

Michał Tutaj

Uniwersytet Warszawski

ORCID: 0000-0002-4904-7876

**FROM MILLET MEMBERS TO CITIZENS.
THE CIVIL CODE OF TURKEY AND THE FORMATION
OF THE IDEA OF CITIZENSHIP IN TURKEY¹**

This paper's main goal is to depict how the creation of the modern state together with modern legal system of the post-war Republic of Turkey in the 20's of the twentieth century contributed to changing the personal status of inhabitants of the remnants of the Ottoman Empire. The special attention is paid to the Turkish Civil Code², because – in my opinion – the implementation of this legal act contributed significantly to creation of the notion of modern citizenship in Turkey.

This manuscript has the following structure. In the first part, I am presenting my approach to the notion of “citizenship”. The second part is about the millet system of Ottoman Empire and general legal background of this state. The third part depicts the creation of the Republic of Turkey and promulgation of the Turkish Civil Code. The last part discusses how this promulgation gave grounds for replacing the idea of sultan's subject with citizens of nation state.

On citizenship

The understanding of “citizenship” has been subject to multiple changes over centuries of European history. It was once a crucial notion from the perspective of ancient legal orders of Athens and Rome. In Athens, the citizenship was closely linked with the entitlement (and to some extent duty) to participate in the process of ruling and judging. In the Roman legal order, citizenship was also fundamental from the perspective of private law, since multiple legal acts were reserved to

¹ This work is financed from the budgetary funds for science for the years 2016–2020, as a research project within the Diamond Grant programme.

² I.e. Law number 743 dated 17 February 1926 – Türk Kanunu Medenisi (Turkish Civil Code), published in legal gazette of 4 April 1926, number 339.

Roman citizens only (e.g. testaments – *testamenti factio*). In addition, over time, Roman law recognised citizenship as a status closely related to residing on a territory subject to given authority. *Constitutio Antoniniana* of 212 AD granted Roman citizenship to all (with minor exceptions for some categories of *pergerini*) free inhabitants of Roman Empire³. This piece of imperial legislation constituted a significant change of approach to citizenship. In Athens, the core function of citizenship was to separate Athenians from non-Athenians in order to exclude the latter from, inter alia, political activity. In Rome, citizenship became the method of inclusion of inhabitants of various lands to the same political and legal environment⁴. In addition, the evolution of Roman law position regarding citizenship indicates the swing from the model of legal personalism to legal territorialism. The rights and duties of persons in Roman law in the period preceding *Constitutio Antoniniana* were depending on nation to which a given person belonged; whereas the discussed law indicated that legal status of citizenship is closely related to inhabiting the territory subject to authority of given power.

The *Constitutio Antoniniana*'s spread the public rights such as right to vote (*ius suffragii*), right to apply for positions in public administration (*ius Honorum*) or right to seek legal protection to new populations. Thus, the public law aspect may seem to be crucial from analysing the true impact of this legal act on legal situations of inhabitants of Roman empire. Nevertheless, probably the most important factor of acquiring citizenship was closely related to private law – the number of legal issues related to mixed citizenship statuses had to drop down. Furthermore, the status of citizenship in some fields of public law (e.g. criminal law) started to lose its significance, since the differentiation in treatment was based on the distinction between *honestiores* and *humiliores*⁵. Thus, from the perspective of this paper, it is worth noting that the distinctive feature of citizenship under Roman law was that it was deeply embedded in private law.

The fall of Roman empire and rise of feudalism caused that the notion of citizenship ceased to be a key term to categorise members of population. However, starting from twelfth century, we can observe re-emergence of this notion in the political, theological, and legal writings⁶. The primary concern was related to public rights and duties of a given person due to his or her citizenship status, in particular

³ W. Dajczak, T. Giaro, F. Longchamps de Berier, *Prawo rzymskie u podstaw prawa prywatnego*, Warszawa 2009, pp. 189–190. What is important, for many inhabitants the Roman citizenship was dual – i.e. they kept the initial citizenship of, for instance, their municipality. P. Gumieła, *Διδομι πολιτειαν Ρωμαιον: treść i zakres nadania obywatelstwa w “Constitutio Antoniniana”*, “Zeszyty Prawnicze” 2016, vol. 10, no. 1, p. 144.

