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An Analysis of the Amendments to the Constitution of the Republic of Turkey In 2004 within the Framework of the European Union Acquis

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ABSTRACT: Within the framework of the European Union harmonization efforts in Türkiye, Articles 10, 15, 17, 30, 38, 87, 90, 131, and 160 of the 1982 Constitution were amended on May 7, 2004, and Article 143 was abolished. These amendments, which are highly significant in terms of fundamental rights and freedoms, incorporated the principle that men and women have equal rights into the Constitution through the amendment of Article 10. It was also established that the state is responsible for ensuring the implementation of this equality. Most importantly, the death penalty was abolished from the 1982 Constitution. Furthermore, press tools were placed under constitutional protection, along with the provision that press tools like printing houses and their extensions, cannot be seized, confiscated, or prevented from operating on the grounds of being instruments of crime. To clarify these issues, this study analyses each of the amendments to the 1982 Constitution in 2004. As described above, the articles of the Constitution of the Republic of Türkiye, dated November 7, 1982, and numbered 2709, have been significantly amended within the framework of the European Union Acquis. Each amendment is positively evaluated in terms of protecting fundamental rights and freedoms in Türkiye and granting more human rights. Furthermore, it is a well-known fact that the 2004 constitutional amendment has made significant contributions to aligning Türkiye's legal regulations with the European Union legal system. The main purpose of the study titled "An Analysis of the Amendments to the 1982 Constitution in the Context of Türkiye's Compliance with European Union Law" is to thoroughly determine the extent to which the 2004 constitutional amendments align Türkiye's legal regulations with the European Union Acquis. This study was prepared by utilising the Official Gazette and copyrighted works. This article is a qualitative study, employing the document analysis technique.

Keywords: Acquis, 1982 Constitution, 2004 Constitutional Amendment, European Union, Human rights.

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1. Introduction

The examination of constitutionalism movements clearly demonstrates that in terms of regulating state governance and protecting citizens' rights, constitutions are closely linked to the concept of "classical democracy," which primarily developed in the nineteenth century.1 A constitution is the fundamental norm of a society's domestic law and internal politics, and other institutions and rules relevant to democracy derive from it.2 Constitutional law, on the other hand, is a branch of the broader field of the

[1] Sosyal, M., *The Meaning of the Constitution in 100 Questions*, 5th edition, Gerçek Publishing, Istanbul, 1979, p. 12.
[2] Parla, T., *Constitutions in Türkiye*, İletişim Publishing, Istanbul, 1971, p. 9.

knowledge area called law.3 In short, a constitution is a fundamental written source that forms the basis of the legal structure of a state, determining the authority, restrictions, and interrelations of institutions authorized on behalf of the nation, as well as regulating fundamental rights and freedoms.4

Since 1876, Türkiye has been a democratic country governed by constitutions from a legal perspective. Türkiye's first constitution dates back to 1876. Although this constitution was not implemented during the period of autocracy, it remained in force together with the 1921 Constitution until 1924.5 Following the 1924 Constitution, the 1961 Constitution, prepared after the military coup on May 27, 1960, came into effect. In the history of Turkish law, the 1961 Constitution is recognised as the fourth constitution.6

The 1982 Constitution, which constitutes the main focus of our study, was also drafted as a result of a coup, just like the 1961 Constitution. In this context, the 1982 Constitution was prepared following the September 12 Military Coup, aiming to legitimize those who carried out the coup. After the coup, those who seized control of the state established a "National Security Council." This council primarily consisted of the Chief of General Staff and the commanders of the armed forces. Therefore, the 1982 Constitution was drafted by a Constitutional Commission established by this group. Due to its inability to limit the power of the ruling authority, this constitution has been subjected to numerous amendments.7

The characteristics of the process of drafting and amending constitutions significantly influence the quality and stability of the resulting constitution. In this process, it is crucial to accurately identify the factors and constitutional preferences that lead to change, choose the right timing, ensure the participation of diverse groups in the constitution-making process, seek as much consensus as possible among these groups, and finally determine the methods and stages through which the constitutional amendment will be carried out.8 Therefore, it is essential to clarify the issues concerning constitutional amendments and to analyse their impacts on democracy in detail.

Since 2001, numerous amendments have been made to the 1982 Constitution in Türkiye to facilitate entry into the European Union. The relationship between the European Union's constitutional order and national constitutional orders is one of the main issues of "European Constitutional Law," which resurfaces at every new stage of European integration.9 Therefore, the primary purpose of the 2004 amendment to the 1982 Constitution was to align the Turkish legal system with European Union Law and the European Court of Human Rights10.

In light of the above explanation, the amendments and regulations in the 1982 Constitution in 2001 and 2004 are legal efforts undertaken by Türkiye in the process of alignment with the European Union. One of the fundamental conditions considered in the constitutional amendments was the European Convention

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[3] Esen, B. N., *Constitutional Law*, Resimli Posta Printing House, Ankara, 1970, p. 5.

[4] Tunç, B., *The Position and Significance of the 1961 Constitution in Turkish Constitutional History*, Journal of Black Sea Studies, issue: 17, volume: 67, 2020, p. 657.

[5] Tunç, B. & Bacak, E., *A Historical and Legal Evaluation of the Government System in the 1924 Constitution*, Journal History School, issue: 61, 2022, p. 4146.

[6] Tunç, B. & Akarçay, E., *An Evaluation of the Amendments Made to the 1961 Constitution After the March 12 Memorandum*, İnsan ve Toplum Bilimleri Araştırmaları, issue: 11, volume: 3, 2022, p. 1544; More about the 1961 Constitution: Köse – Falus – Czukor, From the 1961 constitution to the present day social services in Türkiye 95–106.

