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MARMARA ÜNİVERSİTESİ
AVRUPA BİRLİĞİ ENSTİTÜSÜ

AVRUPA HUKUKU ANABİLİM DALI

THE TURKISH PETROLEUM LAW ON THE WAY OF THE EUROPEAN UNION

DOKTORA TEZİ

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THE TURKISH PETROLEUM LAW ON THE WAY OF THE EUROPEAN UNION

TABLE OF CONTENTS

ABSTRACT

THE TURKISH PETROLEUM LAW ON THE WAY OF THE EUROPEAN UNION

The purpose of this thesis is to highlight Turkey's current and potential role in energy policies of the European Union and giving details on European Union's and also Turkey's petroleum arrangements from the historical perspective and also via recent legislations.

Petroleum consumption may be dealt within the context of sustainable development. This thesis examines recent and projected energy source patterns of existing energy strategies and their renewable alternatives but especially the subject of petroleum .

As a one of the leading market, EU and also Turkey needs continuous energy in order to keep on its development. And Turkey is geographically a natural gateway through which the EU can access oil from east and many of the world's primary oil supplier countries. This thesis is mainly about legal arrangements on exploration, production and distribution of petroleum.

To sum up, if Turkey can realize petroleum potential, it can have national and political control in order to ensure security of supply and indeed it is the key to economic development and driving force behind its modern society and important role in the world / EU politics..

Keywords; Energy Law, Petroleum Law, Petroleum Policy

ÖZET

AVRUPA BİRLİĞİ YOLUNDA TÜRK PETROL HUKUKU

Tezin amacı Avrupa Birliği'nin enerji ve petrol politikalarında Türkiye'nin günümüzdeki ve gelecekteki rolünü sergilemek ve bu amaçla Avrupa Birliği ve Türk petrol hukuku tarihçesine dair bilgiler ve günümüz düzenlemelerini açıklamaktır
Petrol tüketimi sürdürülebilir kalkınma açısından değerlendirilmektedir.
Bu tez günümüz ve gelecekteki enerji kaynağı stratejileri ve alternatiflerini ancak özellikle petrol konusunu incelemektedir.
Avrupa Birliği ve tabii ki Türkiye gelişmesini sürdürebilmek için sürekli enerjiye ihtiyaç duymaktadır. Türkiye doğal konumu sebebiyle Avrupa Birliği için doğu ve dünyanın bir numaralı petrol kaynağı ülkelerinden köprü durumundadır. Bununla bağlantılı olarak bu tez özellikle Türkiye ve Avrupa Birliği'ndeki özellikle petrol aranması, çıkartılması ve piyasaya arzı konusunda mevcut ve olası yasal düzenlemelere ilişkindir.
Sonuç olarak tezin içeriği ve amacı, Türkiye için mevcut ve potansiyel çalışmalar ışığında Türkiye'nin petrol potansiyelini gerçekleştirebilecek olursa, arz güvenliğini sağlayarak ulusal ve politik kontrolünü sağlayacağı varsayımından hareketle; Avrupa Birliği ve Türkiye'deki petrol konusundaki yasal düzenlemelerin incelenmesidir.

Anahtar Kelimeler; Enerji Hukuku, Petrol hukuku, Petrol Politikaları.

ABBREVIATIONS AND ORGANISATIONS

ADER	Association of Oil Distribution Companies
Art.	Article
B.C.	Before Christ
BIT	Bileteral Investment Treaties
BOT	Build, Operate and Transfer
BOTAS	Petroleum Pipeline Corporation
BTC	Baku-Tbilisi- Ceyhan Crude Oil Pipeline
CEE	Consortium for Energy Efficiency
CEPLMP	Cente for Energy, Petroleum and Mineral Law and Policy
CEPS	Center of European Policy Studies
CFSP	Common Foreign and Security Policy
CLRTAP	Convention on Long-Range Trans-Boundary Air Pollution
CPC	Caspian Pipeline Consortium
CS	Common Strategy
CVRIA	The Court of Justice of the European Communities
DG	Directorate General
DOE	Department of Energy, United States of America
DPT	State Planning Organisation
DSP	Dispute Settlement Body
EC	European Community
ECCP	European Climate Change Programme
ECG	Energy Coordinating Group
ECHR	European Court of Human Rights
ECJ	European Court of Justice
ECO	Economic Cooperation Organization
ECR	European Court Reports
ECS	Energy Charter Secretariat
ECSC	European Coal and Steel Community
ECT	Energy Charter Treaty
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
EIA	Energy Information Administration
EMP	Euro-Mediterranean Partnership
EMRA	Energy Market Regulatory Authority
ENP	European Neighbourhood Policy
EOS	European Energy Market Observation System
EU	European Union
EUI	European University Institute
EURATOM	European Atomic Energy Community
FDI	Foreign Direct Investment
GAP	Southeastern Anatolia Project
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
FDI	Foreign Direct Investment
FIRA	Foreign Investment Review Act
IBA	International Bar Association

ICC	International Court of Commerce
ICSID	International Centre for Settlement of Investment Disputes
IEA	International Energy Agency
IEF	International Energy Forum
IEF	International Energy Forum Secreteriat
IEP	International Energy Program
IMO	International Maritime Organization
INOGATE	Interstate Oil and Gas Transport to Europe
JODI	Joint Oil Data Initiative
LNG	Liquifield Natural Gas
LPG	Liquifield petroleum Gas
MAI	Multilateral Agreement on Investment
MEA	Multilateral Environmental Agreements
MENR	Ministry of Energy and Natural Resources
MOU	Memorandum of Understanding
MTA	General Diroctorate of Mineral Research and Exploration
MTOE	Million tons of oil equivalent
NABUCCO	Turkey-Bulgaria-Romania-Hungary-Austria Natural Gas Pipeline Project
NGO	Non Governmental Organization
OECD	Organization for Economic Cooperation and Development

Australia,Austria,Belgium,Canada,The Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea,, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.

OIES	Oxford Institute for Energy Studies
OJ	Official Journal of the European Communities
OPEC	Organization of the Petroleum Exporting Countries
OSCE	Organization for Security and Cooperation in Europe
PCA	Partnership and Cooperation Agreement
PEEREA	The Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects
PETDER	Turkish Petrol Industrialists Association
PETFORM	Petroleum Platform Association
PIGM	General Directorate of Petroleum Affairs
POAS	Petrol Ofisi Corporation
PSA	Production Sharing Agreement
PUIS	Trade Union of Petroleum Products Employees
REIO	Regional Economic Integration Organisation
RES	Renewable Energy Source
RSCAS	Robert Schuman Center for Advanced Studies
SEA	Single European Act
SEMC	Southern and Eastern Mediterranean Countries
SPR	Strategic Petroleum Reserve
STE	State Trading Enterprises
TABGIS	Trade Union of Turkish Petroleum and Gas Employees
TACIS	Technical Assistance to the Common Wealth of Independent States
TAEK	Turkish Atomic Energy Authority
TCA	Trade and Cooperation Agreement
TEN	Trans-European Energy Network
TEU	Treaty on European Union

TUBITAK	The Scientific and Technical Research Council of Turkey
TOBB	The Union of Chambers and Commodity Exchanges of Turkey
TPAO	Turkish Petroleum Corporation
TUDEF	Federation of Consumer Associations
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNCLOS	United Nations Convention on the Law of the Sea
UNFCCC	United Nations Framework Convention on Climate Change
UNIDO	United Nations Industrial Development Organization
UNSD	United Nations Statistical Division
USA	United States of America
WEC	World Energy Council
WTO	World Trade Organization

TABLES

"The life of the Law has not been logic, it has been experience (…). The Law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become".

O.W. HOLMES[1]

[1] Oliver Wendell Holmes, The Common Law, Dover Publications, 1991 (1881).

1. INTRODUCTION

The purpose of this thesis is to give a clear, comprehensive and detailed overview of the policies of petroleum law in Turkey via the light of the European Law. In addition to that this thesis mainly aims to study energy[1] issues from an inter-disciplinary perspective, primarily through the interface of international, regional (European) and national (Turkey) regulatory frameworks via giving more attention to the role of the European and the Turkish petroleum law systems in the energy and resources industries.

But, the twentieth and also the twenty first century was the century of energy. Especially, between 1900 and 2000 much of our contemporary world was shaped by the development of energy resources. Petroleum is expected to remain the position of dominant energy source worldwide through the next several decades at least with demand increasing every year.[2]

Transportation by road via automobile, truck began and also transportation by aircraft and by sea promptly moved past the age of coal to age of petroleum. In accordance to that residential and commercial cooling was invented and heating from wood or sometimes coal mainly turned to natural gas, electricity etc. According to that, it can be said that energy is the driving force behind the functioning of global economy and policies.

Today, in the 21.st Century there has been a growing attention to the need to develop mechanisms for cooperation among nation states (and / or regional organizations) especially on the energy sectors via developing "trade" on natural resources and facilitating the establishment of networks of pipelines and grids crossing international boundaries. According to the huge progress in energy technologies; new

[1] Throughout this study the word "energy" includes mainly petroleum. Other sources of energy , such as coal, solar, wind etc. Are dealt with in comparison, and their characteristics are not discussed in detail.

[2] Hinrichs,Roger A.-Kleinbach, Merlin.(2006).Energy its Use and the Environment, p.12.

forms of energy enter in the international market, such as natural gas and renewable resources. Under the light of the recent developments, it can be said that ; Energy is one significant strategic aspect of the economy which affects and usually shapes foreign policies in countries and regions.

In correlation to the importance and growing demand of energy; new systems of co-operation have been developing quickly as a result of international (or regional) arrangements with a view to jointly developing events on natural resources (petroleum, natural gas, water) by states. In addition to that, it has supported via multilateral treaty instruments and regional developments.

Because of the cost of energy has become dominant factor in the performance indicators of societies' economies, management of energy/ natural resources has become very important. In correlation to that energy management is a part of sustainable energy policies and involves utilizing the available energy resources more effectively. Sustainable energy covers also environmental considerations in addition to energy management which is the practice of using energy more efficiently by considering energy wastage or to balance optimum energy demand with appropriate energy supply.

As explained above, energy plays a critically major role in the political, economic and social development of a country. In another words, "The petroleum has affected the countries that they have possessed itself in the world politics not only economically, but also politically"[3] Therefore, identification and analysis of energy issues and development of energy policy has important key role for all countries especially for Turkey as a developing country and also for the European Union's future.

Although energy plays a critical role especially in industrial societies, the control and ownership of energy resources plays an increasingly important role in world politics. In correlation to that at the national level, governments try to influence the distribution of energy resources through pricing mechanisms and other legal ways; and

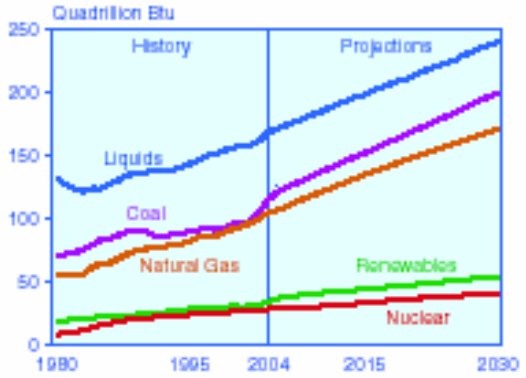
[3] Sarıahmetoğlu, Nesrin, (2000), Hazar Petrol Boru Hattının Güzergahı ve Güvenliği Meselesine Bir Bakış (A Look for the Route and Security Problems of Hazar Petroleum Pipeline), p. 17.

also they may try to influence the use of energy by individuals and business via arranging environmental issues.

This thesis aim to explain the petroleum's mandatory role. But, according to the high energy need and limited sources, world's energy supply from the primary sources is turned to alternative sources and any of various renewable power sources used in place of fossil fuels will be explained in general. Fusion devices are seen to be the best long-term option by some people. Other technologies may be summarized include solar energy, wind power, hydroelectric power, and geothermal energy. The amount of energy in such renewable and generally pollution-free sources is large in relation to world energy needs, nowadays only a small portion of it can be converted to electric power at reasonable cost. Another direction of research and experimentation is in the search for alternatives to petroleum.

The development of the World energy usage from different sources may be seen from the below chart;

Figure 11. World Marketed Energy Use by Fuel Type, 1990-2030



Sources: **History:** Energy Information Administration (EIA), *International Energy Annual 2004* (May-July 2006), web site www.eia.doe.gov/iea. **Projections:** EIA, System for the Analysis of Global Energy Markets (2007).

[4]

As may be seen on above table (Table 1) the dominant position of petroleum will continue to 2030 according to expectations of Energy Agency. In addition to that, according to some authors, petroleum is expected to remain the dominant energy source

[4] http://www.eia.doe.gov/oiaf/ieo/graphic_data_world.html

worldwide through the next several decades at least with demand increasing every year.[5]

On the other hand the solutions for energy sources problem and increasing necessity for energy causes the trend to move from national or state level arrangements to regional ones. The reasons are mainly economic and security; investments in a regional level are of a lower cost. However, regional approaches imply regional cooperation, mutual assistance and trust. Regional policy may include risks for each country especially in the energy sector that the issue of security of supply is essential. As a result, for example EU has guaranteed to help the regional states in cases of supply disruption by their neighboring countries which will be explained in detail later.

Petroleum law which has a long history in Turkey will be examined in detail; Since the words "neft" (naft-naphta) and "petroleum" are often used together by Ottoman Empire[6], Eastern-originated word “Neft” and the Western-originated word “Petroleum” at the title and also inside of this book emphasizes that since the Ottoman Empire’s period petroleum has the vital concernment for Turkey. As in many other fields, the Ottoman Empire was successful for taking part on the world's energy consumption trends but unfortunately failed to follow the production policies. At this point, we may say that, this was the prevail reason for the Ottoman’s problems to the disintegration. and the international policies for petroleum that are applied in our region at present are continued from the ages.

II. THE TERM AND DETAILS OF PETROLEUM

The Price of Oil[7]

It’s all about the price of oil
It's all about the price of oil

[5] Hinrichs,Roger A.-Kleinbach, Merlin.(2006).Energy its Use and the Environment, p.12.

[6] Volkan Ş. Ediger, (2007), Osmanlı’da Neft ve Petrol, Volume 3., Ankara: ODTU Press, p. 2.
[7] Reverend Blair *http://www.energybulletin.net/957.html*, 6 Jul 2004.

Don't give me no shit
About blood, sweat, tears and toil

-Billy Bragg, The Price of Oil

First of all it has to be stated that as explained above sentences unfortunately, "Black gold" often brings hardship and misery to the societies where it is found. Different powers and their huge multinational oil companies often tactical to control of the oil fields through many operations.

On the other hand, environmental damage by oil extraction can provoke protest movements, which are frequently met by violent repression. Boundary disputes between states over oil reserves represent yet another link between oil and violence. As worldwide oil and gas production peaks and consumer demand continues to rise, prices soar, making conflicts for this increasingly scarce resource even more likely in the future.[8]

2.1. The Term of Petroleum

Some sources explain that Petroleum (from Greek petra – rock and oleum – oil or Latin petra – rock and oleum– oil)[9], crude oil, sometimes colloquially called black gold, is a thick, dark brown or greenish liquid. As explained above another name is naphtha, from Arabic naft or nafata (to flow).

According to Petroleum law of Turkey Act no 6326; “Petroleum” means (a) all natural hydrocarbons, liquid or gaseous, produced or producible from the ground, (b) all asphalt and other solid hydrocarbons suitable for production with or dissolved in liquid petroleum or gas (x), and (c) all hydrocarbon products derived from the substances mentioned in the foregoing sub-subarticles; (Art. 3)

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[8] http://www.globalpolicy.org/security/natres/oilindex.htm

[9] Acar, Çağdaş, Bülbül, Sevtaç, Gümrah, Fevzi, Metin, Çiğdem, Parlaktuna, Mahmut. (2007), Petrol ve Doğalgaz (Petroleum and Natural Gas). , Ankara: ODTU Press, p. 3-4.

Fossil fuels include coal, petroleum, and natural gas. Petroleum is called a fossil fuel because it was formed from the remains of tiny sea plants and animals that died millions of years ago. In parallel to that Petroleum is called a nonrenewable energy source because it takes millions of years to form. Unfortunately via recent technologies new petroleum reserves can not be made.

As petroleum, complex mixture of hydrocarbons derived from the geologic transformation and decomposition of plants and animals that lived hundreds of millions of years ago. Any of a class of materials of biologic origin occurring within the world that can be used as a source of energy. All fossil fuels can be burned to provide heat, which may be used directly, as in home heating, or to produce steam to drive a generator for the production of electricity. Fossil fuels supply nearly 90% of all the energy used by industrially developed nations according to IEA Statistics.[10]

Petroleum is used mostly, by volume, for producing fuel oil, which is an important "primary energy" source; according to IEA 2005 statistics fossil fuels has 85% in total in primary energy sources.[11]

Many of the sources in the world write petroleum's history began in the USA in second part of 19 th century [12] . In other words; "The boring of the first hole for the express purpose of finding and producing oil has marked the start of the production of oil as an industrial undertaking, or so to speak the birthday of the extractive petroleum industry. This historic operation took place in the year 1859 in Pennsylvania".[13]But on the other hand as explained above petroleum's history began many years ago; in 5000 B.C. naphta used as a religious symbol.[14] Petroleum is in traditions and tales (in many manuscripts for example; Evliya Çelebi's Seyahatname) since historical ages in Mesopotamia, Persia, Kirkuk and all region.[15] It was used in medicine since centuries.

[10] http://omrpublic.iea.org/balances.asp
[11] Acar , etc. (2007), p. 5
[12] Pees, T. Samuel, http://www.petroleumhistory.org/OilHistory/pages/intro.html
[13] Taverne, Bernard, (2008), Petroleum, Industry and Governments, p.19.
[14] Ediger,(2007), p. 1.
[15] Ediger,(2007), p. 2-9.

According to the reserve statistics in the world; About 80% of the world's readily accessible reserves are located in the Middle East, with 62.5% coming from the Arab 5: Saudi Arabia (12.5%), UAE, Iraq, Qatar and Kuwait. The USA has less than 3%.[16]

2.2 . The Main Headings of Petroleum;

To sum up all the petroleum's adventure it may be said that; Petroleum is recovered from drilled wells, transported by pipeline or tanker ships to refineries, and there converted to fuels and petrochemicals, and served via petroleum stations.

All of the oil activities may be explained under three main headings-terms:

1) The "upstream" states exploration and production; 2) The "midstream" are the tankers and pipelines that carry crude oil to refineries, and; 3) The "downstream" which includes refining, marketing, and distribution to the customers. A company that includes together significant upstream and downstream activities is said to be "integrated". [17] According to the Turkish Petroleum Act no 6326 "petroleum' operation" or "operation" means:

"a)exploration, discovery, development, production, refining or other related operations, storage, transportation and sale of petroleum or petroleum products, excluding the sale of petroleum products to the consumer either directly in retail or through distribution organizations;

b) construction, establishment, and operation- of power, water, housing, camp, and all other installations and equipment necessary for any of the foregoing purposes;

c) administrative activities pertaining to the operations mentioned in Sub-sub-articles (a) and (b)." (Art.3 para 8)

[16] http://www.endofsuburbia.com

[17] http://www.maverickenergy.com/history.htm

In order to extraction this supply that have had specific characteristic, it should be searched before anything else. Both exploration of this material or production is a specific occupation[18]

Because of the special subterranean origin of petroleum it must be extracted by means of wells. Until an exploratory well, has been dug, there is no sure way of knowing whether or not petroleum lies under a particular site. Because of that drilling is a fairly complex and often risky and costly process. Some wells must be dug several miles deep before petroleum deposits are reached. And also nowadays, many of them are drilled offshore from platforms standing in the ocean bed.

Locating an oil field is the first and expensive step at the beginning. Crude oil is a mixture of petroleum liquids and gases in various combinations. Each of these compounds has some value, but after isolated in the refining process. So, the first step in refining is to separate the crude oil into constituent parts.

Crude oil and refined products alike are nowadays transported by tankers, pipelines, barges, and trucks. The petroleum is often officially measured in metric tons in European Union ; but, in Japan, in kiloliters. On the other hand in the United States and Canada, and colloquially throughout the world, the basic unit remains in "barrel".[19]

In Turkey as explained in the Act no 6326 ; "petroleum unit" means 158,984 liters of liquid petroleum (one barrel of 42 gallons) or 500 cubic metres of gaseous petroleum calculated at 15.5° C. and at a pressure of 1.03 kgs. per square centimeter;" (Art.3)

As explained in above part ; Petroleum refineries are important step for petroleum to turn crude oil into valuable products. Large refineries cost billions of dollars and employ several thousands of workers. According to the Turkish petroleum

[18] Altan, Özer, (2003), Petrol Kanunu Değişikliği Hakkında Görüşler (Opinions on Petroleum Law Amendments), p.28

[19] http://www.maverickenergy.com/history.htm

law¸on the Act no 6326 ; “Petroleum Product” means any finished or semi-finished hydrocarbon derived from petroleum by condensation, chemical treatment, refining or other means and processes; (Art.3)

After processing at the refinery, all kinds of petroleum products are usually shipped out through pipelines. Transit of petroleum via pipelines are the safest and cheapest way to move large quantities of petroleum across land via pump stations, which are spaced apart along the underground pipelines, keep the petroleum products moving.

In addition to that under downstream heading the companies called "distribution undertakings" handle the wholesale distribution of petroleum. Distribution undertakings bulk orders for petroleum products from petroleum stations, industries, utility companies, ships, farmers, and so on.

The petroleum’s final link in the adventure is the retailer which may be a petroleum station. The petroleum’s story ends with the pumping petroleum into a car's tank.

Table 2

Risks in Petroleum Industry

Risk	Type
Economic	Market Construction Operation Macroeconomic
Geologic	Reserve Production
Political	Regulatory Transfer-of-profit
Legal	Contract Jurisdictional

Safety	Health
	Environmental
Force	Natural disaster
	Civil unrest Strikes Terrorism

As explained on the above table undertakings on petroleum sector has many risks.

This thesis mainly aims to explain legal issues of petroleum in correlation to the security of supply issues. But from the aspect of environment; petroleum production and petroleum products can contribute to air and water pollution. Drilling for oil may disturb fragile ecosystems both on land or sea. Transporting oil may endanger wildlife and the environment if it's spilled on rivers or oceans. Leaking underground storage tanks may pollute groundwater and create noxious fumes. Processing oil at the refinery may contribute to air and water pollution. Burning gasoline to fuel our cars contributes to air pollution. Even the careless disposal of waste petroleum can pollute streams, rivers, lakes and seas.

In correlation to that; the future must balance the growing demand for petroleum products with protection of the global environment via sustainable energy policies.

2.3. Meaning of petroleum law;

Energy issues has cross-border impacts (e.g.oil pollution from oil tanker accidents) because of that energy issues have become the concern and competence of regional organizations. (e.g. security of supply or reducing carbon emissions). This is not the only factor for building international energy law; competence and other issues are also important for international energy arrangements. The drilling of the first oil well did not only sign the beginning of the petroleum industry, but at the same time it marked the beginning of the development of the petroleum legislation. The petroleum legislation of a state covers all laws, regulations and rules specifically designed for the

purpose of regulating petroleum operations in areas related to jurisdiction of the state and for awarding authorizations (licences or contracts of work) for carrying out petroleum operations.

The petroleum law can be a law specifically designed and meant for petroleum matters, but it may also stated under general mining law with a special section reserved for petroleum matters. But Turkey and also many other countries prefer to arrange petroleum law separately. (The Petroleum Law no 6326 enacted 7 March 1954).

On the other hand in case of absence of a petroleum law, constitutional law or the constitution itself may directly the government to regulate petroleum matters and also issue petroleum authorizations. At the end, the regulatory freedom of a government depends on the character of petroleum law; a comprehensive and applicable petroleum law leaves a government little regulatory freedom. If it arranged mainly via ministerial decisions (this must be always related to specific cases, i.e. the approval of a contract of work, the approval of a development plan or of a sales contracts, the grant of a licence) ministerial policy affects it mainly but a change of legislation is not necessary and in general this kind of decisions are subject to appeal under the rules of administrative law.

Petroleum licence is an administrative authorization issued by the government via acting the sovereign power of the natural resources of the State. On the other hand contract of work is a bilateral contractual relationship signed by a state entity on the one part and a commercial petroleum enterprise from the private or public sector on the other. Petroleum exploration and production activities are conducted in almost all countries pursuant to agreements entered into between foreign private oil companies and the governments of the countries where the petroleum resources are located (each, a "Host Government"), or the government's national oil companies (each, a "NOC"). This detail of contracting between governments and non-governmental parties affects the commonly shared principle of State ownership of subsoil resources.

On the other hand licensing was the beginning step in the theoretical petroleum law: According to the development on petroleum, established forms of commercial and

contract law (joint venture in particular) were adapted to the specific requirements of high-risk, capital-intensive and long-term petroleum investment and finance; petroleum industry contract forms such as Joint Operating Agreements, bidding agreements, project finance, transport, pipeline agreements may be seen.

