THE CHANGING STRUCTURE OF THE LEGAL PROFESSION IN TURKEY:
AN HISTORICAL AND SOCIOLOGICAL ANALYSIS

BY

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ABSTRACT


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This study deals with two main issues: the first is the structure of the legal profession in Turkey and the second is the nature of the relationship between the advocates and the state. The literature on the sociology of the professions is discussed and a theoretical vacuum is stressed as far as the developing countries are concerned. Since the historical characteristics of these countries are different from those in West European countries, a need for a new and specific approach is emphasised. To indicate these historical differences, an analysis of the historical development of the Turkish legal profession is presented. It is concluded that, especially towards the end of the Ottoman Empire, there emerged a dichotomy in the legal system. With the establishment of modern Turkey after First World War, European legal system was accepted and this dichotomy was ended. In this context, it is also asserted that the Turkish state could not be considered in separation from the legal profession.

The results of an empirical research carried out in Turkey were also presented in the second part. In addition to the information concerning the structure of the advocacy system, the views of the advocates on the problems relating to their profession and the country were also presented. It is observed that Turkish advocates are very interested in political, economic, cultural and social problems. They believe that they can play a major role in resolving these problems. A comparison between the Istanbul and Sivas advocates is also drawn to determine whether the views of advocates in big cities and those in rural areas differ significantly from each other.
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GENERAL INTRODUCTION

This study addresses two main issues. The first is the structure of the legal profession in Turkey. The second is the nature of the relationship between the state and the advocates. In order to account for these issues, a theoretical framework is introduced and empirical research is carried out.

The first chapter will deal with literature on the sociology of the professions where a vacuum within the theory of the professions in sociology is emphasised. The primary objective of this study is not to review all theories of the professions or to seek a way to make a major contribution to the general theoretical framework, or to attempt to produce a new approach for the case of developing countries. My objective is limited. All approaches in the sociology of the professions will be examined into two main categories. Through reviewing these mainstream approaches in both sociology and the sociology of the professions, it will also be argued that the debate on the relationship between the state and the professions has its roots in a wider discussion in sociology. In this context, a hypothesis will be raised, which proposes no theoretical distinction between the state and the professions.

In the second chapter, the historical characteristics of the Turkish legal profession will come under discussion. It is my belief that research on the professions must start with a historical analysis if there is no previous study in the area. Hence, the focus will be on the general characteristics of the Ottoman legal system and its practitioners. It will be concluded that especially towards the end of the Ottoman Empire, there emerged a dichotomy in the legal system, with the traditional legal system on the one hand and European rules applied in commercial courts on the other.

In the third chapter, I will concentrate on the structure of the legal system created by the designers of Turkish Republic. I will argue that the declining process of Ottoman legal system ended with a complete take-over of the European legal system after the
First World War. In addition, it should be noted that throughout this chapter, although there is substantial literature on the history of the Ottoman Empire in Turkish, I will only refer to books and articles published in English.

In the fourth chapter I will begin to introduce the results of empirical research conducted in Turkey. The sample group was chosen amongst the advocates practising in Istanbul and Sivas. The first is the biggest and the second a medium-size city in Turkey. The results concerning the general characteristics of the advocacy profession will be the main subject of this chapter.

A point relating to the language of the chapters in which the results of the survey will be presented should be noted. My research is based on the results obtained mainly from the interviews with the advocates. In most cases, I will introduce the opinions of the respondents without commenting on them. In other words, most ideas presented in these parts belong to the respondents rather than to myself. Therefore, I paid particular attention not to change their ways of reasoning and expressing the issues or, in a broader sense, their language.

In the fifth chapter, I will present only the results concerning the Istanbul advocates and discuss the issues which were raised in the first chapter, such as political involvement of the advocates and their opinions on the structure of the state. In this chapter, if a willingness among advocates towards participating in political affairs is observed, it will be possible to conclude that there is a relationship between the Turkish lawyers and the governmental activities. Therefore, the Turkish state could not be considered in separation from the legal profession.

My interest in political issues and political involvement of advocates resulted from the fact that one of the most effective ways of examining the structure and the activities of the state is to analyse its political applications towards other institutions or professional groups. In this sense, the ways of handling social problems of advocates and the
analysis of their political attitudes are perceived as an important factor for the research objectives.

In the sixth chapter, a comparison between the Istanbul and Sivas advocates will be drawn to determine whether the advocates in big cities and those in rural areas differ significantly from each other in terms of their views on the problems of the country and the profession.

In the final chapter, general conclusions drawn on the basis of the information produced by this research will be presented.
CHAPTER I

1. Introduction

In the sociological literature, the focus of the debates on the process of the professionalization has been on industrialized rather than developing or undeveloped countries. Most theorists of the professions believed that professional groups are by-products of the industrialization and, therefore, their sociological analysis can only be done by referring to the developed countries. Due to this belief, developing or undeveloped countries have fallen outside the concern of the major studies on the professions. It is equally true that the academic and occupational conditions in the third world have led to a failure to develop an independent development of the literature on the professions.

The classical studies carried out in industrialized countries like France, Britain, USA, and Germany, concentrating on doctors, lawyers, engineers, teachers and accountants, suggested that professional groups were claiming an autonomy on the base of their high level of technical and intellectual expertise, and a certain kind of discipline, and a commitment to public service. Such a definition of professional group assumed that the

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1. This is a point that has been emphasized by many others before this study. Major studies include a theoretical framework which generally concentrates on developed countries. Therefore, one who may wish to look at this feature of professional theories must go to any of prominent works on the professions. Moreover, a general overview of the literature is also available as published articles. See, for instance, Smigel (1954, 1963), Roth and Daniel (1973), Abel (1980), Foley; Shaked and Sutton (1982), Hall (1983). For special emphasis on Anglo-Saxon, see also Johnson (1973) and Fores and Glover (1978), Burgege (1990).

2. In the legal area, for comparative studies on these countries, see, for instance, Rueshmeyer (1973), Krause (1987), Abel (1988), Sigeist (1986), and Abel and Lewis (1988).

3. Within traditional approaches are made many attempts to define the concept of the professions. More information can be found especially in the works of Cogan (1953, 1955), Greenwood (1957), Millerson (1964), Kleingartner (1967), Jackson (1970), Torstendahl (1990). See also Perrucci (1969, 1971), who argued that the most conspicuous characteristics of the professions were knowledge, autonomy,
crucial factor in distinguishing a profession from an ordinary occupation\(^1\) was the degree of specialised knowledge possessed by the members of the profession as well as their relative organisational independence from other social groups.\(^2\) Alternatively, another view argued that the ability of the members of a profession to control its internal and external relations was the most distinct element of the professionalization process.\(^3\)

Whichever social and historical criteria have been used to describe the fundamental characteristics of professionalization, however, it is very clear that, at present, professional groups in developing countries\(^4\) are practising under similar social, political and economic conditions to those in Western Europe and the USA. Despite this, it is also clear that the social, political, economic and legal conditions that gave birth to the

generating all examples will be generated from the Turkish context. However, there were also some other countries which were analysed in terms of professionalization. With a brief look at the literature of the sociology of the professions, it can be seen that academic studies on developing countries have increased during the last twenty years. These countries, for example, were India, Egypt, Algeria, Brazil and so on. For the works relating to these countries, see; Shills(1961), Ziaedh(1968), Fanon(1970), Commonwealth Foundation (Report-1971), Khane(1972), Reid(1974), Al-Nouri(1975), Milic(1975), Fikaro(1979), Fardom(1979), Ross(1979), El Sayed(1988), Dias(1981), Krause(1992).
professions were rather dissimilar. In other words, the professions developed in a different way in different countries with different historical, social, political, cultural and legal backgrounds. Even though all theories were produced to discover the case of industrialised societies, it is my belief that they may also shed light in the main structure of the professions in the developing countries.

Therefore, in this chapter, I will first introduce a short review of the literature on the theory of the professions and show that the profession groups are as much a social reality as they are in industrialised countries. Such a review will also make it possible to see the historical roots of present day dominant theories in the area. In the second part, I will deal with some classic views in which the main issue is the role and place of the professions within society. Following this part, I will concentrate on Marxist inclined theories.

1-Despite the idea I am presenting here, it is clear that the general characteristics of professional groups in developing countries have not yet been discussed widely and satisfactorily in terms of the sociology of the professions. The similarities and dissimilarities between professional groups in developed and undeveloped countries must be shown much more clearly. But, this would be the subject of further research. Obviously, such a study, which may well take place in the future, would throw a crucial light onto the area of the professions and, most likely, it would also contribute to the conception of professionalization in developed countries. My aim here is only to point to the existence of professional groups and their organisational representatives rather than specify its main characteristics. It should also be noted that in a randomly chosen Turkish newspaper today, one may see various sensational news about doctors, lawyers, engineers or accountants. This provides enough evidence that Turkish people are very keen to know about the actions and interpretations of professional groups relating to social, political and legal problems of the country. There is no doubt that this special attitude of public opinion gradually evokes the concern of social sciences towards professional groups. My study is based on an argument which asserts that professional development in developing countries, [in Turkey here], is visible and comprehensible in terms of sociological analysis.

2-See, this idea was emphasised by Johnson (1972). A good example of analysing the historical background of the professional organisations in unindustrialised countries can be found in the work of Ziadeh (1968), who mainly focused on liberal attitudes of lawyers and their roles in the development process of Egypt. To see how professions became one of the most important parts of the industrial societies, one may look at the works of Reader (1966) and more recently Perkin (1989) who both focused on the British case.
including the approach of Larson who made one of the most cogent attempts in analysing the market conditions and the problem of control in the professionalization process. Additionally, a different approach introduced more recently by Abbott (1988) will be discussed. In the final part of this chapter, I will look at the discussion about the relationship between the state and the professions.

My primary aim in this Chapter is to criticise the mainstream theories, arguing that they tell us little about the development of professions in developing countries and, therefore, a new theoretical framework is needed to give a more satisfactory account of the professions in both developed and developing countries. In order to avoid any misinterpretation of the theories in question, and considering the fact that they were all originally produced to understand the situations in Anglo-Saxon countries, I shall discuss the case of the developing countries only where the content of the theories allows to do so. Otherwise, it will be sufficient simply to introduce the leading approaches in the area.

2. The Literature On the Sociology of The Professions

In the last century, a French sociologist, Emile Durkheim (1957) was first to elaborate on the capacity of intellectuals and professionals to solve chronic social and economic problems. In Britain, the first major study on professional groups like teachers, doctors and lawyers, was that of Carr-Saunders and Wilson in 1933. In Germany, the first attempt was made by Manheim (1929), who believed that due to their education, intellectuals held a special status independent of class obligations within society. The

1.-See, Durkheim (1957) Professional Ethics and Civil Morals.
2.-See-Carr-Saunders and Wilson (1933), The Professions. Most researchers believe that this is one of the most comprehensive studied in the literature, as far as the English case is concerned, dealing with nearly all English professional groups. In this work, an in-depth analysis of the characteristics of the historical development and structure of legal, medical and the other professional groups might be found.
role of professionals in social cohesion was taken up mostly by the functionalist theorists in the United States.¹ By the 1960s, there appeared a great increase in the number of works accounting for the process of professionalization in both Europe and the USA.²

For example, the work of Daniel Bell³ (1960) had a great influence on most students of the professions. He believed that the industrial revolution would be followed by a new and completely different one in which knowledge or information would be most valuable in the process of social change. This new phase in history will also put an end to ideological approaches which dominated the intellectual development in the last century. In the context of intellectual development, he also asserted that professionalization was not limited to the process of industrialisation, but that the rise of professions would continue in the period of post-industrial societies, in which economic, political and social developments would be closely associated with the growth of knowledge.

This international interest continued in the 1970s. In this period, the literature of the professions was dominated mainly by the works of Eliot Freidson (1970, 1972, 1984, 1986). The key concept of his analysis was professional dominance. He suggested that

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³ For the more information about the place of intellectuals within the professional development or the similarities and dissimilarities between these two terms, see, Churchward (1973) and Konrad & Szélényi (1979); Gouldner (1979).

¹ The best example of the functionalist approach might be seen in the work of Parsons (1949) The Professions and Social Structure, Essays in Sociological Theory Pure and Applied. See also, Merton (1958); Begun (1979); Cullen and Nowick (1979).

² The publication of a special issue in Daedalus (1963) is an evidence for the widespread interest in the sociology towards the role and the place of professionals within modern societies. This issue included many important essays on the sociology of the professions, including the works of Barber and Hughes.

³ For the works of Daniel Bell, see The End of Ideology (1962); The Coming of Post-Industrial Society (1974) and The Cultural Contradiction of Capital. Apart from Bell's works, some other writers drew attention to the increasing growth of the knowledge in twentieth century. Some of them can be mentioned in here. Thorstein Veblen (1965), The Engineers and Price System; J. Kenneth Galbraith (1967), New Industrial State; Ivan Illich (1977) Disabling Professions and A. Gouldner (1978), The New Class Project.
professionals had a capacity to secure the future of their own profession, defending the rights of its members, institutionalising rules over occupational life and controlling entry to the profession. It is for this reason that they were able to establish autonomy over the work and a certain kind of power different to that of other groups within society. This approach, in its essence, saw all professional groups as end products of industrialisation.

During the same period, while the above idea was dominating the sociology of the professions, a counter-attack came from the Marxist inclined theorists. In their view, the roles of professionals in the new era of technology were exaggerated by those theorists who focused on the concept of professional dominance. Haug (1973), for example, concentrating on the changes and specific problems in the process of capitalist developments, believed that the professions were losing their monopoly over knowledge.

1 - With regard to the problem of entrance into a profession, an interesting analysis has been recently made by Evans and Laumann (1984). They asserted that contrary to the above idea, entry into a profession does not entail a life-long commitment. Rather, according to the results they obtained from 23 sample groups, there is a substantial movement in and out of the professions.

2 - There is a very large literature on the autonomous characteristics of professional development. Among earlier works, especially the Hughes (1958), Barbor's (1963) and Bucher and Stelling's (1969) were the most interesting. For the more recent works, see also Berlant (1975), Profession and Monopoly; Collins (1979), The Credential Society and Rueschemeyer (1983), "Professional Autonomy and the Social Control of Expertise".

3 - Especially, the power of professionals is exaggerated in the work of I. Illich (1977) Disabling Professions in where he asserted that unlike other occupations in the past, professionals in this century seem to have established so unique monopoly over their work on the basis of their knowledge that they are able to control who should get what and why. This makes twentieth century "The Age of Disabling Professions", an age when people have "problems", experts have "solutions". In addition, the power of professions was also examined by others. For example, an interesting work was done by Arthurs (1982), making a link between the public accountability of the legal profession and the professional independence. Despite the fact that the professionals are holding a considerable power, as he argues, accountability is the necessary implication of accepting a social trust; and it is compatible with the profession's independence. See also Gyarmati (1975), Kronus (1976), Marsden (1977), Stone (1980), Haskel (1984).
public belief in their service ethos and the expectations of work autonomy and authority over the client. Similarly, the autonomy and power of professions were also denied by the theorists who criticised the capitalist system as a whole (Derber, 1960, 1982; Perruci, 1973; Oppenheimer, 1973, 1985; Navarro, 1976; Larson, 1979). Emphasising the importance of capital accumulation, these theorists argued against the idea that professionals played a positive role in social cohesion. They believed that, because of the class structure of the society and the market conditions within capitalist economies, the professionalization process inevitably results in a process in which professionals become simply workers in the service of the state or the dominant class. In other words, the professionals are practically educated slaves of the state.

As a result, it can be said that the theory of professions was dominated by two mainstream approaches: the theory of professional dominance and Marxist inclined theories.

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1. A further discussion on the relationship between the state and the professions might be found later in this study.

2. A similar classification has been recently made by Cullen (1985), who suggested that the first group of the theories in the sociology of professions is developed on the basis of the main principles of functionalist theory while the second was essentially originated from the power approaches or conflict theories. Additionally, Begun (1986) suggested that there was a relation between economic and sociological approaches in the sociology of professions. According to him, free market theory in economy is related to the power theory in sociology and economic analysis of professions while market failure theory to the structural-functional theory. Concentrating particularly on legal professions in American, England and Wales, Abel (1988, 1989), in turn, tried to combine all well-known theories. In his opinion, the Weberian approach to the market in which lawyers are practising is the most appropriate to explain their status within society, because structural analysis of professions are concerned with community, altruism and self-governance. Whereas, the professions are primarily an economic activities. Marxist theories are also marginal because they concentrate on only class conflicts while professions are a category in horizontal division of labour. Therefore, a researcher should use Weber's theory to understand how lawyers constructed their professional commodity (legal service) while Marxism might be useful to explore the class location of lawyers by examining the structures within which legal services are produced. Such concept like stratification, autonomy, self-governance and self regulation can also be
However, despite the fact that both the theories of professional dominance and economic interpretation of the professions, and also others that might be put into different categories, point to some important aspects of professionalization in industrialised countries, they say little about the social functions, the structure, and the future of the intellectual and/or professional groups in developing countries. In Turkey today, for example, the professional organisations like the Bar Association, Chambers of Doctors or the Union of Engineers, are authorised by law to monitor the activities of their members and to represent the profession at national and international levels. Professionals also created their own professional codes, own financial resources and a special system of occupational control over their practice. As such, the education system of professionals seems not very different from the one in industrialised countries. Anyone who wishes to become a doctor, lawyer or engineer is required to go through a long and exacting process of education. In order to qualify for the job, they have to take and pass various kinds of exam before starting professional life. In addition, from the perspective of other members of society, lawyers, doctors, engineers or teachers as discerned in terms of structural functional analysis of professions. See also, Esland(1980), Björkman(1982), Torsendahl(1990).

1-Some of the concepts frequently referred by these two approaches might be helpful to see the general concerns in the sociology of professions. The first group generally used such concepts like monopoly, autonomy, prestige, role, status, ethical codes, esoteric knowledge and so on, while the second, technological innovations, specialisation, standardisation, rationalisation, deskilling, legitimising, codification, self-employment, salaried profession, new class and so on.

2-One of the best example of such a legal regulation of professions is The Law of Advocacy, which has regulated the practice of advocates working privately in Turkey. Doctors, too, are obliged to follow some legal regulations and professional rules enacted by parliament.

2-It can be seen from the statistical figures published by The Institution of High Education(YOK), that medical faculties offer the most attractive education to the high school graduates who want to attend university education in Turkey. A high school graduate has to get a quite high mark in a nation-wide entry-exam to be qualified for either the Medicine or the Law faculty. For further discussion of this subject, see-Chapter-IV, Section-3.
highly educated people constitute some of the most highly regarded groups within society\(^1\).

As noted earlier, throughout this study, none of the theoretical framework described above will be specifically pursued. It is my belief, too, that *each of these theories reflects a theoretical and political perspective that captures only part of a larger whole* (Light and Levine, 1989). More precisely, one approach sheds light on certain points which the other neglects and vice versa. In the light of the findings obtained from my own field research, it will be argued that such a developing country as Turkey, professional groups do not set up a monopoly but, on the contrary, they are closely connected to the state in terms of taking part in political activities.

3. Classic Views

As noted already, Emile Durkheim (1933, 1957) held that the social and economic problems associated with the industrial revolution could only be solved by newly emerged professional groups. A short review of his work is needed to see why and how professionals might contribute to solving social, economic and political problems.

For Durkheim, one object of sociological analysis is to explain how the existing social order might be maintained and in what way social and individual crises might be overcome. He believed that the division of labour functioned to maintain social order.\(^2\)

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1. Almost all of the classical views in the sociology of the professions regarded professionals as one of the most prestigious groups within industrialised societies. For the relation between the concept of prestige and the professional development, see, Laumann and Heinz(1977), Slovak (1980), Nelson (1981). And also the work of Portwood and Fielding (1981), might be helpful to see the reasons why all the established professions are so prestigious and popular in twentieth century. For the situation of the Turkish lawyers in terms of the occupational prestige, see Treiman (1977), who, as a result of an empirical research, categorised them into one of the most prestigious occupations in Turkey (p.474).

2. A wider discussion of Durkheim's analysis might be found in the works of Dingwall, who tried to develop the basic arguments of him. Unlike Durkheim, however, Dingwall maintained that professional work must be studied not just in the context of a division of labour but also as a part of a network of social and economic relations. For more explanation, see, Dingwall and Lewis (1983) *The Sociology of*
According to him, the growth of the division of labour, the formation of large-scale markets and the process of occupational differentiation destroyed the integrity of social order in more simple societies, where a 'mechanical solidarity' that signified the similarities of collective life, had been the dominant aspect of social relations. As a society was passing through this process of differentiation, a new form of solidarity came about, a set of new rules based upon the idea of interdependency and differentiation of tasks, in other words, the 'organic form of social solidarity'. It is also possible that there might appear in the interim period, an abnormal form of the division of labour which would be a threat to social integration, characterised by a condition of rulelessness, namely, anomie. In such a situation, which characterised the western countries just after the industrial revolution, people might have serious difficulties in attaching themselves to some social, economic or moral values associated with daily life.

Durkheim saw professional people as a remedy to the social disease generated by the industrial anomie, claiming that the professions are able to develop a professional ethic, more advanced in their operation, forming a clearly defined body having its own unity and its own particular regulations(1957, p.8). Therefore, the cure for these problems is to give the professional groups in the economic order a stability they so far did not possess(p.13). He hoped that by challenging the fluctuations of industrial societies, the professional groups would develop an important status in the mid-point between the state on the one hand and the family and individual on the other(p.26).

In Durkheim's view, professions offered a resolution of a social problem. His main aim was to understand the social crisis rather than the professionalization process itself.

*the Professions. See also, Lukin's(1983), Occupational Control and Modern Medicine, in where he suggested that medicine has expressed its professional status through the controlled elaboration of its division of labour. Following Johnson's view, he also agreed that professional dominance was not a separate characteristic of medical profession, but a particular intense form of occupation. Apart from these two studies an earlier one was done by Caplow(1954), who dealt with the work and work conditions in the context of the division of labour.*
Professionals were seen, in his theory, as pioneers of the new “industrial” order which emerged last century.

In England, a similar point was developed by Carr-Saunders and Wilson (1933) who did the first comprehensive study on professional groups. They argued that professional associations functioned as a stabilising element within the society. They looked at the growth of these associations as an attempt to provide individuals with a sense of power and purpose, which had not been achieved simply by giving them the right to vote.

Along the same lines, Marshall (1939) asserted that the characteristic of the professions in pre-industrial society was their compatibility with the good life of gentlemanly leisure. The professional man does not work in order to be paid; he is paid in order that he may work. He also pointed out that state control would threaten the development of professionalism.

Perhaps, the most influential emphasis on the altruistic service of the professionals came from Parsons (1951, 1957). He thought that many of most important features of industrialised society are dependent on the smooth functioning of the professions. Both the pursuit and the application of science and liberal learning are predominantly carried out in a professional context. In his account, the professionals are not thought of as engaged in the pursuit of personal profit, but in performing services to clients, or to impersonal values like the advancement of science. Parsons also argued that a sociologist must regard the activities of the legal profession as one of the very important mechanisms

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by which a relative balance of stabilities is maintained in a dynamic and precariously balanced society (p. 385).

Clearly, Parsons' view paralleled the dominant trait approach of the professions, which sought to demarcate them from other occupations by elaborating on their allegedly socially integrative functions into a series of distinguishing characteristics (Abel, 1988, p. 6). Mainly because of this, traditional functional approaches overlooked the conflicts of interest within professions. According to Butcher and Strauss (1961), the primarily focus of the sociological analysis should be in change within professions. To achieve this, they focused on the heterogeneous characteristics of the professionalization process rather than the homogenous elements. They saw the professions as an amalgamation of segments, pursuing different objectives in different manners under a certain name at a particular time in history. Despite their effort to grasp the development process, their approach did not much differ from functionalism.

Similarly, Tawney (1961), emphasised the altruistic service of professional groups. He thought that the increase in the number of salaried managers performing specialised functions was a sign of professionalism intruding into business life.

The same point was repeated in the works of Hughes (1963), Lynn (1963) and especially Barber (1963), who all argued that the new capitalist society is basically a "professional society". In this kind of society, they believed, the generalised knowledge and the community oriented characteristics of professional behaviour are indispensable and society can maintain its fundamental character only by enlarging the scope of professional behaviour.

The altruistic emphasis on the professions eventually stimulated some critical points which had found their roots in Weberian or Marxist inclined approaches.
Weber, for example, focused primarily on market relations and the strategies of distribution of commodities, rather than the production process or the means of production. He focused mainly on the outcomes of historical and economic development, paying particular attention to the problems of industrialisation and bureaucratisation, the changing structure of the western value system, all of which might be seen as key elements of the rationalisation of social relations or the dis-enchantment of the modern world, which characterised all capitalist societies. In such a society, rapid growth in scientific knowledge and technology shape the division of labour that comes to be associated with an authority structure involving a separation between the ruler and the ruled in the work area. Furthermore, bureaucracy as a mode of authority, involves a more effective exercise of power that is limited and justified by appeals to an impersonal order of generalised rules, reinforced by a strict system of supervision and control.

In Weber's analysis, it is obvious that in a rationalised workplace, managers are obliged to find the most efficient and logical means of making decisions to solve problems in the workplace. This requires employees to have more qualifications, particular abilities and distinctive skills. Bureaucratization does offer, he argues, the best chance of putting into practice the principle of division in administration according to purely objective criteria.


2. This is, of course, a sociological definition of the bureaucracy. It might be also defined from the perspective of other disciplines like politics, public administration, economic and so on. For more information on the meaning of bureaucracy, see, among many other studies, especially, Beecham (1987).
individual parts of the work may be allotted to functionaries who have had specialist training and who will continually improve their skills by practical experience (Weber, 1989, p.351).

Though Weber himself offered no explicit treatment of the professions, for other theorists in his tradition, the central question relates to "how actors seek and attain competitive advantages within a relatively free market where the goals are economic rewards. Market competition constructs categories of adversaries who oppose each other within classes" (Abel, 1988, p.4). Professionalization is thus an attempt to translate one order of scarce resources-special knowledge and skills-into another-social and economic rewards. To maintain scarcity implies a tendency to a monopoly of expertise in the market, monopoly of status in a system of stratification (Larson, 1979, p.17). Consequently, professions are actors or groups, who seek protection from market forces, regulating the market place for their services and establishing a certain kind of control over their work.

As it is widely known, Marx and his followers concentrated mainly on the modes of production, identifying conflicts within the relations of production as the dominant force in the course of history. For Marx, labour was a value creating substance. In the labour theory of value, he distinguished between three kinds of value: exchange, use and surplus. Unlike in previous stages of human history, in the capitalist mode of production, the producers of commodities become themselves a commodity to be sold on the market; having nothing but their labour power, they are fully dependent on the market relations.

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1 For the recent interpretations of Weber's approach, see, Ritzer(1975), Parkin(1979), Lackham(1981), Abercrombie and Urry(1983), Murphy(1984). In addition, a good adaptation of Weber's analysis of institutionalisation into the sociology of the professions has been made by Berlant(1975) in Profession and Monopoly, where criticizing Parson's functionalist view of occupation, he focused on how doctors established professional dominance over market and in which political and legal conditions this occurred. Collins(1990) is also one of the well-known interpreters of the Weber's approach. He believed that like other status groups professions set up a social closure or monopoly over the market conditions, thought this is gradually weakening in recent times.
manipulated by the owners of the means of production. That is to say, the separation of workers from the means of production is a new way of extracting surplus value, preparing a more suitable ground for exploitive relations within a class system, a system which works for the benefit of capitalists. In terms of the Marxist theory of exploitation, though Marx himself said little about the professions, the structure of professions is related to the particular nature of commodities which professionals produce and sell. In relation to the production, it is argued that professional labour, even when seen as a commodity sold on the market, does not contribute to capitalist accumulation by producing surplus value. Since only labour which produces surplus value is productive, professional services sold directly on a market are unproductive. In other words, professional labour is not exchanged with capital, and does not participate directly in the production of surplus value. Therefore, professionals may escape from capitalist exploitation, but at the same time, they are not themselves capitalists, since they do not own the means of production. Briefly, the classical Marxist theory views professions as an anomaly group, placing them between workers and capitalist or between bourgeoisie and proletariat.

The second line in Marxist interpretation asserts that professions are not structurally different from any other kind of labour which is subject to capitalist production. As changes in the organic composition of capital tend to bring about the massive reintroduction of the intellectual, labour becomes an integral part of production. Expertise is either drawn from occupations already dependent on the capitalist firm or tends to be qualified as professions; the workers tend to seek professional status or are granted professional privileges, for reasons integral to the organisations. Salaried experts or professionals share one characteristic; the products of their activity do not normally reach an open market, but remain within the purchasing organisation, where they are used

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1. This idea is later developed by Ehrenreich & Ehrenreich (1977) who placed the professionals between managerial and lower classes in a workplace. See also the discussion on the deprofessionalization of professionals further in this study.
directly by employers or by clients of the organisation, a process of production which eventually makes them only agents of power (Larson, 1972, p. 212-243). With regard to the class identity of, for example, lawyers, one might suggest that much of their work relates to the sphere of reproduction rather than production (e.g. family law, inheritance or the transfer of unproductive property such as homes). Even within the capitalist enterprise, lawyers have considerably more influence on how surplus value is distributed among capitalist than on how it is extracted from workers (Abel, 1988, p. 22).

Three dominant approaches in today's sociology of professions, namely, deprofessionalization, proletarianization and corporatization, have developed from the classical Marxism.

4. Deprofessionalization, Proletarianization and Corporatization

In general, "neo-Marxist" theorists believed that by the end of the Second World War, western countries had entered a completely different phase of capitalism in which the social and economic position of the working and middle classes would be much worse than ever before. According to the Marxist students of the professions, the highly developed structure of capitalist societies and the rapid technological changes in the twentieth century had a strong influence on professional people. In their views, professionals had no role in maintaining social order but, conversely, they were all highly educated workers of the state in the new era of capitalism. In order to make this point clear, I will revise the Marxist literature on the theory of the professions. My primary aim is to show how Marxist theories reduced the professionals to a slave-like position within the social hierarchy and therefore, were not able to provide a realistic explanation of the nature of professional groups and their role in developing countries.

1. Another classification, quite different from the one introduced here, was made by Derber (1982). He collected all Marxist inclined theories under three groups. First was related to "theory of bureaucratisation", the second the notion of "educated labour and the new working class" and third "the professional-managerial class" with a special reference to Ehrnreich's view.
To do this, I will summarise the perspectives of as many “neo-Marxist” writers as possible and, in this way, it will be possible to see their common points. As is known, some theorists in the sociology of the profession focused mainly on the medical area. When I present them, I will refer to the medical area. Otherwise, I will draw all examples from the legal profession.

The earliest comments on the professions came from the classical Marxists or “Monopoly Capital Theorists”\(^1\), who were mainly concerned with, how the new corporate structure would affect professional work, the educational system based on the knowledge explosion in science and technology, the structure of professional society ruled by the professions and the control mechanisms within professional organisations.

From the 1960s onwards, in addition to Monopoly Capital theorists, a few more attempts have been made to solve these problems. The first was made by the proponents of deprofessionalization theory. The second flourished in line with classical proletarianization theory. The third made a link between the process of corporatization and the professions.

The seeds of the deprofessionalization theory can be found in the work of Wilensky(1964)\(^2\), in which he asserted, contrary to most approaches, that professional knowledge provides a weak base for an exclusive jurisdiction over work. While bureaucracy enfeebles the service ideal, client orientation undermines colleague control

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\(^1\)It is asserted by the capital monopoly theorists that in the new phase of capitalism, development units of production became larger and more concentrated and small producers were taken over by bigger corporations established by more “scientific and rational” principles of management. The concentration of capital brought about the development of cartels and monopolies which were able to manipulate and restrict the workings of a free competitive market. See, H. Braverman(1974) *Labour and Capital Monopoly*, and Paul A. Baran and Paul M. Sweezy,(1966) *Monopoly Capital*.


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and professional norms. For this reason, according to him, the occupational group of the future will combine elements from both the professional and bureaucratic models.

Marie Haug (1973, 1988), reached a different conclusion. For her, professional development was a trend towards deprofessionalization, rather than professionalization. The main reason for this is the fact that professions will lose their unique qualities with time, particularly their monopoly over knowledge, public belief in their service ethos, and expectations of their work autonomy and authority over the client (Haug and Susman, 1970; Haug, 1973). She maintained that the route of professional development has changed radically within last two decades, believing that two main factors are still playing a vital role in this process. The first is recent inventions in computer sciences. With the new facilities offered by computer sciences, it is no longer difficult to obtain expertise knowledge. Knowledge has become computerised and the computerisation of academic knowledge has broken down the monopoly of the professions over it. Therefore, in the very near future, the esoteric knowledge of the professionals will be accessible to anyone who may want it. The second is the changing pattern in the behaviour of the clients. The public is better educated and no longer accepts the work of professionals unquestioningly. Unlike earlier periods of history, many people are now growing more knowledgeable and demand more accountability. So, a more conscious client control is signalling the end of professional monopoly over knowledge.¹ In short, according to Haug, technological developments and increasing client control over the profession are causing professionals to lose their power and they are becoming slaves of the state.

¹In addition to this, some others argue that the behaviour like do-it-yourself of client is an indication that professional people are losing their monopolistic power over their knowledge. This trend is clear for example in the divorce law or routine medical treatments (Williams and Black, 1972). According to them, clients are now able to get an access to this sort of special knowledge mainly through mass media, especially television. For an earlier work on the social distance between the client and professionals, see, Kadushin (1962). Apart from this, Heinz and Laumann (1978) emphasised the determining influence of the client over the work of American lawyers. Because of this, they believed there was a trend towards social disintegration of lawyers rather than integration. See also Schwartz (1980), Marsden (1977).
Like Haug, Toren (1980) pointed to two main sources of the process of deprofessionalization. She suggests that the changes in the knowledge base of the professions (namely technological innovation and specialisation or the standardisation and routinization); and the ideal of service (or changing patterns in clientism) were undermining professional autonomy. In other words, unlike Haug and many others, Toren insisted that these principle sources of deprofessionalization were rooted in professionalism itself rather than an external threat like bureaucracy or state intervention.

The impact of computerisation on the legal professions in particular is stressed by Engel (1977), who argued that there were five dimensions of standardisation in law; the use of automation and computer technology; fee assessment; delegation of lawyers' tasks to lay assistants; the use of systems analysis in the performance of legal services; and encroachment by lay persons and lay institutions. Slayton (1973) also drew attention to the applications of the computer in law, arguing that it would make available legal knowledge similarly interpreted.

Changes in the pattern of clientele were one of the main issues in the works of Abel (1985, 1986, 1988). Despite the fact that his starting point was rather different from all deprofessionalization theorists, he, too, believed that the legal profession was in a serious crisis. Even if it retained considerable power in the first half of this century, it is not capable in sustaining its prestigious position in the second. There are three main reasons for this. Firstly, the transfer of control over entry from the profession to the colleges or universities. Secondly, the meritocratic foundation is itself fundamentally contradictory, since it is predicated on the value of equality but actually produces inequality. Thirdly, the emergence of sub-categories of lawyers seeking to re-establish their claim to exclusive cognitive competence and thereby recapture control over supply.

\[1\] See also, Bigelow (1973), Sprowl (1979).
For all these reasons, the profession as an economic, social, and political institution is moribund\(^1\).

A more recent comment on the deteriorating situation of lawyers in USA has been made by Rothman(1984)\(^2\). He argues that social, economic and political trends are undermining claims to autonomy and monopoly by previously well-entrenched groups like the legal profession. The courts, for example, have invalidated some professional rules of conduct, state governments are re-examining licensing laws and clients are taking a more active role in legal procedures. Following the main assumptions of Haug, he believes that these trends will lead the American legal profession to a deprofessionalization process and this will be effected by two factors; the first is an internal one which includes changes in the nature of the knowledge base, the composition of the profession, and employment patterns. The second refers to external factors like the client population, consumerism, and encroachment from other occupations. These trends are so powerful that in the very near future, autonomous professions may well become an "anachronism" and professional dominance may be replaced by a narrower, more clearly circumscribed client-expert relationship.

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\(^1\) See also Perrucci(1971, 1973), who especially examined the radical changes in American professions in 1960's, making a connection between then popular political and social movements for freedom and professional developments. He argues that at the present time professionals are facing four different dilemmas that threat the continuity of the radical organisations. The question now is whether they will cope with them or not. Concentrating specially on engineers, he argues that they are far away to deal with social problems like pollution, international tension, urban decay or creation of a totalitarian social system.

\(^2\) Similarly Schwartz(1980) argued that legal profession in America has been greatly bureaucratised through large scale law firm and bar associations have lost their self regulatory characteristics. In his opinion, the only solution to the recent dramatic problems is to teach lawyers in law firms to treat their clients as an individual rather than merely a legal problem passing through the bureaucratic process. See also, Steele and Nimmer(1976), Barzun(1978).
In conclusion, it is clear from the above discussion of deprofessionalization theory that the theorists in this group are agreed that there is a crisis in developing in the professions within capitalist societies. They called this process deprofessionalization rather than professionalization, claiming that all professionals were likened to slaves who served to enhance the dominant ideology within capitalist societies.

The same point can be seen in the context of proletarianization\(^1\) theories.

An early thesis of proletarianization was developed by C.Wirght Mills(1951), who argued that the requirements of bureaucratic specialisation would slowly reduce the scope of professional work and transfer professionals into simple technicians. It is the managers, rather than professionals, who will establish the goals and the project at work. As a result, professionals will be absorbed and assimilated into the bureaucratic context of white collar work and lose control over autonomy in their work. This was also a process that could lead to an increasing deterioration of the professionals' position in Britain(Lewis and Maud, 1952).

Following this tradition, Oppenheimer(1973, 1975), too, concentrated on the proletarianization of the professionals. According to him, five major changes in the industrialisation process underline the proletarianization process. Firstly, bureaucracies tend to replicate in the professionals' own work place. Secondly, because of the advanced system of education, work turns out to be more demeaning and boring than before. Thirdly, the few relative advantages of professional work, such as the standard of living, prestige and meaningful work, are deteriorating within the new system of market relations. Fourthly, with the increasing pressures on the professional stratum, many professionals in the public sector become more closely related to the oppressive functions of government and finally, he points to the importance of the relationship

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\(^1\)A good summary and discussion about the idea of *proletarianization* can be found in the work of Abercombie and Urry(1983), who tried to combine Weberian aspect of the class with the classical Marxism.
between the crisis in the workplace and the recent rise of feminist movements (p.214-216). In his view, all the "established" professions (medicine, law) or "new" professions (engineering and other newer technologies) or "semi" professions (nursing, teaching, social work) are affected by their existence in the bureaucratic context and hence by the trend towards proletarianization. The professional workplace is rationalized and autonomy declines, since it is taken away by the administrators. Professionals have increasingly broken away from traditional professional societies to join trade unions, or professional societies themselves have affiliated with unions (p.34).

A similar point has been made in relation to the medical profession in particular by McKinlay and Arches (1985). They asserted that the bureaucratic power would increase by the expansion of capitalism, and that professionals would fall to a position of salaried practitioners in private and public organisations. As the capitalist economy grows, "deskilling" and "routinization" of work will extract more surplus value from their labour. Chernomas (1986), similarly, argues that changing structural constrains resulting from the requirements of advanced capitalism are reducing physicians to salaried

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1 For the discussion about the position of semi-professional groups like librarians, chemists, nurses and etc. within the process of professionalization, see especially Etzioni (1969), (ed.), *The Semi-Professions and Their Organizations*; Denzin and Metliss (1967), *Incomplete Professionalization*; Larkin (1963), *Occupational Monopoly and Modern Medicine*; Prandy (1965), *Professional Employees*; Pettigrew (1973), "Occupational Specialisation as an Emergent Process"; Jarvis (1976), *A Profession In Process"*. See also, Wardwell (1952), Bock (1967).

2 This idea was later criticised by both Engel (1970) and Toren (1975). Toren asserted that the professionalization could not be explained in terms of the expansion of bureaucratic organisation, mainly because there was no sufficient empirical evidence to prove this so-called close relation between bureaucracy and professional development. Similarly Engel argued that bureaucracy is not necessarily detrimental to professional autonomy.

3 For an earlier emphasis on the relationship between the professional development and union movements, see, Goldstein (1955), "Some Aspects of the Nature of Unionism", in where he argued that there were two alternative ways for the professional organisations; they would either unify with the trade unions or create a completely different organisation from all the others.
employees. Professionals seem to have lost control over their work, being proletarianised through bureaucratisation.

Another discussion concerning the proletarianization of American lawyers has been made by Spangler and Lehman (1982) and Spangler (1986). Rejecting the basic assumptions of the theory of "Taylorism" (1890) or "deskilling", they argued, on the one hand, that lawyers working in large scale partnerships, government offices and various corporations were suffering a loss of control over employment and the management. On the other hand, despite this, professionals are able to maintain their power over the technical aspects of "lawyering work". That is to say, they still hold their expertise knowledge and discretion under their own control mainly through a process of peer control. However, they come to a similar conclusion to the classical Marxists, when they argue that no one can be sure that these attempts at control will succeed or that success will last.

A similar idea is put forward by Derber (1982, 1983) who starts with a critique of orthodox Marxist ideas on the sociology of professions. Like other Marxists, he believes that professionals are profoundly vulnerable to the rationalising forces of capitalist management and will find their work increasingly subject to the direction and control of their employers. This process will lead to the proletarianization of professionals. Three

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1. The rapid increase in the number of professional employees within industrial companies and the problems stemmed from it were much earlier emphasised by Drucker (1952), who argued that the professional employees and the technological changes like the invention of 'electronic brains', would be a major characteristic of the American industrial development in this century. It is only because new technologies need new type of practitioners in the work.

2. The main principle of Taylorism, that had been introduced by F.W.Taylor in 1890, was to organise work environment to achieve the most efficient use of effort to raise productivity. In order to do this, it is suggested that a couple of conditions must be provided; first is the fragmentation of work into simple, routine operations; second is the standardisation of each operation to eliminate idle times; third is the design and control of the work being a management task.

3. For the further debate of this point see, especially E.Spangler (1986), *Lawyers for Hire*, in where she agreed largely with the view of Derber.
factors will probably affect this process. First are recent changes in technology. Second is the emergence of a mass clientele. And the last is the invasion of professional markets by large-scale private and public capital.

Producing an alternative approach to orthodox Marxism, he suggests that there are two different kinds of proletarianization process; the first is "ideological" (meaning the worker's loss of control over decisions concerning the goals, objectives, and policy direction of his work) and the second, "technical" (a loss of control over decisions concerning how the technical tasks and procedures are to be carried out). He believes that the well-known analogy between the "craftsmen" who lost their jobs as a result of new techniques discovered during the period of the industrial revolution and professional people in this century is superficial, mainly because professionals are able to maintain their "skills" and their relative autonomy over the technical aspects of their work. According to him, this trend is evident in two recent developments. Firstly, there is widespread discontent among professionals, and secondly, the structure of employment is changing from self-employment to salaried professions. Undoubtedly these processes undermine professional control and eventually would lead to the subjection of professional labour to management design and control. In addition, professional knowledge is specialised and narrowed so that it no longer serves as a base of power and control in the organisation. In short it is predicted by this view that increasingly, professionals will lose their professional "ideology" but maintain the technical monopoly over their work.

Despite the fact that this view is a new one in the Marxist tradition, Derber contradicts himself when he comes to a similar conclusion to classical Marxism that he initially intended to criticise. While he believed in the usefulness of the differentiation between "ideological" and "technological" proletarianization, he concluded that the status of

1 For the critic of this analogy from another point of view, see also Freidson, The Changing Nature of Professional Control (1984b); Professional Power (1986).
professionals would decline to that of manual workers whose labour is open to all sorts of exploitation as the conditions in the work were changing rapidly.

An interesting line of analysis of proletarianization can be found in Ehrenreich and Ehrenreich's model (1977, 1979), in where they offer a different interpretation of the bureaucratisation of professionals. Basically, they pointed out that professionals have become part of a new class intervening between capital and labour. That is, on the one hand, there is no longer a difference between professionals and other working class people. This is mainly because their labour, like the others', is now open to external control and supervision by management. On the other hand, they may also be allowed by the dominant class to control and rule professional activities. Professionals thus have a unique position within the capitalist system, for they both manage and are managed. As asserted by classical Marxist theory, this newly emerged professional-managerial class is essentially "non-productive" and paid from the surplus value generated by others. Therefore, from the perspective of Ehrenreich and Ehrenreich, professionals serve the interest of the dominant classes.

In conclusion, like the deprofessionalization theorists, the theorists of proletarianization believed that within the highly developed capitalist system, the scope of professional

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1. For the critic of this point, see, Wuthnow and Shrum (1983), "Knowledge Workers as a "new class". They argue that the new-Marxist view of the professions fails to acknowledge present diversities, but gains support when broader trends are considered while the emphasis on ideological conflict between professional and managers gains some support at present but appears to be contradicted by longer-term development. Both of these views, for them, are right in some aspect, while wrong in the other.

2. The place of occupations within the capitalist class system is elaborated from the Marxist point of view by Wright (1979, 1980), who mainly asserted that class and occupation were different aspects of social structure. According to him, occupations can be understood as positions defined within the technical relations of production; classes, on the other, are defined by social relations of production. Bearing in this mind, he also added that in advanced capitalist states, there is a group consisted of mostly highly educated members of the society, whose location within the class system is not very clear. He named this category took place in between high and lower classes contradictory class position. So, the professionals must be considered under this category. For this discussion, see also, Aronowitz (1979).
work was largely confined and the professionals were transferred into simple technicians or some kind of proletariat.

For some other Marxist theorists, the impact of capitalist changes on professional work might also be understood in terms of corporatization\textsuperscript{1}, which refers to a specific control mechanism created by advanced capitalism. On the one hand, within such a capitalist system, professionals are involved in all sorts of organisational and financial arrangements. On the other, as time goes by, they would realise that these giant capitalist organisations are holding all the means of controlling both the internal and external relations of the profession (Montagna, 1968; Baer, 1981; Derber, 1982; McKinlay 1982; Navarro, 1988; McKinlay and Stoeckle, 1988). They become so powerful that nothing within the system may stop them from interfering with the work of professional people. In an advanced capitalist society, "corporatization" also refers to the rationalisation and bureaucratisation of professional work. Under the control of a corporation, all professionals eventually become desensitised to their work. The work itself becomes routinised and boring. So, the process of corporatization turns all professionals into simple workers of the state, whose labour is open to all sorts of exploitation by capitalist

\textsuperscript{1}-Although the first comment about the process of corporations within capitalist societies was made by Hegel and Marx, the subject became much more popular after Duhrendorf's the analysis in 1959. He asserted that the traditional Marxist class analysis was no longer explanatory mainly because the concept of ownership is separated in the highly advanced stage of capitalism from the control mechanism. The actual owner of a capitalist enterprise is not in a position to control it. Rather it is in the hands of managerial stratum. Additionally, see, Ben-David(1964), \textit{Professions in Class System of present-day Societies}; in where he pointed out that it is characteristics of present day societies to find the professional assume a central place in the class system though its locus varies according to the class system of society. This idea was later followed by Jackson and the others in Professions and Professionalization in where they believed that professionals were a class interest group and therefore both professionalization and de-professionalization were constant features in the maintenance of a particular structural situation and set of constraints. And see also, Zeitlin(1974), \textit{Corporate Ownership and Control: The Large Corporation and the Capitalist Class}. 

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entrepreneurs. In short, the corporatization will swallow up professional work, rationalising and bureaucratising market place in which professionals are practising (Derber, 1982).

In the medical area, Navarro (1975, 1978, 1988) asserted that the concepts of professional dominance and proletarianization failed to explain the real meaning of medical care and the position of the medical practitioners. In his view, there are a lot of possibilities for alliances with forces within the medical profession that see the commodification and corporatization of medicine as a threat to the well-being not only of the people generally but also of physicians. Similarly, in the legal area, Montagna (1968) stressed that the works of professionals working in large scale organisations is threatened by three recent developments; the first is that administratively these companies are highly centralised; second, the bureaucracy is much more rigid than smaller ones and therefore the punishment within bureaucracy increases enormously and finally, the rationalisation of professional knowledge is much more apparent.

The same point is also discussed by Baer (1981) who attempted to account for a recent decline in the work of medical practitioners. Baer argues that in American society, physicians are clearly losing their patients while traditional ways of medical treatment become much more attractive. The reason for this is the maldistribution of health and the political economy behind it. The observed rapid decline of professional dominance and autonomy in medicine is a clear indication of the deprofessionalization of medical practitioners, because medical technology is increasingly falling into the hands of the big corporate interests.

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1. The impacts of the bureaucratic structure of large size organisations over professional work are also examined by some others who hold generally an opposite view to the one described here. Hall (1968), for example asserted that a higher level of bureaucratisation existed among less professionalised groups and therefore, the professionals may not be necessarily in conflict with the larger organisation.
Like the others, the theorists of corporatization believe that professionals are losing their power and becoming a passive element within the complex network of the corporation in which they are practising.

Before closing this subject, it should be noted that all the theoretical formulations of professions presented above, i.e. the theories of deprofessionalization, proletarianization and corporatization, have been criticised by other Marxists and monopoly theorists. Especially those in the Weberian school believed that these theories failed to show sufficient evidence for the *dehumanisation* process of professional work. Some of the Marxists theorists viewed the term of "proletarianization" as inappropriate in explaining exploitation of professionals.¹

One of the major critics, for example, is Freidson(1985) who asserted that the main mistake of Marxists interpretations lay in their definition of professions. According to him, proponents of each theory conceptualised professions as fully autonomous, highly prestigious and totally free groups. However, it is his belief that all professionals are subject to a special kind of social control. Re-defining the concept of control, he assumes that the capacity of professionals to perform their daily work is conspicuously limited by the social control of the work, but, at the same time, there is little evidence that the special status of professions will deteriorate so much that they will find themselves in the same position as other workers. It is mainly because recent social and historical developments, since these theories were introduced, showed that neither computerisation nor client control over professional work led professionals into a slavish position within society. According to Freidson, Haug's view, for example, originated from the fashionable view of technology in 1960's. In addition, some theorists within this tradition were aware that

¹ More discussions relating to this point can be found in the works of Freidson(1985), *The Reorganisation of Medical Professions*; Larson(1979), *The Rise of Professions*; Navarro(1988), *Professional Dominance or Proletarianization?*; and Ehrenreich, and Ehrenreich(1977) *The Professional-Managerial Class*; Esland(1980), "Professions and Professionalization".
their theories were only a hypothesis which needed to be tested by the historical facts (Haug, 1973), while some others pointed a lack of clarity in the definition of the concepts they employed, such as deprofessionalization, proletarianization or corporatization (Derber, 1982). However, it should be noted that the most useful point in all of Marxists theories was a specific emphasis on the non-monopolistic character of professionalization.

To sum up, Marxist theorists of the professions paid special attention to the position of the professionals within modern capitalist societies and to how professions were related to the capital, surplus value, and means of production. It is their common view that professionals are only the slave-like labour force of the state, having no special status within the highly complex structure of advanced capitalism. Since they concentrated only on highly developed capitalist systems, they neglected the professions in developing countries and therefore do not seem very helpful to discover the historical characteristics of professionalization in the developing countries. For example, it is commonly argued that the social, political and economic structures of the Ottoman Empire were completely different from all European countries. Therefore, the analysis of the professions on the base of economic explanations of Marxist discourse, that is mainly aimed at the criticism of the western type of capitalism, might be misleading. For example, such an analysis probably will contribute little to the understanding of the great changes and transformation in Ulema\(^1\) class, which was one of the most powerful intellectual groups in the Empire.

As such, the role of professionals in the process of development has never been raised by these theorists. As will be shown later in this study, the professionals in a developing

\(^1\)A term that referred to all well-educated people possessed both religious and scientific knowledge or so to speak, to whole intelligentsia during Ottoman period. Because Islam was seen as a sole origin of knowledge, an intellectual person was supposed to obtain a religious education, Ulema was generally composed of religious people.
country believe that an intellectual or professional has to play a role in the process of social, economic and political development. In their view, contrary to the Marxist theoreticians, as society develops, the interests of intellectual or professional groups may not necessarily be congruent with those of the state. Indeed, the state itself might be a barrier to the process of development. Lawyers, for example, may feel it necessary to fight against the government or the state if its activities are not in favour of what they perceive to be the national, social or occupational interests. That is, in the process of economic, social and political development in developing countries, professionals may support the state authority as well as seek to undermine it.

Furthermore, the system of capitalism in developing countries may be perceived in a different way\(^1\). The development of liberal capitalism\(^2\) has involved passing through different stages and this may involve re-defining capitalism according to the specific needs of a developing industry. Therefore, from the historical point of view, the social status, prestige and role of professionals in those countries must be evaluated in different terms.

\(^{1}\) It can be noted here that there is an on-going discussion concerning how to define the economic structure of the Turkey. Some believe that although the rules of economic life is determined by the capitalism, it is in fact not a real capitalism observed in the west. It is only distorted form of classic capitalism (that is, çarpık kapitalism). On the contrary, the others agree that there is no basic difference between Turkish and European economic systems, but the only problem is that Turkish one is not matured yet. For this reason the state intervention to the economy might be much stronger than European countries. Obviously this kind of discussion is related to economy as well as politics. The first approach was held generally by leftists, while the second by conservative who for long a time defended a mixed economy (karma ekonomi) in which both state activities and private activities were welcomed. For more information on political aspect of this discussion, see, especially, Hale(1974), *Aspect of Modern Turkey* and also Berkes(1964), Okyar(1965), Soysal(1970), Inalcik(1977), Keyder(1979).

\(^{2}\) For a historical analysis of the role of the lawyers in the process of liberalisation in a developing country, see, Ziadeh(1968). A similar point in the present study will also be raised further. The political involvement of Turkish advocates and the relationship between the state and the advocacy will be discussed in the fourth chapter where the results of field research conducted in Turkey are presented.
5. The Professionals, the Marketplace and Occupational Control

As noted earlier, ethical codes, education and the structure of professional organisations were the major themes in the classical studies on professionalization. These studies attempted to explain the professions in terms of just one of their fundamental characteristics. It is for this reason that they failed to give a full account of professional development. By the 1970's, a theoretical vacuum in the sociology of professions became much clearer. The focus of the debate moved away from how an occupation becomes a profession towards an examination of the conditions under which professionals are practising and what position they have within the wider community.

This discussion reached its peak in the study of Larson (1979), who concentrated mainly on the internal and external relations of the professions, referring to the social position of professionals and the main characteristics of the workplace.

The critical point in Larson's analysis was an assumption that professional work, like any other form of labour, was a fictitious commodity that was not produced for sale. Unlike craft and industrial labour, most professions produce intangible goods; their product is only formally alienable and is inextricably bound to the person and personality of producers. Therefore, a special market for professional services had to be created, for the

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1. For the relation between the legal ethic and the educational system, see, Pipkin (1979), who argued that American educational system desensitises law students to legal ethics. In addition, a similar theme is taken up in the example of advertising ban over legal practice in the work of Fennell (1982).

2. For the discussion of this point, see, Johnson (1972) and Abbot (1988).

3. An important critic of the Larson's book, The Rise of Professions, is made by Schudson (1980), who argues that Larson ignored at least one aspect of professionalization, namely, by nature human being are as eager to maximise status as to maximise wealth. In other words, it can be said that professionals may not be controlled by the market conditions described in Larson's book. In contrast, the process of professionalization is an independent path to control of a market and economic resources.

4. The external and internal dynamics of professionalization is widely discussed by Klegon, who suggested that such an analysis was, perhaps, the only way to understand the social meaning of occupational tasks and social consequences of professionalization.
existing markets were unstable and far from unified. However, the question of what kind of special market may facilitate the securing of the future of the profession, is open to further consideration.

Larson's answer is quiet straightforward. A special market\(^1\), for her, can only be created in terms of a special kind of control mechanism\(^2\). In order to establish such control over both the profession and the professional market, a profession may choose one of the two options.

The first one is to legitimise the conditions of access to their special knowledge, which means the source of their power and the future of the profession. To be more accurate, in a market characterised by the modern conditions of capitalism, they have to protect their knowledge and enhance this special power. The best way of doing this, for Larson, is to **standardise professional education**\(^3\) as that transmitted mostly via the university system. Yet, this view sees universities as only a tool to legitimise the dominant ideology.

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1. For the general characteristics of the market in that professionals are working, see, Horowitz (1980).
2. More earlier, among many others, for example, Colvard (1961) referred the concept of control for different purpose. His aim was to show how professionals established an autonomy over their professions. Professions was assumed in this view to be dependent on a certain environment surrounding them, but, despite this, they were also able to control this dependency, mainly creating a special public image, i.e "occupational prestige". Apart from this, a recent and more comprehensive discussion about the concept of the occupational control can also be found in the work of Child and Fulk (1982), who have described it as a collective capability to preserve unique authority in the definition, conduct and evaluation of the work and to determine the conditions of entry to and exit from practice. They also agree that it is central to the comparative analysis of professions because there is a relation between the control mechanism within professions and the privileged situation of professionals.
3. Classical views saw the professional education as an important institution in adjusting professional activities to meet the changing needs of society or them university staff are able to contribute to develop the professional ethic because of their salaried status. It also plays a vital role in the process of professional socialisation of the students. The Larson's view presented here seems to be a reaction to this traditional insight of professional training. In addition, there is a large literature concentrated on the educational system of the professionals. For the critics and more explanation on this issue, see, for instance, Reid (1979), Light (1979), Pippin (1979).
within society. The knowledge transmitted in these institutions has to be the knowledge of the dominant classes. Professionals who possess it, then, have to act according to the interests of the dominant class. This is the process which Larson called the cognitive base of professional development. So, such an educational system plays a vital role in the process of making professionals simple servants of the ruling classes.

The second option is to organise the internal relations of the profession in a specific manner. As seen in the process of professional development, professional people were very keen to regulate fee tables, codes of ethics, and occupational competition among the colleagues. Once the ethical rules are created, for example, all the members of the profession have to follow them and also monitor the actions of the others. Along with the ethical rules, a system of punishment is also created. A member may have to face various kinds of sanctions when he acts against the established ethical rules. Punishment is conceived necessary as a deterrent factor to protect the prestige of the professionals and to maintain the market conditions in which they are working. That is, especially with the recent shifts in the capitalist system that stimulate a great expansion of demand, professionals have to offer a reliable service, by controlling the fees, ethical codes, rules of entrance to the profession and so on. In other words, they have to create what she calls the professional project, which means a concern with establishing high social status for professionals independent of their organisational affiliation. However, because, in an advanced capitalist system, they, too, have to maximise their power position on the market, such an effort makes them proletarianised functionaries, though they believe that they are autonomous. That is, this is a the process that will result in a slave-like position of the professionals within society.

Although Larson considered the internal relations of a profession to be crucial in the process of creating a professional market, she also believed that "the structure of it is determined by the broader social structure which shapes the social need for a given
service and therefore defines the actual or potential publics of a given profession(p.17-18)".

In short, Larson asserted that there is a parallel between the radical shifts from the labour power to factory work in the nineteenth century, and the contemporary displacement of the independent professional by the employee, that is, between the deskilling and routinization of craftsmen and the professional people. It is believed that professionalization is both a response to the extension of market relations and a movement for the conquest of collective social status by the bourgeoisie. Due to the general characteristics of the advanced capitalism, professions have to operate within the area of the state and spread technocratic legitimations of the new structure of domination and inequality. For technological developments have increased the requirements for capital, forcing professions to depend on capitalists, the effectiveness of the professions will replace with the dominance of capitalists. As this replacement takes place, the professional skill will be no longer needed and professional individuals will be nothing but a proletariat, open to all sorts of exploitation. In other words, as anticipated in Marxist literature, professionals are alienated economically and politically.

A similar point was made by Derber(1982), who believed that the concept of proletarianization has two dimensions. The first is related to historical developments and the second to structural changes. The former refers to a historical process of the loss of control over work, which means a shift from self-employment to salaried employment and the loss of autonomy that the professionals have enjoyed for a long time. The latter refers to the structure of the labour process resulting in the subordination of professional control to management control. As noted previously, he also distinguished between ideological and technological proletarianization in which the concept of control is handled from another aspect. So, Derber, too, reaches a similar conclusion like Larson; professionals are now no longer able to control their own work and will become slave-like servants of the state.
Unlike both Derber and Larson, Johnson (1972) saw the professions as a product of specific internal conditions. He focused mainly on the practitioner-client relationship and the distribution of power in society as a major factor transforming the nature of professions-clients relationships. His conclusion was that a peculiar institutionalised form of control is the essential aspect of professions (p.38). The priority was given, in Johnson’s view, to the mechanism of professional self-control. Recognition of the significance of occupational control over work may assist in understanding of the structure of the professions not only in industrial societies but also in developing countries.

In conclusion, it might be noted that the concept of control is of great importance in both Larson’s and Johnson’s analyses. However, they referred to this term in a different context and for different purposes. Generally, in analysing the complex mechanism of control, Larson placed emphasis on the external relations of the professions, while Johnson took internal relations as a starting point. The common point in both, however, was a special reference to the social context of professional development.

To sum up, it can be said that, like other Marxists inclined theorists, Larson agreed that on the basis of the educational background of the professionals and the market conditions in which they are practising, they are slaves of the state, serving the interests of the dominant class. Directing her attention to advanced capitalist societies, Larson, too, said little about developing countries. In this respect, her theory failed to develop an approach

1. The relationship between clients and professionals was also taken up by Marsden (1977). Adopting the Johnson model to Canadian medical tradition, and concentrating especially power relations within professions, he argued that especially doctors who teach hold a considerable power in their hands than the other who work in other type of medical practice in Canada.

2. A comment on Johnson’s view can be found in the work of Cain (1979). According to him, Johnson was wrong, firstly, in seeing the concept of control as a permanent, i.e. non historic, logical possibility, whereas, as history showed us, many occupational are moving in and out, secondly in excluding the power of clients from the professionalization process.
that might be helpful in understanding the professions in the developing countries. However, Johnson, developing more the general concept of the control, asserted that professions constitute a specific control mechanism in different countries in different ways. In this respect, in the literature of the sociology of the professions, Johnson's approach is more comprehensive as far as developing countries are concerned.
6. The System of Professions and Occupational Control

A theoretical alternative to both Marxist and non-Marxist approaches has been more recently sketched by Abbott (1981; 1988). The most crucial question in his analysis is *how societies structured expertise and why it is so important*. According to him, a research in this area must deal with the fundamental characteristics of expert knowledge and its role in history, contemporary societies and the future of societies. Whereas, until present time, most theorists have been concerned with the process of professionalization rather than these areas or the work itself. He believed that in order to give a full account of professionalization, a historical perspective was necessary.

His historical analysis suggests that professionalism has not been the only way of producing and using large quantities of expertise. Societies can have many alternatives to generate and store knowledge in a way which can never be accomplished by a form or a material or a machine. Some societies were able to survive for thousands of years without expert specialisation, in which the bearers of knowledge were the lay practitioners of religious groups as well as experts of civil services and other agents of community. Therefore, a better way of looking at professional developments suggests a radical change of the conventional aspects of history, converting it into a broader one. He believed that since social events are the result of various different determinants, social structure is multifunctional and knowledge is normally stored and served in multiple ways. In short, professionalization, in Abbott's view, is only one of the ways of creating knowledge-based productions.

In this respect, three different means of institutionalising knowledge might be observed in history. Firstly, commodification of expert knowledge (printed materials and machines are the best examples of this kind). Secondly, manufacturing of these commodities, (the division of labour and its organisational form). Finally, application of esoteric and intellectual aspects of knowledge (expertise can reside in people in terms
of being controlled by other professionals or an elite group drawn from them). Professionalism, in this sense, is about as old as commodification and steadily spread through the labour force during the last two centuries. It is also asserted that each of these types of embodiments constitute a particular way of producing capital, commodification involves physical capital, professionalization cultural capital, and bureaucratisation organisational capital.

According to Abbott, the task of the professions can be created or destroyed by historical developments. Technological changes, for example, may affect professional developments. New groups can emerge through client differentiation or through the forces leading to enclosure. There are forces within professions that strengthen or weaken jurisdiction\(^1\) and affect the content and control of the work and its disturbances through the system of profession and jurisdiction. A claim to be a profession comes into existence within a wider system of social and economic relations, a system in which "the link of jurisdiction embodies both social and cultural control(p.86)".

The structure of professional development can be explained shortly on the basis of a number of postulates(p.112). These are:

1) the essence of profession is its work, not its organisation,
2) many variables affect the content and control of the work,
3) professions exist with other professions in an interrelated system.

It is clear that the concept of control, which was the key element in both Larson's and Johnson's analysis, is not of central importance in this model. In Abbott's model, the

\(^1\)Using the term jurisdiction he referred to "a link between a profession and its work" that is the main factor in determining the history of individual profession. He believed that "to analyse professional development is to analyse how this link is created in the work and how it is anchored by formal and informal social structures"(p.20).
mechanism of control is directly related to the professional tasks that are culturally defined. In other words, professional control is explained in terms of other more effective forces in the system. Contrary to professionalization, the concept of control is important in organising professional life, but, its role in the emergent of a profession is not so determining. That is, to become a profession, a profession has to find an exclusive jurisdictional arena within social and cultural systems, rather than establishing a certain kind of control over its work. This model suggests three social domains in which control over tasks is established. The first one is public media, the second legal discourse and the third workplace negotiation.

Similar to the claim of control is a 'jurisdictional claim' which can be made in three different arenas of social life. "The first is the legal system, which can confer formal control of work. The second is the related arena of public opinion, where professions build images that pressure the legal system and a third, equally important arena is the workplace. The arena of public opinion is the most complex one, in which many forces conflict, while the workplace jurisdiction points to a simple claim to control only certain kind of work. The legal jurisdiction has three dimensions. The first is the legislative in which certain professional groups were given statutory rights. The second is the court, where such rights are enforced and actual boundaries of legislative mandates specified. The third is the administrative or planning structure, which has always dominated the legal structuring of professions."  

Once a jurisdictional claim is obtained, the members of professions become full authorities able to perform legal work as they wish. The position of lawyers in this process seems to be fairly interesting. They may be involved in two different positions and play two different roles in the course of claiming jurisdiction; the first is that they are in a position to confirm a jurisdictional claim in the courts. Secondly, they have to define themselves as a professional group through the same court in which they are practising.
Another condition for a successful jurisdictional claim is to find a vacancy in professional life. This means that a profession can emerge only if there is a vacancy for it within the system. Vacancies can be created in a few ways. They can arise by brute force, or, by internal or external events. If the social changes are initiated by the movements that came from the above, external factors may play major role. In addition, this idea suggests that there is a similarity between the hierarchy system within conventionally structured occupation such as the clergy, civil services, and so on and the jurisdictional claims of a profession.

In conclusion, like Johnson, Abbott focused on the conditions in which an occupation becomes a profession. Johnson believed that to recognise an occupation as a profession, a great change is needed in the mechanism of control, while Abbott argues that this process is related to a much wider social, economic and legal context. In a broader sense, an institutionalised form of control is much more related to the internal relations of the group as well as the disturbances of power while a jurisdictional claim arises within a context in which there is a cultural and cognitive interdependence between both professionals themselves and other social institutions. This means that theoretically the concept of jurisdiction in Abbot's model seems to have a similar function, though in a different context, to the concept of control in Johnson's approach.

Moreover, it would not be wrong to say that Abbott's model has been an attempt to collect all the critical points in the most-known theories in the sociology of the professions. For example, the social, cultural and political conditions in which occupations are making claims to a professional status have already been mentioned by

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1-This approach also explains the problematic position of semi-professional groups. Abbott argued that "a profession can create schools, journals, the codes of ethic, but it cannot occupy a jurisdiction without either finding it vacant or fighting for it" (p.86).

2-This idea seems to be important in evaluating especially the Turkish case, in which all the major political, social and economic reforms and changes were initiated by the governmental or political power, rather than the people itself.
many others. The jurisdictional competition between occupations was also mentioned before. Therefore, his model, contrary to his suggestion that it has filled a theoretical vacuum in the sociology of professions, does not seem to be a very new one. He emphasised some of the main features of professionalization which were revealed earlier in the literature. However, his contribution lay in his systematic analysis of the social, cultural, legal, political and historical characteristics of the professionalization process. In conclusion, by collecting all mainstream explanations under a single model, Abbott tried to give a full account of historical developments in the institutionalisation of knowledge and their consequences on the professions in developed countries. Like the other theorists, Abbott said little about never developing countries. He viewed professional groups as an inevitable element within advanced societies, ignoring the existence of similar groups in developing countries.

1. For example, in earlier period, among many others, Wilensky (1964) made a similar point when he pointed out that any occupation wishing to exercise professional authority must find a technical basis for it, assert an exclusive jurisdiction, link both skill and jurisdiction to standards of training and convince the public that its services are uniquely trustworthy. See also Goode (1960). An interpretation of the economic, organisational and cultural environment around the professions was made earlier by Grimm (1973) and more recently by Light (1988). In Light's model, similarly to Abbott's, three factors which affect professional development were stressed; 1) cultural, economic and structural shifts that alter markets, 2) a different product that meets an unfulfilled demand, 3) a legitimacy that overlaps with the dominant profession. Especially in the legal area a connection between lawyers and their professional culture within which they are practising, is also emphasised. See, Friedman (1975), Black (1976), Tomanic and Bullard (1979).

2. Perhaps, one of the first emphasis on this point came from Smith (1957), who asserted that the essential component in professionalization is the changes in the organisation or in the social environment. But there may occur some resistance to these changes within both environmental conditions and the profession itself. The public image, for example, as Abbott pointed out, plays an important role in this. It rewards certain activities and ignores others. Thus, to change a profession means to change the conditions surrounding it. Denzin and Mettlin (1967) also agreed with this view, pointing out that the competition was not only between professions but also within them. At the beginning of their life, all professions, in their view, tried to be a complete one. But, when they failed to establish this, they became an incomplete one or in other words, a semi profession.
7. The State and The Professions

One of the most discussed subjects in the sociology of professions is the relationship between the state and the professions. At present, there are mainly two dominant theoretical frameworks attempting to explain this relationship. One suggests that professional groups are autonomous from the state, while the other points to a close relationship between the state and the professions.

In this part of the study, I shall concentrate on these two general approaches, but before that, it is my belief that a brief looking at the literature on the theory of the state in sociology will provide an opinion how the discussion of the state suddenly intensified within last two decades. Such a general theoretical review will also show that there is a close link between the general discussion of the state in sociology and the attempts to explain the relationship between the state and the professions in the sociology of the professions. I will agree that the approaches in the theory of professions have their roots in a more general and traditional discussion of the state in sociological or political theories. At the end of this part, it will also be argued that the concept of the state, as referred in both sociology and the sociology of the professions should not be considered as a preconstituted and separated social formation from the professions. This idea also constitutes the hypothesis that will be tested through the field research which will be presented in the following chapters.

7.1. Theories of The State in Sociology

Because Marx himself did not directly offer a theoretical analysis of the state, the analysis of the state in Marxism has been based on the works of Engels, Lenin and Trotsky. Such issues as the relations among different parts of the state apparatus and
state power were not examined in detail in Marx's Capital. Therefore, the views of Engels, Lenin and Trotsky dominated sociological theory for a long time.

Apart from Marxist approaches, there have also been some other approaches. Perhaps the most influential one was that of Weber, who described the state as a *human community which claims the monopoly of the legitimate use of physical force within a given territory* (Weber, 1968, p.54-65). Two points were crucial in this approach. Firstly, the state could be defined in terms of its monopolistic authority to use power. Secondly, this authority was built up on the basis of a set of moral and shared values within society (1989, p.41).

After the Second World War, however, the Marxist view of the state re-entered social research. Especially during the 1970s, both American and European sociologists and

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1. Jessop (1990, p.26), who is one of the recent state theorists, collected the classical approaches under six categories and believed that each represented different theoretical assumptions and different political and social implications.

A) In the earlier works, Marx regarded the modern state as a *parasitic* institution that played no essential role in economic production or reproduction.

B) He also discussed the state and state power as *epiphenomena* (id. simple surface reflection) of the system of property relations and the resulting economic class struggles ([Preface to Contribution to the Critique of Political Economy](https://en.wikipedia.org/wiki/Marx%27s_Economic_and_Moral_Sciences)).

C) Another approach treats the state as the *factor of cohesion* in a given society (Engels, 1884; Lenin, 1917; Poulantzas, 1969; Gramsci, 1971).

D) The state can also be neutral and used for the benefit of any class or social force as an instrument of class rule.

E) Lenin and Engels also mentioned the institutional structure of the state. As a *Public Power*, it developed at a certain stage in the division of labour.

F) The state may also be defined by referring to the forms of political representation and the state intervention. Essentially, this approach examines the state as a *system of political domination* with specific effects on the class struggle (Lenin, 1917).

2. It should also be remembered that much earlier works than Marx's and Weber's had been done by N. Machiavelli (1513), *Prince*; T. Hobbes (1651), *Leviathan*; and J. Locke (1690) *Two Treatises of Government*. For a good presentation of all these, see, Held and et al. (ed.), (1983).
political scientists emphasised changes in the role of the state within newly established welfare states. These theorists were involved in a new Marxist school in which general principles of orthodox Marxism had lost much of their former influences. In general, they believed that social reality had greatly changed since Marxist ideology appeared for the first time in the nineteenth century.

In this way, the direction of state research was changed towards more complex and contemporary problems and a number of new theories of the state were introduced. Within these new approaches, great importance was given to the ideological political arenas in which the state apparatus was operating.

These theories will be briefly examined and classified into six main groups, namely; 1) the discussion between Miliband and Poulantzas, 2) Gramscian school, 3) Neo-Ricardian school, 4) the theory of state monopoly capitalism, 5) the approach of the ideal collective capitalism, and finally, 6) historical analysis of the state.

Among Marxist studies, Miliband's and Poulantzas' works were, perhaps, the most important ones. They both focused on political and ideological spheres rather than economic processes of the kind that shape the course of society as specified in classical Marxist analysis.

Miliband (1968) was interested in confronting liberal theorists of democracy with the facts about the social background, personal ties and shared values of economic and political elites, and about the impact of government policy on such matters as the distribution of income and wealth. In other words, the central concern of Miliband was to criticise liberal pluralism and in that way discuss politics and its separated roots from economical activities.

Poulantzas (1968), too, concentrated on criticising traditional Marxist assumptions relating to the economic structure of the society. He argued that the state was
constituted on the basis of highly complex social relations\(^1\) rather than only on the basis of the movements of the capital. In other words, the state is not a simple instrument merely used for capital accumulation. According to Poulantzas, classes should not be seen as simple economic forces existing outside and independently of the state and capable of manipulating it as passive instrument or tool. In addition, class struggle is not confined to civil society, but is reproduced within the heart of the state apparatus itself\(^2\)(p.44-50). The state, in his theory, had an objective function in maintaining social cohesion so that capital accumulation can proceed unhindered. Unlike Miliband’s approach, the state is analysed in terms of its *institutionalised structure* rather than in terms of individuals who control it\(^2\).

Poulantzas also argued that bourgeois political domination could only be established as a way of disguising inequalities in the areas of political, economic, and legal applications. With the advance of modern nation state, this process gained momentum and the state is regarded as a *neutral entity independent of the interest of a certain class, group, and organisation*. This idea is reinforced in time by the principles of free election and strong parliamentary institutions. Subsequently, however, the principle of free election in a democracy prepared the ground for legitimising the interests of dominant classes, while, at the same time, it helped to determine the direction of governmental decisions without undermining its basic structure.

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1. The class structure of modern societies was examined by many others. The most known among them was Carchedi(1975), who argued that classical Marxism had been wrong in making an automatic correspondence between the economic identification of classes and their definition, because classes could only be defined in economic, political and ideological terms. For the criticism of both Carchedi and Poulantzas, see, Johnson(1977), who accused them of being reductionists and ignoring the actual characteristic of the class power.

2. A good example of the critiques written on the discussion between Miliband and Poulantzas can be found in the work of Laclau(1975) who considered Poulantzas’ work as one of the major contributions to the theory of the state in recent years, disagreeing with Miliband who found Poulantzas’ view not very helpful in the development of Marxist political sociology. Laclau also asserted that Poulantzas’ theory was not sufficient to explain the historical development of the state.
Similarly, from the perspective of the Gramscian school, the state plays an important role in unifying the bourgeoisie and organising its political and ideological domination. Unlike classical Marxism, the neo-Gramscian school (Gramsci, 1971; Laclau, 1975; Gamble, 1974; Jessop, 1990), insisted that the dominance of bourgeoisie depended on the existence of particular forms of organisation and representation. Thus, the concept of ideological hegemony became the one most referred to by the members of this school.

In their opinion, in order to establish a hegemony for the "dominant bloc", it is necessary to secure the support of dominated classes. Such support finds its root in the incorporation of certain interests and aspirations of the people into the dominant ideology. The success in sustaining an established hegemony depends on articulating popular democratic struggles into a general ideology of the dominant class. Under a modern capitalist political and economic system, all democratic institutions, competing parties, the separation of the powers and the government itself, ensure a measure of flexibility. It is for this reason that "the power bloc " in a democratic system is able to maintain social cohesion and secure the conditions necessary for continued accumulation (Poulantzas, 1968; Gamble, 1974; Jessop, 1990). If the dominant ideology needs to be challenged, it can only be done in terms of mass political movements supported by the people who suffered from the dominant hegemony system (Jessop, 1990, p.42). It is believed that the success in transforming the state from one form to another is generally dependent on the strategies developed by the competing parts of societies.

Consequently, the neo-Gramscian school dealt mostly with the concepts of ideology, politics, and institution rather than the mode of production or the ownership of the means of production. The state has been described in terms of the existence of a particular form of organisation and representation. This distanced them from classical Marxist debates over the economic basis of the class struggle.
In contrast to the Gramscian school, some theorists, called neo-Ricardians, paid great attention to the economic structure of the state (Gough, 1975; Boddy and Crotty, 1975; Glyne and Sutcliffe, 1972; Gulalp, 1987). Their main interest was not very different from the classical Marxist line. They attempted to explain how states intervene in economic activities and operate for the benefit of bourgeois. In their opinion, "capital will generally manipulate the business cycle to discipline labour and reduce wage costs in the interests of corporate profit maximisation (Boddy and Crotty, 1974) or to redistribute income to the private sector through fiscal changes, subsidies, nationalisation, devaluation, inflation, wage control and legal restrictions on trade union activities (Glyn and Sutcliffe, 1972), or to counter the inflationary effects of tax increases and public borrowing through cuts in public spending on the 'social wage' (Gough, 1975). Therefore, the extreme power of capital in the state created difficulties for revolutionary movements. Eventually the whole system operates at the expense of lower classes. So, in this view, the state is treated as an instrument with an interventionist capacity, manipulating economic activities, and impoverishing the working class. Its basic aim is to maximise the profit for the benefits of capital holders.

Another school in the line of classical Marxism is organised around the notion of state monopoly capitalism (Cheprakov, 1969; Sdobnikov, 1971; Afnasyef, 1974; Menshikov, 1975), which refers to "a specific stage of capitalism in which ascendant monopoly capital interests ally with leading sections of the bourgeois state, not only against the working class but also against non-monopoly fractions of capital (King, 1986)". It is asserted by these theorists that the process of competition during the period of laissez-faire capitalism leads inevitably to the concentration and centralisation of capital and hence to a new stage in which monopolies dominate the whole economy; a process that results in an expanding state intervention in the economy in terms of the nationalisation of basic industries, state provision of essential services, centralised control over credit and money, state assistance for investment, the creation of a large state market for
commodities, state sponsored research and development at the frontiers of technology, state control of wages, state programming of the economy, and the creation of international economic agencies. With the growth of such intervention, monopoly capitalism is transferred into *state monopoly capitalism* (Jessop, 1990, p.33). At the end of this natural development of the capitalist economy, the state becomes an instrument in the hands of the dominant classes and acts only on behalf of them and at the expense of the working class, and even against those possessing small or medium capital. For this reason, dominated classes have to unify their political forces in a way in which they would enable them to secure their political and economic futures against monopoly capitalism.

In response to some of the difficulties with the state monopoly capital theory, some German theorists (Altvater, 1973; Yaffe, 1973; Blanke et al., 1979; Rosdolsky, 1974; Mueller and Neusuess, 1975), argued that under the conditions of the capitalist economy, to be successful in extracting surplus value through free exchange on the market, logically an institution that is connected to economic life through political rather than economic ties is needed. Therefore, to the extent that it is not an actual capitalist but a distinct political institution corresponding to the common needs of capital, the state is an *ideal collective capitalist* (Altvater, 1973). The pre-existence of such a state is necessary to create an appropriate market that facilitates the production and exchange of commodities and the accumulation of capital. The state provides suitable grounds for this market through legal and monetary systems that allow rational economic calculations.

For these theorists, the state has a little power to determine the rules of the capitalist environment, but it is in a position to mediate between market forces in terms of legal and monetary policies. It is for this reason that the state is an *ideal collective capitalist*. It is stressed that for the motion of law of capital, the capitalist mode of production will
necessarily have to confront a serious crisis which leads to a radical change in the system as a whole.

