



Policy Department

**Turkey -
Provisions for religious communities and religious freedom**

NOTE

Abstract:

This note reviews the current situation on the issue of provisions for religious communities and religious freedom in Turkey, including the relevant provisions in the 2004 Regular Report of the European Commission.

The note is intended for European Parliament Members of the Subcommittee on Human Rights.

This note was prepared in view of a visit of the European Parliament's Subcommittee on Human Rights to Ankara and Van (Turkey) from 5 - 8 October 2005.

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I. Brief history of religion and secularism in Turkey

Until the 19th century the Ottoman Empire was an Islamic state and the constitutive principle of the separation of powers was alien to the Islamic principle of statehood (Islam is religion and state = al-Islam din wa daula).

The radical Tanzimat reforms (1839-1876) paved the way for the constitution of 1876. This constitution was not least a concession to the country's small group of politically aware subjects, but it met with vehement opposition from Islamic orthodoxy and was not understood by the great mass of the people either. It was easy for the rulers to restrict the powers of elected parliaments and repeatedly repeal the constitution.

For the non-Muslim minorities – previously protégés (dhimmi) – the reforms did represent a certain liberation, since they allowed them at least limited self-determination in the context of the newly-created “nationalities” (millet), i.e. communities defined by religious denomination. The 1923 Treaty of Lausanne ¹, which clearly took its lead from the millet system in the regulations on non-Muslim minorities, represents the legal basis of relations between the Republic of Turkey and all “non-Muslim minorities”.

The *millet* system, however, disappeared along with the Ottoman Empire. The reform laws that were passed in the Republic of Turkey in the first few years of its existence, the highlight of which was enshrining of the principle of “secularism” in the 1937 constitution, clearly demonstrate an attempt to establish the greatest possible separation of religion and state and thus a break with the Islamic principle of statehood.

Opposition from the population over the past fifty years, however, has obliged the state to repeal some of the relevant reforms and grant Islam much greater scope. This is also reflected in the political landscape, which was changed dramatically by the Justice and Development Party's (AKP) landslide victory in elections held in November 2002. The AKP had its roots in the banned Islamist Welfare party.

It should also be recalled that many of the current restrictions faced in particular by non-Muslim communities have not been as such a heritage of the Islamic Ottoman Empire (see above), but rather of the modern Turkish National state. In the 1920s it fought a liberation war against Christian occupation in the name of a Muslim nation, mainly represented by Turks and Kurds. The Christian population was suspect as potentially collaborating with the enemy and therefore never fully recognised as equal citizen of a Turkish state.

II. Religious freedom in the Turkish constitution

According to Art. 10 of the Turkish Constitution of 1982, “*all individuals ... are equal without any discrimination before the law ...irrespective of ... religion or faith*”. Furthermore, everyone according to Art. 24, para. 1, enjoys “*freedom of conscience, religious belief and conviction*”. According to Art. 24, para.2, “*Acts of worship, religious services, and ceremonies shall be conducted freely, provided that they do not violate the provisions of Article 14*”.

The only limitation on religious freedom comes in Art. 24, para. 5, which states that “*no-one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political influence, or for*

¹ Although there are no groups in Turkey which have the status of minority groups on the basis of ethnic origin, the ethno-religious identity of non-Muslim groups, in practice Turkish citizens of Greek Orthodox, Armenian, Jewish and Bulgarian origin, is recognised by Turkey in accordance with the Lausanne Treaty of 1923 (Section III, articles 37-44) and the Treaty of Friendship with Bulgaria of 1925.

even partially basing the fundamental, social, economic, political, and legal order of the State on religious tenets.” Art. 14 of the Constitution, which states that “*none of the rights and freedoms embodied in the Constitution shall be exercised with the aim of ... creating differences in religion or denomination or by any other means to found a national order based on these ideas and views ...*” was originally intended to provide constitutional support for Art. 163 of the Turkish Penal Code², which for decades formed the basis for criminal prosecution of anti-secular aspirations. After Art. 163 of the Turkish Penal Code was abolished, sanctions on religious freedom were limited by the Anti-Terror Law of 1991 to a ban on holders of religious office exploiting religious feelings for political ends (Art. 241 Turkish Penal Code)

III. Religious demography

Approximately 99 percent of the Turkish population (67.8 million) is officially Muslim, the majority of whom are Sunni. The actual percentage of Muslims is slightly lower; the Government officially recognises only three minority religious communities - Greek Orthodox Christians, Armenian Orthodox Christians, and Jews - and counts the rest of the population as Muslim, although other non-Muslim communities exist.