The licence and also the contract of work authorize the holder(s) to undertake petroleum operations (i.e. exploring, prospecting, production) in limited area and period with fulfilling the obligation and making the payments stipulated. The licence may be exclusive or non-exclusive; if the licence is exclusive, it gives the licencee exclusive rights under the period of the licence is valid no other person than the licencee itself is authorized to exercise the rights powered by the licence; and this kind of licences are granted mainly for exploration and related works (i.e. drilling and development/production operations).On the other hand a non-exclusive licence is mainly for general geological work and covers a large area without involving drilling etc.

According to the Act no 6326 Art.3 subparagraphs ; “

9. "permit" means a geological investigation permit granted under this Law;

10. a) "license" means a petroleum license granted under this Law;

b)"license .area" -means the area 'coverlet by a license;

11. a) '"lease" "means a petroleum lease granted under this Law

b) '"lease area" .means the area covered by a lease;

12. "surface lease" means a lease on land and such rights thereon as may legally 'be available for grant to the use, .usufruct, and servitude thereof, in connection with a petroleum operation;

13. '"certificate" means an authorization granted under this Law *to* conduct a petroleum operation other than exploration, discovery, development, or production;

14. "certificate area" means the area needed for an operation authorized by a certificate;

15. "permittee" means the holder of a permit;

16. "licensee" means the holder of a license;

17. "lessee" means the holder of a lease;

18. "petroleum right" means any of the rights arising from a permit, license, lease, or certificate;"

However there are many details dealing with the contracts of work (i.e. categorization risk/ non-risk contracts or production sharing/ risk service contracts) and also details on licences but this thesis will not go into detail on that matter.

On the other hand petroleum legislation and relevant legislation also sets methods of working and details all types of working conditions and rules on the safety and health of the workers and the general public, environment and tax on income which will not detailed in this thesis.

2.4. Organizations in the World and Turkey;

According to the globalisation of the regulatory challenges. As national regulation loses its power, international agencies state the place for action of relevant actors – multinational companies, banks, criminal groups, but also the global scope of problems – transboundary environmental impact, need to create more level playing fields for competition in global trade. The European Union's relation with its member states – and the well-known British reluctance to yield sovereignty – is a good example. International agencies in this area are therefore more a proto-type of true international regulation; they help its member states to regulate better by providing model guidelines, collective and better regulatory intelligence and a forum of dialogue. There is visible role of international agencies in the regulatory process – servicing the negotiation and administration of treaties, formal elaboration of standards and guidelines and, though rarely, direct regulatory power. Elaborating technical standards, usually in collaboration with experts in governments, companies and industry associations is a key, direct regulatory role. Such standards may be directly binding, but in most cases they have an indirect legal effect: as content of civil responsibility, by explicit incorporation into contracts or by reference in national or international (e.g. GATT/WTO-based) law.

International agencies develop constituencies, e.g. environmental ministry delegates, academic experts, consultants, environmental NGOs which will support its continuous existence – and the need to fund them.

2.4.1. The Organization of the Petroleum Exporting Countries (OPEC)

The Organization of the Petroleum Exporting Countries (OPEC) is a permanent, intergovernmental Organization, created at the Baghdad Conference on September 10–14, 1960, by Iran, Iraq, Kuwait, Saudi Arabia and Venezuela. The five Founding Members were later joined by nine other Members: Qatar (1961); Indonesia (1962); Socialist Peoples Libyan Arab Jamahiriya (1962); United Arab Emirates (1967); Algeria (1969); Nigeria (1971); Ecuador (1973) – suspended its membership from December 1992-October 2007; Angola (2007) and Gabon (1975–1994). OPEC had its headquarters in Geneva, Switzerland, in the first five years of its existence. This was moved to Vienna, Austria, on September 1, 1965. [20]

OPEC's objective is to co-ordinate and unify petroleum policies among Member Countries, in order to secure fair and stable prices for petroleum producers; an efficient, economic and regular supply of petroleum to consuming nations; and a fair return on capital to those investing in the industry. [21]

In the 1970s, OPEC was viewed with great hostility as it seemed to set up a dependence of Western countries on a group of developing countries, on the petroleum crises event. It facilitates worldwide adaptation of companies production to demand, thus on destabilising price cycles; it also makes addition of new capacity, with its unbalanced influence on the normal price cycle. On the other hand, it states the functions of the petroleum cartels – then supported by their governments – of the past. However, by working against a fall of prices to their marginal cost, OPEC's effects are the equivalent of adding the ideal climate-change tax on hydrocarbon consumption. Multinational companies and environmental groups are thus the hidden partners of OPEC, via most of the upstream oil & gas reserves and production.

[20] http://www.opec.org/aboutus/history/history.htm
[21] Supra.

OPEC's current role in the evolution of international energy law is stated by two main issues: First, the organisation was founded on producing countries natural interest to increase revenue. That is still its raison d'ětre, though there are tensions between short-term maximisation through price versus long-term strategies centred on market-share for OPEC as against non-OPEC competitors and non-hydrocarbon alternatives. From this view , there is a conflict between EU, in particular EU governments high excise taxes and OPEC policy. High excise taxes – up to 4 times or more the price in petroleum – have an environmental justification – internalise external costs to the environment and by road traffic, but these are also a convenient cover for large tax income to compensate for the more visible lowering of income tax rates. On that point it is true to say that, the dispute is not about a higher price for petroleum-based energy, but rather about who gets most of revenue.

OPEC's role on producer countries production policies have been at various times subject to scrutiny from an anti-trust perspective. On that point, an organisation that sets production quota would contravene national competition law such as Art.81 of the EU Treaty or Sec. 1 of the Sherman Act which forbid agreements in restraint of trade.

GATT/WTO obligations do not apply to OPEC which will not be a WTO member, but to its member states. Production quotas such as the ones currently used are "export quotas" under Art. XI GATT.

To sum up all these, OPEC states silently important functions for both domestic producers and international oil companies by being the organisation most potent to help stabilise prices by helping producers to manage production.

2.4.2. International Energy Agency (IEA)

IEA was founded in 1974 on a suggestion by Henry Kissinger made in 1973, i.e. at the height of the first oil prices, sudden increase in oil prices and take-over of oil production in the producing countries. And also as a western response to OPEC, whose existence was disregarded in the 1960s, came to be seen as the main instigator and a

powerful cartel threatening Western countries

The IEA's basic purpose was to develop a system of collective energy security. Such collective energy security operates through the continuing emergency sharing system administered by the IEA. This system was never put into operation, though it may have been close at the time of the Gulf war in 1991. The most significant supply disruptions in the EU came about not because of OPEC and Middle Eastern conflict, but because of resistance to another round in petroleum tax increases by the British and other EU governments in October 2000. The IEA's raison d'ĕtre has therefore diversified away from its earlier. The IEA advantage or difference is that it is publicly and internationally funded, and therefore with much more historical continuity, financial stability and less dependence on markets, clients and national budgeting processes than private or nationally based public energy research institutes.

The main aim of the IEA is its emergency oil sharing programme. It consists, first, of measures by member states to reduce demand and to maintain oil stocks at 90 days of net imports. If emergency situations for the whole IEA group occur (two levels of group shortage: a 7% and a 12% shortfall, to be determined by the IEA Executive Director), a rationing plan is activated which also requires surplus countries to provide for imports into deficit countries – with the involvement of the IEA-based oil companies who may have to be directed by member states to re-order supplies.

Another activity point for IEA is; there is regular reporting to enhance the transparency of oil markets; in-depth review of country energy policies – with reports and recommendations; preparation of "outlooks" which provide national (and private) actors with some idea about the future of energy demand and supply via the point of liberalisation of markets and environmental issues. The IEA has difference to take a position on implementation of the Kyoto climate change protocol as long as there is a strong divergence between the US (and most of its companies) and the EU (and its companies). IEA is different from other more famous international agencies (e.g. the OECD with its failed effort to negotiate an multilateral agreement on investment; the WTO, World Bank and IMF with their exposure to the anti-globalisation movement(s).

4.2.4. Energy Charter Conference & Secretariat

The Energy Charter Conference, served by its Secretariat, is the most recent (founded on 1994) addition to specialised, energy-focused international organisations. It is based on the Energy Charter Treaty and has the formal status of an international organisation. The Secretariat serves the treaty implementation, an energy-focused treaty with all European countries, the states of the former USSR, plus Australia and Japan as members. The treaty deals mainly with investment protection (in the style of modern bilateral investment treaties) and with trade (adopting WTO rules for energy trade between states where at least one is not a WTO member (that is now mainly Russia, Ukraine and the Asian countries of the former USSR). The ECT also deals with transit in a novel way. The main activities of the Conference/Secretariat are todays the elaboration of a transit protocol providing more specifics to the more general Art. 7 ECT. A supplementary treaty to provide legally binding and specific rules for access for foreign investors was supposed to be negotiated when the ECT was signed in 1994 after many negotiations. Via supporting of negotiations for an energy transit protocol, the Energy Charter organisation is also directly involved in the emergence of new international energy law.

2.5. Organisations in Turkey;

2.5.1. Energy Market Regulatory Authority (EMRA)

The petroleum market in Turkey was realized as a consequence of the enactment of the Petroleum Market Law (PML) No: 5015 on 20.12.2003. PML regulates the market activities regarding petroleum starting from the crude oil supplied from foreign resources or produced domestically and supplied to the consumers as products. (Downstream activities as explained above) PML has organized in EMRA the duty, authority and responsibility for guidance, regulation, surveillance and supervision of the petroleum market.

According to the petroleum market in Turkey which has been legally

unbundled as 9 activities (refining, distribution, transmission, storage, processing, lube oil, bunker delivery, transportation and vendor activity) and 1 usage (eligible consumer) via license which should be obtained for the performance of the legally unbundled activities or uses. [22]

The qualifications of the persons to be granted licenses should comply with the general and the special conditions determined for related license type arrangements..

According to that, the legal persons dealing in market activities in Turkey and qualified as capital stock company as per the legislation of foreign countries are deemed to be the residents of Turkey regarding their activities in Turkey as per the legislation on protecting the value of Turkish currency.

On the other hand the legal person applying for the licenses of refining, transmission, storage, processing, distribution and bunker delivery should be founded as joint stock or limited liability company as per the provisions of the Turkish Commercial Code No:6762.

According to the arrangements there is no special condition to continue performing the activities of refining, processing, lube oil, storage, transmission, bunker delivery and transportation. But, about continue to perform the distribution activities, there is the condition that the annual total sale to the vendors and users should not be below 60.000 tones.

To continue performing vendor activities, a contract should be made with the new distributor within 3 months as of the termination of the contract with the distributor.

To continue being an eligible consumer, the consumed fuel should not be changed or the annual consumption amount should not be below 5.000 tones.

There are also market conditions; The licenses of processing, lube oil, bunker delivery, transportation, vendor activity and eligible consumer license holders are

[22] http://www.epdk.org.tr

terminated directly upon the application of the related persons. The licenses are also terminated ex-officio in cases of bankruptcy, termination of the license period and administrative sanctions. The distributors have the liability of selling minimum 60.000 tones of white products (petrol, diesel oil) and in case this amount cannot be met, their licenses can be terminated upon Board's decision. The demands for license termination of the refining undertakings are decided by the Board following the hand-over of the facility pertaining to the national petroleum stock and the stock inventory and after the completion of the income accounting process and provided that the liabilities regarding the commitments entered into with third parties in the market are met and related documents are submitted to the Authority.

Permission should be taken from EMRA for liquid fuel trade among the distributors in the petroleum market and for the import of petroleum deemed as product other than liquid fuel.

1) Permission for trade among distributors:

The distributors are obliged to get permission form EMRA to do liquid fuel trade among each other. The permission is granted for three-month periods stating the type and amount of the liquid fuel and the place and term of the trade. The issue has been regulated by Board's Decision.

2) Import of products other than liquid fuel:

The materials taken under the scope of the "Communiqué Regarding the Import of Solvent and Some Petroleum Products" determined by EMRA and issued annually by the Undersecretariat for Foreign Trade, are evaluated by EMRA according to a formula and taking as a base the capacity and expertise reports and are given certificate of compliance.

In addition to the licence and permission arrangements pricing tariffs and mechanisms also approved by EMRA; The service tariffs of transmission facilities and the connected storage facilities (providing service to the third parties) should be approved by EMRA in order to be implemented. The approval period is a calendar year

and in case the tariff proposals are not accepted, the proposal is rejected and the implementation of the current tariff is carried on.

On the other hand except for the tariffs subject to approval, price of the goods and services in the market are constituted in the free market conditions on the basis of "tariff". For the processing and the licensed storage activities not connected to transmission lines "fixed" tariffs are applied; for refining undertaking and distributor licensees' "price cap" tariffs are applied. The vendors with stations can not do sale over the price shown on their boards. The price disputes on domestic crude oil among the refining undertakings and producers of crude oil are settled in a binding way under the arbitration of the Authority within maximum thirty days.

Within the scope of the Article 18 of the Petroleum Market Law No:5015 national marker having the conditions and quality determined by the Authority shall be added to the liquid fuel by the refining undertakings, distributors and processing (bio-diesel) licensees at the refinery exit, customs entry or at other facilities which are the domestic market entry points of the liquid fuel. The aim of this implementation is to determine whether the liquid fuel circulating in the market has entered the market in legal ways or not and preventing the sale of illicit and out of standard products. The adding process is done by the dose-controlled injection equipment installed in the facilities. Such equipment shall have the technical qualifications enabling accurate and traceable measurement results.

The liquid fuel types taken under the scope of this implementation can not be submitted in the domestic market without adding the national marker having the conditions and quality determined by the Authority. Whether the liquid fuel marketed to the country contains national marker with appropriate conditions and qualifications shall be tested by the "National Marker field Control Equipment" produced for our Authority by The Scientific and Technological Research Council of Turkey and according to the test results the process foreseen in the Law No: 5015. The implementation began as of 01/01/2007 for benzene, gas oil and bio-diesel types. [23]

[23] http://www.epdk.org.tr

2.5.2. TPAO

While the monopoly of the state in petroleum prospecting and operation activities have been disappeared by that way on the one hand, it had been also carried out the contribution of the Turkish private sector in those activities alongside the foreign companies on the other hand.

According to this situation, the state would not be able to have the right of the petroleum prospecting and operation by directly, a public Corporation, economic state foundation and public corporation juridical person and the state would have to have a company shareholder in order to perform the activities regarding with its own petroleum as mentioned in the provision of the first article of the law, which is ‘’the petroleum resources have been under the provision and possession of the state’’. An incorporated partnership had been established called Turkish Petroleum Incorporated Partnership (TPAO) by the law legislated on the same date according the sixth article for this purpose (RG, 16.03.1954). The ‘’Turkish Petroleum Incorporated Partnership’’ had been established by the Law No. 6326 that had been accepted in Turkish Grand National Assembly on March 7, 1954 and the related departments of MTA Institute had been transferred to TPAO by this law.

In the examinations that have been performed on the account of the institutional structure, it has been seen that the discussions encountered most likely intended to the evaluation of the role of public in the first periods of the law. In the previous periods before the Petroleum Law No. 6326, the mission of the prospecting and production activities that had been performed according to the intelligence of the general management of MTA finansed by the general budget resources had given to TPAO by the law that had legislated soon after the Petroleum Law and this situation had brought a Qualification to the matter from the commercial perspective. Howsoever TPAO have been a public economic enterprise (KIT) in the environment in which the public capital has been dominant, it has been obvious that the missions of the economic state enterprise would not be able to pass over the purposes determined in KHK No.

233[24]

TPAO's activity field by this law had been defined as follows:

1) Carrying out the petroleum activities in Turkey and purchasing, selling and distributing the petroleum and petroleum products when it is necessary and proceeding all kind of commercial transections that have been in the activity field according to the provisions of the Petroleum Law;

2) Being able to establish commercial companies regarding with its activities and become partnership of the companies that have been established in Turkey and foreign countries;

And, it had been considered that 51% of the primary capital of the partnership would assign to the state (public purse) and 49% of the primary capital of the partnership would assign to the natural and juridical persons and the primary capital had been issued in the state gazette together with the ''Main Agreement'' on 10.12.1954. Besides that, some part of the primary capital share that have been decided to assign to the natural and juridical persons with the related articles of the law had been accepted to be warranted by the public purse that the petroleum explored by MTA and all kind of equipment that had been assembled in the petroleum exploration field and movable and immovable assets and other rights would be transferred to the partnership.

The primary purpose in establishing of TPAO is to provide the contribution of the state in the petroleum activities in a ''partnership'' concept alongside the private enterprise in order to remain corporated with it. In other words, TPAO had shown up as a national petroleum company based on the Petroleum Law dated on 1954 that we would be able to define as ''the law, considering the development and evaluation of our petroleum resources by the private enterprise and allowing the petroleum activities to be carried out by only the companies who had had domestic and foreign juridical identity according to that.

[24] DPT, (2001),p. 102..

The legal regulations to which Turkish Petroleum Incorporation Partnership had been exposed the modifications. TPAO, which had been established as a incorporated partnership status belonging to the state in 1954, had been transformed into a partnership status dependent to ‘’Turkish Petroleum Establishment’’, which had been newly established in accordance with the ‘’Decree Having Force of Law’’ (KHK) about the Economic State Organizations and Public Economic Foundations and the Law No. 2929’’ that had been issued in the official gazette dated on May 20, 1983 and abolished by the 18th article of the ‘’Decree Having Force of Law about Turkish Petroleum Foundation (PETKUR)’’ of TPAO Law No. 6326[13] dated on 18.10.1983 with No. KHK/98[25].

TPAO had changed the TPAO title as ‘’Turkish Petroleum Incorporated Company (TPAŞ) by having an extraordinary meeting by TPAO General Assembly on 31.10.1983 upon issuing the KHK No. 60 and this modification had been declared in Trade Registry Newspaper. Besides that, the purpose and subject of TPAO had been limited as ‘’prospecting, production, drilling and petroleum activities depending on them’’ by another amendment done in the primary agreement and refining, marketing and petroleum pipelines had been taken out from being the activity fields of TPAO[26]).

A few amendmends had been done in accordance with the Law No. 2929 and KHK No. 98. These are:

- İPRAŞ, the association of TPAO had been changed as TÜPRAŞ, Turkish Petroleum Rafineries Incorporated Company and Batman and Aliağa Rafineries and Middle Eastern Rafinery of which its construction had been continuing on these dates had been transferred to the mentioned company.

- ‘’Batman-Dörtyol Crude Petroleum Pipelines’’ and ‘’Yumurtalık-Kırıkkale Crude Petroleum Pipelines’’ belonging to TPAO had been transferred to BOTAŞ.

- ADAŞ, the association of TPAO had been changed as POAŞ,

[25] The issuing date in the official gazette: 28.10.1983, S. 18205
[26] TPAO, http://www.tpao.gov.tr

Petroleum Office Incorporated Company and its statute had been rearranged. ISILİTAŞ, by being liquidating with its all assets and a govermental distribution establishment Petroleum Office, with its all assets had been transferred to POAŞ. The shares of TPAO in Kıbrıs Turkish Petroleum Ltd had been transferred to POAŞ.

- The contribution shares of IGSAŞ and PETKİM, the associations of TPAO, had been transferred to Turkish Chemistry Industry Establishment.

- TPAŞ, TUPRAŞ, BOTAŞ, POAŞ and DITAŞ had been brought as the foundations dependent to Turkish Petroleum Foundation (PETKUR).

PETKUR had not been long-lived and soon after had been disappeared by Decree Having Force of Law No. 233. In order to perform activities according to the provisions of Decree Having Force of Law about the State Economic Enterprise No. 233[16] and within the scope of the pointed KHK, it had been decided that they had been transformed into the State Economic Enterprise (İDT) under the name of Turkish Petroleum Incorporated Partnership (TPAO).

The purpose of TPAO by KHK No. 233 had been summarized like that: ‘’In order to organize the Public Petroleum Sector within the principles of the central planning and coordination and bring the sector in an effective, productive and suitable conditions to cover the country’s requirements and perform the distribution, marketing and petroleum related work activities defined in the Petroleum Law and develop the geothermal energy production and create an investment resource especially firstly in the petroleum prospecting and energy production by providing capital increasement.’’.

The provision, ‘’TPAO brings its purposes directly or by the support of a partnership dependent to the establishment, contribution and other departments’’ had been in the same KHK. The dependent partnerships and contributions of TPAO together with the Decree Law No. 233 had been arranged in order like that:

The dependent partnerships:

- TÜPRAŞ
- POAŞ
- BOTAŞ
- DİTAŞ

The dependent contributions:

- İPRAGAZ
- TÜMAŞ
- Libya-Turkish Engineering and Consultant A.Ş.

The ‘’Turkish Petroleum Incorporated Partnership Primary Status’’, which had been arranged by Economic Affairs Grand Coordination Commission and issued in the official gazette dated on November 9, 1984 had been put into force. The Primary Status of TPAO that had been brought TPAO into the State Economic Enterprise actually and legally, had been issued in order to arrange the legal status, purpose and activity subjectsi organs and organization structure, partnerships and contributions dependent to the establishment and relationships among them[27].

In accordance with the law containing the provisions regarding the privatization of KİTs No. 3291 dated on 28.05.1986, the shares of TPAO in İpragaz A.Ş. had been transferred to the Residential and Public Association Administration Directorate together with the decision of the Collective Housing and Public Association Public Association Assembly No. 54 dated on 30.04.1987.

TÜPRAŞ, by the decision of the Premiership State Partnership Administration (KOİ) No. 90/3 dated on 10.07.1990 and POAŞ, by the decision No. 90/7 dated on 05.09.1990 had been taken into privatization scope.

DİTAŞ, the partnership dependent to TPAO, by the decision of the Higher

[27] TPAO, http://www.tpao.gov.tr

Planning Council (YPK) No. 93/35 dated on 25.11.1993, had been taken into privatization scope.

BOTAŞ had been taken out from the status dependent to TPAO by the decision of the Cabinet No. 95/6526 dated on 08.02.1995 and established in a contribution status.

Turkish Engineering Consultancy and Contracting A. Ş. (TÜMAŞ) , the contribution of TPAO, had been taken into privatization scope by the decision of YPK No. 91/24 dated on 10.0.1991.

İGSAŞ, the dependent partnership of TPAO, had been taken into privatization scope by the decision of the Privatization Council No. 98158 dated on 18.08.1998.

Necdet Pamir[28] had declared the followings by indicating that national petroleum sector had lost its vertical integrated structure after 1980s and been deficiency from the conditions of being successful in the domestic and abroad investments because of partisan and unqualified Management dependent to the featureless establishment:

"TPAO that have performed almost the complete petroleum prospecting activities in Turkey especially for the last 20 years, is only a prospecting-production company. This structure that have been inverse to the international practise will allow our national establishment to follow up the rapidly developed technology, employ qualified man power or prevent itself to remain away from the financial resources that will be able to continue the risky prospecting investments and the infrastructure that will allow to be able to make right investments. The domestic investment budget of TPAO had been decreased for times in the last ten years and come to a point in which it would not be able to give the localization for the prospecting drilling"[29]

The seperation of TPAO had been a discussion subject. Mustafa Özyürek[19] had declared the followings by indicating that TPAO, which had been at first in the

[28] Necdet, Pamir, the Former Vice president of TPAO and President of the Chamber of Petroleum Engineers.

[29] Pamir, (2002).

petroleum prospecting in Turkey for years, had been established in a vertical integrated structure in 1954 but its structure had broken down in 1980s:

‘’TPAO, performing activities in the production, refining and distribution and marketing sub sectors, had been founded as only a prospecting and production company after 1980s. While the other establishments had been seperated from TPAO one by one, our national establishment had gone away from the structure in which it would be able to create the risk capitali one of the most important requirements in the petroleum prospecting. And, it had been deficiency from the possibilities by which it would be able to explore and increase the domestic production by new explorations’’[30]

Özyürek has argued that carrying out an organization in which the loyalty and Qualification had been taken as base would be the warranty of being successful of TPAO in the state and abroad by indicating that TPAO would have to be reorganized in the vertical structure, brought together with the self-governing and managed by the managers who it had grown[31]

TPAO had accelerated its expanding to abroad beginning from the end of 1980s. Two company establishments had been carried out for that purpose.

TPAO had been authorized in oerder to perform to establish companies and involve in the established companies in abroad by the decree of the Cabinet No. 88/13180 and issued on the official gazette on 21.08.1988 and in accordance with this authorization, TPIC, (Turkish Petroleum International Company Ltd) had been established according to Jersey Regulations in Jersey Channel Island in order to perform the abroad activities of TPAO with three million primary capital on 07.12.1988.

“The petroleum has affected the countries that they have possessed itself in the World politics not only economically, but also politically’’[32] Turkey may be afraid

[30] Özyürek, M., (2004), Dünyada ve Türkiye’de Petrol ve Doğalgaz Politikaları (Petroleum and Natural GasPolicies in Turkey and in the world), Panel Speech, p.15-16.

[31] Supra, p.22

[32] Sarıahmetoğlu, N.(2000), Hazar Petrol Boru Hattının Güzergahı ve Güvenliği Meselesine Bir Bakış (A Look for the Route and Security Problems of Hazar Petroleum Pipeline), T.C. Başbakanlık TİKA Avrasya Etüdleri Dergisi, İlkbahar-Yaz, p.67.

