The Importance of Legislative History Materials in the Interpretation of Statutes in Turkey

Christian Rumpf

Follow this and additional works at: http://scholarship.law.unc.edu/ncilj

Recommended Citation
Available at: http://scholarship.law.unc.edu/ncilj/vol19/iss2/4
The Importance of Legislative History Materials in the Interpretation of Statutes in Turkey

**Cover Page Footnote**
International Law; Commercial Law; Law

This article is available in North Carolina Journal of International Law and Commercial Regulation: [http://scholarship.law.unc.edu/ncilj/vol19/iss2/4](http://scholarship.law.unc.edu/ncilj/vol19/iss2/4)
The Importance of Legislative History Materials in the Interpretation of Statutes in Turkey

Dr. Christian Rumpf†

Table of Contents

I. PRELIMINARY REMARKS ........................................ 268

II. THE TURKISH LEGAL SYSTEM .............................. 269
   A. Codification Under the Influence of Continental Europe 269
   B. Modernization Under the Republic ........................ 270

III. THE DEVELOPMENT OF CONTINENTAL EUROPEAN LEGAL THINKING IN TURKEY .................. 271

IV. THE ROLE OF PARLIAMENT ................................. 271

V. THE FUNCTION OF STATUTORY LAW IN THE TURKISH LEGAL SYSTEM ........................................ 272
   A. Notions: Law and Statutory Law .......................... 272
   B. The Constitution and Statutory Law ..................... 273
   C. The Characteristics of Statutory Law .................... 274

VI. THEORIES OF JURIDICAL INTERPRETATION IN TURKEY ...... 275
   A. Approaches to Interpretation in Legal Doctrine ...... 275
   B. Evaluation of the Role of Legislative History Materials ........................................ 281

VII. STATUTORY INTERPRETATION BY THE CONSTITUTIONAL COURT ........................................ 281
    A. The Method and the Decisions of the Constitutional Court ......................................... 281
    B. Examples: Case Law .................................... 282
    C. Evaluation of the Role of Legislative History Materials ........................................ 285

VIII. THE PRACTICE OF INTERPRETATION BY THE COURT OF CASSATION ................................. 285
    A. Preliminary Remarks .................................... 285
    B. Examples: Case Law .................................... 286

† Attorney (Dr. jur.); Research fellow, Max Planck Institute of Public International Law, Heidelberg, Germany; Lecturer, Faculty of Law at Frankfurt University. The author has published extensively on various topics in Turkish law.

*Editor's Note: The Turkish materials cited by Dr. Rumpf were not available to the Journal at the time of publication; these materials were translated by Dr. Rumpf.
I. Preliminary Remarks

The problem of the interpretation of norms is common to the legal practice of all states. Nevertheless, methodological approaches differ according to the legal system, the skill of the local lawyers and scholars, and the exigencies of legal life. The most obvious differences probably exist between the civil law and common law systems, but many states cannot even be classified under these two mainstreams because their legal systems are governed by the specific features and rules of their main religion.

Against this background, Turkey has to be classified as a country which belongs to the world of civil law. Its constitutional system—at least as laid down in the present constitution—follows the principles of secularism and the rule of law through a strict hierarchical system of norms and through the protection of the fundamental rights. The superiority of the constitution is followed by the priority given statutory law, the latter principle arising from the sovereignty of the Nation, as represented by the Great National Assembly of Turkey.

The question of interpretation of a Turkish statute does not only arise in Turkish courts. According to the principles of private international law, a foreign court may also be obliged to answer a preliminary question according to Turkish law or to apply Turkish law to all legal aspects of the case. Consequently, a court may have to interpret a norm in conformity with the methodological approaches practiced in Turkey. Consideration of the importance of legislative history materials is only one issue of the problem of interpretation, yet it is dogmatically one of the most important aspects.

1 The Turkish Constitutional Court has emphasized that the system of the protection of fundamental rights under the Turkish Constitution should be compared with the system of the European Convention on Human Rights; thus, the Court concludes, the interpretation of Turkish fundamental rights must, to a certain extent, follow the theory and practice under the Convention. See, e.g., Judgment of Jan. 10, 1991, Constitutional Court, Resmi Gazete (R.G.) No. 21162 (Turk.).

2 This is especially true for family law, but also for many cases of contract law and commercial litigation. In addition, in the United States, Turkish law is partly applicable in cultural property cases. See, e.g., Republic of Turkey v. Metropolitan Museum of Art, 762 F. Supp. 44 (S.D.N.Y. 1990).
II. The Turkish Legal System

In order to consider the importance of legislative history materials in the course of the interpretation of statutes in Turkish theory and practice, it is useful to give a brief account of the history and structure of the Turkish legal system, the role of the Parliament, the function of statutory laws, and the methodological approaches in Turkey.

A. Codification Under the Influence of Continental Europe

Until the beginning of the nineteenth century, the legal system of the Ottoman Empire had been founded solidly on the principles of Islamic law, with absolute power belonging to the Padishah. During the nineteenth century, however, the Ottoman Empire faced an era of drastic change in every respect, but primarily in the political and legal sectors. The decline of the military strength of the Empire and its economic weakness provoked the need for fundamental reforms. The Gülhane Decree of 1839, in which Ottoman citizens were granted some fundamental freedoms and rights, is considered to be the starting point of these reforms, which developed during the Tanzimat period. Furthermore, the cultural influence of the states of continental Europe, especially France, showed itself in a broad movement towards codification. Principles of commercial, penal, and public or administrative law were taken from France. Later, Italy became another source of reception of foreign law.

The first Ottoman Constitution of 1876, which introduced a democratically legitimated parliament, seems to have been modeled on the Belgian Constitution of 1831 and the Prussian Constitution of 1851. The Constitution of 1876 provided for a modern procedure of legislation—with the Padishah having the last word—and the protection of liberties and fundamental rights. After a period of suspension under the rule of the Padishah Abdülhamit II, the Constitution was restored by the Young Turks in 1909, and the government was turned into a parliamentary monarchy. To the benefit of a government responsible to the parliament, the powers of the Padishah were restricted. At this point, it is hard to deny that the Turkish Constitution had a certain resemblance to the French Constitution of 1875.

Despite the obvious reception of the ideas of European law, until

---

4 See 2 SHAW & SHAW, supra note 3, at 174; LEWIS supra note 3, at 156. See also ROBERT DEVEREUX, THE FIRST OTTOMAN CONSTITUTIONAL PERIOD (1963).
the end of the Ottoman Empire, the Sharia (Islamic law)—more comparable to a common law system than to a civil law system—remained largely in force. The consequence during this period was an unfortunate legal and jurisdictional dualism that caused uncertainty in both theory and practice. Nevertheless, the reception of law from the continental European legal systems continued, especially from France. Common law principles had no opportunity to take root.

