

PSYCHIATRIC ASSOCIATION OF TURKEY

MENTAL HEALTH LAW DRAFT

Preamble:

In the Constitution of the Republic of Turkey, it is written that the Republic of Turkey is a social state, governed by the rule of law and respecting human rights (Constitution, Article 2) The rights of the citizen, whose details are determined by Turkish Civil Law and whose general framework is established in the Constitution of the Republic of Turkey are possessed by every citizen of the Republic of Turkey (Constitution, Article 12). Everyone has the right to protect and develop his material and spiritual entity in a way that includes mental and physical health (Constitution, Article 17). In this sense, the right to a healthy life is a civil right, determined by the Constitution of the Republic of Turkey.

In the scope of civil rights, not only is it important that mental health be preserved as a civil right, or in the case of a disorder, the treatment and rehabilitation be offered in order to prevent the loss of faculties that the mental illness may bring, but it is also of essential importance that the patients undergoing treatment and rehabilitation in a hospital or in society be protected from infringement on their other rights.

Everyone has the right to liberty and security of person (Constitution, Article 19). Only courts are allowed to deprive a person of his liberty. The privacy of an individual cannot be violated (Constitution, Article 20). Everyone has the right to allege and defend as a claimant or a defendant, and no court can avoid accepting a court case that falls under its jurisdiction and authority (Constitution).

Starting from their existence in their mother's womb, everyone is entitled to personal rights. As of birth, everyone possesses the right to be recognized as an individual. As of legal age, everyone is entitled to exercise his or her civil rights (Turkish Civil Code, Articles 13, 10, 11, 12 and 28). However, in cases where individuals are deprived of reasonable mobility due to a mental illness or whose liberties are limited by court for more than one year, a court of law appoints a legal representative in order to prevent losses of rights (Turkish Civil Code, Article 405, 406, 407, 408, 432).

Most mental illnesses do not render the individual a threat to himself or others. However, acute or fulminant phases of some mental illnesses can render the individual potentially dangerous for himself or other members of society. As the treatment of patients whose mental illness may pose potential danger involves their being placed in a mental health clinic until the danger associated with the illness may come to pass, the treatment is both an exercise of the right to treatment in the framework of a "right to healthy life" and a limitation of an individual's liberties simultaneously. Although foundational law of the Republic of Turkey permits only the courts with the authority to limit one's liberties (Constitution, Article 19 and 38), present practice allows the limitation of the liberties of patients with mental illnesses based on medical reasons by a physician's decisions. However, there is no legal regulation that regulates the conditions of admittance to or leave of a hospital.

The main objective throughout the process of the protection of the rights of patients with a mental illness is to ensure that patients are admitted into a hospital on their own accord as much as possible (voluntary admittance), or even better, that they be treated and

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rehabilitated as outpatients in society. Thus in parallel with the recovery of the patient with a mental illness, the primary principle is to move from obligatory admittance to voluntary admittance, meaning a move from treatment in a psychiatric facility by limiting the individual's liberties to admittance to the facility without infringing a person's liberties, up to the point of outpatient treatment in society.

It is a reality that individuals with mental illnesses have been "stigmatized" as "threats to society" based on attitudes that stem from history and negative prejudices. What we aim is not only to underscore the fact that not all individuals with mental illnesses are "dangerous," but also to ensure that patients with mental illnesses who carry the risk of danger due to their illnesses be able to exercise their right to treatment. Therefore, one of the objectives of this law is to define the potential danger linked to mental illnesses in order to determine the treatments and preventive measures for patients who might turn dangerous, along with the lifting of the "dangerous" label in the long run of those patients who do not pose a danger.

The jurisdiction and authority of experts in mental health and illnesses are limited to the examination of the patient that applies to or is enabled to apply to a physician, if need be the diagnosis of the illness, the treatment, his medical care and protection, determining whether or not the patient carries danger linked to his mental illness and the protection of himself and others from the said danger using medical methods and means. Determining and preventing the danger that individuals who do not carry a mental illness does not fall under the responsibility and authority of the branch of medicine that deals with mental health and illnesses. In this respect, another aim of the law is to prevent the "exploitation" of this branch of medicine by defining the areas of application of psychiatric knowledge and the authority and responsibilities that experts in mental health carry.