[7] Tunç, B*., A Historical and Legal General Evaluation of the First Amendments in the 1982 Constitution* (1982-2001 Period), Journal of Dicle University Faculty of Law, issue: 29, volume: 51, 2024, p. 480.

[8] Bilir, F., *Evaluations Regarding Constitutional Making*, Journal of Ankara Hacı Bayram Veli University Faculty of Law, volume: 12, issue: 1, 2008, p. 563.

[9] Oder, B. E., *Structural Problems of Multi-Centric Constitutionalism in the European Union: Comparative Observations for Türkiye in the Light of Jurisdiction Conflicts and the Principle of Subsidiarity*, Constitutional Juristiction, volume: 21, issue: 1, p. 1.

[10] The constitutional amendment for the purpose of legal harmonization prior to accession to the European Union has also been carried out in Hungary. More on the topic: Falus, About a result of globalization in Hungarian fundamental law 20-21.; Aydın – Falus, *Economic and Legal Integration?: Judgment in Case C-65/16 of the Court of Justice of the European Union*, 503–508.

on Human Rights. In fact, by ratifying the European Convention on Human Rights, the Republic of Türkiye has undertaken the obligation to recognize the rights and freedoms stipulated in the convention for its own citizens and to make the necessary changes and regulations in its domestic legal system in accordance with the convention.11 Based on these facts, the primary aim of this study is to examine the extent to which the amendments made to the 1982 Constitution in 2004 expanded fundamental rights and freedoms and how effectively the Republic of Türkiye has been able to implement European Union law within its Constitution. It is also aimed that the findings of this article will make a significant contribution to scholars working in the fields of Constitutional History and Constitutional Law.

2. Analysis of Amendments to the 1982 Constitution

2.1. Regulation on Equality between Women and Men

In general terms, legal equality between women and men is about the nature of citizenship and the rights and duties of citizens. Therefore, choices concerning equality also define the nature of citizenship.12 Since the French Revolution of 1789, the issue of gender equality has been extensively debated, and states with democratic constitutional regimes have been making substantial efforts on this matter. One of these states is the Republic of Türkiye.

Ensuring gender equality in the social sphere and enshrining it constitutionally is of great importance, as gender inequality is a global issue. Gender disparities that have existed for centuries have deprived women and girls of their fundamental rights. However, women and men have equal rights. To achieve a world that leaves no one behind and that is equal and inclusive, it is essential to ensure gender equality and to empower all women and girls.13 In this context, it is crucial to guarantee equality in the Constitution, to implement it effectively, and to monitor its progress. This is because the Constitution stands above all legal texts, and no law can contradict it.

In light of the above explanation, Türkiye has sought to amend its Constitution within the framework of European Union harmonization laws and align it with the European Union legal system. Within this framework, the issue of gender equality was revised in Article 10 of the 1982 Constitution. The original, unamended version of the article reads as follows: "Everyone is equal before the law without distinction based on language, race, colour, sex, political opinion, philosophical belief, religion, sect, or similar reasons".14 As clearly understood from this article, although everyone is equal in the Constitution, it does not explicitly emphasize the concept of gender equality. This situation was not compatible with European Union standards and required amendment.

From a general perspective, it can be observed that the EU places great importance on gender equality. During the early stages of European integration, the issue of gender equality, which was mainly addressed with economic concerns, gained prominence over time with the influence of other factors, and especially from the mid-1970s onward, its social dimension, as well as its human rights dimension were added to its economic aspect. Therefore, legal regulations concerning gender equality within the EU, which largely fall under the scope of labour law, also constitute a significant part of the Union's anti-discrimination policy.15 To this end, the European Union has undertaken significant efforts, which have been incorporated into the constitutions of the member states.

Being aware of the perspective of the European Union on gender equality, Türkiye sought to address this

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[11] Bilir, F., *An Evaluation of the 2004 Constitutional Amendments*, Journal of Gazi University Faculty of Law, volume: 9, issues: 1-2, 2005, pp. 242-243.

[12] Sever, Ç., *A Critique of the Constitutional Court's Approach to Gender Equality*, Gender and Its Reflections, Atılım University Press, Ankara, 2013, p. 34.

[13] Kaşıkırık, A. & Gülümser, I., *The Reflection of Gender Equality on Constitutions and International Agreements,* Türkiye Political Studies Journal, volume: 1, issue: 1, 2021, p. 60

[14] Official Gazette, November 8, 1982, Issue: 17,863, p. 3.

[15] Arısoy I.A. & Demir, N., *Gender Equality in the Context of the European Union Social Law in the Fight Against Discrimination*, Ege University Faculty of Economics and Administrative Sciences, volume: 7, issue: 2, 2007, p. 707.

issue by amending Article 10 of the Constitution in 2004. Accordingly, the following provision was added after the first paragraph of Article 10 of the 1982 Constitution: "Women and men have equal rights. The State is responsible for ensuring that this equality is realized."16 In our point of view, this amendment to the Constitution represents a highly positive development in ensuring gender equality in Türkiye within the framework of harmonization with European Union law.

