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Finally, Istanbul gives Syriac Christians a place to build a cemetery

Syriacs call it a ploy to pit Christian communities against each other

World Watch Monitor (17.12.2012) —Three years after a Syrian Orthodox foundation applied to build a church in Istanbul, the Greater Istanbul Municipality has granted them a large plot of land and a building permit.

Banner headlines in the Turkish media praised the early-December decision as "a first in the history of the Republic," declaring that never before had Turkey allowed a non-Muslim minority to build an official new house of worship.

Still, Syriac Christians were far from pleased.

For one thing, the land they were "granted" by the municipality is, in fact, a Latin Catholic cemetery.

"We don't want a Syriac church on top of a cemetery!" the website *suryaniler.com* stated. "This is a big scandal."

In fact, the graveyard had been donated back in 1868 to the Italian Catholic Church in what is now Istanbul's Yesilkoy district. It was then officially registered as Catholic property in 1936, although later confiscated in 1951 by the city.

The Council of Europe's 2011 progress report noted that Turkey was not fully implementing Law No. 3998, which states that cemeteries belonging to minority communities can no longer be taken over by local municipalities.

According to lawyer Nail Karakas, the Latin Catholic foundation had applied to the city last summer, in accordance with the government's August 2011 pledge to restore expropriated minority properties, to regain possession of their property and resume Christian burials in the graveyard.

So Syriac leaders are insisting that the cemetery land newly designated for their church be returned instead to its rightful owners. "It is clear that (the authorities) want to cause conflict between the minority communities," commented Syriac layman Sabo Boyaci.

Boyaci also faulted the government for trying to exploit the Syriac community politically. "I don't believe the government's sincerity. They delivered this land to us in order to silence us on the matter of Mor Gabriel Monastery. The government simply aims to make a good impression on the European and Turkish public," he told *Hurriyet Daily News*.

Monastery lands under threat

European Union officials have expressed "serious concerns" since the final Nov. 15 verdict by the Turkish Supreme Court of Appeals against the 4th century Mor Gabriel Monastery. The court ordered the confiscation of some 680 acres belonging to the monastery built more than 1,600 years ago near Mardin, in eastern Turkey's Tur Abdin region. The decision was termed an "unlawful appropriation" by the Council of Europe.

Five disputes over the ownership of the ancient monastery's lands have bounced back and forth in the courts since 2008, when Muslim villagers in the vicinity of the monastery protested to the state Treasury and Forestry Administration, claiming that the monastery was illegally occupying their lands.

Litigation was then instigated by state institutions, which had redrawn local boundaries earlier that year to update the national land registry, and passed new laws authorizing the transfer of "uncultivated or forested lands" to state ownership.

"I know from my experience very well that if some 'citizens' bring an organized action against non-Muslims in Turkey, it is almost certain that the state somehow has a hand in it," columnist Orhan Kemal Cengiz wrote Dec. 7 regarding the case in *Today's Zaman*.

The lawsuit was openly supported by Mardin parliamentarian Suleyman Celebi, a member of the ruling Justice and Development Party. Celebi claimed that although the monastery's legal boundaries were established in Ottoman times, the Syriac Christians had failed to observe them properly.

According to a deputy chairman of the monastery foundation, if an individual appeal to the Constitutional Court does not overturn the Nov. 15 decision, the monastery will take the case to the European Court of Human Rights.

The Syriac Orthodox Patriarchate had once resided in Midyat, until it was forced in 1930 to move to Damascus, where it still remains.

The oldest surviving Syriac Orthodox monastery in the world, Mor Gabriel still keeps alive the ancient Aramaic language closest to that spoken by Jesus.

Some 2,000 Syriac Christians still reside in their traditional homelands in and around Mardin. More than 10,000 others have immigrated to Istanbul in recent decades. Without any official church of their own, the Istanbul parishes worship in rented Catholic Church buildings located throughout the city.

The Syriac Church of the Virgin Mary Foundation says their proposed new church needs to be large enough for 1,000 worshippers.

Expectations of the new Constitution and what this means for freedom of religion or belief

Forum 18 (04.12.2012) - The deadline for Turkey's Constitutional Reconciliation Commission (AUK) to submit a draft for the new Constitution to the Grand National Assembly is 31 December 2012. Yet no draft has yet been produced, and Prime Minister Recep Tayyip Erdogan said on several occasions that, if the AUK cannot reach a consensus by the end of 2012, the ruling Justice and Development Party (AKP) will draft the new Constitution on its own. If it can gain enough support in the Assembly it will refer the Constitution for a referendum. Currently the AKP does not have enough support to force through a new Constitution on its own. The Director of the Turkish Economic and Social Studies Foundation (TESEV) Democratisation Program, Özge Genc, told Forum 18 on 30 November that she expects that the AUK will present a draft for public discussion in 2013.

The political parties on the AUK have not reached agreement on a number of issues, including the protection of freedom of religion or belief. The AKP's proposal for protecting this fundamental human right rejected proposals from the main opposition Republican People's Party (CHP), which - unlike the AKP proposal - protected the right to conscientious objection to military service, and defined Turkish secularism (laiklik) as meaning that the state will observe equal distance towards all religions. The AKP has also shown strong opposition to implementing Turkey's international human rights obligations. This would for example involve abolishing the current compulsory Religious Culture and Knowledge of Ethics (RCKE) lessons and changing the Diyanet,

But whatever is in the new Constitution, the fact that protecting freedom of religion or belief and other fundamental rights is being widely discussed is a significant and positive development for Turkey. For example, public attention was gained for the views of religious or belief groups that that the new Constitution must genuinely protect real equality between followers of all religions or beliefs, as against a merely formal equality that has no practical impact. There was also public attention for the demand that the Constitution be brought into line with international human rights law, such as Article 9 ("Freedom of thought, conscience and religion") of the European Convention on Human Rights and Fundamental Freedoms (ECHR).

But what impact have the discussions on protecting freedom of religion or belief had on public attitudes?

The TESEV Survey

The TESEV has, in association with its Constitution Watch Project <http://www.turkeyconstitutionwatch.org>, published a survey of public attitudes. This demonstrates that many in Turkey have a positive attitude towards change, but some expressed insecurity about possible changes. This is reflected in attitudes towards the role of the state, Turkish secularism, and pluralism as reflected in the Diyanet and compulsory RCKE classes.

Secularism

Turkish secularism (*laiklik*) is strongly protected in the current 1982 Constitution and has a major impact on the protection of freedom of religion or belief. It is very different from either the French concept of "*laïcité*", or what many outside Turkey understand by the term "secularism". In Turkish practice it means close state supervision of religious activity, and less autonomy of religious communities than in many other countries. Also, there is not one definition but several, with different political parties using the term to mean different things.

Perhaps one of the most interesting findings of the TESEV Survey is that 74.9 per cent of respondents said that the new Constitution should be compatible with international treaties and universal human rights norms. But along with this, 82.3 per cent wanted the new Constitution to include the nationalism, reforms and principles of the Republic's founder, Mustafa Kemal Atatürk, as enshrined in the 1982 Constitution. Some may consider these two goals as contradictory since in the past, Atatürk's approaches have often been interpreted by law makers and the judiciary to curb human rights protected in the international treaties Turkey is obliged to implement. However, it might be an indication of evolved understandings of nationalism and Atatürk's principles that may harmonise with the values of democracy and human rights.

According to the TESEV Survey, 50.6 per cent said Turkish secularism should remain in the new Constitution with no alterations, while another 47 per cent said they want this secularism maintained, with a definition that the state will observe equal distance to religions. Only 8.7 per cent said they would want no reference to Turkish secularism in the new Constitution. The Survey notes that Kurds, Alevis, and those who define themselves as democratic emphasise "equidistance to religions". The Survey does not specifically reflect the views of non-Muslim minorities, but it is likely that these groups would support "equidistance to religions" as their submissions to the AUK stressed the importance of this.

Other answers reveal that Turkish secularism is not seen as incompatible with manifestations of religious symbols or dress by public employees. A large majority, 76.3 per cent, agreed that public employees, including teachers and judges, should be allowed to wear Islamic veils if they so choose. The AKP's proposals may open the way for this to be permitted.

This view contrasts with the jurisprudence of the Turkish Court of Cassation, which has generally considered the use of religious symbols by public employees as incompatible with Turkish secularism.

The Diyanet

The Diyanet, or Presidency of Religious Affairs, reports to the Prime Minister's Office and holds a monopoly over certain Islamic manifestations in Turkey, such as appointing imams. Massive state financial and institutional support of the Diyanet along with its activities can undermine the effective enjoyment of freedom of religion or belief by some. But civil society proposals for changing the Diyanet have been described by the AKP as

"unjust" and "too assertive for such a sensitive issue". Survey participants thought that the Diyanet should remain as a constitutional institution, but 84.1 per cent thought that it should include representatives of other denominations and religions. It is unclear how this could be achieved, as many followers of non-Sunni Muslim beliefs are strongly critical of the Diyanet and its activities.

Only 21.9 per cent said that the Diyanet should be abolished and every religious group should support their own institution. The greatest supporters of this last option are those who define themselves as socialists (45.8 per cent), supporters of the opposition Peace and Democracy Party (BDP) (45.8 per cent), and Alevi Muslims (40 per cent).

The Diyanet has not yet been considered by the AUK. Many civil society submissions noted the incompatibility of the Diyanet with Turkey's human rights obligations. The majority opinion expressed in the TESEV Survey favours the continuation of the Diyanet, yet supports the idea that it should reflect religious plurality. It is unclear whether the AUK will reach a consensus, but most in Turkey clearly expect that the state will retain an active involvement in the life of the Sunni Muslim community, both in terms of shaping dogma and providing religious services. There may perhaps be an unclear added dimension taking account of pluralism in Turkish society.

Religious Culture and Knowledge of Ethics lessons

The compulsory Religious Culture and Knowledge of Ethics (RCKE) are incompatible with international human rights obligations, as the European Court of Human Rights (ECtHR) and Turkey's Court of Cassation (before the 2011 appointment of 60 new members of the Court) have found. Despite recent changes to RCKE lessons, significant problems remain.

Nevertheless, the ruling AKP government is determined to maintain RCKE lessons. A Court of Cassation decision of 27 November found that RCKE lessons are not religious instruction, therefore were compatible with Turkish secularism and did not interfere with the right to freedom of religion or belief.

The AUK was divided on the issue of compulsory RCKE lessons, with the ruling AKP and the opposition Nationalist Movement Party (MHP) wanted compulsory lessons to be maintained. But the main opposition party, the Republican People's Party (CHP), wanted RCKE lessons to be optional.

According to the TESEV Survey Turkish people appear almost equally divided on this issue. Nearly half of the participants said that the classes should be mandatory, while 46.3 per cent thought they should be optional. Only 3.6 per cent said that they should be completely abolished.

As with the Diyanet, there are demands to include pluralism into existing structures, with 76.9 per cent wanting compulsory RCKE classes to include teaching on other religions and Islamic denominations. 93.8 per cent of Alevis, 95.2 of BDP supporters, 88.5 per cent of CHP supporters, and 71.6 per cent of AKP supporters agreed with this. But a significant minority, 23.1 per cent, wanted only Sunni Islam to be taught in a compulsory manner. This minority was made up of one third of self-identified Islamists and conservatives.

Conscientious objection to military service

Turkey has yet to create a legal framework in order to recognize the right to conscientious objection to military service. Relevant ECtHR decisions await enforcement, but there has been limited improvement domestically through two military court decisions. The AUK has not been able to reach consensus on the issue with opposition to

conscientious objection from both the AKP and the MHP, after the CHP and civil society groups called for conscientious objection to be permitted.

According to the TESEV Survey, 69.7 per cent of respondents said that military service should be compulsory and no exemptions should be allowed, while 17.4 per cent said it should not be compulsory. 6.2 per cent said it should be possible to have a kind of social service as an alternative to military service, and only 6.7 per cent said that the right to conscientious objection should be recognised. It seems to be mostly young people who are in favour of social service and conscientious objection. Apart from BDP supporters, supporters of all other political parties favour the status quo. But CHP supporters appear to give the greatest support to the possibility of social service.

Change without fundamental change wanted?

Turkish society appears to want make further democratic reforms, but without fundamental change that would mean breaking away from the existing principles and structures. The Director of TESEV's Democratization Program, Özge Genc, told Forum 18 that "these contradictions reflect Turkey and Turkish society. Indeed, these views reflect a society in transition and change where contradictions are to be expected". It is possible that the social attitudes could evolve to support principles and structures – such as those of Atatürk - being re-interpreted to become compatible with a democratic state where the rule of law and human rights are respected.

It is important to bring Turkey's human rights obligations into Constitutional change. The implications of a commitment by the majority of Turkish society to the protection of human rights, implementing international treaties, or to Turkish secularism, can be easily overlooked. For example, commitments to upholding freedom of religion or belief must be made real in concrete cases – such as the Diyanet and compulsory RCKE classes. Society's willingness to change the Diyanet and RCKE lessons to include pluralism will not on its own ensure that human rights are protected. There appears to be resistance to the fundamental change necessary to significantly advance the protection of freedom of religion or belief.

Another question is what does the AKP want. As the government it bears the main responsibility to ensure that legislation and practice in Turkey complies with international norms. It does not appear to share society's willingness to include a pluralistic dimension in the Diyanet and compulsory RCKE lessons. This lack of willingness to recognise the reality of Turkey's diverse society can be seen in the AKP's resistance to the recognition of the Alevi cem houses as places of worship, creating a legal framework for people to train their clergy, and recognition of the right to conscientious objection to military service.

Turkish society has some willingness to change, albeit with inconsistencies that may make changes inadequate for the protection of human rights. But society's evolving conceptions of Turkish secularism and the role of the state in relation to freedom of religion or belief are indications of a willingness to advance democracy and the protection of human rights. Indeed, society seems to be to some degree ahead of the AKP in its willingness to implement human rights obligations. So it is important to ensure that discussions in society take place with reliable information on the implications of Turkey's human rights obligations. This would be of great benefit in helping Turkey's new Constitution protect everyone's right to freedom of religion or belief.

Turkish TV channel fined for airing 'insulting' episode of The Simpsons

Watchdog says private broadcaster CNBC-e insulted religious values after show featured God taking orders from the devil

The Guardian (03.12.2012) - Turkey's broadcasting regulator has fined a television channel for insulting religious values after it aired an episode of The Simpsons that shows God taking orders from the devil.

Radio and television watchdog RTUK said it was hitting private broadcaster CNBC-e with a 52,951-lira (£18,600) fine over the episode of the hit US animated TV series, whose scenes include the devil asking God to make him a coffee.

"The board has decided to fine the channel over these matters," an RTUK spokeswoman said, adding that full details would probably be announced next week.

CNBC-e said it would comment once the fine was officially announced.

Turkey is a secular republic but most of its 75 million citizens are Muslim. Religious conservatives and secular opponents vie for public influence. Critics of the government say it is trying to impose Islamic values by stealth.

Elected a decade ago with the strongest majority seen in years, prime minister Tayyip Erdoğan and his Islamist-rooted AK party have overseen a period of unprecedented prosperity in Turkey. But concerns are growing about authoritarianism.

Erdogan last week tore into a hit soap opera about the Ottoman empire's longest-reigning sultan, while RTUK has warned the show's makers about insulting a historical figure.

The Simpsons first aired in 1989 and is the longest-running US sitcom. It is broadcast in more than 100 countries and CNBC-e has been airing it in Turkey for almost a decade.

"I wonder what the script writers will do when they hear that the jokes on their show are taken seriously and trigger fines in a country called Turkey," wrote Mehmet Yilmaz, a columnist for the Hurriyet newspaper.

"Maybe they will add an almond-moustached RTUK expert to the series," he added, evoking a popular Turkish stereotype of a pious government supporter.

The status and issues of the Greek-Orthodox minority in Turkey

Order of St. Andrew OSCE/HDIM (03.10.2012) -

Dr. Achilles G. Adamantiades, Archon Protector of Letters

A. Introduction

1. As a companion to a paper given in Session 11, on Freedom of Thought, Conscience, Religion or Belief, the Order of St. Andrew, the Apostle is pleased to make a

second presentation in Session 14, on Tolerance and Non-discrimination II. In this session we wish to focus on the continuing need for protection of the rights of the Greek-Orthodox minority of Turkey which constitutes mainly the flock of the Ecumenical Patriarchate of Constantinople, and, by extension, of all religious minorities in Turkey. We are fully cognizant, and indeed appreciative, that a process of reform has been initiated and is proceeding toward completion, most importantly in the context of a process to write a new Constitution for the Turkish state.