More recently, some other Marxist researchers attempted to introduce a new understanding of class struggle within capitalist society (Habermas, 1973; Offe, 1974; Hirsch, 1978; Gerstenberger, 1976; Holloway and Picciotto, 1977). In their view, the circuits of capital can only be understood in terms of historical developments rather than concentrating on competing forms of capital. Therefore, state intervention is the key element to account for the expansion of international trade and the process of capital accumulation. In a modern society, the socialisation of capital results in a new type of bourgeois hegemony over the working class. In order to secure the process of capital accumulation on a world scale, capitalism necessitates internationalisation of commercial activities in the process of capitalist development (Holloway and Picciotto, 1977).

Alongside the changes in economic structure can be observed some radical changes in political and legal structures. Throughout history, the form of the state has changed from absolutism to democracy. One may expect that in the period of state monopoly capitalism, the form of the state will change again; a new period which requires much more state intervention than ever before. With the increasing power of the state the importance of the legislative system will decrease in favour of a state bureaucracy.

In conclusion, the resurrection of the state theory in sociology started with the discussion between Miliband and Poulantzas. Miliband criticised the liberal theory of democracy, concentrating on political value system and political elites. Poulantzas saw the state as embedded in a milieu of complex social relations. In a sense, the Gramscian school also followed this way and asserted that the political link of the lower classes was important in securing the support of the dominant class. The state monopoly theory and the neo-Ricardian comments on the state drew attention to state intervention in
economic life while the ideal collective capital theorists emphasised a common need for capital. Apart from all these theories, some believed that the circuits of capital are related to historical development rather than to competing forms of capital.

Although they differ in their essence, it is clear that there is a common point in all of them. The concept of the state was considered as a structure separated from the rest of the society; a separate structure that may affect all kinds of other activities, including, for example, intervention to provide welfare. In general, all theorists in Marxist school saw the state as a dangerous institution in creating a better life for the lower classes.

The structure of the state has also been discussed in the sociology of the professions, though in different context and different terms.

7.2. Theories of the State in the Sociology of the Professions

There have been two main aspects of the state debate in the sociology of the professions. The first emphasised the autonomy of the professions, believing that they are able to establish a special monopoly in so far as they are successful in resisting state intervention in relation to professional practice. The second maintained that the process of professionalization can only be understood in terms of economic and political activities of the state. As mentioned earlier, the former view is basically developed by Freidson, while the latter appeared generally in the works of theorists like Larson and Oppenheimer, whose approaches found their roots in the Marxist analysis of the state.

In this part, therefore, these approaches which emphasised the autonomy of the professions and later the Marxist state approaches as reflected in the sociology of the professions will be described. Later, Foucault's criticism on the conventional view of the state, considered much explanatory throughout this work, will be presented.
The starting point for Freidson (1970) was the question of how professions differed from other occupations and under what conditions they were able to establish a professional dominance and thus a relative autonomy \(^1\) from the state.

He argues that there are several aspects of such autonomy. The first is autonomy over work, the second is control of the works of others, the third is a set of cultural beliefs and the final, the most fundamental source of professional power, is an institutional form of power \(^2\)(p.137).

Professional autonomy is closely connected to control over work. In this view, a profession can be autonomous in so far it manages to protect itself from all external influences, determining its own technical quality and standards as expected by the society that granted it a highly respected position. That is, coexistence between professional autonomy and the state power is possible, mainly because in an earlier period of history, the state itself was a powerful protector of professions. Therefore, the professions cannot be under attack from state intervention in any way. Rather, according to Freidson, autonomy defines a profession and the relationship between a profession and the state.

In the case of the legal profession, a similar position is addressed by Powell (1983). According to him, despite many changes in the technical aspects of the work, the system of government, the market and client control over practice, the monopoly of

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\(^1\) For a different autonomous view of professions see also Scott (1982), who focused on the administrative structure of professional organisations, arguing that there were three models of professions. The first is an autonomous organisation like law firms and hospitals, the second heteronomous, like social work and nursing and the last points to the future arrangements in professions. In his opinion, the gap between the professionals and administrators will be closed and a new structure, what he called conjoint professions, will emerge in the future.

\(^2\) An interesting study along this line was done by Ritti (1974) and others on the structure of the work of American priests. They argued that like other professions, priests are able to maintain an overall view of their profession as a whole by adapting changes in the organisational and social context.
lawyers over their work still survives. These changes enhanced the prestigious position of lawyers because some of them were initiated and facilitated by the bars and in this way, the autonomy of the legal profession was redefined. The same view is also repeated by Nelson (1985), though his starting point is different. For him, since the structure of legal practice has been greatly affected by the changing relations in the division of labour within the legal profession, the ideology of an autonomous professional practice may be strained. He also believed that the ideology of independence based on client groups who are actual users of the professional expertise will probably not change in the near future.

However, the view of the professions as having a great deal of autonomy is criticised by many Marxist and other theorists. Johnson (1990b, p.56), for example, argues that

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1. Nelson (1985) observed that during Watergate scandal in which the corruptibility of lawyers became very visible by the public, the prestige of lawyers fell to its lowest point. However, this discouraged the law students only a little from partaking in one of the most remunerative jobs in United States. Contrary to this, other research revealed a different result, asserting that the scandal still continues to plague American lawyers, who feel that the public does not hold them in high esteem. See, Lawpoll (1978).

2. For the critique of the Freidson's view in this context, see, for example, Light (1988), who argued that the theory of professional dominance did not adequately explain why autonomy should play such a central role in professional work. According to him, this classical view which claims an autonomy for the professions is not contributing to our understanding, mainly because it is now observable, especially in the case of medicine, that the core concept of the profession is changing as professional autonomy declines. It also fails to account for the social environment of professional development and its relation to the state. Another problem is that it dismisses the real importance of the expert knowledge. In other words, it overlooked the fact that there are always some others, like legislators, insurance executives, governmental officials whose ideas are vital in assessing the knowledge of the professionals. Therefore, the quality of the expert knowledge is largely dependent on what the other people think about it. See also; Braude (1961), Colvard (1961), McKinlay (1977), Larkin (1978), Bjørkman (1982), and P. Boreham (1983). Braude asserted that professions have to be defined in terms of a wider social, economic and political context because autonomy is not only related to inner relations of a profession. Lay encroachment, for example, is effective upon presumed autonomy of the professions. Colvard argued that a number of features of professional development, namely, staff specialisation, consultation, investigation, cost participation, undermine as well as bolster professional autonomy. In addition, Boreham argues that
autonomy is a contingent feature of occupational organisations rather than an established universal of professionalization. It requires constant reinforcement, renegotiation and re-establishment. Freidson’s analysis, he believes, becomes a tautology. In Freidson’s view, the state is obliged to prepare the necessary grounds for the social and economic organisation of the work area while rendering a certain kind of autonomy to the professions in terms of the control of the technical aspect of work. This means that professionals control the technicalities of their work while being dependent on the state initiatives on other issues.

Such an understating of autonomy was a reaction to the idea previously expressed in the literature on the professions, which had claimed an absolute independence of the professions from state activities. Freidson, arguing of the existence of a certain autonomy for the professions, believed that it would be possible to give the best historical account of the professionalization process within the social, economic and political contexts in which state power was supreme, while at the same time recognising their autonomous positions within society. But, in Johnson’s analysis of the state/profession relationship, such an effort was only a product of a misconceiving of the state concept. Applying Foucault’s view to the sociology of the professions, Johnson (1992) argues that Freidson, like many others, failed to see the theoretical paradox in the state debate which had been going on for a long time. He believed that the problematic relation between the state and the professions cannot be solved unless the concept of the state as a pre-constituted, calculating, political subject is eliminated from the thinking and analysis. In his comment on Foucault, it is suggested that monopolistic theories have little explanatory ability to handle the professions in power relations while Larkin agrees that professional dominance declines through the recent revisions in the division of labour.

Foucault's distinction between the government and the state provides us with the most adequate theoretical tool in solving this problem.

According to Foucault (1979), the state has been given a greater importance and functionality in recent years than ever before in its history. What is really important now is not so much the state domination of society, but the governmentalization of the state (p.20). In other words, modern societies and states can only be understood in terms of the general tactic of what he called the governmentality, which refers to "the technical and institutional capacity to exercise a highly complex form of power (Johnson, 1990b, p.60)". When the term governmentality is applied in the theory of the professions, it points to a mechanism through which political programmes and objectives of governments have been aligned to the personal and collective conduct of subjects. "Governmentality, in this sense, is all those procedures, techniques, mechanisms, institutions and knowledge that, as an ensemble, empower these political programmes (p.6)". In this process, obviously, expert knowledge is of importance and therefore, the professions are an institutionalised form of such expertise which is developed in association with the process of governmentality. What is called the state is an outcome of governing; in other words, an institutionalised residue. So, while the state includes the professions, the professions constitute a part of governmentality and thus the state. It is for this reason that "not only are the professions dependent on the state for their independence, but the state is dependent on the dependence of the professions in securing a neutral source of legitimising for its activities" (Johnson, 1990a, p.6).


2. The best example of this mutual dependence can be found in the case of law, "where in accordance with the doctrine of the separation of powers the emergent liberal democratic state in Britain is dependent on the bar and bench" (Johnson, 1990a, p.6).
In this respect, Freidson's analysis failed to consider the professions' relationship to the process of governmentality. As Johnson argues (1992), when Freidson talks about technical autonomy, he talks about a mutual dependence between the state and the professions. The expert is not sheltered by an environing state, but shares in the autonomy of the state. The professions are, then, involved in the constitution of the objects of politics, in the identification of new social problems, the construction of the means or instrumentalities for solving them, as well as in staffing the organisations created to cope with them (Johnson, 1990b, p.59). In short, when professional groups are seen as part of governmentality, this can explain how and why they are so keen on playing a key role in governing affairs in contemporary democratic states.

So, earlier analyses of the state argued that the state and its agencies did not concern themselves directly with professional activities. The state was seen as an instrument to approve the professional association's right to ascertain competence and to govern occupational conduct (Child and Fulk, 1982). However, according to more recent theorists of the professions, the state has an important role in determining the content and the manner of professional practice as employer or as a source of funds.

For example, Larson agrees that the autonomy of professions was widely constrained by the interests of the state and also by the socio-economic character of market relations. The state, therefore, is interventionist and never allows professionals to realise their autonomy or independence. Especially "under the market conditions of

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1. According to Child and Fulk (1982), the role of the state has become apparent in four areas: (1) it is interventionist over standards of work and (2) over marketplace controls; (3) it also employs the professionals; and (4) affects on the supply of new recruits to the professional labour market through public funding of training programmes.

2. An example of interventionist state understanding can be found in the work of Herzlich (1982), in where outlining the historical characteristics of the French medicine, he argued that especially in recent years, the state in France is trying to establish several procedures which would rationalise and
corporate capitalism, only the state, as the supreme legitimising and enforcing institution, could sanction the modern professions' monopolistic claims of superiority for their commodities (p.15). The attitude of the state, for example, towards education and towards monopolies of competence is thus a crucial variable in the development of the professional project. It follows that the state itself is the most important device in creating real cognitive exclusiveness that is the cultural basis of the rise of professionals. With regard to the legal profession, for example, professional independence is closely related to the power of the state, the corporation and the national university system. Its expertise directly depends on the stability and legitimacy of the existing order. Therefore legal practitioners are practising in the interest of the state and thus dominant ideology, while the state prepare suitable grounds for legitimising their attitudes.

Some other theorists in the line of the Marxist tradition, namely, the theorists of proletarianization, deprofessionalization and corporatization (Haug, 1973; Oppenheimer, 1973; Derber, 1982), made a similar point to Larson's. In their view, too, professions are losing their control over work and becoming submissive agents of the state. Because the professionals are now much more dependent on the lay questioning, their expert authority and autonomy is declining (Oppenheimer, 1973, p.213; Haugh, 1973, p.206). The state is seen as an interventionist power that may break the autonomous position of professions or reduce them to a position such that they can only be in service to the dominant classes.

homogenise the professional work. For a different aspect of the relationship between French medicine and the state, see also, Steffen (1987), "The Medical Profession and the State in France", in where she tried to show how French medicine developed with and against the state. In addition, for a wider critique of the state and growing and changing capitalist relations and its impact on the professions, see also, Navarro (1984), "The Crisis of the International Capitalist Order and its Implications on the Welfare State".
Like Freidson's view, Larson's and the others' approaches to the state can also be revised in the light of Foucault's approach.

All these Marxist views seem to have repeated the traditional understanding of the state. According to Larson, for example, the state is a supreme legitimising institution and therefore, it is separated from other institutions with a capability of intervening in the professional work. Although she denied an autonomous position for the professions, emphasising the role of the state in the control of the marketplace in which professional work is produced, it is never recognised that the professionals are also a source of development in the state and that there is thus a mutual dependence between them. That is, she failed to see the fact that, while expertise plays a role in legitimising, it is also a part of this process.

Another aspect of the relationship between the state and the professions has appeared in Abbott's model (1982, 1988). As briefly explained in the previous part, his main focus was on the variations in claiming professional jurisdiction, a struggle of occupations to become professions within a complex structure of interrelations and interdependence. He distinguished between three areas of social life in which jurisdictional claim can be made. These are workplace, public opinion and legal order.

It is in the legal order that the state plays a vital role. The interventionist state dictates professions what they must do and the price and quality of service, by introducing a special hierarchical control mechanism in which a lower control system is controlled by a higher one (1988, p.163). Though the degree of state intervention varies from country to country, it exists as an external factor in the system of professions.

The importance of legal order was similarly emphasised by Starr and Immergut's (1985) work. In their view, technical, professional and administrative spheres in government were separated from politics. They believed that such institutions should be non-partisan and professional (p.225). There is a link between the boundaries of political
change, the professional jurisdiction, the established power and the functions of the state (p.222). In other words, while the state and the professions are permanently changing, jurisdictional claims as a part of a political process can be made within a competitive system that is sponsored by the state (Larkin. p.3).

In these views above, as Johnson argues (1992), the state remains conceptualised as a preconstituted agent rather than itself an emergent property of the system. Abbott saw the state as an organising external factor surrounding the professions, making up the legislature, courts and the administrative grounds. Therefore, the state is separated from the public arena but related to the legal recognition of the professions. Even in this situation, the role of the state in claiming a professional jurisdiction is quite limited. It is seen as a kind of audience over the whole system. For this reason, Abbott, too, failed to conceive the state/professions relationship in a way in which the existence of one cannot be separated from the other.

In conclusion, it must be noted that to give a full account of the state/professions relationship, one should recognise that professions and the state are parts of the same reality and any theoretical distinction that might be devised between them seems to be superficial. In other words, the production of professional knowledge seems to be bound up with the political processes within the society in which that knowledge is produced.

8. Summary and Conclusions

There were two main parts in this chapter. In the first, the mainstream schools in the sociology of the professions, including classical views, monopolistic and Marxist based theories were presented. In the second, I dealt with the state debate from the perspectives of both social theory and the sociology of the professions.

The aim of the first part was to discuss the existing literature in the theory. To do that, firstly, a short history of the view of professions as altruistic organisations was
introduced. Secondly, my concentration was on newer approaches like Larson's and Abbot's. It was concluded that none of these theoretical models was able to explain the whole situation of the professional groups in developing countries. Moreover, an increasing concern for sociological analysis of the professions in developing countries was also emphasised. It was suggested that existing literature in the area, though basically produced to account for professionalization in industrial societies, would also be helpful to understand the structure of the professions in developing parts of the world. The comprehensive historical analyses of professional developments in these countries might also contribute to the theoretical discussion on the developed ones.

Among the classical views, Durkheim's and Parsons' were given special importance. They saw professionals as some kind of saviours of the societies that had undergone a widespread deterioration which resulted from rapid social and economical changes. But, this view was rejected by most Marxist theoreticians who asserted that professionals were in fact slaves like employees of the state or of the dominant class.

It was suggested that the views of the professions as altruistic is not helpful in explaining the specific conditions in which Turkish lawyers were practising. Neither were Marxist comments found to be in congruence with the historical developments peculiar to Turkey. For instance, technological developments and their effects on professional work were obviously different in all developing countries. So, criticising these two general models, an attempt was made to draw some conclusions about the Turkish case. While doing that, the primary aim was merely to try to determine some of the basic features of the professional structure rather than to create or propose a new approach explaining the situation in developing countries. In other words, the purpose of reviewing the dominant theories in the literature was to see their importance and possible contributions to understanding the special characteristics of the professions in developing countries.
The hypothesis developed in this context was that the Turkish legal profession did not establish a monopoly.

In the second part, attention was focused on the relationship between the state and the professions. In this context, the second hypothesis was developed, which asserted that the Turkish legal profession did not set up a monopoly because the Turkish state could not be considered apart from the professions. In order to test this hypothesis, it is suggested to examine the relationship between the professions and the politic as a way of changing the social and legal structure. To this end, empirical research has been carried out in Turkey and its results will be introduced in later chapters. However, to observe this link in a theoretical sense, the view of professions as autonomous and the Marxist approach were employed again.

What was implicitly or explicitly emphasised in the monopolistic views of the professions was the idea that the professions always acted to maximise their autonomy from a state which was interventionist, extending and ramifying its apparatus of control over the professions (Johnson, 1990b, p.56). Similarly, Marxist theorists believed that the state simply made all professionals its servants. These approaches were discussed in the light of a newer approach to understanding the state/professions relationship that asserted no valid distinction could be made between the state and the professions.

Concentrating mainly on three dominant views of the state in the existing literature, that is, the models of Freidson, Larson and Abbot, it was argued that they were all wrong in so far as they considered the state as a separate, preconstituted institution which was sometimes hostile to professional development. To be able to eliminate this traditional duality between the state and the professions, as Johnson (1992) suggested, Foucault's concept of the governmentality was introduced into the debate. In the view of Foucault, once a distinction is made between the state and governmentality, it will become much easier to analyse the structure of governmental activities and its historical development.
Government, for Foucault, is the process of making rules, controlling, guiding or regulating, while the state is a historical residue of these activities. Therefore, he finds a government necessary in all societies because a totally uncontrolled, unregulated society is a contradiction in itself. As an theoretical abstraction from social events, the state cannot be something "out there" and, thus, in practice, cannot be in a position to intervene in any process as a separate party only on behalf of itself.

What was concluded was that there was a parallel between the state theories in sociology and the sociology of the professions. As we saw, the state re-entered sociology by the end of the 1960s in the work of Poulantzas and Miliband. Especially Poulantzas was very critical of the orthodox Marxist understanding of the state, claiming a relative autonomy for the state. But, despite this, all Marxist theorists, including Poulantzas, believed that the structure of the state was so formed that it eventually acted at the expense of lower classes. In line with this, Marxist theorists in the sociology of the professions asserted that professional service was organised only to protect the interests of the state and thus the dominant classes. With some minor variations, this understanding of the state became dominant in the sociology of the professions in the 1970s. While Marxist theorists considered all professionals as slaves, a relative autonomy from the state was attributed to them by others, especially by Freidson.

In other words, while the state itself was located in the centre of the discussion in sociology, theorists in the sociology of professions tried to look at it through the perspective of professional developments. An autonomy for the state from class relations was claimed in sociology, while a similar autonomy was claimed for the professions from the state in the sociology of the professions. In short, it must be noted that the state discussion in the sociology of the professions was part of a much wider discussion of the state in sociology.
To sum up, it should be noted that neither of the theories described in this chapter is capable of accounting for all aspects of professionalism in developing countries. It is clear, therefore, that a new theoretical framework is needed. Such an observation is also true for the context of developed countries. Some theorists argue that the findings obtained so far are so complex that none of the present theoretical approaches is able to explain all of them (Cullan, 1985). For some others, it is for this reason that theorists must find a way to combine general approaches in the area (Begun, 1986). A more radical view holds that since these we need a totally new framework, rather than integrating them.¹

Consequently, before presenting the data obtained from empirical research, which will provide information to test the hypotheses developed through this chapter, it is my belief that any research in an area in which there is no previous study, should start with a brief historical analysis. In this respect, the next chapter will focus mainly on the historical analysis of the Turkish legal profession and attempt to introduce the main characteristics of the practitioners within today’s Turkish legal system, and also some of the important social, economic and political events which affected its development.

¹See, Light and Levine (1989), who give unparalleled evaluation of theoretical development in the sociology of medical profession and point to the need of a new approach in the area. An explanation why the area is lacking a comprehensive theoretical model was earlier made by Prest (1984), who asserted that there was a miscommunication between the theorists in the sociology of the professions and the historians. Sociologists were not capable of preparing a theoretical ground while historians failed to supply them with the data they would need to construct an adequate general theory of the professions.
CHAPTER II

1. Introduction
In this chapter, the historical characteristics of the Turkish legal system will be examined. My focus will be on the general characteristics of the Ottoman legal system and its practitioners. In particular, I will look at in what way social, economic, cultural changes took place until the collapse of the Empire affected legal profession. Therefore, a special attention will be paid to the reforms movements. In the final section, a discussion on the state tradition in Turkey will also be introduced. In this way, it will be possible to see in what respect the state analyses in Turkey were similar to those in Europe.

2. Reform Movements
In the theoretical framework of Islam, "there could be no legislative power in the state, since law came from God alone and was promulgated by revelation. In essence, therefore, there could be no law other than Sheriat, the unchangeable, God given law of Islam(Lewis, 1968, p.107)". The Koran, laying down the basic rules of conduct operating within the Ottoman Empire, was regarded not only as a religious book, but also as a code of law. "The sources of law were a)the Koran; b)the unwritten sayings of Mohammed, [Hadis or Sunnet]; c)the traditions emanating from the acts and saying of the companions and immediate successors of the prophet [Icma-i Ummet] and d)the interpretations and analogies of the Koran by the great Muslim jurists [Kiyas-i Fukuha](E.Ozsunay, p.804).

Basic to Islamic thought is the view that legal problems cannot be reduced to logical explanations. Religion was a form of explanation, a science in itself. The sacred law of Islam(i.e. the Sheriat) is an all-embracing body of religious duties, the totality of God's commands that regulate the life of every Muslim in every aspect; it comprises, on an equal footing, ordinances regarding worship and ritual, as well as political and legal rules. Islamic law is the epitome of Islamic thought, the most typical manifestation of the
Islamic way of the life, the core and kernel of Islam itself (Schacht, 1964, p.1). In particular, early Islam regarded knowledge of the Sheriat as perfect and inevitable methods of legal reasoning. As a result, during the Ottoman Empire, law and its applications could not be separated from their religious sources.

While fairly strong, centralised national monarchies or bureaucratic empires appeared in the West and concentrated on technological and economic problems, such a development never occurred in the Ottoman Empire. The main role of the Sultan (the King) in the affairs of the state was quite different from that of Kings in Europe. The Sultan was the head of both administrative and religious affairs, possessing an unlimited power over his Muslim subjects and also minority groups within the Empire. While the Sultanate, as a peculiar system of monarchy, lasted until the beginning of the twentieth century, the concept of the state lost its traditional and absolutist meaning in Europe. With the decline of the feudal system in the West and the rise of monarchical states, a process which reached its peak with the French Revolution in 1789, the western countries began to establish their political and social institutions in line with these new state developments.

1. There is a mass publication in English on the history of Turkey and Ottoman Empire. Among them, the most comprehensive and informative are: Miller (1960), Lewis (1961), Berkov (1964), Shaw (1976, 1977), Cook (ed.), (1976), Lord Kinross (1977), Harris (1985), Davison (1988), Ahmad (1993). For a general criticism of existing literature, see especially, Islamoglu and Keyder (1977), Mango (1977). Keyder (1978), for instance, argued that the Ottoman Empire was not feudal: the nature of the state, its role in the determination of the class structure, in social reproduction and in that class structure itself was fundamentally different from the pre-capitalist order we have come to know as European feudalism.

2. Many well-known sociologists believed that there was a political, cultural and ideological contradiction between the West and the East. Among them, Marx and Engels, were the famous ones, claiming that eastern societies like India, China and Turkey, produced an enduring social order which was incompatible with capitalism. They called this specific system Asiatic Mode of Production. Similarly, Weber believed that the social conditions of feudal Europe which guaranteed property rights contrast with prebendal feudalism and patrimonialism in the East which maximised arbitrariness. He also believed that with prebendal feudalism and patrimonial bureaucracy, the prerequisites of rational capitalism could not emerge. In his view, the role of the Islam in this process was vital. Particularly, the Sheriat provided a rigid, causally influential, framework within which social activity was carried out. The lawyers, the
In contrast, even at the very beginning of the Ottoman Empire, the Sultan was perceived as a shadow of God on Earth and his religious and absolutist image caused more centralisation. The Ottoman government lost its contact with the people living in provincial areas. Towards the end of the seventeenth century, the Ottoman Empire became administratively centralised.

In the eighteenth century, centralisation became much more evident and no prosperous and enterprising Turkish bourgeoisie of the western kind arose to aid the ruler. It is commonly accepted that the Ottoman Empire never experienced feudalism as it developed in most western countries. The Ottoman land system, called timar, might be seen as a main factor that hindered the emergence of the bourgeois class, playing a vital role in constructing the political and economic structures of the Empire. The essential premise of this land system was the idea that conquered lands were allocated to the military and civilians in return for their contributions during the war. "There were three kinds of land; a) private property, b)Vakif's land and c)state land. Timar was a sort of private property

Ulemas generally, the merchants, the army were all state officials and emerged out of the Imperial household. Hence, Islamic societies failed to develop the institutions which were characteristics of the societies of Europe. Focusing on the political, military and economic nature of Islamic society, he asserted that Islamic industrialisation was impeded by the instabilities created by its politico-military structure. For more information and a comprehensive analysis of the Weber view on Islam, see, Turner(1974), Weber and Islam, who criticised Weber of creating a kind of "Orientalism" and a contract-case which, in fact, represents more than an attempt to outline the relationship between religion and economic activity but a celebration of Puritan values.

1. The analysis of centralisation process in Ottoman Empire was made generally on the base of centre-periphery theory which was developed by E.Wallerstein and S.Amir. The most prominent representatives of this theory in Turkey were Mardin(1973), Keyder(1987), Hepet(1980, 1986). See also, Levy(1982).

2. Vakif was an old Islamic institution, well established in the Ottoman Empire. Originally it was a dedication of land or other revenue producing property to pious purposes. In time, the practice grew establishing family (evkaf) for the benefit of the founder's family and their descendants as a safeguard against the general insecurity of property rights. The effective control and disposition of these vakif's and their revenues was usually in the hands of administration and collectors or mostly Kadis, who belonged to or were appointed by members of the class of Ulema.
in which some peculiar administrative and legal regulations were involved. The allocation of the timar entails the official's full authority over the persons in that region and gives the responsibility on behalf of the Sultan to administer that land. The beneficiaries who only temporarily possessed the land, were also empowered to let some part of their land to the local farmers and to collect taxes on behalf of the Sultan. They were expected to use the Sultan's land in a way which would benefit the state and religion. In other words, the land essentially remained state territory and the state always controlled the temporary owner (called Sipahi) of the timar-land. In practice, most land in the country remained under the control of the state, while the Sultans had the right to denote any amount they wished, to the military or civil personnel. The peasants, the real producers, were, therefore, never left to the mercy of landlords as the peasants had access to the state if they had a complaint about their patrons. Before the law, the peasants enjoyed equality with the fief-holders; they could make complaints about the fief-holders, who never possessed autonomous political powers (Heper, 1986). It was God who really owned all lands through the Empire. In this system, therefore, the future and economic interests of the peasants were protected from arbitrary actions of landlords. At the same time, it required peasants to increase production, because they were only able to get greater share by doing so. In short, such a system was accepted as the most important part of economic growth which at least for a couple of centuries put it ahead of the European countries.

However, it had negative implications too. This may be indicated by the fact that it always required a strong central administrative power to maintain legal order as well as fragile relationships between landlords and peasants (Üçok, 1987, p.262). Hence, when the central power over provincial areas weakened towards the eighteenth century, the system began to collapse.

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1. For the special characteristics of the economic system in Ottoman Empire, see, especially, İnalcık (1969), Keyder (1987), Islamoglu (1987).
In a sense, what happened in Europe, outside the Empire from the sixteenth to the eighteenth centuries, constitutes the true history of the Ottoman decline. One of the major developments in Europe was the commercial expansion that enriched especially the Atlantic States, to the detriment of the Ottomans. The West also improved agricultural methods. Its technology, too, advanced rapidly, as did its industry, aided by scientific experiments and the rationalist attitudes culminating in the Enlightenment. None of these developments took place in the East before 1800, at best they awoke only feeble echoes there (Davidson, 1981, p.54).

Eventually, the deterioration of the land system and the breakdown of the governmental machinery towards the end of nineteenth century also brought radical changes but not in the same direction as in Europe. It was a clear process of decline which would open the Empire to the increasing interventions of western countries in political, economic and legal issues as well as in cultural and administrative affairs.

The eighteenth century brought not only a new awareness and administration for the West but also a feeling that the traditional Ottoman way had to be abandoned for the Empire to survive and hold its own against a technologically advanced Europe. The main questions which arose in this period, especially by the intellectuals, were how to save it from collapse or more radically, what was the nature of this entity that was to be saved? It was a common idea that the only way to save the Empire was to change it. The changes would affect many areas, from clothing style to language, the manner of thought and even entertainment. All these were to be done along the line of the western culture and in the western manner.

As a result of this, the process of the reforms in the Empire is always understood as a process of westernization. In this sense, the reign of Sultan Selim-III, (1789-1807) is often taken to mark the start of reform movements. In this process, the scientific and economic distance between the Ottoman Empire and the Western countries became more
apparent. Three characteristics of Selim's reform efforts might be mentioned. "The first was that most of the inspiration for westernization came from French sources and models. The second was that, naturally, most of the reform effort went into improvement of military training, techniques, organisation and weapons. Finally, it was clear that reform could produce reaction from vested interests, even to the point of violence (Davison, 1981, p.68)". Selim's principal reforms appeared in the military area, creating a new army (Nizam-i Cedid, meaning New Order), blaming the previous military personnel for doing poorly in the Russian wars. The various army corps were reorganised, given training and better weapons. Greater attention was devoted to technical military schools and language problems. But, the new army was never integrated with the rest of the army forces. This discontent concluded with the disposition of Sultan Selim in 1807. At the end of this period, the legal area, in fact, remained untouched. The traditional legal rules and court system were not a concern of the reformers.

After the reign of Selim came Mahmut II (1808-1839), who was another reformer Sultan. Mahmut, in time, emerged as a far stronger and much more successful reformer than Selim. But, his was a very long reign and it was only much later, in 1826, that he was able to destroy the traditional army (called janissary or yeniçeri), thus depriving the conservatives of their military arm and setting the Ottoman reform on a new course of destroying old institutions and replacing them with new ones (Shaw, 1977, p.1).

In addition to the new army, Mahmud was engaged in the 1830s in creating a new bureaucracy. The Sultan began to convert old offices into western style ministries. The council of the ministries was intended to resemble a European cabinet and the Grand Vezir to be none of a first Ministry than the old-style absolute deputy of the Sultan. Education of the new bureaucrats also occupied Mahmud's attention. However, in the field of education change was generally difficult, since this was the traditional province of

1 For the military reforms in this period see, Levy (1982).
Despite the fact that many reforms were successful, the organisation of the legal area, in this period, too, was not the main focus of the reformers. The intention of the new bureaucratic elite for modernisation was only oriented towards military, educational and administrative problems, rather than the change of Islamic rules. It was feared that the legal changes would provoke much more reaction from Ulema than the others. "Because Sultan Mahmud had already weakened the power of the Ulema by withdrawing some official duties from their supervision and by creating a government inspectorate to control the vast revenues of the pious foundations (vakıfs), largely under the Ulema control. These were powers that had in the past limited the Sultan's authority, and, of course, overwhelmed it. After Mahmud II, the power of the central government was much greater (Davison, 1981, p.78). In his period, it was also realised that 1) reforms, to be successful, had to encompass the entire scope of Ottoman institutions and society, not only a few elements of the military; 2) the only way that reformed institutions could operate was through the destruction of the ones they were replacing, so that the latter could not hinder their operation, and 3) the reforms had to be carefully planned and support assured before they were attempted (Shaw, 1977, p.1). These considerations were to emerge as the main pillars of Tanzimat reform policy in subsequent years.

3. The Period of Tanzimat

The Tanzimat was a period of sustained legislation and reform that modernised the Ottoman state and society, contributed to the further centralisation of administration, and brought increased state participation in Ottoman society between 1839 and 1876. The successes as well as the failures of the Tanzimat movement in many ways directly determined the course the reform was to take subsequently in the Turkish Republic until
the present day. Leading the Tanzimat were Abdulmecit I (1839-1861) and Abdulaziz (1861-1876).

A dominant figure in the government of this period was Mustafa Reshid Pasha, who leaned not only towards the Sultan’s power, but also towards westernising reform, of which he became the leader. In 1839, he was able, because of a crisis, to rally official backing for a remarkable reform proclamation. Renewed hostilities with the governor of Egypt had again threatened the Empire’s integrity and European support was needed. A reform proclamation would help to attract such support by demonstrating that the Empire could make progress and was worth saving. In these circumstances, the Imperial Edict of Gülhane was issued on 3 Nov. 1839. This pronouncement in the most solemn form marked the start of a period of forty years known in Turkish history as the Tanzimat (reordering or reorganisation), (Davison, 1981, p.78).

The Tanzimat Edict was a combination of old and new. It blamed the decline of the Empire on non-observance of Koranic precepts and Imperial law, but pointed to a remedy in the form of new laws and complete alteration of former usages. The Sultan argued for creation of new institutions that would guarantee his subject’s security of life, honour and property, establish a regular system to assess and levy taxes, develop new methods to assure a fair system of conscripting, training and maintaining his armed forces. He also promised a fair and public trial for all accused people and equality for all religions in the application of these laws. It was this last promise that represented the most radical breach with the ancient Islamic tradition and was, therefore, most shocking to Muslim principles. The laws and tradition of Islam as well as the policy and the practice of the Ottoman Empire, had always protected non-muslim subjects granting them a large measure of autonomy in their internal communal affairs. "The Muslim could also claim that he assigned to his inferiors a position of reasonable comfort and security; he could moreover claim that his discrimination related not to an accident of birth but to a conscious choice on the most fundamental questions of human existence. Infidel and true
believer were different and separate; to equalise them and mix them was an offence against both religion and common sense (Lewis, 1961, p.106). To give up these principles of inequality and segregation required of a Muslim no less great an effort of renunciation than is required of those westerners who are now called upon to forego the satisfactions of racial superiority. That is to say, the Tanzimat was basically aimed to respond to the criticisms about unequal situation of minority groups in the Empire and a series of laws was acted to put this concept into effect. For example, non-Muslims were admitted to the secular schools and allowed to serve in the bureaucracy after graduation. However, this did not stop the European interventions. "The European powers in this period were more meddlesome than ever in Ottoman domestic matters, though previously they blithely promised not to interfere. They insisted on their capitulatory privileges and supported one Ottoman statesman against another (Davison, 1981, p.80)."

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1. For the more information concerning how important role minorities groups played with regard to the economic and politic relations of Ottoman state with European countries which considered these groups as an religious and cultural extension of Europe within Empire, see, Trask (1965), Braude and Lewis (1982).

2. The first capitulations, to use the term in its general modern acceptance, were those granted by Suleyman to the French in 1536. The autonomy which the French merchants in the Ottoman Empire thereby obtained, together with the respect shown them by the Turks as representatives of the Sultan’s new ally, soon caused other European powers to forget their distaste and to seek similar concessions for themselves; Austria in 1567, England in 1580 and Dutch in 1612. Under the Capitulations, foreigners were not subjects to Turkish law; they paid no taxes. Their houses and business premises were inviolable and they could be arrested or deported only by order of their own Ambassadors. Disputes involving foreigners were settled by the consular court of the defendant, according to the law of his own land. Non-Muslim Turkish subjects employed by foreigners could also be given this privileged status, by a diploma conferred by a consular authority. Consular authorities were responsible for the good behaviour of their nationals. In the heydays of Ottoman Empire, these privileges were not regarded as a derogation of sovereignty. In addition, at the times when the Ottomans were still a power to be reckoned with, and foreign communities were small and almost exclusively mercantile, abuse of these great privileges was rare. By the mid-nineteenth century, however, Pera, the European quarter of Istanbul, had become the refuse-pit of Europe. All kinds of undesirables were sheltering under the capitulations confident that their own countrymen would back them against the Turkish authorities any day (Lewis, 1961, p.32).
The legal area was the most influenced one by the reforms which took place during the Tanzimat period. New laws like Commercial Law, Criminal Law, Land Law, and Administrative Law were introduced. Starting even before the decree, a whole series of secular law codes, based mainly on European counterparts, was enacted leaving the subjects, Muslim and non-Muslim alike, with a feeling of security and confidence. This was especially the case with the Penal Code (Ceza Kanunnamesi) of 1840 (revised in 1851 and 1858) which restricted the authority of the bureaucrats in interpreting the law. The Commercial Code (Ticaret Kanunnamesi) of 1850 (revised in 1861) and the Maritime Commerce Code (Ticaret-i Bahriye Kanunnamesi) of 1963, established a secure environment in which trade could operate (Shaw, 1977, p.118). With the Commercial Code\(^1\), a new bank interest system was introduced. All sorts of giving or taking interest had been forbidden by the religion for centuries. An effort to regularise land tenure by a new code in 1858 often had the unintentional effect of throwing legal title into the hands of a large owner rather than the actual peasant cultivator.

Above all, another important legal reform in Tanzimat was the promulgation of a new civil code, known as the Mecelle, which was gradually introduced into practice over the period 1869-1876. The code was an effort to bring together all the Islamic rules associated with civil life in combination with selected elements of western codes. It can be seen as the first step towards a more secular legal system which would appear in the following century. The first form of the modern codifying system was that firmly based on the Sheriat, while bearing western traces in form and presentation. It remained in

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\(^1\) In the earlier period, the Angola-Ottoman Commercial Convention in 1838, was perhaps the first significant step towards destroying the existing social and economic structures, aiming to abandon protectionism, and permitting foreign merchants to engage directly in internal trade for the first time. In this way, the traditional guild system began to collapse and reformers believed that the distraction of outdated economic structures would accelerate westernization and force the Ottomans to innovate. See, (Ahmad, 1990).
force in the Empire until repealed by the modern Turkish parliament in 1926, in the meantime it had a considerable effect on the legal system throughout Middle East.

Another remarkable change was introduced into the court system through a revision of the judiciary. Such changes resulted from the common belief that the fall of the Empire could only be prevented by renewal of the whole social, political, economic and legal structure in parallel with the reception of European legal codes. In fact, in order to apply the new codes in newly established courts, it became apparent that to totally abolish the Sheriat Court and constitute purely secular courts was impossible. Therefore, there emerged in practice a dichotomy in the legal system; a western system and a group of traditional religious rules. While the reformers tried to set up new courts in line with new legal rules, they regarded the Sheriat's rules as an inevitable part of the legal system.

In the period of Tanzimat, there existed three sorts of courts, the first was Kadi's courts or Sheriat courts, the second the court of Christian subjects, which was created to hear the cases concerning religious affairs in Christianity and finally, embassy courts, for problems arising between foreigners and local traders in commercial life. In addition to these courts, the reformers established a new and quite different court from all others which dealt mainly with criminal cases, spreading over all country (Meslic-i Tahlikat). The head of this court was the local governor, but not the Kadi who was only one of the members of this court, together with the others appointed by the local governor from local assemblies. Thus, it seemed that the Sheriat rules lost their major importance in these courts where there was a wide range of secular laws transferred from western countries. The verdict of these courts was absolute, except for the death penalty for which the approval of the Sultan was necessary.

In 1840, commercial disagreements between commercial entrepreneurs of Ottoman origin and foreigners began to be heard in Mixed Commercial Courts (Karma Ticaret Mahkemeleri). The Ministry of Justice became the head of this court in 1848, while the
fourteen members were drawn from both Ottoman and alien traders, seven Ottoman, and seven European entrepreneurs working in Istanbul. Its life, however, was not long. In 1856, another famous court, known as Embassy Courts, which played an important role in constricting the professional organisation, took on its functions all over the country. In cases involving Ottoman subjects and foreigners the advocates of the latter selected two of the assessors from important members of their own communities to make certain that their interests and the codes were adequately considered in making a judgement. The courts had unlimited jurisdiction in all commercial cases. In applying European-style law codes in courts organised essentially in the European mode and with European procedures, the mixed commercial courts thus provided experience in the concept of secular practice (Shaw, 1977, p. 119). With the foundation of these courts, their importance and influence on the government and traders, which meant to a great extent constraint and interference in the domain of governmental initiative by aliens, gradually increased towards the end of century. As a result, the main offices of the state began to be directed by foreign technocrats, even the debts of the Empire were accounted by and paid back on the basis of their accounting method. At the end of these developments, the sovereignty of the state was threatened by the intervention of western countries.

There was no court empowered with clearly defined duties and organised with clear legal principles until 1864. To establish a clear and permanent order in the courts, to organise the dissolved Sheriat rules, with regard to such matters as commercial and criminal law and procedure, to create a whole system of secular courts, operating under the modern rules of procedure and evidence, a great range of legal reforms was introduced by Ahmet Cevdet Pasha (1822-1895), who was one of the most famous reformers in that period. According to him, a clear classification of courts was unavoidable. Firstly courts were divided into two, inferior and superior. Inferior courts could be opened even in the smallest units of the Empire. In smaller settings, bigger courts with an additional duty of reviewing previous decisions, could be established. So, for the first time, secular courts
appeared even in the smallest areas. These were called *Nizamiye Courts* and would hear the cases that were outside the duty and responsibility areas of other courts, namely, traditional Sheriat, commercial court and Embassy courts. In short, the Nizamiye Courts helped to carry the idea of a secular court system even to remote corners of the Empire.

The head of Nizamiye court was the Kadi. The members from other religions and an official appointed by the government. The novel element was that all members of these courts were local personalities, except the Kadi and his official assistants. Under these new circumstances, the Kadi faced losing their absolute authority in the courts and a *vacuum of authority arose in the system*, which was not removed until the Republican era.

To sum up, in the court system of the Tanzimat period, there were five types of court with different duties and different judiciary: Sheriat, Nizamiye, Commercial, Community and Embassy courts. This variety of courts led to great disarray in the legal order. The uncertainty over jurisdiction between courts was another problem. This complex situation lasted until the Republican period.

In applying the Tanzimat reforms probably the most significant was the expanded area of state activity. No longer was the state simply an administrative machine to dispense justice, collect revenue, and raise army. It was now involved in such matters as education, public works and economic development which in large part formerly fell outside its purview. Westernization of administrative practice as well as of the upper bureaucracy continued in this period. One index was the increasing separation of power as judicial functions were divorced from executive functions on several levels and as the legislative function was in part delegated by the Sultan to various appointed councils. Local governors with extensive powers were appointed by the central government, but associated with them were advisory, administrative, council and provincial general assemblies meant to give the inhabitants a voice in public affairs(Davison, 1981, p.80).
The Tanzimat achievement between 1839 and 1856 was so limited that European countries believed that all reforms were introduced only to meet the foreign criticism. In reality, the promised novelties did not reach their aims. From their point of view, minority rights were not effectively safeguarded. Economic progress was slow. Agricultural production improved little. The tax burden on the peasantry remained heavy; tax farming was twice declared abolished, but in fact was not (Davison, 1981, p. 81).

Under these circumstances, on 18 February 1856 a new reform charter, The Imperial Rescript (İlahat Fermanı) was promulgated by the Sultan. The Rescript reaffirmed the principles of the Edict of 1839. This time, there were no references to the Koran, as in the previous Edict, but there was much emphasis on the equality of individuals, confirming the rights of other nations, irrespective of their religions. There was also a more secular emphasis on the economic development of the Empire. The establishment of banks and improvement of public works, communication, commerce and agriculture, were also promised. The Ottoman government had once again declared its good intentions. However, the European countries were concerned more directly with the implementation of the reforms.

The period of Tanzimat, in essence, was a reaction against most of the Ottoman traditions which brought the Empire to the verge of disaster. The main objective of the changes in the Tanzimat period was to meet foreign criticism of Ottoman justice, and thus prepare the way for the abrogation or limitation of the foreign judicial privileges recognised by the capitulations. Even though the reforms were brought about by outside pressures, the Tanzimat period, as a whole, played a vital role in converting the state into a law based state. With these novelties,

a) legal inequalities were, at least formally, abolished,

b) the concept of codification became accepted for the first time by most intellectuals within the ruling class,
c) A great number of laws took effect in the administrative area,

d) Islamic rules, which were in disorder, were brought together and supported by western legal rules where Sheriat rules were found to be insufficient. Some western codes were translated into Turkish,

e) the rules of judging were changed in many respects, forming completely new courts based on western standards,

f) most importantly, the Ottoman people, including minority groups, were given more legal awareness about their rights.

4. The Era of Absolutism

On 30 May 1876, supported by a fetva from the Sheyhulislam authorising the deposition of Abdulaziz and fortified with suitable military preparations, the ministries formally declared that the Sultan had ceased to reign and installed Murad as the Sultan in his place.

The accession of Murad V seemed a victory for the liberals. The satisfaction with their new sovereign was, however, of short duration. In the midst of foreign war and domestic crisis such a situation developed which soon became intolerable, and the ministers, reluctantly, began to consider the possibility of a second deposition. The next heir was Murad's younger brother, Abdulhamid. The prince was shown a draft of the Constitution which the ministers proposed to introduce. He gave it his approval and pledged of his support. The Grand Vezir obtained another fetva from Sheyhulislam authorising the deposition of the Sultan on grounds of mental incapability on 27 August 1876.

A committee of statesmen and the Ulema were given the task of drafting the text, which was completed towards the end of the year. Like other constitutions of the nineteenth century, it was largely based on the Belgian constitution, though it was not passed by a
constituent assembly, but promulgated by the sovereign power (Lewis, 1968, p.159-162). Under this Constitution, the person of the Sultan was sacred and he was responsible to no one for his acts, thus leaving the entire Constitution dependent on his continued good will. He had the sole right to appoint and dismiss the ministers, making them responsible to him rather than to the parliament, which he promised to open as soon as possible, and to declare war and peace, promulgate all secular laws, supervise the enforcements of Sheriat, commute judicial penalties, convene and dissolve the parliament and make arrangements for the election of deputies. He could declare a state of siege and temporarily suspend all guarantees of the Constitution whenever he considered it necessary and banish anyone whom he felt dangerous to himself or the state. His famous Grand Vezir Mithad Pasha, would be the first victim of this provision of the Constitution, being dismissed and killed following a command of the Sultan.

As the new Sultan promised, the first Ottoman Parliament met on 19 March 1877. It was divided into two houses, a Chamber of Deputies (Meclis-i Mebusan) and a Chamber of Notables (Meclis-i Ayan). The Houses were to meet annually from the first of November to the first of March, unless the Sultan advanced the time of opening or prolonged the session. The members of the Chamber of Notables were to be appointed for life by the Sultan, while the deputies were to be elected by the people through indirect election and a system of limited suffrage in which only property owners were allowed to vote. The Chamber of Deputies was granted certain power to enact laws and to exercise control over the executive. On both accounts, however, the ultimate authority depended on the Sultan, who thus remained the cornerstone of the Constitution.

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1. This period is also known as First Constitutional Period (Birinci Meşrutiyet). See, especially, Devereux (1963) and Kushner (1977).
"Abdulhamid had never been a strong partisan of the constitution, though he had promised one in order to gain the throne and perhaps had actually favoured the final draft, since it gave him such extensive power. When the Chambers proved to be so independent-minded, Abdulhamid realised how obstructive to his rule a parliament could be, and how much a focal point for popular resentment it might become. He got determined to get rid of it (Davison, 1981, p. 89)."

On 13 Feb. 1878, the deputies went so far as to demand that three ministers, against whom specific charges had been brought, should appear in the chamber to defend themselves. The next day the Sultan dissolved the Chamber and ordered the deputies to return to their constituencies. The Chamber had sat for ten months (Lewis, 1968, p. 165). It was not re-convened for thirty years. *The constitution remained in abeyance, until the second parliament was opened in 1908.*

Under the first Turkish constitution "all subjects of the Empire were called Ottomans, whatever religions they possessed. All Ottomans enjoyed individual liberty on condition that they did not interfere with the liberty of the others. All Ottomans were equal in the eyes of the law. They had the same rights and duties towards the country without prejudice regarding religion. Authorities may not forcibly enter any residence, to whomsoever it belongs, except in cases determined by the law (Art. 8-26). It was asserted that admission to public offices depended only on ability and on knowledge of the official state language.

To enforce these rights the entire secular court system developed by the Tanzimat was incorporated into the Constitution. Judges were to be appointed for life, the courts organised according to the law and no interference was allowed. The Sheriat courts were retained for Muslim religious matters, while non-Muslims went to their own courts in such cases. Finally, a new High Court (Divan-i Ali) was created to hear accusations against members of the government, both in the executive and the Parliament, with ten
members, each coming from the Chamber of Notables, the State Council of the State and the High Court of Appeal. The court was to be convened by decree of the Sultan, as needed, to judge Ministers, the Grand Vezir and the members of the Court of Cassation and all others accused of the crime of attempts to destroy the safety of the state (Shaw, 1977, p.178).

"The most important legal reforms of the Hamidian era occurred during the first few years of the Sultan's reign and were in reality the continuation of a process begun under the Tanzimat. There was a group of four laws, promulgated in May and June of 1879, of which two dealt with legal procedure. The reorganised Ministry of Justice was given control over all non-religious courts. Another law provided for the regulation of the Nizamiye Courts. At the same time, two further laws dealt with procedural matters; the first providing for the execution of judgements, the second embodying a code of civil procedure.

The failure to meet foreign criticisms seems to have put an end to legal reforms; domestic criticism, at the time, seemed less important. In 1888, the official drafting committee, which was set up in 1869 and which had produced the Mecelle Code of civil law and the Code of Civil Procedure, was dissolved by the order of the Sultan. Work on the revision and codification of other branches of law was not resumed until after the political uprising of 1908 (Lewis, 1968, p.180)."

During this period, an opposition group emerged in the political arena in Europe, rejecting a basic premise of Tanzimat that true modernisation could only be imposed by an elite class from the top. They argued that the Tanzimat reforms must be accompanied by fundamental political and social reforms. "These liberals gradually came together in a loosely formed coalition called the Young Turks"1 (Shaw, 1975, p.255). As a result of

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1. According to Ahmad (1969, 1990), this group was the first example of a popular Muslim pressure group whose aim was to force the state to take their interests into account. Under their rule, however, the
rebellions in the Balkan Countries, Abdulhamid, after thirty years of autocracy, eventually lost his throne. One of the sub-groups of the Young Turks, called The Committee of Union and Progress (or Ittihat ve Terakki Cemiyeti), gained much more power than the others, being supported by the armed forces which were sent to suppress the uprising in the West side of the Empire in 1908. According to them, the recall of Parliament was the major immediate sign of change from absolutism to a constitutional government. Eventually, the Sultan disclosed that he had suspended the parliament of 1876 until the work of modernisation was completed and the time had now come for it to meet again so it could share in the difficult task of saving the Empire from its enemies. So, in the end, a new parliament was opened in 1908, and Abdulhamid remained on the throne for another year, while the Young Turks came to power.

With regard to reforms in the legal sphere, the record of the ten years between 1908 and the final defeat of The Ottoman Empire in the First World War, was not very successful. The hopes of creating a long-lasting constitutional government failed, while a new Provincial Administration Law (1913) strengthened the governors in provincial areas. In 1915, a famous journalist and writer Ziya Gokalp proposed a complete secularisation of the religious courts, schools and religious foundations and the limitation of the Sheyhulislam to purely religious functions.

In 1917, a Code of Family Law was promulgated, including the basic regulations of the Sheriat as well as of the Jewish and Christian Law regarding matters of divorce, marriage


1-For the English translation of Gokalp’s writings, see, Niyazi Berkès (ed.), (1963), Nationalism and Western Civilisation; Selected Essays of Ziya Gokalp. In all his writings, he defended the view that the only way-out of Turkish social and political crisis was to import technological innovations from the West while keeping the traditional way of living. The conceptual instrument to achieve this was a distinction between civilisation and culture, the former could be transferable, the latter had to be local and peculiar to each nation.
and other family relationships for subjects of those religions. The state's assumption of the legal power to enforce these regulations furthered the secularisation movement considerably. The marriage contract became a secular contract and despite the mention of the religious codes in the law, it was basically subject to secular regulations.

The most effective and lasting reforms, however, were to be created in the period of the republic following the end of the First World War.

5. Reforms in Modern Turkey

With the defeat of the Ottoman Empire in the First World War, most of its territory was occupied by the allied forces, composed of the British, French, Greek and Italian armies. With Istanbul occupied by the British army, all governmental activities were suspended by the Allied Forces. The Istanbul government had in fact no real authority over the people any more. After the Mundros Armistice, many deputies and intellectuals were either exiled or escaped to Anatolia to help to form a new nationalist military and its required political base. The movement, unrecognised by the Istanbul government, found a leader named Mustafa Kemal, one of the first people who moved to Anatolia to advise and organise military resistance, to forge political cohesion among the Turks and to fight for diplomatic recognition for the nationalist movement. The creators of this movement believed that the Sultan was unable to rule the country in a traditional way. Therefore, on 23 April 1920, a new parliament, called the Grand National Assembly, convened in Ankara, which was quite a small town at that time. A new constitution was passed through the parliament in 1921, emphasising that sovereignty belonged unconditionally to the nation.

At the end of a successful nationalist resistance to the occupying forces, the Treaty of Lausanne was signed on 24 July 1923. Under its terms, the capitulations were abolished and on 13 Oct. 1923, Ankara was officially named the capital of Turkey while on 29 October, the first Turkish Republic was proclaimed by the Assembly, which then elected
Mustafa Kemal, who had prodded it to take the step, as its first President. This move also symbolised the further cutting of ties with the Ottoman past. The republic, with its new capital, now set out to make a new Turkey for the Turks and new Turks for the new Turkey (Davison, 1981, p.127).

In order to create a new and modern society, a wide range of reforms took place in the first years of a fully independent Turkey. The constitution of 1921 was replaced by another in 1924, which proclaimed that Turkey was a republic, its capital Ankara, its religion Islam and that sovereignty belonged to the nation which exercised it through the Assembly, where both legislative and executive authority resided.

One of the most difficult tasks was to change family life and the way of living to accord with the common practice of civilised nations. For this, a radical reorganisation of the entire legal system of the country was inevitable. Some portions of the western law had been introduced in the Tanzimat period. These reforms had removed large parts of the law from the domination of the Sheriat and its exponents. Secularism of the whole system became the main pillar of M.Kemal’s period.

To this end, on 8 April 1924 Mustafa Kemal and his friends abolished the Sheriat courts. But even after this change, the Sheriat still remained in force in most fields of family and personal law and was still administered by judges who sat in secular courts. Throughout the period of reforms, the exclusive competence of the Sheriat lawyers in matters of family and personal status had been left intact. At the beginning of 1924, the Minister of Justice proposed the restoration, in an improved form, of the liberal Family Law of 1917. This was the first time that a reformer had dared to invade the intimacies of family and religion.
On 11 September 1924, a commission of twenty-six lawyers set to work on the task of adapting the Swiss Civil Code to Turkish needs. The completed code was voted by the Assembly on 17 Feb. 1926 and entered into force on 4 October (Lewis, 1968, p. 266-267). Under this code polygamy became illegal and marriage was seen as a civil contract. The legal equality between husband and wife in a marriage was secured not only for the sexes but also for the religious sects. Minority groups were not subject to their own traditional and separated legal rules from Islamic rules but were to be under one single code. Most importantly, the marriage of a Muslim woman to a non-Muslim man was to be allowed and also it became legally possible to change one’s religion. Apart from the civil code, the Italian Penal code and commercial code based largely on German and Italian codes were also introduced into the system in 1926.

After the legal order of Turkey had been shifted from a religious to a secular basis, it also became necessary to eliminate the main religious symbol of the Empire; the Caliphate. Therefore, one of the radical reforms in the first years of modern Turkey was to abolish the Caliphate in 1924, which was represented in the Empire through Ottoman Sultans. On 3 March 1924, the Grand National Assembly deposed the Caliph, abolished the

1. It was argued by many that since the reception of this law, despite many novelties and differentiation from the traditional laws, social norms prescribed by this law have gained a wide acceptance. See, especially, Velidedeoglu (1957), Lipstein (1957), Magnarella (1973). However, Keyder (1979, 11) believed that Mustafa Kemal reforms of the 1920s were all similar one, imitating the superstructure aspects of Western capitalist modernisation. According to him, the most important of these reforms (the Civil Law) was long overdue. He also maintained that reforms were already operated de facto in urban cities.

2. Caliph is the English form of the Arabic khalifa and Turkish word of Halife, which was the title of those who succeeded Mohammed as political and Military of Muslim community. In Islamic theory, the Caliph was responsible for increasing influence of the Shari‘a rules and maintenance of the social order in Muslim world. Caliphate was transferred to the Ottoman Sultan by the conquest of Egypt in the sixteenth century. From that time on the Ottoman Sultans were the only dynasty who could have put up any serious claim to the Caliphate. During its abolition in 1924, some believed that Islam, without a Caliph, a spiritual leader that symbolised the unity of Islam, would collapse totally. But, new reformers in modern Turkey were well aware of the danger that if they allowed old Islamic institutions to continue, anti-reformists would use religious feeling of especially the rural people against their reform programmes.
Caliphate, and banished all members of the house of Ottoman from Turkey. In this way, the conservative groups became unable to find another ideology of equal potency to resist the radical changes in question at that time. Without the Caliphate, and its religious effects over the political life, the reformers became much more free in initiating the changes in everyday life. Apart from this, the provision that Islam was the official religion of the Turkish state as indicated in the Constitution of 1924, was removed by an amendment in 1928. However, it was not until 1937 that the secular character of the state was mentioned in the Constitution.

In brief, it can be said that the Turkish secularisation program proceeded on the assumption that the Islamic tradition had contributed to many of the ills of the Ottoman Empire. Changes in the status of Islam were designed to weaken the authoritarian hold of religion on the Turks and to make easier the acceptance of the nationalistic westernization program (Trask, 1965).

While the government tried to enlarge its powers over the people to apply all these reforms to practical life, it encountered strong opposition from people with an Islamic

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1Even as earlier as in 1929, H.E. Adivar, a very famous figure in the Liberation War and the first female novelist who pictured this war, stated that although most of the reforms introduced into public life during Ataturk era were asserted to be totally novel by the founders of the republic, the process of westernization or modernisation had already been started and gained a great acceptance among the urban people especially towards the end of Ottoman Empire. The social position of the women, for example, had been greatly bettered on the base of a modern family law enacted in 1907 and women were allowed to go to men schools or work in a state office long before the proclamation of the Republic. As such, polygamy had not been desirable or common in the urban life. She also criticised the reformers of cutting the country off from the traditional roots. Secularisation was the most important she referred. Beginning from 1924, the new regime began to launch a programme designed to secularise the state. But, it took subsequently a form that all the reforms introduced in this line only served to enable the state to control the religion of Islam that had been considered to be the most responsible institution within society for the collapse of Ottomans. According to her, despite the fact that secularisation was a necessity under the conditions that
background. This became more evident when a revolt broke out in the Eastern region of the country. The abolition of the Sultanate and the move away from Sheriat rules in social life, did not find popular support from the majority of the people. But the reaction of the relatively more religious people in the East was the strongest. The government felt it necessary to send troops to the area to gain control again. The uprising was suppressed but not in a peaceful manner. Subsequently, the Assembly passed a drastic Law for Maintenance of Order which provided the government with exceptional power and authority. A special court, known as Independence Tribunals (İstiklal Mahkemeleri), was established with power to judge those involved in rebellion. Using its powers as a new and secular executive body, the government tried to set up its own mechanism to get a persistent and cohesive political and legal order through the country. In this way, a period of one party dominance which was to last until the acceptance of a multi-party system in 1946.

To sum up the reform movements in modern Turkey, it should be noted that with its long history, the Ottoman Empire was not a European country but an Islamic state "drawing its inspiration from another faith and shaped by another set of historical events and circumstances. The struggle of Church and State, the Renaissance, the reformation and counter-reformation, the scientific awakening, humanism, liberalism, rationalism, the Enlightenment-all the great European adventures and conflicts of ideas passed unnoticed. Turkey had gone after the First World War, the way which reformers carried them into effect was wrong and unacceptable from the perspective of the majority of the people. Reformers removed the religion from the state affairs, but did not or could not remove the state from the religious affairs. A special institution was created and charged to appoint the religious practitioners, organise religious education and publications and in this way, control all the religious activities across the country and especially monitor the activities of politically active muslim people. It should also be added that these critiques are still on the political agenda of Turkey. With the increasing political power of radical Islam, the secular character of the state has become in recent years much more open to the intellectual and political debate than ever before.

and unreflected in a society to which they were profoundly alien and irrelevant. The same is true of great social, economic and political changes. The rise and the fall of feudalism, the emergence of the communes, the rebirth of trade, the rise of the new middle class, the struggles of money and land, city-state, nation state and Empire - all the swift yet complex evolution of European life and society, have no parallel in the Islamic civilisation of the Ottomans (Lewis, 1968, p.477). Despite overwhelming conservative resistance, the modernisation of the Empire and also Modern Turkey was the sole way to fill the gap between Turkey and the European Countries.

With regard to the modernisation of the legal order, the intention of the reformers was to put a definite end to the applications of all outmoded legal rules of Islamic Law. It was believed that Islamic rules were no longer able to meet the needs of modern life. The rules of the Sheriat were seen as an obstacle on the way of importing technological innovations from the West. It was also believed that Islamic rules in many divisions of the law, for example in criminal law, were no longer applicable to the legal matters in this century. Therefore, unlike in the Tanzimat period, reformers this time preferred to replace the system with a totally different one, rather than to modify it.

At the end of the reforms, the ties of the Turkish people with their history were cut in many respects. In doing this, it was hoped that Turkey would leave behind its unsuccessful past. For this purpose, the Sheriat was abandoned and its practitioners lost their jobs. The court system was changed to a new one organised along the lines of the continental tradition. All these changes indicated that a process initiated in the reign of Selim III during the Ottoman period was finally completed.¹

¹-Despite this widespread belief, it can be observed that the reactions of radical Islam against the Ataturk's reforms in many areas of social, political and economic lives is getting much more stronger especially after the military coup in 1980. According to fundamentalist Islamic writers all of the changes construed through the republican period have marked a victory of western culture and its capitalist economic system over Ottoman state, tradition and its religion, Islam. For the historical analysis of the fundamentalist
There were basically two critical consequences of these changes over the legal profession.

1) The dichotomy which arose during the period of Tanzimat disappeared as a result of the total acceptance of European Codes. There was now only one single legal system that would be applied to all sorts of cases. In contrast, as might be remembered, from the Tanzimat on, commercial cases were held in the courts operating according to European secular legal rules under the administration of lawyers trained in western schools, while civil cases in Sheriat courts under the Kadi's supervision.

2) The functions and the duties of the legal practitioners of the old system were re-defined. In parallel to the changes in court system, a new type of judge, prosecutor and advocate was needed. The jurisdiction and duties of the modern courts were much more clearly outlined by the new secular laws than those of the Kadi's courts. Moreover, for the first time, advocates were allowed to represent their clients in every kind of court for every kind of case. Prosecutors, too, became main agents of the system.

In short, these radical changes in the legal area introduced at the very beginning of the republican period established the foundations of the present legal system in Turkey.

Before proceeding further with the explanation of this system, a short historical analysis of the legal profession during the Ottoman period may be helpful to comprehend fully the importance and meaning of these great changes. Therefore, in the following part, the main agents of the Ottoman legal system, namely, Sultan, Sheyhulislam, Kazasker, Kadi and Mufti, will be examined.

6. Historical Development of Legal Profession

During the Ottoman Empire, the legal system was established on the basis of five main institutions, each having different authorities and different responsibilities in their practice.
area. The Sultan was at the top of both the administrative and the legal hierarchies, with full authority over his subjects, acting in the name of God and carrying out Islamic Justice on behalf of the Muslim world. The Sheyhulislam was charged with advising the Sultan, issuing fetva ¹ and being responsible for ensuring that the Sultan's actions were consistent with the Sheriat rules. The Kazasker or Kadiasker came below the Sheyhulislam in the hierarchy. The most important legal practitioners were the Kadis and as a by-product of the system, the Muftis arose as assistants to the Kadis, for example, in issuing fetvas when needed.

6.1. The Sultan

According to the Ottoman-Turkish view, the Sultan was appointed by God to hold together the estates of society(Heper, 1986). Therefore, to be a Sultan, it was necessary to be a descendant of the Ottoman Family, which was accepted as the founding branch of the Turkish communities having its origin in Anatolia. From its foundation to its decline and fall, the Empire was ruled by members of the Ottoman family, as only the Son (Veliaht) or the closest relative of the Sultan could ascend to the throne.

The major legal duty of the Sultan was to appoint the Sheyhulislam and Kazasker and to approve the appointments of Kadis. In theory, his legal jurisdiction was, however, limited in the sense that he played no part in the decision-making process in the courts. According to Islamic law, if the case related directly to religious matters, a legal decision made by a Kadi was absolute and unchangeable. The Sultan could intervene in the judicial process only if a Kadi had been involved in a conspiracy or bribery. In such a

¹- In Islamic law, the Fetva was not binding. It was nothing more than a document indicating an abstract opinion of an authority working in the legal area. All Muslims with a certain religious knowledge had the right to issue fetva. But it became an expert job over time and people issuing fetva were named Mufti. So the Sheyhulislam was in effect the biggest mufti in the Empire. In theory, the fetvas issued by the Sheyhulislam and prepared by him and his assistants, were not binding either. However, in practice, even the Sultan himself acted in accordance with Sheyhulislam fetvas, though these Fetvas were not binding in the eyes of the public and the Sultans(Uçok, 1986, p.225).
case, the Sultan could appoint another Kadi. Therefore, in this context and apart from this exception, Kadi or Kazasker, the main representatives of the Sheriat, were assumed to have superior position in relation to the Sultan in Islamic tradition.

The second duty of a Sultan was to lay down the rules of Customary Law (Orf-i Hukuk). In this area, where the religious principles might be less significant, he enjoyed an unlimited jurisdiction, i.e., adjudicating disputes relating to administrative or fiscal issues. He was fully empowered to change customary rules at will. In effect, his word was law.

Although his absolute power was theoretically limited by his subordination to God over time, the increasing central power associated with rapid changes in economic and political conditions led to the reality of dictatorship. Especially towards the end of the Empire, the Sultans were considered to be an irresponsible person from his behaviours. Whereas, "it is known that in the earlier years of the Empire, the Sultan could be sued by an ordinary person in respect of his unfair actions (Üçok, 1987, p.217)."

This irresponsibility of the Sultan posed some serious problems over time, mainly in the political area, during the economic crises in particular, which frequently occurred in the later period of the Empire. In such cases, the Sultan might have lost his power and authority over the Ulema and military authorities, a process leading to his overthrow. Such rebellions were generally organised by the imperial army, backed by important politicians and often substituted the Sultan by one of his close relatives. This process had to be legitimated by a fetva, issued by the Sheyhulislam usually appointed by the new Sultan.

In addition to the above responsibilities, the Sultan was also the fount of mercy, having the right to pardon prisoners. This right was rarely used, however, if the action was related to the breaking of the Sheriat rules, and as such, in practice, most Sultans avoided pardoning prisoners who had been sentenced to death (Üçok, 1987, p.216-217).
6.2. The Sheyhulislam

In the Islamic world, Sheyhulislam was a name for all people with religious knowledge. In the Ottoman period, it was founded as an official post in 1502\(^1\), with the authority to appoint all Kadis and other legal practitioners.

Until the sixteenth century, legal appointments had been made by the head of the Council of Ministers (Grand Vezier). However, with the conquest of Egypt (1517), the Caliphate was transferred to the Ottomans. From this date on, Ottoman Sultans became the effective ruler of the Muslim world. Directly under the Sultan on the religious hierarchy came The Grand Vezir as his absolute representative with delegated power in administrative affairs. The Sheyhulislam became the only person able to decide on the legal appropriateness of the Sultan's actions under the religious rules. For this reason, all Sultans had to pay great attention to the appointments of Sheyhulislams. It was a generally accepted principle to appoint Sheyhulislams from the top rank of the Ulema.

Despite the enormous spiritual influence of the Sheyhulislams over the people, they had little authority in relation to administrative issues. They were not interested in affairs of state. Their patronage was limited to the appointment of relatively unimportant legal practitioners. Although they were considered to be at the head of all the Ulema, they were isolated from everyday and legal practice.

The most important duty of a Sheyhulislam was to issue a fetva in relation to legal or administrative problems which were not amenable to solution under the existing religious or traditional rules (Üçok, 1987, p.224). Fetvas could be issued in response to either a private person's or the Sultan's or other officials' questions concerning public matters (Cin, 1989, p.226). The Sheyhulislam's responses to such problems were of

\(^1\)The first Sheyhulislam was Ali Cemal-i Efendi (....-1525). After him, Sheyhulislam became an official part of the state. Ebussuud Efendi (1490-1534) was the most famous Sheyhulislam, and prepared important religious codifications which prevailed long time in Empire (Üçok, 1986, p.223).
great influence, and had important consequences, too. The system of issuing fetva operated within the Ottoman Empire until its collapse, and was taken to be evidence that the state was following the path of Islam and was inveterately used to justify the Sultan's intentions in all areas of social life. It was for this reason that there were only three Sheyhulislams who were executed by Sultans in Ottoman history.

Up until 1826, the Sheyhulislams carried out duties in their private houses or in a special part of the Mosque or in a place recommended by officials. In 1826, they were allocated a permanent building where they functioned with their assistants and staff.

From the seventeenth century, the normal procedure in appointing the Sheyhulislam was not followed. The criteria of eligibility varied with the changing political and social circumstances. In the history of the office of the Sheyhulislam, twenty-four holders of that office were the sons of previous incumbents. From 1839 on, not a single Sheyhulislam was the son of a previous Sheyhulislam. The social origin of the men who served as Sheyhulislams during the Tanzimat period extended much lower in the ranks of society (Itzkowitz, 1977). In this period, a group seeking power was able to force the Sultan to appoint their own candidate, so helping them to achieve their political goals. In this way, the Sheyhulislam often became a tool in the struggle for power and some of them became involved in the affairs of state, conspiring against the Sultan or his family in their personal interest (Üçok, 1987, p. 224). Towards the end of the Empire in parallel to the changed pattern in their social status, Sheyhulislams lost their prestige.

6.3. The Kazasker
The Kazasker established in 1362 was, in practice, the head of the legal system. "The emergence of the Kazasker as an institution coincided with the increasing power of the Ottoman Army gained in the Empire (Üçok, 1987, p. 226)". In the earlier period of Empire, an official was appointed to deal with the military legal cases and with the rapid growth of the military, and these officials gained much more importance in relation to the
ordinary civil Kadis. Their jurisdiction gradually expanded, leading eventually to the
capacity to appoint the other Kadis, to control their practice and correct their decisions.
The Kazasker began, therefore, to act as an appeal court.

From about 1481 the Kazasker's jurisdiction was divided into two geographical areas.
From this date onwards, there were two Kazaskers; one practised in the European part of
the Empire(Rumeli Kazaskeri), the other in Anatolia. Being the western Kazasker
eventually became a necessary step in the appointment of a Sheyhulislam. This tradition
became so fixed that few Sultans were able to break the rule. A regular career pattern was
the progression from Kadi of Istanbul to Kazasker in Anatolia, Kazasker in the European
side and finally Sheyhulislam of the whole Empire. Until 1574, the Kazasker had the
right to choose and appoint all Kadis and their assistants. By the end of the sixteenth
century, this patronage had passed to the Sheyhulislam. The Kazasker was left with the
unimportant appointments for small settings.

The Kazasker was a natural member of Divan-i Humayun(The Imperial Council). It was
his duty to attend all meetings of this governmental body as he was responsible for
ensuring that the decisions were in accordance with the Sheriat rules.

Every Friday, the Kazasker officiated over a court that was essentially a supreme
court(Cuma Divani), authorised to correct or reinforce the decisions made by inferior
courts, informing those concerned of the outcomes of those meetings, approving the
decisions on behalf of the Sultan(Cin, 1989, p.227).

The Kazaskers continued as a legal institution until the Tanzimat period. After the
proclamation of Tanzimat in 1839, they began to lose gradually their status and effective
position within the legal order. Towards the end of the eighteenth century they were
excluded from the Empire Council, while Sheyhulislam were received.
6.4. The Kadi

In the Ottoman Empire, as in all Muslim countries, the Kadi was an indispensable element of the traditional legal system. From the foundation of the Empire to its collapse in 1920, the principal interpreters of the religious law in Turkey were the members of the Ulema who, in theory, applied the religious rules of the Koran to legal problems.

With the formation of the Ottoman State, the legal system was organised in accordance with the classical Islamic model. The first Kadi was appointed in 1300. In a sense, Kadis were a symbol of the religion. For most people in the Empire, they were responsible for the appropriate application of the religious rules to every kind of legal matter. Because of this, their appointment following a successful invasion by the Turkish army was the main evidence of Ottoman sovereignty. Specifically, therefore, in the Ottoman tradition, they symbolised not only the religion but also the power of the Ottomans in the remote regions in the Empire.

To be a Kadi, one had: a) to be an adult, b) to have a special ability to judge, c) to be a religious and fair person, d) to possess a wide range of legal knowledge and ability to enforce the legal rules, e) to be impartial, f) to be male (Demombynes, 1968, p.150). Throughout Islamic history, with one or two exceptions, no female was appointed to this post.

In the early period, the Kadis were believed to perform their duties according to the unchangeable religious rules with no intervention from outside. Even the authority of the Sultan over the job of the Kadi was limited. In general, the decision of the Kadis was final. Therefore, in the Ottoman legal system, there was no appeal court. However, especially towards the end of the empire, a special court in Istanbul acted as a kind of appeal court, convening on Fridays with a limited jurisdiction over civil and religious cases. In time, the relative autonomy of Kadis made them prestigious members of Ottoman society.
The smallest social unit in which Kadis worked was the Ottoman town or Kaza. The villagers had to come to the towns if they wanted to see the Kadi. It was rare for a Kadi to be appointed to serve in a solely rural area. The Kadi's hierarchy and career structure were a progression from the smallest to the largest towns. Appointments to the big cities required Kadis to display their educational qualifications and job experience which would be assessed by the Kazasker.

It is possible to classify Kadis into two categories. The first is those who were educated in prestigious schools of law, having a good family background and a record of achievement. Such men might be eligible for appointment to the important cities within the borders of the Empire. These Kadis were called the Mevleviyet and there were only a few places to which they could be appointed, such as, Istanbul, Mecca and Medina. The second type of Kadis included those who were less qualified. They were generally appointed to the smaller and less significant towns. In addition to the regular Kadi appointments, there were other positions available, including the Toprak Kadis (judges of the land) who served as travelling agents of the regular Kadis.

Under the Kadis came Naips, assistants of the Kadis, having the authority to hear simple cases in the absence of regular Kadis. The Naips with significant qualifications could also be appointed as deputy Kadis or Kadi Vekili and sent where they were needed, particularly to the smaller places in the region, while Kadis were appointed to one of the three main legal and administrative regions of the Empire (European, Anatolian and Egyptian). There was usually a Naip to deal with legal administration, preventing the piling-up of legal work in the Kadis' office.

Supervising the work of the Kadis were the Mufettish or legal inspectors who regularly examined the Kadi's activities, preparing reports concerning their performances in the courts. Judges living and working in the biggest cities were superior to the inspectors, while the Molla occupied a place above the city judges but below the Kazasker.
quality of the legal education obtained by the Kadis played a vital role in their appointments. For example, even in the worst days of the Empire, a school leaver at a certain stage of training was never accepted as a regular Kadi or a Kadi to the bigger cities (Üçok, 1987).

In the period between the fourteenth and the sixteenth century, the Kazasker was the sole person empowered to select and appoint Kadis to any part of the Empire. The authority to appoint Kadis to the big cities was given to the Sheyhulislam towards the end of the sixteenth century. In so doing, the Kazasker's jurisdiction over the appointment of Kadis was highly constrained. From then until the end of the Empire, he was able to appoint Kadis only for small areas (Cin, 1989, p.230-232). In all cases, appointments had to be approved by the Grand Vezir or the head of ministers, who would submit the names to the Sultan for his confirmation.

"The Kadis in towns had served two years until the seventeenth century, later, this period was reduced to twenty months for towns, one year for bigger cities. All Kadis who had completed their working period in either cities or towns had to come back to Istanbul, live there and see the Kazasker at least once a week (Üçok, 1987, p.232)". The dismissed Kadis and the other members of the Ulema without a position for one reason or another, were then placed at the bottom of the list of candidates for new position. While they waited for re-appointment, they were given a special pension called arpalik, which was considered a retirement pay for those who failed to offer themselves for a post as a result of old age or illness or simply idleness. It normally took at least two years to become eligible for a new appointment. Enforced retirement led, particularly in Istanbul, to efforts to obtain re-appointment before time. It was the common view that during this period of unemployment, some Kadis were involved in corruption and conspiracy (Üçok, 1987, p.232). A Kadi could be dismissed if he; a) lost his mind or ability to judge, b) became deaf or blind, c) violated the laws or used his job for his own interest, d) lost his
belief in Islam, e) if corruption was found, or f) if his incapability for acting as a Kadi is understood or he himself confessed his incapability (Tomaw, cited by Ortayli, 1994).

6.4.1. Duties and Responsibilities of the Kadıs

"Each Kadi had both judicial and administrative functions. As judge of the local Muslim court, he was charged with enforcing both Islamic religious law and the Sultan's laws as applied to all sections of the community. He had to make certain that the court was open to all Muslims seeking justice, that litigation was speedy and just, and that those unable to protect themselves, such as women, children and orphans, were particularly protected (Shaw, 1976, p.1350)". With regard to relating the religious rules to the courts, the only problem was how to interpret the commandments of Koran in specific or novel situations.

The Kadi employed his own assistants to investigate cases, summon witnesses, and punish the guilty, but he was assisted in these functions by the local Sancak Bey (the governor in a county) and the Subashi (police chief) under the supervision or at least in the presence of representatives of the Muslim community. Usually each city or town had its Subashi, who could and did apprehend offenders on his own authority as well as on instruction of the Kadi. When the citizens wished to complain about illegal acts, they did so to the Muhtesip (Market Inspector) in cases involving the market or to the Subashi where criminal acts were involved. The Muhtesip had to secure the help of the Subashi, if market offenders refused to accept his authority. The Subashi were responsible to the Sancak Beys, but if they themselves violated the law, they were brought before the Kadi for judgement and punishment. The Kadıs were fairly autonomous in reaching their decisions. It was only on rare occasions that the Sultan or one of his officials or even the Sheyhulislam, intervened to influence a judgement once it had been given locally (Shaw, 1976).
Alongside their legal duties, the Kadis also had local administrative duties, such as supervising state officials in their districts, certifying tax assessment lists as well as assessment and creation of taxes, mediating in conflicts of authority or jurisdiction and sometimes authorising and enforcing the dismissal of local officials who violated the law and acting in their place until substitutes arrived. Kadis also oversaw the actions of members of the military in keeping order locally, and handled complaints involving the arbitrary actions of the army against civilians. Kadis supervised the collective operations associated with the sowing and harvesting of crops and carried out municipal functions such as the establishment of market regulations and price controls, and arrangements to build and maintain local streets. As the Ottoman Empire declined in many localities at the beginning of the sixteenth century, local Kadis also tended to assume more and more administrative and financial duties. In short, in many areas, they were in fact the local government (Shaw, 1976, p. 136). In other words, the most important legal functionary in the Empire was to a greater or lesser extent the local government. In practice, there was no separation between the local court and the executive. If a governor abused his authority, the Kadi turned to local Ayan (or notables) for assistance. Indeed, the Ayan sometimes forced the Kadis' collaboration against the governors. They poured petitions of complaint into the central government or sent their representatives. Gradually, the Kadis came to represent local interests and the Ayan (Inalcik, 1977).

6.5. The Mufti

The legal process in an Islamic court was largely based on the interpretation of the Koranic commandments. After all examinations that could be made, that is, when "The gates of interpretations were closed", the members of Ulema deciding cases or interpreting law had no choice other than to adhere closely to the interpretations of the school to which they were attached (Shaw, 1976, p. 137). In general, such interpretation was carried out by the Muftis who were authorised to issue fetva, in response to
problems submitted to them by the Kadis, officials, or private persons who sought legal authority in particular cases.