The primary objective of "The Mental Health Law" is to protect the mental health of the country's population, to lift all obstacles that hinder the access to treatment of all citizens that carry a mental illness, to ensure that they indiscriminately benefit from hospital treatment, to forge legal and administrative regulation for their treatment and rehabilitation among society, to found and monitor relevant institutions, to enable their exercising the rights that stem from international foundational legal texts, the Constitution of the Republic of Turkey, the Turkish Civil Code and other legal rights, to prevent any loss of rights and to protect themselves or others from the potential danger their mental illness may cause.

PART I

BASIC PRINCIPLES

Aim:

Article 1- The aim of this law is to enable;

1. The protection of mental health of all citizens of the nation, the treatment of those afflicted with mental disorders, the organization of services for the rehabilitation and prevention of the loss of faculties incurred by mental illnesses,

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to forge the legal and administrative regulations that will permit the foundation and monitoring of institutions geared to organize the said services.

2. To enable the drafting of legal and institutional regulations that will permit preventive measures against the marginalisation or ill-treatment of an individual while in society or during his involuntary admittance to a hospital with the aim of protecting society from danger, and to ensure the individual's right to a healthy life.

Scope:

Article 2- This law covers

1. All institutions particularly dealing with health, communications and security among others that will be working, taking preventive measures, be appointed or monitored in the protection of mental health, working in coordination with the Ministry of Health,
2. All associations, foundations or private institutions and organizations linked to a ministry, university, private administration or municipality that provide treatment or rehabilitation,
3. Official and private insurance institutions,
4. Civil courts of peace in cases dealing with involuntary admittance and patient rights.

PART II

DEFINITIONS:

Article 3- The following are the definitions of some of the terms employed in the legal text:

1. **Mental illness:** Delineates illnesses that are manifested through a disorder in the brain or mind that causes temporary or permanent damage to mental faculties and that fall under the working areas of expertise branches of medicine that deal in mental health and illnesses and child mental health and illnesses.
2. **Mentally ill:** Describes the individual that carries a mental illness.
3. **Clinic for mental health and illnesses:** Delineates all inpatient mental health and illnesses treatment clinics in any public or private hospital governed by at least one military or civilian expert in mental health and illnesses.
4. **Mental health and illnesses special branch hospital:** Delineates hospitals where especially individuals whose mental health is damaged are treated and rehabilitated.
5. **Halfway houses:** Delineates institutions where mental health patients who have completed their acute phase treatment as inpatients of a hospital voluntarily

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continue their treatments as they have not recovered enough to live among society.

6. **Shelters:** Delineates residential buildings founded with the purpose of enabling the integration to society of mentally ill patients who do not have anyone that will care for and supervise them or who have difficulties in adapting to society due to extended hospitalization but who are able to sustain their own life under supervision.
7. **Community based mental health centre:** Delineates mental health institutions that are responsible for providing mental health treatment and rehabilitation services in the community and whose founding, function and staff characteristics are defined in this legal text.
8. **Voluntary admittance:** The term describes the way in which a patient is treated as an inpatient in a mental health and illnesses clinic upon their own accord, on the condition that an expert in mental health and illnesses at the hospital see it fit to do so.
9. **Danger linked to mental illness:** Describes patient behaviour linked to a mental illness, which is a threat to life or causes self-damage or damage to others. The behaviour may have been already manifested or an expert physician in mental health and illnesses, upon examining the symptoms of the disease, has predicted that the possibility of the manifestation of the harmful behaviour has increased.
10. **Mandatory admittance:** This term designates how in cases of danger linked to mental illnesses, the patient is admitted into a psychiatric clinic for treatment and in order to ensure protection of self and public security until the danger is alleviated.
11. **Involuntary admittance:** Delineates the involuntary admittance into a psychiatric clinic of a patient who is deemed to have fulfilled all the mandatory admittance conditions after clinical evaluation.
12. **Court of Peace Magistrate:** Designates the judge of the court of peace that is responsible for decrees regarding the protection of rights of patients as delineated in this law, especially in cases where mandatory admittance to a hospital is concerned, and the execution of the relevant legal processes.
13. **Mental health and illnesses expert appointed by court:** Designates a mental health and illnesses expert appointed by a Court of Peace Magistrate to evaluate the patients who have been seen fit to mandatory admittance into a mental health and illnesses clinic, to draft a report on whether or not mandatory admittance of the said patient is necessary and who is not employed by the hospital or clinic that the admittance will be made.
14. **Informed consent:** A document informing that the patient or an individual who is authorized to speak on behalf of the patient has been provided with information