B. Violations of the Human Rights of Minorities

2. Serious violations of the human rights of minorities have been reported in past years, whereas the constitution of the Turkish state explicitly prohibits discrimination on religious grounds. The U.S. Congress-mandated United States Commission on International Religious Freedom (USCIRF), in its 2012 report, conducts a most thorough, professional, and objective account of the status of religious freedom in Turkey and provides a detailed account of the multitude of egregious violations of the rights of minorities; the Order of St. Andrew fully associates itself with the thrust and findings of this report.^[1]

3. More specifically, while giving credit to actions by the current Government of Turkey, including constitutional and other legal reforms, we are painfully conscious that a practice of property confiscation, under various pretexts, was evident in the past 100 years, especially against the Ecumenical Patriarchate and its associated Greek-Orthodox foundations, thus depriving it of the resources to adequately fulfill its role in the world. The following highlights are but the most egregious violations of the rights of the Ecumenical Patriarchate as well as of the Greek-Orthodox and other religious minorities:

- The Ecumenical Patriarchate, together with other churches and faiths, including the Roman Catholic Church, the Armenian Church, and the Jewish faith, have not been able to gain recognition as legal personalities in Turkey, rendering them unable to own property. The Venice Commission, a consultative body to the Council of Europe, at its 82nd Plenary Session, in Venice, 12-13 March 2010, stated its formal opinion on this matter in the following way:^[2]

"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."

- For almost 100 years, the government has imposed a variety of onerous restrictions on all religious minorities affecting their ability to own, maintain, and transfer communal and individual property; in addition, heavy interference with their internal governance and even outright prohibition in the training of clergy was applied. These restrictions have contributed to a sharp fall in the membership of these communities, thus threatening their sustainability.

^[1] U.S. Commission on International Religious Freedom (USCIRF), 2012 Annual Report, March 2012 (Covering 1-April-2011 to 29-February-2012).

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

- Members of religious minorities continue to face threats and societal discrimination and occasional violence,^[3] on the basis of their religious and/or ethnic minority status.

The Fate of the Greek-Orthodox minority of Turkey

4. The plight of minorities has been exposed in detail in the USCIRF Report.^[4] Suffice it for us to state here that a continuous policy of harassment, over the past sixty (60) years, has driven down the Greek-Orthodox population of Turkey, from over 100,000 in the 1950's to less than 3,000 at present. Today, the Turkish citizens belonging to the Greek-Orthodox minority (and by extension the entire Christian minority) in Turkey are an endangered species. This systematic plan of attrition has resulted in its members representing no more than 0.03% of the total population. The recorded demographic and economic decline, as well as the dramatic reduction in property owned by minorities over the years, offer unequivocal proof of the deep and persistent strategy of oppression and persecution of the Greek-Orthodox and other ethnic/religious minorities by the Turkish Government. However, in this paper, we will focus our attention on the positive developments that have taken place in the past year.

C. Positive Developments

5. During the past year, the Government of Turkey has continued its path toward reform and strong, albeit incomplete, measures to strengthen democracy and the rule of law. The main accomplishments, from our perspective, have been: (i) decisive measures to establish civilian authority over the military; (ii) changing the government's attitude toward ethnic and religious minorities in Turkey and paying attention to their issues; (iii) a decisive move against the clandestine, ultranationalist group, known as Ergenekon, which has threatened religious leaders, including the Ecumenical Patriarch; and (iv) announcements to return confiscated properties or provide fair compensation, a topic to be addressed in more detail below. These moves clearly illustrate the Government's enhanced self-confidence and underpin its bold moves to take further steps, unheard of until this time, to restore the rights of ethnic and religious minorities, as will be elaborated in the following paragraphs. We recognize that P.M. Erdoğan, has had to face down a recalcitrant opposition and a hardened mind-set imbedded over almost 100 years that presented formidable obstacles to his reformist policies. His bold moves have positive, strong implications for the respect of international human rights norms, including religious freedom and the rights of minorities.

6. The Order of St. Andrew is in the position to note specific positive moves and gestures by the government in recent years although these have generally been *ad hoc* moves rather than permanent legal reforms (with some exceptions, i.e., the 2008 Law on Foundations), thus opening the possibility that they could be easily reversed, say, by a successor government that may not share the views of the current one. We cite below briefly a few of these positive developments:

^[3] In June 2010, Bishop Luigi Padovese, the Vicar Apostolic of Anatolia, was murdered in the city of Iskenderun while en route to join the Pope in Cyprus. Currently, the alleged assassin is awaiting trial. The motive and any connection to the alleged Ergenekon group are not clear.

^[4] USCIRF 2012 Report, Op. Cit.

- The Return of the Prinkipos (Büyükada) Orphanage building, following much litigation and judgments by the European Court of Human Rights (ECtHR) to which Turkey is a contracting party. The ECtHR judgment was implemented by the issuance of an order by the Court of Büyükada which produced, in late November 2010, a deed for the property in the name of Rum Patrikhanesi.^[5]
- In March 2011, Turkey implemented the ECtHR judgment of March 2009 on the property rights of the Greek-Orthodox minority foundation of the island of Bozcaada ("Kimisis Theodokou Greek Orthodox Church" of Tenedos) by transferring the property titles to its name.
- Permission for the performance of religious ceremonies. During 2012, as in 2011 and 2010, the Government allowed the conduct of annual religious worship services at the Sümela Monastery near Trabzon, on the Black Sea, as well as in other religiously significant sites. However, it is time that religious shrines of all faiths should be returned to their rightful owners and services should be conducted as frequently as desired without interference, but rather with the protection of the state against interference.
- The Decree of 27-August-2011^[6] on property return or compensation. This decree is a major development on which we shall devote the balance of this paper.

D. The Decree on Property Return or Compensation

7. As background on this issue we state that **massive property confiscations** have been among the top grievances of minority Greek-Orthodox foundations as well as of other religious minorities. These confiscations concerned mainly churches, monasteries and cemeteries.

8. An important event took place on 28-August-2011; Prime Minister Erdoğan announced a Decree, issued the previous day, 27-August-2011, adding a new transitional article (No. 11) to the 2008 Foundations Law in force. The new article enables minority foundations to apply for return of their properties that had been expropriated by the state. The new article also allows application for their return, or for fair compensation in the case that properties were sold to a third party. The Decree also provided for the formation of new religious community foundations in order to correct oversights in the 1936 law. The Decree came to remedy minority foundations property questions that had not been addressed by the 2008 Law of Foundations. Parties interested in the return of confiscated properties were invited to submit the relevant documentation to the Directorate General of Foundations (DGF, or VGM, by the Turkish initials) within 12 months.

9. The Decree provided: (i) the restitution of properties as they were surveyed and registered in 1936 and subsequently confiscated from the religious foundations by the various administrations of the Republic of Turkey; (ii) the return of cemeteries belonging to non-Muslim foundations which had been improperly placed under the control and

^[5] This is the official name for the Patriarchate used by the Government of Turkey, referring to its origins in the Roman Empire.

^[6] The Decree is dated 27-August-2011 but the announcement by P.M. Erdoğan was made on 28-August-2011.

management of various towns and municipalities; (iii) the restitution of undefined deeded property (such as monasteries, parishes, and schools), which were never recognized as legal entities by the Turkish Republic; and (iv) in the event that these properties have been sold or disposed of in various ways by the Turkish state, the Minister of Finance of the Republic of Turkey will establish, with the owners, a just compensation.

10. We do not wish to delve into the details of the Decree, which is the rightful object of legal analysis and detailed knowledge of the facts on the ground; such analysis and commentary are actually being done in the field by the VGM Assembly^[7] which includes a member elected by the non-Muslim minorities. Here, we wish to point out deficiencies that should be obvious to the plain citizen:

- **A deadline for the submission** of restitution applications was set as one year from the Decree's announcement. Given that the Decree Regulations were issued only on 1 October 2011, and that many of the required documents are old and need extensive research, this deadline could result in the inability of many foundations to make applications on time; we are not aware of any extension to the original deadline.
- **The Decree applies to foundations only and not to religious organizations and/or institutions.** This deficiency harkens back to the issue of legal personality which is lacking for these latter bodies.
- The administration of the process, including the approval of applications and the valuation of properties (in case compensation is called for) is left up to VGM, the body that was the main arm of the government performing the confiscations in the first place. This is clearly a case of "**conflict of interest**" that should have been avoided through the appointment of an independent Commission dedicated to this important task. Furthermore, our information indicates that much of the documentation needed for the applications is in the possession of VGM and it would be up to their goodwill and spirit of cooperation to cede them to the applicants; is there any guarantee they will do so?
- **The appeal process is flawed.** Applicants are provided with the right to appeal an unfavorable decision but the final arbiter is again the same body against which the appeal is filed. The Finance Ministry, having a strong motivation to reduce government liability, is the only body permitted to decide on the amount of compensation to be paid! Does this arrangement make any sense and does it comply with the principle of fairness?
- **The Decree is narrow in scope** as it does not apply to a number of property categories, as it should, namely it does not cover:

^[7] The Assembly is the highest VGM decision-making organ, with fifteen members, one of whom is chosen by the non-Muslim community foundations (since the beginning of 2009, Mr. Lakis Vingas, from the Greek-Orthodox Community, was elected to the Assembly and re-elected at the end of 2011 for a 3-year term, by the majority of the 165 non-Muslim community foundations).

- (i) property of the five Greek-Orthodox foundations of Gökçeada (Imvros). According to the official document of the VGM of December 2011^[8], there are no copies of the 1936 declaration of these five foundations. Thus, the Decree is not applicable to these five foundations;
- (ii) property that had not been declared by the non-Muslim minorities in the inventory of 1936 (the so-called 1936 Declaration), because they had been labeled as "acquired illegally;"
- (iii) property of "seized" ("mazbut") non-Muslim community foundations,^[9] meaning those whose administration was seized by the VGM, for various excuses, for example, because they were, allegedly, not able either to hold board elections for a certain time or to fulfill any longer their charitable purpose;
- (iv) property that may have been listed in the 1936 Declaration of a non-Muslim community foundation, but later transferred to legal entities, which are different than the State Treasury, the Directorate General for Foundations, a Municipality or City Special Administration, but still under the supervision of a public body or other foundations. A simple example of this frequently-seen category is a property transferred to a Muslim Foundation, embodied during the Ottoman period (for instance, to the Valide Sultan Foundation). It is feared that applications concerning these transferred properties will not be approved as valid;
- (v) property that was "nationalized" which was often done in an unjust manner, amounting to "wrongful seizure;"
- (vi) properties taken away from religious institutions or communities that do not have community foundations; for example, property that once belonged to the Roman Catholic or Anglican churches;
- (vii) certain cemeteries which, even though registered in the 1936 Declaration in the name of non-Muslim community foundations, such cemeteries were not seen as "property" and were not explicitly listed in the Declaration thus risking not being returned to their community foundations; and
- (viii) properties of Muslim religious communities. This last omission has been criticized as an unjustified omission not only by these Muslim foundations themselves but also by Christian leaders.

The cases, outlined above as not covered by the Decree, are likely to be brought before the European Court of Human Rights (ECtHR) and it is likely that they will win their cases.

11. **Experience to date** is incomplete as the originally set deadline was to expire 12 months from its original issuance of the Decree (which was made on 27-August-11).

^[8] Document no. B.02.1.VGM.1.05.02.130.01- 99/3967/16.12.2011.

^[9] A March 2009 report by the Istanbul-based TESEV Foundation, "Bir Yabancilastirma Hikayesi", found that the number of properties seized from Greek-Orthodox community foundations alone was over 900.

Although we suspect that the time allowed has been inadequate for all potential applications to be submitted with proper documentation, we shall defer judgment on this point until next year, hoping that the necessary provisions will be made by the Government of Turkey (specifically, VGM) to accommodate all potential applicants.

E. Conclusions and Recommendations

12. The process of reform in Turkey is proceeding apace and is producing welcome results. The Decree of 27-August-2011 was a bold move to correct past injustice and reverse a climate of obstinate intolerance and unremitting discrimination that has prevailed in Turkey for too long; this climate, between the government and religions that have community foundations, has been greatly improved. However, it was an initiative badly flawed and seriously incomplete in its inception and poorly implemented in practice. We feel that a more effective, legally robust and practically effective system needs to be put in place if the authorities intend to see their good intentions convert into reality.

13. We respectfully submit that OSCE should immediately impress upon the Government of Turkey the need to fully comply with the principles of OSCE, of which Turkey is a member, and specifically, to:

- Fully adhere to the principles on the rights of expression, assembly and association, dissent, and religious faith and practice of all citizens without discrimination.
- Allow full legal status for Turkey's religious minorities, including religious leadership organs, by making all the necessary legal changes.
- Establish a climate of respect, tolerance, and legitimate assistance toward the free functioning of ethnic and religious minorities and their various institutions.
- Convert the Decree on the Return of Properties into a Law of the Land, and appoint a truly independent body for its oversight and implementation. The law should have comprehensive coverage of all cases (community foundations and religious bodies) as the rule of protecting property to fulfill the foundations' original purpose is valid for all, regardless of the type of religion. The law must correct the deficiencies that have been pointed out in the Decree, including extending property losses before 1936. The Law should also mandate full cooperation of the bureaucracy with strong incentives and strict penalties for stone-walling and other non-compliance. Until such law is passed,
- Extend the deadline as needed and provide for the full implementation of the Government Decree of 27-August-2011, on the return of confiscated properties with full cooperation by VGM and its Assembly.
- Appoint a Public Advocate with the necessary staff and power to assist applicants and help them work with the government (modeled after a similar institution of the European Union).

14. We are cognizant of and thankful for decisive moves on the part of the current Government of Turkey to rectify past injustice with courageous initiatives that are aimed at breaking a mindset encrusted over 100 years of Kemalist mentality and practice, as well as the attendant bureaucratic inertia and persistence of the status quo. In order to amend past injustices and cement the rights of religious and ethnic minorities, the

constitution being currently debated should incorporate their rights unequivocally in its text in a comprehensive and precise manner. We are indeed hopeful and expect that the constitutional reform will lead to concrete democratic gains for the common citizen and to full respect for the rights of all faiths and people of all ethnic origins within Turkey.

Top Turkish musician in court for insulting Islam

Deutsche Welle (17.10.2012) -Turkish pianist and composer Fazil Say faces charges of insulting Islam in comments made on Twitter. Say's supporters as well as his critics say the case risks damaging Turkey's reputation on freedom of expression.

In April Fazil Say wrote several comments on Twitter allegedly ridiculing Islam. One message asked whether a particular call to prayer, which lasted 22 seconds, was cut short so the muezzin could get to his lover or a bottle of booze. Another questioned if heaven, where according to some interpretations of Islam wine flows and virgins await the faithful, was a brothel or a bar.

State prosecutors in Istanbul investigated accusations made by a citizen against Say and in June, they charged the 42-year-old pianist and composer with insulting religious values. A prosecutor claimed Say's tweets could lead to a "collapse of public order."

His trial starts on Thursday (18.10.2012) and he faces up to 18 months in prison, though, even if he is convicted, it is unlikely he will be sent to prison as most sentences shorter than two years are normally suspended. But he would have a criminal record.

Known critic of Erdogan government

For many Turks, Say represents more than just one musician. He's the country's leading classical composer and an internationally renowned concert pianist. Say has also sharply criticized Prime Minister Recep Tayyip Erdogan's conservative-religious government. An atheist, Say said having devout Muslims in government represents a catastrophe for Turkey and said he has long considered emigrating.

Many members of Turkish and international intellectual circles have come out to show their solidarity for the musician, who lived in Düsseldorf for eight years and studied in Berlin. Nearly 8,000 people have added their names to an online petition to support Say, who served as a cultural ambassador for the EU and has performed with the New York Philharmonic, Berlin Symphony Orchestra, Israel Philharmonic, National Orchestra of France and Tokyo Symphony.

Messages forwarded from others

Say has rejected the charges brought against him. He said the tweets were actually re-tweets of messages written by others and added that he is the only one facing criminal charges. Even observers who are generally critical of Say's actions have called the court case a scandal that could damage Turkey's international reputation.

Turkey has been especially concerned about its international reputation as criticism of the country's approach to freedom of expression has grown. In its most recent report, the European Union, which Turkey aims to join, said it had "serious concerns" about Ankara's approach to freedom of expression. Turkey rejects the charge it does not respect freedom of expression.

Judges and prosecutors in Turkey tend to a very strict interpretation of the law. They often rank freedom of expression behind the interests of state security or the threat to social harmony from verbal attack. Whether that will be will be the case for Fazil Say remains to be seen.

How far will new Constitution protect freedom of religion or belief?