According to Kolçak, the principle of equality set forth in Article 10 of the 1982 Constitution is consistent with the European Union laws. The first paragraph of the article—"Everyone is equal before the law without distinction based on language, race, colour, sex, political opinion, philosophical belief, religion, sect, or similar reasons"—along with the first sentence of the second paragraph—"Women and men have equal rights"—emphasizes the right-based aspect of equality. The systematic placement of this article within the first part of the Constitution titled "General Principles," under the subtitle "Equality before the Law," highlights its principle-based nature. Furthermore, the direct reference to the "principle of equality" in the last sentence of the second paragraph, as well as in the third and final paragraphs of this article, indicates that equality is not solely recognized from a rights-based perspective but is also established as an "independent fundamental principle."17 Based on these considerations, it can be concluded that the amendment of Article 10 not only ensures compliance with EU laws but also represents a significant step toward genuinely achieving gender equality in Türkiye.

According to Ulucan, regarding the amendment of Article 10, it is understood that the expression "principle of equality" is directly included in the Constitution in the context of gender equality, indicating that equality is not only recognized from a rights-based approach but is also regulated as an "independent fundamental principle." Within the framework of the European Union harmonization legislation, the 2004 amendment to the 1982 Constitution stipulates that the principle of gender equality applies not only vertically, concerning public authorities, but also horizontally, affecting relationships between private legal entities and individuals. Thus, the Constitution does not perceive the principle of equality solely as a concept of the public law but also adopts it as a fundamental principle applicable to private law relations.18

2.2. Regulation Concerning the Suspension of the Exercise of Fundamental Rights and Freedoms

Article 15 of the 1982 Constitution concerns the circumstances under which fundamental rights and freedoms may be suspended. As is well known, even in a state governed by the rule of law based on human rights, situations may arise that necessitate the restriction or even suspension of freedoms. The framework for suspending freedoms in the name of security is determined by Article 15 of the 1982 Constitution.19 In this context, Article 15 and a few other articles of the Constitution regulate the issue of capital punishment.20 These articles clearly outline how freedoms may be restricted when necessary.

The initial version of Article 15 of the 1982 Constitution, which addresses the issue of capital punishment and remained unchanged in 2004, is as follows: "In times of war, mobilization, martial law, or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures contrary to the guarantees provided for in the Constitution may be taken, provided that obligations arising from international law are not violated, and to the extent required by the circumstances. Even in cases specified in the first paragraph, except for deaths resulting from acts compatible with the law of war and the execution of death sentences, the right to life and the integrity of the individual's material and moral existence shall not be violated; no one shall be compelled to declare

[16] Official Gazette, May 22, 2004, Issue: 25,469, p. 1.
[17] Kolçak, H., *An Analysis of Linguistic Pluralism Demands in Light of the Equality Principle Interpretation by the Constitutional Court,* Çukurova University Journal of Legal Studies, issue: 3, p. 86.
[18] Ulucan, D., *The Equality Principle and Positive Discrimination, Journal of the Faculty of Law*, Dokuz Eylül University, volume: 15, Special Issue, 2013, pp. 371-372.
[19] Topuzkanamış, Ş. E., *Fundamental Rights and Freedoms in the 1982 Constitution, Journal of the Faculty of Law,* Dokuz Eylül University, volume: 21, special issue, 2019, p. 1780.
[20] Bilir, F., 2004, p. 243.

their religion, conscience, thoughts, or opinions, nor shall anyone be accused for them; crimes and punishments shall not be retroactively applied; no one shall be considered guilty until proven guilty by a court decision."21 As can be clearly seen in this article, the original version of the Constitution includes the death penalty, which is undoubtedly incompatible with fundamental rights and freedoms. Therefore, it was necessary to amend the relevant article.

According to Şirin, as also stated above, Article 15 of the Constitution mentions that the exercise of fundamental rights and freedoms may be partially or entirely suspended, or that measures contrary to the constitutional guarantees may be taken -to the extent required by the situation.22 To reiterate, the inclusion of the death penalty in the Constitution, despite being beyond the constitutional guarantees regarding fundamental rights and freedoms, is neither compatible with human rights nor with the European Union laws.

Within the framework of legal regulations made for compliance with the European Union legislation, the amendment to the 1982 Constitution in 2004 removed the phrase "execution of death sentences" from the text of the article.23 According to Demirdal, this amendment was made in accordance with Protocol No. 13 of the European Convention on Human Rights: The Abolition of the Death Penalty in All Circumstances.24 Therefore, it is necessary to evaluate these amendments to the 1982 Constitution within the context of Türkiye's legal adjustments during its European Union harmonization process. In our opinion, this amendment should also be positively assessed in the context of guaranteeing fundamental rights and freedoms in Türkiye.

According to Gören, death penalties are prohibited under European Union legislation and are considered as violations of human rights. It is evident that the death penalty infringes upon the core of human dignity within the right to life, as all forms of executing the death penalty degrade human dignity. The right to life, and the prohibition of cruel and inhuman punishment protected under international law, do not definitively guarantee the abolition of the death penalty. Although there is no general consensus on condemning the death penalty, a trend toward its abolition is observed in national legal systems. Today, the prohibition of the death penalty constitutes a fundamental element of European public order. The European Union has elevated this prohibition to a value criterion and made it a prerequisite for membership.25 In our opinion, being aware of the stance of the European Union on the death penalty, Türkiye demonstrated its commitment to European Union legislation, and the European Convention on Human Rights through the complete removal of the death penalty from its Constitution during the 2004 amendment.

