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## **Links between murders in Turkey and 'masterminds' expected**

***Witnesses previously barred will be allowed to testify***

By Will Morris

Compass Direct (20.12.2010) / HRWF (21.12.2010) – [www.hrwf.net](http://www.hrwf.net) - Attorneys prosecuting the murder of three Christians in southeastern Turkey are making progress linking the knifemen who slayed them to the masterminds who put them up to it, an attorney representing the family of one of the victims said Friday (Dec.17).

Two witnesses, Veysel Şahin and Ercan Gelni – whose testimony the court previously blocked – will be allowed to testify about the plans behind the killings in Malatya. The

judge changed his previous ruling blocking their testimonies because of new evidence that recently became available.

The court will also protect a witness whose testimony would have possibly put him in danger. The latest court hearing was on Dec. 3.

On April 18, 2007, two Turkish Christians, Necati Aydin and Ugur Yuksel, and German Christian Tilmann Geske, were bound, tortured and then murdered at the office of Zirve Publishing Co., a Christian publishing house in Malatya.

The suspects, Salih Guler, Cuma Ozdemir, Hamit Ceker, and Abuzer Yildirim were arrested while trying to escape the scene of the crime, as was alleged ringleader Emre Gunaydin.

### **Establishing links**

Prosecutors have contended that the killings were related to a larger conspiracy by the military and nationalists to destabilize the government by targeting minorities in Turkish society.

"The people responsible are not just confined to the young men caught at the crime scene," said Orhan Cengiz, one of the attorneys representing the interests of the victim's families in the case. "Everybody knows the youngsters have connections [to the nationalists]."

The new decision shows the court's "willingness" to look into possible links between the killers and the gendarmerie, a special police force in Turkey that deals with internal security issues and is allegedly a key player in the destabilization plot, Cengiz said.

Suzanne Geske, widow of Tilmann Geske, said she wants the Malatya murder trial linked with the trial over the Cage Operation Action Plan, believed to be part of the Ergenekon "deep state" operation to destabilize the government.

"I want the Zirve Publishing House killings to be merged with the case into the Cage Operation Action Plan," Geske told Turkish newspaper Today's Zaman. "I do not believe that those young men could have carried out the murders on their own. Some de facto links are evident. There are other influences behind these murders."

Ergenekon is an alleged "deep state" operation referring to a group of retired generals, politicians and other key figures thought by some to be the true power brokers in Turkey. The Cage Plan centers on a compact disc found a year ago in the house of a retired naval officer. The plan, to be carried out by 41 naval officers, termed as "operations" the Malatya killings, the 2006 assassination of Catholic priest Andrea Santoro and the 2007 slaying of Hrant Dink, Armenian editor-in-chief of the weekly Agos.

Newspapers have reported that the Cage Plan, aimed at Turkey's non-Muslim minorities, not only contained a list of names of Protestant Christians who would be targeted, but also named some of their children.

"I believe that there is an ulterior motive behind the killings," Geske reportedly said. "This may be linked to Ergenekon or another criminal group. I believe that the young men who carried out the murders were directed by criminal elements. I want those criminal elements to be exposed. Otherwise, the lives of those young men will be wasted while the real criminals will go unpunished."

The next Malatya hearing is scheduled for Jan. 20.

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## **Turkish Armenians sue Turkey over delayed Patriarch election**

Hurriyet (01.12.2010) / HRWF (03.12.2010) - Website: <http://www.hrwf.net> - The Turkish Armenian community has filed two lawsuits against the Turkish government, including one to get permission to go ahead with a long-delayed election to select their own new patriarch, the Hurriyet Daily News & Economic Review reported.

"A committee composed of civilian representatives from the community filed two lawsuits," the community's attorney Sebu Aslangil told the Hürriyet. "The first one is to make the government allow an election for a patriarch to take place, and the second is for canceling the substitute patriarch's post."

Aslangil told Hurriyet that such a post does not exist in the rules of the Armenian Apostolic Church.

Civilian representatives of the community, who have formed an initiative to lobby for their rights to select their own patriarch, meanwhile held a meeting Wednesday in Istanbul. The initiative previously organized a petition campaign that gathered 6,000 signatures from Armenians in Istanbul demanding that the election be allowed to take place.

Previous patriarch Mesrop II stepped down due to dementia. After his resignation, the Armenian community applied to the Interior Ministry. Two applications were submitted: the first was made by the patriarchate's spiritual committee to elect a co-patriarch and the second was made by the civilian committee to elect a new patriarch.

Speaking to Hurriyet, initiative spokesman Garo Paylan said the fact that there were two applications posed a problem, but that this should "not get the Interior Ministry off the hook for what they have done."

He said the ministry invented the post of "substitute patriarch" in order to see the person they wanted installed in the patriarch's place. "The Turkish state needs to give the Armenian community what they are entitled to and should not impede the election process," Paylan said. "It is our most deserved right to be able to elect our patriarch. In no time in history has the Armenian Patriarchate in Istanbul been persecuted to this extent."

In November, Turkish Prime Minister Recep Tayyip Erdogan held a secret meeting with Archbishop Aram Atesyan and a few prominent businessmen from the Armenian community. The participants made no statement about what was discussed at the meeting.

In subsequent months, Atesyan was assigned as substitute patriarch through the intervention of the Interior Ministry.

According to Paylan, some prominent people from the community had an "interesting" meeting with Interior Minister Besir Atalay last week. "Atalay told us he was given information by Atesyan concerning the election procedure," the spokesman said. "We do not know what is happening behind closed doors, but we know there is a post that has been left unfilled for three years and that is the post of the community's spiritual leader." Paylan said the election must take place as soon as possible and that it does not matter whether it selects a co-patriarch or a new patriarch.

"Atesyan imitates the Turkish government's official discourse wherever he goes and says we have no problems with the Turkish state," he said. "We want someone who is not

afraid to speak his mind and who could represent our community in a way that is true to reality.”

Source:

<http://asbarez.com/89510/turkish-armenians-sue-turkey-over-delayed-patriarch-election/>

**Of related interest:**

- **Turkish Armenians sue Turkey over belated patriarch election**

<http://www.hurriyetdailynews.com/n.php?n=turkish-armenian-community-suing-turkey-for-belated-patriarch-election-2010-12-01>

- **Turkey Ignores Christians Delaying Armenian Patriarchal Election**

<http://www.huliq.com/1/93142/turkey-ignores-christians-delaying-armenian-patriarch-election>

- **Sassounian: Turkey Has No Right to Interfere in Patriarch Election**

<http://www.armenianweekly.com/2010/07/20/turkey-has-no-right-to-interfere-in-patriarch-election/>

- **Turkey's Armenians question election process of co-patriarch**

<http://www.todayszaman.com/news-201416-102-turkeys-armenians-question-election-process-of-co-patriarch.html>

- **On Current Condition of the Armenian Patriarchate in Istanbul**

[http://www.noravank.am/eng/issues/detail.php?ELEMENT\\_ID=4927](http://www.noravank.am/eng/issues/detail.php?ELEMENT_ID=4927)

**See also:**

- **TURKEY: Why state interference in the election of Chief Rabbi, Greek Orthodox and Armenian Patriarchs?**

<http://www.unhcr.org/refworld/pdfid/4c628b2f2.pdf>

- **[Turkey: Restrictions on the Election of Ecumenical Patriarch]**

[http://www.g20humanrights.com/the\\_ecumenical\\_patriarchate](http://www.g20humanrights.com/the_ecumenical_patriarchate)

- **FACTBOX: Christians in Turkey**

<http://www.reuters.com/article/idUSTRE50L08O20090122>

- **The Mechanism of Catastrophe: The Turkish Pogrom of September 6-7, 1955, and the Destruction of the Greek Community in Istanbul**

[http://www.greekworks.com/bookstore/product\\_info.php?cPath=21&products\\_id=34](http://www.greekworks.com/bookstore/product_info.php?cPath=21&products_id=34)

- **The Greek Genocide 1914-1922**

<http://www.greek-genocide.org/index1.html>

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## **Religious intolerance in Turkey**

***On 16-17 November, the Order of St Andrew held a conference entitled "Turkey's Bridge to the European Union" at the European Parliament in Brussels. Human Rights Without Frontiers was invited to a panel addressing "Issues and Concerns of Religious Minorities in Turkey". Hereafter the paper presented by Human Rights Without Frontiers.***

**By Willy Fautré, Human Rights Without Frontiers**

Our organization started dealing with Christians in Turkey when in the early 1990s the first waves of Syriac Orthodox and Chaldeans arrived in Western Europe as asylum-seekers. They were then victims of the Turkish army and of the Kurds. They left their villages and homes, often destroyed, in search of a better and more tolerant world where their security would be guaranteed, where their daughters would not be kidnapped to be forcibly married to a young Muslim, where their crops would not be burnt.

The message that they also brought us is that the Armenians were not the sole victims of the genocide perpetrated during WWI by the Young Turks. They had also been victims of that genocide that they called "Seyfo" (The Sword).

The genocide is far behind us but we remain concerned about the persistent anti-Christian feelings that still prevail in Turkey. The battle for fair laws and equality of religion is certainly a priority but improving the legal framework regulating the life of religious communities, and in particular non-Muslim religious groups, is not sufficient to eradicate the problems of religious intolerance that they have been experiencing for years.

According to some recent surveys, Turkish society does not demonstrate a tolerant or respectful attitude towards people of different religious communities,.

### **Surveys measuring religious intolerance**

An interesting study conducted by Istanbul's Sabanci University in 2009, "Religiosity in Turkey - An International Study", reveals that of those who joined the study, 66 per cent said that members of other religions should not be allowed to expound their ideas by organizing meetings open to the public. Indeed, 62 per cent said they should not be allowed to give out books that explain their views.

The survey also found that almost 40 percent of the population of Turkey said they had "very negative" or "negative" views of Christians. In the random survey, 60 percent of those polled said there is only one true religion; over 90 percent of the population of Turkey is Sunni Muslim.

Ali Çarkoglu, one of two professors at Sabanci University who conducted the study, said no non-Muslim religious gathering in Turkey is completely "risk free."

"Even in Istanbul, it can't be easy to be an observant non-Muslim," Çarkoglu said.

The report was part of a study commissioned by the International Social Survey Program, a 45-nation academic group that conducts polls and research about social and political issues. The survey quantified how religious the population is in each of its 43-member countries.

The study has been conducted previously three times at roughly 10-year intervals. This year marked the first time study data has been collected in Turkey. Turkey was the only Muslim-majority population in the study.

The survey includes significant nuance. While 42 percent of the population agreed with the statement that religious people should be tolerant, 49 percent of those surveyed said they would either "absolutely" or "most likely" not support a political party that accepted people from another religion. But 20 percent of those surveyed said they had "very positive" or "positive" views of Christians – 13 percent "very positive," and 7 percent "positive."

Çarkoglu said the results of study could be attributed to the Turkish educational system, which mandates religious studies for both junior high school and high school students – classes in which Christians and Jews "are not even mentioned" or are portrayed as "the others."

"That instills in these students a severe point of view of intolerance," he added.

The survey is available in Turkish from <http://research.sabanciuniv.edu/13119>

A Protestant concurred with the result of the Survey, stating that "this is exactly our experience. Commitment to freedom of religion is often in general terms supported by people. But when it comes to specifics, there is a strong resistance to allowing the teaching of one's religion, the establishment of churches, etc. This resistance comes both from officials and from ordinary citizens."

This study was just confirming an earlier survey carried out in 2005 by the Pew Global Attitudes Project which also suggested a distinctly negative attitude towards Christians among Turks, with 63 percent describing their view of Christians as "unfavorable," the highest rate among the countries then surveyed.

Such societal attitudes can explain a number of hate crimes targeting or planned to target Christians in the last few years. It is not with laws that they can be fought against but through education of the public, children and youths in schools and in the media.

### **Hate crimes**

On 3 August 2009, a young Muslim took a Christian Turk at knife point, draped his head with the national flag and threatened to slit the throat of the "missionary dog" in broad daylight in Istanbul.

Yasin Karasu, 24, held İsmail Aydın, 35, hostage for less than half an hour on Monday in a busy district on the Asian side of Istanbul in front of passersby and police who promptly came to the scene. The two men had known each other for about a year. While in the army, Karasu showed interest in learning more about Christianity and would call Aydın, a convert from Islam, to ask questions and talk, saying he was interested in other religions. Karasu was then sent to prison for the duration of criminal investigations into the case. The crime is punishable by four years in prison, but Justice Tahsin Dogan ruled six months later that Karasu should be released unconditionally, without serving the remainder of his sentence.

In April 2007, two Turkish Protestants, Necati Aydın and Ugur Yuksel, and a German, Tilmann Geske, were killed in the Christian publishing house where they worked in Malatya. They were tied up and stabbed to death. Two years later, plaintiff attorneys moved the focus of the trial away from the then five suspects – Salih Gurler, Cuma Ozdemir, Hamit Ceker, Abuzer Yildirim, and alleged ringleader Emre Gunaydin – to local officials believed to be liaisons or masterminds of the murders. On 15 October 2010, a court in southeast Turkey ordered the arrest of a suspected "middleman", journalist Varol Bulent Aral, who allegedly incited five young men to stab to death the three Turkish Christians.

In December 2007, a Catholic priest in the coastal city of Izmir was stabbed by a 17-year-old Turk, Ramazan Bay. He had met with Father Adriano Franchini, a 65-year-old Italian and long-term resident of Turkey, after expressing an interest in Christianity following mass at St. Anthony church. During their conversation, Bay became irritated and pulled out a knife, stabbing the priest in the stomach. Two years later, a judge in Turkey sentenced the 19-year-old Muslim to four-and-a-half years in prison.

Bay, originally from Balıkesir 90 miles north of Izmir, reportedly said he was influenced by an episode of the TV serial drama "Kurtlar Vadisi" ("Valley of the Wolves"). The series caricatures Christian missionaries as political "infiltrators" who pay poor families to convert to Christianity.

### **The media and religious intolerance**

Every year, the Alliance of Protestant Churches of Turkey (TEK) releases a report about violations of the rights of Protestants in Turkey and the abuses faced by their congregations.

Their reports make it clear that violent attacks, threats and accusations are symptoms arising from an anti-Christian milieu of distrust and misinformation that the Turkish state allows to exist.

The report cites both negative portrayal in the media and state bodies or officials that "have created a 'crime' entitled 'missionary activities,' identifying it with a certain faith community" as being primarily responsible for the enmity felt towards Christians.

The TEK urges the government to develop effective media watchdog mechanisms to ensure the absence of intolerant or inflammatory programs, and that the state help make the public aware of the rights of Turkish citizens of all faiths.

The TV series "Valley of the Wolves" also played a role in a foiled attack on Antalya pastor Ramazan Arkan in December 2007. The author of the violent crime, Murat Tabuk, reportedly admitted under police interrogation that the popular ultra-nationalist show had inspired him to plan this attempted murder. The plan was thwarted, with the pastor receiving armed police protection and Antalya's anti-terrorism police bureau ordering plainclothes guards to accompany him.

Together with 20 other Protestant church leaders, Arkan on Dec. 3, 2007 filed a formal complaint with the Istanbul State Prosecutor's office protesting "Valley of the Wolves" for "presenting them as a terrorist group and broadcasting scenes making them an open target."

The series has portrayed Christians as selling body parts, being involved in mafia activities and prostitution and working as enemies of society in order to spread the Christian faith.

"The result has been innumerable, direct threats, attacks against places of worship and eventually, the live slaughter of three innocent Christians in Malatya," the complaint stated.

The Protestant leaders demanded that Show TV and the producers of "Valley of the Wolves" be prosecuted under sections 115, 214, 215, 216 and 288 of the Turkish penal code for spreading false information and inciting violence against Christians.

Television shows such as "Valley of the Wolves" may not be the norm, but the recent publication of a state high school textbook in which "missionary activity" is also characterized as destructive and dangerous has raised questions about Turkey's commitment to addressing prejudice and discrimination.

As part of a concluding appeal attached to one of their reports they urged the state to stop an "indoctrination campaign" aimed at vilifying the Christian community.

## **Conclusions**

It is important to note that the government focused its efforts mainly on preventing violent attacks on non-Muslim individuals and their property. Indeed, the AKP government seems to be trying to show that they embrace positive policies in favour of freedom of religion or belief in Turkey. Some suspect that the government's real concern is to prevent attacks that would damage its reputation internationally.

However, the European Commission Turkey 2009 Progress Report has highlighted many serious freedom of religion or belief problems, which have either not been raised, or only referred to in passing, in criminal trials. These issues must be resolved to turn rhetoric on religious freedom into reality.

The issues requiring a quick solution include among others: the property disabilities and confiscations faced by communities as varied as the Alevi Muslims, Catholics, the Greek Orthodox, Protestants, the Syrian Orthodox Church; the lack of legal status of religious communities themselves under the Foundations and other laws; the non-existent legal possibility of conscientious objection to military service, especially for Jehovah's Witnesses; and compulsory intolerant religious education in public schools.