B. Modernization Under the Republic

After the defeat in World War I, the end of the sultanate and the caliphate, which had been unified in the person of the Padishah, approached. The war of independence under the leadership of the general Mustafa Kemal Pasha—later Atatürk—was accompanied by the establishment of an independent political power in Anatolia. In 1920, the Great National Assembly was founded.7 It followed the principle of the unification of powers in order to establish and represent the sovereignty of the Turkish Nation. This Assembly was the one organ of the emerging Republic that concentrated all political power in itself. In 1922, the sultanate was abolished and the Padishah expelled, and the Republic was officially proclaimed in October 1923. By 1924, the first republican constitution went into force, and in the same year, the caliphate ended.

The emergence of the Republic marked a new period of modernization for the legal system. The Islamic law was derogated as a whole and the step toward the adoption of the principles of a continental European legal system was taken. In 1926, the French version of the Swiss Civil Code was translated into Turkish and adopted, with few changes, as the Turkish Civil Code. The Code is still the foundation of Turkish civil law and is considered to be the “keystone of the philosophy of life of the Turkish society.”8 The Republic went on to adopt the Swiss Code of Obligations and the Italian Penal Code of 1889. In 1927, the Civil Procedure Code of the Swiss canton Neuenburg became the Turkish Civil Procedure Code. Two years later, the German Criminal Procedure Code, then in its newest version, was also translated and integrated into Turkish legislation. The failed adaptation of the French influenced Commercial Code and the Swiss civil law led, in 1956, to a totally new codification of the Turkish Code of Commerce. This again demonstrates a balanced combination of the different continental European legal systems in the commercial field, harmonized primarily with its Swiss origins.

---

7 2 Shaw & Shaw, supra note 3, at 340; Lewis, supra note 3, at 360.
III. The Development of Continental European Legal Thinking in Turkey

In the years after the proclamation of the Republic, and in the course of the great secular reforms of the legal system in the spirit of European models, both doctrine and courts in Turkey have been adapted to the norms of European legal thinking.

In the last century of the Ottoman Empire, cultural education was shaped by the attendance of Turkish students and scholars at the European universities and academies. Lessons at the first Turkish colleges of medicine, music, and fine arts were given in French, and military education was given by German officers. Later, this shaping process also affected legal education. The first faculty of law was founded in 1900 at the Darülfünun (Istanbul University). European professors, especially from France, Germany, Switzerland, and Italy, helped the young Turkish lawyers acquaint themselves with the legal thinking behind the positive law as received from continental Europe. This educational process was even accelerated during the Thirties when a number of German professors escaped the Nazi regime, settled in Turkey, and were welcomed as competent teachers. Meanwhile, a system of legal education that followed the French licence system had taken root.

Turkish lawyers now undergo a four-year program of legal studies at the university, and admission to the bar requires a year of practical studies at the office of an attorney-at-law. Similarly, judicial candidates must practice a year at court before becoming judges, while the doctoral candidate must successfully complete a postgraduate program. Many Turkish scholars, and most of the judges in the higher courts, have spent at least some time at continental European universities. Many of them gained their doctorates there, civil lawyers preferring Switzerland and Germany, criminal lawyers going to Italy, France, or Germany, and public lawyers spending some years in France or Germany. It is quite natural that the "product" of such a system and tradition—the young lawyer or judge—will think in terms of continental European law (i.e., positive law). As a matter of fact, Turkish legal literature and case law demonstrate this conclusion; and likewise the treatment of law by Turkish judges—especially of statutory law—has to be seen in the light of this phenomenon.

IV. The Role of Parliament

The role of Parliament in the constitutional history of Turkey is shaped by a specific national identification. Turkish nationalism had close relations to the nationalist movement of the nineteenth century in Europe. The failure of an "Ottoman" nationalism helped the Young Turks movement to impose itself between 1909 and the end of World
War and prepared the soil for a Turkish nationalism, which, as Kemalist nationalism, was finally incorporated in the constitution in 1937.\textsuperscript{10}

The establishment of the Great National Assembly, on the basis of rudimentary constitutional legislation in 1920, was the first result of the movement toward independence initiated in 1919 by Mustafa Kemal Pasha, or Atatürk.\textsuperscript{11} This Assembly was considered to be the embodiment of the spirit of liberty and independence as well as the unity of the Turkish Nation. The principle of the unity of powers, rather than their separation, was the essence of the functions of the Great National Assembly. The development of a legal order in the spirit of continental European legal positivism (Rechtspositivismus), which at the time was identical with statutory positivism (Gesetzespositivismus), together with the consciousness of the force of the Nation, led the Parliament to an eminent role in Turkish constitutional life. The refusal to recognize a constitutional jurisprudence—other states such as Czechoslovakia and Austria had introduced constitutional courts at that time—was consequently interpreted as indicative of the sovereignty of Parliament in its role as the sole constructor of the new legal order. According to this principle, Article 26 of the 1924 Constitution provided that the Great National Assembly could bind the courts by “interpretative decisions” on the meaning of its own statutes. This clearly shows the superiority of the legislative will in constitutional life under that constitution.

However, with the establishment of a Constitutional Court under the 1961 Constitution and the express enforcement of the rule of law (literally: state of law; German: Rechtsstaat; Turkish: hukuk devleti), the legislative will of the Parliament became secondary to the superiority of the Constitution;\textsuperscript{12} the democratic principle was framed by the superiority of the law, and the Parliament had to renounce the power to interpret its own legislation. Parliament retained its legislative functions, however, as the Great National Assembly remained the primary institution to form and develop the Turkish legal order.\textsuperscript{13} A short description of the role of the statutory law (German: Gesetz; Turkish: kanun or yasa) will explicate this point.

V. The Function of Statutory Law in the Turkish Legal System

A. Notions: Law and Statutory Law

As to the notions of “law” (German: Recht; French: droit; Turkish: hukuk) and “statutory law” (German: Gesetz; French: loi; Turkish: kanun) will explicate this point.

\textsuperscript{9} See 2 Shaw & Shaw, supra note 3, at 340; Lewis, supra note 3, at 360.
\textsuperscript{10} Symposium, Türkiye is Bankasi International Symposium on Atatürk (1984).
\textsuperscript{11} 2 Shaw & Shaw, supra note 3, at 341-42.
\textsuperscript{12} Id. at 418. See also Turk. Const. of 1961, arts. 145-47.
\textsuperscript{13} 2 Shaw & Shaw, supra note 3, at 417.
kanun or yasa), the Turkish legal system follows the continental European legal culture. In the colloquial speech, Gesetz, loi, and kanun also may be used as synonyms for Recht, droit, and hukuk, but the professional legal language is quite clear on this point: a statutory law (kanun or yasa) is a regulation adopted in a formal legislatory process in Parliament; "law" (hukuk) in its proper sense is the abstract notion of the whole of legal and enforceable norms that regulate the relationship between the subject and the state, whatever their source may be. This distinction does not exclude customary law, however, which is always subsidiary to statutory laws. Turkish doctrine fully accepts the existence of a hierarchy of norms. The highest position within this hierarchy is taken by the Constitution, including—according to the Constitutional Court—the general principles of law. The next position is held by statutory law (including a special form of legislation called kanun hükününde kararname, meaning "order with the force of a statute"), followed by tüzük (ordinance), y'netmelik (decree), and others. In this hierarchy, every norm must conform with the one in the higher position and is subject in this respect to judicial review.