The level of religious observance varies throughout the country, in part due to the strong secularist approach of the Government. In addition to the country's Sunni Muslim majority, there are an estimated 12-15 million Alevi, followers of a belief system that incorporates aspects of both Shi'a and Sunni Islam and draws on the traditions of other religions found in Anatolia as well. Alevi rituals include men and women worshipping together through oratory, poetry, and dance. The Government considers Alevism a heterodox Muslim sect; however, some Alevi and radical Sunnis maintain Alevi are not Muslims. The majority of Alevi are ethnically and linguistically Turks, mainly of Turkmen descent and live in Central and Eastern Anatolia. About 20% of the Alevi are Kurds, and about 25% of Kurds - especially those who speak Kurmanci and Zaza – are Alevi.

There are some 100.000 Christians (0.15% of the total population), and 20.000 Jews, (0.03%). The proportion of other religious communities can be ignored, either because their previously not inconsiderable numbers have dropped so radically as make them insignificant - as in the case with the Yezidi, for example - or because they have not yet reached significant numbers.

The unofficial estimated non-Muslim populations are: 60.000 Armenian Orthodox Christians; 20.000 Jews; 20.000 Roman Catholics; 20.000 Syriac Orthodox Christians; 3.000 Greek Orthodox Christians; 2.500 Protestants; 2.000 Syriac Catholics; 2.000 Armenian Catholics; 500 Armenian Protestants; and 300 Chaldean Catholics.

The Muslims, Christians and Jews are by no means homogeneous groups. Islam, Christianity and Judaism in Turkey are extremely multi-faceted.

² Art. 163: . “[1] Whoever uses religion, religious feelings or objects held sacred by a religion in any way or for any reason to encourage the population to perform actions that endanger the security of the state, or whoever forms organisations for this purpose, will be punished with imprisonment, even if the encouragement or the attempt to form an organisation has been unsuccessful ... [3] It is prohibited to form political organisations on the basis of religious feelings and opinions. Founders, leaders and members of such organisations will be punished in accordance with the regulations in the first paragraph.”; the purpose of Art. 163 of the TPC was to prohibit anti-secularist propaganda, which originally meant propaganda in favour of the dominant religion, i.e. Islam.

IV. Assessment from the 2004 Commission Regular Report (extract)

Although freedom of religious belief is guaranteed in the Constitution and freedom to worship is largely unhampered, non-Muslim religious communities continue to encounter obstacles. They lack legal personality, face restricted property rights and interference in the management of their foundations, and are not allowed to train clergy. Appropriate legislation should be adopted in order to remedy these difficulties.

Following the September 2003 joint appeal of four major Christian communities to solve outstanding problems, a dialogue was initiated by the authorities in early 2004. However, this has so far not produced practical results. A circular was adopted in December 2003 allowing for the recognition of a change of religious identity on the basis of a simple declaration.

A Regulation on the Methods and Principles of the Boards of Non-Muslim Religious Foundations was adopted in June 2004. This Regulation seeks to address the problems with respect to elections to the boards of foundations, which if not held, or not held on time, can threaten their existence and lead to the confiscation of their properties. Due to the scarcity of religious minorities in certain areas, the new Regulation provides, in principle, for the enlargement of the geographical area within which elections may be held, but only to the adjacent province. Such a restriction, coupled with the fact that this limited enlargement is granted only at the discretion of the local authorities, means that in practice a number of foundations will still not be able to hold elections.

Religious foundations continue to be subject to the interference of the Directorate General for Foundations (Diyanet), which is able to dissolve the foundations, seize their properties, dismiss their trustees without a judicial decision and intervene in the management of their assets and accountancy.