**Willy Fautré**

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## **Syrian Orthodox land - All people are equal, but some are less equal than others?**

By Dr. Otmar Oehring, Head of the Human Rights Office of Missio

Forum 18 (09.11.2010) / HRWF (16.11.2010) - Website: <http://www.hrwf.net> - Turkey's Mor Gabriel Syrian Orthodox Monastery in the Midyat (Tur Abdin) district in the south-eastern Mardin Province is facing no fewer than five separate court cases contesting its right to its own property, Forum 18 News Service notes. Four of the cases started in 2008, with the fifth being lodged in 2010, and the claimants are the Environment and Forestry Ministry (two cases), the State Treasury (two cases) and two local villages. The cases illustrate the insecurity of property ownership that religious minority communities in Turkey face. If the court cases go against the Monastery, many associated with the Monastery and the local Syrian Orthodox community will see this as a sign that the authorities want them to leave the country.

The cases against Mor Gabriel, which was founded in 397 AD, are possibly the best-known legal property cases against religious minorities. They are complex, and involve the three-way relationship between the Monastery, the state and local Kurdish tribes. A nearby Kurdish-populated village, Güngören, has not joined the cases. And while a "land grab" by some villagers in two other villages - Eglence and Yayvantepe - may be one motivation, others have seen another underlying motive: to get rid of the Monastery entirely.

Turkish religious communities as diverse as Alevi Muslims, Catholics, the Greek Orthodox, Protestants, and the Syrian Orthodox Church all have differing but long-standing place of worship and property problems. There has been no significant recent progress in resolving these problems.

### ***Exiled people return***

The 2,000 or so local Syrian Orthodox live in villages around the Mor Gabriel Monastery itself, which has been restored in recent years. They are the surviving remnants of several Christian communities that numbered almost 500,000 people in south-eastern Turkey alone in the early years of the 20th century. Only very few members of other local Christian communities who have been resident for many centuries - Chaldeans, Armenian Apostolic, Armenian Catholic and Syrian Catholic - remain in the region. These

communities have largely left because of Kurdish pressure exerted from before the founding of the Turkish Republic in 1923 to the present day.

Threats – including kidnapping and murder – have come from the PKK Kurdish militant movement, villagers acting without organisation, Kurds within the state-backed Türkiye Hizbullah and Köy Korucular (village guard) groups opposed to the PKK, formal forces of the Turkish state, and Kurdish tribal leaders. This pressure accelerated during the 1970s and 1980s, and the Syrian Orthodox and other minorities in the area were either marginally or not at all defended against attacks and threats by the Turkish authorities.

Indeed, contemporary nationalist attitudes – a powerful force in state and society - see "threats" from "others" who do not fit the nationalist stereotype of who is Turkish, such as the Syrian Orthodox.

The mass exodus of Syrian Orthodox since 1975 has left land untended. Local Kurds have moved in, taken the land and often built houses on it or used it for agriculture.

In 2001, during his last term as Prime Minister, Bülent Ecevit invited the Syrian Orthodox to return to their ancestral homeland as negotiations over possible Turkish entry to the European Union (EU) began. Some Syrian Orthodox began to return in 2004 to their homes – but those who seized and occupied their land are not willing to leave. Only in a very few cases has the state ordered them to do so. This may be to show the outside world that there is some willingness to help the returnees.

While most returned only during the summer months for short holidays, others did return semi-permanently for periods of six to nine months. They began to restore their neglected homes, as well as local Syrian Orthodox churches which had fallen into disuse. In the village of Enhil (known in Turkish as Yemisli) for example, semi-permanent returnees restored around 80 buildings, and built around 40 new buildings. Up to 30 families returned to the area permanently. Since 2004 the numbers returning have increased. Yet those who have come back try to retain the possibility of moving again to Germany, Sweden or other countries they migrated to, in case conditions worsen again in Tur Abdin.

### ***Public promises and state pressure***

Prime Minister Ecevit initially promised protection and support to these villages, in the form of constructing basic infrastructure including roads, water supplies and electricity. But then government enthusiasm for this support waned. Observers in Turkey suggest that the reason for the government's public promise of support was exclusively to improve Turkey's chances of being invited to start EU accession negotiations. In the Tur Abdin district, people note that Ecevit's government at the same time continued supporting the Kurdish Köy Korucular (village guards) and that this paramilitary group targeted Syrian Orthodox who tried to get their properties back from Kurdish tribal leaders like Felemez C&#305;mo and &#350;ehmus Çelebi.

This is the background to the problems the once thriving Mor Gabriel Monastery faces. At present, one Metropolitan Archbishop, three monks and 12 nuns live in the Monastery. Around 50 local children, who attend nearby state schools, also receive education in the Monastery. Many pilgrims still come to the Monastery, as in previous centuries. It has been possible since the 1970s to do some reconstruction of buildings. This has aroused hostility from the local non-Christian population, who ask why the Christians should have such a large Monastery on "their" land.

### ***Is the past being repeated?***

In many ways the threat to Syrian Orthodox property mirrors the treatment of communal Greek Orthodox and Armenian Apostolic property in the heartland of Anatolia from the 17th century onwards, when Kurds were encouraged by the Ottoman state to settle in the area. Many historic churches, monasteries and villages have been occupied by Kurds over the centuries. This can still happen today, as was shown when the Syrian Orthodox village of Sare was occupied in 1994 by former village guards. This occupation was eventually forcibly ended by the Turkish Army in 2004, after pressure from a number of western countries.

The Justice and Development Party (AKP), in power since 2002, has apparently concluded that Turkey has little chance in the near future of joining the EU. This is the reason, people in the Tur Abdin district suggest, why pressure from the AKP government has increased. The Environment and Forestry Ministry, the State Treasury, and the Directorate General of Land Registry and Cadastre have all started to cause problems for the Syrian Orthodox community. As a result, many people who had left Turkey – and others – were unable to register their ownership of their land, issuing land deeds to those who had given up Turkish nationality was forbidden, and land was confiscated as it was claimed to be "forest". At least 300 legal cases are pending as a result of these state actions.

Currently, the sources of livelihood of the Syrian Orthodox population – agricultural land, vineyards – are being threatened. For this purpose, the state has used Forest Law 6831 of 31 August 1956, which states that forests may not be owned privately, and that land – not just the Monastery's land – legally becomes "forest" if it is not used agriculturally for more than 20 years.

This has led to problems not only for Syrian Orthodox but for local Kurds who were forced to flee the region during the bitter civil war between the state and the Kurdish guerrilla movement, the PKK.

The state is also seeking to take away the land under historic Syrian Orthodox churches which have fallen into disuse as the population – and their priests – have been driven into exile.

The monastic community already suffers – as Forum 18 has observed in person – constant threats from local people. In one 2007 incident, a monk was kidnapped by village guards. But despite appeals from the Abbot, the police have so far refused any special protection. Even the chair of the Turkish Parliamentary Foreign Affairs Committee has joined such appeals for protection – in vain.

The Syrian Orthodox community beyond the Monastery has suffered repeated attacks, with land around villages often set on fire. The perpetrators are unknown, but are thought locally to be either local Kurds or the Turkish Army, or both.

In addition, the Army often causes damage in local villages – whether Kurdish- or Christian-populated – by burning down vineyards and forests to secure open terrain around their bases. Christian-populated villages where army units are based speak of their fears that their security is jeopardised by such a military presence, not enhanced.

### ***Who is registered as owns the land – and who really owns it?***

Exacerbating the problem of the Forest Law for the Syrian Orthodox is the official registration of land for the first time, which began in the 1990s. The state contracted with private companies to conduct this registration. In Tur Abdin district people point out that, while the companies as such have not caused problems, some employees of these companies abuse their positions to demand extremely large bribes of thousands of Euros for property to be registered.

In the absence of documents proving land title, the companies register ownership based on the word of local people – in this case the people who have seized the Syrian Orthodox community's land. Those who have left cannot state their case for ownership in this process. But some community members have begun to hire local lawyers to try to defend their interests, and have opened court cases against many land registry decisions.

### ***Why are legal cases brought?***

The five cases brought by the state against the Monastery and its land or other community members have no apparent basis. From Forum 18's conversations with local people, they appear to have been launched because of the religious affiliation of the community. Officials were happy to see the bulk of the community leave the country from the 1970s and those that remain are seen as without political power because they are Christians.

The cases brought privately are also questionable. For example the 2008 case was brought by two of the three neighbouring Kurdish-populated villages, Eglence and Yayvantepe, which claimed that the Monastery was occupying their land. The third village – Güngören - refused to join the suit, its mayor stating that the villagers have had good relations with the Monastery for centuries.

The two villages which brought the case are under the control of local tribal leader Süleyman Çelebi, who is a member of parliament for Prime Minister Recep Tayyip Erdogan's AKP. The lawyer for the villages is one of Çelebi's sons.

On 24 May 2010 the village of Güngören (Kfarbe) was taken to court by the Environment and Forestry Ministry. The allegation made is that three vineyard areas of Güngören village had become forest. These vineyards had been registered as vineyards during the cadastral registration and appropriate land-titles issued. One of the vineyard areas is very close to Mor Gabriel monastery, and a vineyard belonging to the Monastery is within this area. As a result Mor Gabriel is once again facing a court case. The case has now been adjourned until 24 January 2011.

Local people in Tur Abdin district suggest that Güngören (Kfarbe) village has been taken to court because of its support for the Monastery.

The government has to tread warily around such tribal leaders as Çelebi. It fears that if it does not handle them cautiously, they could turn towards the PKK. And it is these tribal leaders who wield power in such villages. While Çelebi is involved in these cases at some level, it is unclear if the Interior Ministry and the Army might also be involved.

### ***No "Turkish solution to a Turkish problem", instead state warnings***

The cases aroused international interest, with observers from Sweden, Germany, the Netherlands, the United Kingdom, the United States, the World Council of Churches, and a number of civil society NGOs attending the court sessions. The Turkish government realised that it would be better for its image to find a solution. In 2009 the chair of the Foreign Affairs Committee of Turkey's parliament told visitors that they should await a "surprise" due within weeks. Observers were expecting the closure of the court cases against the Monastery, and in exchange the government would give the villages a plot from state-owned land equal in size to the one they were arguing in court over with the Monastery.

However, to the dismay of the Monastery and the observers, the Turkish state failed to find a "Turkish solution to a Turkish problem" - let alone a solution based on the rule of law. Instead, the cases dragged on.

In summer 2010, after a court in the town of Midyat had ruled in two cases in favour of the Monastery, the Supreme Court ruled that the Midyat court had not been entitled to hear the cases, which should have been heard by a court in Mardin. This ruling once again left the Monastery community unsettled – and subject to further costs for defending its interests in court.

The Abbot of the Monastery, Metropolitan Timotheos (Samuel Akta&#351;), has remained under close government scrutiny. As he left Turkey on a trip to Germany in May 2010, he was stopped and interrogated at Istanbul airport. Officials – probably from the National Intelligence Organisation (MIT) secret police – warned him that wherever he went in Europe he should not publicly speak about the way he and his community had been treated.

The MIT maintains close surveillance of religious minorities.

### ***Urban and diaspora community fear impact of speaking out***

While many Syrian Orthodox fled abroad, others have migrated to Turkey's bigger cities. Istanbul now has an estimated Syrian Orthodox community of over 10,000 people, many of them prosperous businesspeople. This educated, urban population has not raised with the government their concerns over the community back in Tur Abdin. Within this group, fear of taking up such issues is palpable. "Those who try to get involved in politics will burn their fingers," is one comment Forum 18 has heard.

This same approach affects some in the diaspora communities in Western Europe, even though they are unlikely to face direct consequences for speaking out. Yet naturally they fear any repercussions for those left behind.

### ***End of court cases and restitution of rights vital***

While the extent of the state's involvement in the various lawsuits around the Mor Gabriel Monastery is unclear, the state's actions suggest it would rather that the Monastery no longer existed. However, it cannot move to get rid of the Monastery. From my own observations of the case, I think that as long as the international community shows an interest in the fate of the Syrian Orthodox community, nothing drastic will happen to the Monastery. But this will not prevent the lawsuits dragging on, leaving the Monastery and the community insecure and emotionally and financially drained.

Should international interest fade, the Monastery itself will deteriorate, while the state and local tribal leaders will do what they have long sought to do: take over the Christian-owned land. The remaining Syrian Orthodox community will be forced out and centuries of Syrian Orthodox life in the region will be at an end. This is the community's greatest fear.

The ending of the court cases and the restitution of the community's rights is important as a signal that Turkey is prepared to accept that some of its citizens are not ethnic Turks and are not Muslims, and that they have equal rights. Turkey also has a moral responsibility, as pressure from the state and the non-Syrian Orthodox local population forced community members to flee originally.

The state promised to help returnees but did nothing. Now is the time for the state to fulfil its promises. Negotiations between the community and the Turkish state should begin over the community's future in the region, and how its rights to property and security can be guaranteed.

### ***Wider importance***

The fate of Mor Gabriel and the Syrian Orthodox community of Tur Abdin is important not just for that community, but for the signal it sends to other minority religious communities in Turkey – and indeed to the wider population of the country. Many non-Muslim religious communities face less high profile property issues, while Alevi Muslims cannot get their places of worship recognised as such. But this does not make their impact on those communities less severe.

Observers of Turkey's religious freedom situation tend to watch developments in the bigger cities, including Istanbul, Izmir and Ankara. Yet – even in the cities - the cautious optimism that life for Christian and other minority communities would improve has given way in 2010 to pessimism, various minorities have told Forum 18. The minorities watch what happens in Tur Abdin, and some are already concluding that ethnic/religious communities still cannot either speak out about their situation, or defend their rights.

Turkey's urban journalistic elite, including those who come from the Sunni Muslim majority, are aware of the problems and some have written sympathetically of the Syrian Orthodox community's problems. Indeed, Turkish television has shown films on the wonders of historic Christian sites and the importance of this heritage to Turkey. But this does not mean that the general public has learnt that communities like the Syrian Orthodox are equal citizens, and that they too should have their part in Turkish society.

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## **Turkey moves towards achieving domestic peace**

By Sahin Alpay

Today's Zaman (08.11.2010) / HRWF (09.11.2010) - Website: <http://www.hrwf.net> - On Oct. 31, the day the unilaterally declared cease-fire by the Kurdistan Workers' Party (PKK) was due to expire, a suicide bomber blew himself up as he tried to board a police bus in central Istanbul, wounding 32 people including 15 policemen.

The next day the PKK command in the Kandil Mountains of northern Iraq announced that in response to a call from Abdullah Öcalan, its imprisoned leader on Imralı Island, the cease-fire would be extended until after the general elections, which are due to be held in June. It also stated that the PKK had nothing to do with the terror attack in Istanbul, calling it a provocation.

The PKK in Kandil later also declared that unless it discontinues its attacks, punitive measures will be taken against the splinter group, calling itself the Kurdistan Freedom Falcons (TAK), which assumed responsibility for the suicide bombing. The leader of the PKK in the Kandil Mountains, Murat Karayılan, had commented earlier in an interview that the PKK regretted having targeted civilians in the past and that it would never happen again (Radikal, Oct. 28). On Nov. 3, Prime Minister Recep Tayyip Erdoğan confirmed that state authorities were negotiating with Öcalan for the terms of a laying down of arms by the PKK.

Signs that Turkey may be moving towards solving the Kurdish problem and ending the PKK insurgency continue. President Abdullah Gül, in a conversation with representatives of the pro-Kurdish Peace and Democracy Party (BDP) during the Republic Day reception on Oct. 29, said, "We shall solve our problem the way civilized nations solve their ethnic problems." The extension of the cease-fire by the PKK, reports about it getting ready to pull its militants out of the country and the confirmation of talks between state authorities and the PKK seem to be providing the country with an unprecedented opportunity for a civilized solution to the Kurdish problem.

Let us recapitulate: The PKK in Kandil has been declaring since the summer of 2009 that there cannot be a military solution and that it is ready for a negotiated solution to the Kurdish problem. This is because the world has changed: Violence no longer attracts popular sympathy or support. This is because Turkey, too, has changed: The "democratic initiative" pursued by the Justice and Development Party (AKP) government has brought an end to the denial, and is moving bit by bit towards recognition of the Kurdish identity. A vast majority of Turks as well as Kurds want the violence to stop. A vast majority of Kurds are aware that the end of violence will not only facilitate the recognition of Kurdish rights but also the prosperity of the Kurdish-majority region.

The Kurds of Iraq are also hopeful. Neçirvan Barzani, number two of the Kurdistan Democratic Party (KDP) in Arbil, declared recently: "There will be great steps towards peace in Turkey after the general election. We are at ease." The US wants stability in Iraq after its troops leave. The EU supports the resolution of the Kurdish problem and the adoption of a democratic constitution. There are, undoubtedly, players both inside and outside the country interested in destabilizing Turkey. No one, however, can prevent Turkey from broadening freedom and welfare as long as a majority of both Turks and Kurds support a civilized solution.