A mufti could not innovate or personally make a judgement on the basis of his own examination of the sources. Especially in unusual cases, as mentioned above, he could only base his reply on the code of his particular branch of Islamic law and precedent. In a sense, this gave Muftis, to some extent, freedom in interpreting the rules. In practice, individual Muftis could and did secure the answer they wished by selecting appropriate parts of the code and precedents, while ignoring others. Therefore, people seeking particular interpretations brought the case to a particular Mufti whose interpretation was likely to support their own positions. Eventually, this led to disarray in the theory of Islam and in the method of interpreting of the legal rules.

Unlike Kadis, who were educated in Islamic law, any Muslim could declare himself a mufti, without governmental permission. "However the official Muftis were appointed by the Sheyhulislam for each of the major cities as well as many of the small towns, with the duty of issuing fetvas when needed by the Kadis or the provincial and local authorities. Major appointments were given to Ulema who had received the complete university training or for less important places to those who had graduated at a lower level(Shaw, 1976, p.138)".

"In the Ottoman tradition, those actively involved in religious activity did not accept a salary from the government. Consequently, neither Kadis nor Muftis were salaried but were dependent on the fees paid in return for their fetvas. However, they were appointed to profitable positions such as administrators of foundations and adjudicators of inheritances(Shaw, 1976, p.138)".

The major distinction between Kadis and Muftis was that the former studied and interpreted the law, while the latter enforced it in the courts. Nevertheless, it would be
more correct to see Muftis as official expert witnesses, rather than employees. Their duties were to monitor or in some cases even control the Kadi’s decisions in the court.¹

7. The Impact of Reforms On the Legal Profession

The various efforts made to re-organise legal process mainly took place around 1839 (Tanzimat) and 1856 (Islahat). As mentioned earlier, these are normally considered the beginning of the reform movements in the legal area in the Empire and their effects lasted until the proclamation of the Republic in 1920.

The old Ottoman system remained dominant in many areas of legal affairs during and after the Tanzimat Period. The new reforms, however, required more qualified practitioners to integrate the new system with the Islamic tradition. There was clearly a duality in legal life. It was difficult to combine two different legal systems. This resulted in a vacuum with regard to the application of the legal rules, a vacuum particularly between the capital Istanbul, the centre of legal activities, and the rest of Turkey.

This duality might be seen best in the organisation of the court system. Reformers, on the one hand, tried to set up a new court system and create the required practitioners, such as judges, prosecutors and advocates, and on the other, strove to re-organise the traditional Islamic courts under the supervision of the Kadi. Clearly, this duality hindered the

¹ There were some employees in a town or a city, other than Kadi, Mufti and Naip, who contributed to the legal procedure. These were:

a-Kassam (stands for a person who shared belongings or anything among other people). These employees had the duty to allocate the inheritance of a person after he or she died. This allocation was carried out according to religious rules. In this way they helped the Kadis in the area of the law of succession.

b-Chavush (chief of police in cities). Their duty was to perform the decisions made in the courts by the Kadis, acting as a policemans or present day prosecutors.

c-Subashi (chief police in towns). They were supposed to do the same work as Chavush did in smaller places.

d-Mubahir (usher in a court). They were employees charged with summoning witnesses to the court and informing them of the date of trial.

They were also other assistants who helped the Kadis such as consultants, writers, porters.
development of judicial services. However, despite this duality and its negative consequences, the radical reforms in the Tanzimat period constituted the beginnings of the present day Turkish legal system.

The Kadis remained at the head of the new secular courts, which were established in 1864. The main reason for this was that there were no western personnel able to take over the new courts. However the dominant position of the Kadis in the court was shaken and their authority undermined compared to that of other members of the modern courts. Already in 1838, laws had been passed to decrease and constrain the Kadi’s jurisdiction in an effort to prevent the abuse of the Kadi’s authority which had led to many complaints. As indicated above, the Kadis worked under the supervision of the Kazasker, who was, in turn, responsible to the Grand Vezir. In the nineteenth century, the Sheyhulislam took over the supervising role from the Kazasker. This drew the Sheyhulislam much more into practical affairs and the ‘Shehulislamate’ became much more political. In 1837, Kazasker’s own house became a proper court building operating as a supreme court and all Kadis began to be appointed by the Sheyhulislam and again, in this year, all local and administrative duties of the Kadis were abolished (Cin, 1989, p.236). Yet these local duties of the Kadis contributed to solving local problems effectively and rapidly. The main purpose of giving the Kadis some local duties was to help to decrease the absolute central power. With the abolition of the local duties of local executives, the governmental power over rural areas increased enormously, especially towards the end of the century.

The conditions relating to the appointments of the Kadis were re-organised by new regulations introduced in 1855. Under these regulations, the rules limiting the Kadis’ period of office were abolished. From that date on, the Kadis were able to remain at their post as long as they wished. At the same time, the Empire was re-divided into five judicial areas to which Kadis could be appointed.

1-Tarik-i İmîye dair Ceza Kanunname-i Humayunu
In 1879, a law was passed re-organising the court system. Under this law, judicial offices were given greater jurisdiction, more freedom of action and greater independence from the executive. In addition, prosecutors were first introduced to the system, as were judicial inspectors and the notary was accepted as a new legal position. In 1875, advocacy was also for the first time introduced into the system in Istanbul and spread over the country gradually (Üçok, 1987, p.334).

These changes had some negative consequences on the essential functions of the Ulema class, mainly because their job had been undermined by the newly imported legal rules. The objective of the new legal order was to change radically the social and economic structure which had been in decline for several centuries. The major actor in the traditional system, the Ulema, as a result of the reforms, faced an inevitable threat to their social standing and their jobs and functions. In short, the Ulema was most resistant to the reforms as it had been throughout the whole of Ottoman history.

Although Tanzimat reforms signified the more radical transformations, they failed in many areas especially with respect to economic life. Nevertheless, their effects on the legal system and new institutions established in this period sowed the seeds of the more radical reforms observed in the Republican period from 1920. They were, in fact, a group of significant efforts to change; both the legal system and the traditional social structure based on Islamic rules. During these radical transformations, there was obviously a legal dichotomy. The application of western codes, together with the Islamic rules, led to real chaos in the legal order. While a group of courts applied western codes, particularly in commercial problems, the others tried to apply Islamic rules in other areas such as family or civil conflicts.

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1. This was “Teskilat-i Mehakim Kanunu (Mahkeme Orgutu Kanunu -The law of the Court Organisation).
Apart from this, the concept of "the law state" (or hukuk devleti or the state based on the rule of law) came to Turkey with these reforms, and also the concept of codification was introduced. The western codes were largely accepted where the traditional Islamic rules were found insufficient. The justice system was also varied according to the new laws. New legal institutions were established, introducing new forms of representation in court, such as advocates and prosecutors, which would be an indispensable element of the Republican period.

Before the Republican period, the structure of the Ministry of Justice was also reorganised. In 1870, The Judicial Ministry (Nezaret-i Deavi) created by Mahmut-II was in charge of the expanding secular court system of the Empire, becoming the Ministry of Justice (Nezaret-i Adliye). Its organisation was modified as the new system of secular justice was developed during the century and as it took over many of the judicial duties of the councils and ministries in the Porte, a part of Istanbul. By the end of the century, the Ministry of Justice included the supreme courts and mixed courts, with judges representing the different foreign merchant communities then active in the Empire and with separate civil and maritime branches. In addition to supervising and staffing the judicial system, the ministry was also charged with training judges and supervising the system of the secular legal education (Shaw, 1976).

On 26 April 1913, a new regulation established close state control over the Ulema and religious courts, requiring them to accept the authority of the secular appeal court (Mahkeme-i Temyiz) in many areas. State standards of education and training and state examinations were imposed on the Kadis. All subordinate employees of the religious courts were placed under the control of the Ministry of Justice. On 25 March 1915 all Sheriat courts, as well as those organised by the Ministry of Religious Foundations were transferred to the Authority of the Ministry of Justice, with decisions of the religious courts being subject to review by the secular Appeal Court. The Kadis were now appointed, supervised, transferred, and dismissed by the Ministry of Justice in
accordance with the same regulations and standards applied to the secular courts. All other members of the Ulema were placed under direct control and put on a salary and pension scale comparable to that of other civil servants. The property of religious foundations was put under the control of Ministry of Justice while religious schools were put under the Ministry of Education, which sent its own directors to modernise their staffs and curricula. The Sheyhulislam retained only religious consultative functions associated with his office (Shaw, 1976). The rapid secularisation of schools and courts promised an end to the dualism of the Tanzimat Period, which would be completed in the Republican era.

8. The State Tradition in Turkey

It can be said that the criticisms on the structure of the state and the relationship between the state and the professions also contribute to the understanding of case of the developing countries. It is known that especially in these countries, the state is generally characterised by its intervention into social, politic, cultural and economic activities. Playing a “father role”, it is also perceived as an superior institution above all others.

To make this point more clearer, a short review of the literature concerning the structure of the state in Turkey will be introduced below. Such a review will also provide a good example to understand how the theorists in developing countries handled the concept of the state. In this way, the similarities and dissimilarities between the perspectives of the state theorists in Europe and Turkey will also be discovered.

The structure of the Turkish state has not been discussed from the perspective of the state theories that were presented above. There were two reasons for this.

The first was the fact that the analysis of the structure of the state in developing countries grew out of the concerns of the state theorists in industrialised countries. As noted earlier, it was only towards the end of the 1960s that theorists concentrated on the process of state formation. Among them, some believed that, as predicted by Marx
himself, by the 1960s, the capitalist economy had reached its last stage called monopoly or corporate capitalism. This group of theorists re-evaluated the structure of the state on the basis of economic explanations. Some others, however, like the proponents of the Gramscian school, believed that, as a result of social and political developments occurred after the Second World War, the course of capitalism was changed into a stage that was not predicted by traditional Marxism and, thus, could not be understood without a new perspective. The differences between classes in social and economical terms were now much less than ever before and the political system in which capitalism was operating had become much more democratic. In addition, in accordance with the changes in the political arena, the role and the functions of the state within societies such as England, Germany and the USA were also changing. Therefore, theorists in this group attempted to explain the new conditions in terms of new conceptualisations, such as the relative autonomy of the state from economic activities. However, like capital monopoly theories, the focus of this new perspective was generally on industrialised societies. It said little about the structure of the state in developing countries where the rules of capitalism were different.

Secondly, due to the fact that capitalism in developing countries has not yet attained the level of "monopoly" or "democratic" capitalism, social scientists in these countries paid little attention to the problems of advanced capitalism and the theories that were created to find a solution to them. In Turkey, for example, many attempts were made to explain the main characteristic of the economic system which had developed throughout the history of Ottomans and modern Turkey. The main concern of the researchers was to understand

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1. Even thought there were some attempts to link the state theories to the case of developing countries, they were away to achieve it. Gülşap (1987), for example, believed that the structure of Turkish state could only be explained on the base of capital accumulation theories rather than those that allocated the state a relative autonomy, excluding the laws of capital circulation from the theoretical framework. But he failed in justifying his comment by producing satisfactory historical evidences drawn from the Turkish case. For more information, see also, Akarlı (1975), Mango (1977), Kazancıgil (1981), Ahmet (1984), Bugra (1994).
under which historical, political and economic circumstances capitalism advanced and the differences between the advanced and developing economies. It was in this context that the analysis of the state was usually made. The role of the state in the process of the social, political and cultural transformations was extensively investigated by historians, economists and political scientists, rather than sociologists studying class structures or economic systems. The most prominent representatives of this type of study were those of Berkes (1964), Karpat (1972), Mardin (1973), and Inalcik (1977), more recently, Keyder (1982), Heper (1985) and Finkel & Sirmen (1990). It was commonly accepted in the works of all these researchers that the Ottoman state was highly centralised and remained so to its collapse at the end of the First World War.

Karpat (1972), employing a historical-functional view of structural change, pointed out that the centralisation process of the Ottoman state could be best understood by concentrating on the social and political transformations which took place in Empire in the later part of nineteenth century. He believed that although technological developments and their consequences in the military area, forced other countries to change their social and political structure, the process of transformation in the Ottoman Empire had been initiated through the impact of internal forces, like the changes in the patterns of stratification, long before massive European influence accelerated this transformation. So, the differentiation of the political system and the rise of a new state in this period are directly related to social differentiation and to its underlying causes: changes in occupations, in ownership patterns, income levels, and cultural political values. The first part of this transformation process started in the eighteenth century and the reformers had in reality only one goal; to assure the survival of the state against external and internal challenges. In other words, its patrimonial and interventionism became much clearer. But, in the second part of the transformation, the state was forced to take on a regulatory function. It began to move away from patrimonialism and its interventionism became much more selective. At the end, such a demand to change the structure of the state resulted in a
speed-up of centralisation. In order to be able to suppress the revolt of propertied
groups, notables or intellectuals, the Sultan, getting the support of the 'masses',
abolished in 1831 the traditional land system with a little opposition and appointed its
administrators to other posts. The abolition of this system consolidated the state
possession of lands, thus giving a strong lever of power to the bureaucracy. A new
bureaucratic structure emerged as a direct consequence of the centralisation of the state.
According to Karpat, due to the growing impact of the western industrial system and the
laws of a cash economy and free market, government lost most of its power in relation to
economic activities. True economic power was captured by the urban merchant groups,
but this did not prevent bureaucracy from becoming a dominant and exploiting class as
long as they remained in full command of economic and political power. Consequently,
in Karpat's model, the centralisation of the Ottoman state was explained on the basis of
internal and external factors that caused great changes in the political, social and economic
structures of the Empire. Despite these changes, the basis of the old political structure of
the Ottoman state was always preserved. Never losing its sovereignty, the Empire
emerged as a multi national state, but could not survive the process of transformation. It
failed to adopt itself to the complex conditions necessitated by structural and political
changes. The culminating point in the transformation of the Ottoman state was the
establishment of the Republic of Turkey in 1923.

Similarly, the key concept in the model of Mardin(1973) was centralisation. But, his
focus was on the relationship between the centre and periphery rather than social and
political transformations which occurred as a result of rapid changes in the economic
infra-structure. According to him, the confrontation between the centre or the state and
periphery or the feudal nobility, the cities, the burghers and later, industrial labour, was
the most important social cleavage underlying Ottoman policy and survived more than a
century of modernisation. In the earlier period of Empire, as the Empire expanded its
borders, the Ottomans recognised a variety of freedoms to the local people in the
conquered lands by enforcing a system of decentralised accommodation towards ethnic, religious, and regional particularisms. For this reason, at the beginning, the centre and the periphery were very loosely related to each other. But, especially by the nineteenth century, local economic activities began to gradually increase and local notables took growing interest in economic pursuits. This led to a greater penetration of the state into the periphery and changed the traditional form of the conflict. It was in this period that the state began to build up its dominance. The structure of the bureaucracy was re-designed to maintain the state's authority over nodal points of society. The state claimed to establish a rigid control not only over economic and political but also cultural activities. For instance, the rulers and officials in the upper classes who were heavily influenced by Persian and Arabic culture created a specific language that was foreign to the lower classes. In general, the centre made up a set of principles in political, social and cultural areas, which kept officials alert to the erosion by the periphery over its achievements or supremacy. As a result of this, officials became plunderers of their own society, and the relation between officials and the periphery increasingly showed the mark of "oriental despotism", a full dominance of the state over civil society.

The approach of centre-periphery gained great acceptance among Turkish students of politics and history. Heper(1986), for example, argued that there was a confrontation between the state and civil society throughout the history of the Ottomans. The result of this was a vicious circle. The state elites were sensitive to the crisis of integration, and, therefore, were intolerant towards the periphery, whilst the periphery was adding fuel to the prejudices of the state elites. In the same vein, Akari(1975) showed that there was a tradition for the existence, primacy, autonomy and sovereignty of the state and individuals generalised the concept and cognition of the state in their perception and actions. The dominance of the state was also recognised by Kazancigil(1981), who argued that there was a patrimonial tradition in the Ottoman Empire which reserved a monopoly of legitimacy and authority to the state elites at the expense of social and
economic elites. Inalcik(1977) noted that the Ottoman state was given an absolute right to legislate on public matters.

According to this centre-periphery approach, duality or tension between the centre (or the state) and periphery occurred during the Ottoman period and continued in Modern Turkey, established after the First World War. In the earlier period of republic, the state was able to set up an absolute authority over the periphery, eliminating opposition parties in the parliament, suppressing various revolts which it broke up in the east of country. Collaborating with the local notables and higher classes in the provinces, the centre kept all social, religious and political activities under close observation until the end of the Second World War. Because of this, in the period between the establishment of the Republic and the Second World War, the centre almost lost its contacts with the rural masses. As was the case during the Ottoman Empire, in the republican period, the members of the bureaucratic class had little notion of identifying themselves with the peasantry. The traditional Ottoman relation with the periphery was perpetuated in the earlier period of the Republic. With the transition to multi party political life, the periphery was given an opportunity to play its role in political and cultural activities. In the election of 1950, a newly established party came to power with the support of the rural masses. The traditional structure of the state was redefined on the basis of promises given by this party before the election. The religious activities and traditional values, for example, were re legitimised; the dependency of private enterprise on bureaucracy was in part eliminated. Therefore, it was in the period between 1950 and 1960 that for the first time, a greater portion of the masses came to a meaningful relation with the centre. The traditional image of the protective state distributing justice on one the hand, and abundance on the other, lost its meaning. Instead, a new form of the state that operated for the interest and welfare of not only patrons, notables or elites but everyone, acquired significance. A sort of notable-peasant alliance was set up against the absolute authority of the centre. In short, while this period represented the democratic periphery, the Ataturk
era represented the bureaucratic centre. However, the process of closing the gap between the centre and periphery was interrupted by a military coup in 1960. The old polarisation of centre against periphery took a new form after the adaptation of a new Constitution. Under the new constitution, a wide range of freedoms was recognised for the lower classes. The working masses were allowed to establish their trade unions. Some of the restrictions on political and economic life were lifted. However, these changes led to a new cleavage and differentiation within the periphery while the bureaucrats in the centre became much aware of the demands of a differentiated and integrated modern society. As argued by Heper(1986), in the climate created by the 1960 constitution, the periphery claimed a much more radical role in the process of creating a society in which the exploitation of the masses in economic and political terms would be no longer exist. Such a demand resulted in civil violence and an economic breakdown towards the end of 1970s. In response to the political chaos, the commanders of the armed forces intervened in 1980. The aim of the military interventionists was to depoliticize the periphery and restore a structure of the politics guided from above. The new regime accused the old one of giving too much freedom to the masses. The authority of the centre over the periphery was re-established by the constitution accepted by the vast majority of the people in 1982. The centre was provided with new means to control the activities of the periphery much more effectively than ever before. The periphery, in turn, was much more fragmented. At the present, the question whether the new democratic regime that was created after the military gave up the power in 1983 is preparing a way to change the centre to a new one in which traditional polarisation between the centre and periphery can be removed, is still open to discussion.

It is possible to conclude that what was specifically stressed by the models of Karpat and Mardin was an inclination towards centralisation and the interventionist character of the state in both Ottoman and modern Turkish societies. Karpat's model gave great importance to the economic base of the social, political and cultural transformations that
came about gradually throughout history, while the other explained the same procedures generally referring to the cleavage between the centre and periphery. As noted by all theorists mentioned above, the Turkish state can be defined by its interventionist characteristics. Especially when the attempt towards the democratisation of social institutions gained a certain momentum, as happened in the periods towards the end of nineteenth century in Ottoman period and between 1950 and 1960 in the modern era, the absolute power of the state somewhat decreased. But, despite this, what remained as a fact was that the continuation of the state authority was perceived as primary to all other activities throughout history. Interventionism was the most effective means to show the absolute authority of the state. Those who carried this out were mostly bureaucrats and military forces. Thus, they were always granted a place above all other members of the society. In order to enhance their social position, the bureaucrats developed a strong state in the face of a civil society, a process which was successfully described in the models of Karpat and Mardin. The relationship between governments and other social institutions is the key concept in their analysis. The centre of governmental activities was the palace of the Ottoman Sultans during the Imperial period, while it was the parliament in contemporary Turkey, whose members were elected democratically. In the former period, the representatives of the state always kept a social distance from the lower classes, and therefore, even if various kind of social, cultural and economic changes were introduced into system, the cleavage between the higher and lower strata was never closed. In the latter period, under new principles and new political rules created by the framers of the constitutions, many attempts were made to close this cleavage within a democratic parliamentary system, though this process was interrupted at regular intervals by the military interventions with the objective of reinstalling the authority of the state. Despite all efforts made to change the structure of the state into a much flexible one, the image of the strong state created during the Ottoman period has never been broken. As both Karpat and Mardin showed, however, the social, politic and economic conditions have immensely changed since the collapse of the Ottomans. The rules that
regulated the democratic life and administrative structure that was inherited from the Ottoman Empire have also changed. So, the question why the strong image of the state has prevailed as all the agents or institutions that formed the state apparatus have changed in a great measure seems to be worth asking. As indicated above, Karpat's and Mardin's models failed to produce a satisfactory answer to this question. As suggested previously in this study, such a difficulty can be removed from the analysis of Karpat and Mardin by making a theoretical distinction between the state and government. Once this distinction is recognised, it becomes possible to say that what was changed throughout Ottoman history was the governmental activities rather than what was called the state. All political, social and economic changes had little effect on the traditional structure of the state. Therefore, the state was always perceived as an institution above all the others and was able to play a "father role".

9. Summary and Conclusions

In this chapter, the historical characteristics of the Turkish legal system were the main focus. With special attention being paid to political and social changes during the Ottoman Empire. It was argued that in the period of the Ottoman Empire, religion and its practitioners in the courts played a crucial role in solving legal problems as well as other issues in social life. In general, the legal representatives held a great deal of power throughout the history of the Empire. The centralisation of the administration was another reason why they successfully possessed this power for such a long time. The role of the land system, which was developed under very unique conditions to the Ottomans, was another important factor in the process of governmental centralisation. Furthermore, this land system and the extreme centralisation associated with it constituted the main reason why all significant innovations, including those in the legal area, were imposed from above, rather than being demanded from below.

Towards the end of the empire, a number of important reforms took place. Their aim was to prevent the country from collapsing and to close the technological gap between the
Ottomans and the European countries. Especially in the second half of the nineteenth century a chain of great legal reforms was witnessed but only some of them were successfully carried out in the practice. However, the reforms in the legal system caused a dichotomy in the court system, introducing a significant number of western laws into a system whose principles were drawn from religious rules. In the end, the system of Sheriat was largely undermined by the new legal rules imported from Europe.

This chapter also provided a short history of legal practitioners in the Ottoman period. The place of the Sultan within the system was unique. As a Caliph, he represented the power and justice of Islam and was also responsible for the correct application of Sheriat rules. The source of his absolute power was the Holy Book. Although Sultans were subject to the unalterable provisions of the Sheriat or Holy Law, the Holy Law itself conceded them almost absolute power (Heper, 1986). Such power attributed to Sultans, however, found its basic principles in a specific version of orthodox Islam which the Ottomans adopted at a particular time in their history.

Although Sultans held the most powerful position in both the administrative and religious hierarchies, in practice, Sheyhulislam was the head of the legal system. All Sultans paid great attention to their appointments because the fetva of Sheyhulislams was of crucial importance in dethroning or enthroning of a Sultan. In a sense, the Ulema class was represented in the person of the Sheyhulislam. As a rule, Sheyhulislams were appointed from among this class and were generally highly educated people. Despite this, they had no real administrative duty. The power of Sheyhulislam in affairs of state gradually diminished towards the end of the Empire.

Below the Sheyhulislam came the Kazasker. There were two Kazaskers, one in the European and one in the Anatolian part of the Empire. They were responsible for the appointments of the Kados and generally for the judiciary system.
The most important agent of the Ottoman legal system were the Kadis. The duty of the Kadis was to apply Sheriat rules in the courts, generally on the basis of the advice of the muftis who were the only people capable of interpreting the rules and commandments of the Holy Book. While it was necessary to have a high level of education to be a Kadi, anyone who wished so could be a mufti, because the Holy Book catered for the needs of everyone and was open to the understanding and interpretation of ordinary Muslims. But, in practice, in order to convince the others, Muftis, too, had to be highly educated.

The Kadi's courts were replaced with the secular ones in the nineteenth century. Due to this, they lost their power within the legal system. Especially, in commercial cases, the influence of the secular judges and advocates began to increase with the acceptance of western codes in related areas. It was a westernization, or modernisation, process that would end with the establishment of the Turkish republic in 1923.

In the new period, the abolition of the Caliphate was followed by "the consequent closures of the religious colleges and courts, the enforced and symbolically significant adoption of western headgear in 1925, the whole abandonment of Islamic law in favour of the Swiss Civil Code and the Italian Penal Code in 1926, the replacement of Arabic script with a Latin-based alphabet(1928), and the elimination of much of the Arabic and Persian vocabulary which the Ottoman literati had acquired(W.Halle, 1981, p.2). As a result of all these changes and total abolition of a system based on Islam, the dichotomy in the role of the lawyers disappeared.

However, the question now was whether or not these radical reforms in many areas of the social life, from the style of clothing to the change of script, could successfully be transferred into the practical life of ordinary Turkish people. The actions of the reformers or the intellectuals behind all these reforms were largely dominated by this idea until the Second World War and the transition to the multi party system in 1950.
In addition to the theories developed by theorists in Europe and introduced in the previous chapter, the perspectives of some Turkish theorists were also introduced. There was a similarity between the traditional understandings of the state in Turkey and Europe. In general, all theorists identified the state with its interventionist character that constrains individual and organisational rights and freedoms, imposing rules over social, economic, legal and professional life.

Karpat (1972), for example, employing a historical-functional view of structural change, explained the structure of the state in terms of economic developments in the west and its effects on the Ottoman state and the associated social changes with these transformations. The theory of centre-periphery cleavage, embraced by many Turkish students of politics asserted that there was a permanent tension between the centre (or the state) and the periphery which resulted in centralisation of the state activities, an "oriental despotism", or full dominance of the state over civil society. According to this group, throughout Turkish history, the continuation of state authority was perceived as primary to all other activities. Interventionism was the most effective mean to show the absolute authority of the state. In the same vein, it is argued by both Heper (1985) and Keyder (1982) that the present Turkish state inherited from the Ottoman Empire a strong state and a weak civil society or a strong centre and a weak periphery. Concentrating on the history of secularisation in Turkey, Berkes (1964) maintained that the Turkish state was an instrument of the Turkish transformations in economic, social and political areas as a result of disruptive external effects coming from the West started at the beginning of the nineteenth century.

The interventionist character of the Turkish state is also expressed in one of the speeches of the president of the Istanbul Bar Association, who pointed out that it is especially during social crises that the state most needed elite support and feels it necessary to take some unusual precautions to cope with the extraordinary political, economical and social conditions which threaten its very existence. But, it may not be possible to do so within
the limits of the legal system. In order to legitimise its activities, the state needs elite support. If the elites are reluctant to give such support, as observed quite often throughout the history, the state never hesitate to use force to persuade them to do so (Annual Report of the Istanbul Bar, 1990). During these social crises in Turkey, the lawyers are amongst the groups which are most subject to state pressure.

Throughout Turkish history, the state has also been perceived as a father, having a similar role to a father within the traditional Turkish family. In other words, the state was a strong autocratic organisation, setting up security forces, building up courts and prisons or constraining the boundaries of freedom and rights, but, at the same time, it was a benevolent protector of its subject peoples, offering a secure life and providing a good standard of life. In short, the state played both good and bad parts. This image of the state is also reflected in professional life. In this respect, the state might be seen as interventionist and a potential danger to professional life, but it is the only institution which is able to safeguard the future of the professions. This widespread traditional understanding of the state among professionals suggests that the relationship between the state and the professions is reciprocal. This is a point which will be later developed in this study, especially when presenting the results concerning the degree of political participation of Turkish advocates.

We are now in a position to examine the main agents of the legal system in modern Turkey. For this purpose, in the next chapter, the focus will be on the structure of the legal profession. To do that, firstly, the main features of the existing court system will be introduced. Secondly, the position of legal practitioners such as judges, prosecutors, advocates and notaries will be examined. The structure of the professional organisation, that is, Bar Associations will then be examined.

The main question will be how all the changes summarised above, affected the legal order in modern Turkey and what are their consequences for lawyers working at the present
time? It will also help us to understand under what circumstances today's lawyers are practising in the courts and what the structure of the present legal system and legal profession is.
CHAPTER III

1-Introduction

In this chapter, I will concentrate on the constitutional changes and their effects on the legal profession. Following this, the present court system in modern Turkey will be introduced. The principle agents of the legal profession will also be main issue. Organisational structure of the legal profession will appear in the final section. Within this context, I will present the structure of a Bar association and the Union of the bars of Turkey. Finally, I will focus on the history of Istanbul Bar Association.

2. Constitutional Changes and Legal Profession

With the defeat of the Ottoman Empire in the First World War, the Ottoman government collapsed. While the Istanbul government maintained a shaky existence during the Armistice years (1918-1922), under the control of occupying armies of the Allies, a new governmental structure was developed in Anatolia by those nationalists resisting the occupation. During this era of National Liberation, a number of important constitutional innovations were made. Following the arrest and deportation by the Allied occupation forces of many deputies with nationalist sympathies and the consequent prorogation of the Chamber of Deputies in Istanbul in 1920, Mustafa Kemal called for the election of a new assembly to convene in Ankara. This assembly was different from the Ottoman Parliament in that it held both legislative and executive powers. It was, in a sense, a constituent and revolutionary assembly, not bound by the Ottoman Constitution.

The first, short constitution of 1921 was rapidly followed in 1924 by a more detailed constitution which was a liberal democratic system, based on an intricate network of checks and balances and individual rights. The new constitution assumed that

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1 For more information concerning these years and especially the relations between the Turkish military and the allied forces, see, Visvizi-Dontas (1976), Sadiq (1976), Sonyel (1989).
sovereignty was the general will of the nation and as such, absolute, indivisible, and infallible (Özbudun, 1990, p.26 and 250).

A conspicuous feature of both of 1921 and 1924 constitutions was their conservatism. That is to say, their prime objectives were to establish and maintain the political, economic and legal order. Under the Sultanate, it had been believed that individual rights and interests should be sacrificed in favour of the society as a whole or more accurately, in favour of the welfare of the Islamic world. Under the new constitution, the only perceived threat to both individual and national interests was that coming from the old regime, the Sultans. Once this threat had been removed, those who drew up the constitution thought that there would be no need to protect the nation and the individuals from their own representatives.

The 1924 constitution was of great significance for the legal order. Under this constitution, it was firmly emphasised that legal judgement were to be made through the independent courts, in a manner which the statutory law would specify(art , 8). There was a clear attempt to ensure the independence of the judiciary and therefore a separation of powers between the executive and the judiciary. However it was soon clear that the constitution did not include an article capable of securing the independence of the judges and courts(Soysal, p.48). For example, there existed no mechanism of examining the constitutional appropriateness of the laws passed in the new parliament. To pass such a task to the bench, it was believed, would have the effect of putting judges above the law and legislature.

Consequently, the supreme court came to a conclusion that judges should not be vested with the right to decide on the constitutional appropriateness of any provision of the law. The judges were able to assess the applications of law in the courts but not the constitutionality of the law itself. In other words, under the constitution of 1924, judges were employees of the state. The best example of this was witnessed during the trials of
a group of fundamentalist rebels in the late 1920s. The judges presided over the courts, called Independence Courts or İstiklal Mahkemeleri, where advocates were not allowed to defend their clients and the judges acted not with the aim of providing due justice for the benefit of all, but on behalf of the state. As stressed by a judge (Kılıç Ali) who administrated one of these courts, "justice meant the state, the state, in turn, meant the judges". Therefore, from the perspective of government or political power, the principal duty of a judge was to help to secure the most radical reforms in the history of the country. For all these reasons, it would not be wrong to describe this period, until the multi party system, as a transition period in the development process of the legal profession, a process which eventually led lawyers to fight for democratic legal rights and a democratic state based on the law and its universal principles.

From the foundation of the Republic to 1946, the Republican People's Party, founded by Kemal Atatürk, was the major power in political, social and cultural affairs. The efforts during the single party years to create a secular state so that the court system would become dependent on the secular legislature were to an extent blocked by religious fundamentalists. This failure to create an independent legal order did not pose a major problem during the single-party years when the political system operated as a mechanism for establishing governmental authority and introducing the new rules to the ordinary people. Therefore, it can be argued that the modernising reforms in this era could hardly have been carried out by a political system where governmental authority was divided and dispersed.

With the transition to a multi-party system, the weakness of the Constitution of 1924 became obvious. The unrestrained nature of legislative power coupled with an electoral system which produced lop-sided majorities in the legislature made it tempting for the leaders of the majority party to use their vast powers to suppress or at least harass, the opposition.
As a result of the election of 1950, a political party (Democrat Party), which was founded only four years earlier, gained an enormous support from the lower classes, especially from the peasantry and came to power, defeating the Republican People's Party and promising various modifications in the direction of reform movements. It was a turning point in Turkish political history. Immediately after the take-over, the new government put its programmes into effect. One of the great changes was in the language of the call to prayer (ezan). Reformists had previously changed its language from Arabic to Turkish. But, now, democrats claimed that this change prevented Muslims from worshipping in the way they wanted and therefore violated their freedom of conscience. In spite of some other similar attacks on the Atatürk reforms, in their first years, the regime became relatively more liberal compared with the period of the one party system. Especially when they gained another political victory in the election in 1954, the pressure on the opposition increased tremendously. The Democrats wanted to rule the country without the opposition party, whose leader, the closest friend of M. Kemal and a famous General of the Liberation War, had great influence over the Turkish army. A considerable amount of the People's Party's property was confiscated on the basis that it had been illegally acquired during the period of one party rule. It was hoped that in this way the influence of the opposition would be reduced. A new Press Law, for this purpose, was passed in the Parliament, imposing heavy penalties for publishing inaccurate information which would endanger Turkey's stability which meant, in practice, the power of the Democrat Party. The economic crisis was another reason that pushed the Democrats towards an authoritarian government. Although they won the election of 1957, the discontent with the economic difficulties and political repression came even from within the party and increased greatly towards the end of the 1950s. In particular, the intellectuals on the left of the political spectrum believed that the governments of the Democrat Party, with their anti-Atatürk concessions, brought the country to the edge of a cliff, in both an economic and a political sense.

1. See, Mardin (1965).
One of the institutions most affected by all this was the army. The military class had been instrumental in creating the republic with Atatürk, and many looked upon themselves as the guardians of the Atatürk reforms. The heads of the military forces felt that the violence accompanying political arguments in the spring of 1959 meant a possible civil war, unless the Democrats were removed from the office. Finally on 27 May 1960, units of the Turkish armed forces overthrew the government.

In the interim period between the military take-over and the ratification of the 1961 Constitution, the country was ruled by the National Unity Committee (Ozbudun, 1990, p.28).

Two different comments on the nature of the 1961 Constitution can be made here. Firstly, it can be argued that the 1961 Constitution represented a reaction to the severe problems observed in the functioning of the 1924 Constitution, mainly because the new Constitution was inspired by a pluralistic, rather than a majoritarian, concept of democracy (Ozbudun, 1990, p.28). Secondly, as Soysal argued, a new constitution is usually described as a reaction if it replaces an earlier one. It may be seen that the social and political reactions articulated in the Constitution of 1961 were not solely a critique of the 1924 Constitution. Rather, it was a product of the political changes which were associated with a set of important social transformations between 1950 and 1960. The role of the Military in the political life of Turkey was studied by many social scientists. Some of them can be mentioned here, Lerner and Robinson (1960), Rustow (1964), Harris (1965), Ozbudun (1966), Fidel (1970), Fidel (1971), Levy (1982), Tachau and Heper (1983), Brown (1989).

A socio-cultural analysis of this military take-over was carried out by Karpat (1970), Harris (1970). Karpat argued that by the end of this period, most social groups were liberated from their traditional roots and the ancient concept of power and authority among Turkish intelligentsia was largely destroyed. Traditional power elites could no longer maintain their political supremacy in a socially diversified national state without a change of philosophy and identifying themselves with the cause of some social groups. Harris examined generally the political causes of the coup concentrating on the role of political elites.

For a general comment on the characteristics of the 1961 Constitution, see, Giritli (1962).
main purpose of the 1961 Constitution, in fact, was to determine the exact legal and administrative limits of government and to prevent the arbitrary governmental actions unacceptable in an open and democratic society (Soysal, p.90-91). But, what is overlooked in this view is the fact that social transformations are themselves reactions to the previous social transformations. Kapani (1962) argued that despite the fact that the 1961 Constitution was anti-totalitarian and essentially democratic, reflecting a deep faith in the principles of individual freedoms, what matters was not so much what was written in it, but how this was interpreted and applied.

The way in which the 1961 Constitution was a reaction against previous constitution can be best seen in certain provisions relating to the legislature. Under the Constitution of 1924, the Assembly was the sole representative of the national will; it exercised the right of sovereignty on behalf of the nation and as such, was subject to no effective constitutional limitations. During the period of 1950-1960, the government which had a vast majority in the parliament used this provision to justify its undemocratic applications. For this reason, the law-makers in 1961 changed the relevant article to one which said that "the nation exercises its sovereignty through the authorised agencies in accordance with the principles laid down in the Constitution" (Article, 4). In other words, "the legislature no longer had a monopoly on legitimate authority in the exercise of which other branches and offices of government also had a rightful share" (Ozbudun, 1990, p.29). So, the unlimited political power granted to parliament by the 1924 Constitution was withdrawn by the 1961 Constitution. Formal democracy was re-established. This was clearly a legal reaction to the social and political conditions which were created by the actions of the governments acting within the framework of the previous Constitution.

Among the features of the 1961 Constitution was that it secured the independence of judges through a variety of mechanisms and that it introduced new courts into the system. It established both a constitutional court empowered to judge the
constitutionality of legislative acts and the "The High Council of Judges" with the function of officiating over the appointments, promotions and disciplinary affairs of judges. The Council was given full authority to act independently from the government. It was also in this period that the Law of Advocacy was passed, describing the role of the advocate in detail, stating new rules on how to open and run an office and also organising the structure of professional associations.

The era between 1960 and 1971 involved a resurrection of democratic institutions in Turkey\(^1\). Under the liberal provisions of the 1961 Constitution, workers gained the right to associate into trade unions, the extreme left was allowed to join in the following election and a party whose discourse was largely based on religion split off from a centre-right party, that is, the Justice Party\(^2\) which was the extension of the banned Democrat Party, and managed to enter the parliament. But this liberated climate did not last long. On 12 March 1971, government was officially warned by the Commanders of Military forces about the deteriorating economic, social and political conditions. The role of student movements in this intervention was important. The street demonstrations organised by students\(^3\), also supported by the working classes, aiming to establish a proletariat dictatorship, were seen as a threat to the unity of the state. The military brought thousands of people from every stratum of the society to trial. They were accused of violence or fomenting class conflict. A series of “above party” governments (which had no direct contact with the political parties of the time) were appointed by the military. The courts were brought again under the control of a repressive government. Almost all Marxist activists were imprisoned and stayed in jail.

\(^1\) See Rustow(1970).

\(^2\) The social and political conditions in which the Justice Party was emerged were well illustrated in the work of Sherwood(1968). See also, Mardin(1965), Özbudun(1981), Heper(1990).

\(^3\) For more information on the historical importance of students' movement and their impacts on political life, see, Hyman, Payaslioglu, Frey(1958), L. Roos, N. Roos and Field(1968), Szylowicz(1970), Mardin(1978), Samim, Ahmad(1981).
until the 1974 amnesty, which was granted by a coalition government between social
democrats gathered in the Republican People's Party and the National Salvation Party
that claimed relative freedom for the extreme Muslims and their ideology. This
coordination government also authorised the military for the invasion of Cyprus to protect
the Turkish minority there. When the loose coalition was broken in 1975, another one
between three right-parties, a centre-right, a religious and a nationalist party, known as
the National Front government, was formed, with the hope that they would stop the
increasing violence between the revolutionary leftists and the state, and also the
rightist militants acting a police, who claimed they were trying to save the unity of the
state.

In the period between 1975 and 1980 "such a disrupted political and economic
atmosphere could not easily be contained by governments which were mostly based on
loose coalitions among more than two parties. The economic situation encouraged a
number of damaging strikes which added to the unease and confusion both socially and
economically. Nor did it help that the administration replaced important officials for
political reasons at every change of government. To the military it looked like the
disintegration of the state" (Dodd, 1990, p.26).

Despite the fact that the social democrat government which stayed in power for a short
period in 1978 took necessary precautions to stop economic deterioration, having
recourse to international loans and standby arrangements which included devaluation
and realistic pricing of the product of the public enterprises, it was extremely difficult
to overcome all the problems that the country was facing. Many agreed that the only
way to stop the drift into chaos was to combine the power of two major parties, but this
did not happen.

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Eventually, this instability in many areas of social and political life led to a military take-over of 12th September 1980, under the leadership of the Chief of the General Staff, General Kenan Evren. Soon after the coup, all the political parties, the left wing, the right wing and labour unions were closed down. The universities were brought under strict control; many academics were dismissed or transferred to less desirable universities in the East of the country. Several measures were taken to depoliticize the public service. Martial Law was declared in the whole country. All the terrorists were hunted out and public safety re-secured.

The military coup gave rise to a new constitution, which was submitted to a referendum in 1982, and accepted by the affirmative vote of over 91% of the electorate.

"Just as the 1961 Constitution was a reaction to certain problems encountered by its predecessor, so is the 1982 Constitution. The architects of the 1982 constitution approached their task with the assumption that the political crisis of the 1970s was due to the erosion of the state authority and more specifically, to the weakness of the executive branch. This, in turn, was attributed to what was perceived as the excessive permissiveness of the 1961 Constitution and equally its limitation on the exercise of the executive authority. The underlying objective of the framers of the Constitution was, therefore, "a strong state and strong executive (Ozbudun, 1990, p.32)". In this respect, the powers of the President were strengthened. The scope of political freedoms was restricted. Measures were taken to stop those who sought to undermine the foundations of a liberal and democratic state.

The constitution of 1961 had paid particular attention to the independence of the judiciary; the same degree of care was characteristic of the 1982 constitution. A

3See Ahmad(1985).
4See also, Heper(1992).
Council of Judges and Prosecutors was created to bring together the previously established Councils of Judges and Council of Prosecutors. Under the Constitution of 1982, the President of the Council is the Minister of Justice. The Under secretary to the Minister of Justice is an ex-officio member of the council. Three regular and three substitute members of the Council were to be appointed by the President of the Republic for a term of four years from a list of three candidates nominated for each vacant office by the Plenary Assembly of the High Court of Appeals from among its own members and two regular and two substitute members were to be similarly appointed by the P.A.H.C.A. They may be re-elected at the end of their terms of office. The Council elects a deputy president from among its elected regular members.

The Supreme Council of Judges and Prosecutors deals with the admission of judges and public prosecutors of courts of justice and of administrative courts, transfers to other posts, the allocations of posts, decisions concerning those whose advancements in the profession is deemed suitable, the imposition of the disciplinary penalties and removal from office. There shall be no appeal to any judicial body against the decisions of the Council (1982 Constitution, Article, 159). Today judges who seek a seat in the Council are expected to be highly experienced in the profession. However, the president has the authority to approve candidates chosen by other agencies of the system.

Given the 1982 regulations, it would appear that the judicial system is more open to the executive or political intervention, so undermining the main assumptions of the constitution; i.e. "the principle that the judicial bodies must be created within the legal area itself" (Soysal, p.249).

3. The Court System in Modern Turkey

The religious dependency on Koran and its written fixed rules were the main characteristics of the Islamic legal system. In the Sheriat courts, everyone involved in
legal process had to communicate in written form. This tradition relates not only to the legal matters but to all areas where bureaucratic procedures existed.

In modern Turkey, established soon after the First World War, all legal practitioners such as Kadi, Sheyhulislam and Mufti, were removed from the legal order. The abolition of the Caliphate was an example of the decisive action of the government at that time, which was determined to adopt western codes in the Turkish legal system. In this way, the acceptance of the first modern written constitution in 1924 gave a new shape to the traditional court system. The basic principles prescribed by that constitution remain in effect, with a little change, until the present day. However, the modern court system gradually developed into its final form, in terms of statutory arrangements, which periodically passed throughout parliament.

The present Turkish constitution (1982) and procedural laws contain many provisions for securing the independence and impartiality of the Turkish courts. Independence from the executive branch of the government was secured mainly through the adoption of the principle of separation of powers, which is stated in the constitution and enforced by special statutes concerning the judiciary.

The Turkish courts are bound to make their decisions in conformity with the statutory law, the function of the judiciary being to interpret and apply the law. Contrary to, for example, the English legal system, in Turkey judicial precedents are not in theory regarded as a source of law. This is due to the view that the legislature is the sole source of new law and the only law maker as such (Güriz, 1987, p. 17).

3.1. The Constitutional Court (Anayasa Mahkemesi)

The Turkish Constitution of 1961 established, following the example of certain post-World War II European constitutions (notably, the German and the Italian) a system of judiciary control of the constitutionality of laws. This system was maintained, with certain modifications, by the 1982 Constitution. The new constitution provided for a
special court to exercise judicial power over the constitutionality of laws, rather than granting such power to the general courts. Under the 1961 system, general courts were also empowered, in exceptional cases, to make decisions on the constitutionality of a particular law applicable in a pending trial. No such power was granted, however, to a general court by the 1982 Constitution (Özbudun, 1990, p.57).

The Constitutional Court was also granted a special status among the other High Courts. This court was designed to be independent from the legislative and executive branches of government. "All judges of the Constitutional law hold office until they retire at the age of sixty five. Apart from the age limitation, their duty may be terminated automatically only upon conviction of an offence entailing dismissal from the judicial profession or for health reasons (1982 Constitution, Article, 147)".

The Constitutional Court examines constitutionality in respect of both the form and substance of laws, decrees having the force of law, and the rules of procedure of the Grand National Assembly of Turkey. Constitutional amendments are examined and verified only with regard to their form. However, no action shall be brought before the Constitutional Court alleging the unconstitutionality as to form or substance of decrees having force of law, issued during a state of emergency, martial law or in time of war (Article, 148). A decision to invalidate a constitutional amendment on procedural grounds must be made by a two-thirds majority of the Court.

The procedure of electing the members of this court is highly complicated but based on the principle of securing the impartiality of the court. Under the 1982 Constitution, the Constitutional Court is composed of eleven regular and four substitute members. All members are appointed by the president of the republic. The majority, however, are nominated by the other high courts in the country. Thus, the President appoints two regulars and two substitute members among the members of the High Court of Appeal (Yargıtay), two regulars and one substitute from the council of state (Danıştay),
one from the High Military Administrative Court, one from the Military court and one from the High Council of Public Account (Sayishtay). The President has also a right to choose one member from among three candidates nominated by the Higher Education Council and he can directly appoint three regulars and one substitute member from among either senior civil servants or advocates (1982, Constitution, Article, 146). Apart from the duty of controlling the constitutionality of laws, the Constitutional Court has some other important duties associated with maintaining the existing order. These are as follows:

a) Acting as a High Tribunal (Yuce Divan), to judge the President and members of the Cabinet, all superior Courts and the Head of Prosecutors, if they are accused of involvement in a crime with regard to their duties,

b) to hear cases of the closing down of political parties,

c) if needed, to control the financial situation of political parties,

d) to decide the cases concerning the condition of an MP who was dismissed by the Parliament, provided that such an MP appeal against the decision,

e) to choose the Head of the Court of Jurisdictional Conflicts, from among its own members (Ozbudun I), p. 366.

Access to the Constitutional court can be secured in two ways; through principal proceedings, i.e. those instituted by a governmental organ; and through incidental proceedings, arising out of a pending trial. Principal proceedings (iptal davasi) can be instituted by the president of the republic, parliamentary groups of the governing party and the main opposition party or at least one fifth of the full membership of the Assembly (Article, 150). Cases of unconstitutionality must be initiated within sixty days following the promulgation of the law in question in the Official Gazette (Article, 151).
The decisions of the Constitutional Court are final. Decisions of annulment cannot be made public without a written statement of reasons. When a law is invalidated by the Constitutional Court, it becomes ineffective as of the date of its publication in the Official Gazette. If the court deems it necessary, it may set some later date as the effective date of its decision. This date, however, cannot be more than one year from the date of publication of the original decision. Decisions involving invalidation are not retroactive, meaning that the invalidated laws are considered valid until the date of the implementation of the court decision. The legislative and the executive branches have no power whatsoever to modify or postpone the decision of the Constitutional Court (Article, 153).

In Turkey today, there are four supreme courts, other than the Constitutional Court, with different duties and peculiar applications. It seems that there is a clear specialisation among them. The demarcations were prescribed in detail by the Constitution of 1982.

3.2. The High Court of Appeal (Yargıtay)

The High Court of Appeal is the final body for reviewing decisions and judgements given by the courts of justice and which are not referred by the law to any other judicial authority. It is also the first and last court for dealing with specific cases prescribed by law.

Members of the High Court of Appeal are appointed by the Supreme Council of Judges and Public Prosecutors of the Republic of the Courts of justice or those considered to be members of this profession, by secret ballot and an absolute majority of the total number of members (1982 Constitution, Article, 154)\(^1\). The Head of the court is chosen by these members and can be re-elected at the end of his tenure. Although, by interpreting and applying the law, superior courts enjoy the privilege of laying down

\(^1\)-For the organisational structure of this court, see, Appendix 1.
rules as effective as the rules of a statute, not all decisions of this court enjoy the
authority of precedent. "As a principle the decisions of the General Assembly of all
Chambers of the High Court of Appeal are binding. If there is a contradiction between
the decision of a chamber of the H.C.A. or between two chambers or if it is necessary to
alter established precedent, the General Assembly on the unification of judgements
makes a unifying decision which binds all other courts and the H.C.A. itself(Law of the
H.C.A, Article, 15)". The other decisions of this supreme court, including the decisions
made by the Assembly of Civil or Criminal Chambers are not made legally binding
upon the inferior courts. However, though these decisions are not considered legally
binding, inferior courts generally pay attention to them. This is partly due to the fact
that judges of inferior courts respect the decisions made by the H.C.A. Besides, the
decisions of judges of inferior courts are evaluated by the H.C.A. in considering
professional advancement of the former. The decisions of the H.C.A. are regularly
published by the Directory of Publications of the H.C.A. and by some private
institutions(Güriz, 1987, p.18).

From the Appendix II, it appears that every year approximately ninety thousand cases
resolved in inferior courts were appealed to the Court of Appeal. The Court resolved
95% of these cases. Those not resolved within the year they had been brought in were
transferred to the following year and these remaining cases eventually caused a big
accumulation in the work of the court. In order to resolve this situation, a special law
was enacted in 1988, the increasing workload of the Court diminished that year. This
trend can also be observed in the table relating to the average time of resolving each
case in this court. In 1983 a case was resolved on average in 13 days but this had
increased to 31 days in 1988. However, considering the increasing percentage in
criminal cases (nearly one and half million by 1987), the workload of this court is likely
to go up again within the next decade.
3.3. The Council of the State (Danishtay)

The Council of the State is the final court for reviewing decisions and judgements given by administrative courts and which are not referred by law to other administrative courts. It is also the first and last court for dealing with specific cases prescribed by the law.

The Council of the State tries administrative cases, gives its opinions on draft legislation submitted by the Prime Minister and the council of Ministers, examines draft regulations and the conditions and contracts under which concessions are granted, settles administrative disputes and discharges other duties as prescribed by the law.

Three-quarters of the members of the Council of the State are appointed by the Supreme Council of Judges and Public Prosecutors from amongst the first category of administrative judges and public prosecutors, or those considered to be of this profession; and the remaining quarter of the members by the President of the Republic from amongst officials meeting the requirements designated by law (1982 Constitution, Article, 155).

The President, Chief Public Prosecutors, deputy presidents, and heads of divisions of the Council of the State are elected by the Plenary Assembly of the Council of the State from amongst its own members for a term of four years by secret ballot and by absolute majority of the total number of members. They may be re-elected at the end of their term of office.

"The Council of the State is composed of ten members, eight of whom function in administrative chambers. The judicial function of the Administrative Council of State is extremely important both as a safeguard of the individual against the interference of the state and as an arbiter between the state and the individual (Güriz, 1987, p.19)."

1. For the organisational structure of this court, see, Appendix I.
Unifying decisions made by the General Assembly on the unification of judgements bind all inferior administrative courts and the Council of the State itself. When there is a conflict between the decision of different judicial chambers or different decisions of the General Assembly of judicial chambers, the first president of the Council of the State, concerned judicial chambers and the Chief Prosecutor of the Council of the State may require the General Assembly to make the unifying decision (The Law of the Council of State, Article, 39).

As can be seen in Appendix III, the Council of the State is one of the busiest courts in the country. It has to deal with nearly twenty thousand cases each year. That the court resolves the majority of the conflicts that are appealed to it. In 1983, there was a rapid increase in the number of cases appealed to it. This can be explained by the government handing over from the military to a civil one, which took place that year. The military government of 1980-83 had created its own special courts which operated under extraordinary laws. With the transition to civil life, all who suffered from the decisions reached in these courts brought their cases to the State Council which was the final court in the legal system. The data in the table indicate that unsolved cases are gradually increasing every year. It could be speculated that this will force the system to create radical reforms in the years to come.

The Council of the State operates very slowly. A case that is brought to this court normally takes approximately 350 days to be resolved. Therefore, it could be said that the biggest problem in the functioning of this court is the delay, even though it eventually resolves the majority of cases. Consequently, it would not be wrong to say that this court is not in a position to meet the needs of the Turkish people.

3.4. The Audit Court (Sayishtay)

This court is established as one of the main constitutional institutions whose duty is to audit on behalf of the Turkish Grand National Assembly, "all the accounts relating to
revenues, expenditures and property of government departments financed by the
general and subsidiary budgets, with taking final decisions on the acts and accounts of
the responsible officials, and with exercising the functions required of it by law in
matters of inquiry, auditing and judgement. Parties concerned may file a single request
for reconsideration of a final decision of the Audit Court within fifteen days of the date
of written notification of the decision. No applications for judicial review of such
decisions are filed in administrative courts(1982 Constitution, Article,160)^. The
decision of the court consists of the decisions of a chamber, the General Assembly of
Chambers and the General Assembly of Appeal(The Law of the Audit Court No; 832).
In the event of a dispute between the Council of the State and the Audit Court
concerning matters of taxation or similar financial obligations and duties, the decision

3.5. The Military Court of Appeal(Askeri Yargıtay)
The Military Court of Appeal is the court of final appeal for reviewing decisions and
judgements given by military courts in military cases. The members are appointed by
the president from amongst the candidates nominated by the Plenary Assembly of the
Military Court and its Head prosecutor takes over his duty according to his experience
degree or his rank(1982 Constitution, Article, 156).

The organisation and the functioning of the Military High Court of Appeals, and
disciplinary and personnel matters relating to the status of its members are regulated by
law in accordance with the principles of the independence of the courts and the security
of tenure of judges and with the requirements of military service (Article, 156). All
decisions made by this court bind all inferior courts and the court itself.

There is also another supreme court dealing with administrative affairs in military
services, called the High Military Administrative Court of Appeals.
3.6. The Inferior Courts

In Turkey today there are three inferior courts which are associated with each other by related laws. The first court system, the largest one, called the General Courts (Adliye Mahkemeleri), has jurisdiction over disputes arising between private people. The general court has two main subdivisions, 1) the Civil Courts and 2) the Criminal Courts. The Civil Court is divided into two main parts, a) the Justice of Peace and b) the Civil Court of First Instance. One judge is attached to each part and they are found even in the smallest places throughout the country. The Criminal Court contains three branches, a) the Criminal Court of Peace, b) the Criminal Court of First Instance, and c) Aggravated Felony Court, comprising three judges, one of whom is the Chief Justice. Decisions reached in both Civil Courts and Criminal Courts can be appealed in the High Court of Appeal. In addition, in some large cities, there are a number of basic civil courts established by the Ministry of Justice. Some of them are authorised to try particular categories of disputes, such as labour disputes, commercial disputes, etc.

The Administrative Court (Idare Mahkemeleri) is the second court system, whose duty is to hear complaints about the effects of governmental actions on private persons. Its branches exist in most cities. The verdict of this court can be appealed at the State Council (Danishtay), which is the highest administrative court in Turkey.

The Military Court is the one where military legal problems are solved. It has many sub-divisions, each of which is composed of two judges, advocates and one commissioned officer.

In addition to the above courts, there is a special court established by the Constitution, called the Jurisdictional Conflict Court (Uyushmazlik Mahkemesi). This court is empowered to deliver final judgements in disputes between courts of justice and administrative and military courts concerning their jurisdiction and decisions (1982...
Constitution, Article, 158). However, decisions of the Constitutional Court take precedence in jurisdictional disputes between the Constitutional Court and other courts.

It appears from the tables in Appendix IV, V, VI, that in all inferior courts in Turkey there is an accumulation of work which increases rapidly every year. For example, in the Court of First Instance, there were 457611 cases in 1988, but only 24845 of them were solved within the same year. The same seems to be true for the Criminal Courts like the Court of State Security or the Court of Heavy Penalty. Despite the fact that there is also an increase in the work of Administrative Courts, it seems that this increase has not created problems in these courts because, as can be seen from the relevant table, the speed of resolving cases has gone up in parallel to the increase in the number of cases coming to the courts. A steady increase in the work of the Civil Courts can also be observed in the Appendix VI, which shows only the cases held in Istanbul and Sivas. The table also shows that nearly 25% of total civil cases are held in Istanbul while only 0.9% of them are held in Sivas. In the period between 1969 and 1987 the work of the Civil Courts in Istanbul increased seven times while the work of the Sivas Courts increased four times. In conclusion, it is clear from the figures that all Turkish inferior courts seem to have failed to produce a speedy legal service and the delay in these courts seems to be a serious problem. As is often said in Turkey, "justice that comes late is not justice at all".

4. Legal Practitioners in Modern Turkey

The 1982 constitution identifies four types of legal functionaries in Turkey; Judges, prosecutors, advocates and notaries (that is, Hakim, Savci, Avukat, and Noter respectively).

4.1. The Judges

The role of the judge within a legal system is of primary importance, especially in a country such as Turkey where there is no jury trial. The judges' role and responsibility
are greater than in the courts with a jury. He is actively responsible for the administration of justice, taking the initiative in applying and interpreting law as it relates to the facts submitted by the parties. Other lawyers have a duty to assist the judge in establishing the facts and determining applicable legal provisions (Kuru and Ansay, 1987, p.221).

In Turkey today everyone who obtained a law degree from any university may apply to be a judge or more correctly, an assistant judge. A candidate who wishes to become an assistant judge must first pass an entry examination and complete a period of apprenticeship of two years in a court or in a prosecutor's office. An assistant judge is also required to complete a probationary period of four years before being appointed as a judge with full authority in the court. During this period, they may in certain regions act as a probationary judge. Turkey is geographically divided into three main regions, each composed of many small judicial districts classified according to their population size and their level of development. A judge is normally appointed first to one of the smaller regions, transferring gradually to the more developed areas. In this way, the level of a judge's responsibility increases with experience.

The constitutional independence of judges has been secured under Article 138. "Judges shall be independent in the discharge of their duties. They shall give judgements in accordance with the constitution, law, justice and their personal convictions conforming with the law (Article, 138)". In addition, "no organ, office, agency or individual may give orders or instructions to courts of judges relating to the exercise of judicial power or send them circulars, make recommendations or suggestions. No questions may be raised, debates held or statements issued in legislative bodies in connection with the discharge of judicial power concerning a case under trial. Judges shall not be dismissed. They may not be retired before they are sixty-five years old, unless they so desire. They may not be deprived of their salaries, allowance or other rights relating to their status, even as a result of the abolition of the court or post." (1982
Constitution, Article, 159). The abolition of a court or the post of a judge or the alteration of the area of jurisdiction of court is dependent upon the approval of the High Council of Judges and Prosecutors.

As indicated above, under the constitution of 1961, judges were responsible administratively to the "High Council of Judges and Prosecutors(Article, 143) which was established as a superior regulating body separate from the government and the government administration. The 1961 Constitution permitted, therefore, a high degree of formal autonomy and freedom of action.

The constitutional context within which the Turkish judges operated after 1961 was relatively more supportive of an autonomous legal system. The judges were formally equipped with independent jurisdiction and more freedom of action than ever before. The 1982 constitution, however, significantly changed the functions of "The High Council of Judges", reducing its independence in accordance with the political and legal agenda, especially of the 1970's, which was dominated by the view that political and social unrest was exacerbated by the "excessive" freedom granted in the 1961 constitution and that greater state control was necessary.

So, with the present legal system created by the 1982 constitution, the practice of judges has been opened up to potential interference by the Ministry of Justice, which holds the authority to transfer judges from one area to another. While only the administrative dependency of judges to the Ministry is tolerated by the constitution, it is clear that the Ministry might intervene in legal procedures by means of its control over appointments and promotions. Equally, the President's authority to control appointments to the Council of Judges and Prosecutors could be used in the same way.

In 1987, there were 5183 judges and 7074 assistant judges in the General Courts. It also appears from the Appendix VII, that the relevant figure in 1971 was in total 2166 and 47 respectively. This shows that the number of the judges and assistant judges
increased enormously within the last two decades. Despite this rapid increase, it has not been sufficient to create an effective court system. Today there are thousands of cases waiting in the courts and judges have to deal with many more cases than they should normally do in a working day.

4.2. The Prosecutors

A prosecutor is a person who may bring a case to court on behalf of the public. In a criminal suit, for example, the prosecutor represents the state, on the basis that all citizens are affected by the action of the defendant.

The function of public prosecution is, therefore, attached to the Ministry of Justice, for administrative purposes. However, the organisation of the practice and of the prosecutors is governed by the High Council of Judges and Prosecutors.

There is a public prosecutor with deputies at every general court. The function of the public prosecutor in an Aggravated Felony Court is performed by the public prosecutor assigned to the Court of General Criminal jurisdiction of the locality in which the Aggravated Felony Court is situated. There is no public prosecutor in a Peace Court. This means that a public prosecutor is not present at the trial, but proceedings in these courts are also initiated by the prosecutor of the court of General Criminal Jurisdiction.

The function of the Chief Prosecutor of the Republic (Cumhuriyet Bash Savcisi), is not to prosecute but to present the prosecution's view during the review of the decisions of the High Court. As soon as a prosecutor is informed of the occurrence of an offence, he should make the necessary investigation necessary to decide on whether or not public prosecution should be initiated. He investigates evidence both against and in favour of the accused person(Gölçüklü, 1987, p.250-251).

There is no major difference between the education of judges and prosecutors. The would-be prosecutor, like those who wish to be judges, must take an entry examination

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1. See Appendix (II, III, IV, V).
organised by the Ministry of Justice and all candidates who pass the examination and carry out a two year period of apprenticeship may be appointed as either an assistant judge or assistant prosecutor. At the end of their service as an assistant they may be promoted. This promotion depends on the impression that they have made with the Ministry of Justice. It is also possible for a practitioner to transfer himself or herself from being a judge to prosecuting or vice versa, at any stage of their professional life. However, under Turkish law, while judges are an independent and homogeneous group, there exists a hierarchy among prosecutors. The Chief Prosecutor (Bash Savci), occupies the top rung of the ladder, with responsibility for and a strict authority over all prosecutors within the service. In a sense "the official position of prosecutor is somewhere in between independent judges and the ordinary employees working for the state(Tan, p.20)".

In 1987, as revealed in Appendix-VII, there were 2478 prosecutors, 643 probationers and 1835 assistant prosecutors in Turkey. In 1971, total number of the prosecutors was 1392, 632 probationers and 760 assistant prosecutors. What is clear from these figures is the fact that the number of prosecutors is not increasing as rapidly as that of judges. This is partly because the presence of a prosecutor is not necessary in every kind of case, for instance, divorce cases, while a judge is needed, and partly because this profession is not favoured among the new law graduates. This relative shortage in the number of prosecutors might be one of the main reasons why Turkish courts are not able to produce an effective service for people with legal problems.

4.3. The Advocates

Advocacy, as a profession in a contemporary sense, has existed in Turkey only since the reception of the western legal system in 1924. In the traditional system, while everyone had the right to choose the defender they wished, advocacy was not a profession in a sense of a life long career. "In the court where justice was carried out, the Kadi was the sole person who could determine the style and conditions of how to
judge and come to a conclusion without any consultation with any specialist on the subject relating to the case (Özkent, p. 19). Two conspicuous consequences of the system in which the Kadis had such great authority might be mentioned. Firstly, the dominant position of the Kadi had the effect of blocking the development of independent advocacy in Sheriat courts where the defenders generally did not know all Islamic rules. Secondly, because Islamic rules were applied differently in different regions or varied in accordance with dominant sects in those areas, it became impossible to have unified system of legal rules. For the same reason, it was also difficult to increase the number of experts who both knew and enforced the rules and commandments of Sheriat which were to be found in the books written in Arabic.

"In the period before the Tanzimat, however, there existed a class of pleaders under the name of Dava Vekili who, while untrained in the law, were allowed to represent the defendants in the courts. These untrained people generally preferred to live in the area where Kadis lived, so getting to relate closely to the Kadi (Tan, p. 11). Gradually, it became customary for those going to court to retain such people who were known to have a good relationship with the Kadis. Therefore, clients with legal problems went to Vekils, in the hope of being represented by them in the court and in the hope of being able to be represented by a Vekil holding an exclusive position in relation to the Kadi. An advocacy system of this kind lasted, with regional and historical variations, until the declaration of Tanzimat.

In 1875, a special department in an Istanbul academy (Mekteb-i Sultaniye) was founded. From this time, students who graduated from this department were given authority to represent clients in the court or act as pleaders (Dava Vekili). In the following years "it was decided to set up a law school and employ its students in the special courts (Nizamiye Mahkemeleri) which were established during Tanzimat, in order to hear the commercial issues arising between Ottoman and western entrepreneurs (Tan, p. 12)" as well as to try lawsuits between Muslim and non-muslim..."
litigants (Lewis, 1961, p. 179). This school was the predecessor of the present Istanbul Law Faculty.

During the Republican period, the most important change relating to advocacy was the 1938 law which allowed law graduates to practise as advocates, opening an office in the cities (The Advocacy Law). Under this law, the advocates were described as public employees, but employees who were able to work independently on behalf of their clients. Advocacy was recognised as a legal occupation and as the accepted form of representation in the Turkish courts. The facility of retaining a professional person gave lay persons the opportunity of defending themselves in a more adequate manner. This was also the first comprehensive law on legal representation and remained in force until a new, and more detailed, Act was introduced in 1969, in order to meet the legal needs emerging as a result of the problems associated with rapid economic development and social change. Under the law of 1969, to be accepted as an advocate, it is necessary:

a) to be a Turkish citizen,
b) to graduate from a Turkish law faculty or to pass all requisite examinations concerning Turkish law, after graduation from a foreign law department (The Law of Advocacy. Article, 3),
c) to complete a period of apprenticeship successfully,
d) to live in the authority area of the Bar Association in which one intends to practise,

Under the same law, one cannot be an advocate if he or she,

a) has been sentenced longer than one year or more,
b) has been sacked while in an office of a judge, state-employee or advocate,
c) is known as too inadequate a person to become an advocate,
d) has been bankrupted,
e) is deprived of certain legal rights by a court decision,
f) has been previously sacked from the occupation,
g) is involved in another occupation incompatible with advocacy,

h) is permanently ill which prevents him or her from carrying out the job.

The Turkish education system is a tertiary system. The first stage to the age of eleven is compulsory for everyone. Secondary school is not compulsory by law, but the labour market today requires secondary education for any job with minimal qualification. A student intending to gain an entry to a law faculty has to pass through both stages.

Every secondary school graduate must take a university entrance exam which classifies students according to the level of their ability and places them in a specific university in accordance with their interests indicated in the application form.

According to the data obtained from "The Student Selection and Placement Centre", 287,978 out of 680,000 candidates advanced to the second entrance examination in the academic year of 1990-91 and the number of candidates selected for the law faculties was 2679, including 714 females and 1965 males. In the same year, while 2178 students graduated from law faculties, 15,295 students were continuing their study in six law departments (1990-1991 Academic Year Higher Education Statistics).

Law graduates decide between careers as prosecutors, judges or advocates. Candidates seeking to practise as advocates apply to one of the district Bars for an apprenticeship. There is no examination before entry to any Bar Association in Turkey. The practice of advocacy is currently regulated by the law passed in 19681. Under this law numbered

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1 It should also be noted that this law has been criticised by many lawyers for its restrictive provisions in relation to advocacy practice. They believe that the limits and the right of the advocates are not stated very clearly and therefore the law should be replaced by a new one. This is also a view shared by the present Ministry of Justice. Consequently, a new draft law has already been opened to discussion. It seems that the existing law will be soon changed. Hence, the provisions that outline the work conditions in advocacy practice and presented in this section must be considered as temporary rather than the permanent characteristics of the system. But, there is no doubt that the basic elements of the system will be retained in the coming arrangement.
Every Turkish citizen obtaining a law degree from a university and successfully completing a period of apprenticeship under a Bar Association can open an advocacy office, and represent their clients in the courts (The Law of Advocacy, Art. 3). Each apprentice must complete a period of one year assisting judges or prosecutors in the courts or working with a registered advocate in his office. At the end of the apprenticeship, the training supervisor submits a report to the Executive Committee of The Bar, assessing the pupil's capability. In the light of this report, the committee may allow the candidate to register as an advocate. However, this procedure seems only a formality which everyone has to follow because, until now, only a few applicants have been rejected. All registered advocates have the right to appear in every type of court.

In today's Turkey, advocates are known as one of the groups most discontented with deteriorating conditions in the social, economic, political and legal areas. In their view, the only remedy to the problems that the country is facing is to adapt to the rapid social, economic and legal transformations within the last two or three decades. The changes or reforms which they believe can create better conditions, for example in the legal area, can be listed as follows (The Presidency Report and The Minutes of General Committee of U.B.T, 1989):

1) the political power must provide the people with full freedom in pursuing their civil rights,
2) the security of judges, which was practically lifted by the 1982 Constitution, must be protected in terms of new legislation,
3) the 1982 Constitution, which they described as an "only if" Constitution, must be changed into a more democratic one, in order to have a more stable political and legal order,
4) the executive must give requisite importance to the advocacy system; in the courts today prosecution is given more importance than is advocacy, even though they are
equal theoretically. Therefore, the position of the advocates in the courts must be strengthened,
5) the state must redefine the limits of rights and freedoms, producing new legal means to realise and protect them more effectively,
6) the principle of the secular state must be defended vigorously and transferred practically into all spheres of social life,
7) the financial problems of the Bars must be solved and measures must be taken to increase their effectiveness in political and social activities,
8) clearly legal education needs to be re-organised and the conditions of entry to the profession must be redefined; in order to protect professional ethic, necessary legal arrangements must be made without further delay; in this way, the quality of the legal service will be improved.

In 1990, as can be seen in Appendix VII, there were 26663 advocates in Turkey, 6721 female and 19823 male. This figure was 21395 in 1984, 21447 in 1985, 21411 in 1986, 22294 in 1987, 24217 in 1988 and 24989 in 1989. This means that there has been a steady increase in the number of advocates across the whole country within the last decade, although the numbers did not change significantly in the years of 1984 and 1985.

4.4. The Notaries
In the Turkish legal system a notary prepares deeds and other documents, such as wills authenticates them, sends official notice to the people involved in judicial cases and performs other similar functions indicated in the law (Law of Notary, 1972, Article, 1). To become a notary, a person must be a law graduate and be appointed by the Ministry of Justice. Notaries are regulated by the same Ministry. They receive no salary but fees for each transaction performed. The number of notaries in all cities is determined by the Ministry.
5. Professional Associations

According to the Law of Advocacy, a Bar Association might be established in every town where there are at least fifteen advocates in practice. Advocates working in relatively small communities can be enrolled in the Bar nearest to their practice area or a new Bar Association may be founded under the authority of "the Union of the Bars of Turkey". All such new creations have to be approved by the Ministry of Justice.

The statutory duties of a Bar are laid down by The Law of Advocacy (Art. 76) as follows;

The Bars are an organisation

a) to meet the common needs of the members of the profession,

b) to facilitate professional activities,

c) to contribute to the development of the profession in accordance with the general interest of the public,

d) to protect professional ethics and discipline.

The law also lays down certain restrictions on Bar Associations.

The Bar cannot:

a) engage in activities in any area other than those laid down by the law,

b) organise any meeting or rally not concerned with its legal duties,

c) be involved in political activity,

d) act together with any political party, trade union or other Association,

e) donate money to political parties,

f) support any candidate in national or local elections.

Any Bar violating these restrictions may be abolished by the Civil Court of First Instance. The initiative for such an action is taken by a prosecutor on behalf of the
Ministry of Justice. All the organs of the Bar must follow decisions made by the Ministry, which is empowered to regulate all activities carried out by the Bars.

A further interesting provision of the Law of Advocacy relates to the authority given to the governor of the city to dismiss an Association of the Bar. According to this provision, when immediate action is required, the governor has the right to temporarily discharge any elected organisation of a Bar Association. This rule can be applied only when the association is accused of undermining the state and its peace. The decision to discharge such a body is submitted to the court within three days following the governor's decision. The court must reach a verdict on the governor's decision within ten days.

All Bar Associations are made up of the following.

1. The General Committee,
2. The Executive Committee,
3. The Presidency,
4. The Presidency Committee,
5. The Discipline Committee,
6. The Control Committee.

1) The General Committee
This committee is composed of all advocates whose names are included in the Bar list. It is the main body of the Bar, ultimately responsible for all its activities. Therefore, in the inner hierarchy of the Bar, it holds the highest position.

1. A governor, that is Vali, is a representative of the government in each city, having a full authority to organise and direct the administrative affairs in their area.
2. 1-That is, Baro Genel Kurulu, 2-Baro Yonetim Kurulu, 3-Baro Baskanligi, 4-Baro Baskanlik Divani, 5-Baro disiplin Kurulu, 6-Baro denetleme Kurulu, respectively.
It is the duty of the General Committee of the Bar (G.C.B) to elect the head of the Bar and the members of the Executive, Discipline and Control Committees, as well as the delegates who will represent their Bar in The Union of the Bars of Turkey. The G.C.B. also approves the annual budgets of the association, and the regulations drawn up by the Executive Committee. It discusses all issues raised concerning the profession, helps retired colleagues and determines the necessary conditions for opening an advocate's office.

In order to fulfil these duties, the G.C.B. convenes in October in very other year. Participation in this meeting is compulsory for all advocates and a fine may be imposed on those who do not attend. A record of this meeting is sent to the headquarters of the Union of the Bars of Turkey which monitors the activities of all districts.

2) The Executive Committee

This organ of the Bar is composed of the President of the Bar and at least four members elected every two years. The President of the Bar is the chair of this committee. The members are, as a rule, selected from amongst advocates having in excess of fifteen years experience in the profession. The major duties of the committee include,

a) to secure adequate conditions for professional practice in the district and protecting the occupational order and the honour of the advocacy,

b) to supervise the system of apprenticeship, adding new advocates to the Bar list, and registering transfers of advocates to or from other districts,

c) to act as a mediator in ordinary or financial disagreements arising between advocates and their clients,

d) to enforce decisions made by the Ministry of Justice and the Union of the Bars,

e) to act as a consulting institution any subject on which any Ministry, court or other official body needs clear legal advice,
to administer its members with regard to professional duties, informing them about their responsibilities and controlling them in applying their duties.

3) The Presidency
The President of the Bar is elected for two years from amongst advocates with professional experience of fifteen years.

The basic duties of the president are,

a) to represent the Bar and preside over the Executive Committee,
b) to fulfil the decision of the committees and deal with the routine activities in the office,
c) to appoint the advocate who represent and defend in the profession as a whole in the courts and also in the public offices,
d) to protect and defend professional honour and independence on every occasion,
e) to prepare and submit an annual report to the Union of the Bars of Turkey.

4) The Presidency Committee
This section of the Bar is comprised of,

a) the president of the Bar,
b) the deputy head who carries out the duties of the president in his/her absence
c) the general secretary who organises the routine office affairs,
d) an accountant who manages the budget of the Bar.

5) The Discipline Committee
The discipline committee is formed, if the number of the enrolled advocates in a region is about 250, by three members, if above 250, by five members of the Bar. The main duty of this committee is to investigate complaints about advocates, giving them
penalties—if found guilty—according to the related rules. While this process has to be initiated by the Executive Committee.

6) The Control Committee

The general committee of the Bar was charged to elect three regular and three assistant members of the Committee of Control to examine the financial situation of the Bar.

5.1. The Union of The Bars of Turkey

This is a central organisation in Ankara, formed by the 1968 Advocacy Law, coordinating and controlling the activities of all Bar Associations (U.B.T).

Some of the principal duties of the U.B.T can be summarised as follows,

a) to express publicly the dominant view among advocates on any subject concerning the profession,
b) to contribute to common objectives in the process of professional development,
c) to protect the general interests of the members and maintain the moral order and professional traditions,
d) to enhance the relationship among members, organising social activities and introducing them to each other,
e) to design law drafts and contribute to preparing the laws in accordance with the legal needs of the country by making public statements, publications and so on,
f) to transmit the view of the Bars to governmental bodies on subjects concerned with the Bars,
g) to increase occupational knowledge and the professional level of advocates, opening libraries, issuing magazines, organising conferences, publicising original or translated books,
h) to attend international congresses, setting up good relations with foreign advocates, Bars and legal institutions.
1. The Organs of the U.T.B

1) The general committee of the U.T.B

The members of this committee are all delegates elected by each Bar, each of which is represented by two delegates. It constitutes the main body of the U.B.T.

2) The Executive Committee of the U.T.B.

The President of the U.B.T. is simultaneously the President of the Executive Committee which is composed of ten regular and ten alternate members selected by the General Committee by means of secret voting.

3) The Presidency

The President is elected for a period of four years. The President's major duty is to represent the Union within the country and abroad and to preside over the executive and discipline committees.

4) The Presidency Committee

This committee has four units: a) a President who is the chair of the U.B.T, b) two deputy presidents, c) a general secretary, and d) an accountant.

5) The Discipline Committee

It includes seven members elected by the general council of the Union, with the duty of hearing complaints arising between the Bars and their members, or between advocates and their clients. There are also seven alternate members in the committee.

6) The Control Committee

This committee prepares an annual report about the financial situation of the U.B.T. and is formed by three regular and three alternate controllers. Under the Law of Advocacy, the method of investigation and the procedure of giving or approving a punishment to an advocate have been stated in detail.
5.2. The Istanbul Bar Association

In Turkey, the largest and oldest Bar Association is the Istanbul Bar Association founded on 5 April 1878. It has nearly ten thousand members.

The first Bar Association in Ottoman history was the Société du Borreau de Constantinople, established by foreign advocates, which was accepted as a predecessor of the present Istanbul Bar. The main feature of this Bar was its heterogeneous composition, such that there were only five lawyers with Ottoman origin. More accurately, almost all founder advocates were drawn from one of the minority groups. However, it was minority groups which pushed the Ottoman Empire into many serious political problems in its relations with the European countries. The minority groups also collaborated with the enemies against the Ottoman government during the First World War. Under the capitulation treaties of 1673 signed between the Ottoman Empire and France, the French Embassies had been authorised to hear criminal cases concerning French people living within the borders of the Empire. This kind of legal privilege was extended to many other countries, such as England, Holland, Spain, Russia, etc. In this way, their citizens, especially their commercial entrepreneurs, in the Empire had a right to get away from Sheriat rules while these rigid rules were applied to other Ottoman citizens or truly Ottoman people involved in the commercial area. Foreign people, mostly French, wanted to establish their own courts towards the end of the nineteenth century. Eventually, they managed to set up their own special and privileged courts working within the Embassy Buildings (for this reason, called courts of Embassies or Konsolosluk Mahkemeleri). In time, these courts spread all over the country. Many advocates educated in European universities were brought and employed in these courts. It was also this time, however, that the Ottoman advocacy system faced a wide range of radical reforms in many areas. Owing to this dichotomy

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1. This section is written on the basis of Adem Betil's article which is the single systematic research on the history of the Istanbul Bar Association.
in applying legal rules, the legal system were lacking well-educated advocates of Turkish origin.

In 1870, the foreign advocates wanted to establish a Bar Association with the purpose of protecting their professional and individual interests within the Ottoman Empire, and representing the Ottoman advocates abroad. The first such Bar was composed of thirty-three advocates from England, Italy, Austria, Greece, Belgium and Russia and lasted until the opening of the second Ottoman parliament in 1908. After this date, though the Bar Associations in Europe continued to recognise this Bar, it lost all its functions and voluntarily transferred the right to represent the Bar abroad to the other Bar Association founded by mostly Turkish lawyers in 1878.

With the reforms carried out during the Tanzimat period, it was felt necessary to found local associations capable of overseeing the legal practices. Given the growing significance of trade with the European countries, the Ottoman Empire sought to construct a legal system capable of dealing with the needs of entrepreneurs and their relations with the local traders. Under these circumstances the Istanbul Bar Association was established as a result of legal reforms which took place towards the end of the last century. The aim of these reforms was to safeguard the rights of non-muslim or foreigners in commercial life.