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regarding the treatment or research that will be conducted on the patient and that the patient has been “informed and has consented to the implementation.”

- 15. Association of the mentally ill and their relatives:** Indicates the civil organizations that operate in solidarity of mental health patients and their relatives, and in the protection of their rights.

PART III

PROTECTION OF MENTAL HEALTH

Protective Measures

Article 4 – In order to prevent the factors that disturb mental health and to protect mental health, the Ministry of Health takes the following exemplary measures by preparing and implementing legislation, determining standards, preparing and implementing relevant projects and campaigns in cooperation with related institutions and organizations:

1. Prevention of physical ailments in parents that could lead to mental disorders in the following generation or prevention of child mental health hazards linked to the mother’s health, such as in pregnancy care.
2. Protection of children and youth from substance abuse.
3. Mitigation and prevention of factors that give rise to mental trauma. Treatment and rehabilitation of individuals who have experienced mental trauma. Preparedness of medical and psychosocial support systems to be administered after a natural disaster, before the disaster occurs.
4. Setting standards for activities such as TV shows, computer games and Internet sites including violence that may affect a child’s mental health, determining rules of viewing and enabling their monitoring by related institutions and organizations.
5. Taking preventive measures to stop the marginalisation of individuals with mental illnesses and to spread an anti-branding mentality.

PART IV

REGULATIONS CONCERNING MENTAL HEALTH TREATMENT AND REHABILITATION SERVICES

Mental Health Treatment Institutions

Article 5-

1. The treatment and rehabilitation services provided by mental health and related institutions are regulated by the principle of treatment without branding and easy access of the patient in terms of its location in urban residential settings, its bed and room capacity, and the professional qualifications of their staff.
2. Based on the national population, a target of one mental health care bed per 3000 people is aimed. The Ministry of Health undertakes the necessary regulations concerning the increase in bed and staff capacities to reach this aim.
3. Mental health services must be provided by a staff consisting of nurses,

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psychologists, social workers, primarily and particularly under the leadership of a physician expert in mental health and illnesses; nurses working in the area of mental health must be mental health nurses or have to be trained in the said area through in-service training.

Mental Health Clinics in General Hospitals

Article 6-

1. General hospitals linked to the Ministry of Health or universities and which provide inpatient services must reserve 5% of their total bed capacity to mental health and illnesses services.
2. Starting from provincial centres of state hospitals and large provinces, the Ministry of Health makes the necessary regulations in order to appoint experts in mental health and illnesses, nurses, psychologists and social workers to the staff.
3. At least half of the beds reserved for mental health services in state or university hospitals must be made suitable for involuntary admittance patients.
4. State and university hospitals are responsible for the mental health services of a certain portion of the population of the region which they provide services in. The scope of this responsibility is determined by the Provincial Health Directorate and in line with the number of MDs and other staff workers.
5. These clinics are appointed with at least one mental health and illnesses expert physician, at least one psychologist, one social worker, one expert in occupational therapy and enough of mental health nurses, whose number depends on the number of patients and types of watch the clinic employs.
6. The community mental health centre built away from the hospital undertakes the outpatient care of these clinics. If already built, the mental health clinic also manages the halfway houses.

Day Hospitals

Article 7- These are settings annexed to hospitals and that host rehabilitation services for mental health patients that live in their own home or shelters and where training in acquiring social skills, treatments through occupation, art and sports, vocational courses along with training and treatment sessions geared to the patients and their families are hosted. They are managed by their annexed mental health clinic.