⁴ K. Trzeciński, *Obywatelstwo w Europie. Z dziejów idei i instytucji*, Warszawa 2006, pp. 61–62.

⁵ R. Mathisen, *Peregrini, Barbari, and Cives Romani: Concepts of Citizenship and the Legal Identity of Barbarians in the Later Roman Empire*, “The American Historical Review” 2006, vol. 111, no. 4, pp. 1015–1016.

⁶ K. Trzeciński, *Obywatelstwo w Europie...*, p. 84.

in relation between a given person and ruler. This way of thinking gave grounds to reflection on citizenship in following centuries. It is particularly visible when looking at conceptions of i) Jean Jacques Rousseau, who stressed that all citizens must be equal before the law and must be entitled to participate in exercising authority; and ii) Montesquieu, who perceived the citizenship as a status guarantying the fundamental rights⁷. Nevertheless, Montesquieu as well as Rousseau used the term “citizen” to denominate all persons being subject to a given state. Those views are reflected in the Declaration of the Rights of Man and of the Citizen of 1789. The equality before law is confirmed in Art. I, the entitlement to participate in exercising authority is declared in, inter alia, Art. VI and the protection against public authorities abusing their powers is stipulated in Art. IX and X.

The Declaration and the ideas it represented had significant impact on creation of modern understanding what “citizenship” should be. In particular, the concept of same laws for all persons belonging to a given state made the notion of “citizenship” meaningful for the rise of nation states. Since all persons belonging to a given state (i.e. citizens) were equal before law, the other factors determining legal status and legal rights of a given person (e.g. confession, belonging to a given estate of the realm, feudal bonds) lost its significance. The citizenship became more important as a factor allowing to distinguish people of one state from another. Thus, citizenship became an important term from the perspective of building of nation states.

This is the reason why contemporary scholars’ primary focus is on international and public aspect of citizenship. Even though there is no uniform and commonly accepted definition of “citizenship”⁸, the most definition of “citizenship” explains it as a legal relationship between state and individual owing allegiance and in turn entitled to state’s protection⁹. This protection is often perceived as a guarantee of personal, social, and political rights¹⁰.

This short historical summary was necessary to show why the current discussions on nature and the content of citizenship are oriented on public and international laws but also to show that those discussions do not constitute the whole picture. The idea of citizenship was, from its Roman beginnings, closely related to private law as well, because Roman citizens had access to other legal institutions than non-citizens. In addition, the ideology of the Enlightenment era by spreading the ideas of equality and guaranteed rights gave grounds to creation of universal law (including private law) for all persons subject to a given state.

⁷ *Ibidem*, pp. 134–139.

⁸ D. Pudzianowska, *O istocie instytucji prawnej obywatelstwa*, “Studia BAS” 2015, no. 4(44), p. 10, 35.

⁹ The term: *citizenship* in Encyclopedia Britannica, 3 Sep. 2020, <https://www.britannica.com/topic/citizenship> (30.07.2022).

¹⁰ T. Marshall, *Citizenship and Social Class*, Cambridge 1950, pp. 10–11.

This was reflected in the codification movement of eighteenth to early twentieth century. For those reasons, in this paper I understand “citizenship” in a bit different way than as a special public/international-law status of individuals that indicates his/her rights and duties towards the state. For me, citizen denominates a person that is subject to the universal private law of a given state and regardless of his/her other personal statuses (e.g. religion, ethnicity). In other words, I focus on private law aspect of the citizenship as well.

Consequently, in my opinion, private law regulations can become important tools for replacing the society of individual subject to different legal orders with the modern society (i.e. the society of citizens). I believe that the history of Ottoman Empire and its successor, the Republic of Turkey, shows how this process works and how it can contribute to popularisation of the idea of “citizenship” in a given society.

Millet system

The social order of the Ottoman Empire has been subject to multiple changes during the history. This cannot be surprising since the country of Ottomans developed from minor borderland beylik (thirteenth and fourteenth century), ruled by warring tribal elite into multinational empire spread across three continents. Thus, the organisation of the society had to evolve in order to enable incorporation into society new religion, ethnic and language groups. The need for creating the new social framework appeared to be particularly important after the conquer of cosmopolitical Constantinople in 1453 AD being the seat not only of Byzantine emperors but also of one of its highest religious authority – ecumenical patriarch of Constantinople. In addition, the Islamic tradition¹¹ approved tolerance towards people of the book (i.e. Christians, and Jews) given that they paid special tax for non-Muslims¹².