By Mine Yildirim

Forum 18 (22.08.2012) - Turkey's Constitutional Reconciliation Commission (AUK), in drafting a new Constitution, has been considering the provision protecting the right to freedom of religion or belief. However, the political parties represented on the AUK have not reached a consensus on this. The ruling Justice and Development Party (AKP) has presented its own proposal, rejecting proposals from the main opposition Republican People's Party (CHP). If the AKP's proposal is the basis for this part of the new Constitution, partial progress in protecting freedom of thought, conscience or religion will be seen. But perhaps not as much progress as if the CHP's proposal had been accepted as the start. These protected the right to conscientious objection, and defined secularism as meaning that the state will observe equal distance towards all religions.

So will the new Constitution – when it is eventually adopted - advance the protection of freedom of religion or belief in Turkey? What would be the implications of the omission of some religious freedom commitments, affecting for example religious education, conscientious objection, and the role of the Diyanet?

Politicians and society had hoped that the AUK would make unanimous decisions in drafting the new Constitution. On issues where consensus has not been reached, the proposals of parties are included so that the texts will be considered by the - AKP-dominated - General Assembly of the Parliament. The final draft text ready to be passed to the General Assembly has however not been completed. It was hoped that Turkey would have a new Constitution by the end of 2012 but this now seems unlikely.

The AUK is chaired by Grand National Assembly Speaker Cemil Cicek, and its members are drawn from the AKP, the opposition CHP (through which the Republic's founder, Mustafa Kemal Atatürk, led Turkey as a one-party state), the Nationalist Movement Party (MHP), and the Peace and Democracy Party (BDP).

The AUK has received submissions on religious freedom from various religious and civil society groups. However, some such as the Baha'is, Jehovah's Witnesses, atheist and agnostic groups did not become involved in this process.

The AKP proposal

The AKP government has proposed the following text:

"(1) Everyone has freedom of religion, conscience and belief. This right includes the right to live and to manifest one's religion or belief, alone or together, in public or private, through worship, education, teaching, practice and performing ceremonies, and has the freedom to change one's religion or belief.

(2) No one may be compelled to participate in worship, religious practice and religious ceremonies, to disclose one's religious beliefs and thoughts, and may not be prevented from performing these [worship, religious practice and religious ceremonies]. No one may be condemned, accused or subjected to different treatment based on their belief, thoughts, opinion and performing or not performing the requirements of these [worship, religious practice and religious ceremonies].

(3) In carrying out its tasks in the field of education and teaching, the state will comply with the parents' right to desire that the education and teaching be carried out in line with their religious and philosophical beliefs. Religious Culture and Knowledge of Ethics lessons will be among the compulsory lessons taught in primary and middle educational institutions. Religious education and teaching is subject to the consent of individuals, and in the case of minors, their legal representatives."

Also, Turkish media reported on 10 August that the AKP is proposing a phrase stating that "the right to freedom of religion includes the right to associate". The CHP's reaction to this is not known. The proposal was reportedly accepted by the BDP, while the MHP opposed its inclusion.

- Broadening of protection

The first paragraph broadens the protection of freedom of religion or belief, as Article 24 of the current Constitution only explicitly protects the right to worship. Yet it is unclear what the AKP means by adding the phrase "to live", which is not found in international human rights provisions.

Protecting manifestations of religion or belief and practice provides a basis for protecting the wearing of religious symbols or clothing, religious practices such as praying the namaz (Islamic prayer rituals) five times daily, or fasting. This may open the way for wearing religious clothing such as headscarves in public institutions, such as universities, where this right is restricted for employees.

- The right to change belief

The explicit reference to the right to change religion or belief is in line with Article 9 ("Freedom of thought, conscience and religion") of the European Convention on Human Rights and Fundamental Freedoms (ECHR), which Turkey ratified in 1954. Article 24 of the current Constitution does not explicitly protect this right.

Fortunately, the AKP and the other parties did not hesitate to provide this explicit protection. This may also be seen as important as it sets an example for Middle Eastern countries where the right to change one's religion or belief is not recognised.

- The need for a limitations clause

The second paragraph does not include any conditions under which the right to manifest religion or belief can be restricted. It would be good if the new Constitution were to include the restriction clause used in Article 9 of the ECHR. This states:

"Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others."

Adopting a specific restriction clause for religious freedom would be better than adopting a general constitutional restriction clause on all fundamental rights. This would lay down the specific conditions, in line with international human rights law, under which the right to manifest religion or belief may be restricted. This would also reduce the risk of unspecific laws or regulations being introduced that could be used arbitrarily.

- Education

The third paragraph in the AKP's proposed text on teaching religion or belief is crucial, as it reflects the basis of policies in the field of education. The inclusion of respect for parents' right to educate their children in line with their own religious or philosophical views is consistent with Turkey's international human rights obligations.

But the continuation of the compulsory Religious Culture and Knowledge of Ethics (RCKE) lessons is incompatible with international human rights obligations. The European Court of Human Rights (ECtHR) in Strasbourg in its *Zengin v. Turkey* judgment, as well as Turkey's Court of Cassation, have held that RCKE lessons are incompatible with the country's human rights obligations. Despite changes in the curricula of the lessons, the Reform in Education Initiative found that significant problems remain.

Calls have continued from some parts of the Alevi community as well as civil society organisations for compulsory RCKE lessons to be abolished. But as with conscientious objection to compulsory military service, the government's political will – not court judgments or the experience of victims of human rights violations – is the deciding factor in this part of the AKP's constitutional proposal.

- Conscientious objection

The AKP's rejection of the CHP's proposals to allow conscientious objection and broaden the definition of secularism may indicate that the AKP's commitment to freedom of religion or belief is limited. The AKP appears to resist strongly recognition of the right to conscientious objection and making genuinely civilian alternative service available. This is consistent with the AKP's refusal to make any legal changes, despite continued calls from the Council of Europe Committee of Ministers, to bring Turkey's legislation into line with the requirements of the ECHR.

Failure to include the right to conscientious objection to military service weakens the overall protection of freedom of thought, conscience or belief. Demands for the protection of conscientious objection and the introduction of civilian service were made in proposals from civil society, including the Istanbul Anti-militarist Inisiyatif (IAMI - Istanbul Antimilitarist Initiative), the Türkiye İnsan Hakları Vakfı (HRFT - Human Rights Foundation of Turkey), the Toplum Gönüllüleri Vakfı (TOG - Community Volunteers Foundation) and Mazlumder (Organisation of Human Rights and Solidarity for Oppressed People).

The jurisprudence of the international human rights standards to which Turkey is a party, such as the ECHR and the International Covenant on Civil and Political Rights (ICCPR), defends the right to conscientious objection to military service.

The AKP's resistance to recognition of this right, despite both international obligations and domestic pressure, can be seen as a serious limitation to the AKP's commitment to religious freedom.

CHP proposals

In addition to the right to have and change religion or belief, the right to manifest religion or belief in public or private in worship, teaching, practice and observance and the recognition of the right to conscientious objection, the CHP made additional proposals.

- "Exploitation of religion"

The CHP proposed in the discussion within the AUK, on 9 August, the inclusion of a provision that would prohibit the "exploitation of religion". The AKP rejected this. "Exploitation of religion" is a vague term and its inclusion may have given rise to arbitrary restrictions. The same proposed provision includes the prohibition of any law being made based on religious rules. The AKP also rejected this.

On 7 August the CHP proposed a provision that "the state is impartial toward all religions and beliefs in all its proceedings and actions and will respect social pluralism based on the diversity of religions, beliefs and opinions". The opposition MHP and BDP parties supported the proposal. However, the AKP did not, stating that such a provision would not be compatible with the existence of the Diyanet, whose already large role and status has increased under the AKP.

This CHP proposed provision would have been improved, were it to specify that it should also apply in education, public broadcasting, and the activities of the Diyanet.

Yet, this proposal would have run directly counter to the AKP government's latest actions.

At the same time, the CHP also proposed a provision that "the state will take the necessary measures to establish and maintain mutual respect and tolerance between difference religions and beliefs and those who do not believe". The AKP rejected this proposal, pointing to the difficulty of defining "respect and tolerance" and noting that relevant provisions exist in the Turkish Criminal Code that the state can use when intolerant acts are carried out between citizens.

But as may be seen in the recent prosecutions of atheists, some parts of Turkey's Criminal Code and the way it is used by the authorities itself raises serious concerns about freedom of religion or belief in Turkey.

Had the CHP proposals been accepted, there would have been strong constitutional guarantees of an impartial state in relation to followers of Turkey's varied religions and beliefs, and for the protection of religious minorities' rights. Given the CHP's history, the change in the party's thinking to uphold human rights and state impartiality is significant.

That the CHP provisions pertaining to conscientious objection, an impartial state and respect for diversity were not adopted is regrettable, as they would have significantly improved the protection of the right to freedom of religion or belief. Turkey's religious minorities would have welcomed such provisions.

AKP's future policies on religious freedom

The AKP's refusal to accept the CHP proposals may indicate its future policies concerning religious freedom. Its strong opposition to both abolishing compulsory RCKE lessons and changing the Diyanet are in line with Prime Minister Recep Tayyip Erdogan's statement on 31 January 2012 that he wanted to raise an [Islamic] religious generation.

The legislative changes relating to education in June 2012 made it possible to introduce optional lessons on the life of the Prophet Mohammed and the Quran. Also, optional modular lessons on "Basic Religious Knowledge" will be available. In theory, providing such lessons on non-Sunni Muslim beliefs on request would also be possible.

However, the availability of teachers, the content of curricula, and the organisation of classes are all unknown – and all will be decided by the AKP government. Experience with the way RCKE classes are currently run does not encourage optimism that such Basic Religious Knowledge lessons will in reality be run in such a way as to respect people's freedom of religion or belief.

The AKP prioritises the religious instruction it thinks necessary for its goal of raising a religious generation. This is highly problematic from a human rights perspective, as it inevitably undermines the impartial nature of the state and raises concerns in relation to the rights of children, parents, teachers and others to freedom of religion or belief. The AKP also made a proposal to include a constitutional provision "protecting family and the generation". This may open up possibilities to impose certain moral values on society as a whole, in a way that would be incompatible with Turkey's international obligations.

It is important to remember that the new Constitution will belong to all of Turkey's citizens, regardless of their ethnic origin, religious affiliation or other identities. Constitutional provisions on freedom of religion or belief must take this into account. Instead of drawing the boundaries of religious freedom in Turkey according to the boundaries or future aims of the AKP, the freedoms must be all encompassing and reflect the international provisions on religious freedom.

The challenge for the AKP – as the current ruling party - remains to devise policies which genuinely respect the religious freedom of Turkey's increasingly pluralistic society. This starts with the Constitution and also includes other legislative changes to protect religious freedom in line with the country's existing human rights commitments. The AKP's non-recognition of Alevi cem houses (places of worship), insistence on the compulsory RCKE lessons, strengthening the Diyanet's position as a publicly-funded religious institution, and the comments of AKP politicians, indicate that the party fails to devise policies that respect Turkey's pluralistic reality and observe the principle of impartiality on the part of the state.

Headscarf ban on lawyers

HRWF (14.08.2012) - On 22 August, Sunday's Zaman published an article entitled "Double Standards in the Turkish Justice System" by Hilal Elver, a professor at UC Santa Barbara. A part of it deals with the headscarf ban on lawyers. Here is the relevant excerpt:

According to various bar association regulations female lawyers cannot wear headscarves in courtrooms. There are, however, a few lawyers who, against series of obstacles, wear headscarves while actively working as lawyers. These lawyers had to hire a lawyer without a headscarf in order to defend their clients in hearings and present their arguments in front of judges. Let's imagine such a scenario: A woman is subject to violence, and she has a lawyer who wears a headscarf. While giving modern progressive protection to a woman who is subject to violence, the same legal system does not allow a female lawyer to practice her most natural right to defend her client in a courtroom.

A war against head scarf interning lawyers

In another instance, recently, the Istanbul Bar Association waged a war against interning lawyers who wear headscarves. According to an interim regulation, lawyers cannot come to court buildings with "dirty clothes, blue jeans or a headscarf". Using this rule, the bar administration sent warnings only to lawyers who wear head scarves reminding them of this rule and the. Denied their access to training programs. No e of the people who were blue jeans or dirty clothes received any warning.

If the Turkish legal system is committed to protecting women from violence, how is it possible the same legal system can deny certain female lawyers access to courts or training programs? Isn't it true that the bar's rules create discrimination against female lawyers who wear headscarves, or, using the language of the new law, "create economic violence against women" because these lawyers have to hire a "ghost lawyer", unjustly causing them an extra financial and emotional burden.

(...) Lawyers, unlike judges, do not directly represent the state. Therefore, there is no reasonable argument for appealing to secularists issue, another argument, this time about service giver (lawyer) and service receiver (client), is considered an artificial distinction in many Western legal systems, such as that of the United States.

Recent relaxed implementation on headscarf use in educational institutions has given the impression that there is no longer a headscarf ban in Turkey. There is certainly no constitutionally protected right for women to wear a headscarf. It is only about the current government's verbal and regulatory promises. Moreover, this false and temporary solution gives the impression to many young females who wear headscarves that they will have free choices in their professional life after graduation. This certainly does not hold true in the real world. Secular women's rights organizations should now pay their dues to their religious sisters after having received full support from them during the legal battle over the prevention of violence against women. It is time to give them a hand, too.

If our intellectuals and journalists are questioning why women's participation in the labour force in Turkey is much lower than in other countries, they should at least remember such barriers against religious women at every level of professional organizations and employment opportunities. The chairman of the Istanbul Bar Association criticized intellectuals who do not support his ideas as "genetically deficient intellectuals" in an interview on July 15 in the Cumhuriyet daily. The question is how he would explain such a double standard and discrimination against who wear headscarves as the leader of an association that supposedly protects and preserves justice for "all" of his fellow lawyers.

Religious groups, expectations of the new Constitution, and the AKP

By Mine Yildirim

Forum 18 News service (13.06.2012) - Turkey's Constitutional Reconciliation Commission (AUK) started writing the new draft Constitution on 1 May, starting with the section on fundamental rights. It remains unclear whether the new Constitution will ensure a neutral state and an effective protection of the right to freedom of thought, religion or belief for all. While a new Constitution will not of itself end the many religious freedom problems Turkey's people face, it could solve at least some of the systemic problems and send a strong signal to government and society of other necessary changes.

So far, the AUK has demonstrated an inclusive approach to listening to the expectations of the new Constitution of many diverse groups within Turkey. Representatives of groups from the majority Sunni Muslim community, such as the Diyanet Foundation, and from minorities such as the Alevis (who may comprise one third of the population), various Christian communities, and the Jewish community have all presented their views to the AUK. However, some such as the Baha'is, Jehovah's Witnesses, atheist and agnostic groups did not become involved in this process.

Although the AUK will make its decisions unanimously, the draft Constitution will be subject to changes by and the approval of the General Assembly of the parliament, the Grand National Assembly. The AUK is chaired by Grand National Assembly Speaker Cemil Cicek, and its members are from the ruling Justice and Development Party (AKP), the main opposition party the Republican People's Party (CHP), and the opposition Nationalist Movement Party (MHP) and Peace and Democracy Party (BDP).

Real equality in daily life wanted

The views that religious groups presented to the AUK reflect their longstanding problems and desires. Some Sunni Muslim groups emphasised the need for greater protection of manifestations of the right to freedom of religion or belief in public, such as the use of religious symbols and practice of namaz in employment.

Some of the key religious freedom manifestations that religious groups, including minorities and groups within the majority Sunni Muslim population, hope to see protected in the new Constitution include: the right to establish schools where religious training can be provided, the right for religious organisations and communities to acquire legal entity status, the right to establish places of worship, the right to appoint leaders in accordance with their respective religious traditions.

Also desired is an explicit Constitutional commitment to see the right to freedom of religion or belief in Turkey protected in line with international human rights law, such as Article 9 ("Freedom of thought, conscience and religion") of the European Convention on Human Rights and Fundamental Freedoms (ECHR).

All religious groups who presented their views agree that the new Constitution must genuinely protect real equality between followers of all religions or beliefs, as against a merely formal equality that has no practical impact. They want to experience real equality in daily life.

State - religion relations

The impact of "laiklik", or "Turkish secularism", on state – religion relations is a crucial part of the Constitution-drafting discussions. Some groups are silent on whether Turkey should maintain laiklik in the Constitution or not. Others would like to see, in the constitutional text, a clearly set out explanation of what laiklik would mean in the new Constitution. This reflects the fact that there is not one meaning of laiklik; there are several, with for example different meanings used by different political parties.