The AKP government has a great responsibility. It is true that politicians want to win elections more than anything else. But if the government acts with determination to solve the problem, an ensuing rise in economic prosperity is sure to secure not just one but several election wins for the AKP. No need to pay attention to retired generals who appear on TV and scream, "The PKK will either surrender or will be crushed." The military command in Turkey should be capable of seeing that armed forces' interest, too, is in a civilized solution.

What a civilized solution means is quite obvious: Before everything else it means a bilateral cease-fire and an end to violence. The government should through BDP interlocutors continue the talks on the laying down of arms with both Imralı and Kandil. A general amnesty for rank-and-file PKK members should be proclaimed, and the PKK should be allowed to engage in legal political activity. Expression of all non-violent views including separatism should become free. The election law should be amended to allow fair parliamentary representation of all the regions of the country. Public administration should be reformed with a view to decentralize the terribly over-centralized current system.

All remaining regulations restricting the free enjoyment of the Kurdish language and culture should be eliminated. Public schools should provide elective courses in Kurdish, and the way should be opened for the establishment of schools that provide bilingual education in Turkish and Kurdish. The new constitution should consolidate equality of all citizens irrespective of their ethnic and/or religious identities. A truth and reconciliation commission should be formed by Parliament to investigate crimes against civilians committed by both the security forces and the PKK. The order and implementation of the above reforms are to be determined through the parliamentary process.

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## **Two faces of the Republic in Turkey**

Sahin Alpaly

Today's Zaman (01.11.2010) / HRWF (03.11.2010) - Website: <http://www.hrwf.net> - On Oct. 29 the Republic of Turkey celebrated the 87th anniversary of its founding. Representatives from the Turkish Armed Forces (TSK) and the main opposition Republican People's Party (CHP) boycotted the traditional reception held by President

Abdullah Gül on the occasion. This was perhaps the most conspicuous manifestation of the fact that some thing is terribly wrong (if not rotten) in the state of Turkey.

This is the background of the bizarre event: Prior to the 80th anniversary of the republic, the presidential residence in Ankara was not part of the so-called "public space" where headscarved women were not allowed according to the authoritarian secular policies of the state. Following the coming to power of the Justice and Development Party (AKP) at the end of 2002, however, former President Ahmet Necdet Sezer, distinguished for his commitment to hard-line Kemalism, included the presidential residence in this "public space," thus barring headscarved women, including the wives of most of the AKP leadership, from receptions.

President Abdullah Gül, who replaced Sezer, chose during the past three years of his presidency to hold separate receptions on Republic Day, one for guests with spouses and another for those without, offering a way out for those who refused (on ideological grounds) to shake hands with his headscarved wife. Gül changed his mind this year, perhaps encouraged by the passage of pro-democratic amendments to the Constitution in the referendum last month and by the discourse of the new leader of the CHP, Kemal Kılıçdaroğlu, about solving the "headscarf problem." He decided to hold a single reception on Republic Day where he would welcome all guests together with his spouse. This was enough for the generals and the CHP to boycott the reception. The chief of General Staff held a separate reception, and the CHP leader flew to İstanbul to attend a demonstration organized by a branch of his party.

The bizarre circumstances of its recent celebration render necessary an assessment of the legacy of the Republic on its 87th anniversary. Basically there are two faces to this legacy: One has to do with the successful founding of an independent Turkish state on the ruins of the Ottoman Empire that had collapsed and been partitioned at the end of World War I, and the continuation and broadening of modernizing and Westernizing reforms that had started a century before. If Turkey today is (relatively) the most democratic, secular and developed country in the Islamic world, this is due to the ability of the Republic to renew itself as times necessitate.

The single-party regime that was established in the founding period of the republic stood for the efforts, in line with the conception of modernity that prevailed at the time, to create a Turkish nation and nation-state. At the end of the World War II that regime was replaced by a kind of democracy under bureaucratic tutelage. Since the end of the Cold War, the country has been engaged in bottom-up reforms to consolidate a liberal and pluralist democracy in line with European Union norms. These reforms are today opposed and resisted mainly by elites committed to an authoritarian reading of Kemalism, the founding ideology of the Turkish state, which constitutes the other face of the Republic's legacy.

Kemalism, may be said to stand basically on three pillars. One of the pillars is a crude form of elitism: It maintains that the vast majority of the people form a "horde" incapable of knowing what is in its interest and therefore needs to be herded by an enlightened elite. It can be said that both the single-party regime and the tutelary democracy that replaced it were based on this conception.

The second pillar of Kemalism consists of an authoritarian conception of secularism: Inspired by Western positivist philosophy, it maintains that a modern society can only be one where religion is privatized and the state secularizes society by controlling religion and introducing restrictions on religious freedoms. In its fundamentalist interpretations, this assertive kind of secularism assumes Islamophobic forms quite similar to those witnessed lately in Western societies. It is this pillar of Kemalism that bars headscarved women from higher education, from seeking election to political Office, and from the so-called "public space."

A rigid kind of uniculturalism forms the third pillar: Inspired by 19th century Western thinking, it maintains that a modern society can only be a unicultural one, where all citizens are (voluntarily or not) assimilated into a single national identity. Policies based on these principles have bred widespread intolerance towards cultural diversity, while at the same time triggering 29 armed revolts by the Kurdish minority so far.

I assume it is not necessary to explain why Kemalism as it survives is not at all compatible with a liberal and pluralist democracy, and why the state in Turkey has to liberate itself from its grip. The prospects for this are not at all bleak since this ideology is losing ground and credibility, and since Turkey is a country that has proved its capacity to renew itself when the times necessitate.

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## **Alleged 'middleman' arrested in Malatya, Turkey murders**

### ***Two key witnesses' testimonies connect suspects to higher-level 'masterminds'***

By Damaris Kremida

Compass Direct (21.10.2010) / HRWF (25.10.2010) - Website: <http://www.hrwf.net> - A court in southeast Turkey on Friday (Oct. 15) ordered the arrest of a suspected "middleman" linking the murder of three Christian men to alleged high-level masterminds.

The arrest order came after the testimonies of a former prison inmate and an incarcerated ex-gendarmerie intelligence worker at Friday's hearing. Journalist Varol Bulent Aral - one of the suspected "middlemen" who allegedly incited five young men to stab to death Turkish Christians Necati Aydin and Ugur Yuksel and German Christian Tilmann Geske at the Zirve Publishing Co. in Malatya - was re-arrested at the hearing.

The three Christians were bound and tortured before they were murdered on April 18, 2007, at the Christian publishing house, where they worked. Suspects Salih Guler, Cuma Ozdemir, Hamit Ceker, Abuzer Yildirim and alleged ring-leader Emre Gunaydin were caught trying to escape from the scene of the crime.

Attorneys said the last hearing of the Malatya murders was productive in tracing links between the five murderers and political masterminds whom prosecution lawyers claim are behind the slayings. A key witness, Orhan Kartal, was instrumental in proving that Aral was behind the murders, lawyers said.

"Not only this witness, but Emre also accused Aral before and then changed his statement," said one of the prosecuting lawyers, Orhan Kemal Cengiz. "Before he retracted his statement, he gave details that couldn't have been fabricated. So from the beginning we saw Aral was involved but couldn't prove it."

Kartal spent two months in prison with Aral in Adiyaman in 2008, where they were both held for crimes not related to the Zirve murders. Kartal said that while in prison together Aral detailed how he had planned the attack on the Zirve publishing house by psychologically preparing the five young murderers for the gruesome act. According to Kartal, Aral said he gave the young men the weapons they used to kill the three Christians.

In Kartal's account, Aral also claimed that there was a higher figure behind him, retired Gen. Veli Kucuk. This year Aral completed his previous prison sentence. He is now again in prison as a key suspect in the Malatya murders.

In a previous statement, Aral had complained that retired Gen. Kucuk had threatened him about testifying. Gen. Kucuk has been arrested in connection with Ergenekon, a loose collection of ultra-nationalist generals, businessmen, mafia and journalists who planned to destabilize the government. Evidence in Malatya hearings over the past three years suggests that the murders were instigated by Ergenekon.

Aral has also been implicated in the Ergenekon case, the hearings of which are underway.

Prosecutors believe the Malatya murders are directly linked with a military operation called the Cage Plan within the scope of Ergenekon activities. A document entitled "Cage Plan," found on a retired general's computer, described assassinations that targeted the country's small Christian communities. The document referred to the Malatya murders as a "successful operation."

A second witness, Erhan Ozen, also in prison for other offenses, worked for the clandestine Gendarmerie Intelligence Organization (JITEM). He said that as early as 2004, JITEM personnel were planning the Malatya murders and the assassination of Armenian editor Hrant Dink.

Ozen said that after a meeting, some co-workers talked about how they were organizing an operation against the three Christians in Malatya in an effort to portray the state as ineffectual. He also testified that the rector of the local university and JITEM were monitoring the activities of the three Christian men.

"He was convincing because he gave many details that were coherent and that confirm each other, so his testimony seems to me authentic," attorney Cengiz said. "But of course, we will see."

In April the Malatya court added the Cage Plan indictment to its case file.

Prosecuting lawyer Erdogan Dogan told Compass that this is clear evidence linking the Malatya murders to the Cage Plan. For almost a year, prosecution lawyers have tried to make the case that the two court cases should be merged.

"We had progress in the case," Dogan said of the two testimonies on Friday. "They might decide to join the two cases in the next court hearing."

Judges had found the phone numbers of ultranationalist lawyer Kemal Kerincsiz and Sevgi Erenerol, spokesperson for the Turkish Orthodox Church – a Turkish nationalist denomination – in Aral's personal phone book. Both figures are accused of playing leading roles in Ergenekon and spearheaded prosecution of Christians Hakan Tastan and Turan Topal for speaking to people about their faith.

This week various media released autopsy pictures and images of police videos showing the five suspects as they walk through the blood-stained Zirve office explaining how they committed the crime.

Lawyers said they did not know who leaked these to the press, but they didn't think the images would affect the case.

"These will, however, show the country how the young men were incited and murdered the men, full of racism and hatred," said Dogan. "This will be obvious and should be noted. The state needs to urgently address the fact that these youngsters, or anyone, can become so filled with racism and hatred."

He said that acceptance and tolerance of other people's thoughts and beliefs is fundamental, and that the state should teach these values to its people.

The next hearing of the Malatya murders case is on Dec. 3.

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## **Christians in Turkey acquitted of 'insulting turkishness'**

***But court heavily fines them for dubious conviction of collecting personal data***

By Damaris Kremida

Compass direct (19.10.2010) / HRWF (20.10.2010) - Website: <http://www.hrwf.net> - After four years of legal battle in a Turkish court, a judge acquitted two Christians of insulting Turkey and its people by spreading Christianity, but not without slapping them with a hefty fine for a spurious charge.

Four years ago this month, Turan Topal, 50, and Hakan Tastan, 41, started a legal battle after gendarmerie officers produced false witnesses to accuse them of spreading their faith and allegedly "insulting Turkishness, the military and Islam."

At the Silivri court an hour west of Istanbul, Judge Hayrettin Sevim on Thursday (Oct. 14) acquitted the defendants of two charges that they had insulted the Turkish state (Article 301) and that they had insulted its people (Article 216) by spreading Christianity. Sevim cited lack of evidence.

He found them guilty, however, of collecting information on citizens without permission (Article 135) and sentenced them to seven months of imprisonment each. The court ruled that the two men could each pay a 4,500 lira (US\$3,170) fine instead of serving time, said their lawyer Haydar Polat.

Tastan expressed mixed feelings about the verdicts.

"For both Turan and I, being found innocent from the accusation that we insulted the Turkish people was the most important thing for us, because we've always said we're proud to be Turks," Tastan said by telephone. "But it is unjust that they are sentencing us for collecting people's information."

At the time of their arrests, Topal and Tastan were volunteers with The Bible Research Center, which has since acquired official association status and is now called The Association for Propagating Knowledge of the Bible. The two men had used contact information that individuals interested in Christianity had volunteered to provide on the association's website.

Administrators of the association stated openly to local authorities that their goal was to disseminate information about Christianity.

The two men and their lawyer said they will be ready to appeal the unjust decision of the court when they have seen the official statement, which the court should issue within a month. Polat said the appeal process will take over a year.

"Why should we have to continue the legal battle and appeal this?" asked Tastan. "We are not responsible for the information that was collected. So why are they fining us for this? So, we continue our legal adventure."

Still, he expressed qualified happiness.

"We are free from the charges that we have insulted the Turkish state and the people of Turkey and we're glad for that, but we are sorry about the court's sentence," Tastan said. "We're happy on one hand, and sorry on the other."

The court hearing lasted just a few minutes, said Polat.

"The judges came to the court hearing ready with their decision," Polat said. "Their file was complete, and there was neither other evidence nor witnesses."

Polat was hesitant to comment on whether the decision to convict the men of collecting private data without permission was because they are Christians. He did underline, however, that the court's decision to fine the men was unjust, and that they plan to appeal it after the court issues an official written verdict.

"This was the court's decision," said Polat, "but we believe this is not fair. This decision is inconsistent with the law."

### **Christianity on trial**

The initial charges in 2006 against Tastan and Topal were based on "a warning telephone call to the gendarme" claiming that some Christian missionaries were trying to form illegal groups in local schools and making insults against Turkishness, the military and Islam.

In March 2009 the Turkish Ministry of Justice issued a statement claiming that approval to try the two men's case under the controversial Article 301 came in response to the "original" statement by three young men that Topal and Tastan were conducting missionary activities in an effort to show that Islam was a primitive and fictitious religion that results in terrorism, and to portray Turks as a "cursed people."

Two of the three witnesses, however, stated in court that they didn't even know Topal and Tastan. The third witness never appeared in court. Prosecutors were unable to produce any evidence indicating the defendants described Islam in these terms. At the same time, they questioned their right to speak openly about Christianity with others.

Polat and his legal partners had based their defense on the premise that Turkey's constitution grants all citizens freedom to choose, be educated in and communicate their religion, making missionary activities legal.

"This is the point that really needs to be understood," Polat told Compass last year. "In Turkey, constitutionally speaking, it is not a crime to be a Christian or to disseminate the Christian faith. However, in reality there have been problems."

The lawyer and the defendants said that prosecuting lawyers gave political dimensions to the case by rendering baseless accusations in a nationalistic light, claiming that missionary activities were carried out by imperialistic countries intending to harm Turkey.

Tastan and Topal became Christians more than 15 years ago and changed their religious identity from Muslim to Christian on their official ID cards.

Initially accompanied by heavy media hype, the case had been led by ultranationalist attorney Kemal Kerincsiz and a team of six other lawyers. Kerincsiz had filed or inspired dozens of Article 301 court cases against writers and intellectuals he accused of insulting the Turkish nation and Islam.

Because of Kerincsiz's high-level national profile, the first few hearings drew several hundred young nationalist protestors surrounding the Silivri courthouse, under the eye of dozens of armed police. But the case has attracted almost no press attention since Kerincsiz was jailed in January 2008 as a suspect in the overarching conspiracy trials over Ergenekon, a "deep state" operation to destabilize the government led by a cabal of retired generals, politicians and other key figures. The lawyer is accused of an active role in the alleged Ergenekon plot to discredit and overthrow Turkey's ruling Justice and Development Party government.

Ergenekon has been implicated in the cases of murdered priest Andreas Santoro, Armenian editor Hrant Dink, and the three Christians in Malatya: Necati Aydin, Ugur Yuksel and Tilmann Geske.

In a separate case, in March of 2009 Tastan and Topal were charged with "illegal collection of funds." Each paid a fine of 600 Turkish lira (US\$360) to a civil court in Istanbul. The verdict could not be appealed in the Turkish legal courts. This ruling referred to the men receiving church offerings without official permission from local authorities.

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## **Turkish nationalists accused of killing bishop**

Nicole Winfield

AP (15.10.2010) / HRWF (19.10.2010) - Website: <http://www.hrwf.net> - Turkey's top Roman Catholic bishop has publicly accused Turkish ultra-nationalists and religious fanatics of being behind the slaying of the country's senior bishop.

Monsignor Ruggero Francheschini told a Vatican meeting Thursday that he was speaking out to correct the "intolerable slander" that had surrounded the slaying of Monsignor Luigi Padovese, the Vatican's apostolic vicar in Anatolia.

Padovese was stabbed to death by his driver outside his home in Iskenderun on June 3, a day before he was to leave for Cyprus to meet Pope Benedict XVI.

The slaying shocked the Turkish church and cast a cloud over Benedict's visit. It was the latest in a string of attacks in recent years on Christians in predominantly Muslim Turkey, where Christians make up less than 1 percent of the 70 million population.