For these reasons, the Ottoman Empire developed the institution of *millet*. It was a rule granting independent court of law for every non-Muslim member of society. The law applicable to a given non-Muslim depended on his/her confession

¹¹ In particular the so-called Pact of Umar (634–644 AD) which was believed to guarantee basic personal autonomy and protection for the Peoples of the Books, but for a price of additional public burdens. See: K. Barkey, *Aspects of Legal Pluralism in the Ottoman Empire* [in:] *Legal Pluralism and Empires, 1500–1800*, eds. L. Benton, R. Ross, New York 2013, pp. 84–85.

¹² It is not clear-cut whether the millet system had been functioning since the beginning of Ottoman empire or whether it was properly shaped in the nineteenth century in order to reflect some earlier traditions. However, indeed, the notion itself appeared in 19th century – the term: *Millet* [in:] *Encyclopedia of the Ottoman Empire*, eds. G. Ágoston, B. Masters, 2009, p. 383. What is important from the perspective of this paper, in the final decades of the Ottoman Empire, the millet system was functioning.

and the jurisdiction was executed by the religious hierarchy of a given religion¹³. Thus, for example, Jews were subject to Halakha and their disputes were resolved by a local chief rabbi. The same applied to the majority of Orthodox Christians, since they were subject to the jurisdiction of the Greek Orthodox Patriarchate¹⁴. What is important – legal status of a given person was formerly linked to his/her religion, so – to much extent and as long as it did not interfere with legal situation of Islamic subjects – there were no universal private law in the Ottoman Empire. Nevertheless, they were subject to Ottoman public law and had to observe some special restrictions for non-Muslims (e.g. wearing dress distinguishing them from Muslims, abstaining from participation in army and public administration)¹⁵.

In addition, the autonomy given to a millet was wide – millets could promulgate their own laws and collect their own taxes. The main duty of millets was to remain loyal towards the Ottoman Empire and to pay special taxes for non-Muslims.

In addition, in the Ottoman Empire, there was an additional population of non-Muslims enjoying special status – i.e. foreigners, such as Frenchmen, Englishmen, subject to legal system and jurisdiction of their local consuls under the special sultan privileges called “capitulations”¹⁶. This was another factor contributing to traditional legal pluralism of the Ottoman Empire.

The nineteenth century brought important changes in the legal order of Ottoman Empire. The period of reorganisation (*tanzimat*) lasted less than 50 years (1839–1876) but was distinctive in the Ottoman history since it was an attempt to modernise the Ottoman Empire not only in the area of military organisation and technology, but also in the field of legal order. At that time the Ottoman government carried out the series of reforms including in particular the complex reform of judiciary system by introduction of special *Nizamiye* courts combining jurisdiction over *Sharia* and selected aspects of non-religious civil law¹⁷, issuing *Edict of Islahat* declaring equality between Muslims and non-Muslims which was then confirmed by issuing the first modern constitution of the Ottoman Em-

¹³ Ottomans, at the later stages, used this system to sow dissents between different nations of the same religion. For this reason, e.g. Bulgarians became grouped in a separate millet with limited jurisdiction of the orthodox ecumenical patriarch in Constantinople because of creation of the Bulgarian exarchate in 1870. See: C. Jelavich, B. Jelavich *The Establishment of the Balkan National States, 1804–1920*, 1986, p. 132.

¹⁴ K. Barkey, *Aspects of Legal...*, p. 93.

¹⁵ G. Bozkurt, *The Reception of Western European Law in Turkey (from the Tanzimat to the Turkish Republic, 1839–1939)*, „Islam – Zeitschrift für Geschichte und Kultur des Islamischen Orients” 1998, vol. 75 issue 2, pp. 283–284.

¹⁶ M. van den Boogert, *The Capitulations and the Ottoman Legal System*, Leiden 2020; D.G. Nadolski, *Ottoman and Secular Civil Law*, „International Journal of Middle East Studies” 1977, vol. 8, issue 4, pp. 525–526. The first capitulations were granted to France nationals in sixteenth century, due to vivid and anti-Habsburg cooperation between France and Ottoman Empire.