In its first year, that is in 1878, the members of the Bar were drawn from minority groups. It had 63 members, 11 Muslims, 11 Greeks, 38 Armenians, and some English, French and Italians.

The second general meeting of the Bar was held in 1880. An advocate with Russian origin, a legal consultant of the Sultan, was elected chairman. But the activities of the executive Committee of the Bar did not last long, though they were allocated a new and special building in 1893. As a result of the abolition of the constitution of 1876, all
kinds of meetings for all purposes were gradually banned and after 1893, the Bar had to stop its activities for a while.

The period between 1876, the proclamation of the first constitution (Birinci Mesrutiyet), and 1908, the second constitutional period, (Ikinci Mesrutiyet), is known as a period in which the absolute rule of the sultan prevailed. The constitutional system of 1876 was replaced with a new one which took effect in 1908. On 31 July 1908, the advocates in Istanbul decided to convene and give new impetus to the activities of the Istanbul Bar. The general meeting of the Bar comprised of 125 advocates who met on 21 Aug. 1908, and re-built its active organs.

The Ministry of Justice in the Ottoman Empire did not approve, at first, an appointment of a president elected by the general meeting in 1911, finding his certificate insufficient to become the head of advocates in Istanbul. This disapproval became, perhaps, the first example of the many conflicts that would arise between the state and advocates in the years to come in both the Ottoman and modern Turkey.

The chairman elected in 1914 was involved in some political activities, embracing some progressive ideologies at that time, giving strong support to the "Jeune Turcs" movements and also joining an illegal organisation formed to organise political reactions against the Sultan. This illegal political movement (called Kuvva-i Milliye) remained at the centre of the Liberation War. The political and social engagements in this politically active organisation gained the acceptance of most members of the Bar.

In the earlier period of modern Turkey an advocate who was known as one of the leading of supporters of the former religious order, was elected. This election gave rise to some major debates about the position of the Bar within the new and modern legal system. By forming a committee with extraordinary authority, composed of advocates who contributed to the establishment of the new state, a range of new arrangements was imposed upon the Istanbul Bar Association, including removing some well-known
advocates from the Bar. There were 960 advocates enrolled in the Bar list at that time.
The committee decided to dismiss 473 advocates and convene another general meeting
to elect a new administration. The first meeting of the Bar in the republican period took
place in 1924. During this election, the temporary chairman of the meeting made a clear
statement that the Bar would no longer be interested in political issues, and people who
intended to be concerned with political life would not be allowed to continue their
activities in the Bar. An advocate who embraced the new policy was elected, but after a
short time he had to leave the Bar because he took an office in the cabinet. So, it was
necessary to hold a new election for the chairmanship of the Bar. In the next election,
the former head was elected by the members and the Bar kept its close interest to
political and social matters. This general character of the Bar, its close relationship with
the political order, has been maintained until the present day.

An unfortunate event which affected the whole legal history of Turkey, occurred on 3-4
December 1933. Most legal documents were either burnt or lost in the fire of a judiciary
building in Istanbul. Almost all files relating to cases under the court's control were re-
written with the assistance of the advocates because their own files remained the only
sources to re-organise the cases. Meanwhile, a great number of historical legal
documents concerning the Istanbul Bar and other legal institutions were lost in the
same fire. Eventually, the Bar was transferred into another building in which it
functioned until recently. There were 604 advocates in the general meeting convened
after this fire.

In the Ottoman Period, legal practice was prohibited for females, regardless of their
educational level or their ability because of the idea that the job was more suitable for a
male. No female Kadi, for example, ever appeared in Sheriat Courts. Moreover, the
issue of women's rights as human being was interpreted in the light of the Koran's
commandments and also of interpretations of the Islamic authorities. According to the

1 See Appendix, IX.
religious law of succession, for example, a female as an inheritor was less able to benefit from her parents' inheritance than her brothers. It was not until 1900 that a female advocate was accepted into the Bar or the profession. In this year, a female educated in France applied for membership of the Bar and was eventually accepted after long discussions among lawyers. In the republican period, the first female advocate was allowed to practise in Istanbul in 1927, while all sorts of human rights were recognised for women in the earlier period of the republic.

Today the Istanbul Bar, the largest Bar Association in Turkey, serves 11 thousand advocates, approximately 3500 female and 7500 male. It is clear that the number of advocates who wish to be members of the Istanbul Bar is increasing very rapidly year by year. In 1970, for example, there were 3595 advocates while this figure nearly doubled by 1980, reaching 6944. As might be seen in Appendix IX, although there was a small decrease in 1981 and 1982, that is in the years of Military rule, the figure began to increase again by 1983 and the figure for 1980 had doubled by 1993. These changes in the figures show that Istanbul is the most favoured city among the advocates.

A similar increase might be observed in the workload of the Bar. According to the Appendix X, the number of outgoing documents was 14200 in 1972, while it was 27869 in 1984 and 52227 in 1988. Another indication is the increase in the number of complaints about advocates to the Bar's commissioned committees. There were 475 files in 1972, while there were 502 in 1984, while by 1988, there were nearly 1354. From these figures it seems that nearly one in ten of the Istanbul advocates had an argument with a client. However, most of these complaints were not considered sufficiently important to be examined in the Bar's sub-divisions. For example, in 1972, the number of complaints transferred to the disciplinary committee was 19, this went up to 26 in 1984 and 292 in 1988. But, it seems that there is also a remarkable increase in the number of files transferred to the discipline committee. What seems to be important in this context is that in the period between 1970 and 1988, there were only
one or two cases which ended with an advocate being discharged from the occupation. This means that the vast majority of complaints brought to the Bar were minor conflicts between advocates and their clients. In addition, one of the striking features concerning the Istanbul Bar is the insufficiency of the legal aid. There were only 165 people who benefitted from the aid scheme of the Bar, a figure which seems very small for a city like Istanbul with a population of ten millions, and where the gap between the higher and the lower classes is substantial.

6. Summary and Conclusions

With the establishment of modern Turkey in 1923, the dominance of religion over legal activities, which had lasted for centuries, was broken and the system was transformed into a new one based mainly on laws from Italy, Germany, Switzerland, translated word for word. It was a fresh start for the Turkish legal system. Many new legal institutions were set up and all the remaining figures from the previous period, including the caliphate, were abolished. The new system was a constitutional one, which guaranteed the individual's rights and freedoms, re-organising the whole structure of the state.

The impact of constitutional changes on the legal profession were examined in detail. The first written constitution in the modern sense, accepted in 1924, effectively ended the religious legal system. A new legal order was framed. The legal system was re-organised according to the dominant political views of the time. It was argued that the 1961 Constitution provided legal practitioners with a much more liberal atmosphere than the 1982 Constitution. The Constitutional Court was first established by the 1961 Constitution. The autonomy of judges in both superior and inferior courts from the executive was largely secured. An advocacy law was introduced under this Constitution. Essentially, the 1961 Constitution was part of a wider project aimed at the full democratisation of Turkey. With respect to this, it was not only the legal profession that was provided with relatively free working conditions but all the other social
institutions like trade unions, political parties, business organisations, universities and so on. However, this period ended in a military coup in 1980, aiming at re-establishing the distorted Turkish democracy. The previous Constitution was held responsible for the anarchic environment in the period between 1970 and 1980. For this reason, from the perspective of the framers of the new Constitution, all the freedoms provided by the 1961 Constitution had to be eliminated. The society as a whole was subjected to a depolitisiation process designed in the Constitution and applied by the government of the time. The new Constitution, therefore, was reactionary. The military government were so sure about their diagnosis that they never tried to create widespread social consensus among Turkish intellectuals, including lawyers, over the general content of the constitution. It was, however, sent to referendum and accepted by a great majority of the Turkish people. But, despite this, soon after its acceptance it was clearly understood that the new constitution was full of oppressive articles. It is perhaps because of the lack of such a consensus that the discussion over the 1982 constitution is still going on and there is no single political party in parliament at present that believes that the Constitution should be kept as it is.

Under the 1982 constitution, judges and prosecutors became much more dependent upon governmental decisions. Some new principles in appointing judges and prosecutors were created. Relative authority of the executive over the Bar and its branches was granted by the articles which allow the governmental representatives in the cities to cancel Bar elections and discharge the elected members of the Bar Committees. The aim of the law makers in this respect was to enable the government to control the activities of advocates and their professional organisations. The Military government saw the Bars as one of the organised interest groups that dragged the

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1. It was only by the time this thesis was awarded a Ph.D. degree, that is August 1995, fifteen articles of 1980 Constitution were changed by Turkish parliament. However, more changes are still on the agenda of Turkish public opinion.
country to the edge of a catastrophe by the end of 1980's. In short, the purpose of the 1982 Constitution was to create a strong state but a weak civil society.

In short, all such changes made over seventy years were aimed at attaining a more reliable and efficient system of law. In 1961, the changes followed a liberal political view, lifting restrictions on political and economic life. In 1982, however, the new constitutional arrangements were based on more conservative social and political views. While neither of the reforms rejected the basic principles of secular legal services, they strove to give new shape to legal life by enacting codes aimed at organising public and personal life.

The Constitutional Court was established in 1961 with a duty to monitor the constitutionality of the laws. Its place within the legal system was reinforced by the 1982 Constitution, redefining its duties and responsibilities. Within the last decade, especially, the Presidents of this court have attained a nation-wide reputation by making public statements on political, social and legal issues.

Most members of the Constitutional Court argue that the primary duty of the Constitutional Court is to secure the rights of the people who suffer from the oppressive provisions of the 1982 Constitution and, in a broader sense, contribute to the creation of a law-based-state where arbitrary actions of the government will not be tolerated. In short, by the nature of their job, according to one of the presidents of the Constitutional Court, lawyers cannot and should not remain out of political life in so far as political decisions taken by the governments affect the future of the legal system and its practitioners.

A typical example of such a political involvement of the Constitutional Court can be seen in the long discussion over the secular structure of the Turkish state, a discussion which has been increasingly intensified within the last decade, not only among the Turkish intelligentsia but amongst people from all strata of society.
This discussion can be summarised as follows:

As explained earlier, the 1982 Constitution describes the Turkish state as a secular one and safeguards a wide range of social and individual freedoms. People with strong religious beliefs assert that if the Constitution provides them with social and individual freedoms, like freedom of speech, there should be no restrictions on what they may speak about. But it is clear in the criminal law and other related laws, the secular character of the state is not considered a matter of debate. Therefore, according to many people who believe that a religious state is best for Turkey, there is a contradiction within the constitution and also between the Constitution and related articles of the Criminal Law. By restricting freedom of speech, the Criminal law only prepares legal grounds for the actions of security forces against anti secularists. A matter like this is a typical Constitutional Court case. If the issue is taken to the court by an institution like a political party or an inferior court, the members of the Constitutional Court have to reach a verdict within a given time and explain to the evidence on which they judgement is based.

It seems that there are only two possibilities: firstly, the members of the Constitutional Court may advise parliament to remove from the Constitution the relevant article in which the secularisation of the state has been safeguarded, or secondly, they may deny the allegation that asserts there is a contradiction between two Constitutional articles. If they conclude with the first option, they will be seen as supporting anti-secularists or extremely religious people who want to establish a state on the basis of religious principles. If they deny the allegation, they will be seen as supporting official ideology, but in this case, freedom of expression of a group of people, secured by the Constitution, would be violated by the Highest Court in the country. In short, in a situation of this kind, the Court faces a dilemma that can only be solved on the basis of the political views of its members. For this reason, the decision of this court is not only
a simple legal decision reached at the end of a legal procedure, but also an explicit declaration of the political attitudes of its members.

In such politically important cases, the Constitutional Court always takes the side of the dominant or official political ideology which emphasises the secular character of the state. This was expressed in the words of its President: "the Constitutional court is and will be the most passionate defender of the Atatürk reforms that are considered by all of our members as indispensable foundations of the contemporary Turkey" (Opening Ceremony of the Judiciary Year, 1993).

The High Court of Appeal is the second biggest supreme court in Turkey, with a duty of reviewing decisions and judgements given by the courts of justice. Another supreme court is the Council of the State created for reviewing decisions and judgements given by administrative courts. The decisions reached in both these courts are absolutely binding on the inferior courts. There is also another high court called The Audit Court established with a duty to audit all the accounts relating to revenues, expenditures and the property of government departments. The Military Court of Appeal hears appeals against decisions reached in inferior Military Courts.

In Turkey today there are three kinds of inferior courts having their own special subdivisions: the General Courts (Adliye Mahkemeleri), the Administrative Court (Idare Mahkemeleri), and the Military Courts. There is also a special court established to solve jurisdictional conflicts among the inferior courts.

Under the 1982 Constitution, four kinds of legal practitioners were described: judges, prosecutors, advocates and notaries.

The role of the judge within a legal system is of primary importance, especially in a country such as Turkey where there is no jury trial, while the prosecutor represents the state, on the basis that all citizens are affected by the action of the defendant. The
appointment of both judges and prosecutors is governed by the High Council of Judges and Prosecutors.

Despite the fact that there was no place for the advocates in Kadi's courts during the Ottoman period, in modern Turkey, advocates are seen as an inevitable part of the Turkish legal system in the process of creating due justice. In this sense, advocacy has existed in Turkey since the introduction of a western legal system in 1924.

The notary is another agent of the legal system with authority to prepare legal documents like wills, deeds and so on.

According to the Advocacy Law, the legal representatives of advocates are the Bar Associations. In almost every city in Turkey a Bar Association is established and there is also a Federation of Bar Associations in Ankara, representing the interests of all advocates at national level.

In conclusion, advocates in Turkey today are one of the most active professional groups. By the nature of their job, during a working day, they have to communicate with various kinds of people with different social and cultural backgrounds. Such closeness to the ordinary people perhaps leads them to join in politics and struggle for better life for a poor and helpless people, especially those living in rural areas. They are also one of the most important professional groups in the law making process in parliament. It is for this reason that there has always been at least one lawyer in almost all Turkish cabinets. In addition to this, since advocates are not dependent on the governments, they feel more free in taking action against undemocratic and illegal behaviour of the state than other lawyers, like judges or prosecutors.

The political attitudes of advocates can also be followed through the situations in which the presidents of the Bars have been engaged within the last two decades. The Presidents of the Bar Associations in big cities like Istanbul, Ankara and Izmir, were
secure enough to stand against Military Rules in both 1973 and 1980. In these periods, they severely criticised the Military governments for not following the principles of law in their extraordinary transactions and infringing individual and social rights and therefore undermining the legal system as a whole. During the 1980 Coup, for example, the president of the Istanbul Bar was among the first people to be taken under Military custody. By doing this, the Military government wanted to silence advocates and stop their organisational activities.

In other words, having been involved in political affairs at such a high level, advocates try to play their own role in the process of solving social, political, and economic problems. They seem to be very conscious of the fact that the future of their profession is dependent on the future of the country. They believe that since the most efficient way to solve the country's problems is via politics, lawyers must be deeply interested in politics. In order to make such an involvement more effective, they established organisations other than the Bars. These organisations help to protect their professional interest as well as proposing some solutions to the social and political problems of the country.

The best known organisation of this kind is "The Society for Progressive Advocates"1 in Istanbul. As its title implies, this organisation represents advocates in sympathy with the progressive or leftist ideology. Advocates in this group believe that the problems of the country cannot be solved within the existing social, political, economic and legal

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1 Information about this organisation was collected by participating in some of its meetings where the members discussed the country's problems and the ways of solving them. Despite the fact that they do not have any comprehensive publications that may include their demands and proposals, there are some brochures, leaflets or articles released by its administrators. On the base of these sources, it can be said that their long term purpose is to transfer the concept of supremacy of the law into practical life in Turkey. For mid term period, they want to increase the pressure on the government to put an end to the rumours related to inhuman behaviour of security forces towards innocent people in police stations, improve the position of the advocates in the courts and enact requisite laws to create a better legal system.
structures. What is needed, in their opinion, is a wide range of radical reforms to reorganise every aspect of social and political life. This changing process, they argue, should be aimed at creating a law based state where the power of the law is beyond any discussion. Such a state will also help achieving a full realisation of the Atatürk reforms that are seen by a great number of advocates as indispensable elements of contemporary secular Turkey.
CHAPTER IV

1. Presentation of the Results Concerning the General Sample Group

In this chapter, I shall present the results obtained from the research which was carried out in the cities of Sivas and Istanbul. In April and in the summer of 1992, research was conducted in Sivas, a medium size city in Central Anatolia and in Istanbul, the biggest Turkish city with a population of nearly ten million. As noted earlier, the survey was designed to achieve two fundamental objectives. The first was to comprehend the underlying characteristics of the Turkish legal profession which has never been analysed sociologically. The second was to test the hypothesis raised in the first chapter which suggested no useful distinction could be made between the state and the professions. In testing this hypothesis, I specifically concentrated on the degree of political involvement of advocates and the issue of how they were reacting to social, economic, cultural and legal problems. This information was obtained by conducting semi-structured interviews and questionnaires.

The research produced two different types of information;
1) the first type was concerned with the structure of the advocacy system. This included work conditions of lawyers, their educational and family backgrounds, the reasons for career choice, the activities and internal/external relations of the Bar Associations, and so on. Information of this type was mostly descriptive.

2) the second concerned the level of political involvement of advocates, their personal attitudes towards social, economic, cultural and political problems of the country and the ways of solving them. This information was related to independent variables such as age, birthplace, educational level, size of practice, and the degree of political interest. The statistical test techniques such as chi square, t-test and correlation were used to determine the significance level of the relationships between variables. This information can be described as analytic rather than descriptive.
Despite this, the research did not address several other issues.

a) Firstly, it was not the purpose of this work to explore all the characteristics of the legal system and the legal profession in Turkey. I limited the scope of this work and was mostly concerned with the fundamental characteristics of the system in so far as this information contributed to discovering the nature of the relationship between the state and the advocacy system. Thus, my research should not be considered as a structural analysis of the system as a whole.

b) It is not political research and thus cannot be seen as one which investigated only the general political views of advocates. Asking about the political opinions of advocates helped to understand what they thought about the state. My concern with regard to political affairs was limited to that. Hence, my research did not offer much reliable data to give a full account of the political attitudes and perceptions of advocates as a whole. In other words, it was not designed to produce answers to questions about the real nature of the political opinions of advocates; how many advocates and for what reasons are involved in the political life; what the consequences of such involvement for the legal profession are; or what is the link between the degree of political involvement and social movements.

c) One of the most important issues in the sociology of profession has been the relationship between professionals and their clients; under what circumstances they see each other; how the clients look at the practitioners and vice versa; how this relationship affects the financial situation of the practitioners in a market place whose main principles are marked by the system of capitalism. These questions never became a direct subject of my research.

In short, it should be emphasised that although my research produced a wide range of information, it was not able to address all of the problems that might be raised.
concerning the Turkish legal profession. Its content was limited by the immediate objectives expressed in the first chapter of this study.

At the below, the results concerning all advocates within the general sample group are presented. There were fewer questions in the questionnaires than in the interview schedule. The interview schedule used in Sivas was slightly different from that used in Istanbul. But there was no difference in the form or the content of the questionnaires distributed in these two cities. In order to reach general conclusions about the whole sample, all the common questions in the questionnaires and the interview schedules were selected and a new, different file was created. This information provided simple and descriptive statistical information. Through this type of information, it became possible to see the general trends among the advocates towards the social, political and economic issues that the legal profession and the country have faced in recent years.

2. General Information About the Sample Group

The total number of advocates within the general sample group was 222, 35 in Sivas and 187 in Istanbul. 66 interviews were conducted in Istanbul, and 20 in Sivas. The distribution of the sample group by sex was as follows:

<table>
<thead>
<tr>
<th>Sex</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>47</td>
<td>21.2</td>
</tr>
<tr>
<td>Male</td>
<td>175</td>
<td>78.8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>222</strong></td>
<td><strong>100.0</strong></td>
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</tbody>
</table>

The proportion of the male advocates is nearly 79%, while female advocates represent 21% of the sample group. From this, it can be said that advocacy is primarily a male profession. Despite this, the number of female advocates is substantial. Nearly one in four advocates is female. Moreover, as can be seen in Appendix VII and IX, there has
been a rapid increase in the number of female advocates in recent years. This has been associated with growing number of female students in law departments in Turkish universities.

In the academic year 1990-1991, there were in total 15295 law students in Turkey, 4833 were female and 10462 male. In the same year, the total number of law graduates was 2178, 846 male and 1332 female. (The 1990-1991 Academic Year Higher Education Statistics, OSYM publications). In other words, nearly one in three students and well over half of all graduates were female. This suggests that female law students are much more successful than are males in the school. But after they graduated, few women join advocacy practices. Perhaps female lawyers consider working as sole advocates under a competitive market system as tiring and difficult. Instead, they prefer working for a private company or a state office, perhaps regarding this type of job as less risky for their future. In short, when the number of female graduates from the law faculties is compared to the number of female advocates in practice, it appears that female advocates are not very keen on working as self-employed advocates.

It must be added that there is no legal barrier to stop female lawyers from becoming advocates. There is no entry exam and anyone who has the required qualifications can be an advocate, open an office, and enrol in the Bar Association. Therefore, it cannot be asserted that female candidates are being eliminated in the process of entering into the profession.
Table-4-2-2, Distribution of General Sample Group By Age

<table>
<thead>
<tr>
<th>Age</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>22-30</td>
<td>53</td>
<td>23.9</td>
</tr>
<tr>
<td>31-40</td>
<td>59</td>
<td>26.6</td>
</tr>
<tr>
<td>41-50</td>
<td>58</td>
<td>26.1</td>
</tr>
<tr>
<td>51-60</td>
<td>25</td>
<td>11.3</td>
</tr>
<tr>
<td>61-More</td>
<td>27</td>
<td>12.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>222</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

In the table 4-2-2, the highest proportion (26.6%) refers to those aged between 31 and 40, while those aged between 41 and 50 are the second largest age-group, accounting for 26.1% of the sample.

These figures point to the fact that the general sample group is composed of young advocates. This poses an important question concerning whether the data obtained through this sample are biased in terms of the age of the respondents. If they are, then how might this affect the results of the research? In other words, to which extent are the results reliable?

Above all else, this fact about the age of the sample group seems to be related to the changes in the population of Turkey. According to the 1990 census, the annual population increase rate in Turkey is 2.1%, while the whole population of the country is nearly 56 millions. (Source: The State Institute of Statistics, Census of Population-1990). The population in 1960 was nearly 27 million. From these two figures it can be estimated that more than half of the present Turkish population are under the age of 30. Therefore, the results obtained in the above table are congruent with the basic features of the population as a whole.

The next question in the interview schedule investigated the birthplace of respondents. The primary aim of asking this question was to determine whether they were working
in their birthplaces or whether they moved to another city after graduation. In addition to this, the question also provided information about mobility within the advocacy system. The results are shown below.

### Table-4-2-3, Birthplace of General Sample Group by City

<table>
<thead>
<tr>
<th>City</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sivas or Istanbul</td>
<td>92</td>
<td>41.4</td>
</tr>
<tr>
<td>Not Sivas or Istanbul</td>
<td>129</td>
<td>58.1</td>
</tr>
<tr>
<td>Abroad</td>
<td>1</td>
<td>.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

From table 4-2-3, it is clear that many advocates are not working in their birthplaces. However, the number of advocates who preferred working in their birthplaces cannot be overlooked. In addition, as might be seen, the difference between advocates born in Sivas and Istanbul is not identified. This difference will be examined in detail during the presentation of the results concerning the Sivas case study in the final chapter. It is sufficient to note here that 20 out of 92 advocates in the first column are Sivas advocates. The Istanbul case is shown more clearly in the table below.

### Table-4-2-4, Birthplace of Istanbul Advocates by City

<table>
<thead>
<tr>
<th>Birthplace as City</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Istanbul</td>
<td>64</td>
<td>34.2</td>
</tr>
<tr>
<td>Not Istanbul</td>
<td>123</td>
<td>65.8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>187</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The percentage of respondents who are not working in their birthplaces increases from 58% in the whole sample to 66% in Istanbul. This means that most Istanbul advocates came from other cities. This is an expected result for two reasons. The first is that most
law students who are graduated from the law faculties in other cities hope to find better conditions to perform their job in Istanbul. The second seems to be related to the rapid urbanisation of Turkey. Immigration from rural areas to bigger cities is one of the most serious social problems in today's Turkey.

According to the 1985 census, the population of Istanbul was approximately 5,845,000. In the following census of 1990, it increased to 7,310,000 (Source: The State Institute of Statistic, Census of Population-1990). The difference between these figures is nearly 1,5 millions, which means that the population of Istanbul is increasing by 300,000 each year, i.e. one thousand people per day are either coming to or being born in Istanbul. Because of this, the social and economic life of Istanbul has increasingly been dominated by those who came from other cities. Hence, the high percentage of advocates with a non-Istanbul birthplace is not surprising. There is clearly a relationship between the advocacy system and immigration from rural areas to bigger cities. Considering the high rate of immigration, it can also be said that the real percentage of advocates who were not born in Istanbul is higher than that shown in the table 4-2-4. It is possible that those who said that they were born in Istanbul are the children of the families who previously immigrated to Istanbul.

In conclusion, most Istanbul advocates are not native Istanbuler, but have come from other regions with different expectations. Istanbul advocates are mostly educated provincial people, who seek a relatively good future in a metropolis. This suggests that there is considerable social and geographical mobility within the legal profession as far as Istanbul advocates are concerned.

This trend can be seen clearly in table 4-2-5, where regional birthplaces are presented.
Table 4-2-5, Regional Birthplace of General Sample Group

<table>
<thead>
<tr>
<th>Regions</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marmara</td>
<td>89</td>
<td>40.1</td>
</tr>
<tr>
<td>Aegean</td>
<td>14</td>
<td>6.3</td>
</tr>
<tr>
<td>Inner Anatolia</td>
<td>61</td>
<td>27.5</td>
</tr>
<tr>
<td>Mediterranean</td>
<td>11</td>
<td>5.0</td>
</tr>
<tr>
<td>Black Sea</td>
<td>22</td>
<td>9.9</td>
</tr>
<tr>
<td>Eastern Anatolia</td>
<td>12</td>
<td>5.4</td>
</tr>
<tr>
<td>South Eastern Anatolia</td>
<td>13</td>
<td>5.9</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

A substantial proportion of advocates came from two regions. The Marmara, which includes the city of Istanbul, has the highest rate, 40.1% and Inner Anatolia, which includes Sivas, is the second with 27.5%. From these results, it can be argued that advocates in Turkey tend to work in a place near to their birthplaces, where they have relatives, acquaintances and close friends. This might be correct in the case of a rural area but one must be careful when generalising about the whole country. It may be misleading especially when the big cities like Istanbul are under discussion.

The above table (4-2-5) reveals that 30% of advocates state that they came from regions other than Marmara or Inner Anatolia to the cities where this research was carried out. This percentage seems quite small since it is an aggregation of five regions. In this case, one can might be tempted to assert that the Turkish advocates tend to work in places which are at least near to their birthplaces. However, this would be a quick judgement. The relevant figure goes up to 40.1% in the Istanbul case. In other words, nearly 60% of Istanbul advocates came from regions other than Marmara. Therefore, such an observation is not true for Istanbul, though it does seem to be true for Sivas. In short, it can be said that advocates in rural areas prefer working in their birthplaces, while those in big cities are coming from other regions or cities.
In order to see this trend much more clearly, the results concerning only the Istanbul advocates are shown in the table below (4-2-6).

Table-4-2-6, Birthplace of Istanbul Advocates by Regions

<table>
<thead>
<tr>
<th>Birthplace as Regions</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marmara</td>
<td>88</td>
<td>47.1</td>
</tr>
<tr>
<td>Aegean</td>
<td>14</td>
<td>7.5</td>
</tr>
<tr>
<td>Inner Anatolia</td>
<td>33</td>
<td>17.6</td>
</tr>
<tr>
<td>Mediterranean</td>
<td>11</td>
<td>5.9</td>
</tr>
<tr>
<td>Black Sea</td>
<td>20</td>
<td>10.7</td>
</tr>
<tr>
<td>Eastern Anatolia</td>
<td>10</td>
<td>5.3</td>
</tr>
<tr>
<td>South Eastern Anatolia</td>
<td>11</td>
<td>5.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>187</td>
<td>100.0</td>
</tr>
</tbody>
</table>

It is clear from this table that approximately half of the Istanbul advocates were born in a town or city near to Istanbul. The highest proportion is 47.1%, which represents the Marmara region. However, this figure includes those who were born in Istanbul itself. It is difficult to see, therefore, how many of them came to Istanbul and from which part of the country. To see these, another table is needed, which excludes the advocates who are originally Istanbul'ers.

Table-4-2-7, Distribution of Birthplace of Istanbul Advocates who Were not Born in Istanbul, by Region

<table>
<thead>
<tr>
<th>Regions</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marmara</td>
<td>24</td>
<td>19.5</td>
</tr>
<tr>
<td>Aegean</td>
<td>14</td>
<td>11.4</td>
</tr>
<tr>
<td>Inner Anatolia</td>
<td>33</td>
<td>26.8</td>
</tr>
<tr>
<td>Mediterranean</td>
<td>11</td>
<td>8.9</td>
</tr>
<tr>
<td>Black Sea</td>
<td>20</td>
<td>16.3</td>
</tr>
<tr>
<td>Eastern Anatolia</td>
<td>10</td>
<td>8.1</td>
</tr>
<tr>
<td>South Eastern Anatolia</td>
<td>11</td>
<td>8.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>123</td>
<td>100.0</td>
</tr>
</tbody>
</table>
As revealed from this table, more than one in four advocates came from the region of Inner Anatolia and approximately 20% of them from the Marmara. The third highest figure (16.3%) relates to the Black Sea. There is almost an equal distribution among all the other regions. As a result, the majority of advocates working in Istanbul seem to have come from three regions, the Inner Anatolia, the Marmara and the Black Sea. This supports the idea developed above that the structure of the legal profession is affected by immigration from one region to another.

Looking at the speed of the increase in the population of these regions, such a link between the research results and the facts of immigration becomes much more clear. According to the Census of 1990, the annual increase rate in the population of Inner Anatolia was only 1.4%. (Source; The State Institute of Statistic, Census of Population-1990). It was much smaller (-1%) in sub-districts and villages, the settings that people mostly immigrated from. If the results concerning the Marmara region are ignored, considering its nearness to Istanbul, the second region that most advocates came from is the Black Sea. The annual increase rate of the population of this region is the lowest one, 0.5%. It is -6% for villages. This indicates that the Black Sea is the first region whose population moves towards bigger cities. According to the same statistics, the second region is Inner Anatolia. The 1990 Census indicated that there is mass immigration from the Black Sea and the Inner Anatolia to bigger cities and advocates working in Istanbul declare that they came from basically these two regions. The results in the above tables are consistent with the general social trends of the country. This also makes it clear that most advocates in Istanbul have a rural social background.

With reference to marital status, the results are as follows:
Table 4.2.8. Marital Status of General Sample Group

<table>
<thead>
<tr>
<th>Marital status</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>169</td>
<td>76.1</td>
</tr>
<tr>
<td>Married</td>
<td>53</td>
<td>23.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>222</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

The sample group is composed of 169 single (76.1%) and 53 married (23.9%) advocates.

How can we account for this unusual high proportion of single advocates? There is reason to believe that this figure is artificially high since it also includes divorced people.

It was not a mistake of the survey not to include a choice below the relevant question in the interview schedule, but a necessity that needs to be explained.

At the very beginning of the research, such a choice was included in the pilot research, but was removed at the end of it. It was observed that when advocates were asked whether they were divorced or not, they found this question embarrassing and became reluctant to answer it. Some divorced respondents described themselves as a single person rather than a divorced one. The main reason for this was related to the way in which the issue of divorce was perceived by people. In the traditional culture, divorce was a sign of social failure and an open declaration of personal unhappiness. Therefore, it was not socially desirable. In addition to this, the question might have reminded them of their bad experiences in the past. Whatever the reason, the reality was that the question on divorce was clearly disturbing for most of the respondents in the pilot research. Asking this question, especially at the very beginning of interview, would negatively affect the level of their willingness to answer other questions in the remaining parts of the interview.
An interesting point should be noted here. During many interview sessions, the respondents emphasised that Turkish advocates were very open minded and modern in outlook. What was observed about their attitudes towards divorce, however, was clearly in line with its traditional interpretation. In short, divorce was not regarded as a normal social affair among Turkish advocates.

Consequently, the proportion of 76.1 relating to single advocates in the table(4-2-8) included the figures for the divorced advocates. In addition, considering the annual increase in the number of advocates in Istanbul, that is estimated to be nearly 275 in the period between 1970 and 1990, this high figure of single advocates can be understood much better. However, in spite of this, some other factors, such as the education system or the difficulties peculiar to the advocacy, may also play a role in the attitudes of the advocates towards marriage.

3. Educational Background and Career Choice

Information about educational background and career choice proved helpful in learning about the degree of mobility within the profession and advocates' opinions relating to the educational system as well as in understanding the general structure of the Turkish legal profession.

However, before going further, it is necessary to explain the basic characteristics of the Turkish educational system.

In Turkey today there are four types of secondary and high schools; State, State College, Private, and Foreign Private schools. The educational facilities, the quality of teachers and the curricula are all different in each of these schools.

The first and the most common are the state schools. There are both secondary and high schools owned by the state. The budgets of these schools are set each year by the government, which is obliged by law to offer free and equal educational opportunities
to everyone. There exist a number of schools of this type with different educational aspects. For example, a special high school offers an education on the basis of Islamic rules. However, the vast majority of students go to traditional state schools where a classical educational curriculum is applied under the supervision of the government. There are at least one secondary and one high school in almost all towns and cities in Turkey.

High school education (Lise or Lyceè in French) is considered to be the most important part of educational life, mainly because it is the last stage before gaining access to university education, which is open to only a limited number of successful high school students. Only ten percent of all applicants are qualified for university education. The quality of a high school is determined by the number of its students who gained access to the university education.

There are three main types, and various subgroups of high schools. The state high school is the most common. The private high schools, which are usually established in big cities like Ankara, Istanbul and Izmir, are very popular and expensive. The tuition fee in these schools is subject to annual approval of the government. The level of fees is generally dependent on the popularity of the school. The fee, especially of famous foreign private schools is so much high that only very rich families can afford to send their children to these schools.

The foreign private schools (such as Robert College or Saint Joseph College) are known by students' their success in the University Entry Exam. Generally, all of them are qualified for one of the departments in big city universities. It is also a common view that these schools provide their students with a broad world view and that they become much more successful in their private and social lives. For example, the language of instruction in these schools is either English, French or German. In addition to the official language of instruction, they also have to learn another foreign language.
At the end of their education, a graduate from a private foreign high school knows at least two European languages. Despite the fact that many discussions have been taking place concerning their privileged place within the educational system, the reality is that they are highly successful and popular schools.

Apart from foreign private schools, there is also a type of private high school which includes all stages of education up to university. Despite their high fees, they are very popular, especially among families in high income groups. But the students of these schools are not as successful as those from foreign schools in the University Entry Exam.

In addition, there are special high schools, called state colleges, which are established with the purpose of competing with private schools and equipped with highly qualified teachers and good educational facilities. Compared with the regular state schools, state colleges are much more successful and compared with private schools, much cheaper.

In conclusion, it should be noted that although the level of education in high schools differs greatly, all high school graduates are assumed to have been educated under equal conditions for the University Entry Exam, from which the most popular departments accept only the most successful students. Briefly, most people regard success in this exam as an indication of being a successful person.

It follows from the above that the kind of secondary school or high school that advocates attended can constitute a good criterion for understanding their social and family background.

The first question in the interview schedule about educational background was concerned with the secondary school. This question aimed to ascertain whether they were able to get a good level of secondary school education or not. In other words,
whether their parents were able to afford an expensive school. The results are as follows:

Table 4-3-1, Educational Background of General Sample Group: Secondary School

<table>
<thead>
<tr>
<th>Type of Secondary School</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
<td>205</td>
<td>92.3</td>
</tr>
<tr>
<td>State College</td>
<td>3</td>
<td>1.4</td>
</tr>
<tr>
<td>Private</td>
<td>6</td>
<td>2.7</td>
</tr>
<tr>
<td>Foreign Private</td>
<td>7</td>
<td>3.2</td>
</tr>
<tr>
<td>Others</td>
<td>1</td>
<td>0.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

As shown in table 4-3-1, 205 advocates (92%) went to secondary state schools. The rest of the sample group (8%) went to one of the other types of secondary schools. It appears from these results that there were only a few advocates in the sample group whose family were rich enough to pay the fee of private schools. In other words, the vast majority of advocates do not come from the upper classes of the society. This is a point which is supported by the results about high school education.

Table 4-3-2, Educational Background of General Sample Group: High School

<table>
<thead>
<tr>
<th>Type of High School</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
<td>203</td>
<td>91.4</td>
</tr>
<tr>
<td>State College</td>
<td>4</td>
<td>1.8</td>
</tr>
<tr>
<td>Private</td>
<td>10</td>
<td>4.5</td>
</tr>
<tr>
<td>Foreign Private</td>
<td>4</td>
<td>1.8</td>
</tr>
<tr>
<td>Others</td>
<td>1</td>
<td>0.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Most advocates went to the state high schools. 91.4% of advocates who continued their education in state-owned high schools.
It should be noted that the minimum mark that the law faculties demand from a candidate student is considerably higher than that required by many other departments in Turkish universities. In other words, students accepted by law faculties are relatively better educated than other high school graduates. Because of this, even though the majority of advocates graduated from the state high schools, it would be reasonable to assume that the advocates were the successful students of these state high schools.

It seems possible to conclude that most advocates in the sample group have either a middle class or a lower class background. To put it in another way, *advocacy is not a profession favoured by people from the upper class of Turkish society.*

University education comes after high school education. The University Entry Exam is a turning point in the life of Turkish high school students. Until recently, there were only two law faculties in the whole country, in Istanbul and Ankara. Today there are a number of faculties and therefore advocates can be classified according to the universities from which they graduated. The relevant data are as follows:

---

1. As mentioned in previous chapters, there was a radical change in the Turkish university system in 1982. After the military coup in 1980, universities were accused of being the source of anarchy in the society, therefore administration then tried to get all of them under control, creating a superior institution over all autonomous universities. This institution is called The Higher Educational Board (Y.O.K). However, despite a reactionary philosophy which lay behind the creation of HEB, it was also in this period that a real breakthrough took place by which new departments and new universities were established, especially in provincial areas where many new academic staffs were employed. Some of the departments that were affected by these changes were the law departments in Istanbul and Ankara. Within the last ten years four new law faculties were opened, two in rural areas, two in big cities. These new faculties, however, were seen as the main reason of increasing deterioration in law training. Educational staff in the old universities believed that there were not enough teachers in the new departments and not very good facilities to offer a proper education to the students. Despite nation-wide criticisms, those universities, including law faculties, carried on their education and gradual developments. However, this is a discussion which is still on the present political and educational agenda of Turkey, though those universities seem much more settled compared with ten years ago.
Table-4-3-3, Universities From Which Advocates Within General Sample Group Graduated

<table>
<thead>
<tr>
<th>Name of University</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Istanbul University</td>
<td>169</td>
<td>76.0</td>
</tr>
<tr>
<td>Ankara University</td>
<td>43</td>
<td>19.4</td>
</tr>
<tr>
<td>A University in Europe</td>
<td>3</td>
<td>1.4</td>
</tr>
<tr>
<td>Others</td>
<td>7</td>
<td>3.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>222</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

The law department of Istanbul University is the most popular. It is also the oldest, established in the period of the Ottoman Empire. Only 19% of the total number were educated in Ankara and moved to either Istanbul or Sivas. 7 respondents graduated from the newly established law departments in provincial areas. There are also some advocates who graduated from foreign universities in Europe, but this figure is so small that it can be ignored.

Since most advocates graduated from two faculties, some information should be given about them. In 1991, there were 5671 students, 904 newcomers and the number of graduates was 592 in the Istanbul law faculty. In the Ankara law faculty in 1991, the total number of students was 5085, including 879 new students and 961 graduates.

If the total number of graduates in the country in the same year was taken into account, the importance of the Istanbul and Ankara law faculties would be much clearer. In 1990, there were 2178 students who qualified for a law degree in Turkey. This means that more than half of all law graduates obtained their degree from either Istanbul or Ankara Universities. In other words, graduates from Istanbul University prefer working in this city. This result is consistent with that reached in the table 4-3-2, concerning the type of high school that the respondents graduated from. In addition, advocates
graduated from the law faculties in rural area do not constitute a large group within the general sample group.

The respondents were also asked to indicate the year in which they graduated from a law faculty. The results are as follows:

Table-4-3-4, The Graduation Year of Advocates In General Sample Group

<table>
<thead>
<tr>
<th>Years</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1935-1945</td>
<td>4</td>
<td>1.8</td>
</tr>
<tr>
<td>1946-1955</td>
<td>23</td>
<td>10.4</td>
</tr>
<tr>
<td>1956-1965</td>
<td>21</td>
<td>9.5</td>
</tr>
<tr>
<td>1966-1975</td>
<td>56</td>
<td>25.2</td>
</tr>
<tr>
<td>1976-1985</td>
<td>57</td>
<td>25.7</td>
</tr>
<tr>
<td>1986 and After</td>
<td>61</td>
<td>27.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>222</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

The highest figure in the table is 61(27.5%) that relates to the year of 1986 and after. This means that more than quarter of the sample group graduated from a law faculty after 1986. Nearly 25 per cent of the respondents graduated in the period between 1976 and 1985. There is a similar figure for the period between 1966 and 1975. Nearly 79% of advocates graduated after 1966. The rest of the sample group(20%) graduated between 1935 and 1966, representing the senior members of the profession. This means that three in four advocates obtained a law degree within the last 25 years. Therefore, it is also revealed in this table that the general sample group is composed of young practitioners. This information is congruent with the results in the table of age distribution (4-2-2). On this basis, it is possible to say that in Turkey today the advocates are primarily young.

The next question about the educational background was related to the willingness of the advocates to enter a law faculty.
In order to see the importance of this question, more information about the University Entry Exam and the psychology of the candidates is needed.

Perhaps, it is the University Entry Exam that forces all high school graduates to think, for the first time, about what sort of skills they have and how and where they can employ these skills. In other words, in which occupation they can be most successful. These are indeed not easy questions for young people, because most of them know little about occupations, jobs, business life or universities. In addition, the number of students who can gain access to the universities is limited. Every year, nearly one million candidates apply to take this exam, but only ten per cent of candidates can be placed in a department. Therefore, in the application form, most candidates indicate any department that they think they can get a place in. They do not care whether they really like that department or whether their skills, expectations and abilities are suitable for the particular job that they will perform at the end of their education. These thoughts are always considered as secondary by almost all students. In short, under present circumstances, high school graduates seek any education that the educational system allows.

Given these considerations, the table below indicates whether the advocates deliberately chose a law faculty or whether it was only a chance event resulting from the examination system explained above. The results are as follows:

Table-4-3-5; Level of Willingness In Attending a Law Faculty

<table>
<thead>
<tr>
<th>Law Faculty Chosen</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consciously</td>
<td>186</td>
<td>83.8</td>
</tr>
<tr>
<td>By Chance</td>
<td>36</td>
<td>16.2</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>
83.8 per cent of 222 advocates declared that their decision to attend a law faculty was a conscious one. A small percentage of them, 16.2%, said that they entered a law faculty coincidentally, because they knew little about the law faculty or being a lawyer and while all candidates wish to go into the medicine or other popular faculties they could earn more money after graduation, the mark they got from the science questions in the University Entry Exam was only enough for a law faculty that accepts students on the basis of social and literature questions. However, these respondents were minority. According to this table, most Turkish advocates joined in the advocacy system by knowing about it or that the legal profession is being performed by those who took a conscious decision to join.

Table-4-3-6, Distribution of General Sample Group By Postgraduate Degree

<table>
<thead>
<tr>
<th>Postgraduate Degree</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>31</td>
<td>14</td>
</tr>
<tr>
<td>No</td>
<td>191</td>
<td>86</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100</td>
</tr>
</tbody>
</table>

It is quite clear from this table that taking a postgraduate degree is not common among the Turkish advocates. Only 31 advocates answered the relevant question positively. 86 per cent of them had neither an MA nor a Ph.D.

It is well known that a post-graduate degree is not only open up an academic career but is also route to expert status in a specific law subject. Although historical developments in Turkey did not allow a strong specialisation among advocates (an issue that will be raised later) two possible ways of becoming an expert might be mentioned. The first is attending a postgraduate programme at a university and the second is improving one's knowledge through experience in practice. In general, it is the second way that is preferred by Turkish advocates. Therefore, Turkish advocates do not generally attend
postgraduate programmes. In addition, as often stressed during the interviews sessions, occupational experience plays the most important role in the success of advocates. Ph.D. programmes are held to include more theoretical than practical issues. Young advocates especially have to go into practice quickly because they need money and need to secure their future in the profession. Therefore, they ignore academic work which may help them to gain expertise in the law.

However, the percentage of 14 is not insignificant. It represents one in seven advocates. This means that even though most advocates within the sample do not have a postgraduate degree, a not insignificant minority do engage in academic research. Table 4-3-7 below presents the type of postgraduate degree that the respondents have.

Table 4-3-7, Distribution of General Sample Group by Type of Post Graduate Degree

<table>
<thead>
<tr>
<th>Type of Post Grad. Degree</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Masters</td>
<td>10</td>
<td>4.5</td>
</tr>
<tr>
<td>Ph.D.</td>
<td>15</td>
<td>6.8</td>
</tr>
<tr>
<td>Others</td>
<td>6</td>
<td>2.7</td>
</tr>
<tr>
<td>None</td>
<td>191</td>
<td>86.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>222</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

The number of advocates with a Ph.D. degree is higher than of those with an MA. By the laws which regulate academic life, all respondents with a Ph.D. degree have at the same time an MA degree. So, Turkish advocates tend to get a Ph.D. degree, rather than an MA.

Besides, having a degree from abroad is the most favoured option. The main reason for this is the fact that clients believe that the European education system is better than the Turkish one. A postgraduate degree obtained in Europe, therefore, helps advocates to attract more clients.
The next question asked whether the respondents believe that having a post graduate degree is helpful in becoming a good advocate. The results are as follows:

Table-4-3-8, Opinion of Advocates In General Sample Group Concerning the Usefulness of Postgraduate Education

<table>
<thead>
<tr>
<th>Is a Post Graduate Qualification Helpful?</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>170</td>
<td>76.6</td>
</tr>
<tr>
<td>No</td>
<td>52</td>
<td>23.4</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

76.6% of advocates agree that a postgraduate degree would help them to become a good advocate, while 23.4 % have the opposite view.

The respondents in the second group stated that a post graduate degree is too academic for an advocate, because the problems that they are dealing with everyday can only be solved by practical rather than theoretical approaches. According to them, in order to be a good advocate, one needs experience but not too much detailed theoretical knowledge.

Contrary to this view, the majority of the respondents believed that post-graduate education would help to increase the quality of the service that they provide. This group also believed that one of the main problems in the Turkish system is the lack of specialisation. An increase in the number of people with a post graduate degree will also help to increase the number of specialist advocates in the profession. The respondents specified that most advocates want to get a postgraduate degree but their social and economic conditions do not allow them to do so. This point can also be supported by the results presented in the above tables concerning postgraduate degree. It was revealed from these tables that advocates with a postgraduate degree constituted a minority, while nearly all of them were in support of a postgraduate degree.
4. Law Training

In this section, I present the results concerning the opinions of advocates about current law training. As noted earlier, some radical changes were introduced into the educational system in 1982. A new Institute was set up by the new constitution and this institution was given administrative power over all universities. The rules of appointments for important posts in universities were changed and many staff were dismissed on the basis of their connections with political movements. In addition, for the first time in the Republican Period, the idea of establishing new universities in provincial areas gained acceptance and several universities were opened in the provinces. Law faculties and departments were greatly affected by these changes.

The future of the profession is closely related to the quality of education in law departments. Therefore, the most important question in this part of the interviews and questionnaires investigated whether the advocates consider current university training satisfactory. The results are as follows:

Table 4-4-1 Attitudes of General Sample Group Towards Current Law Training

<table>
<thead>
<tr>
<th>Satisfactory Training</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>31</td>
<td>14.0</td>
</tr>
<tr>
<td>No</td>
<td>191</td>
<td>85.6</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The vast majority of advocates believe that the present legal training is unsatisfactory. Nearly 85 per cent of them believe that students in law faculties are not given good training. This suggests that students who graduated from law departments in recent years were not properly prepared to act as advocates. Most respondents also believed that law education was formerly much better than it is today.
Only a small group of the respondents (14%) were happy with the present system of education.

Respondents were also asked their norms for judging legal training to be either satisfactory or unsatisfactory. *Not everyone responded to each question.*

The main reasons why Turkish advocates find law training unsatisfactory are presented in the tables below.

Table 4-4-2, The Reasons for Unsatisfactory Law Training: It is Only Theory-Based Education (% of those responding)

<table>
<thead>
<tr>
<th>Theory-Based Education</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>15</td>
<td>8.0</td>
</tr>
<tr>
<td>I agree</td>
<td>173</td>
<td>92.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>188</td>
<td>100.0</td>
</tr>
</tbody>
</table>

It appears from this table that almost all advocates (92%) who responded to this question agree that the present educational system is based purely on theory. Only 8% do not share this view.

The common point made by the respondents is that the advocates' job is basically concerned with practice and experience, rather than with academic theory. A practical education is seen as much more useful for future advocates, whereas the existing system makes the students more reluctance and demoralised. They believed that under this system it was almost impossible to be a good lawyer who is well aware of the social and legal realities of the country.

In their view, the first problem with the system, which must be solved urgently, is the badly prepared curriculum and the educational philosophy that lies behind it. Only a
few respondents said that they had no complaints about the educational philosophy in
law faculties.

Most respondents emphasised the fact that the majority of new entrants to the
profession are not even capable of performing even simple and routine procedures.
They do not know, for example, how to take up a case to court or how to apply to the
governmental offices and to present the necessary documentation. Worst of all, it is
claimed, is that they do not even know how to write a petition which normally starts a
case in the Turkish legal system. What they are taught in law faculties has nothing to do
with the practical tasks. The educational system fails to produce good lawyers whom
the legal profession desperately needs.

In the opinion of the respondents, this system can only be corrected by radical changes.
What the system needs is a wholesale transformation from a theoretical to a practical
one, in which new advocates will be able to adapt themselves to the profession and
perform their job more adequately.

According to some young advocates, the most important problem with legal training is
the examination system introduced after 1982. Under this system, the law students have
to take two or three pre-exams, called visa exams, before the final exam that is held at
the end of term. They said that during their education they did not have any spare time
to deal with social activities since they had to prepare for the visa-exams. Too many
exams prevented them from improving other skills necessary for a good advocate. They
could not read, for example, any books other than textbooks. At the end of their
education, it became very difficult to understand what was going on in advocacy. They
described their student days as days that were wasted. They believed that this
examination system has to be changed and rearranged in such a way that the students
will be given much more spare time in which they may follow their own interest and
develop practical skills.
One point they made was related to the new provincial departments. As mentioned before, as a result of the 1982 changes, new law departments were introduced to the system. This development was, however, criticised vigorously by many who did not believe that opening more universities with highly limited facilities would contribute to the development of the sciences. This discussion is still taking place. A number of the advocates within the sample group believed that some of the problems in the advocacy system originate from the departments in rural areas. The results can be seen in the table below.

Table-4-4-3, The Reasons for Unsatisfactory Law Training; It is Because of New Departments Opened In Rural Areas(% of those responding)

<table>
<thead>
<tr>
<th>Departments in Province</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>131</td>
<td>69.7</td>
</tr>
<tr>
<td>I agree</td>
<td>57</td>
<td>30.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>188</td>
<td>100.0</td>
</tr>
</tbody>
</table>

As seen in the table 4-3-11, about 30% of Istanbul advocates who responded to this question stated that the level of university education decreased because of the newly opened universities in rural areas. They stressed two main problems in the law departments in these universities. The first is that the number of academic personnel is much smaller than needed. Secondly, the quality of both students and staff is, in fact, questionable. They believe that it is quite difficult for the graduates from these departments to become good lawyers or advocates. People responsible for opening these faculties aimed only to offer university education to as many students as possible, but ignored the quality of education. Therefore, these universities added more problems to the traditional problems from which the educational system has been suffering for a long time.
However, there are 131 advocates (69.7%) who have an opposite view. This group of respondents believes that these new departments have had no serious effect on the quality of the law training in general. In their opinion, accusing the newly opened universities represents an easy way out and is not realistic. It is well known that before the opening of these universities, there were several educational problems within the universities. What is needed urgently are the radical changes that will re-organise the universities both in big cities and rural areas.

Istanbul advocates do not believe that their job is under threat from the newcomers who graduated from one of the law faculties in rural areas. It is mainly because they believe that none of these faculties are able to produce good quality education for their students and that these students have not enough knowledge to compete with those who graduated from big city universities.

The third point related to the educational system was about the academic staff in law departments. The results are as follows

Table 4.4.4, The Reasons for Unsatisfactory Law Training: It is because of Shortage of Staff in Law Faculties

<table>
<thead>
<tr>
<th>Shortage of Staff</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>37</td>
<td>19.7</td>
</tr>
<tr>
<td>I agree</td>
<td>151</td>
<td>80.3</td>
</tr>
<tr>
<td>Total</td>
<td>188</td>
<td>100.0</td>
</tr>
</tbody>
</table>

As seen in the above table, 80.3% of advocates who responded to the question agree that there is a shortage of academic staff in universities, especially in big cities like Istanbul, Ankara and Izmir. They also agree that the existing staffs are not capable of doing their job properly. Therefore, the shortage and the quality of staff are, in fact, the
real problems within higher education that affect the occupational future of law students and also the lawyers in practice at present.

It was stated in many interview sessions that staff problem in universities arose from the undemocratic actions of an organisation, The Higher Educational Board (know in Turkish as YÖK), created as a result of the 1980 military coup. This institution forced most well-known academics to give up their jobs, asserting that they used the students for political purposes, encouraging them to boycott classes or organise illegal demonstrations against the government. Most academics who lost their jobs went to the USA, Germany or England. The universities lost their most qualified teachers and could not find new staff to take their place. Most lectures in universities are given by those who are appointed by the HEB on the basis of their political beliefs rather than their expert knowledge of the subject. These academics are also known by their ties to the official ideology which aims at the depolitisation of university students. Within the new academic order, both teachers and students are expected not to be interested in political but only academic issues. As a result, staff in the law faculties do not teach in a free environment. The subjects related to the political and social problems of the society are generally ignored. Academic freedom is severely constrained in Turkey. It is for this reason that many teachers are still leaving their jobs in universities and going abroad. In addition, the gap between students and teachers is now much wider than ever before. Generally, most lecturers are not able to make good relation with students.

In brief, most advocates within the sample group pointed out that two important features relating to academic staff in Turkey played an important role in the unsatisfactory state of law training. Firstly, there is a real shortage of staff. Secondly, the quality of these staff is questionable.

On the other hand, approximately 17 per cent of the respondents had an opposite view. They argue that the quality of the staff in universities cannot be seen as the main
problem in the present educational system. In the view of this group, if the other long-term problems are solved, e.g. the financial problems, staff problems can be solved immediately. However, the number of the respondents expressing this view is small.

Therefore, there is a common view among advocates that one of the main problems in law training today is related to the number and quality of academic staff in universities.

The number of students was another point emphasised by some of the respondents. The distribution of the advocates according to their view on this matter can be seen in the table below.

Table-4-4-5, The Reasons for Unsatisfactory Law Training; There are too Many Students In Law Faculties

<table>
<thead>
<tr>
<th>Too Many Students</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>37</td>
<td>19.7</td>
</tr>
<tr>
<td>I agree</td>
<td>151</td>
<td>80.3</td>
</tr>
<tr>
<td>Total</td>
<td>188</td>
<td>100.0</td>
</tr>
</tbody>
</table>

As seen in the above table, 80.3 per cent of advocates who responded to the this question hold that the number of students was one of the main reasons for a decrease in the quality of law training. Only a small number of them stated a different view, saying that since Turkey is developing very rapidly, it is necessary to accept as many people as possible into the law departments to meet the legal needs of the people in the future. According to them, the high number of students in law departments must be tolerated at least for a period of time.

However, the majority of advocates do not agree with this view. They believe that law departments are so overloaded that most students are not able to follow the lectures properly and join actively in class discussions. Often they cannot even find a seat. It is almost impossible to listen to the lectures in silence and take notes. Lectures, seminars
and lessons are held generally in very big theatres where a normal dialogue between teachers and students is impossible. Most teachers do not know most of their students. Yet, in modern educational systems teachers are expected to spare much more time to make contact with students and deal with their problems more closely. In such a system, it is also their duty to give students some practical advice that may be helpful in their professional life. In short, the respondents holding this view stated that the number of students must be limited to a number determined by legal regulations issued either by the HEB. It is getting more and more difficult to provide young advocates even with a basic knowledge of legal system.

Especially young respondents emphasised the fact that the teachers do not have enough time to mark the examinations with the necessary care. They believe that the research tradition has lost its meaning and the academic staff have become like high school teachers whose job involves nothing but reading exam papers. Therefore, academic researchers are not happy with being a part of the new system and thus they do not follow very well the rules created by the system. Even if there are some lecturers who try to offer quality teaching, it becomes practically impossible to do that because of the student numbers. Like most students, teachers too hope that radical change will be introduced into the educational system shortly. However, no one knows when this will occur.

In addition, some respondents put an emphasis on the problem that most students concern today. Since all the difficulties that the Turkish economic system suffers today are reflected in the advocacy system, students tend to believe that they will have serious economic problems in the future. They think that if they do not earn enough money as lawyers, there is no point in studying hard. This belief negatively affects their success during their training and reduces the quality of their education.

The distribution of advocates expressing this view can be seen in the table below.
Table 4.4.6, The Reasons for Unsatisfactory Law Training: Students Think That They Will Have Many Economic Problems In the Future

<table>
<thead>
<tr>
<th>Economic Dissatisfaction</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>167</td>
<td>88.8</td>
</tr>
<tr>
<td>I agree</td>
<td>21</td>
<td>11.2</td>
</tr>
<tr>
<td>Total</td>
<td>188</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Some respondents stated that advocacy does not generate enough money to reach even an average standard of life. Even if they become a judge or a public prosecutor, they will not be very well paid either. It is, of course, possible to make much money in advocacy but the respondents believe that this possibility is open only to a handful of advocates who are socially well connected. However, 11.2% of respondents felt this adversely affects the quality of training.

88.8 per cent stated that the economic problems that young law students will experience do not play a role in reducing the quality of education. They said that the first duty of an advocate is to look for ways of reaching justice rather than thinking about how to make money from their job. The attention of a well motivated law student should be on learning the law and how to apply it, because almost all Turkish people already have economic problems. Whatever job is chosen, the economy remains a problem. If students think about money and do not work, this is again a fault of the educational system. A good education should consider the realities of Turkey openly and prepare students realistically for their lives. It was also the view of this group that a well educated advocate would not have basic economic difficulties. The system will always need hard working and creative advocates.

The opinions on why the present education in law faculties is not satisfactory are summarised in the table below.
Table 4.4.7, Reasons Why Current Training in Law Faculties Is Unsatisfactory

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Not Agreed %</th>
<th>Agreed %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Theory Based Education</td>
<td>8</td>
<td>92</td>
</tr>
<tr>
<td>New Departments In Rural Areas</td>
<td>69.7</td>
<td>30.3</td>
</tr>
<tr>
<td>Shortage of Staff</td>
<td>19.7</td>
<td>80.3</td>
</tr>
<tr>
<td>Excessive Student Number in Law Faculties</td>
<td>19.7</td>
<td>80.3</td>
</tr>
<tr>
<td>Economic Dissatisfaction</td>
<td>88.8</td>
<td>11.2</td>
</tr>
</tbody>
</table>

It is clear that the point most strongly emphasised by the respondents is related to the philosophical aspect of education in law faculties. 92 per cent of them believe that the present educational system in these faculties is based only on theory and therefore gives students little practical information. The second point emphasised strongly is the opinion of the students about their economic situation in the future. The vast majority of the sample group do not believe that law students will have serious economic problems as the graduates enter employment. The number of staff and students in law departments is rated as the third reason for unsatisfactory law training. 80.3 per cent of the respondents agreed that there is a shortage of staff, while the educational facilities in almost all faculties, including those in big cities, are not sufficient to offer a reasonable level of education for all students.

To sum up, the main reasons given for unsatisfactory law training are;

1) the Educational system is based only on theory and must be replaced as soon as possible with a more practical one,
2) Law students will have no basic economic problems in their professional life in the future.

3) Advocates have serious doubts about the academic standard of the staff in law faculties and there are clearly fewer staff than needed. Similarly, all law faculties are overloaded with students and this negatively affects the quality of the advocacy service.

4) New departments in provincial areas were held to have little effect on the quality of the advocacy job.
5. The Period of Apprenticeship

A law student who wants to be an advocate has to apply for an apprenticeship lasting one year. The apprenticeship provides more practical information about the system of advocacy and the courts. All apprentices have to prepare a report and a seminar on a general issue in law. This apprenticeship is divided into two terms. The first should be spent in a private practice and the second in court under the supervision of a prosecutor or a judge. The rules of the apprenticeship period, the duties of the students and the responsibilities of observant advocates in private practices and of judges and prosecutors in the courts are outlined by the legal regulations and the Law of Advocacy.

As we have seen, most advocates believe that the educational system in law faculties is based on theory rather than practice. The idea behind this system is that law students will first learn about theoretical issues, and will then complete an apprenticeship to learn about practical issues. Although this seems fine, there is no doubt that what happens in practice is far from perfect. To see this difference and the importance of the apprenticeship period within the advocacy system, the respondents were asked whether they were happy with the apprenticeship period.

Table 4-5-1, Attitudes of General Sample Group Towards Apprenticeship Period

<table>
<thead>
<tr>
<th>Satisfactory Apprenticeship</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>40</td>
<td>18.0</td>
</tr>
<tr>
<td>No</td>
<td>182</td>
<td>82.0</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

82 percent of the respondents declared that they were not happy with the period of apprenticeship. They believed that it did nothing useful for their professional lives. Most students have to complete this training since it is compulsory. What students required was to get a certificate that would prove that they were successful in their
apprenticeship. However, many respondents held that getting such a certificate is not very difficult because practically none of the observers, i.e. prosecutors, judges or advocates, care much about the apprentices.

Within the sample group, there were others (18%) who had a different view from this and stated that they were happy with the apprenticeship period. This suggests that some students find a way of getting relatively better education than others. How they can achieve this can be explained on the basis of the information and observations obtained from both interview sessions and private conversations with advocates and other lawyers.

All the law students eligible for apprenticeship prefer completing it in an office of an advocate who might be a relative, a family friend or a close acquaintance. Only those who do not have any relatives or acquaintances who are advocates accept placement in the offices arranged by the Bar Association.

Students who go to offices owned by a relative or an acquaintance believe that these advocates will pay more attention to their education, give them responsibilities which may increase their experience, and teach them the practice of the legal procedure in court and how to establish good relationships with the clients. The advocates who were happy with their apprenticeship period are those who were engaged in this type of apprenticeship. Although the vast majority of the sample group believed that the apprenticeship was a waste of time, some of them held the opposite view.

The next question investigated why this period was so unsuccessful. The results are presented in the tables below.
Table-4-5-2, Attitudes of General Sample Group Towards Apprenticeship Period; Bar Associations Are Not Interested In Applicants

<table>
<thead>
<tr>
<th>No Interest In Applicants</th>
<th>Number Responding</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not Agree</td>
<td>130</td>
<td>70.3</td>
</tr>
<tr>
<td>I Agree</td>
<td>55</td>
<td>29.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>185</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

55 advocates had a view that the Bar Associations were not interested in their problems during the apprenticeship period. This percentage, 30, represents one-third of the advocates who required. If the Bars realised their responsibility and were more concerned with the applicants, this period would be better and everything in the system could be changed. For example, if the Bar Association put pressure on probate advocates, they could help the students to improve their skills and their knowledge in an appropriate way. This pressure from the Bars would eventually affect the judges and the prosecutors and they, too, would help the students more. So, from the perspective of these advocates, it is the Bars who are responsible for wasting one year in the lives of all advocates.

However, the vast majority of the respondents (70.3%) held an opposite view. In their opinion, the role of the Bar during apprenticeship is necessarily quite limited. They believe that the Bar Associations are only a part of a wider system from which many other problems in the legal profession originate. They stated that the Bar Associations show as interest in the applicants as they can, but there are several problems in the Bars, e.g. financial problems and disorganisation.

The vast majority of advocates do not, then, hold the Bar Associations responsible for the failure of the apprenticeship period.
The second point related to the problem of insufficient monitoring and control of the applicants during their training.

Table-4-5-3, Attitudes of General Sample Group Towards Apprenticeship Period; Insufficient Monitoring and Control of the Applicants

<table>
<thead>
<tr>
<th>Lack of Control</th>
<th>Number Responding</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>7</td>
<td>3.8</td>
</tr>
<tr>
<td>I agree</td>
<td>178</td>
<td>96.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>185</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Only a small proportion of the advocates(3.8%) that there is sufficient monitoring and control. These held that the system is a failure, because candidates do not make enough effort to learn about the system and do not take this period seriously. So, if there is a problem within the system, it comes from the applicants. However, this view is held by a tiny minority.

Nearly all the advocates(96.2%) agree that there is a lack of monitoring and control over trainees during the apprenticeship. The people who are responsible, by law, for the education of trainees are probate advocates in private practices and judges and prosecutors in courts. According to most respondents, neither advocates, judges nor prosecutors take this period seriously. The respondents believe that if experienced lawyers dealt with apprentices more, it would be easier to adapt to the profession. At present, candidate has to face a number of problems which make this period unnecessarily difficult. These are generally problems that can be solved easily by some legal regulations. For instance, there is no official place where the trainees could refer their problems during this period. There is no-one who could listen to their complaints about a probate advocate or a judge or a prosecutor. Therefore, law students cannot force an experienced lawyer to be interested in their training. Secondly, as laid down by the Advocacy Law, it is possible to complete the apprenticeship with any advocate, but
in practice, only a few trainees are able to choose between advocates. They sometimes find an advocate via an acquaintance or, as happens in most cases, they find them by chance. As a result of this, some students get relatively good training by using their social contacts. Most, however, are just wasting time in an office of an advocate or in the halls of court buildings. Thirdly, even if probate advocates want the trainees to do legal work, they pay them nothing, and most new graduates have serious financial problems, particularly during this period. In addition, there is no rule in the Advocacy Law that organises the financial relationship between the trainee and the supervisor. Therefore, some students prefer having another job instead of wasting time and money during the apprenticeship period. Another job helps their financial situation until they are qualified to open a private office or to have a permanent job in one of the state offices or in the private sector. It is also asserted that in general probate advocates have no objections to such behaviour, intolerable under normal conditions, simply because they are so busy with their own work. Even if they want to help the trainees, they cannot find the time to deal with them. As will be elaborated upon later in this section, judges have similar difficulties in dealing with the problems of apprentices.

It is clear from the above data that probate advocates are often not keen to help in the education of young advocates, and that few young advocates are happy with the advocates, judges and prosecutors who are responsible for their training during the apprenticeship period. This indicates that one of the main reasons why the apprenticeship system does not work well relates to the behaviour and attitude of probate advocates, judges and prosecutors towards the system and the students.

The third point concerning the issue of why the respondents were not happy with the period of apprenticeship was more general. Some respondents stated that the apprenticeship is only a formality that all students have to endure.
It appears that the vast majority of advocates (92.4%) believe that the period of apprenticeship is only a formality because during this period they did nothing useful in preparation for their professional future. Only 7.6% disagreed.

During the interview sessions, a point which was often stressed was that both apprentices and probate advocates and judges were well aware of the importance of the apprenticeship, but there was nothing that they could do. The respondents presenting this view believed that despite the fact that everyone had known for many years about the problems related to apprenticeship, for many years, no serious steps have been taken to solve them and to offer more useful training to the students. Therefore, what has been happening in practice is that both students and supervisors try to find a way of getting away from the obligations of apprenticeship. So, while probate advocates know that students have problems during apprenticeship, students also know that advocates have problems in their jobs. They understand each other very well and this period is seen by both sides as a compulsory, generally not useful, stage of the legal profession. In other words, it is only a formality that must be completed by students.

In general, advocates believe that the apprenticeship period is only a legal formality and that students waste their time during this period.

Another point made by some advocates related to the problems that they faced in the courts. The results can be seen in the table below.

Table 4-5-4, Attitudes of General Sample Group Towards Apprenticeship Period; It is Only a Formality

<table>
<thead>
<tr>
<th>It is a Formality</th>
<th>Number Responding</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>14</td>
<td>7.6</td>
</tr>
<tr>
<td>I agree</td>
<td>171</td>
<td>92.4</td>
</tr>
<tr>
<td>Total</td>
<td>185</td>
<td>100.0</td>
</tr>
</tbody>
</table>

It appears that the vast majority of advocates (92.4%) believe that the period of apprenticeship is only a formality because during this period they did nothing useful in preparation for their professional future. Only 7.6% disagreed.
Table 4-5-5, Attitudes of General Sample Group Towards Apprenticeship Period; Court Officials are not concerned About Applicants

<table>
<thead>
<tr>
<th>Courts Are Not Concerned</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>4</td>
<td>2.2</td>
</tr>
<tr>
<td>I agree</td>
<td>181</td>
<td>97.8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>185</td>
<td>100.0</td>
</tr>
</tbody>
</table>

According to the relevant law, all apprentices have to spend six months in a court, observing judges or public prosecutors, and learning about legal procedures.

There are only four advocates (2.2%) in the above table, who say that judges and prosecutors are interested in the apprentices and their problems.

The rest (nearly 98%) agree that the responsible state officials in the courts are not interested in trainees. Often they do not even want to see the apprentices, even though this is the only period during which the potential advocates may learn about court activities. They generally finish this period with no practical knowledge of the law. When they start their own job, it is difficult to understand what takes place in the courts. Young advocates sometimes have real difficulties in adapting to the system. Undoubtedly, this negatively affects the quality of the legal service. When an advocate fails to solve even a simple problem, public opinion may define all advocates as being helpless and unqualified.

Respondents believe that the function of the courts in the education of law students is very important and all future advocates must learn more about the courts.

The last point that the respondents made was about the importance of this period. Some of them said that if this period was only a time-consuming device, then, it should be abolished. The opinions of the advocates on this subject are as follows:
Table-4-5-6, Attitudes of General Sample Group Towards Apprenticeship Period: There is no Need For This Period

<table>
<thead>
<tr>
<th>No Need for This</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>185</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>185</td>
<td>100.0</td>
</tr>
</tbody>
</table>

As seen in the table above(4-5-6), there are none who think that this period should be abolished. Rather, they believe that it is a necessary period and perhaps the only way to pass practical knowledge on to the new comers. What has to be done is to revise it or to introduce new rules re-organising the field. In short, most advocates have a strong belief that what takes place during the apprenticeship is not useful, so a new form of apprenticeship has to be introduced rather than eliminating it from the system of legal training.

Table-4-5-7, Overall Reasons Why Advocates Find Apprenticeship Period Unsatisfactory

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Not Agreed</th>
<th>Agreed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bar Associations are not Interested in Applicants</td>
<td>70.3</td>
<td>29.7</td>
</tr>
<tr>
<td>There is a Lack of Monitoring and Control of Applicants</td>
<td>3.8</td>
<td>96.2</td>
</tr>
<tr>
<td>This period is Only a Formality</td>
<td>7.6</td>
<td>92.4</td>
</tr>
<tr>
<td>Responsible People in Courts are Not Interested in Applicants</td>
<td>2.2</td>
<td>97.8</td>
</tr>
<tr>
<td>There is no Need for This Period</td>
<td>100</td>
<td>-</td>
</tr>
</tbody>
</table>

Looking at the table(4-5-7), it is possible to say that all advocates believe that the apprenticeship period must be a part of legal training. However, as is clear from the
information in the second, third and fourth row, the vast majority of advocates also believe that law students do not benefit much during this period. At present, this period is regarded as nothing but a legal formality. The first column points to the fact that the performance of the Bar is not highly regarded.

This information poses an interesting question. If all trainees are unhappy about the apprenticeship and believe that they did not learn much during this period, does this mean that the quality of legal service is declining. If so, what can be done to counteract this? Obviously, introducing and applying educational reforms and legal changes take a long time. Therefore, what short term solution can be proposed?

To answer this, the advocates were also asked whether they were in favour of introducing an entry exam to group advocates according to their skills and protect the system from the so called "charlatans". The results obtained from this question are as follows.

Table 4-5-8, Opinion of Advocates in General Sample Group About Whether an Entry Exam has to be Introduced into Advocacy System

<table>
<thead>
<tr>
<th>Compulsory Exam</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>119</td>
<td>53.6</td>
</tr>
<tr>
<td>No</td>
<td>103</td>
<td>46.4</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

This was one of the most interesting and also one of the most difficult questions for respondents to answer. Most advocates stated that there were some advantages and disadvantages of an entry exam. Some of them stressed that success in the exam is openly dependent on who carries out it, who can guarantee that the examiners will be impartial in assessing exam papers and who might ensure that no illegal procedure such
as bribing members of exam committee will take place. In short a lot of hopes and reservations relating to this point were expressed.

53.6 per cent of advocates agreed with the view that candidates seeking a vacancy in the advocacy system should take a compulsory exam. 46.4% gave a negative response to this question. They argued that this exam would never be applied as suggested in theory and if the university system is obliged to equip the students with the qualities necessary for becoming a lawyer, this exam, would be redundant. According to this group, if the students are not educated very well at universities, this has more to do with the educational policies applied by the government and the universities.

In short, it is possible to say that there is no clear majority view among advocates towards introducing an entry exam.

6. Family Background

There is no doubt that information on the family background of advocates will contribute to the understanding of the structure of the legal profession. In this section, therefore, the degree of mobility within the profession and the family backgrounds of advocates will be presented. The main focus will be on the questions asking where their parents were born, what job they had, to what level they were educated, etc.

Firstly the birthplace of the respondents' fathers and mothers will be presented. Since this question was included only in the interview schedules carried out in Istanbul, the number of the sample group is 66. The results are as follows.

Table-4-6-1, Birthplace of Fathers and Mothers of Istanbul Advocates by Cities.

<table>
<thead>
<tr>
<th>Birthplace</th>
<th>Father</th>
<th></th>
<th>Mother</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>%</td>
<td>Number</td>
<td>%</td>
</tr>
<tr>
<td>Istanbul</td>
<td>10</td>
<td>15.2</td>
<td>10</td>
<td>15.2</td>
</tr>
<tr>
<td>Not Istanbul</td>
<td>56</td>
<td>84.8</td>
<td>56</td>
<td>84.8</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100</td>
<td>66</td>
<td>100</td>
</tr>
</tbody>
</table>

208
Only a few advocates' parents (15%) were born in Istanbul. 85% were born in a city other than Istanbul.

These results show either that most of the advocates' families came to Istanbul from other cities in Anatolia or that the advocates preferred working in Istanbul rather than their birthplace. As noted before, Istanbul is the most favoured city among people who immigrate from relatively poor areas of Turkey in the hope of finding a better life.

From these results, it can be said that most Istanbul advocates have a provincial social background. Other data generated in the study suggests that most advocates came from families with low income. This also suggests that the law is relatively open profession and that there are high rates of mobility into the occupation.

Data on father's occupation are presented below.

Table 4-6-2, Jobs of Istanbul Advocates' Fathers

<table>
<thead>
<tr>
<th>Job of Father</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Employee</td>
<td>21</td>
<td>31.8</td>
</tr>
<tr>
<td>Occupation Required an</td>
<td>5</td>
<td>7.6</td>
</tr>
<tr>
<td>University Degree</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Farmer</td>
<td>7</td>
<td>10.6</td>
</tr>
<tr>
<td>Lawyers</td>
<td>6</td>
<td>9.1</td>
</tr>
<tr>
<td>Worker or Small</td>
<td>27</td>
<td>40.9</td>
</tr>
<tr>
<td>Businessman</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Nearly 41 per cent of Istanbul advocates' fathers were workers or small business owners, while 32% of them were state employees. Only 7.6% were university graduates, the remainders being farmers and lawyers.
Workers and small business owners like carpenters, small traders, tailors, greengrocers, small market owners and so on, constitutes a relatively low income group. Most of the Istanbul advocates' fathers worked as factory workers or had a small private business.

The fathers who worked for or retired from a state office also represent a low income group. They are categorised separately in the table because, despite the fact that they are in a low income group, they represent a different culture from that of workers or small businessmen. Nearly 32 per cent of Istanbul advocates come from the families of state employees who appreciate the importance of good education but who may, for financial reason, struggle to provide such an education. A Turkish saying describes this best: "the children of a state employee can only be state employees".

The fathers who obtained a university degree and had their own business, e.g. constructors, engineers, doctors, writers and so on, are classified under the category of university graduates. They represent only 7.6 per cent of the fathers of all Istanbul advocates.

There were only a few (10%) whose fathers were farmers. My expectation was to find a much higher proportion from farming families. This shows that most fathers of Istanbul advocates lived or live in cities rather than in towns or villages. In other words, they are urbanised people working in cities for the state or the private sectors or on their own.

Apart from the occupation of the fathers of the Istanbul advocates, mothers' jobs were also identified. Based on the impressions deriving from the pilot research, most mothers of Istanbul advocates did not have paid employment. They were generally housewives and were not doing anything to contribute to the financial situation of the household. For this reason, the mothers were classified according to whether they were housewives or not. Therefore, the aim of the relevant question was only to find out how many of them contributed to the family economy.
The vast majority of mothers of Istanbul advocates are housewives (90.9%), while only a few (9%) of them have a job outside. This means that most advocates come from a family where the mother does not work and the father earns money. In other words, the advocates' families are traditional Turkish families. In these families, the father is the dominant figure, at least in an economic sense, and the duty of the mother is to do housework and to bring up children. The mother does not, therefore, receive an income from work outside family economy. Fathers are authoritative, while mothers are generally a passive and submissive. This is also reflected in the family education. Girls are prepared for a role similar to that of their mothers, while boys are supposed to be stronger and more dominant.

The subordinate position of the mothers within the family is the most typical characteristic of traditional Turkish families. It is clear that most families in which Istanbul advocates were brought up were traditional families.

Data were also obtained the educational level of the parents of the Istanbul advocates.

Table 4.6.3, Jobs of Istanbul Advocates' Mothers.

<table>
<thead>
<tr>
<th>Job of Mother</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housewife</td>
<td>60</td>
<td>90.9</td>
</tr>
<tr>
<td>Paid employment</td>
<td>6</td>
<td>9.1</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>
Table 4-6-4, Educational Level of Parents of Advocates Within General Sample Group

<table>
<thead>
<tr>
<th>Educational Level of Parents</th>
<th>Father</th>
<th>Mother</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>%</td>
</tr>
<tr>
<td>Primary School</td>
<td>66</td>
<td>29.7</td>
</tr>
<tr>
<td>Secondary School</td>
<td>31</td>
<td>14.0</td>
</tr>
<tr>
<td>High School</td>
<td>54</td>
<td>24.3</td>
</tr>
<tr>
<td>University</td>
<td>56</td>
<td>25.2</td>
</tr>
<tr>
<td>Illiterate</td>
<td>15</td>
<td>6.8</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

There is considerable difference between the educational level of parents of advocates. Nearly 30% of fathers completed only primary education, while this increases to 47.7% for mothers. Nearly 14% of fathers and 13% of mothers completed secondary education but never entered education. An interesting comparison can be drawn with regard to university education. 25% of fathers graduated from a university, while there are only a few mothers (2.3%) with a university degree. While the figure of illiteracy is quite low for fathers (6.8%), it goes up in the mothers' case, to 18.9%.

These data indicate that Turkish advocates' parents are not very well educated. Most completed only primary education, with the fathers being relatively better educated than the mothers. These data confirm the previous suggestion that the advocacy work is performed by those who have a middle class or lower class background and therefore, social mobility into Turkish legal profession seems to be relatively high.

7. Work Situations

In this section, I present the results concerning the general characteristics of the work situation of Turkish advocates. My central concern is the number of lawyers in an office, the work they deal with, the problems that their clients bring to them, the level of job satisfaction, etc.
Table-4-7-1, Number of Lawyers in the Advocate's Offices

<table>
<thead>
<tr>
<th>Number of Lawyers</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>115</td>
<td>51.8</td>
</tr>
<tr>
<td>2</td>
<td>45</td>
<td>20.3</td>
</tr>
<tr>
<td>3</td>
<td>33</td>
<td>14.9</td>
</tr>
<tr>
<td>4</td>
<td>11</td>
<td>5.0</td>
</tr>
<tr>
<td>5</td>
<td>6</td>
<td>2.7</td>
</tr>
<tr>
<td>6</td>
<td>6</td>
<td>2.7</td>
</tr>
<tr>
<td>8</td>
<td>6</td>
<td>2.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>222</td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

115 advocates out of 222 (51.8%) stated that they worked alone in their offices. 35% worked together with up to three advocates, while nearly 13% worked with more than three advocates. This means that approximately 87% of advocates work alone or in a partnership of not more than three advocates. Therefore, it can be said that most Turkish advocates work alone, while many working in a small partnership of two or three advocates.