Community mental health centres

Article 8- Community mental health centres are centres where outpatient rehabilitation and treatment of patients with mental illnesses are undertaken. At least one community mental health centre must be opened under the management of the mental health clinic in a province or district. Community mental health centres are founded in densely populated and central areas and with preventive measures safeguarding against branding. The cost of founding and sustaining such centres can be met by municipalities, university clinics, local authorities, foundations, associations or private hospitals, in coordination with the Ministry of Health. However the supervision of the mental health clinic and the mental health services provided therein is undertaken by the directorate of health, as drafted in Article 11 of this law. The treatment team consists of an expert in mental health and illnesses, an

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expert in child psychiatry, a psychologist, social worker and nurse. The centre implements the treatment and rehabilitation services of the patients with mental illnesses in the region, keeps their records and examines them periodically. A patient who is absent for periodical examination is invited to the centre when necessary. Patients whose admittance to a hospital has been decided are sent to the hospital clinic.

Halfway houses

Article 9- Halfway houses are residential buildings designed as dormitories for patients whose acute treatments have been completed yet have not been able to become fully functional in order to live by themselves. The treatment team consists of a full-time mental health nurse, a social worker and a psychologist. The mental health services are provided by the mental health clinic that is linked to the halfway house.

Shelters

Article 10- Shelters are residential units supervised by the mental health clinic they are connected to and which have been built for the social inclusion and integration of patients with a mental illness who do not have anyone to care and supervise them or who have social adaptation issues due to extended stays in hospitals thus are able to live by themselves under supervision. Patients who are deemed fit to stay in shelters must be capable of taking care of their basic necessities and of carrying out their prepared treatment by themselves. The supervision of patients staying in shelters is undertaken by the social worker from the mental health clinic. A committee formed in the supervising mental health clinic selects the patients to stay in shelters, discharges patients or admits them to hospital.

Monitoring and supervision of institutions providing mental health services

Article 11- A “Central Mental Health Committee” formed by the Ministry of Health and a “Mental Health Committee” formed by every provincial or district health directorate oversee whether or not the mental health services provided by mental health institutions noted in this law comply to general standards of medicine and the necessities indicated by this law. The “Central Mental Health Committee” consists of the Mental Health Department Head and representatives from the Psychiatric Association of Turkey, Child & Youth Mental Health Association, Turkish Association of Psychologists, Association of Social Workers in Turkey and the Federation for Associations of Schizophrenia. The “Mental Health Committees” formed in provinces and districts consist of the mental health branch director, branch representative of the Psychiatric Association of Turkey and representatives from the Child & Youth Mental Health Association, Turkish Association of Psychologists, Association of Social Workers in Turkey and association of patients and their relatives. Complaints and objections to decisions taken by the “District Mental Health Committee” are directed to the “Provincial Mental Health Committee” and complaints and objections concerning the said committee are taken to the “Central Mental Health Committee.”

Article 12 – The Ministry of Health and the Ministry of Labour and Social Security are responsible for making the necessary administrative regulations and for drawing

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protocols with relevant public or private institutions concerning the compensation of or free treatment and rehabilitation services provided to mental health patients.

Regulations concerning the admittance to a hospital of a patient with mental illness:

Article 13- The inpatient treatment of a patient with a mental illness is to be implemented in the following manners:

