

UNIVERSAL PERIODIC REVIEW: TURKEY

This report has been prepared to highlight the ongoing difficulties facing minority religious communities within the Republic of Turkey, and in particular the Protestant minority. While significant positive amendments have been made to existing civil code to facilitate European Union accession, many of these changes as relates to religious freedoms have either been illusory or have been negated by administrative codes which make realization of the newly gained rights under the civil code a virtual impossibility.

1. The impossibility of gaining legal personality for minority religions.

The guarantee of freedom of thought, conscience and religion mandated by both the ICCPR and the European Convention of Human Rights assumes state neutrality. Respect for a plurality of beliefs and convictions are a basic obligation of the State. Individuals must be able to freely choose, and States must allow individuals to freely adopt, their religious convictions and religious membership. Article 18 of the ICCPR and Article 9 of the European Convention of Human Rights enshrines the principle that the right to freedom of religion excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate.

The denial of legal personality to all Protestant churches assumes the illegitimacy of non-Muslim churches as communities, cripples freedom of assembly, and refuses religious communities the fundamental right of access to court to safeguard their collective rights guaranteed to them under international law.

Under the Treaty of Lausanne, equal civil and political rights are to be afforded both the Muslim majority and non-Muslim minorities: "Turkish nationals belonging to non-Muslim minorities will enjoy the same civil and political rights as Muslims."¹ And furthermore: "All the inhabitants of Turkey, without distinction of religion, shall be equal under the law."² The Treaty of Lausanne is also bolstered by the protections provided by the Turkish Constitution itself. Article 10 of the Constitution provides that all people in Turkey, without discrimination, and irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any other such considerations, are to be treated equally under the law. Article 10 also extends this guarantee as equally pertaining to the treatment of people within Turkey by all State organs and administrative authorities.

Articles 24, 26 and 27 of the Turkish Constitution deal with freedom of religion and conscience, freedom of thought and opinion, and freedom of expression respectively. The extent of those freedoms run concurrently with the rights afforded by the European Convention of Human Rights and ICCPR, with interference being allowed in the interest of protecting national security, public order and public safety, preventing crime, and maintaining the integrity of the Turkish State. Article 24 on freedom of religion and conscience also makes special reference to being subject to Article 14 of the European Convention of Human Rights which prohibits discrimination on the basis of religion.

¹ Peace Treaty of Lausanne, Section III, Article 39 § 1.

² Id.

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Further, Article 35 of the Constitution decrees that all persons, presumptively including legal entities such as churches, have the right to own and inherit property. The sole limitations placed on such ownership rights is that they not be held in contravention of the public interest and may be limited by public interest. These limitations however cannot go beyond those interests enumerated by the European Convention of Human Rights.

In 2004, the new Law on Associations was welcomed by the Protestant community as it allowed these communities to form a certain 'legal' entity that would allow them to engage in some of their activities legally. However, this does not eliminate the problem of the impossibility of forming a legal entity as a 'community.'

The Turkish government provides two main arguments under Convention principles justifying the universal denial of Convention rights to minority religious groups in Turkey. First, that the current political and cultural instability and the socio-religious make-up of the country require greater deference to the judiciary and legislatures of Turkey than would be required in other Council of Europe countries. Second, in order to maintain stability in Turkey, the denial of rights to minority religions is necessary because to provide said rights would require reciprocal rights being provided to fundamentalist groups. The consequent of such reciprocal treatment is that radical groups would gain power and therefore be a threat to democratic values and national security. As such, Turkey argues that it is within the interpretation of the ICCPR and European Convention of Human Rights that all minority religions be denied certain fundamental rights equally so as to maintain the status quo.