The next question was about the number of non-lawyers in the office. The results are as follows:

Table-4-7-2, Number of Non-Lawyer in an Advocate's Office

<table>
<thead>
<tr>
<th>Number of Non-Lawyers</th>
<th>Number</th>
<th>Valid Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>113</td>
<td>51.4</td>
</tr>
<tr>
<td>2</td>
<td>30</td>
<td>13.6</td>
</tr>
<tr>
<td>3</td>
<td>50</td>
<td>22.7</td>
</tr>
<tr>
<td>4</td>
<td>27</td>
<td>12.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>220</td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>
A little more than half of the sample have only one assistant helping them in everyday affairs. The proportion of advocates with two assistants is 13.6%. Those with three assistants constitutes 22.7%. In total, these two categories represent 36% of the total number. This means that one in three advocates has 2-3 assistants, while only a small minority (12.3%) having four or more.

The commonest pattern is to employ only one assistant. This confirms that offices are generally small, consisting of one advocate and one non-lawyer assistant.

The jobs of non-lawyers in advocates' offices are displayed in the table below (4-7-3).

Table-4-7-3, Jobs of Non-Lawyers

<table>
<thead>
<tr>
<th>Job of Non-Lawyers</th>
<th>Number Responding</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary</td>
<td>79</td>
<td>42.7</td>
</tr>
<tr>
<td>Cleaner</td>
<td>11</td>
<td>5.9</td>
</tr>
<tr>
<td>Both</td>
<td>73</td>
<td>39.5</td>
</tr>
<tr>
<td>Others</td>
<td>22</td>
<td>11.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>185</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Most assistants in advocacy offices are secretaries (42.7%). 5.9% are cleaners while 39.5% of the assistants work both as a secretary and cleaner. There is only a small percentage representing other jobs, such as chauffeur, office-boys and special assistants with appropriate experiences to work out problems in courts or some other state offices. It seems that, because Turkish advocates generally work alone, they do not need to employ more than one assistant.

One of the most important questions for the understanding of the structure of the Turkish legal profession relates to the specialisation in the law. It was important to gather information about the degree of specialisation within the profession and to find
out if there is a trend towards specialisation. The results are presented at the table below.

Table-4-7-4, General Sample Group According to the Presence of Specialisation

<table>
<thead>
<tr>
<th>Specialist Area</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>135</td>
<td>60.8</td>
</tr>
<tr>
<td>No</td>
<td>87</td>
<td>39.2</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

60% of advocates claimed a specialist area of expertise. Most said that they became specialists by training themselves since there was no special course, programme or any kind of educational activity organised by the Bars or other institutions. Under the present system in Turkey, there are only two ways of developing specialist knowledge in the law. The first is to attend a postgraduate programme in a law faculty. The second is through one's own personal experiences in practice.

Nearly 40% of advocates said that they had no legal specialism.

It should be noted that these figures reflect the respondents' own impression of their knowledge since there is no proper expert training system. There was, however, a tendency towards specialisation and a positive meaning is attached to specialisation.

The areas of specialism represented by respondents are as follows:
Table-4-7-5, General Sample Group According to Their Specialist Areas

<table>
<thead>
<tr>
<th>Specialisation Areas</th>
<th>Number Responding</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Execution-bankruptcy</td>
<td>37</td>
<td>26.6</td>
</tr>
<tr>
<td>Commercial</td>
<td>28</td>
<td>20.1</td>
</tr>
<tr>
<td>Crime</td>
<td>13</td>
<td>9.4</td>
</tr>
<tr>
<td>Landlord and Tenant</td>
<td>13</td>
<td>9.4</td>
</tr>
<tr>
<td>Administrative</td>
<td>18</td>
<td>12.9</td>
</tr>
<tr>
<td>Labour</td>
<td>15</td>
<td>10.8</td>
</tr>
<tr>
<td>Family</td>
<td>7</td>
<td>5.0</td>
</tr>
<tr>
<td>Others</td>
<td>8</td>
<td>5.8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>139</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Commonest specialisation is execution and bankruptcy law (26.6%). Commercial law is the second most popular branch (20.1%). The administrative law is the third (12.9%).

This table suggests that even though Turkish advocates work in various areas of the law, there is a tendency towards working on issues such as bankruptcy and commercial law, which are financially more rewarding. 46.8% practitioners are specialists in one or other of these areas. This high involvement in commercial activities can be seen as evidence of the commercially oriented character of the advocacy profession in modern Turkey. In short, the most attractive areas for advocate specialisation are those directly connected to commercial life.

One of the most effective ways of understanding the work situation of advocates was by asking them how they use their time. The results referring to these points are presented below.
Table 4-7-6, How Advocates Spend Their Time in a Week; Interviewing Clients

<table>
<thead>
<tr>
<th>Interviewing Clients</th>
<th>Number Responding</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-5 Hours</td>
<td>80</td>
<td>38.6</td>
</tr>
<tr>
<td>6-10 Hours</td>
<td>87</td>
<td>42.0</td>
</tr>
<tr>
<td>11-15 Hours</td>
<td>34</td>
<td>16.4</td>
</tr>
<tr>
<td>16-20 Hours</td>
<td>3</td>
<td>1.4</td>
</tr>
<tr>
<td>21-25 Hours</td>
<td>2</td>
<td>1.0</td>
</tr>
<tr>
<td>26-30 Hours</td>
<td>1</td>
<td>.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>207</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

42% of advocates spend between 6 and 10 hours a week interviewing clients. 38.6% spend only between 1-5 hours interviewing clients. In total, 80.6%, of advocates spend between 1 and 10 hours a week interviewing clients.

On average, Turkish advocates interview their clients for about two hours a day. This figure seems quite high within a system in which all advocates have to spend almost all mornings in court buildings waiting for trial. This suggests that interviewing clients is an important part of their job.

Table 4-7-7, How Advocates Spend Their Time in a Week; Court Appearance

<table>
<thead>
<tr>
<th>Court Appearances</th>
<th>Number Responding</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-5 Hours</td>
<td>79</td>
<td>38.7</td>
</tr>
<tr>
<td>6-10 Hours</td>
<td>87</td>
<td>42.6</td>
</tr>
<tr>
<td>11-15 Hours</td>
<td>29</td>
<td>14.2</td>
</tr>
<tr>
<td>16-20 Hours</td>
<td>6</td>
<td>2.9</td>
</tr>
<tr>
<td>26-30 Hours</td>
<td>2</td>
<td>1.0</td>
</tr>
<tr>
<td>36-40 Hours</td>
<td>1</td>
<td>.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>204</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>
42.6% of advocates spend between 6 and 10 hours a week in courts, appearing in hearings or waiting for their turn to provide defence. 38.7% spend between 1 and 5 hours in court. 29% or 14.2% spend between 11 and 15 hours a week on court appearances. In total, 95.5% of the advocates spend between 1 and 15 hours a week in courts, suggesting that almost all advocates have to spend on average three hours a day in courts.

Table 4-7-8, How Advocates Spend Their Time in a Week; Conferring with Colleagues

<table>
<thead>
<tr>
<th>Conferring with Colleagues</th>
<th>Number Responding</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-5 Hours</td>
<td>177</td>
<td>87.6</td>
</tr>
<tr>
<td>6-10 Hours</td>
<td>24</td>
<td>11.9</td>
</tr>
<tr>
<td>11-15 Hours</td>
<td>1</td>
<td>0.5</td>
</tr>
<tr>
<td>Total</td>
<td>202</td>
<td>100.0</td>
</tr>
</tbody>
</table>

It is revealed from this table (4-7-8) that 87.6% of advocates spend between 1 and 5 hours a week on conferring with their colleagues. The rest of them spend between 6 and 10 hours on this activity. Ignoring their proportion of 11.9%, almost 90% of advocates are able to spare at the most 1 hour a day to talk to their colleagues.

Table 4-7-9, How Advocates Spend Their Time in a Week; Conferring With Court Officials

<table>
<thead>
<tr>
<th>Conferring with Court Officials</th>
<th>Number Responding</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-5 Hours</td>
<td>193</td>
<td>95.5</td>
</tr>
<tr>
<td>6-10 Hours</td>
<td>7</td>
<td>3.5</td>
</tr>
<tr>
<td>21-25 Hours</td>
<td>2</td>
<td>1.0</td>
</tr>
<tr>
<td>Total</td>
<td>202</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The time that advocates spend on conferring with officials in courts is usually (95.5%) between 1 and 5 hours a week. The proportion of the advocates who are able to find
more than five hours a week for this activity is very small (3.5%). This suggests that advocates do not consider conferring with clerks in courts as one of the main parts of their job.

Table 4-7-10, How Advocates Spend Their Time in a Week: Attending Government Offices

<table>
<thead>
<tr>
<th>Going to Government Offices</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-5 Hours</td>
<td>196</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Perhaps the most difficult and the most time consuming work for an advocate is dealing with bureaucratic issues in courts and governmental offices. Therefore, the issue of how much time the respondents spend in these places is revealing. All advocates within the sample group spend between 1 and 5 hours a week sorting out bureaucratic problems. This figure is smaller than expected. It might be the case that advocates send their assistant(s) or secretary(s) to the courts and other buildings to solve bureaucratic matters. Several said during the interview sessions that they prefer not to go to these offices unless it was necessary.

Table 4-7-11, How Advocates Spend Their Time in a Week: Legal Paperwork

<table>
<thead>
<tr>
<th>Legal Paperwork</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-5 Hours</td>
<td>100</td>
<td>48.8</td>
</tr>
<tr>
<td>6-10 Hours</td>
<td>73</td>
<td>35.6</td>
</tr>
<tr>
<td>11-15 Hours</td>
<td>27</td>
<td>13.2</td>
</tr>
<tr>
<td>16-20 Hours</td>
<td>3</td>
<td>1.5</td>
</tr>
<tr>
<td>31-35 Hours</td>
<td>2</td>
<td>1.0</td>
</tr>
<tr>
<td>Total</td>
<td>205</td>
<td>100.0</td>
</tr>
</tbody>
</table>
Nearly half of the respondents (48.8%) stated that they spend between 1 and 5 hours a week doing paperwork. 35.6% of them spend more than six hours on this activity but not more than ten. In total, approximately 85% of advocates spend 10 hours or less. This suggests that Turkish advocates do not spend much time on legal paperwork.

Table 4-7-12, How Advocates Spend Their Time in a Week; Administrative Paperwork

<table>
<thead>
<tr>
<th>Administrative Paperwork</th>
<th>Number Responding</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-5 Hours</td>
<td>87</td>
<td>66.4</td>
</tr>
<tr>
<td>6-10 Hours</td>
<td>34</td>
<td>26.0</td>
</tr>
<tr>
<td>11-15 Hours</td>
<td>3</td>
<td>2.3</td>
</tr>
<tr>
<td>16-20 Hours</td>
<td>3</td>
<td>2.3</td>
</tr>
<tr>
<td>26-30 Hours</td>
<td>2</td>
<td>1.5</td>
</tr>
<tr>
<td>41-98 Hours</td>
<td>2</td>
<td>1.5</td>
</tr>
<tr>
<td>Total</td>
<td>131</td>
<td>100.0</td>
</tr>
</tbody>
</table>

66% of advocates spend between 1 and 5 hours a week preparing administrative paperwork, e.g. billing clients, paying tax and insurance premium, while 26% spend between 6 and 10 hours. Therefore, 92% of advocates spend between 1 and 10 hours a week on administrative paperwork.

All the results displayed in the above tables concerning the way in which advocates use their time can be seen in the overall table below. The table will be helpful in identifying the area of work which advocates spend their time.
The table indicates that advocates spend more than five hours a week interviewing clients and attending court hearings. The time they are able to allocate to the other activities is between 1 and 5 hours a week or on average at the most one hour a day. This means that they spend most of their time interviewing clients or going to courts.

It might be noted that during the interviews, when respondents were asked how they used their time, most of them said that they had no idea about it, because they believed that advocates were, because of outside constrains, not able to organise their own time. They agreed that all advocates had to see clients, go to court or do other routine works everyday, but it was difficult to predict how much time they would spend on these activities. For example, the courts were not able to fix the dates of hearings in advance and to inform advocates. Therefore, the advocates have to go to courts in the morning and wait for their turn without doing anything else. Additionally, similar disorganisation existed in the state offices. When the advocates had bureaucratic business in the state offices, it generally took a long time to sort it out. Another reason why they could not organise their own time was related to the manner in which they accepted clients. Since there was no consultation fee, any client who wanted to collect information about their cases could come to see the advocate and ask questions. Most
respondents said that such conversations were usually long, especially when advocates wanted to persuade the clients to let them take on the case. If an advocate had a couple of clients who wanted to consult, this changed all their plans for the day. Therefore, they believed that it was almost impossible for an advocate to plan his/her time.

Because of this, most respondents answered the relevant questions in very general terms and the data obtained through these questions provides only a general idea about the subject.

Data were also gathered on the percentage of cases ending up in court. This was a good indication of the advocates' workload. The results are as follows.

Table-4-7-14, Percentage of Cases Ending Up In Court

<table>
<thead>
<tr>
<th>Cases Ending up in Court</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>100%</td>
<td>159</td>
<td>71.6</td>
</tr>
<tr>
<td>90%</td>
<td>25</td>
<td>11.3</td>
</tr>
<tr>
<td>80%</td>
<td>16</td>
<td>7.2</td>
</tr>
<tr>
<td>70%</td>
<td>7</td>
<td>3.2</td>
</tr>
<tr>
<td>60%</td>
<td>9</td>
<td>4.1</td>
</tr>
<tr>
<td>50%</td>
<td>5</td>
<td>2.3</td>
</tr>
<tr>
<td>Less than 50%</td>
<td>1</td>
<td>.5</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

71.6% of respondents said that 100% of the cases they took on ended up in court. 11.3% of respondents said that 90% of their cases ended up in court. 17% of respondents send 80% or less of their cases to court. This means that most cases brought to Turkish advocates are solved in courts for, as explained during most interview sessions, the Turkish people prefer to come to see an advocate only when they are not able to solve the problem themselves. Hence, the cases that come to advocates are generally complex and difficult and can only be solved in court.
The next question explored levels of remuneration:

Table 4-7-15, Opinions of All Advocates on Whether They Find Advocacy Job Adequately Remunerated

<table>
<thead>
<tr>
<th>Adequate Remuneration</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>97</td>
<td>43.7</td>
</tr>
<tr>
<td>No</td>
<td>125</td>
<td>56.3</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

56% of advocates felt that advocacy is not remunerated adequately, while the rest, 43.7%, hold the opposite view. These percentages are very close to each other. Contrary to my expectations, many advocates (43.7%) stated that they were happy with the money they were making. This attitude of the advocates can be explained by an Islamic tradition relating to the earning of money. According to Islam, believers must thank God for the things they have got or the things they have been given, but should not complain, especially about worldly affairs (like wealth, poverty). In everyday life, therefore, it is a habit of Turkish people not to disclose their economic difficulties, even if they have serious problems. It may be because of this that the number of those who felt they were adequately remunerated is relatively high. In the interview sessions, the respondents in this group very often used an expression; "my money is enough to get by, thanks God", and added that they had no complaints about their income.

The next question related to whether advocates worked in another job and was aimed at ascertaining if they needed additional financial support.
Table-4-7-16, General Sample Group According to Whether They Have Another Job

<table>
<thead>
<tr>
<th>Other Job</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>52</td>
<td>23.4</td>
</tr>
<tr>
<td>No</td>
<td>170</td>
<td>76.6</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

It appears that three in four Turkish advocates do not have another job. However, nearly 24% of them declared that they did. This means that a considerable number of the advocates were involved in other jobs, which were probably related to advocacy in one way or another. There were some advocates who said that they had a job completely different from advocacy, such as teaching in a secondary or a high school or teaching a foreign language. These respondents were retired people with a fixed income. It is quite common, especially among state officials, to enrol in a law faculty and get a degree while working and then open an advocacy office after retirement. These advocates consider advocacy as a secondary job. Apart from them, there are also some who work as advisors to private companies or directly take on a duty in their consultative committees, along with working in their own offices. 24% of advocates who had another job included these respondents.

Data were also obtained concerning the level of job satisfaction among advocates.

Table-4-7-17, General Sample Group According to Whether They Want to Have Another Job

<table>
<thead>
<tr>
<th>Want Another Job</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>74</td>
<td>33.3</td>
</tr>
<tr>
<td>No</td>
<td>148</td>
<td>66.7</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>
Two in three advocates are happy with their job. However, 33.3% of advocates are not. This group said if they had another choice, they would change their occupation to the one that they would enjoy more than advocacy. In general, however, most advocates were happy with their job.
8. Attitudes of Turkish Advocates Towards Bar Associations and Their Activities

Obviously, issues like the activities of the Bar Associations, their place within the advocacy system and the relationship between advocates and the Bar Associations are of special importance for understanding the structure of the legal profession. Therefore, some questions relating to these points were included in both the interview schedules and questionnaires. In this section, I present the results referring to the questions like, "Do you regularly attend the meetings of the Bar?" or "Do you think that the Bar Association does a good job for its members?" or "Should the Bar association be reformed?"

It will be recalled that it is compulsory by law for all advocates to be members of the Bar Association, but there is no rule which forces them to take part in the activities of the Bar. In the table below(4-8-1), the percentage of advocates who regularly attend meetings of the Bar can be seen.

Table-4-8-1, Attendance of Advocates at Meetings In the Bar Association

<table>
<thead>
<tr>
<th>Meetings in the Bar</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>136</td>
<td>61.3</td>
</tr>
<tr>
<td>No</td>
<td>86</td>
<td>38.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

61.3% of advocates attend meetings organised by the Bar Associations. However, a considerable number of advocates(38.7%) do not attend.

It should be noted, however, that the majority of respondents stated that the Bar Associations did not organise meetings or activities very frequently.
The advocates who attend these meetings also gave some information about the nature of meetings.

Table-4-8-2, Attendance of Advocates at General Meetings In the Bar Association

<table>
<thead>
<tr>
<th>General Meetings</th>
<th>Number Responding</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not attend</td>
<td>24</td>
<td>17.0</td>
</tr>
<tr>
<td>I attend</td>
<td>117</td>
<td>83.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>141</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

83% of advocates attend general meetings. It can be concluded that most advocates consider the general meetings as important events. As specified by the Advocacy Law, during general meetings, the president and the members of the committees of the Bar are selected and the administrative committees give an account of their activities in the previous year. Advocates who participate in these meetings can vote and have a say in the administration of the Bar.

Table-4-8-3, Attendance of Advocates At Anniversary Meeting In the Bar Associations

<table>
<thead>
<tr>
<th>Anniversaries of Establishment</th>
<th>Number Responding</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not attend</td>
<td>93</td>
<td>66.0</td>
</tr>
<tr>
<td>I attend</td>
<td>48</td>
<td>34.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>141</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

66% of the respondents said that they did not attend celebration parties or other activities organised each year on the day of the establishment of the Bar Association. Only 34% of the advocates take part in these activities. The respondents in this group represents nearly one in three of the general sample group.

In this case, most advocates, then, do not attend meetings organised to celebrate the anniversary of the establishment of the Bar.
Table 4-8-4, Attendance of Advocates At Meetings In the Bar Association; Symposiums, Panels and Conferences

<table>
<thead>
<tr>
<th>Attending Symposiums</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>49</td>
<td>34.8</td>
</tr>
<tr>
<td>Yes</td>
<td>92</td>
<td>65.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>141</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Approximately 65.2% of the advocates declared that they attended meetings like symposia, panels and conferences related to the profession while 34.8% did not. In other words, two in three respondents in these activities organised by either the Bars or other institutions on behalf of the Bars.

However, activities of this kind were not organised very often.

Table 4-8-5, Attendance of Advocates Towards Meetings In the Bar Association; Others Activities

<table>
<thead>
<tr>
<th>Other Activities</th>
<th>Number Responding</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not attend</td>
<td>119</td>
<td>84.4</td>
</tr>
<tr>
<td>I attend</td>
<td>22</td>
<td>15.6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>141</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Only a small number of the advocates stated that they joined in other kinds of social or cultural. Playing football, engaging together in cultural activities like going to the cinema, theatre and so on, were among these activities. Just 15.6% join in these activities. This shows that some—but only a small minority—want to act together by organising some social and cultural activities. Some respondents added that the Istanbul Bar Association organises football matches between Turkish advocates and advocates.
from Europe. This, they said, really helps them to get closer to their colleagues in Europe.

Overall results relating to the meetings in the Bar are summarised in the table below.

Table 4-8-6, Overall Results Relating to Attitudes of Advocates Towards Meetings In the Bar Association

<table>
<thead>
<tr>
<th>Activities</th>
<th>Don't Attend (%)</th>
<th>Attend (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General meetings</td>
<td>17</td>
<td>83</td>
</tr>
<tr>
<td>Celebrating of Anniversary of Establishments</td>
<td>66</td>
<td>34</td>
</tr>
<tr>
<td>Symposiaums, Panels and Conferences.</td>
<td>34.8</td>
<td>65.2</td>
</tr>
<tr>
<td>Other Activities.</td>
<td>84</td>
<td>15.6</td>
</tr>
</tbody>
</table>

The highest figure, 84.4%, represents those respondents who join in other activities than those in the interview schedules and questionnaires. 83% of advocates regularly attend the general meetings.

Respondents were also asked whether they had ever held an active role in one of the committees of the bar. The results are as follows:

Table 4-8-7, General Sample Group According to Whether Advocates Had Held an Active Role In a Committee of the Bar Association

<table>
<thead>
<tr>
<th>Active Role In Committee</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>36</td>
<td>16.2</td>
</tr>
<tr>
<td>No</td>
<td>186</td>
<td>83.8</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>
Only 36 advocates (16.2%) had held an active role in one of the committees of the Bar Association. These figures suggest that there is a strong tendency among Turkish advocates to have an active role in the administrative units of the bar.

Despite this, an important point needs to be noted. The advocates commissioned in the Bar stated that in the past, the administrators in the Bar had serious difficulties to contact all the members in Istanbul. Therefore, Bar Association opened some branches in other regions and appointed some of its members to represent the Bar. These advocates function as a bridge between the main body of the Bar and the members. It is most likely that some of the respondents who declared that they held an active role in the Bar were regional representatives of the Bar Association.

Table 4-8-8, Opinion of General Sample Group about Whether the Bar Associations Are Doing Good Job

<table>
<thead>
<tr>
<th>Good Job</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>53</td>
<td>23.9</td>
</tr>
<tr>
<td>No</td>
<td>169</td>
<td>76.1</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Only 23% of the advocates agree that the Bar Associations provide a good service for their members. During the interviews, it was stated by the advocates who were happy with the activities of the Bar that, especially in recent years, the Bar worked very hard to organise activities and provided its members with basic services (e.g. a fax machine in every court for advocates) that should have been offered a long time ago. On the other hand, respondents with the opposite view believed that the Bar Association was doing much less than it could or should do. According to them, the Bar Associations do not even try to communicate with the majority of advocates and they do not deal with their problems effectively. Whatever they do is only for the advocates who are close to those elected onto the Committees of the Bar. It seems that there is widespread
discontent with the activities of the Bar Association, despite recent improvements and a new understanding of service launched by the administration elected in the last two elections.

In the light of the above, respondents were asked whether they wanted to see reforms to the bar or not.

The results are as follows.

Table 4.8.9, Opinion of General Sample Group about Whether the Bar should be Reformed

<table>
<thead>
<tr>
<th>Reformation of the Bar</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>186</td>
<td>84.2</td>
</tr>
<tr>
<td>No</td>
<td>36</td>
<td>15.8</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

84.2% believe that the Bar should be reformed. 15% of them did not identify any serious problem with the activities of the Bar and the legal rules that formed the Bar. They said that if there was a problem with the Bar, the reasons were related not only to the Bar itself but also other consideration. However, the respondents with the opposite view stated that a new contemporary spirit of reform must be introduced into the system and the laws relating to the organisation of the Bar Association must be changed. These radical changes, they believe, should make the Bar Associations more active, more interested in the problems of advocates and more effective with regard to the social, economic and political issues facing the country.

The most critical question in the interview schedules and questionnaires was related to the ethical consideration. The respondents were asked if they believed that their colleagues were acting in an ethical manner in their jobs.
The results are as follows.

Table 4-8-10, Opinion of General Sample Group About Whether Advocates Act Ethically

<table>
<thead>
<tr>
<th>Act Ethically</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>56</td>
<td>25.2</td>
</tr>
<tr>
<td>No</td>
<td>166</td>
<td>74.8</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The above table related to the opinions of the respondents concerning their colleagues, and not their own attitudes towards ethical issues. The reason why the question did not directly address the respondents' own attitudes was psychologically based. It was assumed that, normally, people would not like to talk about the ethical aspects of their own work but could give information about the work of others. Asking the question in this manner increased the reliability of the responses.

According to these answers, the vast majority of Turkish advocates declared that, in general, Turkish lawyers did not act ethically. This was the view of nearly 75% of respondents.

This suggests that the violation of ethical rules is one of the most important problems in the Turkish legal profession. It can also be said that professional organisations in Turkey are not generally effective in applying ethical rules or controlling the behaviour of their members. Considering the importance of ethical issues, the reasons why advocates act unethically will be examined in more detail in the next chapter.

9. Major Problems That the Legal Profession is Confronting Today

When respondents were asked about the major problems that the legal profession was facing, they emphasised six points. The answers are presented in the tables below.
Table-4-9-1, Major Problems Confronting the Legal Profession Today; Unskilled Judges

<table>
<thead>
<tr>
<th>Unqualified Judges</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>106</td>
<td>47.7</td>
</tr>
<tr>
<td>I agree</td>
<td>116</td>
<td>52.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

106 advocates felt that Turkish judges are sufficiently well educated for their post which they fulfil adequately. Contrary to this, 116 advocates felt that the Turkish legal system really has judges who are not capable of carrying out such an important work. In their view, many judges do not have adequate education and most of them do not have enough experience to make fair and quick decisions especially if the cases are complicated. Respondents in this group also believed that some judges are not impartial, bringing their political view to the court rooms and deciding in favour of people sharing the same political view.

The second problem within the system was related to the position of advocates in courts.

Table-4-9-2, Major Problems Confronting the Legal Profession Today; Prosecution Is Perceived as More Valuable Than Defence

<table>
<thead>
<tr>
<th>Prosecution's Status is Higher than that of Advocates</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>68</td>
<td>30.6</td>
</tr>
<tr>
<td>Yes</td>
<td>154</td>
<td>69.4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

As explained in the second chapter, in the Turkish legal system, justice is reached by the contributions of three main agents of the system, the judges, the public prosecutors
and the advocates. There is no jury tradition. The duty of the prosecutors is to prove the
allegation. The advocates provide the defence, while the verdict is made by the judges.
However, some advocates claim that the system operates in this way only in theory. In
a typical Turkish court, the ultimate authority is in the hands of judges. If judges have
sympathy towards the prosecution, they may not pay adequate attention to what the
advocates say. Furthermore, there is a general impression that the activities of
advocates may lead to unfair verdicts, because of the manoeuvres they perform in the
courts. It is also a fact that prosecutors are in a better position to collect documents from
governmental offices. According to nearly 70% of the sample group, the prosecutors
have higher status within the system and this makes the job of advocates more difficult.
However 30% of the advocates do not share this approach. They think that the position
of prosecutors in the courts has no effect on how advocates perform their job.

Another point that the respondents made about the major problems of the legal system
concerned the way Turkish people regard advocates. The results are as follows.

Table-4-9-3, Major Problems Confronting the Legal Profession Today; People Have
Insufficient Respect Advocates

<table>
<thead>
<tr>
<th>Insufficient Respect From the</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>People</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I do not agree</td>
<td>85</td>
<td>38.3</td>
</tr>
<tr>
<td>I agree</td>
<td>137</td>
<td>61.7</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

61.7% of advocates stated that Turkish people have insufficient respect for advocates.
According to this group, advocates are not seen as reliable. However, 38.3% of
advocates hold a different view that people do have sufficient respect for advocates.
One of the reasons given for the lack of respect was that people believe advocates will
cheat them of their money. This is one of the most important problems within the
system and advocates or their professional organisations have to do something to gain
the trust of the people.

The survey also probed advocates' view on whether Turkish laws were adequate.

Table-4-9-4, Major Problems Confronting the Legal Profession Today; Laws Are Not Adequate

<table>
<thead>
<tr>
<th>Inadequate Laws</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>69</td>
<td>31.1</td>
</tr>
<tr>
<td>I agree</td>
<td>153</td>
<td>68.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

153 advocates (68.9%) said that the laws were appropriate for the social, economic and political conditions in the country today. Only, 31.1% hold they were appropriate. There is, therefore, a widespread belief that Turkish laws are not appropriate, given the cultural, economic and political developments in the country, and thus should be changed. The advocates who do not consider this point important believe that even if reforms are needed within the legal system, they may not be as effective as it is thought. From the perspective of these respondents, the main problem is related to the manner of the application of the laws rather than to their content. There is, however, agreement on the need for a change in the structure, as in the application, of laws.

The survey also investigate the question of fees.

Table-4-9-5, Major Problems Confronting the Legal Profession Today; High Fees

<table>
<thead>
<tr>
<th>Fees are too high for clients</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>147</td>
<td>67.1</td>
</tr>
<tr>
<td>I agree</td>
<td>73</td>
<td>32.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>
33.2% of advocates believe that consultation fees are so high that most people cannot afford them. The respondents in this group consider this as one of the main obstacle preventing people from using the advocacy system unless it is absolutely necessary. Most Turkish people try to solve their problems on their own.

Advocates with the opposite view believe that fees are not too high for the job they do. They believe that there is a minimum fee required to maintain a reasonable lifestyle.

They also believe that they deserve the money that they charge. As seen in the table(4-9-5), there is a high majority(67.1%) of respondents who share this view.

Apart from the views presented in the above tables(4-9-3, 4-9-4, 4-9-5, 4-9-6), 39 respondents(28.3%) indicated of the problems that were not included in the interview schedules or questionnaires.

Table-4-9-6, Major Problems Confronting the Legal Profession Today; Others

<table>
<thead>
<tr>
<th>Others</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>99</td>
<td>71.7</td>
</tr>
<tr>
<td>Yes</td>
<td>39</td>
<td>28.3</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The most stressed point was that there was a very close link between social, economic and political problems and the legal system. In their view, the problems that confront the legal system cannot be solved unless wider social, economic and political problems are solved. Therefore, whatever is done to create a better legal system cannot be successful under the present conditions. Some of them also stated that bribery is also a very serious problem. In response to this section there were many other interesting points raised. They will be discussed in appropriate parts of this study.
The following table summarises respondents' views concerning the problems facing the legal system.

Table-4-9-7, Overall Results Relating to Major Problems Confronting the Legal Profession Today

<table>
<thead>
<tr>
<th>Problems Within Legal Profession</th>
<th>Not Agreed(%)</th>
<th>Agreed(%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unskilled Judges</td>
<td>47.7</td>
<td>52.3</td>
</tr>
<tr>
<td>Superiority of Prosecution</td>
<td>30.6</td>
<td>69.4</td>
</tr>
<tr>
<td>Not Enough Respect from People</td>
<td>38.3</td>
<td>61.7</td>
</tr>
<tr>
<td>Inappropriate Laws</td>
<td>31.1</td>
<td>68.9</td>
</tr>
<tr>
<td>High Fees</td>
<td>66.2</td>
<td>32.9</td>
</tr>
<tr>
<td>Others</td>
<td>71.7</td>
<td>28.3</td>
</tr>
</tbody>
</table>

A majority of advocates believe that the most important problems in the legal profession today are related to the position of judges and prosecutors, the attitudes of Turkish people towards the advocacy system and inappropriateness of today's laws for modern conditions.

10. Attitudes of Turkish Advocates Towards The Advocacy System

In this section, I present some results related to the general characteristics of the advocacy system. The first question asked for this purpose was whether the present advocacy system was adequate. The results are as follows:
Table 4-10-1, Attitude of Turkish Advocates Towards Advocacy System; Is it Adequate?

<table>
<thead>
<tr>
<th>Adequate Advocacy System</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>33</td>
<td>14.9</td>
</tr>
<tr>
<td>No</td>
<td>189</td>
<td>85.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The vast majority of Turkish advocates (85%) believe that the advocacy system is not adequate for Turkey. There is only a small number of advocates (15%) who are happy with the present advocacy system. It follows from these figures that Turkish advocates work under the rules of a system that they do not believe to be correct. It was more important to analyse the reasons why they found the system inadequate. In order to do that, the reasons given by the respondents are collected under five categories. The first reason was that the advocacy system was open to pressure from the government. The distribution of the respondents can be seen in the table below (4-10-2).

Table 4-10-2, Reasons Why Advocacy System is Inadequate; Advocacy System is Open to Pressure from The Government.

<table>
<thead>
<tr>
<th>It is Open to the Pressure From Government</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>106</td>
<td>55.8</td>
</tr>
<tr>
<td>I agree</td>
<td>84</td>
<td>44.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>190</td>
<td>100.0</td>
</tr>
</tbody>
</table>

44.2% of the advocates stated that the advocacy system is open to the interventions of the executive. They believe that the interference of the government is one of the main causes of decline in the legal system. Members of the government seeks to use the lawyers and the legal system for their own political purposes or personal interests. Therefore, a way must be found as soon as possible to decrease government control.
over legal affairs. 55.8% of the respondents argue that governmental pressure is not the reason why the advocacy system is inadequate. They said that within a democratic system, one must expect government involvement in the activities of professional groups. While the government tries to control the activities of professional groups, these groups also play a role in the decision making process of the government. Therefore, the attempts of the Turkish government to control the activities of the advocates should not be seen as problematic. Even if there are some laws that authorise government intervention in the judicial system, no of the government has tried to use them. They believe that although there are a lot of problems within the advocacy system, these are generally related to other issues which are more complex than the pressure of governments.

Consequently, advocates appear divided on whether governmental pressure is the major problem within advocacy system. It should be noted, however, that a little more than half of the sample group believe that governmental pressure is not a major problem.

The second point the respondents identified was related to the problem of freedom within the system. The results are as follows.

Table-4-10-3, Reasons Why Advocacy System is Inadequate; There is no Freedom Within the System

<table>
<thead>
<tr>
<th>No Freedom in the System</th>
<th>Number Responding</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>86</td>
<td>45.3</td>
</tr>
<tr>
<td>I agree</td>
<td>104</td>
<td>54.7</td>
</tr>
<tr>
<td>Total</td>
<td>190</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Half of the advocates (54.7%) do not feel free within the system. For this group, the system is not able to provide satisfactory opportunities to perform their job in a way similar to that of their colleagues in Europe. However, nearly 45% of the sample group
saw no major problem in relation to freedom. They also added that if advocates complain about the lack of freedom, the problem is related not to the advocacy system but to the broader political system. In other words, in their view, advocates cannot say that the system in which they are practising is the reason why they are not free.

However, a little more than half of advocates do not feel free while working within the system. This indicates that the advocacy system needs to be re-organised so as to offer more freedom to its practitioners.

A similar point was expressed in relation to the place of the Bar Association within the system. The results are as follows.

Table-4-10-4, Reasons Why Advocacy System is Inadequate; Bars are Under the Control of Government

<table>
<thead>
<tr>
<th>Bars Are Under the Control of Government</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>52</td>
<td>27.4</td>
</tr>
<tr>
<td>I agree</td>
<td>138</td>
<td>72.6</td>
</tr>
<tr>
<td>Total</td>
<td>190</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The vast majority (72.6%) of our sample group believe that the Bar Associations are under the control of the governments. In their view, this control results from old fashioned legal regulations and some articles of the Advocacy Law. Some respondents stated that the attitudes of the advocates elected to the administrative committees of the bar give rise to the negative image of the Bar in public opinion.

Only 27.4 felt the Bars were not under the control of government, arguing that most legal rules offer a free environment for the Bars, although some articles in the 1982 Constitution and Advocacy Law give the governments authority to intervene in the activities of the Bars. However, these respondents stated that everyone in Turkey knows
that there have only been a few exceptional instances when these rules and regulations have been applied.

However, it should be noted that some advocates pointed to the fact that even if most governments have not applied these laws until now, the possibility of using them always exists. Governments are aware of this possibility and can use it against the Bars as a threat to establish authority over them. The respondents also added that if the governments did not intend to use these laws, it would be much better to abolish them.

The next point related to the attitudes of the Turkish people towards legal problems and the legal system. The results are as follows.

Table-4-10-5, Reasons Why Advocacy System is Inadequate; There is a Lack of Understanding of the Legal System

<table>
<thead>
<tr>
<th>Lack of Understanding of Legal System</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>115</td>
<td>60.5</td>
</tr>
<tr>
<td>I agree</td>
<td>75</td>
<td>39.5</td>
</tr>
<tr>
<td>Total</td>
<td>190</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Some advocates stated that there is not even a basic consensus about what can be expected from the legal system. In their view, within the present system, all lawyers describe the system according to their own criteria, create their own rules and act in accordance with these rules. In other words, there is chaos within the legal system. Therefore, the legal system should be redefined with a clearer definition of duties and responsibilities within such a system. 39.5% advocates supported this view.

The majority view (60.5%) asserted that even though the Turkish advocacy system has been imported from foreign countries, the system has since gained wide acceptance and works without basic problems.
In general, the legal system introduced by the reformers in the Republican period has gained wide acceptance from both lawyers and the Turkish people.

The study also investigated advocates' views of the system as a whole.

Table 4-10-6, Reasons Why Advocacy System is Inadequate; The System is Wrong as a Whole

<table>
<thead>
<tr>
<th>Wrong System</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>109</td>
<td>57.4</td>
</tr>
<tr>
<td>I agree</td>
<td>81</td>
<td>42.6</td>
</tr>
<tr>
<td>Total</td>
<td>190</td>
<td>100.0</td>
</tr>
</tbody>
</table>

42.6% of the advocates stated that the present system is completely wrong and should be radically changed as soon as possible. By radical change they meant a transformation of the system to a more modern and realistic one. In a sense, it would be a second reformation of the system in the history of modern Turkey. The respondents believe that there are many outmoded laws and many amendments which make the law extremely confusing for ordinary people and also sometimes for lawyers.

In addition, the legal profession must be re-organised so that only people who have devoted themselves to this job can enter the profession. In this way, the prestige of the profession will be maintained more effectively.

However, 57.4% of advocates disagree with these views. They believe that the legal system generally works well. In their view, the problems are only superficial.

The data suggests advocates are divided as to whether the legal system is wrong in principle. A little more than half of the sample group believe that there is no need for a radical change within the system, but the rest of them are clearly in search of a new system which may solve what they see as the problems of today's system.
There is some pressure among advocates to create a new system rather than try to correct some parts of the old one according to the needs of the time.

The views on why the advocacy system is inadequate can be seen together in the table below.

Table-4-10-7, Overall Results Concerning Whether Advocacy System is Adequate

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Not Agreed %</th>
<th>Agreed %</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is Open to Pressure from Government</td>
<td>55.8</td>
<td>44.2</td>
</tr>
<tr>
<td>There is no Freedom within the System</td>
<td>45.3</td>
<td>54.7</td>
</tr>
<tr>
<td>Bar is Under the Control of Government</td>
<td>27.4</td>
<td>72.6</td>
</tr>
<tr>
<td>There is lack of Understanding of Law System</td>
<td>60.5</td>
<td>39.5</td>
</tr>
<tr>
<td>The System is wrong as a whole</td>
<td>57.4</td>
<td>42.6</td>
</tr>
</tbody>
</table>

The most commonly identified problem is that the Bar is under the control of the government (72.6%). This means that the most important issue that the legal profession is confronting today is the relationship between the Bars and the government.

One of the most interesting questions in the survey was concerned with whether the Turkish people receive adequate legal prosecution. The results can be seen in the table below.

243
Table 4.10.9: Opinion of Advocates concerning Whether Turkish People Receive Law Protection

<table>
<thead>
<tr>
<th>Adequate Protection of Law</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>10</td>
<td>4.5</td>
</tr>
<tr>
<td>No</td>
<td>212</td>
<td>95.5</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

There is a consensus among the advocates that Turkish people do not receive adequate legal protection (95.5%).

Most advocates believe that, despite the fact that the rights of Turkish people are safeguarded by various laws, the reality differs from the theory. They stated that most Turkish people believe that it is not possible to solve their problems through the existing legal system. Others, however, argued that part of the problem was that Turkish people are not aware of their legal rights, that they do not search for their rights and therefore, do not know how to solve their problems. These who hold this view consider this to be a matter of education. They believe that as the level of education increases, people will derive more benefits from the legal system. The reasons why people do not receive law protection will be examined in more detail in Chapter V, where the results relating to Istanbul advocates will be presented.

It seems sufficient to say here that according to many advocates, the existing legal system does not offer good protection to the Turkish people.

11. Political Attitudes of Turkish Advocates

In this section, I present the results about the political behaviour of the sample group. This information was obtained through questions asking if they are interested in politics, if they are members of a political party or if they stood as a candidate in any election.
The first question was concerned with whether they were interested in politics or not. The results are as follows.

Table-4-11-1, Interest Level of Turkish Advocates in Politics

<table>
<thead>
<tr>
<th>Interest in Politics</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>137</td>
<td>61.7</td>
</tr>
<tr>
<td>No</td>
<td>85</td>
<td>38.3</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

38% of the respondents are not interested in politics. These respondents believe that politics has nothing to do with their job as advocates. They said that by the nature of their job, lawyers had to be impartial, but politics was not an activity based on impartiality. For this reason, politics should be carried out by politicians.

However, nearly 62% of advocates are interested in politics. Most of them stated that there was a close relationship between the legal profession and politics. They believed that the problems within the legal profession could only be solved by participating in political activities. In other words, as one of the advocates pointed out, life cannot be separated from politics and, therefore, advocates have to be involved in political activities. This was a commonly expressed view among the advocates who were concerned with politics.

However, it should be noted that the proportion of those who are not interested in politics is quite high. It may be that some of the respondents did not want to declare their political views openly.

As will be recalled from the second chapter, the development of Turkish democracy has been interrupted by military interventions once every ten years or so. The last intervention took place in 1980. The architects of this coup accused politicians of not
being capable of doing their job properly and put most well known politicians into jail for a couple of years. Therefore, politics became dangerous. A governmental programme was launched to depoliticize students, workers, and interest and professional groups. In short, the respondents answered the questions in the interview and questionnaires within the political atmosphere created by a military coup. Some of them might have been afraid of declaring their political connections openly.

However, it is clear that most Turkish advocates are interested in politics. This is consistent with their other opinions concerning social, economic and cultural problems and the ways of solving them, a theme that will be focused on in the next chapter.

The next question investigated whether the respondent was a member of a political party or not. The results are as follows.

Table 4.11.2, Turkish Advocates and Membership of a Political Party

<table>
<thead>
<tr>
<th>Membership of a Political Party</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>61</td>
<td>27.5</td>
</tr>
<tr>
<td>No</td>
<td>161</td>
<td>72.5</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

27.5% of advocates are members of a political party, while 72.5% are not. The advocates emphasized that unstable conditions in democratic life discouraged many of them from registering for a political party. The reality was that at the time the research was conducted, the oldest party in Turkey was just 9 years old.

Given this, the fact that 27% of advocates were members of a political party is very significant. In short, most advocates are not members of a political party, but, considering the special social and political conditions in Turkey, there is a substantial
minority who are members of political parties. This is an indication of a high level of politicisation among advocates.

The next question was concerned with the degree of political involvement. The relevant question investigated whether the respondents held an office in a political party or not. The results are as follows.

Table 4-11-3, Distribution of Turkish Advocates According to Whether They Held an Office in a Political Party.

<table>
<thead>
<tr>
<th>Office in a Political Party</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>62</td>
<td>27.9</td>
</tr>
<tr>
<td>No</td>
<td>160</td>
<td>72.1</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

72.1% of the sample group did not hold an office in any political party, while 27.9% of them were actively involved in political issues and worked for one of the committees or sub-committees of the political parties. In the previous table (4-11-2), the percentage of advocates who were members of political parties was 27.5. This is a similar percentage to those in this table (4-11-3). Therefore, it might be said that almost all of the advocates who are members of a political party are also active members of that community.

In the following question, the attitudes of advocates towards standing for political election were examined. This was another important question concerning the degree of political involvement. The results are as follows.
Table-4.11-4, Distribution Of Turkish Advocates According to Whether They Stood as a Candidate in any Election.

<table>
<thead>
<tr>
<th>Candidate in an Election</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>35</td>
<td>15.8</td>
</tr>
<tr>
<td>No</td>
<td>187</td>
<td>84.2</td>
</tr>
<tr>
<td>Total</td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

15.8% of the advocates had been candidates in either local or general elections. However, the vast majority of them have never been candidates. Considering, again, the proportion of the advocates actively engaged in a political party, this percentage of 15 becomes a very important proportion, because the figure reveals a difference of only 12% between those who registered in a party and those being a candidate. This again suggests that advocates who are members of a political party are not ordinary but highly active members of that party.

In this context, one of the most interesting questions in the interviews and questionnaires concerned whether the involvement in political affairs helped them to improve in their career. The aim of this question was to find the real reason why they were interested in political issues. To put it another way, it sought to find out whether they were involved in politics just because of individual curiosity or because they wanted to use it as a stepping stone to gain a reputation in their profession. The result are as follows:
Table 4.11-5, Distribution of Advocates According to whether They Consider Political Involvement as a Way of Advancing in Law Career

<table>
<thead>
<tr>
<th>Is Involvement Important?</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>50</td>
<td>22.6</td>
</tr>
<tr>
<td>No</td>
<td>158</td>
<td>71.1</td>
</tr>
<tr>
<td></td>
<td>14</td>
<td>6.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

According to most of the advocates, there is no relationship between being a successful advocate and being involved in political affairs. The majority view was that political involvement has nothing to do with being a good advocate. Some of them also stated that it can even be a barrier in their career. Therefore, it can be said that Turkish advocates do not participate in political issues to advance their for their individual interests or because they expect a benefit for their professional careers from such an involvement.

12. Summary and Conclusions

In this chapter, the concentration was on the general characteristics of the legal profession in Turkey. The main themes were related to the educational and family background of the advocates practising in Istanbul and Sivas; their opinions about the occupational training, the work situations, the Bar Associations and socio-political problems of the country.

Data revealed that the advocacy profession in Turkey was a male dominated profession, performing by quite young practitioners. Advocates were very keen on working in big cities like Istanbul rather the smaller ones like Sivas. Rapid urbanisation process played an important role in this.
The vast majority of respondents completed their secondary or high school education in state schools, a few in foreign or private colleges which were affordable only by rich families. Respondents did not differ in relation to the university education. Most went to a law faculty in Istanbul, Izmir or Ankara. Only a few involved in postgraduate education, though the majority considered it as a necessity in their career. It was the majority's view that the students in law faculties were not able to get a good quality of law training under the current educational system, mainly because it was based on the theory rather than on the practice. The system also failed in providing a satisfactory occupational education. Apprenticeship was seen only as a formality by both the trainees and the observant. Educational system, therefore, had to be reformed as a whole before too late.

It was found that most of Turkish advocates came from either middle class or lower class of society. Advocacy is not a favoured profession in the upper class. This indicated that there was a high social mobility within legal profession and this made it available to everyone from any stratum of the society.

Most advocates' families, coming to Istanbul from one of the cities in Anatolia, were traditional Turkish families in where the father was the dominant figure and the duty of the mother was to do housework and to bring up children.

Although Turkish advocates preferred working alone, a strong tendency towards working in a partnership of two or three advocates was found. The offices of the advocates were generally small and there was generally only one non-lawyer assistant doing a secretarial job, cleaning or both. Most advocates were specialists in one of the subjects in law, but there was no proper education that may provide them a specialist knowledge.
The survey revealed that advocates spent most of their time interviewing clients and attending court hearings. The main reason for this was that the courts worked in a very disorganised manner.

In respect to job satisfaction, a considerable number of respondents declared that they were happy with the money they made from their job.

The meetings that advocates attend were the general meetings, anniversaries of establishment, and symposiums, panels and conferences. Advocates were very keen to hold an active role in the administrative units of the Bar. It was believed that the Bar Associations were not producing a good service for their members. Therefore, there was a strong trend among the respondents to reform the Bars and their administrative structure.

The respondents were also asked whether Turkish lawyers acted ethically. It was commonly agreed that Turkish lawyers did not act ethically. This pointed to a serious problem within the legal system. Professional organisations did not seem to be in a position to control the attitudes of their members with regard to this issue.

Five major problems within the legal system were found very important. The first was the quality of the judges. The second was the status of the prosecution in court. The third was about the negative image of the advocates among the people. The fourth indicated that the laws were inadequate. The final was related to the high fees. Respondents agreed that legal system was confronting very serious problems that had to be solved as soon as possible. Advocacy system did not seem to be an adequate one and Turkish people did not receive a proper legal protection within this system.

Majority of the respondents said that there was a close relationship between advocacy or the legal profession and the politics. It was believed that the problems within the legal profession could only be solved by participating more actively in political
activities than at present. Despite this, the proportion of enrolling to a political party was found low. This fact was explained on the basis of specific historical features of the country. Because of this, the number of the respondents who held an office in a political party was also low. Similarly, most respondents did not stand as a candidate in any general or local election. Political involvement was not seen so much important as a way of advancing in professional career. However, advocates who were members of a political party were active members, standing candidates and holding duties in the executives committees of that party. Therefore, the real opinions and attitudes of the respondents must be searched in their opinions related to the social, economic and political problems of the country and especially those on the Constitution and the state which would come under discussion in more detail in the next Chapter.
CHAPTER V

1. Social, Political and Economic Issues: The Views of Istanbul Advocates

In this chapter, I analyse the attitudes of Istanbul advocates towards social, political and economic problems in more detail. The problems that the advocates are facing in their professional life will also be examined.

It will be recalled that the most important part of the present survey was carried out in Istanbul where more than ten thousand advocates were practising. This chapter represents in some detail the results obtained in this city.

The sample group in Istanbul was composed of 187 advocates. Interviews were conducted in two different areas selected on the basis of their regional characteristics. 66 advocates were interviewed. The interviews were designed to obtain data in the subjective opinions of advocates towards specific issues, such as those related to constitutional changes and political problems. When the results of the interviews were combined with those obtained through questionnaires, it became possible to produce a wide range of information about the structure of the legal profession. The information obtained through questionnaires will be included in the tables in which the statistical test procedures will be carried out.

In the first section, the structural or "objective" information about the legal profession will be presented. In the second, the view of advocates obtained through interview sessions and relating to the conditions surrounding their professional life, such as professional ethics, professional problems and political or constitutional issues will be outlined. This section will also include an examination of the main characteristics of the Turkish advocacy system and its major problems. At the end of it, some conclusions relating to the hypothesis developed in the first chapter of this study, that is, the relationship between professional groups and the state, will be drawn.
The attitudes of the Istanbul advocates towards current legal training will be analysed in
the section below.

2. Analysis of Attitudes of Istanbul Advocates Towards Current Legal
Training

In this section, the relationship between the attitudes of the Istanbul advocates and the
independent variables such as age, social background, size of practice, level of political
interest and so on, will be examined. To do this, firstly the statistical procedure of
correlation will be employed, and then, further relationships between variables will be
examined. At the end of each procedure, it will be possible to reach more reliable
collusions in the light of either $x^2$ test or t-test which will be employed when one of
them is more appropriate than the other. Phi test will also be used if both of variables
are dichotomous.

The correlations between the opinions of the advocates on the subject of current law
training and the independent variables are as follows.

Table-5-2-1, Correlations Between Five Variables and Whether Istanbul Advocates
Find Current Training Satisfactory

<table>
<thead>
<tr>
<th>Age As Region</th>
<th>Birthplace</th>
<th>Educ' level of Father</th>
<th>Size of Practice</th>
<th>Interest in Politics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sat.Training</td>
<td>- .2504**</td>
<td>.0963</td>
<td>.0525</td>
<td>.1486*</td>
</tr>
</tbody>
</table>

*P=0.05

**P=0.01

It appears from this table(5-2-1) that there are three significant relationship between the
attitudes of the advocates and the five independent variables of age, regional birthplace,
educational level of father, size of practice and level of political interest. These
relationships referred to age, level of political interest and size of practice. Two of them
are observed at the level of P<0.01 which indicates a high significance. Each of the
significant relationships can be analysed and tested separately.
The first is between the attitudes of the advocates and their age. Relevant data are presented below.

Table-5-2-2, Attitudes of Istanbul Advocates Towards Current Law Training, By Age

<table>
<thead>
<tr>
<th>Age</th>
<th>20-30</th>
<th>31-40</th>
<th>41-50</th>
<th>51-60</th>
<th>61 and Above</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes(%)</td>
<td>4.4</td>
<td>5.6</td>
<td>17.1</td>
<td>25.0</td>
<td>25.9</td>
<td>24</td>
</tr>
<tr>
<td>No(%)</td>
<td>95.6</td>
<td>94.4</td>
<td>82.9</td>
<td>75.0</td>
<td>74.1</td>
<td>163</td>
</tr>
<tr>
<td>Column</td>
<td>45</td>
<td>54</td>
<td>41</td>
<td>20</td>
<td>27</td>
<td>N=187</td>
</tr>
<tr>
<td>Total</td>
<td>24.1</td>
<td>28.9</td>
<td>21.9</td>
<td>10.7</td>
<td>14.4</td>
<td>100(%)</td>
</tr>
</tbody>
</table>

\[ \chi^2 = 12.8 \]

As it is confirmed by the results in this table(5-2-2), there is a strong relationship between the attitudes of the advocates towards the current training system in Turkish Universities and advocates' age. 95.6% of the respondents who are aged between 20 and 30 and agree with the view that the educational system is unsatisfactory. The proportion of the respondents holding this view decreases gradually towards the older groups. It is only 74.1% in the group aged 61 and above. This means that older advocates are more likely than are younger advocates to say that the present educational system is satisfactory.

In order to explain why older advocates were more likely to find the educational system satisfactory, two points can be made. Firstly, it might be said that older advocates are normally more adapted to the legal system than are the younger ones. They are experienced and probably played a role, directly or indirectly, in creating the existing system. In a sense, they are the creators and representatives of the existing legal system. So, their perspective in looking at the current problems is likely to be different from that of the young advocates. They see relatively fewer problems with the educational
system. Secondly, it may be that they find the educational system satisfactory when they compare it to the one they went through in the past.

The data indicate that young advocates complain much more about the current educational system in the law faculties. This can be explained in terms of their status within the profession. Young advocates are new graduates and more energetic than the older ones, though generally less experienced. During the interview sessions, most young advocates stated that they were not educated very well in the law faculties and faced many problems, especially in the first years in the profession. As a result of bad education, they have to spend some additional years learning about the law and the profession. Their view is that all the basic knowledge about the law should be given in universities. The data suggests that younger respondents are not happy with the system of education in the law faculties.

It is, therefore, possible to say that the age of advocates is significantly related to advocates' views on whether the present system of law training is satisfactory or not.

Another highly significant relationship is between the attitudes of advocates and their level of political interest:

Table 5-2-3, Attitudes of Istanbul Advocates Towards Current Legal Training, By Level of Political Interest

<table>
<thead>
<tr>
<th>Interested in Politics</th>
<th>Yes</th>
<th>No</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is Training Satisfactory</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes(%)</td>
<td>7.1</td>
<td>21.6</td>
<td>24</td>
</tr>
<tr>
<td>No(%)</td>
<td>92.9</td>
<td>78.4</td>
<td>163</td>
</tr>
<tr>
<td>Column</td>
<td>113</td>
<td>74</td>
<td>N=187</td>
</tr>
<tr>
<td>Total</td>
<td>60.4</td>
<td>39.6</td>
<td>100(%)</td>
</tr>
</tbody>
</table>

Phi=0.21
P=0.003

256
There is a highly significant relationship between the attitudes of advocates towards the educational system and their level of political interest. In other words, the advocates who find the educational system most unsatisfactory are those who are most interested in politics.

Of those who are interested in politics, well near 90% say the educational system in law faculties is not satisfactory. Among those who are less interested in politics, the figure decreases to 78%. This means that being interested in politics is strongly associated with the views of advocates on the subject of whether the educational system is appropriate or not.

As stated in many interview sessions, advocates who are interested in politics believe that the present educational system, just like the other areas of social life, can only be changed by political actions. In other words, the educational system will remain the same as long as the political system is not changed. The respondents who are interested in political issues believe that in recent years, there have been no real changes in the political system which may affect the educational system. To put it another way, advocates holding the view that the legal training is not satisfactory tend to believe that the educational system can only be improved by political actions. To contribute to a change in the educational system, they become more involved in political life.

It is clear that the attitude of advocates concerning law training is associated with the level of their political interest.

The third significant relationship in the correlation table was between the attitudes of advocates towards legal training and the size of practice. This relationship can be seen in the table below (5-2-4):
It can be seen from this table that there is a significant relationship between attitudes towards the current legal training system and the size of practice. Column variables represent the size of practice. The number of respondents who replied 'No' to the question investigating whether law training was satisfactory, increases with the size of the practice. Especially advocates working together with more than three partners tend to view training unsatisfactory. Among the others, there are none who believe the present system is appropriate for Turkey. On the other hand, in the first three columns, there is a substantial minority who believe it is appropriate. From this, it can be said that there is a significant relationship between the size of practice and advocates' opinions about the educational system in Turkish universities. This requires more explanation.

Especially young advocates believe they will increasingly be required to work in large scale partnerships in the near future. All advocates working in these partnerships will need to specialise in one of the areas of the law, because the legal problems of Turkish people have became so complicated that they cannot be solved by an advocate working
alone. In their view, law students should be educated according to the needs of this new system. However, the existing system of education is not capable of doing this. Secondly, most respondents agree that social, economic and political conditions and the Turkish people's expectations from the legal system are changing very rapidly. Advocates have to keep up with these changes, but at the moment, law students graduate without knowing enough about the problems of their country.

In short, advocates who work in joint offices and, in a sense, represent the new ideas, find the present educational system in law faculties unsatisfactory to a relatively larger degree than do the others.

In summary, there are three main factors that seem to have affected the views of advocates in relation to the law training in legal faculties. These are age, size of practice, and level of political interest.

In the next section, I focus on the problem of apprenticeship, which attracted a lot of attention from most respondents during the interview sessions.

3. Analysis of Istanbul Advocates' Attitudes Towards Apprenticeship

In this section, the opinions of the Istanbul advocates about the period of apprenticeship will be analysed through the independent variables of age, regional birthplace, social background, size of practice and level of political interest. The relevant correlations can be seen in the table below (5-3-1).

Table 5-3-1, Correlations Between Five Variables and Advocates' Views of Apprenticeship.

<table>
<thead>
<tr>
<th>Age</th>
<th>Birthplace as region</th>
<th>Edu.level of Father</th>
<th>Size of Practise</th>
<th>Interest in Politics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satisfactory Apprenticeship</td>
<td>-.2477**</td>
<td>-.0597</td>
<td>.0178</td>
<td>.0591</td>
</tr>
</tbody>
</table>

*P=0.05

**P=0.01
There is a highly significant relationship between the attitudes of advocates towards apprenticeship and their age. In addition, a weaker relationship exists between their attitudes and the level of political interest. In order to see these relationship in more detail, the tables below (5-3-2, 5-3-3) are drawn.

Table-5-3-2, Attitudes of Istanbul Advocates Towards Apprenticeship By Age

<table>
<thead>
<tr>
<th>Age</th>
<th>20-30</th>
<th>31-40</th>
<th>41-50</th>
<th>51-60</th>
<th>61-Above</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes(%)</td>
<td>11.1</td>
<td>13.0</td>
<td>17.1</td>
<td>30.0</td>
<td>40.7</td>
<td>36</td>
</tr>
<tr>
<td>No(%)</td>
<td>88.9</td>
<td>87.0</td>
<td>82.9</td>
<td>70.0</td>
<td>59.3</td>
<td>151</td>
</tr>
<tr>
<td>Column Total</td>
<td>45</td>
<td>54</td>
<td>41</td>
<td>20</td>
<td>27</td>
<td>N=187</td>
</tr>
<tr>
<td></td>
<td>24.1</td>
<td>28.9</td>
<td>21.9</td>
<td>10.7</td>
<td>14.4</td>
<td>100.0</td>
</tr>
</tbody>
</table>

\[ \chi^2=12.9 \]

\[ P=0.01 \]

The above table (5-3-2) confirms that there is a strong relationship between the attitudes of Istanbul advocates towards apprenticeship and their age. It can be seen that the old advocates tend to be more positive towards apprenticeship, while the younger ones are more negative. Among 187 advocates, nearly 90% of advocates aged between 20 and 30 hold the view that this period was a failure for both themselves and for probate lawyers. Among the aged 61+, this percentage goes down to 60.

The percentage of the respondents, who found their apprenticeship satisfactory risen from 11% in the younger group, to 40% in the older group.

Another significant relationship is between the advocates' attitudes and the level of political interest. This relationship can be seen in the table below (5-3-3).

260
Table 5-3-3, Attitudes of Istanbul Advocates Towards Apprenticeship Period, By Political Interest.

<table>
<thead>
<tr>
<th>Interested in Politics</th>
<th>Satisfactory Apprentice (%)</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes (7.1)</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>No (21.6)</td>
<td>12.8</td>
</tr>
<tr>
<td>No</td>
<td>Yes (92.9)</td>
<td>163</td>
</tr>
<tr>
<td></td>
<td>No (78.4)</td>
<td>87.2</td>
</tr>
<tr>
<td>Column</td>
<td>113</td>
<td>N=187</td>
</tr>
</tbody>
</table>
| Total                  | 60.4                        | 39.6      | 100

Phi = 0.21
P = 0.003

The more the advocates are interested in politics, the more they find the apprenticeship period unsatisfactory.

In the first column, the percentage of advocates who are interested in politics and who do not find the apprenticeship period satisfactory is 92.2. Among those who are not interested in politics only 78% do not find the apprenticeship period satisfactory. Put another way, only 7.1% of respondents who are interested in politics found the apprenticeship period satisfactory. This increases to 21.6% amongst those who are not interested in politics.

This disparity shows that advocates who are interested in politics are more unhappy with the apprenticeship period than those who are not interested in politics. In other words, the more they are politicised, the more they oppose to existing order. The level of political interest has a clear and strong influence on the respondents' attitudes towards the apprenticeship period.

4. Work Conditions

The main characteristics of the work conditions in which Turkish advocates are practising today have already been examined (Chapter IV). The aim of that chapter was
to gather objective information relating to issues such as the number of lawyers and non
lawyers working in a practice, the percentage of cases ending up in courts and so on. In
addition, especially during the interview sessions, the respondents were also asked
more specific questions about the structure of the Turkish legal profession. Some of the
questions of this type were: "How long have you practised in this job?"; "How do you
attract your clients?"; "Are you in favour of partnership or not?" In this section that the
results of such questions will be presented and analysed.

The length of the respondents' experiences in the job was the first question asked in this
section. The results are as follows:

Table-5-4-1, Length of Practice of Istanbul Advocates

<table>
<thead>
<tr>
<th>Years</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-10</td>
<td>44</td>
<td>66.7</td>
</tr>
<tr>
<td>11-20</td>
<td>18</td>
<td>27.3</td>
</tr>
<tr>
<td>21-30</td>
<td>3</td>
<td>4.5</td>
</tr>
<tr>
<td>31-40</td>
<td>1</td>
<td>1.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>66</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

The majority of Istanbul advocates (nearly 67%) have been in their jobs for between 1
and 10 years. Among 27% of advocates have between ten and twenty years
experiences The rest(6%) have been working in the profession for more than twenty
years.

These results are consistent with those obtained in relation to the respondents' age(see,
table-4-2-2). As might be remembered, the majority of the respondents fell within the
younger group. The data (in 5-4-1) indicates that the majority of the Istanbul advocates
entered the profession only within the last ten years and are, therefore, not very experienced.¹

The next question related to whether or not the respondents had a specialist area in the law. Some of them answered positively and specified their expert areas. As revealed earlier by table-4-6-4, 60% of respondents had a specialist area.

In this section, I present the results referring to whether the respondents did more work in their specialist area than other advocates.

Table-5-4-2, Distribution of Istanbul Advocates According to Whether They Do More Work in Their Specialist Area Than Other Advocates².

<table>
<thead>
<tr>
<th>More Work Than Others</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>9</td>
<td>13.6</td>
</tr>
<tr>
<td>No</td>
<td>57</td>
<td>86.4</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Nearly 14 per cent of advocates do more work in their specialist area than other. This means that among the advocates who said they were experts in an area of the law, only a few was able to do more work or earn more money than the others. To put in another way, within the present Turkish advocacy system, it is not necessary to be a specialist to do more work or to earn more money than the others.

Some respondents said that since advocates work under the competitive market conditions, the personality of advocates plays the most important role in doing more work than the others. Because of the financial problems, most advocates have no choice

¹-This is also in line with the trend relating to the distribution of advocates in Istanbul by years (see, appendix, VIII). In parallel to the speed of growth in Istanbul, the number of young advocates is going up so rapidly that there are always fewer experienced advocates than newcomers.
²-This table also included advocates who did not have any specialist area. But this did not significantly affect the result.
but to accept all the cases coming to them. Even those who are highly specialised are
not exceptional to this.

The aim of the next question was to gather information about which areas of the law
were lucrative and, therefore, favoured amongst advocates. The responses also revealed
what kinds of problems Turkish clients took up to their lawyers.

The results are presented in the table(5-4-3) below.

Table-5-4-3, The Most Lucrative Fields In the Law According to Istanbul Advocates

<table>
<thead>
<tr>
<th>Lucrative Field</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial</td>
<td>28</td>
<td>42.4</td>
</tr>
<tr>
<td>Maritime</td>
<td>12</td>
<td>18.2</td>
</tr>
<tr>
<td>Execution</td>
<td>4</td>
<td>6.1</td>
</tr>
<tr>
<td>Crime</td>
<td>8</td>
<td>12.1</td>
</tr>
<tr>
<td>Civil</td>
<td>5</td>
<td>7.6</td>
</tr>
<tr>
<td>Not important</td>
<td>3</td>
<td>4.5</td>
</tr>
<tr>
<td>Others</td>
<td>6</td>
<td>9.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>66</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

The most lucrative cases in the legal system today are held to be commercial cases. The
percentage of advocates sharing this view is 42.4. The second most profitable area is
maritime law(18%) and the third is criminal law(12).

The data suggest that advocates make much of their money through commercial cases.
According to some of the respondents, the economic situation of the country plays an
important role in this with, especially in recent years, small business owners
experiencing very serious financial problems. They borrowed money from banks and
were not able to pay it back. Many had to give up their businesses. As the number of
people who became bankrupt increased, so did the number of commercial cases.
The fee for commercial cases varies according to the amount of money under discussion. An advocate may want the whole fee at the beginning of the procedure, but this is not very usual. Generally advocates take half of the fee at the beginning, then the rest at the end of the trial. According to most respondents, it is also becoming more common to pay in monthly instalments since most clients who lose their business have serious difficulties in paying legal fees.

As a result, it should be noted that although advocates a high proportion of their income through commercial cases, these cases are complex and may take a long time to conclude in court. Despite this, it is clear that the bread and butter of the Turkish advocacy system is made up of commercial cases. However, most respondents felt that the number of commercial cases will decrease as the Turkish economy develops.

Many respondents also felt that despite the fact that advocates make a good deal of money from commercial cases, this takes them away from what they see as their real job. In their opinion, advocacy should not be reduced to a money-generating job and it must not become simply a debt-collector business. Advocates must deal with real legal problems, creating fair justice and also, as an intellectual group, they must spare more time to think about the problems of the country rather than about how they can make more money. In short, there are some advocates who believe that even though commercial cases are very lucrative, the advocates should not be manipulated by the "money circles".

Istanbul is situated on the both sides of the strait of Bosphorus. That is to say, it is a coastal city, with an international business capacity. Therefore, it is possible to see all kinds of industrial activities in Istanbul. National and international shipping is one of the most important businesses. It is for this reason that some advocates (18.2%) stated that the most lucrative area is Maritime Law.
The fees that advocates demand from a maritime law case are generally high. These cases must always be handled by expert advocates or those who have had contact with people in the local and international marine sectors. According to the respondents, the number of cases relating to maritime law is generally much smaller than of the others cases, but this is the most lucrative area for the advocates. Consequently it can be said that although there is a lot of money to be made in this area, not many advocates benefit from these cases.

Criminal cases are also a lucrative field. As noted in the previous chapter, clients accused of a criminal offence do not pay much attention to the amount of the advocates' fees. What concerns them most is the result in court. Generally, those who are rich enough want to retain the most famous advocate in order to secure the required result in the court. Therefore, criminal cases are expensive and are, consequently, favoured by advocates who want to make a lot of money. Most respondents also added that in order to make much money from criminal cases, being an expert is not enough. Advocates also have to have a good reputation among clients and colleagues.

In addition, amongst the advocates who considered criminal cases to be lucrative, some made a link between their profitability and political developments within the last two decades. What made criminal cases so important and lucrative were the military interventions and the conditions which caused them. As might be remembered, Turkey has had three military coups within the last thirty years, the last one in 1980. With the military take-over, many intellectuals and ordinary people were jailed for political reasons. This resulted in a great increase in the number of criminal cases. Even in the years after the military left the office, criminal cases continued to occupy an important place in the work of advocates.

It might be suggested that, as long as today's social and economic disorder continues in Turkey, advocates will have more criminal cases, and criminal cases will be much more lucrative in the future.
The next question in the interviews and questionnaires was related to the means of obtaining clients. The respondents said that there were five main ways in which clients come to them. These points can be seen in the table (5-4-4) below:

Table 5-4-4, The Means by Which Clients Choose Istanbul Advocates

<table>
<thead>
<tr>
<th>Means of Client Choice</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Reputation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I do not agree</td>
<td>56</td>
<td>84.8</td>
</tr>
<tr>
<td>I agree</td>
<td>10</td>
<td>15.2</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
<tr>
<td>2) Friends or Acquaintance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I do not agree</td>
<td>4</td>
<td>6.1</td>
</tr>
<tr>
<td>I agree</td>
<td>62</td>
<td>93.9</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
<tr>
<td>3) Previous Clients</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I do not agree</td>
<td>43</td>
<td>65.2</td>
</tr>
<tr>
<td>I agree</td>
<td>23</td>
<td>34.8</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
<tr>
<td>4) By Chance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I do not agree</td>
<td>61</td>
<td>92.4</td>
</tr>
<tr>
<td>I agree</td>
<td>5</td>
<td>7.6</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
<tr>
<td>5) Family Background</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I do not agree</td>
<td>66</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>
It seems that in the view of respondents, finding an advocate through a friend or acquaintance is the most common way of finding an advocate. The percentage of advocates holding this view is 94.

35% of respondents said that they found their clients via previous clients.

15% said that the clients selected them because of their reputation. This figure is, perhaps, smaller than might have been expected.

7% of advocates felt their clients come to them by chance.

It is noteworthy that among the advocates within the sample group, none finds clients through their family reputation or family background.

Some points can be made on the basis of these figures.

First of all, it is clear that Istanbul advocates find their clients themselves. According to Turkish laws, advocates cannot use mediators or mediator firms to get clients and also cannot advertise. The only way of getting clients is to set up good social contacts with other people, for example, by joining in social activities. The more they meet people, the more they spread their reputation. Therefore, it pays advocates to be active members of the wider society.

Secondly, it appears that success in the job, which is represented by the clients coming via the recommendation of a previous client, is an important characteristic of the Turkish advocacy system. This means that Turkish clients consider previous achievements of the advocates as an important factor in choosing them. This is a point that can be supported by the percentage of clients selecting advocates by chance. Among the sample group composed of 66 advocates, there are only a few who said that some of their clients chose them as result of seeing by chance their publicity board in the window of their offices.
As seen in the table (5-4-4), none of the respondents says that their family background has any importance in terms of attracting clients. This shows that advocacy is a job in which one has to achieve success by oneself. Clients select a certain advocate because of his or her own capacity, not because of the fame of their family. As we saw earlier, most advocates come from modest family background with little reputation.

Another question investigated what kinds of problems clients took to the advocates. The results are in the table (5-4-5) below.

Table-5-4-5, Legal Problems of Turkish Clients.

<table>
<thead>
<tr>
<th>Legal Problems</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial</td>
<td>27</td>
<td>40.9</td>
</tr>
<tr>
<td>Divorce</td>
<td>12</td>
<td>18.2</td>
</tr>
<tr>
<td>Land</td>
<td>2</td>
<td>3.0</td>
</tr>
<tr>
<td>Crime</td>
<td>5</td>
<td>7.6</td>
</tr>
<tr>
<td>Landlord and Tenant</td>
<td>6</td>
<td>9.1</td>
</tr>
<tr>
<td>Debt-Collection</td>
<td>14</td>
<td>21.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>66</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

As seen in this table, the most common problems are commercial problems, mentioned in 41% of responses. The second most common case concerned debt collection, mentioned by 21% of respondents. It should be noted, however, that although the category of commercial cases and debt collection were classified separately, hoping that a much clearer result would be obtained, most respondents did not distinguish between them. Since debt collection appears as a result of commercial activities, it was often included within commercial cases. As noted earlier (in the table 4-5-6), in recent years, the debt collection business has become more lucrative and has increased enormously.
Consequently, it is clear that the vast majority of Turkish advocates have a very close relationship with business life. Only a small percentage of the cases they take on is related to other issues within the civil, criminal or land law.

As mentioned before, discussions on changing the structure of the legal system in a radical way are still on the Turkish political and legal agenda. Many proposals have been made. Some of them have been applied immediately¹, while others are still on the agenda.

One of the main issues on the agenda is whether the legitimising of legal partnership is good for the future of advocacy or not. It is not possible under Turkish laws to set up advocacy firms. Therefore, it was thought that it would be very interesting to gather the advocates’ views on the issue of partnership. The results collected from the relevant question are as follows.

Table 5.4.6, Is Large Scale Partnership Useful for the Future of Legal Profession?

<table>
<thead>
<tr>
<th>Do You Support Partnership</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>63</td>
<td>95.5</td>
</tr>
<tr>
<td>No</td>
<td>3</td>
<td>4.5</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The vast majority of Istanbul advocates (95.5%) are very much in favour of setting up large scale partnerships. This proves that the present system, which involves working individually in separate offices, is not seen as ideal for the future of the legal system.

¹-The best known example of this kind is the law which passed in parliament and took its effect in 1993. By this law, it became possible for everyone to demand an advocate during the first questioning in a police situation. In the past, some investigations in police stations stimulated serious discussions on the subject of human rights. It was thought that if questioning was made in the presence of an advocate, it would put an end to this kind of speculations. The law which made this radical change possible is seen as a first step in the reforms which are meant to continue in the future. What kind of reform and how they can be achieved was still under discussion in the summer of 1994.
Most respondents believe that they can provide much better service within a partnership. The main advantage of this system, in their view, is that if they work together with some partners, they may seek each other's opinions in difficult cases. Working in such a system, advocates will also direct themselves to a specific area in the law, and specialisation will be developed. Today only a few advocates are aware of the importance of having an specialist expertise for helping clients more effectively. They will also make more money in a such a system.

However, some advocates said that if the system of partnership was introduced, it would result in a disaster, because it would create a monopoly or hegemony of rich advocates over the others. Especially young advocates would suffer from this. All advocates would have to be engaged in one of the firms or set up their own firm. In this system, all the cases would gradually be accumulated in the hands of a few giant firms. Therefore, measures should be taken to protect relatively poor advocates from the monopoly of large firms, for example, by setting a limit to the number of lawyers in a partnership. Despite this reservation, it is clear that the vast majority of Istanbul advocates are in favour of setting up large scale partnerships. They believe that the reforms that would legalise partnership firms must be introduced into the system as soon as possible.

One of the ways of getting to know about the economic structure of the legal profession was asking whether the respondents considered advocacy was adequately remunerated. The results obtained from this question were presented earlier in table 4-6-14 in chapter IV, but no explanations of their views was presented there. In the tables(5-4-7, 5-4-8, 5-4-9, 5-4-10, 5-4-11, 5-4-12) below, these explanations can be seen.
Table 5-4-7, Distribution of Istanbul Advocates According to Their Views on Whether the Legal Profession is Adequately Remunerated

<table>
<thead>
<tr>
<th>Adequate Remuneration</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>23</td>
<td>34.8</td>
</tr>
<tr>
<td>No</td>
<td>43</td>
<td>65.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>66</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

65% of respondents felt that the legal profession was not adequately remunerated. The reasons given by advocates as to why the profession is not well remunerated are classified into five groups and presented in tables (5-4-8, 5-4-9, 5-4-10, 5-4-11, 5-4-12) below.

Table 5-4-8, Opinions of Istanbul Advocates on Why the Legal Profession is not Adequately Remunerated; It is Because of Low National Income

<table>
<thead>
<tr>
<th>Low National Income</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>15</td>
<td>33.3</td>
</tr>
<tr>
<td>I agree</td>
<td>30</td>
<td>66.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>45</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

66% of respondents agree that the main reason why advocacy is not adequately remunerated is related to the low national income, compared to European countries. According to these respondents, this is true not only for the legal profession but for all other occupations. They believe that none will earn enough money until the national income goes up at least to a point approaching the average level in Europe which is over $10,000 per annum. In Turkey, it is nearly $3,000. They said that as long as ordinary people cannot afford the fees, advocates cannot earn the money they deserve. In short, from the perspective of these advocates, there is a close relationship between the national income and their own income.
A similar point was made by others who asserted that there were other reasons for inadequate remuneration in addition to the low level of income. The results can be seen in the table(5-4-9) below.

Table 5-4-9, Opinions of Istanbul Advocates on Why Legal Profession is not Adequately Remunerated: It is Because of Unstable Economic Structure

<table>
<thead>
<tr>
<th>Unstable Economic Structure</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>12</td>
<td>26.7</td>
</tr>
<tr>
<td>I agree</td>
<td>33</td>
<td>73.3</td>
</tr>
<tr>
<td>Total</td>
<td>45</td>
<td>100.0</td>
</tr>
</tbody>
</table>

In the table(5-4-9), the majority of the advocates agree that there is a close relationship between the economical structure of the country and their income. They stated that the continuation of their job is totally dependent on the income level of their clients which is, in turn, bound with the economic developments of the country. But, they do not regard situation of the Turkish economy as encouraging. In their opinion, the chaos which started at the beginning of the Republican period still continues. Within the last 60 or 70 years, all Turkish governments were unable to implement an economic system which would increase the income level of the Turkish people. According to the respondents, when the economy is not able to create new opportunities for the members

1-In order to determine the economic system of the new country, a congress convened in Izmir in 1923. At the end of many discussions, a state based capitalism was accepted by the delegates of the congress. Turkey mainly followed the decisions taken in this congress until 1950. With the government that came to power in 1950, state based economic politics were left and it was believed that the economic development could only be achieved on the base of private sector. This idea changed again as a result of 1960 military coup, a system called 'mixed economy' was introduced, in which the state and the private sectors had an equal right to contribute to the economic development. This understanding reached its pinnacle in the 1970s. However, the government made a radical decision in 1980, which is known as the 24 January decisions, and the principles of liberal economy were launched. This a process which still continues in Turkey. In short, it should be noted that none of the existing economic policies have been applied for a long time within the short history of modern Turkey.
of the society, the income level of people automatically goes down. This affected not only the legal system but all the other occupational groups, too.

Consequently, most respondents agree that advocacy cannot be a lucrative job unless the government and other relevant institutions manage to set up an efficient economic system.

Another point in relation to the economic structure of Turkey was related to commercial activity in regions. The aim of this was to check if there was a relationship between remuneration and local economic activities. The results obtained were crucial with regard to the fact that the research was carried out in two areas which were very different in economic terms. The first area was Istanbul and the second, Sivas, which is not very well developed. In the table (5-4-10) below, only the results concerning the Istanbul advocates will be presented, while those concerning the Sivas cases will be given in the next chapter. The results are as follows.

Table-5-4-10, Opinions of Istanbul Advocates on Why the Legal Profession is not Adequately Remunerated; It is Because of Weak Commercial Activities In the Region.

<table>
<thead>
<tr>
<th>Weak Economic Activities</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>45</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>45</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Not even one respondent made a connection between the issue of inadequate remuneration and weak economic activities in the region. This shows that although most advocates complained about the economic situation of Turkey (Table, 5-4-9), none of them believe that regional economic activities are insufficient. Moreover, it was stressed that advocates could not earn as much money in any other parts of the country as in Istanbul. They see Istanbul as the most suitable city for performing their job, since it is the centre of all kinds of economic activities. Therefore, in their view, economic activities in Istanbul cannot be regarded as the reason for inadequate remuneration.
Another point was related to the advocates' fees.