Meeting the AUK on 17 December 2011, the Diyanet Foundation asked for laiklik to be maintained in the new Constitution. They also opposed an autonomous Diyanet, instead asked for maintaining its position within the state structure. As far as the compulsory Religious Culture and Ethics lessons are concerned the Diyanet Foundation did not believe these were contradicting the principle of laiklik they expressed the view that optional lessons on, for example, performing the namaz, should be made possible in schools. The Diyanet Foundation builds many mosques in Turkey, and has the purpose of supporting the Diyanet in all its activities.

Non-Muslim religious minorities, the Alevis, and some civil society groups have - in contrast to those who advocate laiklik - emphasised the need to both: make the neutrality of the state and equal distance to all religions and beliefs a constitutional principle; and recognise explicitly the pluralistic nature of Turkish society. These demands for the new Constitution to guarantee state neutrality and pluralism reflect both the reality of Turkish society and the judgments of the European Court of Human Rights (ECtHR) in Strasbourg.

Competing interests?

The many submissions to the AUK from religious groups and civil society organisations reveal at least two approaches. One approach emphasises the need for a neutral state and protection of the right to freedom of religion or belief for all in line with international human rights law. The second approach emphasises greater freedom to manifest religion in the public sphere, by which these groups mean Islamic symbols such as but not limited to allowing women to wear headscarves in public institutions, such as universities and law courts, and religious educational or worship facilities which give greater visibility to Sunni Islam.

These two approaches are not necessarily mutually exclusive. They can exist together within a normative framework based on the protection of everyone's human rights. However, in a state which opts for openness to religious manifestations in the public sphere, the state must ensure observance of the principle of neutrality and respect for pluralism.

A neutral state?

An important question is this: what will determine the formulations used in the new Constitution to address state – religious community relations and the right to freedom of religion or belief?

Among those who closely follow the Constitution-drafting process, realisation is growing that the new Constitution may not enshrine a legal framework that explicitly ensures a neutral state or protects the right to freedom of religion or belief for all in line with international law. Many non-Muslims, Alevis, atheists, agnostics, and key civil society organisations share this concern.

Similarly, it is widely thought that the new Constitution will not abolish either the compulsory Religious Culture and Knowledge of Ethics lessons, or the Diyanet. Both are highly problematic when measured against Turkey's international human rights obligations.

However, many observing the Constitution-drafting process think that it may change the current interpretation of laiklik. The new Constitution, whose formulations can be heavily influenced by the ruling AKP government, may do this in such a way as to, in effect, allow for broader protection of manifestations of freedom of religion or belief by the Sunni Muslim majority.

Recent trends in AKP policy

Since the third election victory of the AKP in June 2011, the new Constitution-drafting process has been a significant symbol of hopes within Turkey for a democratic state that respects fundamental human rights. Yet some government decisions, and the way they have been taken, appear to contradict such hopes. The AKP's recent policies that have implications for the protection of freedom of thought, religion or belief seem to address

demands of the Sunni Muslim majority. Such policies are coupled with inaction to address long-standing problems of the Alevi and non-Muslims including atheists and agnostics.

The AKP has introduced changes such as the Restitution Decree for non-Muslim community foundations only, but prosecutions have also continued of people exercising the religious freedom right not to believe and to share atheist beliefs.

Many in Turkey have also been concerned by recent significant changes that the AKP has made in education, the role and status of the Diyanet, and tax exemptions for building places of worship and offering religious education.

Education

The AKP has made fundamental changes in the education system, but neither allowed a reasonable amount of time for discussions among educators and civil society, nor sought interaction and cooperation with such groups. In the area of freedom of religion or belief, these legislative changes allow the opening of Imam Hatip Middle Schools, a form of Islamic school education many in the AKP support. The changes also allow the possibility of distance learning for female students in high schools, if for example they choose to wear a headscarf and are thus barred from attending lessons. They also make possible optional lessons on the Quran and the life of the Prophet Mohammed.

However, the legislative changes result in possibilities that seem to benefit the Sunni Muslim community the AKP draws its main support from. They do not allow for the opening of schools similar in form to Imam Hatip schools for Alevis, other Muslims or any non-Muslim groups. The changes also do not abolish the compulsory Religious Culture and Knowledge of Ethics lessons. Their content has also not been redefined to conform with international human rights standards – for example as education about all religions and beliefs found in Turkey, or as optional lessons on Christianity, Judaism, the Alevi faith, the Baha'i faith, or humanist philosophy.

A report published by Reform in Education Initiative on 8 June indicates that the changes in 2011-2012 curricula of the Religious Culture and Ethics lessons do not meet the ECtHR standard that the lessons be objective and respect pluralism. The changes have been mainly limited to the inclusion of more information about diverse interpretations within Islam, so as to include Alevi and Caferi rituals and figures.

On 3 April the Education Ministry signed an agreement with the Hayrat Foundation enabling it to provide free private Quran lessons and Ottoman language lessons. (The Ottoman language was the variety of Turkish that was used for administrative and governmental purposes in the Ottoman Empire.) Under the agreement, the Hayrat Foundation will initially open 300 centres for these purposes, which it is intended will rise to 900 centres. The Education Ministry will oversee the lessons, which break the monopoly of the Diyanet as the sole institution formally allowed to offer Quran courses. The agreement also makes it possible for community centres owned by the state to be used for the lessons.

This initiative in the field of education, which has clear freedom of religion or belief implications, once again benefits only followers of one religion. The state is in this way providing a service only for those who want their children to learn to read the Quran in this way. Yet again, the state is not respecting its duty of neutrality as outlined in ECtHR judgments, or the need to respect the equality of all religions or beliefs in state actions.

The Diyanet

The Head of the Diyanet, which only represents this state institution not all Muslims, has had his place in the state protocol list moved in May 2012 up from 51st to 10th. While the Diyanet facilitates the exercise of the right to freedom of religion or belief by some, it also constitutes a structure that raises significant issues regarding the protection of the right to freedom of thought, religion or belief by others.

This change in the protocol list, taken together with the fact that no representative of any religious or belief group has a place in the protocol list, may be an indication that the state is giving even greater importance to the Diyanet, including its role and function.

In August 2012 (the Muslim month of Ramadan), Diyanet TV will start broadcasts using the Turkish state TV channel TRT. Speaking at the Protocol Ceremony on 8 May 2012, the Deputy Prime Minister Bekir Bozdag said that Diyanet TV, which will broadcast its own programmes for initially 12 hours a day, will be used for the "proper understanding and teaching of religion". The channel's remaining 12 hours will be used for programmes compatible with its broadcasting policies. The channel will be funded (like the Diyanet itself) by all Turkish taxpayers, whatever their religion or belief.

Deputy Prime Minister Bülent Arınç, speaking at the same event, stated that Diyanet TV will contribute, in unspecified ways, to re-build Turkish family structures. Professor Esra Arsan of Bilgi University's Media and Communications Department commented on 10 May to Bianet that the Diyanet may use fears of social change to propagate its views of, for example, the clothes women should wear and what a family means. She also strongly criticised the increased use of public funds to promote one religion, something others in Turkey have also heavily criticised.

The state TRT broadcasting corporation has given only very limited exposure to religions or beliefs outside Islam, and its programs have reflected limited diversity within Islam. For example only limited coverage of Alevi feasts. However, on 26 January it for the first time broadcast the 1985 Claude Lanzmann film on the Holocaust "Shoah".

Tax exemption

On 1 June new legislation was passed allowing tax exemption for those who build places of worship and places that provide religious instruction. But to benefit from this exemption, the places of worship must have permission from the relevant local Governorship, and the places that provide religious instruction must provide this instruction under the Diyanet's supervision.

The requirement for permission from Governorships seriously limits who can receive these tax exemptions. The largest community demanding to have its own places of worship, or cemevi, is the Alevi community, which is around one third of the population. But these are not allowed. Communities, such as Protestants and Jehovah's Witnesses, face serious obstacles in establishing places of worship, while Catholics, Greek and Syriac Orthodox and other communities face serious problems in maintaining places of worship. Problems pertaining to the enjoyment of right of all to establish places of worship have long been observed. However, the state – seemingly, lacking the political will – has taken no corrective action so far.

The new legislation deliberately leaves out all premises that are in fact places of worship – such as Protestant churches, Jehovah's Witness Kingdom Halls, and Alevi cem houses – but lack legal recognition in law as places of worship. One reason for this is the refusal by relevant Governorships necessary permission. The day before the legislation was adopted, Aykan Erdemir, a deputy of the opposition Republican People's Party (CHP), questioned the AKP proposal's discriminatory effect, excluding the Alevi cemevi. However, his concern was ignored.

What do AKP actions and inaction mean for the new Constitution?

Problems with exercising freedom of religion or belief in Turkey are numerous and long standing. The AKP - as it has demonstrated - has since the June 2011 election the power to make legislative changes and changes in government practices to resolve these problems. Yet the Party has instead chosen to strengthen the Diyanet and to make changes that address "societal demands", as understood by the AKP to mean adoption of policies that seem to benefit the majority of Muslims. This gives an increasing impression that the steps it has taken have been consistently limited to benefit only the AKP's own Sunni Muslim supporters, instead of framing these steps in such a way as to advance everyone's freedom of religion or belief. The AKP has shown no determination to take the bold steps needed to address the realities of Turkey's pluralistic society and resolve the problems faced by all religious or belief groups.

If Turkey's protection of the right to freedom of religion or belief is to come closer to the standards upheld by international human rights law, the new Constitution and the Government's policies now and after the Constitution's adoption must observe the principles of impartiality of the state and equal protection of the right to freedom of thought, religion or belief for all. This means, at minimum, modifying laiklik to mean a neutral state that effectively protects freedom of religion or belief for all. This will include, but is not limited to, not viewing the Diyanet or the Compulsory Religion and Ethics lessons as legitimate - whatever "societal demands" the AKP perceives.

Turkish pianist charged with insulting Islam

By Selcan Hacaoglu

The Sydney Morning Herald (01.06. 2012) - A Turkish court on Friday formally charged an internationally known pianist and composer with insulting Islamic religious values in comments he made on Twitter.

The court in Istanbul voted to approve an indictment against Fazil Say, who has played piano with the New York Philharmonic, Berlin Symphony Orchestra, Israel Philharmonic, National Orchestra of France and Tokyo Symphony.

The 42-year-old Turk faces charges of inciting hatred and public enmity, and insulting "religious values." Say, who has served as a culture ambassador for the European Union, allegedly mocked Islamic beliefs about paradise in April.

Meltem Akyol, a lawyer for Say, said the pianist has denied the charges. The trial will be held on Oct. 18, she said.

"We certainly do not accept the charges," Akyol said by telephone on Friday. "He has stated in his initial testimony during the probe that he had no intention to humiliate any religion. He was basically criticizing those who are exploiting religion for profit."

Akyol said Say's tweets and retweets on social media cannot be considered as public remarks because only people who follow him can see them. In one tweet cited in the indictment, Say said: "What if there is raki (traditional anisette drink) in paradise but not in hell, while there is Chivas Regal (scotch) in hell and not in paradise? What will happen then? This is the most important question!!"

Islam forbids alcohol and many Islamists might consider such remarks unacceptable. In one of the pianist's retweets, one excerpt questioned whether paradise was a "brothel?" according to the indictment.

Akyol claimed that line belonged to the wine-loving 11th century Persian poet Omar Khayyam, most known for his work the "Rubaiyat of Omar Khayyam." But Murat Bardakci, a historian, wrote in HaberTurk newspaper in April that the alleged line did not belong to Khayyam.

"He was merely expressing his ideas within free speech," said Akyol, adding that the renowned artist was not seeking any privileges or immunity from prosecution.

Akyol, meanwhile, confirmed that Say closed his Twitter account before the court decision Friday, because he was annoyed with messages.

"He has lately incurred the wrath of some people," Akyol said. "He has even been receiving death threats."

Say had floated the idea of leaving Turkey and moving to Japan earlier this year, his lawyer said. The pianist was abroad and not available for comment. He was expected to return to Istanbul this weekend following a concert in Slovenia on Friday.

Say was the latest prominent Turk to run into trouble in the country for expressing his views. He could face a maximum 1 1/2 years in prison if he is convicted.

The European Union has long encouraged Turkey to improve freedom of speech if it wants to become a member one day.

Turkey's Nobel laureate Orhan Pamuk has been prosecuted for his comments about the mass killings of Armenians under a law that made it a crime to insult the Turkish identity before the government eased that law in an amendment in 2008.

In 2007, ethnic Armenian journalist Hrant Dink, who received death threats because of his comments about the killings of Armenians by Turks in 1915, was shot dead outside his office in Istanbul.

Selective progress on conscientious objection

By Mine Yildirim,

Åbo Akademi University (01.05.2012) - Two recent Turkish military court decisions concerning conscientious objection claims have shown a partial recognition of the right to conscientious objection to military service as a human right. This right is protected under, among other human rights standards by which Turkey is bound, Article 9 ("Freedom of thought, conscience and religion") of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The military court decisions came despite no specific Turkish legislation either recognising this right or regulating its implementation.

Yet these court judgments should be read carefully, as they show the limits of the right to conscientious objection currently recognised in Turkey. Two current requirements stand out: first, the courts require that the religion held by the conscientious objector is known to reject military service; and secondly, that the conscientious objector's "sole and

undivided" motivation for rejecting military service is his conscientious objection declared at the start of compulsory military service, which applies to men between 20 and 41 years old. Women are not liable for conscription.

Council of Europe pressure

Yet prior developments in Turkey have pointed against recognition of this right. The Council of Europe Committee of Ministers has in recent months been expressing grave concern at Turkey's response to the case of conscientious objector Osman Murat Ülke (Application no. 39437/98), who had been arrested in 1996 and subsequently sentenced many times. The European Court of Human Rights (ECtHR) in Strasbourg ruled in his favour in January 2006, and after the ruling Turkey informed the Committee of Ministers that regulations concerning conscientious objection will be made in due course. However, nothing has to date been done to fulfil the requirements of the Ülke judgment.

Unlike the two recent cases before military courts, Ülke based his stand on his pacifism, not on any organised religion. In international law his pacifist beliefs would still fall within the exercise of freedom of religion or belief in relation to conscientious objection.

The Committee of Ministers has repeatedly expressed its concern that Turkey has not executed the ECtHR judgment, including changing the law. Ülke has been in hiding since 2007, because the authorities are seeking to arrest him. At its 6-8 March 2012 meeting, the Committee of Ministers noted among other things that "there was a valid arrest warrant against the applicant for desertion", "that the Court's judgment leaves no scope for any new arrest of the applicant [Ülke]", and "strongly urged" Turkey to withdraw the arrest warrant and give "a clear time-table for the adoption of the general [legislative] measures envisaged to execute the judgment".

In response to this pressure, the Turkish Government has given contradictory signals. Justice Minister Sadullah Ergin declared on 15 November 2011 that the Defence Ministry was working on a legal regulation pertaining to conscientious objection. Justice Minister Ergin's statement aroused much heated debate. It was then reported on 17 November that conscientious objection would be regulated as a crime.

On 22 November the ECtHR found in the case of Jehovah's Witness conscientious objector Yunus Ercep v. Turkey (Application 43965/04) that denying the right to conscientious objection to military service breaks Article 9 ("Freedom of thought, conscience and religion"). This was the first time that the ECtHR had made an Article 9 judgment in relation to Turkish conscientious objectors. However, the same day Prime Minister Recep Tayyip Erdogan said that "what is called 'conscientious objection' has never been in our agenda" (see F18News 30 November 2011).

The Ercep judgment followed the ECtHR's Bayatyan v. Armenia judgment in July 2011 (Application no. 23459/03), in which the Court for the first time unequivocally recognized that conscientious objection to military service is protected under Article 9.

A Justice Ministry official, who wished to remain anonymous, declined to comment to Forum 18 on 12 April 2012 on the Government's current approach to the issue of conscientious objection.

Will conscientious objection be protected in the new Constitution?

Campaigners for conscientious objection are lobbying for the planned new Constitution to include a specific commitment to this right (see F18News 30 November 2011). The Conscientious Objectors Platform, a Turkish advocacy group, made a presentation to the parliamentary Constitutional Reconciliation Commission on 9 April 2012. They called for the right to conscientious objection to compulsory

military service to be protected in the new Constitution. They explicitly drew on the ECtHR cases in arguing for the recognition of the right to object to military service based on an individual's religious, political and philosophical beliefs.

The Platform also called for alternative forms of service to be introduced, under which an individual could either refuse to bear arms in carrying out military service, or carry out a completely civilian alternative service.