B. The Constitution and Statutory Law

The position of the constitution and statutory law within the norm hierarchy is not only a result of a raisonnement étatique, but is positively stipulated in the Constitution itself. Article 11, Section 2 of the Constitution of 1982 provides that "statutory laws must be in conformity with the Constitution." The significance of statutory law, however, is established by several sections of the Constitution which allow limitations on fundamental rights, but only to the extent that the limitations are effected by statute. This significance is also indicated by an emphasis on formal legislative procedure and by regulations limiting those orders that can have the force of a statute. According to Article 91 of the Constitution, an order with the force of a statute can be promulgated on short notice by the Government where there is a statute which has previously defined the subject of this abbreviated form of legislation, and where the order will be submitted to the Parliament for legislative review after it takes effect. Fundamental liberties and political rights, however, may not be limited by such an order with the force of a statute. This again shows the specific importance of a formally adopted statute. The same importance is also demonstrated by the fact that it is a statute by which, according to a special procedure under Article 175, constitutional amendments are to be effected.

The preeminent role of the statute in the Turkish legal system is

---

14 Id. at 418. See also TURK. CONST. OF 1961, arts. 145-47.
15 TURK. CONST. OF 1961, art. 11 (quotation translated by author).
17 TURK. CONST. OF 1961, art. 175.
thus clearly demonstrated by its position within the norm hierarchy and its significance within constitutional mechanisms. In this respect, the Turkish legal system follows the model of continental Europe.

C. The Characteristics of Statutory Law

The formal characteristics of statutory law are essentially shaped by the fact that the legislation must develop through a specific procedure. As to its contents and structure, the Constitutional Court\(^{18}\) and legal doctrine\(^{19}\) indicate some specific criteria. The statute has to be "general" and "determined."\(^{20}\) "General" means that a statute may not address individual cases;\(^{21}\) "determined" means that the wording of the statute should be such that the judge is able to draw a certain meaning out of it that is theoretically "foreseeable" by the subject. As a rule, the more a statute touches individual rights, the more it has to be determined. This result arises out of the constitutional concept of *nulla poena sine lege*, which is one of the preeminent principles of criminal law.

Emphasis is placed upon the role of the statutory law by the principle of the "legality of the administration," which means that any administrative body has to act in accordance with law or, if the rights of an individual person are in question, in accordance with a statute. As a consequence, the Turkish courts, under the Constitutions of 1961 and 1982, have abandoned the doctrine of sovereign immunity which protected administrative action from judicial review.\(^{22}\)

Finally, Article 138 of the Constitution of 1982 provides that not only are the public administration and the government bound by the law and the statutory laws, but also the judiciary itself: "The judges are independent in executing their office; they take their decisions according to their good conscience in harmony with the Constitution, the statutory laws and the law."\(^{23}\) Furthermore, if a judge discovers the unconstitutionality of a statute, he is not allowed to overrule the statute by arguing that it violates the Constitution.\(^{24}\) Instead, the judge is


\(^{20}\) Erdoğan Tezic, Türkiye'de 1961 Anayasasına Göre Kanun Kavramları, supra note 19, at 34.

\(^{21}\) There are some exceptions in Turkish constitutional law, including the annual budget law and acts on the execution of death penalties.

\(^{22}\) A few exceptions are stipulated in the section of the Constitution of 1982 on the powers of the President of the Republic.

\(^{23}\) Türk. Const. of 1961, art. 138 (quotation translated by author).

\(^{24}\) Before 1961, the question of the judicial review of statutory laws by the judiciary was discussed in Turkish legal literature. See Christian Rumpf, Das Rechtsstaatsprinzip in der
bound to follow the statute as a result of the reasoning of Article 152 of the Constitution, although he may bring such a statute before the Constitutional Court, pursuant to that article, if the case depends on the application of such a potentially unconstitutional statute (German: konkrete Normenkontrolle, Turkish: somut norm denetimi). This underlines the narrow role of the judge with regard to the formal statute.

It is against this background that the application of the law by the Turkish judge has to be seen, and it also determines the role and the manner of the methodological approach of the judge who interprets a statutory regulation. The wording of the statute and its meaning take first place before the ingenious fantasy of the judge.

VI. Theories of Juridical Interpretation in Turkey

A. Approaches to Interpretation in Legal Doctrine

Methodological discussions to the extent of that in the nineteenth-century German doctrine are foreign to Turkish lawyers. Even if we take into account the fact that Turkish legal scholars observe the developments in Europe—especially those in Switzerland—we cannot say that there is any great concern in the Turkish doctrine about the methods of interpretation of the law. Nevertheless, one can identify three different patterns that are discussed by Turkish scholars and, as is later discussed, by the courts: the grammatical or linguistic interpretation; the historical or subjective interpretation, which could better be termed the genetic interpretation; and the teleological or objective interpretation. From time to time, allusions to other methods,
such as the so-called systematical interpretation, also appear.\textsuperscript{29}

Without any doubt, Turkish legal writers, as well as the courts, presume that Article 1 of the Turkish Civil Code constitutes the leading rule for the interpretation of statutes and for the filling of gaps in any branch of the positive law. The relevant paragraph of this article reads as follows: “The statute has to be applied with its wording and meaning to any case within its field of application.”\textsuperscript{30} The following examples will illustrate how Turkish doctrine approaches the problem of interpretation and its methods.

The largest of the leading commentaries to the Civil Code states:

The features to be observed by the judge in the course of interpretation of a statute: For the solution of a problem submitted to him, the judge primarily has to apply the Civil Code and its binding regulations. Doing this, he must consider the wording of the statutory law as the obvious text, the clear meaning of the regulation. The spirit of the law derives from the meaning which has its source in the clear wording. Thus, the judge will first have recourse to the wording of the statute, and if he cannot find a meaning directly, he will try to find a meaning out of the whole of the statute: out of the spirit. The application accords with the sense of the statute, as such sense has to be considered, the meaning which arises from the interdependency of the legal system on which the statute is founded, and the whole of the statute itself . . . .

The meaning of the statute can also be elaborated by the use of logical and etymological analysis, by means of the singular words, punctuation marks, headings and under-headings, and in reference to all expressions and phrases used by the legislature. The preparatory works in the course of the legislation also have to be examined. Furthermore, the meaning of the statute can be extracted from the system of the regulations.