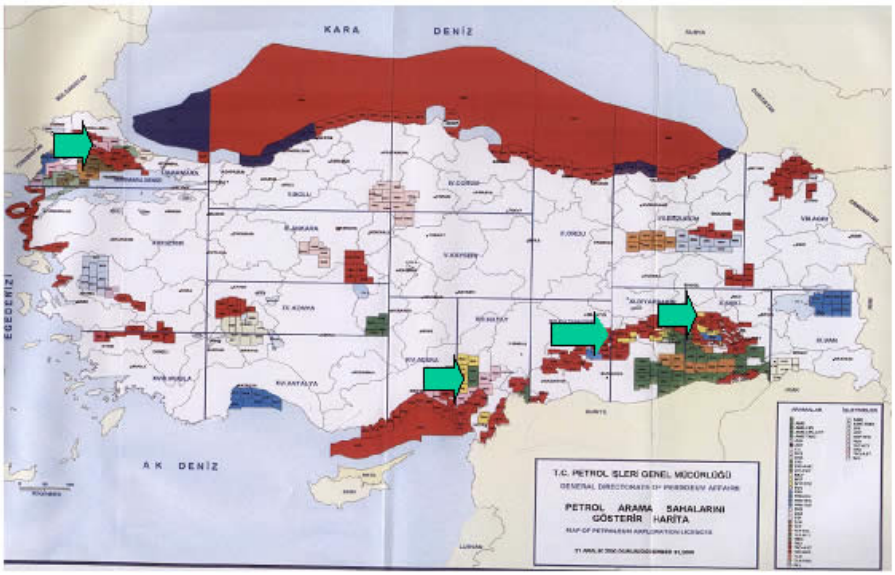
from possibility of this sentence and because of that petroleum activities are limited.

In Turkey, more than 3,000 wells have been drilled since 1935, on onshore areas; 77% have been in the southeast Turkey, 15% in the Thrace Basin (European side of Turkey) 7% in other parts of the country and 1 % of these were offshore areas. In the offshore areas, a total of 35 exploration (by 10/2005)wells have been drilled; 13 in the Black Sea, 11 in the Marmara Sea, 3 in the Aegean Sea and 13 in the Eastern Mediterranean Sea. As a result of all these activities 103 oil and 28 gas fields (24 in the Thrace), in different sizes have been discovered.[33]

TPAO has been exploring in the country since 1955 and has made many discoveries. Major oil fields are located in SE Turkey (Anatolia) on the northern part of the Arabian Plate and the gas fields are located in the Thrace Basin. Also Adana and Tuz Gölü Basins are the 3rd important areas as far as the exploration and drilling activities are concerned. Currently, the Black Sea offshore basin is a hot spot and is getting more and more attractions where TPAO farms out, especially after the TPAO-ARCO joint venture had drilled two exploration wells (Limanköy-1 and Limanköy-2), at the Western Black Sea (District-I), near Bulgarian border in 1999. One well resulted with gas shows and the other was dry, 50km offshore at 850 meters of water.

Table 3. Petroleum regions, licence areas and production points.[34]

[33] http://www.tpao.gov.tr/v1.4/
[34] http://www.pal.metu.edu.tr/articles/petrol_nerede.htm



Şekil 10. Türkiye' nin petrol bölgeleri, ruhsat alanları ve üretim sahalarının yoğunlaştığı yöreler

TPAO has a joint venture agreement for the deep offshore Black Sea license with BP in the most eastern part, next to the Georgian offshore border and has drilled one exploration well in 2005. Currently, TPAO conducts serious negotiations for the western and central Black Sea offshore blocks with major International companies[35].

The onshore TPAO's activities have been more active than offshore where TPAO has had several joint ventures with the major International oil companies such as; Esso, Amoco, Shell, Huffco, ARCO, and Chevron between 1983-2005. TPAO-ARCO joint venture discovered three oil fields in SE Turkey (Anatolia) in Adiyaman (District XII) and Diyarbakir (District XI) in 1990-1991. The joint venture has lasted 16 years till the BP-ARCO merger in 2000.[36] The discovered fields are called; Cendere, Ozan Sungurlu and Migo Fields and they are still producing oil. TPAO-ARCO joint venture alone had drilled 40 onshore wells (6 explorations, 6 appraisals and 28 developments wells) where TPAO was the operator.

TPAO had had influence in establishing various companies until today. These companies will be shown in the following according to their establishment order.

[35] http://www.tpao.gov.tr/v1.4/

[36] Kaya, (2004).

2.5.3. Ministry of Energy and Natural Resources

The foundation purposes and duties in the Law about the Organizations and Duties of the Ministry of Energy and Natural Resources have been arranged in order like the following:

The purpose: In order to assist in detecting the target and politics regarding with the energy and natural resources in the direction of defending the country, security and comfort and develeopment of the national economy and arrange the principler regarding with the foundation of the Ministry of Energy and Natural Resourcesi its organizations and duties in order to provide to be explored, developed, produced and consumed of the energy and natural resources according to thoe targets and politics.''.

The duty: The duties of the Ministry of Energy and Natural Resources are the followings:

a) ''To determine the short and long term requirements of the country to the energy and natural resources, assist in determining the necessary politics for its supply and carry out the plannings,

b) In order to assist in determining and appointing the general politics principles in order to explore, operate, develop, determine, control and protect according to the country benefit, technical requirements and economical developments of the energy and natural resources,

c) In order to give the rights of exploration, building up facility, carrying out cancellation activities and utilization intended to the evaluation of those resources, carry out the transfer, transmission and cancellation activities when they are required, establish the hypothec and condemnation rights, keep the registries of them and protect,

d) In order to provide and inspect coordination of the determination works of the general politics of the production, transmission, distribution, etude, foundation, operation and continuation activities of the energy and natural resources according to the requirements, security and benefit of the public,

e) In order to appoint and determine the production, transmission, distribution, pricing and consumption politics of the underground and overground energy and natural resources,

f) In order to approve and inspect the operating and investment programs of the dependent and relevant establishments of the Ministry and follow up and evaluate the activities according to the annual programs,

g) In order to inspect and verify the activities and proceses of the dependent and relevant establishments of the Ministry and give the necessary orders and supervise from all aspects,

h) In order to obtain and evaluate all kinds of information to achieve the above mentioned duties and carry out the preparation activities regarding with the determination and development of the long term politics.''.

2.5.4. Petroleum Office Directorate

The establishment, known as Petroleum Office Directorate upon the Petroleum Law No. 6326 had been put into force in 1954, had been taken Petroleum Affairs General Management of the Republic of Turkey name by the law, known as petroleum reform in the public opinion by the Law No. 1702 in 1973. Fuel Oil Office Management, dependent to the Ministry of Energy and Natural Resources, had been assined to the Directorate General for Petroleum Affairs by the same law upon its closing down. PİGM is an establishment dependent to the Ministry of Energy and Natural Resources with its added budget.

In the distribution of the authorizations mentioned in the Petroleum Law, a distribution had been carried out between the President, Minister and Cabinet. Some authorization and coordination issues had been resolved by the collaboration of the Revenue Office, Customs, Tekel, Ministry of the Interior and these departments' collaborations. But, it had been got out of the authorization assignation in sub regulation issues apart from a feew exceptions and the possibility had been given to make

regulations in obvious issues only by the "Regulations"[37].

Some duties performed by the Directorate General for Petroleum Affairs (PİGM) with the Petroleum Market Law No. 5015 had been given to (EMRA) Energy Market Regulatory Authority.

III. ENERGY POLICIES IN THE EUROPEAN UNION

3.1. Historical background and arrangements on main legislative documents;

First of all it has to be stated that legislative arrangements may occur in parallel to the economical, political and social realities. According to the main events seen on these years (on below table) many legislation implemented as explained in this thesis.

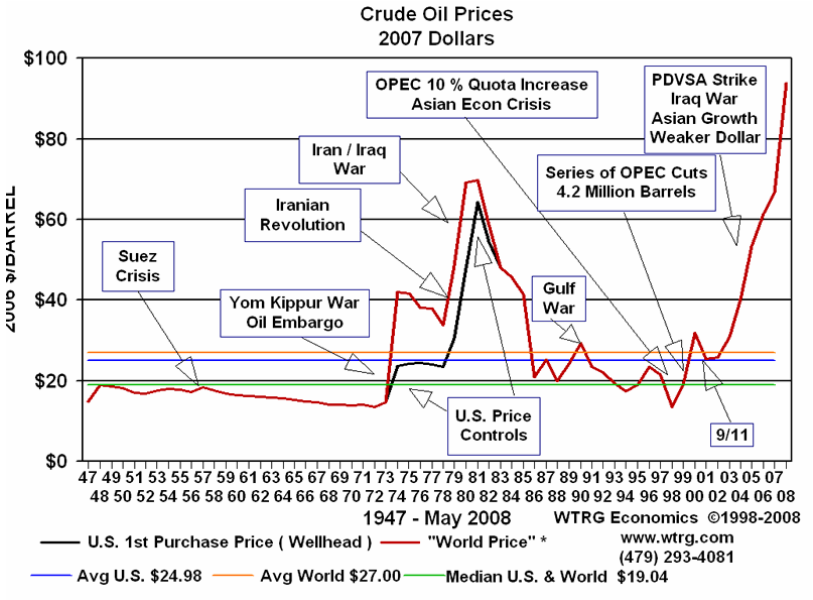


Table 3[38] Crude Oil Prices 1947-2007

It is true to say that, the main aim of the European Community's energy policy is to ensure a supply of energy to all consumers at acceptable prices while respecting the environment and promoting healthy competition on the European energy market; for

[37] The name of the Petroleum Regulation had been changed as the Petroleum Constitution and the Constitution had been renewed.

[38] http://www.wtrg.com/oil_graphs/oilprice1947.gif

this reason some arrangements seen on many areas such as environment, competition, economical, political, company law, administrative law etc. But this thesis will deal mainly the policies/ arrangements on petroleum investigation, exploration and production only dealing the other points whenever it is necessary.

3.1.1. Between the years 1950-1972

At the beginning, energy matters were not specifically mentioned in the EC Treaty.[39] Its functions were taken over by the EC via some arrangements, decisions. The Treaty of Paris was signed on 18 April 1951, establishing of ECSC between "the Six" countries: France, Germany, Italy, Belgium, the Netherlands and Luxemburg. On 25 March 1957, the Six signed the Treaties of Rome, establishing the European Economic Community and the European Atomic Energy Community.[40] The development of a single European energy policy was at the heart of the European Union project, with the ECSC Treaty (establishing the European Coal and Steel Community) entered into force in 1952 and ended in 2002 and the Euratom Treaty (establishing the European Atomic Energy Community) in 1957 [41]

The function of coal as the main energy resource in the Community but, at the end of the 1950s, been replaced by oil. The effect, important result of this change/ dependence on imported energy was the inevitable risks, especially because the main sources of energy import to Europe were situated in one region, the Middle East.[42] Europeans were struck by the reality of dependence via Suez Canal Crisis on 1956.[43] In correlation to that supply of energy, alternatives of energy and energy stocks remains essential today, despite economic and geopolitical changes. In addition to that european politicians gave essential role to the energy sector for common European policy.[44] According to these developments in 1958 , a report by the Oil Committee of the OEEC

[39] The majority of measures adopted were based on Art. 100 EEC Treaty (new Art 94 EC), which provided for EC competence in matters affecting the functioning of the Common Market. According to the Art. 235 EEC (new Art. 308 EC), Community organs could act if deemed necessary for the Common Market, even when no competence was expressly provided by Treaty.
[40] KARLUK, Rıdvan, (2007), Avrupa Birliği ve Türkiye (The European Union and Turkey, p.40-41.
[41] ECSC Art. 97
[42] Haghighi, Sanam S, (2007), Energy Security, p.40.
[43] Haghighi, p.41.
[44] Cross, E.D.- Hancher, L- Slot, P.J.,(2001), EC Energy Law, Energy Law in Europe, p.214

“the doctrine of mutual interdependence of Europe and the Middle East” was considered as an essential element of security of energy supply for the first time.[45]

EURATOM Treaty[46] emphasizes nuclear energy, because of the general shortage of "conventional" energy in the 1950’s, the six founding States (Belgium, France, Germany, Italy, Luxembourg and the Netherlands) looked to nuclear energy as a means of achieving energy independence instead of coal. In case of the costs of investing in nuclear energy could not be undertake by individual States, the founding States joined together to form Euratom.

Although the 'Euratom Treaty was dealt in order to promote the peaceful use of nuclear energy, but very largely lost its political *raison d'etre* in the 1960s. Some countries such as; France refused to integrate nuclear policy into the Community mechanisms and Germany also separated. Today, seven Member States-—Greece, Italy, Portugal, Ireland, Denmark, Luxembourg and Austria—do not have nuclear energy production on their territory, mainly for environmental reasons.[47] Sweden, Germany and Belgium have taken a political decision against the nuclear energy. This influences Community energy decisions on nuclear or non-nuclear matters, including those relating to climate or to the internal market. [48]

Activities in energy markets continued in the years between 1958-1960 and at that time the energy demand increased on coal and oil. In correlation to that new oil refineries built in different countries on Europe and via technical developments energy related costs lowered (eg. Shipping and pipelines). The shipping industry started to construct larger vessels and the transport of oil by pipeline became more common in the Europe and also in the world. [49]

According to the developments, a draft protocol of energy policy related to harmonization was presented in 1964. On that document the policies were about

[45] Haghighi,(2007), p.45, Implications and Lessons of Suez Crisis (Paris, OEEC,1958).
[46] http://eur-lex.europa.eu/en/treaties/dat/12006A/12006A.html
[47] Kramer, Ludwing, (2003), EC Environmental Law, p.360-361.
[48] İbid.
[49] The General Report of the European Coal and Steel Community, 8 th General Report, Luxembourg, 1960.

possible cooperation of companies with consumers; promoting exploration in the community; analyzing the possibility of sharing supplies and stock pilling petroleum products; and main points for production of petroleum.[50] In addition to that, in 1968, the first guidelines towards a common Community Energy Policy were established. The Commission stated the necessity to support especially to finance exploration and production of hydrocarbons in circumstances on particular interest to the community and also finance a variety of investments that are for common interest.[51] This common policy was aim to ensure a cheap, secure and stable supply especially on the hydrocarbon sector, governments should be prepared to promote the economically rational development on the production of hydrocarbons in the Community; attempt to agree a common policy on hydrocarbon stocks; eliminate all regulations on discrimination between member states and third countries. On that point, the clear example of discrimination was the Netherlands; in that country exploration of oil and natural gas from the North Sea Continental Shelf for nationals could be carried out freely and solely production was subject to concessions, on the other hand for non-nationals both exploration and production were subject to a system of licences and concessions.[52]

According to that report, and also others it was clear that the Commission believed the energy market is a global market and each player's decision can affect the others.[53] Especially energy crisis in the USA (e.g. The 1971 crisis which resulted in the closure of schools and the restriction of airline services) (and also other events as seen on the above table) might raise concerns in Europe and all member countries agreed that oil security was an international security issue, and necessity for harmonization was necessary, but on the other hand they could not agree to create a common plan.[54]

At that point OPEC was established as a permanent, intergovernmental Organization, and a few years later IEA was established which will be explained in detail below.

[50] Lucas, NJD, (1977), Energy and the European Communities, p.35-40.
[51] Ibid, p.47.
[52] Haghighi (2007), p. 49.
[53] 12 th General Report of EEC (March 1964), p. 75.
[54] Haghighi (2007), p. 50.

In 1967, because of Arab- Israeli war the Suez Canal was blocked. In correlation to that the shipments resumed but oil was not sold to some countries which were "embargoed countries" such as USA, Britain and West Germany.[55] After that the Commission gave special importance to the 'supply policy' and via Directive 68/414 EEC took the first and important action in guaranteeing security of energy/ oil supply in 1968. According to that directive Member States obliged to maintain a level of stocks equivalent to 65 days of consumption and also member states with domestic oil production had a reduced stockpiling obligation to a maximum 15 % of their total production.[56]

3.1.2. The Oil Crisis and the Energy Policy between :1973-1986;

Some scientists believe that modern energy history begins with the events of 1973-1974.[57] On 6 October 1973, Egypt and Syria declared their aim of regaining the Arab territories occupied by Israel since 1967 via using the "oil weapon" which means 'any manipulation of price and/or supply of oil by exporting nations with the intention of changing the political behaviour of the consumer nations'[58] .

At that point there was no shortage of petroleum in European Markets, but the price increased. The posted price of Arabian light crude increased from $3 per barrel in early October 1973 to $11.65 per barrel in January 1974. In correlation to that situation inflation and economic recession ensued, leading to unemployment, the closing down of schools, workplaces and factories.[59]

On the other hand because of crisis the adoption of some common measure by energy-consuming countries occured. A conference in Washington in February 1974 realized with the establishment of ECG which later formed the International Energy

[55] Supra, p. 51.
[56] The Council Directive 68/414/EEC of 29 December 1968 on Imposing an Obligation on Member States of the EEC to Maintain Minimum Stocks of Crude Oil and/or Petroleum Products,(1968), OJ L/308/14. And Council Decision 68/416/EEC of 20 December 1968 on the Conclusion and Implementation of Individual Agreements Between Governments Relating to the Obligation of Member States to Maintain Minimum Stocks of Crude Oil and /or Petroleum Products., (1968), OJ L/308/19.
[57] Barton, B. Redgwell, C., Ronne, A., Zillman, D. N.,(2005), Energy Security, p.3.
[58] Maull, H. (1980), Oil and Influence: the Oil Weapon Examined' in G. Treverton (ed), Energy and Security, p.3.
[59] Mauksch, M, (1975) Energy and Europe:EEC Energy Policy and Economy in the context of the World Energy Crisis, p.13.

Agency in the context of OECD[60]. The members of that group were eight Community Members (France joined IEA in 1992) and USA, Norway, Australia, Canada and Japan. The two main reasons to create this agency were firstly, initially proposed by USA, and the second 'the implementation of an oil-sharing mechanism in order to protect the oil-consuming countries against a new embargo, and on the other hand, the shift from a seller's market to a buyer's market through enforcement of oil-saving measures and the switch to other energy sources'[61]

Nonetheless, Proposals for Council Decisions on intra-Community trade in crude oil and petroleum products; exports of petroleum products to third countries; maintenance and harmonization of voluntary measures for reducing energy consumption in the Community; measures to be taken by Member States with a view to the concerted and harmonized reduction of consumption of petroleum products. COM (74) 20 final, 10 January 1974 proposed[62] and on 17 September 1974 European Commission energy program was accepted by Council of Ministers.[63]

In 1979 Iranian Revolution and in 1980 war broke out between Iran and Iraq and the postpone of oil exports from these two main energy-producing countries evoked the Commission and also Council for the reinforcement of prevent measures[64]. To sum up all these, it may be said that, the period between 1973 and 1986 marked the beginning of the establishment of a common energy policy.

3.1.3. The Period 1986- Today

Outstanding events in the period 1987- 2008 may be summarised mainly by the signing of the Energy Charter Treaty and the establishment of European Energy

[60] Haghighi,(2007) p. 58
[61] Supra; See H. Simonet, 'Energy and the Future of Europe' (1975) Foreign Affairs 450-454.
[62] http://aei.pitt.edu/5142/01/001623_1.pdf Council Resolution, OJ C 153,09.07
[63] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31975Y0709(01):EN:HTML
[64] Energy Cooperation with Developing Countries and the Role of the Community. Report from the Commission to the Council. COM (80) 96 final, 7 March 1980., http://aei.pitt.edu/4380/01/001577_1.pdf, Energy Policy in the European Community: Perspectives and Achievements. Communication from the Commission to the Council. COM (80) 397 final, 10 July 1980, http://aei.pitt.edu/5046/01/001351_1.pdf, Energy Price and Tax Harmonization in the Community. Communication from the Commission to the Council and the European Parliament. COM (80) 152 final, 20 March 1980, http://aei.pitt.edu/5463/01/001344_1.pdf, Energy, Communication from the Commission to the European Council. COM (80) 301 final, 29 May 1980.,http://aei.pitt.edu/1519/01/energy_situation_COM_80_301.pdf

market. Many measures were adopted at the Union level and many opinions were communicated between the Community institutions and also the Member States. Main documents stated pillars of the policies; such as The Single European Act[65] and the Maastricht Treaty[66] strengthened the EU process. From the aspect of environment EU accepted higher standards via Treaty of Amsterdam[67] and KYOTO Conference[68] and also on SAVE Programme[69]. According to the Altener Programme measures related to the use of renewable sources of energy, such as biomass, solar, hydro, geothermal, and wind energy stated; and since 1997, the EU has been working towards the target of a 12 % share of renewable energy in gross inland consumption by 2010.[70] Via Euro-Mediterranean Forum in 1996, development of co-operation on energy projects realized.[71]

The first Electricity Directive which was the first and most important measure aimed and achieving a common European market in energy, was adopted in 1996 and entered into force in 1997; after that in 2003 the new Electricity Directive replaced the previous directive.[72] The new directive stated various necessary measures for the full establishment of an internal market in electricity, which will not detailed in this thesis. Also the Gas Directive was adopted on 22 June 1998 and transmission, storage, distribution and supply of natural gas were regulated via this directive and later replaced in 2003.[73]The EU's membership of the Energy Charter Treaty[74], and the Community's

[65] Single European Act, OJ L 169, 29.6.1987. http://www.unizar.es/euroconstitucion/library/historic%20documents/SEA/Single%20European%20Act.pdf

[66] The Treaty on the European Union, OJ C 191, 29.7.1992. http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html

[67] Treaty of Amsterdam amending the Treaty on EU, the Treaties establishing the EC and certain related acts, OJ C 340, 10.11.1997, http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf

[68] The Kyoto Protocol is an international agreement linked to the United Nations Framework Convention on Climate Change http://unfccc.int/resource/docs/convkp/kpeng.pdf

[69] Council Decision 91/565/EEC of 29 October 1991 concerning the Promotion of Energy Efficiency in the Community,1991,OJ L/307/34 and Council Dir. 93/76/EEC of 13 September 1993 to Limit Carbon Dioxide Emissions by Improving Energy Efficiency(SAVE), (1993), OJ L/237/28.

[70] Green Paper on 'Energy for the future: Renewable Sources of Energy', COM (96) 576 Final and Communication from the Commission, Energy for the Future: Renewable Sources of Energy, White Paper for a Community Strategy and Action Plan, COM (97) 599 Final.

[71]http://www.europeanenergyforum.eu/

[72] Dir 2003/54/EC of the Parliament and of the Council of 26 June 2003, concerning common rules for the Internal market in Electricity and Repealing Dir 96/92/EC, (2003), OJ L/176/37.

[73] Dir 98/30/EC of the Council of 22 June 1998 concerning common rules for the Internal Market in Natural Gas, (1998), OJ L/204/1.

INOGATE Programme (which aims to promote interstate projects to attract large scale investment to energy producing and transit countries)[75] were facilitated and protected the investments in the energy sector.

At the beginning, energy matters were not specifically mentioned in the EC Treaty as explained above. But Article 3 of the Maastricht Treaty [76] stated specific competence in energy-related matters, 'to achieve Community goals the activities of the Community shall include measures in the sphere of energy'. Because of the absence of detailed provision in the EC Treaty, measures could be expanded through the increase in the numbers and the areas covered by the secondary legislation. There are many important soft law measures, mainly in the form of White[77] or Green Papers[78], that specifically deal with the issue of the European Union's field of energy/security of energy supply. For establishing secure, competitive and sustainable energy market and with regard for the need to preserve and improve the environment, as stated on the section 10 under the heading of energy article III-157 of the Draft Convention European Union's policy on energy shall aim to;

Functioning the energy market,

Ensure energy supply in the Union, and

Promote energy efficiency and saving and the development of new and

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[74] The Treaty was developed on the basis of the Energy Charter Declaration of 1991, but while this Declaration stated the political intent to cooperation on international energy issues, the 1994 Treaty is a legally binding multilateral agreement. It is the only agreement of its area dealing with inter-governmental cooperation in the energy sector, covering the whole energy activities (from exploration to end-use) and all energy products and energy-related equipment. http://www.encharter.org/index.php?id=28, Council Decision 98/181/EC, ECSC, Euratom, OJ L 69, 9.3.1998.

[75] http://www.inogate.org/en/

[76] The Treaty of Maastricht was signed on 7 February 1992 and amended the Traety of Rome, which established the European Economic Community in 1957. http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html

[77] White Paper on an energy policy for the European Union, COM (95) 682, 13 December 1995, http://aei.pitt.edu/1129/01/energy_white_paper_COM_95_682.pdf

[78] The Green Paper will help the European Union lay the foundations for secure, competitive and sustainable energy. http://ec.europa.eu/energy/green-paper-energy/doc/2006_03_08_gp_document_en.pdf

renewable forms of energy.[79]

According to the recent possible principles of Energy Policy for Europe which were stated at the Commission's green paper A European Strategy for Sustainable, Competitive and Secure Energy on 8 March 2006.[80] As a result of the decision to develop a common energy policy, the first proposals, Energy for a Changing World were published by the European Commission, following a consultation process, on 10 January 2007.