These arguments fail for three reasons. First, on two occasions, the Turkish High Courts have recognized the legal personality of Chief Rabbinate of Turkey.³ Furthermore, the European Court of Human Rights in 2008 ruled that the Ecumenical Patriarchate had the right to hold land in its name.⁴ These holdings collectively speak to the fact that judicial recognition of the legal personality of non-Muslim religious minorities exists *de facto* within Turkey. Second, the Grand Chamber of the European Court of Human Rights has recognized the legitimacy of withholding rights from fundamentalist groups within Turkey which are granted to others.⁵ This is important in diffusing the argument that Turkey must withhold universal minority rights as a means of keeping in check fundamentalism. Third, the means in which Turkey has exercised its interference has been haphazard, often times discriminatory, and lacking in any uniform approach. This is particularly true with regard to the plethora of rights given to the Sunni majority but withheld from all other minority religions such as government funding and clergy training programs.

Legal personality is at the very substance of the "right to court."⁶ Without legal personality, religious minorities are virtually defenseless against arbitrary state action, such as deprivation of property without financial compensation and refusal of permits to build houses of worship. It is of the

³ Edirne Asliye Hukuk Mahkemesi; judgment affirmed by the 1. Chamber of Yargitay (Edirne Asliye 1. Hukuk Mahkemesi, 1998/469 Esas, 1998/715 Karar and Yargitay 1. Hukuk Dairesi, E.99/6508, K.99/6647). Izmir Asliye Hukuk Mahkemesi ; judgment affirmed by the 7. Chamber of the Appeal Court (T.C Yargitay, 7. Hukuk Dairesi, 23.09.1957).

⁴ ECHR, *Case of Fener Rum Patrikligi (Patriarchate Oecumenique) v. Turkey*, Application No. 14340/05, judgment of 08. 07. 2008.

⁵ ECHR, 13 February 2003, *Refah Partisi a.o. v. Turkey (Grand Chamber)* (Appl. No. 41340/98, 41342/98, 41343/98, 41344/98), § 124.

⁶ See e.g.: ECHR., *Golder* Judgement of 21 February 1975, Series A No. 18, p. 18, §§ 36-38.

utmost import that the Human Rights Council make this issue a priority if minority religions in Turkey are to continue to exist at all.

Recommendation: Provisions relating to the granting of legal personality to religious communities must be available, foreseeable and precise. The discretion afforded to administrative bodies responsible for registering legal personality cannot be unfettered. The possibility of appeal to a judicial tribunal must also be accessible as a check on the powers of the governing administrative body's authority in denying legal personality.

2. Unconscionable administrative obstacles restricting the building of places of worship.

In 2003, within the framework of the European Union's 6th harmonisation measures, Turkey's Public Works Statue No. 3194 was positively amended to read 'places of worship' instead of 'mosques', thereby aiming to meet the needs of non-Muslim citizens. However, the negative experiences of minority non-Muslim religions, and in particular the Turkish Protestant Community, in trying to acquire places of worship openly display the serious obstacles and rights violations this Community faces, and its inability to utilise its lawful rights due to the interpretation and application of these otherwise positive legal developments.

This new allowance in the law itself was nullified however by administrative measures which made the requirements for obtaining permission to build a house of worship all but impossible. Whereas the Public Works Statue No. 3194 only required zoning permission of the highest civilian administrator⁷, subsequent administrative provisions placed insurmountable obstacles in the way of Protestant and other minority churches from building places of worship. The situation is in fact so dire that not a single non-Muslim place of worship has been built under the amended Public Works Statute.⁸ This problem is a direct result of the law, the implementation of regulations, and the negative bias of public officials. The implementation of the regulations varies according to the municipality. For example the building regulations of the Municipality of Greater Izmir require at least 2,500 m² plot of land for religious facilities.⁹

The Human Rights Committee must work to ensure through its recommendations that rules such as the 2, 500 m² and other obstacles in the way of building places of worship be removed. The very fact that the positive amendments in the new law have not led to the construction or establishment of a single new place of worship establishes the crippling nature of the current

⁷ Appendix 2: (Amendment: 15/07/2003 – 4928 S.K. mad.) *"In the development of zoning plans, the required places of worship shall be designated taking into account the conditions of the planned districts and regions and their future needs. Provided that the permission of the highest civilian administrator is obtained and the zoning legislation is respected, places of worship can be built in the provinces, sub-provinces and towns. Places of worship cannot be allocated for other purposes in violation of the zoning legislation."*

⁸ NB: Although a slightly different situation, the Istanbul Protestant Church Foundation's building in Altintepe is an exception.