As regards property rights, of the 2.234 applications for registration of property in line with the January 2003 Regulation, 287 have been accepted. Applications could only be made by the 160 minority foundations listed in the Regulation. Given the religious communities' lack of a legal status, their existing properties are permanently at risk of being confiscated and attempts to recover property by judicial means encounter numerous obstacles. For example, the authorities have initiated legal proceedings aimed at confiscating the Greek Orthodox orphanage on the island of Büyükada near Istanbul. A number of non-Muslim religious communities are not entitled to establish foundations, including the Catholic and Protestant communities, and are thus deprived of the right to register, acquire and dispose of property.

Efforts have been made to ensure that places of worship other than mosques are granted permission to open. However, technical requirements have been invoked to prevent a number of churches from registering. The longstanding application of the Protestant church in Diyarbakir to register as a place of worship was refused in May 2004. Requests to restore churches continue to be subject to slow and cumbersome authorisation procedures. For example, the Panagia Greek Orthodox Church, which was affected by the bombing of the British consulate in November 2003, has still not been granted authorisation to carry out repairs.

A procedure for the reversal of the expropriation of a Bahai place of worship in Edirne was successfully finalised in December 2003, although the community has since reported administrative obstacles when seeking permission to make renovations to their property.

The ban on the training of clergy remains. Non-Muslim religious minorities are thus likely to encounter difficulties in sustaining their communities beyond the current generation. The Greek Orthodox Halki (Heybeliada) seminary, which has been closed since 1971, has still not been reopened. Nationality criteria restrict the ability of non-Turkish clergy to work for certain churches, such as the Syriac or Chaldean. Public use of the ecclesiastical title of

Ecumenical Patriarch is still banned and the election of the heads of some religious minority churches is still subject to strict conditions. Non-Turkish Christian clergy continue to experience difficulties with respect to the granting and renewal of visas and residence and work permits.

Religious textbooks have been redrafted in order to address the concerns of Christian minorities. However, clergymen and graduates from theological colleges continue to be prevented from teaching religion in existing schools run by minorities.

In November 2003, the office of the Directorate General for Religious Affairs (Diyanet) in Antakya (Southeast) established a multi-religious committee aimed at developing a harmonious relationship between Muslims, Christians and Jews.

As far as the situation of non-Sunni Muslim minorities is concerned, there has been no change in their status. Alevi (Estimated population of 12-20 million) are not officially recognised as a religious community, they often experience difficulties in opening places of worship and compulsory religious instruction in schools fails to acknowledge non-Sunni identities. The parents of an Alevi child have a case regarding compulsory religious education pending before the ECtHR.

Most Alevi claim that, as a secular state, Turkey should treat all religions equally and should not directly support one particular religion (the Sunnis) as it currently does through the Diyanet.

V. European Parliament resolution on the 2004 regular report on Turkey's progress towards accession (15 December 2004)

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43. Reiterates its call to the Turkish authorities to put an immediate end to all activities discriminating against and creating difficulties for religious minorities and communities, including in the areas of property rights, legal status, schools and internal management, environmental planning rules and the training of clergy, and requests as a first clear sign of implementation the immediate re-opening of the Greek Orthodox Halki seminary and the public use of the ecclesiastical title of the Ecumenical Patriarchate; calls on Turkey, bearing in mind the current difficulties, to act in accordance with the relevant case-law of the European Court of Human Rights; calls for the recognition and protection of the Alevites, including the recognition of Cem houses as religious centres, and for all religious education to be voluntary and to cover not only Sunni religion; calls for the protection of the fundamental rights of all Christian minorities and communities in Turkey (e.g. Greeks of Istanbul, Imvros and Tenedos);

Sources:

- *European Commission 2004 Regular Report on Turkey's progress towards accession*
- *World Market Research Centre (WMRC)*
- *European Commission against Racism and Intolerance (ECRI)*
- *Oehring: Human Rights in Turkey - Secularism = Religious Freedom ?, Aachen 2002*