Turkish officials have insisted the slaying was personal and not religious or politically motivated, and Benedict himself played down the motive at the time of the slaying, saying it was not a "political or religious assassination."

But Franceschini, head of Turkey's bishops' conference, told a meeting of bishops gathered to discuss the plight of Christians in the Middle East that Padovese was the victim of "premeditated murder" by the same forces that Padovese had denounced for killing a priest in 2006 and three Christians in 2007.

Francheschini said Padovese's killing was part of a "dark plot of complicity between ultra-nationalists and religious fanatics, experts in schemes of tension."

His comments appeared to be a reference to a series of ongoing cases against hundreds of hardline secularists in Turkey whom prosecutors believe are behind several sensational attacks, including on religious minorities.

Prosecutors say the accused have been trying to create an environment of chaos that would force the secular military to overthrow the Islamic-oriented government.

Some ultranationalists in Turkey also tend to be deeply religious and suspicious of Christians, whom they accuse of proselytizing and converting Muslims.

The polarizing topic of religion in Turkey stems in part from the legacy of Mustafa Kemal Ataturk, a war hero who founded the Turkish republic in 1923 as colonial powers divided up former Ottoman territories. He abolished the caliphate and its traditions of dress and language in favor of a Western, secular state.

In the Padovese case, the driver, Murat Altun, was arrested soon after the slaying. His lawyer, Cihan Onal, said Friday that prosecutors in Iskenderun are still investigating the case and it's not clear when they will issue an indictment.

While some church officials and diplomats have quietly said the murder seemed suspect, Franceschini's comments were unusual in their bluntness. He said he wanted to set the record straight to erase the "intolerable slander circulated by the same organizers of the crime."

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## **The Ecumenical Patriarchate in Istanbul**

### ***2010 Review of the Implementation of the OSCE Commitments Working Session 2: 1 October 2010***

OSCE – HRWF (08.10.2010) – [www.hrwf.net](http://www.hrwf.net) -

#### **Introduction**

1. We represent, before the 2010 OSCE Review Conference, the Order of Saint Andrew the Apostle, a United States-based organization of Orthodox Christian laymen, whose mission is to defend and preserve the existence and world-wide radiance of the Ecumenical Patriarchate of Constantinople, which is the spiritual center of 300 million Orthodox Christians in the world. Members of the Order are found in all walks of life, including the U. S. Congress, executive government, the professions, business, and the arts. Our presence at this Conference is made on behalf of the Ecumenical Patriarchate in order to highlight its historical rights and prerogatives and the serious impediments and threats, at times, with which it is confronted frequently.

2. As you may recall, the Archons were present in a number of past OSCE Conferences; specifically, we were here last year and brought before the assembly a somber account of the difficulties of the Ecumenical Patriarchate and its local congregation. We are here this year to review the situation, take stock of developments, and urge strict adherence with the principles put forward and, indeed, accepted by the members of OSCE.

3. We are mindful of important and encouraging developments to which we wish to give full credit but also to point to serious deficits and violations of principles that unfortunately persist. Our commitment is strong and unshakable in the defense of the Patriarchate's rights and prerogatives. Despite good intentions and good words from Turkish officials, our main concerns remain unresolved to this day, as outlined below.

#### **The "Ecumenical" title**

4. An item of paramount importance to the standing of the Ecumenical Patriarchate in the world is its title as "Ecumenical," which translates as pertaining to the entire "inhabited

world." We do not need to remind this erudite assembly that the Ecumenical Patriarchate was founded by the Apostle Andrew, the first-called Apostle of Jesus, in 37 A.D., in the town of Byzantium, later renamed Constantinople (the city of Constantine, who moved the capital of the Roman Empire to the east, officially, in the year 330 A.D.) which is the present-day Istanbul (officially renamed in 1930, by Kemal Atatürk). The Ecumenical Patriarchate has served, over the centuries, as the religious center for Orthodox Christians up to this day. Its position and prestige was formally elevated in the year 451 A. D., when the Fourth Ecumenical Council of the Christian Church, convened in Chalcedon of Asia Minor, established the five senior Sees of the Christian Church and their order of "preeminence in respect and love" and conferred upon the Bishop of Constantinople a rank second only to that of the Bishop of Rome. The term "Ecumenical Patriarchate" dates from the sixth century A.D. and reflects the stature in which the Bishop of Constantinople was held by the rest of Christendom. When Constantinople fell to the Ottoman Turks in 1453, Sultan Mehmet the Conqueror officially recognized the Ecumenical Patriarch (at the time, Gennadius II Scholarios) as Ethnarch of the Orthodox peoples, while maintaining his position as "primus inter pares" (first among equals) among all the bishops of the Orthodox Churches. In succeeding centuries, the Ecumenical Patriarchate continued its existence in Istanbul, exercising its spiritual ministry over world-wide Orthodoxy (paragraph 5).

5. The "Ecumenical" title of the Patriarch can be clearly illustrated by a large number of events which demonstrate that the Orthodox churches and the entire Christian world, indeed, consider his 15-century old title valid and act accordingly. A few facts that attest to this claim:

A number of Popes of Rome, including the current occupant of the See of Rome, Pope Benedict XVI, have paid official visits to the Patriarchate;

The Ecumenical Patriarch has exercised his recognized prerogatives as "primus inter pares," or "Ecumenical" by convening a number of synaxes (gatherings just short of the status of a synod). Most recently, such synaxes were held in 2008 and 2009;

During a visit by Archbishop of Canterbury, Dr. Rowen D. Williams, the Archbishop repeatedly referred to His All Holiness the Patriarch as the Ecumenical Patriarch.

The visit to the Ecumenical Patriarchate of the newly elected Patriarch Kirill of Moscow and All Russia, July 4-6, 2009, offers clear testimony of this recognition.

6. The denial of recognition entails also legal consequence, namely, to introduce the specter (if not the reality) of criminal prosecution. In August 2008, the Prosecutor of Istanbul's Beyoglu District twice requested the Ecumenical Patriarch to testify why he used the phrase "the ecumenical nature of the Patriarchate" during an international conference of approximately 1,000 Orthodox youth in Istanbul.<sup>1</sup> This judicial interference has, however, no basis in fact or law as clearly stated by the Venice Commission (paragraph 7).

7. The matter of the title "Ecumenical" has also been the subject of deliberation by the European Commission for Democracy Through Law, also known as the Venice Commission. At its 82nd Plenary Session, in Venice, 12-13 March 2010, the Commission expressed a formal opinion<sup>2</sup> stating, among other things:

"99. The Turkish authorities are under a clear obligation under Article 9 of the ECHR not to obstruct or in any way hinder the Patriarchate from using this title. However, it cannot be inferred from the ECHR that the Turkish authorities are obliged themselves to actively use this title when referring to the Patriarchate, nor to formally recognise it. If the authorities do not want to use the title, they are formally free under the ECHR not to do so, as long as they do not obstruct the use of it by others.

100. However, taking into account the fact that the word "Ecumenical" forms part of the title of the Patriarchate and has done so since the 6th century, and that this title is widely recognised and used globally, the Venice Commission fails to see any reason, factual or legal, for the authorities not to address the Ecumenical Patriarchate by its historical and generally recognised title."

8. We regret to report to this conference that recognition of "Ecumenical," as a legitimate and historical title, is still denied to the Patriarch of Constantinople, by the Turkish Government, which continues to view him as the Bishop of a flock of 2,000 Greek Orthodox faithful. This attitude and denial of a legitimate title is unacceptable; it diminishes the stature of the Ecumenical Patriarch, defies history, contradicts universal Christian practice, and defeats Turkey's aspirations for joining the European Union.

### **The process for the election of a new Ecumenical Patriarch**

9. Up until recently, a perennial concern has been the requirement placed by Turkish authorities on the process of electing a new patriarch. The requirement that the candidate to the patriarchal throne and his electors be Turkish citizens at the time of election, combined with the dwindling numbers of candidates who fulfill this requirement, has been a dire threat to the very existence of the Ecumenical Patriarchate. We have noted with satisfaction that, in recent rulings, electors of the world-wide Patriarchal Synod have been allowed to apply for Turkish citizenship and a large number (about 17) of them have done so. This recent ruling, once fully implemented, will add a considerable number of Orthodox prelates to the small pool of indigenous electors (comprising only 12 aging Bishops) for the election of a new Ecumenical Patriarch.

### **Restriction on Free Religious Education**

10. Over the past few decades, the opening of the Theological School at Halki (Heybeliada) has become a thorny issue. Its closure, in 1971, seriously deprived the Ecumenical Patriarchate of its ability to educate its clergy and lay theologians and to be, by its ecumenical role, a center of Orthodox learning, research, and scholarship. In addition, The Ecumenical Patriarchate has severe visa restrictions placed by the Turkish government on students and priests who wish to visit it in order to study and serve there. The Ecumenical Patriarchate is not permitted to have its own printing facility, publish religious journals, treatises and books, a serious hindrance to its theological and pastoral function.

11. Over the years, there have been many voices, inside and outside Turkey, that have joined ours in petitioning the Turkish Government to allow the reopening of the Halki Seminary. These are too numerous to quote in this paper; we mention only briefly the following voices of support:

The U.S. Government, through the voice of several successive Presidents. When President Barack Obama addressed the Turkish National Assembly in 2009, he remarked

The European Union (EU), on several occasions and by many of its governing bodies and institutions;

The newspaper Hürriyet, in a September 4, 2009 article: "...thus, we are all looking forward to seeing some concrete results after so many years;" and again on August 16, 2010: "...In the same spirit, Turkey should move confidently to reopen the Halki Seminary on the Sea of Marmara island of Heybeliada, shuttered since 1971."

12. It now appears that the Government of Mr. Tayyip Erdogan is looking seriously into the resolution of this problem. It was reported recently that Turkish Culture Minister,

Ertogul Günay, stated that the government is searching for a formula to integrate the school into Turkey's university system. Minister Günay said, speaking on Kanal 24 television, that "although we have not finalized a decision in the Cabinet, my personal impression is that we are going to open the seminary." Speaking on NTV, Minister Günay again stated: "with the opening of the school, we strengthen ourselves and at the same time render a service to our citizens on the way toward the EU."

### **Denial of Legal Personality and Property Confiscations**

13. For many long years, a major impediment to the functioning of the Ecumenical Patriarchate as a normal institution in Turkish society is placed by the fact that it is not recognized by the Turkish Government as a legal entity, resulting in its deprivation of property rights. It is widely thought that this Turkish-government tactic has been a calculated long-term strategy of harassment, attrition and annihilation, with multiple deleterious effects upon its functioning and, indeed, its very existence.

14. The denial of legal personality prompted the Venice Commission (see paragraph 7) to state:

"In view of the strict requirements established in the case-law of the European Court of Human Rights, the Venice Commission sees no reason which would justify not granting to religious communities as such the possibility to obtain legal personality. It therefore recommends that Turkey should introduce legislation that would make it possible for religious communities as such to acquire and maintain legal personality."

15. A special mention must be made to the case of the Orphanage on the island of Prinkipos (Büyükkada). Without going into the long legal history of the case, we shall only mention that the Ecumenical Patriarchate, after exhausting all legal means, took its case to the European Court of Human Rights (ECHR) which ruled, on 7 July 2008, in favor of the Patriarchate. In a judgment issued on June 15, 2010, ECHR ruled that the Turkish Government had to return the Orphanage to the Ecumenical Patriarchate. Based on this unequivocal legal judgment, we call on the Government of Turkey to honor its publicly announced intention to reinstate the property to its lawful owner. It is worth mentioning that the Ecumenical Patriarchate has announced plans to use the facility, if and when it devolves under its control, to a center for environmental ethics and inter-faith dialogue, rendering a much needed service in today's conflict-ridden world.

16; Massive confiscations of Ecumenical Patriarchate properties have been experienced over the years. The Greek Orthodox Church in Istanbul owned more than 8,000 properties in 1936. By 1999, the number had been reduced to about 2,000. Today, the number is less than 400, many of them being small churches or other buildings of varied commercial value. The list of confiscations is too long to detail in this paper.

### **Shared Complaints**

17. The egregious violation of the Ecumenical Patriarchate's legitimate rights befalls, unfortunately, also other religious minorities in Turkey, including Armenian, Catholic, and Protestant churches and the Jewish faith. The same denial of legal personality is employed as a stratagem to allow the State to confiscate properties, disallow construction of new buildings and deny permits for the repair or refurbishment of old ones. We are thus in full solidarity with sister Christian denominations and the Jewish faith in Turkey and vigorously protest the multiple violations of rights which should be observed in Turkey as they are observed, indeed, in all civilized countries of the world. Looking to the prospects of Turkey of continuing accession negotiations with the European Union and knowing that religious freedom is a fundamental cornerstone of European civilization, which must be safeguarded at all costs, we foresee great difficulties

and strenuous objections on the part of many, if not all, countries, members of the EU, on the basis of religious rights violations.

18. On the website of Forum 18, a Norwegian organization dedicated to the protection of human rights, we read:

"Turkey continues to interfere in the choices made by the Jewish, Greek Orthodox and Armenian Apostolic communities of who should lead them, Forum 18 News Service notes. The government makes no attempt to hide this interference, which raises serious questions in relation to its international human rights commitments to allow religious communities to select the leaders of their choice. ...So the Jewish, Greek Orthodox and Armenian Apostolic leaders are chosen with government permission as leaders of religious communities which do not exist in law and whose personal positions are not recognized in law."

19. In the August 18, 2010 issue of Human Rights without Frontiers International Newsletter, Mine Yildirin and Otmar Oehring write:

"Most controversy over state interference in religious leadership affects the three religious communities - the Jewish, the Greek Orthodox and the Armenian Apostolic - which in the government's interpretation of the 1923 Lausanne Treaty are the only three recognised ethnic/religious communities...But this recognition still does not mean that they are legally independent entities in their own right. Indeed, no religious community in Turkey has independent legal status in its own right - which means for example that no religious community can own property... Turkey's interference in the choice of Muslim, Greek Orthodox, Armenian Apostolic and Jewish leaders clearly seems incompatible with the country's international human rights commitments to allow religious communities to choose their own structures and leadership."

### **A Changing atmosphere**

20. Although our grievances are still standing as detailed above in our statement, we are in a position to acknowledge a number of encouraging recent events and statements on the part of top Turkish officials that are favorable to our cause. We briefly enumerate below the most important ones:

- A visit by Prime Minister Erdogan, in August 2009, together with the Ecumenical Patriarch, to the Orphanage of Prinkipos (Büyükkada) and subsequently to the Monastery of St. George Koudounas. This visit was an indirect, if not explicit, acknowledgement of ownership rights of the Ecumenical Patriarchate over the Orphanage and a tacit acceptance of the verdict of the ECHR on the issue. The actual implementation of the ECHR decision is still awaited.

- On Sunday, August 15, 2010, official permission was granted for a religious celebration at the 4th-century Monastery of Sümela,<sup>3</sup> on the Black Sea, near Trabzon, at which the last religious service was held in 1922. The Ecumenical Patriarch Bartholomew celebrated, at this iconic monastery and for the first time in 88 years, the Dormition of Jesus's mother Mary in the presence of a multitude of Orthodox Christians from Russia, Greece, Georgia and the United States. The Patriarch duly thanked, with generous words, the Government of Turkey for this permission. Even as we also are thankful to the Government of Turkey, we look forward to a time when the right for the Ecumenical Patriarch or any religious leader for that matter, to perform services at a religious shrine would not be viewed as an extraordinary event eliciting gratitude but as a natural, self-understood, and normal exercise of basic rights.

· Commenting on the event described above, Prime Minister Recep Tayyip Erdoğan summed up its importance better than anyone else. Speaking at a Ramadan fast-breaking "iftar" in Diyarbakir, he said:

"Anyone who trusts in his own faith does not fear the freedom of faith. The one who trusts in his own ideas does not fear the freedom of ideas. They say these are 'nationalists.' Open up Ottoman history and read. The Ottomans were open, and trusting in themselves this is what they did. Never experiencing the slightest problem; quite the opposite, they established their authority in the international community and they did so in the best of ways."

### **Supporting voices**

21. The number of voices in support of the points we are making is increasing, inside and outside of Turkey. We cite here but a few:

Ø The United States Commission on International Religious Freedom (USCIRF), in its Annual Report, published on May 2009, notes that, contrary to the 1923 Treaty of Lausanne provisions, Turkey has specifically failed to implement the guarantees and protections granted for all non-Muslim religious minorities.

Ø The United Nations' Committee on the Elimination of Racial Discrimination (CERD) has invited Turkey, on 7 April 2009, to reopen the Greek Orthodox Theological School on the island of Halki, to return confiscated properties and promptly execute all related judgments by the European Court of Human Rights.