Another item is the observation of the purposes of the statute. Interpretations change with time and the needs of life. If we look for the true meaning, the interpretation should not follow the realities of the time of adoption but those of the present. This is called the objective modern interpretation. Even those interpreters who defend the objective historical interpretation admit that an interpretation in accordance with legal developments has to be found if the interpretation, valid at the time of adoption of the regulation, seems to be insufficient in the face of changing circumstances.\textsuperscript{31}

The theory of interpretation proposed in this commentary, although lacking a well-elaborated argument and foundation—as is also the case with most of the rest of the literature in this matter—can be summa-

\textsuperscript{29} In German theory and practice, this method ranks second in the canon of methods, after grammatical interpretation.

\textsuperscript{30} \textit{Türk. Constr.} of 1961, art. 1 (quotation translated by author). “Meaning” is the translation nearest to the Swiss original text, whereas the Turkish \textit{ruh} at this place should be translated as “spirit.” Both translations are compatible with the Turkish legal practice of interpretation.

\textsuperscript{31} \textit{Loğdu Dalamanlı et al., 1 İlmi ve Kazal İctihadarla Açıklamalı Türk Medeni Kanunu [The Turkish Civil Code, Annotated on the Basis of Legal Science and Case Law]} 5 (1991) (quotation translated by author).
rized as follows: In the first place, the wording of the statute has to be examined linguistically; if semantic and hermeneutic efforts do not help, the general meaning has to be extracted from the whole of the regulations of the statute and other statutes in the same field. This general meaning should help to find the special meaning of the norm being explicated. At this stage, the judge has to make use of the legislative materials.

Another source, Köprülü, follows this concept generally, but does not mention the importance of the legislative materials. This may be due to the fact that he confines himself to the interpretation of the Civil Code, which is a reproduction of the Swiss Civil Code of considerable age. As a consequence, he finds no reason to place any emphasis on legislative history materials; as the Civil Code has a certain age and has been extensively interpreted by generations of lawyers.

A. Seref Göüzüyüşuk, one of the leading authors in administrative law, refers to the general importance of Article 1 of the Civil Code. He ranks the methods of interpretation in a manner similar to those already described: the primary step is grammatical interpretation; the second is genetic interpretation, which, like other authors, he calls historical interpretation with inclusion of legislative materials; and finally comes the teleological interpretation, which he marks off from legislative history and which he links with a present-oriented delimitation of the aims and purposes of the statute. In the end he prefers a mixed interpretation, stating that "to interpret the statute in the right way, all methods quoted above have to be considered." By putting the weight on one or the other method, important aspects would be disregarded and therefore the certainty of law endangered. "For these reasons, in the course of interpretation we profit by the grammatical, the teleological, and the historical method."

Karayalçın starts from the principle that the statute is the written expression of the will of the legislature. First, he suggests a grammatical interpretation where the meaning of the wording itself has to be examined. As the wording may be contrary to the spirit of the statute and thus oppose the "real will" of the legislature, the latter may have to be discovered. According to the author, this is a consequence of the principles of the primacy of the statutory law and of the judge being bound by the will of the legislature.

This may perhaps be attained through linguistic, grammatical, logical

---

33 Id.
35 Id. at 64 (quotation translated by author).
36 Id. (quotation translated by author).
37 Karayalçın, supra note 25, at 84.
38 Id. at 86.
and systematic considerations. But if the real will of the legislature is to be ascertained, one often must examine the texts of the government bill or the proposals of the Parliament, their grounds, the amendments proposed in the commissions and their grounds, and even the debates of the plenary assembly of the Parliament, in order to get a result.\textsuperscript{39}

Another commentator, Bilge, also refers directly to Article 1 of the Civil Code.\textsuperscript{40} He similarly describes the three methods of the grammatical, historical (subjective), and teleological (objective) interpretation.\textsuperscript{41} He emphasizes the latter and then proposes, like Gözübüyük, a mixed interpretation:

This procedure of interpretation, which also may be called the balancing method, is to prompt the comprehension of the statute without neglecting the legislative materials; one must not, however, content oneself with [the legislative materials]. Attention must be paid always to the purpose of the statute, to the needs, the opinions, and the manner of thinking of the present time.\textsuperscript{42}

Bilge states that this is the predominant method preferred by legal scholars and the courts.

The textbook of İmre on the Turkish civil law contains one of the most solidly elaborated presentations of the methods to be applied in the course of interpretation of statutory law.\textsuperscript{43} Like most of the others, he starts from Article 1 of the Civil Code.\textsuperscript{44} After an extended description of the history of methodological approaches, he comes again to the three methods: the grammatical method, the subjective or the subjective historical method, and the objective or objective up-to-date method. According to him, the value of the subjective historical method is limited.\textsuperscript{45} In his opinion, one should follow the predominant school of thought and practice, which considers this method not as an independent methodological approach but as a subsidiary means to interpret a statute.\textsuperscript{46} Thus, İmre emphasizes the importance of understanding the wording which, in light of the needs of the present time, should be complemented by up-to-date objective considerations in order to discover the aim and purpose of the statute.\textsuperscript{47} He concludes that first, the text and the headings have to be examined, followed by consideration of the system of the statute and its aim, purpose, and historical roots.

The preparatory works to the statute (legislative materials) are a supplementary means of interpretation. . . . In addition to the legislative

\textsuperscript{39} Id. (quotation translated by author).
\textsuperscript{41} Id. at 196.
\textsuperscript{42} Id. at 197 (quotation translated by author).
\textsuperscript{43} ZAHIT İMRE, MEDENİ HUKUKA GİRİŞ [INTRODUCTION TO PRIVATE LAW] (3d ed. 1980).
\textsuperscript{44} Id. at 155.
\textsuperscript{45} Id. at 159.
\textsuperscript{46} Id. at 162.
\textsuperscript{47} Id. at 164.
materials, the moral, economic, social, scientific and technical circumstances of that time should be looked at, for they may have had an influence on the birth of the statute. Namely, it may be that the interests which result from the needs and necessities arising in the development of the society have been taken into account by the legislature.\textsuperscript{48}

To the extent that İmre believes recourse to the legislative materials and the historical roots in Turkey is of lesser importance than in Switzerland and other European countries, he relates this conclusion explicitly to the Turkish Civil Code and, specifically, to its coming into existence.\textsuperscript{49} There are, as he states, no legislative materials to testify to the preparatory foundations of the Great National Assembly of that time.\textsuperscript{50}

Tekinay, however, does not entirely follow the positions of the above-quoted authors.\textsuperscript{51} For him, the genetic interpretation is itself a proper method of its own. Nevertheless, he acknowledges that legislative materials should be used carefully and in a restricted manner.