As a conclusion, Article 15, which aligns the 1982 Constitution to international law and harmonizes it with the European Union laws, defines and safeguards the rights and freedoms forming the "hard core" of fundamental rights and liberties as rights and freedoms that "cannot be suspended" even in extraordinary circumstances, in accordance with the characteristics outlined in human rights declarations. According to Yanık, it is a fundamental legal rationale to expect that a constitution, which states that regulations concerning freedoms in extraordinary conditions will be consistent with international law, should, first and foremost, be in harmony with international human rights documents and open to international law in terms of the regime of freedoms during ordinary periods.26 Additionally, the removal of the reference to

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[21] Official Gazette, November 8, 1982, Issue: 17,863, p. 3.
[22] Şirin, T., *Fundamental Rights and Freedoms in the 1982 Constitution under the State of Emergency Regime: Reexamining Old Concepts*, Constitutional Law Journal, volume: 5, issue: 10, 2016, p. 493.
[23] Official Gazette, May 22, 2004, Issue: 25,469, p. 1.
[24] Demirdal, M. B., *The Abolition of the Death Penalty in International Human Rights Law and the Process in Türkiye*, Politik Ekonomik Kuram, issue: 2, volume: 1, 2018, p. 64.
[25] Gören, Z., *The Right to Life and the Death Penalty, Journal of Social Sciences*, Istanbul Ticaret University, volume: 5, issue: 10, 2006, p. 67.
[26] Yanık, M., *An Evaluation of the Human Rights Understanding of the 1982 Constitution in Light of International Documents and Constitutional Court Decisions*, Journal of the Faculty of Law, Ankara Hacı Bayram Veli University, issue: 12, volume: 1, 2008, p. 1153.

the death penalty from Article 15 demonstrates the effort to transform the 1982 Constitution into one of the constitutions that secure fundamental rights and liberties from various perspectives.

2.3. Regulation Regarding the Inviolability, Material, and Moral Integrity of the Individual

In the second section of the 1982 Constitution, titled "Rights and Duties of the Individual," one of the fundamental rights and freedoms, namely the inviolability, material, and moral integrity of the individual, is regulated.27 Furthermore, it includes regulations regarding the rights and duties of the individual (such as the inviolability of the person, material and moral integrity, prohibition of forced labour, personal liberty and security, privacy of private life, inviolability of domicile, freedom of communication, freedom of residence and travel, freedom of religion and conscience, freedom of thought and opinion, freedom to express and disseminate thought, freedom of science and art, right to property, etc.).28 These regulations are deemed significant not only in the Turkish Constitution but also in European Union laws. In our opinion, the presence of a constitutional regulation in this field holds great importance in terms of embodying the characteristics of a genuine rule of law and aligning with European Union norms.

In the context of the explanation above, the unchanged version of Article 17 of the 1982 Constitution, regarding the inviolability and material and moral integrity of the individual, is as follows: "Everyone has the right to life, to protect and develop their material and moral integrity. No one shall be subjected to torture or ill-treatment; no one shall be subjected to a penalty or treatment that is incompatible with human dignity. Acts of killing that occur in the execution of the death penalty imposed by the courts, legitimate defence, the execution of arrest and detention orders, the prevention of the escape of a detainee or convict, the suppression of a rebellion or insurrection, and acts of killing occurring in the implementation of orders by the competent authority during a state of emergency or martial law are excluded from the provisions of the first paragraph."29 Although this article guarantees the inviolability of the individual, the inclusion of a provision regarding death penalty, does not align with human rights or European Union laws.

The 1982 Constitution, through Article 17, not only includes death penalty but also grants certain state officials the authority to kill under certain conditions, providing immunity from prosecution for such acts. This amounts to "extrajudicial execution." Such a provision can only imply that certain acts of killing are excluded from judicial review. This type of provisions cannot be found in contemporary constitutions.30 Therefore, it was not feasible for the Republic of Türkiye Constitution, which included such a provision, to form a strategic partnership with the European Union and the Council of Europe. This is why Türkiye's removal of the death penalty from its Constitution was somewhat due to a requirement.

The "death penalty," which aims to eliminate a person from society, has not been practiced legally in Türkiye since 1984, although it remained in the Constitution until 2004.31 Most civilized countries have removed the death penalty from their laws, and member states of the Council of Europe have abolished it as well. However, it should be noted that signing the 6th Protocol to the European Convention on Human Rights, which abolishes the death penalty, and which has not yet been signed by Türkiye, has been an important step in the process of democratization.32 In this context, the amendment of Article 17 of the Constitution in 2004 and the removal of the death penalty is of utmost importance.33

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[27] Gözler, K., *Turkish Constitutional Law,* Ekin Publishing, Bursa, 2000, p. 246.
[28] Kuzu, S., *Regulations Regarding Fundamental Rights and Freedoms in the Constitution and Their Relationship with Taxes, Journal of Economics and Administrative Sciences*, Eskişehir Osmangazi University, issue: 10, volume: 3, 2015, p. 198.
[29] Official Gazette, November 8, 1982, Issue: 17,863, p. 3.
[30] Savcı, B., *September 12 and Law*, (Editor: Çelenk, Halit), Onur Publishing, Ankara, 1988, p. 10.
[31] Akbulut, İ*., Should the Death Penalty Return?,* Journal of the Turkish Bar Association, issue: 131, 2017, pp. 11-30.
[32] Savcı, B., 1988, p. 10.
[33] Tunç, B., *Turkish Constitutional History and the Characteristics of Constitutions*, Aktif Publishing, Istanbul, 2023, p. 188.

In line with the explanations and information provided above, the phrase "Execution of death penalties imposed by the courts" at the beginning of the fourth paragraph of Article 17 was removed from the text in order to bring the 1982 Constitution into alignment with European Union laws and to fully abolish the death penalty in Türkiye.34 The modification of Article 17, which also regulates the death penalty, similar to Article 15, can be considered as a necessary step both for ensuring compliance with European Union laws and for the establishment of a modern state.