Ø Turkish writer Orhan Kemal Cengiz published, in Zaman, dated 10 July 2009, a devastating critique of Turkish practices. We quote from his article:

"There is a deep-rooted state policy that has brought the patriarchy to the verge of total extinction. This policy was shaped during the late Ottoman and early republican era and has been applied vigorously since then. This is a policy of taking gradual steps to push this historical institution into a corner to force it to choose one of the two options: Either it will stay in Turkey and will lose everything slowly and painfully, or it will leave Turkey once and for all."

Ø In an article published on August 17, 2010 in Hurriyet Daily News, Mustafa Akyol wrote:

"Erdogan took another good step by publicly supporting the Patriarchy, blaming its opponents for paranoia and praising religious freedom. He also advised the nationalists to "open up Ottoman history and read." Good job. But Erdogan should not confine himself with Sümela, and move on to solve other problems of Turkey's Christians, beginning with the re-opening of the Halki Seminary. He should, in other words, de-crucify all the followers of Christ in this country. They have suffered enough."

Ø The Council of Europe's Venice Commission, in March 2010, added its strong voice as highlighted in paragraph 7.

### **Conclusions and Recommendations**

22. Based on the principles of the Helsinki Final Act and the Vienna and Copenhagen Concluding Documents, this paper has presented the views of the Order of St. Andrew the Apostle on the plight of the Ecumenical Patriarchy of Constantinople. The OSCE participating states have strongly affirmed religious freedom as a fundamental human right. We claim that these rights are inherent to the Ecumenical Patriarchy and must be respected and defended by the public authorities of Turkey not only for the sake of the

Ecumenical Patriarch but also for other Christian denominations and other faiths in the country.

23. Our report above clearly shows that the Government of Turkey has failed to live up to these principles with respect to the Ecumenical Patriarchate, notwithstanding the fact that it is a signatory to the OSCE. Since the fall of Constantinople in 1453, the Ecumenical Patriarchate has been a living testament to the religious coexistence of Christians and Muslims, difficult as this coexistence may have been at times. The Ecumenical Patriarchate has served as a bridge between the Muslim East and the Christian West; this role is in jeopardy if current policies and practices are to continue. We respectfully call on this body to reaffirm its strong commitment to its preservation. More specifically, we recommend that OSCE and its Committees vigorously approach the Government of Turkey and try to persuade it of the urgent need for them to faithfully adhere to the above principles and to follow up their good intentions with actions. Specifically, they must:

- Officially allow the use of the title "Ecumenical" and cease and desist from any interference with its use; any penalties related to its use need to be deleted from existing law, regulation, or practice.
- Continue its reforms in connection with the procedure for the election of a new Ecumenical Patriarch with full respect for The Patriarchate's own canonical law, historical precedents, and position as a leading spiritual authority in the Orthodox world.
- Accord recognition of the Ecumenical Patriarchate and other religious denominations and faiths in Turkey as legal entities with all attributes, rights, and prerogatives attendant to their legal personality, including the right to own, build, repair, and acquire property.
- Allow the opening and normal operation of the Theological School in Halki and remove all impediments to its effective functioning as a center of theological education, research and scholarship.
- Cease all confiscations of property historically belonging to the Ecumenical Patriarchate, return properties which have been illegally confiscated, or, if this proves impossible or difficult, provide proper and just compensation, based on fair and prompt arbitration.
- Follow up with deeds their stated intention to return the Orphanage at Büyükkada to the Ecumenical Patriarchate as ordered by ECHR.

24. As Turkey continues its vigorous quest to join the European Union, full adherence to the OSCE charter, including, above all, freedom of conscience and religion, will be a powerful asset and convincing argument, supporting Turkey's high aspirations. It will be strong proof that Turkey has the readiness, willingness, and ability to establish fair conditions for all its citizens but also leadership in adopting needed reforms and in becoming a paradigm for emulation in the entire Muslim world. The road upon which the present Government of Turkey has embarked is promising; it needs to persist on it and bring the needed reforms to fruition. We wish them success in this endeavor.

#### **Footnotes:**

1 According to the New Anatolian wire service, under Article 219 of the Turkish penal code, the Ecumenical Patriarch could be fined and/or imprisoned for a term between one month and one year if found guilty of using the word "ecumenical." Even though this threat did not materialize, the message is still very clear: if the Ecumenical Patriarch or any employee of the Ecumenical Patriarchate uses the word "ecumenical" in reference to the Patriarch's title, they may be subject to criminal prosecution!

2 The document was issued in Strasbourg, 15 March 2010, Opinion no. 535/2009, CDL-AD(2010)005 Or. Engl.

3 Sümela Monastery sits at an altitude of approximately 1,200 meters. Founded in the year 386 A.D. during the reign of Emperor Theodosius I (375-395), legend has it that two priests undertook the founding of the monastery.

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## **Why state interference in the election of chief rabbi, Greek Orthodox and Armenian Patriarchs?**

By Mine Yildirim, Researcher at the Institute for Human Rights at Åbo Akademi University, and Dr. Otmar Oehring, Head of the Human Rights Office of Missio

Forum 18 (11.08.2010) / HRWF (18.08.2010) - Website: <http://www.hrwf.net> - The Turkish government's interference in whether or not the Armenian Apostolic community could elect a new leader and its decision to impose its choice on the community in June has highlighted again the government's continued desire to prevent four specific religious communities from choosing their own leaders freely. The involvement of the government can also impose delays in these processes. Perhaps surprisingly, the government makes no attempt to hide this interference, which is incompatible with Turkey's commitments to allow religious communities to select the leaders of their choice.

Sunni Muslims, the country's largest religious community, are funded and controlled through the Diyanet (Presidency of Religious Affairs), which reports to the Prime Minister. The head of the Diyanet is appointed by the state, and it is the only government religious agency. All Sunni religious activities are carried out through the Diyanet, and many Muslims are content with this situation. It is not possible to in this article address the human rights issues which affect the Diyanet, but it should be noted that Muslims outside the framework of the Diyanet maintain at best an unrecognised, insecure existence.

Most controversy over state interference in religious leadership affects the three religious communities - the Jewish, the Greek Orthodox and the Armenian Apostolic - which in the government's interpretation of the 1923 Lausanne Treaty are the only three recognised ethnic/religious communities.

But this recognition still does not mean that they are legally independent entities in their own right. Indeed, no religious community in Turkey has independent legal status in its own right - which means for example that no religious community can own property. So the Jewish, Greek Orthodox and Armenian Apostolic leaders are chosen with government permission as leaders of religious communities which do not exist in law and whose personal positions are not recognised in law.

### **No legal requirement - and no legal guarantees**

The election or appointment of Chief Rabbi, the Greek Orthodox Patriarch and the Armenian Patriarch is based on a process that lacks legal certainty and which is to a great extent outside of the control of the religious communities themselves. The main reason for this is that the process of application for state permission in order to elect or appoint the religious leader is not required by any law, but is de facto required by what may be called established practice - and by the possible consequences of not applying for permission.

No law states that state permission is necessary, or what processes to gain permission should be followed. However since the establishment of the Turkish Republic the Jewish, Greek Orthodox and Armenian Apostolic communities have applied for state permission when electing or appointing their religious leaders, continuing the practice established

during the Ottoman period. The possible consequences of not applying for permission might include, to name only two possibilities:

- non-recognition of the religious leader by the state for purposes of representing their ethnic/religious community - a very important function in Turkey;
- and withholding permission to wear religious clothing in places outside of places of worship.

It is highly unlikely that any of these three ethnic/religious minority groups would break with established practice, as they strive - for very understandable reasons - to avoid any kind of conflict with state officials. But as there are no legal guarantees under this established practice, there are no guarantees against what may amount to arbitrary state administrative decisions.

One person who has a leading role in one of the three communities told Forum 18 that "the procedure is defined throughout the process, with changes in criteria as well as reciprocal negotiations". Commenting on the uncertainties within the process, they noted that "each election is different".

Generally speaking it is the community officials who prepare the initial draft of regulations for the election or appointment of their religious leaders, including the criteria for candidates and term of service.

However, the Ministry of Interior may advise changes, or declare that a certain provision to be incompatible with existing regulations - whether or not this is in the regulations.

It is very important to note that the communities, in preparing election regulations to submit to the Turkish authorities, are strongly guided by what they think may be acceptable to the state, in the light of their previous experiences. This is particularly reflected in the criteria for who may be chosen as the leader.

Despite the differences between each and every election of the Jewish, Greek Orthodox and Armenian Apostolic leaders, the three communities generally work on the basis that the government will insist that:

- only it can determine whether an election is permissible, according to its interpretation of the existing regulations;
- only it defines what tasks the elected leaders may carry out and what title they may use;
- only it determines when the election can take place;
- and that the chosen leader must be trusted by the government.

Apart from insisting that all members of leadership bodies - such as the Holy Synod for the Greek Orthodox, the Spiritual Council for the Armenian Patriarchate and the Beth Din for the Jewish community - are Turkish citizens, the government does not generally interfere at present in appointments below the level of the head of the religious community.

### **No leadership interference or recognition for most other communities**

While the government appoints the official Muslim leadership and keeps a strong grip on who can lead the Jewish, Greek Orthodox and Armenian communities, it makes no attempt to interfere in the selection of leaders for the country's other religious communities.

Most foreign-linked religious communities - such as the Latin Catholics, the Anglican Church and the German Evangelical congregation - have not faced Turkish government obstruction in their choice of leaders.

Nor has the government interfered in the choice of leaders for most other religious communities - including Alevi Muslims, other non-Diyanet Muslims such as the Shia, the Syrian Orthodox Church, Protestant Churches, Jehovah's Witnesses, Yazidis and Baha'is - but it also gives no recognition to these as religious communities, or to their leaders. The government also does not recognise these leaders as having any kind of representative role.

### **Leaders and communities who don't exist**

The Chief Rabbi and the two Patriarchs head the only ethnic/religious communities that are recognised in the Lausanne Treaty. The Turkish government does not recognise their religious communities as having independent legal status as religious communities. So the three leaders are chosen with government permission as leaders of religious communities which do not exist in law and whose personal positions are not recognised in law. Their authority over fellow-believers in Turkey or abroad may also not be recognised.

In the case of Bartholomew and his predecessors, the government goes out of its way to reject their status as "Ecumenical Patriarch", calling him instead the "Fener Rum Patrik" (Patriarch of Fener). This is the name of the district of Istanbul in which the Patriarch lives. Along with this the government also tries to reject the Ecumenical Patriarch's wider jurisdiction or authority over Orthodox communities outside the country - including direct jurisdiction over dioceses in eastern Greece and some parts of the diaspora.

A Turkish court in June 2007 ruled that Bartholomew is not a church leader with jurisdiction outside Turkey, but only the head of the local Greek Orthodox ethnic/religious community. It also denied that he could be called Ecumenical Patriarch. This had no impact on his status outside Turkey, and has caused widespread protests. The Council of Europe's Venice Commission in March 2010 urged Turkey to recognise the right of the Patriarchate to use the title "ecumenical", as well as to allow all religious communities to have legal status.

The Armenian Patriarchate also has jurisdiction outside Turkey, having jurisdiction over the tiny Armenian community on the Greek island of Crete.

The Turkish Government - as with the Ecumenical Patriarchate - rejects the terminology used by the Armenian Apostolic Church itself for its Patriarch: "Patriarch of Constantinople". Instead, the state refers to him as "Ermeni Patrik" (Armenian Patriarch). To accommodate government objections, the Patriarch signs his name as "Patriarch of Istanbul and All Turkey".

### **Delayed Jewish election, new title for leader**

Jews - whether Sephardic (the majority) or Ashkenazi (a small minority) - are organised in one Chief Rabbinate. When the current Chief Rabbi Isak Haleva was elected in December 2002 to replace the veteran Chief Rabbi David Asseo, who had died five months earlier, for the first time the office of Chief Rabbi was decided by the community to be for a seven year term, not a lifetime appointment as previously.

When Haleva's term expired in late 2009, the government refused to allow an election (by direct vote of members of the Jewish community throughout

Turkey) to take place, unless the post title was changed from Chief Rabbi of Turkey to Chief Rabbi. The criteria for the 2002 and 2009 elections were determined by the Election Committee, and it included conditions for the leader such as:

- be a Turkish citizen at least 40 years old;
- what religious training he should have;
- and be trustworthy in the eyes of the Turkish government.

The last condition was a condition required by the Turkish state in all previous elections. traditionally. However, in the 2009 elections the Istanbul Governorship informed the Election Committee that this provision must be changed to stipulate that the Chief Rabbi must "have a good reputation in the eyes of the state and society".

After finalising the election criteria, and receiving approval from the Interior Ministry, the post of Chief Rabbi was advertised in newspapers.

Before the 2009 elections the Jewish community had only one candidate in elections, but in 2009 there were two candidates - both of whom applied on their own initiative. The government did not put forward a candidate, neither did it oppose either of the two candidates. However, it should be noted that the state-approved criteria put forward by the Jewish community ensured that whoever was chosen would be acceptable to the state.

Eventually, the government permitted an election to the post of Chief Rabbi of Turkish Jews, which Haleva won in May 2010. The other candidate gained a much smaller number of votes.

### **Why couldn't the Armenians themselves elect a Patriarch?**

The recent experience of the Armenian Apostolic community - the largest of Turkey's Christian communities with some 60,000 people - is the most vivid illustration that the government's desire to meddle has not diminished.

Mesrop Mutafyan was elected Patriarch for life in 1998 against the express wishes of the Turkish authorities. But Patriarch Mesrop has been forced to retreat into health-related seclusion, brought on by years of pressure from the media, the public and the Armenian diaspora. As his health has declined and he has been unable to exercise his functions in recent years, the question of a successor became acute.

The Armenian community is in a particularly complex legal - or non-legal - situation for choosing leaders. The Armenian Patriarchate is subject to an 1863 Regulation concluded between the Ottoman administration and the Patriarchate. A new regulation annulling this has not been drafted since the establishment of the modern Turkish Republic, and there are differing views among lawyers as to whether or not the 1863 Regulation is still valid. Despite this lack of legal certainty, the Patriarchate acts as if the 1863 Regulation is valid. This Regulation does not specify a course of action if the Patriarch becomes ill, as it only makes provision for the course of action to be taken if the Patriarch dies or resigns from office.

In this instance, the selection of a new leader was complicated by the fact that the current Patriarch, Mesrop, is still living.

Two different factions in the community approached the government separately. Archbishop Aram Ateshian, who chaired the Spiritual Council and was de facto leader of the Patriarchate in the wake of Patriarch Mesrop's incapacity, asked the government on 3 December 2009 to allow the selection of a Co-Patriarch. He thought that a new Patriarch can only be chosen on the death of the previous Patriarch. By contrast, the Council of

Armenians in Turkey, which tends to reflect the views of many in the business community, asked for the election to be allowed to go ahead of a new full Patriarch to replace Mesrop.

The Church presented three candidates - all Turkish citizens. But only Archbishop Aram was living and working in Turkey. Archbishop Karekin Bekjian has served in Germany for the past two decades, while Sebu Chuldjyan - who left his native Turkey when he was ten - serves as a bishop in Armenia. The Turkish government would have been highly nervous about a bishop who has strong links with Armenia, with which relations remain delicate.

The Church had hoped to hold elections on 12 May, but the government delayed in giving any response. This prompted debate in the community as to whether the delay had been caused by the differing requests or whether it merely represented continuing government reluctance to resolve the problems for religious minority communities.

Eventually, the Interior Ministry wrote to the community on 29 June via the Istanbul Governor's Office, rejecting both the proposals put to it from within the Armenian community, arguing that Church regulations did not envisage the possibility of electing a new Patriarch while the incumbent is still alive or a Co-Patriarch. It insisted that only a Patriarchal Vicar-General (Patrik Genel Vekili), a previously-unknown post, could be elected to lead the community until the time Mesrop dies. Some other churches have such a title, and it is thought that this gave the state the idea of using this title for the Armenian leader.

The government justified its decision to refuse the election of a Co-Patriarch by stating that such a position is not foreseen in the existing Regulations - but nor is the appointment of a Patriarchal Vicar General. Murat Bebiroglu, who was before the election on the Patriarchal Advisory Council, wrote in 14 July 2010 in Hye-Tert newspaper that such a position has not existed within the Armenian Orthodox Church since 1709 and it is not in their tradition. (The Patriarchal Advisory Council was dissolved during the election period.) Bebiroglu also noted that the community did not apply for permission to elect a Patriarchal Vicar General. In his view this decision permitting the election of Patriarchal Vicar General is legally unjustified and needs to be challenged by the Armenian Community. The government thus assumed the role of regulator or arbitrator, and imposed a solution to the problem that was not asked for by the community. It was not a legally justifiable interference.

The letter from the Interior Ministry added that the Patriarchate could apply for permission for the new Vicar General to wear religious vestments outside places of worship "which is allowed for only one individual in each religion or confession", as the letter reminded the community. Patriarch Mesrop had been accorded such a right by a decision of Turkey's Council of Ministers one month after his 1998 election.