¹⁷ A. Rubin, *Legal borrowing and its impact on Ottoman legal culture in the late nineteenth century*, „Continuity and Change” 2007, vol. 22, issue 2.

pire in 1876. The formal equality – in due course – resulted in opening of Ottoman non-religious schools for non-Muslims, (periodical) revocation of special *ciziyé* tax and also obligatory military service for non-Muslims (previously for Muslims only). Nevertheless, the reforms of *tanzimat* period did not intend to delete the millet system. Instead, the legislation and political declarations – related mainly to financial and administration issues – aimed for attracting non-Muslims to more progressive agenda¹⁸.

The period of *tanzimat* also brought proclamation of selected legal codes such as Commercial Code. What is more important from the perspective of private law, the well-known *Mecelle* was announced (coming into force in parts between 1868 and 1876). This legal act can be described as a pre-civil code, since it was an attempt to codify legal rules arising from *Sharia* according to a Hanafi legal school interpretation. Such an option was chosen at that time, although there was an important faction preferring to implement translated French Civil Code instead¹⁹.

The *Mecelle* was structured in sixteen chapters combining material as well as procedural law. The text of the *Mecelle* is quite lengthy, it contains multiple examples and repetitions. It does not regulate all typical fields of private law (e.g. family law)²⁰. For this reason, it lacks the level of generality and completeness expected from typical legal codes²¹. Thus, the *Mecelle* can be viewed as a rather unsuccessful, but unique attempt to put the *Sharia* – based legal rules in a code-like form associated with the European trend of codification. Nevertheless, the *Mecelle* should not be treated as a change of the form of law only. From wider perspective, the *Mecelle* was important because of common legal framework in the area of private law it created. Although *Mecelle* was based on *Sharia*, it could be used as a source of law when resolving disputes between Muslims and non-Muslims. In addition, the *Mecelle* was important as a next step of confirming state's (i.e. sultan's) power to affect the private-law sphere even though it was regulated by Shariah²².

There were multiple reasons behind the reforms (e.g. military defeats, poor “steerability” of the state, external international pressure), but the need to reinvent the legal order in order to address increasing national awareness of non-Muslims

¹⁸ S. Shaw, E. Shaw, *Historia Imperium Tureckiego i Republiki Tureckiej*, vol. II, Warszawa 2021, pp. 208–209.

¹⁹ G. Bozkurt, *The Reception...*, p. 282.

²⁰ The main Ottoman attempt to regulate family law was ephemeral act on family law of 1917 – for more information see: K. Dannies, S. Hock, *A Prolonged Abrogation? The Capitulations, the 1917 Law of Family Rights, and the Ottoman Quest for Sovereignty during World War I*, „International Journal of Middle East Studies” 2020, vol. 52, issue 2, pp. 247–249.

²¹ More about characteristics of “proper” legal codes, see: J. Rudnicki, *Dekodyfikacja prawa cywilnego w Polsce*, Bielsko-Biała 2018, p. 28.

²² A. Rubin, *Modernity as a Code: The Ottoman Empire and the Global Movement of Codification*, „Journal of the Economic and Social History of the Orient” 2016, vol. 59, issue 5, pp. 851–852.

and their separationism is often emphasised as a key factor²³. The *Mecelle* should be seen as a small step forward in the process of this reinvention – it prepared the ground for creation of the common civil law for all subjects of the Ottoman Empire. Nonetheless, the main aim of the reforms in the area of equality of all subjects of the sultan was never met. The compromise reforms did not appease appetites of non-Muslims (mainly Christian ones), as they started to treat foreign powers as protectors against the Ottoman Empire that were able to effectively carry out military intervention. On the other hand, Muslims regarded reforms as one-sided privileges towards non-Muslims²⁴. The experiment with the constitutional government (provided in the constitution of 1876) accepting limited form of parliamentarism as a form of “safety valve”²⁵ only strengthened those sentiments. Despite the growing tensions the millet system existed to the very end of the Ottoman Empire.

The fall of Ottoman Empire and the Civil Code

The I World War brought the change – the war’s aftermath was the elimination of the Ottoman Empire. The process was not as quick as in the case of Austrian-Hungarian Empire, because it took place within couple of years starting from 1918. The treaty of Sevres de facto dismantling the Ottoman Empire was signed in 1920. The alternative, unlinked to *Entente* government under influence of Mustafa Kemal Atatürk was active in Anatolia and did not accept the treaty and managed to win the war with Greece what allowed to sign more beneficial treaty of Lausanne in the middle of 1923. In the meantime, the military victory allowed to consolidate power and announce formal end of the Ottoman Empire and birth of the Republic of Turkey in the end of 1922. The last element of the formal empire – the office of caliph held by the head of Ottoman dynasty was cancelled in 1924. The Ottomans were forced to exile.