It is claimed that they will begin to a 'post-industrial revolution', or a low-carbon economy, in the European Union, as well as increased competition in the energy markets, improved security of supply, and improved employment prospects. However the proposals have been adopted by the European Commission, they make the approval of the European Parliament but were debated and approved at a meeting of the European Council on March 8 and 9, 2007.[81]

According to these Proposals[82] ;

- "A decline of at least 20% in carbon dioxide emissions from all primary energy sources by 2020 (compared to 1990 levels), while pushing for an international agreement to succeed the Kyoto Protocol aimed at achieving a 30% cut by all developed nations by 2020.

- In comparison to 1990 levels , a cut up to 50% in carbon emissions from primary energy sources by 2050

- For the use of biofuels by 2020, a minimum aim of 10%

[79] Draft Treaty establishing a constitution for Europe, 18.7.2003. http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf

[80] A European Strategy for Sustainable, Competitive and Secure Energy Commission's green paper COM(2006) 105 final

[81] EU sticks out neck in global climate change battle EU Observer 09/03/07.

[82] An energy policy for Europe, Communication from the Commission to the European Council and the European Parliament COM (2007) 1, final.

- The energy supply and generation activities of energy companies must be free from their distribution networks for actual market competition

- Developing energy relations with the EU's neighbour countries via agreements on transit or supply

- The development of a European Strategic Energy Technology Plan to improve technologies in areas on renewable energy, energy conservation, clean coal, carbon capture, low-energy buildings. "

3.2. The European Union Measures in the Field of Energy/ Petroleum;

Under this heading, community measures related to trade in energy goods and services are analysed. It has to be stated here that the international trade rules of the WTO are also incorporated in the community legal system, as well as the international trade rules of the Energy Charter Treaty. These rules mainly copied from the GATT/WTO rules, with some modifications.

3.2.1. The EU Measures on trade of energy/oil and petroleum products;

On Article 133 of the EC Treaty EU' s commercial policy approach may be found, but the definition and instruments of the Common Commercial Policy (CCP) are not given in that treaty. But, this subject has been developed and interpreted in the case law of the ECJ and in legal scholarship as explained below.

At the beginning Member States were allowed to restrict intra-community trade in products originating in third countries; and also they were still able to protect their national markets for a number of various products, the most prominent examples of motor vehicles, textiles, clothing and bananas.[83] On the other hand , no product import may be limited , except those clearly mentioned by the Council as being subject to

[83] Haghighi, (2007), p.113.

different regulations.[84]

According to recent arrangements under two possibilities the import of oil could be prohibited; one is the as explained on the art. 301 of the EC Treaty ;

'Where it is provided, in common position or in a joint action adopted according to the provisions of the Treaty on the European Union relating to the Common foreign and security policy, for an action by the community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.'

The second possibility is related to environment; but this is hard to applicable under EU standards, because of the limited 'clean energy' sources.

On the other hand exports of energy from the EU has been raised just about within the framework of cooperation like Euro-Med Partnership.[85] And also regulations[86] in parallel to the International Energy Agency (IEA) emergency response measures (emergency sharing system) realised when a fall in supply of at least 7% occurs in one or more member states, minimum stock obligations are adopted, and in time of crisis, demand restraint, allocation and rationing powers are adopted. So that, the collective response to short-term shortages among members of IEA occurred. On the other hand according to above explained regulations, since December 1992, petroleum products are within the frame of the Community's policy of non-restricted exports. At that point on Bulk Oil case in 1984[87]

There are two important exceptions to the rules on export; one of them is stated on Art. 30 of the EC Treaty (ex Art.36), or 'under the rule of reason' approach,

[84] A repealed regulation obliged the Member States to notify the Commission of imports of crude oil and natural gas (1996), OJ L/80/2 and other Regulation obliges Member States to register imports of petroleum and its products, (1981), OJ L/373/9.

[85] To enhance relationship between the EU and countries of the Mediterranean region, http://ec.europa.eu/external_relations/euromed/index_en.htm (accessed 8.6.2008)

[86] Council Reg (EEC) No 1934/82 of 12 July 1982 Amending Reg (EEC) No.2603/69 Establishing Common Rules for Export (1982) OJ L/211/1 and Council Reg (EEC) No. 3918/91 of 19 December 1991 Amending Reg (EEC) No 2603/69 Establishing Common Rules for Exports, (1991), OJ L/372/31.

[87] Case 174/84, Bulk Oil AG v. Sun International Limited and Sun Oil Trading Company, (1986), ECR 559.

restrictions on energy are seen on grounds of public security for the aim of guaranteeing the continuity or regularity of supply, or protecting the environment, may be justified under this role if no difference is made between domestic and other goods. To apply this rule , the Member State should show that the particular measure is objectively necessary (proportionality test).[88] Other exception was established that a national measure unless it is proved that 'the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations may affect the security of a Member State'.[89]

To sum up above explanations petroleum and petroleum products are not accepted under general exception to the applicability of the CCP. And as explained the European Court of Justice's interpretation of Art. 133 (ex Art 113) of the EC Treaty stated two major reasons to justify the reasons for restrictions; one of them was economic and the other one political and aims to harmonize GATT standards with EU.

3.2.2. The EU measures in energy/petroleum services;

Services of general economic interest are key element in the European model of society.[90] These services are traditional services for basic needs such as energy supply, water, transport, telecommunication, and post. A commitment to preserve such services at a required minimum level, accessible to all, is presented as a shared value within the EU and the availability of such services at a reasonable price plays an important role in promoting social and territorial cohesion. Article 16 EC[91] now confirms the place of such services among the shared values of the Union and their role in promoting social and territorial cohesion against the background of the completion of the internal market which itself brings about increasing pressure to open new sectors to competition.

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[88] Case 72/83, Campus Oil Limited and Others v. Minister for Industry and Energy and Others, (1984), ECR 2727 and Case 393/92, Municipality of Almelo and Others v. NV. Energiebedrijf Ijsselmij, (1994), ECR I-1477.

[89] Case 70/94, Werner,(1995), ECR I-3189, para 27, and Case 83/94 Criminal Proceedings against Leifer and Others, (1995), ECR I-3231.

[90] European Commission, Communication on Services of General Interest in Europe [2001] OJ C17/4.

[91] Without prejudices to Articles 73, 86 and 87, and given the place occupied by services of gen eral economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their mission

Services in the energy/petroleum sector can be explained under two categories; traditional and emerging services.[92] The traditional services include exploration, drilling services, derrick erection, refinery services, wells and pipeline building[93]; on the other hand emerging services may be explained those arising from the break-up of integrated energy systems and the introduction of competition and privatization to energy sector.[94] For example, the operations related to power pools, energy trading and brokering, energy management, reduction on greenhouse gas emission, and trading of emission rights may be counted under this heading and also especially for the petroleum sector, construction services to build pipeline, petrol tank and refineries.

In the EC Treaty energy issues stated in general and energy services in particular, but some provisions may be applied to the energy sector. In relation to the provisions on merger control and state aids may applied to services in energy sector and also the competition rules on the activities of all exploration, production, distribution and supply services are under the same conditions. On the other hand, secondary legislation exists and some common rules were adopted to regulate energy services.[95] In that directive stated that energy entities should no longer be identified via their legal status but via their activities; because some entities governed by public law on the other hand some of them governed by private law. Art. 22 of the 2004 Directive states the exemptions;

This Directive shall not apply to contracts governed by different procedural rules and awarded;1. Pursuant to an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering supplies or works intended for the joint implementation or exploitation of a project by the signatory states;2.To undertakings in a Member State or a third country in pursuance of an international agreement relating to the stationing troops; 3. Pursuant to the

[92] Haghighi,(2007), p.123.
[93] Supra, p.124.
[94] İbid.
[95] Council Dir 90/531/EEC of 17 September 1990 on the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Postal Service Sectors; Council Dir 93/38/EEC of 17 September 1990 on the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Postal Service Sectors,(1993), OJ L/199/84 and Dir 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Postal Service Sectors,(2004), OJ L/134/1.

particular procedure of an international organisation.

But , these geographical restrictions may not applicable and; if Community network is not used, Member States are free to do their activities in a third country. If a single undertaking combine these two activities paragraph 5 of the Art.133 EC applies and for the activities of the energy services, Member States are free to enter into agreements with the third countries under two conditions; firstly, if the activity fitted with the principles of WTO agreement on government procurement, European Community is a party and secondly if the conditions explained above satisfied.

3.2.3. The transit regime of the EU

The transit regime is also a kind of service on petroleum industry and services of general economic interest are key element in the European model of society.[96] These services include traditional services for basic needs such as energy supply, water, transport, telecommunication, and post. On the other hand an important point to preserve such services at a required minimum level, accessible to all, is presented as a shared value within the EU and the availability of such services at a reasonable price plays an important role in promoting social and territorial cohesion. Article 16 EC[97] now states that services among the shared values of the Union and their role in promoting social and territorial cohesion against the background of the completion of the internal market.

The transit regime is one of the most pillar of the petroleum policy. Transit of petroleum / energy from the country where the energy explored to the other country / consumer. The continuous transit of energy is, therefore, most important for secure energy supply. On the other hand, without regulating/ the possibility of transit of energy, the analysis of the initial investment opportunities for exploration and

[96] European Commission, Communication on Services of General Interest in Furope [2001] OJ C17/4.
[97] Without prejudices to Articles 73, 86 and 87, and given the place occupied by services of gen eral economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their mission

production of energy in a given country becomes weak.

The petroleum's investment is necessitated to studying various countries' proven and potential energy reserves, which is followed by a cost-effective analysis of the most appropriate routes for transportation of petroleum to the other markets and the upgrading of the export arrangements to guarantee energy flow.

Also there are some concerns to strengthen supply security through infrastructural arangements. It is declared at the beginning, and is also reflected in the Treaty itself. Article 154 EC (Article III-139 under the Convention) states that in order to achieve the objectives referred to in Articles 14 (Article III-ll, internal market) and 158 (Article III-lll, economic and social cohesion) and to enable citizens of the Union, economic operators, and regional and local communities to derive full benefit from setting-up of an area without internal frontiers, the Community shall support to the establishment and development of trans-European networks in the areas of transport, telecommunications, and energy infrastructures. In addition to that community action has to aim at promoting the interconnection and interoperability of national networks as well as access to such networks. On the other hand Article 155 EC (Article III-140) points to this that in order to realize above mentioned objectives, the Community shall establish a series of guidelines covering the objectives, priorities, and broad lines of measures declared in the sphere of trans-European networks and identify projects of common interest. Although, if these projects may already be contributed by member states, the Community may also support through the Cohesion Fund,[98] set up pursuant to Article 161 EC (Article III-114), to the financing of specific projects (e.g. energy projects) for their viability.

At the beginning the first Decision of 1996 laid down a series of guidelines for trans-European energy networks (TEN),[99] with a view to stating, inter alia, priority projects of common interest among trans-European electricity and natural gas networks.[100] Article 3 of that decision states clear reference for supporting the security

[98] A fund to provide assistance in the fields of environment and transport infrastructure of common interest with a view to promoting economic and social cohesion and solidarity between member states
[99] Decision 1254/96/ECof 5 June 1996 [1996] Oj L161/147.
[100] The Annex to the Decision stated a list of projects of common interest

of energy supplies, after then in the framework of the Energy Charter Treaty and cooperation agreements concluded by the Community.[101] The second main decision is that, decision of 1999 amended the indicative list of projects of common interests, pointing it with several new projects.[102] In 2001, the Commission adopted a proposal for a Decision amending the 1996 Decision,[103]

Mainly, this proposal aimed at amending the TEN-Energy Guidelines by stating a separate category of priority projects among the projects of common interest, of energy network projects which have very important impact from the point of view of the essential criteria of energy policy.[104] From the aspect of financial frame/ funding, in order to efficiently support those projects for which increased financial support is key to their completion, the Commission considered in its proposal that, for priority projects of European interest.[105] On the other hand, the European Parliament has accepted this approach, but has amended the recitals to the effect that, as a general rule, the construction and maintenance of energy infrastructure should be subject to market principles: the creation of a competitive and integrated internal energy market can be achieved more cost-effectively by revising current competition policy legislation than it can by merely increasing infrastructure capacity.

Although from the aspect of third countries (e.g. Turkey), on 13 May 2003, the Commission adopted a Communication, which aims to strengthen the energy co-operation with third/ neighbouring countries.[106] On that communication articles states part of a wider strategy for a new framework in the relations with the Union's neighbours

[101] in 1997, a Decision was taken to add a few projects to the previous mentioned indicative list: Decision 1047/97/EC of the European Parliament and the Council of 29 May 1997 amending Decision 1254/96/EC [1997] Oj L152/12.

[102] Decision 1741/1999/ECof the European Parliament and the Council of 29 July 1999 amending Decision 1254/96/EC [19991 Oj L207/1.

[103] Proposal for a Decision of the European Parliament and the Council amending Decision 1254/96/EC, COM(2001}0775,20 December 2001 J2002J OJ C151/1.

[104] The proposal also aims at amending the TEN- Energy guidelines as follows: defining the projects of common interest more interestingly; making it clear that project identification does not prejudge the assessment of their environmental impact; updating the provisions relating to the committee procedure without making any fundamental change; extending the reporting period for the implementation reports from two to four years, given the submission of the Annual Report on the TENs which covers the three sectors

[105] Priority projects are those mainly stated as being important from the aspect of the competitive operation of the internal market or the strengthening of security of supply

[106] Communication of the European Commission to the Council and the European Parliament on the development of energy policy for the enlarged European Union, its neighbours, and partner countries, 12 May 2003, COM(2003)262 final

and declares guidelines to possibilities to the growing external energy dependence between the European Union and neighbouring countries.[107] This strategy is necessary, because these countries play a vital role in the European Union's energy policy, the Commission points the necessary measures to state the effective development of the European Union internal market and infrastructure goals to both neighbouring countries and partners. The Communication is cleared on energy relations of the enlarged European Union with its neighbours and most important geographical partners in this sector, including southeast Europe(also Turkey) and the Caspian Basin. On the other hand these two markets are most important for the completion of the Internal Energy Market, and also for the security of energy supplies of the European Union. In short the communication's main points are: support the security of energy supplies of the European community; strengthen the Internal Energy Market of the enlarged EU; strenghtened the modernization of energy systems in partner countries; to build up major new energy infrastructure projects. The Communication has highlighted several concrete areas of action that need to be addressed by the European Union:

• The construction of the new infrastructure necessary for an enlarged European Union to function effectively in close collaboration with the supply countries as well as transit regions

• A greater use of Galileo[108] for security, safety management, and construction purposes.[109]

In addition to the Commission's above-mentioned measures and a continued

[107] Weider- Europe Neigbourhood; A new Framework for relations with our Eastern and Southern Neighbours' 11 March 2003, COM(2003)140 final

[108] Galileo is Europe's contribution to a global navigation satellite infrastructure

[109] From the aspect of security of supply, the European Commission is declaring that security of supply contains two main elements; the first one is physical security of supply and the second one is strategic and commercial the first one requires that safe and effective networks are maintained and the second one especially means that there is the necessary pipeline infrastructure for sufficient domestic consumption needs. Galileo project is contributing to the first point of security of supply. It deals main opportunities for raising the security and safety of networks, and some maritime transport of energy/petroleum projects. Because of that via this project, close collaboration with the neighbouring countries and partners is necessary. It is necessary to involve these countries in the promotion of the use of Galileo in its future concrete use in the energy sector, notably regarding the construction and maintenance of oil pipelines, the monitoring of oil tankers, and the management of natural resources.

development of dialogue between the European Union its neighbours and partners will permit the development of a real large energy community in the European area.

In accordance with the above mentioned details Energy Charter states main points on transit regime of the EU. Article 7 of the Energy Charter Treaty is about transit of energy products, materials and equipments is one of the most disputed article in the treaty, and the negotiations on approving a protocol on transit between the sides are still continuing. According to Article 7 of the ECT which obliges contracting parties to take 'necessary measures' to 'facilitate transit' ; via that article, they shall apply the principle of freedom of transit and they should not distinguish between materials, products and equipments as to origin, destination, ownership, and pricing, and they should allow transit without imposing any unreasonable delays, restrictions or charges.

The main energy producing members of the Energy Charter Treaty (ECT) are those of the Caspian Region (Iran is not a member but observer of the ECT). Because of that, transit regimes mainly deals transit of energy/ petroleum from these countries. And also as many countries (i.e. Bulgaria, Romania, Russia and also Turkey) are situated on the road, transit rules covers that countries. There is an agreement which signed in 1999 , between Turkey, Azerbaijan and Georgia to transport Azeri oil from Baku to Ceyhan (BTC)[110].

Because of the importance of the Caspian Region for the EU' s energy security, the EU examines the development of reserves , in addition to support the construction of export frame of this region via Interstate oil and gas transport to Europe Programme (INOGATE).This programme mainly aims to support regional integration of the oil and gas pipeline systems and to facilitate energy transport. This project is not only construction of the interstate transportation system but also the operation of that system.[111] 'The Umbrella Agreement' which came into force in 2001, signed by twenty-one nations of Central Asia, Eastern Europe, the Caucasus Region and the European Union is about the institutional framework for the establishment of the INOGATE programme.

This agreement is 'aimed at rationalizing and facilitating the development of interstate oil and gas transportation systems and to attract the investments necessary for

[110] This pipeline was opened in May 2005.
[111] http://www.inogate.org/

their construction and operation'. In addition to that agreement states a 'common operator' between contracting parties to avoid the inadequate operation of one system by various national authorities and also it sets out commonly agreed technical specifications and environmental protection regulations.[112] It is enclosed that this agreement will be followed by a series of protocols to deal with specific cross border pipeline projects.

To sum up above explanations, it is clear that issues related to energy security are strongly related to the establishment or upgrading of transit regime (potential or existing export infrastructure), not only in the energy-producing countries but also in the transit countries.

Article 7 of the Energy Charter Treaty on transit of energy products, materials and equipments still under polemic and the negotiations on approving a protocol on transit are still continuing. Article 7 of the ECT obliges contracting parties to take 'necessary measures' to 'facilitate transit' via using the principle of freedom of transit and they should not distinguish between materials, products and equipments as to origin, destination, ownership, and pricing, and they should warrant transit without imposing any unreasonable delays, restrictions or charges.[113]

Article 7 (6) and (7) state the methods on settlement of disputes, in case of any dispute occurs between the transit country and the exporting country, one method prescribed in this article is conciliation. The dispute will be referred to the Secretary General of the Secretariat of the Charter by a contracting party to the dispute, and a conciliator will be appointed. The conciliator shall seek to reach an agreement between the parties, and if unsuccessful, a resolution or a procedure to achieve a resolution would be recommended. According to Article 7(7), conciliation will only take place when the relevant contractual or other dispute resolution remedies dial were previously agreed upon between the contracting parties are exhausted.[114] Another possibility for the prior settlement is the insertion of the dispute .settlement system as stated in Article 27(3) of the ECT into the transit agreement, where the contracting parties agree, on failing to reach agreement through diplomatic channels, to submit the dispute to an ad hoc tribunal where, in case of the absence of an agreement to the contrary, the rules of the

[112] Haghighi (2007), p.323.
[113] Haghighi,(2007), p.325.
[114] Ibid.

UNCITRAL shall govern. On the Article 27 it is not clear the type of disputes to which it applies transit disputes could fall within its framework (as well as state-state investment disputes, disputes on environmental issues, etc.).

3.3. The EU's main acquis on petroleum;

EU currently imports 82% of its oil and 57% of its gas, making it the world's leading importer of these fuels[115]

First of all it has to be mentioned that main acquis on petroleum may be summarized under four headings[116];

- "stocks directive" and other emergency legislation
- "licence directive" prospection, exploration and production directive
- Registration for imports and deliveries
- Information/ consultation on costs and prices

This thesis mainly aims to explain "licence directive" in comparison with the Turkish Petroleum Law. On the other hand main legislation and arrangements related to other headings may be summarized as follows;

The acquis on security stocks;

- Council Directives 68/414/EEC (dated 20 December 1968) and 98/93/EC on stocks
- Council Decision 68/416/EEC on bilateral agreements
- Oil supply crisis management
    - Council Directive 73/238/EEC on measures for mitigating

[115] Low-carbon economy proposed for Europe, by AP, 10 January 2007.
[116] Directorate General for Energy and Transport, Explanatory Screening Energy, Brussels report, May 15, 2006.

effects of oil supply difficulties

- Council Decision 77/706/EEC on fixing a target for reduction in the event of supply difficulties

- Commission Decision 79/639/EEC on detailed rules for the implementation of Council Decision 77/706/EEC

To explain above arrangements in short it has to be stated some main obligations here;

Member states must have 90 days of stocks (Art.1 on Council Directives 68/414/EEC it was 65 days but via Directive 72/425/EEC and 98/93/EC raised from 65 days to 90 days) on the other hand this obligation is on three kinds of product categories (1. motor sprint and aviation fuel; 2. Gas oil, diesel oil, kerosine and jet-fuel of the kerosine type; 3. Fuel oils. Art.3 of the) and minimum requiremnt depends on domestic production (max. 25% allowance). 'ownership' criteria (art. 3.1. and 6.2)

- And member states shall report regularly on stocks and inform on bilateral agreements.

- And a consultation system for member states to reduce stocks under the compulsory level shall precede.

- Member states must secure fair and non-discriminatory conditions

- Stocks may be held in one or more member states if there is an intergovernmental agreement

- Member states must use consumption data of the previous year

- And according to their stocks member states shall present monthly statistical informations

- In addition to above points it has to be stated here via Council Regulation No. 2964/95 introducing registration for crude oil imports and

deliveries in the Community [117] EU' s main objective is improving transparency in the petroleum market and to monitor the statistics (monthly basis) of crude oil imports for the security of supply policy .

- On the other hand via Council 1999/566/EC: Commission Decision of 26 July 1999 implementing Council Decision 1999/280/EC regarding a Community procedure for information and consultation on crude oil supply costs and the consumer prices of petroleum products (notified under document number C(1999) 1701) [118] EU mainly aim to build the transparency of prices and costs in the European Oil/Petroleum Market, particularly in the downstream sector. This decision also aims to encourage the strengthening of the internal market in oil via making statistics/information (weekly and monthly basis) on supply costs and price/ taxation trends in member states.

3.4. Directive 94/22/EC of the Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (the Licensing Directive) [119]

The matter of conservation and management of energy resources is *inter alia* stated with in ECT article 18(3) which points: "Each State continues to hold in particular to specify and enjoy taxes, royalties or other financial payments payable by virtue of such exploration and exploitation, and to regulate the environmental and safety aspects of such exploitation, development and reclamation within their area, and to participate in such exploration and exploitation, *inter alia*, through direct participation by the government or through state enterprises."

In the Licensing Directive the issue of conservation of hydrocarbon resources

[117] Council Regulation (EC) No 2964/95 of 20 December 1995 introducing registration for crude oil imports and deliveries in the Community, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=395R2964

[118] http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&type_doc=Decision&an_doc=1999&nu_doc=566&lg=en

[119] OJ No L 164, 30.6.1994, p.3

is issued in article 2(1) which states: "Member States retain the right to determine the areas within their territory to be made available for the exercise of the activities of prospecting, exploring for and producing hydrocarbons." Resource management is regulated in article 6(2) of the Directive which declares: "Member States may, to the extent justified by national security, public safety, public health, security of transport, protection of the environment, protection of biological resources and natural treasures possessing artistic, historic or archaeological value, safety of installations and of workers, or the need to secure tax revenues, impose conditions and requirements on the exercise of the activities set out in article 2(1)."

On the other hand the subject of resource management is also pointed in the joint statement adopted by the EEA Joint Committee when the Licensing Directive was added into the EEA Agreement. According to this joint statement the Contracting Parties to the EEA Agreement *inter alia* approve "exclusive rights to resource management, *inter alia* exploration and exploitation policies, the optimalization of development and production and the rate at which petroleum resources may be depleted or otherwise exploited". But it does not apply to storage or transmission pipelines.

In the text of the Licensing Directive the term "authorisation" is defined as "any law, regulation, administrative or contractual provision or instrument issued there under by which the competent authorities of a Member State entitle an entity to exercise, on its own behalf and at its own risk, the exclusive right to prospect or explore for or produce hydrocarbons in a geographical area" (Licensing Directive article 1(3)). It should be noted that in different legal instruments other terms such as licences and concessions are often used to describe such authorizations.

Within the EU and the EEA the Licensing Directive contains rules to ensure transparent procedures for inviting and submitting applications for authorisations for the prospection, exploration and production of hydrocarbons, and to ensure transparency in the treatment of such applications. The Directive also contains rules to ensure that all interested entities may submit applications. Furthermore, the Directive contains rules to ensure that the conditions and requirements which will apply to the exercise and termination of the activities covered by the authorisation are applied in a non-

discriminatory manner and that there is no discrimination between entities as regards access to the activities in question. ECT article 18(4) aims at ensuring the same objectives.