⁹ a) *Site Allocation Criteria: Religious facilities can be built in building plots that are designated in zoning plans for religious facilities. In new development areas the building plots shall not be less than 2,500 m².*

b) *Construction Criteria: Unless a clause to contrary exists in the building regulations, such zones can only be used for religious facility and their annexes. They cannot be used for other uses eg. commerce, habitation or education. In building plots that comply with the site allocation criteria, separated buildings can be built on the condition that these are distanced at least 10.00 metres from the plot borders. The structure is allowed to cover at most 60% of the plot. The height of the building is not regulated. Facilities such as WCs and fountains can be built as part of the annexes.*

c) *Mosques will be built in accordance with the regulations of the Directorate of Religious Affairs.*

administrative scheme. The establishment of smaller places of worship which would be suitable to smaller and scattered communities of minority religious believers throughout Turkey must be guaranteed. The impartiality of the municipalities in allocating places of worship should be ensured. Furthermore, the historic churches in the inventory of municipalities or the Ministry of Culture that are not in use or are being used outside their aim of religious worship ought to be opened to the use of Christian community. Finally, the criteria for permission to establish places of worship from the local administrators needs to be transparent whereby it can be understood and foreseen by all. To this extent, the rights of non-Muslim citizens need to be clearly communicated to local authorities and civil servants should receive training in these matters.

Recommendation: Administrative ordinances must bolster and facilitate the new civil statutes allowing for the building of places of worship and not frustrate them. Administrative provisions which make the building of places of worship for minority religions a virtual impossibility must be immediately be repealed.

3. Hate Crimes against minority Christians.

The Malatya murders represent perhaps the most egregious killings in Turkey in recent memory. Despite the murders being orchestrated against the Protestant community, State and Intergovernmental organizations have yet to address the fact that a serious threat exists to the Christian minority within Turkey.

When we consider that this community's numbers are estimated at around 3000-3500 people, one can appreciate how the more than 19 attacks in 2007 have had a considerable negative effect on it. This small, yet public, community has been terrorised with the aim of suppressing it and causing it to withdraw within itself. Apart from those apprehended for the Malatya murders, all the perpetrators of the 19 attacks in 2007 (which included physical attacks, assassination plans and murders) have either not been caught or have been released, pending trial. Most of these people are at large in society. Furthermore, to date there has not been any noteworthy advance in exposing the shadowy connections behind the scenes in the Malatya case.

Despite being a small religious community, the Protestant community continues to face security problems. Throughout Turkey, 6 pastors and the legal advisor of the Alliance of Protestant Churches of Turkey are under police protection. Numerous churches also require police protection in order to enjoy the simple freedom of worshipping together. As the attached addendum on human rights violations attests to, 2008 saw no slow down in the number of violent attacks, assassination plots, bomb threats and other threats of violence.¹⁰ A Ministry of Interior Circular of June 2007 requests local law enforcement officials to pay attention to the protection of worship places of non-Muslim citizens as well as paying particular attention to intelligence on possible plans of violent attacks to non-Muslims. Indeed a number of plots of attacks and killings have been uncovered and prevented by the police. However, since the circular or any other initiative of the authorities fails to address the root causes of such intolerance manifesting itself in hateful acts of violence, the Christian population is not able to live in a legal and social framework that fosters equality and freedom of religion or belief for all.

¹⁰ See Addendum entitled: *Human Rights Violations Faced by the Protestant Community in Turkey During 2008*.