Replacement of the Ottoman Empire by the Republic of Turkey was a significant change, from the perspective of the system organising ethnical groups within the state, for two reasons. First – the ideology of the new entity was based – inter alia – on the principle of nationalism²⁶. It was understood rather in inclusive than exclusive way²⁷ – i.e. it did not deny right to be member of the Turkish

²³ G. Bozkurt, *The Reception...*, p. 284.

²⁴ S. Shaw, E. Shaw, *Historia Imperium...*, p. 214.

²⁵ *Ibidem*, p. 220.

²⁶ Other principles – named as arrows of Kemalism – were: republicanism, populism, laicism, statism (etatism), and revolutionism.

²⁷ T. Alaranta, *The Enlightenment Idea of History as a Legitimation Tool of Kemalism in Turkey*, Helsinki 2011, pp. 27–28.

nation because of not being genetic Turk²⁸. It was more focused on ties arising from Turkish language, common values and identification with the common history. However, the main idea was that the Republic of Turkey is a state of the Turkish people and there is no place for distinguishing other groups (e.g. millets) subject to special set of laws and their own jurisdiction. In the eyes of Atatürk and ruling elite – even if a given group did not identify themselves as ethnic Turks – it was in fact the part of the one unified Turkish nation²⁹.

Second, the Republic of Turkey was much smaller than the Ottoman Empire and contained mainly areas that were inhabited by Turks (and other non-Arabic Muslims). Moreover, wars-related³⁰ flees and re-locations combined with massacres of civils also contributed to disappearance of some ethnic groups, in particular Greeks and Armenians. So, the Republic of Turkey was much more homogeneous country from that perspective and thus, there were no need to maintain the millet system whose aim was to manage multi-ethnic empire.

Consequently, there was no place for millet system and for millet-typical legal pluralism in the Republic of Turkey.

What is also worth noting, the another system of legal pluralism – the capitulation disappeared in similar time. They were cancelled at the beginning of the I World War (i.e. at the end of 1914)³¹.

Apart from those socio-political factors behind the cessation of millet system, there was also a more legal one. Namely, the treaty of Lausanne, factually superseding the treaty of Sevres, in Art. 39 says:

All the inhabitants of Turkey, without distinction of religion, shall be equal before the law.

Differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honours, or the exercise of professions and industries³².

Thus, the government of Turkey was formally obliged to resign from any legal solutions that could lead to differentiation of legal status because of religion. As a result, the very core of the millet system, i.e. rule that multiple ethno-religious

²⁸ As a side note, “Turk” was rather insulting term used to describe people of rural areas in the Ottoman period – see: S. Shaw, E. Shaw, *Historia Imperium...*, s. 565; T. Alaranta, *The Enlightenment...*, p. 26. Thus, the well-known Atatürk’s saying: *How happy is the one who says I am a Turk* (tur: *Ne mutlu Türküm diyene!*) could be also an attempt to disenchant this offensiveness of this notion.

²⁹ For a sample of Atatürk’s speech in this respect see: A. Mango, *Atatürk and the Kurds*, “Middle Eastern Studies” 1999, vol. 35, no.4, p. 20.

³⁰ As a side note, the major relocations were related rather to Greek-Turkish war than the I World War itself.

³¹ K. Dannies, S. Hock, *A Prolonged Abrogation...*, p. 247.

³² https://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne (30.07.2022).

groups are partially subject to different jurisdictions. The state-wide, universal law became a necessary to effectively implement the peace treaty arrangements. It required not only multiple legislative works, but also *de facto* the creation of the new legal language given that the new government of Turkey aimed for superseding the old Ottoman language (being a mix of Turkish, Arabic and Persian) with the truly Turkish language. In addition, Atatürk himself believed that the legal reform can be an effective tool of civilising Turkey³³. Thus, it should not be surprising that the Turkish government and parliament took extensive efforts to implement multiple legal acts in the very early years of the Republic. By 1929, Turkey promulgated i.a. the Criminal Code (1926), the Code of Civil Procedure (1927), the Code of Criminal Procedure (1929), The Enforcement and Bankruptcy Law (1929) and the Civil Code together with the Code of Obligations (1926)³⁴.