Table-5-4-11, Opinions of Istanbul Advocates on Why the Legal Profession is not Adequately Remunerated; It is Because Clients Cannot Afford the Fee

<table>
<thead>
<tr>
<th>Clients Cannot Afford the Fee</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>30</td>
<td>66.7</td>
</tr>
<tr>
<td>I agree</td>
<td>15</td>
<td>33.3</td>
</tr>
<tr>
<td>Total</td>
<td>45</td>
<td>100.0</td>
</tr>
</tbody>
</table>

It may be seen from this table(5-4-11) that 66.7 per cent of the respondents agree that the fees are reasonable. 33.3%, however, think that the clients have difficulties in paying the fees.

The respondents in the first group stated that even when the cases are similar, advocates demand different fees from different clients. The amount of the fee varies according to ability of the clients to pay. In one sense, the fee is determined by market conditions. Therefore, in practice, all clients can pay the fee. In their view, advocates are well aware that if they do not change appropriate fees, they could not possibly continue their job.

However, some advocates held the opposite view, believing that even if they operate a sliding scale of fees, Turkish people are so poor that they cannot afford even a minimum fee. However, this was minority view.

Therefore, it can be concluded that most advocates do not see the fee as a main reason why advocates are not well paid.

To conclude this section, an overall table will be drawn to see the general views amongst advocates about their remuneration.
Table-5-4-12, Advocates' Views of why the Legal Profession is not Adequately Remunerated

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Not Agreed (%)</th>
<th>Agreed (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low National Income</td>
<td>33.3</td>
<td>66.7</td>
</tr>
<tr>
<td>Unstable Economic System.</td>
<td>26.7</td>
<td>73.3</td>
</tr>
<tr>
<td>Weak Commercial Activities in the Region.</td>
<td>100</td>
<td>-</td>
</tr>
<tr>
<td>Client Cannot Afford the Fees.</td>
<td>66.7</td>
<td>33.3</td>
</tr>
</tbody>
</table>

The highest figure in the table(5-4-12), 100%, represents the local commercial activities. Istanbul advocates clearly believe that the local economy is sufficiently well developed and cannot be the main reason for the inadequate remuneration. The rest of the figures in the table seem to be similar to each other. Considering them together, it can be said that according to Turkish advocates, there is a close relationship between their income and the economic situation of the country.

It is also possible to establish a link between the view of advocates concerning their remuneration and the independent variables such as age, size of practice and so on. It should be noted that it is possible to use a larger sample group here. The sample group in the table(5-4-12) above was composed of 66 respondents. It will be 187 in the one below. Undoubtedly, this will make it possible to achieve more reliable results.

Firstly, a correlation table will be drawn. Secondly, if significant relationship between variables appear, other tables will be created to analyse these relationship in detail. The results from the correlation table are as follows.

Table-5-4-13, Correlation Table Relating to Advocates' Views on Remuneration to Five Independent Variables.

<table>
<thead>
<tr>
<th>Age</th>
<th>Birthplace as region</th>
<th>Edu.level of Father</th>
<th>Size of Practice</th>
<th>Interest in Politics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adeq. Re.</td>
<td>0.0517</td>
<td>0.1933**</td>
<td>0.0552</td>
<td>0.1397</td>
</tr>
</tbody>
</table>

*0.05  
**0.01
In the table (5-4-13) above, it can be seen that there is only one significant relationship which is between the remuneration issue and the birthplace of the respondents. This relationship is observed at the significance level 0.01.

In this case, it can be said that the opinions of the advocates on whether their profession was adequately remunerated or not, are related to by the characteristics of their birthplace which is, of course, an aspect of their social background. To look at this relationship more closely, a cross table will be drawn and the results tested on the basis of chi square procedure.

Table 5-4-14, Opinions of Istanbul Advocates on Whether Legal Profession is Remunerated Adequately, by Birthplace

<table>
<thead>
<tr>
<th>Birthplace</th>
<th>Ade. Remune.</th>
<th>Yes (%)</th>
<th>No (%)</th>
<th>Column Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marmara</td>
<td></td>
<td>50</td>
<td>50</td>
<td>88</td>
</tr>
<tr>
<td>Aegean</td>
<td></td>
<td>71.4</td>
<td>28.6</td>
<td>14</td>
</tr>
<tr>
<td>Inner Anatolia</td>
<td></td>
<td>36.4</td>
<td>63.6</td>
<td>33</td>
</tr>
<tr>
<td>Mediterranean</td>
<td></td>
<td>54.5</td>
<td>45.5</td>
<td>11</td>
</tr>
<tr>
<td>Black Sea</td>
<td></td>
<td>45</td>
<td>55</td>
<td>20</td>
</tr>
<tr>
<td>Eastern Anatolia</td>
<td></td>
<td>20</td>
<td>80</td>
<td>10</td>
</tr>
<tr>
<td>South Eastern Anatolia</td>
<td></td>
<td>9.1</td>
<td>90.9</td>
<td>11</td>
</tr>
<tr>
<td>Row Total</td>
<td>84</td>
<td>103</td>
<td>100</td>
<td>N=187</td>
</tr>
</tbody>
</table>

$X^2 = 14$

$P = 0.02$
There is a significant relationship between the attitudes of advocates towards remuneration and their regional birthplace. The level of significance is 0.02, or p<0.02.

In the first row (Marmara), those who said Yes and those who said No, are equal. The percentage of those who said Yes goes down to 9, which represents those born in South Eastern Turkey. The percentage of the respondents who said No generally increases gradually from Marmara to South Eastern Anatolia, where almost 91% said No. Thus, advocates originating from Eastern or South Eastern Anatolia believe much more strongly that the legal profession is not remunerated adequately.

It will be recalled that these two regions are the poorest regions in Turkey. It would seem that the respondents coming from these two regions want to earn more money than the others to increase their living standard and to secure their future. In other words, their expectations towards the job or towards the advocacy system as a whole would seem to be higher.

Some of the results about working conditions have already been presented in the previous chapter. This included information on how the respondents were using their time in a day, what kind of cases they had and so on.

In the section below, I focus on similar issues such as the activities they perform in a working day. In this context, the first question asked whether they subscribed to a Turkish legal journal or not.

Table-5-4-15, "Do You Regularly Subscribe to any Turkish Law Journal or Publication?"

<table>
<thead>
<tr>
<th>Subscription to a Turkish Law Journal</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>56</td>
<td>84.8</td>
</tr>
<tr>
<td>No</td>
<td>10</td>
<td>15.2</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>
Nearly 85% of the advocates subscribed to a Turkish legal journal.

Advocates who subscribed also revealed the kinds of journals and publications they were sent. Amongst the journals and publication, the most common is The Bar Journal and the second most common was the Journal of Verdicts by The Supreme Court of Appeal. It was quite rare to see an advocate who subscribed to any other kind of legal journal; there are, in effect, only two journals to which advocates subscribe.

It was stated during the interview sessions that the main reason for subscribing to these journals was to follow recent changes in Turkish laws rather than to read about occupational or intellectual issues. In short, subscription to a journal is seen as a way to follow legal changes.

A further question enquired whether the respondents could read in a foreign language. The aim of this question was to see how important it is for Turkish advocates to learn a foreign language, and to understand how open Turkish advocates are to the outside world. The result are as follows.

Table-5-4-16, Can You Read in a Foreign Language?

<table>
<thead>
<tr>
<th>Foreign Language</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>25</td>
<td>37.9</td>
</tr>
<tr>
<td>No</td>
<td>41</td>
<td>62.1</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Nearly 38 per cent declared that they could read in a foreign language. At this point, some explanation about the educational system in which respondents learned a second language should be provided.

Within the Turkish educational system, it is compulsory to learn a European language. In other words, all Turkish students become familiar with a foreign language during
their secondary or high school education. This means that most advocates within the sample group learned at least the basic grammatical rules of one language. However, it is a common view that especially in state high schools, the quality of language teaching is quite poor. Unlike private school students, students in state schools have no opportunity of taking private lessons because of their family's economic situation. As we have already seen (in the table 4-3-2), the majority of advocates graduated from state schools. Despite this, a considerable number say that they can read in a foreign language.

Although almost all advocates would have a basic knowledge of a foreign language, only a small number of them know a foreign language well enough to follow publications in that language.

It should be added that from my observations during the interview sessions, Istanbul advocates appear very keen on learning and reading in a foreign language.

Most advocates accused the Bar and its executives of not organising cultural activities for its members. Many advocates, for example, said that they wanted to learn English, but the Bar Association did not do anything to organise cheap courses designed especially for advocates. However, one of the advocates in the Bar Executive Committee pointed out that the Bar Association had organised a language course similar to that described by the respondents. He said that the Bar notified the members about the course, but none attended. Eventually, the course was cancelled.

This event might be interpreted in two different ways. Perhaps, Bar Association did not advertise the course well or perhaps, although they wished to attend to course, they were not able to do so for one reason or another. In any case, this provides a good example of the generally poor communication between the Bar Association and its members.
In the table above, there is no indication of how a foreign language might be helpful in professional life. Therefore, the next question investigated whether the respondents subscribed any foreign publications.

Table-5-4-17, Do You Subscribe to any Foreign Publication?

<table>
<thead>
<tr>
<th>Foreign Law Journal</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>3</td>
<td>4.5</td>
</tr>
<tr>
<td>No</td>
<td>63</td>
<td>95.5</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Only a few advocates (4.5%) have a subscription to a foreign journal. Although one in three respondents could read in a foreign language, only a small number of them are keen on following legal issues which are on the agenda of Europe.

A couple of points can be made in this respect.

Firstly, since most respondents do not know a foreign language at a level sufficient to read and understand without basic problems, they do not want to subscribe a foreign journal. Secondly, as revealed earlier (table 4-6-17), most advocates have to spend most of their time in the courts, waiting for their turn or conferring with clients or colleagues. Hence, it may be difficult for find time to consider foreign issues. Thirdly, as mentioned before, most of them are not very happy with their financial situation, reading or following foreign literature in the law might be very expensive. Finally, given the fact that Turkey was not an open country until the 1980s, advocates did not have an opportunity to establish contacts with European colleagues and legal institutions.
5. Attitudes of Istanbul Advocates Towards The Bar Association

A good deal of data concerning the Bar Association was presented in Chapter IV, section 7. In this section, therefore, I shall concentrate on other aspects of advocates' views towards the Bar Association that were raised during the interview sessions. These points should be considered as additional information to that in the Chapter IV, section 7. The basic aim here is to clarify the relationship between Istanbul advocates and the Bar Association, and the functions of the Bar Association within the advocacy system. The relationships between the variables will be examined on the basis of statistical test techniques like chi square or t-test.

The first question inquired whether the respondents were members of an association, organisation or club, other than the Bar Association. The aim of this question was to find out how much the respondents were interested in other issues. In this way, the level of external relations of advocates was examined. The results are as follows:

Table 5.5.1, Istanbul Advocates According to Whether They are a Member of Any Other Association, Organisation, or Club

<table>
<thead>
<tr>
<th>Membership in Any Other Organisation</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>19</td>
<td>28.8</td>
</tr>
<tr>
<td>No</td>
<td>47</td>
<td>71.2</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>

71% of Istanbul advocates said that they were not members of any association, organisation or club, other than the Bar Association. 29% said that they were members of at least one other organisation.

As noted before, advocates work within the market conditions. It was revealed in the previous chapter that clients select advocates through their own friends and acquaintances. Therefore, in order to increase the amount of work and earn more
money, advocates have to increase the number of friends they have. In a sense, the more they join in social life and attract the attention of clients and friends, the more clients they are likely to get.

Secondly, since advocacy is a private job, advocates can organise their own time. Therefore, they have time for social activities. According to most respondents, by joining social life, they play a leadership role within the community. Many believe that as intellectuals, it is their duty to contribute to solving the social and political problems of the country. One way of doing this is joining in social and political activities and declaring their views to a much wider community.

In short, Istanbul advocates are very keen on being members of organisations, clubs and associations other than the Bar Association.

The next question was, "What kinds of organisation are they?". The results can be listed in the table below.

Table-5-5-2, Kinds of Organisations of which Istanbul Advocates are Members

<table>
<thead>
<tr>
<th>Kind of Organisation</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Development</td>
<td>9</td>
<td>13.6</td>
</tr>
<tr>
<td>Assoc. for Retired People.</td>
<td>5</td>
<td>7.6</td>
</tr>
<tr>
<td>Ataturk Association</td>
<td>2</td>
<td>3.0</td>
</tr>
<tr>
<td>Member of Many Assoc.</td>
<td>4</td>
<td>6.1</td>
</tr>
<tr>
<td>No Response</td>
<td>46</td>
<td>69.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>66</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Among 66 advocates, 9(13.6%) declared that they were members of The Association for Social Development. A further 5(7.6%) were the members of the Association for Retired People, which is not, in fact, only for retired people but for everyone who may wish to be a member. 6.1% are members of more than one organisation, while 3%
being members of the Ataturk Association, which was set up to improve the political and social reforms introduced in the period of Ataturk.

At this point, it must be noted that all the organisations listed are affiliated with one of the mainstream political strands. The common point between these associations is that they are all established under the so called progressive or leftist ideologies. Members of these associations describe themselves as social democrats, democratic socialists, socialists or communists. The aim of these political groups is to change the existing order to a more equalitarian one.

Apart from these, there are other associations established to contribute to the maintenance of the existing social and political order. The best example of this is the Ataturk Association.

The results referring to whether the Bar Association performs a good service for its members, were presented in table 4-7-8. The sample group was composed of 222 respondents, of whom 24% said that the Bar performed a good service, while 76% held that it did not. However, the reasons why advocates held that the Bar did not provide a good service for its members were not examined.

In the section below, I examine these reasons. The sample group is composed of only 66 respondents who were interviewed. These findings were very helpful, especially in elucidating the structure of the profession.

Some respondents asserted that the Bar Association was not active.

Table-5-5-3, Reasons why the Bar Association does not Provide a Good Service for its Members; Bar is not Active

<table>
<thead>
<tr>
<th>Bar is not Active</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>2</td>
<td>3.9</td>
</tr>
<tr>
<td>I agree</td>
<td>49</td>
<td>96.1</td>
</tr>
<tr>
<td>Total</td>
<td>51</td>
<td>100.0</td>
</tr>
</tbody>
</table>
There is a great agreement (96.1%) among the respondents that the Bar Association is not very active. In other words, the Bar Association does less than its members expect.

The respondents in this group emphasised that despite the fact that there were some legal barriers that hindered the Bar from doing its job properly, it existed to protect the interests of its members. However, at present, the Bar was not doing that. According to them, the most important barriers for the Bar and its administration were financial problems.

Table-5-5-4, Reasons why the Bar Association does not Provide a Good Service for its Members; Bar has Important Financial Problems

<table>
<thead>
<tr>
<th>Financial Problems</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>31</td>
<td>60.8</td>
</tr>
<tr>
<td>I agree</td>
<td>20</td>
<td>39.2</td>
</tr>
<tr>
<td>Total</td>
<td>51</td>
<td>100.0</td>
</tr>
</tbody>
</table>

61% of the respondents agree that the Bar has severe financial problems. In their view, this is the most important reason why the Bar cannot perform a good job.

39% of them hold the opposite view. They stated that the Bars have enough financial resources. The problem is that there are few qualified people in the Bar who know how to use the money effectively. This is held to be especially true for the Istanbul Bar.

On the other hand, a larger group of advocates pointed out that the government was reluctant to allocate financial resources to provide a better service for the Bar members. In addition, the Bar is not able to collect membership fees. It continues its job in very bad conditions. They added that the government has to find a way of solving these problems as soon as possible, otherwise, the legal profession will continue to experience serious problems.
It is clear that the Bars have financial problems, but they are also seen as being unable to use the existing financial sources effectively. Most advocates hope that the government will allocate more financial resources to the Bars.

According to some respondents, the Bars should organise more cultural activities than they do at present. The distribution of the respondents with regard to this point can be seen in the table (5-5-5) below.

Table-5-5-6, The Reasons why the Bar Association does not Provide a Good Service for its Members; Bar Must Organise More Cultural Activities

<table>
<thead>
<tr>
<th>Cultural Activities</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>43</td>
<td>84.3</td>
</tr>
<tr>
<td>I agree</td>
<td>8</td>
<td>15.7</td>
</tr>
<tr>
<td>Total</td>
<td>51</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The vast majority of advocates (84.3%) agree that the Bars should not to organise more cultural activities. In their view, the main duty of the Bars is to deal with professional problems rather than to organise cultural or other activities. They stated that in Turkey today, many problems concerning occupational life require solutions and the Bar must try to solve them first.

12% of the respondents, however, believed that the Bar must organise more cultural activities because there is no better way of developing good relations among the members. Some noted that when the Bar organises a party or a celebration, only those advocates who are close to the Bar administration are invited, and this as not felt to be proper.

The next point was related to the issue of solidarity between colleagues.
Table 5.5.6, Reasons why the Bar Association does not Provide a Good Service for its Members; There is no Solidarity among Advocates.

<table>
<thead>
<tr>
<th>No Solidarity</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>29</td>
<td>56.9</td>
</tr>
<tr>
<td>I agree</td>
<td>22</td>
<td>43.1</td>
</tr>
<tr>
<td>Total</td>
<td>51</td>
<td>100.0</td>
</tr>
</tbody>
</table>

A little less than half of the sample group agree that there is no solidarity amongst advocates. In their view, since advocates did not care about their colleagues, the Bar did not work very well. Advocates have different political views and, therefore, different solutions to the social and political problems and there is a strong competition between advocates as far as politics is concerned. Because of this, they do not see any point in helping each other. Each advocate looks after their own interests and they cannot be united around professional interests. There is a perceived need to create better solidarity between colleagues.

On the other hand, the majority of the respondents felt that the lack of solidarity among advocates is not one of the reasons why the Bar does not work well.

The final point related to Bar activities concerned the political tendencies of advocates and the Bar Association. Some respondents said that the Bar should stay out of political issues.

Table 5.5.7, Reasons why the Bar Association does not Provide a Good Service for its Members; Bar Is Extremely Involved in Political Issues

<table>
<thead>
<tr>
<th>Extreme Political Involvement</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>45</td>
<td>88.2</td>
</tr>
<tr>
<td>I agree</td>
<td>6</td>
<td>11.8</td>
</tr>
<tr>
<td>Total</td>
<td>51</td>
<td>100.0</td>
</tr>
</tbody>
</table>
Only 11.8% of respondents asserted that the Bar was extremely involved in political issues.

88.2% of the respondents have a different view. They agree that the Bar Association takes a part in political discussions but this involvement is not extreme. As will be seen in the next section, this group also believes that the role of the Bar Association in political life should increase.

Consequently, the majority of Istanbul advocates have a view that political involvement has nothing to do with the poor performance of the Bar.

In order to see the general trends among the respondents, an overall table can be drawn, including the five categories presented above.

Table-5-5-8, Opinions of Istanbul Advocates on Why the Bar Association does not Provide a good Service

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Not Agreed (%)</th>
<th>Agreed (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bar is not Active</td>
<td>3.9</td>
<td>96.1</td>
</tr>
<tr>
<td>It has Serious Financial Problems</td>
<td>60.8</td>
<td>39.2</td>
</tr>
<tr>
<td>It must Organise more Cultural Activities</td>
<td>84.3</td>
<td>15.7</td>
</tr>
<tr>
<td>There is no Enough Solidarity amongst its Members</td>
<td>56.9</td>
<td>43.1</td>
</tr>
<tr>
<td>Bar is Extremely involved in Political Issues</td>
<td>82.2</td>
<td>11.8</td>
</tr>
</tbody>
</table>

96.1% of the respondents felt that the Bar is not sufficiently active. This means that the biggest problem for the Bar is that it does not deal with the problems of its members and act to protect their interests. Most members of the Bar felt that the Bar Association should not pay much attention to organising cultural activities but should participate in
political discussions more frequently than now. What is also clear is that although everyone knows about the financial problems of the Bar and that it needs more financial resources, there is a general feeling that should be spent in a more careful way.

In order to analyse these results in more detail, a correlation were drawn between the five independent variables, such as age, birthplace, educational level of father, size of practice and level of political interest and the responses of advocates. The result are as follows.

Table-5.5.9, Correlations of Variables with Regard to Whether Bar Association Provides a Good Service

<table>
<thead>
<tr>
<th>Age</th>
<th>Regional Birthplace</th>
<th>Educ' level of Father</th>
<th>Size of Practice</th>
<th>Interest in Politics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good Service</td>
<td>-0.1483*</td>
<td>0.0752</td>
<td>-0.1663*</td>
<td>-0.0199</td>
</tr>
</tbody>
</table>

*P=0.05  
**P=0.01

There are two significant relationships. The first is between the opinions of advocates on whether the Bar provides a good service and their age. The second is related to the educational level of fathers. These relationships can be tested by $x^2$ technique.

It should be noted that the size of the sample group used for the correlation is larger here than in the tables above where the reasons why the Bar did not perform a good service were presented. The sample group in these tables was composed of 66 respondents who took part in the interview sessions. However, it is possible to use the general sample group here which consisted of 187 respondents.
The relationship between attitudes of the advocates towards the Bar Association and advocates' age was observed at the significance level of 0.05. This means that the relationship is not very strong. In fact, the difference between cells is not high. The figure of 80% in the second row (aged 20-30) goes down to 55 in the last cell (aged 61+). In the first row, the 20% for the 20-30 age group goes up only to 44%. Therefore, clearly, the attitude of the advocates towards bar activities varies according to their age, but this relationship is not very strong.

The second significant relationship in the correlation table was between the attitudes of advocates and the educational level of their fathers.

Table-5-5-11, Attitudes of Istanbul Advocates Towards Bar Activities, by Educational Level of Father

<table>
<thead>
<tr>
<th>Ed of Fa Good Job</th>
<th>Primary</th>
<th>Secondary</th>
<th>High School</th>
<th>University</th>
<th>Illiterate</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes(%)</td>
<td>17.6</td>
<td>28.6</td>
<td>2.2</td>
<td>58.0</td>
<td>15.4</td>
<td>49</td>
</tr>
<tr>
<td>No(%)</td>
<td>82.4</td>
<td>71.4</td>
<td>97.8</td>
<td>42.0</td>
<td>84.6</td>
<td>138</td>
</tr>
<tr>
<td>Column</td>
<td>51</td>
<td>28.6</td>
<td>45</td>
<td>50</td>
<td>13</td>
<td>N=187</td>
</tr>
<tr>
<td>Total</td>
<td>27.4</td>
<td>15.0</td>
<td>24.1</td>
<td>26.7</td>
<td>7.01</td>
<td>100.0</td>
</tr>
</tbody>
</table>

t=2.36
p=0.02
This table (5-5-12) confirms that there is a strong relationship between the opinions of the respondents concerning the Bar activities and the educational level of their fathers, which is observed at the significance level of 0.02. This means that the opinions of the advocates vary according to their social backgrounds.

Advocates whose fathers are relatively less educated tend to say that the Bar does not provide a good service. This suggests that they expect more from the Bar Association than do those coming from a higher social background.

Conversely, the percentage of the respondents who believe that the Bar performs a good job increases with the educational level of fathers, reaching its highest figure in the column for university education.

It may be that the first group, which represents relatively poor advocates, want to have a more active Bar which will protect their rights more efficiently than at present, because they need to earn more money than those with a upper class background. An active Bar will also secure their future in the profession.

6. Analysis of Istanbul Advocates' Opinions on Whether Lawyers Practise In An Ethical Manner

As might be recalled, this subject was examined in the previous chapter (see table 4-7-10), where the main emphasis was on presenting some of the results concerning the general sample group of 222 respondents. Those results were descriptive.

In this section, I focus on the reasons why, and the way in which, Turkish advocates do not act ethically. While doing this, I will refer to the results obtained from the interview sessions. In order to present them systematically, I will categorise the answers into five groups. Since there were more than five explanations to the question, I have emphasised the five points.
The question was "Do you believe that Turkish Lawyers generally practise in an ethical manner?" The distribution of percentages was: Yes=25.2% and No=74.8%. The results are almost similar as far as the 66 respondents in the interviews are concerned.

The first point was related to the issue of pre-research in the process of bringing a case to court. The distribution of the respondents according to this point is as follows.

Table-5-6-1, Opinions of Istanbul Advocates on Professional Ethics; Most Advocates do not Examine the case Satisfactorily Before Taking it to the Court

<table>
<thead>
<tr>
<th>Insufficient Pre-research</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>4</td>
<td>8.2</td>
</tr>
<tr>
<td>I agree</td>
<td>45</td>
<td>91.8</td>
</tr>
<tr>
<td>Total</td>
<td>49</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The vast majority of Istanbul advocates believe that Turkish advocates do not examine cases properly and do not take them to court following proper preparatory stages. Most of the respondents stated during the interview sessions that Turkish advocates accepted a case even if they did not have any idea about how to solve it. In their eyes, cases are only a way of making money and advocacy is a kind of commercial activity rather than a part of the justice system. To act properly, an advocate must first examine the case very carefully and then think of how he can defend it in court. In order to be successful in court, he must know very clearly what he is going to do. However, this procedure is not followed by most advocates. They say or promise their clients that they will solve the problem in court. It is generally easy to manipulate the attention of Turkish clients, because most of them know little about judicial matters.

In short, it is clear that advocates who act in this manner may act to the detriment of their clients. According to the respondents, some of these problems might sometimes be very serious but, most of the time, they are solved within the system in which all legal people know the rules very well.
The next point referred to the link between advocates and police organisations. Some respondents asserted that there was a close relationship between the police and some advocates.

**Table-5-6-2, Opinions of Istanbul Advocates on Professional Ethics; Some Advocates have too Close a Relationship With Police Officers and State Employees**

<table>
<thead>
<tr>
<th>Relationship with Police and State Employees</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>11</td>
<td>22.4</td>
</tr>
<tr>
<td>I agree</td>
<td>38</td>
<td>77.6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>49</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The majority of Turkish advocates (77.6%) agree that some advocates have an organic tie to the police and state employees.

Many respondents felt that some advocates, especially those who want to become rich quickly, will do anything to win the case, including bribing the police or state officials. They first make friends among police officers and gain their trust. After this, they work together and when the advocate needs information or documents, police officers provide them or, as often happens, change the information in the documents according to the wishes of the advocate. In short, these people can do everything behind closed doors.

The advocate who wins cases in this way finds more clients. His or her reputation increases because new clients are generally interested in the previous success of advocates.

However, the help of police officers or state officials might not be sufficient for special cases. In such circumstances, they resort to private people who work in Mafia style and who have emerged in recent years. For example, in a criminal case, the most common way of altering evidence is to change the report prepared by the forensic medicine
officers. This kind of report might be evidence crucial for reaching a decision in court. To save their clients from possible heavy punishment, advocates try to change the contents of this report, on the basis of their personal relationship with the people in these offices. In today's Turkey, this might be observed in many other state offices. Cases relating to the land law can be another example of this kind. If the report of the Land Registration Office is of vital importance for the final verdict, and a small change in these reports may affect the results of the trial, advocates contact the people working for that office and persuade them to introduce that small change into the report. It is strongly emphasised that especially in recent years, it has become almost impossible to solve cases in a legal and "proper" way in courts. To solve even a simple case, advocates have to deal with these 'power-holders' within the state. It is so even for those cases where the clients are totally and clearly in the right.

In short, bribery works for the benefit of both advocates and their clients and also for the ones who are bribed. Who suffers from this are the poor people who cannot afford the bribe. So, in one sense, the justice system works to the advantage of those who have money. Advocates earn money for the risk they take on; clients with the money get the results they want, but people who really need legal protection lose every time. As some of the respondents stated, today's justice system is rich people's justice system.

It should be noted that problems such as bribery, corruption and infringement of rights have a very long history in Turkey, going back to the Imperial Period. Therefore, no one hopes that the government will solve these problems in a short time. But, in 1993, the government was able to solve one of the big problems within the system.

Until 1993, Turkish advocates were not allowed to see their clients before the first questioning was completed in police stations. It was at this stage of questioning that many speculations were made about the way which the police treat the people under investigation. It was asserted very often that most arrested people were forced to sign
statements in which they admitted their crimes. Many also asserted that the police tortured these people to confess to the crime. Under this system, advocates were left with only one option, to establish good relationships with the police officers. In this way, it became possible to get information about what was happening to their clients in police stations and, perhaps, to help the clients.

Apart from bribing court officials, policemen and state officials, advocates act unethically in another way which has recently appeared within the system. As noted earlier, the most common and important source of income for Turkish advocates is debt collection. Clients coming from business often have a cheque or a commercial contract (Senet) which is not cleared by the bank. This is a case that should be taken directly to court. If advocates can get their client's money back, they are paid on the basis of a percentage of the total amount. However, it is not easy to get this money back most of the time because of the economic crisis of the country and the increasing number of the bankruptcy cases. Moreover, Turkish courts are extremely overloaded by this kind of cases. It may take an advocate a couple of years to get a case like this resolved. Even if they finally get the money back, the money will lose its value due to the high inflation that the country has been suffering for years. When advocates cannot manage to get the money back, they take the issue to the people who solve this kind of problem in Mafia style. It is not only advocates who go to these people, but also ordinary people who need their money urgently. Therefore, it is possible to say that the Turkish legal system is losing its function in commercial cases as people try to find justice outside the legal system. This shows that neither advocates nor their clients have full trust in the justice system as it is today.

It is possible to conclude that many advocates will do anything possible to earn money and do not pay much attention to codes of professional ethics. This attitude of the advocates should be considered within the traditional and structural framework of the legal system as well as the economic and political situation that the country has
experienced in recent years. The problems between the Turkish legal system and the economic, social and political problems of the country will be examined in detail later in this chapter.

Many respondents, also held that some of their colleagues do not tell truth to their clients.

Table-5-6-3, Opinions of Istanbul Advocates on Professional Ethics; Some Advocates Deceive their Clients.

<table>
<thead>
<tr>
<th>Deceiving Clients</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I agree</td>
<td>49</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>49</td>
<td>100.0</td>
</tr>
</tbody>
</table>

All advocates responding to the question believe that advocates deceive their clients. This happens in various ways.

Many respondents stated that the first and the most common way is to accept a case that cannot be won in court. When a client comes to see an advocate, he says that he will take up his case to court and promise that he will find a solution. After this, he adds that he needs some money for expenses. Once he gets the money, he never deals with the case again. At the most, he sends an application to the court to start the judicial process, but never follows it through. When the client comes back to the office to get some information, the advocate says that it will take a long time to reach a result. He may demand extra money for extra expenses. The amount of the money demanded depends on the educational level of clients. The best example of this kind of case is the debt collection. In most debt collection cases, clients are really in a hopeless position. They have to rely on advocates' words and wait for the result. From the point of view of the advocates, these are generally the most difficult cases to resolve quickly, because the accused are usually bankrupt and thus have serious payment difficulties. It generally takes a long time to collect evidence that may satisfy the judges. Advocates have to
spend an extremely long time to get even a small amount of money back. For this reason, they prefer to let matters take their own course. Therefore, there are many people who paid much money to advocates and whose cases were not taken to court. Undoubtedly, there is a way of getting the money back from this kind of advocate but no-one in commercial life has the time to do it. Even though some of them try to do it, it usually takes quite a long time since the judicial system operates very slowly. In addition, most clients with commercial cases have other things to do and give up their struggles against advocates. In the end, only a few disputes between advocates and their clients become the subject of legal procedures. In reality, everything works at the expense of small business owners, but not of those who hold economic or political power in their hands. Many respondents held that, as a result of the situation explained above, Turkish people will totally lose their trust in the advocates and the legal system, which has already been damaged severely.

The next point concerning the issue of professional ethics was related to the political opinions of the advocates and the impact of these opinions on their jobs. The distribution of respondents who said that some advocates allowed their political views to influence their behaviour in court is set out in table(5-6-4) below.

Table-5-6-4, Opinions of Istanbul Advocates on Professional Ethics; Some Advocates Consider Their Political Opinions More Important than Creating Fair Justice in Courts

<table>
<thead>
<tr>
<th>Acting Politically in Courts</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>34</td>
<td>69.4</td>
</tr>
<tr>
<td>I agree</td>
<td>15</td>
<td>30.6</td>
</tr>
<tr>
<td>Total</td>
<td>49</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The vast majority (69.4%) of the Istanbul advocates agree that most advocates do not bring their political views into court.
Some respondents (30.6%) stated that most advocates act as if they were supporters of a political party rather than lawyers who must be impartial. It is worth noting some of their explanations about how advocates act politically in the court.

It is a common idea that, especially in political cases, advocates deliberately change the direction of the trial. For example, if an advocate lost a political case, he usually ties this to the political views of judges or prosecutors, accusing them of not being impartial or being under the pressure of public opinion holding opposite political views. In other words, they consider political cases as a struggle between two dominant political strands; left and right, rather than as a matter of justice. Sometimes, politics starts at the very beginning of a case. Some advocates never take on a case coming from anyone with an opposite political view. Leftist advocates take only leftist people's cases, while rightists take those of rightist people. In this way, they try to get a reputation among rightist or leftist groups. It was also added that these advocates may do anything possible to get the case, even if they are sure that their client is guilty. From their point of view, the law is only a tool for reaching their political targets.

In the opinion of advocates who are extremely involved in politics, political crimes are not similar to ordinary crimes. They are committed for more valuable or 'holy' purposes. Therefore, punishment for these crimes must be given in a different way. Moreover, in their view, since social life necessarily involves a political activity, advocates cannot stay away from political activities. Therefore, what they defend in courts necessarily involves a political view and they can only act in terms of their own political views. An ideal advocate, in their view, must also work in their everyday life for the realisation of political objectives.

However, according to the majority of the sample group, the actions of these advocates are not in accordance with the codes of professional ethics. Most of them stated that if an advocate defends a client and tries to persuade the court that he is innocent, even if
knowing that he is not, this means that there is a problem with the way that advocate understand the law.

Some advocates said that as a result of their experiences in courts, they lost their belief in justice. Data on this are presented below.

Table-5-6-5, Opinions of Istanbul Advocates On Professional Ethics; I lost My Belief in Justice

<table>
<thead>
<tr>
<th>No Belief in Justice Any More</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>37</td>
<td>75.5</td>
</tr>
<tr>
<td>I agree</td>
<td>12</td>
<td>24.5</td>
</tr>
<tr>
<td>Total</td>
<td>49</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Nearly one in four Istanbul advocates are extremely unhappy with the system in which they practise. They believe that the present system works so badly that no-one will be able to correct it in the future. They have lost their belief in the system.

One of the main reasons that make them think in this way is the attitudes of advocates towards ethical matters. In their view, no-one wants 'to play the game' any more according to its rules. All lawyers want to reach a conclusion in court as soon as possible and as easily as possible, even if they know that all the ways involved in that process are wrong and not in conformity with the rules of professional ethics.

In the table(5-6-5) above, 24.5% of respondents share this view, while 75.5% disagrees. This result points to the fact that despite all sorts of problems, most Istanbul advocates have not lost their faith in the advocacy system. They believe that although there is a problem with professional ethics, not only this problem but all the others within the legal system can be solved. When responsible people, especially politicians, diagnose the problems rightly, they can be solved quicker and easier than is generally thought.

Legal problems cannot be considered in isolation from other social, economic and
cultural problems. They are all connected with each other and when responsible people start to solve these problems, they will all be solved together. Therefore, there is no need for pessimism. As time goes by and the legal system becomes more settled, all the basic problems will disappear, including those related to the violation of ethical codes.

An overall table which covers all the answers of the respondents will now be presented. This will make it possible to see the main views of advocates more clearly.

Table-5-6-6, An Overall Table Relating to The Opinions of Istanbul Advocates On Professional Ethics

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Not Agreed (%)</th>
<th>Agreed (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advocates do not Examine Cases</td>
<td>8.2</td>
<td>91.8</td>
</tr>
<tr>
<td>Advocates Have too Close a Relation with the Police Organisation and State Employees</td>
<td>22.4</td>
<td>77.6</td>
</tr>
<tr>
<td>Advocates Deceive their Clients</td>
<td>100</td>
<td>-</td>
</tr>
<tr>
<td>Advocates Consider their Political Opinions More Important than Reaching Fair Justice in Courts</td>
<td>69.4</td>
<td>30.6</td>
</tr>
<tr>
<td>I Lost my Belief in Justice</td>
<td>75.5</td>
<td>24.5</td>
</tr>
</tbody>
</table>

Most respondents believe that advocates deceive their clients. 91.8 % believe that advocates do not carry out pre-research and therefore do not take their job seriously. These data show that *advocacy is in chaos in Turkey* as far as professional ethics is concerned.

As might be seen in the table(5-6-6), the other figures justify this point. 77.6% of the advocates say that lawyers try to reach justice not through legal ways but in many other ways, while nearly 69.4% assert that advocates regard political approaches as more valuable than the legal values.
At this point, it is possible to search for a relationship between the opinions of advocates and the independent variables like age, size of practice, educational level of father and so on. To see these relationships, a correlation table is drawn below.

Table-5-6-7, Correlations of The Variables With Regard To Whether Advocates Act Ethically

<table>
<thead>
<tr>
<th></th>
<th>Age</th>
<th>Regional Birthplace</th>
<th>Educ' level of Father</th>
<th>Size of Practice</th>
<th>Interest in Politics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pro. Ethics</td>
<td>-0.0547</td>
<td>0.0093</td>
<td>0.0336</td>
<td>0.0257</td>
<td>0.0624</td>
</tr>
</tbody>
</table>

*P=0.05  
**P=0.01

There is no significant relationship between the opinions of the advocates relating to professional ethics and the independent variables. This means that the opinions of advocates within the sample group were not affected by any of independent variables.
In this section, I will focus on the political attitudes of Istanbul advocates. Some of the findings relating to this subject were presented in a previous chapter. The primary concern of that chapter was only to present the main trends which were identified on the basis of the general sample group composed of 222 respondents. The information, therefore, produced objective results. The questions in the relevant part of the questionnaires and interviews were, for example, "Are you interested in politics?", "Are you a member of a political party?", "Is the current advocacy system, as it operates in Turkey today, adequate?" and so on. These were not very suitable questions for gathering more detailed information about advocates' opinions on the structure of the legal profession and the relationship with political activity.

In this Chapter, therefore, I will present more detailed information about the opinions of advocates. The main focus will be on the external relations of advocates, the relationship between the state and the legal profession, or between the political parties and their policies on social, economic and political developments and their impact on the profession and the legal structures, and also international affairs such as EEC membership of Turkey and its possible outcomes for the legal system. Therefore, this section will reveal important information to test the hypotheses raised in the first chapter of this study.

The first results that will be presented are related to the question: "In Turkey today, do all who require the protection of the law receive it?". The results of this question were presented in table-4-9-9. The distribution of the respondents according to their answers was as follows; the percentage of those who thought that people received legal protection was 4.5, and of those holding the opposite view, 95.5. These results did not change significantly in the context of a smaller sample group which is composed of only those who took part in the interview sessions in Istanbul. The results concerning
this group are: those who said "Yes" constitutes 3%, while those who said "No" represent 97%. In both calculations, a vast majority of Turkish advocates believe that Turkish people do not receive the protection of the law at all.

In this section, the perceived reasons why people do not receive this protection will be presented.

According to most of the respondents, the first reason was that the cultural level of Turkish people was quite low.

Table-5-7-1, Reasons Why Turkish People Cannot Receive the Protection of Law; The Cultural Level of People is Low

<table>
<thead>
<tr>
<th>Low Cultural Level</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>21</td>
<td>32.8</td>
</tr>
<tr>
<td>I agree</td>
<td>43</td>
<td>67.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>64</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Most respondents (67.2%) agree that those in the need of legal protection do not receive it, mainly because they are not educated enough to know how and where to get that protection.

The respondents expressing this view said that they have some clients who cannot even read or write. Therefore, these people do not know anything about their legal rights. They are not in a position to demand that the state do anything for them. Most of the time, they fail to defend themselves properly even when they encounter small problems. When they have a problem, they do not know where they can apply or at what stage they must go to see a lawyer. In the respondents' opinion, not only these people but generally all Turkish people do not have enough self-confidence to demand for their rights. They do not want to go to state offices, talk to people there and explain their problems. They prefer to talk to a friend or an acquaintance and get their opinion, but
generally these opinions are no more correct than their own. What they want is to solve
the problem without paying money to lawyers or state officials. Such clients often lose
the case that they could win. According to the advocates, there are two sides of a coin.
If the first side is that the general cultural level of the people is low, the other is that the
actions of the state force them to look for justice outside the state offices.

It is not only uneducated people but also well-educated members of the society that are
not able to get proper legal protection. It is almost impossible for an ordinary Turkish
citizen to follow a legal transaction in a state office. The respondents stated that the
bureaucracy in Turkey almost grinds to a halt both in courts and all the other state
offices. Under the existing circumstances, seeking legal protection for a simple problem
is only a dream. They believe that in today's Turkey, no one expects anything from the
law and its practitioners. Everyone tries to solve their problems on their own and in
their own way. What they know very well is that the Turkish state is too weak to solve
their problems. In short, according to some advocates, alongside the low cultural level
of Turkish people, the general structure of the state and the society is the reason for the
failure to provide Turkish people with appropriate legal protection.

The second reason relating to the issue of legal protection refers to the human rights
problem which has been discussed for a long time. Many Istanbul advocates made a
connection between human rights and legal protection. (See table 5-7-2 below).

Table-5-7-2, Reasons Why Turkish People Cannot Receive the Protection of the Law;
The Concept of Human Rights is not Established.

<table>
<thead>
<tr>
<th>Problem of Human Rights</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>48</td>
<td>75.0</td>
</tr>
<tr>
<td>I agree</td>
<td>16</td>
<td>25.0</td>
</tr>
<tr>
<td>Total</td>
<td>64</td>
<td>100.0</td>
</tr>
</tbody>
</table>
From this table (5-7-2), it is clear that the majority (75%) of Istanbul advocates believe that the concept of Human Rights is settled and it has nothing to do with the failure to provide people with good legal protection.

However, one in three advocates takes the view that the human rights problem is not resolved and has an important role in the issue of legal protection.

During the interview sessions, most respondents stated that a considerable number of cases that they were dealing with were related to the violation of human rights. They said that it was a very well known fact that in Turkey today, the number of people who were subject to ill-treatment by the police forces is substantial. According to these respondents, the situation of these people provides an illustration of the fact that Turkish people cannot get a proper protection under the law.

A person who has been tortured, for example, cannot find any official institution to which he can apply to start an investigation or to make a complaint about the torturers. Generally, in such a case, all the evidence disappears suddenly and all the people involved in that event become silent. Since these events are not unusual, most police officers can be considered as experts in concealing such evidence. They can hide in a professional way all the evidence that may be used against them in court. If someone who was subjected to ill treatment in a police station makes a complaint to a court or a prosecutor, investigators cannot find anything to prove such a crime. Especially in recent years, such events have occurred so often that the Turkish public do not show any reaction to them any more. It is also true that neither the government nor the other responsible institutions want to take the necessary measures to stop these events.

In short, no one can say that these people are in a position even to demand legal protection. The respondents representing this view believe that they will not get it until the concept of human rights is properly understood by the Turkish people.
On the other hand, while the majority of Istanbul advocates believe that no one can deny that there is a problem of human rights in Turkey today, at the same time, they held that it is also a problem in all of the countries in the world. The problem varies only in its degree. Therefore, even if the government manages to stop infringements of human rights, the system will continue to suffer from the absence of appropriate legal protection. The reason for the lack of appropriate legal protection, they argue, goes much deeper. The legal protection issue cannot be connected with human rights problems, but, can only be explained by the structural problems within the legal system and the society.

The next point referred to the fees. Some of the respondents asserted that Turkish people could not get appropriate legal protection because advocates’ fees were too high. The distribution of Istanbul advocates who declared their view on this subject is as follows.

Table-5-7-3, Reasons Why Turkish People Cannot Receive the Protection of the Law; The advocates Fees are Too High

<table>
<thead>
<tr>
<th>Fees are High</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>7</td>
<td>10.9</td>
</tr>
<tr>
<td>I agree</td>
<td>57</td>
<td>89.1</td>
</tr>
<tr>
<td>Total</td>
<td>64</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The vast majority(89.1%) of Istanbul advocates believe that high fees are one of the main reasons why Turkish people cannot receive legal advice and protection.

In table 4-8-5, it appeared that Turkish advocates did not agree that their fees were very high. In the table above(5-7-3), however, they accept that high fees are one of the reasons why Turkish people cannot receive legal advice and protection. According to the advocates expressing this view, despite the fact that they do not get the money they deserve, the fees still deter people from using advocates. Especially when poor clients
cannot pay the fee that the advocates demand, they go to see other people who work in Mafia style for less money. The vast majority of the respondents pointed out that Turkish people are generally afraid of coming to see lawyers. They think that advocates will take all of their money.

Some respondents believed that if the government standardises the fees, advocates will manage to set up a good relationship with their clients and clients will get appropriate protection under the law.

Others stated that they were practising within a strange system where even the basic rights of people who could afford high fees could not be protected in practice. It is so especially with regard to the political cases.

The next point addressed the relationship between advocates and their clients. Some of the respondents asserted that Turkish people did not trust advocates.

Table-5-7-4, Reasons Why Turkish People Cannot Receive Legal Protection; They do not Trust Advocates

<table>
<thead>
<tr>
<th>People do not Trust Advocates</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>18</td>
<td>28.1</td>
</tr>
<tr>
<td>I agree</td>
<td>46</td>
<td>71.9</td>
</tr>
<tr>
<td>Total</td>
<td>64</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Nearly 72% of the advocates share the view that Turkish people do not trust advocates.

On the basis of these figures, it can be said that the majority of Istanbul advocates know very well that when the clients come to see them, they think that advocates are going to cheat them. Some respondents said that even when these clients have very serious problems, they do not want to come to see advocates.
In such a case they try, firstly, to solve their problems on their own. If they cannot do it, then they go to see an advocate. But when they come to see an advocate, it may be too late to take the necessary measures. Because of this, even if they are on the right side, they lose time and money. When they lose the case in the end, they hold advocates responsible for it.

It should be noted that nearly two in three respondents in the sample group accepted that the attitudes of advocates towards clients must change for the benefit of both advocates and clients. According to them, the system must be reorganised and mutual confidence between advocates and their clients must be re-established.

The last point on the issue of legal protection was related to the number of lawyers in the country. Some believed that the main reason for inadequate legal protection is the inadequate number of lawyers.

Table 5-7-5, Reasons Why Turkish People Cannot Receive the Protection of Law; The Number of Lawyers is Inadequate.

<table>
<thead>
<tr>
<th>Shortage of Lawyers</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>63</td>
<td>98.4</td>
</tr>
<tr>
<td>I agree</td>
<td>1</td>
<td>1.6</td>
</tr>
<tr>
<td>Total</td>
<td>64</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Only one respondent agreed that there is a shortage of lawyers and that this is the reason why Turkish people cannot receive appropriate legal protection. On the contrary, almost all of the sample group have the opposite view.

The respondents representing this view emphasised that there was a sufficient number of advocates in Istanbul today and also that it increases year by year. Even though there is a shortage of judges, prosecutors and other officials in courts, this must be seen as a political preference of the government, because everyone knows that many lawyers
who recently graduated from law faculties are unemployed. If the government wants to employ them, they can do so. Therefore, no one can say that Turkish people cannot receive appropriate legal protection because there is a shortage of advocates.

At this point, an overall table can be drawn to see the main views of respondents more clearly and to make a final conclusion on the legal protection issue.

Table-5-7-6, An Overall Table Relating to the Opinions of Istanbul Advocates On Why Turkish People Cannot Receive Appropriate Law Protection

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Not Agreed (%)</th>
<th>Agreed (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Cultural Level of Turkish People is Low</td>
<td>32.8</td>
<td>67.2</td>
</tr>
<tr>
<td>The Concept of Human Rights is not Settled</td>
<td>75</td>
<td>25</td>
</tr>
<tr>
<td>The Advocates Fees are too High</td>
<td>10.9</td>
<td>89.1</td>
</tr>
<tr>
<td>Turkish People do not Trust Advocates</td>
<td>28.1</td>
<td>71.9</td>
</tr>
<tr>
<td>The Number of Lawyers is Small</td>
<td>98.4</td>
<td>1.6</td>
</tr>
</tbody>
</table>

In summary, advocates believe that there is a sufficient number of lawyers capable of offering good law protection to the Turkish people, but, in order to achieve this, the problem of fees must be solved, advocates have to gain the trust of people and the government and other responsible institutions must find a way of increasing the cultural level of the Turkish people.

In addition to the points presented above, more information can be obtained on the basis of analysing the relationships between the question of appropriate legal protection and the independent variables. This information will show what kind of variables influenced the respondents' decisions. In order to do this, a correlation analysis will be
made and then further statistical analysis will be undertaken. The results obtained from
the correlation table are as follows.

Table-5-7-7. Correlation of The Variables With Regard to Whether Turkish People
Receive Adequate Law Protection

<table>
<thead>
<tr>
<th></th>
<th>Age</th>
<th>Regional Birthplace</th>
<th>Educ' Level of Father</th>
<th>Size of Practice</th>
<th>Interest in Politics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law Protection</td>
<td>-0.1019</td>
<td>0.1293</td>
<td>0.956</td>
<td>-0.0242</td>
<td>-0.2451**</td>
</tr>
</tbody>
</table>

*P=0.05
**P=0.01

There is a highly significant relationship between the opinion of advocates about the
legal protection issue and the level of political interest. This is observed at the level of
P=0.01. However, no relationship other than this has been observed.

This means that the decision of the respondents was highly affected only by their
political opinions. In order to see this relationship more closely, a cross table between
these two variables will be produced and the significance level of this relation will be
tested.

Table-5-7-8, Opinions of Istanbul Advocates On Whether Turkish People Receive
Adequate Law Protection, By Level of Political Interest

<table>
<thead>
<tr>
<th>Political Interest Adequate Legal Protection</th>
<th>Yes (%)</th>
<th>No (%)</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes (%)</td>
<td>0.9</td>
<td>12.2</td>
<td>10</td>
</tr>
<tr>
<td>No (%)</td>
<td>99.1</td>
<td>87.8</td>
<td>177</td>
</tr>
<tr>
<td>Column</td>
<td>113</td>
<td>74</td>
<td>N=187</td>
</tr>
<tr>
<td>Total</td>
<td>60.4</td>
<td>39.6</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Phi=0.245
P=0.0008
The table(5-7-8) above confirms that there is a highly significant relationship between the opinion of Istanbul advocates concerning law protection and their level of political interest.

In the first column, there is only one per cent of the respondents who are interested in politics and agree at the same time that Turkish people receive adequate legal protection. Contrary to this, 99% of the respondents interested in politics said that Turkish people did not receive adequate legal protection. Data on the respondents who are less interested in politics suggest that they are more attached to the existing order or they are less critical. For this reason, they say that the present legal protection is adequate.

In short, the opinion of Istanbul advocates on whether Turkish people receive appropriate law protection varies significantly according to their level of political interest.

7.1 Analysis of How Advocates can Help to Improve Economic, Social and Political Situation of Turkey

As noted earlier, Turkish advocates are very critical about the economic, political, and legal conditions in the country. During the interview sessions, most respondents stressed that there is a link between the problems within the legal system and the economic, political and social problems of Turkey. They believed that not only the advocacy system but all the other areas of social life will soon become much worse, unless the government does something to aid economic development.

The next question was "Do you think that Turkish advocates can help to improve the economic, social and political situations of Turkey?" Following this, the question of how they could help was also asked. Via this question, the level of the respondents' interest in social, political, economic problems and their role in solving them, were examined.
The results are as follows.

Table-5-7-1-1, The Results of the Question "Do you Think that Turkish Advocates can Help to Improve the Economic, Social and Political Situation of Turkey?"

<table>
<thead>
<tr>
<th>Help to Improve Social Economic, Political Situation of Turkey</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>61</td>
<td>92.4</td>
</tr>
<tr>
<td>No</td>
<td>5</td>
<td>7.6</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>

It can be seen that nearly all Turkish advocates (92.4%) believe that they can help to improve the economic, social and political situation of Turkey.

However, the issue of how advocates can help is not clear. In order to expose the possible ways, another question was asked. The answers to this question were collected under five categories. Each category represents one of the most frequently mentioned points during the interview sessions.

The first point was related to the activities of the Bar Association.

Table-5-7-1-2, The Ways in Which Istanbul Advocates Can Help to Improve Economic, Social and Political Situation of Turkey; The Bar Association Must Increase its Involvement in Such Matters.

<table>
<thead>
<tr>
<th>Bar must Increase its Involvement</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>18</td>
<td>28.1</td>
</tr>
<tr>
<td>I agree</td>
<td>46</td>
<td>71.9</td>
</tr>
<tr>
<td>Total</td>
<td>64</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Among the advocates who said that they could help to improve the situation of Turkey, nearly 71.9% agreed that in order to be successful in doing this, the Bar Association must show much stronger involvement to the political, social and economic events.
which affect the future of the country. Advocates or the Bar Association should not be silent about all kinds of events even if these have little direct relationship to the legal profession because, in the respondents' view, advocates are a part of a wider political, economic and social system. Any change in those systems will eventually affect the system of advocacy. For this reason, advocates and their legal representatives must declare their opinions about social, economic and political events more vigorously and effectively. If needed, they must criticise the government or other state institutions.

However, what can be seen easily today, according to the respondents, is the fact that the Bar and its executives are not able to convey the reactions of advocates very well to a broader public. All they do is represent advocates abroad, make statements to the press or attend official meetings, rather than produce meaningful solutions to the problems of the country. What is expected from the Bar, in short, is to be much more decisive and active than they are at the present time.

The second point was related to the intellectual capacity of advocates. Some of the respondents said that advocates can play a pioneering role in the development process of the country.

Table-5.7.1-3, The Ways in which Istanbul Advocates Can Help to Improve Economic, Social and Political Situation of Turkey; They Can Play A Pioneering Role In Enlightening Turkish People

<table>
<thead>
<tr>
<th>Pioneering Role</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I not agree</td>
<td>12</td>
<td>18.8</td>
</tr>
<tr>
<td>I agree</td>
<td>52</td>
<td>81.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>64</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

81.3% of the sample group agree that Turkish advocates can be pioneers of the social change.
Most respondents within this group stated that advocates are not only lawyers but also intellectual members of the society, being educated in relatively better conditions than other university graduates. Moreover, by the nature of their job, they have to be interested in social, economic and political problems in the world as well as in their own country. In their view, the main duty of the intellectuals is to tell people who are generally less educated about the social, economic and political truths.

However, some of the respondents also said that what advocates do in practice is far removed from this. These respondents held that it can hardly be said that advocates use their knowledge for the benefit of their country. They only think about how they can increase their income. What they are forgetting, in the meantime, is the fact that the future of their profession is strongly bound up with the future of their country. When they understand this, they will start to think about the people outside their profession and try to do more for these people.

According to other respondents, as a result of many political, economic and social experiences that the country went through within the last two decades, advocates are now much more conscious of the fact that they must do something to change the political, economic and social structures to new and more realistic ones. A country, in their opinion, can only be developed when people are informed correctly. If people know the real situation of the country, they may act much more realistically and get prepared for the radical changes that are needed in all areas of social life. To help people to understand what takes place in social and political life, advocates are in the most advantaged professional group. They are well educated and experienced about the social, cultural and political problems of the country, and moreover, they are very close to the Turkish people.

In short, according to the majority of the sample group, advocates can be ideal pioneers in the process of changing the social, political and economic structures of the country.
The third issue identified in this context was related to the problem of human rights. This was one of the long term discussions in Turkey. The distribution of the sample group according to their answers collected from the relevant question can be seen in the table (5-7-1-4) below.

Table-5-7-1-4, The Ways in Which Istanbul Advocates Can Help to Improve Economic, Social and Political Situation of Turkey: They may Help to Improve Human Rights

<table>
<thead>
<tr>
<th>They may help to Improve Human Rights</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>29</td>
<td>45.3</td>
</tr>
<tr>
<td>I agree</td>
<td>35</td>
<td>54.7</td>
</tr>
<tr>
<td>Total</td>
<td>64</td>
<td>100.0</td>
</tr>
</tbody>
</table>

As noted before, within the last three decades, Turkish political life was interrupted three times by Military coups. Especially during the military periods, the number of complaints about the infringement of human rights increased enormously. Both intellectuals and ordinary people received ill treatment of the police or the armed forces. The discussion on how human rights should be protected still continues to occupy a central place in the political agenda of Turkey.

Advocates, perhaps, were the closest professional group to the people who suffered from the violation of human rights. Ordinary Turkish people saw them as the most courageous group capable of reacting to the unfair application of the Military Rules, because advocates were not working under the control of the government like judges, prosecutors or other professional groups e.g. doctors or engineers.

It appears from the table (5-7-1-4) above that the respondents are divided evenly on this issue. 55% of them agree that advocates are able to contribute to the solving human right problems while 45% have the opposite view.
The respondents holding the opposite view argue that the human rights problem is not as serious as it is portrayed in the media or in many European countries. Turkey is not so different from other countries in the world. Some people, in their view, including some advocates in both Turkey and Europe, exaggerate this problem. In the respondents' opinion, the problem of human rights is an international problem rather than a national one. In other words, they hold that the vast majority of ordinary Turkish people have no complaints about the violation of human rights, even during the times of military take-overs. They point out that although Turkish governments are not able to secure all human rights, no country in the world is able to do that. Especially in developing countries where the speed of social changes is higher than in the industrialised countries, there are many specific political, economic and social problems. Experiencing these problems, it becomes difficult to protect all human rights effectively.

In conclusion, it should be noted that there are two different groups amongst the Istanbul advocates. The first thinks that there is a human rights problem in Turkey and that advocates are able to contribute to solving it, while the second believes that the discussions on human rights are concerned primarily with international relations rather than national ones.

Another point the respondents emphasised was related to the problems within the legal system. They believe that advocates cannot contribute to the improvement of social or political situation in Turkey unless they are better organised.

Table 5-7-1-5, The Ways in which Istanbul Advocates Can Help to Improve Economic, Social and Political Situation of Turkey; They Must Organise Themselves Better.

<table>
<thead>
<tr>
<th>They Must Organise Themselves First</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>40</td>
<td>62.5</td>
</tr>
<tr>
<td>I agree</td>
<td>24</td>
<td>37.5</td>
</tr>
<tr>
<td>Total</td>
<td>64</td>
<td>100.0</td>
</tr>
</tbody>
</table>
37.5% of the sample group believe that if advocates do not change, they will never be in a position to help to develop Turkey in the future. What must be done immediately, in their view, is to establish friendship amongst advocates, increase their intellectual level and put clear objectives about the ways in which they can help others. In other words, unless a wide range of reforms is introduced into the legal profession, not only advocates but also all the other legal practitioners will lose their prestige in the near future. In short, within the present system advocates themselves need help.

62.5% of the respondents expressed the opposite view. According to these respondents, if advocates attempt to reform the advocacy system first, they will lose time and will not even do what they were able to do before. Therefore, they must change the advocacy system while helping to improve the social, economic and political developments of the country. As seen in the table (5-7-1-5), the majority of Istanbul advocates share this view.

The last point related to the degree of political participation. The results are as follows.

Table 5-7-1-6, The Ways in Which Istanbul Advocates Can Help to Improve Economic, Social and Political Situation of Turkey; They Must be More Involvement in Politics.

<table>
<thead>
<tr>
<th>They Should be More Interested in Politics</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>34</td>
<td>53.1</td>
</tr>
<tr>
<td>I agree</td>
<td>30</td>
<td>46.9</td>
</tr>
<tr>
<td>Total</td>
<td>64</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Almost half of respondents (46.9%) agreed that advocates can help to improve the economic, social and political situation of Turkey by increasing their concern about political problems. Those who disagreed (53%) represented a small majority of the sample group. The first group believes that advocates must be interested in politics,
because they know the structure of the state better than other members of the society, and also they are usually good speakers and therefore very influential in public life. If they want to change the structure of society, the best way to do this is to join in political life. Despite the fact that there are many lawyers in the Turkish political life, these respondents held that if they want to be more useful and effective for their professional future and for the general interest of the country, there must be more advocates in the political arena than at present.

Respondents who disagreed with this view said that the legal profession is already represented very well in political life. They also held there are several ways of helping others which are as important as political participation. Therefore, while some deal with political issues, others must use different ways, for example helping the education of ordinary people or contributing to the intellectual life of the country.

To conclude this section, a general table relating to the ways in which advocates can help to improve the economic, social and political situation of Turkey will be compiled. This will help in the understanding the most common views amongst the Istanbul advocates.

Table 5-7-1-7, A Summary of the Opinions of Istanbul Advocates On The Ways In Which They Can Help to Improve the Economic, Social and Political Situation of Turkey

<table>
<thead>
<tr>
<th>Ways of Helping to Improve Social and Political Situation</th>
<th>Not Agreed (%)</th>
<th>Agreed (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Bar Association Must Increase its Involvement</td>
<td>28.1</td>
<td>71.9</td>
</tr>
<tr>
<td>They can play a Pioneering Role</td>
<td>18.8</td>
<td>81.3</td>
</tr>
<tr>
<td>They can Help to Improve Human Rights</td>
<td>45.3</td>
<td>54.7</td>
</tr>
<tr>
<td>They Must First Organise Themselves</td>
<td>62.5</td>
<td>37.5</td>
</tr>
<tr>
<td>They Must be More Interested in Politics</td>
<td>53.1</td>
<td>46.9</td>
</tr>
</tbody>
</table>
The data indicates that there is a strong feeling amongst Istanbul advocates that they can help to improve the economic, social and political situation of Turkey, but there is no consensus on the way which they can achieve it. However, the vast majority of advocates feel that the Bar must be more involved in such issues, and that advocates can play a leading role in recovering such problems.

The correlations between the views of whether Istanbul advocates and the independent variables can be seen in the table(5-7-1-8) below.

Table-5-7-1-8, Correlations of The Variables With Regard to How Istanbul Advocates Can Help to Improve Economic, Social and Political Situation of Turkey

<table>
<thead>
<tr>
<th>Help to Improve</th>
<th>Age</th>
<th>Regional Birthplace</th>
<th>Educ' Level of Father</th>
<th>Size of Practice</th>
<th>Interest in Politics</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0.3014*</td>
<td>0.1852</td>
<td>-0.1339</td>
<td>-0.1891</td>
<td>-0.0314</td>
</tr>
</tbody>
</table>

*P=0.05  
**P=0.01

In the table(5-7-1-8) above, only one significant relationship is observed between the attitudes of advocates and their age. In order to see this relation more closely, the data can be cross-tabulated and significantly tested by using (t) test technique.

Table-5-7-1-9, Opinions of Istanbul Advocates On How They can Help to Improve Economic, Social and Political Situation of Turkey, by Age

<table>
<thead>
<tr>
<th>Age Improve</th>
<th>20-30</th>
<th>31-40</th>
<th>41-50</th>
<th>51-60</th>
<th>61-High</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes(%)</td>
<td>100.0</td>
<td>100.0</td>
<td>33.3</td>
<td>100.0</td>
<td>83.3</td>
<td>61</td>
</tr>
<tr>
<td>No(%)</td>
<td>-</td>
<td>-</td>
<td>66.7</td>
<td>-</td>
<td>16.7</td>
<td>5</td>
</tr>
<tr>
<td>Column</td>
<td>27</td>
<td>23</td>
<td>6</td>
<td>4</td>
<td>6</td>
<td>N=66</td>
</tr>
<tr>
<td>Total</td>
<td>40.9</td>
<td>34.8</td>
<td>9.1</td>
<td>6.1</td>
<td>9.1</td>
<td>100.0</td>
</tr>
</tbody>
</table>

\( \text{t}=-2.55 \)  
\( p=0.01 \)
As seen in the table (5-7-1-9), in the first two columns, all respondents aged 20-40 agree that they can help in the improvement of Turkey.

The data indicate that the younger advocates are, the more they believe that they can help to improve the economic, social and political situation of Turkey.

7.2. Analysis of The Relationship Between The Turkish Legal Profession and The State

As noted in the first chapter, one of the central concerns of this study is to examine the relationship between the state and the legal profession. Relevant information on this was obtained from interviews and questionnaires. During the interview sessions, the respondents were asked what they thought about this relationship. In the questionnaires, other indirect questions were posed.

Using both sources of information, it was hoped that reliable results would be obtained and that this information could be used to test the hypotheses developed in the first chapter.

In this section, I will present information relating to advocates' views of the relationship between the state and Turkish legal profession.

Respondents were asked "Are the relations between the legal profession and the state good?" If they held they were not good, they were asked why this was the case. Firstly, I will present the results from the first question. Reasons as to why the relationship between the legal profession and the state was not good will be classified into five categories and presented afterwards.

Table-5-7-2-1, Opinions of Istanbul Advocates On the Relationship Between the Legal Profession and the State

<table>
<thead>
<tr>
<th>Good Relationship with the State</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>12</td>
<td>18.2</td>
</tr>
<tr>
<td>No</td>
<td>54</td>
<td>81.8</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>
Most advocates (81.8%) believe that the relationship between the state and the legal profession is not good.

According to those who held this view, not only advocates but also all other groups within the society suffer from the action and policies of a strong state. The main problem is that the state, via state officials, seeks to control the actions of advocates. This is not a recent development. The Turkish state has a long history of this kind. In other words, specific historical developments in Turkish society have resulted in a strong state.

Consequently, it should be noted that it seems to be a general view among Istanbul advocates that the state tries to control the legal profession and the advocacy system too much.

Advocates identifies a number of ways in which the state tries to control the legal profession.

Table-5-7-2-2, Reasons Why The Relationship Between the Legal Profession and the State is not Good; It is Because of Some Articles of the Constitution

<table>
<thead>
<tr>
<th>Because of the Constitution</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>29</td>
<td>55.8</td>
</tr>
<tr>
<td>I agree</td>
<td>23</td>
<td>44.2</td>
</tr>
<tr>
<td>Total</td>
<td>52</td>
<td>100.0</td>
</tr>
</tbody>
</table>

As noted in the second chapter, the present Turkish constitution was accepted by a great majority of the people in 1982. Since then, however, the discussion over its content and the way in which it was introduced into the system has continued in parliament, in the press and in academic circles. Constitutional institutions, like the Bar Associations, play their role in the discussion, too, offering proposals for a better, more democratic
constitution. In other words, the debate over the articles of the Constitution has become one of the most debated issues for the Turkish intelligentsia.

According to table(5-7-2-2), about 44% of the sample held that relations were bad because of the undemocratic content of the 1982 Constitution. In their opinion, the Constitution, written by a military junta, cannot meet the legal needs of the Turkish people. It contains many articles which restrict not only the legal profession but also other spheres of social life. In general terms, what the Constitution brought with it was a very powerful and highly centralised government. Many advocates held that nothing will improve unless a different and more appropriate constitution is introduced. According to the respondents in this group, the most suitable constitution for a developing country like Turkey is one which fully secures social and individual freedoms, on the lines of the 1960 Constitution.

However, 56% of the respondents did not share this view. According to them, despite the fact that the 1982 constitution is one of the main problems on the political agenda, it is not the main problem in the relationship between the state and the advocates. They agreed that the Constitution contains some undemocratic articles, but, they held that no Turkish government has ever attempted to use these articles against advocates or others. Those articles are included in the Constitution only because of fears, particularly concerning political violence which was the main reason for the military coup. In order to end social anarchy, law makers tried to secure the future of the state by formulating some articles which gave governments extraordinary power. Several respondents held that what the state has done so far is totally in accordance with the law and also with the interest of the Turkish people. That is why, they held, the critics of the Constitution have never received a general support from ordinary people.

The data suggest a need to discuss the constitution at length and, if necessary, change it to one that may be supported by the majority of Turkish people. As one of the
interviewees stated, Turkish advocates have to enter the next century without any constitutional debates.

One of the most important criticisms made by the respondents was related to the skills of state officials and clerks in courts.

Table-5-7-2-3, Reasons Why The Relationship Between the Legal Profession and the State is not Good; State Offices are Unqualified People

<table>
<thead>
<tr>
<th>Unqualified State Officers</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>20</td>
<td>38.5</td>
</tr>
<tr>
<td>I agree</td>
<td>32</td>
<td>61.5</td>
</tr>
<tr>
<td>Total</td>
<td>52</td>
<td>100.0</td>
</tr>
</tbody>
</table>

By the nature of their occupation, advocates have to spend time in state offices such as governmental buildings, municipal buildings, police stations and so on. Usually, they go to these places to collect official documents which constitute evidence in trials, as well as to get advice when they need expert advice about the case they are dealing with.

In a normal working day, advocates see many people in state offices. Therefore, they have to establish good relationships with the people in those offices, many of whom are very powerful. By using their power, state officials can create many difficulties. For example, if someone has to finalise a transaction urgently, they can block it and this may cost that person a lot of money and time. Instead of wasting time on having a dispute with state officials or making complaints about them, most people, including advocates, prefer to give them some money at the beginning and receive a guarantee that their business will be completed as quickly as possible. In short, most respondents agreed that the only way of setting up a good relationship with state officers is to bribe them.
However, giving money does not always guarantee the required result. In some cases, even if advocates pay much money, officers may not do their job properly, because they are not qualified for judicial tasks. Even some of the judges are not very well educated and experienced.

These officers are open to bribes because their salary are often very low, even though they have important jobs where a lot of money is involved. In addition, the educational system does not effectively transmit traditional moral values. In the most of the advocates' views, the whole of Turkish society faces a real moral crisis.

According to the respondents, especially in recent years, the judicial system has become excessively complex and confusing. Even those who are representatives of the law have to act illegally, bribing officials, falsifying documents, making up unreal evidence and so on. The advocacy system may break down totally in the near future. Therefore, what the government must do before long is to create a different atmosphere in these offices, by introducing radical administrative changes. Under the existing conditions, it is impossible for advocates to improve their relation with the state.

Consequently, it should be noted that according to these advocates (61.5%), the fact that they have to bribe the officials in the state offices is the main reason why the relationship between the state and the advocates is not good.

Nearly one in three advocates (38.5%) do not share this view. In general, this group accepts that there are problems with state officers, but this is not, in their view, the main reason why there is a poor relationship between the state and the legal profession. They believe that the reason should be looked for somewhere else. In their view, there are many other problems which prevent good relationships with the state.

Some respondents also asserted that the state and its executives act illegally.
The vast majority of Istanbul advocates believe that one of the main reasons for a bad relationship with the state is that the state does not follow the rules that it itself created. Therefore, no one can expect ordinary people to abide by them.

On the one hand, state officials accuse advocates and their clients of not respecting the laws. On the other, it is seen as quite normal for a state officer to falsify written documents or cheat advocates. It became normal for state officials to get involved in corruption and similar crimes, but until now, no one has taken this issue seriously. It seems that corruption has spread from the top to the bottom of the state mechanism.

The treatment by the police of ordinary people in police stations is another example. When someone is taken to a police station, no one knows what will happen. In other words, the police force, who are responsible for the maintenance of social order, are the ones who violate legal rules, torturing people, demanding bribes, and so on.

The same can be said for the state bureaucrats. The state seeks to keep advocates under control in terms of both legal and bureaucratic procedures. In this sense, bureaucrats are the unique representatives of the state. But many bureaucrats seek primarily to secure their own personal interests. The bureaucrats, like politicians and police officers, assert that they can break the rules for the benefit of the state, no one knows what the benefits to the state are. In essence, under the name of public benefits, bureaucrats create private benefits. Usually, nothing happens when they violate the rules, but, when an advocate

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Table 5-7-2-4, Why The Relationship Between the Legal Profession and the State is not Good; The State Acts Illegally

<table>
<thead>
<tr>
<th>Illegal Applications of the State</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>13</td>
<td>25.0</td>
</tr>
<tr>
<td>I agree</td>
<td>39</td>
<td>75.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>52</td>
<td>100.0</td>
</tr>
</tbody>
</table>
or an ordinary person does so, they find themselves in court. Therefore, the state must re-organise the legal framework in which bureaucrats work and, in this way, require them to obey the law. Only then will it be realistic to expect other people to follow the legal rules.

Another point was related to the place of the Bar Association within the system. According to some of the respondents, the Bar Associations are not free and this is one of the main reasons why the relationship between the legal profession and the state is not good.

Table-5-7-2-5, Reasons Why The Relationship Between the Legal Profession and the State is not Good; Bar Associations are not Free

<table>
<thead>
<tr>
<th>Freedom For the Bar</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>31</td>
<td>59.6</td>
</tr>
<tr>
<td>I agree</td>
<td>21</td>
<td>40.4</td>
</tr>
<tr>
<td>Total</td>
<td>52</td>
<td>100.0</td>
</tr>
</tbody>
</table>

About 40% of the respondents agree that as long as the Bar Association remains under the control of the state and its agents, it will be impossible to establish good relations with the state.

However, 60% did not hold this view. These respondents stated that no one can say that the Bar Associations today work freely, but despite this, it is still possible to maintain a good relationship with the state and its representatives. They believe that undoubtedly that there are legal restrictions on the activities of the Bars, but the relevant articles have never been applied, although the existence of these laws disturbs the advocates elected to official posts in the Bars.

In conclusion, a considerable number of Istanbul advocates agree that the governmental pressure on the Bars is not the main reason why there is not a good relationship between the legal profession and the state.
Some of the respondents stressed the internal relations of the profession rather than the external ones explained above. In this context, they said that if advocates want to establish a good relationship with the state and other professional organisations, they must solve their own problems first.

Table 5-7-2-6, Reasons Why The Relationship Between the Legal Profession and the State is not Good; Internal Relations of the Profession must be Reorganised

<table>
<thead>
<tr>
<th>Applications in the Profession</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>19</td>
<td>36.5</td>
</tr>
<tr>
<td>I agree</td>
<td>33</td>
<td>63.5</td>
</tr>
<tr>
<td>Total</td>
<td>52</td>
<td>100</td>
</tr>
</tbody>
</table>

Some Istanbul advocates (63.5%) believed that there were some serious problems within the profession which had an effect on the relationship with the state. They stated that in order to set up a good relationship with the state, advocates must create a 'single voice' from inside the profession.

In their view, some advocates had been engaged in the extreme edge of the political spectrum in the past. But these political movements aimed to destroy the democratic system and the foundations of the state. Following the military coup of 1980, the state took political and legal precautions to keep advocates and the advocacy system under control. These measures were aimed only at lawyers and advocates who tried to undermine the state. Therefore, there is nothing for ordinary practitioners, who were not and are not involved in these political activities, to fear from the state.

However, many respondents (36.5%) who do not agree with this view and claimed that in a democratic system, all advocates must be free to express their political views in any way they choose. What they will say may disturb the state, but this should be considered an aspect of democracy. Within a contemporary democracy, different views and different activities must be considered as a positive rather than negative factor.
Oppressive legal rules are created by a misguided interpretation of democracy by the law makers, and this also created problems between the state and the profession. Therefore, it is the state which must reconsider its attitudes towards democratic principles and its relation to professional groups.

In conclusion, each of the groups expresses criticism of different points. The majority of the respondents, however, believe that there is an internal problem within the profession which prevents it from establishing a good relationship with the state. Advocates must, first of all, organise themselves and solve the internal problems of their profession. Only after this will they be able to build a good relationship with the state.

As has been the practice so far in this study, it might be useful to present all the results from the above tables and identify the most important findings.

Table-5-7-2-7, An Overview of The Reasons Why The Relationship Between the Legal Profession and the State is not Good

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Not Agreed (%)</th>
<th>Agreed (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is Because of Some Articles of Constitution</td>
<td>55.8</td>
<td>44.2</td>
</tr>
<tr>
<td>State Officers are Unqualified</td>
<td>38.5</td>
<td>61.5</td>
</tr>
<tr>
<td>The State Itself Sometimes Act Illegally</td>
<td>25</td>
<td>75</td>
</tr>
<tr>
<td>Bar Associations Must Be Free</td>
<td>59.6</td>
<td>40.4</td>
</tr>
<tr>
<td>Internal Relations of the Profession Must be Reorganised</td>
<td>36.5</td>
<td>63.5</td>
</tr>
</tbody>
</table>

In summary, 75% of respondents said that the state itself was sometimes acting illegally. This shows that what the majority of the advocates complain about are the
illegal activities of the state. Therefore, this is the most important barrier in setting up a good relationship to the state.

63.5% of advocates believed that internal relations within the profession must be revised, while 61.5% believed that many state officers are unqualified.

In conclusion, it must be said that advocates believe that there is a mutual relationship between the state and the advocacy system. Advocates and other people will not follow legal rules until the state does. Apart from this, it seems that advocates have to reorganise their internal relations, that is, the relations between their colleagues and the activities of the Bar. These results also confirm a fact stressed before, namely that there is a chaos within the Turkish legal system.

At this point, a correlation table can be set up to see which independent variables affected the opinions of the advocates on this issue.

Table-5-7-2-8, Correlations For The Independent Variables With Regard to How Istanbul Advocates Can Help to Improve Economic, Social and Political Situation of Turkey

<table>
<thead>
<tr>
<th></th>
<th>Age</th>
<th>Regional Birthplace</th>
<th>Educ' level of Father</th>
<th>Size of Practice</th>
<th>Interest in Politics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relations with the State</td>
<td>0.1604</td>
<td>-0.2402</td>
<td>0.0689</td>
<td>-0.0404</td>
<td>0.1936</td>
</tr>
</tbody>
</table>

*P=0.05
**P=0.01

There is no significant relationship between the attitudes of Istanbul advocates and the independent variables. This means that the responses of Istanbul advocates to the relevant question were not affected by any of the independent variables such as age, regional birthplace, educational level of the fathers, size of practice and the level of political interest.
7.3. The Impact of The 1982 Constitution on Professional Development

In the third chapter, the focus was on the main characteristics of the 1982 Constitution and the social and political conditions that gave birth to it. As might be remembered, following the 1980 military coup, a constitutional draft was introduced by the military government and this constitution was approved by the vast majority of Turkish people via a referendum with nearly 98% of the vote in favour of the new constitution.

In spite of this, a few years later, many articles of the Constitution began to be severely criticised by Turkish intellectuals, trade unionists, university teachers and journalists. The Turkish political agenda was dominated by the discussion on the Constitution. At present, almost all Turkish newspapers, even though they differ on specific issues, demand a change of the 1982 Constitution urgently and radically. Political parties discuss the ways of changing it. Critics argue that intellectual, economic, social and political life is too much under the control of the state and its agents, whose powers were enlarged by this Constitution and thus, individual rights were restricted. Under such a Constitution, they argue, the establishment of a democracy in line with western democracies is impossible. In short, there is almost no one left today who defends the Constitution, despite the fact that it was accepted almost unanimously in 1982.

These appear to be two options for the politicians. The first is to change the constitution entirely. The second, if such a change is not possible, is to change at least these articles which are judges affect negatively political, social and legal developments.

Given the importance of the discussions on the Constitution, advocates were asked this issue. The aim of this was to learn the opinions of advocates about the effects of the Constitution on the legal profession. This information was also useful to indicate their political approaches to the country's problems.
The first question investigated whether the Constitution was believed to have affected the profession negatively or positively. In what ways it affected the profession was the second question.

The results revealed by the first question are as follows.

**Table 5-7-3-1, How did the 1982 Constitutional Change Affect Professional Development?**

<table>
<thead>
<tr>
<th>Effects of Constitutional Changes on Profession</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positively</td>
<td>10</td>
<td>15.2</td>
</tr>
<tr>
<td>Negatively</td>
<td>56</td>
<td>84.8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>66</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

The vast majority of Turkish advocates (84.8%) agree that the 1982 Constitution negatively affected the development of the legal profession.

On the basis of these results, it would seem that there are only a few advocates among the Istanbul advocates who support the 1982 Constitution.

Respondents indicated they felt the Constitution adversely affected the profession in a number way.

Firstly, they referred to the actions of the government and the articles which authorised the government to act outside legal rules.

**Table 5-7-3-2, How Has the 1982 Constitution Affected Professional Development; It provided Governments With Some Extraordinary Powers.**

<table>
<thead>
<tr>
<th>Illegal Action of Governments</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>8</td>
<td>14.3</td>
</tr>
<tr>
<td>I agree</td>
<td>48</td>
<td>85.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>56</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

331
The vast majority of Istanbul advocates agree that the present Constitution gives extraordinary powers to the governments. Using its power, government extends its interventions over all social, political, and economical activities. Because of these unusual powers, government has become undemocratic. Ministers and bureaucrats think that they can control all parts of the society and, in this way, silence the opposition and the critics of the government.

For example, the governments has become much more involved in the appointment of high court judges. The judges in these courts were known for their reactions against the illegal actions of the state. They showed their reaction even at the time when everyone was subdued by the military forces. Not only the rules of appointments of high court judges have been changed, but transfers of ordinary judges and public prosecutors from one region to another have become a matter of political decision. This means that the government can much more easily manipulate lawyers who are supposed to be impartial. The government may subjugate a prosecutor by threatening him with being sent to a relatively undeveloped region of the country. In other words, if a prosecutor wants to work in a developed area of the country, he must do as he is told by the government. Because of this fear, it is difficult for the judges to be impartial in court. Especially in political cases, the number of which increased enormously in the 1980s, the government used this against all legal practitioners. In recent years, ordinary people and intellectuals have accused the governments of acting outside the law in appointing lawyers. However, the government has consistently declared it did nothing outside of the legal rules. From the perspective of the government, what should be done is not to change the legal system as soon as possible. Most respondents stated that the issue of reforming the legal structure is not the case only in professional life but in all spheres of social life.