Following the meeting, two opposition political parties, the Republican People's Party (CHP) and the Peace and Democracy Party (BDP), made statements noting that the right to conscientious objection to military service must be recognised to comply with Turkey's international human rights commitments.

Whether or not the right to conscientious objection will be recognised in Turkey's new Constitution remains to be seen. However, the Justice and Development Party (AKP) Government's reluctance so far to create a legislative framework for conscientious objection is not a positive sign.

Landmark rulings on conscientious objection against Turkey

Following the ECtHR November 2011 judgment in the Ercep case, on 17 January 2012 the Court made a similar judgment against Turkey in the case of another Jehovah's Witness conscientious objector Feti Demirtas (Application No. 5260/07). The ECtHR again held that the Turkish government violated Article 9 of the ECHR, stating that "the absence of an alternative to military service in Turkey is in breach of the right to conscientious objection".

The ECtHR also reiterated its finding in the Ülke case, considering that the situation of conscientious objectors in Turkey - prosecution, criminal proceedings and "civil death" - was not compatible with the rule of law in a democratic society. The Court found that Turkey had broken Article 3 ("Prohibition of inhuman or degrading treatment") and Article 9, as well as Article 6 ("Right to a fair trial") because Demirtas was forced as a civilian to appear before a military court.

The Turkish government defended its position, claiming that the right to freedom of religion and conscience should not be applied to conscientious objection. The ECtHR, however, referred to its new jurisprudence established with the July 2011 Bayatyan case.

Military court recognises right to conscientious objection

As noted above, the Turkish Government has long lacked the political will to recognise the right to conscientious objection. At the same time, the Council of Europe has long urged Turkey to make the necessary legislative changes to both prevent new violations and stop existing violations against conscientious objectors in Turkey.

However, two recent - surprising - military court decisions changed Turkey's legal practice in relation to conscientious objection. One concerns a Jehovah's Witness conscientious objector, Baris Görmez, the other a Muslim conscientious objector, Muhammed Serdar Delice. In both cases military courts to some degree relied on the changed jurisprudence of the ECtHR on conscientious objection following the Bayatyan v. Armenia case. However, in both cases a key factor was the declared religions of the conscientious objectors.

Article 90 of the Turkish Constitution states that in cases of conflict between international agreements in the area of fundamental rights and domestic laws, the provisions of international agreements will prevail. This provision was applied in both military court judgments.

Conscientious objection based on a group's or individual's convictions?

Malatya Military Court's 7 March Delice decision outlines the Turkish military judiciary's interpretation of the right to conscientious objection to military service. Delice declared his conscientious objection approximately five months after he had been conscripted. He declared that his conscientious objection was based on his Islamic and nationalist beliefs. The decision includes some general points about the Military Court's interpretation of conscientious objection to military service, as well as some points specific to Delice's case.

The Military Court interpreted the ECtHR's approach to the right to conscientious objection as one based on the theological position of a religious group, and excluded the beliefs of the individual. It ruled out an individual rejecting military service according to his own views. Instead, the Military Court relied on the rejection of military service by an intellectual, religious or political group, as such. It referred to the example of Jehovah's Witnesses, stating: "persons who are members of the Jehovah's Witnesses reject military service, because they are part of this group or institution which fundamentally rejects military service".

Selective theological assessment

Based on this understanding, a young man claiming conscientious objection to military service would have to be a member of a religious group considered by a court to be categorically opposed to military service. In the Malatya Military Court's view, Delice belonged to "Islam which is not a belief or ideological movement that rejects the performance of military service".

This view of Islam was a theological statement by the court. But when Delice wanted to bring in the mufti of Malatya as an expert witness, the court rejected his request. In excluding the mufti, the court cited Law No. 5271 ("On Criminal Procedure"). Article 62 of this Law states that experts must take an oath saying that they will perform their tasks based on science. The Court stated that "the religious sphere is intrinsically related to beliefs and is dogmatic, hence any view expressed from this field cannot be based on science and includes subjective elements".

This explanation seems to contradict the Court's view that Islam does not reject the performance of military service. On the one hand, the Court maintains that religious views cannot be presented in proceedings by experts, as they are not scientific and include subjective elements. Yet on the other, it bases its decision on its own theological assessment.

"One and undivided purpose"

According to the Military Court, Delice had Islamic and nationalist views when he was conscripted. According to the Court, he only declared his conscientious objection to military service after he "saw wrongs and deficient aspects of military service for himself and thus declared his conscientious objection".

The Court also argued that Delice did not from the beginning of his military service have a "one and undivided purpose" of conscientious objection. The Court thus ignored in relation to conscientious objection a key part of international law's understanding of freedom of religion or belief, which is also found in the ECHR's Article 9 - the right to change beliefs.

Under this ruling, a conscientious objector must demonstrate that his objection exists before conscription, and that it is his "one and undivided purpose" - i.e. that he has no

other reasons for wanting to leave military service. According to the Court, in Delice's statement to the Prosecutor he said that he wanted to leave military service for a number of reasons. According to his statement, these included financial difficulties and the hostile reactions of some of his fellow-soldiers and commanders towards him because he was performing namaz (Muslim prayers) in the military.

Military or civil courts for conscientious objectors?

The Delice decision also touches on the question of whether a conscientious objector is tried by a military or a civil court. Since Delice was already performing his military service when he declared his conscientious objection, the Court noted that according to Article 9 of Law No 353 ("On the Establishment of Military Courts and Tribunal Procedure") he was under the jurisdiction of the military courts. This reasoning seems to imply that if a person objects to being conscripted before he joins the military he may be tried by a civil court. It will be interesting to see how and in which courts newer conscientious objection claims lodged before conscription will be dealt with.

Delice has appealed against the ruling, and the High Court of Appeals decision and its reasoning will be awaited with great interest by many in and outside Turkey.

Right to conscientious objection recognised - for Jehovah's Witnesses

Isparta Military Court recognised the right to conscientious objection to military service when it acquitted Jehovah's Witness Baris Görmez on 13 March 2012. He had spent a total of four years in prison from November 2007 and had been charged with "rejecting wearing of the uniform" and "rejecting orders". As in the Delice case, the Court relied on the changed jurisprudence of the ECtHR.

His fellow Jehovah's Witnesses maintain that Görmez faced very harsh conditions in prison, but never abandoned his insistence that his faith commands him not to take part in any military activity. They say he was slapped on the face, kicked and trodden on by Gendarmerie officers.

The decision to recognise Görmez's conscientious objection clearly does not constitute a remedy to the maltreatment he suffered. Whether he will pursue legal remedies for his maltreatment is not known.

Theological evaluations must be avoided

In the assessment of conscientious objection claims by public authorities, evaluations of theological views must be avoided. Otherwise - as in the Delice case - there is a grave risk of making decisions based on a court's or public authority's purely subjective views, and not based on the evidence of a particular case. There are naturally going to be diverse theological opinions - but it is important that they do not divert the course of justice and the rule of law.

Following a request by the Milli Gazete newspaper, the Diyanet, or Presidency of Religious Affairs under the Prime Minister, published its theological view on conscientious objection on 15 April 2012. According to the Diyanet, the right to conscientious objection does not exist in Islam. It argued that, in addition to worship rituals, everyone is responsible toward their family and state - including in the area of tax and military service.

The Diyanet's view has a special significance since it comes from a state body. Diyanet views have been consulted by the judiciary on cases involving freedom of religion or belief before, such as whether the Baha'i faith is a religion or not, and whether the Alevi

cemevi is a place of worship or not - even if the Diyanet has no formal responsibilities in relation to the religion or belief concerned and its opinions are not binding on public.

Turkish writer Professor Ihsan Eliaçık believes that the right to conscientious objection is not contrary to Islam. He argued, in a 17 April commentary on Bianet, that the Diyanet excludes any Islamic views that support conscientious objection as a way to "provide a religious cover for state policies".

"Regardless of one's religion, conscientious objection is everyone's right"

The decisions concerning Görmez and Delice were received both as milestone decisions that recognise the right to conscientious objection and as disappointing - especially in the case of Delice. The Istanbul branch of Mazlumder (Association of Human Rights and Solidarity for Oppressed People) organised a 16 March press conference, at which Delice's lawyer Mahir Orak complained that Malatya Military Court "developed a new stalling method by saying that there is no conscientious objection in Islam". Orak also considered that the Delice and Görmez decisions were contradictory.

Delice, who was also present at the Mazlumder press conference, insisted that "regardless of one's religion, conscientious objection is everyone's right".

Oguz Sönmez, speaking on behalf of the Conscientious Objectors Platform, emphasised that a military court cannot assess a conscientious objection claim properly. He added that an individual's self-declaration must be the determining factor in deciding whether or not he is a conscientious objector.

On the other hand, Jehovah's Witnesses have welcomed the recognition of the right to conscientious objection. Jehovah's Witness spokesperson Ahmet Yorulmaz told Bianet on 13 March that in deciding Görmez's case, the military court took into consideration Turkey's conviction at the ECtHR in the Yunus case.

What needs to be done?

Military court decisions recognising the right to conscientious objection as an internationally protected human right bring Turkey closer to compliance with international human rights norms. But Turkey has not yet complied with its human rights obligations in relation to conscientious objection to military service.

The need for a comprehensive legal framework remains urgent. This must clearly recognise that human rights are individual rights that can be exercised alone or in community with others, and recognise the right to change beliefs. Theological evaluations by public authorities would not be compatible with the state's ECHR obligation to remain neutral, which ECtHR rulings have repeatedly stressed.

Such a comprehensive legal framework meeting international standards must also include: recognition of the right to conscientious objection and non-discriminatory regulations for its application; the establishment of a non-military assessment mechanism to fairly and impartially decide on claims of conscientious objection; and the establishment of a fully civilian alternative to military service.

Attacked Turkish Pastor joins in memorials for slain Christians

Istanbul church leader says he has known hostility from Muslims nearly all his life.

By Damaris Kremida

Compass Direct News (18.04.2012) – After a memorial service for three Christians who were murdered in Malatya, Turkey five years ago today, an Istanbul pastor who was attacked over Easter weekend said he's experienced hostility from Muslims nearly all his life.

Semir Serkek, 58, pastor of Grace Church in Istanbul's Bahcelievler district, said he personally knew Turkish converts to Christianity Necati Aydin and Ugur Yuksel and German Christian Tilmann Geske, who were brutally murdered by five young men in the southeastern city of Malatya on April 18, 2007.

"I looked at their fate with some envy, because they were young and I am old, but they left – I have gone through many things," he said. "But they were so young, so young."

On a day when memorial services were held for the three slain Christians in Malatya, Izmir and Elazig as well as the ones Serkek attended at both the Kozyatag Cultural Center and Gedikpasha Church in Istanbul, the pastor said the physical violence on him the evening (April 7) before Easter Sunday surprised him.

"I've been verbally abused for being a Christian many times, but this was the first time I was hit, so this was surprising and made me sad," Serkek said.

Serkek was alone at Grace Church finishing preparations for the next day's Easter celebration when at around 9 p.m. he heard frantic pounding at the door, he said. Opening it, he found four young men in their late teens who claimed they had questions and demanded to enter.

The men, whom Serkek said appeared to be about 18 years old, were agitated, and when he refused to let them in they used insulting language, he said. They threatened to kill him if he didn't recite the Islamic testimony of faith.

"This made me uneasy, and I told them that this was a church and they should come back in the morning," Serkek told Compass. "This is a Muslim neighborhood, what business does a church have here?' they asked me, and told me again and again that if I didn't accept the final religion I would die."

Finally one of the men kicked Serkek in the chest. The blow threw the pastor down the entrance steps to the ground. The Muslims ran away laughing, Serkek said.

Born to a Syriac Christian background family in the southeastern city of Mardin, Serkek said that while the violence surprised him, he has known verbal abuse since childhood and especially since he started serving God and began openly sharing his faith 35 years ago.

"To be honest, I've experienced these things from my childhood," Serkek said. "I know these things closely. I'm from Mardin, and I'm a Syriac Christian. We are serving actively, and we have to spread the Word to be a source of blessing. This is what we are called to do, to bless. This is how God will use us, and I believe this with all my heart."

Two days after the attack, Turkish Director of Religious Affairs Mehmet Gormez called Serkek from Denmark, where he was traveling, to express his disappointment about the attack on him, according to local press.

"I don't want to be ungrateful, but I also told him that these men are trained in the mosques," Serkek said. "At least 10 times they repeated their demand that I say the *kelime-i shahadet* [Islamic testimony of faith]. They pressured me. They told me I will die."

They had violence in them. They didn't even know me. They used insulting language. Their goal was to provoke me."

Serkek said he is convinced the four Muslims who attacked him did not pass by his church site by accident or impulsively. He said the attack was planned, and that if police catch them he would like to know who put them up to it.

On Sunday (April 15), 17 activists from a non-profit organization known as Dur De, which fights racism and hate-crimes, came to Grace Church in a show of support to Serkek. Earlier last week, a delegation from a Muslim non-profit called Damla Nur Dursun also visited Serkek and brought him flowers.

On Easter weekend, Turkish Prime Minister Recep Tayyip Erdogan and President Abdullah Gul issued official statements wishing the country's Christians a Happy Easter. Gul stated that "regardless of ethnic origins, language, faith and political views, everyone is an equal citizen in Turkey and equal owners of the Turkish state," according to the Anatolian Agency. Erdogan wished Christians peace and well-being.

The attack on Serkek, however, came as a bitter reminder to the nation's Christian community that Turkey has a long way to go in giving equal standing to non-Muslims.

Along with the memorial services around Turkey today, Geske's family published an announcement in *Taraf* newspaper.

"While remembering with deep love and respect my husband, our father and our brothers, we pray and invite our beloved country's people and government to a new level of tolerance," the announcement read. "A new tolerance that brings peace and alleviates pain from this country where thousands have been killed in the name of religion, race, political opinion and differences of tradition. We invite every child and every citizen to choose life instead of death, good instead of evil and blessing instead of curse."

Aydin, Yuksel and Geske worked for Zirve Publishing Co. distributing Christian material, as did Serkek for many years. The pastor said that he himself was nearly lynched in the northeastern town of Artvin for handing out Christian materials.

Because of Turkey's long-term and systematic limitations on non-Muslim communities, the United States Commission on International and Religious Freedom recommended that Turkey be designated as a "Country of Particular Concern" this year. There are an estimated 4,500 Christian converts in Turkey.

Turkey's religious freedom record slides

Pastor in Black Sea region's bastion of nationalism feels the hate; slow justice in Malatya

By Damaris Kremida

Compass Direct News (09.04.2012) – Sentiment against Christians in Turkey has persisted long enough for a U.S. religious rights monitor to recommend it as a "Country of Particular Concern," and pastor Orhan Picaklar knows such anti-Christian hostility first-hand.

Picaklar, of Agape Church in Samsun, lives in the Black Sea region, a bastion of Turkey's unique Islamic-imbued nationalism, where Christians live under increasing pressure. He has seen his building attacked and his family and congregation threatened.

"Just as it is difficult to belong to Jesus all over the world, unfortunately it is the same in Samsun, if not worse," Picaklar said. "We have been here for 10 years, and people here still treat us like cursed enemies. Our families feel anxiety. On the hour my wife calls me and I have to say, 'There's no problem,' as if to say, 'I'm still alive.'"

Picaklar's son received death threats on Facebook last September. A man in his early 20s caused minor damage to Picaklar's church building last month, the latest in a series of aggressions that has led the church to file charges after long declining to do so.

Police called Picaklar in the middle of the night on March 4 to tell him to come to the police station because a young man had disturbed neighbors near the church building. Neighbors heard the suspect, Eren Cilce, yelling, "Corrupt, perverted Christians, we are going to bring this church down on your heads, get lost," among other threats, Picaklar said.

The church was housing visitors who had travelled from Romania, he said. Visitors, especially foreigners, attract unwanted attention from local nationalist groups, he added.

The assailant's threat was nothing new. In June a man broke into the church building and painted threats on the wall. When authorities captured the perpetrator, he asked Picaklar for forgiveness. The church didn't press charges.

Though Picaklar's congregation has never pressed charges for previous hate crimes, last month they decided to formally complain.

"We are always forgiving, but since the threats are continuing in aggression and we are innocent, we decided as a congregation for the first time to press charges," he said.

A court hearing will likely take place in May, and Picaklar said he expects the culprit will be fined. Police informed him that Cilce was drunk, and Picaklar said he hopes the court doesn't dismiss the case on that basis. The congregation does not have a lawyer.

Of the 50 members of his church, only a dozen have made the brave move to change the religion status on their identification cards from Muslim to Christian, or at least to leave it blank, Picaklar said.