On the Licensing Directive, the introduction paragraph eight states: "Whereas Member States have sovereignty and sovereign rights over hydrocarbon resources on their territories". The Licensing Directive was integrated into the Agreement on the European Economic Area (the EEA Agreement) on 1 September 1995.[120] In this document the EEA Joint Committee adopted a joint statement including a Declaration by the Parties to the EEA Agreement in which they *inter alia declar*e "that States have sovereignty and sovereign rights over petroleum resources" and also the Contracting Parties to the EEA Agreement inter alia state "that the Licensing Directive in no way prejudices the rules in Contracting Parties governing the system of property ownership".

Because of their sovereignty, it is therefore up to each Member State to adjudge within the geographical areas in which the rights to prospect, explore for and produce hydrocarbons may be exercised and to authorise entities to exercise those rights. The law sets out the framework criteria as to the assessment of licence applications for the prospecting, exploration and extraction of hydrocarbons in member state's territory including its Exclusive Economic Zone. These criterias may include:

- the technical and financial capacity of the applicant;
- national security and public interest;
- the methods envisaged by the applicant to carry out the activities specified in the licence;
- the economic benefits that the applicant offers in order to acquire the licence; and
- the conduct of the applicant within the framework of any previous licence.

[120] Decision No. 19/95. OJ No L 158, 8.7.1995, p.40. and EEA Supplement No.25, 8.7.1995, p.1, e.i.f. 1.9.1995. http://www.efta.int/content/legal-texts/eea/annexes/annex4.pdf/view?searchterm=prospection

And also that licences may be subject to such terms as may be necessary to safeguard:

1. the correct undertaking of the activities permitted by the licence;

2. the payment of a levy in a currency or as hydrocarbons;

3. national security, public health and public safety;

4. environmental protection;

5. the protection of resources, national treasures and the environment;

6. the safety of transport, installations and workers;

7. the management of hydrocarbons; and

8. the necessity to safeguard the income payable to the Government.

The law expressly provides that the criteria for the granting of licences and the terms applicable to them must be applied in a non-discriminatory manner. Additionally, an environmental impact assessment report must support any application.

In the EEA Agreement the principle of non-discrimination is defined as follows (article 4, which corresponds to article 6 in the EC Treaty): "Within the scope of application of this Agreement, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited". The most notable difference follows from the qualification "without prejudice to any special provisions contained therein". The content of the principle of non-discrimination as contained in article 6 of the EC Treaty has been qualified further through the jurisprudence of the Court of Justice of the European Community.

On that directive two main systems stated for granting authorizations;

... As laid down in Article 3 of the Directive, Member States can choose

between 2 methods of granting authorizations to prospect, explore for and produce hydrocarbons: either a "licensing round" system (see Article 3(2)) or an "open door" system (see Article 3(3)). The two systems may be combined ; if

"Open door" areas are available on a permanent basis; they may be the subject of a request for or grant of authorization at any time. Member States must declare which areas within their territory are "open door" via a notice published in the Official Journal of the European Communities

On the other hand under the "licensing round" system interested entities are invited to apply for a particular area within a given time limit. According to that, a notice is published in the Official Journal of the European Communities on the member states preferences on licence systems.

Article 12 of Directive 94/22/EC establishes a link with European public procurement legislation, in particular 2004/17/EC[121] (and also 2004/18/EC[122]) which replaced Directive 93/38/EEC, which replaced Directive 90/531/EEC. This Directive concerns the purchases of entities operating in the water, energy, transport and telecommunications sectors and regulates them following the principles of transparency and non-discrimination between potential suppliers. Supplies, services and contracts above a certain value are the subject of detailed procedures designed to ensure equal treatment of potential suppliers.

Since 2000 the "classic" Directives for supply, services and works and the "Utilities" Directive have been under revision in the EU Parliament and the Council of Ministers. On the 2nd of January 2004 this conciliation procedure finished with the adoption of the two Directives. The Directives took effect by announcement on

[121] Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sector

[122] Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts, and public service contracts

30th of April 2004 in The Official Journal (OJ) and shall be implemented in the Member States within 21 months.

The purpose of this revision is a modernisation and simplification of the directives. This will be done by:

- combining and consolidating the three rules and procedures for all three areas.

- adjusting the Directives to existing practices in the Member States and judgements of the European Court of Justice

- allowing the use of electronic communication and new electronic purchase technology and more flexible procedures.

After final implementation, the public procurement market would be regulated by two Directives: one consolidated for supply, services and works within national, regional and local activities and the other for the same activities within the Utilities sector (water, heating, gas, electricity, transportation and postal services).

According to that directives new possibilities stated;

a. The use of social clauses in the awarding of contracts (art. 19, Utilities Directive art. 28)

b. Environmental requirements to products, services and works are allowed to the extent that these demands are linked to the subject-matter of the contract or the performance of the contract.

c. Performance and Functional Description; to encourage enterprises to use their technical know-how and skills to offer the best technical solution, contracting authorities can refrain from using details technical specifications and instead specify their requirements in terms of performance and function.

On the other hand, Member States can decide if they will use the

following options: competitive dialogue (art. 29, 30 and 44), framework agreements(art. 32, the utilities Directive art. 14), Central Purchase Bodies (art. 1, 12-13 and art. 33, utilities Directive art. 1, 11-12 and art.15) electronic purchasing system (art. 1, 12-13 and art. 33, utilities Directive art. 1, 11-12 and art.15) Reduced Deadlines for Bids (art. 38), Publication of Contracts (art. 35) .

According to that directive in Article 8 the principle of reciprocity also declared; the Directive aims to ensure non-discriminatory access to the activities of exploring for and producing, hydrocarbons within the Union not only for Community entities but also entities from third countries, it follows that third countries be expected to reciprocate.

To summarize that, this Article provides, on the basis of information received from the Member States, the Commission draft a report to the Council on any complication by European entities, de jura or de facto, in gaining access to or exercising the activities of prospecting, exploring for or producing hydrocarbons in third countries. On the other hand, the Commission may present proposals to the Council for the appropriate mandate for negotiation with a view "to obtaining competitive opportunities comparable to those which entities from third countries enjoy within the European Union. In addition, the Commission can, if need be, propose that the Council authorize one or more Member States to refuse an authorization to an entity controlled by one of the third countries concerned or by nationals of that country.

The fact that no problems have been reported by the Member States or by industry does not exactly mean that there are no disagreements. However, it is clear that the progressive opening up of exploration and production at world level is an established fact.

Another point for that directive is; the exemption is granted upon a request from Norway and after the Authority has concluded that Norway has correctly transposed the so called hydrocarbons licensing directive (Council Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the

conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons), which is a prequisite for granting the exemption.[123]

IV. ENERGY POLICIES AND LEGISLATION IN TURKEY

4.1. The history of Turkish petroleum exploration

4.1.1. Ottoman Era

The history of petroleum exploration in Turkey goes back to B.C. but detailed information may be found until the Ottoman Empire. The codes; "Kadıyye-I Ma'deni Novobrdo" (50 Art.) dated 1494 and also Kanun-I Ma'adin-I Srebrenic ve Sas" (48 Art.) dated 1548 has importance which dealt only mineral law.[124] After that in some codes e.g. Diyarbakır Province code clearly include the tax arrangements for the horse-load naphta (and also tar).[125] On the other hand the first naphta licence was given to the Neftçi Family via imperial edict on Bagdat Wartime.[126]

From the aspect of legal developments at that time; The first constitutionalist movements were seen in the 19th century in the period of the Ottoman Empire. The Empire originally was based on monarchy and theocracy. The acceptation of *Tanzimat* (1839) and *Islahat* Edicts (1856) under the influence of Western liberalism clearly changed this structure by introducing certain rights and liberties for Ottoman subjects and making some arrangements for non-Muslims. The adoption of the 1876 Constitution –*Kanun-u Esasi*- created more clear changes in the structure of the Empire via establishing a parliament. But this innovation was significant in changing the absolutist nature of the Empire, it was insufficient to transform it into a Western-style

[123] http://www.eftasurv.int/information/pressreleases/1999pr/dbaFile1839.html
[124] Ediger, (2007), p. 26.
[125] Ediger,(2007), p.27.
[126] Ediger,(2007), p. 31.

parliamentary monarchy and continued by the amendment of Kanun-u Esasi in 1909[127]. On the other hand this period did not continue because of the defeat of the Empire and its allies in the First World War.

As explained above Evliya Celebi's Seyahatname deals petroleum/ naphta in Ottoman Areas and also this data is written by W.LOFTUS and published in geology society periodical on 1854.[128] In 1890, when the first wells in the Çengen area near Iskenderun were drilled.[129] On that era petroleum activities seen mainly on four areas Iskenderun, Trakya, Musul, Erzurum and Van[130]

4.1.2. The period 1923–1954

Following the foundation of the Republic of Turkey on 29 October 1923 and its first Petroleum Law, Law No. 792 from 1926, the rights to survey, explore and produce petroleum were given to the Turkish government. The first well being established in parallel with the new petroleum framework was the Baspirin-1 well around Midyat, drilling to a depth of 1351 meters in the time between 1934 and 1936. Most of the petroleum activities during the 1930s took place in southeast Anatolia, Iskenderun, Adana, Van and Thrace. [131]

On that period fundamentals of the implemented policies was determined in İzmir Economy Congress, in 1923. According to that congress, liberal economic system was tried to be set up. But, especially the government was authorized for petroleum exploration and production by the laws made in 1926. On the other hand, "Privileged companies policy" on electricity, since Ottoman Time, was not changed and continued

[127] Yazıcı, S., (2006), A Guide to the Turkish Public Law Order and Legal Research, p.2

http://www.nyulawglobal.org/globalex/Turkey.htm

[128] Ediger,(2007), p.30-42.
[129] http://www.pigm.gov.tr/turkiyede_petrol.php

[130] Supra.
[131] Supra.

till 1930[132]

According to developments on Turkish republic, in the first and second industrialization plans arranged for the years 1933–1942 in order to increase the electricity production, to decline on the import dependency of production and economy, it was stated that the industrialization could be possible by obtaining low-priced energy, and hydraulic and fossil energy (coal, petroleum etc.) resources should be explorated.[133] In the context of the second industrialization plan, mainly energy issues , the issues such as mining operations, petroleum exploration and production and electricity power plants were included. Because of the important events; The death of Atatürk who is the founder of the Republic of Turkey, and the start of World War II (it was between 1939 and 1945) interrupted the implementations of that plan. During this period, according to the nationalization process, coal producer foreign companies were nationalized, and public enterprises such as Directorate of mineral research exploration (MTA), Etibank, Petrol Ofisi, and Electricity Surveys Administration (EIEI) were established. In 1940, the first petroleum productive well was drilled in the Raman Oil Field by MTA[134].

After World War II, a new development plan was prepared in 1945, and Etibank was activated on energy projects .Economic policy of the period 1950–1960 was based on mixed economy via encouragement of private sector and foreign investors in addition to public sector. But, the policy could not be realized successfully. On that period, public sector developed rather than private one. The most important conferences in the period were World Energy Conference dated 1949 and the First Energy Congress organized by Turkish National Committee in 1953.

4.1.3. 1954- Onwards

Between the years 1950–1960, electricity production and consumption in

[132] Kaya Ercan (2004), "Türkiye'de Uygulanan Enerji Politikaları ve Sonuçları",(Energy Policy Applications and Results in Turkey), Ankara: Kara Harp Okulu Bilim Dergisi, Yıl:2004-1, Cilt: 14.

[133] YILMAZ, Osman- USLU, Tuncay, (2007), Energy Policies of Turkey during the Period 1923-2003, Energy Policy Volume 35, Issue 1, January 2007.

[134] DTM, Electricity Generation and Consumption in Turkey, Under Secretariat of Foreign Trade,2004. http://www.dtm.gov.tr

Turkey increased in correlation to the economic development and industrialization. Tuncbilek and Soma coal-fired power plants were constructed and started operation in 1956 and 1957, respectively[135]

. On the period 1960–1980, according to the developments in the world Turkey saw; the way of economic development and industrialization are able to be possible via full and cheap energy and distributing this energy in the desired amount and time throughout the country. At that point, the energy supply (petroleum was in the first place) has been the most important instrument for the economic development and industrialization problems.

In accordance with the Turkish Constitution, the period 1960–1980 became a period in which mixed economy policy dominated by the state was stated, planned arrangements was started and improved. In the first planned period (dated between 1963–1967) and second planned period (dated between 1968–1972) it was mainly focused on the efficient use of the power plants. In the third planning period (1973–1977), state-control energy policy was adopted.

On the other hand, in the third planning period energy demand could not be met sufficiently, because of the primary energy resources could not be realized as much as expectations and, petroleum production could not be increased. Because of that Turkey faced problems in the energy field. Unfortunately, in the fourth planned period, it was aimed that 53% of total energy consumption would be met by primary energy resources; but, during the planned periods, growth rate of energy production decreased instead of the increase in energy consumption, for instance, at the end of 1977, import dependency in energy was 50%[136]

Because of the characteristics of the sector, energy investments require high capital and profits in the long term, were mainly realized by the state. In correlation to that, the participation of the private sector remained limited at that time.

[135] http://www.dtm.gov.tr

[136] Supra.

In the years 1973 and 1977, as explained above, there was two petroleum crises resulting from excessive increase in petroleum prices. Since energy consumption was mainly dependent on petroleum, petroleum crises brought about several economic difficulties for Turkey. Therefore, at that period, it was planned that the number of lignite-fired power plants would be increased and in 1978, nationalization of lignite deposits operated by private sector was started via a law called "Mines to be Operated by the State".

The period after 1980 can be seen as the time in which state-controlled economy was replaced with liberal economy[137] In relation with a liberal policies followed by the governments, public investments have been clearly decrease the public share in the economy. While present public enterprises and plants were tried to be transferred to private sector by using different methods such as "Transfer of Operation Rights" and "Sale of Property", new investments were aimed to be realized by private sector under the new models "build–operate" and "build–operate–transfer"[138] Especially on the electricity sector , the solution has been to met in foreign investments through the "build–operate" and "build–operate–transfer" models[139].

Especially on the last part of the 1980s, unfortunately, the country had an increasing desire to meet energy demand from imported resources.

Energy policies of Turkey as of 1923- onwards has contradictions from time to time. At the beginning it was in parallel to the world , hard coal as a national resource had a major role in energy production, than petroleum, after than an imported resource, took its place. Petroleum crises experienced between 1973 and 1979 change Turkey's economy and get the importance of national energy sources. After 1990s, Turkey turned to imported resources again, unfortunately, natural gas took place with increasing proportion in energy production.

The most important target for the Turkish government is to meet energy

[137] Candoğan, (2003), New Period in Energy and the evaluation of current problems. In: Turkish Fourth Energy Symposium, Electricity Engineers Chamber of Turkey, Ankara.
[138] Supra.
[139] Sohtaoglu, (1999), Analysis of created value added in the electric power sector: a case study of Turkey, Energy Policy 27,(1999) ,4, p.195-202.

demand in a secure, timely, economic and environmentally friendly manner. The main instruments to realize this may summarize as follows:

- ❑ Upgrading energy supply security;
- ❑ Diversifying energy sources;
- ❑ Optimising assessment and use of indigenous energy sources;
- ❑ Promoting energy efficiency;
- ❑ Decreasing energy intensity;
- ❑ Harmonise with the EU *acquis*;
- ❑ Apply the preventive principle in environment policy.

The Turkish Government is not in a position to finance all energy investments itself and seeks to fund from the private sector or foreign sources. In correlation to that, motivating private/foreign investment has been adopted as the basic strategy. The Government has encouraged foreign investment since the 1980s in many ways. In the past, mainly three different models were used: "Build-Operate-Transfer" (BOT), "Build-Own-Operate" (BOO) and "Transfer of Operating Rights" (TOOR).

According to these modifications in politics, to realize this progress, the Turkish government had adopted a radical approach and amended the Constitution to state the possibility of appealing to international arbitration in case of investor dispute.

The Turkish Government (and also whole world) considers pricing to be a very crucial element of its energy policy. The main aim of the strategy is to reach cost reflective pricing.

In correlation to that, petroleum prices were formally liberalised in 1989, but the Government had reserved the authority to intervene in determining the prices of oil products. For instance, the government used this authority for subsidising LPG prices for six months in the year 2000, because of the economic problems due to the 1999 earthquake. After the establishment of the automatic price setting mechanism in 1998, the authority for intervening to determine oil products prices has been abolished. The prices of oil products are announced freely by the refineries within the price corridor of ± 3%, which is established with respect to the CIF MED product prices in the last seven days. There are two kinds of taxes on sales of petroleum products to end-users (VAT 18% and a Special Consumption Tax introduced in August 2002). The previous applications of the Petroleum Price Stabilisation Fund and Petroleum Consumption Tax were abolished with the introduction of the Special Consumption Tax, aimed at keeping consumer prices stable in the event of high fluctuation of prices. The Petroleum Market Law that has been submitted to Parliament will further liberalise oil prices.

The Government promotes the use of unleaded gasoline through a preferential pricing policy. Unleaded gasoline is priced lower than super gasoline (95 octane leaded gasoline).The goal is to shift entirely to unleaded gasoline. In order to attain this objective, the refineries of Izmir are being upgraded via construction of hydro cracking and isomer-ation units harmonised with EU standards. The Kirikkale refinery complied with EU regulations in 2005 on petroleum quality for both leaded and unleaded gasoline.

On the other hand unleaded gasoline is in compliance with pre-2000 regulations, but the sulphur content needs to be reduced to comply with EU standards. Standards for maximum sulphur content in diesel oil are also being tightened in order to comply with EU regulations. New desulphurisation units are planned operational in three major refineries by 2007 in order to comply with EU standards. Since January 2002, no regular gasoline is sold in the market and all imported and domestically produced new automobiles are equipped with catalytic converters and Euro/95 standards are in place.

There are no effective tax incentives to encourage energy efficiency in Turkey. Indeed, existing energy taxes are designed with the purpose of collecting revenue and

environmental protection does not appear to play a significant role; only petroleum products standarts may support environmental protection.

4.2. The Law No. 792 and MTA Period

The petroleum law had been approach its importance after the foundation of the Republic. The Petroleum Law No. 792 dated on March 24, 1926, which had been prepared by basing on the petroleum law in Romania,[140] had arranged the petroleum prospecting activities in Turkey until 1954, according to that law the petroleum prospecting right given to the state. While this law that had not adjudged lots of issues regarding with the prospecting and operation intended to the petroleum prospecting had been inadequate with lots of aspects, it had not arranged the issues such as transmission of the petroleum and petroleum refining, either. Via that law, the petroleum prospecting have been closed to the foreign investors. "1926 Petroleum law had been a law never permitting the possibility to foreign petroleum companies to be involved in an activity in Turkey''[141] According to that law the Turkish petroleum sector has been intended to be protected from the foreigners via the first article of the law had been arranged in the way that the petroleum prospecting and operation right would not be given to any foreign concession:

" The prospecting and operation of the whole petroleum and derivative content mines in all regions within the border of Turkey has been given to the state on the condition that it would be dependent on the Mining Law" [142]

The law regarding "Gold and petroleum Prospecting and Operation administration Organization Law'' had been accepted on 20.05.1933 and with No. 2189. An organization had been needed in order to carried out the petroleum prospecting by the state and Petroleum Prospecting and Management of Business had been established in the same year depending on the Ministry of Economy with this law.

[140] Tanrıseven, H., (2005), Türk Kamu Sektöründe Petrole İlişkin Kararlar Sistemi (Petroleum Decision System on the Turkish Public Sector), Phd. Thesis, Ankara University, p.36.
[141] Altuğ, (1983), Petrol Sorununun Tarihsel Gelişimi ve Türkiye (Historical Development of Petroleum Problem and Turkey), p.212.
[142] Published on the Official Journal, April 06.1926.

The Management had been annexed into MTA Institute that had been established in 1935 with the Law No.2804 and taken the form of the Directorate of Petroleum Group of this Institute[143]. The petroleum prospecting had been continued by the support and help of the state beginning from this date.

In 1950s, because of there have not enough technologic experience and technical personnel in Turkey alongside the expenditures of the petroleum prospecting activities, an important development in the petroleum prospecting and operation activities within MTA Institute had not been observed. MTA Institute had drilled six petroleum wells which corresponds to 5.7% of the total petroleum necessity of the country [144]

The institute had explored the petroleum resources with its own limited utilities until 1954 in which the Petroleum Law No. 6326 had been accepted in Turkish Grand National Assembly.

Because, the petroleum prospecting and operation have required great capital, the adequate prospecting had not been able to done with limited budget capacity and the Government body in Turkey. The Petroleum Law No. 792 had not permitted the foreign capital to enter into the sector. Appropriating funds for the petroleum prospecting, the necessary equipment that have to be imported from abroad and difficulties in finding the specialist personnel had not given any possibilities to break through in the petroleum prospecting.

On the other hand, the political power in this period had been demanding utilizing the petroleum resources from which great hopes had been expected. By that reason the DP Government had given indications regarding the new petroleum law that would be enacted and the petroleum politics that they would be followed up in the next years with the enactment dated on 12.11.1952 with No. 3/15833:

‘’It has been decided that all the processes would be performed in order to provide and invite the specialists who are aware the World petroleum regulations and

[143] Petroleum Law Pleading, 1954, Art.4
[144] Türkyılmaz, (1976), p.26.

applications and this law's technical, economical and financial aspects by determining our petroleum resources as soon as possible, bringing them into operation, by making explorations for he purpose of increasing the value of the petroleum, bringing the foreign and capital owner juridical persons who will accept making a collaboration and warrant operating in the most suitable conditions for our military and economical interests with in the scope of the requirements of the World petroleum politics, making their activities happen, taking all kind of legal, administrative and financial precautions that will be able to provide agreements between our Governments and them and utilizing the opinions in the exploring of the necessary conditions to be able to actualize this purpose''

The investigations performed on this enactment had executed the ''necessity of substitution'' of a new law that would consist the accepted principles in lots of countries and country conditions instead of the Petroleum Law No. 792 dated on March 24, 1926 that would not be able to cover that date's requirements.

Since the petroleum prospecting had required great capital, technical knowledge and experience and because of both the investments done by the state budget would not be enough and difficulties obtained in having the equipment and experienced personnel would be faced, the prospecting tempo in the period of the Law No. 792 had been very slow and establishing the petroleum industry in Turkey had not been realized enough.

In 1950s in which a outward-oriented politics had been followed up, the Law No. 792 had lost its "vitality and practice capability'' in respect to the possession that it had consisted and the law had been "extremely incomplete''[145]

The problems of which the petroleum activity had shown by the state by having qualification that had conferred on the underground petroleum resources explored and produced by the foreign private capital opinion's right [146]. Unfortunately , the foreign private investors had obtained the necessary financial power and enough specialist personnel and equipment.

[145] Petroleum Law Pleading, 1954, Art.8.

[146] Göğer, (1967), p.67.

Government had had the need of enacting the Petroleum Law No. 6326 in 1954 in order to encourage the petroleum prospecting and explorations in all nationwide in great a scale on the one part and supply the rapidly grown petroleum requirements from domestic resources and provide an industrial development consisting the petroleum industry in Turkey and its whole branches with this reason.

It has been declared in the beginning of the Petroleum Law Pleading that a politics would be followed up including ‘’performing explorations in order to explore our petroleum resources as soon as possible, bring them into operation and increase the value of them, and providing the operation of the resources that will be explored with in the scope of the requirements of the World petroleum politics suitable for our military and financial interests in the most perspective’’[147]

‘’The primary benefits that will be expected from exploring our petroleum resources as soon as possible and their operation’’ are able to be arranged in order like that[148]

- A national wealth that remains in underground and not inures to the benefit will become desirable,
- The country will have the fuel oil that the country has needed in its development without spending Exchange by that way,
- The petroleum industry will be able to be established in the country and our economical part will gain strength,
- Considerable indispensable revenue will be provided to the exchequer.

In other words, it is able to be said that it has entered into great expectations from the new petroleum law and foreign capital in that period.

When it is looked at the World economy, the period of 1950 and 1973 had been

[147] Petroleum Law Pleading, 1953, Art. 9.
[148] Supra.

the cheapest petroleum period completely[149]

Barker report, which had been prepared by World Bank and submitted to the president Celal Bayar, had stated that ‘’It had better the private sector will lead to the mining exploration and operation and the discoveries and activities of MTA Institute will be submitted to the knowledge and usage of the private sector and foreign capital instead of having developed the industrial fields processing the mine products’’[150]

The Government had explained in 1952 that the companies exploring the petroleum would not be nationalized by issuing a declaration. In a bulletin, which had been issued by MTA Institute in this period, it would be indicated that the foreign companies would be helped. After issuing this bulletin, eight foreign companies had started performing geological exploration.

The year 1954 in this period had been a year in which a new period would be started in order to modify the petroleum politics that had been effective in Turkey[151] On this date, the Petroleum Law No. 792, which had been effective since 1926 and notified the exploration, development and evaluation of the petroleum resources by the state and its own inspection in Turkey, had been abolished and the Petroleum Law No. 6326, which had brought the principal of hose activities that would be performed by the private sector and its investments, had been accepted instead of the first one.

According to new law; a new period had been started in the followed up petroleum politics” and it had been considered that the explorations would be performed and developed by the support of the domestic and foreign private enterprises with this law.