The Human Rights Committee must provide immediate recognition of the violence committed against minority religion adherents in Turkey, and in particular the Protestant community in light of both the Malatya murders and proliferation of other violent attacks or threats of attacks. Its recommendations must reflect the objective, dire and growing threat to this community.

Recommendation: In light of the Malatya murders and ongoing acts of violence against the Christian minority in Turkey, policies regarding education against discrimination based on religion should be implemented in Turkish schools and throughout government ministries. This body should continue to monitor that all legal steps are being taken to bring to justice all those who commit violent crimes against persons based on religious animus. In addition, relevant public bodies should engage in dialogue with the Protestant community in order to address their particular problems in this respect.

4. Missionary activity and religious speech is being put in grave danger by current Turkish government policies.

Apart from being a fundamental right, freedom of thought conscience and religion is also a multi-dimensional right. "Freedom to manifest one's religion is not only exercisable in community with others, 'in public' and within the circle of those whose faith one shares, but can also be asserted 'alone' and 'in private'; furthermore, it includes in principle the right to try to convince one's neighbour, for example through 'teaching', failing which, moreover, 'freedom to change [one's] religion or belief', enshrined by the ICCPR and European Convention of Human Rights, would be likely to remain a dead letter".¹¹

These rights are being denied minority Christians within Turkey, often under egregious circumstances. People of faith are being arrested and prosecuted for publically sharing their faith even though no such crime exists in Turkish domestic law.¹² Provocative, false and misleading information continues to be published in school books, describing missionary activity as a threat to national security.¹³ In nearly all cities throughout Turkey, various associations hold seminars in primary and secondary schools with the permission of the authorities, vilifying 'Missionary' activities.¹⁴ Anti-'Missionary' conferences continue to be held in provinces and townships using state facilities, in particular Public Training Centres.¹⁵ Furthermore, missionary activity and minorities continue to be propagated as threats in training and seminars given to military personnel and conscripts at military facilities.¹⁶

¹¹ ECHR, judgement of 25 May 1993, *Kokkinakis v. Greece* (Publications ECHR, Series A vol. 260-A), § 31. Dr. R. A. Lawson, *Opinion at the Request of the Council of Europe: Concerning the Confessions Act*, May 2003 (unpublished).

¹² *E.g.* On 12.12.2008 two people in the province of Rize were arrested and sent to the public prosecutor on the grounds of "missionary activity". In 2007, two American evangelists were arrested for preaching in Taksim (central Istanbul). In 2009 two persons in Ankara were taken to the police station for sharing their Christian faith and were released after the police officers learnt that 'sharing one's faith does not constitute a crime in Turkey.

¹³ *See e.g.:* Attached English translation of a mandatory Turkish high school book comparing missionary activity to a form of terrorism.

¹⁴ *See:* <http://www.habervitrini.com/haber.asp?id=274441>.

¹⁵ *See: fn. 3* of the attached addendum *Human Rights Violations Faced by the Protestant Community in Turkey During 2008*.

¹⁶ *Id., fn. 4.*

The creation of such an atmosphere of intolerance has struck fear into the hearts of minority religion adherents in Turkey. The allowance and even promotion of such an atmosphere by the Turkish authorities has an undeniable chilling effect on freedom of thought, conscience and religion. Recognizing that such state action does violence to the very substance of the protections afforded in the ICCPR, Universal Declaration of Human Rights and other fundamental human rights documents, Turkey must be called on by the Human Rights Committee to answer for its behaviour and guard their actions accordingly.

Recommendation: (a) State and local organs cannot provide facilities to associations or organizations for the purpose of holding conferences aimed at vilifying missionary activity or people of faith; (b) Arbitrary arrests of Christians for sharing their faith cannot be tolerated; (c) False and misleading information about Christians and missionaries must no longer be provided in state sponsored school textbooks or to military personnel; (d) The government and state bodies must most urgently become proactive in their stance against these campaigns aiming to provoke and mislead the public. Any security measures should be done in ways that do not intimidate the church congregations.