According to Şen, the death penalty is not well regarded in modern criminal law systems and is severely criticized because it deprives a person of their right to life, and because there is no possibility of reversal in cases where environmental factors lead the person to commit the crime, or in cases of judicial errors. Moreover, penalties for violating commands and prohibitions can be graded, leading to compensation for damages and rectification of wrongdoing, however, it is a well-known fact that the case of death penalty lacks these characteristics.35 Therefore, the removal of the death penalty provision from the Constitution, and its absence in reality in Türkiye since 1984 well before it was removed from the Constitution, is of great importance in terms of fundamental rights and freedoms. Additionally, with regards to its intense efforts to join the European Union since the early 2000s, Türkiye's removal of death penalty-related provisions from its legal system has special significance within the context of European Union acquis as well.

2.4. Regulation Regarding the Protection of the Press Instruments

Another amendment to the 1982 Constitution was to Article 30, which concerns the protection of press instruments. Freedom of thought and expression is one of the vital concepts of democratic society and the rule of law. Its protection is of utmost importance. However, in modern democracies today, there are various interventions against freedom of press and communication. Despite the Constitution, relevant articles of the European Convention on Human Rights, the Press Law, and established case law, pressure and efforts to control communication rights continue, and with the widespread use of social media, these efforts are increasing even further.36 For the establishment of a liberal-democratic state order and a rational public space, constitutional regulations to protect press instruments are extremely important, based on the significance and meaning of communication. The 1982 Constitution needed to be amended in this regard.

The initial version of Article 30 of the 1982 Constitution regarding the matter is as follows: "The printing house and its accessories, established as a press enterprise in accordance with the law, shall not be confiscated or seized as a criminal instrument or prohibited from operation, except in cases of conviction for a crime against the indivisible integrity of the State and Nation or the fundamental principles of the Republic or national security."37 Without freedom of expression, the principle of a "democratic state," which is granted by Article 2 of the Constitution, loses its meaning. Any intervention against the freedom of press also interferes with the formation of public opinion and electoral freedom. Therefore, any intervention against the press, including press instruments, is incompatible with both the freedom of press and the European Union law. A regulatory change was required in this area.

In the context mentioned above, Article 30 of the 1982 Constitution was amended. The new version of the article is as follows: "The printing house and its accessories, established as a press enterprise in accordance with the law, as well as press instruments, shall not be confiscated or seized as a criminal instrument or prohibited from operation."38 The amendment to Article 30 of the Constitution in 2004 is significant in terms of press freedom. With this amendment, the issue that press instruments cannot be

[34] Official Gazette, May 22, 2004, Issue: 25,469, p. 2.
[35] Şen, E., *Death Penalty, Journal of the Faculty of Political Sciences*, Journal of Istanbul University, issues: 11, 12, 13, 1995, p. 231.
[36] Keskin, F. & Oruç, A. S., *Press and Freedom of Communication in the Context of Public Will Formation: A Legal Analysis of Broadcast Bans in Türkiye*, Journal of the Ankara Bar Association, issue: 2, 2016, p. 197.
[37] Official Gazette, November 8, 1982, Issue: 17,863, pp. 8-9.
[38] Official Gazette, May 22, 2004, Issue: 25,469, p. 2.

seized under any circumstances was placed under constitutional protection. In our opinion, this change was a necessary regulation to align with European Union law and to ensure the order of fundamental rights and freedoms.

According to Korkmaz, social and political structures, economic conditions, and cultural heritage, as well as regimes regulating mass communication tools such as the press, radio, and television, influence, and shape thought. Thought, in turn, shapes human behaviour, and in essence, every thought is transient and naturally communicative. "The communication of thoughts and opinions" through speech, writing, and education, directly falls into the domain of law.39 Therefore, lifting prohibitions in this area and making new regulations is imperative not only in terms of European Union laws but also from the perspective of human rights. Hence, the amendment and re-regulation of Article 30 was an extremely important regulation for ensuring the freedom of press.

2.5. Regulation on Crimes and Punishments

Article 38 of the 1982 Constitution pertains to crimes and punishments. This article enshrines the principle of "legality in crime and punishment," as outlined in Article 2 of the Turkish Penal Code No. 5327. According to this principle, no one can be punished or subjected to security measures for an act that is not explicitly defined as a crime by law. According to Demirtaş, the principle of legality in crime and punishment indicates that crimes and their respective sanctions must be clearly defined by law.40 This is exactly how it was regulated in the initial version of the Constitution. However, there is no provision stating that the death penalty would not be applied or that there would be no death sentence.

As thoroughly explained above, the most significant amendments to the 1982 Constitution in 2004 was those regarding the abolition of the death penalty. In the context of the aforementioned provisions, the death penalty, which was present in the original version of the Constitution, was abolished through the 2004 amendments. As part of this reform, the ninth paragraph of Article 38 was removed from the text, and the tenth and final paragraphs were amended as follows: "The death penalty and general confiscation of property shall not be imposed. Except for obligations arising from being a party to the International Criminal Court, a citizen cannot be extradited to a foreign country for a crime."41 According to Aliefendioğlu, with this amendment, the provisions of Article 7 of the European Convention on Human Rights concerning crimes and punishments were aligned with those in Article 38 of the Constitution.42 As a natural consequence, many provisions of the European Convention on Human Rights were incorporated into the 1982 Constitution and transformed into directly applicable positive rules of law in courts. This once again highlights the importance of this development for both European Union law and the European Court of Human Rights.