The ‘’Petroleum Law Regulation’’ on 14.01.1954 with No. 1/735 had been accepted by the Government and just the 136th article limiting the legislation organ in an inartificial manner regarding that amendment would not be able to be done without having the petroleum owners’ consent had been refused by Turkish Grand National

[149] Pala,C., (2001), p.166.

[150] Türkyılmaz,(1976), p.26.
[151] Altuğ, (1983), p.217.

Assembly[152].

According to the provisions of the law regarding constitutions, permits and certificates had been come into force beginning from the issuing date and the other provisions had been come into force beginning from the issuing date of the Petroleum Regulations[153]

There are also opposite side against the Law; e.g. CHP stated that "Foreigners have taken advantage of Turkey by the capitulation in history…but our government would like to bring the foreign capital that the African clans have expelled in our teritorries…The Petroleum Law is a capitulation law[154].

The Petroleum Law had been experienced extreme critics most likely by the ''statist'' fractions. Türkyılmaz had indicated that the Petroleum Law ''had been prepared according to the imperialists' demands "by claiming that" the Petroleum Law, which had prepared to Max Ball and been approved by DP power in March 1954, had been the legal support of the colony of the multinational monopolies in

[152] The original text of the article is like that: ''The prospecting and operating licences, certificates and their similar forms given according to this Law had been signed between the Republic of Turkey and petroleum right owner for the rights by having put down with regard to the responsibilities and obligations in order to perform the petroleum activities in the prospecting and production fields. This agreement is not be able to be amended and abolished unless there are not any malfunctions during its effectiveness duration and its provisions and conditions are not violated or the mutual consent of the parties are not existed.''.

[153] Because of this reason, the application to obtain the prospecting licence had been done after having issued the Regulation in August 1955.

[154] The author Metin Toker, who had written an article regarding with the Petroleum Law after years, had declated the followings by reminding the discussions done in this period and indicating that Max Ball had prepared the Petroleum Law according the demands of the foreign petroleum companies:
''Billions of dollars had been waiting their legalization to go to Turkey. Petroleum companies would have increased by the new Law. We would be rish as much as Saudi Arabia. The opposition had been emphasizing that this had been a return to the ''capitulations''. Even the Apple trees had been taken under the sunjection of the foreign capital. The country had been selling (…). The Foreign Capital Law and Petroleum Law had been like what Mr. Randall and Mr. Ball had said. Neither billions of dollars had been come to Turkey nor the petroleum had been come up nor the capitulations had come back.'' (Toker, 1999).

the petroleum field'' [155] On the other hand Ersümer[156] had evaluated this fact by indicating that the Petroleum Law ''had been the most liberal law of Turkey'' on the contrary of the ''statist'' fractions in many speechs.

4.3. The Petroleum Law No. 6326

In correlation, the place and importance of the petroleum have grown especially from 1950's, the petroleum law concept has developed and the laws, which have consisted more detailed regulations) have been started being legislated. ''The petroleum law term is able to be characterized as the activities including petroleum prospecting, procurement, transmission, sales, liquidation and whole sale of the petroleum products'' [157]

After 1953, it has been seen that a burden and importance would be given to the legal regulations regarding with the petroleum. ''The petroleum, in consequence of both economical and military and strategic importance, has been taken a place in the most valuable materials'' [158]

The constitution that has show the Petroleum Law No. 6326 and its practice have been the main resources of the Turkish Petroleum Law.

The purpose of introducing that law has been to provide the prospecting, development and evaluation of the petroleum resources of the Republic of Turkey rapidly, continously and effectively in accordance with the national interests.

It had been aimed the contribution of foreign and domestic legal persons into the petroleum prospecting by enacting the Petroleum Law No. 6326 in order to provide the rapid development of the petroleum sector in Turkey and taking part of Turkey in the World petroleum market[159]

4.3.1. The Principles Dominating the Law No. 6326

[155] Türkyılmaz, (1976), p.26-32
[156] Ersümer, Cumhur, the Minister of Energy and Natural Resources, 1997 and 2001.
[157] Göğer, Turgut Y.,(1967), Türkiye'de Petrol (Petroleum in Turkey), İstanbul yayınevi, p.15.
[158] Petroleum Law Pleading, 1954 Art. 4
[159] Tolunay, N. (1958), Türkiye'de Petrol İmkanlarına Kısa Bir Bakış (A Short Look on the Possibilities of Petroleum in Turkey), Petrol Dairesi Bülteni, n.2, Ankara

It had planned to develop and determine the country's petroleum in the most rapid way by the private investor support via the Petroleum Law No. 6326

The concept of the law had been defined in the second article like that:

'' The purpose of this law is to provide the development and exploitation of the petroleum resources of the Republic of Turkey by the supports and investments of the private enterpreneur in the rapid, uninterrupted and productive way and the contribution of the petroleum prospecting[160]performed by the foreign companies in the same way''[161].

This provision had been also brought with the sixth article of the law in this matter on the other hand:

''A company is able to have to a permit, exploration licence, operation licence or certificate for its own juristic situation according to the laws of the Republic of Turkey and regulations of the foreign nations''

The activity fields of the market had been arranged in different headlines such as prospecting, production, transfer, liquidation and other activities related with the Petroleum Law. The distribution field in the law had been only mentioned without bringing any modifications. Although the activities regarding the petroleum in the law had been arranged in separately headlines, the condition of being in production activities had been brought in order to perform transfer, liquidation and other activities that would be possible to do especially upon obtaining a certificate until 1994.

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[160] The Petroleum Activities had been explained in the eight clause of the third article of the Petroleum Law. According to this definiton, the petroleum activity has contained;

- The prospecting, exploration, production, liquidation and petroleum and petroleum products' Storage, distribution, transportation and sales apart from the sales, Storage and distribution of the petroleum products directly to the consumer or distribution establishments as retail,
- The necessary energy and water facilities for any of those activities; building, camping and all the other facilities and their contructions and foundations and administrative activities regarding with those ones.

The petroleum activity is not only the primary petroleum activities such as prospecting, operating and refining but also the other technical and administrative activities necessary or assistant to them (P.L., 3/8-b and c). On the other hand, it has contained all the activities in substantive characteristic (Tolun, (1983), p.104).

[161] OJ, March 16, 1954

The main opinion that have had gained the Law's existence, is to carry out the underground resources of the country with the support of the private enterpreneurs and investments. Able to arrange in order the principles dominating the according to the purposes:

1. Turkey has needed the prospecting of the domestic crude petroleum resources as soon as possible. The support of the foreign companies have been required for that. Turkey, which have gone without the required financial resource in order to explore the petroleum and prospecting experience, has targeted to cover this deficiency by bringing the foreign capital and petroleum-rich people.

2. Encouraging the foreign companies to perform petroleum prospecting and production activities in Turkey has been only able to be provided if Turkey competes with the other countries producing the petroleum. In order to create the competition environment, the most suitable possibilities have to be defined.

3. Different possibilities have to be established in order to bring the foreign petroleum companies to Turkey (exemptions, expansion of the licence fields, capital and profit warranty and permit of employment foreign personnel etc.). These kind of regulations have been intended to bring the foreign investors. It has been also targeted to provide a safe business environment to the foreign companies that will be invested in Turkey in the same way.

4. The safe and suitable environment that will be provided should give the possibility to all kind of companies in the country in order to explore.

5. Although it has been tried to bring the foreign capital to our country via the Petroleum Law, it had been also brought some provisions in order to save the national interests and prevent the country petroleum to go under the foreigners' control. The 12th article of the law is like that:

''The juristic persons who have had financial interests and benefits in

the amount and form in which the foreign nations would be able to be effective in the management directly or indirectly and the persons who have performed on behalf or name of a foreign nation;

a. Are not be able to have the petroleum right and perform the petroleum prospecting;

b. Are not be able to purchase the movable and immovable properties that have been necessary for the petroleum prospecting, have to those and establish claim and benefit on those;

c. Are not be able to establish or operate the facilities that have been consisted from the petroleum prospecting and constituted some parts''[162]

The statement that have been in the clause article of this article, ''it is able to be defined exceptionally with the decision of the cabinet'' had been adjudged.

6. For the activities of the companies that have not been appropriate to the good will rules, the financial provisions should be brought instead of the criminal provisions.

The 132nd article of the Petroleum Law is like that;

" If the holder of a petroleum right fails to comply with this Law, the Regulations and with Decrees and orders given on the basis of such or with one of the written conditions of his permit, licence, lease and certificate The General Directorate of Petroleum Affairs shall request compliance within 90 days, operations covered by his permit, licence or leaseor certificate or the direct implementation of the cancellation sanction. If despite such warning the failure continues after the 90 days period, the operations may be temporarily suspended for a period of not less than 90 days not more than 180 days or the General

[162] OJ, 16.03.1954.

Directorate of Petroleum Affairs may suggest to the Minister for the direct cancellation of the permit, licence, lease or the certificate.

2. a) Resuming of the operations shall be permitted during the temporary suspension period, if an acceptable assurance to the effect that the failure will be removed is provided to the General Directorate of Petroleum Affairs by the holder of a permit, licence, lease of certificate.

b) In case acceptable assurance is not provided and the failure is not removed or the failure is not removed although an acceptable assurance has been provided, the holder of a permit, licence, lease or certificate shall be given another 45 days of grace. If the failure has not been removed at the end of this grace, the permit, licence, lease or certificate may be cancelled.

3. In case the holder of a licence, lease, or a certificate does not comply with the provisions of Articles 13, 57, 58, 59, 67 and 85 of the Law, the cancellation sanction shall be directly applied after granting the 90 day period, without resource to the temporary suspension remedy.

4. The decision for cancellation shall be taken by the Minister upon the proposal of the General Director and the decision for temporary suspension by the General Director.

5. If a decision for cancellation has been taken, the rights arising from permit, licence, lease or certificate shall be terminated on the date of cancellation.

6. If a decision for temporary suspension has been taken none of the operations shall be performed except for the operations related to the sale of petroleum, for the prevention of an unsafe act or waste and for the removal of the incident leading to the temporary suspension of operations.

7. It has been also considered that the petroleum field would be expanded alongside the petroleum prospecting with this law.

8. The law had moved on the account of that the petroleum right owner[163], who had explored the field under which the petroleum would exist and the petroleum would be suitable for commercial production, would evaluate in the most effective way. Within this scope, the provisions regarding with the transmission and liquidation of the petroleum had been also put.

9. While arranging the economic provisions in the law, it had been moved from the intelligence that has been existed in the Middle East. Since the Middle Eastern countries had been considering that the law, providing more less benefit rather than the benefit to the foreign companies, would not have success and this concept has been the base of the economic provisions of the law[164] The inspection of the legislation of this law had been given to ''Petroleum Office Directorate'' with the Petroleum Law No. 6326[165].

4.3.2. The Amendments Done in the Petroleum Law No. 6326

The Petroleum Law arranging the activities regarding with the petroleum prospecting, production, distribution and refining had taken out the fuel oil and natural gas distribution and the law had been amended in parallel with the political and economical developments in the World and also in Turkey.

However, The Petroleum Law No. 6326 dated on March 7, 1954 had been brought some amendments depending on the modifications of the regional and global conjunction that encountered in the following years in 1955, 1957, 1973, 1979, 1983 ,1994,2003 and 2008 until today.

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[163] Each petroleum right owner, who has been the prospecting and operating licences, is able to request a usage right if it will be necessary according to the Petroleum Law (P.L., 87/1).

[164] Göğer, (1967), p.62.

[165] The Petroleum Office Directorate had been transformed into the Directorate General for Petroleum Affairs by the Petroleum Reform Law No. 1702 accepted on 05.04.1973.

The amendments carried out in the Petroleum Law No. 6326 (Approval Date: 7.3.1954, Issue Date: 16.3.1954) are the followings:

Law No	**Name**	**Approval Date**	**İssue Date**
6558	The Law about adding clauses to the articles of the Petroleum Law No. 6326	13.5.1955	21.5.1955
6987	The Law about adding clauses to some articles of the Law No. 6558 that had amended in this Law with the Petroleum Law No. 66326	29.5.1957	6.6.1957
1702	The Petroleum Reform Law	5.4.1973	18.4.1973
2217	The additional Law to the Petroleum Law No. 6326	1.3.1979	12.3.1979
2808	The Law about amending some articles of the Petroleum Law and adding some articles and clauses to the Law	28.3.1983	30.3.1983

4046	The Law Concerning Arrangements For The Implementation Of Privatization And Amending Certain Laws And Decrees With The Force Of Law	24.11.1994	27.11.1994
5015	Petroleum Market Law	4.12.2003	20.12.2003
5728	The Law for harmonization of basic criminal law via the amending certain laws and some other laws	23.1.2008	8.2.2008

"The purpose of this Law (No. 6326) is to provide the exploration, development and evaluation of the petroleum resources of the Republic of Turkey rapidly, continuously and effectively according to the national interests"[166].

The petroleum Law No. 6326 had been criticized since it had given expansive rights to the foreign investors. The individual made those critics had been come together that putting into force the Law No. 6326 would create positive effects in Turkey's

[166] PIGM, (2003), 2002 Yearbook.

petroleum explorations and petroleum operations.

The duration via the amendments may be arranged under three headings below:

- 1954 – 1973 Liberation period,
- 1973 – 1980 Increasing period of the Public Efficiency (the State),
- 1980 – 2008 Efforts to return to Liberation period.

4.3.2.1. Between 1954 and 1973 (Progression to Liberation)

The most distinctive characteristic separating the Petroleum Law No. 6326 from the previous Law No. 792 is to approach to the petroleum business from more liberal perspective, bring the foreign capital to our country and allow the private sector to perform petroleum activities alongside the public.

a. The Law No. 6558

Some new provisions, which had not been in the law from the encouragement perspective, had been added to the law by the Law No. 6558, enacted one year after the enacting of the law No. 6326.

1. The Petroleum Right owners had been recognized exchange rate warranty,

2. The Petroleum Right owners had been given that they would be able to keep the income (the amount rather than their activities in Turkey and responsibilities brought by the Law), which they had had from the sales of the petroleum exported from our country in outside of Turkey,

3. The foreign petroleum explorers had decreased their expenses and kept their responsibilities exceptional by the year 1955 amendments,

The above ones had been given to the foreign petroleum companies, by the regulations amended in the Law.

b. The Law No. 6987

The purpose of the petroleum Law, as mentioned in its second article, had been explained that it would develop and determine the petroleum resources of the Republic of Turkey. But, the distribution and liquidation of the foreign crude petroleum had been left outside of the scope of the Petroleum Law. It had been come on with the attempts to establish refining facilities that would be in seriousness and concept in order to process the foreign supplied crude petroleum in Turkey between the years of 1954 and 1957 by that reason.

c. The Approaches Opposing to the Liberalization

The Petroleum Law No. 6326 and attempts to make the petroleum activities liberal had not accepted in all country. The nationalist and left approaches made criticism forcibly.

İsmail Cem had declared the followings by indicating that the adventure of the petroleum in Turkey had developed by leaving our country's benefits and interests in the second plan:

‘’TPAO, our national petroleum establishment, had been treated as if it had been a foreign establishment. TPAO had been hobbled while giving the prospecting licence and exploring the petroleum fields. İt would be possible to indicate that the develeopment of this establishment had been restrained by the Governments as being conscious and intended. An extensively propaganda had been developed about our weakness on the one hand, but, it had been said that we would be able to do the activities by the support of the foreign private companies while TPAO had carried out the 60% of the drilling activities by itself in 1960s. The petroleum campaign that had been started by the national and democrat powers had given some results in 1970s. While the petroleum production had been increasing rapidly, the embargo on TPAO had

become lighter.'[167].

Results in the period of 1954 and 1973 like that:

1. The foreign capital that had come to Turkey had shown a significant increasing at first. This situation had caused great expectations but the foreign capital had not been as it had expected.

2. Turkey, together with the Petroleum Law No. 6326 containing so liberal provisions and enacted in 1954, had become a country which the large companies had been interested in like in the other countries in the Middle East at the beginning. But, although the foreign petroleum companies had shown significant interest to Turkey as a new petroleum field, this interest had decreased in the next years increasingly. Most of the companies had not obtained any results from their prospecting activities and left Turkey in very short time. The most important reason for the foreign petroleum companies in decreasing their interest shown to Turkey as a petroleum field had been that Turkey had not been had significant petroleum potential like in the other countries in the Middle East [168]

3. Totaly 828 explorations, prospecting, drilling and injection wells had been opened including 509 wells, belonging to TPAO and 319 wells, and belonging to the national and foreign private sector companies.

4. Batman-İskenderun Pipelines had been taken into operation in 1967, the first and biggest petroleum distribution facility built up by TPAO.

Prof. Altuğ have indicated that the petroleum politics, put into force via the Petroleum Law in Turkey, has been continued until 1960s with the new legal regulations consisting more significant possibilities to the national and foreign private investors.[169]

[167] Supra, p.416.
[168] Altuğ, (1983), p.209-210.
[169] Altuğ, (1983), p.221

When it is looked at the modifications, it is able to be indicated that the dominant approaches has been:

- Open to the foreign capital,
- The private investor but also,
- ‘’Nationalist’’.

4.3.2.2. Between 1973 – 1980 ‘’Introversion and Returning to Statism’’

After putting into force the Petroleum Law No. 6326, the targets considered in the petroleum industry had been completely reached and significant developments had been obtained.

Turkey, dependent to the abroad for the petroleum, had been affected by the foreign developments in all periods fatally. Naturally, petroleum wealth and shock periods had required to be carry out some kind of regulations in Turkey.

When it had come to 1973, the petroleum had been very important like ‘’blood in the vessel’’ for the industrial economies of the World. The petroleum had been brought to the consumption after being produced and almost had not been left in the stock. The supply and demand balance had never been nip and tuck thus far after the years from the war and the relationship between the petroleum exportation countries and their companies had not come to disengagement point. These indicators had been a situation shown that an additional pressure would cause a ‘’petroleum shock’’ and this time the shock would be in global-wide. At that time; “ By 1973, oil had become the lifeblood of the world’s industrial economies, and it was being pumped and circulated with very little to spare.”[170]

As explained above part, the encountered embargo and production limitations applied to some countries because of the Arab and Israel War had affected especially

[170] Yergin, Daniel, (2003), The Prize, p.588.

the industrial countries and the petroleum products' prices had increased everywhere[171]

Turkey had have to pay more expensive amounts to the petroleum importation during the continued petroleum shock. In parallel with those situations encountered, some kind of regulations had been carried out in Turkey before and after the crisis. The Petroleum Law No. 6326 had been amended significantly by the ''Petroleum Reform Law"[172] No. 1702 dated on 05.04.1973.

Altuğ indicates that the petroleum activities in Turkey will be brought together with a complete inspection of the state by taking from the control of the national and foreign private sectors and a legal status that will have to equal rights with the private enterprise by the regulations that have been carried out in order to make reform in Turkish petroleum business [173]

The Petroleum Reform Law, according to Göze, is to rearrange the 130th article of this period's constitution properly by prospecting and operating the petroleum resources for the national interests in the most effective way[174]

The ''nationalist'' emphasis in the law has been seen by the amendment done in the ''purpose'' section. It had been an intelligence such as the activities encountered will be performed ''according to the national interests'' by leaving off ''the petroleum resources will be developed and determined by the private enterprise's support and investments'' principle that has been in the Law No. 6326.

It has been indicated to aim at the second article of the Law that the petroleum resources of the Republic of Turkey would be provided for prospecting, developing and determining rapidly, continuously and effectively ''according to the national interests''[40]. It had been targeted by this modification that the ''petroleum resources would be kept under the unconditional control of the state'' because of the economical,

[171] Dinçer, (1974), p. 1.
[172] Official Gazette: 18.04.1973, S. 14511 The obligation of amending some articles of the Petroleum Law and bringing clearness to some provisions had placed both in the Government programs before and after March 12, 1971.

[173] Altuğ, (1983), p.222.
[174] Göze, Ayferi, (1976), Petrol ve Maden Hukukumuz (Our Petroleum and Mineral Law), Fen Fakültesi Press, İstanbul, p.85.

strategical and political reasons[175]

The new principles brought by the Law No. 1702 are able to be put in order like that:

1. Bringing the Principles Allowing the Public with more Priority: The ‘’by the private enterprise’s supports and investments’’ emphasis written in the second article of the Petroleum Law had been taken out and the state would be the ‘’primary’’ authorized party in prospecting and operating the petroleum in Turkey and this authorization would be used by TPAO on behalf of the state principle had been brought[176]. In parallel to the 130th article of the constitution by that way, the private sector would be given ‘’order of precedence’’ principle had been left off and this foundation had been brought to the front by ‘’the right of obtaining permit, licence or certificate will be belong to TPAO on behalf of the state’’ emphasis. And lots of exemptions and priorities had been given to TPAO, a public economical enterprise by the amendment done in the 121 th article, such as not to pay state’s right and obtain sixteen licences on a region.

On the other hand, accepting to give permit, prospecting and operating licence to the legal persons considered as a trader according to the laws of the Republic of Turkey and foreign states’ and remained outside of the collective and dormant companies ‘’on the understanding that obeying the principles existed in the law’’ had been commented as the petroleum prospecting and operating activities ‘’have been demanded to be carried out under the inspection of the state and within the scope of the combined economical principles’’[177]

The condition of obtaining the Cabinet decision had been brought for the activities apart from the prospecting and operating activities of the domestic and foreign legal persons who had given the permit of performing petroleum activities and the activities intended to the low risky and high profitable fields

[175] Göze, (1976), p.86.
[176] ‘’Turkish Petroleum Incorporated Partnership had been given the right of permission, prospecting and operating licence on behalf of the state’’ (PL, A.6).

[177] Altug and Goze

had been aimed to be controlled. The provision that this kind of activities would be able to be performed if more than the half had belonged to the state had been also brought.

2. Some precautions had been also taken in order to provide the control of the operating fields in more effective way and increase the production.

3. The financial provisions: Although the characteristics of the petroleum industry had been taken into consideration by the amendments, the private taxation provisions of the Petroleum Law had been abolished and the incomes obtained from the petroleum activities had been exposed to the regulations of the Corporation Tax Law, Tax Procedure law and other taxation. Separating the proportional exhaustion share and submitting the common tax return formalities had been ended off and the state's rights obtained from the explorer and business administrator had increased within this aspect.

4. Shortening the durations: In order to prospect the petroleum in very short time and reach to the economical production level, the prospecting and operating durations and right owners' obligation durations had been shortened[178].

5. New provisions regarding the sea explorations having more importance increasingly in the petroleum prospecting in parallel with the developments of the period by the law had been brought[179].

6. The ''commissioning'' situation caused the extension of the dispute generally and conflicted with the Turkish judicial System had been

[178] The durations;

- The prospecting licence duration had been decreased from 6 years to 3 years,
- The operating licence duration had been decreased from 40 years to 20 years,
- The expansion duration prospecting licence duration had been decreased from 10 years to 5 years,
- The expansion duration requesting licence duration had been decreased from 20 years to 10 years.

[179] The second clause of the 45th article of the Petroleum Reform Law No. 1702 dated on 05.04.1973 that had amended in the Petroleum Law No. 6326

abolished and resolving the disputes had been left to the administrative jurisdiction. The provisions brought regarding the taxation of the petroleum right owners to the private taxation Government had not been considered by another amendment and they had considered to be exposed to the general taxation laws like other obligors.

7. The provisions regarding with the importation, exportation and transfers had been rearranged significantly and the provision, a transfer that will be done to the imported capital will not utilize from the exchange rate, had been brought[180].

8. The Petroleum Office Directorate had been converted to the Directorate General for Petroleum Affairs by the Petroleum Reform Law No. 1702 and had been engaged to the Ministry of Energy and Natural Resources (ETBK) The foundation, associated to the Minister formerly, had been associated to the Ministry and given work in order to carry out the other regulations regarding with the petroleum products alongside carrying out the Petroleum Law. In this way, ‘’an unity and coordination in the petroleum activities’ via public administration had been provided’’[181]

While the System, brought by the detailed amendments done in the Petroleum Law No. 6326, had been bringing the possibility of prospecting and operating the Turkish petroleum resources rapidly by TPAO, acting on behalf of the state, on the one hand, it had also brought a regulation targeting that the private enterprises, performing the activities in the petroleum field, would be controlled by the ‘’well disciplined inspection’’ and the investors, performing the activities with a good will in the determined conditions, would have the petroleum right.

When examined the above regulations, it is able to be indicate that the liberal implementations had been taken backward, the regulations dated on 1954 had been become distant and the scale had shown the ‘’nationalist’’ direction as not mentioned in

[180] The third clause of the 45th article and 55th article of the Petroleum Reform Law No. 1702 dated on 05.04.1973 that had amended in the Petroleum Law No. 6326
[181] PİGM, (1974), p. 3.

the Law No. 792 dated on 1926.