Many in Turkey see Christians as corrupt elements of the West out to shake the integrity of Turkey and Islam; this portrayal has been propagated to some extent in media and literature, including school textbooks. Though constitutionally Turks are allowed to share their faith with others, the word "missionary" carries negative connotations, including the mistaken notion of undermining Turkish sovereignty. In recent years a series of assassinations of Christians in Turkey has brought to the fore deep-rooted prejudices against Christians.

Country of Particular Concern

Such indiscretions are one reason the U.S. Commission on International Religious Freedom (USCIRF) last month recommended that Turkey be designated as a "Country of Particular Concern (CPC)," among Iran, Saudi Arabia and Sudan, for religious freedom violations.

The report cited the government for "systematic and egregious limitations" on religious freedom, stating that Turkey, "in the name of secularism, has long imposed burdensome

regulations and denied full legal status to religious groups, violating the religious freedom rights of all religious communities.”

Restrictions that deny non-Muslim communities the rights to train clergy, offer religious education and own and maintain places of worship have led to their decline and in some cases their disappearance, the report stated. The Greek Orthodox community of Turkey has dwindled to around 2,500 from tens of thousands early in the 20th century.

The report called some of the positive steps the government has made in the area of property, education and religious dress as “ad hoc” that have not led to systematic constitutional and legal changes.

Religious restrictions in Turkey have not increased in the last year, but the report stated that continued legal discrimination against non-Muslim groups was a dangerous trend.

Turkish officials called USCIRF’s recommendation to the U.S. Department of State “null and void.” Turkey’s parliament is in the process of drafting a new constitution, and a special parliamentary committee has met with members of Turkey’s non-Muslim communities to hear from them how the new constitution could better represent their communities.

A researcher on religious freedom in Turkey, Mine Yildirim of ABO Academy in Finland, told Compass that USCIRF’s portrayal of religious freedom in Turkey is correct but that the country did not deserve to be designated as a CPC.

“I think it was an unfair attestation, and though they wanted to give a strong message to Turkey, it backfired because the ministry said it was null and void and they wouldn’t take it into account at all,” said Yildirim, a Turkish Christian.

Yildirim acknowledged that religious freedom violations against Protestants had increased in 2011, noting that with few exceptions they are still unable to establish places of worship. Most of Turkey’s churches function as civil associations and can therefore meet in buildings.

Malatya, Five Years Later

Five years after the murder of Turkish Christians Necati Aydin, Ugur Yuksel and German Christian Tilmann Geske in Malatya, no verdict has been issued due to Turkey’s slow judiciary. This has not helped Turkey’s religious rights image.

The Malatya Third Criminal Court is making some progress in shedding light on a shadowy group that was allegedly behind the murders, experts said, but the process has been painfully slow.

A new indictment due last month against the alleged “masterminds” of the murders is still not ready, prosecution lawyers said, setting back hopes for progress at hearings this week.

“Nothing is going to happen,” plaintiff lawyer Erdal Dogan said before today’s court hearing. “We are still waiting for the new indictment.”

The court decided to re-convene on June 18.

The April 2007 murders are believed to be part of a conspiracy to overthrow the current pro-Islamic government.

Prosecuting lawyers and members of the local Protestant community still hope that the new indictment due ahead of the June 18 hearing will be a step forward in bringing the perpetrators to justice.

"I believe the indictment will uncover many details we are not aware of," Umut Sahin, coordinator of the Legal Committee of the Association of Turkish Protestant Churches (TEK), told Compass. "I think it might surprise us."

Sahin said he believed the delay of the new indictment was due to its complexity and length and not any unwillingness to advance the case.

Since 2008 there have not been similar bloody attacks against Protestants, but according to TEK, 2011 saw a spike in hate crimes against the association's 4,500 members.

Commenting on the slow proceedings of the Malatya trial, researcher Yildirim of the ABO Academy said that the judiciary and Turkish "problems of rule and law" were partially to blame, but that the forthcoming new indictment would be a positive step.

"For Malatya, if you put aside the slowness, now finally a new indictment is being prepared to find the instigators," she said. "So this is a positive effect. It's not what we expect from justice, but even though it is slow, this is a positive outcome of the trial."

Turkey passes a school reform law that secular critics view as Islamist

Reuters (02.04.2012) - Turkey's ruling party pushed through a school reform act on Friday that provoked brawls among parliamentarians and mass protests by secular Turks and teachers, who said the law was pushing an Islamic agenda and would lower education standards. Prime Minister Tayyip Erdogan sent shudders through the secular opposition earlier this year when he said his goal was to raise a "religious youth." Earlier this month, his AK Party sprang the surprise proposal to overhaul the education system.

Education has been one of the main battlegrounds between religious conservatives who form the bedrock of AKP support - and secularists since soldier statesman Mustafa Kemal Ataturk founded the Turkish republic in 1923. Believing that religion was holding back Turkey, one of Ataturk's first acts was to close madrasas, religious schools. Admirers of Ataturk say the AK Party is rolling back policies hurtful to pious Muslims.

The changes approved on Friday included measures that will allow schools specialising in religious education combined with a modern curriculum, known as imam hatip schools, to take boys and girls from the age of 11 instead of 15, and to provide optional classes in Koranic studies and the life of the Prophet Mohammad in other schools.

The law stipulates that children should complete 12 years schooling, though critics say the overall quality of education will suffer as parents have the option of putting their children into technical colleges grooming them for low-paid blue-collar and service industry jobs, like hairdressing for girls, from an early age.

Opposition anger over the bill boiled over when the AK Party steamrolled it through the committee stage, provoking brawls in parliament earlier this month.

Indictment of 'masterminds' of murders in Turkey expected

Court sets a week of court hearings in April for witness testimony

By Damaris Kremida

Compass Direct News (28.02.12) – Judges in Turkey's southeastern city of Malatya have announced the preparation of an indictment in the case of three murdered Christians that is expected to reveal a shadowy network that incited five young men to carry out the crime.

The Third Criminal Court of Malatya is expected to announce the indictment on April 9, followed by a week of witness testimony that judges believe will link the five murder suspects to the "masterminds" who prompted them, plaintiff lawyers said. The brutal murders of Turkish Christians Necati Aydin and Ugur Yuksel and German Christian Tilmann Geske at the Zirve Publishing House by five young men in 2007 are believed to be part of a conspiracy to overthrow the current pro-Islamic government.

"In the next court hearing, the new indictment will certainly be ready, and the case will deepen as the suspects and instigators are judged together," co-plaintiff lawyer Erdal Dogan told Compass.

Dogan said the case will speed up with the introduction of the new indictment and make it easier to bring those responsible to justice.

Co-plaintiff attorney Orhan Kemal Cengiz said that with this second indictment he expects former gendarmerie commanders and other officers who have been arrested in connection with the Malatya murders to finally take the stand in the case – something he and colleagues have long hoped for.

"The longer we wait, the more anxious we become, because it should have been announced [long ago]," Cengiz said.

Cengiz said he is not sure how deep the second indictment will probe into the network he and other attorneys believe was behind the five murderers. For the last five years, plaintiff lawyers have argued there is overwhelming evidence that the Malatya murders were connected to *Ergenekon*, a hidden network within the state alleged to have plotted crimes to destabilize the government.

"It is difficult to speak about it without seeing the indictment itself," said Cengiz. "It should implicate a wider network behind these murders. But we don't know to what extent they will expand the limits of the case. I hope it will uncover the real network, but it may be too shallow; then again, it may really go deep."

Ergenekon is believed to be behind at least three key murders of Christians since 2006, including those in Malatya, as well as other crimes.

This month plaintiff lawyers for families of the Malatya murder victims demanded key *Ergenekon* indictments be joined to the Malatya murders case. The 37th hearing of the Malatya murders case took place on Feb. 17.

One of the requested indictments concerns a case opened against retired Gen. Ilker Basbug, a former chief of general staff. Basbug testified last month in an investigation that implicates him in an anti-government propaganda campaign of the Turkish Armed

Forces. The propaganda campaign aimed to instill fear in the public that the government was attempting to establish a religious order based on Islamic law.

This month authorities prepared an indictment against him as a senior administrator of the *Ergenekon* terrorist organization within the Turkish Armed Forces. Basbug is the highest-ranking officer to be jailed and involved in legal proceedings in Turkey this far, according to *Today's Zaman*.

In April 2010, judges added to the Malatya case file one of the *Ergenekon* indictments concerning the so-called Cage Operation Action Plan. The Cage Plan surfaced when authorities seized a CD from the office of retired naval officer Maj. Levent Bektas, a suspect in the *Ergenekon* case, which exposed plans to assassinate prominent non-Muslim Turkish citizens. The naval forces group planned to pin the murders to the current pro-Muslim government.

The Cage Plan called the killings of Armenian journalist Hrant Dink in Istanbul, Catholic priest Andrea Santoro in Trabzon, and the three Christians in Malatya successful "operations."

Ergenekon hearings have been ongoing since October 2008, and scores of its alleged members, including military personnel, members of the press, academics and businessmen, are in jail.

Advances and Setbacks

The trial hearings for the murders of the three Christians in southeastern Turkey in 2007 continued slowly last year amid advances in investigations – and the replacement of judges whom lawyers say were making significant progress in the case.

Last year the prosecutor for the *Ergenekon* case in Istanbul, Zekeriya Oz, ordered the arrests of various suspects in relation to the Malatya case. Malatya plaintiff lawyers saw this as a major advance in their efforts to illustrate to the courts and public that the two files should be joined, as they concern the same perpetrators.

Initially 20 suspects were arrested in last year's investigation pertaining to the links between *Ergenekon* and Malatya, and seven of them are still in custody. They include former Malatya Provincial Gendarmerie Brigade Commander retired Col. Mehmet Ulger and a theology instructor at Malatya's Inonu University, Ruhi Polat. Five of the seven are active in the military.

These suspects were arrested after a CD surfaced with a voice recording of a meeting in which they discussed the Malatya killings, how much they paid the assailants and how the murders influenced the country's agenda.

It is believed that *Ergenekon* members were spying on Christians in Malatya and organized numerous talks vilifying missionaries in Turkey as agents who aimed to overrun the state. There are approximately 4,000 Christian converts among Turkey's population of 75 million.

A transcript of a speech made on April 18, 2007, the day of the Malatya murders at Inonu University in Malatya entitled, "Besieged Turkey at the Start of the 21st Century," by Hursit Tolon, was included in the Malatya case file this month. Tolon is a retired general and key suspect in the *Ergenekon* investigation.

Though the Turkish Constitution ensures freedom to disseminate information about one's faith, many Turks hold deep-seated, anti-Western nationalism and suspicion of

Christians, who are seen as seeds of Western propaganda aimed at questioning Turkish sovereignty.

The Malatya case experienced a major setback last year when *Ergenekon* prosecutor Oz and Malatya head judge Eray Gurtekin were taken off the cases and promoted to higher positions. Plaintiff lawyers expressed dismay as both prosecutors had contributed to major advances in the case. Plaintiff lawyers in both cases said they believed the promotions were an effort to sidetrack the cases and sabotage the advances they had made.

Buried Cases

Last month an Istanbul prosecutor acquitted seven suspects in Dink's murder of belonging to a network or terrorist organization. The acquittal came as a surprise in the face of evidence linking Dink's murder to members of police, *Ergenekon* suspects and the Gendarmerie Intelligence Organization.

In January 2007, Dink, an Armenian Christian and editor-in-chief of *Agos*, was shot by 17-year-old Ogun Samast from Trabzon. Samast was sentenced to 22 years and 10 months of prison for killing Dink, while the man who instructed Samast to kill Dink received an aggravated life sentence on charges of instigation to premeditated murder. Other suspects also received prison sentences.

Dink's death five years ago, and the court's decision last month, created public outrage over prejudice against Armenians and non-Muslim minorities in Turkey and the court's inability to bring to justice the instigators of the crime.

After the the Istanbul court reviewing Dink's court case declined to pursue evident links between the young men who killed him and *Ergenekon*, Cengiz, who is also a writer for English daily *Today's Zaman*, wrote a column titled, "Will the Malatya massacre be also covered up after Dink?"

"This verdict was the worst of the worst that the court could ever deliver in this case," Cengiz wrote.

The Turkish Presidency's State Supervisory Council (DDK), in a 650-page report issued this month, recommended that the Dink case be re-opened in order to bring top police and gendarmerie officials to justice for negligence before and after Dink's murder.

The DDK recommendation is not binding, but a prosecutor in the case is already collecting evidence to re-open the case. The Malatya case file is expected to be used as evidence in the new Dink case.

This month marks the six-year anniversary since the murder of Santoro in the northern city of Trabzon. Authorities arrested a 16-year-old in relation to Santoro's death and sentenced him to 18 years of prison for pre-meditated murder.

No further probes were made into who might have been behind the crime despite evidence that the Trabzon police had tapped Santoro's phone three months before the murder. Malatya lawyers say a deeper investigation would easily uncover links to the murders of Christians that followed.

In June 2010, Catholic Bishop Luigi Padovese, vicar apostolic of Anatolia, was murdered by his driver. There are suspicions that this case could also be linked to the other Christian assassinations, but court proceedings by the state prosecutor are closed to the press.

Hate

A book released in October 2011 by Turkish journalist Ismail Saymaz shocked the nation, exposing how the Malatya murders constituted an act of national hate. The book is entitled, "*Hate, Malatya: A Murder with National Consent.*"

Saymaz provides detailed information that shows how the killing of Santoro in Trabzon and the murders in Malatya are connected, and how the security forces viewed the Christians as national threats.

Shortly after the release of Saymaz's book, a veteran crime reporter for the *Hurriyet* newspaper, Ali Daglar, published "*The Priest Murders – 200 Years of Close Pursuit and the Bloody Zirve Finale.*" The book examined the Malatya murders in the context of national prejudice toward Christians throughout the last two centuries.

There is no legislation in Turkey to penalize hate crimes. This month the Hate Crime Legislation Campaign Platform organized a series of meetings between civil society groups, academics and concerned citizens.

Lawyers from the group are drafting legislation that will define and authorize penalties for hate crimes. The group plans to submit it to the Turkish Parliament by the end of 2012. The platform cites the murders of Santoro, Dink and those at the Zirve Publishing House as examples of hate crimes.

Church head in unprecedented meeting with Turkish MPs

Greek Orthodox patriarch expresses concerns for Christians in Turkey

By Will Morris

Compass Direct News (27.02.12) – In an unprecedented meeting, the head of the Greek Orthodox Church in Turkey last week expressed his concerns and hopes for the country's Christian minority to members of the Turkish Parliament.

The visit took place in Ankara after Speaker of the Parliament Cemil Cicek invited Ecumenical Patriarch Bartholomew I to meet with a parliamentary commission responsible for revising the country's constitution. Christians in Turkey are hoping that the new constitution will guarantee them the ability to worship, educate their communities and conduct their religious activities with the same rights as their Muslim-majority counterparts.

The Feb. 20 meeting is a sign that progress is being made, but more progress is needed, said the patriarch, who as "archbishop of Constantinople" is "first among equals" in the Eastern Orthodox Communion.

"It is the first official invitation to non-Muslim minorities in Republican history," Bartholomew told reporters after the meeting. "We don't want to be second-class citizens. Unfortunately, there have been injustices in the past. These are all slowly being rectified. A new [Turkey](#) is being born."

The invitation is one of several actions the government has taken that Bartholomew has welcomed. In August, Turkish Prime Minister Recep Tayyip Erdogan announced that Christian and Jewish groups that had their properties seized in a 1936 government directive and a subsequent 1974 court order could apply to have them returned.

In a statement released shortly after the decree was issued, Bartholomew said the new order represented "the restoration of an injustice."

Problems with the government, however, remain. In 1971, the Orthodox-run Halki Seminary was closed because of a court order dealing with the regulation of private universities. Under the court order, all private schools, including the seminary, had to be run under government supervision.

In response, the Patriarchate closed the seminary, rather than have it fall under government control. Bartholomew brought up this issue at the meeting with Parliament officials.

Also critical to Bartholomew and other Turkish Christians is the issue of what is known as "legal personality." There is no method under Turkish law for a church group to establish itself as a legal entity. This limits a congregation's ability to raise funds, transfer foundation deeds and own or, in some cases rent, land.

If minority religious groups do not already have foundation status, their only recourse is to apply to establish an association, which is routinely granted but not recognized as a "church" or "place of worship." In contrast, the Turkish government runs a "Directorate for Religious Affairs" that funds and controls mosques and the training of Islamic clergy across the country.