1.
 - a) The individual may apply to a mental health clinic on their own accord;
 - b) The patient may be brought in by a relative, public officials or any other individual;
 - c) Courts may send the patients with the purpose of observation, protection or treatment. Transactions concerning patients sent by court are implemented as indicated in Turkish Penal Code, Turkish Civil Code, Code of Criminal Procedure and Code of Civil Procedure.
2. Inpatient admittance procedures of a patient who voluntarily requests admittance to a hospital are undertaken upon the decision of an expert in mental health and illnesses and by having the patient sign a document bearing the patients' consent to being admitted to inpatient treatment. As long as the patient does not pose any danger linked to the mental illness, the patient who has been admitted voluntarily reserves the right to be discharged from the hospital even if the treatment has not been completed.
3. Even if they are admitted voluntarily to the hospital if the patient shows signs of "danger linked to mental illness" they are not to be discharged on their own accord. In such cases, articles dealing with involuntary admittance are implemented.
4. Patients who are seen to be requiring mandatory admittance as a result of a clinical evaluation are admitted involuntarily.
 - a) During admittance procedure, a document stating the patient's rights and manners of objection to admittance is given to the individual accompanying the patient.
 - b) When there is no company to the patient and mandatory admittance conditions are fulfilled, the patient is admitted by decision of the mental health and illnesses expert and the situation is indicated in the mandatory admittance form.
 - c) When conditions for "mandatory admittance due to mental reasons" arise, the expert in mental health and illness may decide for the patient to be admitted mandatorily without seeking consent from the legal representative of the patient or his family; these circumstances are indicated in the mandatory admittance form. However, the patient, his legal representative or their relatives reserve the right to object to the Court of Peace. If approved, a document stating the consent to inpatient admittance has to be signed.
 - d) The same provisions apply to convicts or prisoners.
 - e) All cases of involuntary admittance are notified to the Court of Peace in 24 hours. Before the notification, the patient is examined for the second time and a document is drafted stating an opinion whether or not the conditions for mandatory admittance still persist. If possible, this second evaluation is to be

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- undertaken by another expert in mental health and illnesses on duty.
- f) A patient who fulfils the conditions for “mandatory admittance due to mental reasons” can be taken to another public or private mental health clinic or hospital for treatment by his legal representative or relative. In any case, the “mandatory admittance due to mental reasons” report is to be sent to the Court of Peace in the area where the mandatory admittance decision was taken. The Court of Peace Magistrate undertakes the procedures related to the patients’ admittance and treatment.
5. The Court of Peace monitors the state of individuals admitted involuntarily.
- a) Medical reports on the individuals admitted involuntarily are notified by hospital management to the Court of Peace on duty in 24 hours. The expert in mental health and illnesses appointed by the court has to examine the patient in the 24 hours following the issue of the admittance report and delivers his report to the Court.
- b) The Court of Peace Magistrate examines the two reports, thereby deciding whether the mandatory admittance shall continue or cease. If necessary, the magistrate can demand additional medical explanations or can appoint another psychiatry expert.
6. Patients evaluated as not bearing any danger due to mental causes following the first 24 hours after involuntary admittance are discharged from the hospital following a report issued by the expert in mental health and illnesses supervising the treatment concerning the disappearance of the danger due to mental causes. This report, along with the one informing the necessity of mandatory admittance is sent to the court.
7. The end or continuing of the involuntary admittance are dependent upon the following conditions:
- a) When the conditions for “mandatory admittance” are lifted, the situation is informed to the Court of Peace on duty by experts of the mental health clinic and regulations related to inpatient or outpatient voluntary treatment become valid.
- b) In cases of involuntary admittance, a report issued by the expert in mental health and illnesses supervising the treatment concerning the necessity for the continuation of the mandatory admittance due to mental causes is sent to the court on duty following evaluations made once every three weeks following the first three months after admittance, once a month following 3-6 months, once every six months following a year and annually for longer periods of inpatient treatment.
- c) When necessary, the Court of Peace Magistrate will consider the evaluation report of the expert in mental health and illnesses appointed by the court, after which the magistrate decides whether or not the mandatory admittance condition shall end or continue.
- d) Objections can be made at any phase of the involuntary admittance procedures. The formal or content-wise evaluation falls under the authority of the Court of Peace magistrate.

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- e) When a patient is seen fit to be discharged from the hospital by a decision made by the psychiatry experts on duty in the clinic or by the Court of Peace magistrate in compliance with the conditions stated in this law, the related mental health committee decides to transfer the patient to a halfway house or shelter and the final decision is notified to the Court of Peace Magistrate. The decision and execution of the implementation concerning whether or not the patient be sheltered in a public or private institution rests with the Court of Peace Magistrate.