Dr. Cahit Kayra has argued that the petroleum problem would be able to be resolved by a national politics and national philosophy by indicating that obtaining the negative results are very normal and carrying out the small amendments will not be required and by declaring that ''anti nationalist system has been in the basis'' of the problems[182]

Oğuz Türkyılmaz had declared the followings by indicating that the ''imperialist exploitation'' have continued in the petroleum field in Turkey:

''The foreign petroleum companies had closed the petroleum fields by obtaning lots of licences for years without performing any scientific and serious activities with the possibilities provided to themselves by the Petroleum Law enacted in Democrat Party period. They had preferred the marketing that had been most profitable rather than the activities intended to the production and transferred the incomes obtained from the petroleum in our country.''[183]

4.3.2.3. Amendments after 1980

In this period, Turkey had been presumed that it had had enough petroleum resources. But, by the evaluations that the parties remained in these expectations the parties had declared beginning from the second half of 1970s that they would not be able to be successful in these activities[184]

Because of the being dependent the newly established industrial facilities and energy stations to the petroleum the petroleum requirement, which had been 7.4 million tons in 1970, had increased 15 million tons when coming to 1980.

In this period, the domestic and foreign private companies had not shown enough interest to the explorations with various reasons alongside TPAO, a public establishment, had not made the necessary investments, either.

[182] Kayra, C., (1976), Üçüncü Petrol Kongresi açılış konuşması (Opening Speech of the Third Petroleum Congress), Papers, Ankara Press., p.9.
[183] Türkyılmaz, (1976) p.23.
[184] Dinçer, (1974), p.1

Although the continously increasing petroleum production beginning from the years of 1970, the domestic petroleum production had not been increased in the same scale and on the contrary it had decreased more and more. [185]

In that period, Turkey, dependent to abroad in energy/petroleum,had been affected negatively from the 1974 petroleum shock and the fuel oil trouble had been come up by the effect of the strait encountered beginning from 1976.

And also some wells closed, closing the wells in which there would be a possibility to prospect the petroleum by TPAO had caused that the private sector had been excluded and the period had come to ‘’statist and nationalist’’ direction.

The necessary legal regulations and precautions had not been able to be brought for the distribution activities. This pessimist situation, ‘’Insisting to resolve the petroleum problem and evaluating the petroleum politics again, exactly and rapidly’’, had been put into words by PİGM General Management of this period [186]

The expected development had not been obtained in two-year period from 1954 in which the Petroleum Law enacted to 1983 and Turkey had been obliged to supply the increased petroleum requirements by importing the petroleum from abroad more and more while the petroleum had not covered the ‘’state requirement’’. The precaution considered by the Petroleum Law in order to encourage especially the foreign capital investments in the petroleum industry had been on paper and had not been able to provide a practical benefit.

When it had been come to 1980s, the high petroleum prices in the world had been caused important results from the point of the energy policies of Turkey:

- The petroleum prospecting and production activities in different regions had been encouraged at first,

- The alternative energy resources such as natural gas, coal and nuclear energy had been gone towards all over the world,

[185] http://www.tpao.gov.tr
[186] Dincer, (1979).

- The energy conservation had been gone finally[187] The energy conservation had been embraced as a Government policy by the military Government especially in 1980s and wanted to be constituted a conservation consciousness in the public by being announced the ‘’conservation week’’.

These opinions had affected the petroleum sector and the decision of January 24 had been a kind of milestone for the politics modifications from the point of the petroleum and energy.

On the other hand, these policies, modifications had been related with the cyclical developments that had been effective in the world closely. When it had come to 1980s, opening to foreign countries, becoming distant from the state’s economical activities, performing the economical and commercial activities by the establishments belonging to the private sector, becoming liberal and deregulating principles had been started dominating like adopted in the lots of western countries.

The efforts of having expanded the possibilities intended to the private sector once again in the petroleum activity and encouraged the foreign capital had been put into words by the authorized parties within the scope of that situation. The arguments in this period may be summarized as below:

- The petroleum prospecting and production activities should have given more importance and priority above all in order to strengthen the country’s economy that had been shocked and consumed away by the petroleum importation and save from the heavy weight that it had carried.

- The amount, assigned for those activities, had not been enough in order to be able to achieve the purpose since the public supplies had been limited.

- The reality of approaching to the problems until today had not been enough had come into view when comparing the geologic and geophysics etudes and drilling amount encountered in Turkey in one year to the other

[187] Pala, (2001), p.176.

countries and taking into consideration the petroleum exploration possibility had been related with the prospecting amount closely.

- Encouraging the private sector and foreign capital and being existed of this potential in the petroleum prospecting and production activities had been considered that they would be the suitable way in order to be able to reach to the target.

The declaration of the Ministry of Energy had been appropriate to the encountered liberalism wind after the January 24 decisions and related amendments that would be performed in the Petroleum Law two years later.

For the purposes of encouraging the petroleum prospecting after the delimitative provisions of the Law No. 1902 and bringing the foreign capital and technology to the petroleum prospecting activities in Turkey, it had been in need of bringing new provisions by performing some amendments in the Petroleum Law by the Law No. 2808.

Turkish Armed Forces had defined the petroleum used by the public establishments and institutions and real and legal persons as the "country requirement'' in the definitions section of the Law No. 2808 dated on 28.03.1983. Fuel oil amounts of the ships and airplanes at the harbours and airports of Turkey respectively and the petroleum that has to be refined in order to supply the requirements defined in this clause had been also included in that amount too. The concept of the country requirement had been expanded by that amendment.

While being able to be imported the petroleum produced by a petroleum right owner in Turkey before the amendment performed with the Law No. 2808 had been depended on compensating the country requirement completely, but on the other hand via Law no. 2808 the petroleum right owner had been given the possibility that the petroleum owner would be able to import the produced petroleum in Turkey to the abroad without being dependent to the country requirement partly.

It had been brought the possibility that TPAO would be able to obtain the rights such as obtaining permission, prospecting licence and operating licence regarding with

the petroleum, use them by the specialist establishments dominated to in person and parental authority and parental capital or assign to those establishments within the scope of the provisions of the Law No. 6326[188].

According to the Law No. 4046 Art. 39;

Article 6. of the Petroleum law arranged as below;

> "The right to acquire permits, licences and leases in connection with petroleum is held by Türkiye Petrolleri Anonim Ortaklığı on behalf of the State.
>
> The said incorporation may exercise this right on its own initiative or through the intermediary of the specialized organizations it predominates in terms of capital and administration or it may transfer the right to such organizations under the provisions of this Law. However, the licences and leases so acquired shall not surpass the limitation specified in the Law.
>
> To the extent that is in line with the purpose of establishment, public organizations and incorporations, more than half of the capital of which is held directly by the State, may be granted a certificate on behalf of the State by resolution of the Council of Ministers.
>
> To the extent that is in line with the principlrs specified in this Law, stock companies or private juridical persons which, according to the legislations of foreign states, are in the capacity of stock companies, may be granted a permit, licence, lease and, by resolution of the Council of Ministers, a certificate under the terms specified in Article 60 of this Law."
>
> The importation of the petroleum and natural gas produced in the country had

[188] Article 13 (Amendmend: 28/3/1983 – 2808/3).
''1. The petroleum right owners had been brought that they would be able to import 35% in territorial land and 45% in territorial waters as a crude or product via the crude petroleum and natural gas that they had produced in their explored petroleum fields according to that after January 1, 1980. Remain amount and the complete of the crude petroleum and natural gas produced in the fields explored before January 1, 1980 and the obtained petroleum products from those had been assigned for the ''country requirement.''.

been provided by the amendment performed in the Art.13 . The petroleum right owners had been brought that they would be able to import 35% in territorial land and 45% in territorial waters as a crude or product via the crude petroleum and natural gas that they had produced in their explored petroleum fields according to that after January 1, 1980. Remain amount and the complete of the crude petroleum and natural gas produced in the fields explored before January 1, 1980 and the obtained petroleum products from those had been assigned for the ‘’country requirement’’.

On the subject of market prices; the amount, which had been assigned in order to supply the country requirement from the petroleum and natural gas produced by the petroleum right owners, had been applied the market prices. The provision, if the World free competition prices change, the sales prices change, too, had been also included in the same article.

The condition, whish is ‘’before reaching a decision about an application containing a consideration existing in the authorization field of another maqam, the concurrence of the related authority of ETBK should be taken’’, had been brought by the amendment. performed in the 24th article.

The concluding duration of the subject of the Minister had been decreased from ninety days to twenty days and the conveying duration of the decision to the relevants had been increased from seven days to ten days regarding with right amended in the 25 th article, which is ‘’The aplication and petroleum right owner is able to oblige to the Minister within twenty days beginning from the issuing date of the provisions of the Law against the decisions that have been taken by PİGM and affected the rights encountered from the application, permission, prospecting licence or certificate’’ (Art. 30). The bringing an action duration of the opposing party upon decision issuing date to the Council of State had been decreased from thirty days to twenty days. The Council of State has decreed those claims primarily and urgently (art. 31). PİGM had been brought an obligation that the decisions become definite regarding with the petroleum right had been obliged to be declared in the official gazette within fifteen days by amendment performed in the 32nd article.

The giving a decision duration regarding with the permission demand of PİGM had been decreased from ninety days to sixty days by an amendment performed in the para 3 on the 46 th article.

And also by the 52 nd article;

> " 1. The contents of licence applications for field which is open for petroleum exploration shall be kept confidential for four work days following the date of application.
>
> a) In the event another or more than one application is made within this period for the same plot of land either partly or wholely, these applications shall be considered to have been made on the same day and shall be evaulated by the General Directorate in the scope of Articles 4 and 51 of this Law.
>
> b) In the event no other licence application is made, within four work days following the first application for the same plot of land either partly or wholely, the request shall be resolved by the General Directorate, taking into consideration the provisions specified in Articles 4 and 51.
>
> c) Licence applications made after four work days following the date of the first application, for a plot of land either partly or wholely, shall not be subject to evaluation.
>
> 2. The above provisions shall be applicable also to applications to be lodged foe a rejected licence application area or relinguished licence area, which are made after the rejection or relinguishment has been finalized and published in the Official Gazette.
>
> 3. Applications made in compliance with the procedures shall be finalized by the General Directorate and submitted to the Minister at the latest within three months. The Minister shall execute his discretion as per Sub-article 1 of Article 4 and Article 20 of this Law and shall reach a final decision accordingly at the latest within 20 days.

TPAO had been brought a right containing obtaining a prospecting licence up to twelve years by bringing an exemption to the provision of being able to have at least eight licences in a region by an amendment performed in the second clause of the 55 th article.

The possibility of increasing the prospecting licence of the explorer continuing the prospecting up to two years that the prospecting licence duration is able to be four years by the 55th article and the maximum validity duration of a prospecting licence duration beginning from the issuing date had been increased from five years to eight years by an amendment performed in the third clause of the same article.

The ‘’state’s right’’ amounts that the Explorer had been obliged to pay for each prospecting field had increased sixteen times by an amendment performed in the 56th article. The starting to prospect drilling obligation of the petroleum explorer had been increased to three years at least with in two years beginning from the former licence date belonging to that region any one of the prospecting fields belonging to the same region by the 58th article.

On the other hand, the operating licence owner had been also given ‘’selling the petroleum in each aspect’’ right in addition to the rights including petroleum prospecting, developing, producing and distributing the produced petroleum in the relevant fields during the right have been valid and on condition that being dependant on the provisions of the Law No. 6326 by an amendment performed in the first clause of the 60 th article. The provision, which is ‘’the petroleum pipelines outside of the operating field together with the liquidation activities remain outside of those activities’’, added by the 1973 amendments and not been existed in the initial state of the Law had been abolished. And, the provision to the business administrator, which is ‘’the business administrator has been also able to be given a certificate by the Cabinet decision only if the reserve and production situations of the field are accepted that they are suitable and economical and approved that they are suitable to the purpose of this law and other provisions regarding with the certificate by alone or together with other petroleum operators’’, had been brought.

The state's right of the business administrators had been increased sixteen times that they had been obliged to par for each operating field by an amendment performed in the 69 th article.

The content of the right, which is ''the right of the petroleum right owner companies that they will be exempt from the importation of the equipment that will be required for the activities and from the customs and all kind of importation taxes and illustrations in the importation of those equipment'', had been expanded. The article had been arranged like the following:

''A petroleum right owner is able to import the instrument, fuel oil and land transport, marine transport vehicles and transport airplane that have been necessary by our General Management in order to use in those activities only if the instruments are belonged to construction, foundation and Operation of the administrative activities and building facilities and their materials for the petroleum activities on behalf of himself by a contractor accepted by the General Management or a representative or in person''

''The utilization duration from the exception and dispensations proposed in this clause is up to the end of 2020 calendar year.''.

The Law No. 2808 had brought new regulations to the 114th article of the Petroleum Law regarding with the price by this regulation;

a. All kind of importation price of the petroleum will be determined by the Directorate General for Petroleum Affairs by taking the current free competition prices on that date into consideration.

b. The approval of the Ministry of Energy and Natural Resources will be necessary to carry out those prices.

The possibility, which is ''the petroleum right owner is able to conserve the currency obtained from the petroleum that it had been given permission to be imported according to the first clause of the thirteenth article of this Law'', had been brought by the (a) sub clause of the fourth clause of the 115 th article.

The Petroleum Regulation had been arranged in order to show the practice duration of this Law according to the 114th article of the Petroleum Law No. 6326 and put into force by issuing in the official gazette in 1955. The Petroleum Regulations had amended three times between 1967 and 1979.

The amendments performed in the legislation had not been restricted with the Petroleum Law No. 6326 and other laws brought liberalization, the Petroleum Constitution had been arranged by the decision of the Cabinet dated on 11.05.1989 and The Petroleum Regulation had been abolished dated on 1955. The Petroleum Regulation, cut down a lot, had been put into force on 17.7.1989 under the name of the ‘’Petroleum Constitution’’.

It has been indicated that an attention had been shown to the petroleum prospecting that it has been a significant importance in supplying the energy demand and country economy and encouragement of the foregin capital especially in this field and effort had been carried out in completing the bureaucratic procedures in the very short time .

The Petroleum Law No. 6326 had not constituted a discussion platform intended to the regulations regarding the duties, authorizations and responsibilities of the Directorate General for Petroleum Affairs and executive organ in the administrative settlement and the discussions had been focused on the number of the public corporations that had been given a duty for that purpose and their capital relations.

The “integration’’ approach had been accepted in the “commercial’’ activities of the public by beginning from the primary years of the planned development period

The Integration phenomenon,

- ‘’The distribution and sales responsibilities of the petroleum operated by the state will be combined with the prospecting, operating and refining responsibilities by following up the principle, which is a decision authorization from the prospecting to the retail sale regarding with the enchainment businesses,. The Petroleum Office will be brought that is will be

able to supply goods circulation of the refinery facilities, which the state had had, and TPAO will be the authorized in the management'' in the first five-year development plan.

- The second five-year development plan had been defined with the provisions, which are ''the operating public establishments will be combined by one organization together with the prospecting, production, distribution and sales activities'',.

- The opinion including carrying out all the activities by one public establishment (by TPAO) or accumulating the incomes of the partnership and contriburion that will be established for all the activities had been defended according to the providing cross-subsidy theory formulized in such a way that the financial requirement will be supplied by the risky prospecting and production activities and the incomes that have been obtained from the high profitable dsitribution and processing activities yntil reaching to an obvious level according to the economic conjuncture of the World.

As mention in PETKUR example after 1980s, the opinion of providing effective management by establishing a public holding and directing the usage of the resources spplied from this sector had been focused on.

But, it had been prefered to establish a seperate KİT for each activity field by having become distant from the integration structure that have been used in establishing the market by the public nowadays. If the petrochemical activities are kept out;

- TPAO in the petroleum prospecting and production activities,

- TÜPRAŞ in the supplying and processing of the crude petroleum, the crude petroleum and petroleum products' stocking and wholesale of the petroleum products activities,[189]

[189] Had carried out those activities until having privatizated on behalf of the public

- BOTAŞ in transporting the crude petroleum and natural gas by the pipelines, distributing and importing the natural gas from the abroad,

- DİTAŞ in transporting the crude petroleum and petroleum products by marine transport,

- POAŞ in storing and distributing the petroleum products[190]

A public establishment had been considered to be established like in above.

The public investments had not been restricted with the domestic resources and especially after separation of Russia, it had reached to significant amounts in the immediate surroundings of Turkey. The reason of those investment have been focused on the purposes including supplying the country requirements in the most suitable conditions and converting the political power in the immediate surroundings of Turkey to cash.

On behalf of managing those companies, it has been seen that

- The Ministry of Energy and Natural Resources for TPAO and BOTAŞ,

- The Directorate of Privatization Administration for TÜPRAŞ, DİTAŞ[191] and POAŞ (until 2000)

The inspection and supervision activities of the market on behalf of the public had been carried out by the Directorate General for Petroleum Affairs, the dependent establishment of the Ministry of Energy and Natural Resouces.

The Electricity Market Regulatory Authority had been established by the Law No. 4628 and then, it had been taken the name of Energy Market Regulatory Authority by the Natural Gas Market Law No. 4646. The regulation and inspection of the

[190] Had carried out those activities until having privatizated on behalf of the public
[191] DİTAŞ has carried out 90% of the crude petroleum transportation of Turkey. The capital of DITAŞ is like that 50.98 % the Privatization Directorate of the Ministry of Finance, 29.0 % TUPRAS, 20.0 % T.S.K.G.V, 0.22 % IGSAS.

petroleum market duties had been given to the authority by the Petroleum Market Law No. 5015. The Energy Market Regulatory Authority had started working on 19.11.2001.

The purposes of those laws that they will constitute an energy market, which will be able to be operated according to the private law provisions in the competition environment, is powerful financially, consistent and transparent and provide an independent regulation and inspection in this market in order to supply the electricity, natural gas and petroleum in sufficient, quality, affordable and environment adaptable manners.

The Petroleum Law has taken the rules of law in its scope including the stages such as prospecting, production, operating, distribution and liquidation beginning from exploration; how, in which conditions, who and by whom the permission of performing those activities are given and controlled; Content of the petroleum right; rights and benefits of the right owners; how the petroleum prices are determinated; what are the administrative and criminal precautions and penalties and the rules regarding with our petroleum industry (apart from the sales of the petroleum products to the consumers directly as retail or by distribution corporations and storaging and transportation necessary for the sales).

The Petroleum Law had subjected performing the ‘’petroleum activity’’ to some kind of conditions. Those conditions are able to be arranged in order like the following:

- Not any petroleum activities are able to be performed without obtaining the permission, prospecting licence, operating licence or certificate.

- The private law judicial persons and capital companies are able to be given the permission, prospecting licence, operating licence or certificate according to the principles in this Law and foreign country regulations, respectively. The real persons do not have that right.

The savings that the Directorate has given the performing petroleum permission:,

The permission: (Art. 50).

By being subjected to the provisions of this Law, a prospecting permission has given the owner the following rights:

- Performing the geological prospecting,
- Performing the geological prospecting as if the owner had been the owner of the permission out of the prospecting field in order to explore his own petroleum resources,
- Performing the prospecting and evolution drilling and procuring the petroleum from this field for the monopoly,
- Demanding the operating licence after an exploratio.
- The prospecting licence duration is four years. This duration is able to be expanded up to two years. If the activities of the explorer are able to give the exploration possibility at the end of the second year, the duratin is able to be expended up to two years again by the permission of the Cabinet upon demanding an expansion demand with a suitable program.
- A prospecting field is not be able to be more than fifty thousand hectares.

The operating licence (Art.60)

By being subjected to the provisions of the Petroleum Law, an operating licence has given the owner the rights such as prospecting the petroleum, evaluating and distributing during his rights have been into force.

- The prospecting licence duration is twenty years beginning from its putting into force date. This duretion is able to be expanded by the decision the Cabinet only if its suitability has been detected and afferred according to the national interests and technical and economical principles and unless it has not passed teo years.

- An operating fiels is at least twenty five thousand hectares.

The certificate (Art.80)

The administrative savings that permit performing some kind of activities such as liquidation and storage have been given ‘’certificate’’ name.

The certificate duration is maximum 30 years. This duration is able to be expanded up to 10 years by the decision of the Cabinet.

In addition to above articles via Law no 4046 Art. 40 a paragraph added to Art. 115 of the Law no 6326, and it was like that;

“Those falling outside the scope of the above will be transferred at the rate of exchange prevailing at the date of transfer.”

According to Law no 5728 Art. 177 Article 124 of the petroleum law amended like this;

> “1. A person who conducts geological investigation without obtaining a permit is liable to imprisonment for six months or judicial fine.
>
> 2.A person who conducts petroleum operations other than geological investigations without obtaining a licence, lease or certificate is liable to judicial and to imprisonment for three months to one year. “

According to Law no 5728 Art. 178 Article 125 of the petroleum law amended as below;

> “1. To persons who commit waste or unsafe act as defined in this Law, an order shall be given by the General Directorate to cease such waste or unsafe act within a specified time. If such waste or unsafe act continues after the end of such specified time, the offender shall be liable to a administrative fine of 5000 lira for each day that it continues.
>
> 2. If serious and irreparable damage results from acts mentioned above, the offender shall be liable to an administrative fine not less than 10000 lira. “

According to Law no 5728 Art. 179 Article 126 of the petroleum law amended as below;

> " A person who willfully and without lawful excuse impedes or interferes with the exercise of a right or the performance of a duty under this Law is liable to a judicial fine or imprisonment for not more than six months. "

According to Law no 5728 Art. 180 Article 127 of the petroleum law amended as below;

" A person who in an application or proceeding under the provisions of this Law makes a material statement that he knows to be false is liable to a judicial fine or to imprisonment for six months to 2 years. "

4.4. Recent developments;

Turkey is located as energy bridge between major oil producing countries of the Middle East, the Caspian, Africa, and the strong demanding markets of Europe, helping the former to reach out to the markets and the latter to diversify its dependence on a limited number of source countries.

But, considering the competition of other pipeline projects located in neighboring countries, the strategic location factor alone has proved insufficient for Turkey to become the main energy bridge of the region. These multi-billion dollar pipeline projects, transporting oil and gas through Turkey, demand a stable and favorable legal regime, and consistent energy policies, whereby the applicable financial arrangements and other points to the investors and the financers are clearly stated.

Today, there are two different legal regimes applicable to oil and gas pipelines, according to the project is governed by an international agreement or not. For example, if a project is supported by an international agreement, executed by and between the relevant countries, the applicable legal rule is determined by the relevant international agreement together with the Law on the Transit Passage of Petroleum through Pipelines

(the "Transit Law"). Published in the Official Gazette numbered 24094 and dated 29 June 2000.

Otherwise, the legal system is determined by the Turkish laws. Until 2001, the Petroleum Law (Law No. 6326) ("Petroleum Law") was the only piece of legislation governing the petroleum and natural gas activities as explained before.

Upon entry into force of the Petroleum Market Law (Law No. 5015), regulating certain petroleum activities including refining, storage, transmission, transportation and the sale of petroleum, which are matters also regulated by the Petroleum Law, it became necessary to amend the Petroleum Law to avoid regulation of the same petroleum activities under two different sets of legislation and to prevent conflicts between the two law and authorities, namely the Energy Market Regulatory Authority (EMRA) (the designated authority under the Petroleum Market Law) and the General Directorate of Petroleum Affairs (the "GDPA") (the designated authority under the Petroleum Law). In addition to the foregoing, with the purpose of harmonizing the Turkish legislation with the acquis communautaire and providing further rules to investors of petroleum exploration and production activities in Turkey, the government submitted a Draft Petroleum Law to the Parliament.

As declared in the report of the Government, the intent of the Draft Petroleum Law was to regulate petroleum exploration and production activities, and to leave the remaining petroleum activities to be governed by the Petroleum Market Law. On the other hand petroleum pipeline activities were left outside the scope of the initial text of the Draft Petroleum Law. Fortunately, Parliament's Industry, Trade, Energy, Natural Resources, Information and Technology Commission introduced Article 29 into the Draft Petroleum Law in order to ensure the regulation of transit petroleum pipelines.

According to the Article 29 of the Draft Petroleum Law ; the Council of Ministers may allow the construction of a pipeline for transporting crude oil or natural gas from a foreign country into Turkey, or transit passage of the same through Turkey to be transported to a third country, provided that an international agreement does not govern the relevant pipeline project. Article 29 further provides that the principles and

procedures related to the implementation shall be determined by the decisions of the Ministry of Energy and Natural Resources.

In correlation to that, the major difference between the Petroleum Law No. 6326 and the Draft Petroleum Law is the authority determining the applicable legal regime. While the Petroleum Law No.6326 provides that the legal regime governing transit pipelines shall be determined by the Council of Ministers, the Draft Petroleum Law provides that principles and procedures related to the implementation shall be determined by the decisions of the Ministry. Because of that, in the absence of a legal system to be determined by the Council of Ministers, the Ministry's decision will be sufficient.

The Draft Petroleum Law, which was passed by Parliament on 17 January 2007, was returned to Parliament by the President on the grounds that certain articles related to exploration and production activities are unconstitutional and contrary to public interest. If Parliament had discussed this legislation, only the articles challenged by the President would have been debated and Article 29, which was not challenged by the President, would have passed as is.

4.4.1. Draft Petroleum Law no. 5574,(DPL)

According to the developments of the world, the Turkish Government has been introducing major legislative changes in order to privatize and liberalize the country's petroleum industry, to harmonize with EC legislation and to enhance (foreign) investment in the petroleum sector. Thus, a Petroleum Market Law (PML)[192] has been implemented on 20.12.2003, and the Petroleum Law (PL) has been amended. The Draft Petroleum Law (DPL)[193] rejected by the president of Turkey and it has not come in to effect as explained above.