In the closed-session meeting, Bartholomew expressed those concerns and then delivered an 18-page document outlining the Greek Patriarchate's suggestions for the new constitution. The patriarch said he was extremely grateful for the meeting and left it "with hope."

"Denigrating religious values" - A way to silence critics of religion?

By Mine Yildirim

Åbo Akademi University www.inancozqurlugugirisimi.wordpress.com (15.02.12) - The prosecution of - among others - a cartoonist, a contributor to a website, and the publisher of a diary have raised concerns about how the complementary human rights of freedom of expression and freedom of religion or belief can be exercised in Turkey, including the religious freedom right not to believe. The common element is that all these cases relate to the prosecution of questioning or criticism of all religions, or Islam specifically, from an atheist perspective. Also, in all these cases Article 216 (3) of the Turkish Criminal Code ("Denigrating the religious values of a group") has been used as the legal basis of prosecution. A close look at this provision and its application is therefore necessary to understand the developing intersection of freedom of expression and freedom of thought, conscience, religion or belief in Turkey.

These cases are taking place in the context of public debate on drafting a new Constitution. This has opened up discussion in Turkey of a wide range of issues to do with freedom of religion or belief.

The fundamental human right to freedom of religion or belief "protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief", as General Comment 22 on Article 18 ("Freedom of thought, conscience and religion") of the International Covenant on Civil and Political Rights (ICCPR) puts it. Article 19 ("Freedom of opinion and expression") of the ICCPR complements freedom of religion or belief with

the statement: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his [sic] choice". As General Comment 34 on this Article puts it: "All forms of opinion are protected, including opinions of a (..) moral or religious nature".

Under the ICCPR, permitted freedom of expression restrictions "shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals". Article 20 of the ICCPR requires that states must by law prohibit "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". However, General Comment 34 notes that it is incompatible with Article 19 "to criminalize the holding of an opinion".

The Turkish Criminal Code's Article 216 (3) states: "Any person who openly denigrates the religious beliefs of a group shall be punished with imprisonment from six months to one year if the act is conducive to a breach of the public peace". The interpretation and application of this Article should be brought into line in every case with Turkey's international obligations.

Court cases based on "denigrating religious values"

Cartoonist Bahadır Baruter is facing a maximum possible imprisonment of one year, following the publication of a cartoon he drew in Penguen magazine on 10 February 2011. The cartoon showed the slogan "There is no God, religion is a lie" written on the wall of a mosque. The Presidency of Religious Affairs Foundation's Officers' Union and a number of citizens complained about Baruter. The Istanbul Public Prosecutor's Office then brought a prosecution against him under Criminal Code Article 216 (3), and demanded the maximum sentence. The second hearing is scheduled to take place on 29 March 2012. Baruter's prosecution has been both strongly defended and attacked in some parts of the Turkish media.

A website user called A.M.S. contributed to the Eksi Sözlük (Sour Dictionary) collaborative website a comment entitled "Absurdity of Religion" on 10 August 2010. He too was prosecuted under Article 216 (3), this time by Istanbul's Prosecutor for Media Cases, Nurten Altınok. Prosecutor Altınok argued that A.M.S. went beyond legally permissible freedom of thought and criticism, and denigrated the Islamic religion and the belief that God created the universe. For this violation of Article 216 (3), Altınok asks that A.M.S. be jailed for between six months and one year. Article 218 states that if this crime is committed through the media the sentence will be increased by a half.

Today's Zaman newspaper reported on 27 December 2012 that A.M.S. said in his statement to the Police Information Unit that he did not intend to commit any crime and that he did not target a certain person or anyone in general. On these grounds he does not think he has broken Article 216 (3). The case continues.

An older case deals with the Illallah Diary published by Metis Publications in 2010. The Diary's foreword stated that the right to believe was protected by organised religion, state budgets, police and military forces. It then comments: "We, who have prepared this Diary, respect the right to believe. But we have to say that we have a bit more respect for the right not to believe." The case against Metis was opened on 26 November 2010 on grounds of "denigrating religious values" under – once again – Criminal Code Article 216 (3).

The Director of Metis, Semih Sökmen, and the Editors who prepared the Diary for publication - Müge Sökmen, Özge Çelik, Tuncay Birkan, Özde Duygu Gürkan, Graphic Designer Emine Bora, and Proofreader Eylem Can - are all being prosecuted in this case.

In the third hearing, which took place on 30 November 2011, Semih Sökmen said that he bore responsibility for the Diary. However he added that in the Diary there was not one sentence that was written by the accused, as the quotations used in the Diary were statements made by prominent persons of world literature and philosophy. These included George Bernard Shaw, Umberto Eco, Fyodor Dostoyevsky, James Joyce, Albert Einstein, and Galileo Galilei. Sökmen stated that this case "should never have been opened", and that other than criticising religion and religious ideology they had no intention of denigrating the religious values of people. The case continues.

The Turkish translation of the book *The God Delusion*, by Richard Dawkins, has also been the subject of prosecution, when its publisher Kuzey Publications was accused under Article 216. In April 2008 a court ruled that the action of Kuzey's owner Erol Karaaslan did not include the components necessary to commit the claimed crime. He was therefore acquitted.

Article 216 (3)

Article 216 of the Criminal Code punishes "Offences against public peace". Paragraph 1 punishes incitement to hatred and hostility against a group in society based on "class, race, religion, denomination or geographical region". Paragraph 2 punishes acts that "openly denigrate a segment of society based on social class, race, religion, denomination, gender, or geographic region". These are legislative provisions related to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which obligates states parties to "declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin (..)" as well as Article 20 of the ICCPR.

Turkey ratified the ICERD on 16 September 2002, a little over one year before it ratified the ICCPR.

Criminal Code Article 216 (3) states: "Any person who openly denigrates the religious beliefs of a group shall be punished with imprisonment from six months to one year if the act is conducive to a breach of the public peace".

There have been situations where Article 216 has been rightly applied to combat racism. An example was the prosecution under Article 216 (2) of Niyazi Capa and other members of the Osmangazi Cultural Associations Federation, who displayed posters at the entrance of their association which read "Jews and Armenians cannot enter" and "Dogs are free to enter" in January 2009. They were convicted in June 2009 and given sentences of five months in prison, commuted to 3,000 Turkish Lira (at that time 12,380 Norwegian Kroner, 1,400 Euros, or 1,960 US Dollars) fines. However, Forum 18 is not aware of a similar instance involving Article 216 (3).

Some parts of Article 216 have caused concern ever since it came into force in 2005. As the Organisation for Security and Co-operation in Europe (OSCE)'s then Representative on Freedom of the Media noted in 2005, in "Review of the Draft Turkish Penal Code: Freedom of Media Concerns", "in view of Articles 215 [("Praising an offence or an offender")] and 216, even ethical discussions of euthanasia or abortion issues in the press could constitute a crime".

"Legal benefit"

According to Nurten Altinok – the prosecutor in the Eksi Sözlük website case - the "legal benefit" that is protected in Article 216 is not "God, religion, prophet, holy books, denominations" but "the religious feelings that are held for these concepts". She says,

"surely a person can explain his/her view on these concepts, criticise them. But the issue that must be observed in this process is not to hurt other's feelings."

Prosecutor Altinok partly based her argumentation on the European Court of Human Rights (ECtHR) *Otto Preminger v. Austria* judgment (Application No. 13470/87 <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695774&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>). The ECtHR had not found a violation on the part of Austria for the seizure of a film, which according to the Austrian state was an attack on the Christian religion especially Roman Catholicism. The ECtHR held that the Austrian authorities did not exceed their margin of appreciation in their interference in the right to freedom of expression. The ECtHR maintained that "a uniform conception of the significance of religion in society" could not be found in Europe, so national authorities enjoy a certain margin of appreciation.

Human rights lawyer Orhan Kemal Cengiz commented to Forum 18 on 3 February that in general the Turkish judiciary has applied Article 216 "recklessly". He noted that the provisions punishing incitement against groups have been used against minorities – even though the purpose of these provisions was to protect minorities. "Article 216 (3) should be used cautiously", Cengiz commented.

Article 216 can in line with Turkey's international obligations be used to protect public order, where there is an actually existing significant threat to public peace such as a riot. Its purpose should not be to protect religions or beliefs as such from criticism or attack. For a conviction to be secured under Article 216, the judiciary should require a direct and provable threat to public order or public peace as a result of the alleged offence to be established beyond reasonable doubt.

The hurt feelings of those who complain should not be thought of as sufficient grounds for prosecutors to bring a case under Article 216. After all, feelings are difficult for a court to assess, and are in practice impossible to use as a basis for a conviction in line with Turkey's international obligations. The margin of appreciation granted to national authorities in such cases by the ECtHR, as cited in the *Otto Preminger* case, must not lead to the imposition of wide-ranging restrictions in domestic law.

Who is behind complaints leading to Article 216 (3) prosecutions?

These prosecutions were initiated following complaints made by persons. Ceyhun Gökdoğan, a lawyer who is actively involved in making such complaints, told *Yeni Akit* newspaper on 31 January 2011, that he and his colleagues (whom he did not identify) closely follow "publications against the holy".

Among those he named were Dawkins' book *The God Delusion*, Nedim Gürsel's book *Daughters of God*, Burak Özdemir's book *God's Birthday*, and the *Illallah Diary* published by Metis. Gökdoğan claimed that "attacks against religion" on various websites were also prosecuted as a result of their efforts, such as anarsist.org, [Eksi Sözlük](http://Eksi_Sözlük), ateizm.org, Richard Dawkins' website and many pages on Facebook. (Dawkins' website was closed to access from Turkey in 2008 and opened to access from Turkey again in July 2011 by a court decision.) Gökdoğan also claimed that "hundreds" of illegal websites were closed and articles that included "defamation" were removed from websites.

The media attention given to these cases, Gökdoğan argued, created an awareness among the public that they can do something about these publications through the law. It is, he said, now understood that in Turkey "insult and mocking of religion" will not go unpunished.

Article 216 (3) does not appear to have been used in relation to the denigration of philosophical convictions, or of religions other than Islam. This may be because those

who may be offended by the denigration of these beliefs do not complain to the authorities.

The experience of atheist websites

A well known atheist web forum in Turkey is ateizm.org – however this website is unavailable in Turkey by court order, as is ateizm1.org. Only ateizm2.org is accessible within Turkey. The forum's manager, Aydın Türk, has outlined the type of approach those who wish to take actions against websites can follow. He told Cumhuriyet Daily newspaper on 26 December 2010 that such websites do not want to face court cases that may close them. Türk said that Adnan Oktar (an author also known by the name Harun Yahya) and his team (who were unspecified) "usually go to prosecutors saying that there is a personal insult on a certain site against them, and get a temporary order to close the website".

Türk stated that "because the owners of these sites are usually amateurs, or do not want their name to appear in the media, and do not want to spend money to hire a lawyer, these websites remain closed". This is why the atheist forum has been forced to use more than one website. Before the atheist forum's second website, ateizm1.org, was closed, they received an official request from Adnan Oktar's lawyer to remove alleged insults from the website.

A website dedicated to Turan Dursun, a well-known Turkish atheist murdered for his beliefs in 1990, and entitled "The Voice of Freedom from Religion" is hosted abroad to avoid "problems", according to the website's frequently asked questions section. The site's previous host in Turkey had closed the site in 2002 without giving any reason.

In contrast, numerous websites in Turkey discuss responses to atheist claims, and these do not seem to face any legal problems.

Access to atheist websites – and even websites about the biological theory of evolution – from schools is not allowed by the Education Ministry. On 11 December 2011, Milliyet Daily Columnist Can Dünder reported and criticised a webfilter introduced by the Ministry which blocks access by schools to websites which are either atheist in perspective or provide information on evolutionary theory. However, the Ministry allows access to websites which criticise the content of the websites it blocks.

On 18 January 2012, Turkish media reported that the Education Ministry's internet service provider Turkish Telekom had stated that the Ministry itself chose to block "personal websites and blogs". It remains unclear what category atheist websites are in. The Ministry has not yet responded to Forum 18's question of 2 February, asking what criteria are used for blocking websites.

Cold climate for atheists

Atheist views often face strong public criticism in Turkey. In this context, Prime Minister Recep Tayyip Erdogan's statement on 31 January 2012 that he wanted to raise a religious generation, as opposed to an atheist one, did not contribute to a tolerant climate for atheists.

The comments by A.M.S. on the Eksi Sözlük website were the basis of a campaign by a number of people, including Taraf Daily columnist Mehmet Baransu. He declared on his Twitter account: "What a pity if these people are not going to stand up against the filth of Eksi Sözlük. No one should call themselves Muslim. No one can mock my religion. I don't care about being a democrat if someone is cursing my God and prophet (..) If this country will not stand up against this disgrace, think about how you will face our Lord and prophet." Other Turkish columnists however, have stated that whatever one thinks

of A.M.S.' views on Islam, the comments made were legal and should not be legally prosecuted.

More concretely, no-one who is not registered by the state as a Jew or Christian – including atheists and agnostics, Muslims including Alevis (despite an ECtHR judgment), Baha'is, and all others - can exempt themselves or their children from compulsory Religious Culture and Knowledge of Ethics (RCKE) school classes. Atheist parents have fought court cases without practical effect on this issue.

Being an atheist in Turkey may not be too difficult if one is unnoticed and does not mind being thought of as a Muslim. Yet revealing oneself as an atheist and advocating atheist beliefs - even in the virtual world where one can be somewhat anonymous - seems to be very difficult. The monitoring of atheist websites so as to take legal action against them reveals the relatively weak position of the owners of these sites. They face financial costs and public exposure if they engage in a legal battle, making such cases an unequal competition of interests. People who are not prepared to face such prosecutions may impose self-censorship.

The application of Article 216 (3)

In this unequal competition of interests the law and the judiciary have a crucial role to play, and this is why their application of Criminal Code Article 216 (3) is so important. Prosecutors and judges must bear in mind that scrutiny of the application of restrictions on freedom of expression cannot be based on the protection of feelings.

Restrictions must be interpreted narrowly, prescribed by law, based on the protection of the rights and freedoms of others, made only in response to a direct and provable threat to public order, and necessary in a democratic society. This approach is one of the bases of the human rights agreements – such as the ICCPR and the ICERD – that Turkey has solemnly undertaken to implement.

The margin of appreciation granted to national authorities by the ECtHR in cases where the place of religion in a society comes into play must not be viewed as a carte blanche to apply restrictions "recklessly", as human rights lawyer Orhan Kemal Cengiz puts it. For this silences critics of religions or beliefs, and the right to make such criticism is an integral part of the right to freedom of religion or belief. Given the way restrictions have been broadly applied, efforts of non-state actors to eliminate the atheist voice in the Turkish virtual or publishing world has created a fierce legal struggle around the complementary human freedoms of expression, thought, conscience, religion or belief.

Turkish Christians subject to discrimination, attacks, report says

Textbooks, media vilify followers of Christ; intolerance an 'urgent problem'

By Will Morris

Compass Direct News (14.02.12) – Despite some promising developments, Christians in Turkey continue to suffer attacks from private citizens, discrimination by lower-level government officials and vilification in both school textbooks and news media, according to a study by a Protestant group.

In its annual "Report on Human Rights Violations," released in January, the country's Association of Protestant Churches notes mixed indicators of improvement but states that there is a "root of intolerance" in Turkish society toward adherents of non-Islamic faiths.

"The removal of this root of intolerance is an urgent problem that still awaits to be dealt with," the report states.

"There is still a lot of room for improvement," said Mine Yildirim, a member of the legal committee for the association. "These problems have not been solved in some time."

The report documented 12 attacks against Christians in 2011, including incidents in which individuals were beaten in Istanbul for sharing their faith, church members were threatened and church buildings attacked. None of the attackers have been charged. In some of the attacks, the victims declined to bring charges against the assailants.

In some places in Turkey, some church leaders have to "live under some sort of police protection," the report reads.

"There are at least five church leaders who have bodyguards, and at least two have a direct phone line to a police protection unit," the report states. "Several churches have police protection during worship services."

Yildirim said attacks have increased since the previous year, and that much of the problem lies in the fact that the Turkish government won't admit there is a problem. The state routinely characterizes attacks on Christians as isolated acts of violence rather than the result of intolerance within elements across Turkish society.

"I think it has to be identified as a problem by the state, initially," Yildirim said. "It is a problem that nothing is being done about at all."

There are an estimated 120,000 Christians in Turkey, of which 3,000 are Protestants. Sunni Muslims make up close to 99 percent of the country's 75 million people, according to United Nations' population figures.