The Civil Code and the Code of Obligations were based on the Swiss Civil Code (including the Code of Obligations) to the extent that many authors describe them as “a translation”³⁵. The Turkish Civil Code contained multiple revolutionary changes, at least at the level of letter of law, since it did not recognise polygamy or marriages concluded before imam and differentiation between sexes in the field of inheritance and divorce law. Article 8 of the Turkish Civil Code of 1926 guaranteed the same legal capacity for everyone.

Every person uses his/her civil rights.

*Hence, within the limits of law, everyone is equal when it comes to being entities possessing rights and duties*³⁶.

Moreover, the code was one universal law for every person subject to the jurisdiction of the Republic of Turkey. In Article 1, we can see the wording confirming that the same law applies to all regulated aspects without any differentiation related to socio-legal status of a given person.

*The law applies to all matters with which it's letter or spirit relate to*³⁷.

³³ G. Bozkurt, *The Reception...*, s. 294.

³⁴ More on reforms and the background of the civil code – see: A. Adamczyk, M. Adamczyk, *Recepcja szwajcarskiego kodeksu cywilnego w Turcji. Rewolucja czy kontynuacja?*, “Roczniki Nauk Prawnych” 2006, vol. 9.

³⁵ See e.g. U. Özsu, ‘Receiving’ the Swiss Civil Code: translating authority in early republican Turkey, “International Journal of Law in Context” 2010, vol. 6, no. 1, p. 63, G. Bozkurt, *The Reception...*, s. 294; A. Adamczyk, M. Adamczyk, *Recepcja szwajcarskiego...*, pp. 167–168. The opposite view in relation to the personal and family law parts of the code is presented by R. Miller. R. Miller, *The Ottoman and Islamic Substratum of Turkey's Swiss Civil Code*, “Journal of Islamic Studies” 2004, vol. 11, issue 3.

³⁶ This is my own translation. The original text (transcripted): *Her şahıs medeni haklardan istifade eder. Binaenaleyh kanun dairesinde haklara ve borçlara ehil olmakta herkes müsavidir.*

³⁷ The original text: *Kanun, lafziyle veya ruhiyle temas ettiği bütün meselelerde mer'idir.*

Thus, the solution applied in the code allowed to comply with the obligation imposed by the Treaty of Lausanne.

From the perspective of legal history of Turkey, the civil code of 1926 can be perceived as a culmination of the century-long process of modernizing legal reforms that were started in XIX century. However, the truth is that this regulation changed the status of the inhabitants of Turkey. They ceased to be millet members and instead they became the members of the society of a nation-state, subject to its universal private law and being under territory-related jurisdiction. Namely, they acquired citizenship from the private-law-oriented meaning discussed in the beginning of this paper.

The mechanism was to some extent similar to the one applied in Rome. The private law legislation was used to add new members to the already existing political society.

At the symbolical level, this new law could be treated as a joining to the society of civilised nations. It can be observed from the linguistical perspective. The Turkish name of the code (*Türk Kanunu Medinisi*) refers to the adjective *medeni* meaning “civil”, but also being part of the word *medeniyet* meaning “civilisation”. Many influential Turkish thinkers of the early XX century explored the difference between the “civilisation” and “culture”³⁸. Kemalism tended to align to “civilisation” as a placeholder for rationalistic and universalistic set of values and solutions typical for modern European countries. ‘

Concluding remarks

My aim was not to present the view that the creation of the notion of citizenship was introduced in Turkey due to the introduction of the civil code only. This legal act did not create the idea of citizenship directly. It does not use the term of *vatandaşlık* which denominates the citizenship in its dominant public-law-related perspective. Instead, I hoped was to depict that the regulation of private law (e.g. the civil code) providing universal law for all persons, irrespective of their personal status, contributes to the functioning of the *sensu largo* citizenship. The Turkish example seems to prove that providing the same legal framework for every inhabitant can be an effective way to coin the idea of belonging to one legal and political community.