But even the new law of national energy regulation is becoming

[192] Petrol Piyasası Kanunu, Kanun No. 5015, enacted on 04.12.2003, publıshed in the Official Gazet No. 25322 on 20.12.2003.

[193] Law no 5574 dated 17 January, 2007.

internationalized; because of the many reasons; firstly, competitive pressures, second, the dominance of regulatory trends, and thirdly the influence of supranational organizations (such as the EU), but also international treaties and non-treaty instruments creates a convergence of systems of energy regulation, typically led by the copying of approaches that are considered to have worked well –e.g. the U.K. energy regulation model or the US. Regulatory model.[194] Until the implementation of the Petroleum Market Law on 20.12.2003, the Petroleum Law, being surveyed by the General Directorate of Petroleum Affairs (PIGM)[195], had regulated both upstream and downstream petroleum activities. The Petroleum Market Law, which is now regulating petroleum transportation, refining, storage and distribution activities, has drawn a line between upstream and downstream industry. The supervision and licensing procedures concerning downstream activities have been handed over from the PIGM to the Energy Market Regulation Authority (EMRA)[196].

Upstream activities are left to the PL and the administration of upstream activities, including the granting of exploration and development licenses, will continue to be dealt with by the PIGM.

Two aspects may be seen; on the one hand, the implementation of the Petroleum Market Law made it necessary to make changes in the Petroleum Law, in particular to revise the provisions governing downstream activities, which are now subject to the Petroleum Market Law. On the other hand, both the introduction of the Petroleum Market Law and the changes to the Petroleum Law was means to further national petroleum supply as well as to adapt to EC legislation. Important aspects within this scope are the many incentives Turkey has been implementing to enhance petroleum activities and to attract foreign investment.

[194] Walde, W., Thomas, (2003), International Energy Law: Concepts, Context and Players: A Preliminary Introduction by T.W.Walde, p.6

[195] http:// www.pigm.gov.tr

[196] http://www.epdk.org.tr

The main duty of EMRA is to establish a financially viable, stable and transparent energy market, which functions as per the provisions of private law and within a competitive environment to ensure the independent regulation and supervision of the market in order to provide sufficient electricity, natural gas, petroleum and LPG of good quality to consumers, at low cost, in a reliable and environment friendly manner.

The Turkish Draft Petroleum Law (DPL) contains the essential arrangements;

In Article 3, the DPL states that all petroleum located in its jurisdiction is the exclusive property of the state. “The petroleum resources of Turkey are subject to the possession, disposal and under the rule of the State”, (Article 3 DPL).

The DPL identifies the competent authority vested with the execution of the law and implementation of government policy. It names the responsible authority and ensures that potential investors know who their single point of contact with the government “The duties stated in this Law shall be executed by the General Directorate of Petroleum Affairs, which is a public legal entity with a special budget and which is attached to the Ministry of Energy and Mineral Resources. … b) The seat of the General Directorate of Petroleum affairs is in Ankara. c) The duties of the General Directorate include the following: … ”, (Article 5 DPL)

The DPL ensures that petroleum operations are conducted only under a duly issued permit, license or lease respectively, and on the terms specified in the Law and its supplement regulations. “No petroleum operation may be conducted except under an investigation permit, license, or lease, granted under this law”, (Article 4 DPL).

Under the Turkish petroleum regime, oil rights are granted as license. The issue of whether Model Agreements should be enacted in the Law does thus not arise in the case of Turkey.

According to the statements regulations should be subsidiary instruments of a Petroleum Law. It recommends that the Petroleum Law should expressly authorize the authority to make regulations consisting with the policy and objective of the Law. Regulations provide flexibility to the regime, allowing for changes to be made quickly, in response to current developments and without the need for a long-lasting and burdensome legislative process. The DPL obliges the PIGM to issue the regulations within six months following the implementation of the law. “The rules and principles of application of the provisions under this Law shall be defined by the Regulations to be issued by the General Directorate. The Regulations shall be issued within six months

following the entry of this law into force", (Article 5 DPL).

On the other hand licenses are only granted to applicants who have the requisite financial resources, technical competence and professional skills necessary to fully fulfill their obligations. The Turkish DPL clearly states that oil rights shall be only granted to applicants who have the necessary technical and financial means and who obey the Law's obligations. "…When granting or rejecting an application for a petroleum right, the applicant's compliance with the legislation, previous experience of the applicant in the conduct of similar operations, his financial ability and fulfillment of the objective of this Law shall be taken under consideration. When comparing the committed work and financial investment program of an applicant with other applications, the applicant who appears to fulfill the objective of this law in the shortest time and with the best work and investment program shall be granted the right", (Article 3 DPL).

The duties of a rights holder should be enumerated in the Petroleum Law and then amplified in greater detail in the Petroleum Agreement itself. Turkey, which grants licenses as administrative permit, has amplified the rights holder's duties in the DPL's Second Part (Exploration and Production) under "Section One" in the Articles on Investigation Permit, License and Lease. The rights holder's duties related to notification of contact details and registration, the maintenance of records and reports and the state's permission to conduct inspection are stated in Article 12 DPL.

According to the World Bank, provisions on taxation should be stated or referred to in the Petroleum Law in a manner that the potential investor may easily gain a full understanding of the applicable tax regime, compute the amount of taxes to be paid and compare the fiscal package with other world wide regimes. The Turkish Draft Petroleum Law includes the fiscal package and covers the baselines of the tax premises. The Law includes provisions on rent, royalty, revenue tax, and import and export duties. The fiscal terms are fair and equal, providing for a tax regime regardless of the nationality of the investor (domestic or foreign).

Rights holders, contractors and sub-contractors are free to import and export supplies and equipment for petroleum operations, which is approved by the PIGM, free of customs duties and import/export taxes. And also The DPL includes some provisions on environment protection and safety.

From the point of the importance of fiscal stability, the investor should be secured wherever possible from the adverse economic affects of new legislation. As an additional element of the total fiscal package, provisions should be included to mitigate the effects of any new enactments which are of disadvantage for current rights holders. In Section 8, "Temporary and Final Provisions", the DPL provides for transitional provisions protecting present rights holders.

The DPL finally covers the following recommended subjects: -It contains a reasonably extensive "Definitions" section in Article 2.

It deals with the issue of unitization. "The application made by the lessees, whose lease areas are situated in whole or in part in the same petroleum field, for unitization of operations, shall be acted on promptly. Lessees thus united shall pay rentals for the unitized petroleum field on the basis of proportions, which they shall jointly determine and establish, in addition to the rentals normally payable for these areas remaining outside of unitization", (Article 19 c). The DPL explains the issue of the rights holder's requirement to use and access land and/or water for petroleum operations in Article 21. As petroleum rights are granted as administrative permit and not by means of an agreement, the DPL does not contain a provision referring disputes to be solved by international arbitration. At the end, the NPL does contain an "out of court" provision for the settlement of disputes in Article 9, which says that "the General Directorate shall attempt to settle conflicts by negotiation and peaceful means." In Section 7, the DPL clearly refers to the amendments made in other laws being afflicted by the Petroleum Law's changes.

According to the developments on Turkey's Upstream Legislation; there exist (as explained above) two methods for determining which company receives exploration

and development rights, i.e. individual negotiation and competitive bidding procedure. In a competitive bidding system, applicants usually have to meet certain requirements to participate in the bidding process, but the licenses on specific tracts are awarded to qualified bidders solely on the basis of competitive sealed bids.

The present Turkish Petroleum Law provides competitive bidding for acquiring leases only, (Art. 64 PL). Having changed this, the DPL is now granting both (developing) leases and (exploration) licenses by means of competitive bidding, (see Article 16, 18 DPL).

About exploration;In Article 53, 2, the PL regulates that a person may hold not more than 8 licenses in one district. No such restriction is included in the DPL. A person or legal entity may acquire as many licenses as he/it may want to hold.

On the subject of petroleum areas the present PL is restricting the petroleum exploration area to 50,000 hectares. The DPL has extended the license area to 100,000 hectares for onshore exploration and 1,000,000 for offshore exploration.

"A license area may not exceed 100,000 hectares at land and 1,000,000 hectares at sea", (Article 16 para 3 DPL).

On the term of licence the PL issues licenses for a term of 4 years. This time period could be extended twice by 2 years time in each case of extension. The DPL grants a term of 5 years for onshore exploration and 8 years for offshore exploration. (Article 16 para 4 DPL) Under the condition of submitting a drilling program, the licensee may extend the term twice; all in all, a license may not be held for more than 9 years in the case onshore exploration and 14 years in the case of offshore exploration. However, if a discovery is made and the remaining term of the license is not enough to carry out the operation, the General Directorate may extend the license for a term not to exceed 3 years concerning onshore development and 10 years concerning offshore development.

“The term of a license is 5 years at land and 8 years at sea”, (Article 17 d DPL).

From the aspect of production; in accordance with the amendments regarding exploration licenses, the DPL maintains no restrictions with regard to the size of a production lease area and has extended the term. There is a time extension; Whereas the old Petroleum Law granted a term of 20 years for leases, the DPL now grants a term of 30 years.

“The lease may be granted with a term of up to 30 years from its effective date, upon request of the owner, considering the work and financial investment program to be received according to the Regulations. If the production stops for a period exceeding two years, the lease shall be cancelled. If the production program is suitable at the end of this term, the term of the lease may be extended not to exceed 10 years in time”, (Article 18 e, DPL).

About the Fiscal Terms; Under the provisions of the DPL, both permit and lease holders are obliged to pay a rental fee. According to Article 14 DPL, the fee to be paid for a permit is TL 500,000 per hectare per year and according to Article 19 b DPL, the annual rental fee for a lease is TL 1,000,000 per hectare. The payment of a rent for exploration license holders has been abolished in the DPL.

The DPL Law has introduced a progressive sliding scale for the payment of royalty. Article 20 a NPL states as follows:

“A licensee or lessee shall be liable for a royalty in percentages to be determined out of the below stated segments in accordance with the daily quantity of petroleum produced, which is calculated by dividing the monthly production to the number of days. About government share arrangements; The Turkish petroleum framework does not grant petroleum rights by concluding a Production Sharing Contract (PSC). In Turkey, petroleum rights are granted as license, and the license is an administrative permit.

However, the Turkish Petroleum Law has included a provision comparable to the share of production in a PSC. Article 114 and Article 13 Sec. 1 PL allow onshore producers to export 35% of the produced oil and offshore producers 45% of their entire crude oil production.

The DPL has no export restriction for crude. A petroleum right holder may export all the entire petroleum that he produces.

"A holder of petroleum right may export the petroleum he produces, free of all kinds of export taxes and dues", (Article 24 d DPL).

Taxation; The DPL includes an important change with regard to the payment of profit tax. Though the present Petroleum Law already maintains a tax cap, namely 55%, the DPL, in Article 23, is far more generous and provides a tax cap of 40%.

"The total amount of the taxes that the petroleum right holders are obliged to pay on their net profits and the income taxes which they are obliged to withhold on behalf of his shareholders may not exceed 40%", (Article 23 a DPL).

In Article 23 f, the DPL provides attractive tax deduction possibilities:

"Apart from those expenses permissible to be deducted from earnings of the tax payer in order to determine corporate earnings under Article 14 of the Corporate Tax Law, Law No. 5422, the holder of a petroleum right shall be allowed to make the following deductions:

(1) Rental and royalty paid by a corporate holder of petroleum rights;

(2) Remaining unredeemed values of the economic values surrendered due to surrender of the area held by the petroleum rights holder, non capitalized exploration expenses, intangible drilling expenses and expenses for drilling wells not productive in economic quantities;

(3) Losses of previous years stated in the financial sheets…;

(4) The depletion allowance represents the total of capitalized exploration expenses, intangible drilling costs and the expenses for drilling wells not productive in economic quantities …"

And also; "The holder of a petroleum right, his representative or his contractor recognized by the General Directorate, can on his name import free of customs and other import taxes and dues into Turkey, all materials, fuels and land, sea and air transport vehicles required for its petroleum operations in Turkey that are approved by the General Directorate, excluding the materials related with the construction, erection and operation of buildings, installations and equipments and his administrative activities, provided that said materials are used exclusively for its petroleum operations. If such material to be imported is procured locally, they shall be subject to the exemptions of all kind of taxes, duties and fees that are collected locally. …", (Article 24 a DPL).

The Turkish tax system applied tax exemptions for imports for a time period of five years since entry of the items into Turkey.

The import exemption in the DPL, Article 24 c, for both onshore and offshore petroleum operation activities for a period of 10 years as of the date of entry, has been welcomed by the petroleum industry. The DPL does not provide for an exchange guarantee.

Under a practice of the existing PL investors were allowed to transfer capital outside Turkey at the exchange rate of the date the capital was transferred into Turkey, (on Art. 115). The difference used to be covered by the Treasury's Fund No. 20, which was established in response to the oil price increase in the late 1970s, the money being used both for petroleum exploration and as exchange guarantee for investors. On the other hand in 1997, the High Court of Audits objected to the practice, accusing Treasury officials of embezzlement.

In the scope of evaluating the PML, the Turkish petroleum industry demanded to replace the exchange guarantee as petroleum investments were highly risky and involved enormous sums of money.

The Turkish DPL is a clear, brief and thorough Petroleum Law that covers the essential concepts necessarily required in a modern legislative petroleum framework. The legal and fiscal regime is packed into a self-containing and coherent framework which includes and applies the principles commonly found in international petroleum legislation. Such frameworks are advantageous for both host country and international oil company for the development of petroleum resources in the host country.

The Turkish Petroleum Platform Association (Petform) stated that it was quite pleased with the Draft. "This Law will encourage foreign exploration companies to invest in Turkey and bring capital, foreign know-how and employment opportunities. These investments will finally lessen the dependence of imports from other countries and further our country's energy policy."[197] But, the Turkish legislators are advised to think about implementing an exchange rate guarantee.

5. Comparison of the Turkish Petroleum Law and the European Law;

The main aim of modern petroleum legislation is to provide a legal framework for an orderly development of the mineral industries. To that end, such legislation must give investors the necessary incentives and guarantees, but it must also permit the government to give guidance to the mineral development and to practise a petroleum policy, that is part of the country's economic and overall policy. For these reasons, it must be considered within the general design of this policy and in connection with other relevant legislation, namely in the field of environment, health and safety, taxation, customs, corporation law and investment incentives.

[197] Sermaye transferine izin verilmeli', (The necessity for the capital transfer), Energy, Petroleum, Gas, Year 36, No. 275, (31 July 2004).

These points may, in a certain way, seem contradictory; but they are not necessarily so, if the laws, and not only the petroleum law, are inspired by a spirit of guided liberalism. The government, by enacting the laws, creates the framework; as soon as the authorisations, licences or concessions have been issued, its role is to watch over the proper implementation of the rules it has itself stated and the fulfillment of commitments agreed upon by the investors.

A petroleum law must create attractive conditions and guarantees for new investments, and take into account the characteristics of modern prospecting and petroleum. This would promote petroleum exploration, prospecting, discovery and development of new deposits and their equipment, with a view to expanding and diversifying production, whether for local use or for export. A petroleum law must provide for a legal framework permitting these operations without adding legal or political uncertainties to the hazards linked to the very nature of things; it must provide the framework within which the different successive petroleum phases may be safely conducted.

The petroleum law should not allow a wide scope of administrative discretion. Modern petroleum requires clarity, predictability and minimisation of subjective bureaucratic decision-making. The petroleum law should provide well-defined entitlements, based on transparent criteria relying on standards that can be adjudicated by impartial institutions. Petroleum laws influenced by the concept of permanent sovereignty over natural resources but in reality opening the door to bureaucratic and political interests with large discretionary powers granted to national agencies have failed in their aspirations. The large restrictive and discretionary bargaining powers are now known to have been a major disincentive to investment because of extra investment cost, uncertainty and unreliability. The modern approach, by contrast, would be a government staying away from petroleum, public authorities ensuring compliance with very few, but essential public law requirements (health and safety, environment; active and rational use of public land and resources; domestic economic integration/linkages and tax). The result would be few, if any, discretionary powers and a minimum use of ‘negotiation’. Clear and predictable decision-making criteria and emphasis on a

standardized regime which meets business expectations, requires little decision-making by government agencies and thereby minimizes bureaucratic friction and all sorts of prohibitive transaction costs. International competition between countries is to a significant extent played with the capacity of the regulatory regimes to create transparency.

Above explanations may be summarized as; the petroleum law should determine with respect to petroleum rights include.

The exploration phase does not necessarily call for exclusive rights, but it is useful for the explorers to be registered and their activity known to the government. For this reason, it is advisable to establish a non-exclusive exploration permit. In certain countries, this permit may be exclusive, in which case it is known as an ”exclusive exploration licence”. In any event, the government should be able to create such zones in order to protect its own technical activities or those run by international bodies on its behalf.

The prospecting and development phases need the protection of exclusive rights, as well as sufficient latitude of both area and duration, for an orderly progress of the scientific and technical surveys just described. There should be a certain degree of flexibility to allow for adjustment to the various cases encountered. In certain countries, there are two types of licence -one that is broad in scope and of fairly long duration, and another one for simpler cases.

The counterpart of exclusive rights is the obligation to work; there are many ways of deter petroleum this and official supervision is needed to ascertain whether the work is actually being done and to make note of the results obtained.

The exploitation title, whatever its name, must be of sufficient a duration to allow for complete amortization of the expenses incurred in exploring, prospecting and equipping the mine and for repayment of the capital invested. However, in modern law it no longer has the indefinite duration it had in former times. Supervision continues

throughout the mine's life, but without undue interference with the management which is responsible for the financial equilibrium of the enterprise.

Many other important matters are covered in a petroleum law, for example, dealing with the surface owner or occupier or with neighbouring mines etc. and that both under private and public law. The private law aspect is generally covered by detailed provisions on petroleum damages, normally in the form of the obligation to pay compensation for damages caused by petroleum operations, irrespective of fault. The public law aspect is getting more and more important with the growing importance of the environment issues. It has its main field of application in the area of open cast petroleum with its often massive changes of the surface. Essential part of petroleum activities and petroleum regulations is therefore not only the extraction as such but also the phase of the closure of mines having due regard to the interests of adequate restoration after the end of exploitation. A very important feature of petroleum law is furthermore the regulation of the technicalities of petroleum operations. The specific nature of petroleum including the typical dangers of this industrial activity requires specific regulations on health and safety aspects which are traditional parts of petroleum law.

In addition to these substantial issues concerning petroleum legislation a more formal aspect of legislative technique is of not negligible importance. It is beneficial to have one uniform petroleum law for all mineral resources. If different laws for specific mineral resources are used (e. g. for hydrocarbons, petroleum products, quarries) they should be compatible. Also, the relationship between the petroleum law and the general legislation needs to be considered.

With regard to the first aspect concerning comprehensive or dispersed rules it has to be stated that a modern petroleum law should be comprehensive and should contain, as many as possible of the pertinent rules e. g. on royalties, regional planning, petroleum damages, environment, health and safety and other related issues. The petroleum resources industry is very specific in nature and as such requires treatment that is different from that accorded to other industries. Such treatment requires the

inclusion into a comprehensive code of provisions which fall into the jurisdiction of different ministries (Environment, Mines, Economy, Energy, Finance, Trade) and agencies (Central Planning Commission, Customs, Land Use, etc.).

According to the aspects of relationship between the petroleum law and the general legislation, the petroleum law as a special law normally overrules general legislation, e. g. in the field of environment and health and safety. On the other hand, in many countries there is a trend to deal with certain aspects of petroleum (e. g. certain environmental aspects) in the general legislation and by this way to excavate the content of integrated petroleum law systems replacing it by an uncoordinated set of rules and requirements. The execution of these parallel general rules being with the responsibility of general administrations has the consequence that former typical petroleum issues dealt with by petroleum authorities are more and more under the competence of these general administrations. This entails the replacement of specific administrations by general administrations so that the supervision of petroleum activities by one single institution and the integrated risk prevention especially in the fields of environment and health and safety is no longer guaranteed.

The described requirements for a modern petroleum law resulting from the specific nature of petroleum activities and the requisites from the over-all economic and legal evolution at the national level are more and more superseded by the increase of legislation at European level. At the moment there is no comprehensive European legislation regulating the whole range of petroleum activities with its different elements, i. e. prospecting, exploration, extraction, closure, reclamation, liability and so on. This is among others due to the fact that individual countries have sovereignty over their natural resources and are therefore free to determine the modalities of using these resources. As stated on the Act no.6326 Art. 1 The petroleum resources of Turkey are subject to the possession and disposal, and are under rule of the State.

On the other hand, European legislation is influencing the oil-extracting industry and national petroleum law not that much on a comprehensive basis but more and more on a sector basis, especially in the areas of licensing/administrative

procedures, health and safety and above all environment.

6.CONCLUSION

Turkey's strategic location makes it a natural "energy bridge" between major oil producing areas in the Middle East and Caspian Sea regions on the one hand, and consumer markets in Europe on the other.Meanwhile the EU has been encouraging Turkey to provide a safe transit centre to help meet the EU's future energy requirements. It is also highly interested in establishing new supply networks through Turkey. Turkey could become Europe's fourth-largest source of energy supplies after Norway, Russia, and Afghanistan.[198]

Unfortunately, Turkey has not taken notice of the importance of energy based on national resources (especially petroleum and recently gas). It is obvious that Turkey will face problems in meeting energy demand in the future. In order to meet the demand reliably, significant increases will be needed both in energy production and in supply in coming years. It is necessary for Turkey to meet energy demand with national resources. Exploration of new coal and petroleum deposits in the country should be increased, new technologies should be used for efficient energy production, special importance should be given for utilization of renewable energy resources ... [199]

The Government should aim to apply its energy efficiency law[200], taking into account ongoing efforts and experience gained in the fields of energy efficiency and harmonisation with EU legislation and regulations. Also, the law should seek to enhance coordination between the various ministries and institutions in the area of energy efficiency and related environmental aspects.

The main aim of modern petroleum legislation is to provide a legal framework for an orderly development of the petroleum industry taking into account the specific requirements of the prospecting and other activities, especially in the fields of petroleum

[198] http://www.medibtikar.eu/2-11-Energy-market.html

[200] Law No.5627 dated 18 April 2007. OJ No. 26510.

rights, health and safety and environment. For realizing these points public benefits has to be consider by the authorities.[201]It is therefore necessary to adopt specific rules for this sector taking into account these requirements and - with respect to general legislation and separated from the mineral law - to foresee appropriate general provisions also taking into account these requirements or to foresee exemptions from general provisions that do not meet these requirements. The combination of more or less co-ordinated general provisions and their unmodified application to the petroleum sector has an negative effect upon this sector and contributes to the shift of mineral-extracting activities from countries subject to this over regulation to countries with more flexible rules.

Petroleum legislation and the relevant general legislation must allow free access to natural resources, give investors the necessary incentives and guarantees, provide for transparent procedures and foresee operational freedom, but it must also permit the government to guide petroleum development and to practice a petroleum policy that is part of the country's economic and overall policy. A well balanced solution at international level is the EU Directive 94/22/EC of 30 May 1994 on the conditions for granting and using authorisations for the prospection exploration and production of hydrocarbons.

According to that directive NPL arrangements occurred; as explained above NPL has many discussion points; mainly as seen on the rejection of the Ministry it does not include the "national interest" and against the Turkish Constitution Art. 168. But the term "national interest" stated Dir 94/22/EC. Also some other points for petroleum sector has difference (e.g. investor company conditions e.t.c.) than the same directive and also against the "national interest" which is stated in the Act no.6326.

According to the civil movements and big discussions seen on the new

[201] For the term public benefits, Yıldırım, Turan, Kamu yararı ve Disiplin Cezalarının Affı, Anayasa Yargısı, p.3-5

petroleum law the government has to consider some necessities.[202]

To sum up all above points; as stated on the EU documents criterias/requirements as explained below points has to be stated on the petroleum law especially for foreign investors:

- the technical and financial capacity of the applicant;
- national security and public interest;
- the methods envisaged by the applicant to carry out the activities specified in the licence;
- the economic benefits that the applicant offers in order to acquire the licence; and
- the conduct of the applicant within the framework of any previous licence.

And also;

1. the correct undertaking of the activities permitted by the licence;
2. the payment of a levy in a currency or as hydrocarbons;
3. national security, public health and public safety;
4. environmental protection;
5. the protection of resources, national treasures and the environment;
6. the safety of transport, installations and workers;
7. the management of hydrocarbons; and the necessity to safeguard the income payable to the Government.

[202] GÜLAN, Aydın, (2008), Maden İdare Hukukumuzun Ana İlkeleri ve Temel Müessseseleri (Main Principles and Organizations of our Mineral Law),

At the end it has to be stated that as explained in detail Turkish petroleum policy changes mainly because of the politics; but on the other hand; Turkey has to follow its own rights on exploration and also all petroleum sector via considering that "The petroleum resources of Turkey are subject to the possession and disposal, and are under rule of the State. " (Art.1 on Act no.6326)

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