to be analyzed not only through the law texts, but also through the implementation of these laws - that is, through policing practices, judiciary procedures, legal resolutions, courtrooms, and lawsuits. However, such an extensive analysis was outside the scope of this report, with the exception of situations in which an analysis of legal regulations allow us to get a better grasp of the meaning of certain laws and relevant amendments. As such, the main elements of the police legislation highlighted here need to be seen as a first step towards grasping the mentality prevalent in the Turkish policing.

The report aims to reveal the basic codes of this mentality by analyzing certain police laws, and the justifications for issuing or amending these laws in specific situations. In



this respect, the report can be viewed as a preliminary work for comprehensive and in-depth studies in the future.<sup>1</sup>

The entire body of law which directly or indirectly concerns police practices, powers, the limits of these powers, and the structure of the police force is too extensive to be assessed in the present report. Accordingly, the report focuses on the laws and regulations which define the authorities and responsibilities of the police, and regulate the profession of policing. These laws and regulations are the following:

**Law on Police Duties and Entitlements (PVSK) and Laws on Criminal Procedure (Law on Criminal Procedure, CMK [2004]; previously Law on Criminal Procedure, CMUK [1929])** constitute the main body of the laws analyzed in the report. As is known, **PVSK** concerns the powers and duties of the police force, whereas **CMUK** and **CMK** lay out the rules that the police officers must abide by during the prosecutions of suspects and defendants, in which they intervene as active agents. Aside from PVSK, CMUK and CMK, the following legislation is also analyzed in the report:

- **Anti-Terror Law** dated 12.04.1991 and numbered 3713 (TMK)

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<sup>1</sup> Although the report focuses on the policing legislation of the Republican Era, it must be indicated that the current police force is a continuation of the Ottoman police established in 1845 and renamed in 1909 as General Directorate of Police (Emniyet-i Umumiye Müdürlüğü). Until the enactment of Law on Police Force no. 2049 dated 1932, Law on Police Duties and Entitlements no. 2559 dated 1934, and Law on Police Organization no. 3201 dated 1937, the structure of the Ottoman police organization and its laws (Police Codes of 1907 and 1913) remained valid. That is, both institutionally and legally, the current police force is the heir of Ottoman police. Metin, İsmail and Fethullah Eraslan, *Türkiye’de Polis ve Kişi Hakları*, İletişim Cep Üniversitesi, İstanbul, 1994, pp. 10-12; Kardaş, Ümit, *“Türkiye’de Polis ve Toplumsal Denetim,”* Birikim, no. 213, 2007.



- **Regulation on Special Forces** (Official Gazette, dated 11.12.1986, numbered 19308)
- **Regulation on Riot Police** (Official Gazette, 30.12.1982, numbered 17914)
- **Law on Misdemeanors** dated 31.03.2004 and numbered 5326
- **Police Disciplinary Statute** (Official Gazette, 24.04.1979, numbered 16618)

During the examination of this basic body of law, other codes were also analyzed when required. They are the following:

- **Regulation on Municipal Community Police Force** (Official Gazette, 07.08.1971, numbered 13919)
- **Law on Law Enforcement Organization** dated 04.06.1937 numbered 3201
- **Regulation on Criminal and Preemptive Searches** (Official Gazette, 01.06.2005, numbered 25832)
- **Regulation on Apprehension, Detention and Statement Taking** (Official Gazette, 01.06.2005, numbered 25832)
- **Law on the Prevention of Certain Actions Effecting Public Order** dated 08.09.1971 numbered 1481
- **Law on the Prosecution of Public Officials and Other Public Employees** dated 02.12.1999 numbered 4483

The report is a discussion of the quality of policing in Turkey as is laid out by laws and the authority and powers given to the police. Moreover, it aims to uncover the dynamics that extend or restrict police authorities through regulations. Looking at police laws in this manner unearths clues – albeit at the level of discourse – about the mentality of policing, the elements of the conceptualizations of “**crime**,” “**criminal**,” “**order**” and



“**security**” within the police force, and the grounds that legitimize police authority. In some cases, reasoning and debates around the adoption or amendment of these laws were also considered. The second section of the report includes a discussion of the understanding of security and order within the legislation under focus, and the founding principles of policing.