Edis elaborates in a more extended way on what Tekinay, Bilge, and İmre have stated.\textsuperscript{52} Again, he reviews the basic methods. For him, the legislative materials are a natural part of the genetic interpretation and, at the least, should be used as a supplemental means of interpretation.\textsuperscript{53} He gives a clarifying example:

In the course of examining the birth of a statute, the fact that the final wording had been preceded by a different wording of the legislative draft or that specific notions have been changed before appearing in the final text can help to reveal the meaning.\textsuperscript{54}

Next, one must consider Özsunay.\textsuperscript{55} This author presents a singular opinion that totally rejects making use of the legislative materials.\textsuperscript{56} According to Özsunay, Article 1 of the Civil Code calls upon the judge to act like an “objective legislature.”\textsuperscript{57} This starting point, which lifts one aspect of that provision up to a principle and which offers to the judge more discretionary power than the supporters of the mixed interpretation, consequently leads to different results. Without any reasoning, Özsunay rejects the “subjective historical interpretation.”\textsuperscript{58}

\begin{itemize}
\item \textsuperscript{48} Id. at 169 (quotation translated by author).
\item \textsuperscript{49} Id.
\item \textsuperscript{50} Id. Indeed, the only important materials are the speeches of the Secretary of Justice, Mahmut Esat (Bozkurt), which consist of some general considerations about why one should utilize a translation of the Swiss Civil Code instead of the German or the French Civil Codes.\textsuperscript{51} TEKINAY, supra note 8, at 60.
\item \textsuperscript{52} SEYFULLAH EDIS, MEDI N HUK KU GİRİŞ VE BAŞLANGıC HÖKÜMLERi [INTRODUCTION TO AND THE PRIM ARY RULES OF PRIVATE LAW] 189 (1987).
\item \textsuperscript{53} Id. at 195.
\item \textsuperscript{54} Id. (quotation translated by author).
\item \textsuperscript{55} ERGUN ÖZSUNAY, MEDI N HUK KU GİRİŞ [INTRODUCTION TO PRIVATE LAW] 188 (5th ed. 1986).
\item \textsuperscript{56} Id. at 191.
\item \textsuperscript{57} Id.
\item \textsuperscript{58} This is similar to the opinion of Edis who rejects this method for the filling of normative gaps, which is another issue and has nothing to do with the interpretation of a given norm and its text. Edis, supra note 52, at 140.
\end{itemize}
Under the heading "Methods of Interpretation not Allowed: (i) The subjective historical interpretation," he states "occasionally, the will of the legislature may not be perceptible. Especially, if several collective organs are involved in the legislative process, it is often impossible to reveal the will of the legislature."59

Özsunay then lists the preeminent methods of interpretation. He explains the "objective historical method" as consisting of the evaluation of the general historical circumstances at the time of the adoption of the statute, but not including the process of legislation itself.60 Second, he writes about the "objective up-to-date method," which has to be founded on an evaluation of the actual needs of the present time.61 The result of the process of interpretation shall be determined by the "permanent will of the law" as discovered through the objective spirit.62 Özsunay adds a list of methods of interpretation that have been developed in Germany during the last century. Thus, Özsunay, who does not provide any reference to Turkish doctrine or case law, remains far from the mainstream of Turkish theory and practice as to the role of legislative history materials in interpretation.

Finally, one should look at Esen's work because his lectures on the "Interpretation of the Constitution by the Constitutional Court"63 are still considered a remarkable contribution to that subject, although they have had little impact on Turkish constitutional practice. Esen explicitly prefers an approach influenced by both continental European and Anglo-American legal thinking and critically states that "the Turkish judge has the habit of a positivist approach."64 According to Esen, the judge therefore examines the wording of the provision and, if this appears to be insufficient, "the draft regulation, [and] the opinions advocated during the parliamentary debates, in order to get any instruction."65 Esen urges this method for the Constitutional Court, but recognizes a tendency of that court to renounce positivist approaches.66 This expectation has not been followed, however, as is shown below.

59 This is in contradiction to IMRE, supra note 43, though his opinion is based on the same source—A. Meyer-Havoz, Berner Kommentar zum ZGB, [Bern Commentary on the Civil Code], Art. 1, No. 132 (1962) (quotation translated by author). The quotation of Özsunay itself offers nothing more than the conclusion that legislative materials play a role only as a subsidiary means of interpretation.
60 ÖZSUNAY, supra note 55, at 192.
61 Id.
62 Id.
64 Id. at 8 (quotation translated by author).
65 Id. (quotation translated by author).
66 Id. at 17, 19.
B. Evaluation of the Role of Legislative History Materials

The Turkish doctrine does not follow a homogeneous pattern of methodological terminology. Notions of the different methods of interpretation are not always the same; some authors, namely Özsunay and Edis, explicitly refer to methods having been developed not only in Switzerland, but also in Germany. But in general, the presentation of the methods of interpretation concentrates on the three kinds of approaches that have their source in Article 1 of the Civil Code. The grammatical method is without any doubt preeminent. It is followed by the objective method through which the meaning and purpose of the statute is found within the limits of the wording and in obedience to the needs and necessities of the present time. The subjective or subjective historical method, in this Article described as the genetic method, is accepted as a proper method of its own only by some Turkish scholars. Nonetheless, with the exception of Özsunay, most scholars consider research into the real will of the legislature to be, at the least, an important subsidiary or supplementary means of interpretation. In any case, review of legislative history materials constitutes a well-settled part of Turkish legal methodology.

This assertion is supported by a more practical fact: Textbooks and handbooks on Turkish law in Turkey quite often contain not only the text of the subject statutory and administrative provisions, but also the text of official statements, grounds, and reports of commissions related to the legislative process. Thus, almost all Turkish legal writers advocate that legislative history material has to be considered in the course of interpretation of statutory law if the purpose and the meaning of the provision cannot be found merely through an examination of the wording itself.

VII. Statutory Interpretation by the Constitutional Court

A. The Method and the Decisions of the Constitutional Court

The methods developed by legal writers are also reflected in the decisions of the Constitutional Court. As a result of the different character of the conflicts to be resolved, the interpretation of constitutional norms may follow criteria different than those applicable to the interpretation of statutory law. At the level of the Constitution, there often is conflict between two different or opposite constitutional norms that must be resolved. Quite frequently, the statute in question is the concrete expression of a constitutionally protected public interest, that at the same time violates another constitutionally protected private interest.

However, both the constitutional norms and the statutory law that has been submitted to the Constitutional Court for constitutional review have to be interpreted in order to determine what the law is. Without going into the details of methods of interpretation within the constitutional review, it is clear that the interpretation of statutory law by the Constitutional Court is at least as relevant as the interpretation of statutory law by other courts. Furthermore, the interpretation of a statute by the Constitutional Court is, by virtue of the constitutional force of its judgment, generally binding. Therefore, the manner in which the Constitutional Court ascertains the meaning of a statutory provision is important. With regard to the interpretation of statutory law, the Constitutional Court is in unison with the majority of the Turkish literature: It starts with the wording (grammatical method), and then turns to an objective up-to-date interpretation, which also incorporates an examination of the legislative materials. The following examples will show the role of legislative history materials in the process of interpreting statutory law by the Constitutional Court.