In conclusion, most of the respondents agreed that in order to establish a stability within the legal profession, the power of the government must be confined by changing the
Constitution radically. If this is achieved, the voice of democratic and constitutional institutions will increase and the activities of governments will be controlled by democratic pressure.

Only 14.3% of the respondents disagreed with this view, while 85.7% agreeing

The next point was related to the right to a proper defence. Some respondents believed that the ability to defend a client is limited in modern Turkey. The distribution of Istanbul advocates is as follows.

Table-5-7-3-3, How the 1982 Constitution Has Affected Professional Development; Advocates Cannot Conduct Defence Properly.

<table>
<thead>
<tr>
<th>Right to Defence is Limited</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>6</td>
<td>10.7</td>
</tr>
<tr>
<td>I agree</td>
<td>50</td>
<td>89.3</td>
</tr>
<tr>
<td>Total</td>
<td>56</td>
<td>100.0</td>
</tr>
</tbody>
</table>

According to most advocates, the 1982 Constitution was designed to enlarge the borders of the state. An image of an extremely strong state was also reflected in court rooms. In the present atmosphere in courts, if a case is brought against the state or the government, advocates cannot perform their job properly, since they are always subject to invisible pressure. The legal rules allow judges to arrest advocates. During the period of military power, for example, some judges applied this rule and arrested some advocates who simply performed their job. Advocates are very discontented with these events and want the parliament to withdraw these extraordinary powers from judges and governments. It is getting steadily more difficult to reach justice even in an ordinary case in courts

Apart from this, the problems remain in collecting data for the defence. In the Turkish tradition, collecting documents is seen as the job of prosecutors. In practice, advocates
have been excluded from this process. They may be allowed to collect documents, but this is dependent on the attitudes of state officials. For many reasons, these officials do not do their job properly and are very reluctant to help people who need their help. Obviously, without sufficient evidence, it is almost impossible to conduct the defence properly.

According to 89.3 per cent of the sample group, the 1982 Constitution must be changed as soon as possible and the obstacles for Turkish advocates in performing their job adequately must be lifted. It is held that a more liberal defence system will produce a more effective justice in courts.

20.7% of respondents have a different opinion holding that the right to defence is not limited primarily because of the recent constitutional changes. The main reasons, they argue, lie elsewhere. In their opinion, advocates have had similar problems under nearly all of Constitutions in the Republican Period and even in the Ottoman Period. The pressure on the advocates does not come from the articles of the Constitution but from the nature of their job. They work in a market where they have to do everything possible to win a case and to maximise their income. The pressure on advocates starts at this point. If they lose the case, the clients spread negative propaganda. If they can get a positive result from court, it helps to attract more new clients. Therefore, they have to win all the cases they take on. While they use all possible means to win the cases, they come across some barriers created by the government or the Constitution. In such cases, they complain about the restrictions of the government or the articles of the Constitution. What they must do is to reconsider their profession and their place within the society, and then declare their opinions about the government and the others. This is, however, very much a minority view.

The third point with regard to the 1982 Constitution was related to the ways of appointing judges to high courts. As noted in chapter II, Part II, the most important
cases are heard in High Courts and their decisions are binding. Because of this, the appointments of High Court judges attract the attention of the public at large.

The distribution of Istanbul advocates according to their opinions on the appointments of judges to the high courts is as follows.

Table-5-7-3-4, How the 1982 Constitution Effected The Professional Development; As it is Specified in The Constitution, the Manner of Appointing Legal Practitioners to High Courts is wrong

<table>
<thead>
<tr>
<th>The Appointment Manner to the Appeal Courts</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>7</td>
<td>12.5</td>
</tr>
<tr>
<td>I agree</td>
<td>49</td>
<td>87.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>56</td>
<td>100.0</td>
</tr>
</tbody>
</table>

As noted before, the role of the government and the president in appointing judges and prosecutors to the high courts has increased substantially under the 1982 Constitution. In Turkey today, the appointments to the Constitutional Court, for example, are of major importance, because this court is the final court for people to seek justice. An appeal can be made to the Constitutional Court when the case is a matter of the Constitution rather than ordinary laws. The decisions of the Constitutional Court are always extremely important for both parties since they are absolutely binding. If the cases are related to the actions of the state, the decisions of the Court become even more important. The government puts enormous political pressure on the judges in these courts. Despite this, within recent years, most decisions of the Constitutional Court have been decided against the state. In this way, the Court has shown the people that they can stand against the central political power. By doing so, they gave the Turkish people an impression that they were reliable lawyers, their decisions were fair and people could trust the legal system. The reputation of this court increased in recent years.
According to 87.5% of the respondents, the 1982 Constitution made these courts more dependent on the government. Since the new Constitution, the possibility of reaching justice in these courts has greatly decreased. In their view, before long, the legal system must be reorganised and all the new rules for making appointments to High Courts must be abolished. The independence of these courts must be secured again and protected from possible governmental interventions. If these are poetised, people will lose their trust in the legal system totally. These courts must be run by real professionals, and not by those who are appointed on the basis of their political views rather than their professional skills.

Only 12.5% of them held a different view. The respondents in this group maintain that despite some constitutional changes relating to the appointment of legal practitioners to these courts, it is quite rare to see the government seeking to use its authority to put pressure on judges. In practice, there are only a handful of people who support the constitutional articles which gave extraordinary powers to the government. Turkey, it is argued, having had many similar experiences, will never get involved in an undemocratic process of this kind again. It is because of such a belief that no government has been keen to use its power in relation to judicial affairs. This is, however, very much a minority view.

At this point, a sensational incident involving the Turkish President and the President of the Constitutional Court may be mentioned. As noted in Chapter II, the President of the Republic is authorised to appoint some members of the Constitutional Court. It was one year after the present survey was completed that the President of the Republic appointed a judge to the Constitutional Court. But this appointment was refused by the President of the Constitutional Court, claiming that the appointment procedure had not been carried out properly. However, this was only an excuse. Everyone knew that the real reason for the rejection was different. By refusing this appointment, the President of the Constitutional Court made it clear that he did not want to see anyone with
political views different from those of the other members of the courts. By appointing a judge who had a similar political view to himself and his government, the President of the Republic wanted to establish his authority over the Constitutional Court. In this sense, both the appointment and its refusal were political.

This incident shows that contrary to what was said by some respondents, the articles in the Constitution relating to the rules of appointing judges are used and the Constitutional Court is not indifferent to political processes.

One of the most important changes within the 1982 Constitution referred to the rules for removing committees of the Bar Association. As noted before, the governor of a district was given the authority to remove the council of the Bar if he deems it necessary.

Table-5-7-3-5, How the 1982 Constitution Affected Professional Development; Bar Associations Became More Dependent on Governments

<table>
<thead>
<tr>
<th>Dependency of Bar on Governments</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>8</td>
<td>14.3</td>
</tr>
<tr>
<td>I agree</td>
<td>48</td>
<td>85.7</td>
</tr>
<tr>
<td>Total</td>
<td>56</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The vast majority of Istanbul advocates (85.7%) agree that the Bar Associations are now more dependent on governments than ever before, because of some of the articles of the 1982 Constitution. Before the 1982 Constitution, the Istanbul Bar Association in particular was known as one of the most important opposition groups to the undemocratic actions of the government, no matter from which side of the political spectrum they were coming. Because of this attitude of the Bar, some people were held that advocates were responsible for the social disorder which occurred between 1970 and 1980. Those who framed the 1982 Constitution sought to place all problematic institutions, including the judicial system, under the control of the state. The organisation of advocacy was changed, and new rules were created for the appointment
of judges and prosecutors. The experience of the anarchic milieu that Turkey went through between 1970 and 1980 was the background for the 1982 Constitution. All restrictive articles in the Constitution were created in order to prevent the return of social order.

After the 1980 military take-over, the President of the Bar Association was arrested and accused of opposing the actions of the Military government. He was also accused of being a member of an association called The Turkish Peace Association (Baris Dernegi ve Baris Dernegi davasi). However, the real reason for his arrest was political. The Bar and its members were not outside political life. According to most respondents, even if these powers are not used often in any Turkish city today, the Bars cannot work under these rules which are a threat to judicial freedom. According to 85.7% of the sample group, the Istanbul Bar Association must resolve this problem as soon as possible. The Constitution must be changed so that social and individual freedoms will be grow. The Bar Associations must be protected from any improper pressures.

The last point emphasised by the Istanbul advocates was more general. They argued that this constitution by no means meets the needs of Turkish people for individual freedoms. The results are as follows.

Table-5-7-3-6, How the 1982 Constitution Affected The Professional Development; This Constitution Does not Meet the Needs of Turkish People In terms of Individual Liberty.

<table>
<thead>
<tr>
<th>Economic and Political Needs</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>14</td>
<td>25.0</td>
</tr>
<tr>
<td>I agree</td>
<td>42</td>
<td>75.0</td>
</tr>
<tr>
<td>Total</td>
<td>56</td>
<td>100.0</td>
</tr>
</tbody>
</table>
Nearly two in three respondents agree that the 1982 Constitution is not appropriate for Turkish people. They want a constitution which prepares the ground for individual freedoms. For most of them, it is only under a freedom-based constitution that Turkish democracy will improve and Turkish people will come to trust the legal system.

However, the present constitution is a product of what is seen as a tyrannical period and is, therefore, full of oppressive articles which restrict social, political, economic and legal life. Some lawyers have called it a constitution of "only if". That is, after the rights and freedoms are defined, there is always an "only if" clause which restricts those rights and freedoms. It is a constitution describing the rights of individuals, but telling them what they should and should not do. While the society changes very rapidly, the Constitution has lagged behind these changes. As the recent public reactions have made clear, there is a wide spread demand for constitutional changes in Turkey.

At this point, reference may be made to a revealing incident.

In 1980, the government decided to liberalise the Turkish economy to the outside world. In parallel to this decision, it was felt necessary to renew the whole telecommunication network of Turkey which was out-of-date compared with the European system. The renewal was carried out very successfully and in a very short time of two to three years, remote corners of the country were connected with the world wide telecommunication system. Some people living in these regions saw high technology for the first time. Following the operation, the government which introduced this system won three general elections, breaking all previous election records.

As a part of these transformations in the telecommunication system, many television and radio stations were established. However, there was no legal rule organising the broadcasting principles of these establishments. Under the 1982 Constitution, however, the state had a monopoly over broadcasting systems. This monopoly was illegally
broken by private people or private broadcasting companies who gained tremendous support from all parts of the society. There was almost nothing that the government could do about this state of affairs. The Constitution was openly and widely violated and there was no one who could stop this. In the end, the government decided to close down all radio stations working without legal permission, but could not do anything to the television stations. This action met strong protest from Turkish many people. In June 1993, the Parliament enacted an amendment changing the relevant articles of the Constitution to permit the private radio stations.

According to the respondents, this incident indicated how far the government and Constitution were out of touch with ordinary Turkish people.

At this point, it might be useful to see the most important aspect of advocates' views concerning the Constitution:

Table-5-7-3-7, Attitudes of Istanbul Advocates Towards The 1982 Constitution

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Not Agreed (%)</th>
<th>Agreed (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>It Provided Governments with Extraordinary Powers</td>
<td>14.3</td>
<td>85.7</td>
</tr>
<tr>
<td>Advocates cannot Conduct Defence Properly</td>
<td>10.7</td>
<td>89.3</td>
</tr>
<tr>
<td>The Manner of Appointing Lawyers to the High Courts must be Revised</td>
<td>12.5</td>
<td>87.5</td>
</tr>
<tr>
<td>Bar Associations are much more Dependent on the Governments than Ever Before</td>
<td>14.3</td>
<td>85.7</td>
</tr>
<tr>
<td>This Constitution Does not Meet the Needs of Turkish People</td>
<td>25</td>
<td>75</td>
</tr>
</tbody>
</table>

Around three quarters of the respondents support the ideas displayed in the first four rows. In the last row, there is a slightly lower percentage. It is possible to say that Turkish advocates believe that the 1982 Constitution influenced the advocacy profession very negatively. They strongly want to see radical changes in the 1982
Constitution, believing that not only the legal system but also other spheres of social life should be reformed urgently. They see the undemocratic articles of the 1982 Constitution as the origin of many of the existing within the legal profession.

At this point, the relations among the variables can be examined. In this way, it will be possible to see whether the attitudes of advocates were affected by any of the independent variables. In order to do that, a correlation table will be drawn. The results can be seen in the table (5-7-3-8) below.

Table 5-7-3-8, Correlations with Regard to the Attitudes of Istanbul Advocates Towards The 1982 Constitution

<table>
<thead>
<tr>
<th></th>
<th>Age</th>
<th>Regional Birthplace</th>
<th>Educ' level of Father</th>
<th>Size of Practice</th>
<th>Interest in Politics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effects of</td>
<td>0.1443</td>
<td>0.0216</td>
<td>0.0274</td>
<td>0.1423</td>
<td>-0.0523</td>
</tr>
<tr>
<td>Constitution</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*P=0.05
**P=0.01

As shown (5-7-3-8) in the table above, no significant relationship between the variables was observed. This means that the attitudes of Istanbul advocates, as far as this sample group is concerned, are not significantly affected by any of the independent variables such as age, size of practice or educational level of their fathers.

The respondents were also asked about their suggestions for changes in the constitution. The results can be seen in the tables (5-7-3-9) below.

Table 5-7-3-9, Suggestions For Constitutional Changes; Government Must be subject to control of the Law.

<table>
<thead>
<tr>
<th>Legal Control Over Governments</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>9</td>
<td>13.6</td>
</tr>
<tr>
<td>I agree</td>
<td>57</td>
<td>86.4</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>
The percentage of the respondents who agree that the legal control of governments must be enhanced is nearly 86.4. As mentioned before, most advocates believed that the government frequently acted outside of the law. Government officials consider themselves to be above legal regulation, and do not pay attention to any legal decisions taken by other constitutional legal institutions.

Many state and its employees appear to surmise that the law exists only for ordinary citizens but not for the state. In order to place governmental officials under the control of the law, the structure of the state created by the 1982 Constitution must be re-organised. Although there are some laws at the present time which limit the actions of the state, state officials can still find ways of avoiding these laws. In other words, the state must be forced to follow its own rules. So, the concept of separation of the powers must be revised and re-described much more clearly in the new constitution. The power of the judiciary must be increased, as it is only symbolic today.

The second suggestion of the respondents was related to individual freedoms in the Constitution. They mostly believed that the present Constitution allows only for extremely limited individual freedoms. The results are as follows.

Table-5-7-3-10, Suggestions For Constitutional Changes; The Constitution Must Secure Individual Freedoms.

<table>
<thead>
<tr>
<th>Freedom-based Constitution</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>5</td>
<td>7.6</td>
</tr>
<tr>
<td>I agree</td>
<td>61</td>
<td>92.4</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Ninety-two per cent of the advocates believe that the 1982 Constitution is reactionary by comparison with its predecessor. According to the official ideology created by the military coup in 1980, the 1960 Constitution offered more freedom to the Turkish
people who were simply not prepared to use it in a proper way. For example, trade unions were given a right to strike for the first time in the Republican period. However, they used it for political purposes to demolish the Turkish state, aiming to establish a proletarian dictatorship. On this basis, one of the biggest trade unions of the time (DISK or Trade Union for the Revolutionary Workers) and its administrators were put on trial after the military coup in 1980. According to the military staff, by the end of 1979, the Turkish government had lost control over many institutions which were highly involved in politics. Turkey became an arena where all extremist political factions from the far right to the far left, were fighting. It was chaos and the military staff argued that nothing could stop the bloodshed other than a military intervention. According to a poll that was carried out at the time when the army took over in 1980, the coup gained support from the vast majority of Turkish people.1

During the preparation of the new constitution, the concentration of the law makers was focused on social and individual freedoms. They believed that these freedoms had to be limited. One of the ways of achieving that was to increase the power of the state.

It is the above idea that nearly 93% of the respondents do not agree with. According to them, the 1961 Constitution was unsuccessful, not because the Turkish people could not use their rights in a proper way, but because it was only an interim period leading to a more effective use of these rights. The present situation is very different from that of ten or twenty years ago. Within this time, great political and social changes have occurred. Most countries have changed their economic, social and political orders or reorganised them in line with individual freedoms. Turkey cannot ignore these developments, for Turkish people have also learned how to use individual and social freedoms.

1-For more information, see, M. Ali Birand (1987), The Generals' Coup in Turkey.
In short, according to the respondents, at the present time, there is no danger for the security of the state. Individuals in European countries are in a much better position to enjoy their freedoms and civil rights, compared to ten years ago. The creation of a new constitution or the radical change of the present constitution, must be carried out in line with the new developments in Europe. Otherwise, the reaction of the people against the existing situation will be stronger and more decisive than ever before, for Turkish people are really tired with merely talking about the constitutional problems. The parliament must work much harder than it does now to affect change.

Consequently, the vast majority of Turkish advocates believe that social and individual freedoms must constitute the basic principles of the new constitution. In this way, it will be possible to decrease the power of the state over social, economic and political life.

A minority of the respondents, however, had a different view. They maintained that there was no real difference between any of the Turkish constitutions introduced until now. The distribution of the Istanbul advocates according to their opinions on this point can be seen in the table (5-7-3-11) below.

Table-5-7-3-11, Views on Constitutional Issues; There Are No Differences Between Constitutions

<table>
<thead>
<tr>
<th>No Differences Between Constitutions</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>61</td>
<td>92.4</td>
</tr>
<tr>
<td>I agree</td>
<td>5</td>
<td>7.6</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>

It is clear that the vast majority of respondents (92%) held that there were differences between the constitutions.

According to some respondents, the difference between Constitutions lies in their application rather than in their formal contents. What has been observed in practice so
far is the fact that all constitutions have failed to safeguard human rights and freedoms. This means that what is written in the constitutions is of secondary importance. The important issue is the way in which the principles of the Constitution are carried out. Therefore, if lawyers want to change the constitution, the legal system in which the articles of the constitution are applied must also be changed.

However, the percentage of the respondents holding this view is quite small, the more common view being that the freedoms must be first spelt out in the Constitution. Only after they are codified, can one investigate whether the people use their rights properly. So, according to these respondents, the content of the Constitution is as important as the way of applying it.

7.4. Opinions of Istanbul Advocates On EEC Membership for Turkey and Its Possible Effects on The Legal Profession

One of the most important issues on the Turkish political and economic agenda is the proposed membership of Turkey in the EEC. It is especially important in an economic sense, because the Turkish economy was opened up to the outside world in 1980 and, therefore, needs new markets. It is also important politically, because Turkey has experienced serious political problems within the last two decades, which have usually ended with military interventions. It is hoped that integration with Europe will help Turkish politicians to create a new and modern democratic system.

At present, the Turkish government has not yet received a positive answer to its application made in 1987. The uncertainty about it lasted for a couple of years. During which the hopes and the wishes of the Turkish people decreased day by day. Despite this, it is still possible to see frequent discussions of EEC membership in every Turkish newspaper.

The fundamentalist groups believe that, with membership of the EEC, Turkey will forget its great history and abandon its unique culture. In their opinion, EEC
membership is a step towards further Christianisation of the country. The future of Turkey, they argue, must be sought in the East and not in the West. Contrary to this, both liberal, leftist and rightist parties are in favour of EEC membership and represent the vast majority of Turkish people. Nevertheless, some intellectuals are not sure whether the Turkish government will be accepted in the near future, and, some of them strongly advise the government to reconsider the relevant decision.

Given the importance of the subject, a question relating to Turkey’s membership in the EEC, was included in the survey. It investigated whether EEC membership would, in the view of respondents, contribute to the improvement of the legal profession. The responses were categorised under five divisions.

First of all, the respondents’ thoughts about the possible effects of a membership on the legal profession were investigated. The results are as follows.

Table-5-7-4-1, How will the EEC Membership Affect the Development of the Legal Profession? Positive Effect

<table>
<thead>
<tr>
<th>Positive Effect</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>7</td>
<td>10.6</td>
</tr>
<tr>
<td>I agree</td>
<td>59</td>
<td>89.4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>66</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

The vast majority of the advocates (89%) believe that EEC membership will positively affect the development of the legal profession. Only 11% disagreed.

In what way this membership will affect the legal profession was the second question to be investigated.

The most emphasised point was related to the advocates’ financial situation in the future. The results are as follows.
Table 5.7.4-2. How will the EEC Membership Affect the Development of the Legal Profession? Advocates will Earn Much More Money

<table>
<thead>
<tr>
<th></th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>62</td>
<td>93.9</td>
</tr>
<tr>
<td>I agree</td>
<td>4</td>
<td>6.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Nearly 94 per cent of the sample group said that the EEC membership will not affect their financial situation.

According to them, some advocates may think that, when Turkey becomes a member of EEC, the number of clients will increase, and so will their income. However, the number of clients is already quite high and advocates are not happy with their income. The real problem, then, is not the number of clients but the limited payment capacity of most Turkish people.

Some may feel that the economic situation of the people will improve and this will affect the income of advocates. This might be true, but it will take a long time to see the effects of these changes within the advocacy system. According to one of the respondents, when membership of the EEC is realised, advocates will have more cases in foreign countries and make money from these jobs, but these assignments will be taken by those who are already rich, occupying the top position within the system. Advocates with a relatively low income and reputation, i.e. the majority, will not gain any advantage from membership and a significant change in the income level of ordinary advocates cannot be expected.

The next point was related to the relationship between Turkish advocates and their colleagues in European countries. In many respects, some said, there was a gap between
Turkish and European systems. In their opinion, EEC membership would help to close this gap.

Table 5-7-4-3, How will the EEC Membership Affect the Development of the Legal Profession? It may Help to Close the Gap Between Turkish and European Advocacy Systems.

<table>
<thead>
<tr>
<th>It Will Close the Gap</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>9</td>
<td>13.6</td>
</tr>
<tr>
<td>I agree</td>
<td>57</td>
<td>86.4</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>

About 86% of advocates agree that membership of Turkey within the EEC can help to close the gap between the legal systems in Europe and Turkey. They believe that the legal system in European countries is more developed than the Turkish one. In the Turkish system, there are many long-standing legal problems while most of these difficulties are not seen as a problem in Europe.

An example that was given in nearly all of the interview sessions was related to the human rights issue. All respondents said that looking at the number of complaints about human rights violations in Turkey, it is clear that human rights are protected much better in European countries than in Turkey. Therefore, via membership in the EEC, Turkish lawyers will be much closer to these countries and will probably learn more about how European lawyers deal not only with human rights problems but also many other legal problems. It was also added that it is not only lawyers who must learn from Europe but also, in particular, politicians. In short, in the opinion of this group, Turkish membership of the EEC will bring Turkish society closer to European countries and European culture.
Table-5-7-4-4, How will EEC Membership Affect the Development of the Legal Profession? Advocates will Get More Work From European Countries

<table>
<thead>
<tr>
<th>Job in Other Countries</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>13</td>
<td>19.7</td>
</tr>
<tr>
<td>I agree</td>
<td>53</td>
<td>80.3</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The vast majority of Turkish advocates believes that with EEC membership, they will be able to get more work from European countries. The relations of Turkey with European countries will grow, advocates will go to those countries more often and become more familiar with the European legal system. It could also be possible to open an office in Europe and work in a different country in a rather different legal system. Foreign lawyers, too, will come to Turkey and work together with Turkish lawyers. In this way, they will exchange ideas and information. Lawyers in both Europe and Turkey may help people to understand each other's culture and set up better social, cultural and economic relations. In other words, in their view, advocates will be able to contribute to building a bridge between Turkey and the European countries.

The majority of Istanbul advocates (80%) held this view, while almost 20% holding the opposite view.

It is clear that the majority of Istanbul advocates believe that membership of the EEC will help them to get more work in European countries.

The last point on this subject was concerned with whether Turkish advocates are ready to join the community.
29% of the respondents held that Turkish advocates are not ready to joint in the EEC, while 71% felt that they were.

The respondents holding the former view are very sceptical about the idea that advocates will successfully adapt themselves to the more developed legal system in European countries. In their view, Turkish lawyers struggled in the past with many problems to create the present system. If another radical change is introduced into the system, even if it is thought useful for the future of the profession, it might destroy all that has been done until now. In order to prevent such a devastating effect of the European legal system the Turkish system, advocates and other lawyers must be well educated and more familiar with these systems before joining EEC. Otherwise, the consequences of joining might be much more damaging than expected. However, this was a minority view.

The large majority of Istanbul advocates believe that Turkish advocates today are ready to compete with their European counterparts.

To sum up, the general views amongst advocates with regard to the question of EEC membership can be presented in the following table:

<table>
<thead>
<tr>
<th>They Are Not Ready Yet</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I do not agree</td>
<td>47</td>
<td>71.2</td>
</tr>
<tr>
<td>I agree</td>
<td>19</td>
<td>28.8</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Table-5-7-4-5, How will EEC Membership Affect the Development of the Legal Profession? Advocates are Ready to Join The Community
Table-5-7-4-6, Attitudes of Istanbul Advocates Towards The Membership of Turkey In EEC.

<table>
<thead>
<tr>
<th>How EEC Membership Will Affect Turkish Legal Profession</th>
<th>Not Agreed (%)</th>
<th>Agreed (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>It will Affect Positively</td>
<td>10.6</td>
<td>89.4</td>
</tr>
<tr>
<td>Advocates Will Earn More Money</td>
<td>93.9</td>
<td>6.1</td>
</tr>
<tr>
<td>It will Help to Close the Gap between Turkish and European Legal Systems</td>
<td>13.6</td>
<td>86.4</td>
</tr>
<tr>
<td>They will Get More Jobs in European Countries</td>
<td>19.7</td>
<td>80.3</td>
</tr>
<tr>
<td>They Are not Ready Yet</td>
<td>71.2</td>
<td>28.8</td>
</tr>
</tbody>
</table>

In general, it can be said that Turkish advocates believe that although EEC membership will not significantly affect their financial situation, it will have a very positive effect on the legal profession.

At this point, the relationship between the opinions of advocates on the issue of EEC membership and the independent variables can be examined. In order to examine these relationships, a correlation table will be drawn. The results obtained from the correlation procedure can be seen in the table(5-7-4-7) below:

Table-5-7-4-7, Correlations of The Variables With Regard to the Attitudes of Istanbul Advocates Towards The EEC Membership of Turkey

<table>
<thead>
<tr>
<th>Age</th>
<th>Regional Birthplace</th>
<th>Educ’ level of Father</th>
<th>Size of Practice</th>
<th>Interest in Politics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Membership to EEC</td>
<td>-0.2158</td>
<td>-0.2609*</td>
<td>0.3781**</td>
<td>0.2953*</td>
</tr>
</tbody>
</table>

*P=0.05

**P=0.01
According to the table(5-7-4-7) above, there are four significant relationships among variables. Two of them seem highly significant. Their significance level is $P=0.01$. The others are significant at a relatively lower level, $P=0.05$. The most significant relationship has been observed between the attitudes of Istanbul advocates towards EEC membership and the educational level of their fathers. There is also a similar relationship with the level of political interest.

A close look at these relationships is necessary. A cross table will be drawn for each relationship revealed by the table(5-7-4-7) above. The first relationship is related to the birthplace of the respondents’ fathers. The results are as follows.

Table-5-7-4-8, Attitudes of Istanbul Advocates Towards EEC Membership by Their Regional Birthplace.

<table>
<thead>
<tr>
<th>EEC Birthplace</th>
<th>Against Turkish Membership(%)</th>
<th>In Favour of Turkish Membership(%)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marmara</td>
<td>-</td>
<td>100</td>
<td>31</td>
</tr>
<tr>
<td>Aegean</td>
<td>-</td>
<td>100</td>
<td>3</td>
</tr>
<tr>
<td>Inner Anatolia</td>
<td>20</td>
<td>80</td>
<td>10</td>
</tr>
<tr>
<td>Mediterranean</td>
<td>-</td>
<td>100</td>
<td>1</td>
</tr>
<tr>
<td>Black Sea</td>
<td>45.5</td>
<td>54.5</td>
<td>11</td>
</tr>
<tr>
<td>Eastern Anatolia</td>
<td>-</td>
<td>100</td>
<td>7</td>
</tr>
<tr>
<td>South Eastern Anatolia</td>
<td>-</td>
<td>100</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>7</td>
<td>59</td>
<td>N=66</td>
</tr>
<tr>
<td></td>
<td>10.6</td>
<td>89.4</td>
<td>100</td>
</tr>
</tbody>
</table>

($X^2$ or $t$-value could not be calculated for this table, since some cells contained fewer than five cases)
It can be seen that the attitudes of Istanbul advocates towards EEC membership vary according to their birthplace. All advocates coming from five different regions support EEC membership, while nearly half of the advocates with a Black Sea origin do not. All advocates born in Istanbul or in cities near to it (Marmara region), want to joint the EEC, suggesting that advocates from Istanbul are much closer to Europe than those coming from inner and north Anatolia.

Table-5-7-4-9, Attitudes of Istanbul Advocates Towards EEC Membership by Educational Level of Their Fathers

<table>
<thead>
<tr>
<th>Ed of Father</th>
<th>Primary</th>
<th>Secondary</th>
<th>High School</th>
<th>University</th>
<th>Illiterate</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>EEC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No(%)</td>
<td>31.3</td>
<td>18.2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>7</td>
</tr>
<tr>
<td>Yes(%)</td>
<td>68.8</td>
<td>81.8</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>59</td>
</tr>
<tr>
<td>Column</td>
<td>16</td>
<td>11</td>
<td>14</td>
<td>20</td>
<td>5</td>
<td>N=66</td>
</tr>
<tr>
<td>Total</td>
<td>24.2</td>
<td>16.7</td>
<td>21.2</td>
<td>30.3</td>
<td>7.6</td>
<td>100</td>
</tr>
</tbody>
</table>

(X² or t value could not be calculated for this table, since some cells contained fewer than five cases).

The opinions of Istanbul advocates on EEC membership vary according to the educational level of their fathers. Some respondents with fathers with either primary or secondary school backgrounds were opposed to Turkish membership of the EEC, indicated that advocates coming from a relatively lower class are less supportive of EEC membership than others. In other words, advocates with a higher social background support membership more strongly than those with a lower class background.
Table-5-7-4-9, Attitudes of Istanbul Advocates Towards EEC Membership by Size of Practice

<table>
<thead>
<tr>
<th>Size</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>More</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>EEC</td>
<td>No(%)</td>
<td>30.4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Yes(%)</td>
<td>69.6</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>59</td>
</tr>
<tr>
<td>Column'</td>
<td>23</td>
<td>15</td>
<td>11</td>
<td>8</td>
<td>3</td>
<td>6</td>
<td>N=66</td>
</tr>
<tr>
<td>Total</td>
<td>34.8</td>
<td>22.7</td>
<td>16.7</td>
<td>12.1</td>
<td>4.5</td>
<td>9.1</td>
<td>100</td>
</tr>
</tbody>
</table>

(X^2 or t value could not be calculated for this table, since one of the cells contained less than five cases.)

30% of respondents in the first column claim that EEC membership is not good for the future of the legal profession. In all other columns, there is no one who shares this view, i.e. advocates working alone are less supportive of EEC membership than those working in a partnership. Without exception, all advocates working in an office with more than one advocate believe that EEC membership will affect the legal profession positively.

Table-5-7-4-10, Attitudes of Istanbul Advocates Towards EEC Membership by the Political Interest

<table>
<thead>
<tr>
<th>Interested in Politics</th>
<th>Yes (%)</th>
<th>No (%)</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>EEC Impact on Legal Profession</td>
<td>Negative</td>
<td>23.3</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Positive</td>
<td>100</td>
<td>76.7</td>
</tr>
<tr>
<td>Column</td>
<td>36</td>
<td>30</td>
<td>N=66</td>
</tr>
<tr>
<td>Total</td>
<td>54.5</td>
<td>45.5</td>
<td>100</td>
</tr>
</tbody>
</table>

(X^2 or t value could not be calculated for this table, since one of the cells contained fewer than five cases).
There is a relationship between the attitudes of Istanbul advocates towards EEC membership and their political interest. Amongst those with a high level of political interest, there is no one who claims that such a membership will affect the Turkish legal system negatively, while nearly 24 per cent of the respondents who are not interested in politics say that it will.

In conclusion, attitudes of Istanbul advocates towards EEC membership are affected by some of the independent variables, such as regional birthplaces, educational level of fathers, size of practice, and the level of political interest.

7.5. Opinions of Istanbul Advocates On the Secular Structure of The State

With the establishment of the new Turkish state after the First World War, secularism became one of the most important concepts in social, economic and political life. The previous state, the Ottoman Empire, had been based on Islamic religion and religion was the dominant power in social relations. After the collapse of the Ottoman Empire, religion was often held to be the main reason why the Turkish economy and society fell behind all European countries. The official view asserted that Islam, as a system of belief, was too much involved in state affairs, compared with other religions. According to the Islamic interpreters, Islam was not only a religion but also a group of unchangeable rules which its believers had to follow in their social, economic and political lives. It was believed that Islamic fundamentalists blocked the import of many technological inventions from Western countries. Yet, the founders of the modern Turkish state wanted to establish a state where science and technology would be given a supreme place. It was felt necessary, therefore, to separate Islam from the state. At the end of the First World War, Turkish revolutionaries saw the secularisation of the Turkish state as necessary in order to establish a modern state on the debris of the Ottoman Empire.
The new state flourished on the main principles of secularisation. In a sense, via the declaration of secularisation, the religious affairs of the country were taken under the control of the state. By doing this, it was hoped that the negative effects of the rigid Islamic rules on social and political life would be reduced to some extent.

After the acceptance of secularism, Turkey became the first Islamic secular country in the world. However, the discussion over the secular structure of the Turkish state has never stopped since it was introduced. Today, with the increasing power of the fundamentalist political movements all over the world, Islamic movements seem to have gained a relatively more powerful position in Turkey.

Islamic fundamentalist claim that the structure of the state must be converted into its previous form, that is, the Sheriat order. Islam, in their view, is a religion which covers not only the world of belief, but, also social, economic and political life. The first duty of a statesman, therefore, is to follow Islamic rules. The Koran, it is held, offers perfect guidelines for the state and its administrators. This is, according to them, what makes Islam unique among all other monopolistic religions.

In the event of a radical change of the secular structure of the Turkish state, the first part of the society affected by this change would be the system of law. Therefore, it was thought useful to ask the Istanbul advocates their opinions on the discussion over the secular structure of the Turkish state as it was gaining momentum day by day. The main points were, "What was the possibility of going back from the present legal system to the Sheriat order?" and "Do you see any a danger in a return to the former legal system?"

These questions are extremely important for Turkish lawyers practising at the present time, because they owe their existence to the present secular legal system based on western systems. If the system is changed, most of its practitioners will face the loss of their jobs.
The results as to whether recent discussions over the secular structure of the state threaten the politics-legal situation in Turkey can be seen in the following table(5-7-5-1).

Table-5-7-5-1, Distribution of Istanbul Advocates According to Whether the Recent Discussions Over secular Structure of the State is Threatening the Future of Turkish Legal Profession.

<table>
<thead>
<tr>
<th>Discussion is Threatening the Future of the Legal Profession</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>21</td>
<td>31.8</td>
</tr>
<tr>
<td>No</td>
<td>45</td>
<td>68.2</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>

 Nearly 32% of the sample believe that the discussion over the secular structure of the state is threatening the existence of the state, and, therefore, of the legal profession and the advocacy system. According to these respondents, the number of supporters of the Sheriat order increases day by day. Islamic movements are not only a matter of religious belief, but at the same time a political movement. Islamic rules have never been open to interpretation and, therefore, they cannot be adapted to modern conditions which emerged in the last century. At the moment, there is no need to demand such a system which will only put advocates into a worst economic and social position, but also block their efforts to improve the profession. These discussions only damage the efforts of Turkish governments and lawyers who have been trying to unify the Turkish legal system with European and world systems for more than seventy years. According to these respondents, the advantages of this unification are numerous. Having a contemporary society means in some sense having a modern, universal law system. Turkish people have been trying to set up a system of that kind for decades, but even discussion over it are discouraging for most of lawyers. In short, if the state and the government remain silent, as they do at present, fundamentalists will gain enough
political and economic power to change the present order to an Islamic one in the very near future. They have already 'infiltrated' into state offices and have become quiet effective in making governmental policies. They are also effective in influencing education, commerce and political life. The number of their representatives in parliament, in particular, is growing very rapidly in every general election. If they come to power one day, Turkey will be like Iran or one of the Arabic countries. In reality, although the probability of this is quite low, such a development would not be very surprising to anyone, because everything changes so rapidly in today's world that what appears impossible may come about suddenly. For this reason, the increasing power of fundamentalists constitutes a potential danger to the future of Turkish people as a whole.

On the other hand, the majority of the sample (68%) declared the opposite view, arguing that fundamentalists have always been on the political arena of Turkey, but they have never gained significant support from the majority of the people. Throughout Turkish history, the discussion over religious affairs has been on the agenda. At the current time, fundamentalists are becoming more popular. As often asserted, the increasing sympathy towards fundamentalist Islamic movements is only related to the religious belief of the people. There is no link between those movements and the advocacy system. If there is democracy, everyone has a right to say whatever they want. Along with the growth of liberal thought within the state after 1980, Islamic fundamentalist found an opportunity to express themselves for the first time in seventy years (since the establishment of the Republic). In a sense, their existence was denied by the founders of the Republic during this period. But after 1980, people who had strong Islamic belief were more directly involved in social life and Islam reached more ordinary people than ever before. So, like Christianity in European countries, Islam, as an official religion of Turkey, found some supporters with sincere belief. This must not be exaggerated. What is taking place has nothing to do with a wish to destroy the base of the secular state.
This base is, in their opinion, so strongly built that it cannot be demolished by a temporary popular political movement. Therefore, while the excitement of some Turkish people who see fundamentalism as a danger can be understood, there is no need for panic or for extreme reactions, which can be used by fundamentalists against them. Additionally, the role of international affairs in encouraging Islamic movements today cannot be denied, but these movements will disappear as international tension on this subject dies down. Turkish Islamic people get their inspiration in one sense from the international events which recently occurred in Iran and some Northern African countries.

It is possible to conclude that though all Turkish advocates see the Islamic movement as a danger to the future of the country, most of them believe that it will not gain enough support to be able to come to power and set up an Islamic order in Turkey.

At the end of most interview sessions, what has been especially emphasised by respondents was the fact that advocates owe their existence to the present legal order and, therefore, have to support the secular structure of the state.

Table-5-7-5-2, Correlation of the Variables With Regard to the opinions of advocates Concerning The Secular Structure of the State.

<table>
<thead>
<tr>
<th>Age</th>
<th>Regional Birthplace</th>
<th>Educ' Level of Father</th>
<th>Size of Practice</th>
<th>Interest in Politics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secular State</td>
<td>0.1980</td>
<td>0.0336</td>
<td>-0.0795</td>
<td>-0.1826</td>
</tr>
</tbody>
</table>

*P=0.05  **P=0.01

There is no significant relationship among the dependent and independent variables. Therefore, it is possible to say that the attitudes of Istanbul advocates are not affected

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by age, size of the practice, birthplace, educational level of father or the level of the political interest of the respondents.

The last question in the interview schedule inquired whether the Islamic rules still play an important role in some areas of the law.

Table 5-7-5-3, Opinions of Istanbul Advocates on Whether Islamic Rules Still Play An Important Role In Some Areas of the Law

<table>
<thead>
<tr>
<th>Islamic Rules still Play a Role in the Law</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>8</td>
<td>12.1</td>
</tr>
<tr>
<td>No</td>
<td>58</td>
<td>87.9</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Only 12 per cent of the respondents have the opposite view, asserting that, as a completely different legal system, Sheriat was so effective in social life during the Ottoman Period that its rules are still valid among the Turkish people. This is the case especially amongst those with a peasant background. If the subject is, for example, related to the law of succession, these people may follow Islamic rules which allow men to have double the inheritance from their parents as their sisters. However, this cannot be known unless one of the parties resorts to the civil law, by making a complaint about the other party. It is because of this tradition that official statistics are not very reliable and in reality the number of such incidents might be higher than it seems.

Nearly 88% of Istanbul advocates agree that Islamic rules do not play any role in the areas of law they practice, holding the view that especially in big cities old rules have lost their function completely, because even people coming from rural areas adapted very well to urban life. This is true even for the women. Modernised women, who are
familiar with big city life, never accept any humiliation under the Islamic law, take the issue to court and obtain justice from their brother(s).

Islamic law is regarded as a very backward institution by almost all big city people. In practice today, those rules seem to have lost all relevance to law. However, it must also be noted that these opinions of advocates refer to Islamic legal rules but not to Islam as a religion.

8. Summary and Conclusions

In this chapter, the attitudes of the Istanbul advocates towards social, political and economic problems were analysed in detail. The focus was on introducing the results about relationships among variables rather than about only one variable. In this way, it became possible to see which factors were effective on the decisions of the respondents. The sample group in Istanbul was composed of 187 advocates while 66 of them were interviewed.

In the first section, the objective information such as formal information or working conditions were analysed while, in the second, the subjective information obtained through interview sessions and relating to the conditions surrounding their professional life, such as professional ethics, professional problems and political or constitutional issues, were the main issues. At the end, the main characteristics of the Turkish advocacy system and its major problems became much more clearer. It is discovered that the opinions of the advocates on the subject of law training varied according to their age, the level of political interest and the size of practise. To see these trends, Chi Square analysis for each relationship were carried out. It appeared that the respondents who found law training system unsatisfactory were, at the same time, those who were relatively young, interested in politics and tended to work in partnerships rather than classical advocacy offices.
A highly significant relationship between the attitudes of advocates towards apprenticeship and their age was also observed. There was also a relatively weaker relationship between their attitudes and the level of political interest. The old advocates found the period of apprenticeship satisfactory while the younger ones declared a completely opposite view. It was also revealed that advocates who were interested in politics were more unhappy with the apprenticeship period than those who were not interested. It is concluded that the more they are politicised, the more they oppose to existing order or vice versa.

The information on the work conditions, which was not presented in the previous chapter, included such issues as length of practise, whether the respondents did more work in their specialist area than the others, most lucrative field in the law, the means by which clients chose Istanbul advocates, legal problems that Turkish people took to the advocates, whether large scale partnership was useful for the future of legal profession and the reasons why legal profession was not adequately remunerated. It is concluded that advocates considered Istanbul as a most suitable city to perform their job and pointed out that there was a close relationship between their income and economic situation of the country. Another issue in this context was related to how they used their free time. The majority of Turkish advocates subscribed to at least one law journal, believing that this would help them to follow the changes of the legal rules. Nearly one in three of the sample group declared that they could read in a foreign language. But, it was noted that the educational system in the Turkish high schools in which language courses were compulsory played an important role in getting so high proportion for the relevant question. This became more clearer when the subscription proportion to a foreign journal appeared considerably low. Such a trend amongst advocates pointed to the fact that advocates were not yet integrated with the European system and established satisfactory contacts with their colleagues and legal institutions in Europe.
The opinions of the Istanbul advocates on the Bar and its activities were also one of the main issues in this Chapter. It was strongly emphasised that the Bar Association did not organise any social or cultural activities and this made it impossible to create a good understanding and solidarity amongst advocates. The reasons why the Bar Association did not provide a good service for its members were examined in detail. It was a common idea that the Bar was not active enough, had important financial problems and had to take part in political debates more actively. The opinions of the respondents on this issue were affected by their age and family background. Those with a low class background wanted more strongly to see more active Bar than the others. It was also found out that Istanbul advocates were very keen on being members of organisations, clubs and associations other than the Bar Association.

This chapter was also concerned with the reasons why and the ways in which Turkish advocates did not act ethically. The vast majority of the respondents believed that Turkish advocates do not examine the case satisfactorily before taking it to the court. Two in three of them pointed out that some advocates established close relationships with the police officers and state employees hoping that they would get a different treatment from the others in these offices. It was unanimously expressed that some advocates deceive their clients. Referring to the political lawsuits, some believed that advocates consider their political opinions more important than creating a fair justice in courts. Considering existing disarray in the legal system, nearly two in three of the sample group said that they lost their belief in justice completely. All these criticisms meant that the Turkish advocacy profession was in chaos as far as professional ethics was concerned.

In this chapter, some subjective information relating to the external relations of advocates, the relationship between the state and the legal profession, or between the political parties and the opinions of advocates about social, economic and political developments and their impact on the profession and the legal structures, and also
international affairs such as the EEC membership of Turkey and its possible outcomes for the advocacy system, were presented in detail.

The first point raised in this context was related to the issue of the law protection. The reasons why Turkish people could not receive a proper protection from the law was multi faceted. It was believed that mainly because the cultural level of people was low, Turkish people could not receive it. Two in three of the respondents asserted that, contrary to the common idea, the concept of Human Rights was settled and it had nothing to do with the failure in providing people with good law protection. In addition, it was the view of the vast majority of the respondents that the fees were not affordable and people no longer trusted advocates. It was also stressed that there were enough number of lawyers to offer a good law protection to the people. Apart from all these, some respondents asserted that people would not receive a proper law protection unless these problems were eliminated from the system. On the basis of statistical analysis, it was also found that respondents who were interested in politics believed the idea of unsatisfactory law protection more strongly than the others.

The level of the respondents' interest in social, political, economic problems and their role in solving them, were also examined. Nearly all respondents believed that lawyers could help to improve the economical, social and political situation of Turkey. It was revealed that Istanbul advocates wanted to be an active element in the development process, rather than only contributing to it, attaching themselves to the idea that they were capable of playing a pioneering role, but there was no shared opinion on the way which they can achieve it. They also wanted the Bar to show much more effective and decisive reactions to the everyday political, economic and social events than it does at present. As the statistical analysis revealed, the younger advocates believed more strongly than the others that they would contribute greatly to the improvement of the economic, social and political situation of Turkey.
One of the central concerns of this study was to identify the relationship between the state and the legal profession. The majority of the Istanbul advocates believed that the relationship between the state and the legal profession is not good, asserting that the state tried to control the legal profession and the advocacy system. In their opinion, it does this in various ways. Firstly, there were some articles in the 1982 Constitution which allowed the state to establish pressure over professional life. Some believed that advocates failed to set up a good relationship with the state because the state officers were quite unqualified and uneducated. For some others, the real reason was that the state itself acted illegally and they could not do anything in this kind of situations. Due to the Constitutional Articles, Bars were under the governmental pressures. It is also believed that advocates and other legal professionals must organise themselves, if they really wanted to set up a good relation with the state. In short, it was a common view among Istanbul advocates that thought the state tried to control the legal profession and the advocacy system, there was a mutual relationship between the state and the legal professions. While the state affected their future, lawyers played an active role in the state affairs. Furthermore, the information obtained in this section also confirmed that there was a chaos within Turkish legal system and moral values have almost lost their meanings.

Given the importance of the Constitutional provisions over the social, political and economic life, respondents were also asked about its impacts on their practise. The vast majority of Turkish advocates declared that the 1982 Constitution negatively affected the development of the legal profession. They believed that it provided governments with extraordinary authorities and this made it easier for the governments to intervene in professional activities. It was commonly agreed that under the provisions of the Constitution, advocates could not make their defence properly, non of the judges and prosecutors was sure about their future since the rules of their transfer changed greatly and tied much more to the governmental initiative, and Bars now were much dependent
on the governments. Therefore, they described the present Constitution as an undemocratic one and had to be replaced with a new one or at least some of its articles had to be changed as soon as possible. The new Constitution, in their opinion, must be designed on the basis of individual and social freedoms and the state and its activities must be taken under the legal control.

Another issue investigated whether the EEC membership of Turkey would contribute to the improvement of the legal profession. The vast majority of the advocates believed that such a membership would have a positive effect on the legal profession. It is pointed out that advocates would earn much more money than they were doing now. According to this view, advocates would also learn many from the European system and their colleagues in Europe and this would help to close the gap between Turkish and European systems. The idea that lawyers were not yet ready for integration with Europe was rejected by almost all respondents. On the basis of the statistical analysis, it was revealed that the opinions of the respondents on this subjects were affected by four factors; regional background, family background, work conditions and the level of political interest. It was observed that the advocates born in Istanbul, those with better social background, those working in a partnership, and those interested in politics, wanted to join in EEC much strongly than the others.

The secular characteristic of the Turkish state was also brought to the discussion in this chapter. Turkey was the first Islamic secular country in the world, but, the discussion over its secular structure never stopped since it was introduced after First World War. Because of this, respondents were asked whether the discussions on this subject threatened the future of the legal profession. Nearly two in three of the sample group declared that though the recent Islamic movements were dangerous for the future of the country, the idea of secularism was settled firmly enough and therefore, there was no need to be afraid of those against it. Fundamentalists, in their view, have always been on the political arena of Turkey, but they have never gained a significant support from
the majority of the people. Besides, most Istanbul advocates also believed that Islamic legal rules no longer play an important role in any area of the law.

To sum up, the points that Istanbul advocates put a specific emphasis through this chapter can be listed below:

1) The law training system in Turkey is far from being a satisfactory one as it operates today.
2) The period of apprenticeship is only a formality and should be reorganised for more practical purposes.
3) The Bar Associations are not able to provide a good service for its member and therefore, it must be reformed as soon as possible. The Bars are under the direct or indirect pressure of the government. Almost all advocates want to see a more active and effective Bar taking part in the politics, social and economic discussion.
4) Some lawyers do not follow ethical rules. In general, advocates tend to deceive their clients. In this respect, Turkish advocacy system is in a chaos.
5) It is a common belief of all respondents that Turkish lawyers can help to improve the economic, social and political situation of Turkey.
6) The relationship between the state and profession is not good. The role of the advocates in improving this relationship, however, is considered to be vital, because it is believed that advocates or lawyers are able to affect the activities of the state while the state strives to control theirs.

On the basis of the above points, it can be said that Turkish advocates strongly want to involve in political, cultural and social activities. While they try to create a more respectful profession through the new arrangements in the educational system in both universities and profession, they want to play their parts in the development process of the country. It is believed that there is a close link between the problems of the country and the problems that the legal profession have been suffering for a long time. In short,
Turkish lawyers affect the governmental activities while the government tries to control them. In other words, advocates seems to be one of the elements that shape the Turkish state, rather than to be a social formation in separation from it.
CHAPTER VII

1. Comparison Between Istanbul and Sivas Advocates

In Chapter IV, the results concerning all advocates within the general sample group consisting of 222 respondents in Istanbul and Sivas were presented. Nearly all the information given there was obtained through interviews and questionnaires. However, in order to present the data in a systematic way, the results obtained from Istanbul were never compared to those from Sivas.

In Chapter V, only the Istanbul advocates were focused upon. Some issues still require some explanation and comment. However, as noted in the Introduction to this study, the survey was carried out in two different cities in Turkey. One of them was the biggest and the most developed, while the other was a medium sized city and less developed. Carrying out the survey in two cities with different social and historical features, made it possible to obtain additional and comparative information about the legal system. In the previous chapters, the results concerning Sivas advocates were not presented separately, although the information in Chapter IV included a great deal of data drawn from Sivas advocates.

In this Chapter, Sivas results will be presented separately, in order to facilitate a comparison with the data from Istanbul. In this way, it will be possible to see both the most important results obtained from Sivas and some comparative information that makes the structure of the legal profession in Turkey more clear. The main concern of this chapter, therefore, will be the differences and similarities between the advocates from two cities. The relations between them will be examined through issues such as formal information (age, gender, birthplace, marital status), work conditions, the structure of the Bar Associations and the degree of political involvement.
2. Age, Sex, Birthplace and Marital Status of Advocates

In this section, some of the main characteristics of the advocates in the cities of Istanbul and Sivas will be briefly presented. Attention will be focused on their age, gender, birthplace and marital status.

The average age of the Istanbul advocates is 42.5, within a sample group composed of 187 advocates. In Sivas, the average age is 40.6, while the sample group consisted of 35 advocates. Advocates in both two cities are very young, so it appears that there is no real differentiation between these two cities as far as the average age of the advocates is concerned.

Other characteristics of advocates can be seen in the table (6-2-1) below.

Table-6-2-1, Sex, Birthplace and Marital Status

<table>
<thead>
<tr>
<th></th>
<th>Sex (%)</th>
<th>Practice in Birthplace (%)</th>
<th>Marital Status (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Female</td>
<td>Male</td>
<td>Yes</td>
</tr>
<tr>
<td>Istanbul</td>
<td>15.5</td>
<td>84.5</td>
<td>33.7</td>
</tr>
<tr>
<td>Sivas</td>
<td>51.4</td>
<td>48.6</td>
<td>82.9</td>
</tr>
</tbody>
</table>

The most important difference in this table (6-2-1) concerns the birthplace of the respondents. Nearly 83 per cent of the Sivas advocates indicate Sivas as their birthplace, while only 34 per cent of the Istanbul advocates were born in Istanbul, i.e. Sixty-six per cent of them came to Istanbul from other cities. This figure in Sivas is only 17 per cent. In other words, only a few of the Sivas advocates came to Sivas from other cities. This means that Sivas advocates are natives of the region, while the Istanbul advocates are usually from other cities in Turkey. In addition, this information also reveals that Sivas is not one of the favoured cities among advocates, while Istanbul is the most attractive. The first reason for this is, of course, the difference between the
levels of economic development in these two cities. Advocates choose to go to more developed areas rather than to those with a relatively low economic capacity.

The second difference is between the numbers of single and married advocates. In Sivas, nearly 46 per cent of the respondents are single, while in Istanbul this figure increases to 82 per cent. Moreover, given the average age in both cities presented above, this result is of some interest. The average age of Istanbul advocates is about 40 and if it is assumed that the usual marriage age is between 25 and 30, then a considerable number of Turkish advocates are single and above the usual marriage age. This trend seems much stronger amongst Istanbul advocates than those in Sivas.

Another difference is related to the sex. Fifty-five per cent of the Sivas advocates in the sample group are female, while this figure is only 15 for Istanbul. This shows that today relatively more female advocates work in Sivas than in Istanbul. However this information must be evaluated within the limits of the present research. As might be recalled from the first chapter, the proportion of female advocates in Istanbul was 66% by the end of 1991. This is an exact figure. So what can be said is that this information about sex of the respondents in both cities is true only for the sample groups and, therefore, should not be generalised.

3. Family Background

In this section, the family structure of the advocates working in Istanbul and Sivas will be dealt with. The first question is related to their parents' work: what kind of job their fathers and mothers had and whether there is a similarity or difference between Istanbul and Sivas advocates as far as their parents' jobs are concerned. Secondly, the educational level of their parents and the relationship between the two cities will be examined. The expectation is that the parents of Sivas advocates are less educated than those in Istanbul.
Table 6-3-1, Job of Parents of Advocates in Istanbul and Sivas

<table>
<thead>
<tr>
<th>Job (%)</th>
<th>Father</th>
<th>Mother Working</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>State Employment</td>
<td>University Graduate</td>
</tr>
<tr>
<td>Istanbul N=66</td>
<td>31.8</td>
<td>7.6</td>
</tr>
<tr>
<td>Sivas N=20</td>
<td>30</td>
<td>15</td>
</tr>
</tbody>
</table>

It appears from this table (6-3-1) that most of the parents of Istanbul advocates are either state employees or workers. The total of these two groups of occupations in the table is nearly 72.5 per cent, which represents over two in three respondents in the sample group. In order to become a state employee or worker, it is not necessary to graduate from a university. These jobs are middle class or lower class jobs. 40 per cent of Sivas advocates come from a similar background, while the number of advocates whose fathers were also lawyers increases considerably, to 35 per cent. The second column represents the fathers who worked as independent businessmen or traders with a university degree. This proportion is quite small in both cities, as in the figures for those whose fathers were farmers.

The final column relates to whether or not advocates' mothers worked. Only a few advocates' mothers had a job and contributed to house expenses. The vast majority of the advocates' mothers in these both cities are housewives, looking after children and dealing with everyday household affairs.

What is, in fact, revealed from this table (6-3-1) is the fact that most advocates in both cities have a middle-class or lower-middle-class background. Therefore, advocacy does not attract those from a rural or lower-class background. In the table (6-3-1) above, there are only a few advocates with such a background. This is true even for the Sivas case. Advocates in Sivas originate from urban areas just like their counterparts in Istanbul.
can be concluded that advocacy in today’s Turkey is a profession primarily for those from the middle class. Further relevant data is presented in the table below, where educational level of the parents is examined.

Table-6-3-2, Educational Level of Advocates' Parents in Istanbul and Sivas

<table>
<thead>
<tr>
<th>Schools(%)</th>
<th>Primary F</th>
<th>Primary M</th>
<th>Secondary F</th>
<th>Secondary M</th>
<th>High F</th>
<th>High M</th>
<th>Universi' F</th>
<th>Universi' M</th>
<th>Illiterate' F</th>
<th>Illiterate' M</th>
</tr>
</thead>
<tbody>
<tr>
<td>Istanbul N=187</td>
<td>27.3</td>
<td>46.0</td>
<td>15.0</td>
<td>12.3</td>
<td>24.1</td>
<td>20.9</td>
<td>26.7</td>
<td>2.7</td>
<td>7.0</td>
<td>18.2</td>
</tr>
<tr>
<td>Sivas N=35</td>
<td>42.9</td>
<td>57.1</td>
<td>8.6</td>
<td>17.1</td>
<td>25.7</td>
<td>2.9</td>
<td>17.1</td>
<td>-</td>
<td>5.7</td>
<td>22.9</td>
</tr>
</tbody>
</table>

The data indicate a similarity between the Istanbul and Sivas cases. As shown in the first column, around a half of advocates’ mothers went only to a primary school. Many of the fathers of advocates in Sivas(43%) also went just to primary school, but in the Istanbul case most fathers have had post-primary education.

Despite this, an interesting point appears in the last column, which represents parents without any proper education. The proportion of illiterate parents in both cities is similar, with between 6-7% of father and 18-23% of mother having no proper education.

4. Work Conditions

As noted before, Turkish advocates practise in private offices. It is illegal to set up large scale partnerships as in some European countries and the USA. Despite this, it is not rare to see a number of advocates working in the same office. Each advocate working in these offices is separately responsible for his or her own work. Though they may combine their working areas, they are not able to set up a partnership legally. The advantage of working together is that they will never turn away a client coming to the office, for, all clients with a legal problem will always find an available advocate to
deal with their case. Thus, by working together, they unify their abilities and skills to attract more clients.

In the previous chapter, the results relating to the conditions under which Istanbul advocates practise were presented. Here, those data are compared with those collected from Sivas.

Firstly the size of practices in Istanbul and Sivas will be compared.

Table-6-4-1, Percentages of Lawyers working in Advocacy Offices in Istanbul and Sivas; Comparison of Size of Practices

<table>
<thead>
<tr>
<th>No of Partners</th>
<th>1 (%)</th>
<th>2 (%)</th>
<th>3 (%)</th>
<th>4 (%)</th>
<th>5 (%)</th>
<th>More (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Istanbul (N=187)</td>
<td>47.6</td>
<td>19.8</td>
<td>17.1</td>
<td>5.9</td>
<td>3.2</td>
<td>6.4</td>
</tr>
<tr>
<td>Sivas (N=35)</td>
<td>74.3</td>
<td>22.9</td>
<td>2.1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

As shown in the table(6-4-1), most Sivas advocates(74%) work without any partner in the office, while 48% of the Istanbul advocates fall into the same category. 32% of Istanbul advocates work in offices with three or more partners, while only 2% of Sivas advocates work in offices with three partners, and more have more than three. This means that Sivas advocates usually work alone, only in a few cases preferring to work together with other colleagues. In the Istanbul case, though, there are more advocates working together, though the size of their practice varies. In both Istanbul and Sivas, however, advocates tend to practise either alone or in a partnership with one or two partners. This shows that in both cities, advocacy is performed on a very individualistic basis.

In conclusion, it might be said that the trend to work as a group is stronger in Istanbul, while, in general, the vast majority of advocates practise alone.
The next point is concerned with the issue of specialisation in the Turkish legal system. Advocates were asked if they were specialists in one of the areas of the law. The results are as follows:

Table-6-4-2, Comparison of Istanbul and Sivas Advocates According to Whether They Have a Specialist Area in the Law

<table>
<thead>
<tr>
<th>Cities Special Area</th>
<th>Istanbul (%)</th>
<th>Sivas (%)</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes(%)</td>
<td>63.6</td>
<td>45.7</td>
<td>135</td>
</tr>
<tr>
<td>No(%)</td>
<td>36.4</td>
<td>54.3</td>
<td>87</td>
</tr>
<tr>
<td>Column</td>
<td>187</td>
<td>35</td>
<td>N=222</td>
</tr>
<tr>
<td>Total</td>
<td>84.2</td>
<td>15.8</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Phi=0.13
P=0.04

It appears from this table(6-4-2) that there is a relation between geographical location and the tendency to specialisation. This relation is observed at the significance level of P=0.04 which is not very strong.

In fact, looking at the table(6-4-2), it is clear that nearly 64% of the Istanbul advocates have a specialist area in the law, while this goes down to 46% in the case of Sivas advocates. Clearly, while a considerable number of the Sivas advocates do not feel any need for specialising in a particular field of the law, the tendency to have such a specialist area increases amongst the Istanbul advocates. So, it can be said that having a specialist area in the law varies according to the locations of the advocates' practice. In other words, in a big city like Istanbul, advocates feel it necessary to have more detailed legal knowledge than those in smaller cities like Sivas.

One of the most popular issues on the Turkish legal agenda today is whether the parliament should allow advocates to set up large scale partnership. In the table(6-4-3)
below, a similarity can be seen between the Istanbul and Sivas advocates as far as this subject is concerned.

Table-6-4-3, Attitudes of Istanbul and Sivas Advocates Towards Large Scale Partnership.

<table>
<thead>
<tr>
<th>Partnership</th>
<th>Istanbul</th>
<th>Sivas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes(%)</td>
<td>95.5</td>
<td>100.0</td>
</tr>
<tr>
<td>No(%)</td>
<td>4.5</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

As seen from the above table(6-4-3), there is a small percentage(4.5%) of the Istanbul advocates who disagree with the view that large scale partnerships will help in the development of the Turkish advocacy system. The rest of the sample group in both Istanbul and Sivas agree that the change to allow such legal firms will affect the profession positively. It is clear that Turkish advocates are strongly in favour of setting up large scale partnership. Their decision is independent of the locations of their practice. This independence has been confirmed by the result obtained from the Chi square test between these two variables. In that, there was no significant relation between the cities and the attitudes of advocates at any level of significance. The results are: Phi=0.10 and P=0.33.

In order to understand the characteristics of legal work, advocates were also asked whether they agree that the legal profession was remunerated adequately. The results obtained from the Istanbul sample group were presented in the Chapter V. Here, the data from Istanbul and Sivas advocates are compared. The results are as follows.
Table 6-4-4, Comparison of Istanbul and Sivas Advocates According to their Opinion on Whether the Legal Profession is Adequately Remunerated

<table>
<thead>
<tr>
<th>Cities Adequate Remuneration</th>
<th>Istanbul (%)</th>
<th>Sivas (%)</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes(%)</td>
<td>44.9</td>
<td>37.1</td>
<td>97</td>
</tr>
<tr>
<td>No(%)</td>
<td>55.1</td>
<td>62.9</td>
<td>125</td>
</tr>
<tr>
<td>Column</td>
<td>187</td>
<td>35</td>
<td>N=222</td>
</tr>
<tr>
<td>Total</td>
<td>84.2</td>
<td>15.8</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Phi=0.05
P=0.39

Phi Value for this table (6-4-4) is 0.05 and the significance level is 0.39. It appears that there is no significant relationship between the above variables. In other words, the views of advocates are not affected by the regions where they work. This trend is quite clear in the table above in which there is nearly a balanced distribution between the figures within each cell.

In conclusion, in both cities, over half of all advocates agree that the legal profession is not adequately remunerated, while the others have the opposite view.

The next point was related to the degree of job satisfaction. Advocates were asked if they want to work in another job.

Table 6-4-5, Distribution of Istanbul and Sivas Advocates According to Whether They Want to Have a Different Job

<table>
<thead>
<tr>
<th>Cities Want Different Job</th>
<th>Istanbul (%)</th>
<th>Sivas (%)</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes(%)</td>
<td>35.3</td>
<td>22.9</td>
<td>74</td>
</tr>
<tr>
<td>No(%)</td>
<td>64.7</td>
<td>77.1</td>
<td>148</td>
</tr>
<tr>
<td>Column</td>
<td>187</td>
<td>35</td>
<td>N=222</td>
</tr>
<tr>
<td>Total</td>
<td>84.2</td>
<td>15.8</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Phi=0.09
P=0.15
About 35 per cent of Istanbul advocates want to have a different job, while the percentage of Sivas advocates expressing the same wish is nearly 23. This shows that Istanbul advocates are more discontented with their job than those in Sivas. However, this difference is not high enough to say that the job satisfaction level of Turkish advocates varies significantly from one city to another. This point confirms the results obtained from the cross table analysis. In that table, Phi value was 0.09 at the significance level of P=0.15. These figures indicate that the views of advocates are independent of the regions where they work. Most advocates in both cities seem to be happy with their job. This trend is clear in the table. Nearly 68 per cent of them declared that they did not want to work in a different job.

To sum up, it might be said that the trend towards working together is much stronger in Istanbul, while the Sivas advocates, generally, prefer working alone. The perceived need of advocates to have a specialist area in the law varies significantly according to the regions where they practise. The tendency amongst the Istanbul advocates to have an area of expertise is stronger than amongst those in Sivas. It has also been shown that the vast majority of Turkish advocates favour setting up large scale partnerships. Finally, majority of the advocates in both cities believe that advocacy is not remunerated very well in Turkey.

Although work conditions in Istanbul and Sivas are different in some respects, the opinions of advocates on those conditions seem to be broadly similar, e.g. with regard to the issues of partnership or remuneration.

5. The Bar Association and Activities in the Bars

In this section, the opinions of advocates on the subject of the structure of the Bar Associations and their activities will be compared. The issues of in what kind of activities they take part and whether there is a relation between the degrees of political involvement of the advocates in these two cities, will be the major concerns. First of all,
the activities organised by the Bars will looked at to see in which city advocates are most keen on joining these activities.

Table-6-5-1, Comparison of Attitudes of Advocates in Istanbul and Sivas Towards Meetings in the Bar Associations

<table>
<thead>
<tr>
<th>Cities Attending</th>
<th>Istanbul</th>
<th>Sivas</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes(%)</td>
<td>55.1</td>
<td>94.3</td>
<td>136</td>
</tr>
<tr>
<td>No(%)</td>
<td>44.9</td>
<td>5.7</td>
<td>86</td>
</tr>
<tr>
<td>Column</td>
<td>187</td>
<td>35</td>
<td>N=222</td>
</tr>
<tr>
<td>Total</td>
<td>84.2</td>
<td>15.8</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Phi=0.29
P=0.00001

There is a highly significant relationship between the attitudes of advocates and the regions where they work. The significance level of this relationship is P=0.00001.

About 94 per cent of the Sivas advocates say that they attend meetings in the Bar, while this goes down to 55% in the Istanbul case. This difference indicates that the regions in where advocates work are related to their decisions on the subject under consideration. In fact, there are only a few Sivas advocates who said that they did not attend meetings in the Bar. However, it must also be noted that this tendency of Sivas advocates to attend the Bar Activities may originate from the "weak activities" offered by the Sivas Bar Association. As mentioned before, most Sivas advocates stressed that there were not many activities organised by the Bar Association, and this might be one of the reasons why most Sivas advocate attend meetings. That is to say, Sivas advocates join in most activities of the Bar, but there are not many of these activities. Normally, there are more activities in the Istanbul Bar than in the Sivas Bar. Clearly, these activities attract the attention of more advocates in smaller cities than of those in bigger cities.
At this point, a closer look at the relation between these two cities seems to be useful. In order to do that, data will be presented to see which meetings the respondents attend most and which meetings attract less attention. It must be noted that the percentages in the following table relate only to those who declared that they attend meetings in the Bar Associations.

Table-6-5-2. Comparison of Attitudes of Istanbul and Sivas Advocates According to Which Meetings in the Bars They Attend

<table>
<thead>
<tr>
<th>Meetings</th>
<th>General Meeting</th>
<th>Anniversary</th>
<th>Symposium</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Responses (%)</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Istanbul N=187</td>
<td>19.6</td>
<td>80.4</td>
<td>72</td>
</tr>
<tr>
<td></td>
<td>Sivas N=35</td>
<td>8.8</td>
<td>91.2</td>
<td>47.1</td>
</tr>
</tbody>
</table>

With regard to general meetings, there is high attendance from both cities, but the Sivas advocates seem a little more keen on joining in these meetings. Only 28 per cent of the Istanbul advocates join in anniversary celebrations, compared with 53% for Sivas advocates. Roughly comparable numbers from the two cities attend symposia and other events. In short, this table(6-5-2) shows that the degree of involvement in activities organised by the Bar Associations seems slightly higher in the Sivas case than in Istanbul.

One of the issues was related to the opinions of the respondents about whether the Bar Associations performed a good service for their members. Data on this are presented below.
Table-6-5-3, Distribution of Istanbul and Sivas Advocates by their Opinions about whether Bar Associations Provide a Good Service for their Members.

<table>
<thead>
<tr>
<th>Cities</th>
<th>Istanbul</th>
<th>Sivas</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good Service</td>
<td>Yes</td>
<td>26.2</td>
<td>11.4</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>73.8</td>
<td>88.6</td>
</tr>
<tr>
<td>Column</td>
<td>187</td>
<td>35</td>
<td>N=222</td>
</tr>
<tr>
<td>Total</td>
<td>84.2</td>
<td>15.8</td>
<td>100.0</td>
</tr>
</tbody>
</table>

$\Phi=0.12$

$P=0.05$

There is a relation between the opinions of the advocates and the cities in which they practise. The attitudes of the Istanbul advocates towards the Bar Association differ significantly from these of their colleagues in Sivas. From the table (6-5-3) above, it can be said that the Sivas advocates believed more strongly than those in Istanbul that the "Bar does not provide a good service". However, considering the significance level of $P=0.05$, this relation is not very strong.

A second relevant question is related to the issue of reform of the Bar Associations. In examining this issue, it will be possible to see whether the demand for this reform varies according to regions.

Table-6-5-4, Distribution of Istanbul and Sivas Advocates by their Opinions on Whether Bar Associations Should be Reformed

<table>
<thead>
<tr>
<th>Cities</th>
<th>Istanbul</th>
<th>Sivas</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reform of the Bar</td>
<td>Yes</td>
<td>80.7</td>
<td>100.0</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>19.3</td>
<td>-</td>
</tr>
<tr>
<td>Column</td>
<td>187</td>
<td>35</td>
<td>N=222</td>
</tr>
<tr>
<td>Total</td>
<td>84.2</td>
<td>15.8</td>
<td>100.0</td>
</tr>
</tbody>
</table>

$t=2.88$

$P=0.004$
All Sivas advocates agree that the Bar Associations should be reformed, while nearly 19 per cent of the Istanbul advocates believe that such a reform is not necessary. The difference of 20 per cent between these two cities is substantial, a point that is verified by the outcome of t-test. The significance level for this observation is 0.004, which represents quite a strong relation.

Summing up, it can be said that the Sivas advocates want to reform the Bar Association much more strongly than those in Istanbul.

In the light of the analyses in this section, it can be said that Sivas advocates are more involved in the activities of the Bar Association than their colleagues in Istanbul. The second point suggests that the opinions of advocates on the subject of whether the Bar Association provides a good service, are related to the cities where they work. A similar result is observed looking at the relationship between the attitudes of the Istanbul and Sivas advocates towards the reform of the Bars. On this issue, the attitudes of advocates vary according to region.

6. Attitudes of Istanbul and Sivas Advocates Towards Professional Ethics

During the interview sessions, most respondents strongly emphasised the fact that the violation of professional ethics in Turkey today is not unusual. Both Turkish people and lawyers believe that unethical behaviour by lawyers has become an everyday occurrence. This is, then, an important point in understanding the conditions in which advocates practise. In this section, this subject will be focused upon in an attempt to see if there is a meaningful difference between the Istanbul and Sivas advocates.
Table 6-6-1, Distribution of Istanbul and Sivas Advocates by their Opinions on Whether Turkish Lawyers Act Ethically

<table>
<thead>
<tr>
<th>Cities</th>
<th>Istanbul</th>
<th>Sivas</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ethical Manner</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes(%)</td>
<td>22.5</td>
<td>40.0</td>
<td>56</td>
</tr>
<tr>
<td>No(%)</td>
<td>77.5</td>
<td>60.0</td>
<td>166</td>
</tr>
<tr>
<td>Column</td>
<td>187</td>
<td>35</td>
<td>N=222</td>
</tr>
<tr>
<td>Total</td>
<td>84.2</td>
<td>15.8</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Phi=0.14
P=0.02

The answers of the advocates in Istanbul and Sivas differ significantly. Indeed, 60 percent of the Sivas advocates believe that lawyers do not act in an ethical manner, while this percentage is 77.5 in the Istanbul case. Looking at the high percentage of these in Istanbul case who consider that advocates act unethically, it can be argued that Istanbul advocates face instances of violation of ethical rules in their professional life more often than those in Sivas. However, it is important to remember that most advocates in both regions felt that, in general, lawyers do not act in an ethical manner.

In conclusion, it is possible to say that the attitudes of advocates towards ethical problems are strongly related to regional conditions.

In the next section, the attitudes of the Istanbul and Sivas advocates towards political issues will be examined. The main concern will be on the issues such as the opinions of advocates about the advocacy system, the matters of legal protection, whether advocates can help to improve the economic, social and political situation of Turkey and so on.
7. Comparison of the Attitudes of Istanbul and Sivas Advocates With Regard To the Degree of Political Involvement

In this section, the main focus will be on the degree of political involvement of advocates, the relationship between the legal profession and the state, discussions on constitutional changes and the secular structure of the state. Other issues, useful for the understanding of the differences between the advocates working in Istanbul and Sivas, will also be addressed.

The attitudes of Istanbul advocates towards political, social and economic issues were examined in detail in Chapter III. The kinds of occupational problems they had in the advocacy system were also examined.

Here, therefore, I shall only present the comparison between the advocates in the cities of Istanbul and Sivas with regard to the problems that the legal profession is confronting today. In this way, it will be possible to see whether the attitudes of advocates towards those issues are affected by factors peculiar to the regions where they practise.

A table showing the problems identified by advocates from these two cities can be seen below.

<table>
<thead>
<tr>
<th>Problems</th>
<th>City</th>
<th>No(%)</th>
<th>Yes(%)</th>
<th>test</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unskilled Judges</td>
<td>Istanbul</td>
<td>46.5</td>
<td>53.5</td>
<td>Phi=.05</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>54.3</td>
<td>45.7</td>
<td>P=.39</td>
</tr>
<tr>
<td>Superiority of Prosecution</td>
<td>Istanbul</td>
<td>32.6</td>
<td>67.4</td>
<td>Phi=.09</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>20</td>
<td>80</td>
<td>P=.13</td>
</tr>
<tr>
<td>Not Enough Respect From People</td>
<td>Istanbul</td>
<td>36.4</td>
<td>63.6</td>
<td>Phi=.09</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>48.6</td>
<td>51.4</td>
<td>P=.13</td>
</tr>
<tr>
<td>Inadequate Laws</td>
<td>Istanbul</td>
<td>31.6</td>
<td>68.4</td>
<td>Phi=.02</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>28.6</td>
<td>71.4</td>
<td>P=.72</td>
</tr>
<tr>
<td>High Fees</td>
<td>Istanbul</td>
<td>68.8</td>
<td>31.2</td>
<td>Phi=.09</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>55.9</td>
<td>44.1</td>
<td>P=.14</td>
</tr>
</tbody>
</table>
Looking at the significance levels in the table (6-7-1), it can be said that there is no significant difference between advocates from these two cities as far as their opinions on professional problems are concerned. This means that the responses of advocates do not vary according to the regions where they work. They have similar occupational problems in these two cities. For example, the Sivas advocates agree as strongly as the Istanbul advocates that the prosecution is considered to be superior in relation to the defence. That is, prosecutors are seen as more important part in court than advocates. This idea and the others in the table (6-7-1), have equal support from both the Istanbul and the Sivas advocates. So, it is possible to conclude that all advocates in the sample groups have similar views on the problems confronting the Turkish legal profession.

The second point that will be raised in this section is related to the system of advocacy. The advocates were asked whether they found today's advocacy system to be adequate for the needs of Turkish people. The results are as follows.

<table>
<thead>
<tr>
<th>Cities Adequate System</th>
<th>Istanbul</th>
<th>Sivas</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes(%)</td>
<td>14.4</td>
<td>17.1</td>
<td>33</td>
</tr>
<tr>
<td>No(%)</td>
<td>85.6</td>
<td>82.9</td>
<td>189</td>
</tr>
<tr>
<td>Column</td>
<td>187</td>
<td>35</td>
<td>N=222</td>
</tr>
<tr>
<td>Total</td>
<td>84.2</td>
<td>15.8</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Phi=0.02
P=0.67

The relevant question in the questionnaires was "Is the current advocacy system, as it operates in Turkey today, adequate?". From the table (6-7-2) above, bearing in mind the significance level (P=0.67), it can be said that there is no significant difference between the regions. The percentage of the respondents who agree that today's system is
inadequate is nearly 86 in Istanbul and 83 in the case of Sivas. Thus, the opinions of advocates in both cities are similar. The conditions in the cities where they work had no real effect on their responses, as far as the relevant question is concerned. In short, most Turkish advocates agree that the Turkish advocacy system is not adequate for Turkish people as it operates in Turkey today, and this result is independent of the regional conditions of their practice.

In addition to this question, the respondents who said that this system was not adequate were also asked why it was inadequate.

The responses of the Istanbul and Sivas advocates were compared as follows:

Table-6-7-3, Distribution of Advocates From Istanbul and Sivas According to their Opinions on why the System of Advocacy is Inadequate.

<table>
<thead>
<tr>
<th>Reasons</th>
<th>City</th>
<th>No(%)</th>
<th>Yes(%)</th>
<th>test</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advocacy System is Attacked by</td>
<td>Istanbul</td>
<td>59</td>
<td>41</td>
<td>Phi=.15</td>
</tr>
<tr>
<td>The Executives/Government</td>
<td>Sivas</td>
<td>37.9</td>
<td>62.1</td>
<td>P=.03</td>
</tr>
<tr>
<td>There is no Freedom within the System</td>
<td>Istanbul</td>
<td>46.6</td>
<td>53.4</td>
<td>Phi=.06</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>37.9</td>
<td>62.1</td>
<td>P=.38</td>
</tr>
<tr>
<td>Bar is Under the Control of the Governments</td>
<td>Istanbul</td>
<td>30.4</td>
<td>69.6</td>
<td>Phi=.16</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>10.3</td>
<td>89.7</td>
<td>P=.02</td>
</tr>
<tr>
<td>There is a Lack of Understanding of The Legal System</td>
<td>Istanbul</td>
<td>57.1</td>
<td>42.9</td>
<td>Phi=.16</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>79.3</td>
<td>20.7</td>
<td>P=.02</td>
</tr>
<tr>
<td>Advocacy System is Completely Wrong</td>
<td>Istanbul</td>
<td>50.9</td>
<td>49.1</td>
<td>Phi=.30</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>93.1</td>
<td>6.9</td>
<td>P=00002</td>
</tr>
</tbody>
</table>

There are four significant relations in the table(6-7-3) above. One of them was observed at a high level of significance. The first relation refers to the opinions of advocates who say that the advocacy system is open to the attacks of the executive or the government or the state. The significance level of this relation is P=0.03. As shown in the first row, the Istanbul advocates have a slightly different view from those in Sivas. 59 per cent of
the Istanbul advocates say that the system is not open to governmental pressure, this percentage goes down to nearly 37% in the case of Sivas. So it can be said that the opinions of Turkish advocates on this issue are affected by regional variations.

The second significant relation is observed between Sivas and Istanbul advocates in relation to the claim that the Bar Associations are under the control of the government. This relation can be seen in the third row of the table(6-7-3). The level of significance is 0.02, while the Phi value is 0.16. In that row, 70% of Istanbul advocates and 90% of Sivas advocates stated that the Bars were under the control of the government. This means that the Sivas advocates believe much strongly than the Istanbul advocates that there is a political control of the Bars, though the vast majority of advocates in both cities believe that the Bar is under the control of the government.

Some of the respondents emphasised that Turkish people were not well aware of their rights. Most of them have little knowledge of the legal system of the country. This, of course, creates problems in terms of solving legal problems in courts. According to those respondents, everyone in Turkey today has a different understanding of the legal system.