As such, the Turkish civil code seems to fulfil its function. Despite the new code coming into force in 2001, the stabilising role of the civil code remained the same. It still provides all persons with the equality in terms of their legal capacity without distinction related to personal status (e.g. religion). This unify-

³⁸ U. Özsu, ‘Receiving’ the Swiss..., pp. 66–69.

ing effect has never been seriously doubted – the conference held in Istanbul in 1956 and shortly later summarised in the *Annales de la Faculté de Droit d’Istanbul* (vol. 5 no. 6, 1956) did not indicate that the universal nature of the code posed any problem from the sociological perspective³⁹. Also, some later examinations confirm that despite the non-religious nature of the Civil Code, the traditionalistic population of rural areas did not challenge code’s binding force⁴⁰.

It appears that the Civil Code (and other legal acts) managed to convince at least significant part of society and legal pluralism that legal pluralism is not the solution. The Code seems to have passed some stress-tests in this regard. The creation of *Refah partisi* – a political party that aimed for creation of some religion-dependent form of legal pluralism especially for Muslims. This posed a threat for the legal future of the Republic of Turkey. Consequently, the party was banned, and the ban was not challenged by the European Court of Human Rights⁴¹.

This shows that despite passage of time legal elite (and political decision-makers) do not decide to undermine the universal legal framework contributing to the idea of Turkish citizens instead of Ottoman millet members.

Bibliography

- Adamczyk A., Adamczyk M., *Recepcja szwajcarskiego kodeksu cywilnego w Turcji. Rewolucja czy kontynuacja?*, “Roczniki Nauk Prawnych” 2009, vol. 9.
- Alaranta T., *The Enlightenment Idea of History as a Legitimation Tool of Kemalism in Turkey*, Helsinki 2011.
- Barkey K., *Aspects of Legal Pluralism in the Ottoman Empire* [in:] *Legal Pluralism and Empires, 1500–1800*, eds. L. Benton, R. Ross, New York, 2013.
- Boogert van den M., *The Capitulations and the Ottoman Legal System*, Leiden 2020.
- Bozkurt G., *The Reception of Western European Law in Turkey (from the Tanzimat to the Turkish Republic, 1839–1939)*, “Islam – Zeitschrift für Geschichte und Kultur des Islamischen Orients” 1998, vol. 75, issue 2.
- Dajczak W., Giaro T., Longchamps de Berier F., *Prawo rzymskie u podstaw prawa prywatnego*, Warszawa 2009.

³⁹ A. Izveren, *The Reception of the Swiss Civil Code in Turkey and the Fundamental Problems Arising in the Practice of Turkish Courts out of this Reception of a Foreign Civil Law*, “Annales de la Faculté de Droit d’Istanbul” 1956, vol. 5, issue 6, pp. 150–154; B. Davran, *Bericht über die Aenderungen im Türkischen ZGB gegenüber schweizerischen, verbunden mit einigen Bemerkungen über den Sinn der Rezeption*, “Annales de la Faculté de Droit d’Istanbul” 1956, vol. 5, issue 6, pp. 124–130.

⁴⁰ J. Starr, J. Pool, *The Impact of a Legal Revolution in Rural Turkey*, “Law & Society Review” 1974, vol. 8, issue 4.

⁴¹ M. Tutaj, *Między mieszanym systemem prawnym a pluralizmem systemów prawnych na przykładzie późnego Imperium Osmańskiego*, “Przegląd Prawniczy Uniwersytetu Warszawskiego” 2020, vol. 1, pp. 149–152.