According to Terzi, there are periodic discussions about reinstating the death penalty in Türkiye after its complete abolition. However, even if it such an intention to reinstate the death penalty exists, its implementation would cause great controversy. Firstly, Article 38 of the Constitution explicitly stipulates that the death penalty cannot be imposed. Moreover, Türkiye has become a party to international treaties regarding the abolition of the death penalty, and Article 90 of the Constitution provides that in cases of conflict between international treaties concerning fundamental rights and freedoms and national laws, the provisions of international treaties will prevail.43 Therefore, if there were an attempt to reinstate the death penalty, amendments to these two articles of the Constitution would be necessary, along with the withdrawal from international treaties. At this stage, this does not seem feasible.

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[39] Korkmaz, Ö., *Freedom of Thought and Its Limits, A Tribute to Prof. Dr. Seyfullah Edis*, (Prepared by: Zafer Gören), Dokuz Eylül University Press, Izmir, 2000, p. 119.

[40] Demirtaş, S., *The Trend of Decriminalization and Avoiding Punishment in Turkish Law*, (Special Issue) Journal of Dokuz Eylül University, Izmir, 2019, p. 494.

[41] Official Gazette, May 22, 2004, Issue: 25,469, p. 2.

[42] Aliefendioğlu, Y., *Towards the European Convention on Human Rights Constitution*, Journal of the Faculty of Political Sciences, Ankara University, issue: 46, volume: 1, 2015, p. 21.

[43] Terzi, A., *The Grand National Assembly's Authority to Decide on the Execution of Death Penalties: Historical Process, Documents, and Discussions*, TGNA, Ankara, 2014, p. 171-172.

2.6. Regulation on the Adoption of International Treaties

Article 90 of the 1982 Constitution pertains to the adoption of international treaties. The status of treaties within Turkish domestic law has been a highly debated topic in legal doctrine. The cause of these debates lies in the provisions of the 1982 Constitution with regards to treaties.44 In fact, the issue of international treaties and approval had been addressed and discussed many times before the 1982 Constitution. This situation continues to be relevant today.45

The only article in the 1982 Constitution that directly regulates the status of international treaties within domestic law is Article 90. In addition, Articles 15, 16, and 42 of the second part of the Constitution, titled "Fundamental Rights and Duties," and Article 92 of the third Part regarding the "Fundamental Organs of the Republic" section, make references to treaties relating to certain issues.46 As a result, the remarks regarding the status of treaties in domestic law are generally based on these provisions of the Constitution.

According to Belgin, a new dimension to the status of international treaties in Turkish law was brought with the addition of the following sentence at the end of Article 90 in the constitutional amendments of May 7, 2004. This change aimed to clarify the ongoing debates since the 1961 Constitution and achieve a result similar to the proposed amendments in 2001 -although it differed in terms of scope- within the framework of harmonization with the European Union.47

In the above context, the 2004 amendment to Article 90 of the 1982 Constitution represented a significant step towards the aim of assenting international treaties. In yhis context, the following sentence was added to the final paragraph of the article: "In cases of conflict between international treaties on fundamental rights and freedoms, duly enacted in accordance with procedures, and domestic laws containing different provisions on the same subject, the provisions of international treaties shall prevail."48 This amendment expanded the scope of laws within the Turkish legal system according to the rule system, and certain treaties were adopted as superior rules.49 The proper understanding and implementation of this provision, and its emphasis on fundamental rights and freedoms marked an advanced stage in the pursuit of a "more democratic and freedom-oriented constitution."

According to Belgin, considering that the purpose of the provision added to the last paragraph of Article 90 of the Constitution by the legislative body was to serve as a step towards ensuring the supremacy of international agreements, especially the European Union acquis, over domestic law, it can be said that this purpose has been achieved.50 However, in its current form, the regulation still needs continuous interpretation by both practitioners and scholars with regards to determining which rights among those included in human rights and fundamental freedoms agreements should prevail, the existence of domestic regulations that provide more favourable provisions on the same matter, and the conflicting aspects between the Constitution and the international agreement texts.

2.7. Regulation on Supreme Bodies of the Higher Education

Article 131 of the 1982 Constitution regulates the supreme bodies of higher education. In Türkiye, higher

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[44] Eren, A., *The Impact of the 2004 Amendment to Article 90 of the Constitution on the Status of Treaties in Turkish Domestic Law*, Journal of Erzincan Binali Yıldırım University Faculty of Law, volume: 8, issue: 3-4, 2004, p. 47-78.
[45] Armağan, S., *The System for Signing and Ratifying International Agreements in the 1982 Constitution*, Journal of Constitutional Jurisprudence, issue: 17, 2000, p. 340.
[46] Eren, A., p. 55-56.
[47] Belgin, D., *Problems and Solutions Regarding the Amendment Made to Article 90 of the Constitution (May 7, 2004),* Journal of Ankara Bar Association, issue: 4, 2008, p. 110.
[48] Official Gazette, May 22, 2004, Issue: 25,469, p. 3.
[49] Sav, A. & Sav, N. Ö., *The Essence and Scope of International Agreements Relating to Fundamental Rights and Freedoms Enforced According to Procedure*, Journal of the Turkish Bar Association, issue: 109, 2013, p. 402.
[50] Belgin D., p. 110.

education institutions and their upper bodies are regulated by Articles 130 and 131 of the Constitution and the Higher Education Law No. 2547. According to Article 131 of the Constitution, only the Higher Education Council is designated as the supreme body for higher education. The Higher Education Council consists of members appointed by the President from among candidates selected by universities and the Council of Ministers, with their number, qualifications, and selection procedures determined by law, and members directly selected by the President. On the other hand, universities, which are autonomous public legal entities, have separate organs, and their powers and duties are regulated by law.51 However, this article was deficient in many respects and needed to be brought in line with European Union law. Therefore, the article was amended.