Their views are shaped by their own interests, or they just simply do not understand that the legal system must be followed without exception. This situation affects the advocacy system negatively. For example, Turkish people do not seek an advocate's help unless they cannot solve the problem on their own. When they do contact the advocates, in many cases, it is too late to solve the problem quickly and easily. Therefore, today's advocacy system cannot operate properly and meet the needs of Turkish people. In the fourth row, the percentage of the respondents who shared this view is presented. From the cells in the table(6-7-3) above, 43% of the Istanbul, and 21% of Sivas respondents felt this was the case. This means that the Istanbul advocates are more than twice as likely as than the Sivas advocates to believe that the system of
law is not understood properly by most Turkish people. It is also the case (the third row of the table) that the Istanbul advocates differ from Sivas advocates in relation to the issue of control over the Bar Association, the latter being more likely to believe that the Associations are under the control of government.

The last significant difference between advocates from the two cities relates to the idea that the present advocacy system in Turkey is completely wrong. 49% of the Istanbul advocates, and just 7% of Sivas advocates hold this view. Clearly, Istanbul advocates are much more unhappy with the system that they are working in, with an extremely strong relation between the attitudes of advocates and the regions. The significance level for this relation is 0.00002. Phi value is 0.30.

In conclusion, looking at these five significant relations in the table(6-7-3), it might be said that, the views of the Istanbul advocates about why the legal system is not adequate for Turkey differ significantly from those in Sivas. The regional factors seem to have played an important role in giving rise to these views.

Following this issue, the respondents were also asked their opinions related to the protection offered by the law. The aim of this question was to discover whether Turkish people get appropriate legal protection and if not, why not. The following section compare the responses of the Istanbul and Sivas advocates and the similarities and dissimilarities between them.

<table>
<thead>
<tr>
<th>Cities</th>
<th>Law Protection</th>
<th>Istanbul</th>
<th>Sivas</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes(%)</td>
<td>5.3</td>
<td>-</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>No(%)</td>
<td>94.7</td>
<td>100</td>
<td>212</td>
<td>95.5</td>
</tr>
<tr>
<td>Total</td>
<td>187</td>
<td>35</td>
<td>N=222</td>
<td>100.0</td>
</tr>
</tbody>
</table>

$\chi^2 = -1.40$

$P=0.16$
As seen from the table(6-7-4), the opinions of advocates do not differ significantly from one city to another on this subject.

All the respondents(100%) in Sivas said that Turkish people do not receive adequate legal protection.

The results in Istanbul are very similar. It seems that there is a consensus between advocates as far as this issue is concerned. Clearly, according to the advocates, the present legal system does not operate as they believe it.

Table-6-7-5, Political Attitudes of Advocates Practising in Istanbul and Sivas; A Comparison Between These two Cities Advocates

<table>
<thead>
<tr>
<th>Political Involvement</th>
<th>City</th>
<th>No(%)</th>
<th>Yes(%)</th>
<th>test</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are you Interested in Politics?</td>
<td>Istanbul</td>
<td>39.6</td>
<td>60.4</td>
<td>Phi=0.06</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>31.4</td>
<td>68.6</td>
<td>P=0.36</td>
</tr>
<tr>
<td>Are you a Member of a Political Party?</td>
<td>Istanbul</td>
<td>73.3</td>
<td>26.7</td>
<td>Phi=0.03</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>68.6</td>
<td>31.4</td>
<td>P=0.56</td>
</tr>
<tr>
<td>Have you Held Office in a Political Party?</td>
<td>Istanbul</td>
<td>74.9</td>
<td>25.1</td>
<td>Phi=0.14</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>57.1</td>
<td>42.9</td>
<td>P=0.03</td>
</tr>
<tr>
<td>Have you Been a Candidate at any Election</td>
<td>Istanbul</td>
<td>86.6</td>
<td>13.4</td>
<td>Phi=0.15</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>71.4</td>
<td>28.6</td>
<td>P=0.02</td>
</tr>
<tr>
<td>Would you Say that in General Politics is an Important Way of Advancing in a Law Career?</td>
<td>Istanbul</td>
<td>77.4</td>
<td>22.6</td>
<td>Phi=0.002</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>77.1</td>
<td>22.9</td>
<td>P=.09</td>
</tr>
</tbody>
</table>

It appears from this table(6-7-5) that there are only two significant difference between the regions. The first relates to holding an office in a political party and the second to being a candidate in elections. The relationships between these and the regions in which advocates practise are observed at a low significance level. The level of significance for the first one is P=0.03. For the second relation, it is P=0.02.

The first relation shows advocates' behaviour varies by region. The Istanbul advocates are less likely to hold an office in a political party than the Sivas advocates. It may be
that advocates working in smaller places are more keen on holding an office in political parties than their counterparts in big cities.

As seen from the cells in the table (6-7-5), the percentage of the Istanbul advocates who did not hold an office in a political party is nearly 75, while this percentage is 57 in Sivas. This difference is statistically significant.

The second significant relation in the table (6-7-5) above shows that the willingness of advocates to be candidates in an election differs according to regions where they practise. This trend is clear in the fourth row of the table (6-7-5), where only 13% of the Istanbul advocates have stood as candidates in an election, while this percentage goes up to 29 in the Sivas case. The difference between these figures is significant.

As already mentioned, no significant regional differences have been found concerning the other three variables in the table (6-7-5). In relation to the level of interest in politics, the attitudes of advocates in the two cities are similar. There is a similar result in relation to the membership of a political party. Nearly 73% of the Istanbul advocates declared that they were not members of political parties, while this figure is 69% in the Sivas case. The difference between the figures is not significant, with most advocates in both cities not being members of political parties. Similarly, there is no difference in the opinions of advocates in the two cities on the issue of the advantages of active involvement in politics. The relevant question investigated whether an active involvement in politics is an important way of advancing in the law career. The results from the Istanbul and Sivas cases are the same with seventy-seven per cent of the advocates in both cities holding that such an involvement was not an important way of advancing in a legal career.

In conclusion, it must be stressed that advocates in both cities are interested in politics to a high degree. However, their activity level within political parties is different. The Sivas advocates seem to be more keen on participating in political activities and
holding offices in the administration of party organisations at a local or national level. There is also a similar difference between advocates from the two cities in terms of membership of a political party. In both cities, relatively few advocates are party members, with only one in three advocates being party members. However, most advocates were interested in political life, suggesting that while most advocates within the general sample group are interested in politics, far fewer are able to become actively involved in political issues.

One reason for this situation is that under the Turkish constitution, neither state employees nor workers working for the state nor military personnel nor judges and prosecutors can enrol in a political party. In other words, for many people, being a member of a political party is restricted by law. This may play a role in the decision of advocates who declared that they were not enrolled in a political party. It may be that, when they join a political party, they fear that they would lose some of their clients who may have different political views. In short, any tie with a political party may affect their job adversely. For these reasons, the results in the table indicate that the majority of advocates are interested in politics, while fewer are member of a political party.

It should also be noted that Turkish advocates do not see involvement in political issues as a way of improving their professional life. They believe that professional advancements are dependent on professional success rather than social or political contacts acquired through political involvement. This is held by approximately three-quarters of the sample in both Istanbul and Sivas.
8. Comparison of the Opinions of Istanbul and Sivas Advocates With Regard to How They can Help to Improve The Economic, Social and Political Situation of Turkey

The respondents in Istanbul and Sivas were asked if they believed that they could help to improve the economic, social and political situation of Turkey. In Chapter IV, the results concerning the Istanbul advocates were presented. In this section, I will compare the results obtained from both cities. The first point concerned whether they could help these developments or not. The respondents were given two choices, Yes and No. The results can be seen in the table (6-8-1) below.

Table 6-8-1, Opinions of Advocates In Istanbul and Sivas on Whether They can Help to Improve the Economic, Social and Political Situation

<table>
<thead>
<tr>
<th>Cities Help to Improve</th>
<th>Istanbul</th>
<th>Sivas</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes(%)</td>
<td>92.4</td>
<td>100</td>
<td>81</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>94.2</td>
</tr>
<tr>
<td>No(%)</td>
<td>7.6</td>
<td>-</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>5.8</td>
</tr>
<tr>
<td>Column</td>
<td>66</td>
<td>20</td>
<td>N=86</td>
</tr>
<tr>
<td>Total</td>
<td>76.7</td>
<td>23.3</td>
<td>100</td>
</tr>
</tbody>
</table>

$t=1.27$

$P=0.20$

There is no significant difference between the Istanbul and Sivas advocates with regard to their opinions on whether Turkish advocates can help to improve the economic, social and political situation of Turkey, i.e. the opinions of advocates were not related to regional factors. Nearly all advocates, from both cities, agreed that Turkish advocates can help to develop Turkish society.

Responses of advocates on how they could help the development of Turkish society were divided into five categories identified on the basis of the most often repeated answers collected during the interview sessions.
Table 6-8-2, The Ways in Which Turkish Advocates Can Help to Improve the Social, Economic, and Political Situation of Turkey; A Comparison Between Advocates From Two Cities.

<table>
<thead>
<tr>
<th>The Ways of Helping to Improve Social, Economic and Political Situation</th>
<th>City</th>
<th>Yes(%)</th>
<th>No(%)</th>
<th>test</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Bar Association must Become More Involved in Political Events</td>
<td>Istanbul</td>
<td>71.9</td>
<td>28.1</td>
<td>Phi=0.01</td>
</tr>
<tr>
<td>They May Play an Educative Role</td>
<td>Sivas</td>
<td>81.2</td>
<td>18.8</td>
<td>Phi=0.01</td>
</tr>
<tr>
<td>They May Help to Improve Human Rights</td>
<td>Istanbul</td>
<td>54.7</td>
<td>45.3</td>
<td>Phi=0.04</td>
</tr>
<tr>
<td>They must First Organise Themselves</td>
<td>Sivas</td>
<td>60</td>
<td>40</td>
<td>Phi=0.02</td>
</tr>
<tr>
<td>They Must Be More Interested in Politics</td>
<td>Istanbul</td>
<td>46.9</td>
<td>53.1</td>
<td>Phi=0.06</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>55</td>
<td>45</td>
<td>Phi=0.52</td>
</tr>
</tbody>
</table>

There is no significant regional variation. In the first row, 70 per cent of the respondents in Sivas say that the Bar Associations must become more involved in social and political events, and nearly the same percentage of the Istanbul advocates share their view. In the second row, eighty per cent of both the Istanbul and Sivas advocates agree that Turkish advocates can play a pioneering role in educating Turkish people in relation to economic, political and social issues. In the third row, between 40-45 per cent of all advocates believe that the contribution of advocates to the resolution of human rights issues is quite limited. This subject, they argue, is related to wider social and political problems. Around 40 per cent of advocates in both cities agree that they must organise themselves before being in a position to help to improve the situation of Turkey (fourth row). In the last row, their opinions on involvement in political life were presented. On average, 50 per cent of the advocates favour a more intensive involvement in political issues with little regional variation.
In conclusion, it must be stressed that the opinions of advocates on how they can contribute to the social, economic and political development of Turkey are not significantly related to regional factors.

9. Comparison of the Attitudes of Istanbul and Sivas Advocates With Regard to the Relationship Between The Legal Profession and The State

The relationship between the Turkish legal profession and the state is one of the main issues in this study. The opinions of the Istanbul advocates on this subject have been presented in previous chapters. The central concern here is to compare the opinions of the advocates working in two cities with different social, economic and political structures. I focus firstly on the main similarities and differences between the advocates from these two cities and secondly, on their explanations of why the relationship between the legal profession and the state is not good.

Table-6-9-1, Opinions of Advocates In Istanbul and Sivas on The Relations Between the Legal Profession and the State.

<table>
<thead>
<tr>
<th>Cities Relation To State</th>
<th>Istanbul</th>
<th>Sivas</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good(%)</td>
<td>18.2</td>
<td>10</td>
<td>14</td>
</tr>
<tr>
<td>Not Good(%)</td>
<td>81.8</td>
<td>90</td>
<td>72</td>
</tr>
<tr>
<td>Column</td>
<td>66</td>
<td>20</td>
<td>N=86</td>
</tr>
<tr>
<td>Total</td>
<td>76.7</td>
<td>23.3</td>
<td>100</td>
</tr>
</tbody>
</table>

Phi=0.09
P=0.38

The significance level in the table(6-9-1) is 0.38, which suggests no significant difference between the attitudes of Istanbul and Sivas advocates towards the relationship with the state.
Nearly 82 per cent of the Istanbul advocates and 90% of those in Sivas declared that the relationship between the profession and the state is not good. Therefore, overwhelming majority of both the Istanbul and Sivas advocates argue that the relationship between the legal profession and the Turkish state is not good.

A comparison of the results from these two cities with regard to the respondents' explanations of why this relation is not good can be made.

Table-6-9-2, Opinions of Istanbul and Sivas Advocates on Why The Relationship Between Legal Profession and The State is not Good

<table>
<thead>
<tr>
<th>Reasons</th>
<th>City</th>
<th>No(%)</th>
<th>Yes(%)</th>
<th>test</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is Because of Some Articles of the Constitution</td>
<td>Istanbul</td>
<td>55.8</td>
<td>44.2</td>
<td>Phi=0.14</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>72.2</td>
<td>27.8</td>
<td>P=0.2</td>
</tr>
<tr>
<td>State Offices are not Sufficiently Qualified</td>
<td>Istanbul</td>
<td>38.5</td>
<td>61.5</td>
<td>Phi=.019</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>61.1</td>
<td>38.9</td>
<td>P=0.09</td>
</tr>
<tr>
<td>The State itself Sometimes Act Illegally</td>
<td>Istanbul</td>
<td>25</td>
<td>75</td>
<td>Phi=.08</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>16.7</td>
<td>83.3</td>
<td>P=0.46</td>
</tr>
<tr>
<td>Bar Associations Must Be Free from Governmental Control</td>
<td>Istanbul</td>
<td>59.6</td>
<td>40.4</td>
<td>Phi=0.23</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>33.3</td>
<td>66.7</td>
<td>P=0.05</td>
</tr>
<tr>
<td>Advocates' Actions are Often Understandable</td>
<td>Istanbul</td>
<td>36.5</td>
<td>63.5</td>
<td>Phi=0.08</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>27.8</td>
<td>72.2</td>
<td>P=0.49</td>
</tr>
</tbody>
</table>

It appears from this table(6-9-2) that there is only one significant difference between the regions, which is related to the opinions of advocates on the subject of the independence of the Bar Association from Government, while many advocates claiming that the Bar Associations have been tied to the government in too many respects.

In the table(6-9-2), nearly 67 per cent of the Sivas advocates and 40% of those in Istanbul state that the Bars are too dependent on the government. This difference in the view of Sivas and Istanbul advocates is significant.
In the first row, it can be seen that 44% of Istanbul advocates and 28% of Sivas advocates said that the relationship with the state was not good because of some articles of the 1982 Constitution which restricted the activities of the Bar. However, this difference was not statistically significant.

There is a slightly different result in the second row, which produced a significance level of 0.09, approaching the level of a significant result. Over 61 per cent of Istanbul advocates agree that state officers are not well qualified, while only 39 per cent of the Sivas advocates share this idea. In this respect, the opinions of the advocates differ just a little, but not enough to be significant.

In the third row, similarly, there is no significant variation between regions. The advocates in both cities believed that the state itself act illegally. Some of its applications fall outside the legal rules and traditions. The percentage of the advocates who agreed with this view is 75% in Istanbul and 83% in Sivas.

The same can be said for the last row of the table(6-9-2), where there is no significant variation between the cities. 63% of Istanbul advocates and 72% of those in Sivas act illogically in their daily and professional lives, so their actions are not readily understandable.

In conclusion, it must be stressed that only in the case of the freedom of the Bar from government, the opinions of the advocates in Istanbul and Sivas significantly differ from each other. The two groups have similar views on other issues such as constitutional problems, the performance of state employees, the illegal actions of the state and the general behaviour of advocates. In general, advocates in both cities believe that the relationship between the legal profession and the state is not good because of some constitutional articles, illegal actions by the state itself, dependency of the Bar Associations on the government and some actions of the advocates towards their occupation and towards social and political events.
10. Comparison of the Attitudes of Istanbul and Sivas Advocates With Regard to the Effects of The 1982 Constitution on Professional Development

In this section, I shall present the results relating to the attitude of advocates in Istanbul and Sivas towards the impacts of the 1982 Constitution on the Turkish legal profession. In this way, it will be possible to see the differences or the similarities between the advocates in two cities. I will use the data obtained through both interviews and questionnaires.

In the first table (6-10-1), the opinions of the advocates on how the 1982 Constitution affected the legal profession are presented. Interviewees were offered two choices, "positively" and "negatively". This question was placed in both interviews and questionnaires.

The table (6-10-1) below has been compiled on the basis of the information obtained by questionnaires, while the second table (6-10-2) is based on the results of interview schedules.

Table 6-10-1, Opinions of Advocates In Istanbul and Sivas On How the 1982 Constitution Affectected The Legal Profession.

<table>
<thead>
<tr>
<th>Cities</th>
<th>Istanbul</th>
<th>Sivas</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positively(%)</td>
<td>22.3</td>
<td>20</td>
<td>30</td>
</tr>
<tr>
<td>Negatively(%)</td>
<td>77.7</td>
<td>80</td>
<td>106</td>
</tr>
<tr>
<td>Column</td>
<td>121</td>
<td>15</td>
<td>N=136</td>
</tr>
<tr>
<td>Total</td>
<td>89</td>
<td>11</td>
<td>100</td>
</tr>
</tbody>
</table>

Phi=0.01
P=0.83

There is a similarity between the advocates in Istanbul and Sivas. 78-80% of advocates in both cities agree that the 1982 Constitution affected the Turkish legal profession negatively. Thus, the attitudes of advocates do not differ by region.
The following table (6-10-2) provide data on the way in which advocates feel that the 1982 Constitution affected the profession.

Table-6-10-2, Opinions of Istanbul and Sivas Advocates on How the 1982 Constitution Affected The Legal Profession

<table>
<thead>
<tr>
<th>How did the Constitution Affect the Legal Profession</th>
<th>City</th>
<th>No(%)</th>
<th>Yes(%)</th>
<th>Test</th>
</tr>
</thead>
<tbody>
<tr>
<td>It Provided Governments With Extraordinary Powers</td>
<td>Istanbul</td>
<td>14.3</td>
<td>85.7</td>
<td>Phi=0.12</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>25</td>
<td>75</td>
<td>P=0.27</td>
</tr>
<tr>
<td>Advocates cannot Conduct Defence Properly</td>
<td>Istanbul</td>
<td>10.7</td>
<td>89.3</td>
<td>Phi=0.05</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>15</td>
<td>85</td>
<td>P=0.61</td>
</tr>
<tr>
<td>The Way of Appointing Legal Practitioners to the High Courts is Unsatisfactory</td>
<td>Istanbul</td>
<td>12.5</td>
<td>87.5</td>
<td>Phi=0.10</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>30</td>
<td>70</td>
<td>P=0.25</td>
</tr>
<tr>
<td>Bar Associations Became Much More Dependent on Governments</td>
<td>Istanbul</td>
<td>14.3</td>
<td>85.7</td>
<td>Phi=0.06</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>20</td>
<td>80</td>
<td>P=0.54</td>
</tr>
<tr>
<td>This Constitution does not Meet Needs of Turkish People</td>
<td>Istanbul</td>
<td>25</td>
<td>75</td>
<td>Phi=0.14</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>40</td>
<td>60</td>
<td>P=0.20</td>
</tr>
</tbody>
</table>

As in the previous table (6-10-1), there is no significant difference between advocates from the two cities in this table (6-10-2). In other words, advocates' views are not related to the regional factors.

The first row includes the distribution of advocates who thought that governments were given extraordinary powers by this Constitution, a view which is shared by nearly 86 per cent of the Istanbul advocates and 75 per cent of the Sivas advocates. The difference is not significant.

In the second row, the advocates agree that in the milieu created by this Constitution, advocates cannot perform their job properly. The results in both cities are again broadly similar, while 89.3% in Istanbul, and 85% in Sivas agreeing with this view.
In the third row, the advocates complain about the manner of appointment to the High Courts. They say that the relevant articles in the Constitution specify how these appointments must be made, but give too much jurisdiction to the executive in doing that. As a consequence, lawyers have become more dependent on the executive. This view is held by 87% of Istanbul advocates and 70% of Sivas advocates.

In the fourth row, again, the views of Istanbul and Sivas advocates are broadly similar, between 80-85% arguing that Bar Association have become too dependent on Governments. Nearly 75% of the Istanbul advocates and 60% of the Sivas advocates argue that the constitution does not meet the needs of the Turkish people. Again, this difference is not significant.

In conclusion, it can be said that the opinions of advocates on the subject of how the Constitution affected the Turkish legal profession negatively do not differ significantly between the two cities. The regions where they work appear to be unrelated to their opinions as far as this point is concerned. They generally agree on the major points. Firstly, they believe that by the 1982 Constitution, governments are provided with extraordinary powers. Secondly, the rights of defence advocates in courts are limited. Thirdly, the changes in the appointment of judges to high courts have given the executive too much power. Fourthly, the Bar Associations have become too dependent on the executive. Finally, there is general agreement that the Constitution does not meet the needs of the Turkish people.

11. Comparison of the Attitudes of Istanbul and Sivas Advocates With Regard to Turkey's Membership of EEC.

In April 1987, the Turkish government applied for Turkey to become a member of the European Community. Although this application has not received a positive reply yet, discussion on this issue is still one of the main issues on the political and social agenda of Turkey. Some Turkish people believe that getting closer to the European countries
will help to improve the Turkish economy and society. Others hold that a very close relation with Europe will affect Turkish culture and the region negatively. In their opinion, such integration will bring more negative than positive effects on the Turkish economy, too. So, they argue, Turkey must stay out of Europe as long as it can. In this respect, during the interview sessions, advocates in both cities were asked if they supported Turkish membership of the EEC and what they thought about its possible effects on the Turkish legal profession. The results are as follows:

Table-6-11-1, Opinions of Istanbul and Sivas Advocates On Turkey’s Membership of EEC

<table>
<thead>
<tr>
<th>Turkey’s Membership of EEC</th>
<th>City</th>
<th>No(%)</th>
<th>Yes(%)</th>
<th>test</th>
</tr>
</thead>
<tbody>
<tr>
<td>It will Affect Turkish Legal System Positively</td>
<td>Istanbul</td>
<td>10.6</td>
<td>89.4</td>
<td>Phi=0.32</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>40</td>
<td>60</td>
<td>P=0.002</td>
</tr>
<tr>
<td>Advocates will Earn More Money</td>
<td>Istanbul</td>
<td>93.9</td>
<td>6.1</td>
<td>Phi=0.26</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>75</td>
<td>25</td>
<td>P=0.01</td>
</tr>
<tr>
<td>It will Help to Close the Gap Between Turkish and European Legal Systems</td>
<td>Istanbul</td>
<td>13.6</td>
<td>86.4</td>
<td>Phi=0.13</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>25</td>
<td>75</td>
<td>P=0.22</td>
</tr>
<tr>
<td>Advocates will Get More Work in European Countries</td>
<td>Istanbul</td>
<td>19.7</td>
<td>80.3</td>
<td>Phi=0.33</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>55</td>
<td>45</td>
<td>P=0.002</td>
</tr>
<tr>
<td>Lawyers Are not Prepared for EEC Membership</td>
<td>Istanbul</td>
<td>71.2</td>
<td>28.8</td>
<td>Phi=0.05</td>
</tr>
<tr>
<td></td>
<td>Sivas</td>
<td>65</td>
<td>35</td>
<td>P=0.59</td>
</tr>
</tbody>
</table>

It appears that some of the opinions of the advocates within the sample group are related to regional factors. There are three significant differences between cities in the table(6-11-1). The first is related to whether advocates believe that membership will affect the legal profession positively or negatively. Eighty-nine per cent of the Istanbul advocates agree that the legal profession will be affected in a positive way, while this percentage goes down to 60% in the Sivas case. Clearly there is a considerable difference between advocates from two cities as far as this subject is considered. The significance level of this relation is 0.002. In short, it can be said that the Istanbul
advocates more likely believe than the Sivas advocates that EEC membership will affect the legal profession positively.

The second difference refers to whether the EEC membership will change the financial situation of advocates. Only 6 per cent of the Istanbul advocates expect a great change in their financial situation, while this figure goes up to 25% in Sivas. The Sivas advocates holding this view believe that the income level of advocates will increase with EEC membership. However, it is clear from the table(6-11-1) that the general view among advocates is that the unification with European systems will have no real effect on their financial situation. The difference between advocates from the two cities is significant at the level of $P=0.01$.

The third difference between the two cities concerns whether advocates will be able to get more legal work abroad with EEC membership. Eighty per cent of the Istanbul advocates agree that they will be able to get more legal work from European countries in the years following the EEC membership of Turkey, but only 45% of Sivas advocates held this view. In short, advocates' views on this subject are related to regional factors.

There is no significant relation in the third and in the last rows of the table(6-11-1) above. The opinions of advocates on whether EEC membership of Turkey will help to close the legal, economic and social gap between Europe and Turkey, are presented in the third row. While 86 per cent of the Istanbul advocates believe this to be the case, the percentage goes down to 75 in Sivas. There is no significant difference in the views of the Istanbul and Sivas advocates on this subject. Most believe that with EEC membership, Turkish people will learn more about the European political, social and legal systems.

In the last row, advocates' views on whether they are ready to join in the European Community are presented. 29 per cent of those in Istanbul and 35% in Sivas feel that
the profession is not adequately prepared for membership. This difference is not significant.

Consequently, it might be said that the opinions of advocates on EEC membership vary between the two cities. In particular, they differ on the issues of whether such a tie with Europe will affect the legal profession positively, whether advocates will earn more money than they are earning now, and whether they will get more work from European countries. With regard to the other issues in the table (6-11-1), the opinions of the Istanbul and Sivas advocates do not differ significantly.

The majority of the advocates in the third row stressed that EEC membership would help to close the economic, social and legal gap between Turkey and the European Countries. In the last row, they said that Turkish advocates and lawyers were well prepared for unification with the European legal, economic and political systems.

Istanbul advocates seem to be more keen on joining the European Community than those in Sivas.

12. Comparison of the Attitudes of Istanbul and Sivas Advocates With Regard to the Secular Structure of the State

As noted before, one of the main discussions on the political agenda of Turkey is concerned with the secular structure of the state. As an Islamic country, the secular state or society was not a familiar concept for Turkish people until the end of the First World War. With the establishment of the new state after the collapse of the Ottoman Empire, the founders of the state considered the separation of religious affairs from state affairs as a way of improving the social and economic situation of Turkey. However, the plan to shift the society from a traditional to an modern one was difficult to achieve. The governments of the transition period encountered many reactions coming from both the lower classes and the intellectuals. Reactionary movements generally argued that Islam was not only a religion but also a life style. It showed people not only how to organise
their personal lives, but also affected political sphere. As noted before, the traditional legal system, the Sheriat, was replaced with a European system. At the present time, there are two views dominating the discussion, each of which has historical links. The first group supports the new order, while the other claims that the political, social and legal orders during the Ottoman Period were the most suitable ones for an Islamic society. At present, the second movement, after a long silence during last seventy years, has begun to gain popularity among Turkish people.

In this respect, the views of advocates on the secular structure of the state were crucial. The aim of the relevant question in the interviews was to find out whether there is a tendency within the legal profession to favour a return to the former Islamic legal order. The opinions of the Istanbul advocates on this subject have already been presented. Here, a comparison will be made between the Istanbul and Sivas advocates. The first table (6-12-1) will reveal whether there is a difference between the Istanbul and Sivas advocates with regard to their opinions on the secular structure of the state.

Table-6-12-1, Opinions of Istanbul and Sivas Advocates On The Secular Structure of The State

<table>
<thead>
<tr>
<th>The Effects of the Discussion On Secular Structure of the State</th>
<th>City</th>
<th>No (%)</th>
<th>Yes (%)</th>
<th>Test</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is Dangerous for the Future of Turkish People</td>
<td>Istanbul 31.8</td>
<td>68.2</td>
<td>Phi=0.31</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sivas    -</td>
<td>100</td>
<td>P=0.003</td>
<td></td>
</tr>
<tr>
<td>Islam is Still Very Effective in Social Life</td>
<td>Istanbul 91.3</td>
<td>8.7</td>
<td>Phi=0.02</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sivas    90</td>
<td>10</td>
<td>P=0.88</td>
<td></td>
</tr>
<tr>
<td>It is Threatening the Future of Turkish Legal System</td>
<td>Istanbul 8.7</td>
<td>91.3</td>
<td>Phi=0.16</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sivas    20</td>
<td>80</td>
<td>P=0.28</td>
<td></td>
</tr>
<tr>
<td>It is Only a Political Discussion</td>
<td>Istanbul 100</td>
<td>-</td>
<td>Phi=0.12</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sivas    90</td>
<td>10</td>
<td>P=0.23</td>
<td></td>
</tr>
</tbody>
</table>

In the first row, on the question of whether the discussion over the secular structure of the state is dangerous for the future of the Turkish people, there is a highly significant
difference between advocates from the two cities. Nearly 68 per cent of the Istanbul advocates and all the Sivas advocates agreed that it was dangerous. They believe that the present discussion will endanger the future of the society if the responsible people do not take necessary precautions to stop those who are in favour of fundamentalism.

Thirty-two per cent of the Istanbul advocates had the opposite view, believing that such a discussion did not put the future of Turkish people at risk. In their opinion, the secular state is so firmly established that discussion cannot change the situation. Turkish people, in their view, are used to living with the modern institutions introduced during the republican period.

In short, advocates in the smaller city are much more sensitive to the anti secular political movements and the philosophy behind them, than are those in Istanbul.

There is no significant difference other than this in the views of advocates from the two cities.

In the second row, the data on opinions relating to the effectiveness of Islam within everyday life are presented. The results in Istanbul and Sivas are similar. Nearly 9 per cent of the Istanbul advocates agree that Islam is still effective within the society while the comparable figure is 10% in Sivas. The vast majority of advocates believe that Islam is not as effective within everyday life as it used to be.

In the third row, one can see whether the respondents agreed that the discussion on the secular state was a threat to the future of the legal profession. There is again a similarity between the two cities. 91 per cent of the Istanbul advocates and 80 per cent of the Sivas advocates agree that it is a threat to the future of the legal profession. The opinions of the advocates do not differ with regard to the regions where they practise.

In the last row, only 10 per cent of the Istanbul advocates say that this discussion is being made among only political parties rather than Turkish people. That is to say, it is
much more related to everyday political issues. There is no need to take it seriously. However, the vast majority of the respondents in Istanbul and Sivas do not agree with this approach. They believe that these discussions are not ordinary. They clearly undermine the foundations of the state. For these reasons, they are also dangerous for the future of the profession, for the state and for Turkish people.

In conclusion, there is only one significant difference between the opinions of advocates from the two cities.

Despite the reaction of the respondents to the Islamic movements, it was possible to see some elements of Islam which are still very much alive within Turkish society. At the beginning of this study, it was expected to find that some Islamic rules in the legal area were still followed by some Turkish people. Information on this point would provide a good criterion for understanding the differences between the two cities where this research was carried out. In this respect, the last question of the questionnaires and interview schedules was related to this point. Below, the results obtained from a comparison of the Istanbul and Sivas advocates are presented.

Table-6-12-2, Opinions of Advocates In Istanbul and Sivas On Whether Islamic Rules Still Play an Important Role in the Law

<table>
<thead>
<tr>
<th>Cities</th>
<th>Istanbul</th>
<th>Sivas</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Islamic Rules</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes(%)</td>
<td>12.1</td>
<td>100</td>
<td>28</td>
</tr>
<tr>
<td>No(%)</td>
<td>87.9</td>
<td>-</td>
<td>58</td>
</tr>
<tr>
<td>Column</td>
<td>66</td>
<td>20</td>
<td>N=86</td>
</tr>
<tr>
<td>Total</td>
<td>76.7</td>
<td>23.3</td>
<td>100</td>
</tr>
</tbody>
</table>

(Chi square or t value could not be calculated since one of the cells in the table included fewer than five cases.)
It seems from the above table (6-12-2) that there is a difference between the opinions of Istanbul and Sivas advocates on whether Islamic rules still play an important role in the law or not, even though this relation could not be tested statistically.

It is clear in the table (6-12-2) that the opinions of Istanbul advocates are considerably different from those in Sivas. In fact, 88 per cent of the Istanbul advocates agree that Islamic rules do not function in the law any more, while all of the respondents in Sivas have a completely opposite view. The Sivas advocates believe that Islamic rules are still effective amongst Turkish people. During the interview sessions, they said that some of their clients come to see them in order to claim their rights which were violated by their relatives who followed Islamic rules. They were usually female clients. Most cases of this type were related to the law of succession. Since Islam gives only one third of the total inheritance to female inheritors, male inheritors in rural areas prefer, if they can, to follow Islamic rules to get a bigger part of the inheritance. This usually happens behind closed doors because of the restrictions of modern laws on the application of the Sheriat laws. If a female whose rights are infringed resorts to an advocate, the event becomes known publicly. Otherwise, no one hears about it. Advocates in Sivas said that the number of complaints of this kind and of the cases they take to court is considerable. In their opinion, there is no doubt that Islamic rules are still applied at least in some parts of the region where they practise.

A similar application of the former legal rules appears in Family Law. The respondents stated that some people, especially those with strong religious belief, want to marry only according to the rules of Islam. In this type of marriage, there is no written evidence that binds the parties. Especially those males in rural areas who want to marry more than once prefer this, because if a divorce is necessary in the future, it will be easy for them to get it without giving their wife or wives anything acquired on the basis of marriage. If they marry under modern law, however, they will have to give the wife half of their belongings and provide her with maintenance payment.
Consequently, because of the specific social conditions of Sivas, Islamic rules are still effective in some areas of the law, while these rules seem to have lost their power in big cities.

13. Summary and Conclusions

In this chapter, the results obtained from Sivas are presented and compared with those from Istanbul. In this way, it was possible to see the differences and similarities between the advocates from the two cities. The main issues were the work conditions, the structure of the Bar Associations and the degree of political involvement.

On the basis of the information relating to the birthplaces of the respondents, it is revealed that Sivas, representing the rural area, is not one of the favoured cities among advocates, while Istanbul, representing developed cities, is the most attractive one. It is also revealed that a considerable number of Turkish advocates today are single and above the usual marriage age.

A comparison of the family structures of the two cities advocates justified the idea that advocacy profession is a favoured profession amongst those with a middle class or lower middle class background. There was no significant differentiation between the two cities advocates in this sense.

Despite the fact that it is not allowed by Turkish law to set up large scale partnerships, some advocates find a way to work together with a couple of friends in an office. It is observed that the trend to work as a group is stronger in Istanbul, while, in general, the vast majority of advocates practise alone in both cities. Besides, it is found that advocates in both cities are strongly in favour of setting up large scale partnership. In respect of the issue of specialisation, Istanbul advocates held a different view from Sivas advocates. In a big city like Istanbul, advocates fell necessary to have more detailed legal knowledge than those in smaller cities like Sivas. Similarly to the conclusion in previous chapter, nearly a little more of the half of the advocates in both
cities believed that advocacy profession is not adequately remunerated and despite this they declared that they did not want to have any other job.

It appeared that Sivas advocates are more keen to take a part in the Bar activities than those in Istanbul. This is explained by the fact that there were less activities in Sivas than in Istanbul. Sivas advocates also believed more strongly than those in Istanbul that the "Bar does not provide a good service" and must be reformed as soon as possible. This meant that advocates practising in rural area are more reactionary to the Bar actions than those in big cities.

It is discovered that Istanbul advocates faced instances of violation of ethical rules in their professional life more often than those in Sivas, though the vast majority of the advocates in both cities believed that lawyers did not act in an ethical manner.

With regard to the problems that the legal profession was confronting, there was no significant difference between the advocates from the two cities. The ideas expressed in this context had an equal support from both Istanbul and Sivas advocates. Similarly, they did not differ on the issue whether the current advocacy system was adequate. But they differed significantly on four issues in explaining the reasons why it was inadequate. Sivas advocates believed more strongly than those in Istanbul that the system as a whole was open to pressure of the executive, the Bars were under the control of the government and the advocacy system was completely wrong while the Istanbul advocates asserted more strongly than those in Sivas that the system of law was not understood properly by most Turkish people. In addition, the advocates believed at the same level that Turkish people did not receive a proper law protection.

The statistical analysis of the data revealed that the Sivas advocates were much more keen on holding an office in a political party and being a candidate in political elections than the Istanbul advocates. In other words, all advocates within sample were highly interested in politics, but Sivas advocates were more interested than those in Istanbul.
There was no significant difference between Istanbul and Sivas advocates with regard to their opinions on whether Turkish advocates could help to improve the economic social and political situation of Turkey. They all believed that Turkish advocates were able to play an important role in the development process of the Turkish society. It should also be added that the ways which they recommended to contribute to the development of Turkey were not significantly related to regional factors.

The advocates from two cities did not also differ with regard to their opinions about the relationship between the state and the profession. Nearly all of them believed that this relationship was not good. They differ, however, on only one of the reasons why it was not good. In this context, the Sivas advocates believed more strongly than those in Istanbul that the Bar Associations are under the control of the State or the Government.

The advocates from both two cities also believed that the 1982 Constitution affected the Turkish legal profession negatively. Similarly, their opinions on how it affected the legal profession negatively did not change according to regional factors. In general, they all pointed out that by the 1982 Constitution, governments were provided with extraordinary powers, the right to defence in courts was limited, the changes in the appointment of judges to high courts put the judges in a worse position in the eyes of advocates than before, the Bar Associations became much more dependent on government and the Constitution was not realistic at all.

However, there were three points on which advocates significantly differ with regard to the issue of EEC membership of Turkey. Firstly, Istanbul advocates believed more strongly than Sivas advocates that the EEC membership would affect legal profession positively. Secondly, the trend relating to the fact that there would be no change in the income of advocates was much weaker among the Sivas advocates. Thirdly, in a similar way, most Sivas advocates believed that this membership would not help them in
getting more work abroad. As a result, it became clear that Istanbul advocates were more keen on joining in the European Community than those in Sivas.

There was only one significant relationship with regard to the secular characteristic of the state. It appeared that the advocates working in a rural area were more sensitive to the anti-secular political movements and the philosophy behind them, than those in Istanbul. There was also a consensus on the fact that the recent discussions on secularisation were a threat to the future of the state and the legal profession. One of important observation pointed to the fact that Islamic rules were still effective in some areas of the law in Sivas, while these rules lost their power in big cities like Istanbul.
1. General Conclusion

At the beginning of this study, the mainstream theories in the sociology of the professions were analysed and criticised. It was argued that their contribution to the understanding of the situation in developing countries is quite limited. Therefore, a new and more comprehensive theoretical framework is needed.

In the first chapter, a short history of the functionalist view of professionalization and more recent theories such as Larson's and Abbots', was provided. The classical views were valuable in the sense that they explained the process of professionalization in the context of broader process of economic and cultural development. However, their concentration was mostly on the dysfunctioned outcomes of the industrialisation process and how these dysfunctions could be "cured", rather than on the structure of professional groups in developing countries where the process of industrialisation has taken a different form. Marxist and neo-Marxist theorists of the professions and the theorists of deprofessionalization, proletarianization and corporatization argued that with the expansion of beaurocratisation and commercialism, relative professional advantages would be lost and, in the end, professional organisations would be undermined by the growing central control of the state. In other words, professionals would be highly educated servants of the state. Marxist critiques on professionalization were undoubtedly relevant to recent developments in the western capitalist system. However, clearly, the underlying idea in these predictions, is not directly related to the future of professions in developing countries. Neither is it produced with an aim to the professionalization process within the context of the process of modernisation in those countries. Additionally, it is true that the system of capitalism has developed and is perceived differently in developing countries. The most important contribution of the Marxist theorists was their emphasis on the non-monopolistic character of the
professions. Drawing on this viewpoint, it was hypothesised in the current study that *Turkish legal profession did not establish a monopoly.*

The second hypothesis guiding this study referred to the relationship between the state and the professions. It was suggested that the Turkish legal profession did not set up monopoly *because the Turkish state could not be considered as separated from the professions.* In order to prepare the theoretical ground for the discussion of this hypothesis, the theories of the state in both sociology and the sociology of the professions were examined. It was argued that the discussion on the state in the sociology of the professions had its root in a wider discussion within sociology. Foucault's concept of governmentality, which suggested that there is no theoretical distinction between the state and the activities of the government or what he called "governmentality", was also examined. It is noted that recent changes and unanticipated developments in socialist and, to lesser extent, in capitalist societies have indicated that the traditional image of a strong state is being replaced by a much more flexible one, whose duties are confined only to providing a framework for social actions rather than controlling them directly. The future of professions, therefore, is an issue closely related to the development of the state. This idea became clearer in the context of developing countries when the main characteristics of the historical development of the Turkish state were presented.

Any research in an area in which there is no previous study should start with a brief historical overview. Therefore, the focus of the second chapter was on the historical development of the Turkish legal profession. Special attention was paid to the political and social changes during the Ottoman Empire. It was argued that in the period of the Ottoman Empire, religion and its practitioners in the courts played a crucial role in solving legal problems as well as other issues in social life. The religious legal representatives held a great deal of power throughout the history of the Empire. The centralisation of the administration was the main reason why they successfully
maintained this power for such a long time. Towards the end of the Empire, a number of important reforms took place, aimed at closing the technological gap between the Ottomans and the European countries. It was argued that these reforms resulted in a dichotomy in the legal system, introducing a significant number of western laws into a system whose principles were drawn from religious rules. At the end of the nineteenth century, the system of Sheriat was weakened by the new legal rules imported from Europe. During the Ottoman Period, there were five elements of the legal system, the Sultan, the Sheyhulislam, the Kazasker, the Kadi and the Mufti. The most important agent of the Ottoman legal system was the Kadi. The Kadis' courts were replaced with secular ones in the nineteenth century. In this century, especially in commercial cases, the influence of the secular judges and advocates began to increase with the acceptance of western codes in related areas. It was a westernization or modernisation process that would end with the establishment of the Turkish republic in 1923. As a result of all these changes and the abolition of a system based on Islam in the period of Republic, the dichotomy in the legal system disappeared.

With the establishment of modern Turkey in 1923, the dominance of religion over legal activities, which had lasted for centuries, was broken and the system was transformed into a new one based mainly on laws from Italy, Germany and Switzerland. Many new legal institutions were set up, initiating a new period established on the principles of the Constitution. The first written constitution, accepted in 1924, ended the religious legal system and outlined the borders of a new legal order. But it was an order which experienced increasing problems, which the constitutions of 1961 and 1982 were, in part, framed to eliminate. The legal system was, on both occasions, re-organised according to the political views of the dominant groups of the time. In 1982, the new constitutional arrangements were based on more conservative social and political views, and it is generally agreed that the 1961 Constitution provided legal practitioners with a much more liberal atmosphere than did the 1982 Constitution.
The Constitutional Court was established in 1961 with a duty to monitor the constitutionality of the laws. The High Court of Appeal is one of the four supreme courts in Turkey and has the duty of reviewing decisions and judgements given by the courts of justice. The other supreme court is the Council of the State, created for reviewing decisions and judgements given by administrative courts. The decisions reached in both courts are absolutely binding on lower courts. There is also another high court called The Audit Court established with a duty to audit all the accounts relating to revenues, expenditures and the property of government departments. The Military Court of Appeal is the one where all decisions reached in lower Military Courts can be appealed.

In Turkey today, there are three kinds of lower courts having their own special subdivisions: the General Courts(Adliye Mahkemeleri), the Administrative Court(Idare Mahkemeleri), and the Military Courts. There is also a special court established to resolve jurisdictional conflicts among lower courts.

The new secular legal system identified three types of practitioners; advocates, judges, and prosecutors. Advocates are most involved in market relations, for the only way to perform their work is to open an office in a marketplace, where there is intensive competition. Judges and prosecutors do not work in the marketplace and in order to explore the characteristics of the Turkish legal profession and the conditions in which practitioners work on an everyday basis, this study has focused on the work of Turkish advocates.

In the fourth chapter, the general characteristics of the advocacy system were described on the basis of the results obtained from a survey carried out in Istanbul and Sivas. The data revealed that the profession was male dominated in Turkey, being performed by young lawyers who were very keen on working in big cities like Istanbul rather than smaller ones like Sivas. Clearly, the effect of the rapid urbanisation process on this
trend was vital. Most of the advocates' families came to Istanbul from other cities in Anatolia. Their fathers were only educated to high school level while the vast majority of the mothers left school after primary education. Most fathers were state officers or workers in state or privately owned factories, or involved in small business, while only a few mothers worked outside the home. On this basis, it was concluded that advocates' families are traditional Turkish families and Turkish advocates came from the middle or lower classes of society. In other words, advocacy is not a profession which attract people from the upper class. The information on the social background of advocates also indicated that advocacy is open to everyone from any stratum of the society.

The vast majority of respondents pointed out that the students in law faculties are not able to get a good quality legal training under the current educational system, for training is based on theory rather than practice. Professional institutions like the Bars also fail to provide a satisfactory occupational education. The period of apprenticeship is seen as only a formality by the trainees and the observants. It was strongly emphasised that the educational system as a whole needed urgent reform. The data also indicated that Turkish advocates mainly work alone, or in a small partnership of two or three advocates. Advocates' offices were generally small and suitable only for one advocate and one non-lawyer assistant doing a secretarial job, cleaning or both. Most advocates declared that they were specialists in one area of the law, but they become specialist by drawing on their own experience in the practice, because there was no proper education that could provide them with specialist training. The information presented in this chapter indicated that advocates spent most of their time interviewing clients and attending court hearings. Contrary to the expectations, a considerable number of respondents declared that they were happy with the money they were making from their job. Nearly one in three of the sample group worked in another job while more than one in three wanted to work in different job. The vast majority of the respondents believed that the Bar Associations were not producing a satisfactory
service for their members and that they needed urgent reform. However, there was a strong tendency among Turkish advocates to play active role in the administrative units of the Bar. The vast majority of advocates emphasised that Turkish lawyers did not act ethically. These data pointed to the seriousness of the crisis that the legal system has undergone in recent years, and to the fact that professional organisations had little effect in terms of applying ethical rules or controlling the attitudes of their members. Respondents pointed to five major problems that the Turkish system is confronting today. The first is that the judges are not knowledgeable enough about the law and the philosophy behind it. The second stressed that the prosecution was perceived as more valuable than the defence in courts. The third was about the negative image of advocates among the Turkish people. The fourth was related to the appropriateness of the existing laws to Turkish society. Laws were thought to be generally inadequate. The final point indicated that the fees were very high.

In this context, the degree of political involvement of advocates was also investigated. It was usually stressed that the problems within the legal profession could only be solved if advocates participated in political activities much more effectively than they do at present. Therefore, advocates believed that a close relationship between the legal profession and politics was essential to changing the existing order. However, few advocates were members of political parties. This was explained on the basis of specific historical features of the country. Only fifteen years ago, there was a military take-over which prevented all political activities of all social and political institutions for three years. Due to this, not only legal but all other institutions were forced to cut their ties with political life. This prevented advocates from taking part in political activities for a couple of years. Therefore, data on party membership did not provide a reliable guide to their political interest. It was suggested that the level of political interest of advocates could be determined by taking account of other measures such as their opinions on the
social, economic and political problems of the country and especially those concerned with the Constitution.

In the fifth chapter, the attitude of Istanbul advocates towards the social, political and economic problems of the country were analysed in more detail. All advocates believed that lawyers could help to improve the economic, social and political situation of Turkey. Believing that they were capable of playing a pioneering role, they wanted to be an active element in the development process. However, there was no shared view on how they could achieve this.

One of the central concerns in this respect was to identify the relationship between the state and the legal profession. A majority of advocates believed that the relationship between the state and the legal profession was not good, asserting that the state tried to control the legal profession and the advocacy system too much. Some articles in the 1982 Constitution allowed the state to bring undue pressure to bear over professional life. In addition, they found the state officers insufficiently qualified and educated. Most also believed that the state itself acted illegally. Due to the Constitutional Articles, Bars were made to comply with governmental pressures. Most respondents also held that advocates and other legal professionals must improve their organisation. It was a common view that thought the state tried to control the legal profession and the advocacy system, there was an interdependency between the state and the legal professions. While the state is able to affect their future, lawyers believed that they may play an active role in the state affairs.

The vast majority of Turkish advocates declared that the 1982 Constitution negatively affected the development of the legal profession, believing that it provided governments with extraordinary powers and prevented advocates from defending clients properly, reduced the security of judges and prosecutors, since the rules of their transfer were changed greatly and tied much more to governmental initiatives, and Bars became
much more dependent on the governments. Therefore, the present Constitution was described as an undemocratic and "Only If" Constitution, and most advocates wanted to see it replaced with a new one or, at least, some of its articles changed as soon as possible. A new Constitution, in their opinion, should be designed on the basis of individual and social freedoms and the state must be subject to greater legal control.

The vast majority of advocates believed that if Turkey joined the EEC, this would have a positive effect on the legal profession and enable them to earn much more money than they are doing now.

With regard to the recent religious movements and their possible effects on the legal profession, it is generally believed that the recent Islamic movements were dangerous for the future of the country. However, most stressed that the idea of secularism was well established and, therefore, there was no need to be afraid of anti secularists movements. Fundamentalists, in the majority view, have always been on the political arena of Turkey, but, they have never gained significant support from the majority of the people. In addition, most Istanbul advocates believed that Islamic legal rules no longer play an important role in any area of the law.

On the basis of all the above points, it was concluded that Turkish advocates want to be more active in political, cultural and social events. While they want to create a more highly respected profession through the reorganisation of the educational system in both universities and profession, they also want to play their parts in the development process of the country. In short, while the government tries to control them, Turkish lawyers seek to affect the governmental powers. It was concluded that advocates were one of the groups that helped to shape the modern Turkish state, rather than a social formation separated from the state.

The final chapter considered data on the differences and the similarities between the Istanbul and Sivas advocates, or big cities and smaller cities advocates.
considered the most attractive city in which to work as an advocate. There was no significant difference between the two cities in the sense that, in both, advocacy was a middle class or lower middle class job. It was also observed that the trend to work in a partnership was stronger in Istanbul than in Sivas, while, in general, the vast majority of advocates practise alone in both cities. Istanbul advocates felt it necessary to have more detailed legal knowledge than those in Sivas. Sivas advocates more strongly believed that the Bar did not provide a good service and had to be reformed as soon as possible. They also were more keen on attending Bar activities than those in Istanbul. Although the vast majority of advocates in both cities believed that lawyers did not act in an ethical manner, Istanbul advocates encountered more instances of violation of ethical rules in their professional life than did those in Sivas. With regard to the problems that the legal profession was perceived on confronting, there was no significant difference between advocates from two cities. The statistical analysis of the data revealed that Sivas advocates were much more keen on holding an office in a political party and being a candidate in political elections than the Istanbul advocates. However, no significant difference was found between the Istanbul and Sivas advocates with regard to their opinions on whether Turkish advocates could help to improve the economic social and political situation of Turkey. Neither did they differ with regard to their opinions about the relationship between the state and the profession. In both cases, a majority believed that this relationship was not good. Another common point concerned the 1982 Constitution, while a majority in both cities holding that it affected the legal profession negatively. However, the Istanbul advocates were more keen to join in the European Community than those in Sivas. Although there was a consensus on the fact that the recent discussions on the secularisation were a threat to the future of the state and the legal profession, advocates working in the smaller city were much more sensitive to and critical of these movements and the philosophy behind them, than were those in Istanbul. It also emerged that Islamic rules were still effective in some areas of the law in Sivas, while these rules had lost their power in big cities like Istanbul.
In conclusion, this study has indicated that Turkish advocates are practising in a capitalist system which has some peculiar features. It is a system in which a traditional industrial revolution was not observed but its main outcomes, such as, mechanical and electronic machines and more recently, computerised systems of production imported from western countries, along with the necessary basic scientific knowledge that makes it possible to create such a technology can be observed. There are a great number of medium-sized and small firms. As a result of liberalisation of economy, cartels and trusts which hold, in many western industries, market control creating monopolistic conditions in the labour market increased their power in Turkish economy. There is a system of capitalism and its basic characteristics such as free enterprise, private property, freedom of contract and, more recently, a more liberal understanding of the economy, have been embraced by the vast majority of the people. The dominance of governmental intervention in economic and professional life has been regarded by many members of the private sector as a barrier to Turkish economic development. The potential dangers of government-controlled activities that threaten the competitive character of the economy is often emphasised. What most people wish to see is a system of liberal capitalism in which all entrepreneurs work independently in accordance with the principle of "l'assez-faire". In addition, without passing through a period of "great transformation", these rapid changes in the forms of production gave rise to social problems that have had serious effects particularly on urban life which offered a wide variety of economic and social facilities for the people that had lived in rural areas. In particular, big cities became a setting in which two different cultures, two different codes of morality, are compounded. These developments greatly complicated the system of legal norms, created a heterogeneous clientele structure which left Turkish legal practitioners with a wider area of work which spread over various field of the law, making advocacy an increasingly lucrative practice. This, however, increasingly involved advocates in market relations. As a main source of legal regulation of market relations, the legal system and its practitioners play a crucial role
in the system of capitalism. In Turkey today, the marketplace in which advocates are practising might be characterised by some elements of both modern capitalism and a more traditional economic system based largely on agricultural relations. Advocates are, thus, involved in regulating occupational relations within a capitalist market, creating ethical codes that regulate behaviour among members of the profession and, more important, persuading others that advocates are performing a socially useful job. Within the rules of the game in the market, advocates seek to take control of their practice, determining the main organising principles of their professional work. As pointed out by Larson, they are subject, in a broad sense, to the changes in the marketplace but, at the same time, they seek to establish and maintain a certain kind and degree of control over their work, ensuring each individual's interest and a more prosperous future for the profession as a whole.
### Administrative Organisation of Court of Appeal.

<table>
<thead>
<tr>
<th>First President</th>
<th>First Deputy President</th>
<th>Chief Public Prosecutor</th>
<th>Deputy Chief Public Prosecutor</th>
<th>Head of Civil Department</th>
<th>Head of Criminal Department</th>
<th>Member</th>
<th>Other Personnel</th>
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### Administrative Organisation of Council of State.

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<th>Head of Department</th>
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<th>Provisional Reporter of The Constitutional Court</th>
<th>Other Personnel</th>
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Appendix(I)
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<th>Out-Going Documents</th>
<th>Turns over to next year</th>
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Appendix (II)
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### The Number of the Cases Under Investigation of Administrative Department of the Council of State.

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Source: Ministry of Justice, The Statistics of Justice. Appendix(III)
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Source: Ministry of Justice, The Statistics of Justice

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*1: Acquittal  
*2: Sentence  
*3: Lack of Jurisdiction

Appendix(V)
Appendix (VI)

The Number of Judgement Reached in Civil Courts

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<th>Total of Country</th>
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Appendix (VIII)

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Source: Ministry of Justice, The Statistics of Justice. Appendix(IX)
### The Workload of Istanbul Bar Association by Years

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Appendix IX
Difficulties In the Field

One of the most important difficulties encountered at the beginning of the research was related to methodological issues. Since there was no previous academic study focusing on the general structure of the Turkish legal profession, the primary objective of the present research was to produce such information. However, such a task was risky in two respects. Firstly, while trying to gather general information, the scope of the study might have been much broader than it needed to be. Secondly, the research could have ended up purely descriptive. For these reasons, special attention had to be paid to the methodological framework and the techniques to be employed had to be chosen very carefully. There were two alternative techniques; the interview and the questionnaire. Each of them had their own methodological implications which might have affected the validity and the reliability of the research. The first alternative, the interview technique, was the most reliable and productive one, since it made it possible to ask open-ended questions. However, it required the interviewees to give up a lot of time and was therefore time-consuming for both the interviewer and interviewees. The interviewer was able to talk to only four or, at the most, five respondents each day. Moreover, the interview technique was not adequate for obtaining a wide range of numerical data, since a large group of sampling was required for collecting this type of data. Numerical data might be provided by the use of a questionnaire. But in order to describe the general structure of the area, it was necessary to obtain both numerical and non-numerical data. The best way to achieve this was to employ both the interview and questionnaire techniques. Bearing the advantages and disadvantages of both techniques in mind, it was planned that the data collected by means of interviews would establish the basis of the research, while the questionnaires would be used to test and support the results of the interviews. This means that in the process of data collecting, priority was given to the interview technique, while the questionnaire was of secondary importance. It should also be noted that my personal observations obtained through the interview
sessions and various meetings organised by the Istanbul Bar Association were referred to where they were needed to support the results of the interviews.

In carrying out the interviews, the most important issue was related to the selection of respondents. In order to find advocates who had time for an interview, the technique of snowball was used. In this technique, after an interview session, the interviewer asks the respondent to nominate or suggest one or two of his or her colleagues who may contribute to the survey. This helps to create a trusting atmosphere between the interviewees and interviewers, because the interviewers are always sent by a friend of the respondent. However, this technique did not work very effectively in practice. For example, the respondents who were recommended by a young advocate were also usually young. Or the respondents who had sympathy for one of the political positions nominated those who shared the same political opinions. Therefore there was a danger that the sample group would be composed of only young or only old respondents or those sharing the same political views. To overcome this problem, the interviewing part of the research was divided into stages and at each stage, a different reference list was created and followed. By doing this, it became possible to constitute a mixed and more representative group.

To test the suitability and effectiveness of the interview schedule and of the questionnaires, pilot research was carried out in Istanbul in March 1992. During this research, nearly twenty advocates working in two different quarters of Istanbul were interviewed. Each of these areas had its own court building and, as is the case in the whole country, the advocates' offices (or bureau) were situated around these courts.

The first area, called Beyoğlu, is known as a commercial and entertainment centre and, for this reason, only rich advocates or those with a nation-wide reputation are able to rent or buy an office there. The second area was Avciilar, a working class area on the periphery of Istanbul. The commercial life in this area was noticeably poor. Therefore,
the Beyoğlu respondents represent rich advocates, while those in Avcılar symbolize the group with a lower income. What lay behind this was an assumption that the advocates working in the relatively poor area would express different feelings, opinions and expectations from those in the rich area, and in this way, a much broader picture of the system in which advocates work would be drawn. However, it should be noted that it is always possible to find other places with features similar to Beyoğlu or Avcılar in a metropolis like Istanbul in where there are nearly twenty court buildings. It is also possible to find both rich and poor advocates at the same time within any of these areas.

The question of why these areas were chosen, or why the research had to be carried out on the basis of location rather than other criteria, such as for instance, the type of practice, needs more explanation. It was, in fact, possible to conduct comparative research by classifying the Istanbul advocates according to the kind of practice, i.e. advocates working in their own office or together with others or in private business, or in public offices. Such research would have been much more detailed but, since there was no previous research on the structure of the advocacy system, it was felt more appropriate for my research to discover the general rather than the particular.

Theoretically, a classification within this group was also possible. For example, there were advocates working only for foreign or only for large national companies. There were also others who had close relations with interest groups like trade unions, political parties and business circles. However, in the light of the information collected from advocates with long experience and those commissioned in the branches of the Istanbul Bar Association, it was understood to be practically impossible to determine which advocate was working for which company or in what way they earned money. Although it was widely known that most self-employed advocates were engaged in more than one job, there was no official document that could prove this.
The first and the best known reason why the advocates did not want to talk about who or which company they were working for was related to the taxation system. Under this system, as long as an advocate did not declare his business connections to the state taxation office, he could avoid paying tax. In addition, since all jobs of this kind were part-time, the transfer from one company to another was easy and common. So the advocates considered company-work as a temporary engagement and kept it as a secret between themselves and the company. Given the above, the only workable criterion for choosing the sample group was the location. By conducting the interviews on the basis of location, it became possible to reach various types of practitioners, rich/poor, young/old, experienced/inexperienced, leftist/rightist, fundamentalist/progressives, liberal/socialist, etc.

Another difficulty of the research concerned the time. During the interview sessions, most advocates were very keen to speak about social, economic, cultural and political problems, and proposing solutions to them in a very detailed manner. When the subject was sensitive, e.g. addressing political issues, they became much more cautious, but when it came to the general social and economic issues, they wanted to say as much as possible. While doing this, however, they sometimes missed the actual content of the question. During both the pilot and the main research the respondents were never interrupted but, on the contrary, encouraged to say more. As a result, the pilot research lasted one month and the main research more than two months.

The transportation network in Istanbul was another problem experienced by the researcher. Especially in the rush hour the main roads were extremely busy. It took sometimes a couple of hours to get from one area to the other. Because of this, the areas where the main research was carried out were chosen so that they were close to one another.
The analysis of the professional organisation has been of special importance in research tradition on the legal profession. Therefore, the Istanbul Bar Association was the starting point of the present research. The first time I went to the Bar, the conditions were extremely discouraging. For example, although there was a library that contained journals, books, magazines and other documents, they were all unsystematically classified and were in a very bad condition. My primary aim in analysing the documents in the Bar Association was to get an idea about its external and internal relations as well as to trace the changes concerning the legal profession throughout the history of the Republic. But it was difficult to derive this information from the analysis of these documents. There was no article directly related to the history of the Bar or its past activities. Therefore, I started with classifying the official documents in the library, looking through all journals issued by the Istanbul Bar and other Bars. I grouped them according to their date and content. Although this lasted nearly two weeks at the summer of 1991, little information relevant to my project was found. It was clear that, throughout the history of the Bar, little attention has been paid to the classification of the historical documents and the education of its members in terms of library activities. In the following year, however, the facilities in the library were considerably developed. A computer system was installed and a new classification system was launched by the newly appointed young librarians.
The Organisation of the Interview Schedule and Questionnaire

Although each interview schedule was composed of seven different sections, there were two main parts. The first produced a great deal of objective information about the structure of the legal profession, while in the second, the opinions and attitudes of the advocates towards social, political, legal and economic developments in the country were examined, and therefore, this type of information was subjective. This subjective information was especially helpful in providing information about the relationship between the state and the professionals.

In the following, the structure of the interviews and questionnaires is discussed in terms of their forms and their content.

In the first part of interview schedule, there were five sections focusing on such issues as formal information, education and career choice, family background, work conditions, and the activities and the structure of the Bar Association.

The aim of the first section was to gather basic information about the characteristics of each respondent such as sex, age, birth-place, marital status. These data were used to categorise the sample group and in this way it became possible to draw comparison between the variables.

The second section focused on schools the respondents attended, general considerations about the law training and apprenticeship period and other relevant issues. On the basis of the data obtained via the question about educational background, a significant differentiation among advocates was revealed. Problems and difficulties for newcomers to the profession were also exposed. The opinions and recommendations of the advocates about today's educational system in law departments were also among the main topics.
The third section dealt with family background. The main questions were concerned with the family structure in which the advocates were brought up, the jobs and the educational level of their parents. This was a relatively short section, but it produced critical information to establish a link between the political attitudes and family background of the respondents or, in a broader sense, the social reality in which they grew up. This type of information was also important to determine the extent of social mobility within the legal profession.

The most important section was, perhaps, the fourth concerning the characteristics of the work conditions of Turkish advocates. The typical questions in this section referred to the number of lawyers and non-lawyers in an advocate's office, the duration of service in the profession, specialisation in the law, the distribution of the working time in a week, the kinds of relationships they held with the clients and the major problems the clients took up to the advocates, the financial situation and so on.

These were all subjective questions. The idea behind asking these questions was that one of the ways of discovering the general characteristics of a profession was to learn about the individual experiences of its members.

Most questions in this section were in the form of Yes or No answers, while only a few required a response to Why or How. As is well known, the methodological tradition offers two possible ways of asking questions; open-ended or closed questions. However, it is also known that there are some implications of asking both types of questions. Open-ended questions, for example, might provide overly-detailed information for a study such as the present one with limited scope. To identify the fundamental characteristics of the system rather than the specific features of it, the most productive questions, therefore, were Yes or No questions.
The content of the questions was equally important. Many elements of the advocacy system were questioned and elaborated in terms of individual concerns and the extent of job satisfaction. More elementary questions asking whether they were happy with their job or not, if the level of income was adequate or how often they create domestic and foreign publications were asked. The data obtained from these questions were very helpful in developing an understanding of the circumstances under which the advocates were performing their job and how closely they followed recent changes and developments in the profession. In using "Yes" or "No" questions, it was not always possible to get detailed and inclusive answers to all these questions. However, the results from this section made the fundamental characteristics of work conditions in which the advocates were practising much clearer.

In the fifth section, the activities of the Bar Association were examined. Basic structural information concerning the Istanbul Bar was provided in the first chapter. In addition to this information, the activities of the Bar Association were examined through the perspective of the advocates within the sample group. The leading questions enquired how they assessed the activities of the Bar, to what extent they were involved in these activities and particularly, how the bar should be reformed. I have mainly focused on questions of whether the advocates believed that the Bar Association was doing a good job for them or what kinds of organisations or clubs other than the Bar Association were attractive to advocates and what reform was needed. The relationship between the Bar Association and its members was further elucidated by these questions. Moreover, the questions asking why the Bar Association could not fulfil its job effectively and in what way its members might contribute to make it better, were also asked. In order to obtain detailed information, open-ended questions were employed throughout this section.
The attitudes of the advocates towards ethical matters in applying legal rules constituted the main issue of the sixth section. Since these kinds of questions were always disturbing for the respondents, there was only one question in this section investigating whether their colleagues acted ethically or not. If they responded to this negatively, they were then asked to say why they thought that their colleagues did not act ethically. Following this, they were also asked to elaborate on the ethical understanding of the advocates in more detail. This was a short but one of the most effective and productive questions. It was also a shocking question, being placed in the middle of the interview schedule and between two different sections with different topics.

The next point referred to what kind of unethical practice exists. Most of the respondents hesitated in answering this question. But after they confessed that some advocates or lawyers did not act ethically, they had to explain why this was so.

They usually spent quite a long time to give a proper answer but the answers were sometimes inconsistent. The content and the length of the answers were dependent on the political view of the respondents, and on the extent to which they were involved in political issues, since in one sense this question was basically political. Therefore, those who were involved in political affairs felt much more free and their answers provided much more open and realistic explanations. In short, although this question raised sensitive issues, it produced very useful information.

The degree of political participation of the advocates was elaborated upon at length in the seventh section, the last and largest section of the interview schedule. The main concern of this section was the problems directly related to the advocacy system, how advocates could contribute to improve the economic, social and political situation of the country, in what way ordinary people looked at the legal system, how and why lawyers were interested in
political issues, whether they were happy with the recent constitution, the relationship between the advocates and the government, how the secular structure of the state affected the future of the legal profession and, finally, what kind of role the Islamic rules played in legal affairs. The information produced by these questions was important in several ways.

Firstly, it provided a wide range of data to test the hypothesis concerning the relationship between the state and the professional groups.

Secondly, considering that it was the last section in collecting such data, special attention was paid to the manner of asking questions. After a question was asked, the respondents were given reasonable time to think about it. They wanted to talk not only about the question but also several other subjects that they faced in their professional and even everyday lives. They were never interrupted. Some of them did not hesitate to say all they knew in response to the question while others seemed very cautious in talking about political issues. I made notes as they spoke. In this part of the interview, the respondents were in fact very helpful and lengthy speeches enriched the content and the authenticity of the data.

Thirdly, it was in this section that the current social and international problems were raised. This includes, for example, EC membership of Turkey and constitutional changes on the present agenda of the government. The respondents showed great willingness to talk about these problems and suggested some interesting solutions to the long-term problems of the country. There was no doubt that these opinions about current topics were valuable, firstly, to see their reactions and secondly, their willingness to contribute to the solving of problems. Above all, these questions signalled also what the respondents wanted to change, how they thought they could do that and what kind of legal or social order they wanted to see.
As noted above, the aim in distributing questionnaires to a group larger than the interviewed sample chosen among the members of the Bar Association in Istanbul and Sivas was only to provide a reliable support for the results obtained from interviews.

All the questions in the questionnaires were closed-ended. They were designed, firstly, not to occupy too much time of the respondents since the sample group was composed of very busy people for whom filling in a long and detailed form might have been very boring. This increased the likelihood of receiving the questionnaires back. Secondly, the design allowed asking as many questions as possible.

Unlike the interview schedule, the questionnaires consisted of only one section with 38 questions on different topics and some special probes, explanations and choices. The respondents were not so free to render their views at length. A few choices prepared in the light of the pilot research were listed below each question. There were only a couple of multiple choice questions most of them being in the form of Yes/No questions. In effect, the questionnaires were a shortened form of the interview schedule. Most questions, in fact, were drawn from the latter and added only a few explanations where they were necessary.

The first section of the interview schedule relating to the formal information was kept in its original form as it included the most important part of the schedule, i.e. the information about sex, age, marital status and so on. In addition to respondents' educational background, the schools they attended and their opinion on the problem of apprenticeship, one or two questions referred to their family and the educational level of their parents.

This section was followed by the one about work conditions. Unlike in the interviews, a number of choices were located below each question and the respondents were asked to put a tick next to one of them. This section included, for example, questions relating to the
The following questions related to work conditions, the degree of specialisation, the means of finding clients and so on. Some concerned the Bar Association and its activities. At the beginning of this section, some basic questions were posed such as the frequency of attending the meetings in the Bar, whether the Bar does a good job and if it needs to be reformed. These were, indeed, beneficial in discovering the structure of the Bar, producing a great amount of information and data which confirmed the results obtained from the interviews. The data produced by this section provide the first basic and reliable information in the field.

The question relating to whether their colleagues acted ethically or not was placed in the questionnaires too, but there was no probe inquiring about the "why" and "how" of their actions. It was felt sufficient to get Yes/No answer.

In the last part, a couple of questions about the political behaviour of the advocates were asked, e.g. if they had any connection with any political party, held any active role in those parties, stood for a candidate in elections, and their personal views on the matter of changing the current constitution. These were, again, mostly Yes/No questions, not asking any details on the subject concerned but very useful for understanding the relationship between the advocates and the political order, and therefore the state. It would not be wrong to say that a great amount of information that confirmed the results obtained from the interviews was provided by these questions.
INTERVIEW SCHEDULE

I-FORMAL INFORMATION

1- Sex of respondent
   1-Male__  2-Female__

2- Could you tell me how old are you?_____

3- Where were you born (city and region)?_______

4- Are you single or married?
   1-Single____  2-Married____

II-EDUCATION AND CAREER CHOICE

5- What kind of school did you attend?
   A- Secondary school
      1-state____
      2-state college____
      3-private____
      4-foreign private____

   B- High school
      1-state____
      2-state college____
      3-private____
      4-foreign private____

6-a- From which university did you obtain your first degree?_______

   b- When did you graduate?_______

7- Did you choose this university?
   1- consciously____  2- coincidently____

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8-At what point of your life did you decide to become an advocate?

____________________

9-Do you have a post-graduate degree?

1-Yes____  2-No____

if 'Yes'

A- 1-M.A.____  2-Ph.D____  3-Other____

10-Is current university law training satisfactory?

A- 1-Yes____  2-No____

if 'No'

B-Why?

____________________

____________________

11-a)-Is postgraduate training necessary for becoming a good advocate?

1-Yes____  2-No____

a)-Should a compulsory examination follow apprenticeship?

1-Yes____  2-No____

12-Did you personally find the experience of apprenticeship satisfactory?

1-Yes____  2-No____
If "No"

A-what did you find unsatisfactory?

III-FAMILY BACKGROUND

13-Where were your parents born (city and region)?

a-Mother__________

b-Father__________

14- What kind of work did your father do?

15-What kind of work did your mother do?

16-To what level was your father educated?

1-Primary school ___

2-Secondary school___

3-High School___

4-University___

17-To what level was your mother educated?

1-Primary school ___

2-Secondary school___

3-High School___

4-University___

IV-WORK CONDITIONS

18-How many lawyers work in this practice?

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19-How many non-lawyers work in the office of this practice?

A-What are their jobs.

20-For how long have you been practising as an advocate?

21-Would you say that you were a specialist in any particular field of law?

1-Yes  2-No __

If “Yes”
A-What field?

22-Would you say that in your practice you carry out some kinds of legal work more than others?

1-Yes_____  2-No ___

23-What would you say is the most lucrative field of legal work in Turkey at the moment?

A-Why is that so?

24-Can you estimate, very roughly, what proportion of your average working week is spent in the following kinds of activity?

a-Interviewing clients ----
b-Court Appearances------
c-Conferring with colleagues-----
d-Conferring with court officials----
e-Attending government offices----
f-Legal paper work------
g-Administrative paper work-----
j-Travel------
h-Other------
25-By what means do your clients come to you?


26-What particular legal problems do the majority of your clients have?


27-What percentage of the cases that you work on-roughly-end up in court?


28-Do you find useful for the future of legal profession to encourage to set up more large scale partnership?

  1-Yes  2-No

29-Is the practise of law adequately remunerated?

  1-Yes  2-No

If "No"

A-Why is this?


30-Do you have any other remunerative occupation?

  1-Yes  2-No

31-Do you want to stay in this job in the rest of your life?

  1-Yes  2-No

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32-Do you regularly subscribe to any Turkish law journal or publication?
   1-Yes    2-No

33-Can you read in a foreign language?
   1-Yes    2-No
if ‘Yes’
   A-Do you subscribe of any foreign publications?
      1-Yes    2-No

V-BAR ASSOCIATION

34-Do you regularly attend the meetings of the bar?
   1-Yes    2-No
If “Yes”
   A-
      1-General meetings
      2-Anniversary of establishments
      3-Symposiums, panels, conferences
      4-Others

B-Have you ever had an active role within bar?
   1-Cultural activities in the bar
   2-Occupational activities
   3-In administrative bodies
   4-In bar branches
   5-Others

35-Are you member of any other associations, organizations or clubs?
   1-Yes    2-No

4 5 2
If “Yes”
A-what are these?

36-Do you think the Bar Association does a good job for its members?
1-Yes  2-No
A-If "No" Why?

37-Should the bar association be reformed?
1-Yes  2-No
If "Yes",
A-what reforms would you like to see?

VI-LEGAL ETHICS

38-Do you think that Turkish lawyers generally practise in ethical manner?
1-Yes  2-No
If "No"
A-What kind of unethical practice exist?

VII-POLITICAL PARTICIPATION

39-What would you say are the major problems confronting the legal profession today?

40-Is the current advocacy system, as it operates in Turkey today, adequate?
1-Yes  2-No
41- In Turkey today, do all who require the protection of the law receive it?

1-Yes  2-No

If "not",
A- Why not?

42- Do you think that Turkish advocates can help to improve economic, social and political situation of Turkey?

1-Yes  2-No

If "Yes"
A- In what ways specially?

43- Are the relations between the legal profession and the state good?

a-Yes  b-No

If "not",
A- Why not?

44- Are you interested in politics?

1-Yes  2-No

45- Have you got any relative who has ever been active in politics?

1-Yes  2-No
46-A-Are you a member of a political party?

1-Yes  2-No

B-Have you ever held office in a political party?

1-Yes  2-No

C-Have you ever been a candidate at a local level or general election?

1-Yes  2-No

47-Would you say that in general an active involvement in politics is an important way of advancing in a law career?

a-Yes  b-No

If "Yes"
A-How would such involvement help a career?

____________________

____________________

48-In your opinion, did the 1982 constitutional affect the professional development positively or negatively?

1-Positively  2-Negatively

A-In what ways?

____________________

____________________

49-Are there any constitutional changes would you suggest to improve legal system?

____________________

____________________

50-Do you think the membership of E.E.C would contribute beneficially to the development of legal profession?

____________________

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51-Do you think that the recent discussions over secular structure of the state is threatening the future of Turkish legal profession?

1-Yes 2-No

A-If 'Yes' in what ways?

52-Would you say that Islamic rules still play an important role in some fields of the law?

1-Yes 2-No

A-If 'Yes'
Which fields?

53-Is there anything you want to add?

Thank you
QUESTIONNAIRE

1- Sex of respondent ;
   1-Male  2-Female

2- Could you tell me how old are you?

3- Where were you born (city and region)?

4- Are you single or married?
   1-Single  2-Married

5- Which degree of school did you attend? (Please tick adequate one)
   A-Secondary school
       1-state
       2-state college
       3-Private
       4-foreign private
   B-High school
       1-state
       2-state college
       3-Private
       4-foreign private

6-a- From which university did you obtain your first degree? 
   7-Did you chose this university
       1-Consciously  2-Coincidentaly

8-Have you got a post-graduate degree or a second degree from another university?
   1-Yes  2-No

9-Is current university law training satisfactory?
   1-Yes  2-No

10-a)-Is postgraduate training necessary for becoming a good advocate?
     1-Yes  2-No

b)-Should compulsory examination follow apprenticeship?
     1-Yes  2-No
11-Did you personally find the experience of apprenticeship satisfactory?
1-Yes__  2-No___

If "No"
A-Why ?

12-To what level was your father educated?
1-Primary school ___
2-Secondary school__
3-High School___
4-University___

13-To what level was your mother educated?
1-Primary school ___
2-Secondary school__
3-High School___
4-University___

14-How many lawyers work in your practice?
 a-1____ b-2____ c-3____ d-4____ e-5____ f-More than 5___

15-How many non-lawyers work in the office of this practice ?
 a-1____ b-2____ c-3____ d-More than 3____

A-What are their jobs.
1-Secrater_____  b-Cleaner_______  3-Other_____

16-For how long have you been practising as an advocate?
 a-Less than 5 years___
 b-5_____ 9 years___
 c-10____ 14 years___
 d-15____ 19 years___
 e-20____ 24 years___
 f-25____ 29 years ___
 g-Over 30 years_____ 

17-Would you say that you were a specialist in any particular field of law?
1-Yes______  2-No____
If "Yes"  A-What field? (Please thick one)

1-Executive and bankruptcy law____
2-Commercial law____
3-Criminal law____
4-Tenant and landlord law (kira tahliye)____
5-Administrative law____
6-Labour law____
7-Family law____
8-Other____

18-Can you estimate, very roughly, what percentage of your average working week is spent in the following kinds of activity?

a-Interviewing clients------
b-Court Appearances------
c-Conferring with colleagues------
d-Conferring with court officials------
e-Attending government offices------
f-Legal paper work------
g-Administrative paper work------
j-Travel------

19-By what means do your clients come to you?

1-Reputation____
2-Referral by colleagues, previous clients and friends____
3-Because of location of my office____
4-Because of my family background____
5-Through mediators (for example, simsar)____
6-Coincidently____
7-Other____

20-What legal problems do the majority of your clients have?
(Please thick more than one, if necessary)

1-Commercial____
2-Divorce____
3-Land law____
4-Crime____
5-Tenant-landlord problems____
6-Political____
7-Administrative____
8-Debt collection____
9-Other (Please specify)____
21. Roughly what percentage of the cases that you work on end up in court?
   a. All of them  b. 90%  c. 80%  d. 70%  e. 60%  f. 50%  g. Less than 50%

22. Do you find useful for the future of the legal profession to encourage to set up more large scale partnership?
   1. Yes  2. No

23. Is the practice of law adequately remunerated?
   1. Yes  2. No

24. Do you have any other remunerative occupation?
   - Yes  2. No

25. Do you want to stay in this practice in the rest of your life?
   1. Yes  2. No

26. Do you regularly attend the meetings in the bar?
   1. Yes  2. No

27. If "Yes" attend the meetings in the bar:
   A. 1. Annual general meetings
      2. Anniversary of establishments
      3. Conferences
      4. Others

28. Have you ever held an active role within the bar?
   1. Yes  2. No

29. Do you think the Bar Association does a good job for its members?
   1. Yes  2. No

30. Should the bar association be reformed?
   1. Yes  2. No

31. Do you think that Turkish lawyers generally practise in an ethical manner?
   1. Yes  2. No

32. What would you say are the major problems confronting the legal profession today?
   (Please think each you agree with)
   1. In general judges do not have ability of making right decision
   2. The prosecution is seen as an instance over the advocacy and thus the defence in the courts construes quite weakly
   3. They do not have enough respect of the people
   4. Laws are not adequate to the today's social conditions
   5. Going to an advocate is seen still luxury
31. Is the current advocacy system, as it operates in Turkey today, adequate?
   1. Yes  2. No

If 'No',
A. Why not? (Please tick each you agree with)
   1. Advocacy is constantly under the attack by the executive
   2. Advocates are not free within this system
   3. The present system does not provide justice for all
   4. The society does not understand the role of law very well
   5. Advocates are too political
   6. Government regard advocates as hostile
   7. Other (Please specify)

32. In Turkey today, do all who require the protection of the law receive it?
   1. Yes  2. No

33. Are you interested in politics?
   1. Yes  2. No

34. A. Are you a member of a political party?
   1. Yes  2. No

   B. Have you ever held office in a political party?
   1. Yes  2. No

   C. Have you ever been a candidate at a local level or general election?
   1. Yes  2. No

35. Would you say that an active involvement in politics is important way of advancing in a law career?
   a. Yes  b. No

36. In your opinion, did the 1982 constitutional affect the professional development positively or negatively?
   1. Positively  2. Negatively
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