B. Examples: Case Law

In a decision dated September 24, 1987, the Court had to consider a statute, adopted in 1924 and amended in 1963, which provided for the suspension of village mayors and members of the village councils. The statute also allowed a sort of “judicial” review of such acts, this review being effected by “independent” administrative bodies. The Council of State, which brought the case to the Constitutional Court, had estimated that such a review could not be considered a “judicial review” in the sense of Article 125 of the Constitution. The Constitutional Court examined the genetic development of this Article. As Article 125 followed Article 114 of the (precedent) Constitution of 1961, the Court also examined the official grounds as well as the reports of the Constitutional Commission of the Assembly of Representatives of the time. In this case, the decision was exclusively founded on the evaluation of the constitutional legislative history materials. The result was that the provision of the statute was held to be in conformity with the Constitution.

Another decision, dated June 14, 1988, reviewed an amendment of the legislation on elections. According to this amendment, political parties had to meet certain conditions (e.g., the organization of regional assemblies) as a basis for their participation in election cam-

---

68 Id. at 153.
70 Turk. Const. of 1961, art. 125.
paigns. The same amendment had tried to coordinate the dates of general and local elections. In the course of interpretation, the Constitutional Court made use of legislative materials several times. The legislature, in statements during the legislative process, had alleged certain reasons that should have legitimated the holding of general and local elections on the same date. In this case, however, this would have led to a delay of some months in the local elections that year, and thus would have caused the lapse a period of more than five years since the previous elections. Consequently, the Court had to determine what the Constitution meant in its requirement of elections "every five years." In the end, the Constitutional Court could not find an interest protected by the Constitution that would legitimate an electoral period of more than exactly five years.

Later, the Court had to review a provision of the same statute that again involved a changed electoral period: in this case, the time between the interim elections—provided for by the Constitution—and the next regular elections. Again, the Constitutional Court examined the official grounds of the government bill. The Court tried to interpret the term "organs" through the use of legislative materials, but to no avail. In this case as well, the examination of legislative history materials was constituent for the final decision. As a result, the provisions were held unconstitutional.

A decision dated January 28, 1988, was taken after review of a statute that delegated budgetary control over public enterprises and funds from the Parliament to the Government. The public funds at issue, which were placed under the control of the Government itself and financed by duties imposed by law, were thought to serve as a means to avoid budgetary restrictions and create a sort of "black budget" under the control of the executive power. Again, the Constitutional Court investigated the process of legislation, especially the reports of the Budgetary Commission of the Parliament. The interpretation of the constitutional norm in question, Article 165, was based on an examination of the debates and reports of the Consultative Assembly, which was involved in the adoption of the Constitution of 1982.

A very good example of both historical (in our sense) and genetic interpretation is the decision dated June 21, 1990. According to

73 Id. at 43, 53, 57.
74 Id. at 44.
75 Id. at 52.
76 Id.
78 Id. at 14.
79 Id. at 15.
80 See supra note 27 and accompanying text.
the statutory provisions of the public law of construction, the cities and the provinces as administrative bodies have the right of "field clearing"—changing extensions and borders of real estate in the course of planning without a formal procedure of expropriation.\textsuperscript{82} This provision was deemed unconstitutional by an administrative court that brought the case to the Constitutional Court. The Constitutional Court started its considerations by drawing upon the entire history of public construction law since 1848. It then described the actual system of this branch of the law and finally integrated the legislative materials into its statements.\textsuperscript{83} On review of these findings, the Court declared the provision constitutional.

Allowing the establishment of universities by private foundations had been the purpose of an amendment to the Universities Act of 1981,\textsuperscript{84} declared unconstitutional by the decision of May 30, 1990, on the ground that universities have to be established by the State.\textsuperscript{85} In this decision, the historical and genetic methods were again basic elements of interpretation. To consider which principles were relevant to the establishment of universities, the Court examined: Article 130 of the Constitution of 1982,\textsuperscript{86} Article 120 of the Constitution of 1961,\textsuperscript{87} its amendments of 1971\textsuperscript{88} and the official statements of the 1971 Parliament;\textsuperscript{89} the draft of the Consultant Assembly 1982,\textsuperscript{90} and the written notes of the National Security Council which criticized and changed that draft and which finally adopted the provision in its present form.\textsuperscript{91} Against this background the Constitutional Court inquired into the aims and the purposes of Article 130, especially as far as the words "university" and "freedom of research," and other notions were concerned. Again, legislative materials played a decisive role in this judgment.

Finally the decision of January 28, 1992, is worth mentioning.\textsuperscript{92} Here, the Court had to consider a provision of the Tariff, Strike and

\textsuperscript{82} Law No. 3194 of May 3, 1985, Resmi Gazete [R.G.] No. 18749 (May 9, 1985) (Turk.).
\textsuperscript{84} Law No. 3589 of Nov. 23, 1989, Resmi Gazete [R.G.] No. 20358 (Nov. 30, 1989) (Turk.).
\textsuperscript{86} Id. at 20.
\textsuperscript{87} Id.
\textsuperscript{88} Id.
\textsuperscript{89} Id. at 18.
\textsuperscript{90} Id. at 20.
\textsuperscript{91} In this report, "National Security Council" means the "Milli Güvenlik Konseyi," which represented the military junta between September 12, 1980, and December 6, 1983. It must not be confused with the "Milli Güvenlik Kurulu" (NSC) which is, under the Constitutions of 1961 and 1982, a consultant body to the government for internal and external security matters.
Lockout Act,\textsuperscript{93} according to which workers who were not members of a trade union had to pay certain contributions to the trade union in order to get the benefit of tariff agreements.\textsuperscript{94} The case is one of those that falls under Provisional Article 15 of the Constitution, under which statutes and regulations adopted between September 12, 1980, and December 6, 1983—the period under the military regime—were not to be brought to the Constitutional Court. Thus, the case was declared inadmissible.\textsuperscript{95} Nevertheless, the Court took the opportunity to expound on interpretive methodology.

Before all, statutory laws must be applied by their wording. The words which are used in the text of the statutes have to be understood in the terms of the juridical terminology. It is an exigency of the law that a provision of the statute must not only be interpreted according to the social and economic needs of the day, but also in respect to the period that it has been in force.\textsuperscript{96}

There was no need to refer to legislative materials. However, the Court clearly indicated that the history of application of the law must be considered and, in fact, such history starts with the legislative materials.

\textbf{C. Evaluation of the Role of Legislative History Materials}

The representative selection of cases of the Constitutional Court, described above, demonstrates that this Court refers extensively to the legislative history materials when it has to examine statutes for their normative content. The same is done with the materials of the Constitution, when the normative content and extent of a constitutional norm have to be determined. The Court even moves beyond the doctrine when researching legal history, in order to highlight the meaning and understanding of the legal notions and regulations in question.