In this context, approximately seven years after the Constitutional Court's annulment decision ending the authority of the Ministry of National Education to select members for the Higher Education Council, when the European Union's 2003 Progress Report suggested that military representatives should not be present in civilian institutions to align civilian-military relations with European Union standards; an amendment was made to the second paragraph of Article 131, in order to ensure the civilianization of the administration, which eliminated the General Staff's authority to nominate candidates for the Higher Education Council.

The second paragraph of Article 131 was amended as follows: "The Higher Education Council is composed of members appointed by the President from among candidates selected by universities and the Council of Ministers, with the number, qualifications, and selection procedures determined by law, giving priority to professors who have had successful service in rectorship and academic positions, and members directly elected by the President."52 With this amendment, the representative of the Higher Education Council selected by the General Staff was removed. This change should be considered as a step towards the civilianization of the administration. The regulation was made with the aim of aligning civil-military relations with the standards of European Union countries and ensuring the civilianization of the administration.53 In our opinion, this amendment has helped Turkish universities to begin to align with the universities of EU member states. Additionally, this provision has been beneficial in ensuring the autonomy of universities in Türkiye.

2.8. The Repealed Article 143 of the 1982 Constitution

The repealed Article 143 of the 1982 Constitution, concerned the State Security Courts. The State Security Courts, established in 1983 in accordance with the provision of Article 143 of the Constitution, were established in the provincial centres of Ankara, Diyarbakır, Erzincan, İstanbul, İzmir, Kayseri, Konya and Malatya, in a manner to be named after these provinces, to hear cases related to crimes against state security. Their duties cover the crimes specified by Article 9 of Law No. 2845.54 However, from their inception, the State Security Courts were heavily criticized by legal professionals and were considered problematic in many ways, leading to calls for their abolition.

According to Çelenk, even in the drafting stage, the State Security Courts were heavily criticized in legal circles and the press. These courts were criticized for violating the principles of "Judicial Independence, the Right to a Natural Judge, and Judicial Guarantee," of the Constitution. It was emphasized that these courts which were established to try certain political crimes, an expression of distrust in general courts, and perpetuated martial law, were political and extraordinary judicial

[51] Demircioğlu, M. Y. & Uz, A., *Some Legal Evaluations of the Interuniversity Council from the Perspectives of Constitutional and Administrative Law*, Journal of Ankara University Faculty of Law, issue: 62, volume: 1, 2013, p. 1.
[52] Official Gazette, May 22, 2004, Issue: 25,469, p. 3.
[53] Bilir, F., 2004, p. 247.
[54] Katoğlu, T., *The Differences Between the Trial Procedure Applied in State Security Courts and the General Trial Procedure, Journal of the Faculty of Political Sciences*, Journal ofAnkara University, issue: 49, volume: 3, 1993, p. 255.

bodies.55

In the context of the above explanation, the existence of State Security Courts has been viewed negatively from the perspective of modern law and a contemporary constitution. Therefore, in 2004, Article 143 of the 1982 Constitution, which regulated the State Security Courts, was abolished.56 It must be acknowledged that this amendment was made in accordance with the rulings of the European Court of Human Rights. This is because the European Court of Human Rights found the cases heard in the State Security Courts to violate the principle of "fair trial" on the grounds that military judges were not sufficiently independent. Later, the procedural rules applied in these courts were also changed. It should be noted that there was no need to regulate State Security Courts as a separate article in the Constitution and thus create a risk of establishing an extraordinary judicial body. Establishing such courts in the same manner that is consistent with the organization and functioning of general courts,57 and therefore the abolition of the State Security Courts has been an extremely positive reform from a human rights perspective.

According to Özhabeş, the distinctive point that gave judges and prosecutors in the State Security Courts special authority was the different investigative and prosecutorial procedures they could legally apply. The judge or prosecutor who held the power to resort to these procedures was expected to remain within legal boundaries. The weak commitment of special courts, such as the State Security Courts, to human rights, universal democratic legal principles, and institutions becomes evident. The powers held by the judges and prosecutors in these courts can turn into political leverage and blackmail power in the hands of actors with ill-intentions. For this reason, these courts always carry the risk of politicization, regardless of who is in charge. Thus, such courts are neither compatible with the right to a fair trial nor with the standards set by the European Court of Human Rights.58 Consequently, the abolition of Article 143 in 2004, in our view, was a positive development for ensuring fundamental rights and freedoms.

It is becoming apparent how weak the commitment of special courts, such as the State Security Courts, to rights and freedoms, universal, democratic legal principles and institutions is. The powers of judges and prosecutors working in these courts can also turn into political trump cards and blackmail power in the hands of ill-intentioned users. For this reason, these courts always carry the risk of politicization, regardless of who is in charge. For this reason, such courts are neither in line with the right to an independent trial nor with the European Court of Human Rights. Therefore, the abolition of Article 143 in 2004 has been positive in terms of ensuring fundamental rights and freedoms, in our opinion.