- Dannies K., Hock S., *A Prolonged Abrogation? The Capitulations, the 1917 Law of Family Rights, and the Ottoman Quest for Sovereignty during World War I*, "International Journal of Middle East Studies" 2020, vol. 52, issue 2.
- Davran B., *Bericht über die Aenderungen im Türkischen ZGB gegenüber schweizerischen, verbunden mit einigen Bemerkungen über den Sinn der Rezeption*, "Annales de la Faculté de Droit d'Istanbul" 1956, vol. 5, issue 6.
- Encyclopedia Britannica*, <https://www.britannica.com/topic/citizenship> (30.07.2022).
- Encyclopedia of the Ottoman Empire*, eds. G. Ágoston, B. Masters, 2009.
- Gumiela P., *Διδομι πολιτειαν Πρωμαιων: treść i zakres nadania obywatelstwa w "Constitutio Antoniniana"*, "Zeszyty Prawnicze" 2016, vol. 10, no. 1.
- Jelavich C., Jelavich B., *The Establishment of the Balkan National States, 1804–1920*, 1986.
- Mango A., *Atatürk and the Kurds*, "Middle Eastern Studies" 1999, vol. 35, no. 4.
- Marshall T., *Citizenship and Social Class*, Cambridge 1950.
- Mathisen R., *Peregrini, Barbari, and Cives Romani: Concepts of Citizenship and the Legal Identity of Barbarians in the Later Roman Empire*, "The American Historical Review" 2006, vol. 111, issue 4.
- Miller R., *The Ottoman and Islamic Substratum of Turkey's Swiss Civil Code*, "Journal of Islamic Studies" 2004, vol. 11, issue 3.
- Nadolski D.G., *Ottoman and Secular Civil Law*, "International Journal of Middle East Studies" 1977, vol. 8, issue 4.
- Özsu U., *'Receiving' the Swiss Civil Code: translating authority in early republican Turkey*, "International Journal of Law in Context" 2010, vol. 6, no. 1.
- Pudzianowska D., *O istocie instytucji prawnej obywatelstwa*, "Studia BAS" 2015, no. 4(44).
- Rubin A., *Legal borrowing and its impact on Ottoman legal culture in the late nineteenth century*, "Continuity and Change" 2007, vol. 22, issue 2.
- Rubin A., *Modernity as a Code: The Ottoman Empire and the Global Movement of Codification*, "Journal of the Economic and Social History of the Orient" 2016, vol. 59, issue 5.
- Rudnicki J., *Dekodifikacja prawa cywilnego w Polsce*, Bielsko-Biała 2018.
- Starr J., Pool J., *The Impact of a Legal Revolution in Rural Turkey*, "Law & Society Review" 1974, vol. 8, issue 4.
- Trzcziński K., *Obywatelstwo w Europie. Z dziejów idei i instytucji*, Warszawa 2006.
- Tutaj M., *Między mieszanym system prawnym a pluralizmem systemów prawnych na przykładzie późnego Imperium Osmańskiego*, "Przegląd Prawniczy Uniwersytetu Warszawskiego" 2020, vol. 1.
- Shaw S., Shaw E., *Historia Imperium Tureckiego i Republiki Tureckiej*, vol. II, Warsaw 2021.

Summary

This paper depicts how the changes taking place in the Ottoman Empire in its last years and the establishment of the Republic of Turkey gave grounds to creation of the notion of the nation-state citizen. This category replaced the category of millet member meaning in those circumstances, the member of a given ethno-religious group. The millet members benefited from law attributed to a given millet and thus, in the field of private law, their rights depended mainly on their personal status.

The Turkish codification of the civil law, based on the Swiss Civil Code (i.e. the ZGB) played important role in the process of creation of the category of citizen. The codification brought – in the field of private law – the idea of equality of legal capacity of entities. Consequently, it eliminated legal pluralism and the principle of legal personalism.

Keywords: Turkey, millet, ZGB, codification

OD CZŁONKÓW MILLETÓW DO OBYWATELI. TURECKI KODEKS CYWILNY I KSZTAŁTOWANIE SIĘ KONCEPCJI OBYWATELSTWA W TURCJI

Streszczenie

Artykuł prezentuje to, jak przemiany dotyczące Imperium Osmańskie pod koniec jego istnienia i powstanie Republiki Tureckiej dały podstawy do tworzenia się koncepcji obywatela państwa narodowego. Zastąpiła ona kategorię członka danej społeczności etniczno-religijnej określonej w tamtych realiach jako *millet*. Członkowie milletów korzystali z prawa przypisanego do danego milletu, a tym samym można stwierdzić, że w dziedzinie prawa prywatnego ich prawa zależały przede wszystkim od ich statusu osobistego.

Istotną rolę w procesie tworzenia się kategorii obywateli odgrywała turecka kodyfikacja prawa cywilnego oparta na szwajcarskim Kodeksie cywilnym (tj. ZGB). Wprowadzała ona w dziedzinie prawa prywatnego równość uczestników obrotu pod kątem zdolności prawnej i tym samym wyeliminowała istniejący wcześniej pluralizm prawny i zasadę prawnego personalizmu.

Słowa kluczowe: Turcja, kodyfikacja, ZGB, millet