The Spiritual Council convened on 1 July and hastily chose Archbishop Aram to the newly-created post of Vicar General. Not only did the community not select its leader freely (though Aram might well have been chosen in an election), it was not even able to determine for itself whether it wanted a new Co-Patriarch, a new full Patriarch, or would use the title Vicar-General.

That Aram and the Spiritual Council - led by Aram - co-operated in the appointment of Aram as leader with the new title Vicar-General, and that the community was denied the usual election procedure, has caused considerable questioning within the church and wider Turkish Armenian community of whether the appointment is valid. The dispute continues, and some suggest that Aram's history of co-operation with the Turkish Government as leader of the Spiritual Council unduly influenced the state's actions.

## **History of interference**

There have been previous instances of government interference in the Armenian Apostolic leadership, dating back several decades. In 1997 the government forced the Patriarchate to disband its council of lay advisers.

When Mesrop was chosen as Patriarch in 1998, the government went out of its way to try to prevent his appointment and indicated directly that the only other candidate, the then-72 year-old Bishop Shahan Sivacian, was its choice. The government appeared to regard the then-42 year-old, well-educated and internationally-connected Mesrop as the more threatening candidate. This was widely thought to be because he might be an articulate public face in Turkish society for his community, as well as a spiritual leader.

But although it did not want Mesrop, the Turkish government was ultimately forced to bow to strong foreign pressure to accept him as the new Patriarch.

## **Ecumenical Patriarchate's experience**

The Ecumenical Patriarchate faced less government interference in its most recent leadership election, although it could only proceed with this when the government had given its permission. When Bartholomew became Patriarch in 1991, he was elected by the Holy Synod and the government agreed to the choice.

In a move which broke with established practice, in 2004 Patriarch Bartholomew named several foreign citizens to membership of the Holy Synod. These appointments were made unilaterally, without consulting the government. Amid an outcry by Turkish nationalists, who called for the Patriarch to be expelled from the country, Prime Minister Recep Tayyip Erdogan indicated that this was an internal issue for the Church. It is unclear whether Prime Minister Erdogan would have made a similar statement had the Armenian Patriarchate acted similarly.

After years of urging on the part of the Patriarchate and apparently as a result of the August 2009 meeting between Bartholomew and Erdogan, the government finally agreed that foreign bishops of dioceses under the Ecumenical Patriarchate could apply for Turkish citizenship. Patriarch Bartholomew immediately wrote to the bishops urging them to do so, pointing out that when the election of his successor takes place, "they will have the right to elect and to be elected".

Why the Turkish government chose not to intervene when Patriarch Bartholomew named foreigners to the Holy Synod and apparently to allow foreign bishops to gain Turkish citizenship remains unclear. Perhaps, as the easiest way to calm the nationalists, it was a "Turkish solution to a Turkish problem"?

## **Why arbitrary interference instead of a legal framework?**

There is no existing adequate legal framework governing the elections of the Chief Rabbi and the two Patriarchs. Whenever a need for the election of a spiritual leader arises, permission for that particular election must be obtained. This permission is not valid for any subsequent election. Several key problems with this can be observed.

Firstly, the requirement for state permission or regulation is incompatible with the right of religious communities to be free in their internal affairs, particularly one as critical as the right to appoint their own leader in accordance with their own doctrines and traditions.

Secondly, there is no legal justification for state interference with the election or appointment of religious leaders in any of the three communities. Whether it be national

security, public safety or other concerns that leads the government to interfere in these matters, any interference must in international law be proportionate, justified by law and necessary in a democratic society.

Thirdly, and most importantly, even if state regulation or permission were justified, the fact that each and every election is arbitrarily treated differently puts the religious communities in a very vulnerable position.

The main reason for this is that the government's arbitrary decisions are affected by factors which these religious communities cannot control. The lack of an adequate legal framework that is compatible with international human rights law may be an indication of mistrust of these minorities. In addition, foreign policy issues such as relations with Armenia, whether the USA describes the 1915 tragedy as genocide or not, the Cyprus issue and the situation of the Muslim community in Western Thrace and relations with Israel, all influence the decisions the Turkish government takes about the communities in question. In this way, the government holds what it thinks is a "trump card" in the highly complex question of the relationship between foreign and internal politics.

The core of the problem is that the Turkish state primarily thinks that relations with these three communities are strongly linked to foreign policy matters - not a matter of the freedom of religion or belief of Turkish residents. For decades, these communities have been subject to the changing relationships between Turkey and other countries - even though these communities are not themselves the countries in question.

So it is highly unlikely that the Turkish government will either allow these communities to freely appoint their own leaders, or formulate a permanent, legally acceptable solution to these problems. Although the Turkish government does not put its international legal obligations into practice by refraining from interference in the internal matters of these communities, it presents its solutions as gracious signs of tolerance and respect for religious freedom in Turkey.

### **The need for a fundamental change of approach**

Turkey's interference in the choice of Muslim, Greek Orthodox, Armenian Apostolic and Jewish leaders clearly seems incompatible with the country's international human rights commitments to allow religious communities to choose their own structures and leadership.

This interference has resulted in growing attention being given to this problem - as was seen in reactions to Bartholomew's nomination of foreign citizens to the Holy Synod in 2004, interference in the Jewish electoral process, and the Armenian leadership in 2010. State interference has also created frustrations within the communities, which has become widely known within and outside Turkey. In future, the government may have to face even more damaging reactions to state interference - thus turning what it has thought of as a "trump card" in foreign relations into a foreign policy problem.

The government would not face the problems this causes - and would have gained positive reactions internationally - if it had resolved the problem by allowing each religious community to choose its leadership freely, under a transparent legal framework, in line with the "freedom of thought, conscience and religion" defined in Article 18 of the Universal Declaration of Human Rights and Article 9 of the European Convention of Human Rights.

The key to a stable long-term solution lies in addressing the situation of religious communities within a human rights protection framework, rather than from changing political perspectives. A fundamental change in approach seems long overdue.

However, any resolution in line with Turkey's international human rights obligations would also have to entail granting legal status to all existing religious communities. Communities of all Turkey's faiths should be free to structure themselves as they choose, and to freely select their leadership in the way they wish to do so.

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## Looking beyond the veil

By Gigi Poinier for Human Rights Without Frontiers

HRWF (02.07.2010) - Website: <http://www.hrwf.net> - On June 23, 2010 the Friedrich-Naumann-Foundation for Freedom hosted a luncheon on the topic of women's rights in Turkey "Looking Beyond the Veil, Religious Freedom in Turkey", at the Stanhope Hotel in Brussels. The event was chaired by FDF President Dr. Wolfgang Gerhardt (MEP Germany). The panel members included Jörg Dehnert (FDF Project Director Turkey in Istanbul), Christos Makridis (European Commission, Deputy Head of Unit European Integration), Rana Birden (civil society consultant in Istanbul, member of the KADER, the Association for Supporting and Training Women Candidates), and Professor Dr. Korel Göymen (member of the Istanbul Policy Center, Sabanci University).

Dr. Wolfgang Gerhardt opened the meeting by stating there is a global responsibility between Christians and Muslims to keep an open dialogue and not shy away from difficult questions. Mr Gerhardt discussed the FDF Foundations commitment to working for democracy and human rights, the rights of minorities and women. Furthermore, the FDF President stressed that recognizing human rights is fundamental and not negotiable.

Panel member Christos Makridis (European Commission) began the debate by pointing out that the legal framework in Turkey is broadly in place. However, does this legislation translate into political reality? Mr Makridis stated that on the issue of women's rights in Turkey the EC analysis is focused on four areas which include the extremely low representation of women politically and in the labor force, access to education, and violence against women in Turkey. Mr Makridis stressed that efforts are needed to increase the percentage of women in the Turkish labor force and that women need to be represented politically in order for the status of women to improve in Turkey. In addition, there needs to be more resources directed at providing assistance to women who are victims of violence.

Rana Birden (active member of Civil Society) asserted that increasing conservatism in Turkey is preventing women's ability to enjoy their rights and that there has been little progress made in these areas toward comprehensive gender equality. Ms Birden pointed out that women's participation in the Turkish labor force is one of the lowest in the world.

Ms Birden attributes the oppression of Turkish women in politics, education, and the labor force to a male dominated culture that instills a societal belief that women's primary purpose is to be caretakers. Child care in Turkey is practically non-existent and the burden is entirely left to the women. Ms Birden reminded the audience that only recently the Prime Minister of Turkey publically called on all women to give birth to a minimum of three children. In addition, she pointed out that although women in education have increased by 23 percent, the societal attitude in Turkey is that women are sent to school only so they can be educated mothers.

Professor Dr. Korel Göymen, on the other hand, stated that there is nothing that will delay progress in Turkish society and he remains very optimistic. He pointed out that Turkish women are very active in NGO'S, and attributes women's lack of participation in the labor force to the economic conditions in Turkey. Furthermore, Professor Göymen claimed there was insufficient data to accurately assess women's participation in Turkish

society. He finished the dialogue by stating Turkey is an open society and is changing very fast.

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## **Strasbourg court rules Turkey must return orphanage to Ecumenical Patriarchate**

NAT da Polis

AsiaNews (16.06.2010) / HRWF (17.06.2010) - Website: <http://www.hrwf.net> - In a unanimous decision, the European Court of Human Rights in Strasbourg ruled that Turkey must return the former Greek Orphanage on Büyükada Island, the largest of the Princes' Islands, back to Fener Greek Patriarchate. This concludes the long legal case between the Ecumenical Patriarchate of Constantinople and Turkish authorities. The case had begun in 1997 when Turkey tried to use various legal means to take the building away from the Patriarchate in order to upgrade the area without compensation.

The orphanage is a large, wooden building—an architectural jewel built in 1898 by a French company and bought in 1903 by Eleni Zarifi, the member of a rich Istanbul Greek family who donated it to the Ecumenical Patriarchate for Christian orphans. The orphanage was closed down in 1964 and the building left to decay.

The sentence is very important because for the first time the European Court requires the Turkish state to return the property without compromise (*restitutio in integrum*); for example, paying compensation in order to keep the building.

Another important feature of the ruling is the explicit recognition of the legal status of the Patriarchate. The Turkish state has never recognised the Ecumenical Patriarchate despite improved relations between Ankara and the Fener (the Istanbul neighbourhood where the Patriarchate is located), especially since Prime Minister Erdogan's Justice and Development Party (AKP) came to power.

The prime minister accompanied by the Ecumenical Patriarch Bartholomew I visited the former orphanage for the first time on 15 August 2009, and since then has said on several occasions that he would not oppose the sentence of the European Court in Strasbourg.

Since the Ecumenical Patriarchate is not legally recognised by the Turkish state, it cannot own property in Turkey. It is only allowed to meet the religious needs of the Orthodox community of Istanbul. Even its headquarters in the Fener belong to the Saint George Foundation (Vakif). The same is true for other religious minorities in Turkey.

Political and diplomatic circles in Strasbourg point out that the ruling now opens new perspectives for religious minorities recognised by Turkey, most notably Jews and Armenians, based on the Treaty of Lausanne (1923). The same is true for the Catholic minority, whose members live in an unclear legal status and survive by maintaining a few buildings amid difficulties and uncertainties.

Given its importance, Turkish media have given the sentence an extensive coverage. Turkish European Union Affairs Minister Egemen Bağış told reporters that the government was not surprised by the ruling but could not say whether recognition would be given or not.

Some time ago, Prime Minister Erdogan asked Bartholomew what the Patriarchate would do with the orphanage if it were handed back. The ecumenical patriarch answered that

the intention was to turn one section into an international centre for the environment, and the other into a centre for inter-faith dialogue.

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## **Trial over 'insulting turkishness' again yields no evidence**

***Justice Minister says Article 301 defendants 'presumed innocent' until verdict***

By Barbara G. Baker

Compass Direct (28.05.2010) / HRWF (31.05.2010) - Website: <http://www.hrwf.net> - The 11th hearing of a case of alleged slander against two Turkish Christians closed just minutes after it opened this week, due to lack of any progress.

Prosecutors produced no new evidence against Hakan Tastan and Turan Topal since the last court session four months ago. Despite lack of any tangible reason to continue the stalled case, their lawyer said, the Silivri Criminal Court set still another hearing to be held on Oct. 14.

"They are uselessly dragging this out," defense lawyer Haydar Polat said moments after Judge Hayrettin Sevim closed the Tuesday (May 25) hearing.

Court-ordered attempts to locate and produce testimonies from two witnesses summoned three times now by the prosecution had again proved fruitless, the judge noted in Tuesday's court record.

Murat Inan, the only lawyer who appeared this time on behalf of the prosecution team, arrived late at the courtroom, after the hearing had already begun.

The two Protestant Christians were accused in October 2006 of slandering the Turkish nation and Islam under Article 301 of the Turkish criminal code.

The prosecution has yet to provide any concrete evidence of the charges, which allegedly took place while the two men were involved in evangelistic activities in the town of Silivri, an hour's drive west of Istanbul.

Both Tastan, 41, and Topal, 50, became Christians more than 15 years ago and changed their religious identity from Muslim to Christian on their official ID cards.

Initially accompanied by heavy media hype, the case had been led by ultranationalist attorney Kemal Kerincsiz and a team of six other lawyers. Kerincsiz had filed or inspired dozens of Article 301 court cases against writers and intellectuals he accused of insulting the Turkish nation and Islam.

Because of Kerincsiz's high-level national profile, the first few hearings drew several hundred young nationalist protestors surrounding the Silivri courthouse, under the eye of dozens of armed police. But the case has attracted almost no press attention for the past two years, ever since Kerincsiz was jailed in January 2008 as a suspect in the overarching conspiracy trials over Ergenekon, a "deep state" operation to destabilize the government led by a cabal of retired generals, politicians and other key figures. The lawyer is accused of an active role in the alleged Ergenekon plot to discredit and overthrow Turkey's ruling Justice and Development Party government.

Two weeks ago, Turkish Justice Minister Sadullah Ergin commented before the United Nations Human Rights Council on the controversial May 2008 amendments to Article 301, under which Tastan and Topal are being tried.

Ergin insisted that the revised Article 301 had provided "a two-fold assurance" for freedom of expression in Turkey. The most significant revision required all Article 301 cases to obtain formal permission from the justice minister before being prosecuted.

This week Ergin released Justice Ministry statistics, noting that out of 1,252 cases filed under Article 301 during the past three years, only 83 were approved for prosecution.

Stressing the principle of "presumption of innocence," Ergin went on to criticize the Turkish media for presenting Article 301 defendants as guilty when they were charged, before courts had heard their cases or issued verdicts.

But for Tastan and Topal, who by the next hearing will have been in trial for four years, Ergin's comments were little comfort.

"At this point, we are tired of this," Tastan admitted. "If they can't find these so-called witnesses, then the court needs to issue a verdict. After four years, it has become a joke!"

Topal added that without any hard evidence, "the prosecution must produce a witness, someone who knows us. I cannot understand why the court keeps asking these witnesses to come and testify, when they don't even know us, they have never met us or talked with us!"

Both men would like to see the trial concluded by the end of the year.

"From the beginning, the charges against us have been filled with contradictions," Topal said. "But we are entirely innocent of all these charges, so of course we expect a complete acquittal."

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## **What criminal trials do and don't reveal**

By Güzide Ceyhan

Forum 18 (22.04.2010) / HRWF (27.03.2010) - Website: <http://www.hrwf.net> - Email: [info@hrwf.net](mailto:info@hrwf.net) - Turkish Protestants and human rights defenders expected that the Malatya murder trial hearing on 15 April would be the last in their three-year long pursuit of justice for the savage killings of Necati Aydin, Tillman Geske and Ugur Yüksel. The three were murdered in April 2007 in the Christian publishing house where they worked. In the previous hearing on 19 February, the prosecutors had asked for life sentences three times over for the five young men - Emre Gunaydin, Cuma Ozdemir, Abuzer Yildirim, Hamit Ceker and Salih Gurler - who are imprisoned and accused of the murders.

However, an indictment related to Operation Cage Plan - an alleged Navy plan targeting Turkey's non-Muslim communities - has been added to the case file. The files have not been merged yet, as the judges have to first investigate the added file, and then determine whether a reasonable relationship exists between the murders and the alleged plan. The prosecutors have requested that claims for the merger of the two cases be rejected at this stage "because there is no evidence indicating a concrete connection between the two cases". The judges have decided to postpone the decision to the next trial to take place on 14 May.

### **Operation cage**

The Operation Cage Plan was found on a CD seized in April 2009 from the office of a retired Naval Major, Levent Bektas, who is a suspect in the Ergenekon case. An annotated English-language translation of the Plan is at <[http://www.esiweb.org/pdf/turkey%20-%20Operation%20Cage%20\(Kafes\)%20Action%20Plan%20\(English%20translation\).pdf](http://www.esiweb.org/pdf/turkey%20-%20Operation%20Cage%20(Kafes)%20Action%20Plan%20(English%20translation).pdf)>, and a non-annotated translation is at <http://www.turkishgladio.com/files/64ecage.doc>.