\textbf{VIII. The Practice of Interpretation by the Court of Cassation}

\textbf{A. Preliminary Remarks}

The Court of Cassation consists of twenty Chambers of civil law and ten Chambers of criminal law. On appeal, these Chambers review the decisions of the courts of the first instance, and they do not state on the facts. In the case of a "cassation," or quashing of a judgment, the case is heard again by a court of first instance. If this court maintains its former opinion, a second appeal is heard at the "Great Chamber" (assembly of the Presidents of the Chambers), whose decision cannot be overruled.

If there is a divergence of the case law within the different Chambers or the Great Chamber, the specific legal question may be brought

\textsuperscript{94} Id.
\textsuperscript{95} Judgment of Jan. 28, 1992, Constitutional Court, Resmi Gazete [R.G.] No. 21169, at 25 (Turk.).
\textsuperscript{96} Id. at 23 (quotation translated by author).
to the Presidency of the Court of Cassation, which may call in the Plenary Assembly of the Chambers of civil law or criminal law—or both—in order to “unify” the jurisprudence. As many as eighty judges or more sit for these hearings. Rulings of this Plenary Assembly are published in the Official Journal and have the force of statutory law. The present examples, except for the last one, are selected from the official collection\textsuperscript{97} of such decisions.

\textbf{B. Examples: Case Law}

The decision of February 18, 1981,\textsuperscript{98} involved a problem relating to compensation for damages and interest after a violation of copyrights, as well as the applicability of the general principles of the Code of Obligations to the right to compensation. The Court had to determine the extent to which the legal provisions protected the copyright itself, as opposed to the users. The Court started by examining the motives of the legislature.\textsuperscript{99}

Another judgment, on December 8, 1982,\textsuperscript{100} is also considered a leading case on the question of methodology. The basic question concerned jurisdiction over cases where Social Security seeks recourse against third party debtors. When interpreting the statute governing the Annuity Office, the Court remarked on the features of statutory interpretation. It emphasized the unconditional preeminence of the wording of a statute, but also examined the interpretations’ harmony with the intentions of the legislature, as indicated by the draft bill.\textsuperscript{101} The Court also stated that the “old meaning” of the materials is of less weight than a determination of purposes in accordance with actual needs and conditions of the present time.\textsuperscript{102} In other words, the legislative materials may lose their importance with the passage of time. In the actual case, the Court examined the written motives of the government and came to the conclusion that the materials would not assist in solving the problem with the wording of the statute in the case.\textsuperscript{103} In fact, the Court expressly preferred the grammatical interpretation, followed by the teleological method, but it also examined some of the

\textsuperscript{97} \textit{Yargıtay İctidamları Birleştirmе Kararları [Decisions Under the Unified Jurisdiction of the Court of Cassation]} [Y.I.B.K.].


\textsuperscript{99} \textit{Id.} at 13.


\textsuperscript{101} \textit{Id.} at 52.

\textsuperscript{102} \textit{Id.}

\textsuperscript{103} \textit{Id.} The Court had some problems with the notion of “\textit{üzel hukuk hukümleri},” which actually has a double meaning: it means both “regulations of private law” and “special law regulations.”
legislative materials in order to come to a finding.\textsuperscript{104}

The Plenary Assembly proceeded similarly in its decision dated February 1, 1984.\textsuperscript{105} This case involved the extent to which an appeal may be precluded, after expiration of the term provided by the provisions of an amendment to the Civil Procedure Code.\textsuperscript{106} The minority of the Assembly made extensive use of the reports of the Law Commission of the National Security Council,\textsuperscript{107} while the majority rejected these considerations, arguing that the motives of the Law Commission were not in accord with the express wording.\textsuperscript{108} One of the dissenting votes pointed out that the Court of Cassation, and the Constitutional Court as well, made use of legislative history materials when interpreting statutory provisions.\textsuperscript{109} No dissent asserted that legislative materials have binding force; only the statute itself is binding. Yet, as another dissenting vote insisted, methodical interpretation of statutory law has to respect the legislative materials.\textsuperscript{110} In their words:

Turkish law has decided in favor of the teleological interpretation and has chosen the procedure of investigating the purpose of the wording. There is, however, no doubt that the wording itself predominates . . . . The means to be applied in the interpretation are, of course, the preparatory works of the legislature and the purposes that can be drawn out of the official grounds. Nevertheless, in the teleological interpretation, the subjective will of the legislature (voluntas legislatoris) and the reason for the institution of the legislation procedure (occasio legis) are not the primary and only measures. The law is permanent, while the legislature is temporary. . . .\textsuperscript{111}

This vote demonstrates some unity between both the majority and the minority on the issue of the methodology of interpretation.

The judgment of May 14, 1984,\textsuperscript{112} addressed double appropriation of real estate under the Statute on Settlement of 1954, and its amendment of 1939. The regulation in question had provided that proprietors whose estates had been appropriated by new settlers could bring their claims only within a certain period.\textsuperscript{113} The Court had to consider whether proprietors, who themselves had appropriated real

\begin{itemize}
  \item \textsuperscript{104} Id.
  \item \textsuperscript{105} Judgment of Feb. 1, 1984, Court of Cassation, E.1983/9, K.1984/2, 6 Yargıtay İç- thadıları Birleştişme Kararları [Decisions Under the Unified Jurisdiction of the Court of Cassation] [Y.I.B.K.] 146 (Turk.).
  \item \textsuperscript{108} Id. at 154.
  \item \textsuperscript{109} Id. at 161 (Çenberci dissenting).
  \item \textsuperscript{110} Id. at 163 (Varlık dissenting).
  \item \textsuperscript{111} Id. at 163, 177 (quotation translated by author).
  \item \textsuperscript{112} Judgment of May 14, 1984, Court of Cassation, E.1983/10, K.1984/4, 6 Yargıtay İç- thadıları Birleştişme Kararları [Decisions Under the Unified Jurisdiction of the Court of Cassation] [Y.I.B.K.] 205 (Turk.).
  \item \textsuperscript{113} Such cases occur in regions lacking a well-organized land registration system.
\end{itemize}
estate under the Statute of Settlement, could benefit from these provisions. The Court of Cassation affirmed the rights of these proprietors.

The Court based its decision on extensive investigations of the legislative history materials, especially the reports of the Mixed Commission of 1939. On a second issue, relating to the beginning point of the claims period, the Court explained its method of interpretation. It stated:

From Article 1 of the Civil Code comes the principle that a statutory provision is valid not only according to its wording, but also following its text and spirit. The judgment of the Plenary Assembly, given on March 27, 1957, provided that "the statement of the meaning of a statutory law must, in the first place, rely on the sense found in the wording; if this meaning is in opposition to the aims and the purposes of the adoption of the law, the decision has to follow the meaning which can be drawn out of the spirit of the statutory law."116

The Court quoted other cases and distinguished this judgment from the decision of December 8, 1982, where unconditional priority had been assigned to the wording. There the Court deemphasized the importance of the teleological interpretation. This made the further proceeding comprehensive; the Court based its final result on the government draft of the amendment of 1939, and the reports of the Law Commission and the Special Commission for Policies of Settlement.