The report “**The Spirit of the Police Laws in Turkey: Legislative Discourses, Instruments and Mentality**” focuses on the changes and transformations of the police legislation from the founding of the Republic to date, and shows that the legislation underwent important changes. With these changes, the authority, scope of power and powers of the police that were defined in the early years of the Republic were extended. The attitudes and ideologies of the actors in charge of the state were as influential as the societal, economic and political transformations that Turkey underwent. These ideologies were reflected in the language and discourse of the law as well as the tools defined thereby. In short, the police legislation and therefore the powers and authorities of the police inevitably changed throughout the years within the framework of political, social and economic relations.

Below, you will find a summary of the evolution of the legal inventory in focus throughout the years, and a summary of its analysis.

### **The Legal Inventory of the Police Organization and Its Historical Evolution**

PVSK was adopted in 1934, during the early Republican period, and within the context of a desire to establish a nation-state, and concomitantly to draw the boundaries of desired citizenry. The powers and authorities given to the police in the law are reflective of a



mentality that grants the police an important role towards the establishment of a new societal order. In the first version of the law, the significance placed on the definition of police powers, and especially the establishment of security/order, the protection of morality, and the guarantee of the **“security and well-being of the state”** is striking. The police task of implementing laws comes thereafter. As discussed in more detail below, among the *raison d’êtres* of the police, ensuring the social order and state security remain predominant throughout the years – and even to this day.

The 1960s and ‘70s were decades during which, on the one hand, Turkey had witnessed a country-wide industrialization, the increase in urban migration, mobilization of the working class and mass movements, and on the other hand, the public had still experienced the traces of the 1960 and 1971 coups. All this change has affected the definitions of **“state security,” “public order”** and **“threat”** determined by actors in control of the state, and therefore transformed police regulation. In the legislation under study, the most important attribute of the period is the re-structuring of police powers and responsibilities in light of these societal changes. In this context, alongside amendments to the PVSK, the establishment of **Municipal Community Police** units, and the adoption of the **Law on the Prevention of Certain Actions Effecting Public Order** are important. These laws have enabled the police to have considerable authority over the control and suppression of social movements perceived as **“threats”** at the time, and empowered police intervention in public sphere through increased authority. For instance, opening universities up to police monitoring has become possible through changes that took place in this period. Additionally, in the 1970s, parallel to the state's changing perception of **“social threat,”** the first steps were taken towards the expansion



and militarization of the police organization. Lastly, during this period, in line with the **“state interests,”** police interventions were encouraged and even awarded. Another observation one can make is that during this period, the changes to and transformations of the police legislation were increasingly restrictive of individual rights and liberties.

The period following the 1980 coup was accompanied by the first steps taken to transition to a market economy that promoted precarious work, large scale suppression and repression of civil society organizations, unions and societal opposition, as well as the intensification of the armed conflict in the Kurdish regions of Turkey. This new period also included the increase in police powers and authorities through legal amendments, the expansion of the police force’s scope of authority, and the strengthening of its capacity. In aftermath of the coup, the Municipal Community Police units were re-structured as the Riot Police, with a similar *raison d’être*, a military structure and as units that were equipped with high technology weapons. The primary task of the Riot Police is to intervene in meetings and demonstrations, in other words, in social incidents (the quality of the intervention, and the events that will be intervened are to be determined by the **“psychological”** and **“ideological”** classifications be made by the units). The legal changes in this period expand the police authority in order to suppress political opposition and to bring public life under extensive control. This process has been supported by the tendency to increase the discretionary power of the police and legal protection mechanisms provided to the police. On the other hand, restrictions on the use of force by the police have remained quite limited. The impact of legal and institutional changes to the organization during this period lasted until the 2000s, and arguably, to date.