The plan reveals that prominent Turkish non-Muslim figures were targeted for assassination, to diminish international and domestic public support for the governing Justice and Development Party (AKP). The murders of Armenian-Turkish journalist Hrant Dink, Catholic priest Fr Andrea Santoro and the three Protestants in Malatya are expressly identified in the plan as having helped achieve this goal, by encouraging the view that non-Muslims living in Turkey were killed by fundamentalist religious groups.

However, the Plan goes on to say that "propaganda (..) staged by the AKP" has successfully attributed these crimes to Ergenekon.

The Cage Plan targeted non-Muslims generally, but the only named targets were Christian by faith or background. Groups such as Baha'is and Jehovah's Witnesses were not specifically identified in the Plan. The logic behind Cage choosing these targets seems to be that planners thought this would evoke most responses outside Turkey, and thus more negative foreign coverage and reactions against the AKP.

### **Chance to reveal what lay behind murders and advance justice**

The media supportive of the AKP government strongly supports the view that all these murders were indeed arranged by Ergenekon, as the Cage Indictment states. The Indictment, prepared by state prosecutors, was accepted by Istanbul's 12th Criminal Court in March 2010. However, throughout the legal proceedings of the case against Fr Santoro's murderer - O.A. who was 15 at the time of the murder on 5 February 2006 - no actionable connection to any other instigators or larger plot was established in the trial, beyond a climate of intolerance.

It is certainly not implausible that there could be more behind Fr Santoro's murder than an isolated individual's action, as some in Turkey strongly suspect. It remains unclear, for example, why Turkey's National Intelligence Organisation (MIT) secret police had a flat facing the Trabzon church where Fr Santoro was murdered. And it has yet to be seen whether the Cage Indictment will have any legal implications for Fr Santoro's case. The High Court of Appeals on 4 October 2007 confirmed an 18-year jail sentence imposed on O.A.

Since the beginning of the Malatya trial, the families of the victims, lawyers for the victims (who are not Christians), and the Protestant community have become convinced that the killings were part of a bigger plan involving many actors targeting the Christian community as a whole. The prospect of the merger of the two cases has thus created hopes that this may make it possible to investigate the background of the murders, and bring to justice all those responsible.

### **Cage's aims**

One of the methods of creating a perception of hostility and insecurity for non-Muslims, described in the Cage Plan, is disinformation against non-Muslim minorities. Accordingly, websites and other media and communication tools were to be used to spread the perception that non-Muslims constitute a threat to the nation and are divisive. This it was hoped would lead to hostile acts against non-Muslims.

The Plan also aimed at taking advantage of many people's fears of the AKP and its religious roots. Such people who could be used for this included members of vulnerable groups in Turkey, prominent writers opposed to the AKP, influential foreign non-Muslims, secular and democratic-minded Turkish citizens worried by the threat of enforced sharia (Islamic law), and religious leaders of non-Muslim communities. The instigators of Cage hoped that such people would make statements that their communities are under threat in Turkey.

Clearly, the plan aimed to orchestrate many people to create the perception that non-Muslims are under threat in Turkey because of the rise of Islam and particularly the AKP. Hence, many people played a part in the execution of Cage without actually knowing about it and embracing its purposes. Cage's goal – if the plan is authenticated – was to use the apparently contradictory ends of both inciting hostile actions against non-Muslims, and inciting condemnation of this hostility, to undermine the stability of the AKP government.

### **Tragic irony**

The tragic irony is that even if Cage is an entirely fictitious plan, non-Muslims in Turkey – as well as Muslims – have good reason to think that freedom of religion or belief in Turkey is both limited and under threat. The actions and policies of the state – independent of Ergenekon and Cage – allow no other conclusion to be drawn.

### **After Ergenekon arrests attacks decline**

It has been noticeable that, after the start of arrests related to Ergenekon, the media became less hostile to vulnerable religious communities, particularly Christians. This is noted in the 2009 Report on Human Rights Violations prepared by the Association of Protestant Churches, published on 30 January 2010.

The Report pointed out that 2009 saw a "decrease in defamatory and false information directed towards Christians by heavily biased publications". However it also notes Protestant concern that "frequent hate and slander filled publications continue in local media and on the internet". The Cage Indictment exposes a plan to utilise the media for hostile and defamatory coverage against non-Muslim communities, and such hostile coverage does indeed happen.

However, proving a connection between orders given by named persons and this hostile coverage has not been possible. The exposure of the Cage Plan is on its own unlikely to help identify such a connection. Indeed, people may have acted as if they were following the Cage Plan without knowing about Cage, out of a genuine – but irrational and unfounded – fear that "missionary activities" are a threat to Turkey.

It is not possible to know exactly what actions planned by those who produced Cage have been carried out, and what actions are unrelated to those people. For instance, it is known that assassinations were plotted against the Armenian Patriarch Mesrob Mutafyan, the leader of Sivas' Armenian community Minas Durmaz Güler, and Ali Balkiz and Kazim Genç in the Alevi community. However, it has not yet been established that these were directly orchestrated by the Cage planners, or whether it is a result of the already existing social intolerance.

Indeed, the Interior Ministry issued a Decree asking for reinforced protection of non-Muslim citizens and requesting increased alertness for intelligence that might reveal planned attacks (19/06/2007, No. 508). Efforts have since been made to prevent attacks on non-Muslim citizens from happening again, and it is clear that these efforts have been successful to some degree with the uncovering of several plots.

## **Government hasn't addressed underlying issues**

Yet it is important to note that the government focused its efforts mainly on preventing violent attacks on non-Muslim individuals and their property; the many other existing freedom of religion or belief issues were not addressed. What does this imply? Some suspect that the government's real concern is to prevent attacks that would damage its reputation internationally.

There is almost a perception, with almost a feeling of relief, among vulnerable religious communities that the brutal murders were just a plan by a small violent group within the military – an isolated event, not reflecting any negative attitudes towards Christians and other religious communities in Turkey. Indeed, the AKP government seems to be trying to show that they embrace positive policies in favour of freedom of religion or belief in Turkey.

However, the European Commission Turkey 2009 Progress Report has highlighted many serious freedom of religion or belief problems, which have either not been raised, or only referred to in passing, in criminal trials. These issues must be resolved to turn rhetoric on religious freedom into reality.

The issues requiring resolution include: the property disabilities and confiscations faced by communities as varied as the Alevi Muslims, Catholics, the Greek Orthodox, Protestants, the Syrian Orthodox Church and the Jehovah's Witnesses; the lack of legal status of religious communities themselves under the Foundations and other laws; the non-existent legal possibility of conscientious objection to military service; and compulsory intolerant religious education in public schools.

## **Intolerance of freedom of thought, conscience and belief remains**

Sadly, irrespective of who was behind Ergenekon or Cage, Turkish society does not demonstrate a tolerant or respectful attitude towards people of different religious communities. An interesting study conducted by Istanbul's Sabanci University in 2009, "Religiosity in Turkey - An International Study", reveals that of those who joined the study, 66 per cent said that members of other religions should not be allowed to expound their ideas by organising meetings open to the public. Indeed, 62 per cent said they should not be allowed to give out books that explain their views. The survey is available in Turkish from <http://research.sabanciuniv.edu/13119/>.

The sample used in the Survey was determined according to the standards established by the Turkish Statistical Institution, and represented a wide geographical range and randomly selected participants. A Protestant who wished to remain anonymous concurred with the result of the Survey, stating that "this is exactly our experience. Commitment to freedom of religion is often in general terms supported by people. But when it comes to specifics, there is a strong resistance to allowing the teaching of one's religion, the establishment of churches, etc. This resistance comes both from officials and from ordinary citizens."

Unfortunately, many Turks do indeed have a deep-rooted hostility to Christians and other religious minorities. Powerful forces in the "deep state" have built on and support this intolerance.

## **Conclusion**

The Cage Indictment exposes an undercover plan by the "deep state", which aims to use the Dink, Santoro and Malatya murders and public opinion manipulation to create the view that non-Muslim Turkish citizens are targeted by fundamentalist religious groups. The file is like Pandora's Box and has raised far more questions than answers. If it is

merged with the Malatya case, there is no doubt that it will take the case to another level where it might be possible to address the broader issues that led to the murders. However this will take many more years, as it will be added to a cluster of cases around the Ergenekon case, which itself raises many issues related to the right to fair trial with prolonged imprisonments without any verdict and legal means of retrieval of evidence. The results and impact of these cases are impossible to accurately predict.

And the government still needs to take action now on the other real challenges to freedom of religion or belief in Turkey, irrespective of whether they feature in trial proceedings.

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## **Conscientious objection a test of Turkish religious freedom**

By Güzide Ceyhan

Forum 18 (19.03.2010) / HRWF (22.03.2010) - Website: <http://www.hrwf.net> - Email: [info@hrwf.net](mailto:info@hrwf.net) – Turkish non-recognition of the right to conscientious objection to military service contributes to conscientious objectors being in an unending cycle of prosecution - trial - punishment, Güzide Ceyhan notes in a commentary for Forum 18 News Service <http://www.forum18.org>. The case of Muslim objector Enver Aydemir demonstrates this. He objects to conscription because of the military's "antagonistic feelings towards my beliefs". The experience of his mother and sister, who were not allowed to visit him in custody wearing veils, has, he thinks demonstrated this. Similarly trapped in the prosecution – trial – punishment cycle are Jehovah's Witness and secular conscientious objectors. The refusal of the European Court of Human Rights to address the religious freedom aspects of the Ülke case ignored the prosecution – trial – punishment cycle's coercion of a person to change their beliefs. Sadly, it appears that conscientious objection is – like non-recognition of the independent legal existence of religious communities – another example of Turkey's reluctance to recognise freedom of religion or belief for everyone.

Turkey does not recognise the right to conscientious objection to military service, along with countries such as Azerbaijan, Belarus, Turkmenistan and – in practice – Armenia, Forum 18 News Service notes. Without recognition of this right – which is embedded in the right to freedom of religion or belief - and even lack of any regulations to address their situation, conscientious objectors find themselves in an unending cycle of prosecution – trial – punishment.

In spite of Turkey's repeated statements that legal efforts are underway to address this problem, the current non-existing or inadequate legal provisions create great difficulties for conscientious objectors. These include violations of the right to freedom from cruel, inhuman or degrading treatment or punishment, and of other fundamental human rights.

The continuing case of a Muslim objector, Enver Aydemir, demonstrates this. Aydemir is a devout Muslim who objects to serving in the Turkish military forces because "the elites of the Turkish Military Forces, relying upon secular values, hold antagonistic feelings towards my beliefs and that I will never never be a soldier of this order." The Turkish pacifist website [savaskarsitlari.org](http://savaskarsitlari.org) on 15 March 2010 reproduced his July 2007 letter explaining this, in which he also commented that:

"I saw how appropriate my attitude was because my mother and my sister, who came to see me [in military custody] after two days, were not allowed in the guardhouse because of their veil. As a person whose most precious values are his faith, I cannot accept the attitude of the elites of the Turkish Armed Forces against Islamic values. For this reason I

declare my conscientious objection. It is not possible for me to be part of an institution that insults even the most basic beliefs of Muslims."

Aydemir was detained and then arrested on 24 December 2009 and is held in Eskisehir Military Prison. Aydemir's lawyer, Davut Erkan, stated on 15 March 2010 that efforts were underway to trap his client in the prosecution – trial – punishment cycle. The military prosecutor has asked for Aydemir to be sentenced to up to 10 years in prison for "refusal to follow orders". Charges of "desertion" have also been raised by the military prosecutor. Aydemir himself stated, when he was tried on 31 January 2010 that he was held naked in a cold room and also punished with falaka (a punishment inflicted by beating the soles of the feet). His father sent a letter of complaint to the Human Rights Commission of the Turkish Grand National Assembly, who are investigating the complaint.

For conscientious objectors from a non-Muslim background, denial of conscientious objection along with the marginalisation of non-Muslim religious communities has a clear impact on the intolerance and physical attacks members of these communities experience. This has been demonstrated in the cases of young male Jehovah's Witnesses, who have been maltreated and repeatedly prosecuted in recent years for refusing compulsory military service on grounds of religious conscience.

Compulsory military service in Turkey applies only to men, not to women. Conscientious objectors to this service fall mainly into two groups: pacifists who consider themselves 'total objectors' to any compulsory state service, including any or fully civilian service, and Jehovah's Witnesses, who reject military service but are willing to serve within a strictly civilian alternative service regime. There are approximately 89 conscientious objectors who are not Jehovah's Witnesses, according to the war resistor savaskarsitlari.org web site. About 30 conscientious objectors are Jehovah's Witnesses.

One reason for the small number of declared conscientious objectors – around 120 out of 14,000,000 men in all age groups eligible for military service - is that declared objectors have to face serious consequences for refusing military conscription. Many prefer to find other ways of avoiding military conscription. On 1 June 2008 the Minister of National Defence stated that around 1,000,000 men had either postponed military service or evaded the draft. Objectors often prefer to evade military service by postponing service (for example by continuing their education), working abroad, or desertion.

As no legal regulations address the situation of conscientious objectors, each time an objector refuses to wear a military uniform, or refuses orders, or refuses conscription, it is considered as a refusal to obey orders and the Military Criminal Code applies. Prosecution and sentencing then follows. There starts an unending cycle of prosecutions and prison sentences, because following the first conviction every act of refusal is reckoned as an independent act of "insistence on refusing to obey orders". Hence the objector is faced with a tough choice; virtually life long prosecution and prison sentence, giving up on listening to the voice of his conscience, or retreating to a life on the run.

Conscientious objection to military service is a legitimate part of everyone's right to freedom of thought, conscience and religion, as the then UN Human Rights Committee stated in its General Comment 22 on Article 18 of the International Covenant on Civil and Political Rights (ICCPR). It confirmed this in 2006, in a ruling on the case of Korean Jehovah's Witness conscientious objectors, Yeo-Bum Yoon and Myung-Jin Choi. The Committee ruled that, Korea's conviction and sentencing of the two conscientious objectors was "a restriction on their ability to manifest their religion or belief". Turkey, like Korea, has ratified the ICCPR and so this decision has direct implications for Turkey in establishing the scope of its obligations under Article 18.

Despite this, the government claims that international human rights law does not protect the right to conscientious objection. This has been the government's argument in a case before the European Court of Human Rights (ECHR) in Strasbourg about a Turkish pacifist conscientious objector: Osman Murat Ülke v. Turkey.

The ECHR found against Turkey in January 2006 that Ülke's conviction and punishment had been "degrading treatment" under Article 3 ("Prohibition of torture, inhuman or degrading treatment or punishment") of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Court ruled in extremely strong terms that: "the numerous criminal proceedings brought against the applicant, the cumulative effects of the ensuing criminal convictions and the constant alternation between prosecution and imprisonment, together with the possibility that he would face prosecution for the rest of his life, are disproportionate to the aim of ensuring that he performs his military service. They are aimed more at repressing the applicant's intellectual personality, inspiring in him feelings of fear, anguish and vulnerability capable of humiliating and debasing him and breaking his resistance and will. The clandestine life, amounting almost to "civil death", which the applicant has been compelled to adopt is incompatible with the punishment regime of a democratic society."

However, although Ülke also complained to the ECHR under Article 9 ("Freedom of thought, conscience and religion"), the ECHR concluded that "it was not necessary to give a separate ruling on the [other] complaints." But the judgment did state that Turkey's "legal framework is evidently not sufficient to provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one's beliefs. Because of the unsuitable nature of the general legislation applied to his situation the applicant ran, and still runs, the risk of an interminable series of prosecutions and criminal convictions." The Turkish government promised to address this, but has yet to do so.

The refusal of the ECHR to address the Ülke case under Article 9 – which refusal the Turkish Government had argued for – caused great disappointment among Turkish civil society activists. This failure by the ECHR meant that it failed to consider an extremely serious consequence of the Turkish treatment of conscientious objectors. As the cycle of arbitrary detention, prosecution and prison sentences is severe, it has the effect of applying strong coercion to a person to change their conscientiously-held belief.

This is clearly an extremely serious violation of everyone's freedom of thought, conscience and religion.

In other religious freedom cases involving individuals against states, the ECHR has also been reluctant to rule on whether there have been breaches of Article 9 as against other European Convention articles. This was the case when two Turkish Alevi Muslims successfully brought a case to the ECHR on the question of compulsory lessons in religious culture and ethics.

Unfortunately, the ECHR, in an extremely dangerous October 2009 judgement in the Bayatyan v. Armenia case, has made the extraordinarily mistaken claim that Article 9 does not guarantee the right to conscientious objection to military service. This put the ECHR out of step with the international legal standards on conscientious objection to military service, including those of the ICCPR, and is being challenged in the Grand Chamber of the ECHR.