The last decision to be considered in this Article was entered by the 11th Chamber (Civil Law) of the Court of Cassation. The Chamber had to answer the question of whether interest on arrears to Social Security should be paid by a commercial corporation in bankruptcy. The Social Security Act was silent on this issue. The Court turned to systematic comparisons between the Turkish law of bankruptcy, which prohibits the claim of interest on arrears, and the Collection of Public Claims Act, which provides for such interest. The Court found that when the Commission of Health and Social Affairs of the Great National Assembly debated an amendment in 1985, it considered both the Social Security Act and the Collection of Public Claims Act as being closely related to each other. On this ground,

---

115 Id. at 210.
116 Id. (quotation translated by author).
117 Id.
118 Id. at 211.
the Court came to the conclusion that the provisions on the interest payable on arrears of the Social Security Act should be interpreted in light of the Collection of Public Claims Act. Again, legislative history material played a decisive role.

C. Evaluation of the Role of Legislative History Materials

The case law of the Court of Cassation gives legislative history materials a firm role within the framework of methods for interpreting statutory law. Questions remain as to the ranking of the grammatical and the teleological interpretation, however. In its decision dated May 14, 1984, the Court obviously preferred the teleological method. In none of its decisions, however, did the Court deny the importance of the legislative materials, and thus it followed the majority of the legal literature, as well the jurisprudence of the Constitutional Court. It considered the legislative materials a subsidiary means of interpretation for determining the objective meaning of a statute. Sometimes the legislative materials were quoted in order to supplement a result that had been extracted from the actual wording. At other points, the Court has made use of legislative materials in order to show a relationship to the "spirit of the time." Finally, there were instances where the legislative materials even served as the main foundation of the decision.

IX. The Practice of Interpretation by the Council of State

A. Preliminary Remarks

The Council of State is the highest administrative court, and its judicial functions can be compared with the French Council of State. It is independent, in the sense that there is a strict separation of powers, and it has two Chambers that review in advance draft regulations of the government. In addition, eight Chambers sit for trials.

The Council of State's procedure is not comparable to that of the Court of Cassation. Aside from the parties, there are—following the French system—an Advocate General (Danistay savcisi) and a Judge of Instruction who prepare the case and give their reports in the hearing. The method of investigation and the similarity to the French system suggest that methodological considerations are of lesser importance. Nevertheless, one can find several examples of methodological considerations in the jurisprudence of the Council of State.


124 Id.
B. Examples: Case Law

A decision of October 21, 1983, reviewed a governmental decree on the distribution of press cards and its conformity with a statute adopted in 1960. In this context, the function of the General Directorate for Press and Publications had to be determined. In order to reveal the purpose of that directorate, the Council first examined the grounds of the government bill which preceded the adoption of a statute of 1920.

In a decision dated November 5, 1986, the Council of State followed both the grammatical and teleological methods. In this case, the Court had to determine the powers of a president of the university who had been appointed temporarily. According to the Council, a regulation must be interpreted “primarily in the frame of its proper meaning and purpose,” which can be founded on systematic considerations.

Another relevant decision is that of December 29, 1987, which was of great political importance at that time. The question was whether a public servant, who had been suspended by an act of the civil public administration initiated by the military authorities during a military state of emergency, can reclaim a post in the public administration after the end of that state of emergency. The Council of State had to interpret a provision of an 1981 amendment to the Military State of Emergency Act of 1971, according to which a public servant, once suspended, “must never again be engaged in the public administration.” The Court examined the official grounds of that provision and the extensive debates of the Consultative Assembly. From this foundation, the Council of State concluded that the prohibition continued after the end of the military state of emergency.

---

126 Id.
128 Id. at 244 (quotation translated by author).
130 This type of state of emergency, as was proclaimed in the whole country on September 12, 1980, is a state of emergency under full military authority, whereas the “normal” state of emergency—like the one currently in place in the southeast of Turkey—is under a strengthened civil authority. Both types of states of emergency, as well as the state of war, are regulated by the Constitution and by separate statutes. See Christian Rumpf, Der Not- und Ausnahmefall im Türkischen Verfassungsrecht [States of Emergency and Martial Law in Turkish Constitutional Law], 48:4 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht [HEIDELBERG J. OF PUBLIC INT’L L.] 683 (1988).
132 The dissenting votes criticized the majority for not considering the special situation under which the provision was adopted. Under the rule of law, a narrow interpretation should have been chosen. A few months later, the dissenting minority succeeded in chang-
C. Evaluation of the Role of Legislative History Materials

In general, the Council of State in its decisions tries to rely on the plain wording of the statutory provisions under consideration; without any clear foundation, the Court determines the purpose of the statute. In some cases, however, the Council of State expressly makes use of legislative materials, including both the official grounds and the protocols of the debates of the Parliament.

Thus, with respect to the Council of State, if the wording itself is not sufficient to reveal a meaning, the Court tries to explicate the aims and purposes of the statute on the basis of teleological, systematical, and finally genetic considerations, with the help of the legislative history materials.

X. Conclusion

The development of the Turkish legal order shows that Turkey possesses a continental European legal system. This fact is also reflected by both traditional and modern legal education, and in Turkish legal thinking. Consequently, the position of statutory law within the legal system follows criteria familiar to the continental European legal system, including principles of the legality of the administration, and of courts being bound to the statute that has to be "general" and "determined." Statutes take, after the Constitution, a privileged place within the norm hierarchy. Thus, the interpretation of the statute is highly relevant.

Turkish scholars have not engaged in a truly controversial discussion of methodological problems. They may show minor divergence in terminology and in weighing the different methods or means of interpretation, but all of them—with the notable exception of Özsunay—consider the examination of legislative history materials either a proper method on its own (subjective method or subjective historical method), or as a subsidiary means within the teleological (objective) method.

The case law of the Constitutional Court is the most extensive, with respect to the examination of legislative history materials. This Court attributes to legislative history materials a preeminent place in interpretation of statutory law. The Court of Cassation has also developed a clear hierarchy of methods: the grammatical method, followed by the teleological method. The legislative history materials are a subsidiary means to be employed, if the evaluation of the wording and the place of a provision within the system of the surrounding statutes does not permit a final determination of its aims and purposes, and is there-

---

1994] TURKISH LEGISLATIVE HISTORY 291

fore unclear. Finally, the practice of the Council of State is quite similar to that of the Court of Cassation. Though this Court has placed little emphasis on the discussion of methodological issues, its interpretive approach permits the conclusion that the Council of State also makes use of legislative history materials within the teleological interpretation, if the statute’s wording is insufficient.

In general, we can conclude that Turkish practice follows the pattern of a civil law system under the principle of sovereignty of the Nation, represented by the national parliament. The judge is narrowly bound by the text of written law and his margin of interpretation and supplementation is limited by the will of the legislature, as far as this will can be determined and aligned with actual needs. In the latter context, legislative history materials are an important means of ascertaining the law.