The Kurdish issue played an equally important role in the transformation of the police in the 1980s. Special Forces Units, which were set up in 1983 to combat **“terrorist organizations,”** appeared to be one of the most important elements of the police force that was restructured with an eye to the Kurdish question in the 1980s, and the **“state of emergency policing.”** The units were equipped with special powers and tools to be effective in **“the fight against terrorism,”** and this has resulted in extra-legal and extra-judicial actions by the units in especially the 1990s, but also in the first half of the 2000s. It should also be kept in mind that until 2002, there was no official regulation pertaining to the special forces that was open to public.

In the 1990s, especially within the framework of changes to criminal justice procedures, EU accession process played an important role. Steps were taken to improve the protection of the rights of suspect and accused in CMUK. On the other hand, the **“state of emergency”** policing whose foundations were laid in the 1980s, especially in the context of the Kurdish issue, was endowed with an important legal text with the adoption of the **Anti-Terror Law** in 1991. **TMK** was adopted predominantly to ensure state security against “threats of terrorism,” and is striking in terms of the important restrictions it placed on individual rights and freedoms.

In the 2000s, a new emphasis was placed on combating crime in the cities, and **“pre-crime”** police strategies that prioritized mechanisms towards eliminating “risks” were implemented. Within this framework, intelligence-led policing supported by technologically empowered information systems has been implemented. The **Law on Misdemeanors** adopted in 2004 is an important testament to the new policing mentality as a text that defines the intervention of the police in daily life. During this period, despite certain democratic changes, the powers, scope of authority and especially the



discretionary power of the police continued to increase. Amendments that allow for the police to frequently intervene in daily life and limit personal freedoms to “**prevent crime**” are especially noteworthy. On the other hand, the monitoring mechanisms necessitated by this increase in powers remain inadequate in the legislation.

**The CMK that replaced CMUK in 2004** and certain democratic amendments of the period should not be overlooked. In fact, in this period significant legal amendments were made towards fighting torture under custody which was used by the police as a method especially in 1990s to control and suppress oppositional political movements, and which constituted one of the major points of criticism against police practices. The authority of the police to define crime was also abolished. On the other hand, the amendments fall far short of adequate in terms of democratization. In this context, an important problem that faces us with regards to the rights of the accused in the 2000s concerns the relations of the prosecutors with the police whom they are supposed to monitor in practise. While it is not legal according to the **CMK**, it is observed that the police have more initiative in determining the context of the indictment. Referred to as the “**supremacy of police reports over the law,**” this problem is compounded by phone tapings and similar intelligence-gathering strategies of the police that solidified in the 2000s. There are severe criticisms that these strategies pave the grounds for extra-legal evidence especially in the court cases against political oppositional movements.<sup>2</sup> On the other hand, during these years and especially in 2006, many changes were made to the **TMK** towards strengthening state authority and further limiting individual rights and freedoms. According to these amendments, alienating the public from military service

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<sup>2</sup> See Bora, Tanıl, “*Çağdaş Hukukçular Derneği Genel Başkanı Selçuk Kozağaçlı ile Söyleşi*” (Interview with Director General of Modern Lawyers Association Selçuk Kozağaçlı) p.31; Coşkun, Vahap, “*Fezleke hukuku*” (Supremacy of Police Reports over the Law), *Taraf*, 25.01.2013.



and resistance to public officials were also included under the category of crimes of terrorism including the cases in which a person is “not a member of a terrorist organization but committed a crime ‘in the name of’ a terrorist organization.” The police’s right to use firearms was also extended this same year. Additional Article 2, which was nullified by the Constitutional Court in 1999 on grounds of violating the “right to life”, was reintroduced with slight changes in **TMK**. As a result, the police became authorized to shoot to kill “if a person refused to surrender.”