2.9. Regulation Regarding the Court of Accounts (Sayıştay)

The amended Article 160 of the 1982 Constitution, regulates the Court of Accounts. In Türkiye, the authority to conduct audits on behalf of the parliament belongs to the Court of Accounts. As a constitutional institution, the Court of Accounts performs two basic functions: auditing and adjudicating. The auditing authority of the Court of Accounts is limited by the powers granted by the Parliament. The provisions related to the auditing duties and the scope of its audits of the Court of Accounts are regulated in the 1982 Constitution, the Public Financial Management and Control Law No. 5018, and the Court of Accounts Law No. 6085.59 The last paragraph of Article 160, which regulated such an essential institution, has been removed from the Constitution.

According to Akyel and Baş, the Court of Accounts, regulated under Article 127 of the 1961 Constitution, was more specifically defined in Article 160 of the 1982 Constitution, stating: “The Court of

[55] Çelenk, H., *Why Should State Security Courts Be Abolished?,* Contemporary Lawyers Association Publications, Ankara, 1976, p. 3.
[56] Official Gazette, May 22, 2004, Issue: 25,469, p. 3.
[57] Bilir, F., 2004, pp. 247-248.
[58] Özhabeş, H., *Evaluation of Changes to the Special Jurisdiction System in March 2014*, TESEV Democratization Program Report Series, Istanbul, 2014, p. 1.
[59] Işık, S. & Engin, R., *Evaluation of Findings Related to Public Procurement in the Court of Accounts' Audit of Municipalities,* Journal of Denetişim, issue: 25, 2022, p. 163.

Accounts is responsible for auditing all income, expenses, and assets of public administrations and social security institutions within the scope of the central government budget on behalf of the Grand National Assembly of Türkiye, finalizing the accounts and transactions of the responsible parties, and performing the duties of examination, audit, and settlement as stipulated by the laws..."60 However, a fundamental regulation in the last paragraph of Article 160 made the Turkish Armed Forces one of the decision-making authorities in the Court of Accounts. This situation was not compatible with European Union standards. Therefore, the relevant paragraph was removed from Article 160.

In the context of the above explanation, the last paragraph of Article 160 of the Constitution has been repealed. This paragraph previously stipulated that the procedures for auditing state assets held by the Armed Forces on behalf of the Grand National Assembly of Türkiye would be regulated by law in accordance with the confidentiality requirements of national defence services. With this amendment, the exceptional provision that prevented the audit of the Court of Accounts was removed. As a result, the Court of Accounts is now authorized to audit state assets held by the Armed Forces as well. This change has brought the Turkish Armed Forces under the audit of the Court of Accounts. The amendment was made in accordance with the criteria outlined in the 2002 European Union Progress Report regarding the provision of transparency and efficient governance and ensuring transparency in the audit of state expenditures.

3. Conclusions

The 1982 Constitution, the constitution of the Republic of Türkiye, has been amended many times since its enactment. In fact, this Constitution emerged as a transitional Constitution and many articles had to be amended in time depending on the needs. In this context, major amendments were made to the 1982 Constitution in 1988, 1993, 1995, 1999, 2001, 2004, 2007, 2010 and 2017, starting in 1987. As a result of these amendments, 143 articles of the 1982 Constitution, which has 177 articles, have been amended to date.

In the context of the above explanation, serious amendments were made to the 1982 Constitution in 2004. The main purpose of these amendments was to harmonize the Constitution of the Republic of Türkiye with the legal system of the European Union. At that time, Türkiye was making serious efforts to become a member of the European Union and to make laws in accordance with the law of that union. Therefore, the amendments made to the Constitution in 2004 should be evaluated in the context of Türkiye's efforts to harmonize with the European Union Acquis.

The 2004 amendments to the 1982 Constitution are extremely important amendments as they are part of the steps taken by the Republic of Türkiye in the process of harmonization with the European Union. Among these amendments, the inclusion of full equality between men and women in the Constitution is of utmost importance. With this amendment, the issue of equality between women and men, which started to be implemented in Türkiye with the entry into force of the Turkish Civil Code adopted in 1926, was fully guaranteed under the Constitution with the 2004 Constitutional amendment.

The most important amendment to the 1982 Constitution in 2004 was undoubtedly the removal of the death penalty from the Constitution, which was considered to be extremely negative for fundamental rights and freedoms. Within the scope of the amendment, all provisions of the 1982 Constitution related to the death penalty were removed from the Constitution, which is considered to have been extremely effective in putting the Republic of Türkiye in an extremely important position both in terms of complying with the laws of the European Union and further developing human rights.

In 2004, there were other important amendments to the articles of the 1982 Constitution in addition to the above-mentioned changes. In this context, the article on the protection of press tools was reorganized. Thus, in the context of ensuring freedom of the press in Türkiye, the means of the press have been taken under constitutional guarantee. In addition, it has been accepted that the provisions on fundamental

[60] Akyel, R. & Baş, H., *Constitutional and Judicial Position of the Court of Accounts in the Context of Public Administration and Oversight*, Journal of Finace, issue: 158, 2010, p. 377.

rights and freedoms, provided that they are in conformity with Turkish law, shall prevail. Of course, these amendments are in line with both the European Union Acquis and the European Court of Human Rights.

Apart from the above-mentioned amendments to the 1982 Constitution, which are considered to be extremely important in terms of fundamental rights and freedoms, other important amendments had to be made among the 2004 amendments. One of these was to put an end to the practice of the Chief of General Staff nominating members of the Council of Higher Education of the Republic of Türkiye. Finally, the article of the Constitution concerning the State Security Courts was repealed and the practice of confidentiality in the inspection of state property held by the armed forces on behalf of the Turkish Grand National Assembly was abolished.

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