Despite this, especially when the ECHR sees that other Convention articles are involved, the Court has been becoming increasingly important in defending freedom of thought conscience and belief in Turkey.

The Ülke judgement has, as the Turkish government recognised, serious implications for Turkey's legal framework. Article 24 of the 1982 Turkish Constitution guarantees freedom of religion or belief, and does not allow suspension of this right even in times of national emergency. Article 72 lists military service as one of the two national service options which are "the right and duty of every Turk," the second option being an undefined "public service." There are no conflicts between the Constitution and potentially recognising the right to conscientious objection.

But this is not the case with Turkey's laws regulating military service. The 1927 Military Law states that military service is "compulsory for every male citizen." Failure to report for military service is, under the Military Criminal Code's Article 63, a crime. Article 87 of the Code describes all subsequent refusals to undertake military service as "insistence on disobedience to orders." As the Ülke judgement noted, this opens up "the risk of an interminable series of prosecutions and criminal convictions."

After the Ülke decision, Turkey informed the Committee of Ministers that regulations concerning conscientious objection will be made in due course. The Defence Ministry, in response to a parliamentary inquiry about conscientious objection, said on 2 June 2008 that work is in progress for a regulation on this right. However, nothing has to date (March 2010) been done to fulfil the requirements of the January 2006 ECHR judgment.

Generally speaking, arguments by military circles in favour of not recognising the right to conscientious objection are either based upon national security arguments, or the perception that conscientious objection is a concept foreign to Turkey's culture. The Ministry of Justice and Ministry of National Defence state that work on conscientious objection is ongoing since the Ülke judgment. But no information is available as to the specific content of this work, or when a result is expected. The reasons behind this slow progress appear to include the military struggle against the PKK in eastern Turkey and the many lives lost in this struggle; an inequality of risk between conscientious objectors and those who risk their lives in military service; and strong resistance from some parts of society, because of a deeply rooted notion that (against Turkey's international human rights commitments) national security needs always override religious convictions.

There have only been two positive moves since the ECHR judgment. A draft code on conscientious objection to military service was submitted on 14 November 2008 to the Grand National Assembly by a Kurdish human rights defender and parliamentary deputy from the opposition Peace and Democracy Party (BDP), Akin Birdal. But there is no sign that this may become law, as so far political parties have been unresponsive to the Bill. Another significant development is a Decree issued on 3 July 2008 by the Ministry of Justice, attempting to prevent the endless prosecution – trial – punishment cycle that objectors have to face. This Decree states that deserters can only be arrested and detained with a court warrant by the police. This means that conscientious objectors cannot now be arrested by military authorities from the recruitment office.

In light of Turkey's international and constitutional human rights commitments, will Turkey create a suitable legal regulation to assess claims of conscientious objection to military service? It seems there is a strong military and political will not to recognise a right to conscientious objection. Some developments, such as the Ministry of Justice Decree, which is in itself a positive step, still give the impression that the right to conscientious objection will not be recognised soon. This is because the Decree appears aimed at eliminating the consequences of non-recognition of conscientious objection, instead of legally addressing freedom of religion or belief issues that arise when one is forced to act against genuinely held beliefs.

Sadly, it appears that conscientious objection is – like non-recognition of the independent legal existence of religious communities – another example of Turkey's reluctance to recognise freedom of religion or belief for everyone.

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## **Criminal conviction of members of a religious group for their manner of dressing in public held to be unjustified**

***Ahmet Arslan and Others v. Turkey (no. 41135/98)***

### ***Principal facts***

Press release issued by the Registrar (23.02.2010) / HRWF (24.02.2010) - Website: <http://www.hrwf.net> - Email: [info@hrwf.net](mailto:info@hrwf.net) - The applicants are 127 Turkish nationals, including Mr Ahmet Arslan. They belong to a religious group known to its members as Aczimendi tarikaty.

In October 1996 they met in Ankara for a religious ceremony held at the Kocatepe mosque. They toured the streets of the city while wearing the distinctive dress of their group, which evoked that of the leading prophets and was made up of a turban, "salvar" (baggy "harem" trousers), a tunic and a stick. Following various incidents on the same day, they were arrested and placed in police custody.

In the context of proceedings brought against them for breach of the anti-terrorism legislation, they appeared before the State Security Court in January 1997, dressed in accordance with their group's dress code.

Following that hearing, proceedings were brought against them and they were convicted for a breach both of the law on the wearing of headgear and of the rules on the wearing of certain garments, specifically religious garments, in public other than for religious ceremonies. They appealed against their conviction, but without success. In addition, their application to the Ministry of Justice, seeking leave to lodge a reference by written order was also dismissed.

### ***Complaints, procedure and composition of the Court***

Relying on Article 9, the applicants complained that they had been convicted under criminal law for manifesting their religion through their clothing.

The application was lodged with the European Court of Human Rights on 14 November 1997.

Judgment was given by a Chamber of seven judges, composed as follows:

Françoise **Tulkens** (Belgium), **President**,  
Ireneu **Cabral Barreto** (Portugal),  
Vladimiro **Zagrebelsky** (Italy),  
Danutė **Jočienė** (Lithuania),  
Dragoljub **Popović** (Serbia),  
András **Sajó** (Hungary),  
Işıl **Karakaş** (Turkey), **Judges**,

and also Sally Dollé, **Section Registrar**.

### **Decision of the Court**

It was established that the applicants had not received criminal-law convictions for indiscipline or lack of respect before the State Security Court, but rather for their manner of dressing in public areas that were open to everyone (such as public streets or squares), a manner that was held to be contrary to the legislative provisions.

The applicants' conviction for having worn the clothing in question fell within the ambit of Article 9 – which protected, among other things, the freedom to manifest one's religious beliefs – since the applicants were members of a religious group and considered that their religion required them to dress in that manner. Accordingly, the Turkish courts' decisions had amounted to interference in the applicants' freedom of conscience and religion, the legal basis for which was not contested (the law on the wearing of headgear and regulations on the wearing of certain garments in public).

It could be accepted, particularly given the importance of the principle of secularism for the democratic system in Turkey, that this interference pursued the legitimate aims of protection of public safety, prevention of disorder and protection of the rights and freedoms of others. However, the sole reasoning given by the Turkish courts had consisted in a reference to the legal provisions and, on appeal, a finding that the disputed conviction was in conformity with the law.

The Court further emphasised that this case concerned punishment for the wearing of particular dress in public areas that were open to all, and not, as in other cases that it had had to judge, regulation of the wearing of religious symbols in public establishments, where religious neutrality might take precedence over the right to manifest one's religion.

There was no evidence that the applicants represented a threat for public order or that they had been involved in proselytism by exerting inappropriate pressure on passers-by during their gathering. In the opinion of the Religious Affairs Organisation, their movement was limited in size and amounted to "a curiosity", and the clothing worn by them did not represent any religious power or authority that was recognised by the State.

Accordingly, the Court considered that the necessity for the disputed restriction had not been convincingly established by the Turkish Government, and held that the interference with the applicants' right of freedom to manifest their convictions had not been based on sufficient reasons. It held, by six votes to one, that there had been a violation of Article 9.

In application of Article 41 (just satisfaction), the Court held, by six votes to one, that the Turkish State was to pay 10 euros (EUR) to each of the applicants for pecuniary damage, and EUR 2,000 jointly for costs and expenses.

Judge Sajó expressed a concurring opinion and Judge Popović a dissenting opinion; the texts of these opinions are annexed to the judgment.

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## **European court rules against Turkey's religion ID**

### ***Designation on identification cards used to discriminate on basis of religion***

By Damaris Kremida and Will Morris

Compass Direct (02.02.2010) / HRWF (08.02.2010) - Website: <http://www.hrwf.net> - Email: [info@hrwf.net](mailto:info@hrwf.net) – A European court on Tuesday (Feb. 2) ordered Turkey to remove

the religious affiliation section from citizens' identification cards, calling the practice a violation of human rights.

Religious minorities and in particular Christian converts in Turkey have faced discrimination because of the mandatory religion declaration on their identification cards, which was enforced until 2006. Since then, citizens are allowed to leave the "Religion" section of their IDs blank.

The ruling by the European Court of Human Rights (ECHR) "is a good thing," said Zekai Tanyar, president of the Turkish Protestant Alliance, citing prejudices against Christian converts.

"[Religion on the ID] can cost people their jobs," he said. "It has been known to affect whether they get a job or not, how people look at them, whether they are accepted for a post or an application of some sort. Therefore I think [the ruling] is a good and appropriate thing."

Tanyar said the same principles would apply in the case of Muslims living in a country that had prejudices against Muslims. For converts in Turkey having to state their religion on their ID cards, "in practice, and in people's experience, it has been negative."

The ECHR ruling came after a Turkish Muslim national filed a petition challenging that his identification card stated his religion as "Alevi" and not Muslim. Alevis practice a form of Shia Islam that is different from that of the Sunni Muslim majority.

The court found in a 6-to-1 vote that any mention of religion on an identity card violated human rights. The country was found to be in violation of the European Convention of Human Rights – to which Turkey is a signatory – specifically Article 9, which deals with freedom of religion and belief; Article 6, which is related to due process; and Article 12, which prohibits discrimination.

The presence of the "religion" box on the Turkish national identification card obliges individuals to disclose, against their will, information concerning an aspect of their personal convictions, the court ruled.

Although the government argued that indication of religion on identity cards did not compel Turks to disclose their religious convictions, the ECHR found that the state was making assessments of the applicant's faith, thus breaching its duty of neutrality and impartiality.

In a statement on the verdict this week, Turkish Prime Minister Recep Tayyip Erdogan said that the ruling was in line with the government's intentions.

"I don't see the ECHR decision as abnormal," he said, according to Turkish daily Taraf. "It's not very important if it is removed."

The ECHR is independent of the European Union, which Turkey seeks to join. The rulings of the ECHR are binding for members of the Council of Europe, of which Turkey is a member, and must be implemented.

### **A Step in the Right Direction**

Human rights lawyers welcomed the decision of the ECHR, saying it is a small step in the direction of democracy and secularism in Turkey.

"It is related to the general freedom of religion in our country," said human rights lawyer Orhan Kemal Cengiz. "They assume everyone is Muslim and automatically write this on

your ID card, so this is a good reminder that, first of all, everyone is not Muslim in this country, and second, that being a Muslim is not an indispensable part of being Turkish.”

The lawyer said the judgment would have positive implications for religious minorities in Turkey who are subject to intolerance from the majority Muslim population.

In 2000 Turkey’s neighbor Greece, a majority Christian Orthodox country, lifted the religion section from national IDs in order to adhere to European human rights standards and conventions, causing tumult among nationals.

“In Turkey, Greece or whatever European country, racism or intolerance or xenophobia are not rare occurrences if [religion] is written on your card, and if you are a minority group it makes you open to racist, xenophobic or other intolerant behaviors,” said Cengiz. “There might be times that the [religious] declaration might be very dangerous.”

### **International Implications**

It is not yet known what, if any, effect the ECHR decision could have on the rest of the Middle East.

Because of its history, economic power and strategic location, Turkey is seen as a leader in the region. Like Turkey, many Middle Eastern countries have a place for religious affiliation on their identification cards. Unlike Turkey, listing religious affiliation is mandatory in most of these countries and almost impossible to change, even under court order.

According to Human Rights Watch (HRW), religious identification is used as a tool to deny jobs and even basic rights or services to religious minorities in many Middle Eastern countries.

“It’s a serious problem from a human rights point of view,” said Joe Stork, deputy director for the Middle East and North Africa for HRW, an international human rights organization. “It’s especially problematic when that requirement becomes a basis for discrimination.”

Stork said the identification cards shouldn’t have a listing for religion at all. He said the European decision may eventually be used in legal arguments in Middle Eastern courts, but it will be a long time before change is realized.

“It’s not like the Egyptian government is going to wake up in the morning and say, ‘Gee, let’s do that,’” Stork said.

Egypt in particular is notorious for using religion on IDs to systematically discriminate against Coptic Christians and converts to Christianity. While it takes a day to change one’s religion from Christianity to Islam on their ID, the reverse is virtually impossible.

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## **TURKEY - EUROPEAN COURT**

### **Sinan Isik v. Turkey (application no. 21924/05)**

#### **Chamber judgment<sup>1</sup>**

***Registrar of the European Court (02.02.2010) - On 2 February, the European***

***Court ruled that the indication of religion on identity cards was in breach of the European Convention and violated Article 9 on freedom of thought, conscience and religion.***

**Principal facts**

The applicant, Sinan Işık, is a Turkish national who was born in 1962 and lives in İzmir (Turkey). He is a member of the Alevi religious community, which is deeply rooted in Turkish society and history. Their faith, which is influenced, in particular, by Sufism and pre-Islamic beliefs, is regarded by some Alevi scholars as a separate religion and by others as a branch of Islam.

In 2004 Mr Işık applied to a court requesting that his identity card feature the word "Alevi" rather than the word "Islam". Until 2006 it was obligatory for the holder's religion to be indicated on an identity card (but since 2006 he or she has been entitled to request that the entry be left blank).

On 7 September 2004 the İzmir District Court dismissed the applicant's request, on the basis of an opinion it had sought from the legal adviser to the Religious Affairs Directorate (a public body). The court found, endorsing that opinion, that the term "Alevi" referred to a sub-group of Islam and that the indication "Islam" on the identity card was thus correct. The applicant appealed on points of law, complaining that he was under an obligation to disclose his beliefs as a result of this obligatory indication on his identity card. He argued that this obligation contravened both the Convention (freedom of religion and conscience) and the Constitution ("no one shall be compelled ... to disclose his or her religious beliefs and convictions"). On 21 December 2004 the Court of Cassation upheld the judgment of the court below without any other reasoning.

**Complaints, procedure and composition of the Court**

In addition to Article 9, Mr Işık also relied on Articles 6 (right to a fair hearing) and 14 (prohibition of discrimination), complaining that he was obliged to disclose his beliefs on his identity card, a public document that was used frequently in everyday life. He also complained about the denial of his request to have "Islam" on his identity card replaced by the name of his faith, "Alevi". He argued that the existing indication did not represent the reality and that the proceedings leading to the denial of his request were objectionable, as they involved an assessment of his religion by the State.

The application was lodged with the European Court of Human Rights on 3 June 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Françoise Tulkens (Belgium), President,  
Ireneu Cabral Barreto (Portugal),  
Vladimiro Zagrebelsky (Italy),  
Danutė Jočienė (Lithuania),  
Dragoljub Popović (Serbia),  
András Sajó (Hungary),  
Işıl Karakaş (Turkey), judges,  
and Sally Dollé, Section Registrar.

**Decision of the Court**

The Court reiterated that the freedom to manifest one's religion or beliefs had a negative aspect, namely an individual's right not to be obliged to disclose his or her religion or to act in a manner that might enable conclusions to be drawn as to whether or not he or she held such beliefs.

The Court did not find persuasive the Government's argument that the indication of religion on identity cards (obligatory until 2006) did not constitute a measure that compelled Turkish citizens (and Mr Işık in particular) to disclose their religious convictions and beliefs. As regards the procedure whereby the applicant, in 2004, had unsuccessfully attempted to obtain the rectification of his identity card, the Court took the view that, since it had led the State to make an assessment of the applicant's faith, it had been in breach of the State's duty of neutrality and impartiality in such matters.

The Government further contended that since the law of 2006 the applicant, in any event, could no longer claim that he was a victim of a violation of Article 9, because since then all Turkish citizens had been entitled to request that the information about religion on their identity cards be changed or that the appropriate entry be left blank. On this point the Court found that the law had not affected its assessment of the situation. The fact of having to apply to the authorities in writing for the deletion of the religion in civil registers and on identity cards, and similarly, the mere fact of having an identity card with the "religion" box left blank, obliged the individual to disclose, against his or her will, information concerning an aspect of his or her religion or most personal convictions. That was undoubtedly at odds with the principle of freedom not to manifest one's religion or belief.

The Court pointed out that the breach in question had arisen not from the refusal to indicate the applicant's faith (Alevi) on his identity card but from the very fact that his identity card contained an indication of religion, regardless of whether it was obligatory or optional.

The Court found, by six votes to one, that there had been a violation of Article 9. It further decided, by the same majority, that it did not need to examine separately whether there had been a violation of Articles 6 and 14.

As the applicant had not submitted any claim under Article 41 (just satisfaction) of the Convention, the Court did not make any award. Referring to Article 46 (binding force and execution of judgments), the Court indicated that the deletion of the "religion" box on identity cards could be an appropriate form of reparation to put an end to the breach in question.

Judge Cabral Barreto expressed a dissenting opinion, which is appended to the judgment.

The judgment is available only in French. This press release is a document produced by the Registry. It does not bind the Court. The judgments are available on its website:

<http://www.echr.coe.int> or

<http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionSimilar=45150525&skin=hudoc-en&action=similar&portal=hbkm&Item=1&similar=englishdocument>

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

*1 Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.*

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