Yet, recent changes targeting the rights of the accused and the judicial reform packages on the **TMK** are reasons for hope. It can still be said, however, that these changes are short-term revisions rather than reform, and thus inadequate.<sup>3</sup>

In short, the legislation that is evaluated in this report has undergone multiple changes throughout the years. With these changes, the authority, scope and powers of the police that were defined in the first years of the Republic were expanded. In these expansions, the attitudes and ideologies of the actors in charge of the state were as important as the societal, economic and political transformations that Turkey underwent. These ideologies were reflected in the language of the law.

### Legislative Discourse, Instruments and Mentality

Law and legislation are not independent of the societal relations that they grow out of, and the state which constantly interacts with these relations. Laws are a reflection of the

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<sup>3</sup> For a comprehensive evaluation of the amendment to the TMK within the scope of the legal reform packages see Karakaya, Naim and Hande Özhabeş, “*Judicial Reform Packages: Their Effects on Rights and Freedoms*,” TESEV Publications, İstanbul, 2013.



order that the state tries to conceptualize, of its strategies towards societal relations, the ideologies it adopts, and its definitions of “**threat.**” Therefore, evaluating the legislation with regards to the discourses it embodies and the instruments it uses is important to understand the security mentality that is a part of the state-promoted discourse that guides policing, and the fundamental values and elements that shape this mentality.

The report demonstrates that historically, there are two important discursive themes that run through the legislation and that give away the rooted values of the state and the resulting mentality: **Public order and the continuity of the state.**

Accordingly, we encounter laws that are the product of a mentality that places state security before citizen/individual security, and can therefore limit citizens' rights and freedoms to protect the state. It is important to note that this mentality has prevailed up until now, and that democratization efforts in Turkey will only be meaningful when they are based on the prioritization and protection of individual rights and freedoms. In this framework, the predominance of “**state security**” in police laws to date points to the existence of a significant problem concerning democratic principles, fundamental rights and freedoms. On the other hand, the states of exception defined in the laws and the vague expressions constitute an obstacle to both the protection of fundamental rights and freedoms, and the implementation of accountability principle that should exist in democracies.

The definition of **“order”** that we encounter in police laws is one that has been working towards the creation of a **“desired and complacent citizen”** since the establishment of the Republic, and bears signs of a **“conservative,” “authoritarian”** and **“patriarchal”** mentality. The definition of order in these laws is one that is shaped by ideological, moral and economic norms predominant in the state, and one that discriminates certain segments of society as **“Others,”** and often **“criminalizes”** them. Surely, a certain definition of order, and the police’s being in charge of protecting this order are inherent to the institution of the police. However, the existing laws show that the adopted definition of order, through definition of exceptions and vague phrases, enable discrimination amongst different segments of society, victimize certain groups and therefore enable practises which violate personal rights and freedoms. Bearing in mind that citizens who do not act in accordance with this definition of order are perceived as **“threats”** to the order that the state is attempting to establish, and the emphases on **“the continuity of the state”** and **“desired order,”** it can be said that the existing laws aim at protecting the authority and security of the state rather than individual rights and freedoms.

It is possible to conclude, therefore, that for the police laws in Turkey to be compatible with democratic principles in general, respectful of fundamental rights and freedoms and human rights, transparent and accountable in particular, many amendments need to be made. The inventory of the legislation that is analyzed in detail in the report bears important clues about the necessary changes. However, the main point that is underlined in the report and through the analysis of the legislation is that technical and implementation-based changes to the laws will not be enough on their own. The report includes instances of positive changes towards democratization being overturned in subsequent periods on various grounds. Therefore, this report on mentalities and values



embedded in laws is important in showing that for any legal improvement to be permanent, a fundamental change in the totality of the values and mentalities of the actors in control of the state is necessary. Such a transformation of mentality must be one of the objectives for future reform efforts.

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