MENTAL HEALTH & ILLNESSES EXPERT APPOINTED BY COURT

Article 14-

1. In cases of “mandatory admittance due to mental reasons,” an expert in mental health and illnesses is appointed by the Court of Peace and is requested to draft a report on the state of affairs.
2. The expert in mental health and illnesses appointed by the court must not be employed by the hospital advised to host the mandatory admittance.
3. Only in the following exceptions can the expert physician appointed by the court to evaluate the necessity of the patient’s mandatory admittance can be an expert in neurology.
 - a. In cases where an expert in mental health and illnesses suitable to be appointed is absent in the province or district of the hospital which the patient will be admitted mandatorily;
 - b. In cases where there exists a legally valid objection to the appointment of the existing expert or experts in mental health and illnesses or where there are legal obstacles to their appointment (such as an impediment to being an expert witness).
4. The expert in mental health and illnesses appointed by court is paid the current value of his labour.

TREATMENTS ADMINISTERED, RIGHT TO CHOOSE OR REFUSE

Article 15-

1. No patient can be administered a treatment outside of those universally accepted and whose scientific effectiveness have been validated. The institution administering the treatment has to make the necessary technical and administrative regulations that any treatment entails.
2. Research that does not comply with the related laws and the legislation related to the Drug Research published by the Ministry of Health can not be conducted on the patient. When research is to be conducted, in cases where the patient whom research will be conducted does not have a person to sign an “informed consent” the responsibility to issue an “informed consent” or the appointing of an individual that could provide the consent rests with the Court of Peace Magistrate.

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3. In cases of voluntary admittance, treatment cannot be administered before providing treatment information in compliance with medical ethics and before obtaining a signed document stating that either the patient or their legal representative has consented to the treatment. A patient of voluntary admittance reserves the right to refuse treatment.
4. In cases of “mandatory admittance due to mental reasons,” the patient does not have the right to refuse the treatment that is aimed to lift the potential danger linked to the mental illness. Either an expert in mental health and illnesses or a committee of experts in mental health and illnesses are authorized to decide upon such treatment. The lawful authority for all objections related to the treatment is the Court of Peace magistrate on duty.

RIGHT TO PRIVACY OF THE PATIENT WITH MENTAL ILLNESS

Article 16- Excluding legal conditions, any declaration to the public and to third parties concerning the mental illness or treatment of an individual, any publication of the patient’s name, voice and image in print, oral and visual mass communication media or the Internet is a violation of the individual’s personal rights. The right to privacy of the patient with a mental illness must be protected even after they are deceased. For this reason,

1. It is obligatory that mental examination and interviews take place in a protected environment.
2. It is essential that the mental health clinic employees keep secret the fact that a patient is undergoing mental treatment. Apart from information required for professional consultation, scientific research, discussion or training for related professional staff, experts in mental health and illnesses are not permitted to make video, audio or film records for public viewing even if their patients are willing and have given permission through written or oral means.
3. Records that are used for scientific discussion and training require the patients’ or their legal representative’s written consent and must keep secret the identity of the patient. In cases where these records are given over for broadcasting purposes, the personal responsibility of the individuals who have served the records is the same as that of the hospital management.
4. Apart from special circumstances that concern the patient’s treatment or procedural acts, it is not permitted for individuals who are not on duty to see the records in patients’ files.

PART IV

Those obligated to obey the law

Article 17- All hospital staff like managers of public or private mental health care institutions, physicians, nurses, health staff, laboratory assistants, experts in mental health and illnesses appointed by the court, managers and staff of audial and visual media and Internet sites are obligated to obey the rules stated in this law.

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In cases of infringement of these laws, the sanctions to be enforced will be defined by the Ministry of Justice Commission on Law Drafting.

PART V

Article 18- With this law, articles of the Press Law have been changed as in the following:

PART VI

ENFORCEMENT

Article 19- This law is enforced by the Ministries of Justice and the Ministry of Health.

Article 20- This law is to be enforced starting the day it is published in the Official Gazette.

The following topics are not covered in the draft proposal as the Ministry of Justice staff should cover them:

- 1. Articles relating to the appointment, jurisdiction and authority of the Court of Peace Magistrate.**
- 2. The subject of what sanctions will be enforced in cases where the patients' right to privacy is violated and how the implementation of applications concerning the preservation of this right to privacy by health staff in public and private treatment institutions and members of printed, visual or Internet-based press will be carried out.**
- 3. The modifications to be made in the Turkish Penal Code, Press Law and others in order for the implementation of this law and how they will be enforced.**