Attacks against Christians come from those who, at a minimum, question the "Turkishness" of Christian nationals or who, at the extreme, view Christians as spies out to destroy the country from within. Many of the more horrific attacks, such as the 2007 torture and killing of three Christians in Malatya, have been linked to members of nationalist movements. The criminal case into the murders continues without a court ruling thus far.

Along with attacks, Christians in Turkey continue to have problems establishing places of worship. The worst incident in that regard last year was on Dec. 23, when the local government of Istanbul's Sancaktepe district sealed the entrance to the floor of a building rented by the Istanbul Family Life Association, allegedly because of licensing issues.

"When individuals went to the municipality to inquire about the situation, they were told there would not be any activity by the association allowed in that area and that the seal would not be removed," the report states. "In the same building there are bars and cafes that continue their work along with other businesses. It is only the church association activities that are being banned; they are targets of hate speech and open favoritism of others."

The report also identifies state policies that single out Christian children for harassment or vilification. A civics book, "The History of the Turkish Republic's Reforms and 'Ataturkism,'" taught to eighth-grade students, continues to characterize "missionary

activities” as a national threat. The Ministry of Education ignored the association’s efforts to change the language, according to the association’s report.

“This example vividly shows that prejudice and intolerance has been built up by the Ministry of Education and has been worked into the thinking of others,” the report states.

Along with the government, the association points a finger squarely at Turkish news media for perceived bigotry toward Turkish Christians.

“The increase in the slanderous and misinformation-filled and subjective reporting with regard to Christians in 2011 is a worrisome development,” the report states.

Being a Christian is often characterized in the news media as a negative thing, according to the study, and many legal activities of church bodies were portrayed as if they were illegal or a liability to society. Some church groups were falsely linked to at least one terrorist group.

Despite all the problems, Christian Turkish nationals are still faring better than their regional counterparts in countries such as Iran, Iraq and Egypt. The report notes some positive developments in Turkey over the past year, including school administrators being more responsive to the rights of non-Muslim students to opt out of state-mandated Islamic education.

In addition, due to a court order, Turkish citizens are allowed to leave the religious affiliation space blank on their state-issued identification cards. The association noted that some government agencies have been more responsive to concerns about the rights of the Christian minority.

Yildirim declined to speculate on the future of Christians in Turkey but concluded, “Change can happen in Turkey; it just needs to be a priority.”

Interview with Zekai Tanyar, the Chair of the Association of Protestant Churches

IOG (25.01.2012) - The Association of Protestant Churches in Turkey which represents most of the churches of the small Protestant community has published its 2011 Report on rights violations faces by Protestants in Turkey. We talked to the Chair of the Association, Zekai Tanyar, about the Report and the problems of Protestants in Turkey.

Last week, the Association of Protestant Churches published its report on rights violations experienced by the Protestant community throughout 2011. The report shows that almost every month verbal or physical attacks were carried out against Christians. What are your thoughts on this? In comparison to previous years, can you observe any changes?

Just as one is thinking “maybe somethings are changing, maybe the mentality about fundamental human rights is changing” you find one is again facing the incitements of prejudice and intolerance. In the Bible it says that “the mouth says what comes from the heart”. When one looks at the statements of our country’s leaders, reactions of public authorities and many newspaper articles, one can, unfortunately, clearly see negative attitudes towards Christians. You frequently find that even when they try to appear tolerant in their discourse, their words pierce more than they heal. It is clear that any positive administrative and legal change is not really the result of minds committed to justice. But regardless of their reason, we are grateful for the positive changes. We hope

that the opportunities provided by these changes will, in time, create deep rooted change. As long as these outlooks do not change, you will get the same answer to this question be it in one, five or ten year's time.

What do you think the reason behind these attacks is? Is it systematic or just individual attacks?

My answer is connected to my first response. There are various components at the root of such aggressiveness, such as a struggle for supremacy among different beliefs, a sense of historical wrongs and prejudices, fears, political interests, etc. These lead to both systematic and individual attacks. Indeed, considering the common negative propaganda and stirmongering, one could reasonably say that the individual attacks are also produced by systematic initiatives. Democracy requires one to be open to differences, but if the state and society cannot accept these differences, how are they going to react? So, even if they do not wish to appear systematic, they resort to inciting organized or individual anger. For the attacks one has to look at what is instilled in the people, and the ugliness of all that is instilled is blatantly before us.

Can you tell us about the Protestant community in Turkey? How many people, where do the lives most etc.?

There are local and foreign Protestant fellowships. We don't know the exact number of the local fellowships but we think it is about 100, about 50% of these consist of a handful people meeting in homes. The majority of the churches are in the three big cities, but there are churches in various parts of Turkey. The number of local Protestants is about 4000-5000. These are not foreigners, they are local people, and most are not from the traditional Christian communities.

Foreign fellowships are few in number and they are more for expats working in Turkey, residents and visitors. I don't know the exact number but I don't think there would be more than 10-15 churches. These are located in the three major cities and a few tourist regions.

It appears from your report that the Protestant community has great difficulty establishing places of worship. Have you been in dialogue with the authorities to find a solution. How do you think this problem can be solved?

This is a huge problem. But it is no surprise that this problem has not been solved when you consider the mentality of the state that does not accept the Alevi community's own definition of its "places of worship", and their community numbers tens of millions! There has been dialogue several times but with no result. There is need for more talk. However, these visits do not go beyond polite stalling as long as the attitude I mentioned is present. Churches find themselves shuttled between municipalities and governorships in their search for a solution to this problem. Even if one municipality responds positively, often the state Governor does not give approval. Sometimes the authorities respond with ridiculous excuses saying "there are not enough Christians in the neighbourhood". So are we supposed to do te head counts and form ghettos?! The solution is for Turkey to respect its own constitution and international human rights law. It is religious communities themselves who determine their "place of worship" in accordance with their traditions, and not political institutions.

The authorities lack knowledge about Constitutional and human rights and their obligations and instead their approach is often based on an attitude of "how can I block this?" The Directorate of Religious Affairs cannot have decision making power over non-Muslim religious communities, yet, for whatever reason, some public authorities seek their approval. Permission for places of worship should be given in line with the

country's and community's reality (the needs, the small numbers etc.). It is not possible to find a solution by continuously creating obstacles, without giving it a try.

There is no educational facility in Turkey to train Christian ministers. How does the Protestant community meet their needs in this respect? How would you like this problem to be solved? What are the demands within the Protestant community in regards to this issue?

Since the Protestants do not believe in having a central administration to control their activities, there are differing approaches. Generally speaking the training of ministers is carried out within each church community according to its own tradition. The key issue is that there should be a legal way of training religious ministers without this being controlled by the Ministry of Education. Supervision is one thing, controlling it is another thing. This issue clearly demonstrates how "freedoms and rights" are not really comprehended.

Before we Turks came to Anatolia, there were Christian communities and many of the churches in Turkey are connected to these historical churches. Their ways of training clergy are clear and they were pretty much able to carry it out until 40-50 years ago. What was the logic of changing this? How can the Ministry of Education, which changes curricula every year because they cannot decide on educational policies, administer a group whose religion they do not even understand. Solutions existed in the past and are straightforward, the real issue is whether there is the will to grant these rights?

The local Protestant churches are still exploring the best way to train their ministers and they need to clarify the best approaches. But even if their demands were clear, currently in Turkey, the state has neither the legal framework nor desire for this.

What are your thoughts about the new Constitution? Generally about Turkey and in particular for the Protestant community, what changes in the new Constitution would solve the existing problems?

I cannot comment generally on the Constitution, but will touch upon the right to believe and express one's thoughts and opinions. I do just want to say though that the more one makes elaborate statements, the more the conflicts. The Constitution should be clear and liberal, and the basic approach should be to prevent injustices rather than to claim to grant rights. The current Articles 10, 24, 25 and 26 which deal with the rights to freedom of expression and belief illustrate these points. Many statements in them are clear and fine, but problems arise when these Articles also lay down precise applications. For example, the new Constitution should definitely not include "compulsory religious education" as is stipulated in the current Article 24. A Constitution should not lay down any requirement for "compulsory lessons", as the detailed content of education and particular courses should be regulated in legislation and statutes.

We have to be careful about some new proposals. For example one proposal includes this phrase, "...for whatever reason, religious feelings or those that are deemed holy by religion, cannot be exploited or abused..." This seems reasonable at first, but such statements are open to interpretation and can open the way for witch hunts which have the effect of reducing the freedoms the Constitution should defend.

The Zirve trial, concerned with the killing of three Christians in Malatya in 2007, is in its 5th year. Does the progress of the trial satisfy you (Protestants) and the families?

The progress is extremely slow but just recently the court has at least started to look at the persons or organizations behind the young men who brutally killed these three Christians. Only after more than four years of court hearings, the information and notices

that had been presented at the start of the trial are being taken into account! This shows how the aims of the judiciary can wander away from the quest of justice. We live in a world of competing interests and power.

Whether or not there is "deep state" or something else behind these murders, the root of the problem is related to the mentality and core attitude I mentioned in answer to your first questions. This mentality is: "the person who views things differently than me does not have the right to freedom of opinion or belief, they do not even have the freedom to live!" The change (to consider the persons or organizations behind the murderers) that took place in the process of the Zirve trial is a miracle. We do appreciate the efforts of the lawyers, but if the trial ends with transparency and real justice, it should be classified as a miracle.

There is a particular sensitivity about "missionary activities" in Turkey. In the school curricula we find that missionary activities are identified as national threat. What are your thoughts about that?

The presentation of missionary activities as "a national threat" is like the efforts of a mother to scare her child with horror stories because she cannot guide the children with love and understanding. You know like threatening them that "if they misbehave the doctor will give them an injection, the policeman will imprison them, that the lady over there will beat them"; and likewise the missionary will divide the country.

Who is a missionary? This is a human being who believes in the significance of his/her belief and that all of humanity should know about it. Actually, the person selling goods in the market, the politician, hodjas, imams all are missionaries, and advertisers are probably master missionaries! The Turkish (or rather the Arabic) for this act is "Tebliğ" (to inform, notify, pass on). When it is Islam being promoted it is to Tebliğ, to inform, and is acceptable, yet when it is someone of another belief doing the promoting he/she is labeled with this mysterious and scary name "missionary". Why is that? Because for years in our society, this 'foreign' term has been intentionally given a very negative scary meaning and the people have swallowed this twist and thus fear it. So now, if a certain belief group, and in particular Christians, are to be ostracised all you need to do is simply label them "missionaries". This is the way to show the target without using the term "Christian". Isn't the aim after all to silence the child, numb them and rule over them? The fact that the doctor, the policeman or other persons are not evil and will not carry out the claimed threat is not important. It is not important that in this process, innocent people are hated, ostracised, their rights violated or even killed!

The aim of the scare stories is not so much to protect the country, but to have an excuse to limit people's freedom of belief and expression. A Muslim should be able to share their belief in a predominantly Christian culture and indeed Muslim missionaries do. Then, why should a Christian, Buddhist etc. not be able to share their belief in our country? The Constitution says they can! "How are we going to stop them then? Oh let's call them missionary. That mysterious frightening word we have termed!"

Protestant churches: Intolerance urgently needs to be addressed

Today's Zaman (19.01.2012) - A report on human-rights violations against Protestants in Turkey emphasizes that hate crimes directed at them increasingly continued in 2011 and this problem urgently needs to be dealt with.

The annual report, which has been prepared since 2008 by the Association of Protestant Churches Committee for Religious Freedom and Legal Affairs based in İzmir, highlights various verbal and physical attacks against the country's Protestants.

One such instance occurred on April 1, 2011, when a young man attacked individuals at the İzmir Resurrection Church.

"After shouting at the leader, who was standing in front of the building, he took out a gun and shot blanks at the leader. Afterward, he took out a loaded hunting rifle. Because of the intervention of the leader and some church members, the shot went into the air. The attacker was subdued and turned over to the authorities. An accomplice of the attacker was captured in Manisa. The two are still under arrest and the court proceedings, which began in November, continue," the report states.

In addition, the sign on the Yalova building of the Light Church Association was stolen in July, and a sign was destroyed in December. There is video footage of the incidents, but the perpetrators have not yet been captured.

Soner Tufan, the press and public relations officer for the Association of Protestant Churches, told Today's Zaman it is important to note the perpetrators of the church attacks might have links with terrorist groups, as indicated in the ongoing court case related to the attack in İzmir. He added there were more attacks against churches and religious leaders in 2011 compared to 2010. The estimated number of Protestants in Turkey is around 3,000. Sunni Muslims make up the majority in the country's population of 75 million.

"Unfortunately, those attacked have started to choose to keep silent because no effective results have been obtained from various court cases," he said. "Additionally, whenever a church becomes more active in the community, we see that attacks immediately follow."

Some church leaders have been under police protection, while there are at least five church leaders who have bodyguards, and at least two church leaders have a direct phone line to a police protection unit. Several churches have police protection during worship services.

According to the report, there have been various actions deemed "discriminatory." One example is the İzmir Light Church Association's request to the İzmir municipality to use the Aya Voukla Church for a Christmas activity last year, since the church is within the municipality's purview and is used as a cultural center. However, their request was turned down without an explanation. Another example given in the report is that despite the Antakya Protestant Church's repeated requests to the Antakya Municipality for land for a cemetery, no place was assigned to them.

The report repeats this year that changes in 2003 to Zoning Law No. 3194, as part of the European Union's Sixth Harmonization Package, was intended to meet the needs of non-Muslim citizens for places of worship by replacing the word "mosque" with the words "place of worship." However, the Protestant community is still confronted with obstacles in exercising their rights because of the arbitrary interpretation of the law, according to the report.

Recommendations of the association to authorities include:

- The Ministry of Justice must effectively record those hate crimes against churches and religious leaders.
- National and regional authorities need to immediately take all necessary steps to address the problem of access to places of worship.

- Even though missionary activities are legal in Turkey, some government institutions criminalize missionary work, and this is being taught as one of the biggest national threats to society in schools, in the military corps and through some civil society organizations. There should be decisive action against these types of efforts.
- Security forces need to be educated about the rights of non-Muslim citizens and the right to propagate one's beliefs; arrests on accusations of "doing missionary work" need to be stopped.
- Elements in school textbooks creating discrimination and prejudice should be removed.
- The Ministry of Education should ensure that there are no problems in schools and classrooms for non-Muslim students' exemption from mandatory religion class, which concentrates on Sunni Muslim teachings.
- The "religious affiliation" section on identification cards continually risks creating discrimination and should be removed.
- Within the framework of freedom of expression, the media needs to create its own "code of ethics." Quick and effective control mechanisms should be established against discrimination and intolerance in print and broadcast media.
- The idea of tolerance toward people within the society who belong to different religions yet possess equal rights as Turkish citizens needs to be actively propagated by national and regional officials, beginning with the Ministry of Education.

Full report at http://protestankiliseler.com/2011_Rights_Violations_Report.pdf

European Court again obligates Turkey to protect rights of conscientious objectors

JW Official Website (17.01.2012) - - The European Court of Human Rights (ECHR) unanimously concluded that Turkey had violated Articles 3, 9, and 6.1 of the European Convention when it convicted Feti Demirtaş, one of Jehovah's Witnesses in Turkey, for his conscientious objection to military service.

Feti Demirtaş was first called up for military duty in 2005. He suffered a series of humiliating arrests, during which he was often beaten. He was also prosecuted and imprisoned numerous times, serving a total of 554 days in prison until his release in June 2007. Since Demirtaş would not compromise his Bible-based beliefs even in the face of extreme abuse, a report was prepared to classify him permanently as having an alleged mental illness as a pretense to discharge him from the military. In its judgment, the ECHR not only found that Mr. Demirtaş suffered inhumane treatment at the hands of Turkish authorities, it also found that the government's handling of Mr. Demirtaş' case violated his right to freedom of conscience. Further, it ruled that he should not have been tried by a military tribunal since he had never agreed to be part of the military.

On July 7, 2011, the Grand Chamber of the ECHR released a landmark decision in *Bayatyan v. Armenia* and, for the first time in its history, found that Article 9 of the European Convention (Freedom of conscience) protected conscientious objectors. This ruling is binding upon all member states of the Council of Europe, including Turkey. The decision in *Demirtaş' case* also comes on the heels of the November 22, 2011, judgment in the case of *Erçep v. Turkey*, which found that Turkey had violated Articles 6 and 9 of the European Convention when it submitted Mr. Erçep to numerous prosecutions and convictions for being a conscientious objector. The recent ECHR decisions on this issue

are obligating countries like Turkey to reevaluate their treatment of conscientious objectors and to adjust their legislation in line with Convention guarantees.

See text of the judgment at

<http://strasbourgconsortium.org/portal.case.php?pageId=10#caseId=843>
